

August 2, 2019

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, MI 48909

Re: Benton Harbor High School

Dear Governor Whitmer:

The American Civil Liberties Union of Michigan has carefully followed recent events related to Benton Harbor High School. We are hopeful that what appears to be an emerging dialogue between your administration and Benton Harbor school officials will be productive. We do not wish to disrupt that process, but we feel a responsibility to highlight continuing concerns we have about the state government's relationship with the Benton Harbor school district and the implications for the democratic rights of the people in that city.

In recent weeks we have spoken with Benton Harbor residents and activists with whom we have had both long-term and recent acquaintance. Based on those discussions as well as our overall experience with education issues and previous administrations' use of emergency managers, we strongly urge against any inclination to revive the idea of unilaterally closing the high school, or to resort to state control of the school district in some other form.

Benton Harbor High School was established in 1872, and it has not only played a central role in the lives of many generations of Benton Harbor residents, it is in a real sense an anchor of the community. Closing the school would eliminate one of the only remaining educational, cultural and civic centers in a community that has endured decades of discrimination, marginalization and poverty. As for emergency management, the City of Benton Harbor's experience with the emergency manager approach during previous administrations was one that denied the people of that city their democratic rights and democratic participation in government, regardless of one's opinion about whether it was effective. The school system should not be subjected to the same experience.

As an organization committed to the protection of civil rights and civil liberties, our perspective on these matters is firmly rooted in arguments we have made in court that the right to a quality education is protected by both the Michigan Constitution and the United States Constitution, as well as an abiding commitment to the protection of the democratic rights of all citizens. In recent years, the ACLU has worked in Benton Harbor and throughout the state to promote the right to education and democratic self-



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government.¹ As you continue your discussions with Benton Harbor’s school leaders, our work on cases concerning education, Benton Harbor and democratic rights leads us to urge that you use caution and carefully consider the historical, racial, and economic context of the complex problems facing a very troubled city.

Benton Harbor’s History

In years past, Benton Harbor was a magnet for African Americans migrating from the south because of its employment opportunities. However, the disappearance of jobs during the 1960s and 1970s marked the beginning of a steady economic decline. Currently, 85 percent of Benton Harbor’s population is of African ancestry, and there is a poverty rate of 48 percent. This is in stark contrast with the neighboring City of St. Joseph which has a population that is 87 percent white and which is, on balance, considerably better off financially than Benton Harbor’s residents. The two cities are separated by both the St. Joseph River and starkly different economies. This all happened in Benton Harbor because of, among other things, deindustrialization, white flight, rising crime rates, the crack trade, chronic unemployment, and loss of state revenue-sharing.

In recent years, the state’s purported efforts to address Benton Harbor’s challenges through emergency management have not only failed, they have made matters worse because they were part of a pattern of state actions that were racially discriminatory. In a case challenging the constitutionality of the emergency manager laws,² U.S. District Judge George Caram Steeh noted:

¹ See *D.R. v. Mich. Dep’t of Educ.*, No. 16-cv-13694 (E.D. Mich. filed Oct. 18, 2016) (ongoing class action challenging systemic failure to provide an adequate education for children with disabilities in Flint), <https://www.aclumich.org/en/cases/special-education-flint>; *L.M. v. State of Michigan*, 307 Mich. App. 685, 862 N.W.2d 246 (2014) (class action alleging that “inadequate and deficient instruction” in Highland Park public schools “has resulted in [students’] failure to obtain basic literacy skills and reading proficiency” as required by the Michigan Constitution); *People v. Pinkney*, 501 Mich. 259, 912 N.W.2d 535 (2018) (reversing conviction for violating a non-existent election fraud law in connection with local campaign to recall Benton Harbor’s mayor after all-white jury was permitted to hear irrelevant and inflammatory evidence of Rev. Pinkney’s political activities); *Duncan v. State of Michigan*, 284 Mich. App. 246, 774 N.W.2d 89 (2009) (class action to repair broken indigent defense system statewide, with Berrien County and Benton Harbor as one focal point for the case), <https://www.aclumich.org/en/duncan-v-granholm>; *Phillips v. Snyder*, 836 F.3d 707 (6th Cir. 2016) (challenging constitutionality of emergency manager law).

² *Phillips v. Snyder*, No. 13-cv-11370, 2014 WL 6474344 (E.D. Mich. Nov. 19, 2014), <https://www.electablog.com/wp-content/uploads/2014/11/PAlawsuit.pdf>.

By plaintiffs' calculations, over 52% of Michigan's African Americans are under emergency manager authority pursuant to the enactment of [the emergency manager law], compared to two percent of Michigan's Caucasian citizens."³

Judge Steeh went on to explain:

Additionally, the Michigan Department of Treasury maintains a scoring system to determine the financial health of the state's cities and townships. The latest information available from the state is for fiscal year 2009. Fiscal indicator scores between 5 and 7 place a municipality on a fiscal watch list, while scores between 8 and 10 result in the community receiving consideration for review. However, six out of seven communities (85%) with a majority population of racial and ethnic minorities received [emergency managers] when they had scores of 7. At the same time, none of the twelve communities (0%) with a majority white population received an [emergency manager] despite having scores of 7 or higher.⁴

Benton Harbor was among the predominantly black cities that did not emerge from the emergency manager process with new-found economic vigor. Local elected leaders who were sidelined during the years of emergency management were left to try and pick up the pieces after emergency management was lifted.

Benton Harbor's school district has had its own problems. By 2011 the school district was \$18 million in debt. The state issued an ultimatum demanding that school officials cut \$2.6 million from its budget or have an emergency manager appointed to run the district.

Consideration was given to consolidation of schools, the sale of buildings, the elimination of art and sports programs and teacher layoffs.⁵ Although the district agreed to a state-approved debt elimination plan, the school district's troubles continued into 2012 and consideration was given to borrowing money under then recently-enacted legislation authorizing emergency loans to troubled municipalities and school districts.⁶

By 2014 the school district's debt was down to \$15 million, but it had a \$40 million budget. There were 2,800 students in the district and that number was continuing to shrink. Austerity measures included consolidating 50 percent of the buildings, outsourcing non-instructional services, and having the staff agree to a 10 percent pay cut. There was also talk of entering into a consent agreement with the Michigan Department of Treasury as a way of

³ *Id.* at *10, slip op. at 19-20.

⁴ *Id.* at *11, slip op. at 22.

⁵ <https://www.abc57.com/news/big-cuts-soon-at-benton-harbor-schools>.

⁶ https://www.heraldpalladium.com/news/local/benton-harbor-school-district-in-danger-of-missing-payroll/article_3a807795-b5b1-5c85-9019-47f2b6d7ab7d.html.

preventing the appointment of an emergency manager.⁷ An emergency manager was not appointed, but in 2016 Governor Snyder appointed a consultant under the terms of a consent agreement. He was to serve as the school district's liaison with the Michigan Department of Treasury.⁸

In 2018 a new form of leadership was instituted for the school district. Dr. Robert Herrera was appointed as the district's "CEO." Under a revised partnership agreement with the State of Michigan, he was to report directly to the state's school reform board rather than the local school board, and he was given four years to turn the district around. Herrera resigned from the school district in June.

Roots of Financial Distress

Clearly state involvement in the affairs of Benton Harbor and its school district is nothing new. It is therefore remarkable that whenever in varying degrees the state involves itself again and again in the school's affairs, it seems that the reason given is *local* mismanagement. We do not offer a qualitative assessment of the performance of Benton Harbor school officials, but we do suggest that: (a) the people of Benton Harbor have the right to evaluate their school board at the ballot box; and (b) uninformed presumptions about the competence/incompetence of school leaders are not only unfair, they can obscure the actual causes of a school district's problems.

Research by Michigan State University Professor David Arsen demonstrates that a school district's financial distress may be due to race and factors unrelated to school management. In 2015, Arsen observed:

Roughly ten percent of Michigan's 550 districts had operating deficits at the end of each fiscal year from 2012 to 2014. Thus far, three districts, each predominantly African-American and urban, have been placed under an emergency manager's control, including the state's largest district, Detroit Public Schools. Two more predominantly African-American districts were dissolved soon after [the emergency manager law's] passage. State review teams have recently declared financial emergency in two additional predominantly African-American, urban districts that are currently operating under consent decrees.⁹

Arsen sought, and found, an explanation for this racial phenomenon. He concluded that predominantly black school districts find themselves having to do far more with fewer resources, not because they are black, but because of the dynamic triggered by the presence of charter schools in the district. High achieving students in search of better educational opportunities leave

⁷ <https://wsbt.com/news/local/benton-harbor-schools-to-enter-special-debt-agreement-with-state>.

⁸ <https://www.wsjm.com/2016/02/22/new-consent-agreement-consultant-appointed-for-bh-schools/>

⁹ <https://www.fundmischools.org/wp-content/uploads/2017/03/WP51-Which-Districts-Get-Into-Financial-Trouble-Arsen.pdf>.

the district's schools for charter schools and leave behind students who need much more expensive special education services:

Districts with high concentrations of African American students are much more likely to be subject to intense charter school penetration, to lose students to inter-district choice, and to have higher concentrations of students with disabilities.¹⁰

Benton Harbor's schools may or may not have been negatively impacted by the charter school phenomenon, but if nothing else Arsen's analysis highlights the fact that local mismanagement has been, and in the absence of caution, can continue to be a convenient excuse for intervention.

Legislation such as Michigan's emergency management law changes the politics of state intervention and governance reforms by providing state officials greater legitimacy to intervene in local districts. To be viewed as legitimate, it is necessary to define the heart of the educational problem as administrative incompetence or the failure of local democratic governance structures.¹¹

We believe it is an error to reduce the problems of the Benton Harbor school district to the simplistic proposition that the school board through incompetence created a massive debt and is incapable of eliminating it. As Arsen's research demonstrates, the fiscal problems may have multiple hidden causes that will not be discovered without expert analysis and a remedy specifically tailored to the actual problems.

Sending Students Into Neighboring Districts May Be Counterproductive

We also want to lift up concerns in the community about having Benton Harbor High School students attend schools in neighboring districts. Racial integration has many potential benefits, but it cannot occur successfully without proper preparation of the communities that will be affected. This would require the engagement of skilled professionals working in Benton Harbor and neighboring communities over an extended period of time. The resources that would be required for such an undertaking would be better spent on improvement of Benton Harbor's own high school.

Fears of Gentrification

We are encouraged by your expressed commitment to building a relationship of trust with the Benton Harbor community. However, a significant obstacle to such a relationship is found in a sentiment expressed by Benton Harbor Mayor Marcus Muhammad in a recent media interview:

Muhammad said he believes a motive behind the proposed closure [of the high school] is to allow developers to get access to the high school, which sits on prime

¹⁰ *Id.*

¹¹ *Id.*

property near the St. Joseph River. As mayor, Muhammad says he has seen development plans with no high school building on the site. "Follow the money and money talks," he said. "They say it's about finances. But what's not said in the undercurrent is there is elaborate plans to turn Benton Harbor into a tourist attraction for second homes and retirement and recreation. Basically, a new population and push out those who have stayed in the city."¹²

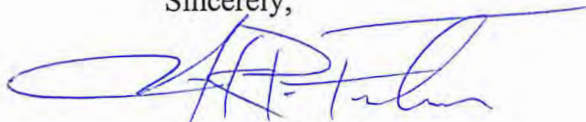
The ACLU has heard this viewpoint expressed not only by individuals engaged in civic affairs but also by everyday Benton Harbor residents. The fears are based on a very real history. More than fifteen years ago, developers set their sights on seizing part of Jean Klock Park's beachfront for development of an upscale golf resort. There was considerable resistance by Benton Harbor residents. Nevertheless, there has been extensive beachfront development of residential properties that are likely far beyond the reach of most Benton Harbor residents. The high school, its athletic fields and other school grounds are in the vicinity of entertainment enterprises located along Riverview Drive. It doesn't take much imagination to see the development possibilities for this area if the high school were not in the way. In order to build the type of relationship of trust with the people of Benton Harbor that is needed to improve the high school, it is important to dispel any false notions about development and to make public any development plans that might exist.

Conclusion

Ultimately, the people of Benton Harbor and all cities want to be treated with respect and dignity. Because the people in the city have lived the problems and have grappled with them, they possess great insight regarding causes and potential solutions. If the state comes into Benton Harbor with pre-packaged guidelines, timetables and solutions, it sends the message that the people of the community cannot be trusted to determine their own destiny. The state cannot know the full extent of a community's creativity and problem-solving ability without first taking the opportunity to spend time developing relationships. It is our hope that your administration will strive to become part of the Benton Harbor family and join them in embracing the institutions they have come to know and love.

Thank you for considering our thoughts on these matters. We welcome any opportunity you might provide for us to discuss them with you in person.

Sincerely,



Mark P. Fancher
Staff Attorney-Racial Justice Project

¹² <https://www.detroitnews.com/story/news/education/2019/06/10/benton-harbor-high-school-turmoil-racial-overtones/1269719001/>.