

4 The Pro-Democracy Struggle in Michigan and the Prehistory of the Water Movement in Flint

This water crisis is because we have a democracy crisis in Michigan.
—Nayyirah Shariff, quoted in *Democracy Now!*, “On World Water Day”

Michigan Public Act (PA) 4 took effect in March 2011—the eve, ironically, of a democratic uprising of international proportions. The self-immolation of Tunisian fruit vendor Mohamed Bouazizi in late 2010 touched off a cascade of political rebellions that swept through the Arab world and beyond the next spring and summer. From Western Africa to the Arabian Peninsula, a generation of young Libyans, Egyptians, Iranians, and others used the language of democracy to contest the abuses of authoritarian regimes and give expression to political aspirations. Later that year, a throng of activists gathered in the heart of Manhattan’s financial district to encamp in Zuccotti Park and broadcast the demands of the “99 percent.” Speaking for the millions of Americans left behind by the government’s response to the economic recession, they condemned the growing influence of corporate elites over the American political system and called for higher taxes on the wealthy and stricter economic regulation. Occupy Wall Street, too, had a catalytic effect, inspiring a chain reaction of similar occupations throughout the United States and the world. While the issues addressed by Occupy activists varied from country to country, the movement’s shared objective, according to one prominent protest sign, was “real global democracy now.”

In the meantime, in Michigan’s next-door-neighbor Wisconsin, progressives and organized labor launched their first sally against the wave of far-right Republican politicians elected by Rust Belt voters during the 2010 midterm elections. As the Wisconsin legislature considered a so-called budget repair bill being pushed by Tea Party darling Scott Walker, targeting the

wages, benefits, and collective bargaining rights of public-sector employees, protesters began to flood the lawn of the state capitol. Over the next several months, they staged some of the largest rallies in the state's history, buoyed by an influx of supporters from all over the country. For two weeks in February, protestors physically occupied the capitol building, forming a makeshift community that anticipated the Occupy movement's commandeering of public space. Although the anti-union bill eventually passed, the opposition continued, phasing into efforts to recall Governor Walker and various state senators that stretched into the summer of 2012.

Each of these struggles was shaped by local priorities and local vernaculars of resistance. But the near-ubiquitous theme of "democracy" suggested parallels between them. Activists fought to institute democracy where it had never before existed, or defend democracy against threats posed by plutocratic elites, or make what was *called* democracy more "real." Some activists played up the similarities, sensing some sort of *Zeitgeist* that bridged the various uprisings, and expressions of solidarity and mutual aid crisscrossed back and forth between them. Zuccotti Park drew comparisons to Egypt's Tahrir Square and prominent Egyptian activists visited to share their wisdom with their American counterparts. Protestors in Wisconsin, too, were the beneficiaries of help from afar: Flint activist Nayyirah Shariff remembers when, outside of the Madison Capitol building, pizzas began to arrive, purchased in a gesture of camaraderie by sympathizers in Egypt and other parts of the Middle East.¹

Michigan saw its own pro-democracy movement emerge around the same time. As in Wisconsin, it began as a backlash against a radical Republican agenda set into motion after 2010's midterm electoral coup. Newly-minted Governor Rick Snyder may not have had the Tea Party credentials of Scott Walker, but his administration quickly set to work enacting policies that shifted the state sharply to the right: corporate tax breaks, restrictions on collective bargaining, and school privatization, among others. If there was one piece of this agenda that crystallized and focused the opposition like Walker's anti-union bill had in Wisconsin, it was the legislation that would become PA 4. Despite not bringing the subject up during the campaign, Snyder announced in his January 2011 State of the State address that his administration would seek to revise Michigan's existing emergency manager law so as to establish greater "clarity" about "the powers of the financial managers."² Although Snyder hinted that the changes

would involve “strengthened provisions,” few were prepared for just how much strengthening he had in mind.

As Snyder’s intentions became clearer, what inspired the most concern at first was the possibility that the new law would be used against organized labor, as yet another weapon—and a powerful one at that—in a broader war on collective bargaining. Granting state appointees the ability to render null and void existing union contracts with police officers, fire fighters, 911 operators, teachers, and other public employees would amount to a state veto over the bargaining process at the local level. As the emergency manager (EM) bill began to take shape in the state legislature, Michigan’s major unions sprang into action. In February and March, they sponsored rallies at the capitol that drew thousands of protestors, prompting the *Lansing State Journal* to write that “Wisconsin fever” had “officially hit Michigan.”³ Apparently, the Snyder administration agreed: in a fact sheet about the proposed upgrades to the EM system, it warned that the protestors were “trying to use this issue to provoke the kind of fighting seen in Wisconsin.”⁴

There was more at stake in opposing the law than collective bargaining, however. As activists would come to frame it, the battle in Michigan was not just between organized labor and union-busting politicians in the pockets of the corporate elite, but between “democracy” and “dictatorship.” Given the near-absolute power EMs enjoyed over local government, this was no mere hyperbole. PA 4’s advocates, after all, were so unabashed in their disregard for local democracy that they described the statute unapologetically as a kind of “financial martial law.”⁵ Opponents of the law called it “un-American,” “fascist,” “tyrannical,” and “autocratic.” Its disproportionately disproportionate impact on African Americans—at one point about half of Michigan’s African American population lived under an EM—drew comparisons to historical forms of racial disenfranchisement like slavery and Jim Crow.⁶ Activists also saw in the law shades of the authoritarian regimes under challenge by fellow activists in other countries. The Reverend David Bullock, a pastor in Highland Park, Michigan, who emerged as one of the law’s most outspoken critics, vowed to “show the world that democracy is at stake in Michigan just as it is in Libya or Egypt.”⁷

Those who turned out for rallies at the capitol in early 2011 held out some hope, however farfetched, of impeding the EM bill’s progress through the legislative process, or at least amending the bill. But with Republicans in control of the state House and Senate (not to mention almost all other

important state offices), there was little that protesting and lobbying could do to delay, much less prevent, the inevitable. Asked if the demonstrations at the capitol were having any effect, State Senator Phil Pavlov responded that legislators “had to talk a little bit louder,” but because Republicans were “pretty lock stepped” on the issue, demonstrating wouldn’t “sway any votes either way.”⁸ With only one lone House Republican dissenting, the state legislature passed PA 4 along otherwise strict party lines. Snyder signed it into law on March 16 and it took effect immediately.

Effectively shut out of state government, opponents of the law had little choice but to pursue other avenues of resistance. In Wisconsin, activists were beginning to talk about recalling Governor Walker and his allies in the legislature, but they were stalled, for the time being, by a state law limiting recalls to officials who had served at least a year in office. Unhindered by such a restriction, Michigan activists began to employ the tactic almost immediately. Through the spring and summer, they initiated recall efforts against twelve state representatives who had won narrow victories in 2010. Most of these efforts petered out—eleven of the twelve failed to get recall language onto the ballot for lack of signatures. But in District 51, just to the south of Flint, Flint activists helped to oust arch-conservative Paul Scott in the first successful recall of a Michigan state legislator since 1983.

Contemporaneously with these district-level efforts, a group calling itself the Committee to Recall Rick Snyder initiated a campaign to remove the governor from office. In late April its petition language was approved, and it began an ambitious push to collect 1.1 million signatures in ninety days. Much to the chagrin of the recall’s backers, the Michigan Democratic Party and most of the state’s major unions declined to offer their support, and the campaign ran up against the limits of its leaders’ meager organizing experience. It fell well short of the signatures needed to put the recall on the ballot.⁹

Wisconsin activists commenced their own attempt at a gubernatorial recall in late 2011. Over the ensuing months, they gathered over a million signatures despite only needing half that many, setting the state on course for a special election. Energized by this development, Michigan activists decided to try again to get rid of Snyder. The Committee to Recall Rick Snyder reorganized as the Super PAC Michigan Rising and began a new petition drive in May 2012. This time around, the group had experience, a clear strategy, and better fundraising prospects. But even with a more fine-tuned operation, signature gathering proved to be slow going. When

Walker handily won Wisconsin's special election in June, it deflated the hopes of Michigan activists looking for a success to imitate. Discouraged by their prospects, they ended the campaign. In December of that year, Snyder signed legislation erecting new barriers to getting a recall onto the ballot. Not until the Flint water crisis heavily damaged his reputation would he be subjected to another recall challenge.

In between the failed recalls of Governor Snyder, the pro-democracy movement in Michigan got a fresh injection of energy from the reverberations of Occupy Wall Street. In early October 2011, Occupy events and encampments started to spring up around the state in places like Grand Rapids, Muskegon, Ann Arbor, and Kalamazoo. In Lansing, Occupy activists convened their General Assembly on the steps of the Capitol. In Detroit, they camped out for a month in Grand Circus Park, holding protests outside nearby banks and carrying out direct actions. In Flint, they set up on private property on the north side of downtown and endured through the winter as other camps around the country voluntarily disbanded or were driven from their territory by police. By the spring, Occupy Flint was the only camp still standing in Michigan. Its longevity was significant not only because it was a testament to the hardiness of Flint activists, but also because it provided a local base of support for the activities of the pro-democracy movement through the spring of 2012.

In January 2012, on Martin Luther King Jr. Day, about a thousand activists from around the state turned out for an "Occupy for Democracy" march that took the spirit of the Occupy movement straight to Governor Snyder. After gathering in Ann Arbor, they proceeded to march a mile and a half to the entrance of Snyder's gated community in Superior Township.¹⁰ Although the marchers "occupied" the area only temporarily—long enough to make speeches and deliver a letter of complaint to one of Snyder's representatives—they attracted considerable attention for their controversial decision to bring the struggle against emergency management to a residential neighborhood. With some of Snyder's more curious neighbors looking on from the other side of the fence, Reverend Bullock proclaimed to the crowd that if democracy was good enough for Egypt, it was good enough for Michigan.

While large-scale protests helped to bring statewide attention to PA 4 and recall efforts challenged it indirectly by seeking to punish the Governor and Republican legislators for enacting it, three more direct routes of contesting the law and its application emerged that gave further definition

to the pro-democracy movement. The first was an effort in 2011 and 2012 to repeal PA 4 through referendum. The second was a legal challenge to the constitutionality of the law, beginning in 2011 and continuing in different forms into 2018. The third consisted of diverse forms of local resistance to particular EMs and EM decrees within cities under emergency management. Through their contributions to all three forms of pro-democracy activism, a small but devoted contingent of Flint activists helped make Flint into one of the hotspots of anti-EM resistance.

The understanding of democracy that would later animate the water movement in Flint was heavily indebted to the ideas of the pro-democracy movement. Pro-democracy activists like the members of Stand Up for Democracy and the Flint Democracy Defense League believed democracy to be under assault by private interests that were using the cover of “emergency” to enact unpopular neoliberal policies by authoritarian means. This notion percolated through activist circles nationwide thanks partly to the popularity of Naomi Klein’s 2011 book *The Shock Doctrine* and the idea of “disaster capitalism,”¹¹ but in Michigan it seemed especially relevant, for nowhere—in the United States, at least—was the abrogation of democracy more literal or glaring. PA 4’s affront to fundamental democratic values was so egregious, activists believed, that it could be used to catalyze popular resistance across lines of class, race, and geography. Mixed in with their populist clarion call to rise to the defense of representative democracy, however, was a less obvious but more radical current associated with the Occupy movement: a resolve to think beyond traditional democratic institutions, to seize the moment to deepen rather than merely defend democracy. The exigent circumstances created by the state takeover and the deterioration of Flint’s water were not always conducive to the concerted pursuit of this ambition, but the water crisis, especially, generated popular energies and political opportunities that some activists tried to channel in such a direction (see chapter 8).

Flint activists came to see the assault on democracy theorized by Klein as intersecting with a global assault on water that was also especially salient in Michigan. Among the private interests who stood to benefit from emergency management, they believed, were those looking to privatize public water systems. By contrast, the people suffering worst under EMs in cities like Detroit and Flint were those struggling with rising water rates and water shutoffs. The more that water issues came to disrupt everyday life, the more they became a basis for the kind of broad-based organizing the activists

aspired to, as well as a starting point for awakening residents to the larger issues of privatization and democracy connected with them. As efforts to contest the EM law directly ran into obstacles, pro-democracy activists in Flint, taking inspiration from compatriots in Detroit, shifted their struggle onto this new terrain. No one could have anticipated that the crisis of water affordability and accessibility that first drew their attention would soon be supplanted by a crisis of water quality. But thanks to the effusion of political activity called forth by the attack on local democracy in Flint and beyond, when that crisis hit the activists had already laid the groundwork for a political analysis of it and a popular response to it. If, then, the Flint water crisis really began with the passage of PA 4 in 2011, as these activists believed, so too did the Flint water movement.

Repealing PA 4

Recall of elected officials was not the only mechanism of direct democracy Michigan activists turned to in the absence of influence over the legislative process. As the passage of an augmented EM law began to look like an inevitability in early 2011, they started to discuss the possibility of repealing the law through referendum. In March, the Traverse City-based group Reject Emergency Managers began drumming up interest in a repeal effort over social media. Spokesperson Betsy Coffia described the strategy as “a very small version” of the spur to action provided by social media during the Arab Spring.¹² Shortly thereafter, Reject Emergency Managers teamed up with the Detroit-based urban policy think tank Michigan Forward, which took the lead in bringing together a coalition of groups throughout the state willing to lend their support to the repeal. The result was the Stand Up for Democracy (SUD) coalition.

Although organized labor decided to keep its distance, for the most part, from the recall efforts that began to appear around the same time, it threw its support behind the repeal. The first group to step up was Council 25 of the American Federation of State, County, and Municipal Employees (AFSCME), which became SUD’s chief financial benefactor, kicking in \$185,000 over the next year and a half. Support also came from the Michigan Education Association and the United Auto Workers. Because labor in general was “diametrically opposed” to the law, SUD spokesperson Greg Bowers remembers, even relatively conservative unions endorsed the repeal effort.¹³

Legal support came from groups like the Advancement Project, the Sugar Law Center, and the ACLU. Groups like the Michigan NAACP, the Michigan Welfare Rights Organization, and the Rainbow Push Coalition helped mobilize volunteers to collect petition signatures. And Flint activists who would later take leading roles in the water movement contributed in significant ways. Claire McClinton, a former GM electrical engineer, union organizer, and matriarch of sorts within the Flint activist scene (known affectionately as “Mama Claire,” a nickname she disliked), and Nayyirah Shariff, a ubiquitous activist and trained community organizer, served as community action team leaders. Bishop Bernadel Jefferson, another GM retiree whose fight against emergency management began in 2003 with a campaign to reopen community centers closed by emergency financial manager (EFM) Ed Kurtz, represented AFSCME and served as SUD’s Genesee County chair. As pastor of Flint’s Faith Deliverance Center, a member of the Concerned Pastors for Social Action, and former president of the Greater Flint Council of Churches, Jefferson also offered the coalition an important anchor within the faith community.¹⁴

The referendum’s path to the ballot was not as steep as the one that twice thwarted efforts to recall Governor Snyder, requiring a considerably more manageable tally of 161,304 signatures. Another advantage the repeal effort had over the recall effort was that it could be framed as nonpartisan. Organizers knew their success depended upon making the case for repeal not only to the predominantly liberal residents of large, majority-minority, economically depressed cities already under emergency management (or next in line for it), but to conservatives living in parts of the state that were predominantly rural, white, and, by relative standards, affluent. SUD settled on two principal arguments it expected to resonate with the latter demographic. The first of these was an argument from self-interest: while postindustrial cities like Flint, Benton Harbor, and Pontiac may have been the first to be saddled with emergency management, PA 4 made every city, village, county, and school district in the state vulnerable to unwanted takeover. After all, the lingering effects of the Great Recession, combined with deep cuts to state revenue sharing, were being felt not just in Michigan’s most troubled cities, but all over the state. The ACLU of Michigan warned that “over one hundred local governments are potentially in a state of ‘fiscal watch’ and forty school districts or charter schools are in deficit while another 150 are in danger of going into deficit.”¹⁵ Reports started to appear of majority-white cities like Northville, Suttons Bay, and Taylor

being threatened with emergency management.¹⁶ And municipalities and school districts that were currently solvent could, conceivably, fall on hard financial times at some point in the future. The takeaway, as SUD activists put it, was that emergency management was “coming to a town near you.”

Their other argument was more ideological, framing PA 4 as a recipe for a particularly nefarious form of big government at odds with conservative principles. The emergency manager system, activists contended, was an implicit attack on the idea of self-determination, premised on the belief that unelected, “expert” bureaucrats were better at governing people than people were at governing themselves. Even Michiganders sympathetic to Governor Snyder’s overall agenda had reason to see PA 4 as an overreach—as anti-American, even. While the Tea Party movement spoke of being “Taxed Enough Already,” proponents of the repeal often used a slogan that was, ironically, a more direct reference to colonial resistance against British tyranny: “No Taxation without Representation.”¹⁷

Through 2011 and into 2012, SUD brought these arguments to venues around the state as it worked toward its signature goal. Bishop Jefferson described the repeal as a “genuine grassroots effort,” with organizers braving the rain, snow, and sleet to collect signatures, setting up tables at every possible event regardless of what or where it was.¹⁸ By February, SUD had more than enough signatures to qualify the referendum for the November ballot. On February 29, 2012, busloads of activists from Detroit, Flint, and other Michigan cities converged on Lansing for a celebratory rally. The activists ended by marching to the Secretary of State’s office to hand-deliver the petitions.

Two months later, the repeal ran into an unanticipated roadblock when the Board of State Canvassers, splitting 2 to 2 along party lines, declined to certify the petitions. The decision followed a challenge brought by the conservative group Citizens for Fiscal Responsibility arguing that the heading printed on the petitions failed to conform to stipulations in state law about font size. The issue was not, to be sure, one of readability—to the layperson’s eye, the text was close enough to the required fourteen-point size that the differences were microscopic. Expert witnesses including a graphic design professor from Michigan State University and one of the state’s premier printers confirmed that the font was correctly proportioned, but their testimony was disregarded by the Republican members of the board.¹⁹

For advocates of the repeal, it was hard not to see the challenge and the board’s ruling on it as anything other than cynical attempts to deny the

people of Michigan an opportunity to have their say about PA 4. The decision not only threw the future of the repeal effort into doubt, it also ensured that the law—which would be suspended upon certification of the referendum—would remain in effect for as long as it took to litigate the matter in the courts. Flint activist Bob Mabbitt remembered the “Fontgate” episode to me as a moment when the members of the Flint SUD contingent gained new insight into the extent to which the system was rigged against them.²⁰ Nayyirah Shariff described it as a “wake-up call.”²¹

SUD lawyers immediately launched a legal challenge to the ruling, but it took months to close the case. Finally, on August 3, the Michigan Supreme Court ruled in a 4 to 3 decision that the font issue was too trivial to keep the referendum off the ballot. The voters would have their say after all—and in the meantime, PA 4 would go dormant.

The suspension of PA 4 did not, however, mean the suspension of emergency management altogether, despite arguments to that effect by SUD. Instead, Attorney General Bill Schuette concluded that in PA 4’s absence, its predecessor, PA 72, had gone back into effect, allowing the state to convert EMs into EFMs for the time being. The decision was not just a disappointment in the moment, but a foreboding of things to come. It was clear that even if voters repealed PA 4, the state would simply fall back on PA 72 as a stopgap, keeping its appointees in place while it crafted a replacement law.

Still, Michigan voters would at least have an opportunity in November to make their feelings on PA 4 known. When polled about the proposed repeal in early 2012, respondents leaned toward upholding the law. As election day approached, however, new polls showed that the tide had turned. Support for the repeal was, as expected, much stronger in Michigan’s larger cities than it was in the suburbs, and stronger with Democrats than Republicans. Overall, however, the polls suggested that the repeal’s advocates had made considerable headway with a wide range of Michiganders from all over the state. The results on November 6 confirmed as much: voters rejected PA 4 resoundingly, with majorities in almost all of Michigan’s eighty-one counties voting against it. Some regarded the outcome as a “miracle.”²²

One effect of SUD’s repeal campaign was to open up a discursive space for a conversation about what a viable alternative to emergency management might look like. For its part, SUD offered an eight-point plan centered on municipal finance reforms meant to prevent cities from ending up in desperate fiscal situations to begin with. The plan proposed, among other things,

restoring state revenue sharing and reforming the municipal bond system to place cities in a stronger position relative to creditors. It also insisted upon preserving local involvement in decision making even in “emergency” situations, suggesting that councils comprised of state and local officials could be established to solve financial problems collaboratively rather than placing sweeping powers in the hands of individual appointees. After the repeal, SUD activists had an opportunity to make their case directly to Chief of Staff Dennis Muchmore and other members of Governor Snyder’s cabinet. As impressive as the repeal itself was, however, the coalition was not in a position to exert much influence: Republicans still had a firm majority in both houses of the state legislature, meaning there was little to stop them from pushing through a virtual duplicate of the law. This is, in fact, exactly what happened when, on December 26, Snyder signed PA 436.

The governor claimed that the new law demonstrated that the administration had “clearly heard, recognized, and respected the will of the voters” by incorporating new provisions for “local control.”²³ Unlike PA 4, PA 436 allowed local officials the choice of four different options upon a state declaration of financial emergency: a consent agreement, mediation, an EM, or Chapter 9 bankruptcy (although, crucially, the state retained veto power over the choice). PA 436 also gave local officials the ability to suggest alternatives to specific proposals made by EMs as long as they yielded similar cost savings, as well as the power to remove an EM after a year in office by a two-thirds majority vote.

Snyder may have believed these to be substantive changes, but SUD saw the new law—hastily passed during a lame-duck session and reviving the broad powers that made PA 4 controversial—as an expression of the administration’s contempt for the popular will. It released an analysis of the many similarities between PA 436 and PA 4 and questioned just how much the law had actually changed. As Greg Bowens put it at the time, “We think that the Governor’s view of what the will of the voters is is quite different from what the actual voters did.”²⁴ Republican legislators seemed to concede this implicitly when they took steps to shield the new law from another referendum, attaching an appropriation to it and thereby rendering it immune from repeal under Michigan law.²⁵ SUD vowed to continue fighting, but there would be no redux of the statewide petition drive that had been the reason for the coalition’s existence. Resistance would have to proceed through other channels.

The Constitutional Challenge

Running parallel to the repeal effort through 2011 and 2012 was a complementary legal challenge to the constitutionality of PA 4, filed by the Sugar Law Center for Economic and Social Justice and other legal partners on behalf of twenty-eight Michigan residents from around the state.²⁶ The decision to mount a legal challenge to PA 4 was far from automatic—the general attitude within the legal community in early 2011, John Philo of Sugar Law recalled to me, was that not much could be done through the courts to contest the law. But with the repeal petition drive underway, he and his colleagues decided that the value of a lawsuit transcended its likelihood of success. A lawsuit was not only another means of raising awareness about PA 4, it was a means of bringing otherwise obscure details about the origins and intent of the law to light through the discovery process. Philo hoped this would provide fodder for those making the case for repeal and keep the issue alive as the repeal effort proceeded. Beyond that, he and others were convinced that the law was “undemocratic and wrong and can’t be legal.”²⁷

The lawsuit was filed in state court on June 22, 2011, with the expectation that it would eventually find its way to the Michigan Supreme Court.²⁸ Flint resident, teacher, and former school board member Paul Jordan agreed to sign on as one of the plaintiffs. As part of a coordinated rollout of the suit around the state, he held a press conference outside Flint City Hall at which he announced the filing and denounced PA 4 as “a cynical attempt to grab power in Michigan’s most vulnerable cities and schools.”²⁹ In the months that followed, Jordan became one of the most prominent critics of PA 4 in Flint, working to spread the word about the law through op-eds, panel appearances, and public protests, and acting as a link between the legal challenge and other forms of resistance by local activists.

The lawsuit named Governor Snyder and State Treasurer Andy Dillon as defendants and took aim at the facial language of PA 4, alleging that the law violated the Michigan Constitution in several different ways. First, the plaintiffs claimed, it violated provisions establishing municipal home rule by empowering EMs to repeal local ordinances and disregard local charters and contracts. Second, by depriving elected officials of their ability to govern, the law violated citizens’ right to vote and petition. Third, it abolished the separation of powers, enabling appointees of the executive branch to establish new legislation unilaterally. Finally, it allowed the state

to impose unfunded mandates on local governments, forcing local taxpayers to cover the cost of EM (and EM staff) salaries.³⁰

After surviving what John Philo called an “unbelievably unheard of” attempt by the Snyder administration to quash the lawsuit quickly by skipping the discovery phase and moving it directly to the majority-Republican State Supreme Court, it was rendered moot by the repeal of PA 4.³¹ The legal wing of the pro-democracy movement took on renewed importance, however, after the passage of PA 436. The same group of attorneys who had challenged the constitutionality of PA 4 decided to file a new lawsuit against PA 436—this time in federal court, in the belief that federal judges would be more likely to understand the underlying issues of democracy at stake.³² The suit charged that PA 436, in usurping republican government, interfering with voting rights (and thereby freedom of speech), and discriminating against African Americans and the poor, violated the US Constitution’s Due Process Clause, Guarantee Clause, Equal Protection Clause, and First and Thirteenth Amendments, as well as the federal Voting Rights Act. This time, the attorneys drew their plaintiffs exclusively from cities that had been directly impacted by emergency management. In Flint, Bishop Jefferson from SUD and City Council President Scott Kincaid joined Paul Jordan on the lawsuit.

In November 2014, the suit suffered a major setback when a district court judge dismissed eight out of its nine charges. The judge found, firstly, that the Fourteenth Amendment does not include the right to elect local officials and that at the local level there is no right to republican government under the Guarantee Clause. With respect to claims of discrimination against the poor, the judge found that there was a “rational basis” for differential treatment of municipalities based on finances, and that this did not amount to discrimination under the Equal Protection Clause. Furthermore, because the imposition of an EM did not involve the outright firing of local officials, and because local elections proceeded as usual under emergency management, PA 436 did not violate the Voting Rights Act. Nor did the law infringe on First Amendment protections for freedom of speech. And Thirteenth Amendment protections against slavery did not apply because, even under emergency management, residents still had “every device in the political arsenal” available to them.³³

The one charge left standing was the charge that PA 436 violated the US Constitution’s Equal Protection Clause on the basis of race. But pursuing this charge in isolation was risky. An equal protection argument would

have to meet a heavy burden of proof, showing that PA 436 was not only discriminatory in implementation, but also discriminatory in intent.³⁴ This required a “much deeper dive” during the discovery period, said John Philo, which the state was determined to fight doggedly every step of the way.³⁵

The attorneys opted to save the equal protection charge for a later date and pursue an appeal of the whole suit, focusing their accusations of discrimination on wealth rather than race. The case proceeded into the Sixth Circuit Court of Appeals, where, in September 2016, it was finally dismissed. In a unanimous decision, the judges wrote that PA 436 was “rationally related” to the “legitimate legislative purpose” of improving the financial situation of distressed localities. They echoed the earlier district court determinations that the law did not violate citizens’ freedom of expression,³⁶ or constitutional protections against slavery, or the Voting Rights Act, pointing out that citizens “are still provided a vote” and that the local officials they elect remain in office. Also, the law was “facially entirely neutral with respect to race” and had been “passed by state-elected bodies for which African Americans have a constitutionally protected equal right to vote.”³⁷ The court also rejected the claim that selectively applying the law based on the financial situation of local governments was tantamount to wealth discrimination, ruling that the solvency of government and the wealth of residents were separate matters.

Having shot down these eight charges for the second time, the court concluded that the “vast” powers possessed by EMs were appropriately tailored to the equally vast challenges faced by local governments in fiscal distress. One of the attorneys for the plaintiffs, Herb Sanders, lambasted the decision, saying that the court “took a fascist view toward the democratic rights of the citizens.”³⁸

The Sixth Circuit decision finding PA 436 constitutional left Sanders, Philo, and the rest of the legal team with few options.³⁹ But at the very least, Philo maintains, the legal challenge helped to “flip” the “public perception” of the EM law.⁴⁰ Consequently, even before the Flint water crisis dealt the EM system its worst-ever black eye, EMs were growing warier of exercising the full range of their powers.⁴¹ Ironically, then, the legal battles against PA 4 and PA 436 may have had their most important effects outside a legal context. By diminishing the standing of emergency management in the court of public opinion, they arguably helped to generate *de facto* constraints on the exercise of state power—a precedent replicated in dramatic fashion during the water crisis.

Local Resistance to Emergency Management

The day Herb Sanders and his colleagues delivered oral arguments to the Sixth Circuit in August 2016, several buses full of activists from Flint, Detroit, and elsewhere made the journey to Cincinnati to be present for the hearing. Addressing the activists on the steps of the courthouse after a discouraging appearance before the skeptical and impatient circuit judges, Sanders told them that “there’s only so much we can do as attorneys. This issue is going to be determined not in the courtroom, but in the streets.”⁴²

The sentiment met with vocal approval from the onlookers, many of whom had, in fact, been fighting emergency management in the “streets” since 2011. At times, they had taken the fight directly to the state politicians responsible for the EM law. An early opportunity to do so came in May 2011, when Governor Snyder and PA 4 sponsor Al Pscholka were slated to march in the Grand Floral Parade at the annual Benton Harbor Blossom-time Festival. Benton Harbor had entered state receivership under PA 72, but in April now-EM Joe Harris had used the expanded powers available to him under PA 4 to neutralize the local government. Citing mismanagement of funds and infighting among elected officials, he kicked the latter out of their offices and prohibited them from doing anything without his express permission except calling a meeting to order, approving meeting minutes, and adjourning a meeting.⁴³ It was a vivid illustration of what an EM could do that an EFM could not, and for critics of PA 4, Harris’s actions became emblematic of the law’s anti-democratic implications. Progressive blogger Chris Savage called Snyder and Pscholka’s scheduled parade appearance “an audacious display of arrogance andchutzpah.” It smacked, he wrote, “of a conqueror reviewing the lands recently vanquished.”⁴⁴ After getting wind that protests were in the works, Pscholka pulled out, scolding “professional agitators” for trying to turn a “wholesome community event” into a “political sideshow.”⁴⁵ Snyder, however, went ahead with the parade. As he made his way along the route, protestors hounded him relentlessly, chanting, waving signs, and turning their backs on him at strategic moments. For a number of Flint activists, it was their first experience protesting the new EM law. Claire McClinton remembers being heartened by the fact that union members were joined by members of the “community,” suggesting that a “broader social movement” was taking shape around what people correctly recognized as a “community-wide” issue.⁴⁶

Pro-democracy activists saw Benton Harbor as an instructive example of what kind of city the Snyder administration would choose for emergency management. Its population was overwhelmingly African American. Its poverty rate was one of the highest in the state. Its economy was in shambles from lost manufacturing. Its local government was in poor financial condition, as evidenced by dwindling cash reserves, an underfunded pension system, and faltering municipal services.⁴⁷ Just as important, however, the city had something to offer: a Lake Michigan shoreline ripe for development, and a corporate partner (some would say master) in the Whirlpool Corporation, headquartered in Benton Harbor since 1911, that was eager to help bankroll that development. The main thing preventing the recuperation of the city's economy, argued Al Pscholka, was the "play government" at City Hall.⁴⁸ A "stable" political environment, he said, would create a more favorable climate for investment, from which the city would reap desperately needed revenue.

But activists suspected the state would use emergency management in Benton Harbor to advance development projects that left poor residents behind while transforming the city into a lakeside playground for the wealthy. Their suspicions centered on the \$500 million Harbor Shores development, comprised of a Jack Nicklaus-designed golf course and associated luxury housing. It wasn't just that the payoff the average resident would see from this development was indirect at best—it was that building it had required taking a sizable bite out of a public park, Jean Klock Park, part of which was leased out for the construction of three holes with scenic lake views. This development scheme was already in an advanced stage by the time PA 4 expanded EM Harris's powers, but activists liked to point to ways in which he was using those powers to push it forward.⁴⁹ The larger takeaway, from the activists' perspective, was this: the most attractive cities for state takeover were those where private developers saw opportunity, cities where the state could use financial distress as a pretext to advance private interests.

For all the above reasons, the debut of the EM law's strengthened provisions in Benton Harbor had symbolic resonance that reverberated through activist circles around the state. But Benton Harbor was exemplary in another way, too: when emergency management came to town, local activists rose to the occasion and fought for their city. Sometimes they fought side by side with allies in high-profile actions like the aforementioned

Blossomtime protest and the later “occupation” of the Senior PGA Championship at the much-maligned golf course in May 2012.⁵⁰ But most of their resistance was more quotidian. Led by the firebrand Reverend Edward Pinkney, they maintained a relentlessly contrarian presence, continuously scrutinizing, publicizing, denouncing, and resisting the actions of EM Harris and the local power elite. For Flint activists like Claire McClinton, a long-time supporter of Pinkney (who became the pro-democracy movement’s signature prisoner after being convicted of election fraud, a conviction later overturned),⁵¹ the tenacity with which Benton Harbor activists resisted the takeover of their city was an inspiring retort to the creeping “culture of fascism” and “atmosphere of dictatorship” that develops, she said, when people start getting used to being overruled.⁵²

When PA 4 claimed Flint in December 2011, Flint activists had a similar chance to prove themselves. They were already involved in state-level challenges to PA 4 through recall, repeal, and legal action. Now it was imperative to open up a local front of resistance, too—all the more so because local officials in both branches of city government had apparently rolled over, or even laid out the welcome mat, for EM Mike Brown. *Someone*, the activists felt, had to show that democracy would not die in Flint without a fight.⁵³

Anti-EM initiative in Flint came from several different directions. There were outspoken members of the church community like Pastor Reginald Flynn, arrested during a provocative “one-man” protest of EM Brown’s budget inside City Hall. In his “A Letter from the Flint City Jail,” he denounced the “climate of political suppression, economic exploitation, and racial domination” created by the “implementation of Public Act 4.”⁵⁴ There were legal challenges by local attorneys Greg and Alec Gibbs to Brown’s attempts to restructure retiree health care, leading to two precedent-setting victories that won the attention of other cities under emergency management and the respect of local activists (who held regular meetings in the Gibbs’s conference room for a time).⁵⁵ There was the Flint and Genesee County SUD group, consisting of seven to ten people focused primarily on the repeal but who had more time to devote to local issues after the end of signature gathering in February 2012. And there was a new group formed out of Occupy Flint in January 2012 that called itself the Emergency Manager Work Group. The group lent its support to the repeal effort but also acted as a study group aimed at better understanding the EM law and the actions being taken by

Flint's own EMs. On Fridays, the City of Flint would upload the text of the EM's latest resolutions and executive orders, and the group would meet to pore over them. Sometimes group members would read them aloud in public settings in order to publicize them.⁵⁶

The activists placed particular stress on bringing the inner workings of emergency management into the light because of their feeling that, in Flint, PA 4 was manifesting itself as an insidious "bastardization" (Nayyirah Shariff's term) of the democratic process rather than a bald-faced, hostile takeover. Some of the steps taken by Flint's EMs seemed designed to create the impression of business as usual. In other cities and districts under emergency management, there was no doubt that EMs ran the show—in Pontiac, for example, City Council meetings were canceled altogether, and in Detroit, school board members met as the Detroit School Board in Exile to protest their marginalization. In Flint, by contrast, the council (after a brief hiatus) was allowed to meet once a month, and Mayor Walling was delegated a measure of responsibility. These local officials, Shariff told me, were "not honest," pretending to have power they did not actually possess or that what little power they did have couldn't be revoked at a moment's notice on a whim. Furthermore, the appointment of Flint native and former Interim Mayor Mike Brown as the city's first EM gave the impression that residents were merely being placed into paternalistic hands of an old friend, or at least a familiar and palatable figure, a benevolent dictator. Activists saw it as their task to expose the fact that the people of Flint were no longer living under a democracy, to get them to see Brown as "the face of fascism."⁵⁷ When, during the early months of his tenure, Brown made a point of holding a series of public meetings to discuss his agenda, activists followed him from venue to venue, heckling him and forcing him to defend the legitimacy of his regime.⁵⁸

For the most part, however, the residents who came out to these meetings were concerned not about abstract questions of democracy, but about how Brown proposed to deal with issues like violence, vandalism, the closure of senior centers, and new fees on city services—tangible issues that predated emergency management. Much of the activists' strategizing revolved around finding ways to make the implications of emergency management itself equally concrete. Residents, they believed, had to be able to *see* EMs reshaping their city and diminishing their quality of life before they would begin to appreciate the size of the threat the EM law posed. The controversy in

Benton Harbor over Jean Klock Park provided an important lesson: when treasured public assets were at risk, people paid attention. Given that the privatization of such assets was an integral part of the EM “playbook,”⁵⁹ the activists warned that a fire sale was on the horizon in Flint. Working with local playwright Andrew Morton, they staged a political theater event and demonstration on the lawn of City Hall conceived as a “mad hatter tea party.”⁶⁰ Participants donned costumes and acted out the roles of Governor Snyder, EM Brown, Representative Pscholka, and the conservative Mackinac Center, a longtime advocate of a stronger EM law—all engaged in a poker game in which they gambled away public assets listed on “Garage Sale” signs.⁶¹

The activists’ warning proved prophetic. In June, Brown put the city’s garbage trucks up on the auction block. In August, he sold Genesee Towers—Flint’s tallest building and part of its downtown skyline since the 1960s—for one dollar to the Uptown Reinvestment Corporation, which proceeded to demolish it and create an urban plaza. Activists staged a protest against the decision at the starting line of the annual Crim race in downtown Flint (they had toyed with the idea of physically blocking the runners) and hung a banner from the building prior to the demolition pointing out that “nobody asked US.”⁶² On the same day as the Genesee Towers resolution, Brown gave the Food Bank of Eastern Michigan permission to lease part of a public park next door so it could expand its parking lot.⁶³ A group of residents and activists circulated a petition to stop the transaction, protesting that the community had its own plans for the park.⁶⁴ Brown also gave Atwood Stadium, a city-owned venue for high school football games and other events that had fallen into disuse and disrepair, to Kettering University, its humble “FLINT” lettering at midfield eventually replaced by a Kettering bulldog logo. Even the Santa Claus and reindeer that traditionally graced the roof of City Hall during the holiday season were put up for sale. In response, activist Melodee Mabbitt organized a successful campaign to buy the decorations, carting them around the city on a “democracy tour” and promising to return them to City Hall if democracy was ever restored.⁶⁵ For Mabbitt, the effort was only partially tongue in cheek: standing up for “beloved” parts of Flint’s public sphere, she told me, was a noncontroversial way of dramatizing the effects of emergency management.⁶⁶

After the dissolution of Occupy Flint and Stand Up for Democracy, a core group of activists who had gotten to know each other through the fight against PA 4 concluded that Flint needed a designated pro-democracy group focused primarily on local issues. Over the course of several months of formative discussions in 2013, the Flint Democracy Defense League (FDDL) was born. The group's founding document articulated its "vision of democracy":

Democracy is your right to meaningfully participate in the decisions that affect your life, including the planning and governance of the cities where you live and work. Democracy is not for sale. Wealth does not determine your eligibility to participate in democracy. You always have a voice. You always have a vote. Dictators are never allowed to take those rights from you.⁶⁷

Despite its juxtaposition of democracy to dictatorship (i.e., emergency management), the statement was crafted to reflect higher ambitions than merely the restoration of representative democracy in Flint. Putting an end to emergency management was the immediate priority, but the FDDL envisioned itself as a group that could serve a broader democratic purpose in the city. In the same document, the group clarified that "FDDL doesn't just 'defend democracy.' We *exercise* democratic rights, *educate* others about their democratic rights, and strive to *expand* democratic rights within schools, workplaces, and beyond."

For the FDDL, every objectionable EM action was an opportunity to initiate a deeper conversation about democracy. When EM Darnell Earley put new constraints on public comment at open meetings, for example, FDDL members turned out to City Hall with their mouths taped shut to protest what they described as an assault on the civil liberties fundamental to a democratic society. When EMs sold off public assets, FDDL argued that emergency management was facilitating a kind of "vulture capitalism" that turned democracy into a "rigged, lucrative game for oligarchs."⁶⁸ The issue that rose to the top of the group's priorities during mid-2013 to late 2014, however, was water. It fit the bill perfectly: it was an issue of direct and dire significance to residents, an issue that EM decisions (about matters like water infrastructure, rates, and supply) were shaping in lasting ways, and an issue that allowed for broader discussions of subjects like human rights,⁶⁹ privatization, and self-determination. Well before there was an officially recognized Flint water crisis, in other words, the themes of water and democracy were beginning to draw together in Flint.



Figure 4.1

Members of the FDDL protest changes by EM Darnell Earley to public comment rules. *MLive, Flint Journal*.

Water and Democracy

“One of the things that’s going to bring Michigan back,” EM Mike Brown told Flint residents at the first of his public meetings in 2012, “is water.”⁷⁰ The Karegnondi Water Authority (KWA) pipeline, he suggested, would be one piece of that renaissance. More important, for Flint, it was the answer to the city’s decades-old desire to control its own water system.

Brown’s endorsement was hardly a mark in the KWA’s favor from the activists’ perspective, of course. But it was not until 2013, following the City Council’s affirmative vote on the project, that they began closely scrutinizing the claims made by Brown and the pipeline’s other supporters. Activists were sure they could smell a rat, that there was more to the project than met the eye and that some sort of corruption was at play. The main issue they highlighted at the time, however, was the possibility that taxpayer money would be spent to finance the pipeline’s construction. Genesee County Drain Commissioner Jeff Wright dismissed the concern as patently unfounded, but that did not stop the activists from insisting

that residents have a direct say about the city's participation in the project. In October, a group calling itself the Water Pipeline Question Committee, including the members of the FDDL, launched a petition drive to get the issue onto the November ballot and inject at least a "sliver of democracy" (as Nayyirah Shariff put it) into the decision about Flint's long-term water source.⁷¹ A demonstrably annoyed Wright warned that the vote could slow down the project and force the city into another thirty-year deal with the Detroit Water and Sewerage Department (DWSD).⁷² According to some activists I spoke to, he paid people to hang around the petition sites and try to convince potential signers that the activists were telling lies about the project.⁷³

Faced with the daunting task of collecting eight thousand signatures in forty-five days, the activists fell well short of their goal, killing the referendum. Wright argued that the "lack of support for the petition drive shows clearly that the vast majority of the citizens of Flint are behind this project."⁷⁴ The activists, of course, virulently disagreed with this interpretation; Claire McClinton insisted to me that "there was no popular appetite for the KWA."⁷⁵ But it was clear, at least, that the kinds of concerns activists were raising about the future of Flint's water supply and water infrastructure had not yet captured the imagination of the average Flint resident.

What *was* a pressing matter in the minds of residents was the cost of water. In 2011, Mayor Walling raised water and sewer rates twice—first, in January, by 47 percent, and then, in September, by another 35 percent.⁷⁶ The next spring, EM Brown raised them 25 percent, bringing the average water bill of a Flint resident to over \$100 a month.⁷⁷ The threat of having one's water shut off entirely loomed over anyone behind on payments.⁷⁸

Desperate for relief, residents inundated nonprofit agencies with requests for help with water bills. They explored digging wells and disconnecting entirely from the municipal system. Some turned to what city officials called "water theft" (a term derided by activists, especially after the city spent precious resources on two special investigators hired to crack down on the practice), utilizing various more-or-less creative methods of accessing municipal water without paying for it.⁷⁹ In recognition of the affordability problem, in December 2012 EM Ed Kurtz created an "indigent water fund," a pool of donated money that could be used to help struggling ratepayers on an as-needed basis. But he also continued to make water even more expensive, raising the water service deposit paid by new renters by three-and-a-half times the next March.⁸⁰

With the switch to the Flint River cementing the break with Detroit in April 2014, many hoped and expected that the city would lower rates, but instead they continued to climb, rising another 6.5 percent in 2014. Even on the river, a water bill in Flint was \$35 higher per month than in the next most expensive municipality in Genesee County and almost three times higher than in the cheapest.⁸¹ The city *was* saving money by using the river, of course, but officials insisted that it was better funneled into long-term infrastructural improvements than into short-term respite for cost-weary residents.⁸²

The city making headlines for its water troubles in 2014, however, was not Flint but Detroit, another city under emergency management, and another city, like Benton Harbor, to which Flint activists had strong connections through pro-democracy channels.⁸³ In the spring and summer of 2014, EM Kevyn Orr signed off on a massive wave of water shutoffs targeting tens of thousands of residences. Activists suspected that the spate of shutoffs was a prelude to the privatization of Detroit's water system: if DWSD could unburden itself of the "bad debt" of unpaid bills, it would make the department more attractive to potential investors. Furthermore, shutoffs, along with water liens (unpaid water bills transferred onto property taxes) would push unwanted residents out of the city as their houses were condemned or taken over, clearing the ground for future development. The situation in Detroit was shaping up to be another example, from the activists' perspective, of EMs balancing a city's budget on the backs of its most disadvantaged residents while proffering public assets at bargain-basement prices to private buyers, cleansing the city of its undesirables in the process and handing it over to the rich and powerful.

If the spate of shutoffs had one silver lining, it was that its timing—shutoffs peaked in June to July 2014—proved to be fortuitous. From July 17 to 21, Netroots Nation, the nation's largest annual conference for progressive political activists, was held at the Cobo Center in downtown Detroit. It featured panels with activists from Flint and Detroit who had been fighting for water and democracy in the "trenches," including a keynote panel on resistance to the shutoffs. The nurses' union National Nurses United, which had warned that the shutoffs were creating a public health crisis, called a march through downtown Detroit on July 18 that was joined by many of the conference attendees, including the actor Mark Ruffalo, whose organization Water Defense would later play a significant role in the response to the Flint water crisis. On the same day, police arrested a group of activists

for physically blocking the passage of trucks on their way to shut off water. The principled militancy of the “Homrich 9,” as they came to be called (after the demolition company contracted by DWSD to carry out the shut-offs), helped to create a spirit of civil disobedience within Michigan’s network of water and democracy activists that clearly made an impression on the Flint activists I knew.

The Netroots Nation conference helped to launch the water crisis in Detroit into the national and international spotlight. Maureen Taylor of the Michigan Welfare Rights Organization called its impact “magnificent”—people from around the world had “heard,” “learned,” and “understood,” and were “changed.”⁸⁴ On the heels of the conference, an international convoy sponsored by the Council of Canadians delivered a large shipment of water to the city. In October, there was another surge of international press when UN Special Rapporteurs Catarina de Albuquerque and Leilani Farha came to Detroit to investigate the impact of the shutoffs. They collected testimony throughout the city, visiting homes without water, speaking directly with affected residents, and concluding that the shutoffs constituted a violation of basic human rights.

They also invited residents to speak about the struggles they were facing with water at a town hall on October 19. One of those who testified was Claire McClinton, who stressed the parallels between what was happening in Detroit and what was happening in Flint. In Flint, too, she pointed out, residents faced prohibitively high water rates and were being kicked off the water grid. As examples of the latter, she referred to the Ambassador East mobile home community, where residents had been living without water for over a year and a half, and to shutoff notices just issued to an apartment complex and a homeless drop-in shelter where people went to take showers and wash clothes.

By the time McClinton brought Flint’s water troubles to the attention of the UN in October 2014, Flint activists had already been working for several months to bring the water wars raging in Detroit to Flint. In June, July, and August, City Councilman Wantwaz Davis called several protests and a march against high water rates, which members of the FDDL used to recruit residents to their weekly meetings. The FDDL also presented itself as a resource to residents who were having trouble accessing water, offering to investigate cases like the ones McClinton highlighted for the UN. Taking inspiration from the Detroit Water Brigade, which had formed rapid

response teams and water distribution sites in June as shutoffs began to escalate in Detroit, on August 21 the FDDL organized an emergency water relief site at Mission of Hope, a shelter in Flint's north end. In an eerie anticipation of what would, in a year's time, become a daily ritual for residents throughout the city, the group invited anyone in need to pick up cases of donated water between 10 a.m. and 2 p.m., Monday through Friday.

The FDDL realized that popular discontent over water rates and shutoffs, much like discontent over the selling off of public assets, could be a potent source of opposition to emergency management. Like their counterparts in Detroit, Flint activists consistently stressed the role played by EMs in shaping policy around water. At the third of Councilman Davis's protests, in August 2014, Claire McClinton told the crowd assembled outside City Hall that "in order for us to win our right to water, we got to fight the emergency manager."⁸⁵ People were being forced to live without water, she said, because of "corporate greed and fascism." Nayyirah Shariff spoke of the need to get rid of the EM, Governor Snyder, and "anyone who is a puppet for the corporate regime to privatize water."⁸⁶ Fellow pro-democracy activist and councilman Eric Mays—whose own water had been off for seven months—told the marchers that addressing the problem of water rates would require them to "attack the emergency manager."⁸⁷ Under emergency management, he pointed out, any vote by the City Council to lower rates would be purely symbolic because the EM could simply raise them again. The only real way for the city to retake control of its rates, he argued, was to remove the EM from office.⁸⁸

That this interweaving of the struggle for affordable water and the struggle against emergency management was catching on was evident in the slogan featured on a ubiquitous protest sign that day: "*Down with water rates, up with democracy!*" But already, there were indications that the affordability and accessibility of water would not be the only issue that turned pro-democracy activists into water activists in Flint. Another, humbler, handwritten sign at the same rally raised a portentous question: "*Why does the water have an odor and unusual color? Is it safe to drink?*"

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Environmental Justice and Democracy in the Flint Water Crisis

By: Benjamin J. Pauli

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