

Federal Judge Rules Detroit Residents Have No “Fundamental Right” to Water

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In a ruling Monday, US bankruptcy judge Steven Rhodes threw out a motion to stop mass water shutoffs in Detroit, declaring that city residents had no “fundamental right” to water service. The ruling sanctioned the city’s brutal policy, which has terminated service to nearly 50,000 low-income households since January 2013 and continues at the pace of 400 households a day.

Rhodes dismissed a lawsuit filed by victims of the water shutoffs, which argued that the city’s policy was doing irreparable harm to residents and threatened to create a public health disaster. The residents argued that the city’s policy violated the 14th Amendment’s prohibition against a state “depriving any person of life, liberty, or property without due process of law” and the principle of “equal protection” under the law, since service to major corporations, which failed to pay, had not been discontinued.

On this basis, the plaintiffs sought a six-month moratorium on shutoffs and the restoration of service to households without water. This time was needed, the coalition of liberal and Democratic Party-affiliated groups behind the lawsuit argued, to craft a plan with the city to reduce rates for low-income families.

In throwing out the due process claim, the judge said the plaintiffs could not “plausibly allege that they have a liberty or property interest in receiving water service, let alone water service based on ability to pay.” Nothing in city or state law, he said, “establishes property or liberty interests,” he declared, specifically leaving out any mention of the right to “life” contained in the US Constitution.

Similarly Rhodes tossed out the plaintiff’s claim over equal protection, citing a 1996 US Supreme Court ruling that said the constitution’s promise of this protection had to “coexist with the practical necessity” that most legislation results in “disadvantage to groups or persons.” Large enterprises had far more “complex connections” to the water and sewerage system and “more complex disconnections” would have to take place, Rhodes declared in an alibi for corporations like General Motors, which have refused to pay millions in water and sewerage bills.

Rhodes acknowledged the shutoffs had caused irreparable harm, noting that the lack of water produced serious life-threatening medical problems for seniors and disrupted children’s education and employment for adults. “It cannot be doubted that water is a necessary ingredient for sustaining life,” he declared.

Nevertheless, the judge declared,

“It is necessary to emphasize these findings of irreparable harm do not suggest that there is a fundamental enforceable right to free or affordable water. There is no such right in law. Just as there is no such affordable right to other necessities of life such as shelter, food and medical care.”

In this the judge summed up the priority given to the profit interests of the corporate and financial elite over the social rights of the working class, which the capitalist courts uphold and enforce.

While insisting that citizens in Detroit and by implication throughout the United States have no right to the necessities of life, the judge declared that the banks and big bondholders who control the Detroit Water and Sewerage System had every right to make billions in profits.

Nearly 50 cents out of every dollar in revenue generated by the DWSD is used for debt servicing. The mass water shutoffs were demanded by the big bondholders and credit rating agencies and have been used as a means of increasing the flow of money to the super-rich investors who essentially control publicly-owned utilities like the DWSD.

In response to an “unreasonable amount of delinquencies,” the judge said, the city had “quite properly and justifiably embarked on its program to terminate service in order to motivate payment by those who could afford to pay.”

Rhodes praised the economic terror used to squeeze payments out of low-income households, saying there had been a high “correlation between shutoffs and collections.” A six-month moratorium, he said, would cause “substantial damage” to the city because it would “increase its customer default rate and seriously threaten its revenues.”

He continued,

“Detroit cannot afford any revenue slippage, and its obligations to its creditors require it to take all reasonable and business-like measures to collect the debt that is owed to it as it prepares to show the court that its plan is feasible... The last thing that it needs is the hit to its revenues that would inevitably result from this injunction...”

Any delay in collections, Rhodes said, would also endanger plans to establish regional control over the city’s water system through the setting up of the Great Lakes Water Authority. Rhodes hailed this plan, which is a prelude to outright privatization of the water system.

In justifying his reactionary ruling, the judge made the specious claim that the federal bankruptcy court could not “interfere with the choices a municipality makes about what service it will provide,” under Section 904 of the federal bankruptcy code. This section upholds the separation of powers between cities and municipalities on the one hand and the federal government on the other.

The court, Rhodes said, “does not have authority to require the DWSD to stop mass water shutoffs, refrain from implementing a program of mass water shutoffs or require the DWSD implement procedures involving rate setting or water affordability.”

In making this argument, Rhodes was turning upside down the original intent of the municipal bankruptcy laws, which was to hold creditors and bondholders at bay in order allow cities to continue to provide essential services while they got back on their feet. Therefore it was up to the cities—not the federal courts or the big bondholders—to determine what essential services would have to be maintained.

Instead of holding the creditors at bay at the behest of the population, the entire bankruptcy process has held the interests of the people of Detroit hostage to the looting operation of the big banks and bondholders. All of the legal players in the case—including the corporate lawyers appointed by Emergency Manager Kevyn Orr to “represent” the city and Judge Rhodes himself—speak for the powerful financial interests behind the bankruptcy conspiracy.

The judge’s supposed concern for the sanctity of state and city laws has been demonstrated with his rubber-stamping of city worker pension cuts—which are direct violation of Michigan’s state constitution—and the selloff and privatization of public assets and services in violation of city ordinances requiring a public vote.

Monday’s ruling once again underscores the incompatibility of the social rights of the working class with the domination of society by a financial elite whose singled-minded drive for enrichment is imperiling the life and safety of hundreds of millions. If the capitalist system cannot provide such essentials of life as water, shelter and food—and it cannot—this is only an argument for the working class to reorganize economic and political life on the basis of securing the social needs of the vast majority of the people, not private profit of a few.

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