

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ERIC ESSHAKI, as candidate for
United States Congress and in his
individual capacity,

Case No.

Plaintiff,

Hon.

vs.

GRETCHEN WHITMER, Governor of
Michigan, JOCELYN BENSON, Secretary
of State of Michigan, and JONATHAN
BRATER, Director of the Michigan
Bureau of Elections, in their official
capacities,

Defendants.

**PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65(a), Plaintiff Eric Esshaki moves for a temporary restraining order and/or preliminary injunction against Defendants Gretchen Whitmer, Jocelyn Benson, and Jonathan Brater (collectively, "Defendants"), ordering them to refrain from enforcing the signature requirements and filing deadline prescribed in M.C.L. §§ 168.133 and 168.544(f).

In support of his motion, Esshaki submits the following Brief in Support and his declaration (Exhibit A), confirming that Esshaki is likely to succeed on the merits with respect to the unconstitutionality of M.C.L. §§ 168.133 and 168.544(f) as applied, considering the extraordinary measures taken by state and federal

governments to fight the coronavirus pandemic, including Governor Whitmer's Executive Order 2020-21, which makes it a misdemeanor for Michigan residents to leave their homes for non-essential purposes.

Absent the issuance of a temporary restraining order, Esshaki will incur irreparable injury because his name will not appear on the August 4, 2020 primary election ballot and he and his supporters will be deprived of a meaningful opportunity to vote for him. The balance of equities tips in favor of Esshaki because Defendants' enforcement of the signature requirements and filing deadline prescribed by statute is not, in light of the current pandemic, narrowly tailored to meet any compelling or legitimate State interest. Moreover, the inclusion of Esshaki's name on the ballot will serve the public interest by allowing him and those who wish to vote for him to express their First Amendment rights.

Local Rule 7.1(a)(1) requires Plaintiff to ascertain whether this motion will be opposed. Because this motion was filed shortly after Esshaki filed his complaint, no attorney for Defendants has entered an appearance. Nevertheless, counsel for Plaintiff, Gregory J. Rohl has sought concurrence in the relief sought in this motion by attempting the following contact on or about 3/31/2020 between the hours of 10 AM and 11 AM with Defendant, Gretchen Whitmer at (517) 373-4000, Jocelyn Benson at (517) 335-2724 and Jonathan Brater at (517) 241-2747. With respect to Governor Whitmer, a message was left on her answering machine

seeking concurrence at her executive office without response to date. With respect to Secretary of State Benson, a message was left with Assistant Secretary of State, Heaster Wheeler without response to date. Contact was attempted with Brater and the mailbox was full with no messages being allowed. LOCAL RULE CERTIFICATION: I, Gregory Rohl, certify that this document complies with Local Rule 5.1(a), including: double-spaced; at least one-inch margins; consecutive page numbering; and type size of all text and footnotes that is no smaller than 14 point font. I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

Respectfully submitted,

X /s/ Gregory J. Rohl (P39185)
Attorney for Plaintiff

March 31, 2020

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**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

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STATEMENT OF ISSUES PRESENTED

1. Whether Plaintiff is likely to succeed on the merits.
 - a. Whether M.C.L. §§ 168.133 and 168.544(f) are unconstitutional as applied to Esshaki as a candidate for Congress in light of the unprecedented actions taken in response to the Covid-19 global pandemic, including Governor Whitmer's Executive Order making it a misdemeanor for people to leave their home unless they qualify as an essential worker.
 - b. Whether M.C.L. §§ 168.133 and 168.544(f) are unconstitutional as applied to Esshaki as a qualified registered voter in light of the unprecedented actions taken in response to the Covid-19 global pandemic, including Governor Whitmer's Executive Order making it a misdemeanor for people to leave their home unless they qualify as an essential worker.
2. Whether Esshaki is likely to suffer irreparable harm in the absence of this Court's issuance of a temporary restraining order prohibiting Defendants from enforcing M.C.L. §§ 168.133 and 168.544(f) or other alternative relief this Court deems necessary.
3. Whether the balance of equities tips in favor of Esshaki.
4. Whether a temporary restraining order is in the public interest.

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BRIEF IN SUPPORT

Plaintiff Eric Esshaki (“Esshaki”) respectfully submits this brief in support of his motion for temporary restraining order and/or preliminary injunction.

I. STATEMENT OF FACTS

Esshaki’s Campaign

Esshaki is a Republican candidate for Congress in Michigan’s 11th congressional district. On October 31, 2019, Esshaki filed his “statement of candidacy” with the Federal Election Commission (“FEC”). Esshaki has hired campaign staff and has been diligently campaigning since October 2019. In January 2020, Esshaki was recognized by the National Republican Congressional Committee’s “Young Guns” program for successfully organizing his campaign and demonstrating that he has the potential to win in the general election this November.

Pursuant to Michigan election law, to appear on the official primary ballot, Esshaki and other party-affiliated candidates are required to file with the Michigan Secretary of State’s office by April 21, 2020, a nominating petition with at least one-thousand signatures and up to two-thousand signatures of qualified and registered electors residing in the congressional district. M.C.L. §§ 168.133; 168.544(f).

Esshaki and his campaign team implemented a plan to collect the required number of signatures early on in his campaign. Esshaki, his campaign team, and several volunteers and supporters have been working diligently, and have already collected nearly seven hundred (700) valid signatures. Collecting signatures is a time-consuming process, which requires close contact with electors who reside in the congressional district.

Government response to Covid-19

On or around March 15, 2020, President Trump rolled out his “15 days to slow the spread” initiative (the “Initiative”). This Initiative asked people to practice social distancing and take other measures to prevent the spread of the novel SARS-CoV-2 virus (“Covid-19”). On March 29, President Trump extended this Initiative until at least April 30, 2020.

To comply with this Initiative and protect Michigan’s citizens and campaign staff, Esshaki and his campaign postponed some of its efforts to collect signatures.

On March 10, 2020, in response to the unprecedented Covid-19 pandemic, which has disrupted nearly every aspect of American life, Governor Whitmer issued Executive Order 2020-4, declaring a state of emergency across the state of Michigan. Approximately two weeks later, on March 23, 2020, Governor Whitmer issued Executive Order 2020-21 (the “Stay-home Order” or the “Order”) (Exhibit B). The Order went into effect On March 24, 2020 and remains in effect until at

least April 13, 2020. The gravity of the situation and the epidemiology experts strongly indicates that the Order will likely be renewed and extended for weeks beyond April 13, 2020 and more importantly, beyond the April 21 Deadline.

Whitmer's Stay-home Order is to be construed broadly. The Order makes it a misdemeanor for a person to leave his home or residence unless that person is a worker "necessary to sustain or protect life or to conduct minimum basic operations" ("Essential Worker"). (Exhibit B). The Stay-home Order further requires that Essential Workers who leave their homes must maintain social distancing standards by remaining at least six feet away from others. Neither candidates nor their campaign staff fall within the exception.

Michigan Secretary of State refuses to extend the filing deadline

On or around March 25, 2020, the Michigan Secretary of State informed Esshaki's campaign staff that the April 21, 2020 deadline to obtain and submit the required signatures to get Esshaki's name on the August 4, 2020 primary ballot would be strictly enforced. The Michigan Bureau of Elections ("BOE") posted the following notice on its website, which has remained on its website as of the filing of this Complaint:

"The Bureau of Elections has received inquiries regarding the ability of petition gatherers to collect and submit signature petitions, including candidates with an April 21 filing deadline. As of now, all statutory requirements remain in place. Evaluation of the applicability of statutory deadlines and signature requirements in light of COVID-19 is ongoing, and

we will share an update on any changes to requirements and procedures as soon as they are announced.”¹

Defendants’ enforcement of the Deadline is inconsistent with other actions the Secretary of State has taken during these unprecedented times. Indeed, the Secretary of State offices are closed and not expected to reopen until April 23, 2020—two days after the filing deadline. (Exhibit C). Additionally, the Secretary of State has indicated that it will conduct local elections in May 2020 through mail ballots, and not in person. Similarly, on March 25, 2020, recognizing the severity of this pandemic, Governor Whitmer issued Executive Order 2020-22, extending the canvassing deadline of the state’s primary election to April 24, 2020. And on March 29, 2020, Governor Whitmer issued Executive Order 2020-30, waiving many healthcare related regulations, including liability for health care workers.

These extraordinary measures taken by state officials at the highest level of government underscore the challenges we face as a state and nation during this pandemic. Under these unprecedented circumstances, there is absolutely no compelling or legitimate state interest to enforce the Filing Deadline at issue here.

The enforcement of the Filing Deadline effectively prevents Esshaki, through no fault of his own, from getting his name on the ballot and running for office in a meaningful way. Over the last several months, Esshaki has expended

¹ The announcement can be found here: <https://www.michigan.gov/sos/0,4670,7-127-1633---,00.html>.

countless hours and other resources campaigning. The enforcement of the Deadline severely injures Esshaki and his supporters, and continues to impose severe burdens on him because if it is enforced, he will not be able to run for office, or, alternatively, he will be required to spend large sums of money in an attempt to acquire signatures through a mail campaign when there is no evidence that such a strategy would yield even one additional signature.

Signature gathering is a time-consuming and laborious process. There are several Republican candidates in various congressional districts throughout the state who are challenging Democrat incumbents and who have not yet obtained the required number of signatures to have their names placed on the August primary ballot.

This is particularly true in two of Michigan's most contested congressional districts: the 8th and 11th. Both of these districts are currently held by Democrats who, with the advantage of being incumbents, were able to obtain the required number of signatures before the Stay-home Order went into effect. Defendants' enforcement of the deadline will leave voters like Esshaki forced to vote for the incumbent Democrat in his congressional district, or not vote at all.

II. LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure govern motions for temporary restraining orders ("TRO") and preliminary injunctions. The court

considers several factors to determine whether to issue a TRO. Those factors are “(1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay.” *Ne. Ohio Coal. for Homeless & Serv. Employees Int’l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006). The factors “are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Shelby Cty. Advocates for Valid Elections v. Hargett*, 348 F. Supp. 3d 764, 769 (W.D. Tenn. 2018) (internal citations omitted). Importantly, “in First Amendment cases, the crucial inquiry is usually whether the plaintiff has demonstrated a likelihood of success on the merits [since] the issues of the public interest and harm to the respective parties largely depend on the constitutionality of the state action.” *Graveline v. Johnson*, 336 F. Supp. 3d 801, 807 (E.D. Mich. 2018) (internal citations and quotes omitted).

III. ARGUMENT

Esshaki brings his motion for a temporary restraining order and/or a preliminary injunction pursuant to Federal Rule of Civil Procedure 65.1 Rule 65 provides that “the court may issue a temporary restraining order without written or oral notice to the adverse party.”

A. Esshaki is likely to succeed on the merits.

Pursuant to Michigan election law, to appear on the official primary ballot, Esshaki and other party-affiliated candidates are required to file with the Michigan Secretary of State's office by April 21, 2020, a nominating petition with at least one-thousand signatures and up to two-thousand signatures of qualified and registered electors residing in the congressional district. M.C.L. §§ 168.133; 168.544(f) (the "Ballot Access Statutes").

The enforcement of the Ballot Access Statutes during this national time of crisis and in light of Governor Whitmer's Stay-home Order is unconstitutional. Ballot access laws "place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 10 (1968). Indeed, "other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535 (1964). Thus, "when a state promulgates a regulation which imposes a 'severe' burden on individuals' rights, that regulation will only be upheld if it is 'narrowly drawn to advance a state interest of compelling importance.'" *Lawrence v. Blackwell*, 430 F.3d 368, 373 (6th Cir. 2005).

Here, Defendants insist on enforcing both the signature requirements and filing deadline prescribed by the Ballot Access Statutes. At the same time, however, Defendants have stripped candidates like Esshaki of the ability to meet these requirements because the Stay-home Order prohibits Esshaki from leaving his home for non-essential purposes like signature gathering. That Order further requires Esshaki to maintain a distance of six feet from voters in his district, which effectively eliminates any possibility of electors to provide their signatures without themselves having violated the Order.

Taken together, the Ballot Access Statutes and the Stay-home Order impose burdens so severe that they “function as an absolute bar” to Esshaki getting his name on the August 2020 primary ballot. *Graveline*, 336 F.Supp.3d at 809. There are no alternative means for Esshaki to appear on the ballot, and voters, including Esshaki and his supporters, have no alternative means to exercise their vote effectively if Esshaki is not permitted to have his name on the ballot.

The Defendants’ enforcement of these provisions serves only to “freeze the status quo,” and allow the incumbent, who is of the same political affiliation as Defendants, to run uncontested in the general election. *Id.* at 811. Defendants cannot reasonably justify these actions under the circumstances.

Because the combined application of the Ballot Access Statutes and the Stay-home Order severely burden Esshaki’s rights as both a candidate and a

registered voter, Defendants “must set forth precise interests of compelling importance and show that the regulations are necessary and narrowly tailored to advance those interests.” *Id.* at 813. This, Defendants cannot do. There is no compelling or legitimate state interest for Defendants’ insistence on enforcing the Ballot Access Statutes, and Defendants have within their means the ability to suspend or postpone the Filing Deadline and/or lower the signature requirements. This is especially true given that Defendants have already altered election laws as those laws pertain to the local May election the canvassing deadline of the state’s primary election.

B. Esshaki will suffer immediate and irreparable harm in the absence of relief.

An injury is irreparable if it is not fully compensable in monetary terms. *See, e.g., Uniroyal Goodrich Tire Co. v. Hudson*, 856 F. Supp. 348, 356 (E.D. Mich. 1994). It is well-settled that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). “Restrictions on access to the ballot impinge on the fundamental right to associate for the advancement of political beliefs and the fundamental right to vote.” *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976).

By preventing Esshaki access to the ballot, the Ballot Access Statutes in combination with the Stay-home Order “place burdens on two different, although overlapping, kinds of rights – the right of individuals to associate for the

advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.” *Williams v. Rhodes*, 393 U.S. 23, 30, 90 S.Ct. 5 (1968). Absent relief from this Court, or other extraordinary measures and great expense, Esshaki’s name will not be placed on the ballot. This will deprive Esshaki and his supporters of an effective choice and is burdensome, unreasonable, and is not narrowly tailored to meet any compelling or legitimate state interest.

C. The balance of equities tips decidedly in Esshaki’s favor.

“There are few greater burdens that can be placed on a political [candidate] than being denied access to the ballot.” *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 593 (6th Cir. 2006) (internal citations omitted).

Defendants’ enforcement of the Ballot Access Statutes in combination with the Stay-home Order, effectively robs Esshaki of the opportunity to gain access to the ballot. Given the magnitude of this burden, Defendants are left searching in vain to surmise a state interest of compelling enough importance to continue to enforce the Ballot Access Statutes in comparison to the burdens they impose on Esshaki. This is especially true in light of the extraordinary measures Defendants’ implemented to combat this global pandemic and their willingness to alter existing law to accommodate the local May election and the canvassing deadline.

D. An injunction is in the public interest.

Enforcement of the Ballot Access Statutes in combination with the Stay-at-home Order severely limits the choices available to voters. The Supreme Court has noted that “by limiting the choices available to voters, the State impairs the voters’ ability to express their political preferences.” *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S. Ct. 983, 990 (1979). Ensuring that Esshaki’s name is on the ballot expands the choices available to voters and is thus in the public interest.

When such rights are at stake, a State must establish that the enforcement of its Ballot Access laws are necessary to serve a compelling interest. *See id.* Here, Defendants are enforcing an unconstitutional law, which cannot serve as the basis for a compelling interest of the state. *See, e.g., ACLU v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) (“Neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law”)).

IV. CONCLUSION

WHEREFORE, Plaintiff Esshaki respectfully requests that this Court enter a temporary restraining order and/or a preliminary injunction against Defendants restraining them from enforcing the Ballot Access Statutes and such other equitable relief as this Court deems appropriate.

Respectfully submitted,

LAW OFFICES OF GREGORY J. ROHL, P.C.

By: /s/ Gregory J. Rohl (P39185)

Gregory J. Rohl
41850 W. Eleven Mile Road, Suite 110
Novi, MI 48375
(248) 380-9404
gregoryrohl@yahoo.com
Attorney for Plaintiff

Dated: March 31, 2020

CERTIFICATE OF SERVICE

THE UNDERSIGNED certifies that on the 31st day of March, 2020, the foregoing paper was electronically filed with the Clerk of the Court using the ECF system.

/s/ Amanda Perkins

Amanda Perkins
Legal Assistant

CERTIFICATE OF SERVICE

On March 31st, 2020, I e-filed the above document using the Court's ECF system which will send same-day e-notification to all counsel of record. I also emailed the filing to: Heather S. Meingast at meingasth@michigan.gov. The above document will also be served on the Defendants with the motion and brief as soon as practicable to:

Gov. Gretchen Whitmer
P.O. Box 15282
Lansing, MI 48901.

Jonathan Brater
Director
Bureau of Elections
430 W. Allegan
Lansing, Michigan 48933

Jocelyn Benson
Secretary of State of Michigan
430 W. Allegan
Lansing, Michigan 48933

/s/ Gregory J. Rohl (P39185)
Attorney for Plaintiff

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EXHIBIT A

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Defendants.

DECLARATION OF ERIC ESSHAKI

Pursuant to 28 U.S.C. 1746, I hereby declare as follows:

1. I am a Republican candidate for Congress in Michigan's 11th congressional district.
2. On October 31, 2019, I filed my "statement of candidacy" with the Federal Election Commission ("FEC").
3. I have hired campaign staff and have been diligently campaigning since October 2019, and in January 2020, I was recognized by the National Republican Congressional Committee for successfully organizing my

campaign and demonstrating that I have the potential to win in the general election this November.

4. Pursuant to Michigan election law, to appear on the official primary ballot, I and other party-affiliated candidates are required to file with the Michigan Secretary of State's office by April 21, 2020, a nominating petition with at least one-thousand signatures and up to two-thousand signatures of qualified and registered electors residing in the congressional district. M.C.L. §§ 168.133; 168.544(f).
5. My campaign team and I implemented a plan to collect the required number of signatures early on in my campaign.
6. My campaign team and I, along with several volunteers and supporters have been working diligently, and we have already collected nearly seven hundred (700) valid signatures.
7. Collecting signatures is a time-consuming process, which requires close contact with electors who reside in the congressional district.
8. On or around March 15, 2020, President Trump rolled out his "15 days to slow the spread" initiative (the "Initiative"). This Initiative, which was recently extended to April 30, 2020, asks people to practice social distancing and take other measures to prevent the spread of the novel SARS-CoV-2 virus ("Covid-19").

9. To comply with this Initiative and protect Michigan's citizens, my campaign team and I postponed some of our efforts to collect signatures.
10. On March 23, 2020, in response to the unprecedented Covid-19 pandemic, which has disrupted nearly every aspect of American life, Governor Whitmer issued Executive Order 2020-21 (the "Stay-home Order" or the "Order"). The Order went into effect On March 24, 2020 and remains in effect until at least April 13, 2020.
11. Based on information and belief, the Order will likely be renewed and extended for weeks beyond April 13, 2020 and more importantly, beyond the April 21 Deadline.
12. Whitmer's Stay-home Order is to be construed broadly. The Order makes it a misdemeanor for a person to leave his home or residence unless that person is a worker "necessary to sustain or protect life or to conduct minimum basic operations" ("Essential Worker").
13. The Stay-home Order further requires that Essential Workers who leave their homes must maintain social distancing standards by remaining at least six feet away from others.
14. The Stay-home Order does not create an exception for candidates or campaign staff.

15. On or around March 25, 2020, staff from the Michigan Secretary of State informed my campaign staff that the April 21, 2020 deadline to obtain and submit the required signatures would be strictly enforced.

16. The Michigan Bureau of Elections (“BOE”) posted the following notice on its website, which has remained on its website as of the filing of this Complaint:

“The Bureau of Elections has received inquiries regarding the ability of petition gatherers to collect and submit signature petitions, including candidates with an April 21 filing deadline. As of now, all statutory requirements remain in place. Evaluation of the applicability of statutory deadlines and signature requirements in light of COVID-19 is ongoing, and we will share an update on any changes to requirements and procedures as soon as they are announced.”

17. The Defendants’ enforcement of the deadline is inconsistent with other actions they have taken in these unprecedented times pertaining to our election laws. Indeed, the Secretary of State offices are closed and not expected to reopen until April 23, 2020—two days after the filing deadline. Additionally, the Secretary of State has indicated that it will conduct local elections in May 2020 through mail ballots, and not in person. Further, Governor Whitmore postponed the canvassing elections until April 24, 2020.

18. These extraordinary measures underscore the challenges we face as a state and nation during this pandemic.

19. Governor Whitmer's Stay-home Order has made it impossible for candidates like me to obtain the required number of elector signatures by April 21, 2020, the deadline imposed under M.C.L. section 168.133.
20. The enforcement of that Deadline under these unprecedented circumstances, considering the Stay-home Order, is unconstitutional because it requires me to obtain signatures by April 21, 2020, and simultaneously strips me of the ability to meet those requirements.
21. This effectively prevents me, through no fault of my own, from getting my name on the ballot and running for office in a meaningful way.
22. Over the last several months, I have expended countless hours and other resources campaigning. The enforcement of the Deadline severely injures me and, and continues to impose severe burdens on me because if it is enforced, I will not be able to run for office and will have lost a substantial amount of time and money, or, alternatively, my campaign and I will be required to spend large sums of money in an attempt to acquire signatures through a mail campaign when there is no evidence that such a strategy would yield even one additional signature.
23. My supporters and I will be further injured and will suffer irreparable harm to our voting, speech, and associational rights because my name

will not appear on the ballot and we will not be able to vote for the candidate of our choice.

24. Based on information and belief, there are several Republican candidates in various congressional districts throughout the state who are challenging Democrat incumbents and who have not yet obtained the required number of signatures to have their names placed on the August primary ballot.
25. This is particularly true in two of Michigan's most contested congressional districts: the 8th and 11th. Both of these districts are currently held by Democrats who, with the advantage of being incumbents, are believed to have been able to obtain the required number of signatures before the Order went into effect.
26. I declare under penalty of perjury, that the foregoing to true and correct.

Executed on this 31st day of March 2020 by:

X. /s/ *Eric Esshaki*

ERIC ESSHAKI

EXHIBIT B

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

**Executive Order 2020-21 (COVID-19)****EXECUTIVE ORDER****No. 2020-21****Temporary requirement to suspend activities that are not necessary to sustain or protect life**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. Older adults and those with chronic health conditions are at particular risk, and there is an increased risk of rapid spread of COVID-19 among persons in close proximity to one another. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the

Governor Act of 1945, provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible.

This order takes effect on March 24, 2020 at 12:01 am, and continues through April 13, 2020 at 11:59 pm.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

- a. For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9.
- b. For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:

- a. Consistent with sections 8 and 9, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm. Businesses and operations need not designate:

1. Workers in health care and public health.

2. Workers who perform necessary government activities, as described in section 6.

3. Workers and volunteers described in section 9(d).

- b. In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.

- c. Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons. Those practices and measures include, but are not limited to:
1. Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's or operation's critical infrastructure functions.
 2. Promoting remote work to the fullest extent possible.
 3. Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible, including for customers who are standing in line.
 4. Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
 5. Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person who is known or suspected to have COVID-19.
 6. Any other social distancing practices and mitigation measures recommended by the Centers for Disease Control.
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to supporting those businesses and operations that are necessary to sustain or protect life, are suspended.
- a. For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement,

public safety, and first responders.

- b. Such activities also include, but are not limited to, public transit, trash pick-up and disposal, activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor recreation.
- c. For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b). Workers performing such activities need not be designated.
- d. Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 5(c).

7. Exceptions.

a. Individuals may leave their home or place of residence, and travel as necessary:

- 1. To engage in outdoor activity, including walking, hiking, running, cycling, or any other recreational activity consistent with remaining at least six feet from people from outside the individual's household.
- 2. To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) may leave their home for work without a designation.)
- 3. To conduct minimum basic operations, as described in section 4(b), after being designated to perform such work by their employers.
- 4. To perform necessary government activities, as described in section 6.

5. To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).
6. To obtain necessary services or supplies for themselves, their family or household members, and their vehicles. *Individuals must secure such services or supplies via delivery to the maximum extent possible.* As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences.
7. To care for a family member or a family member's pet in another household.
8. To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
9. To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
10. To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court. 
11. To work or volunteer for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

b. Individuals may also travel:

1. To return to a home or place of residence from outside this state.
2. To leave this state for a home or residence elsewhere.
3. To travel between two residences in this state.
4. As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). Such workers include some workers in each of the following sectors:

- a. Health care and public health.
- b. Law enforcement, public safety, and first responders.
- c. Food and agriculture.
- d. Energy.
- e. Water and wastewater.
- f. Transportation and logistics.
- g. Public works.

- h. Communications and information technology, including news media.
- i. Other community-based government operations and essential functions.
- j. Critical manufacturing.
- k. Hazardous materials.
- l. Financial services.
- m. Chemical supply chains and safety.
- n. Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- a. Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers as defined in this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of critical infrastructure workers.

- b. Workers at designated suppliers and distribution centers, as described below.

- 1. A business or operation that employs critical infrastructure workers may designate suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the work of its critical infrastructure workers.

2. Such suppliers, distribution centers, or service providers may designate workers as critical infrastructure workers *only* to the extent those workers are necessary to enable, support, or facilitate the work of the original operation's or business's critical infrastructure workers.
3. Designated suppliers, distribution centers, and service providers may in turn designate additional suppliers, distribution centers, and service providers whose continued operation is necessary to enable, support, or facilitate the work of their critical infrastructure workers.
4. Such additional suppliers, distribution centers, and service providers may designate workers as critical infrastructure workers *only* to the extent that those workers are necessary to enable, support, or facilitate the work of the critical infrastructure workers at the supplier, distribution center, or service provider that has designated them.
5. Businesses, operations, suppliers, distribution centers, and service providers must make all designations in writing to the entities they are designating, whether by electronic message, public website, or other appropriate means. Such designations may be made orally until March 31, 2020 at 11:59 pm.
6. Businesses, operations, suppliers, distribution centers, and service providers that abuse their designation authority shall be subject to sanctions to the fullest extent of the law.

QC. Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

- d. Workers and volunteers for businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

- e. Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
10. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 14.
11. Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority.
12. This order takes effect on March 24, 2020 at 12:01 am, and continues through April 13, 2020 at 11:59 pm.
13. The governor will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, she will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
- Q 14. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor. X

Given under my hand and the Great Seal of the State of Michigan.

RELATED CONTENT

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STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

Frequently Asked Questions

Regarding Secretary of State services during the coronavirus outbreak

To slow the spread of the coronavirus, all Secretary of State offices are temporarily closed as of Tuesday, March 24, until further notice. In coordination with Governor Whitmer's administration, we will continue to rely on the guidance of public health officials to determine when we can reopen Secretary of State offices. Many transactions can be completed without a branch visit by going online. Late fees will be waived during this period.

Below are answers to Frequently Asked Questions regarding access to Secretary of State services during the coronavirus outbreak.

- **What services are available during the temporary closure of Secretary of State offices?**
Customers can still complete certain transactions online at Michigan.gov/ExpressSOS, although processing may be delayed. All transactions that cannot ordinarily be completed online will be temporarily suspended.
- **When will Secretary of State offices reopen?**
All Secretary of State offices will be closed through the duration of Governor Whitmer's [Stay Home, Stay Safe Executive Order](#). Customers should anticipate branch offices will not be reopened prior to April 23. Secretary Benson and her administration will continue to work with Governor Whitmer's administration to monitor public health across the state in order to determine when we can reopen branch offices.
- **How can I contact the Michigan Department of State during the office closures?**
Customers may contact the Michigan Department of State by calling 888-SOS-MICH or visiting Michigan.gov/ContactSOS. Our department cautions customers that we may not be able to respond to all inquiries due to the high volume of communications and limitations placed on staffing during this time.
- **How can I complete my transaction while offices are closed?**
Many transactions can be completed without a branch visit by going online to Michigan.gov/ExpressSOS. Processing of all transactions that cannot ordinarily be completed online will be temporarily suspended.

- **Will appointments still be honored?**

All appointments previously scheduled to take place during the temporary closure have been canceled. Customers whose appointments were impacted by the cancellation were sent an email with instructions for rescheduling.

Customers who did not receive this email and have a transaction that must be completed in person are advised to reschedule their appointment by visiting Michigan.gov/SOSAppointments or calling 888-SOS-MICH. Please note, **future appointments scheduled are subject to cancellation** as we continue to monitor public health.

- **Can I still complete my transaction by mail during the temporary closure?**

No, transactions cannot be completed by mail during the temporary Secretary of State office closure. **Please do not attempt to complete your transaction by mail during this period.** Your transaction will not be processed while our offices are closed and may be delayed once offices are reopened.

Transactions mailed before the closure will be processed when mail operations resume.

- **Will expiration dates be extended for driver's licenses, state identification cards and vehicle registrations?**

Our department continues to work with Governor Whitmer's administration to explore the option for extending expiration dates for state identification, vehicle registrations and other vital documents obtained through the Michigan Department of State.

While we are bound by state law and cannot currently provide extensions, **our department has waived late fees during this time.** We have notified the Michigan State Police that our offices are closed and asked them to notify local law enforcement agencies across the state **and exercise discretion** as this may impact drivers' ability to update their licenses and vehicle registration.

- **Will late fees be waived during the Secretary of State office closures?**

Yes, our department has waived late fees during this time, going back to March 13.

- **Has the Michigan Department of State coordinated with law enforcement regarding office closures?**

Yes, we have notified the Michigan State Police that our offices are closed and asked them to notify local law enforcement agencies across the state **and exercise discretion** as this may impact drivers' ability to update their licenses and vehicle registration.

- **My license and/or registration is now expired and I was unable to renew due to the branch office closure. What happens if I am pulled over for a traffic violation?**

This is up to the discretion of law enforcement. As the Michigan Department of State is not a law enforcement agency, we cannot speak for law enforcement on this issue, however, we have notified the Michigan State Police that our offices are closed and asked them to notify local law enforcement agencies across the state **and exercise discretion** as this may impact drivers' ability to update their licenses and vehicle registration.

If you have significant concerns with this, we recommend contacting your local law enforcement agency at their non-emergency number for further guidance.

- **My job requires that I have an up-to-date license/state-issued identification card/vehicle registration/etc. How can I renew these items if I am unable to do so online, but need to do so to conduct my work?**

During the temporary closure, the Michigan Department of State is only permitted to conduct emergency transactions for those who support services **necessary for sustaining life** during the coronavirus outbreak.

If you or your employer believes your work falls into this category, we ask that you contact your industry's professional association and ask them to contact us with your needs and any other such needs from your sector. Our department will review and process only emergency transactions from these professional industry associations that clearly articulate their employee(s) need for our credential to work in a critical infrastructure sector to sustain life during the Stay Home order.

- **How can I renew my commercial driver's license (CDL) during temporary office closures?**

During the temporary closure, CDL renewals will be exclusively limited to those who transport goods and services **necessary for sustaining life** during the coronavirus outbreak.

If you or your employer believes your work falls into this category, we ask that you contact your industry's professional association and ask them to contact us with your needs and any other such needs from your sector. Our department will review and process only emergency transactions from these professional industry associations that clearly articulate their employee(s) need for our credential to work in a critical infrastructure sector to sustain life during the Stay Home order.

Additionally, we have notified the Michigan State Police that our offices are closed and asked them to notify local law enforcement agencies across the state **and exercise discretion** as this may impact drivers' ability to update their licenses and vehicle registration. Our department has also waived late fees during this time.

- **How will dealers complete business during the temporary closure?**

During the temporary closure, dealer work will be exclusively limited to transactions necessary for supporting critical infrastructure or health and safety during the coronavirus outbreak. Those who are still unclear as to how to complete dealer transactions during the temporary closure should contact Michigan.gov/ContactSOS and select "Dealers, Mechanics & Repair Facilities" from the list of topics.

- **Will requests for driver or vehicle records be processed during the temporary office closure?**

No, driver and vehicle record requests will not be processed during the temporary office closure.

- **How will disability parking placard applications and renewal requests be processed during the temporary office closure?**

We have temporarily suspended processing for disability parking placard applications and renewals due to our inability to receive and/or send mail while our offices are closed.

- **How will the temporary closure impact services for out-of-state residents?**

We have temporarily suspended processing of out-of-state resident transactions through our Special Services Branch office due to our inability to receive and/or send mail while our offices are closed. Many transactions can still be completed online, and we advise those who are eligible to complete their business online to do so.

- **How will the temporary closure impact reinstatement hearings and driver assessments?**

All driver assessment and license reinstatement hearings through the Office of Hearings and Administrative Oversight will be postponed until further notice during the temporary office closure.

Those who receive a Notice to Appear by mail instructing them to appear for a hearing during the effective period of the Stay Home Executive Order can disregard the request and should not appear for their hearing or assessment on the listed date. Once our department is able to continue conducting in-person hearings and assessments, those who received a notice to appear during the temporary closure will be sent a new notice with information regarding their rescheduled hearing.

Drivers who may be impacted by changes to hearing and driver assessment schedules during this time are advised to **routinely check the [Michigan Department of State website](https://Michigan.gov) for updates** on when hearings will be set to resume.

Additionally, certain services for driver license appeal hearings can still be accessed online through the [Drive Appeal Integrated System \(DAIS\)](#).

- **How will the temporary closure impact the REAL ID compliance deadline?**
During the temporary office closure, the Michigan Department of State will not be able to process requests for standard licenses to be made REAL ID compliant. However, the U.S. Department of Homeland Security has extended the deadline for REAL ID compliance by one year, until October 1, 2021 to protect public health by reducing the need for in-person visits to motor vehicle agencies.
- **How will the inability to renew a driver's license in person impact air travel and Transportation Security Administration (TSA) requirements?**
The federal Transportation Security Administration (TSA) has issued guidelines for individuals who plan to travel by air whose state-issued identification expired on or after March 1, 2020. Please visit [TSA.gov/Coronavirus](https://www.tsa.gov/coronavirus) for more information.
- **How will the inability to renew a driver's license or temporary license plates in person impact interstate travel?**
Interstate travelers questioned by non-Michigan law enforcement should explain that our offices are closed and/or show them our notification of this at [Michigan.gov/SOS](https://www.michigan.gov/SOS).
- **Will local elections still be held during the coronavirus outbreak?**
Many jurisdictions have decided to postpone their May election to August. For those that did not or could not, Secretary Benson and local election clerks across the state are planning to carry out the May election by mailing all registered voters in the election districts an application to vote by mail (absentee). This is the optimal and safest way to participate in our democracy at this time.

The application will come with a postage-paid return envelope. If the voter applies for a vote by mail/absent voter ballot, that will also arrive with a postage-paid return envelope. More information will be made available on the [Michigan.gov/SOS](https://www.michigan.gov/SOS) website as these decisions are made.