

The Detroit “Bankruptcy” Distracts from Attack on Constitution: The Unelected “Czar of Detroit”:

By [William Boardman](#)

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“Through its provisions, Public Act 436 establishes a new form of local government, previously unknown within the United States or the State of Michigan, where the people within local municipalities may be governed by an unelected official who establishes local law by decree.” -

[Complaint for Injunctive Relief](#), Phillips et al. v. Snyder, U.S. District Court for Eastern Michigan

“We are a country of law.... The government cannot just abrogate contracts.”

- Obama economic adviser Larry Summers, quoted by Matt Taibbi discussing the sanctity of contracts in [“Looting the Pension Funds”](#)

“Pension benefits are a contractual right and are not entitled to any heightened protection in a municipal bankruptcy.”

- U.S. Bankruptcy Court Judge Steven Rhodes speaking from the Bench on December 3, and contravening the Michigan Constitution while granting Detroit federal bankruptcy protection

Detroit’s recent bankruptcy eligibility was achieved in part by the Michigan governor defying a court order, the Detroit czar defying a court order, and a federal bankruptcy court telling other federal and state courts that their orders and the cases before them challenging the constitutionality of state law and state actions simply don’t matter.

Since December 3, the dominant media narrative following Judge Steven Rhodes’s bankruptcy court ruling suggests, in over-simplified form, that Detroit’s one man government can dispose of most of the city’s estimated \$18 billion debt and long term liabilities by defaulting on pension contracts and selling off its art collection. This is essentially false as an overview, and false in most of its details.

It would be more accurate to say that Detroit is the victim dishonest politicians colluding with banks and other corporate predators, and we are now witnessing the late stages of an extended municipal lynching that is the natural expression of contemporary American capitalism. That this is essentially true as an overview, and in most of its details, is supported in the question and answer format that follows.

But first, here’s the sanitized frame for the consensus narrative reliably delivered by American pack journalism - in this instance, the New York Times of December 4, under the

headline “Detroit Ruling Lifts A Shield on Pensions” (duplicated verbatim in the Boston Globe and Houston Chronicle):

“In a ruling that could reverberate far beyond Detroit, a federal judge held on Tuesday that this battered city could formally enter bankruptcy and asserted that Detroit’s obligation to pay pensions in full was not inviolable.”

You would not know from coverage by the Times and most other outlets that this and other issues involving Detroit are under widespread court challenge, or that the current situation has been created by officials taking actions that would, in ordinary circumstances, be considered contempt of court.

So what’s wrong with the Times’ summary here?

Speculation is hard to criticize, since any ruling “could reverberate far beyond Detroit,” but most probably won’t. Another, equally valid speculation here would be that the judge’s ruling raises the stakes in an already bitter power struggle over pensions, ignores state litigation that would bar the bankruptcy filing, and supports the one-man rule in Detroit, all of which portend a long legal battle unlikely to be resolved until it reaches the United States Supreme Court.

The Times’ framing implies a false dichotomy, a polarized fight between the city and the pension funds. That is only one axis in a much more complicated struggle in which other powerful players include the Republican governor, a Republican-dominated state legislature, an [unelected city czar](#) with near-dictatorial power, and major banks (at least one of which was a client of the czar’s law firm). The city (insofar as that means the elected mayor and city council), can only watch from the sidelines as others compete to pick it clean. [Under state law](#), the Mayor and City Council [lost their salaries](#) upon appointment of the city czar (he later reinstates their pay in full in his first official act).

Detroit’s problems have evolved downward for more than half a century, as it went from [America’s wealthiest city](#) to perhaps its poorest. The city’s decline was accelerated by events way beyond its control, such as the collapse of the auto industry or the banking-induced financial collapse of 2008. The automakers and the banks benefitted from federal bailouts that have been unavailable to the city. In July, as Detroit headed toward bankruptcy, the Obama White House openly [opposed any bailout](#) (or much other help) for the city with a roughly 80% African-American population. The rest of Michigan is about 80% white.

The public record at this point must be hundreds of thousands of relevant pages. In 2013 alone, court records in federal and state courts are in the hundreds if not thousands of pages. Only fragments have been widely reported, little in any systematic way.

What about unions, aren’t they responsible for the whole mess?

Good example. What kind of question is that? Seriously, what are the unstated assumptions that make such a reflexive question even possible? Unions were once a vibrant means of giving the powerless some power and the powerful hate that and have spent decades demonizing – and destroying – unions with remarkable and profitable success.

The city czar (officially an “emergency manager” appointed by the sole authority of the governor) puts the city’s total pension obligations at \$3.5 billion, a figure that is generally

accepted. That amount is unsecured, contractual debt, most of which won't be due for years or decades. In other words, it's a problem, but it's only a small part of Detroit's current fiscal crisis - and it's a part the city has used to create the appearance of amelioration: "saving" money by failing to pay their legally required payments to pension funds.

Detroit also has an estimated \$5.7 billion liability for retiree healthcare benefits. The Affordable Care Act could potentially limit or reduce these costs, but Michigan Republicans are working to sabotage the act (although the governor eventually sought [Medicaid expansion](#) in November). In October 2013, the city czar ordered a [new health care plan](#) that shifts some healthcare costs to retirees effective January 1, 2014, saving the city an expected \$120 million annually.

So, yes, what Detroit owes to its retired workers is part of the city's debt, contractually agreed to and with no hidden surprises as long as it was well and honestly managed. Retired uniformed workers (such as police and firemen) average about \$30,000 a year in pensions, non-uniformed workers average about \$20,000 annually. Add in their Social Security and some of them are probably close to the median family income nationally (or at least out of poverty, unlike another 36 per cent of Detroit residents, roughly 250,000 people).

In comparison the city czar, attorney Kevyn Orr is paid \$275,000 annually by the state, with [staff salaries](#) running to \$225,000 a year paid by the city (as required by state law).

Doesn't Detroit have twice as many retirees as current city workers?

There are about 21,000 retirees (not all living in Detroit) and about 9,700 city employees (not all living in Detroit). Other reports put the number of retirees at 24,000, with 16,000 of those over 65.

This is partly the result of Detroit's shrinking population, from about 1.8 million people in 1950 to about 700,000 today. Detroit's population loss has contributed to its losing almost half its state revenue sharing since 2002, when it was \$161 million a year higher.

The city has been cutting its workforce for years and the city budget has been reduced roughly 40 per cent in recent years, while continuing to run an [annual deficit](#) during 2008-2012, ranging from \$128 million in 2008 to \$57 million in 2011, according to city czar Orr's bankruptcy court declaration (p. 36).

But within the greater, decayed Detroit, there is a second, downtown Detroit that is, by many accounts, a vibrant and expanding city-within-the-city, supported in part by an estimated \$11 billion in private investment (a billion of that from Quicken Loans founder Dan Gilbert). This Detroit [looks on the bright side](#) (and ignores things like bankruptcy), praising the private "development that's helped transform downtown's buildings, businesses, and riverfront into a lively and appealing urban center. Those dollars and many other ventures and commitments have been so numerous that we had to divide the information into five different fact sheets."

If things are so good, why is there a city czar dictator?

The short answer appears to be: because that's what Gov. Rick Snyder wanted. And the governor controlled the process, so it didn't really matter what the city government or the

people of Detroit wanted.

The more complicated answer is that a supposed democratic process was manipulated to allow for the establishment of autocratic rule in Michigan.

The election of 2010 brought Republicans to power in the state, controlling both houses of the legislature and the governorship with predominantly tea-party type ideologues. They promptly strengthened Michigan's longstanding, little-used "emergency financial manager" law ([Public Act 4](#)), which went into effect March 16, 2011. The law gave Gov. Snyder [unprecedented power](#) to seize control of local communities, replacing their elected officials with a single, governor-appointed czar whose authority was unhampered by meaningful checks or balances.

Gov. Snyder first used his czar power against the predominantly African-American (about 90%) community of Benton Harbor, which first had an emergency manager in April 2010, under a much weaker statute. As the New York Times [reported in December 2011](#), describing that manager:

"His power grew exponentially last spring when Governor Snyder and the state's Republican Legislature passed Public Act 4, which allows emergency managers to renegotiate or terminate contracts, change collective-bargaining agreements, even dissolve local governments (subject to the governor's approval). They have almost unfettered control over their respective cities. This approach to governing is still in its infancy, but if it proves successful in Benton Harbor and elsewhere, emergency managers could be dispatched to troubled municipalities across the state. Snyder has even made it clear that Detroit is a strong candidate for takeover."

So how has one-man rule worked in Michigan communities?

The record is mixed, and without any stunning successes. Representative government has yet to be restored in Benton Harbor, which is now under a successor czar and still living on promises of improvement in the future.

After experiencing Gov. Snyder's experiment in czarist rule in half a dozen communities during Public Act 4's first year, Michigan voters weren't all that happy with the results.

By August 2, 2012, opponents of one-man rule had gathered enough petition signatures to put the repeal of Public Act 4 on the November ballot. In November, roughly four million voters split 52-48 [in favor of repeal](#). Of Michigan's 83 counties, only 8 voted to retain the law.

Responding to the will of the voters, the Republican-dominated legislature promptly passed a revised version of the czar law - and made it immune to any future referendum. [Gov. Snyder signed](#) the new law, [Public Act 436](#), on December 27, 2012, allowing it to take effect on March 26, 2013.

And this is the state law that made possible the czar of Detroit?

Exactly. Gov. Snyder appears to have been gunning for Detroit all along, Detroit being a city rich with his political enemies: Democrats, unions, working people, African-Americans and other minorities.

A year earlier, Gov. Snyder had started the process of placing Detroit under a czar, but instead entered into a consent agreement with the city that included a financial plan. The plan had not succeeded and in February 2013, a state determined that Detroit remained in a financial emergency with no satisfactory plan to resolve it. On March 1, Gov. Snyder announced that he would appoint a Detroit czar and the next day he [formally declared](#) Detroit to be in a “financial emergency.” On March 14, he announced the choice of Washington attorney Kevyn Orr to fill the position for 18 months (subject to reappointment). The appointment authority came from an earlier law, allowing the governor to act without participation by local officials that would be mandated by the new law. Orr took office the day before the new law took effect.

How is it constitutional to replace elected officials with czars?

In a [federal lawsuit](#) filed March 27 in the U.S. District Court, Eastern District of Michigan (Detroit), the [original 22 plaintiffs](#) argue that Michigan’s [czar law is unconstitutional](#) in a variety of ways, including violation of their constitutional rights to equal protection, republican form of government, free speech, and ability to petition their government. Plaintiffs’ attorneys include lawyers from the Center for Constitutional Rights. The American Civil Liberties Union has filed an amicus brief supporting plaintiffs in the case (Phillips v. Snyder, 13-cv-11370).

Before this lawsuit could resolve any constitutional issues, it was stayed by the Detroit czar’s bankruptcy filing in July. In November, bankruptcy judge Rhodes ruled that the constitutional challenge [lawsuit can go forward](#), after the parties agreed that the case would not seek to remove the Detroit czar.

In other words, it is one of the oddities of the priorities of federal law, as currently enforced in Michigan, that issues of municipal debt are given more importance than issues of the constitutionality of laws by which those debts will be adjudicated.

Meanwhile the Detroit czar, while making some apparent effort to find a compromise, continued to move the city toward the long-threatened bankruptcy that elected officials opposed.

So who is this Detroit czar and what are his priorities?

By most outward appearances, attorney [Kevyn Duane Orr](#), 55, fits the classic profile of a hired gun, a consummate professional brought in to clean up Dodge (or in this case Detroit). A Florida native who last worked in Washington (he lives in Chevy Chase) for the Cleveland-based international law firm of Jones Day, which he joined as a partner in 2001 (Jones Day employs more than 2,400 lawyers in 37 cities on five continents). For the previous 20 years, Orr was a federal government attorney mostly handling complex litigation and bankruptcy.

Within the profession, he is considered among the best lawyers in his field.

He attended the University of Michigan, earning his bachelor’s (1979) and law (1983) degrees there. As a Jones Day attorney, Orr represented (at \$700 an hour) Chrysler in its 2009 bankruptcy and restructuring.

Orr’s wife is a surgeon at Johns Hopkins Hospital in Baltimore. They have two children. When the Orrs failed to pay unemployment insurance for their children’s caregivers during 2009-2012, the state of Maryland put four consecutive, [annual tax liens](#) for more than

\$32,000 on the Orrs' home in Chevy Chase. Two of the liens remained unpaid (\$15,797.68) and became public after his appointment as Detroit czar. Orr first said he was surprised and didn't know what the liens were about. Orr has since paid his back taxes, apparently at a discount, and calling it an "embarrassing" oversight. Gov. Snyder blamed the four-year lapse on Orr's accountant.

[Testifying under oath](#) during the November bankruptcy hearing, Orr said he had not intended to mislead Detroit city workers and retirees in June, when he assured them that their pensions were "sacrosanct."

Orr's wife Donna said of Detroit, "If I were in that situation, I would feel good that Kevyn is the person out there to help me. He's fair. He can talk to you. He's not going to hold anything back. He comes from a place of goodness. He's trying to do what's best."

So who decided it was best for Detroit to go into bankruptcy?

From the way things played out, it looks like the fix was in from the start, though the governor and the czar deny it. [They also deny](#) that the governor hired the czar in an illegal manner, even though [there are emails](#) that seem to demonstrate violations of Michigan laws, including the Open Meetings Act. Orr has denied under oath that Gov. Snyder made taking Detroit into bankruptcy a condition of hiring Orr as Detroit czar.

The role of Mayor Dave Bing (who leaves office December 31) and the City Council is also curious, given that in the midst of much public and private speculation about naming a Detroit czar, the city hired the Jones Day law firm as its restructuring counsel (reportedly [under pressure](#) from Gov. Snyder). [Three days later](#), Gov Snyder named Jones Day partner, Kevyn Orr, as the city's czar, with both denying there was any conflict of interest. All the same, Orr said he would resign from the firm and cash out his interest in Jones Day.

Rep. John Conyers, a Michigan Democrat, perceives the Detroit czar hampered by both structural and personal [conflicts of interest](#), writing in September:

"One of the principal reasons Detroit has faced financial turmoil is the State of Michigan has failed to honor its revenue sharing commitments. Therefore, we must question the extent a manager appointed by Gov. Rick Snyder can be expected to hold the state to its commitment. The fact Mr. Orr has been placed in the position of supervising his former law firm and its ample fee requests also creates significant additional conflicts and costs."

That still leaves Orr in a position negotiating with his former (and possibly future) employer on behalf of the city over which he has sole control, [including control](#) over the elected officials who hired his firm to represent them. And then there are the lurking conflicts inherent in the relationship among the city, the czar, Jones Day, who also represents Detroit creditors including JPMorgan Chase, Bank of America, and Union Bank of Switzerland (UBS).

The relationship with UBS is especially sensitive since, as MFI-Miami reports: "Detroit has \$9 Billion in long term debt to bond holders. Nearly 50% of this debt is due to the City of Detroit being a victim LIBOR rigging by [Union Bank of Switzerland \(UBS\)](#) and UBS conning the city's financial managers into using complex derivatives which basically set the City of Detroit up to fail."

Why didn't opponents of bankruptcy go to court to block the filing?

They did, actually.

On July 16, czar Orr presented a [12-page recommendation](#) to the governor and state treasurer that the city file for bankruptcy, writing that: “If the City is authorized to proceed under chapter 9, I intend to move the chapter 9 case along as expeditiously as possible.”

On July 17, the two Detroit pension funds filed for a temporary restraining order to block Gov. Snyder and czar Orr from filing a Chapter 9 bankruptcy petition.

On July 18, the Michigan Circuit Court for the County of Ingham granted the [restraining order](#), ordered that the governor and czar (and their agents and representatives) were barred from taking any further action that might diminish or impair the retirement systems. The Michigan state constitution explicitly protects pensions (Article TX, section 24): “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.”

In spite of the restraining order, not to mention the constitution, that same day Gov. Snyder gave czar Orr official permission to file a Chapter 9 bankruptcy petition. [Late that night](#) and early the next morning, the [attorney filed](#) at least five pleading in support of Detroit’s bankruptcy petition.

On July 19, U.S. Bankruptcy Judge Steven Rhodes froze all the lawsuits seeking to block the city’s bankruptcy filing.

So the bankruptcy judge is going to determine Detroit’s future?

He may play a role, even a large role, although he’s encouraging the parties to reach an out of court settlement that he can just approve. That may be a long shot, but the odds depend to some extent on how active the judge is in motivating the parties to settle particular issues in particular ways.

For all its length (150 pages), [Judge Rhodes’s decision](#) is narrow in its reach, which fits in a one-page, [five-line order](#) that grants Detroit relief under Chapter 9 of the bankruptcy code. As Judge Rhodes wrote in the final paragraph of his decision:

“The Court reminds all interested parties that this eligibility determination is merely a preliminary matter in this bankruptcy case. The City’s ultimate objective is confirmation of a plan of adjustment. It has stated on the record its intent to achieve that objective with all deliberate speed and to file its plan shortly. Accordingly, the Court strongly encourages the parties to begin to negotiate, or if they have already begun, to continue to negotiate, with a view toward a consensual plan.”

Meanwhile, what about the constitutional and other issues?

They’re all still out there, including several appeals of Judge Rhodes’s ruling, although a settlement could make those issues moot. Czar Orr has said he would offer a proposed settlement in early January.

The incoming mayor, [Mike Duggan](#), ran on a record that included his financial turnaround of the Detroit Medical Center, the city’s main hospital system. He promised that if he didn’t agree with the czar’s settlement proposal, he’d offer one of his own. Detroit’s first white

mayor in 40 years, Duggan opposed the appointment of a city czar, but has pledged to work with him.

One context for Detroit's bankruptcy is that it became possible only through the radical abuse of the democratic process and deliberate denial of the express will of Michigan voters. In other words, what is happening to Detroit now is corrupt at its roots, possibly unconstitutional, and seems most likely to benefit a few rich people at the expense of many poorer people.

In one of his odder comments, Judge Rhodes noted that there was evidence of a state conspiracy to force Detroit into bankruptcy. Then he said there was not enough evidence to make a finding of fact that there was such a conspiracy. Perhaps Detroit has less need for a czar than a special prosecutor.

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