

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

HARRIS, et al.,	:	
	:	
Plaintiffs	:	1:CV-11-2228
	:	
v.	:	(JONES)
	:	
CORBETT, et al.	:	
	:	
Defendants	:	<i>Electronically Filed</i>

**PLAINTIFFS’ MOTION FOR EMERGENCY TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiffs, by and through their attorney, move this Court pursuant to Rule 65(a) and (b) for the Federal Rules of Civil Procedure for an Order granting an Emergency Temporary Restraining Order and/or Preliminary Injunction prohibiting defendants from exercising authority delegated to them pursuant to Senate Bill 1151 of 2011 amending Act 47, 53 P.S. § 11701.101 *et seq.* (hereinafter the “Act 47 Amendment”) until such time as the lawfulness of the Act 47 Amendment is finally decided by the Court. In support of this motion plaintiffs aver as follows:

1. Plaintiffs incorporate herein by reference the facts alleged in plaintiffs’ Complaint;
2. Plaintiffs also incorporate herein by reference the facts and legal arguments contained in the “Plaintiffs’ Brief in Support of Motion for Emergency

Temporary Restraining Order and/or Preliminary Injunction” which is being filed contemporaneously herewith;

3. Four factors govern the Court’s decision whether to issue a preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by the denial of relief; (3) whether granting the preliminary relief will result in greater harm to the non-moving party; and (4) whether granting the preliminary relief will be in the public interest. In this case, an analysis of these factors demonstrates plaintiffs’ compelling right to relief;

4. Plaintiffs stand a reasonable probability of success on the merits because, among other reasons:

a. The Act 47 Amendment intentionally deprives plaintiffs’ equal application of certain provisions of the state constitution that expressly prohibit the General Assembly from passing special laws that target one municipality for special treatment and do not apply to all municipalities similarly classified by the General Assembly. The Act 47 Amendment suspends plaintiffs’ right to municipal representation over key municipal functions in the City of Harrisburg on terms equal to all other residents of distressed Third Class cities within the Commonwealth, thereby debasing plaintiffs’ municipal franchise. All of the

foregoing violates plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

b. The Act 47 Amendment improperly delegates unfettered discretionary legislative authority to defendant Governor Corbett to declare, or not to declare, a fiscal emergency and the appointment of a receiver (vested with the power to dispose of municipal assets and plenary spending authority without the consent of plaintiffs' municipal representatives) in any Third Class city refusing to adopt a Final Act 47 Recovery Plan or some other plan acceptable to the Commonwealth. Further, the General Assembly cannot delegate to the Governor authority to suspend representative and democratic control over key municipal functions, authority that, if exercised by the General Assembly directly would constitute a manifest violation of certain provisions of the state constitution. Plaintiffs are entitled to the legislative process necessary to alter municipal governance within the Commonwealth as mandated by the state constitution. All of the foregoing violates plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

5. The Pennsylvania Supreme Court has clearly articulated that, as applied under Pennsylvania law, treating one fiscally distressed municipality differently from another distressed municipality within the same municipal classification (classification, according to the state constitution, based solely on

population) is arbitrary and cannot be sustained under any standard of judicial review;

6. Plaintiffs' municipal franchise will be irreparably harmed if defendants sell and/or lease Harrisburg's income producing assets without first gaining the consent of plaintiffs' elected municipal representatives;

7. No harm will occasion defendants should this Court issue the requested injunction;

8. The public interest in equal application of state constitutional protections lies in favor of granting a stay of defendants' authority under the Act 47 Amendment;

9. On February 10, 2012, plaintiffs' counsel advised the attorneys for defendants of plaintiffs' intention to file this Motion for Emergency Temporary Restraining Order and/or Preliminary Injunction. Defendants represented they will oppose this motion and have, in fact, continued to seek approval of defendant Unkovic's "Recovery Plan" and the authority to dispose of Harrisburg's income producing assets without first gaining the consent of plaintiffs' elected municipal representatives.

WHEREFORE, plaintiffs respectfully request that this Court issue an emergency temporary restraining order or preliminary injunction enjoining defendants from exercising authority delegated to them by the Act 47 Amendment

until such time as the Act 47 Amendment's lawfulness is finally determined by the Court.

Dated: February 23, 2012

/s/ Paul A. Rossi

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on February 23, 2012, he personally caused to be served upon opposing counsel a true and correct copy of the foregoing motion via the Court's ECF filing system.

Dated: February 23, 2012

/s/ Paul A. Rossi
Paul A. Rossi, Esq.

CERTIFICATE OF CONCURRENCE

I, Paul A. Rossi, counsel for plaintiffs, hereby certify that opposing counsel does not concur in the instant motion

Dated: February 23, 2012

/s/ Paul A. Rossi
Paul A. Rossi, Esq.