SPIEGEL & MCDIARMID
1333 NEW HAMPSHIRE AVENUE, NW
WASHINGTON, DC 20036
TELEPHONE 202.879.4000
FACSIMILE 202.393.2866

MEMORANDUM

TO: Prof. Lorray Brown, Michigan Poverty Law Center

FROM: Sean Flynn[1]

DATE: September 26, 2005

SUBJECT: Constitutionality of Water Affordability Program for Detroit

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You asked that we look at the question of whether a rate design to increase the affordability of water rates for poor households, proposed by your expert consultant, Roger Colton, would be deemed to constitute a "tax" under the terms of the Headlee Amendment, article IX, § 31 of the Michigan Constitution, and therefore subject to a requirement that it be approved by a majority of voters before it can be put in place. As we have advised you, we are not admitted to practice law in Michigan, but have examined the issue utilizing the ordinary rules of legal analysis in this country. This memorandum thus cannot be taken as a binding opinion, and we recommend that you review our conclusions. Nonetheless, and subject to those qualifications, it is our view that the Headlee Amendment does not place any limitations on a decision by the Board of Water Commissioners to adopt the proposed rate design and affordability programs for two reasons:

> (1) the rate design proposal is not a tax, but rather is a traditional and reasonable component of a user fee that is not required to go through a voter approval process; and
>
> (2) even if the fee were to be considered a tax for Headlee Amendment purposes, it is exempt from the voter approval requirement because the authority of the Board of Water Commissioners to adopt "equitable" rate designs to provide water to all city residents predates the Headlee Amendment.

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[1] Chris Kirkwood-Watts, a second-year law student at the University of Michigan Law School who worked as a summer associate at Spiegel & McDiarmid in 2005, provided invaluable research assistance on the issues discussed in this memorandum.

BACKGROUND

Last year, the Michigan Welfare Rights Organization filed a complaint for administrative relief with the City of Detroit Board of Water Commissioners (Board). The complaint requested that the Board establish a water affordability program for low income customers of the Detroit Water and Sewerage Department (DWSD).

The Complaint was filed in response to "an aggressive campaign to collect delinquent accounts" in Detroit, including approximately 40,000 annual service disconnections. According to the report by Roger Colton, "A Water Affordability Program for the Detroit Water and Sewerage Department" (January 2005) (Expert Report), the high number of disconnections in Detroit is directly related to unaffordable water bills faced by a substantial percentage of Detroit residents.

Water rates of the DWSD are currently set through a traditional cost of service rate design including both fixed and variable charges. Fixed charges, which are referred to as "meter charges" in the Expert Report, are the same for each bill regardless of the amount of water consumed. Variable charges, sometimes called consumption charges, are based on the amount of water used by each customer as measured by a meter. The charges vary between customer classes (e.g. residential, commercial, industrial), but are currently the same for all customers within a class.

The Expert Report indicates that low income residential households are facing a growing affordability crisis in Detroit. The Expert Report explains that the Environmental Protection Agency (EPA) and others have estimated household affordability limits for water and sewer charges at 2-2.5% of household income and that approximately 120,000 Detroit families earning less than $20,000 per year face average water bills that exceed 3% of household income. The average water bill in Detroit would be 8.1% of the income of a household reliant on Supplemental Security Income and 9.7% of income for a recipient of Temporary Assistance to Needy Families. The Expert Report estimates that approximately 40% of Detroit households are in need of some form of affordability assistance for their water bills. Expert Report at 3-13.

To ensure that all Detroit households can afford their water bills, the Expert Report recommends several programs:

- A fixed bill credit for poor households, scaled to the income of the household;

- An arrearage management program to allow poor households to cancel their arrears over a two year period if they remain in the low-income program and pay a small contribution to arrears each month;

- Distribution of water conservation kits to the lowest income households (i.e. at or below 50% of poverty level) to decrease their consumption of water and related expenses (i.e. electricity, gas).

The Expert Report recommends financing the three programs through increasing the fixed charge to customers not in the program by $1 per month from residential customers, $20 per month from commercial customers, $80 per month from municipal buildings, schools and housing complexes, and $275 per month from industrial customers. Expert Report at 18-20.[2]

The Expert Report notes that affordability programs are not simply welfare programs, but rather are "a way to help DWSD rationalize its overall collection efforts." Expert Report at 22. The Report notes a number of operational reasons for implementing the affordability programs that will likely result in cost savings to the utility and its consumers. These include:

> (1) administrative savings associated with processing fewer disputes, implementing fewer cut-offs and targeting collection activities away from low income customers toward those with higher ability to pay,
>
> (2) working capital savings associated with lower arrears and therefore less need to replace arrears with higher cost capital,
>
> (3) bad debt savings as bill payment rates rise. *Id.* at 22-24.

During a hearing on the proposal, a board member asked whether the proposed rate design to fund the affordability measures would violate the Headlee Amendment, article IX, § 31 of the Michigan Constitution, which requires that any new local tax be approved by a majority of voters. The Board member specifically requested comment on application of the Michigan Supreme Court's opinion in *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998), which struck down an effort of the City of Lansing to fund a sewer improvement through a charge assessed to all property in the city without voter approval.

[2] The Report refers to the charge as a "meter charge," although the charge does not vary by the size or number of meters on the property as do traditional meter charges. Other mechanisms have been used to finance affordability programs, including rising block tariffs that increase the per-unit charge as consumption increases. Rising block tariffs have an added benefit of encouraging conservation, but may be more prone to fluctuations in revenue generation. *See* American Water Works Association, *Principles of Water Rates, Fees, and Charge*s 99-102 (5th ed. 2000).

DISCUSSION

Ratified during the "tax revolt" of the 1970s, the Headlee Amendment states in relevant part:

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

Mich. Const. art. IX, § 31.

The Headlee Amendment requires voter approval only for a "tax" not already authorized by law at the time of its passage. It does not require voter approval to impose or raise a regulatory or user fee. *Bolt*, 459 Mich. at 158-59. Nor does the amendment require voter approval for levying or raising a tax that was already approved by law at the time the Headlee Amendment was passed. *American Axle Mfg., Inc. v. City of Hamtramck*, 461 Mich. 352, 358 (2000).

We conclude that the fixed charge proposed for the Detroit Water affordability program meets both exceptions to the Headlee Amendment. It is a valid component of a user fee for water service, not a tax, under *Bolt*. And, regardless of whether it is a tax or fee, the discretion of the Board to implement affordability measures in its rate design predates the Headlee Amendment by over a century, and therefore is exempt from the Amendment as interpreted in *American Axle*.

1. The charge is a valid component of a fee, not a tax subject to the Headlee Amendment

The first reason that the Headlee Amendment does not require voter approval for the proposed affordability program charges is that the charges are valid components of a "fee" that are not subject to the Amendment.

Local governments raise revenues through three basic forms of charges: (1) "taxes" levied on real and personal property; (2) "regulatory fees," such as license and permit fees, that finance specific regulatory regimes; and (3) "user fees" for specific goods and services provided in the government's capacity as a market participant.

Taxes by local governments and the state are subject to specific constitutional limitations contained in article IX of the Michigan Constitution. But regulatory and user fees are subject only to the requirement that they be authorized by a valid act of the legislature. This section describes the tests Michigan courts have used to distinguish fees

from taxes and our conclusion that the proposed water affordability surcharge is a permissible component of a fee, not a tax subject to the Headlee Amendment.

a. Michigan case law distinguishing between fees and taxes

i) Voluntary user fees are not taxes

The primary distinguishing criteria between a tax and a user fee is that taxes are compelled whereas fees are voluntarily paid in exchange for a specific service. The distinction traces to *Jones v. Board of Water Commissioners of Detroit*, 34 Mich. 273, 1876 WL 7151 (1876).

In *Jones*, the court held that the Board of Water Commissioners could not raise funds for infrastructure improvement through a compelled levy on properties not subject to water rates because such a charge would violate the constitution's requirement of uniformity in taxation. But the court held that surcharges to water rates could be directed into a fund for future infrastructure improvements because "water rates paid by consumers are in no sense taxes, but are nothing more than the price paid for water as a commodity." 1876 WL 7151, at *2.

Jones cited the voluntary nature of water rates as being the primary factor distinguishing them from taxes: "No one can be compelled to take water," the Court explained. *Id.* As such, the court held that "[t]he price of water is left to be fixed by the board in their discretion [as granted by statute], and the citizens may take it or not as the price does or does not suit them." *Id.*

Similarly, the court has held that sewer charges assessed only to users of the system are not taxes subject to Article IX limitations. *Ripperger v. City of Grand Rapids*, 338 Mich. 682 (1954). The court in *Ripperger* held that it was permissible for a city ordinance to grant discretion to the city manager to add "an additional charge" to such rates to meet the operational needs of the system without being subject to scrutiny under Article IX. *Id.* at 688.

ii) Regulatory fees are not taxes if the charge is proportional to the cost of the regulatory program

A second distinction drawn by the Michigan Supreme Court concerns the ability of local governments to charge regulatory fees, such as license and permit fees. Here, the payer is not compensating the state for the purchase of a commodity, but rather is funding a particular police-power regulatory regime necessary for a particular industry (e.g. building permits fund code enforcement). The Michigan Supreme Court has held that the distinguishing characteristic of a valid regulatory fee is that it raises revenue only for the specific program of regulation for which the fee is paid, rather than as a means of raising revenue for the general fund. *Vernor v. Secretary of State*, 179 Mich. 157 (1914).

In *Vernor*, the state quadrupled the registration fee for motor vehicles, raising the question of whether the increase "changed the character of the legislation from a regulatory and licensing measure to one of taxation." *Id.* at 162. The court found that the fee crossed the line because it was so excessive compared to the costs of motor vehicle regulation that it had to be considered a tax designed to raise general revenue.

The court explained the test to be applied in such cases:

> To be sustained, the act we are here considering must be held to be one for regulation only, and not as a means primarily of producing revenue. Such a measure will be upheld by the courts when plainly intended as a police regulation, and the revenue derived therefrom is not disproportionate to the cost of issuing the license, and the regulation of the business to which it applies.

Id. at 167.

In *Vernor* and later cases, the court has made clear that the review of fees for their proportionality must be deferential. "[W]hat is a reasonable fee must depend largely upon the sound discretion of the Legislature" and therefore "[i]t will be presumed that the amount of the fee is reasonable." *Id.* at 168. A fee will be declared a tax only if it is clear "upon the face of the law itself, or is established [by the plaintiff] by proper evidence" that the fee "is wholly out of proportion to the expense involved." *Id.*

iii) *The combined test of* Bolt

In *Bolt*, the Michigan Supreme Court analyzed a property levy for a sewer investment in reference to both the *Jones* and *Vernor* standards. At issue in the case was an effort of the City of Lansing to raise funds for rehabilitation of part of its sewer infrastructure by assessing all landowners in the city, including the seventy-five percent who would not benefit from the work and had already been assessed for similar renovations in their area. *Bolt*, 459 Mich. at 163. The charge was challenged under the Headlee Amendment, on the ground that the charge was a tax and therefore had to be approved by the majority of voters prior to implementation.

The court in *Bolt* described *Jones*, *Vernor* and their progeny as establishing three criteria for distinguishing a fee from a tax. The first two – whether the charge serves a regulatory purpose, and a "related" criterion that the charge be proportionate to the costs of the regulation – emanate from *Vernor*. The third – whether the charge is voluntary, emanates from *Jones*. *Bolt*, 459 Mich. at 161-62.

Bolt held that the charge at issue was a tax because it was not part of a voluntary rate ("the property owner has no choice whether to use the service") and it was not

proportionate to its regulatory purpose because the project was for general public purposes (investing in long term infrastructure to meet environmental standards) and included charges to properties who would not benefit from the service. *Bolt,* 459 Mich. at 164-68.

The best interpretation of *Bolt* is that it did not change the prior law established in *Jones* and *Vernor,* but rather applied those standards against claims that the charge could be either a user fee or regulatory fee. Where a charge is clearly a voluntary user fee under *Jones*, *Bolt* should not be read to require courts to engage in a rate-making function by engaging in the *Vernor* proportionality analysis. *See Kowalski v. City of Livonia,* __ Mich. App. __, 2005 WL 1753628, n.2 (July 26, 2005) (citing *Jones* for principle that "a contract price for a governmentally owned commodity could never qualify as a 'tax' even if the government sets the contract price high enough to glean a substantial profit"); *see also Lapeer County Abstract & Title Co. v. Lapeer County Register of Deeds,* 264 Mich. App. 167, 185 (2004) (limiting *Bolt* analysis to cases involving assessments to property and upholding $1 per page copying fee that is "neither a regulatory fee nor a tax, but rather is simply the direct purchase price for the provision of a service as part of a voluntary transaction"). But some courts have nevertheless applied all three *Bolt* factors to charges that are unmistakably voluntary user fees. *See Graham v. Township of Kochville*, 236 Mich. App. 141, 146-48 (1999) (holding that a "tap in" charge to connect to water system serves "paramount" regulatory purpose of ensuring "availability of clean water" to all people of city and was not excessive in relation to cost of service). Since *Graham* upheld the charge even though examining all three *Bolt* factors, the determination to examine all factors there may be considered *dicta*.

Certiorari petitions have been filed in *Kowalski v. City of Livonia* (upholding franchise fee charged to cable companies), which may give the Michigan Supreme Court an opportunity to settle the law in this area.[3] The outcome of *Kowalski* will not affect any challenge to the proposed affordability charge, however, because that charge clearly meets both the voluntary and proportionality prongs of the *Bolt/Jones/Vernor* line of cases.

b. The proposed surcharge is a voluntary user fee, not a tax

Perhaps the strongest factor in support of the validity of the charge for the proposed affordability program is that it is part of a voluntary user fee. This distinguishes the charge from the compelled assessment of property at issue in *Bolt,* which could not be avoided by refusing water service. *See Bolt*, 459 Mich. at 167 n.16 (quoting Headlee Blue Ribbon Commission Report for the proposition that "a 'fee for service' or 'user fee' is a payment made for the *voluntary receipt* of a measured service")

The affordability charge meets the voluntary criteria for a use fee despite individual customers not having a choice as to paying the specific component of the charge directed

[3] Should cert. be granted, the Law Center may consider participating as an amicus.

to financing the affordability program. The question of whether a fee is voluntary is directed at the charge in its entirety, not to a specific surcharge that makes up a component of the overall fee. Thus the court in *Jones* found that a surcharge for a water infrastructure fund was a permissible component of a voluntary fee because citizens could choose to not take water service, even though they had no choice in whether to contribute to the infrastructure extension fund once they chose to take the water service. Similarly, the proposed affordability charge is voluntary because it is "only compulsory for those who use the service" offered by DWSD. *Bolt*, 459 Mich. at 167-68 (describing permissible fee as one that is *Bolt*, the charge is).

The voluntary nature of the water fee of which the affordability program is a part may in itself insulate the fee from Headlee Amendment scrutiny. *See Kowalski*, __ Mich. App. __, 2005 WL 1753628, n.2; *Lapeer County Abstract & Title Co.*, 264 Mich. App. at __; *cf. Gorney v. City of Madison Heights*, 211 Mich. App. 265 (1995) ("a fee need not be regulatory in order not to be deemed a tax"); *cf. Graham v. Kochville Twp.*, 236 Mich. App. 141 at 151 (the *Bolt* criteria must be seen "in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee"); *Bolt*, 459 Mich. at 167 n.16 (three factors should be analyzed in totality). Nevertheless, it is clear that the water affordability charge would also meet the criteria of being proportional to a regulatory purpose.

c. The surcharge is proportional to regulatory purposes

The proportionality analysis that traces to *Vernor* is designed to ensure that regulatory fees are used to finance "regulation only, and not . . . a means primarily of producing revenue" for the city's general fund. 179 Mich. at 167; *see also Bolt*, 459 Mich. at 161-62, 167 n.16 (a user fee is one "in which the revenue from the fees are used only for the service provided"). Thus courts look to two questions, (1) whether the program serves a regulatory purpose, and (2) whether the charge is so out of proportion to the costs of promoting that purpose that it should be considered a tax in disguise.

The regulatory purpose analysis is highly deferential. A fee is regulatory if it serves a traditional police power of a locality to provide for the health, safety, and general welfare of the community. *Merrelli v. St. Clair Shores*, 355 Mich. 575, 582-83 (1959); *Graham*, 236 Mich. App. at 146. The proposed water affordability charge is unquestionably regulatory in this regard. *See Graham*, 236 Mich. App. at 148 & 153 (holding that "availability of clean water is of paramount importance to the people" therefore ordinance "regarding the water supply system of a township, including the fee requirements that will sustain the system, does bear a rational relationship to the public health, safety, and general welfare").

It is also clear that the fee is not "wholly out of proportion to the expense involved" in providing water. *Vernor*, 179 Mich. at 168. The fees for water service do

not raise any funds for the general accounts of the City of Detroit, but rather are used exclusively for services related to the provision of water.

Courts have sometimes analyzed whether a fee is proportional to a regulatory purpose by distinguishing between financing general public benefits and financing programs the specifically benefit those paying the fee. Thus, *Bolt* stated that a "true 'fee' . . . is not designed to confer benefits on the general public, but rather to benefit the particular person on whom it is imposed." 459 Mich at 165. On quick read, one might use this language to argue that the affordability charge is a tax because the program does not benefit the person paying it, but rather pursues public benefits by cross subsidizing those who cannot afford to pay their bills.

The public/private benefit distinction illuminate in *Bolt* should not, and has not, been used to require a tight nexus between specific user benefits and every charge that is included in a fee. Rather, courts have held that programs with broad public benefits may be funded from surcharges on user-fees if they are "reasonably related" the service provision funded by the fee. *County of Saginaw v. John Sexton Corp.*, 232 Mich. App. 202 (1999). Thus, the court in *Saginaw* upheld under Headlee Amendment challenge a surcharge to a landfill fee that funded a recycling program because the purpose of the recycling program was reasonably related to the objective of regulating landfill capacity that was promoted by the regulatory fee. Similarly, the Michigan Supreme Court upheld the use of parking meter revenues to fund "other traffic control devices and regulations" not directly related to parking meter supervision and enforcement because the other programs were not "so remote from the parking problem . . . to create an intent as a matter of law to raise 'revenue under the guise of a police regulation.'" *Bowers v. City of Muskegon,* 305 Mich. 676, 682-683 (1943).

At least one lower court opinion has already held that affordability programs are reasonable components of utility rates for Headlee Amendment purposes because they benefit utility users and the utility itself, not the general public. *Consumers Power Co. v. Assoc. of Bus. Advocating Tariff Equity*, 205 Mich. App. 571 (1994) (upholding electricity affordability surcharge). By similar reasoning, an unreported case upheld a 911 call center surcharge to telephone fees. *Wayne County Tax Payers Assoc. v. County of Wayne*, No. 197279, 1998 WL 1992550, unreported (Mich. App. 1998).

The purposes of the proposed water affordability are reasonably related to the aims of the public water system. The affordability program is vital to serving the valid police power purpose of ensuring that all people in Detroit have "access to municipal water." *Graham*, 236 Mich. App. at 153. The affordability program also serves valid administrative goals of improving the efficiency of the system's cost collection and bad debt programs. *See* Expert Report at 22-24 (citing administrative cost savings predicted from implementation of affordability program); American Water Works Association, Principles of Water Rates, Fees, and Charges 129 (5th Ed. 2000) (endorsing affordability programs as beneficial to utility and all customers because "[w]hen customers have trouble

paying utility bills, the cost to the utility is manifested in increased arrearages, late payments, disconnection notices, and service disconnections" which "increase all other customer's bills."); *cf. Gorney v. City of Madison Heights*, 211 Mich. App. 265 (1995) (charge "intended to help localities pay… administrative costs" was fee, not tax, for Headlee Amendment purposes). For these reasons, the inclusion of affordability programs in rate designs is now a common practice in water and other utility systems. *See* AMWA, Principles of Water Rates 129-134.

Finally, it has long been recognized that ratemaking by customer class inherently involves cross subsidization, since the cost to provide services to one member of a class can differ quite substantially from that to another. *See* Charles F. Phillips, Jr., The Regulation of Public Utilities 438 (1993) ("there is no one correct way to allocate these costs among different units of service"); Alfred E. Kahn, 123 The Economics of Regulation (1988) ("the marginal costs of serving no two customers are identical, except by chance."). Thus the fact that the adoption of the rate design in question would shift the way in which the costs of providing water are recovered somewhat among individual customers is simply an example of a different, but permissible, rate design.[4]

Accordingly, it is evident that the proposed water affordability program meets all of the *Bolt* factors. The funding of the program is through a voluntary fee, and that fee is proportional to the valid regulatory purposes served by the water system.

2. The affordability program is authorized by laws predating the Headlee Amendment

While we have concluded that the affordability program should not be considered a "tax," we note that it is not necessary that our analysis be accepted in order to conclude that the program would not be subject to the restrictions of the Headlee Amendment. Even if a court were to conclude that the proposed affordability program incorporated in Detroit's rate design would be a "tax" normally subject to the Headlee Amendment, the Amendment would not apply because legal authorization for the program predates the Headlee Amendment.

The Headlee Amendment applies only to taxes "not authorized by law or charter when this section is ratified." Michigan Constitution, Article IX, § 31. The Amendment "permits the levying of previously authorized taxes even where they were not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date." *American Axle*, 461 Mich. at 357. Thus, in *Duverney v. Big Creek-Mentor Utility Authority*, 469 Mich. 1042 (2004), Chief Justice

[4] We have not endeavored to analyze whether the specific differences in fixed charges proposed for the different classes of customers are reasonable. An arbitrary distribution of costs of the program among customer classes may be subject to legal challenge under the mandate that the DWSD set rates that are "equitable." City of Detroit Charter § 7-1504.

Corrigan (concurring) explained that a challenge to sewer charges authorized prior to 1978 will "prove futile under *American Axle*" because discretion of the city authority to set and increase fees can be implied from state laws declaring public sewer systems to be in the public interest and authorizing local governments to compel connections. *Duverney*, 469 Mich. at 1042.

The discretion of the City of Detroit and its Board of Water Commissioners to adopt affordability programs within its rate designs is implied by laws, dating back over a century, that require the provision of water to all city residents at equitable rates. *See Jones*, 1876 WL 7151, at *1 (tracing discretion to set rates to Act of February 14, 1853); Home Rule Act of 1909, M.C.L. §§ 117.4f , 117.4f(c) (last amended 2000) ("[e]ach city may in its charter provide for . . . the acquirement, ownership, establishment, construction, and operation . . . of public utilities for supplying water"); Mich. Const. (1963), art. VII, § 24 ("any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water"); City of Detroit Charter § 7-1504 ("Under the direction of the board, the department shall supply water, drainage and sewerage services within and outside of the city. The Board shall periodically establish equitable rates"); City of Detroit Charter, Declaration of Rights § 1 (1974) ("The city shall provide for the public peace and health and for the safety of persons and property in the city. The people have a right to expect aggressive action by the city's officers in seeking to provide residents with…clean waterways and a sanitary city."), amended 1997 (currently reading: "the people have the right to expect city government to provide for its residents, . . . safe drinking water and a sanitary, environmentally sound city."). The Board is not prohibited from responding to the evidence of decreasing affordability of rates because it has not previously exercised its authority or because the circumstances leading to the need for the program are new. *American Axle*, 461 Mich. at 357. Accordingly, any challenge of a Board decision to use that authority now "will prove futile under *American Axle*." *Duverney*, 469 Mich. at 1042.

3. Legal concerns regarding the authorization of collateral deprivations

On reviewing the proposal of Roger Colton, we noted a proposal that we were not requested to address that may raise legal concerns. Mr. Colton recommends that, as a substitute for service disconnections to households in arrears, the City of Detroit explore "the suspension of some benefit or service which the City would otherwise provide to the customer," such as residential parking permits or the grant of other licenses and permits. Expert Report at 42. We did not research Michigan law on this subject. However, we note that similar proposals have been held to be violations of city charters and other foundational laws in many states. *See Garner v. City of Aurora*, 149 Neb. 295, 302 (1948) ("The authorities are uniform to the effect that a public service corporation cannot refuse to furnish its public service because the patron is in arrears with it on account of some collateral or independent transaction, not strictly connected with the particular physical service.").

CONCLUSION

Our analysis of *Bolt* and Michigan case law indicates that the proposed fixed charge to water bills to fund affordability and bill collection programs is a permissible component of a water rate, not subject to voter approval under the Headlee Amendment. The Board of Water Commissioners has broad discretion to determine an "equitable" rate structure to distribute the costs of the program.