TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES

PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF CITIZENS OF FLINT, MICHIGAN

BY THE UNITED STATES OF AMERICA

WITH A REQUEST FOR AN INVESTIGATION, HEARING ON THE MERITS AND PRECAUTIONARY MEASURES

UNDER THE PROVISIONS OF ARTICLE 23 OF THE RULES OF PROCEDURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

SUBMITTED BY CLAIRE R. MCCLINTON, JEANNE M. WOODS, AND JOHN C. PHILO ON BEHALF OF

Bishop Bernadel L. Jefferson, Gina Luster, Victoria Marx, Melissa Mays, Adam and Christina Murphy, Joyce McNeal, Anthony Paciorek, Doris Patrick, Ben Pauli, Claudia Perkins Milton, Laura Sullivan, Lee Anne Walters, and Nakiya Wakes

Claire R. McClinton
Flint Democracy Defense League

Professor Jeanne M. Woods
Loyola University New Orleans College of Law
Human Rights Advocacy Project*

John C. Philo, Executive Director
Maurice & Jane Sugar Law Center
For Economic & Social Justice
Detroit, MI

* James Branum, John Crosby, Benjamin D’Alessio, Courtney Hutchens, Michael Moore, Sarah Lambert, Joshua Lewis, and Tiffany Walker
Table of Contents

SECTION I. INFORMATION ON THE ALLEGED VICTIMS AND PETITIONERS 3
  1. INFORMATION ON THE ALLEGED VICTIMS 3
  2. INFORMATION ON THE FAMILY MEMBERS 5
  3. DATA ON THE PETITIONERS 6
  4. IS YOUR PETITION RELATED TO A PREVIOUS PETITION OR A REQUEST FOR PRECAUTIONARY MEASURES? 7

SECTION II. FACTS ALLEGED 8
  1. MEMBER STATE OF THE OAS AGAINST WHICH THE COMPLAINT IS SUBMITTED 8
  2. THE FACTS 8
  3. AUTHORITIES ALLEGEDLY RESPONSIBLE 25
  4. HUMAN RIGHTS ALLEGEDLY VIOLATED 26
     a. The Right to Participate in Government 26

SECTION III. LEGAL REMEDIES PURSUED TO RESOLVE THE FACTS ALLEGED 29

SECTION IV. AVAILABLE EVIDENCE 30
  1. EVIDENCE 30
  2. WITNESSES 35

SECTION V. OTHER LODGED COMPLAINTS 35

SECTION VI. PRECAUTIONARY MEASURES 36

MEMORANDUM OF LAW IN SUPPORT OF PETITION 38
SECTION I. INFORMATION ON THE ALLEGED VICTIMS AND PETITIONERS

1. INFORMATION ON THE ALLEGED VICTIMS

Name of the Alleged Victim: Claire McClinton

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (810) 813-1852

Email of the Alleged Victim: crmccclinton@comcast.net

Name of the Alleged Victim: Melissa Mays

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (810) 423-3435

Email of the Alleged Victim: wateryoufightingfor@gmail.com

Name of the Alleged Victim: Claudia Perkins-Milton

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (810) 691-9398 (cell); (810) 787-3187 (home)

Email of the Alleged Victim: theyoungcowgirl@yahoo.com

Name of the Alleged Victim: Lee Ann Walters

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (616) 212-6233

Email of the Alleged Victim: Lwalters313@gmail.com

Name of the Alleged Victim: Joyce McNeal

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (810) 820-5635
Name of the Alleged Victim: Gina Luster
   Sex of the Alleged Victim: Female
   Telephone Number of the Alleged Victim: (313) 412-4268
   Email of the Alleged Victim: Gluster08@yahoo.com

Name of the Alleged Victim: Laura Sullivan
   Sex of the Alleged Victim: Female
   Telephone Number of the Alleged Victim: (810) 252-6582
   Email of the Alleged Victim: Dr.laura2@gmail.com

Name of the Alleged Victim: Ben Pauli
   Sex of the Alleged Victim: Male
   Telephone Number of the Alleged Victim: (253) 219-4514
   Email of the Alleged Victim: bpauli@kettering.edu

Name of the Alleged Victim: Anthony Paciorek
   Sex of the Alleged Victim: Male
   Telephone Number of the Alleged Victim: (810) 962-7003
   Email of the Alleged Victim: Jonny8bit@gmail.com

Name of the Alleged Victim: Doris Patrick
   Sex of the Alleged Victim: Female
   Telephone Number of the Alleged Victim: (810) 221-5375
   Email of the Alleged Victim: dorispatrick50@gmail.com

Name of Alleged Victim: Nakiya Wakes
Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (574) 903-7414

Email of the Alleged Victim: Nwakes@yahoo.com

Name of Alleged Victim: Christina Murphy

Sex of the Alleged Victim: Female

Telephone Number of the Alleged Victim: (248) 520-0473, (586) 209-6959

Email of the Alleged Victim:

Name of Alleged Victim: Bernadel L. Jefferson

Sex of the Alleged Victim: Female

Telephone of the Alleged Victim: (810) 252-3010

Email of the Alleged Victim: blfaith1@yahoo.com

2. INFORMATION ON THE FAMILY MEMBERS

Alleged Victim: Lee Ann Walters

Name of the Family Members and Relationship to the Alleged Victim:
Gavin Walters (son, 4 years old); Garrett Walters (son, 4 years old)

Telephone of the Family Members: (616) 212-6233

Email of the Family Members: Lwalters313@gmail.com

Alleged Victim: Joyce McNeal

Name of the Family Members and Relationship to the Alleged Victim:
Joseph Pounds (son, 39 years old, deceased); Mylun Pounds (grandson, 16 years old); Joel McNeal (husband).

Telephone of the Family Members: (810) 820-5635

Email of the Family Members: joycemcNeal123@gmail.com
Alleged Victim: Gina Luster

Name of the Family Members and Relationship to the Alleged Victim: Kennedy Luster (daughter, 5 years old)

Telephone of the Family Members: (313) 412-4268

Email of the Family Members: Gluster08@yahoo.com

Alleged Victim: Nakiya Wakes

Name of the Family Members and Relationship to the Alleged Victim: Jaylen (son, 6 years old), Nashuana (daughter, 16)

Telephone of the Family Members: (574) 903-7414

Alleged Victim: Victoria Marx

Telephone: (574) 289-4152

Email of the Family Members:

3. DATA ON THE PETITIONERS

Name of the Petitioner: Claire McClinton

Telephone Number of the Petitioner: (810) 813-1852

Email of the Petitioner: crmcclinton@comcast.net

Do You Want the IACHR to Keep Your Identity as Petitioner Confidential During the Procedure: No.

Name of the Petitioner: Jeanne M. Woods

Telephone Number of the Petitioner: (504) 861-5424

Email of the Petitioner: woods@loyno.edu

Do You Want the IACHR to Keep Your Identity as Petitioner Confidential During the Procedure: No.
Name of the Petitioner: John C. Philo

Telephone Number of the Petitioner: (313) 993-4505

Email of the Petitioner: jphilo@sugarlaw.org

Do You Want the IACHR to Keep Your Identity as Petitioner Confidential During the Procedure: No.

Per Article 23 of the Rules and Procedures of the Inter-American Commission on Human Rights, Claire McClinton submits this petition as both petitioner on behalf of the aforementioned victims and as a victim, and Jeanne M. Woods and John C. Philo submit as petitioners on behalf of the aforementioned victims.

4. IS YOUR PETITION RELATED TO A PREVIOUS PETITION OR A REQUEST FOR PRECAUTIONARY MEASURES?

   The Petitioners have not personally submitted a petition to the Commission concerning these same facts. However, the damages that resulted from the facts underlying this petition were the subject of a hearing request submitted by the US Human Rights Network. The Commission granted the request, held the hearing, and issued a report entitled “Human Rights and Access to Water in the United States” following its 157th regular session in April, 2016. The Commission noted in its report that states have an obligation to protect people who have been subject to discrimination historically, as well as to respect human rights and guarantee the necessary conditions for a life of dignity.”

---

A request for precautionary measures to the Commission concerning these same facts is attached.

SECTION II. FACTS ALLEGED

1. MEMBER STATE OF THE OAS AGAINST WHICH THE COMPLAINT IS SUBMITTED

United States of America

2. THE FACTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2011</td>
<td>Governor Rick Snyder signs Public Act 4, an amended version of the state's emergency manager law (Public Act 72). The controversial changes strengthened the authority of Emergency Managers and granted them the power to alter collective bargaining agreements. See Exhibit 1.</td>
</tr>
<tr>
<td>August 29, 2011</td>
<td>State Treasurer Andy Dillon's office began a review of Flint's finances under Public Act 4 to determine whether the City had a probable financial stress. See Exhibit 2.</td>
</tr>
<tr>
<td>September 30, 2011</td>
<td>Governor Snyder appoints an eight-member financial review team to determine whether a &quot;financial emergency&quot; exists in Flint. The Treasurer's review finds probable financial stress. See Exhibit 3.</td>
</tr>
<tr>
<td>November 8, 2011</td>
<td>State financial review team finds Flint is facing a financial emergency and recommend that an emergency manager be appointed by the Governor. See Exhibit 4.</td>
</tr>
<tr>
<td>November 15, 2011</td>
<td>Mayor Dayne Walling declines to request a hearing on the state's findings.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>November 29, 2011</td>
<td>Michael Brown, Flint's former Interim Mayor, is named by Governor Snyder as Flint's new Emergency Manager. See Exhibit 6.</td>
</tr>
<tr>
<td>December 1, 2011</td>
<td>Brown takes office, and eliminates the salaries for the Mayor and City Council (which he later partially restored). See Exhibit 7.</td>
</tr>
<tr>
<td>December 8, 2011</td>
<td>Brown eliminates the offices of the Ombudsman and Civil Service Commission. See Exhibit 8.</td>
</tr>
<tr>
<td>2012</td>
<td>Water rates began to climb. Water services are disconnected for nonpayment. See Exhibit 9.</td>
</tr>
<tr>
<td>January 16, 2012</td>
<td>Flint residents march near the Governor's home in protest of the Emergency Manager law. See Exhibit 10.</td>
</tr>
<tr>
<td>January 17, 2012</td>
<td>Brown submits a financial and operating plan to the state as required by law. See Exhibit 11.</td>
</tr>
<tr>
<td>March 2012</td>
<td>“Stand Up For Democracy” petition rejected by state because it was in the “wrong font”. See Exhibit 26, 17.</td>
</tr>
</tbody>
</table>
| March 15, 2012    | A judge grants a temporary restraining order against any action by Emergency Manager Brown pending a lawsuit filed by city employee Sam Muma, head of AFSCME Local 1600, alleging the state violated the Open
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 20, 2012</td>
<td>Ingham County Circuit Court Judge Rosemarie Aquilina rules in favor of Muma, ordering the removal of Brown from office and the restoration of power to the Mayor and City Council. See Exhibit 13.</td>
<td></td>
</tr>
<tr>
<td>April 26, 2012</td>
<td>The state Board of Canvassers deadlocks in a 2-2 vote on a petition to put a referendum on Public Act 4, the emergency manager law, before voters. See Exhibit 15.</td>
<td></td>
</tr>
<tr>
<td>May 14, 2012</td>
<td>Petitioners rally at the lawn of Flint City Hall against the Emergency Manager law. See Exhibit 16.</td>
<td></td>
</tr>
<tr>
<td>August 3, 2012</td>
<td>The Michigan Supreme Court orders the State Board of Canvassers to certify a referendum of Public Act 4 for the November ballot. See Exhibit 17.</td>
<td></td>
</tr>
<tr>
<td>September 10, 2012</td>
<td>The Flint City Council files a lawsuit against the appointment of emergency Manager Kurtz in Genesee County Circuit Court. See Exhibit 18.</td>
<td></td>
</tr>
<tr>
<td>December 2012</td>
<td>The Michigan Legislature enacts a statute (PA 436) that effectively reinstates PA 4 in a lame duck session; The statute eliminates the ability of people to vote on this issue any more. See Exhibit 20.</td>
<td></td>
</tr>
<tr>
<td>March 23, 2013</td>
<td>Flint City Council votes 7 to 1 to enter into contract with Karengnondi</td>
<td></td>
</tr>
</tbody>
</table>
Water Authority (KWA), where KWA would supply the city with water from Lake Huron after construction of a pipeline is completed. The decision to switch to the Flint River as an interim source of drinking water was not voted on by the City Council. See Exhibit 65.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 16, 2013</td>
<td>Andy Dillon, State Treasurer, authorizes Flint EM (Kurtz) to enter into contract with KWA. See Exhibit 21.</td>
</tr>
<tr>
<td>June 26, 2013</td>
<td>Flint EM (Kurtz) signs a resolution that allows the city to hire an engineering firm, Houston-based Lockwood, Andrews &amp; Newman, to place the Flint Water Plant in operation using the Flint River as the primary interim drinking water source while the KWA pipeline is being built. See Exhibit 23.</td>
</tr>
<tr>
<td>June 2013</td>
<td>Michigan Department of Environmental Quality (MDEQ) officials notify Flint Water Treatment Plant (FWTP)/Genesee County that no corrosion control would be required for switch to Flint River as interim source of drinking water. See Exhibit 22.</td>
</tr>
<tr>
<td>April 10, 2014</td>
<td>The MDEQ issues a construction permit for improvements to the Flint Water Treatment Plant (FWTP). See Exhibit 24.</td>
</tr>
<tr>
<td>April 17, 2014</td>
<td>Michael Glasgow, one of FWTP’s utilities administrators, sends an e-mail stating: “If the water is distributed from this plant in the next several weeks it will be against my direction.” See Exhibit 22.</td>
</tr>
</tbody>
</table>
| April 25, 2014| Flint begins using the Flint River as its new water source, with officials
from Flint, the Genesee County Drain Commission and the MDEQ there for
the switch. A City news release quotes an official of the MDEQ’s office of
drinking water as saying “the quality of the water being put out meets all of
our drinking water standards, and Flint water is safe to drink.” But the City
does not provide corrosion-control treatment to prevent lead from leaching
into pipes and MDEQ does not require it. Residents soon complain about
the water- the color, rashes and concerns about bacteria. See Exhibit 22.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2014</td>
<td>Gina Luster’s sickness begins. As a result, she lost 67 pounds in 3 months; lost hair; collapsed at work (and subsequently lost her job due to illness); suffers from memory loss; was treated with morphine for an orange-sized lump in her breast caused by “mastitis” (bacterial infection); had a hysterectomy; and now walks with a cane. Luster’s 5-year-old daughter, Kennedy, was diagnosed with vitamin D deficiency and claims of constantly “hurting bones.” Her teeth also “crumbled.” Luster’s sister has 4 children who have all developed dyslexia. See Exhibits 25.</td>
</tr>
<tr>
<td>July 5, 2014</td>
<td>Gina Luster collapses at work and is rushed to the hospital. See Exhibit 25.</td>
</tr>
<tr>
<td>July 28, 2014</td>
<td>Suzzane Kolch is the first victim to die from Legionnaires’ disease. See Exhibit 22.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>July/August 2014</td>
<td>Nakiya Wakes notices behavioral changes in her son, Jaylen, who started throwing temper tantrums and getting suspended from school. Around the same time Jaylen starts to complain of chest and leg pains, and Nakia, along with her daughter, Nashuana, start experiencing rashes and hair loss. Gina Luster’s daughter, Kennedy, starts complaining of bone aches and fatigue. See Exhibit 66, 25.</td>
</tr>
<tr>
<td>August 2014</td>
<td>The City of Flint violates the National Primary Drinking Water Regulations Maximum Contaminant Level (MCL) for E. Coli bacteria (Acute Coliform MCL violation). See Exhibit 63.</td>
</tr>
<tr>
<td>August 14, 2014</td>
<td>The City announces that fecal coliform bacterium has been detected in the water supply, prompting a Boil Water Advisory for a neighborhood on the west side of Flint. The City boosts the amount of chlorine in the water and flushes the system. The Advisory is lifted on August 20. See Exhibit 27.</td>
</tr>
<tr>
<td>September 2014</td>
<td>The City of Flint is again found to violate the National Primary Drinking Water Regulations MCL for Coliform bacteria (Monthly Coliform MCL violation). See Exhibit 63.</td>
</tr>
<tr>
<td>September 5, 2014</td>
<td>Flint issues another Boil Water Advisory after a positive test for coliform bacteria. The presence of this type of bacteria is a warning sign that E. coli or other disease-causing organisms may be contaminating the water. City officials tell residents they will flush the pipes and add more chlorine to the water. See Exhibit 28.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>October 2014</td>
<td>The General Motors plant in Flint stops using the City’s water due to concerns about high levels of chlorine corroding engine parts. See Exhibit 29.</td>
</tr>
<tr>
<td>October 14, 2014</td>
<td>Valeria Brader of the Governor’s office recommends a return to the Detroit Water and Sewage Department (DWSD) as an interim solution. The Governor’s legal counsel Mike Gadola says that: “The notion that I would be getting drinking water from the Flint River is downright scary. [Flint] should try to get back on the Detroit system as a stopgap ASAP before this thing gets too far out of control…my mom is a City resident. Nice to know she’s drinking water with elevated chlorine levels and fecal coliform.” See Exhibit 22.</td>
</tr>
<tr>
<td>November 2014</td>
<td>Lockwood, Andrews and Newman, Inc. produces an “Operational Evaluation Report” to assess the factors contributing to high levels of total trihalomethanes (TTHMs) following the source change. TTHMs are a group of chemical compounds that form during drinking water treatment. The compounds are produced when organic matter in natural water reacts chemically with chlorine disinfectants. This report is required by the National Primary Drinking Water Regulations when water tests show TTHM or HAA5 levels in excess of 80 percent of the MCL. See Exhibit 63, 64.</td>
</tr>
<tr>
<td>December 2014</td>
<td>The Walters stop drinking water from the tap due to water quality. The City</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>December 20, 2014</td>
<td>Doris Patrick, a lifetime resident of Flint who prior to the water crisis had never been diagnosed with any major illnesses, was diagnosed with multiple waterborne illnesses resistant to medication. See Exhibit 62.</td>
</tr>
<tr>
<td>December 24, 2014</td>
<td>Gina Luster receives a letter from her employer on Christmas Eve, stating that she was fired due to her deteriorating health. See Exhibit 25.</td>
</tr>
<tr>
<td>January 2, 2015</td>
<td>The City warns residents that the water contains byproducts of disinfectants that may cause health issues including an increased risk for cancer over time. The letter is sent after the state finds that the level of disinfecting chemicals in the water exceeds the threshold set by the Safe Drinking Water Act. The water is deemed safe for the general population, but the elderly and parents of young children are cautioned to consult with their doctors. The byproducts are TTHMs, which can cause liver and kidney problems with long-term exposure. See Exhibit 30.</td>
</tr>
<tr>
<td>January 7, 2015</td>
<td>A state building in Flint begins bringing water coolers, according to e-mails from the Department of Technology Management and Budget (DTMB) See Exhibit 22.</td>
</tr>
<tr>
<td>January 9, 2015</td>
<td>The University of Michigan Flint campus begins testing its water and detects lead in drinking fountains. See Exhibit 31.</td>
</tr>
<tr>
<td>January 12, 2015</td>
<td>The DWSD offers to reconnect Flint to Detroit’s water system at no cost.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>January 21, 2015</td>
<td>EM Darnell Earley rejects offer. See Exhibit 22.</td>
</tr>
<tr>
<td>January 21, 2015</td>
<td>Residents tote jugs of discolored water to a community forum. They say the water tastes funny and smells terrible. The Detroit Free Press reports that children are developing rashes and suffering from mysterious illnesses. See Exhibit 32.</td>
</tr>
<tr>
<td>January 28, 2015</td>
<td>Corinne Miller of the Michigan Department of Health and Human Services (MDHHS) meets with Nick Lyon, MDHSS Director, and gives him materials that document an outbreak of Legionnaires’ disease in Genesee County in 2014. See Exhibit 22.</td>
</tr>
<tr>
<td>February 2015</td>
<td>The MDEQ notes some “hiccups” in the transition, including a buildup of TTHMs, a cancer-causing byproduct of chlorine and organic matter. See Exhibit 33.</td>
</tr>
<tr>
<td>February 4, 2015</td>
<td>Flint resident Lee Anne Walters’ son develops rashes over his entire body; she shows a video of this to the Flint City Council. City subsequently tests her home’s water for lead. See Exhibit 34.</td>
</tr>
<tr>
<td>February 11, 2015</td>
<td>The City of Flint tests drinking water iron level at the Walters’ residence and the level is so high that it exceeds the capability of the measurement (&gt;3.3 mg/L). See Exhibit 63.</td>
</tr>
<tr>
<td>February 18, 2015</td>
<td>The City tests the drinking water in Lee Anne Walters’ home. Tests reveal high lead in the drinking water (104 ug/L) and iron level once again exceeds the limit of the test (&gt;3.3 mg/L). See Exhibit 63.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>February 25, 2015</td>
<td>The Environmental Protection Agency (EPA) Region 5 notifies Ms. Walters regarding the high lead levels discovered in her home. See Exhibit 63.</td>
</tr>
<tr>
<td>February 26, 2015</td>
<td>The EPA notifies the MDEQ that it has detected dangerous levels of lead in the water at the home of Flint resident Lee-Anne Walters. A mother of four, she had first contacted the EPA with concerns about dark sediment in her tap water possibly making her children sick. Testing revealed that her water had 104 parts per billion (ppb) of lead, nearly seven times greater than the EPA limit of 15 ppb. See Exhibit 35.</td>
</tr>
<tr>
<td>February 27, 2015</td>
<td>In response to EPA questions about Walters’ water, the DEQ’s Stephen Busch says Flint has an optimized corrosion-control program. See Exhibit 50.</td>
</tr>
<tr>
<td>March 2015</td>
<td>Adam Murphy begins to experience disorientation, hand tremors, memory loss, and starts running into things. See Exhibit 36.</td>
</tr>
<tr>
<td>March 13, 2015</td>
<td>MDEQ’s Brad Wurfel e-mails Governor Snyder’s office: “Political flank cover out of the City of Flint today regarding the spike in Legionnaire cases. See enclosed. Also, area ministers put a shot over the bow last night ... with a call for Snyder to declare a state of emergency there and somehow ‘fix’ the water situation ...” See Exhibit 22.</td>
</tr>
<tr>
<td>March 18, 2015</td>
<td>Walters writes the EPA after another test indicates the lead level in her water is 397 ppb. See Exhibit 35.</td>
</tr>
<tr>
<td>March 23, 2015</td>
<td>Flint City Council members vote 7-1 to stop using river water and to</td>
</tr>
</tbody>
</table>
reconnect with Detroit. However, the state-appointed Emergency Manager, Jerry Ambrose, overrules the vote, calling it “incomprehensible” because costs would skyrocket and “water from Detroit is no safer than water from Flint.” *See Exhibit 37.*

**April 2015**

Victoria Marx begins to experience tremors in her hand, losing her balance, and dragging of her right leg. She was put on anti-depressants. In August of 2015 she was diagnosed with Parkinson’s disease. Her home value has been reduced by half and she is unable to sell it due to the high levels of lead found.

**April 24, 2015**

The MDEQ indicates to the EPA that Flint has no corrosion control in place but is conducting lead and copper monitoring. *See Exhibit 22.*

**June 10, 2015**

EPA recommends that the DEQ offer Flint technical assistance on managing various water-quality issues. *See Exhibit 35.*

**June 24, 2015**

An EPA regulations manager, Miguel Del Toral, issues a memo, “High Lead Levels in Flint,” warning that the City is not providing corrosion control treatment to mitigate the presence of lead in drinking water. According to the memo, scientists at Virginia Tech tested tap water from the Walters’ home and found the lead level was as high as 13,200 ppb. Water contaminated with 5,000 ppb of lead is classified by the EPA as hazardous waste. *See Exhibit 38.*

**July 9, 2015**

Flint Mayor Dayne Walling drinks a cup of tap water on a local television
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 28, 2015</td>
<td>Cristin Larder, from the Michigan Department of Health and Human Services (MDHHS), analyses blood lead levels in Flint and says they warrant further investigation. See Exhibit 22.</td>
</tr>
<tr>
<td>July 30, 2015</td>
<td>Nakiya Wakes learns that she has miscarried twins three months into her pregnancy. See Exhibit 66.</td>
</tr>
<tr>
<td>August 17, 2015</td>
<td>The MDEQ orders Flint to optimize corrosion control treatment in the water supply after state testing from the first six months of 2015 reveals elevated lead levels. See Exhibit 40.</td>
</tr>
<tr>
<td>August 23, 2015</td>
<td>Virginia Tech Professor Marc Edwards notifies the MDEQ that his team will be conducting a water quality study. See Exhibit 41.</td>
</tr>
<tr>
<td>September 2015</td>
<td>The Murphy family dog loses 38 pounds in one month. Dog tested positive for lead- 409/bil. Dog gives birth to blue puppy with translucent skin. See Exhibit 36.</td>
</tr>
<tr>
<td>September 8, 2015</td>
<td>The Virginia Tech team issues a preliminary report estimating that 40% of Flint homes have elevated lead levels. The MDEQ disputes his findings. See Exhibit 41.</td>
</tr>
<tr>
<td>September 9, 2015</td>
<td>The EPA announces that it will assist Flint in developing corrosion control treatment for the water. The next day, MDEQ spokesman, Brad Wurfel tells the Flint Journal that the City needs to upgrade its infrastructure, but he also expresses skepticism about the Virginia Tech study. See Exhibit 42.</td>
</tr>
<tr>
<td>Date: September 11, 2015</td>
<td>After concluding that Flint water is 19 times more corrosive than Detroit water, Virginia Tech recommends that the state declare that the water is not safe for drinking or cooking. The river water is corroding old pipes and lead is leaching into the water, according to the study. See Exhibit 43.</td>
</tr>
<tr>
<td>Date: September 24, 2015</td>
<td>A research team led by Dr. Mona Hanna-Attisha, a pediatrician from the Hurley Medical Center, releases a study revealing that the number of children with elevated lead levels in their blood nearly doubled after the City switched its water source. In neighborhoods with the most severe contamination, testing showed that lead levels tripled. In response to Dr. Hanna-Attisha’s report, MDHHS Director Nick Lyon instructed his staff to provide a “strong statement” that the blood levels were due to seasonal fluctuation. See Exhibits 36, 44, 67.</td>
</tr>
<tr>
<td>Date: September 25, 2015</td>
<td>The Mayor’s office issues a lead advisory (citing the concerns of the medical community) recommending that residents use water only from the cold water tap for drinking, cooking and making baby formula. But the City also asserts that it is in full compliance with federal safe-drinking water laws. See Exhibit 45.</td>
</tr>
<tr>
<td>Date: September 28, 2015</td>
<td>MDHHS Director Nick Lyon writes in an email that: “I need an analysis of the Virginia Tech/Hurley data and their conclusions. I would like to make a strong statement with a demonstration of proof that the lead blood levels seen are not out of the ordinary and are attributable to seasonal</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>October 2015</td>
<td>Joseph Pounds, Joyce McNeal’s son, is admitted to McLaren hospital in Flint and subsequently air-lifted to a hospital in Ann Arbor, MI and put in the intensive care unit: he has only one functional lung that is ravaged by untreatable pneumonia, his heart is surrounded by pus, and his liver has completely shut down. Doctors asked Ms. McNeal what countries Joseph had visited because he was dying from a “Third World” bacterium. See Exhibit 48.</td>
</tr>
<tr>
<td>October 8, 2015</td>
<td>The MDEQ announces that three Flint schools tested positive for dangerous lead levels in the water. Governor Snyder says the City will discontinue using Flint River water and switch back to Detroit’s water system. See Exhibit 46.</td>
</tr>
<tr>
<td>October 16, 2015</td>
<td>Flint switches back to Detroit water. Residents are cautioned that it will take weeks for the system to be properly flushed out and that there may be lingering issues. The EPA establishes a Flint Safe Drinking Water Task Force. See Exhibit 47.</td>
</tr>
<tr>
<td>October 18, 2015</td>
<td>Joyce McNeal’s 39-year-old son dies two days after his birthday. The contaminated water compromised his immune system, causing deterioration of his mental and physical health. His symptoms included: sores, rashes, loss of flesh while showering, bacterial infection (causing his death as diagnosed by the Ann Arbor Hospital), and Pneumonia (“heart was sitting in fluctuations.” See Exhibit 22.</td>
</tr>
</tbody>
</table>
November 4, 2015 | The EPA publishes a final, redacted version of its report on high lead levels in three Flint homes, including the Walters’ residence. Manager for the EPA, Del Toral says, “most of the recommendations” from his earlier memo are being implemented in Flint. *See* Exhibit 49.

December 14, 2015 | Flint Mayor Karen Weaver declares a state of emergency because of the contaminated water. *See* Exhibit 22.

December 30, 2015 | MDEQ Director Dan Wyant resigns after the Flint Water Advisory Task Force concludes that the crisis resulted from a failure of state regulators. *See* Exhibit 49.

January 5, 2016 | Governor Snyder declares a state of emergency in Genesee County. *See* Exhibit 22.

January 13, 2016 | Governor Snyder discloses that an outbreak of Legionnaires’ disease occurred in the Flint area between June 2014 and November 2015, with 87 cases and 10 deaths. *See* Exhibit 22.

January 16, 2016 | President Obama declines to declare a federal disaster in Flint. *See* Exhibit 50.

March 17, 2016 | Governor Snyder testifies before the Congressional House Committee on Oversight and Government Reform. *See* Exhibit 22.

March 24, 2016 | Governor Snyder’s Flint Water Advisory Task Force issues its final report. *See* Exhibit 22.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 20, 2016</td>
<td>Criminal charges are filed against Stephen Busch, a district water supervisor for the Michigan Department of Environmental Quality, and Michael Prysby, a district water engineer, on counts of misconduct, neglect of duty, conspiracy to tamper with evidence, and violating Michigan’s Safe Drinking Water Act. <em>See</em> Exhibit 22.</td>
</tr>
<tr>
<td>July 29, 2016</td>
<td>Six current and former state workers are charged as the criminal investigation continues. One of the employees, Liane Shekter-Smith, is the former chief of the Michigan Office of Drinking Water and Municipal Assistance. She faces charges of misconduct in office and willful neglect of duty for allegedly misleading the public and concealing evidence of rising lead levels in water. <em>See</em> Exhibit 22.</td>
</tr>
<tr>
<td>November 2016</td>
<td>Dennis Walters, the husband of Flint advocate Lee-Anne Walters, files a complaint claiming that he is being mistreated at work by superiors and colleagues who resent his wife’s activism. Walters, a Navy veteran who works at a police precinct at the Naval Station in Norfolk, Virginia, says that he has been scheduled to work long hours with no breaks and denied opportunities to expand his skill set via training. The family relocated to Virginia because of the water problems in Flint. <em>See</em> Exhibit 34.</td>
</tr>
<tr>
<td>December 20, 2016</td>
<td>Four officials – two of Flint’s former Emergency Managers, who reported directly to the Governor, and two water plant officials – are charged with felonies of false pretenses and conspiracy. They are accused of misleading</td>
</tr>
</tbody>
</table>
the Michigan Department of Treasury into getting millions in bonds, and then misusing the money to finance the construction of a new Keregondi Water Authority (KWA) pipeline and force Flint’s drinking water source to be switched to the Flint River. See Exhibit 22.

**February 17, 2017**
The Michigan Civil Rights Commission issues a report: “The Flint Water Crisis: Systemic Racism Through the Lens of Flint.” According to the 129-page report, “deeply embedded institutional, systemic and historical racism” indirectly contributed to the ill-fated decision to tap the Flint River for drinking water as a cost-saving measure. The report states that it believes “the current state civil rights laws appear inadequate to address” the “root of this crisis.” See Exhibit 51.

**June 14, 2017**
Michigan Attorney General Bill Schuette announces criminal charges against MDHHS Director Nick Lyon, MDHHS Chief Medical Executive Eden Wells and additional charges against former Emergency Manager Darnell Earley, the MDEQ’s Stephen Busch and Liane Shekter-Smith, and the City of Flint’s Director of the Department of Public Works Howard Croft. See Exhibit 22.

**October 2, 2017**
The United States Supreme Court denies petition for writ of *certiorari* for *Bellant v. Snyder (Phillips v. Snyder)*. See Exhibit 53.
3. **AUTHORITIES ALLEGEDLY RESPONSIBLE**

Federal Government of the United States; former President Barack Obama; President Donald Trump; The US Environmental Protection Agency (EPA).

State of Michigan; City of Flint; Richard Dale Snyder, Governor, State of Michigan; Dayne Welling, Mayor of Flint; Michigan Department of Environmental Quality (MMDEQ); Michigan Department of Health & Human Services (MDHHS); MMDEQ; Patrick Cook, Water Treatment Specialist, MMDEQ; Howard Croft, Director of Public Works, City of Flint; Linda Dykema, Director, Division of Environmental Health, MDHHS); Michael A. Finney, Member, Secretary of Treasury, State of Michigan; Ed Kurtz, Flint Emergency Manager; Nick Lyon, Director, MDHHS; David McGhee, Member, FRTAB; Dennis Muchmore, Chief of Staff to Governor Rick Snyder; Nancy Peeler, Lead, Childhood Lead Poisoning Prevention Program, MDHHS; Michael Prysby, Engineer, District 11, MMDEQ; Adam Rosenthal, Water Quality Analyst, Lansing District Office, MMDEQ; Robert Scott, Data Manager, Healthy Homes and Lead Prevention Program, MDHHS; Liane Shekter Smith, Chief, Office of Drinking Water and Municipal Assistance, MMDEQ; Michael A. Townsend, Member, MDHHS; Bradley Wurfel, Director of Communications, MMDEQ; Daniel Wyant, Director, MMDEQ.

Flint Receivership Transition Advisory Board (FRTAB); Gerald Ambrose, Flint Emergency Manager; Darnell Early, Flint Emergency Manager; Stephen Busch, Lansing District Supervisor, FRTAB; Michael Glasgow, Utilities Administrator, City of Flint; Frederick Headen, Chairperson, FRTAB; Natasha Henderson, City Administrator, City of Flint; Daugherty Johnson, Utilities Administrator, City of Flint; Nick A. Khouri, FRTAB; Beverly Walker-Griffia, Member,
4. **HUMAN RIGHTS ALLEGEDLY VIOLATED**

   a. **The Right to Participate in Government**

   The United States is a signatory to the Charter of the Organization of the American States, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and the International Covenant on Civil and Political Rights. These instruments guarantee and protect the right to democracy. The right to democracy encompasses the right of the people to participate in government and guarantees the right of the people to take part in decision-making that will affect their lives.

   The right to democracy of the people of Flint, Michigan, was violated by the Michigan Governor’s appointment of Emergency Managers to replace elected officials. This right is guaranteed in the instruments of the Inter-American system. The OAS Charter emphasizes that representative democracy is the *raison d’etre* of the regional organization, an “indispensable condition for the stability, peace and development of the [Americas].” Article 3(d) reiterates that "[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy." Article 47 calls upon Member States to give primary importance "to the encouragement of education, science, technology, and culture, oriented toward the overall

---


3 *Id.* at Preamble.

4 *Id.* at art. 3(d).
improvement of the individual, and as a foundation for democracy, social justice, and progress.\textsuperscript{5}

The American Declaration of the Rights and Duties of Man provides an authoritative interpretation of the Charter's language. Article XX of the Declaration provides: "[e]very person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."\textsuperscript{6} The Emergency Manager system renders the election of representatives in Flint illusory and ineffectual.

The Inter-American Democratic Charter, promulgated in 2001, reaffirms and further clarifies OAS Members’ obligations, establishing democracy as a human right. Article 1 unequivocally proclaims: "[t]he peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas."\textsuperscript{7}

Article 3 defines democracy by pointing to its essential elements: (1) respect for human rights and fundamental freedoms; (2) access to and the exercise of power in accordance with the rule of law; (3) the holding of periodic, free, and fair elections based on secret balloting; and (4) universal suffrage as an expression of the sovereignty of the people, the pluralistic system of

\textsuperscript{5} \textit{Id.} at art. 47.
\textsuperscript{6} The American Declaration of the Rights and Duties of Man, Art. XX. \textit{available at} https://www.cidh.oas.org/basicos/english/basic2.american%20declaration.htm [accessed November 27, 2017]
\textsuperscript{7} Inter-American Democratic Charter, Art. 1 \textit{available at} http://www.oas.org/charter/docs/resolution1_en_p4.htm [accessed November 27, 2017].
political parties; and (5) the separation of powers and independence of the branches of government.\(^8\)

The right to democracy is also enshrined in an international treaty to which the United States is a party, the International Covenant on Civil and Political Rights. Article 25 of the ICCPR provides that:

\[
\text{[e]very citizen shall have the right and the opportunity…(a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country.}\(^9\)
\]

General Comment 25 is an authoritative interpretation of Article 25 by the United Nations Human Rights Committee. It makes clear that the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Further, General Comment 25 emphasizes that the right guaranteed is one of direct participation\(^{10}\) and that States have an affirmative obligation to take effective measures to ensure that all persons are able to exercise this right.\(^{11}\) This obligation exists not just at the national level, but at all relevant governmental levels where decisions impact the lives of citizens.


\(^{11}\) Id.
As a result of the violation of the right to democracy, Flint residents suffered severe violations of other fundamental human rights protected in the Inter-American system. These violations can be summed up as the notorious “Flint Water Crisis” – the poisoning of an American city. The rights violated include the rights to life, to a family and protection thereof, and to preservation of health and well-being.

SECTION III. LEGAL REMEDIES PURSUED TO RESOLVE THE FACTS ALLEGED

In Catherine Phillips, et al. v. Snyder, et al. 12 Catherine Phillips and twenty other local residents, activists, and community leaders filed suit in the Eastern District of Michigan against Michigan Governor Richard Snyder and Michigan Treasurer Andrew Dillon challenging the constitutionality of the Emergency Manager law. The District Court dismissed almost all of plaintiffs’ claims, finding that there is no fundamental right to elect local legislators, and that the Guarantee Clause does not apply to local governments. The only claim to survive dismissal (the Equal Protection claim based on discrimination against African-Americans) was stipulated by the parties to be dismissed without prejudice. 13

The Phillips plaintiffs appealed to the U.S. Court of Appeals for the Sixth Circuit. See Exhibit 56. On September 12, 2016, the Sixth Circuit affirmed the District Court, finding that the U.S. Constitution provides no fundamental right to have local officials elected. 14 The plaintiffs were denied a rehearing by the Sixth Circuit en banc on November 1, 2016. Plaintiffs subsequently filed a petition for a writ of certiorari (sub nom Bellant v. Snyder, No. 15-2394) to

13 Id.
the U.S. Supreme Court on March 30, 2017. The petition was denied on October 2, 2017. See Exhibit 57. Though litigation regarding constitutionality of Michigan’s Emergency Manager laws is estopped and all domestic remedies on this issue have been exhausted, suits alleging different violations are still pending.\(^\text{15}\)

**SECTION IV. AVAILABLE EVIDENCE**

1. **EVIDENCE**

**Exhibit 1**—“Mich. Senate passes bill to give broad powers to emergency managers”

NBC News, March 9, 2011

**Exhibit 2**—“Preliminary financial review in Flint could take up to 30 days, as outlined under emergency financial manager law” MLive, August 26, 2011

**Exhibit 3**—“Gov. Snyder appoints team to review Flint’s finances under emergency manager law, requests report within 30 days” MLive, September 30, 2011

**Exhibit 4**-“State review panel recommends emergency financial manager be appointed in Flint” MLive, November 8, 2011

**Exhibit 5**-“Flint’s elected leaders bracing for emergency manager, state takeover” MLive, November 15, 2011

**Exhibit 6**-“Former Acting Mayor Michael Brown named Flint’s emergency manager” MLive, November 29, 2011

**Exhibit 7**- Order No. 2, Elimination of Salaries and Benefits of Mayor and City Council

**Exhibit 8**-“Emergency manager axing ombudsman’s office, service commission ‘disappointing’ council member says” MLive, December 8, 2011

**Exhibit 9**-Quarterly Report to the State Treasurer Regarding the Financial Condition of the City of Flint July 12, 2012

**Exhibit 10**-“Busload of Flint residents joining march on governor’s gates to protest emergency manager law” MLive, January 11, 2012

**Exhibit 11**-“Flint’s financial plan pending in state treasurer’s hands” MLive, January 17, 2012

**Exhibit 12**-“Restraining order against Flint emergency manager leaves city without clear chain of command” MLive, March 15, 2012

**Exhibit 13**-“Judge removes Flint emergency manager, restores mayor and city council; State planning appeal” MLive, March 20, 2012

**Exhibit 14**-“Flint emergency manager reinstated as battle over Public Act 4 continues” MLive, March 26, 2012
Exhibit 15-“Flint emergency manager unscathed after Public Act 4 petition uncerfified; Opponents vow to keep fighting” MLive, April 26, 2012

Exhibit 16-“Flint rally: ‘It’s fighting time’ against emergency managers, Public Act 4” MLive, May 14, 2012

Exhibit 17-“Stand Up For Democracy v. Secretary of State

Exhibit 18-“Flint City Council members sue emergency financial manager Ed Kurtz” MLive, September 10, 2012

Exhibit 19-“Flint gains public safety millage, loses emergency manager law” MLive, November 7, 2012

Exhibit 20-“Overnight in the lame duck Michigan legislature: Final votes on abortion, taxes, guns and 3 surprises” MLive, December 14, 2012

Exhibit 21- Genesee County Drain Commissioner’s Office Release April 12, 2013

Exhibit 22- Interim Report of the Flint Water Crisis Investigation

Exhibit 23-City of Flint Contract with Lockwood, Andrews, & Newman Incorporated

Exhibit 24-“Flint gets final permit approvals from state to use Flint River for drinking water” MLive April 10, 2014

Exhibit 25-Testimony of Gina Luster

Exhibit 26- Testimony of Bishop Bernadel L. Jefferson

Exhibit 27-“Flint issues boil water notice for portion of west side of city” MLive, August 16, 2014

Exhibit 28- “Flint issues boil water advisory for section of the city after positive test for total coliform bacteria” MLive, September 5, 2014
**Exhibit 29**—“General Motors shutting off Flint River water at engine plant over corrosion worries” MLive, October 13, 2014

**Exhibit 30**—“City warns of potential health risks after Flint water tests revealed too much disinfection byproduct” MLive, January 2, 2015

**Exhibit 31**—University of Michigan-Flint Campus Drinking Water Testing Results January-February 2015

**Exhibit 32**—“Flint’s water woes the latest hit for the embattled city” Detroit Free Press, January 22, 2015

**Exhibit 33**—MDEQ Water Quality Update

**Exhibit 34**—Testimony of Lee Anne Walters

**Exhibit 35**—Summary of MDEQ and City of Flint FOIA Requests

**Exhibit 36**—Testimony of Christina Murphy

**Exhibit 37**—“Lawsuit seeks end to Flint River drinking water, return to Detroit” MLive, June 5, 2015

**Exhibit 38**—Del Toral Memo June 24, 2015

**Exhibit 39**—“Flint’s mayor drinks water from tap to prove it’s safe” WNEM, July 9, 2015

**Exhibit 40**—Flint Water Timeline

**Exhibit 41**—Flint Water Study Update September 8, 2015

**Exhibit 42**—“Fed sending in experts to help Flint keep lead out of water” MLive, September 10, 2015

**Exhibit 43**—Flint Water Study Update September 11, 2015
Exhibit 44-“Flint doctor’s fight to expose lead poisoning” CNN, September 24, 2015

Exhibit 45-City of Flint Issues Lead Advisory, September 25, 2015

Exhibit 46-“Toxic lead levels found in water at three Flint schools” MLive, October 8, 2015

Exhibit 47-“Flint reconnects to Detroit water, may take 3 weeks to clear all pipes” MLive, September 19, 2015

Exhibit 48-Testimony of Joyce McNeal

Exhibit 49-Redacted EPA Final Report November 4, 2015

Exhibit 50-“President Obama declares emergency in Flint” Detroit Free Press, January 16, 2016

Exhibit 51-Flint Water Crisis: Systemic Racism Through the Lens of Flint

Exhibit 52-“EPA Awards $100 Million to Michigan for Flint Water Infrastructure Upgrades” March 17, 2017

Exhibit 53- SCOTUS Blog Entry, Certiorari Denied

Exhibit 54-Phillips v. Snyder, No. 15-2394 (6th Cir. 2016)

Exhibit 55-Phillips Petition for Certiorari


Exhibit 57-Boler/Mays consolidated appeal


Exhibit 59-Concerned Pastors Settlement Agreement

Exhibit 61-Order consolidating all non-class action Flint water cases

Exhibit 62-Medical records of Doris Patrick

Exhibit 63-Interim Report on High Lead Levels in Flint Michigan, Time Line of Events

Exhibit 64- TTHM in Drinking Water: The Flint, Michigan Story, A Lesson for Us All.” March 13, 2015

Exhibit 65-Flint City Council Minutes, March 23, 2013

Exhibit 66-Testimony of Nakiya Wakes

Exhibit 67- Office of Special Counsel, Investigator’s Report, Attorney General Case No. 16-0004

Exhibit 68- Testimony of Anthony Paciorek

Exhibit 69- Testimony of Victoria Marx

2. WITNESSES

The names of the Victims in Section I and Authorities Allegedly Responsible in Section II are incorporated fully herein by reference as witnesses to the violations.

SECTION V. OTHER LODGED COMPLAINTS

Three Special Rapporteurs of the Special Procedures of the Human Rights Council reported on the Flint Crisis in 2016. In a May 3, 2016 Press Release from the UN Office of the High Commissioner on Human Rights, UN Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, warned: “The fact that Flint residents have not had regular access to safe drinking water and sanitation since April 2014 is a potential violation of
their human rights. . . . Serious problems reported on water quality, particularly high concentrations of lead, are also concerning human rights issues.”

SECTION VI. PRECAUTIONARY MEASURES

Per Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights, and based on the facts alleged in this petition, Petitioners respectfully request the Commission to adopt the following precautionary measures to prevent further irreparable harm to victims named in this petition, and to the people of Michigan:

1. GOVERNMENTAL TRANSPARENCY

The Petitioners and Victims respectfully request that Genesee County public officials report publicly on how the $100 million granted by Congress through the Water Infrastructure Improvements for the Nation Act (WIIN) is being spent. Government transparency has been lacking in Genesee County. Presently, there is no mechanism in place to account for how the $100 million awarded by the Environmental Protection Agency (“EPA”) is being used to improve the contaminated water and pipes throughout the county, or if the money is being used at all.

2. INJUNCTION AGAINST THE “ACTIVE WATER ACCOUNT” REQUIREMENT FOR PIPE REPLACEMENT

To be eligible for pipe replacement the homeowner must have an active water account with no outstanding balances. This is prohibitive for most residents, many of whom have lost jobs as a result of the crisis. Petitioners and Victims request an injunction against the enforcement of the “active water account” requirement as a condition to having contaminated pipes replaced. Residents of Flint are forced to pay exorbitant rates for poisoned water that they are unable to use or ingest. Additionally, an injunction should be placed on the billing for contaminated water.
3. INVESTIGATION INTO OFFICE OF GOVERNOR SNYDER

Currently five officials of the Michigan Department of Environmental Quality, five officials from the Michigan Department of Health and Human Services, and two Emergency Managers appointed by Governor Snyder have been charged criminally in connection with the water crisis in Flint. Governor Snyder has adamantly asserted that he was not aware of the dangerous levels of lead in Flint’s water supply until October 1, 2015, and that he did not learn about the outbreak of Legionnaires’ disease until 2016.

Petitioners respectfully requests that the IACHR conduct an independent investigation into the office of the Governor and make a recommendation to the United States Department of Justice as to Governor Snyder’s level of complicity. Petitioners also request that the IACHR make its findings available to the Congressional House Committee on Oversight and Governmental Reform, which heard testimony from the Governor on March 16, 2017.

4. SUSPEND OPERATION OF EMERGENCY MANAGER LAWS

Petitioners request that the IACHR formally recommended to the Michigan Legislature that Public Act 436 be suspended, that all future Emergency Manager legislation be enjoined from enactment, and political authority be restored to local governments.
MEMORANDUM OF LAW IN SUPPORT OF PETITION

INTRODUCTION

The United States of America is one of the wealthiest countries on Earth. It considers itself to be the “leader of the free world;” a country of rights, opportunity and prosperity. Yet, one of our Victims died from what doctors called a “Third World bacterium.” How is it possible that the Flint Water Crisis could occur – and persist for nearly four years unabated – in the United States of America? How was an entire city poisoned with toxic lead and bacteria-infested water flowing through their pipes and into their homes, causing at least ninety-one cases of Legionnaires’ disease and at least twelve deaths?

Before their water was poisoned, the people of Flint were disenfranchised. This tragedy was a direct result of the undermining of democracy. Power was taken from their elected officials and placed in the hands of appointed, unelected, and unaccountable Emergency Managers, who placed cost-cutting above the health and well-being of citizens. The people of Flint have a long and proud history of struggle. They have demanded accountability. They have sought a remedy through the courts, which have repeatedly failed them. They have lost loved ones, lost jobs, and their lives have been shattered. They are forced to perform daily tasks – like cooking – with bottled water; some of them do not know where they will take their next bath.

The United States has failed to remedy this tragic situation for which it is responsible. Through the Emergency Manager system, the state of Michigan infringed upon Flint citizens’ right to democracy as enshrined in multiple international treaties to which the United States is a
party and legally bound.\textsuperscript{16} Even in the absence of these legally binding treaty provisions, the United States has violated the regional custom of the Americas, which protects and promotes a democratic form of government.\textsuperscript{17} There is a consistent practice among the American states that establishes a human right to democracy as evidenced by domestic and international agreements, national constitutions, statements made by American State leaders, and actions taken in response to failures to adhere to democratic norms. As a result of this violation of the right to democracy – as protected by both treaty law and regional custom – the United States violated the rights to life, to preservation of health and well-being, to protection of the family, and to equality before the law.\textsuperscript{18}

In analyzing, evaluating, and applying the international treaty provisions, the Petitioners urge this Commission to consider the expansive evolution and development of other areas of law that has occurred since these instruments were ratified. The emergence and evolution of international environmental law and the development of anti-discrimination law warrant a closer look at the situation in Flint – an environmental disaster that disproportionately affects African-Americans and other minorities.\textsuperscript{19}

\textbf{JURISDICTION}

The Inter-American Commission on Human Rights ("IACHR") monitors the compliance by the Member States of the Organization of American States ("OAS") with the obligations they have undertaken under the OAS Charter and related instruments. The United States is an OAS

\textsuperscript{16} See infra Section (I)(A).
\textsuperscript{17} See infra Section (I)(B).
\textsuperscript{18} See infra Section (II).
\textsuperscript{19} See infra Sections (III)(A) and (B).
member state that has signed the American Declaration of the Rights and Duties of Man and is, therefore, accountable to this honorable Commission. Petitioners submit this Memorandum of Law in support of our arguments under the Charter of the Organization of the American States;\textsuperscript{20} the American Declaration of the Rights and Duties of Man;\textsuperscript{21} the Inter-American Democratic Charter;\textsuperscript{22} and the International Covenant on Civil and Political Rights.\textsuperscript{23}

**FACTS**

In 1990, the Michigan state legislature enacted Public Act (“PA”) 72. This law allowed for a local financial emergency review board to appoint an Emergency Financial Manager (“EFM”) after the Governor of Michigan declared a state of financial emergency. Under this law, an EFM had control over matters related to finances, but local elected officials remained in control of administrative and policy matters.\textsuperscript{24}

Michigan operated under PA 72 until 2011, when the Michigan legislature enacted PA 4 to replace it and converted all EFMs into Emergency Managers. PA 4 greatly expanded the scope of an Emergency Manager’s power. Emergency Managers could legislate in place of the municipality’s elected governing body. Under PA 4, an Emergency Manager’s power extended

\textsuperscript{21} Organization of American States (OAS), The American Declaration of the Rights and Duties of Man, Apr. 30, 1948, available at \url{https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm}.
\textsuperscript{22} Organization of American States (OAS), The Inter-American Democratic Charter, Sept. 11, 2001, available at \url{http://oas.org/charter/docs/resolution1_en_p4.htm}.
beyond finances and to the full array of municipal authority and governance. PA 4 specifically provided that an Emergency Manager would “act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.” Further, local elected officials were prohibited from exercising their powers unless the Emergency Manager specifically authorized them to do so in writing, and that authorization was subject to change at any time. The Governor subsequently appointed Emergency Managers to run the City of Flint.

Over 200,000 Michigan voters signed petitions to place a referendum on the ballot in 2012 that would reject the law, thus suspending PA 4 until the referendum took place. This brought back the prior, more limited, EFMs under PA 72. In the November 2012 election, the referendum was successful in repealing PA 4.

However, instead of accepting the will of the voters, the Governor and Legislature responded to this repeal by enacting Public Act 436, which is functionally identical to PA 4. The new Public Act 436 provided once again for the appointment of an Emergency Manager to “act for and in the place and stead of the governing body and the office of chief administrative officer of the local government;” that “the governing body … of the local government” and prohibits local elected officials from exercising governmental authority “except as may be specifically

25 Id.
27 Id.
28 Phillips, 836 F.3d at 711. Emergency Managers were also appointed to run the Highland Park and Muskegon Public Schools.
29 Id.
authorized in writing by the emergency manager” and “subject to any conditions required by the emergency manager.”30

On March 27, 2013, individuals living in areas run by state-appointed Emergency Managers – Detroit, Pontiac, Benton Harbor, Flint, and Redford – filed suit in the United States District Court for the Eastern District of Michigan. 31 They alleged that PA 436 violates their right to elect local legislative officials under (1) the Due Process Clause of the Fourteenth Amendment to the United States Constitution; (2) the Guarantee Clause of Article IV, § 4 of the United States Constitution; (3) the Fourteenth Amendment's Equal Protection Clause by burdening their right to vote and by discriminating against African Americans, the poor, and those entities that had Emergency Managers under the previous laws; (4) § 2 of the Voting Rights Act (VRA); (5) the First Amendment by engaging in viewpoint discrimination and infringing on plaintiffs' freedom of speech, freedom of association, and right to petition their government; and (6) the Thirteenth Amendment.32 All of the claims were dismissed.33 On September 12, 2016, Plaintiff’s appealed to the United States Court of Appeals for the Sixth Circuit arguing the same claims and the Sixth Circuit affirmed the ruling of the district court. 34 On October 2, 2017, the United States Supreme Court denied a Petition for Writ of Certiorari in the case. As such, Petitioners have exhausted their available domestic remedies.

30 Mich. Comp. L. § 141.1549(1).
31 Phillips, 836 F.3d at 712.
32 Id.
33 Plaintiffs voluntarily stipulated to the dismissal of the equal protection claim based on race in order to expedite the decision. See id.
34 Id.
In April of 2013, Flint Emergency Manager, Ed Kurtz decided to leave the Detroit water system within one year and join the Karegnondi Water Authority (“KWA”) which was to use Lake Huron as a water source, scheduled to begin in 2016.\(^{35}\) In June of 2013, EM Kurtz unilaterally decided to use the Flint River as an interim water source.\(^ {36}\) Corrosion control was proposed but rejected after the Michigan Department of Environmental Quality said it was unnecessary.\(^ {37}\) In April of 2014, Flint began using the Flint River for its municipal water.\(^ {38}\)

Flint citizens immediately began to complain about the water’s discoloration, foul odor, and bad taste. Numerous cases of rashes, sickness, and epidemics began to break out almost immediately upon the conversion to the Flint River. There were multiple “boil water” warnings due to the presence of dangerous bacteria in the water. There were also tests showing lead and legionella in the water. Government officials were alerted to the danger when, in October of 2014, General Motors, was granted state approval to switch back to the Detroit water system at its Flint engine manufacturing plant, because the corrosive water was damaging auto parts. Yet, the state took no action with regard to the humans forced to drink this same water.\(^ {39}\)

On March 23, 2015, the Flint City Council voted to return the City to the Detroit water system. Then-Emergency Manager Jerry Ambrose unilaterally overruled this decision, claiming that “Flint water today is safe by all [U.S. Environmental Protection Agency] and [Michigan


\(^{36}\) Id.

\(^{37}\) Id.

\(^{38}\) Id.

Department of Environmental Quality] standards, and the city is working daily to improve its quality. No remedial action was taken until October of 2015 when Flint switched back to Detroit water. Residents were cautioned, however, that it would take weeks for the system to be properly flushed out and that there may be lingering issues.

In January 2016, a state of emergency for the City of Flint was declared by the Mayor, Governor, and President. These declarations brought national (though short-lived) attention to Flint and the “Flint Water Crisis.” As a result of the corrosiveness of the non-treated municipal water, lead was leaching from the service lines and the City’s drinking water had poisoned Flint residents. Throughout the duration of the crisis, the Emergency Managers continuously denied that there was any issue with the water, and the local government—elected by the people—was rendered helpless to stop these atrocities. The harms that resulted from the unilateral decisions of Emergency Managers are severe, ongoing, and in many instances permanent. These harms include declining white blood cell counts, bone marrow damage, growth plates being hardened by lead, hair loss, crumbling teeth, damage to pancreases, growths on tongues, polyps on colons, seizures, copper poisoning, bacterial infections, skin rashes, memory loss, issues with hand-eye coordination, and children with learning disabilities, and death.


41 See Petition Alleging Violations of The Human Rights of Citizens of Flint, Michigan, at Section II(2).
ARGUMENT

I. The United States violated the right to democracy.

A. The United States violated treaty law to which it is a party and legally bound.

The United States is internationally bound by the Charter of The Organization of the American States;\(^\text{42}\) the American Declaration of the Rights and Duties of Man;\(^\text{43}\) the Inter-American Democratic Charter;\(^\text{44}\) and the International Covenant on Civil and Political Rights.\(^\text{45}\) These legally binding instruments all guarantee and protect the right to democracy. As these instruments make clear, the right to democracy necessarily encompasses the right of the people to take part in decision-making that will affect their lives. As a federal State, the United States must ensure that its international obligations are observed by all of its constituent parts.\(^\text{46}\)

The right to democracy was clearly violated by the imposition of the Emergency Manager system in Flint, Michigan.\(^\text{47}\) Under this system, the Governor appoints unelected and
unaccountable Emergency Managers with wide-ranging unilateral authority when he determines that a financial emergency exists in a Michigan municipality. The Emergency Manager takes over the municipality, and his authority supersedes that of local elected officials—leaving the elected officials and their constituents completely powerless. This system infringes the right to participate in government of the impacted citizens, who are left unable to participate in decisions that affect their lives, their health, their families, and their futures. This is precisely the position in this union a republican form of government. U.S. Const. Article IV, § IV. This claim was ultimately rejected by the Sixth Circuit Court of Appeals in Phillips v. Snyder, 836 F.3d 707, 716-17 (6th Cir. 2016), cert. denied sub nom. Bellant v. Snyder, No. 16-1207, 2017 WL 1300221 (U.S. Oct. 2, 2017).

The United States Sixth Circuit Court of Appeals explains the takeover process in detail in Phillips v. Snyder:

There are eighteen scenarios contained in PA 436 that act as triggers for the statute. § 141.1544(1)(a)–(r). If one of those scenarios occurs, the “state financial authority” (the state treasurer for a municipality, or the superintendent of public education for a school district, § 141.1542(u)(i)–(ii)) conducts a preliminary review to determine whether a given entity is under “probable financial stress.” § 141.1544(3). The financial authority then turns its final report over to a local emergency financial assistance loan board, which is a statutory entity established by § 141.932. This board reviews the authority's report and makes an official finding of either probable financial stress or no financial stress. § 141.1544(3). If the board reaches a conclusion of probable financial stress for an entity, the governor appoints a “review team.” § 141.1544(4), (5). Within sixty days of a review team's appointment, it must turn in a report to the governor that reaches a conclusion on whether a financial emergency exists within the reviewed local government. § 141.1545(3), (4). Within ten days after receiving the review team's report, the governor determines whether a financial emergency exists or not. § 141.1546(1). A local government is provided an opportunity to appeal this determination to the Michigan court of claims. § 141.1546(3).

Phillips, 836 F.3d 707 at 711-12.

The emergency manager law provides, in pertinent part:

(1) The governor may appoint an emergency manager to address a financial emergency within that local government as provided for in this act.
(2) Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

that the vulnerable citizens of Flint, Michigan were left in when an Emergency Manager made the “cost-saving” decision to begin drawing the City’s water supply from the Flint River.\textsuperscript{50} This unilateral decision had the direct effect of bringing lead and dangerous bacteria into the homes of Flint residents, leading to devastating and irreversible health effects including memory loss, permanent brain damage, disease, and even death.\textsuperscript{51} The United States, through the actions of the State of Michigan, thus violated the right to democracy of the citizens of Flint, Michigan and this violation directly resulted in violations of numerous other provisions of these legally binding international agreements as detailed below.

i. **The United States violated the right to democracy guaranteed by the Charter of the Organization of the American States.**

The Charter of the Organization of the American States (the “OAS Charter”) is a Pan-American treaty that was signed in 1948 and entered into force in 1951.\textsuperscript{52} All thirty-five independent states of the Americas, including the United States, have ratified the OAS Charter and are members of the Organization and are, therefore, legally bound by its provisions.\textsuperscript{53}

Beginning in the Preamble, the OAS Charter makes clear that one of the key considerations for the creation of this international organization was a realization that “representative democracy is an indispensable condition for the stability, peace and development
of the [Americas].”\textsuperscript{54} Article 2 of the Charter lists the “essential purposes” of the OAS, the second of which is “\textit{to promote and consolidate representative democracy}.”\textsuperscript{55} In Article 3(d), the members reaffirm that “[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States \textit{on the basis of the effective exercise of representative democracy}.”\textsuperscript{56} With regard to development, Article 47 of the OAS Charter emphasizes that the Member States will give primary importance “to the encouragement of education, science, technology, and culture . . . \textit{as a foundation for democracy}, social justice, and progress.”\textsuperscript{57}

The Emergency Manager system not only fails to “promote” representative democracy but it disposes of it altogether. Yes, it is true that the citizens of Flint physically voted for representatives, but these representatives were stripped of all their decision-making power—essentially rendering their elected positions meaningless. These elected representatives were replaced with Emergency Managers that were appointed at the sole discretion of Michigan’s Governor.

In \textit{Phillips v. Snyder}, the United States Sixth Circuit Court of Appeals danced around this issue. It first dismissed the allegation that the Emergency Manager system violates the United States Constitution’s guarantee of a republican form of government.\textsuperscript{58} The court next reasoned

\begin{itemize}
\item \textsuperscript{54} OAS Charter, \textit{supra} note 20 at Preamble.
\item \textsuperscript{55} \textit{Id.} at art 2.
\item \textsuperscript{56} \textit{Id.} at art. 3.
\item \textsuperscript{57} \textit{Id.} at art. 47 (emphasis added).
\item \textsuperscript{58} The Court admits that the U.S. Supreme Court has recently “expressed doubt that all Guarantee Clause challenges are not justiciable,” but goes on to reason it is “aware of no case invalidating the structure of political subdivisions of states under the Clause.” \textit{See} Phillips, 836 F.3d at 717.
\end{itemize}
that the Emergency Manager law does not violate § 2 of the Voting Rights Act because § 2 does not cover appointive systems.

ii. The United States violated the right to democracy guaranteed by the American Declaration of the Rights and Duties of Man.

The American Declaration of the Rights and Duties of Man (“the Declaration”) is an international human rights instrument that was adopted by the OAS at the same 1948 meeting in which the OAS Charter was ratified. The jurisprudence of both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights holds the Declaration to be a source of legally binding international obligations for OAS Member States, including the United States.

Article XX of the Declaration provides: “[e]very person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to

59 52 U.S.C.A. § 10301 (West) (prohibits voting procedures that discriminate on the basis of race, color, or minority status).
60 See Phillips 836 F.3d at 720-21. However, the Flint city government was not an appointive system. The system was one composed of a body of elected officials which, against the will of the people, had all of their authority usurped by a single appointed individual. This was a clear violation of the right to democracy as enshrined in the OAS Charter and despite the court’s opinion in Phillips, the Petitioners assert that this violates the United States’ domestic law as well.
61 American Declaration, supra note 21.
62 See, e.g., Roach and Pinkerton v. U.S., Case 9647, Inter-Am. Comm’n H.R., Report No. 3/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987) (in holding that the U.S. government violated Article I (the right to life) and Article II (the right to equality before the law of the American Declaration of the Rights and Duties of Man, the Commission explained: “As a consequence of articles 3 j, 16, 51 e, 112 and 150 of the [OAS] Charter, the provisions of other instruments of the OAS on human rights acquired binding force. Those instruments, approved with the vote of the U.S. Government, are the following: American Declaration of the Rights and Duties of Man (Bogotá, 1948) [and] Statute and Regulations of the IACHR.”).
take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."

The Emergency Manager system clearly violated Article XX. It denies Flint citizens the right to participate in their own government when it denies their elected representatives the right to legislate, make decisions, or otherwise act on behalf of the citizens who elected them. Holding elections to select individuals who will ultimately have no authority to act can hardly be deemed “honest.”

iii. The United States violated the right to democracy guaranteed by the Inter-American Democratic Charter.

The Inter-American Democratic Charter (“the Democratic Charter”) was adopted by the OAS Member States, including the United States, at a special session of the General Assembly of the OAS held on September 11, 2001. This Declaration is an authoritative interpretation of Article 9 of the OAS Charter regarding the overthrow of democratically elected governments and elaborates the meaning of the promotion of democracy. The Democratic Charter further defines democracy; explains the interdependency between democracy and social and economic development; and details how to defend democracy.

Article 1 reaffirms the OAS position that democracy is a protected human right, proclaiming that: “[t]he peoples of the Americas have a right to democracy and their

---

63 American Declaration, supra note 21 at art. XX.
64 See Democratic Charter, supra note 22; see also Tenth Anniversary of the Inter-American Democratic Charter, OAS (last updated 2017), http://www.oas.org/en/democratic-charter/.
66 See Democratic Charter, supra note 22.
governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.”67 Article 3 defines democracy by pointing to its essential elements which include, \textit{inter alia}:

\begin{quote}
respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.68
\end{quote}

Article 4 further defines democracy by looking to the essential components of its exercise. It provides, in pertinent part, that “[t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.69

The Flint Emergency Manager system directly contravenes these values. The right to democracy means that elections should be real—not illusory. The officials who have been chosen by the citizens should have \textit{actual} authority not mere symbolic titles. The people should, through their chosen representatives, be in a genuine position to influence public policy for their communities.

The Michigan government not only failed to promote and defend the right to democracy, it eliminated this right for the citizens of Flint. The disenfranchisement of Flint meant that the people could not defend their social rights, rights which were transgressed when Emergency Managers unilaterally elevated cost-cutting above safe drinking water—deciding not to renew

\footnotesize
\begin{itemize}
\item 67 \textit{Id.} at art. 1 (emphasis added).
\item 68 \textit{Id.} at art. 3.
\item 69 \textit{Id.} at art. 4.
\end{itemize}
the Detroit water contract, not to use a corrosion control treatment for the Flint River water, and not to switch back to the Detroit system once problems with the Flint River were detected. All of these decisions – calculated to cut costs – ultimately cost lives.

iv. **The United States violated the right to democracy guaranteed by the International Covenant on Civil and Political Rights.**

The International Covenant on Civil and Political Rights (“ICCPR”), part of the International Bill of Rights, was ratified by the United States in 1992. Article 25 provides:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:
> (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
> (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
> (c) To have access, on general terms of equality, to public service in his country.

General Comment 25 is an authoritative interpretation of Article 25 by the Human Rights Committee. It defines and clarifies the content of Article 25. Of particular importance in this case, General Comment 25 explains that:

> [w]hatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an *effective opportunity* to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.  

---

70 See Petition, supra note 41.  
71 ICCPR, supra note 23.  
72 Id. at art. 25.  
73 ICCPR General Comment 25, supra note 10, (emphasis added).
General Comment 25 clarifies that Article 25 “deals with the right of individuals to participate in those processes which constitute the conduct of public affairs.”\textsuperscript{74} The General Comment emphasizes that there shall be no discrimination in voting rights\textsuperscript{75} and that any conditions to voting must be “objective” and “reasonable.”\textsuperscript{76} It underscores that the right guaranteed under Article 25 is one of direct participation\textsuperscript{77} and that States must take effective measures to ensure that all persons are able to exercise these rights.\textsuperscript{78} General Comment 25 highlights the fact that “[w]here citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.”\textsuperscript{79}

The Emergency Manager system strips the representatives elected by the citizens of Flint of the ability to exercise governmental power on their behalf. For instance, when the Flint City Council voted to return to the Detroit water system in March of 2015 after numerous citizen complaints about the quality of the Flint River water, then-Emergency Manager Jerry Ambrose arbitrarily and unilaterally overruled the City Council’s vote. This means that one unelected individual overruled the considered decision of the people’s chosen representatives. This is a

\textsuperscript{74} Id. at para. 1.
\textsuperscript{75} Id. at para. 3.
\textsuperscript{76} Id. at para. 4 and 1.
\textsuperscript{77} Id. at para. 6.
\textsuperscript{78} Id. at para. 11.
\textsuperscript{79} Id. at para. 7 (emphasis added).
direct affront to the fundamental principles of democracy—a system of government that the United States consistently purports to practice and promote.\(^8^0\)

In sum, these treaties (and interpretations thereof) individually and collectively establish an enforceable human right to democracy in the Americas. That right encompasses actual participation in government. This means that the elected officials must have actual power to make decisions that will affect the lives, well-being, and interests of the citizens who elected them. The United States, through the actions of the State of Michigan, clearly violated this fundamental principle when the Emergency Manager system stripped all authority from elected representatives and left them *powerless* to prevent or ameliorate a government-induced catastrophe.

**B. In addition to the legally binding international instruments, the right to democracy is established by regional custom within the Americas.**

Petitioners urge this Commission to consider, in addition to the treaties and other international instruments, cited above, the broader regional *corpus* of customary law, including the consistent regional norms and practices governing Petitioner’s rights to democracy and legal obligations arising from those norms.

Customary international law emerges from a general and consistent practice of States, followed by them from a sense of legal obligation.\(^8^1\) The comments to Section 102 of the Restatement note that state practice can take many different forms, and that there is no required

---

\(^8^0\) See, e.g., *Democracy*, U.S. DEPARTMENT OF STATE, https://www.state.gov/j/drl/democ/ (explaining that “[d]emocracy and respect for human rights have long been central components of U.S. foreign policy,” and affirming U.S. objectives to promote democracy around the world).

duration for such practice as long as it is “general and consistent.”

Different forms of State practice include “diplomatic contacts and correspondence; public statements by government officials; legislative and executive acts; actions by the military; treaties and executive agreements; decisions of international and national courts and tribunals; and decisions, declarations, and resolutions of international organizations, among many others.” Article 38 of the Statute of the International Court of Justice places “international custom” second on its list of sources of binding international law.

i. **There is consistent State practice evidencing a human right to democracy in the region of the Americas.**

The practice of States in a regional or other special grouping may create “regional,” “special,” or “particular” customary law for those States among themselves. Many sources evidence a consistent practice among American States including voluntary agreements, State constitutions, and statements by government officials.

a. **Voluntary agreements are evidence that the right to democracy is a regional custom.**

All of the States within the region of the Americas have accepted the right to democracy as a legal norm as evidenced in their accession to human rights treaties. This region consists of 35 independent countries located in North, South, and Central America. All are OAS Member States. All have adopted the American Declaration and the Inter-American Democratic.

---

82 Id.
84 Statute of the International Court of Justice, art. 38(1)(b), as annexed to the Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (signed at San Francisco June 26, 1945; entered into force October 24, 1945).
to democracy is enshrined within these instruments. As they are legally binding, they evidence not only State practice, but *opinio juris* as well.

Every independent country in the American region is also a member of the United Nations. The Universal Declaration of Human Rights, adopted by the General Assembly, states that “the will of the people shall be the basis of the authority of government.” Since its adoption, the Declaration has inspired constitution-making around the world and has contributed greatly to the global acceptance of democracy as a universal value and principle.

**b. State constitutions in the Americas evidence the right to democracy as a regional custom**

All States in the region have enshrined the right to democracy in their national constitutions. For example, the constitution of Antigua states: “Antigua and Barbudo shall be a unitary sovereign democratic State;” Argentina “adopts the federal republican *representative* form of government as this constitution establishes;” and “Belize shall be a sovereign
democratic State of Central America in the Caribbean region.”

Even Cuba, which the United States government labels an “authoritarian state” has a constitution which states, “Cuba is … organized … as a united and democratic republic, for the enjoyment of political freedom, social justice, individual and collective well-being and human solidarity.” The Constitution of Venezuela, an American state which the United States government has condemned for “disrespect for democracy,” also declares the country to be “a Democratic and Social State.”

**c. Statements by State officials within the region are evidence of a consistent state practice recognizing the right to democracy.**

The official statements of governments in response to undemocratic action are further evidence of a consistent state practice recognizing democracy as a right and legal obligation. A recent example is provided by the regional response to the Honduran Constitutional Crisis of 2009. In 2009, Honduras experienced the first coup in Central America since the Cold War Era. It began when President Manuel Zelaya, democratically elected in 2006, was ousted by the army after months of tensions over his efforts to lift his presidential term limit. In the early morning of June 28, 2009, Honduran army soldiers stormed the presidential palace in the capital of

---

90 Belize Const. Part I Section 1 (1).
92 Cuba Const. Chapter I, Art. 1.
94 Venezuelan Constitution Title I, Article 2.
Tegucigalpa, disarming the presidential guard and exiling the democratically elected President to Costa Rica. 96

States across the region denounced the coup as a violation of democratic norms and international legal obligations. On June 29, 2009, United Nations General Assembly heard representatives from numerous countries in response to the situation in Honduras.97 Representatives from Mexico (on behalf of the Rio Group), Chile, Cuba, Jamaica (on behalf of the Caribbean Community), the Dominican Republic, Brazil, Ecuador, Bolivia, Argentina, Colombia, Saint Vincent and the Grenadines, El Salvador, Spain, Costa Rica, Panama, Belize, Peru, and Uruguay all condemned the coup.98 The next day, June 30, 2009, the United Nations General Assembly, including every country in the American region, unanimously adopted a consensus resolution demanding that President Zelaya be reinstated. 99 The OAS Special General Assembly instructed the OAS Secretary General “to reinforce all diplomatic initiatives and to promote other initiatives for the restoration of democracy and the rule of law in the Republic of Honduras and the reinstatement of President Zelaya. 100

The following statements are illustrative of the strong conviction that democracy is an enforceable legal norm:

100 Id.
President Barack Obama of the United States:

We believe that the coup was not legal and that President Zelaya remains the president of Honduras, the democratically elected president there. . . It would be a terrible precedent if we start moving backwards into the era in which we are seeing military coups as a means of political transition, rather than democratic elections.\textsuperscript{101}

Bolivian President Evo Morales:

To allow people to participate and decide the future of their country through their vote, it is not possible that some groups ignore this, including the military. This is a discredit to the armed forces, who democratically participate in the decisions that the people of each country take. We no longer live under dictatorships. Those will continue to fail. What is currently happening in Honduras is an adventure of a group of the military who have assaulted democracy. Thus, they will fail. \textsuperscript{102}

Argentina President Cristina Fernandez:

[\text{T}he situation in Honduras… reminds us of the worst years in Latin America's history. We will demand that the OAS fully comply with the democratic charter that requires unconditional respect for democracy and, above all, the restoration of the Honduran president. I do not hesitate to call this a return to barbarity. All countries of the continent and the entire international community should demand the return of the democratically elected president.\textsuperscript{103}

U.S. Secretary of State Hillary Clinton:

The action taken against Honduran President Manuel Zelaya violates the precepts of the Inter-American Democratic Charter and thus should be condemned by all. We call on all parties in Honduras to respect the constitutional order and the rule of law, to reaffirm their democratic vocation and to commit themselves to resolve political disputes peacefully and through dialogue.


\textsuperscript{103} Id.
The President of Chile Michelle Bachelet stated that the coup violates the constitutional order in that Republic and additionally contravenes in flagrant manner the provisions of the OAS Charter and its fundamental institutions. . . Chile demands the restoration of democracy in Honduras and the immediate reinstatement of the President of the Republic, José Manuel Zelaya, legitimately elected by the Honduran people. 104

Foreign Minister José Antonio García Belaunde of Peru stated: “[w]e call for the restoration of democratic order and we support the efforts of the OAS Secretary General, José Miguel Insulza, under the Democratic Charter.” 105

The President of Paraguay, Fernando Lugo said that the coup was a “blow to the democratic conscience of the Continent.”106

Taken together, these statements show a firm commitment to and acceptance of a legal obligation of democratic governance in the American States.

ii. The consistent State practice of democracy is a legal obligation in the Americas—opinio juris.

Consistent state practice alone is not enough to evidence a binding regional customary norm; opinio juris must be established. Opinio juris is a sense of legal obligation, not merely compliance based on kindness, courtesy, or convenience. 107 Legally binding instruments such as the regional and international treaties and State constitutions which recognize a right to

democracy provide clear evidence of *opinio juris*. The actions taken by States in the Americas in response to the 2009 coup in Honduras and the constitutional crisis in Venezuela further demonstrate a consensus in the region on the legally binding nature of the right to democracy.

**a. The reaction of the OAS to the 2009 coup in Honduras shows that State Members are legally obligated to abide by democratic norms.**

In response to the 2009 coup in Honduras, the OAS suspended that country’s membership in the OAS in accordance with Article 21 of the Inter-American Democratic Charter.108 This suspension was a legal consequence that followed from the violation of the right to democracy. The *de facto* regime in Honduras held elections in November of 2009 in an attempt to re-establish democratic legitimacy. However, it was not until President Zelaya was allowed to return from exile in 2011 that the OAS voted to restore Honduras as an active Member State.109 This demonstrates that legal consequences follow a deviation from democratic practices in the Americas.

**b. The reaction of the IACHR to the crisis in Venezuela provides the *opinio juris* of a customary rule of democracy.**

In response to a wave of social protests, Venezuelan President Nicolas Maduro engaged in acts of violent suppression which resulted in the deaths of at least thirty-six people and the injury of at least 757.110 Protests erupted after President Maduro issued Decree 2830, which called for the election of a National Constituent Assembly to amend the Venezuelan

---

Constitution.111 President Maduro has ruled Venezuela by decrees like this since he took office. 112 Similar decrees suspended local elections. Further, the Venezuelan Supreme Court, seated by Maduro’s constituents, dissolved the Parliament, transferring all legislative powers to itself—although the decision was reversed three days later. 113 By trying to do away with the opposition-controlled legislative branch, the move effectively meant the remaining two branches of Venezuelan government were controlled by Maduro's ruling United Socialist Party. Opposition parties boycotted the July 30th election which they viewed as an illegitimate attempt to consolidate power and marginalize the National Assembly, which was the only branch of government not controlled by President Maduro’s United Socialist Party of Venezuela.114

In response to President Maduro’s actions, this Commission unequivocally condemned “any attempt by the Venezuelan authorities to prevent the holding of elections and to suppress citizens’ right to vote,” citing the Inter-American Democratic Charter.115 This condemnation shows that this Commission considers the region to be legally bound to respect the right to democracy.

111 Id.
c. The reaction of countries censured for violations of the right to democracy demonstrate that this right is accepted as a legal obligation.

In the Americas today, democracy equals legitimacy. No State in the Americas rejects the right to democracy; even States that are arguably undemocratic attempt to portray themselves as democracies in order to maintain legitimacy and avoid adverse legal consequences. Such consequences were visited upon Venezuela following the Constitutional Assembly elections.116

The relationship between democracy and human rights is well understood. As the United States Second Circuit explained in Filartiga v. Pena-Irala, “[t]here now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens. … There is no doubt that these rights are often violated; but virtually all governments acknowledge their validity.” 117

The consequences of the violation of the right to democracy have been dire for the people of Flint. As previously stated, the people of Michigan clearly rejected the Emergency Manager system in the referendum on Public Act 4. The state government of Michigan responded by overruling the will of the people by enacting Public 436. Emergency Managers with authoritarian powers wielded their budget-cutting axes to poison the water of the City of Flint. Because they were unaccountable, the suffering of the people was ignored and prolonged, and persists to this day.

117 Filartiga v. Pena-Irala, 630 F.2d 876, 884 (2d Cir. 1980).
II. As a consequence of the violation of the right to democracy, the United States violated numerous other rights protected under Inter-American treaty law.

Without the ability to exercise the right to participate in public policy decision-making, the citizens of Flint were left to the mercy of unaccountable officials whose only concern and mandate were budget-cutting. It should come as no surprise that numerous harms resulted from the usurpation of the power of their elected officials, including violations of the right to life, the right to preservation of health and well-being, the right to protection of the family, and the right to equality before the law. Thus, the Emergency Manager system instigated what has become known as the “Flint Water Crisis.”

A. The violation of the right to democracy caused a violation of the right to life.

The Inter-American and international human rights instruments protect the right to life. Specifically, Article I of the Declaration provides that “[e]very human being has the right to life, liberty and the security of his person.” Article 6(1) of the ICCPR similarly provides that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

---

118 See infra (I) para. 1, naming The Charter of The Organization of the American States, The American Declaration of the Rights and Duties of Man, The Inter-American Democratic Charter, and The International Covenant on Civil and Political Rights as international treaty law in which the United States is a party and legally bound.

119 American Declaration, supra note 21 at art. 1.

120 ICCPR, supra note 23 at art. 6, para. 1.
The right to life imposes a positive obligation on the State to protect against the loss of life and to ensure that this right is “not violated as a result of socio-economic deprivation or discrimination.”\(^{121}\)

In interpreting the right to life under the International Covenant on Civil and Political Rights, the Human Rights Committee, in its [G]eneral [C]omment No. 6 (1982), stressed that besides protecting against the active taking of life, the right also placed a duty on States to ensure access to the means of survival and required States to adopt positive measures, notably to reduce infant mortality, increase life expectancy and eliminate malnutrition and epidemics.\(^{122}\) This positive obligation means that the State must affirmatively act to protect against the loss of life, including taking preventive measures in the face of known risks to life.\(^{123}\)

Access to safe drinking water and sanitation have been increasingly viewed as “prerequisite[s] for the realization of other human rights,” including the right to life.\(^{124}\) According to the United Nations Office of the High Commissioner for Human Rights, “the international community has increasingly recognized that access to safe drinking water and sanitation must be considered within a human rights framework.” The Commission explains that “[o]bligations related to access to safe drinking water and sanitation are…implicit in a


\(^{123}\) See The Right to Water, supra note 122; see also IJRC, supra note 121.

\(^{124}\) See, e.g., ESC General Comment 15, supra note 122.
number of international human rights treaties and are derived from obligations pertaining to the promotion and protection of other human rights, including the rights to life, adequate housing, education, food, health, work and cultural life.\textsuperscript{125}

The Emergency Manager system, in undermining democracy, violated the right to life. State actors knew of the serious health risks associated with the Flint River water and failed to take the proper steps to ensure the protection of life and health. They did not use a corrosion control treatment for the Flint River water in violation of federal law.\textsuperscript{126} Dr. Marc Edwards, a member of the Virginia Tech team that conducted extensive water testing in Flint, said, "Flint is the only city in America that I'm aware of that does not have a corrosion control plan."\textsuperscript{127} Elected and accountable representatives serving the best interests of their constituents should have made these crucial decisions.

\textsuperscript{125}See \textit{The Right to Water, supra} note 122. The Committee on Economic, Social and Cultural Rights took this approach in General Comment 15 where it explains that the right to water is "a prerequisite for the realization of other human rights" including the right to life and human dignity and the right to health. See ESC General Comment 15, \textit{supra} note 122, adopted in November 2002 by the Committee on Economic, Social and Cultural Rights, asserting that: “[t]he human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” The General Comment further provides:

\begin{quote}
The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.
\end{quote}

The explicit right to water was also recognized by the UN General Assembly on July 28, 2010, by the adoption of Resolution 64/292 which expressly recognized access to clean water and sanitation as a human right, recognizing that these rights are essential to the realization of all human rights.

\textsuperscript{126}Flint’s water system was in violation of the “Lead and Copper Rule” listed in 40 C.F.R. § 141.80 et seq. These lead and copper regulations “establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education.” 40 C.F.R. § 141.80(b); see also Lindsey Smith, \textit{State admits Flint did not follow federal rules designed to keep lead out of water}, Michigan Radio (Oct. 18, 2015), \url{http://michiganradio.org/post/state-admits-flint-did-not-follow-federal-rules-designed-keep-lead-out-water}.

For a year and a half, government officials repeatedly assured Flint citizens that the water was safe despite mounting evidence that it was not. Residents complained that the water came out of the tap in shades of greens and browns and had a “disgusting” odor and “offensive” taste; clumps of hair were falling out; and even General Motor’s engines were corroding from the water. General Motors was taken off of the Flint River water supply, even though it cost the City of Flint – supposedly at the height of a financial emergency – $400,000. The unelected government chose to protect corporate profits while continuing to expose the people to deadly contaminants.

The government’s failure to protect the citizens of Flint from known risks resulted in physical harm to Flint residents including at least ninety-one diagnosed cases of Legionnaires' disease, at least twelve of which resulted in death. Petitioner Joyce McNeal’s thirty-nine-year-old son was one of the victims who died. The poisoned water compromised his immune system causing rapid deterioration of his mental and physical health. According to the Victim,

---

130 The Centers for Disease Control and Prevention explains that Legionnaires’ disease is a lung infection caused by exposure to the Legionella bacteria, it lists the following as typical symptoms: cough, shortness of breath, fever, muscle aches, headaches and explains that the disease “can also be associated with other symptoms such as diarrhea, nausea, and confusion.” See Legionella (Legionnaires' Disease and Pontiac Fever), CDC (May 31, 2016), https://www.cdc.gov/legionella/about/index.html.
her son developed sores and rashes, and lost flesh while he was showering; his heart was “sitting in pus.” McNeal explained that the “water was eating [her son] alive.”

**B. The violation of the right to democracy caused a violation of the right to preservation of health and well-being and the right to protection of the family.**

The above-referenced instruments also protect the right to the preservation of health and well-being and the right to protection of the family. Article 34 of the OAS Charter enshrines an agreement among Member States, including the United States, as to the critical importance of “equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development,” and the agreement to “devote their utmost efforts to accomplishing basic goals.” The stated goals include, *inter alia*, proper nutrition, adequate housing and urban conditions that offer the opportunity for a healthful, productive, and full life.

The American Declaration also provides various rights protecting health and well-being. Article VII specifically provides that “[a]ll women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” Article XI provides that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care. . ..” Additionally, in the

---

132 See Exhibit 67 (testimony of Petitioner Joyce McNeal).
133 OAS Charter, *supra* note 20 at art. 34.
134 *Id.*.
136 American Declaration, *supra* note 21 at art. XI.
international arena, access to safe drinking water and sanitation have been viewed as a “prerequisite for the realization of” the right to health.137

The right to health, like the right to life, necessarily requires the State to protect against life-threatening and health-deteriorating threats. But acceptance of a positive obligation to protect is not even necessary here because in Flint, the State itself was the agent of the threat to health.138 The injuries resulting from the violation the right to the democracy include, in addition to the previously mentioned cases of Legionnaires’ disease and death, declining white blood cell counts, bone marrow damage, growth plates being hardened by lead, hair loss, crumbling teeth, damage to pancreases, growths on tongues, polyps on colons, seizures, copper poisoning, bacterial infections, skin rashes, cysts, memory loss, issues with hand-eye coordination, and children having to re-learn basic knowledge such as the alphabet.139

For example, Petitioner Gina Luster fell ill in July 2014, just three months after the switch to the Flint River.140 She lost sixty-seven pounds in three months, lost hair, collapsed at work, and continues to suffer from memory loss. She eventually lost her job due to illness. She developed a lump in her breast the size of an orange due to a bacterial infection. At the young age of thirty-nine, she now walks with a cane. Luster’s five-year-old daughter, Kennedy, was diagnosed with vitamin D deficiency and constantly complains of “hurting bones.” Her teeth also “crumbled.” Luster’s sister has four children who have all developed dyslexia. Petitioner Lee-

137 See, e.g., ESC General Comment 15, supra note 122. See also infra I(B)(1) (explaining that right to water and sanitation are necessary for the realization of other human rights).
138 See Petition, supra note 41, Section II(2).
139 See Petition, supra note 41 at Section II(2).
140 See Exhibit 42 (testimony of Petitioner Gina Luster).
Anne Walters, a mother of four, noticed her children falling ill in February of 2015.  

Testing of her family’s tap water revealed that the water had 104 parts per billion (ppb) of lead, nearly seven times greater than the Environmental Protection Agency (“EPA”) limit of 15 ppb.

The ongoing sanitation issues in connection with the contaminated water at Flint homes—water which residents are required to maintain at great costs—constitutes an ongoing violation of Flint citizens’ right to preservation of health and well-being. Flint citizens pay the highest water rates in the country. If the citizens refuse to pay for the poisoned water, they are at risk of having their homes condemned due to “sanitation” issues after the one-year moratorium on tax liens expires in May of 2018.

Regarding the family, the Declaration expressly provides in Article VI that “[e]very person has the right to establish a family, the basic element of society, and to receive protection thereof.” The ICCPR similarly provides, in Article 23(1) that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

The violation of the right to democracy also resulted in a violation of the right to protection of the family. Many residents, including Victim Anthony Paciorek and his girlfriend,

141 See Exhibit 51 (testimony of Petitioner Lee-Anne Walters).
142 Id.
143 Julia Lurie, While Lead Flowed Through the Pipes, Flint Residents Paid America’s Most Expensive Water Bills, MOTHER JONES (Feb. 17, 2016), http://www.motherjones.com/environment/2016/02/while-lead-flowed-through-taps-flint-had-most-expensive-water-nation/.
144 Id.
145 Over 8,000 residents of Flint were in danger of losing their homes to foreclosure due to tax liens from unpaid water and sewer bills. In May 2017, the Flint City Council voted to put a one-year moratorium on placing tax liens on Flint properties. This begs the question of what will become of these homes once the moratorium is lifted in May 2018. See Flint Council Blocks Use of Tax Liens for Unpaid Water Bills, U.S. News (May 18, 2017), https://www.usnews.com/news/best-states/michigan/articles/2017-05-18/flint-council-blocks-use-of-tax-liens-for-unpaid-water-bills; see also Tyler Scott, Flint city council votes to stop issuing tax liens for unpaid water bills, MICHIGAN RADIO (May 18, 2017), http://michiganradio.org/post/flint-city-council-votes-stop-issuing-tax-liens-unpaid-water-bills.
146 ICCPR, supra note 23 at art. 23, para 1.
are afraid to have children due to the risk of birth defects associated with lead poisoning.\textsuperscript{147} Fetal
deaths have risen at an alarming rate following the water switch ordered by the Emergency
Manager. In fact, one recent study found that fertility rates in Flint have decreased by 12% and
fetal death rates have increased by 58% following the decision by the Emergency Manager to
switch to the Flint River water which caused the city’s exposure to lead.\textsuperscript{148} The future of an
entire generation of Flint children is uncertain, with the Hurley Medical Center finding a
“statistically significant” rise in blood lead levels of young children living in Flint following the
switch to the Flint River.\textsuperscript{149} The World Health Organization warns that “[t]here is no known
safe blood lead concentration,” and further explains:

\begin{quote}
[y]oung children are particularly vulnerable to the toxic effects of lead and can
suffer profound and permanent adverse health effects, particularly affecting the
development of the brain and nervous system. Lead also causes long-term harm in
adults, including increased risk of high blood pressure and kidney damage.
Exposure of pregnant women to high levels of lead can cause miscarriage,
stillbirth, premature birth and low birth weight, as well as minor malformation.\textsuperscript{150}
\end{quote}

All of these consequences have been experienced by the people of Flint.\textsuperscript{151}

In sum, the United States, through the actions of the State of Michigan, violated the rights
to preservation of health and well-being and to protection of family. As a result of the lead and
bacteria coming into their homes through the decisions of the Emergency Managers, Flint

\begin{footnotes}
\textsuperscript{147} See Exhibit 68 (testimony of Victim Anthony Paciorek).
\textsuperscript{151} See Petition, \textit{supra} note 41.
\end{footnotes}
citizens have been inflicted with disease and illness and unborn children are dying at alarming rates.

C. The Emergency Manager system as applied in Flint violates the right to equality before the law.

The above-referenced instruments also protect the right to equality before the law. The Declaration provides in Article II that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” The Inter-American Commission has repeatedly established that:

the right to equality and nondiscrimination contained in Article II is a fundamental principle of the inter-American human rights system (“IAHRS”). The principle of non-discrimination is the backbone of the universal and regional systems for the protection of human rights. As with all fundamental rights and freedoms, the Commission has observed that States are not only obligated to provide for equal protection of the law, but they must also adopt the legislative, policy, and other measures necessary to guarantee the effective enjoyment of the rights protected under Article II of the American Declaration.154

Similarly, Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.155

152 See infra (I) para. 1, naming The Charter of The Organization of the American States, The American Declaration of the Rights and Duties of Man, The Inter-American Democratic Charter, and The International Covenant on Civil and Political Rights as international treaty law to which the United States is a party and legally bound.

153 American Declaration, supra note 21 at art. II.


155 ICCPR, supra note 23 at art. 26.
Non-discrimination is a key requisite of democracy. Article 9 of the Democratic Charter provides that “[t]he elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance…and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.”\textsuperscript{156} Article 12 further underscores the fact that poverty compromises democratic principles, providing for a “shared commitment” to combating problems associated with development and poverty.\textsuperscript{157}

The United States, through the actions of the State of Michigan, violated the right to equality before the law.\textsuperscript{158} Flint is the poorest city in the United States with an alarming forty-five percent of its citizens living in poverty.\textsuperscript{159} Over half of Flint’s residents, more than fifty-six percent, are African American.\textsuperscript{160} Nearby municipalities with higher income levels and fewer

\textsuperscript{156} Democratic Charter, \textit{supra} note 22 at art. 9.
\textsuperscript{157} \textit{Id.} at art. 12.
\textsuperscript{158} This is not only a violation of international law but also a violation of the United States Constitution, which provides:

\begin{quote}
[\textit{a}ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.]
\end{quote}

U.S. Const. Art. XIV § 1.
\textsuperscript{160} See Sonya Rastogi et al., \textit{The Black Population: 2010}, \textsc{U.S. Census Bureau} (Sept. 2011) https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf (showing that, in 2010, 56.6\% of Flint citizens answered that they were “Black or African American alone”).
minority citizens were not subjected to the Emergency Manager system\textsuperscript{161} and therefore their right to participate in government was not infringed.\textsuperscript{162} Statistics show that African Americans in Michigan are five times more likely to be subjected to the Emergency Manager system than their non-black counterparts.\textsuperscript{163}

In sum, the United States, through the actions of the State of Michigan, violated the right to democracy as guaranteed by the Charter of the Organization of the American States, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and the International Covenant on Civil and Political Rights, and as established through the regional custom of the Americas. As a consequence of violating the right to democracy, the United States also violated the rights to life, to preservation of health and well-being, to protection of the family, and to equality before the law. The resulting harms caused by these rights violations included severe damages to the health of Flint residents—including declining white blood cell counts, bone marrow damage, growth plates being hardened by lead, hair loss, crumbling teeth, damage to pancreases, growths on tongues, polyps on colons, seizures, copper poisoning, bacterial infections, skin rashes, memory loss, issues with hand-eye coordination, and


\textsuperscript{162} In \textit{Phillips v. Snyder}, the Sixth Circuit makes the illogical assertion that there is no violation of equal protection because all Flint citizens were treated the same. The court insisted that"[p]laintiffs have not shown that they have been denied the right to vote on equal footing within their respective jurisdictions. Individuals in jurisdictions without emergency managers are not relevant to the protected right." Phillips, 836 F.3d at 719. The Petitioners assert that it is the dictatorial Emergency Manager system itself that is being imposed by the State of Michigan in a discriminatory manner. Therefore, it is appropriate to compare the democratic rights of Flint residents to the rights of residents of other municipalities within the State.

\textsuperscript{163} See \textit{The Flint Water Crisis: Systemic Racism Through the Lens of Flint, Report of the Michigan Civil Rights Commission}, MCRC (Feb. 17, 2017), http://www.michigan.gov/documents/mdcr/VFlintCrisisRep-F-Edited3-13-17_554317_7.pdf (finding that, "[i]f you live in Michigan, there is a 10% chance that you have lived under emergency management since 2009. But if you are a black Michigander, the odds are 50/50.").
children with learning disabilities. Sadly, on at least twelve occasions, these injuries led to death.

**III. The evolution and development of related areas of law must be considered when interpreting applicable treaty provisions.**

Since the formation of the OAS in 1948, there have been massive social movements and global legal developments protecting and expanding environmental rights as well as the rights of racial, ethnic, and national minorities. While these developments were not incorporated into the language of the Charter, this Commission made clear in *Dann v. United States* that it will take into consideration relevant legal developments that have evolved since the Charter’s inception.\(^\text{164}\) As with the recognition of indigenous rights in the *Dann* case, the evolution of international environmental and anti-discrimination law provide an instructive context within which to examine the current crisis of democracy in Flint, Michigan.

**A. The development and evolution of international environmental law must be considered when interpreting the applicable treaty provisions.**

The connection between human health and the environment is common knowledge in the twenty-first century. We now know that environmental toxins can make us ill, that hazardous waste can spread disease. When the OAS Charter and American Declaration were adopted in 1948, however, and even when the ICCPR was ratified in 1966, our understanding of how the environment in which we live affects our health and well-being was not widely appreciated. Since the adoption of these instruments, understanding of the environment and regulations to help improve and protect the quality thereof, have proceeded aggressively, both internationally

---

and in the United States. The interpretation of provisions in these instruments, therefore, must reflect society’s acquired knowledge of the interdependency of health and environment—that fundamental rights to life, health, and protection of the family cannot be realized without a healthy environment.  

An evolutive interpretation of a human rights instrument “gradually extend[s] the level of protection afforded to the rights and freedoms guaranteed by” that instrument. Thus, the European Court of Human Rights found that, while “[t]here is no explicit right in the [European Convention on Human Rights] to a clean and quiet environment … where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 [protecting the home and family life].” Similarly, this Commission, when interpreting the American Declaration of the Rights and Duties of Man in the case of the Yanomami Indians of

165 Regulation of the environment began to take full swing in the United States in the 1960s and ’70s. During this time, the United States enacted a series of laws regulating the quality of the environment. The Clean Air Act was passed in 1963. 42 U.S.C. §7401 et seq. (1970). The Wilderness Act was next in 1964. This was followed by the Clean Water Act in 1965. 33 U.S.C. §1251 et seq. (1972). The Environmental Protection Agency (“EPA”) was established in 1970; its stated purposes include, inter alia, ensuring that “all Americans are protected from significant risks to human health and the environment where they live, learn and work.” The Safe Drinking Water Act followed in 1974. 42 U.S.C. §300f et seq. (1974). In 1980, the Comprehensive Environmental Response, Compensation, and Liability Act (“Superfund”) was created in order to provide federal funds to “to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.” 42 U.S.C. §9601 et seq. (1980).

166 Indeed, Congress’s national environmental policy provides, inter alia, as follows:

(a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment…declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures…to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

42 U.S.C.A. § 4331 (West).


168 Id. The interconnectedness of Article 8’s protections and the environment was first expressly recognized by the ECHR in 1994 in Lopez Ostra v. Spain, when a faulty water purification and treatment plant near petitioner’s home emitted “noxious fumes and effluents” that forced petitioner to evacuate her home. The ECHR found a violation of Article 8, reasoning that “the consequences of environmental degradation may so affect an individual’s well-being as to deprive her of the enjoyment of her private and family life.” Lopez Ostra v Spain (A/303-C), (1995) 20 E.H.R.R. 277 (1994).
Brazile considered the impact of environmental degradation on the right to life, liberty, and personal security (Article I); the right to residence and movement (Article VIII); and the right to the preservation of health and to well-being (Article XI), concluding that these rights were violated when a road was built through territory of the Yanomami Indians forcing them to leave their homes.\footnote{See Brazil, Comunidad Yanomami, Case 7615, Inter-Am. Comm’n H.R., Resolution No. 12/85, available at http://www.cidh.org/annualrep/84.85eng/Brazil7615.htm.}

These regional human rights decisions form part of the corpus of rapidly evolving international environmental law. Other evidence of this evolution can be found in rulings of domestic courts, such as the Supreme Court of India, which interpreted the right to life in the Indian Constitution to include “the right of enjoyment of pollution-free water and air for full enjoyment of life.”\footnote{Subash Kumar v. State of Bihar, A.I.R. 1991 S.C. 420.}


\footnotesize
\begin{itemize}
  \item [173] Framework Convention on Climate Change (May 9, 1992), 31 ILM 849 at Art. 3 para. 3.
\end{itemize}
The Rio Declaration consists of 27 principles intended to “protect the integrity of the global environmental and developmental System.”174 While the Declaration itself is nonbinding “soft law,” several of its Principles have been incorporated into binding treaty law, and reflect emerging customary environmental law. Indeed, the Rio Declaration has been cited by a U.S. federal court as declaratory of pre-existing legal principles concerning the environment.175

Among these are two closely inter-related Principles that are particularly germane to the crisis in Flint, having democratic decision-making as their cornerstone.

Principle 10 enunciates the policy that “[e]nvironmental issues are best handled with the participation of all concerned citizens … in decision-making processes.”176 This Principle has been widely embraced in the region of the Americas. In 2001, the Organization of American States adopted the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development.177 Twenty-three American States have signed on to the Declaration on the application of Principle 10,178 and have adopted a Roadmap for the formulation of a legally binding instrument.179

Such a legally binding instrument has been adopted by 47 parties in Europe and Central Asia — 46 States and the European Union. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

---

176 Rio Declaration, supra note 174 at Principle 10.
Aarhus Convention entered into force in 2001. The Convention is a rights-based instrument conferring rights on the public, including future generations. Signatory States are required to report regularly on their implementation of the Convention at the national level.

Principle 15 articulates what has become known as the Precautionary Principle, summarized as follows: “[w]hen an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.” The Principle is aimed at preventing harm, rather than assigning liability after the fact.

Democratic decision-making and transparency are critical components of the Precautionary Principle. The mechanisms of democracy – debate, deliberation, public hearings, stakeholder input, weighing and balancing of interests, compromise – are designed to shed light on all pertinent aspects of an issue. These democratic processes are essential to ensuring that potential risks to public health and wellbeing are given due weight in the course of governmental decision-making.

The Precautionary Principle is included in more than ninety international agreements and declarations as well as in the domestic law of fifty countries, and is incorporated into European Union environmental law. While some countries, notably the United States and

---

182 D. Freestone & E. Hey, Eds., The Precautionary Principle in International Law 71 (Kluwer 1996). The Precautionary Principle is widely incorporated into the domestic law of European States; in France it is elevated to a constitutional principle.
Canada, have questioned its status as a rule of customary international law, under the evolutive approach it is not necessary for the Commission to find that the Precautionary Principle has decisively entered into general international law. The core values of democracy and protection enshrined in Principles 10 and 15 provide added cogency to Petitioners’ claim that the Emergency Manager system abridged the rights of Flint citizens protected under the instruments discussed herein, causing serious foreseeable harm to human life and health.

**B. The evolution and development of anti-discrimination law must be considered when interpreting applicable treaty provisions.**

Many widespread and far-reaching developments have occurred in the field of equal protection—both internationally and within the United States—since the ratification of the OAS Charter and the other aforementioned international treaties and instruments. In Latin America, there have been significant developments regarding rights of indigenous and ethnic minority groups since the promulgation of the OAS Charter. Within the last two decades, these developments have accompanied transitions to democracy. Many of these advancements had a theme of collective rights and demands by indigenous groups. When approaching new legislation, Latin Americans legislators are encouraged to make pluricultural oriented public policy. In 2010, the Bolivian president signed the Law Against Racism and Any Form of

---


184 See Dann v. United States, *supra* note 164.


186 *Id.* at 2.

187 *Id.* at 5.
Discrimination\textsuperscript{188} to address the long-term attitudes, beliefs, and actions discriminating against the indigenous population.\textsuperscript{189} In 2011, the Venezuelan government passed the Organic Law Against Racial Discrimination in order to:

establish appropriate mechanisms to prevent, address, punish and eradicate racial discrimination in all its manifestations, guaranteeing to all persons and groups of people, the enjoyment and exercise of their rights and duties enshrined in the Constitution, laws, treaties, agreements and international conventions on human rights signed and ratified by the Republic. \textsuperscript{190}

Argentina has also enacted legislation to combat racial discrimination; it created the National Institute against Discrimination, Xenophobia, and Racism (INADI) in 1995.\textsuperscript{191} The goals of the INADI are to enforce present legislation that aims to create a more equal society, sustain educational campaigns that promote social and cultural pluralism, and uniquely to seek out all World War II participants that migrated to Argentina who were responsible for the Holocaust.\textsuperscript{192}

In 1969, the United Nations adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).\textsuperscript{193} The goals of ICERD are to prevent racial discrimination, promote tolerance, and to provide a resolution mechanism.\textsuperscript{194} In 2013 the OAS adopted the Inter-American Convention against Racism, Racial Discrimination, and Related Intolerance.\textsuperscript{195} This Convention sets forth the duty to prevent racism or any racially

\textsuperscript{189} Id.
\textsuperscript{191} Law No. 24515, October 1995.
\textsuperscript{192} Id. The law applies to anyone responsible for the “extermination of peoples, or in the death and persecution of persons or groups of people because of their race, religion, nationality or political opinion; and when appropriate, make complaints to the competent authorities.”
\textsuperscript{194} Id., at arts. 5-8.
\textsuperscript{195} Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, opened for signature June 5, 2013, O.A.S.T.S. A-68.
discriminatory conduct and provides a system to monitor the implementation of the Convention. This interest by American States demonstrates an evolving international interest in eliminating racial inequality. Important strides towards equality have also been made in the United States since the promulgation of the OAS Charter. Among these developments are the Civil Rights Movement of the 1960s that championed legal equality for African Americans in the United States, which followed the promulgation of the OAS Charter.

An important aspect of equal protection enforcement in the United States is the application of strict judicial scrutiny to governmental decisions that target or disproportionately impact racial, national, or ethnic minorities. The purpose of strict scrutiny is to unearth impermissible racial motivations behind legislation, with the understanding that policy that targets a minority group that has suffered historic discrimination can easily lead to serious deprivations of human rights.

The United States Supreme Court introduced this concept in the case of Korematsu v. United States. The plaintiff, an American citizen of Japanese descent, challenged the World War II-era Civilian Exclusion Order No. 34, which required all persons of Japanese descent to report to concentration camps. At the time of this opinion, “not one person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free.” This arbitrary deprivation of personal liberty was based solely on national origin.

---

196 Id. art. 4.
197 Id. art. 15.
198 Korematsu v. United States, 323 U.S. 214 (1944), (examining the constitutionality of internment camps for Japanese Americans during WWII).
199 Id. at 216.
200 Id. at 241.
The standard of strict scrutiny has been applied subsequently to overturn racially discriminatory laws in education, marriage.\(^{201}\)

We urge the Commission to adopt a “heightened scrutiny” approach when examining the Michigan Emergency Manager law and its application. Flint, Michigan has a total population, reported in the 2010 census, of slightly over 100,000 residents.\(^{202}\) Of these residents, 56.6% are African American.\(^{203}\) Michigan cities under emergency management include Benton Harbor, Detroit, Flint, and Pontiac. Pontiac has a population of over 50% African American.\(^{204}\) Benton Harbor and Detroit recorded an over 80% African American population.\(^{205}\) Together these cities account for almost 50% of the total African American population of Michigan. The fundamental human rights of these citizens have been disproportionately infringed by the Emergency Manager legislation in the State of Michigan. While this legislation may appear neutral on its face, according to a report by the Michigan Department of Civil Rights white citizens of Michigan have only a 10% chance of being under Emergency Management, while African American citizens of Michigan have an almost 50% chance.\(^{206}\) Because there is evidence that minority populations were disproportionately affected by the Emergency Manager


\(^{203}\) Id.


\(^{205}\) Id.

system, Petitioners urge this Commission to look at the violations of applicable treaty provisions with a heightened level of scrutiny and suspicion.

**CONCLUSION**

The United States Government has failed the people of Flint, Michigan. The United States, through the actions of the State of Michigan, disenfranchised the City’s residents, and then poisoned their water. It has failed to remedy the health crisis that followed for which it alone is responsible. Flint citizens have suffered irreparable harm to their health and to their lives. They have repeatedly demanded an end to their ongoing suffering but have exhausted their domestic remedies and are forced to seek relief through this honorable Commission.

The Emergency Manager system violates Flint citizens’ right to democracy — their right to participate in decision-making that affects their lives and well-being. The United States violated numerous international treaties to which it is a party and legally bound. Even in the absence of the legally binding treaty provisions, the United States has violated customary international law within the region of the Americas which establishes a human right to democracy. As a consequence of the violation of the right to democracy, the United States violated the rights to rights to life, to preservation of health and well-being, to protection of the family, and to equality before the law.
Finally, the evolution and development environmental law and protection of the rights of minorities require this Commission to look at the rights violations closely and with heightened scrutiny and suspicion.

“The Flint Water Crisis” is more than a news story; it is bigger than a *Lifetime* movie. These are real people who continue to suffer tremendous harm and are merely seeking accountability and justice for the unthinkable pain and suffering that they continue to endure at the hands of their own government.