IN THE STATE OF MICHIGAN

COURT OF APPEALS

NICOLA BINNS, JAYNE CARVER, SUSAN MCDONALD, GOAT YARD LLC., individually, and on behalf of other similarly situated, and **END OF THE ROAD MINISTRIES, INC.**, a Michigan nonprofit corporation, individually and on behalf of other similarly situated,

Plaintiffs

v.

CITY OF DETROIT, a Municipal Corporation, by itself and through its **WATER AND SEWAGE DEPARTMENT,** its Agent, the **DETROIT BOARD OF WATER COMMISSIONERS**, and **GREAT LAKES WATER AUTHORITY**.

Defendants.

_____/

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PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY, INJUNCITIVE, AND MONETARY RELIEF

NOW COMES PLAINTIFFS, NICOLA BINNS, JAYNE CARVER, SUSAN MCDONALD, GOAT YARD LLC, and END OF THE ROAD MINISTRIES, INC., by and through their attorneys, REDETROIT EAST COMMUNITY LAW CENTER, PLLC, and for it Complaint under Michigan's Headlee Amendment states as follows:

NATURE OF PLAINTIFFS' CLAIMS

1. "When virtually every person in a community is a 'user' of a public improvement, a municipal government's tactic of augmenting its budget by purporting to charge a 'fee' for the 'service' rendered should be seen for what it is; a subterfuge to evade constitutional limitations on its power to raise taxes." Bolt v City of Lansing, 459 Mich 152, 166, 587 NW2d 264 (1998). This lawsuit arises from violations of Plaintiffs' rights under the Constitution of the State of Michigan of 1963.

2. The People of the State of Michigan adopted the Headlee Amendment in 1978, which added Article 9 § 25 through 34 to the Michigan Constitution. Article 9, § 31 of the Michigan Constitution prohibits the enactment of a tax by a municipality without a vote of the electorate. Specifically, and in relevant part, § 31 provides as follows:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government Voting thereon.

Mich. Const. Art IX, § 31 (1978).

3. Defendants have repeatedly violated art 9, § 31 each and every time that they have collected, or attempted to collect, the disguised municipal tax of a "Drainage Charge" from Plaintiffs and other Detroit landowners. "An application of § 31 is triggered by the levying of a tax." *Jackson Co v City of Jackson*, 302 Mich App 90, 98; 836 NW2d 903 (2013).

4. "Section 31 prohibits units of local government from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit's

electorate." *Id.* at 98-99, quoting *Durant v Michigan*, 456 Mich 175, 183; 566 NW2d 272 (1997). While "a tax imposed without voter approval 'unquestionably violates' § 31 . . . a charge that is a user fee 'is not affected by the Headlee Amendment.'" *Jackson Co*, 302 Mich App at 99, quoting *Bolt v City of Lansing*, 459 Mich 152, 158-159; 587 NW2d 264 (1998).

5. This case presents a tax, not a fee, because the property owner does not receive any direct benefit in exchange for the services purportedly conferred. In fact, Defendants cannot establish that a service is actually provided to Plaintiffs that supports the "drainage charge." Defendants have levied this fee against Plaintiffs' properties in conjunction with the City of Detroit's Assessor's Office. *See* Exhibit 1, *infra*. "Generally, a fee is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit. A tax, on the other hand, is designed to raise revenue." *Jackson Co*, 302 Mich App at 99, quoting *Bolt*, 459 Mich at 161.

6. Beginning in October 2016, Defendants imposed a "drainage charge" on all parcels of property in the City of Detroit that "drain"[1] into the Defendant's combined sewer system. See (DWSD Letters to Plaintiffs Dated August 1, 2016, Exhibit 1). Defendants informed Plaintiffs in August 1, 2016 that it was working to "ensure all parcels that drain to the city's sewer system are billed for their fair share of drainage costs." Exhibit 1. However, Defendants never bothered to investigate, record, monitor or report as to whether each parcel, for which the charge was billed, was, in fact, a parcel that created or contributed potentially polluted runoff water that actually drained into the city's sewer system. In fact, it cannot be determined whether *any* parcel belonging to Plaintiffs, or any landowner, contributes to or creates runoff water that actively drains into and uses Defendants' outdated combined stormwater and sewage system. Defendants set out a new

[1] *See* http://www.detroitmi.gov/drainage , attached as Exhibit 3.

billing policy that it implemented, city-wide, to all property owners – regardless of actual usage of the storm sewage system by the particular landowner. Plaintiffs bring their Complaint individually, and on behalf of a proposed class of similarly situated persons who are also assessed this Drainage Fee by the City of Detroit, and its agent, the Detroit Water and Sewerage Department (DWSD).

7. Defendants calculate the "drainage charge," not by how much service it provides to the property at issue, but based upon an arithmetic computation of impervious vs. non-impervious surfaces combined with assumed, potential, or suspected "runoff" amounts from the Plaintiffs' land. The "drainage charge" is also not directly correlated to any benefit that Plaintiffs receive by purportedly using Defendants' drainage services.[2] Defendant's published a Manual entitled, *A Guide to the Drainage Charge*, (attached as Exhibit 2). The Manual describes that the Drainage Charges are the equivalent of the total impervious surface area of the parcel multiplied by the $750.00 per impervious acre, per month charge. *See* Exhibit 3. Here, no relationship exists between the $750 "drainage charge" for impervious acre runoff and the value of the service or the benefit to the Plaintiffs landowners. *See* Exhibit 2. Consequently, the use of the word "charge" for this unjustly imposed *tax* is a misnomer.

8. By Defendants' own admission, "Federal and State regulatory mandates required DWSD to invest more than $1 billion in combined sewer overflow control facilities to help prevent untreated overflows and preserve Detroit's water quality." ("DWSD Drainage" page attached as Exhibit 3). Over the last 40 years, Defendants have been in violation of the NPDES (National Pollutant Discharge Elimination System) Permit limits on numerous occasions over many periods

[2] As discussed *infra*, it is doubtful that the majority of Plaintiffs' land is impermeable surface that actually drains into the Defendants' system.

of time in the past. *See* Permit No MI00022802 Fact Sheet, Exhibit 4, p. 11. As a result of these violations, Defendants have "remained under an active federal consent judgment issued by the United States District Court for the Eastern District of Michigan." *Id*. Consistently, Defendants' sewage system violations are the result of a high inventory of solids in its waste water treatment plant ("WWTP"). *Id*.

9. Defendants' "drainage charge" is intended to raise revenue. According to Defendants, "the combination of [sewer overflow control facilities] investment plus drainage treatment costs account for the drainage charge." (Exhibit 3). Defendant DWSD's website goes on to state that "[r]evenue from drainage charges pays for the capital, operations and maintenance costs associated with Detroit's combined sewer overflow facilities as well as treating wet weather flows at the wastewater treatment plant."[3] *Id*.

10. Since October 2016, the "drainage charge"[4] imposed each month by Defendants, appears as a line item on monthly invoice statements to property owners and customers, including Plaintiffs. (Plaintiffs' DWSD Invoices collectively, Exhibit 5). The "'drainage charge' is not the reflection of a metered or monitored calculation of Plaintiffs'' runoff contributed to, or processed by, the drainage system. While average rainfall is taken into consideration; the potentially polluted contents existing in runoff water that may or may not be contributed to the sewage system by landowners is not accounted for in Defendants' "drainage charge" explanatory manual. *See* Exhibit 2, *passim*.

[3] *See* http://www.detroitmi.gov/drainage, also attached as Exhibit 3.

11. The "drainage charge" imposed by Defendants should be declared a tax for the following specific reasons:

a. The "drainage charge" is assessed by Defendants upon Plaintiffs, regardless of their actual usage or benefit of Defendants' drainage systems.

b. Plaintiffs have paid, or are being required to pay to Defendants, these monthly "drainage fees" even though there is no mechanism by which Defendants could ever measure the amount of potential run-off water, or the amount of pollution contained in the potential runoff, from the parcel

c. Defendants have no way of calculating, or metering, the amounts of each pollutant potentially contained in the amount of run-off water actually entering the Defendants' combined sewage system as a result of the impervious portions of land on each parcel. However, Defendants boldly charge an arbitrary and capricious amount of money as a "drainage fee' to landowners for this incalculable amount of potential runoff that may or may not be draining into Defendants' water or sewage service.

d. Defendants' billing practice in implementing and collecting the "drainage charge" does not serve a regulatory purpose and is solely imposed upon landowners to generate the revenue needed by Defendants.

e. Defendants' "drainage charge" is unsupported by the inability to measure the cost incurred by Plaintiffs, in actual costs, associated with drainage from any form of surface on Plaintiffs' lands.

f. Defendants' "drainage charge" does not correlate with the cost incurred by Defendants for the actual costs associated with drainage from any form of surface on land from purportedly impervious surfaces throughout the City of Detroit.

g. Defendants' "drainage charge" was unjustly imposed, across the board to landowners throughout the City, without any actual assessment or record indicating specific amounts of water drainage occurring on each specified parcel, or the cost incurred by Defendants' for the WWTP processes necessary to clean each amount of potential pollutants that may or may not be contained in runoff that may or may not be draining from Plaintiffs' land.

h. Defendants "drainage charge" is compulsory by law and policy. Non-payment will result in a lien upon the land itself and disconnection of water to landowner's main residence.

i. The "drainage charge" is compulsory because an individual or company's water service to main residence will be disrupted/disconnected if *any* "drainage charge" on *any* parcel is not timely paid.

j. The "drainage charge" is not voluntary because it mandates that landowners, like Plaintiffs, pay the "drainage charge" arbitrarily imposed upon each lot or have the option to pay for improvements that qualify for the green "credit" offered by Defendants. The credit is not comparable to the cost put forth by Plaintiff for said "green" improvements and does not, in any way, provide or reward landowners with a 100% reduction in the charge when they can demonstrate no usage of Defendants sewer system.

k. Defendants' green (tax) credit scheme does not actually provide the landowner with the ability to earn a complete deduction of the "drainage fee" in return for 100% permeability with improvements that mitigate all potential runoff even when it is shown that drainage is confined to the parcel itself through absorption or other green alternative to the Defendants' sewage system (i.e. where there is no actual drainage into the City's sewage system)[5].

12. Defendants imposition of this disguised tax against Plaintiffs, and other Detroit property owners across the City of Detroit, violates § 31 of the Headlee Amendment because Defendants imposed the tax without a vote of the citizens of the City of Detroit. As a result, Plaintiffs bring this Complaint, under § 32, to enforce § 31 of the Headlee Amendment by seeking declaratory relief that the "drainage charge" is a tax, injunctive relief to stop the unconstitutional collection of this tax, and monetary relief in the form of return of tax payments, costs, and attorney fees.

THE PARTIES

13. Plaintiff Nicola Binns ("Ms. Binns") is a resident, landowner, and taxpayer of the City of Detroit. Ms. Binns owns three parcels of property in the City of Detroit. She owns her home located at 518 Marlborough, Detroit, MI 48215. Ms. Binns purchased the side lots to her property, 510 and 504 Marlborough, where she operates, among other things, a community garden. Defendants have charged Ms. Binns a "drainage charge" on her community garden side lots since

[5] Pursuant to MCR 2.112(M), Plaintiffs designate subparagraphs (a) through (k) of Paragraph 11 as "factual questions that are anticipated to require resolution by the Court."

October 2016. Defendants also charged Ms. Binns a "drainage charge" for her residence. It is important to note at the outset, that the "drainage charges" for Ms. Binns side lots (510 and 504 Marlborough) exceed the "drainage charge" on her home, which does have an impervious structure located upon it. (Exhibit 10)

14. Plaintiff, End of the Road Ministries International, Inc. ("ETOR Ministries") is a Michigan non-profit corporation doing business in the City of Detroit through its operation of Hope House Detroit. ETOR Ministries operates Hope House Detroit, located at 840 Marlborough, Detroit, MI 48215. ETOR Ministries also purchased side lots at 833 and 841 Philip Street, Detroit, MI, from the Detroit Land Bank Authority, upon which a garden was created to accompany the newly designated hangout/picnic area and Playscape. Defendants have billed ETOR a "drainage charge" on its tax-exempt operation of Hope House Detroit, a non-profit for youth outreach, education, and a mentoring program. Defendants have charged ETOR a "drainage charge" for its playground and community gathering spaces, located adjacent to Hope House Detroit that provide enjoyment to the surrounding community. (Plaintiff ETOR Ministries Invoices, Exhibit 11)

15. Plaintiff Jayne Carver is a resident of the City of Detroit, a Michigan taxpayer, and owns the real property located at 2476 Field Street, Detroit MI 48214. Defendants have charged Ms. Carver a "drainage charge" that exceeds her sewage and water actual usage, but that purportedly reflects cost to drain potential polluted run-off that drains from Plaintiff Carver's property (Plaintiff Jayne Carver's Invoices Exhibit 12)

16. Plaintiffs Susan McDonald and the Goat Yard, LLC, operate a boat yard at 95 St. Jean. Defendants have charged these Plaintiffs a drainage fee in the amount of $697.50, despite the fact that it is located next to the river and again Defendants have no evidence that any

stormwater runs off of Plaintiffs' boat yard, with hazardous chemicals in tow, and enters the Defendants sewage system. (Exhibit 13, Plaintiffs McDonald and Goat Yard LLC Invoice).

17. Defendant CITY OF DETROIT is a Michigan municipal corporation located in Wayne County, Michigan. It is a "Home Rule" city organized under PA 279 of 1909, as amended, the Home Rule City Act, MCL 117.1, et seq. The CITY OF DETROIT, along with Defendants BOARD OF WATER COMMISSIONERS and the GREAT LAKES WATER AUTHORITY operate a combined sewage and storm water system in the City of Detroit, County of Wayne, State of Michigan and 76 suburban communities, through its agent the Detroit Water and Sewerage Department (DWSD). (see Exhibit 4, Permit No MI 0022802 Fact Sheet). DWSD, in rolling out its "drainage charge" has imposed, upon Plaintiffs and approximately 20,000 other real property parcels of customers and noncustomers alike, an unjustly levied and unconstitutional tax upon Detroit property owners, including Plaintiffs herein.

JURISDICTION

18. Plaintiffs bring this action against Defendants under Michigan's Headlee Amendment, Mich. Const. Art. 9, §§ 25- 34, challenging a mandatory stormwater drainage charge imposed by Defendants. Original Jurisdiction is proper in the Michigan Court of Appeals under MCR 7.206(E). *See also* Mich Const Art 9, § 32; MCL 600.308a.

COMMMON FACTS

19. Stormwater is water from rain. When rain falls to the earth in agricultural and other undeveloped areas, it is either slowly runs off and dissipates, or is absorbed. Rooftops and paved areas prevent the water from being absorbed and contributes to much more run-off. (DWSD, Frequently Asked Questions Publication, p. 1, Exhibit 6).

20. As a result, stormwater can accumulate around, on, or because of, impervious services (roads and sidewalks) clogging drains and causing nuisance flooding possible threatening to public health and safety.[6] *Id* at p. 1-2.

21. Due to age, Defendants' current drainage infrastructure needs repair and replacement. A proactive replacement program is necessary to keeping the systems functioning correctly. Unfortunately, the failing drainage infrastructure, is only a part of the problem that needs to be fixed. *See* Permit Fact Sheet, Exhibit 4.

22. As the rain falls onto our streets and sidewalks, water accumulates, containing potential pollutants such as gasoline, oil, and heavy metals into the city's overwhelmed drainage system. *Exhibit 6.* Pesticides, herbicides, and fertilizers can potentially wash away from lawns or other green spaces. *Id.* Over time the potential for pollutants to build in our waterways and underground drainage systems, damaging our streams, rivers, and lakes, increases with passage of time. *Id.* There exists no dedicated funding for the city's system in Detroit, unlike water and sewer services, and prior to the adoption of the utility, this system was supported by general funds.

23. However, the City of Detroit is now faced with increasing costs and Defendants have decided that a fair and more equitable way to fund the stormwater program needs to been explored. (Exhibit 1) In the Summer of 2016, DSWD launched their "drainage charge" awareness campaign, but did not begin imposing the 'charge' until October 2016. *Id*. If the fee is not paid by the landowner, the landowner risks a lien being placed resulting in a shut-off to the necessary water utility service at their home or primary business location. Det. Ord. Nos. 26-3-13 (allowing the

[6] In fact, Plaintiffs Binns and ETOR Ministries both experienced the perpetually flooding of Detroit's lower Jefferson Corridor (specifically Jefferson Chalmers neighborhood) in the past five years because of the accumulation of more stormwater than Defendants' antiquated system is able to handle.

city to have a lien for sewage service charges) and 26-3-14 (allowing that lien to be based upon records of the DWSD). Exhibit 7. Water service can, and will, be disconnected *to residence of land owner* regardless of which parcel's "drainage charge" remains unpaid.

24. Defendants' stormwater "drainage charge" provides the necessary revenue needed, by Defendants, to maintain and improve existing stormwater infrastructure to implement the comprehensive stormwater quality management plan as required by the United States Environmental Protection Agency and the Michigan Department of Environmental Quality. "Federal and State mandates have required DWSD to invest more than $1 billion in combined sewer overflow control facilities (CSOs) to help prevent untreated combined sewer overflows into waterways…" DWSD Drainage Charge Q & A, Exhibit 6, Q #3. "Fees from drainage charges pay for capital, operations and maintenance costs for the CSOs, wastewater treatment plant and combined sewer system components." *Id.*

25. Defendants calculate the "drainage charge" by using the following formula:

DRAINAGE CHARGE = PARCEL IMPERVIOUS SURFACE AREA

X

IMPERVIOUS ACRE RATE

See Id at Q #4.

26. By using the City of Detroit's Assessor's data and "flyover views" Defendants began billing Plaintiffs and other similarly situated Detroit property owners, at a charge of "$750 per impervious acre or $.017 cents per impervious square foot…" *Id.* "The new drainage rate is based solely on impervious acreage." *Id* at Q#7.

27. Defendants admit that portions of the drainage charge will be used to retire bad debt. *Id* at Q #s 24-26. According to Defendants, "[i]f everyone pays their share of the drainage charge, DWSD can decrease the rate and help customers pay less [of DWSD's bad debt]." As a result of bad debt retirement, DWSD, projects that the rate is going "to decline 32% through fiscal year 2019." *Id* at Q#26. Contrary to these statements by DWSD, Detroit, City Charter provides that "[a]ll moneys paid into the city treasury form fees collected for water, drainage or sewage services shall be used exclusively for the payment of expenses incurred in the provision of these services…." Detroit City Charter, Art 7, ch. 12, § 7-1203 (Exhibit 8).

28. Under City of Detroit Municipal Ordinance 56-3-12, the Board of Water Commissioners is only empowered to set rates for "sewage services" "on the basis of the quantity of water used thereon, or therein, as the same measured by the city water meter there in use, or by such other equitable method…" Det. Ord. 56-3-12(a) (Exhibit 7). Defendants' current rate scheme for the "drainage charge" is *ultra vires* because Defendants' "drainage charge" is based upon a mathematic equation computed with an arbitrary assessment of an unmeasured costs at the exorbitant rate of $750 per impervious acre per month.

29. While Defendants are currently attempting to levy this assessment upon property owners throughout the City of Detroit, including Plaintiffs, Defendants have engaged in no metering of any of the assessed parcels or conducted an actual assessment of the parcel's use of the sewage system as required by Det. Ord. 56-3-12(b). In fact, Detroit's current ordinances require that "[m]eters or other means for gauging or metering as above provided shall be installed by the property served, where applicable, and/or the user of the sewage system as required by and under the supervision of the director of the water and sewerage department, as a condition to the use of

the sewage system." Det. Ord. 56-3-12(b). Nonetheless, there are no meters, measurements, or any quantifiable data collected that shows a correlation to the cost of an unknown amount of potentially polluted storm runoff to the "drainage charge" imposed by Defendants against each respective parcel. Exhibit 2. Instead, there is no basis to support which this "charge" as constitutional or constitutionally imposed. Defendants are informing customers that the water supply to their homes will be shut off if they do not pay all "drainage charges" on each of their side lots. *See* Plaintiff Nicola Binns DWSD bills, Exhibit 9.

30. Defendants are overreaching with this "drainage charge" in more ways than just by violating the City's own ordinances. Defendants are also not acting in conformance with Chapter 12 of Article 7 of the Charter of the City of Detroit. Chapter 12 requires Defendant Board of Water Commissioners to "establish equitable rates to by paid" by a parcel "using water, drainage, or sewerage services." Detroit Charter, art 7, Ch. 12, § 7-1202 (Exhibit 8). Here, Defendants miss the key elements needed to assess and determining whether or not the Plaintiffs actually used the drainage or sewage services in relationship to their specific parcels. Things that must be considered in order to determine a real fee for drainage, do the side lots that belong to the landowner create, or contribute, additional and potentially polluted runoff, and how much? And, does this potentially polluted runoff, that may or may not drain in the system, create enough additional wastewater runoff to support the imposed cost for services? The charge is unsupported by facts, involuntary, punishable, unjust, and unconstitutional.

31. Instead, Defendants charge a disproportionate and unrelated fee for the non-existent service it provides to Plaintiffs' parcels. There is a benefit conferred by the improvement of Defendants failing management systems and infrastructure; however, absent a vote of this

electorate, this "drainage charge" for the good of the public at large should be declared an unconstitutional municipal tax upon landowners in violation of Michigan's Headlee Amendment. The "nature of a stormwater management system, which benefits the public without providing any individualized, measurable benefit to individual property owners does not lend itself to a system of funding based on user fees." *Dekalb County v U.S.*, 108 Fed. Cl. 681 (U.S. Court of Claims, 2013).

32. Defendants' "drainage charge" scheme does include credit for green improvements and other alternatives to prevent stormwater from draining from parcels of property into Defendants' combined sewage system. However, a review of Defendants' publication, *A Guide to Drainage Charge Credits* (Exhibit 10) reveals that even if a landowner, such as Plaintiff Binns, who mitigates all runoff on her property with rain catchment systems, rain gardens, and impervious cover reduction[7], Defendants will only issue drainage charge credits up to the maximum of 80% of the total drainage charge. *See* Exhibit 10, pp 3-5.

33. "Drainage charge" Credits are "a reduction in the drainage charge to a property based on the implementation and continuing proper operation of a storm water management practice." Exhibit 10, p. 1. "While multiple credits can be given to eligible properties, the total credit to any property cannot exceed 80 percent of the drainage charge for that property." Exhibit 10, p. 11. These means that the "drainage charge" Credit scheme does not offer the opportunity for any property owners to challenge or otherwise avoid the imposition of this tax in full.

[7] "Because the drainage charge is calculated using the amount of impervious cover on a site, the removal of impervious cover is not considered a drainage charge credit but rather an adjustment to the impervious area." Exhibit 11, p. 3.

34. By billing this stormwater Drainage Charge to Plaintiffs and other similarly situated Detroit landowners, the charge does not reflect actual costs of stormwater disposal services, metered with relative precision in accordance with available technology and including an appropriate capital investment.

35. The Drainage Charge also lacks a significant element of regulation. The stormwater "drainage charge" does not take into consideration the presence of pollutants on each parcel that contaminate to such runoff and contribute to the need for treatment before discharge into navigable waters.

CLASS ALLEGATIONS

36. The named Plaintiffs bring this action, under MCR 3.501, on their own behalf, and on behalf of the class of all others persons similarly situated who are property owners in the City of Detroit.

37. The proposed class consists of all persons who have been charged the unconstitutional "drainage charge" by Defendants and who own property in the City of Detroit, County of Wayne, State of Michigan.

38. The named Plaintiffs and the members of the proposed class all have typical tangible and legally protectable interests at stake in this action. The claims of the Plaintiffs and proposed class members have a common origin and basis. Their claims originate from the same policy, procedures and actions of the Defendants in charging a "drainage charge" that does not correlate to actual drainage or run off fees incurred by Defendants for each respective parcel charged for the utility service.

39. The Defendants act in the same way toward the Plaintiffs and the proposed class members. As such, the named Plaintiffs and proposed class members have each been the victim of illegal practices of the Defendants as stated in Counts I through III of this Complaint.

40. The Plaintiffs claims for relief are typical of the claims of each of the absent class members. If brought and prosecuted individually, the claims of each proposed class member would necessarily require proof of the same material and substantive facts, rely upon same remedial theories, and seek the same relief.

41. The claims and remedial theories pursued by the named class representatives are sufficiently aligned with the interests of absent class members to ensure that the universal claims of the proposed class will be prosecuted with diligence and care by the Plaintiffs as representatives of the class.

42. The members of the proposed class are so numerous that joinder of all the individual members is impracticable. The proposed class is in excess of 20,000 parcels that have improperly been added to Defendants billing and collection enforcement system. *See* Exhibit 1.

43. If individual actions were required to be brought by each injured or affected member of the class, the result would be a multiplicity of actions creating a hardship to Plaintiffs and all others similarly situated, to the Defendants, and to the resources of the Court. Since individual refunds may be relatively small for most members of the Class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions.

44. A class action is an appropriate method for fair and efficient adjudication of this

lawsuit and distribution of the common fund to which the Class is entitled. Plaintiffs anticipate no difficulty in the management of this action as a class action.

45. The named Plaintiffs will fairly and adequately represent the interests of the class, because the named Plaintiffs are members of the class and the claims of the named Plaintiffs are typical of the claims of those in the class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent and experienced counsel to prosecute this action.

COUNT I

DECLARATORY RELIEF

46. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1-46 as if fully included herein.

47. As a direct and proximate result of the Defendants' custom, policies and actions, Plaintiffs and all other persons similarly situated have suffered and will continue to suffer a loss of their constitutionally-protected rights to be free from real property taxation unilaterally imposed by a municipality. In particular, Defendants may not disguise a tax as a "fee."

48. The stormwater drainage charge are a disguised tax intended to avoid the obligations of the Headlee Amendment, including the requirement that the Stormwater Charges, as taxes, be approved by a majority of the electorate.

49. Defendants Drainage Charge aimed at stormwater has all the relevant indicia of a tax:

a. They have no relationship to any service of benefit actually received by the taxpayer;

b. The amount of the Drainage Charge is disproportionate to the cost incurred by Defendants in providing sewage disposal services;

c. The Drainage Charge is designed to raise revenue.

d. Plaintiffs, and other payers of the Drainage Fee benefit in no manner distinct from any other taxpayer or the general public;

e. Payment of the Stormwater Charges are not discretionary, but mandatory;

f. Various other indicia of a tax described in *Bolt v Lansing, supra,* are present[8].

50. Plaintiffs seek an Order from this Honorable Court, consistent with *Bolt v City of Lansing*, 459 Mich 152, 587 NW2d 264 (1998), and its progeny, that the "fee" imposed here by Defendants amounts to an unconstitutional taxation of real property by Defendants.

COUNT II

INJUNCTIVE RELIEF

51. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1-50 as if fully included herein.

52. As a direct and proximate result of the Defendants' custom, policies and actions, Plaintiffs and all other persons similarly situated have suffered and will continue to suffer a loss of their constitutionally-protected rights to be free from real property taxation unilaterally imposed by a municipality.

[8] Plaintiffs also designate (a) thru (f) of Paragraph 49 as "factual questions that are anticipated to require resolution by the Court" under MCR 2.112(M).

52. Plaintiffs will suffer immediate and irreparable harm including threats to health and safety, if Defendant is not enjoined from executing its policy of mass water shut offs in violation of due process and equal protection.

54. Plaintiffs ask this Honorable Court to permanently enjoin Defendants from imposing or collecting this Drainage Fee.

COUNT III

MONETARY DAMAGES

55. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1-55 as if fully included herein.

56. As a direct and proximate result of the Defendants' custom, policies and actions, Plaintiffs and all other persons similarly situated have suffered and will continue to suffer a loss of their constitutionally-protected rights to be free from real property taxation unilaterally imposed by a municipality.

57. Plaintiffs ask this Honorable Court to refund all Drainage Charges paid and Order the Defendants to pay into a common fund for the benefit of Plaintiffs and all other members of the Class the total amount of refunded charges for this illegal tax that they are entitled and appoint a Trustee to seize, manage, and distribute in an orderly manner the common fund established. .

GENERAL PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. Issue a temporary restraining order (TRO), to stop all "drainage charge" collection

from Plaintiffs and other similarly situated property owners and schedule an evidentiary hearing for a preliminary and permanent injunction;

B. Provide declaratory relief finding that Defendant's policies, procedures and actions relating to "drainage charge", violates § 31 of Michigan's Headlee Amendment;

C. Refund all moneys collected from Plaintiffs, and other similarly situated landowners.

D. Award reasonable attorneys' fees and costs; and

E. Award any further relief as is just and equitable.

Dated: March 25, 2017

Respectfully submitted,
REDETROIT EAST COMMUNITY LAW CENTER

/s/ Lisa C. Walinske
BY:_____

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