

EXHIBIT 5

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STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM
CIVIL DIVISION

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

v

Case No. 13-734-CZ
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN; RICHARD
SNYDER, as Governor of the State
of Michigan; and ANDY DILLON,
as Treasurer of the State of
Michigan,

Defendants.

ROBBIE FLOWERS, MICHAEL WELLS,
JANET WHITSON, MARY WASHINGTON,
and BRUCE GOLDMAN,

Plaintiffs,

v

Case No. 13-729-CZ
Hon. Rosemarie Aquilina

RICK SNYDER, as the Governor of the
State of Michigan; ANDY DILLON, as
the Treasurer of the State of Michigan;
and the STATE OF MICHIGAN,

Defendants.

MOTION TO AMEND PRELIMINARY INJUNCTION

MOTION FOR DEFAULT JUDGMENT

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE

Ingham County, Michigan - Friday, July 19, 2013

1 APPEARANCES:

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For Plaintiffs Webster, et al.:

3

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For Plaintiffs Flowers, et al.:

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For State Defendants:

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REPORTED BY:

Melinda I. Dexter, RMR, RPR, CSR-4629

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Official Court Reporter

313 W. Kalamazoo

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Post Office Box 40771

Lansing, MI 48901-7971

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T A B L E O F C O N T E N T S

WITNESSES:

None

EXHIBITS:

None

1 Ingham County, Michigan
 2 Friday, July 19, 2013 - At 11:25 a.m.
 3 THE COURT: Okay. All right. Robert Flowers,
 4 Michael Wells, Janet Whitson, Mary Washington, and Bruce
 5 Goldman versus Rick Snyder, as the Governor of the State
 6 of Michigan; Andy Dillon, as the Treasurer of the State
 7 of Michigan; and the State of Michigan, Docket 13-729-CZ.
 8 Counsel, your appearance for the record.
 9 MR. WERTHEIMER: William Wertheimer,
 10 your Honor, on behalf of Plaintiffs.
 11 MR. CANZANO: Your Honor, John Canzano. I'm
 12 not counsel in that case. I'm here on the Webster case.
 13 THE COURT: Okay. Thank you.
 14 MR. QUASARANO: Thomas Quasarano, Assistant
 15 Attorney General on behalf of the State Defendants.
 16 MR. DEVLIN: And Brian Devlin, Assistant
 17 Attorney General.
 18 THE COURT: Thank you.
 19 Counsel?
 20 MR. WERTHEIMER: Your Honor, Plaintiffs are
 21 here today in order to request that the Court enter
 22 either a corrected or amended preliminary injunction
 23 order. The Court, I'm sure, recalls the circumstances
 24 yesterday. We have had a chance to have your order
 25 typed. We reviewed it. There were some mistakes in it.

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1 whatever the Court's preference would be.
 2 THE COURT: Well, I'm going to sign this, and I
 3 haven't compared the two. I think we probably should
 4 call it an amended order.
 5 MR. WERTHEIMER: Okay.
 6 THE COURT: But let me just say that your stay
 7 is denied.
 8 MR. QUASARANO: Thank you, your Honor.
 9 Maybe --
 10 THE COURT: Counsel?
 11 MR. QUASARANO: Maybe doing another separate
 12 order makes the most sense, and we can do that using the
 13 forms provided by the Court.
 14 THE COURT: Okay. Thank you.
 15 MR. QUASARANO: Thank you.
 16 MR. WERTHEIMER: Your Honor, one other thing
 17 that may be related to that, and that is, the order the
 18 Court is entering, consistent with the order the Court
 19 entered yesterday, provides us with the relief that we
 20 were seeking by our motion which was scheduled for
 21 hearing Monday at 9 o'clock.
 22 The Attorney General had also noticed a motion
 23 to dismiss for Monday at 9 o'clock. It was not timely in
 24 the sense that he did not give the appropriate time
 25 period for us to respond. In the reply brief I filed

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1 For example, the heading still said temporary restraining
 2 order from the other case where it was clear from the
 3 record and from the body, even, of the order that it was
 4 a preliminary injunction. So we made that change. We
 5 typed everything. We put in the attorneys' names and the
 6 case name.
 7 We made a couple of other changes, which I have
 8 indicated to the Court off the record on another copy of
 9 the injunctive order. And I would -- we would -- I'm
 10 happy to go over each of those, if the Court needs.
 11 Otherwise, I would request that the Court issue this
 12 preliminary injunction. I did not know whether the Court
 13 would want to refer to it as corrected, amended, or not
 14 refer to it at all. So I left that blank. But we would
 15 ask that the Court enter the order that we presented
 16 today to conform to the Court's ruling yesterday.
 17 THE COURT: Counsel?
 18 MR. QUASARANO: Yes, your Honor. As your Honor
 19 knows, we moved for a stay, and so I would ask either
 20 that the stay that was denied yesterday be identified in
 21 the modified order, or we can present another stay. I
 22 would assume that the Court would not grant a stay of
 23 this order consistent with yesterday. So either to
 24 identify it in this modified order as a stay was
 25 denied or we can present another stay.

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1 yesterday, we objected to that and said that we did not
 2 agree to expedited. There was no order expediting and
 3 suggested that the Court deny the -- their motion for
 4 that reason, but I raise it now just to indicate that
 5 that also is out there and that maybe we want -- we want
 6 another order dealing with that issue.
 7 Our position is that it's not timely and that
 8 it shouldn't be heard Monday in any event. I don't know
 9 whether the Attorney General intends to proceed on Monday
 10 on it.
 11 MR. QUASARANO: Your Honor, we do understand
 12 that under MCR 2.119, the motion for summary disposition
 13 is a 21-day period. We sought stipulation of counsel.
 14 They were kind enough to look at the briefs first to
 15 decide whether they would stipulate. They chose not to.
 16 We also sought the endorsement on our notice of
 17 hearing from the Court to allow the hearing on Monday.
 18 Yesterday at bench we discussed if we needed to -- we
 19 needed to set a hearing date on the dispositive motions.
 20 The Court is at liberty to have those heard today or on
 21 Monday or at such other time. Our notice of hearing did
 22 say "or at such other time as the Court may order" on the
 23 notice of hearing itself. Thanks.
 24 MR. CANZANO: Your Honor, if I could make a

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1 THE COURT: Yes, sir.

2 MR. CANZANO: We've -- we've presented a motion

3 this morning, an emergency motion, to advance the hearing

4 on our motion for declaratory judgment that's set for

5 Monday to today. It would be my intention to deal only

6 with the declaratory judgment part of it today, not the

7 injunction part of it. And they've already -- they've

8 agreed that that can be expedited. I don't know that

9 they've agreed that it can be expedited to today, but

10 they agree that it could be expedited to Monday.

11 So if -- that part of it, either today or

12 Monday, that would be a final declaratory judgment. My

13 preference is to do it today.

14 THE COURT: Is that correct?

15 MR. QUASARANO: Well, I believe under 2.605(D),

16 they can seek an expedited hearing, and certainly the

17 Court has the authority to issue that. I think by not

18 entertaining a dispositive motion, we're not going to

19 have a complete argument. Mr. Devlin will be arguing for

20 the State. But we do acknowledge what the court rule

21 says, that's correct.

22 THE COURT: Well, are you objecting to having

23 it heard today?

24 MR. QUASARANO: We will not object in the

25 interest of judicial economy.

8

1 that, or will you be amending that?

2 MR. QUASARANO: No. I'll speak for Mr. Devlin

3 here for a moment only. In the notice of hearing, we

4 indicated to advance it to that date because of all the

5 other activities in this case or such other time as the

6 Court may order.

7 I do point out that in the Flowers case in the

8 prayer for relief is a reference to declaratory judgment.

9 Both cases are asking for both reliefs; preliminary and

10 declaratory judgment. Preliminary injunction motions

11 were granted. Our brief talks about the alternative,

12 assuming arguendo there were a filing, a Chapter 9

13 filing, and then we go into the basis for why there are

14 grounds not to declare judgment, why there is some

15 jurisdictional grounds.

16 So I think that the brief is sufficiently

17 adequate to address all of the issues that are still at

18 issue in this case. Certainly there has been a factual

19 change and those factual changes don't need to be

20 addressed.

21 MR. WERTHEIMER: I guess I just would reiterate

22 if -- I need to know whether counsel is going forward on

23 Monday with its motion to dismiss. I still haven't heard

24 a yes or no.

25 THE COURT: His answer is yes, Counsel.

10

1 THE COURT: And your motion deals with that

2 issue?

3 MR. QUASARANO: It's a (C)(8) motion that would

4 address whether there are grounds for a declaratory

5 judgment, yes.

6 THE COURT: Well, then --

7 I'm sorry?

8 MR. WERTHEIMER: I'm sorry. I may be confused

9 now. Their motion that they filed in the Flowers case to

10 dismiss deals with issues like ripeness. It's a (C)(4)

11 and (C)(8) motion. Many of the facts have changed. I

12 would think they would want to refile that, in any event.

13 I mean, you know, to make an argument based on -- based

14 on ripeness given what happened yesterday afternoon seems

15 to me to be just, to use a lawyer's word, moot at this

16 point. But I'm concerned only with their motion to

17 dismiss in the Flowers case, not with anything related to

18 Webster and whether we're to appear here Monday at 9 to

19 -- per their notice or whether they've withdrawn that

20 motion or not.

21 THE COURT: Okay. Well, let's deal with the

22 Flowers case.

23 What is your intention in regard to Monday?

24 Are you still asking the Court to hear your motion? It

25 has already been filed. Do you still ask the Court to hear it?

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1 MR. WERTHEIMER: Well, okay. If the answer is

2 yes, I would just point out that it's clear under the

3 rules that it is not timely; that no order has entered

4 from this Court.

5 THE COURT: You're right.

6 MR. WERTHEIMER: Okay.

7 THE COURT: You know what we're doing? We are

8 under siege here. Well, we aren't; I'm not. Technically

9 I am through paper, but all of you are. Detroit is. The

10 State is. So I'm not going to go through the usual court

11 rules and the time and all of that. You are all going to

12 spend your weekend doing what lawyers do, and that's a

13 lot of homework because we're going to have that hearing

14 Monday unless you're asking me to do it now.

15 I'm going to hear everything because we're not

16 going to piecemeal this. You all know the case. I know

17 the case. I've done the homework. I don't think myself

18 or my staff got any sleep last night. We've been doing

19 research. I bet if I called all of your wives and asked

20 if you got any sleep, they'd be saying, "No. When is my

21 husband going to get some sleep," right? So we're going

22 to have a hearing, and I don't care if it's today or

23 Monday. I'll come here Saturday, if you would like. I

24 don't care. Let's get some answers, let's get a bottom

25 line as to whether we're going to the Court of Appeals

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1 because that's where you all are headed. I don't care
2 what side you're on. Someone is going up, right? So I
3 have answers for you. Tell me your story. I've got the
4 solution. You might not like it.
5 Can we move on?
6 MR. QUASARANO: We're prepared to go today, or
7 we'll defer to brother counsel for Monday if more time is
8 needed.
9 MR. WERTHEIMER: I'll go today. We can go
10 right now, I mean.
11 THE COURT: Okay. I can go right now too.
12 How about you, sir?
13 MR. CANZANO: I think we already agreed that
14 Webster could go today.
15 MR. DEVLIN: Very well.
16 THE COURT: We have an agreement. I think that
17 might be the only thing you all agree on. Hallelujah.
18 MR. QUASARANO: Other than it's very hot
19 outside.
20 THE COURT: Yeah. We can agree on that too.
21 Okay.
22 Counsel? Well, let's let these gentlemen enter
23 so we don't make noise for the court reporter before we
24 proceed.
25 Anybody else need to make an appearance?

12

1 THE COURTROOM: (No verbal response.)
2 THE COURT: No? Okay.
3 MR. CANZANO: Which case would you like to go
4 first; Webster or Flowers?
5 THE COURT: Mr. --
6 MR. WERTHEIMER: Well, he goes first on Flowers
7 because it's his motion, so it's not my --
8 THE COURT: Okay. Whatever you'd like.
9 MR. DEVLIN: Thank you, your Honor. My name
10 is Brian Devlin, Assistant Attorney General.
11 THE COURT REPORTER: Could you approach the
12 podium, please?
13 THE COURT: Yeah. If everybody would speak
14 from the podium. The mikes work better. The court
15 reporter has better access to hear you. We'll make a
16 better record, and obviously the Court of Appeals and the
17 Supreme Court will need your record, please.
18 MR. DEVLIN: Thank you, your Honor. Brian
19 Devlin appearing on behalf of the Defendants.
20 As Mr. Quasarano has mentioned, that obviously
21 there's been a very dramatic change in circumstances
22 since the brief was filed. The petition in bankruptcy
23 has been filed as of yesterday. It changes some aspects
24 of this case from the State's perspective, but not all.
25 The court reporter should make for the record.

1 Flowers will apply to Webster as well. The fact that
2 this case is now before the bankruptcy court means that
3 there is a court of competent jurisdiction that can hear
4 many of the concerns of the Plaintiffs. And that fact
5 alone changes a lot of the ripeness arguments and things
6 that you will see.
7 Nonetheless, it is the position of the State
8 that there has not been harm at this point to the
9 Plaintiffs.
10 THE COURT: Sir, there hasn't been harm because
11 they haven't acted. What we have here, and I would like
12 you to get to the point, because -- and you can make your
13 record. I'm a very patient judge. I think most people
14 will agree with that. But I have two very serious
15 concerns because there was this rush to bankruptcy court
16 that didn't have to occur and should not have occurred.
17 And certainly Plaintiffs should not have been blind-
18 sided, and this Court and this process should not have
19 been ignored.
20 We have the Michigan Constitution Article IX, §
21 24 that forbids the Emergency Manager to file bankruptcy
22 if pension plans or retirement system of this State or
23 its political subdivisions are diminished or impaired.
24 And the Constitution states:
25 The accrued financial benefits of

14

1 each pension plan and requirement
2 system of the state and its
3 political subdivisions shall be a
4 contractual obligation thereof
5 which shall not be diminished or
6 impaired.
7 And the bankruptcy court will be doing exactly
8 that in its reorganization because the pensions are an
9 unsecured asset. And under the bankruptcy
10 reorganization, under a reorganization Chapter 9, there
11 is no reaffirmation of debt. If I were doing a Chapter 7
12 and wanted to go in and reaffirm payments on my car, I
13 could do so. But there is no way that you can go into
14 bankruptcy court and say, "I am going to reaffirm the
15 pension so that we don't disrupt that."
16 So what we're doing here is violating the
17 Constitution. And then we have Michigan Compiled Law
18 141.1552, which precludes the Emergency Manager from
19 taking such actions. It states specifically in m -- (m)
20 and (ii):
21 The emergency manager shall fully
22 comply with the public employee
23 retirement system investment
24 act --

1 -- 1965 PA 314, and § 24 of
 2 Article IX of the State
 3 Constitution of 1963, and any
 4 actions taken shall be consistent
 5 with the pension fund's qualified
 6 plan status under the federal
 7 internal revenue code.

8 So tell me, sir, how do you get into bankruptcy
 9 court and not violate the Constitution of Michigan and
 10 not violate how the Emergency Manager is supposed to
 11 operate? Haven't we jumped the gun? What are you doing
 12 here, sir?

13 MR. DEVLIN: I can understand your Honor's
 14 concerns. The position of the State is that none of
 15 these impairments have occurred yet.

16 THE COURT: Only because the bankruptcy trustee
 17 hasn't got his teeth into it. It will occur. It's
 18 imminent, isn't it? Tell me how it's not imminent, sir?

19 MR. DEVLIN: I can't predict the future.

20 THE COURT: Yes, you can.

21 MR. DEVLIN: I cannot.

22 THE COURT: The bankruptcy court -- the
 23 bankruptcy court has a certain function. You're a
 24 lawyer. You understand the function of the bankruptcy
 25 court. That's why you ran there yesterday not slowly but

1 that they have the power to address under 943, is just
 2 that; it's just speculation.

3 THE COURT: It's a certainty, sir. You filed
 4 in bankruptcy court, which is federal because you know
 5 that certainty. I don't know how you get around it
 6 because it's an unsecured asset that cannot be
 7 reaffirmed, and there is no case law, and you know that
 8 as well because all of us stayed up all night looking for
 9 case law, and there is no case law. You can't tell me
 10 that it can be segregated out and reaffirmed.

11 So these people that have this pension where it
 12 is supposed to be protected under the Constitution and
 13 under the legislative intent under the emergency manager
 14 legislation, it cannot survive. It cannot survive
 15 federal bankruptcy, and I have no jurisdiction there, and
 16 you know that. And that's why everybody made us wait as
 17 -- slowly we were waiting for your office to come here
 18 out of courtesy. We waited so we would have both sides
 19 present, which is what we do. We honor civility, and it
 20 was filed in order to bind everybody so this could occur,
 21 and it's cheating, sir, and it's cheating good people who
 22 worked.

23 And so what's going to happen is we're not
 24 honoring the Constitution, we're not honoring the
 25 emergency manager legislation, and we're not honoring

1 in your running shoes, right?

2 MR. DEVLIN: I can't speak to that. I had
 3 nothing to do with it. But I can tell you about § 943 of
 4 the Bankruptcy Code, which affords all of the protections
 5 that we discussed in the brief that I've alluded to
 6 today.

7 None of those injuries have occurred at this
 8 point. For that reason, we believe the claim is still
 9 speculative. Of course those are legitimate concerns,
 10 but the court, the bankruptcy court can address them.

11 I referred to -- I'd also refer to *Straus*, the
 12 case cited in our brief too. If that injury has not
 13 occurred, as we contend, then it's an inappropriate
 14 remedy that the Plaintiffs are asking for today.

15 Now, obviously you and I don't see this injury
 16 in quite the same terms, but that is the position of the
 17 State. The injury has not occurred at this point.

18 THE COURT: That would be because the
 19 bankruptcy judge has not sat at his bench like I have and
 20 heard the case and started the reorganization, and that's
 21 the only reason. For me to believe what you're saying
 22 would be -- would make me Helen Keller who's not yet
 23 learned the alphabet.

24 MR. DEVLIN: I think anything that you and I
 25 agree on about that the bankruptcy court did not do

1 good citizens, and we're also not honoring the President
 2 who took Detroit out of bankruptcy. What are we doing,
 3 sir?

4 MR. DEVLIN: Your Honor, I understand what
 5 you're saying, but I would take exception to the motion
 6 that somehow the Attorney General's Office delayed or
 7 dragged its feet or in any way tampered with the
 8 proceedings yesterday. Now, I wasn't here. I wasn't
 9 part of them, but I don't believe that's the case.

10 THE COURT: It looks that way, sir. If somehow
 11 that's not the case, I apologize, but it's the old saying
 12 if it looks like a duck, you know the rest.

13 MR. DEVLIN: Well, I don't want to speculate on
 14 who did what yesterday. As I said, I wasn't here.

15 THE COURT: Thank you.

16 MR. DEVLIN: But it is our position that until
 17 that injury occurs and in light of *Straus*, in light of
 18 the jurisdiction of the bankruptcy court, that this
 19 motion should be -- er, the motion is inappropriate. The
 20 State's motion should be granted --

21 THE COURT: Sir --

22 MR. DEVLIN: -- thank you.

23 THE COURT: Let me ask you this: If the injury
 24 occurs, isn't it then too late, much too late, way too
 25 late for anybody to fix it. There is no way to fix it

1 injury. The leg has been amputated, and we cannot fix
 2 it.

3 MR. DEVLIN: We don't know, is my position on
 4 that. We don't know, and there is opportunity for this
 5 very issue to be heard in the bankruptcy court.

6 THE COURT: But there is no opportunity in the
 7 bankruptcy court for them to fix the harm. Do you have
 8 any law that says the bankruptcy court can fix the
 9 pension fund because I haven't found that either, and
 10 I've looked?

11 MR. DEVLIN: Again, I understand the pension
 12 fund to be tremendously under funded. There are many
 13 problems here, far beyond what's gone on in the last
 14 24 hours. But the court, the bankruptcy court does have
 15 jurisdiction to hear these arguments, to note the
 16 Michigan Constitutional provisions, and to order what it
 17 feels it must order.

18 THE COURT: Okay.

19 MR. DEVLIN: Thank you.

20 THE COURT: Thank you.

21 MR. WERTHEIMER: Your Honor, I'll be brief.
 22 First, I would just point out to the Court that this is a
 23 motion under C -- MCR 2.116(C)(4), (5), and (8): That
 24 is, it's a claim that there is no jurisdiction over the
 25 subject matter; it's a claim that my clients have no

1 capacity to sue because apparently they're not being
 2 injured; and it's a claim that we have failed to state a
 3 claim.

4 As to the law relating to those three points, I
 5 would rely upon the briefs that I have filed, including
 6 the reply brief that I filed yesterday in which I did
 7 take the position that we should not hear -- that the
 8 Court should not hear the motion to dismiss but in which
 9 I dealt with all of those issues, and I won't repeat
 10 those arguments.

11 I would just point out a couple of things:
 12 First of all, counsel says that he cannot predict the
 13 future. The Detroit Emergency Manager, who is a
 14 competent lawyer familiar with bankruptcy, has predicted
 15 the future, and we quoted him in our complaint as saying,
 16 essentially, that once he gets into bankruptcy, the
 17 constitutional rights of our clients will disappear, will
 18 be "trumped" in his words or in the words of the reporter
 19 quoting him. And I think that was -- there was an
 20 interview and there was also his statements made to the
 21 Detroit Free Press Editorial Board.

22 But the point being that the Detroit Emergency
 23 Manager has had no reluctance to predict the future, and
 24 his prediction is consistent with our claim and with the

1 just simply is not credible for an attorney for the
 2 Governor and the State Treasurer to come here today and
 3 say he can't predict the future when we indicated in our
 4 complaint that the future could be predicted.

5 I would also point out that since we were in
 6 court yesterday, we now have not just the bankruptcy but
 7 filings related to that bankruptcy. I'm not going to
 8 introduce these documents, but I understand that counsel
 9 in the Webster case that will be argued when we're done
 10 here will be introducing them. I would simply point out
 11 that we've got correspondence back and forth between the
 12 Detroit Emergency Manager and the Governor requesting the
 13 authorization and the Governor approving the
 14 authorization, in which there is not a word mentioned
 15 about Article IX, § 24 of the Michigan State
 16 Constitution.

17 Our Governor does not feel that that's
 18 relevant. He goes on for pages in his authorization,
 19 obviously for public relation's purposes, talking about
 20 how deeply he cares about the city of Detroit, etcetera,
 21 etcetera, but not one word about Article IX, § 24 of the
 22 Constitution. And, of course, no such word from Mr. Orr
 23 in his request to the Governor.

24 So counsel's essentially saying "No harm yet.
 25 Don't worry. Maybe bankruptcy court will take care of

1 it." But the people who are taking it into bankruptcy,
 2 have taken it into bankruptcy have made very clear
 3 they're not going to take care of it in bankruptcy.

4 And finally just the obvious point, but I think
 5 needs to be reiterated with all the flurry going on that
 6 the whole point of injunctive relief is to prevent a harm
 7 that has not yet occurred, and that's all we're seeking
 8 with our overall lawsuit and all we were seeking with our
 9 motion for preliminary injunction, which this Court has
 10 already granted. Thank you.

11 MR. QUASARANO: Your Honor, I think that the
 12 State's briefing and argument sufficiently presents the
 13 State's position, but I know the Court is patient, and I
 14 would ask the Court's indulgence on the one matter of my
 15 appearance here yesterday, and I would like to make this
 16 clear for the record, if I may, but for Mr. Wertheimer,
 17 who is counsel for the Flowers and others case, I would
 18 not have known that the General Retirement System of the
 19 City of Detroit, et al., even had a TRO motion scheduled.

20 The only communication I had with counsel for
 21 that, those Plaintiffs, was the night before asking if we
 22 could accept service on the Governor, which, as the Court
 23 knows, we're barred from accepting service on behalf of a
 24 State Defendant. Until the State Defendant is served, we

1 I was told there would not be any preliminary
 2 injunction or TRO sought in that case. I do understand
 3 that situation had changed in the hours after that. But,
 4 but for Mr. Wertheimer calling me, counsel in another
 5 case, I would not have known. When he called me, and the
 6 transcript yesterday says it was around 3:30 or so, and
 7 then I arrived as quickly as I could walk over here. So
 8 there was no delay on behalf of the Attorney General's
 9 Office to be here, to represent the State's interest, to
 10 be here to answer this Court's questions. And any delay
 11 at all was because we were notified by counsel for the
 12 Plaintiffs yesterday that they intended to bring the
 13 motion. Thank you for letting me clarify that.

14 THE COURT: Thank you.
 15 Anything further, sir?
 16 MR. DEVLIN: Nothing further. Thank you.

17 THE COURT: Defendants have filed a motion for
 18 summary disposition pursuant to (4), which is:
 19 The Court lacks jurisdiction of
 20 the subject matter.

21 This Court absolutely has jurisdiction of the
 22 subject matter. It's a state question. I know they've
 23 removed it to federal bankruptcy court, but we still have
 24 very serious state questions. We have the State
 25 Constitution, Article IX, § 24. We have an emergency

1 The opposing party has failed to
 2 state a claim on which relief can
 3 be granted.

4 I see problems all over the place. I stated
 5 them. I don't think I need to be redundant. Clearly
 6 there are numerous claims and issues. I won't be
 7 redundant. The relief requested is denied. Motion for
 8 summary disposition is denied.

9 MR. WERTHEIMER: Thank you, your Honor.
 10 THE COURT: Who's preparing the order?
 11 MR. QUASARANO: I'll be preparing it for you,
 12 Judge.

13 THE COURT: Thank you, very much, sir.
 14 MR. QUASARANO: Thank you.
 15 THE COURT: Next matter?
 16 MR. WERTHEIMER: We are -- I am done relative
 17 to the Flowers case.

18 THE COURT: Thank you, very much, sir.
 19 MR. WERTHEIMER: I'll vacate. I think there
 20 are others lawyers in the room with another related case.
 21 So I'll wait in the courtroom but vacate counsel table.

22 THE COURT: Thank you.
 23 MR. WERTHEIMER: Thank you.
 24 MR. CANZANO: Your Honor, John Canzano on
 25 behalf of the Plaintiffs in the Webster case. I would

1 manager statute, and we have a Constitution at issue.
 2 State issues are within the purview of this Court. I
 3 don't care that it was removed to bankruptcy court.
 4 There is nothing here that tells me it was properly
 5 removed to federal bankruptcy court because there is a
 6 procedure in place of how it gets removed. And this
 7 Court does not believe it was properly placed in the
 8 hands of the bankruptcy court because it is going to
 9 affect pensions. Once it affects pensions, which is
 10 clearly what it's going to do, it's in violation, and the
 11 Governor can't give permission for it to go to bankruptcy
 12 court. It's very clear. I think a first-year law
 13 student understands the concept. And I know the Governor
 14 is not a lawyer, but he has very well paid lawyers who do
 15 understand the concept.

16 The party asserting the claim
 17 lacks the legal capacity to sue.

18 That is MCR 2.116(5). A party asserting the
 19 claim lacks the legal capacity to sue? How is that
 20 possible? They're interested parties. Absolutely they
 21 have capacity to sue. The pension's involved, the
 22 pension related to the parties. I don't see any problems
 23 there.

24 And then we have (8), which is always a

1 like to clarify the relief that we are seeking here
 2 today. We -- our complaint sought declaratory judgment
 3 and preliminary injunction. Today we are seeking only a
 4 declaratory judgment.

5 I have taken the liberty of preparing an order
 6 for declaratory judgment which I can present when I'm
 7 done, and the Court may or may not want to say everything
 8 that I've said in there, but I think we are entitled to
 9 that relief. The briefs -- this has all been briefed
 10 already. I don't need to go over that.

11 The State's defense to our motion did not
 12 contest the facts and did not contest the substance of
 13 the merits of the law, which is that the Constitution
 14 prohibits diminishment of pension -- accrued pension
 15 benefits. They simply -- they simply said the case is
 16 not ripe, and there is not an actual controversy for a
 17 declaratory judgment.

18 Now, after yesterday, it's obviously ripe. We
 19 cited a case in our reply brief, *City of Lake Angelus*,
 20 which amazingly is almost on all fours with this case. I
 21 won't describe that case again except to say that that
 22 was a case where the Attorney General made the argument
 23 that there was no injury and there was no need for
 24 declaratory judgment because a request to a tribunal had

1 court correctly ruled that the -- there is an actual
 2 controversy because the parties need the court to tell
 3 them what their rights and obligations are so they know
 4 what to do in the future; whether this tribunal could
 5 overrule a local ordinance which prohibited sea planes on
 6 Lake Angelus, even though they hadn't been asked and they
 7 hadn't ruled. So that part is exactly what we have. Now
 8 we have the bankruptcy has been filed.
 9 I would like to offer a couple exhibits, which
 10 are the July 16th letter from Emergency Manager Orr
 11 requesting authorization to file for Chapter 9, which
 12 amazingly this happened on Tuesday, and none of our --
 13 none of our crack reporters knew about this. Nobody knew
 14 about this until yesterday. This was a secret letter.
 15 And the July 18th letter from yesterday of the
 16 Governor authorizing Emergency Manager Orr to file for
 17 Chapter 9. And I think if you look at these two letters,
 18 it is crystal clear what the judge has already concluded
 19 in the prior case; that not only does the bankruptcy
 20 threaten to impair but that that is the goal and the
 21 intent of the emergency manager is to impair accrued
 22 pension benefits in bankruptcy.
 23 I'll give these to opposing counsel. These are
 24 -- they're a matter of public record now. I just wrote
 25 Exhibit A and Exhibit B on them.

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1 such action by the Governor is without authority and in
 2 violation of Article IX, § 24. And what happened
 3 yesterday was a violation of the Constitution.
 4 Now, my declaratory judgment order declares
 5 these statements. It also has a paragraph at the end
 6 that says:
 7 In order to rectify his
 8 unauthorized and unconstitutional
 9 actions described above, the
 10 Governor must: One, direct the
 11 Emergency Manager to immediately
 12 withdraw the Chapter 9 petition
 13 filed on July 18th. And, two,
 14 not authorize any further Chapter
 15 9 filing which threatens to
 16 diminish or impair accrued
 17 pension benefits.
 18 Now, this is just a declaratory judgment. So
 19 it is my hope that if the Court is willing to enter this,
 20 that the Governor will obey his oath of office and follow
 21 what the Constitution requires. And so -- and if he does
 22 not, then we may be back here on -- with another
 23 iteration of this that requires some type of injunctive
 24 relief.
 25 At this time we're not seeking injunctive

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1 (Approaching the bench.)
 2 THE COURT: All right. Thank you.
 3 MR. CANZANO: As to the merits, I think again
 4 it is very clear this isn't a case where you need case
 5 law. You just read the Constitution. It says accrued
 6 pension benefits shall not be diminished or impaired.
 7 The Constitution says that. The Emergency Manager law
 8 says the Governor can authorize the Emergency Manager to
 9 file for Chapter 9. And it doesn't prohibit that -- it
 10 doesn't require that pension benefits be protected when
 11 he files for Chapter 9. And it is, therefore,
 12 unconstitutional to that extent.
 13 THE COURT: Is there any objection to the Court
 14 receiving Exhibit A and B?
 15 MR. DEVLIN: No objection, your Honor.
 16 THE COURT: A and B are received. Thank you.
 17 (At 12:04 p.m., Exhibit A and
 18 Exhibit B is received.)
 19 MR. CANZANO: So the emergency manager law is
 20 unconstitutional to the extent that it allows the
 21 Governor to authorize a Chapter 9 filing which threatens
 22 to diminish or impair pension benefits. And the Governor
 23 is prohibited by Article IX, § 24 from authorizing an
 24 emergency manager to proceed under Chapter 9 in a manner
 25 that is intended to impair accrued pension benefits.

1 relief, so I would -- I would withdraw our request for
 2 preliminary injunction without prejudice. And I'd also
 3 ask, if this order is entered, that the temporary
 4 restraining order entered yesterday be vacated or
 5 expired, and all we want is a declaratory judgment right
 6 now.
 7 THE COURT: And the reason to vacate or expire
 8 the temporary restraining order?
 9 MR. CANZANO: Because now we have the default
 10 judgment and the TRO. I don't remember what the court
 11 rule says, but it cannot only exist for a short period of
 12 time on its own, and this is the tact that we would like
 13 to take because we would like to tell the Governor, "This
 14 is what you're supposed to do." And then if he doesn't
 15 do that, then we'll then -- we'll reassess our options.
 16 THE COURT: Okay. Thank you.
 17 MR. CANZANO: May I present my draft order?
 18 THE COURT: Yes. Have you presented it to the
 19 other side?
 20 MR. CANZANO: I have not.
 21 THE COURT: Thank you.
 22 MR. QUASARANO: We've looked at this,
 23 your Honor.
 24 MR. CANZANO: Just as to the matter of the

1 anyone is arguing -- I don't think the Attorney General
2 is arguing that our case is stayed by the bankruptcy
3 court because we're not suing the Emergency Manager.
4 We're only suing the Governor and the Treasurer and the
5 State of Michigan, and they're not -- they're not in the
6 bankruptcy court. They're not the debtor, so that's an
7 argument that has been raised. But, just for clarity, I
8 wanted to point that out. That's all I have.

9 THE COURT: Thank you.

10 Response?

11 MR. DEVLIN: Thank you, your Honor. Brian
12 Devlin again on behalf of the Defendants. I won't repeat
13 the discussion we had on the Flowers case. Much of that
14 applies. The relief sought in each of these cases is the
15 same position of the State, is that the bankruptcy court
16 jurisdiction has a great effect on this, and that the
17 reliefs that might be desired by the Plaintiffs are
18 available through that court. Furthermore, we'd cite the
19 *Straus* case as well in this reply.

20 I would like to call the Court's attention to
21 just one other thing: There was reference made to the
22 Governor's obligation to uphold the terms of the United
23 States -- of the State Constitution but that also applies
24 to the United States Constitution, and bankruptcy court
25 is certainly someone he may have to answer to as well.

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1 transcript without looking at both.

2 So I'm going to direct the court reporter to
3 treat today as one transcript despite there being two
4 docket numbers, and I didn't even call both of them, but
5 we just sort of started, but we're really dealing with
6 Dockets 13-734-CZ and 13-729-CZ.

7 So the motion for summary disposition in regard
8 to 13-734-CZ, and that's Defendants' motion for summary
9 disposition is denied based on the same rationale the
10 Court had and reasoning in the prior case.

11 In regard to the request for declaratory
12 judgment, I think it is imperative that the Court sign
13 this. It's absolutely needed. And the Governor, I have
14 to believe, took his oath in all sincerity to uphold the
15 United States Constitution and the State of Michigan
16 Constitution. I hope he rereads certain sections and
17 reconsiders his actions.

18 I am finding the actions that have been taken
19 in regard to filing this action in the bankruptcy court
20 as overreaching and unconstitutional as it applies to
21 what the Detroit Emergency Manager Kevyn Orr has done in
22 conjunction with the Governor.

23 So I find it absolutely necessary to sign this
24 order of declaratory judgment. I am also going to order,
25 in addition to what you have crafted here, that a copy of

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1 So that should not be lost sight of.

2 Finally, I wanted to point out that we do have
3 a motion for summary disposition pending in this case as
4 well. And I would rely on the arguments in the brief.
5 And the ones I've just restated as well to ask that that
6 relief be granted. Thank you.

7 THE COURT: Are you asking that that be heard
8 now, or would you like me to make a ruling on that now?

9 MR. DEVLIN: I think you could probably make a
10 ruling on it without further argument.

11 THE COURT: I think so too.

12 MR. DEVLIN: All right.

13 THE COURT: Okay.

14 MR. DEVLIN: Thank you.

15 THE COURT: Anything further?

16 MR. CANZANO: Nothing further, your Honor.

17 THE COURT: All right.

18 As to the motion for summary disposition in
19 regard to Defendants' motion is denied. I'm going to
20 incorporate the transcript, the arguments of the Flowers
21 matter into this file. I think that in order to have a
22 complete argument, we're going to consolidate the
23 arguments and the files for the purpose of today because
24 they are really united. They are part and parcel of the

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1 this order be forwarded to President Obama. I know that
2 he's watching this, and he's bailed out Detroit. If this
3 is going to ultimately proceed to bankruptcy without
4 anyone paying attention to Michigan's Constitution and to
5 what the legislature drafted and to what the Governor
6 himself signed into law, then there will ultimately be a
7 request that Obama will have to look at the pension, so
8 he might as well follow this. He said in the news that
9 he's following this. He might as well see what we've all
10 done here. It's that important to the State of Michigan
11 and to the thousands of people who will be affected, and
12 ultimately all of the taxpayers of the state of Michigan
13 are going to be affected because we will all have to pick
14 up the tab if this is not honored as it should be.

15 Additionally, I am asked that the temporary
16 restraining order be quashed and nullified, so that is
17 now withdrawn, and it expires today at 12:15. And the
18 order of declaratory judgment is being signed as that
19 expires.

20 Is there anything else for the record?

21 MR. WERTHEIMER: Not for the Plaintiffs in
22 Flowers, your Honor.

23 MR. QUASARANO: I'm obliged, your Honor, to
24 move for a stay of enforcement of the order of

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1 THE COURT: You are obliged. I am obliged as
2 well to deny.

3 MR. QUASARANO: I'll have an order ready.
4 Thank you, Judge.

5 THE COURT: I look forward to signing all of
6 those orders today. I will be in until 5 or so. And I
7 haven't looked at Monday's docket. Have we taken care of
8 all of Monday or not?

9 MR. WERTHEIMER: I think, as to the Plaintiffs
10 in Flowers, you have because our motion was for
11 preliminary injunction, which you have granted and will
12 be providing us with that order, and their motion was for
13 summary disposition, which you've denied. I believe that
14 was all that was up in Flowers. So that the Flowers case
15 continues, but there is nothing up for Monday in Flowers.

16 MR. QUASARANO: Defendants concur in Flowers.

17 THE COURT: Okay. My law clerk is making
18 copies, multiple copies, of the order I've just signed.

19 I am here on a moment's notice as you all have
20 become accustomed to if you need me.

21 MR. WERTHEIMER: Thank you, your Honor.

22 THE COURT: That's all for the record.

23 MR. CANZANO: Thank you, your Honor.

24 Appreciate the Court's ability and willingness to help us
25 out on this urgent time.

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1 THE COURT: Thank you.

2 (At 12:16 p.m., the matter is
3 concluded.)
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1 STATE OF MICHIGAN)
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CERTIFICATE OF REPORTER

I, Melinda I. Dexter, Certified Shorthand Reporter, do hereby certify that the foregoing **37 pages** comprise an accurate, true, and complete transcript of the proceedings and testimony taken in the case of **Gracie Webster, et al.** versus **Richard Snyder, et al.**, Case Nos. **13-734-CZ** and **13-729-CZ**, on **Friday, July 19, 2013.**

I further certify that this transcript of the record of the proceedings and testimony truly and correctly reflects the exhibits, if any, offered by the respective parties. WITNESS my hand this the nineteenth day of July, 2013.


Melinda I. Dexter, RMR, RPR, CSR-4629
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