

UNITED STATES DISTRICT COURT
EASTERN DIVISION OF MICHIGAN
SOUTHERN DIVISION

WAYNE COUNTY RETIREES' ASSOCIATION, INC.;
AFSCME SUBCHAPTER 38; EUGENE WRIGHT,
ANTHONY CECE, DOUGLAS WADLIN, CHARLES BONZA,
EVELYN GLANTON, MARGY BISHOP, BEVERLY BRODEN,
PAUL PENERACKL, AND KIM SMITH,
on behalf of themselves and all other similarly
situated,

Plaintiffs

Case No.
Hon.

Vs

CHARTER COUNTY OF WAYNE, and
WARREN EVANS, Individually and in
his official capacity of Wayne County
Executive, and Ex-Official
Member of the Wayne County Employees'
Retirement System, and GARY WORONCHAK,
Individually and in his official capacity
As Chairman of the Wayne County Commission,
And Ex-Official Member of the Wayne County
Employees' Retirement Commission, WAYNE COUNTY
EMPLOYEES' RETIREMENT SYSTEM AND ITS TRUSTEES;
JOHN DOE NO. 1 THROUGH JOHN DOE NO. 8,
INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY AS
BOARD MEMBERS OF THE WAYNE COUNTY EMPLOYEES'
RETIREMENT COMMISSION, jointly and severally,

Defendants

JAMIL AKHTAR P.C.
By Jamil Akhtar
Attorney for Plaintiff
7577 U.S. Hwy. 12
Onsted, MI 49265
Tx. 517-467-7373
Facsimile (517) 858-0190
Email: jimakhtar@att.net

-AND -

MARK PORTER & ASSOCIATES
By Mark Porter
Attorney for Plaintiff
551 East 11 Mile Road, Suite 3D
PO Box 71527
Madison Heights. Michigan 48071-0527
Tx (248) 547.1911
Facsimile (248) 547.1917

COMPLAINT AND JURY DEMAND

Plaintiffs ("Class Representatives") on behalf of themselves and all persons similarly situated, by their attorneys, Jamil Akhtar, P.C. by Jamil Akhtar and Mark Porter & Associates, by Mark Porter, complaint against the Defendants is as follows:

JURISDICTION AND VENUE

1. This is an action for equitable relief and damages alleging that Defendants have breached its obligations owed to Plaintiffs, to provide specific health care and other retirement benefits and coverage to Plaintiffs as retirees. Plaintiffs also allege that Defendants have violated their constitutional rights by substantially impairing their contractual rights and depriving them of property contrary to due process of law. These claims are asserted under 42 U.S. C. §1983 and this court has jurisdiction to hear these claims under 28 U.S.C. §1331. This Court has supplemental jurisdiction to consider any claims brought pursuant to Michigan law and the Michigan constitution.

2. This action is brought as a class action by the Wayne County Retirees Association (WCRA), AFSCME Sub-Chapter 38 and the Class Representatives on behalf of themselves and a similarly situated class of retirees and surviving spouses and dependents pursuant to Rule 23(a) and Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

3. In Count I, brought under 42 USC §1983 as well as the state constitution, Plaintiffs seek damages as well as declaratory and injunctive relief where Defendants have deprived Plaintiffs of a property interest without procedural due process and in violation of substantive due process, as well as a taking of property without just compensation, in violation of 42 U.S.C §1983, U.S. Const. Amend. 14, and Article

I §17 and Article IX §24 of the Constitution of the State of Michigan. Additionally, Defendants Robert Ficano, County Executive Evans and Charter County of Wayne acted pursuant to an official policy or custom.

PARTIES

4. Plaintiff, Wayne County Retirees' Association, Inc., (hereinafter WCRA) is a non-profit corporation registered with the Michigan Department of Licensing and Regulatory Affairs. The WCRA was formed "*to represent the interests of retirees of Wayne County in regard to their retirement benefits from the Defendant-County, including all type of health and medical benefits and insurance benefits, including advocacy, lobbying and/or litigation*"; plaintiff, Eugene Wright serves as the current president of WCRA; at the time of filing this complaint, WCRA has approximately 100 dues paying members.

5. Plaintiff, AFSCME Sub-Chapter 38 is affiliated with the American Federation of State, County and Municipal Employees and is chartered by said labor organization; further, Sub-Chapter 38 is a non-profit corporation registered with the Michigan Department of Licensing & Regulatory Affairs. Plaintiff, Sub-Chapter 38, represents approximately 1700 retirees from Wayne County, Michigan.

6. Plaintiff and class representative, Anthony Cece, is a member of the WCRA, was employed by Wayne County and retired on December 1, 2010. At the time of his retirement, he was a Lieutenant in the Sheriff's Department and was represented by a collective bargaining unit; AFSCME Council 25, Local 3317. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

7. Plaintiff and class representative, Eugene Wright, is a member of the WCRA, was employed by Wayne County and retired on 3-1-15. At the time of his retirement, he was a Corporal in the Sheriff's Department and was represented by the

Police Officers' Association of Michigan. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

8. Plaintiff and class representative, Douglas Wadlin, is a member of the WCRA who was employed by Wayne County and retired on 11-30-2004. At the time of his retirement, he was a Corporal in the Sheriff's Department and was represented by the Police Officers Association of Michigan. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

9. Plaintiff and class representative, Evelyn Glanton, is a member of the WCRA, was employed by Wayne County and retired on 8-1-2009. At the time of her retirement, she was represented by the Governmental Administrator Association. She is not currently a Medicare eligible retiree, receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. 's's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

10. Plaintiff and class representative, Charles Bonza, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction in elimination of

benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

11. Plaintiff and class representative, Margy Bishop, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

12. Plaintiff and class representative, Beverly Broden, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

13. Plaintiff and class representative, Paul Penerackl, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. He is not currently a Medicare eligible retiree who receives health insurance benefits through the plan in place at the time of his retirement, and also receives or has received other benefits as a result of his employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with his level of healthcare.

14. Plaintiff and class representative, Kim Smith, is a member of AFSCME Sub-Chapter 38 who was employed by Wayne County and retired on 8-30-2015. She is not currently a Medicare eligible retiree who receives health insurance benefits through

the plan in place at the time of her retirement, and also receives or has received other benefits as a result of her employment. Defendant's reduction or elimination of benefits has caused a financial hardship and irreparable injury by threatening to interfere with her level of healthcare.

15. At all relevant times Defendant, County Executive Evans, was the elected County Executive and an ex-official member of the Wayne County Retirement Systems Board of Trustees.

16. At all relevant times, Defendant, Gary Woronchak, was an elected County Commissioner, and appointed to be the Chairman of the Board of Commissioners and an ex-official member of the Wayne County Employees' Retirement Systems Board of Trustees.

17. At all relevant times Defendant, Wayne County Employees' Retirement System, had Statutory, Charter and Enabling Ordinance authority, to manage the funds and administration of the Wayne County Employees' Retirement System; as such, pursuant to Act 314 P.A .1965, the Commission had a fiduciary duty to protect the retirees' benefits and to protect the retirees' representation on the Commission.

18. On February 10, 2016 Defendant County Executive Evans with the apparent approval of Defendant, Woronchak, sent a letter to the Director of the Wayne County Employees' Retirement Commission, Mr. Robert Greden , advising him that as of October 1, 2015 County Executive Evans through his anonymous appointees to the Retirement Commission were in charge of the Retirement Commission and the Commissioners who were serving prior to October 1, 2015 were forbidden to take any action; further County Executive Evans through his Corporation Council advised Mr. Greden that any action taken by the Commission as it relates to hiring outside counsel was not recognized.

SUMMARY OF FACTS

19. Plaintiff hereby incorporates paragraph 1 through 18 above to avoid repetition.

20. On or after approximately May 1, 2007, all collective bargaining agreements, contained a provision which provided for retirees to receive the same medical and prescription benefits as received by active employees. The applicable language in the Collective Bargaining Agreement basically provided as follows:

D. Employees who retire from County service who are eligible for post-retirement health care benefits shall participate in the same health care plan options, coverages, co-pays, deductibles, etc., as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is

within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare.

21. On December 16, 2015, defendant, County Executive Evans, published a "Memorandum" to all Wayne County employees of his intent to implement healthcare and prescription drug plan changes effective January 1, 2016. (Exhibit 1)

22. Changes to the active employees' medical/prescription benefits include but are not limited to the following:

- a. Effective January 1, 2016 a high deductible medical/prescription plan would go into effect, wherein the active employees with a family plan; co-pays would be \$2600.00 before any insurance coverage would be provided;
- b. Employees would now be required to pay 25% of the premium for medical insurance which amounts to \$107.22 for a single person; \$257.33 for a (2) person policy and \$321.66 for a family policy payable on a monthly basis; by way of a deduction from their March 1st retirement checks
- c. Active employees will receive an annual bonus in the amount of \$1300.00 to be placed in a health saving account to pay for the high deductible co-pays of up to \$2600.00 per year for a full family policy.
- d. Based upon good faith information and belief, County Executive Evans will, as of the March 1, 2016, start deducting from retirees' month retirement check, the 25% medical insurance premium co-pay.

23. Based upon good faith information and belief, County Executive Evans, if he has not already done so, will implement the high deductible insurance plan for all retirees, which require a first dollar payment of \$2600.00 deductible.

24. Based upon good faith information and belief, County Executive Evans will not provide retirees with the same \$1300.00 bonus, to be placed in a HRA as received by active employees.

25. **Retirement checks will be printed no later than February 23, 2016; therefore, time is of the essence.**

26. Plaintiffs, WCRA and AFSCME Sub-Chapter 38 and the named and class Plaintiffs herein, have not received notice of the change in premiums and co-pays as said information has not been made available by the Defendants.

27. On February 10, 2016 Evans sent a letter to the members of the Wayne County Retirement Commission advising that as of October 1, 2015 they were removed from their position as Trustees of the Retirement System. (Exhibit 2)

CLASS ACTION ALLEGATIONS

28. Plaintiffs hereby incorporate paragraph 1 through 27 above to avoid repetition.

29 The individual Plaintiffs bring this action on behalf of themselves, and on behalf of those similarly situated. Pursuant to Act 314, PA 1965; §21(2), plaintiff's intent is to protect the retiree representatives on the Retirement Commission and more specifically the two (2) retiree representatives elected to the Commission by retirees were not provided with the due process mandated by § 21(2) of Act 314, P.A. 1965; MCL 38.1141.

30 The individual Plaintiffs bring this action on behalf of themselves, and on behalf of those similarly situated, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1)(A) and (B)(2) and (3).

31. The individual Plaintiffs seek to represent a class of all represent a class of individuals represented by WCRA and Sub-Chapter 38 who were or are participants or beneficiaries in the lifetime health insurance benefits plan or plans arising under collective bargaining agreements between the County of Wayne and various labor

organizations, or participants or beneficiaries in lifetime health insurance plans arising from ordinances and mutually explicit understandings establishing a property interest in lifetime health insurance in the absence of representation by a labor organization that resulted in plans provided under collective bargaining agreements.

32. The exact number of the members of the proposed class is not presently known, but based on information and belief the number is in excess of 1500 persons, and is so numerous that joinder of all members of the proposed class in this action is impracticable.

33. There are questions of law and fact common to the class, including legal and factual questions pertaining to the retirement health benefits provided under applicable collective bargaining agreements and ordinances and past practices, and to the propriety under federal and state law of Defendants' discontinuation or modification, and threatened discontinuation or modification, of various retirement health care benefits.

34. The individual Plaintiffs' claims are typical of the claims of members of the proposed class in that all these claims arise under collective bargaining agreements, ordinances and past practice and conduct. The plans cover retirees as well as their eligible spouses and dependents. Additionally, the claims relate to Defendants' wrongful reduction or threatened reduction of retiree health insurance benefits contrary to relevant agreements.

35. The individual Plaintiffs will fairly and adequately represent the interests of the proposed class because they have the same or similar claims and interests arising out of the same or similar operative facts and the same or similar law and contract obligations and retiree health plans, and because they have secured representation of attorneys who are skilled, knowledgeable, and experienced in labor and employment law, civil constitutional litigation and multiparty and class action

litigation involving attempts to reduce or eliminate the retirement benefits of public sector retirees.

36. Defendants' wrongful acts were undertaken on grounds that are generally applicable to the proposed class members, making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

37. The common questions of law and fact that are implicated predominate over any questions that affect only individual members of the proposed class, and class action is far superior to any other available methods for the fair and efficient adjudication of this controversy.

COUNT I

VIOLATION OF PLAINTIFFS' RIGHT UNDER U.S. CONSTITUTION AMENDMENT 14 DUE PROCESS ACTIONABLE UNDER 42 U.S.C. §1983

38. Plaintiff hereby incorporates paragraph 1 through 37 above to avoid repetition.

39. On the date of their retirement, the individual Plaintiffs had a binding contract with the Defendant, Wayne County, for lifetime medical insurance benefits. (See paragraph 20 above).

40. A collective bargaining agreement creates a property interest which can only be taken away from the Plaintiffs as a result of providing the Plaintiffs with the appropriate due process of law as required by Amendment 14 to the U. S. Constitution. (**Hahn v Star Bank**, 190 F3d 708, 716 (6th Cir. 1999)).

41. The Plaintiffs' lifetime retirement, medical and prescription drug benefits constitute a property interest in addition to being established by contract, said rights are also protected by Article IX §24 and Article 1 §17 of the 1963 Michigan Constitution; see also Wayne County Ordinance 32.

42. The retirement benefits which the Plaintiffs claim is a "property right", are referred to as "mirror plan benefits" and which are the same level of benefits provided to active employees. Benefits are divided into two components; (1) part one is the level of medical and drug services to be provided for under the plan and (2) the second component is the cost of the plan and who pays what amount.

As can be seen by reviewing the pre September 21, 2015, labor agreements, this division between the level of benefits and cost of the insurance is clear:

ASFCME COUNCIL 25; LOCALS 25 et al ending 9-30-2014

- D. Employees who retire from County service who are eligible for postretirement health care benefits shall participate in the same health care plan options, coverages (excluding Master Medical and dental coverage), co-pays, deductibles, etc. as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person, and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate. Contributions for each plan year will be increased/decreased at the same rate at which reported monthly illustrative rates or premiums increase or decrease, not to exceed ten percent (10%) over the previous plan year's contribution rate for the specified plan.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health

care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare. (Exhibit 5 (a))

AFSCME Council 24 Local 3317 (10-1-2008 to 9-30-2011)

- D. Employees who retire from County service who are eligible for post retirement health care benefits shall participate in the same health care plan options, coverages, co-pays, deductibles, etc. as active employees covered by this, or any subsequent, collective bargaining agreement.

Employees retiring under the provisions of this Agreement shall make monthly contributions toward the cost of medical and prescription drug benefits based on the average monthly premiums and/or illustrative rates ("rates") of the medical and prescription drug plans available to retirees. The average monthly rates for the separate medical and prescription drug plan categories shall be calculated by averaging the single-person, two-person and family rates of each available plan resulting in an average monthly plan rate for each available plan. The average monthly plan rates for the PPO and HMO medical plans shall then be further averaged together to reach the standard average monthly medical plan rate.

Retirees enrolling in either the PPO or the HMO plan option shall contribute ten percent (10%) of the standard average monthly medical plan rate in addition to ten percent (10%) of the average monthly prescription drug plan rate. Retirees electing to enroll in the Traditional plan option shall contribute an amount equal to retirees enrolled in the PPO or HMO plan option plus the monthly rate difference between the standard average monthly medical plan rate and the average monthly Traditional plan rate.

Contributions toward the cost of retiree healthcare shall continue at the appropriate rate as described above until the first of the month after the retiree is within five (5) years of eligibility for Medicare due to age. The rate in effect at that point in time shall thereafter be the maximum monthly contribution rate for that retiree and shall be assessed until such time as the retiree and all covered dependents have enrolled in Medicare. Contributions toward health care costs shall not be assessed against the retiree during months when all covered members are enrolled in Medicare. (Exhibit 5(A))

43. The Plaintiffs will be irreparably harmed by the actions of the Defendants, a request for injunction is included in this lawsuit; the reduction in medical insurance coverage constitutes irreparable harm, meriting a preliminary injunction; Hinckley v Kelsey-Hayes Co., 866 F Sup 1034, 1044 (Ed Mich 1994); City

of Pontiac Retired Employees Ass'n et al v Louis Schimmel et al, 751 F3d 427 (en bac 6th Cir. 2014) (Exhibit 3).

44. Without providing the Plaintiffs with notice or the right to have a hearing, the Defendants, on January 1, 2016, changed the retirement, medical and prescription insurance benefits which Plaintiffs were to receive on a lifetime basis. All such changes were done without notice and without a right to appeal, in violation of Plaintiffs' rights to due process.

45. Pursuant to Wayne County Code at §141(43), the Plaintiffs are guaranteed their medical and prescription benefits until they reach age 65 when they must apply for Medicare supplemental insurance benefits. (Exhibit 4)

46. The Plaintiffs are for the most part, live on fixed incomes, and are now required to pay between \$107.22 to \$321.66 per month, for their 25% insurance premium payments. (Exhibit 1)

47. Under the terms of the high deductible insurance plan, retirees are now required to pay out of pocket co-pays of \$1300.00 to \$2600.00 deductible prior to receiving medical and prescription coverage under the terms of the County medical/prescription high deductible plan. (Exhibit 5(b); high deductible health plan)

48. County Executive Evans' actions as herein stated were done under color of law.

WHEREFORE PLAINTIFFS REQUEST judgment against the Defendants for the following relief:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continued medical/prescription benefits without notice, is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;

- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions;
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;
- e. Award Plaintiffs punitive damages against Defendant governmental officials and against Defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' right to due process of law;
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs such other and additional legal and/or equitable relief to which they are entitled to.

COUNT II

DEPRIVATION OF PROPERTY RIGHT CREATED UNDER U.S. CONSTITUTION AMENDMENT 14, ACTIONABLE UNDER 42 U.S.C. 1983 (COMPOSITION OF THE RETIREMENT COMMISSION)

49. Plaintiff hereby incorporates paragraphs 1 through 48 above to avoid repetition.

50. All retired employees of Wayne County are guaranteed the right to vote and elect (2) members of the Wayne County Retirement System Board of Trustees.

51. This property right is created by the Wayne County Charter at Article VI-Retirement, §6.111 and §6.112 Retirement Commission which provides as follows:

"ARTICLE VI - RETIREMENT

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

COMPILER'S COMMENTS:

The Wayne County Retirement Ordinance was republished on November 20,1986 (Ordinance 86-486) to incorporate all prior amendments, conform the ordinance with federal law remove outdated provisions, and reconcile inconsistent terminology. This was done again on November 17,1994 in Ordinance 94-747, which has since been amended by Ordinances 97-728, 98-335, 2000-536,2002-1103, 2002-1147,2003-124, 2005-924 and 2010-514. (Code Chapter 141)

It has been ruled that those provisions of the Wayne County Retirement Ordinance which provided for "20 and out" benefits for non-union employees were invalid because in conflict with MCL 46.12a which requires that a county employee have at least 25 years of service to become eligible for retirement benefits if less than 60 years of age. (Donald Gray vs. Wayne County Retirement System, et al Civil Action No. 84-401 649 CK, August 31, 1984, Third Circuit Judge Roland Olzark presiding.)

6.112 Retirement Commission.

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordinance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System. The costs of administration and management of the

Retirement System shall be paid from the investment earnings of the Retirement System.

COMPILER'S COMMENTS:

In Opinion 88-012, the Corporation Counsel advised that the Retirement Commission was without authority to amend the Retirement Ordinance or to expand benefits beyond those authorized by the Ordinance.” (Exhibit 6)

52. Wayne County Home Rule Charter provision 6.112 was implemented by way of the adoption of the Wayne County Code of Ordinances (Chapter 141- et seq. Retirement). (Exhibit 7)

53. Wayne County Ordinance §141-35-Retirement Commission (a)(1)(d) provides as follows:

“(2) retired members who are residents of Wayne County to be elected by the retired members and beneficiaries. The election shall be conducted in accordance with procedures adopted by the Retirement Commission.”

54. Property rights are created by contract and by law. (Hahn v Star Bank, 190 F3d 708, 716 (6th Cir. 1999)).

55. Under the provisions of Act 436 P.A. 2012 a Consent Agreement was approved by the State Treasurer, signed on August 21, 2015. (Exhibit 8). Defendant, County Executive Evans, forced all Unions with the exception of Local 3317, to agree to a contract provision which would allow Evans to reorganize the membership of the Retirement Commission; in part the retiree representatives would be changed from two elected representatives to one elected representative. (Exhibit 9-GAA Contract)

56. Defendant, County Executive Evans, has submitted to the County Commission a request to reorganize the Retirement Commission which would have the affect of eliminating one of the two retired members elected by the retirees to the

Wayne County Retirement Commission. (Exhibit 10, Evans' letter dated January 11, 2016)

57. Defendant, County Executive Evans, is without authority to unilaterally amend the Wayne County Charter, the Wayne County Charter can only be amended by the citizens of Wayne County.

58. Each of the Collective Bargaining Agreements entered into between Wayne County and the various unions, prior to September 21, 2015, contained a provision wherein the:

"The detail provisions of the Wayne County Employees' Retirement System shall control except where changed or modified below."

59. In addition to union employees of Wayne County, there are non-unionized employees who are members of the retirement system; most important is that there are several thousand retired members who would be disenfranchised if defendant, County Executive Evans, is allowed to change the composition of the Retirement Commission without a Charter amendment. County Executive Evans is attempting to eliminate a property right created by law, by eliminating (1) of the (2) retired members of the Wayne County Retirement Commission in violation of the members' rights of due process under the 14th Amendment to the United States Constitution.

60. United States District Court Judge Judith E. Levy, in the matter of AFSCME Council 25 and its Affiliated Locals Vs Charter County of Wayne and County Executive Evans, on December 4, 2015 entered an Order wherein the Court stated:

"Plaintiff may, however, allege that their rights to pensions and vested retirement benefit, as well as their right to representation on the government Public Employee Pension Board, are property rights, and that the right to arbitration are procedural rights owned before plaintiff are deprived of their property rights." (Exhibit 11).

In the AFSCME Council 25 case, the Plaintiffs represented active employees and not retirees. However, Article IX, §24 of the Michigan Constitution provides that retirees' vested rights cannot be diminished or impaired and are considered contractual. (Exhibit 12)

Under Act 314, PA 1965, the County Charter and County Ordinances, the composition of the Retirement Commission, creates a property right protected by the 14th Amendment.

61. As of the date of each of Plaintiffs' retirement, they had a vested right to participate in the management and operation of the Wayne County Employees' Retirement System by way of selecting (2) retirees to represent their interests.

62. Defendants have placed the Retirement Commission (Exhibits 2 and 10) on notice that at its meeting of February 29, 2016, County Executive Evans will attempt to seat his personally selected members of the Retirement Commission.

Plaintiffs through their representation by their two elected Trustees now presently have a 25% voting right on the Commission; whereas under Evans' plan retirees will only have a 1/10 vote on the Commission. (Exhibit 9).

WHEREFORE PLAINTIFFS REQUEST judgment against the Defendants for the following relief:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continually to have the right to select the (2) retiree members on the Retirement Commission is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions;
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;

- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.

COUNT III

DEPRIVATION OF PROPERTY RIGHTS CREATED UNDER WAYNE COUNTY ORDINANCE NO. 2013-500

63. Plaintiff hereby incorporates paragraphs 1 through 62 above to avoid repetition.

64. On August 8, 2013 the Wayne County Commission passed Ordinance No. 2013-500 which provides as follows:

Chapter 32 - COUNTY BENEFITS

Sec. 32-1. - Citation.

This chapter may be cited as the county benefits ordinance.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-2. - Definitions. Modified

For purpose of this chapter words, terms and phrases shall have the following meanings:

Benefit means a healthcare; retirement; pension; insurance; leave time; bonus; severance; lump sum payment; loan or similar compensation, arrangement, accommodation or incentive of a financial nature excluding wages or salary.

Bonus means any lump sum monetary payment received once in a fiscal year in addition to an employee's wages or salary, or an increase in an employee's wages or salary that is reduced within 60 days of implementation of the increase.

Contractor means a person, business, corporation, partnership, sole proprietorship, joint venture or other private legal entity that has an agreement, no matter what it is called, to provide goods, services, supplies, or construction to the County of Wayne.

Elected official means a person who is elected to the office of chief executive officer, county commissioner, county clerk, register of deeds, prosecuting attorney, sheriff, treasurer, circuit court judge or probate court judge within the County of Wayne.

Employee means any person who receives wages or a salary from the County of Wayne regardless of the number of hours worked by or the position of employment held by the person.

Leave time means vacation, annual, sick, holiday, personal business or other similar time compensated by the County of Wayne.

Sec. 32-3. - Commission findings.

(a) The Wayne County Commission finds that the chief executive officer has specifically tailored, offered and provided special benefits and/or accommodations to individuals who serve as appointees in his administration.

(b) The Wayne County Commission finds that the expenditure of public funds requires great responsibility and stewardship to maintain public confidence.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-4. - County benefits.

(a) The County of Wayne shall not provide any benefit to, or any change to an existing benefit, for an elected official, employee or contractor without prior approval, by a majority vote, of the Wayne County Commission.

(b) Notwithstanding subsection (a) of this section, the County of Wayne shall not offer or provide a benefit to an elected official, employee or contractor, unless the benefit is offered or provided on the same terms and at the same time to one of the following groups:

(1) All elected officials;

(2) All union employees within a local;

(3) All non-union or appointed employees within the executive branch of county government;

(4) All non-union or appointed employees within the legislative branch of county government;

(5) All non-union or appointed employees within the judicial branch of county government; or

(6) All similarly situated contractors.

(c) Notwithstanding subsections (a) or (b) of this section, the County of Wayne may provide an elected official, employee or contractor with a benefit, if the benefit is specifically provided by the Wayne County Charter, law, resolution, ordinance, or a court of competent jurisdiction.

(d) The chief executive officer or his/her designee shall prepare and implement policies and procedures to provide for concurrence, uniformity and consistency in the application of this chapter.

(e) No employee may receive monetary compensation that will result in him or her exceeding the salary range for his or her position that is in effect on January 1 of that year without approval of the Wayne County Commission.
(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-5. - Existing contractual rights.

This chapter shall not impair any rights under a collective bargaining agreement or contract of employment with respect to benefits or other compensation in effect on the date the ordinance from which this chapter is derived becomes effective.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-6. - Delegation of authority.

The provisions of this chapter shall supersede any authority delegated by the Wayne County Commission to execute contracts or otherwise legally bind the County of Wayne to obligations, except authority delegated by

resolution of the county commission to the department of corporation counsel and the commission chairperson to settle legal matters.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-7. - Penalties.

(a) In addition to any remedies or penalties provided by law, a person who violates this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for a period not exceeding 90 days, or both.

(b) The office of corporation counsel or the office of commission counsel may institute a civil action in the appropriate district court or in the Third Circuit Court against a person who violates this chapter to recover any financial loss on behalf of the county.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-8. - Application.

This chapter shall apply to any benefit or change in benefit, provided after the effective date of the ordinance from which this chapter is derived.

(Ord. No. 2013-500, §1, 8-8-13) (Exhibit 13)

65. The individual and class Plaintiffs are entitled to medical and prescription insurance benefits equal to active employees of Wayne County.

66. The right to medical and prescription insurance constitutes a property right created by the due process provisions of the 14th Amendment to the United States Constitution. (Hahn v Star Bank, 190 F3d 708, 716 (6th Cir. 1999).

67. Wayne County Ordinance 2013-500 in part provides at §34-4 (b) that employees of Wayne County shall not receive fringe benefits (which include medical and prescription benefits) *"unless the benefit is offered or provided on the same terms and at the same time in one of the following groups:*

2. All union employees within a local".

68. On December 16, 2015, Defendant, County Executive Evans, gave notice that as of January 1, 2016, Wayne County Executive Evans would change medical and prescription benefits to all union and non-union employees. (Exhibit 1)

69. The Wayne County Commission determined that County Executive Evans' Order relating to medical and prescription insurance coverage does not apply to elected Wayne County Commissioners and the Commission own County employees. (Exhibit 14).

70. Because Wayne County Commission employees are covered under Ordinance 2013-500, the retirees are to receive the same medical and prescription benefits as those received by "County employees" that being employees of the Wayne County Commission.

71. Wayne County Executive Evans has deprived the Plaintiffs of a property right, that being the same medical and prescription benefits provided to Commissioners and their employees in violation Plaintiffs' rights under the due process provisions of the 14th Amendment to the United States Constitution.

72. Plaintiffs are entitled to just and proper medical benefits equal to the benefits received by county employees working for the Wayne County Commission.

WHEREFORE, PLAINTIFF REQUESTS:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in continued medical/prescription benefits without notice, is unlawful and violative of Plaintiffs rights under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;
- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;
- f. Award to Plaintiffs of costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.

COUNT IV

BREACH OF CONTRACT

73. Plaintiffs hereby incorporate paragraphs 1 through 72 above to avoid repetition.

74. Plaintiffs and prospective class Plaintiffs, at the time of their retirement, were all covered by Collective Bargaining Agreements, which provided that upon retirement, the Plaintiffs would receive lifetime medical and prescription drug insurance which "mirrored" the medical and prescriptions benefits received by active employees.

75. Chapter 32 (County Benefits) guaranteed all county workers that they would receive, at a minimum the same medical and prescription benefits which are being received by the elected County Commissioners and the Commissioner's staff. This guarantee is contained in the County Code of Ordinances at §32. (Exhibit 3)

Chapter 32 - COUNTY BENEFITS

Sec. 32-1. - Citation.

This chapter may be cited as the county benefits ordinance.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-2. - Definitions. Modified

For purpose of this chapter words, terms and phrases shall have the following meanings:

Benefit means a healthcare; retirement; pension; insurance; leave time; bonus; severance; lump sum payment; loan or similar compensation, arrangement, accommodation or incentive of a financial nature excluding wages or salary.

Bonus means any lump sum monetary payment received once in a fiscal year in addition to an employee's wages or salary, or an increase in an

employee's wages or salary that is reduced within 60 days of implementation of the increase.

Contractor means a person, business, corporation, partnership, sole proprietorship, joint venture or other private legal entity that has an agreement, no matter what it is called, to provide goods, services, supplies, or construction to the County of Wayne.

Elected official means a person who is elected to the office of chief executive officer, county commissioner, county clerk, register of deeds, prosecuting attorney, sheriff, treasurer, circuit court judge or probate court judge within the County of Wayne.

Employee means any person who receives wages or a salary from the County of Wayne regardless of the number of hours worked by or the position of employment held by the person.

Leave time means vacation, annual, sick, holiday, personal business or other similar time compensated by the County of Wayne.

Sec. 32-3. - Commission findings.

(a) The Wayne County Commission finds that the chief executive officer has specifically tailored, offered and provided special benefits and/or accommodations to individuals who serve as appointees in his administration.

(b) The Wayne County Commission finds that the expenditure of public funds requires great responsibility and stewardship to maintain public confidence.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-4. - County benefits.

(a) The County of Wayne shall not provide any benefit to, or any change to an existing benefit, for an elected official, employee or contractor without prior approval, by a majority vote, of the Wayne County Commission.

(b) Notwithstanding subsection (a) of this section, the County of Wayne shall not offer or provide a benefit to an elected official, employee or contractor, unless the benefit is offered or provided on the same terms and at the same time to one of the following groups:

- (1) All elected officials;***
- (2) All union employees within a local;***
- (3) All non-union or appointed employees within the executive branch of county government;***
- (4) All non-union or appointed employees within the legislative branch of county government;***
- (5) All non-union or appointed employees within the judicial branch of county government; or***
- (6) All similarly situated contractors.***

(c) Notwithstanding subsections (a) or (b) of this section, the County of Wayne may provide an elected official, employee or contractor with a benefit, if the benefit is specifically provided by the Wayne County Charter, law, resolution, ordinance, or a court of competent jurisdiction.

(d) The chief executive officer or his/her designee shall prepare and implement policies and procedures to provide for concurrence, uniformity and consistency in the application of this chapter.

(e) No employee may receive monetary compensation that will result in him or her exceeding the salary range for his or her position that is in

effect on January 1 of that year without approval of the Wayne County Commission.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-5. - Existing contractual rights.

This chapter shall not impair any rights under a collective bargaining agreement or contract of employment with respect to benefits or other compensation in effect on the date the ordinance from which this chapter is derived becomes effective.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-6. - Delegation of authority.

The provisions of this chapter shall supersede any authority delegated by the Wayne County Commission to execute contracts or otherwise legally bind the County of Wayne to obligations, except authority delegated by resolution of the county commission to the department of corporation counsel and the commission chairperson to settle legal matters.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-7. - Penalties.

(a) In addition to any remedies or penalties provided by law, a person who violates this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for a period not exceeding 90 days, or both.

(b) The office of corporation counsel or the office of commission counsel may institute a civil action in the appropriate district court or in the Third Circuit Court against a person who violates this chapter to recover any financial loss on behalf of the county.

(Ord. No. 2013-500, § 1, 8-8-13)

Sec. 32-8. - Application.

This chapter shall apply to any benefit or change in benefit, provided after the effective date of the ordinance from which this chapter is derived. (Ord. No. 2013-500, § 1, 8-8-13)

76. On December 16, 2015 Defendant, County Executive Evans, advised all County employees, excluding employees represented by the Police Officers Association of Michigan and County Commissioners and their staff that as of January 1, 2016, the new high deductible medical insurance would go into effect. (Exhibit 1).

77. The December 16, 2015 notice which Defendant, County Executive Evans gave to County employees, guaranteed that they would receive a \$1300.00 cash bonus to be transferred to the employee's health saving account (HSA); however, County Executive Evans, refused to pay Plaintiffs, retired Wayne County employees, the same \$1300.00 bonus. (Exhibit 1)

78. This action by County Executive Evans, of not providing for the same \$1300.00 cash bonus to retirees, constitutes an act of bad faith on Defendants' part.

79. Many, if not most of the Plaintiffs, live on fixed incomes and depend on their pension benefits to sustain their standard of living.

80. Wayne County employees are still receiving paychecks every (2) weeks in addition to paid holidays, paid vacation time, paid sick days, paid shift and weekend premium pay, all of which are provided for through their Collective Bargaining Agreement and/or the non-union and executive compensation plan.

81. The January 1, 2016 implementation of the new high deductible health plan will constitute a severe hardship on the Plaintiffs in that many are faced with a \$2600.00 out of pocket deductible before any of the County medical insurance takes effect. (Exhibit 1 and Exhibit 5).

82. When the high deductible payments are added to the increase in the employee's premium share going from 10% to 25%, this amounts to a total out of pocket expense, which could exceed \$5000.00 per retiree.

83. It was never the intent of the parties, when in 2007 and thereafter, to place retirees in a position where they had to choose between medical care and paying their bills.

84. County Executive Evans did publically state that his contract proposals were "draconian in nature".

85. There are currently 5,317 retirees of which 1,175 are classified as "mirror" retirees with an average age of 63.

86. In January 2015 Wayne County Executive Evans published a document entitled "Wayne County Recovery Plan"; said plan provided for "mirror retirees" to pay a 10% premium sharing. (Exhibit 15)

87. The Defendants set out on a course of conduct to insure that retirees would receive less in medical benefits than did active employees; said actions constitute fraud on the part of the County-Defendants.

88. The September 21, 2015 contracts entered into between the Defendants and the employee unions (including Local 3317) are considered adhesion contracts and therefore are to be considered *void ab initio*.

89. Federal and Michigan Courts, use the standard rule of contract interpretation when reviewing complaints and pleadings for breach of contract, grounded under Collective Bargaining Agreements. Port Huron Educ. Ass'n, MEA/NEA v Port Huron Area School Dist., 452 Mich. 309, 324(1996); the contract is read as a whole, to give meaning to all terms within the contract: Century Security Co. v Charron, 230 Mich App 79 82(1998); cited in Genesee County Community Health

Dept v Sprague, Michigan Court of Appeals docket #297490; 2011 WL 2557476 (2011) (Exhibit 5).

90. Federal and Michigan Courts used the collective bargaining contract as guidance for contract cases involving public employees. **Quinn v Police Officers Labor Counsel**, 456 Mich 478, 482 n.1 (1998); citing: **Demings v City of Ecorse**, 423 Mich. 49, 56 (1985).

91. Customary rules of contract interpretation are used to determine the vested rights of retirees through collective bargaining agreements. **UAW v Yardman** 716 F2d 1476-1479 (6th Circ 1983); cert denied, 465 US 1007(1984) in the case at bar, the mutually/ ratified language of the Collective Bargaining Agreements and Memorandum of Agreements, explicitly created Plaintiffs vested rights to those health insurance program specified by written agreements.

92. Plaintiffs vested health insurance program are specifically linked to the pension article and clauses contained in their respective collective bargaining agreements and memorandum of agreements. **Golden V Kelsey-Hayes**, 73 F3d 648, 656 (6th Cir 1997). See also **Harper Woods Retiree Association**, (Exhibit 16)

93. In each case, Plaintiffs provided the accord and satisfaction of their vested health care insurance programs. They completed the required years of good faith service; as well as the other requirements demonstrates the Defendants' agreement that is medical benefits are a contractual obligation, which began at the retirement date of each Plaintiff; and continued through every successive year, regardless of language change in subsequent collective bargaining agreements. **Cole v Arvin-Meritor**, 515 Fed Supp 2^d 791, 803(ED Mich 2006). (Exhibit 17).

a. The retirement benefits clause is "general" duration clauses, tied to "the life times" of the Plaintiff with no expiration date tied to any subsequent collective bargaining agreement. Id, at pg-802.

b. The general duration clause for retiree health care benefits are opposite the language and set off to the specific duration of health insurance program for active County employees through subsequent contracts. Id, at pg-803.

94. The Defendants' unilateral imposition of the health plan changes on January 1, 2016 is not reasonable in light of changes in health care, nor are they reasonably commensurate for Plaintiffs, given the fixed income of retirees.

95. The Defendants' unilateral actions are material breaches of the various Collective Bargaining Agreements and the Memorandum of Agreements previously obtained and accord and satisfaction with the Defendants.

96. As a result of the Defendants willful reputation of the contracts the Plaintiffs have incurred and will continue to incur substantial economic damages in a form of the payment of medical insurance premiums and out of pocket co-payments.

WHEREFORE, Plaintiff requests this Honorable Court:

- a. Declare the Defendants' actions of January 1, 2016 to be material breach of contract.
- b. Permanently enjoin the Defendants from making the retiree healthcare changes, which were unilaterally made as herein set forth.
- c. Order returned to the status quo ante for retirees' health care insurance, as it operated prior to January 1, 2016 for all of the Plaintiffs herein.
- d. Grant Plaintiffs their cost and attorney fees pursuant to law and court rules.
- e. Order that all affected retirees and their spouses be made otherwise whole for all cost incurred by the Plaintiffs after January 1, 2016.
- f. Take such other action the Court deems necessary at law; equity, and court rules to affect its order.

COUNT V

**VIOLATION OF PLAINTIFF'S RIGHTS UNDER U.S. CONSTITUTION
AMENDMENT 14 DUE PROCESS ACTIONALBE UNDER 42 U.S.C. § 1983
RE PLAINTIFFS' REPRESENTATIVES ON THE WAYNE COUNTY EMPLOYEES'
RETIREMENT SYSTEM (ELIZABETH MISURACA AND HUGH MACDONALD)**

97. Plaintiffs hereby incorporate paragraphs 1 through 96 above to avoid repetition.

98. The individual and class Plaintiffs pursuant to the Wayne County Charter and Wayne County Code of Ordinances, elect (2) retired representatives to the Wayne County Employees' Retirement Commission.

99. As of December 31, 2015 Commissioner Elizabeth Misuraca had over a year remaining in 'her term of office.

100. As of December 31, 2015 Hugh Macdonald had had over a year remaining in his term of office.

101. On February 10, 2016 Defendant, County Executive Evans, sent a letter to Robert Greden the Director of the Wayne County Employees' Retirement Commission, advising them that all of the Commission's actions taken on and after October 1, 2015, were null and void. County Executive Evans takes the position that the new Collective Bargaining Agreements provides him with the authority to change the composition of the Retirement Commission; more specifically County Executive Evans claims the right to eliminate one of the two retiree elected Commissioners. (Exhibit 2 and Exhibit 10)

102. Pursuant to Act 314, PA 1965 MCL 38.1141, no member of the Retirement Commission can be removed from his or her elected office, without the Commission first bringing charges and holding a hearing on his/her removal.; Sec. 21(2) of the Act provides as follows:

“(2) The governing board vested with the general administration, management and operation of a system or other decision/making body that is responsible for implementation and supervision of a system shall give notice and hold a hearing on the removal of a member of that board or body for any of the following reasons...”

103. Sec. 21 of Act 314, PA 1965, creates a property right in the Commissioner position and therefore, removal can only be for cause.

104. County Executive Evans, by implementing his changes to the Retirement Commission on a retroactive basis, whereby one of the two retiree members was removed as of October 1, 2015 said unilateral removal constitutes a deprivation of a property right, without due process of law, in violation of the 14th Amendment to the United States Constitution.

105. County Executive Evans is mistaken in his belief that by changing the Collective Bargaining Agreements to allow him to take control of the Retirement Commission is authorized by Act 436, PS 2012 and the Consent Agreement approved by the State Treasurer on August 21, 2015.

106. County Executive Evans cannot point to any statute or court decision which would allow him to change the makeup of the Retirement Commission, amend the County Charter without a vote of the people or to amend the Wayne County Code of Ordinances, all of which provide for the appointment of two Trustees to represent retirees.

107. As a result of the retroactive changing of the membership of the retirement system, the Plaintiffs and the class Plaintiffs had their membership participation as far as their ability to vote on retirement system business diminished from 25% participation in voting down to 10% participation in voting without County Executive Evans amending the Charter, Code of County Ordinances and in violation of §21 of Act 314, PA 1965.

108. The current elected Wayne County Retirement Commissioners, Tina Turner, Henry Wilson, Gary Woronchak, and Wayne County Executive Evans, breached their fiduciary and statutory created obligation to protect the rights of Plaintiffs'

members to ensure that the Plaintiffs, pursuant to the Wayne County Charter, the Wayne County Code of Ordinances and Act 314, PA 1965 continue to have two retired employees serving on the Wayne County Retirement Commission.

109. By breaching its duties as above set forth, 5000 retirees have been denied a statutorily created property right to have representation as required by the Charter, Code of County Ordinances and Act 314, PA 1965.

WHEREFORE, PLAINTIFFS REQUEST that this Honorable Court enter an injunction prohibiting County Executive Evans from taking any actions in replacing the Retirement Commission members and more specifically the representatives of retirees on the Commission.

Further, plaintiff requests that the Court take the following actions:

- a. A Declaratory Judgment pursuant to 28 U.S.C. 2201 declaring that the Defendants' actions in depriving Plaintiffs of their constitutionally protected property interests in having two elected Retirement Commissioners representing retirees is unlawful and violative of the rights of Plaintiffs under the due process clause of the 14th Amendment;
- b. Preliminary and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65 reinstating Plaintiffs' medical/prescription benefits;
- c. Award Plaintiffs any and all damages incurred as a result of the Defendants' actions
- d. Award Plaintiffs compensatory damages sufficient to compensate them for their mental anguish, emotional distress, embarrassment, humiliation and damages as a result of Defendants' actions;
- e. Award Plaintiffs punitive damages against defendant, governmental official; against defendant, County Executive Evans, as a result of the reckless indifference with which he violated Plaintiffs' due process of law;
- f. Award to Plaintiffs costs and disbursements of this action, including reasonable attorney's fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. 1988 (b);
- g. Award to Plaintiffs of such other and additional legal and/or equitable relief to which they are entitled to.

REQUEST FOR PRELIMINARY INJUNCTION

110. The damages are irreparable, in that the imposed financial actions – which have been self-described by Defendant County Executive Evans as “draconian” – are designed to be beyond “economic.” Said changes will directly and adversely affect Plaintiffs’ protected entitlements and also adversely affect their access to appropriate health care. The loss is beyond that which can be financially recovered. Sampson v. Murray, 415 U.S. 61, 90; 94 S. Ct. 937 (1974); also Basicomputer Corp. v. Scott, 973 F.2d 507, 512 (6th Circ. 1992).

111. There is no adequate remedy at law. The actions and omissions of the Defendants, coupled with their active solicitation of State intervention, have placed Plaintiffs in a position where no appeal to any independent forum was available. “A theoretical right to recover money damages will not constitute an adequate legal remedy where difficulties in the collection of any judgment render that remedy illusory.” Winston v. General Drivers, Warehousemen & Helpers Local Union No. 89, 879 F. Supp. 719, 725 (W.D. Ky. 1995). In the case at bar, over 2,500 class members will all have collective and individual claims against Defendants – on an ongoing basis.

112. The Plaintiffs’ Complaint has demonstrated numerous, “serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued.” Friendship Materials, Inc., v. Michigan Brick, Inc., 679 F.2d. 100, 105 (6th Circ. 1982)

113. The issuance of a preliminary injunction will support the public interest. For instance, Plaintiffs’ contracts have been in place and relied upon by Plaintiffs’ members for decades. The benefits will not be merely reduced, but completely eliminated under the guise of a law that facially, and as-applied, violates the U.S. Constitution. “It is always in the public interest to prevent violation of a party’s constitutional rights.” G & V Lounge, Inc. v. Michigan Liquor Control Comm’n, 23 F.3d 1071, 1079 (6th Cir.1994).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF REQUESTS that this Court:

- A. Issue a Preliminary Injunction against all Defendants.
- B. Declare the acts and omissions of all Defendants to be unconstitutional, in violation of the Plaintiffs rights under Federal law, and *void ab initio*.
- C. Enter an Order Compelling Defendants to maintain the level of benefits and representation required under law and contract.
- D. Enter an award of attorney fees pursuant to 42 U.S.C. §1988.
- E. Have the Plaintiffs Otherwise Made Whole, by such other relief as required by law and equity.

Respectfully submitted,

Dated: February 16, 2016

/S/ Jamil Akhtar
Jamil Akhtar, Attorney for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on the issues set forth by this Complaint.

Respectfully submitted,

Dated: February 16, 2016

/S/ Jamil Akhtar
Jamil Akhtar, Attorney for Plaintiffs