

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
INTERNATIONAL REALTY, INC.,
EXECUTIVE PROPERTY
MAINTENANCE, INC., INTRACO
CORPORATION, INC., CASITE
INTRACO, LLC, BAHASH &
COMPANY, LLC, d/b/a HILLSDALE
JEWELERS, WILLIAM A. SHORTT,
D.D.S., & THERESE F. SHORTT,
D.D.S., d/b/a SHORTT DENTAL,
and MIDWEST CARWASH
ASSOCIATION,

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

Defendants.

No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

Index of Exhibits

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Exhibit A

STATE OF MICHIGAN
COURT OF CLAIMS

STEVE MARTINKO, et al,

Plaintiffs,

OPINION AND ORDER REGARDING
PLAINTIFFS' APRIL 23, 2020 MOTION
FOR A PRELIMINARY INJUNCTION

v

Case No. 20-00062-MM

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan, DANIEL EICHINGER, in his
official capacity as Director of the Michigan
Department of Natural Resources, and
DANA NESSEL, in her official capacity as
the Attorney General for the State of
Michigan,

Hon. Christopher M. Murray

Defendants.

_____ /

I. INTRODUCTION

This matter was filed by five Michigan residents who claim that three of Governor Whitmer's executive orders, Executive Orders 2020-21 and 2020-42,¹ and now Executive Order 2020-59, infringe on their constitutional rights to procedural due process and substantive due

¹ Plaintiffs recognize that EO 2020-21 was rescinded by EO 2020-42, and they claim that EO 2020-42 "extended the timeline originally set by [EO] 2020-21 and grossly expands its restrictions on businesses' and individuals' fundamental rights." After the verified complaint was filed, EO 2020-42 was rescinded by EO 2020-59, which (among other things) eliminated the prohibitions on traveling intrastate to another residence, from not using motorized boats on the waterways, and to an extent allows the re-opening of some businesses and state parks. Although plaintiffs challenge the same restrictions set forth in EO 2020-42, the Court will for clarity sake refer to the restrictions within the current executive order, EO 2020-59, unless the timing period is relevant to any issue.

process. Specifically, plaintiffs’ verified complaint alleges that the “mandatory quarantine” imposed by EO 2020-59 violates their right to both procedural due process (Count I) and substantive due process (Count II), and that the intrastate travel restrictions contained in EO 2020-42 also violate their rights to procedural due process (Count III) and substantive due process (Count IV). They also allege in Count V of their verified complaint that the Emergency Management Act, MCL 30.401 *et seq.*, is an unconstitutional delegation of legislative power to the Governor. Plaintiffs have requested the Court issue a preliminary injunction—but not a permanent one—restraining these defendants from continuing to implement the provisions of EO 2020-59.² Once restrained, plaintiffs seek a declaration that the challenged restrictions and the EMA are invalid.³

II. JURISDICTION

Defendants first argue that this Court lacks subject matter jurisdiction because plaintiffs seek only injunctive relief based upon federal constitutional claims, which deprives the Court of jurisdiction to decide the matter. Defendants rely upon MCL 600.6440, which provides:

No claimant may be permitted to file claim in said court against the state nor any department, commission, board, institution, arm or agency thereof who has an adequate remedy upon his claim in the federal courts, but it is not necessary in the complaint filed to allege that claimant has no such adequate remedy, but that fact may be put in issue by the answer or motion filed by the state or the department, commission, board, institution, arm or agency thereof.

² On April 23, 2020, the Court denied plaintiffs’ motion for an *ex parte* temporary restraining order on the ground that plaintiffs had not shown the threat of immediate and irreparable harm of physical injury or loss of property.

³ The Court appreciates the speed at which counsel submitted briefs, and for the high caliber of the briefs submitted.

Because a federal court can exercise jurisdiction against state officers in their official capacity when seeking only prospective injunctive relief, defendants argue, MCL 600.6440 applies and the Court lacks jurisdiction to decide the matter.

The legal principles put forward by defendants are sound, but they do not apply to plaintiffs' case. First, the statute refers to claims filed in the Court of Claims against the state, its departments, agencies, etc., and does not pertain to claims brought in this Court against individuals, as plaintiffs have done here. Thus, it is irrelevant whether claims against state officers in their official capacity brought in federal court might essentially be considered claims against the state. Second, with respect to defendants' argument, plaintiffs seek declaratory rulings on each of their three challenges, and one of those challenges—the claim that the EMA violates the separation of powers doctrine—is based upon state law. So too is their challenge to the intrastate ban on travel to vacation rentals. Additionally, in their complaint plaintiffs seek “other and further relief as the Court deems appropriate,” which whatever that could end up being, it would go beyond the declaratory and limited injunctive relief requested in the complaint, and could include damages, even if only nominal. Because plaintiffs' claims and forms of relief do not meet all the requirements of MCL 600.6440, this Court does not lack subject matter jurisdiction.

III. MOOTNESS

Defendants also argue that plaintiffs' case is moot because they only challenge EO 2020-21 and EO 2020-42, which have been rescinded, and EO 2020-59 is the only existing executive order containing these restrictions. True enough, but as defendants seem to recognize, it was *after* plaintiffs' filing last week that the Governor issued EO 2020-59, and plaintiffs have not had time to seek to amend their complaint, and several of plaintiffs' challenges to the prior EOs—the stay-at-home provision and the ban on intrastate travel to vacation rentals—remain within EO 2020-

59. Those two challenges are therefore not moot, as the Court can still render complete relief against those provisions. See *CD Barnes Assoc, Inc v Star Haven, LLC*, 300 Mich App 389, 406; 834 NW2d 878 (2013). The remainder of the challenges to EOs 2020-21 and 2020-42, as well as to the Department of Natural Resources rule⁴, have been removed by EO 2020-59, and are now moot.

The Court therefore concludes that the only remaining ripe challenges to the executive orders are (1) the stay-at-home provision, (2) the prohibition of traveling to a third-party vacation rental, and (3) the limited public access to certain public land. And, of course, plaintiffs’ challenge to the constitutionality of the EMA remains a live controversy.

IV. STANDARDS FOR A PRELIMINARY INJUNCTION

“The objective of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties’ rights.” *Alliance for the Mentally Ill of Mich v Dep’t of Community Health*, 231 Mich App 647, 655–656; 588 NW2d 133 (1998). The status quo has been defined as “ ‘the last actual, peaceable, noncontested status which preceded the pending controversy.’ ” *Buck v Thomas Cooley Law School*, 272 Mich App 93, 98 n 4; 725 NW2d 485 (2006), quoting *Psychological Services of Bloomfield, Inc v Blue Cross & Blue Shield of Michigan*, 144 Mich App 182, 185; 375 NW2d 382 (1985). In *Mich AFSCME Council 25 v Woodhaven–Brownstown Sch*

⁴ Specifically, plaintiffs challenge a Department of Natural Resources rule, implemented in furtherance of EO 2020-42, that “restricts the use of powerboats on public waterways yet allows sailboats and kayaks.” Plaintiffs likewise question a DNR rule, also implemented in furtherance of EO 2020-42, that “further restricted access to public lands, parks and trails to residents of ‘local communities.’ ” Much to the pleasure of outdoor enthusiasts, EO 2020-59 seems to have eliminated the restrictions on use of powerboats and use of state parks during certain hours of the day.

Dist, 293 Mich App 143, 146; 809 NW2d 444 (2011), the Court of Appeals instructed that, “[w]hen deciding whether to grant an injunction under traditional equitable principles,

a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued.^[5]

Not surprisingly, the Court will first turn to the initial consideration, i.e., whether plaintiffs have shown a likelihood of prevailing on the merits. Though plaintiffs do not have to prove they *will* succeed on the merits, they do have to prove that they have a *substantial likelihood* of success on the merits. *Int’l Union v Michigan*, 211 Mich App 20, 25; 535 NW2d 210 (1995).

V. THE MERITS

A. BACKGROUND AND FACTS

Michigan residents, like all other Americans, cherish their liberty. We always have, though the liberties and freedoms we seek to protect have changed over time. At and before our founding, our forefathers fought for the inalienable right to own property, freely engage in commerce, represent ourselves through our own elected representatives, worship where and how we wanted, etc. The Declaration of Independence’s list of grievances against the King of England prove as much, as do several of the amendments to the United States Constitution, and in particular, the Fifth and Fourteenth Amendments.

⁵Quoting in part *Alliance for the Mentally Ill*, 231 Mich App at 655–656.

Today we have all the freedoms and liberties that the founders fought for, and our branches of government exist in large part to ensure that those rights remain intact. See Declaration, ¶ 2.⁶ The liberty and freedoms at stake in this matter do not in large part involve those rights and liberties the founders fought so hard for; instead, plaintiffs focus on the right to freely move about one's community and state, to do commerce when one pleases, and to travel about the state for vacation purposes. It is the restrictions to those activities within EO 2020-59 that plaintiffs challenge here.

As any reader of this opinion knows, the challenged executive orders were issued to address the public health crisis occasioned by the world-wide spread of the novel coronavirus, which hit our great state in early March. Specifically, on March 10, 2020, was when the first two cases of the virus were diagnosed in our state⁷, while the first death resulting from the virus occurred on March 18, 2020.⁸ As a result of the quick spread of the virus within our state borders, and to meet the myriad challenges that immediately arose Governor Whitmer issued numerous executive orders, including EO 2020-21, EO 2020-42 and EO 2020-59. The main element of the executive

⁶ The Court realizes that the Declaration is a political document, not a legal one, but it is good evidence of the founding political theories and objectives. See *Troxel v Granville*, 530 US 57, 91; 120 S Ct 2054; 147 L Ed 2d 49 (2000)(SCALIA, J., dissenting)(“The Declaration of Independence ... is not a legal prescription conferring powers upon the courts[.]”); *Derden v McNeel*, 978 F2d 1453, 1456 n4 (CA 5, 1992)(“[G]eneral statements about inalienable rights ... tell us little about the prerogatives of an individual in concrete factual situations.”); *Coffey v United States*, 939 F Supp 185, 191 (EDNY, 1996)(“While the Declaration of Independence states that all men are endowed certain unalienable rights including ‘Life, Liberty and the pursuit of Happiness,’ it does not grant rights that may be pursued through the judicial system.” (citation omitted)).

⁷ Executive Order No. 2020-21; Detroit Free Press, *Coronavirus Timeline* <https://www.freep.com/story/news/local/michigan/2020/03/18/coronavirus-timeline-first-case-michigan-first-death/5069676002/> (accessed April 28, 2020). This article contains a compilation of information from the state Department of Health and Human Services.

⁸ Detroit Free Press, *First Michigan Death Due to Coronavirus is Southgate Man in his 50s* <https://www.freep.com/story/news/local/michigan/wayne/2020/03/18/coronavirus-deaths-michigan/5054788002/> (accessed April 28, 2020).

orders is the requirement that most residents remain in their home unless engaging in certain essential activities, or certain limited outdoor activities. The result of the order, from an economic standpoint, was thousands of Michigan residents being unable to work unless they could do so remotely, the closing of all restaurants, bars, and other small and large businesses.⁹

At the time the first stay-at-home order was issued on March 23, 2020—only 13 days since the first confirmed case in this state—there were already 1,328 confirmed cases and 15 deaths.¹⁰ Today, just over one month later, Michigan has over 36,000 confirmed cases of the virus and over 3,000 related deaths.

B. THE MERITS

In their complaint, plaintiffs do not challenge the Governor's authority to issue the executive orders on this subject-matter. Instead, plaintiffs challenge the scope of the order through separate claims based on procedural due process and substantive due process. Although these claims entail different considerations and standards, see *In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App 562, 573-574; 892 NW2d 388 (2016), the Court will address the claims together since, under these circumstances, each protected right is subject to the same overriding principle. In other words, the constitutional right asserted does not make a difference when considering this issue, because both are subject to a balancing with the state's interest to protect the public health. This holds true because, and perhaps contrary to common knowledge, most, if not all, individual constitutional rights are not absolute and are subject to a balancing with the

⁹ Michigan was not alone in this regard. The Court takes notice that the worldwide economy has come to a virtual standstill as a result of state and national actions taken to control the virus.

¹⁰ Detroit Free Press, *Michigan Coronavirus Cases, Tracking the Pandemic*, <https://www.freep.com/in-depth/news/nation/coronavirus/2020/04/11/michigan-coronavirus-cases-tracking-covid-19-pandemic/5121186002/> (accessed April 28, 2020).

countervailing state interest. See *New Rider v Board of Ed of Independent School Dist No 1*, 480 F2d 693, 696 (CA 10, 1973) (“Constitutional rights, including First Amendment rights, are not absolutes.”) and *In re Abbott*, 954 F3d 772, 784 (CA 5, 2020) (Recognizing, when addressing Texas emergency rules during the coronavirus pandemic, that individual rights secured by the Constitution could be reasonably restricted during a health crisis).

As can be seen, then, there are two competing constitutional principles at play. First, as plaintiffs note in their verified complaint, in *Ex Parte Milligan*, 71 US 2, 120-121; 18 L Ed 281 (1866), the United States Supreme Court recognized—in a case that arose during the height of the Civil War—that our rights enshrined in the Constitution do not become less important or enforceable because of exigent circumstances:

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

Though our individual constitutional rights cannot be suspended or eliminated, they are, as noted, subject to reasonable regulation by the state. And, when it comes to the power of the state to act in the best interests of the public health when faced with a serious contagious disease, which is the state interest acted upon by the Governor,

“[w]e are plowing no virgin field in considering the questions here involved. Numerous decisions, both federal and state, have considered the questions now before us. They are not all in accord and in some instances are not reconcilable. There is, however, a very marked trend in them in one direction, that which upholds the right of the state, in the exercise of its police power and in the interest of the public health, to enact such laws, such rules and regulations, as will prevent the spread of this dread disease.” [*People ex rel Hill v Lansing Bd of Ed*, 224 Mich

388, 390; 195 NW 95 (1923). See, also, *Jacobsen v Commonwealth of Mass*, 197 US 11, 25-26; 25 S Ct 358; 49 L Ed 643 (1905) (upholding state’s power to require vaccination over plaintiff’s Fourteenth Amendment liberty interest to not be told what to do), and *In re Abbott*, 954 F3d at 784-785.]

As noted earlier, plaintiffs’ due process claims set out in Counts I and III are challenges to the quarantine¹¹ requirement and (as amended by the changes contained in EO 2020-59), the prohibition on intrastate travel to a vacation rental. Plaintiffs’ specific assertion is that, although the state may have the ability to quarantine those who are infected with the virus, the state cannot quarantine everyone without some showing that the individual(s) are infected. Because EO 2020-59 does so, the executive order violates their right to procedural due process. The same holds true, they argue, for the prohibition of intrastate travel to a third parties’ vacation home.¹²

In addressing this argument, it is imperative to recognize the limited question the Court is empowered to decide. Except in limited circumstances mentioned later, it is not for the courts to pass on the wisdom of state action that is granted to it by the general police power or by statute. Certainly the state cannot simply ignore the individual rights enshrined in our federal (or state) constitution in the name of a public health threat. Judicial review of state actions is therefore (and quite obviously) appropriate and necessary. But the *depth* of that review is limited, and does not include delving deep into the pros and cons of what is the better plan of action between two reasonable alternatives. This point was well-made by three concurring Justices in *Rock v Carney*,

¹¹ Plaintiffs characterize the “stay-at-home” provision as a quarantine, which defendants quarrel with, but quarantine is defined as “a restraint upon the activities or communications of persons ... designed to prevent the spread of disease or pests.” Merriam-Webster’s Collegiate Dictionary (11th Ed).

¹² Plaintiffs have not asserted that they own a second home in Michigan or that they had rented a third parties’ vacation home for use during a time in which any executive order remained in place.

216 Mich 280, 283; 185 NW 798 (1921), a case involving the state's response to the spread of venereal diseases during World War I:

The questions involved in this litigation are of supreme importance, not only to the individuals composing this commonwealth, but also to the numerous boards of health and to the state itself. We approach their consideration with a due regard of their importance. Neither a desire to sustain the state, nor a supersensitiveness prompted by the delicacy of the examination here involved, should in any way enter into or control our decision. Policies adopted by the legislative and executive branches of the state government are not submitted to this branch for approval as to their wisdom. They stand or fall in this court because valid or invalid under the law, and their wisdom or want of wisdom in no way rests with us. If valid, they must be upheld by this court; if invalid, they must be so declared by this court. If these defendants have transcended their power, they must be held liable, and they may not be excused from liability by the fact that their motives were of the highest. If they had not transcended their power, they are not liable, and supersensitiveness or preconceived notions of proprieties, no matter of how long standing, do not render them liable. The case must be determined by the application of cold rules of law.

Thus, whether and to what extent this Court agrees with policy implemented in the executive orders is of no moment or consideration. Instead, the Court must dutifully apply the “cold rules of law” to determine the validity of the challenged provisions of the executive order.

Binding authority from the United States Supreme Court and the Michigan Supreme Court compels this Court to conclude that plaintiffs do not have a substantial likelihood of success on the merits. This is not because the rights asserted by plaintiffs are not fundamental—being forced (with some important exceptions) by the state to remain in one's home, in turn causing many residents to be unable to work, visit elderly relatives, and to generally move about the state. But those liberty interests are, and always have been, subject to society's interests—society being our fellow residents. They—our fellow residents—have an interest to remain unharmed by a highly communicable and deadly virus, and since the state entered the Union in 1837, it has had the broad

power to act for the public health of the entire state when faced with a public crisis. As the *Jacobsen* Court so aptly held:

The defendant insists that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. *But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.* This court has more than once recognized it as a fundamental principle that ‘persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned.’ In *Crowley v Christensen*, 137 US 86, 89; 34 L Ed 620, 621; 11 S Ct 13 (we said: ‘The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law.’ [*Jacobson*, 197 US at 26; citations omitted in part; emphasis supplied.]

The role courts play under *Jacobson* and *Lansing Bd of Ed* is not to “second-guess the state’s policy choices in crafting emergency public health measures,” *In re Abbott*, 954 F3d at 784, but is instead to determine whether the state regulation has a “real or substantial relation to the public health crisis and are not ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’ ” *Id.*, quoting in part *Jacobson*, 197 US at 31. Part of this review includes

looking to whether any exceptions apply for emergent situations, the duration of any rule, and whether the measures are pretextual. *Id.* at 785.¹³

Turning to plaintiffs' specific challenges, the stay-at-home provision, the most restrictive portion of the executive order, was first implemented by the Governor on March 23, 2020, thirteen days after the first case of COVID-19 was diagnosed in the state. Though there were at that point approximately 1,328 cases in the state and 15 reported deaths, Governor Witmer was not acting on a blank slate. Instead, it was common knowledge that the virus had already rapidly spread throughout the state of Washington, was prevalent in several other states, and was devastating parts of Italy, China, and other countries. Indeed, the speed at which the virus spread was well known at the time the stay-at-home provision was implemented. It is true that this measure is a severe one, and greatly restricts each of our liberties to move about as we see fit, as we do in normal times. But the governor determined that severe measures were necessary, and had to be quickly implemented to prevent the uncontrolled spreading of the virus. As noted, Michigan was not alone in this regard:

To be sure, [the order] is a drastic measure, but that aligns it with the numerous drastic measures Petitioners and other states have been forced to take in response to the coronavirus pandemic. Faced with exponential growth of COVID-19 cases, states have closed schools, sealed off nursing homes, banned social gatherings, quarantined travelers, prohibited churches from holding public worship services, and locked down entire cities. These measures would be constitutionally intolerable in ordinary times, but are recognized as appropriate and even necessary responses to the present crisis. [*In re Abbott*, 954 F3d at 787.]

¹³ Plaintiffs' correctly note that *Jacobson* did not involve a state-wide requirement to stay at home, and instead addressed an involuntary vaccination program. But most cases have different facts, and it is the legal principle set forth in the decision that guides future courts. Thus, despite some factual differences, the Court relies (as did the *In re Abbott* court) upon *Jacobson* as it is the most relevant decision on this issue from the Supreme Court.

Plaintiffs suggest that the better—and more constitutionally sound decision—would have been to quarantine only those who have the virus. It may have been a better option to some, as doing so may have had a less severe impact on the movement of the Michigan population, and may have reduced unemployment. Or, as plaintiffs argue, a more narrowly tailored order by region may have been more reasonable for the entire state. But some of that is simply hindsight, and to accept it would be to impermissibly delve too deep into the choices made. Additionally, the Governor’s concerns were not limited to what was most convenient or palatable at the time, as she also had to protect, to the extent possible, the health and safety of all Michigan residents and to not overburden the health care system. The introduction to EO 2020-59 outlines some of the other serious considerations that went into issuing the stringent order:

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, to establish the public health infrastructure necessary to contain the spread of infection, 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.

And, contrary to plaintiffs’ arguments, the Supreme Court has upheld, against a constitutional challenge, a state’s quarantine of individuals even when they are *not* infected with the disease being controlled. See *Compagnie Francaise de Navigation a Vapeur v Louisiana*, 186 US 380, 393; 22 S Ct 811; 46 L Ed 1209 (1902).

As noted, the Court’s role is not to pick which alternative may be more reasonable, more preferential, or more narrowly tailored, as the latter is in deciding some constitutional cases. Monday morning quarterbacking is the role of sports fans, not courts reviewing the factual basis supporting executive action to protect the public health. Instead, it is the role of the executive and legislative branches to determine what *steps* are necessary when faced with a public health crisis.

In re Abbott, 954 F3d at 792 (“Such authority [to determine what measures are best to take] properly belongs to the legislative and executive branches of the governing authority”); *Rock*, 216 Mich at 296; *Lansing Bd of Ed*, 224 Mich at 397.¹⁴ Under federalism principles, it is the States that retained the police power, and that power—though not unlimited—is quite broad. See *Nat’l Federation of Independent Business v Sebelius*, 567 US 519, 536; 132 S Ct 2566; 183 L Ed 2d 450 (2012) (“The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution’s text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the “police power”) and *Blue Cross & Blue Shield of Mich v Governor*, 422 Mich 1, 73; 367 NW2d 1 (1985) (discussing the scope of the police power and how that power extends to enacting regulations to promote public health, safety, and welfare, and providing that regulations “passed pursuant to the police power carry with them a strong presumption of constitutionality.”).

What the Court must do—and can only do—is determine whether the Governor’s orders are consistent with the law. *Rock*, 216 Mich at 283. Under the applicable standards, they are. The undisputed facts known at the time the first stay-at-home order was made, and the undisputed facts known today, compel the conclusion that the order had a real and substantial relation to the public health crisis. The challenged measures relate to limiting human interaction which helps control the spread of a virus considered to be extremely communicable. To make it voluntary, or more limited in scope, were perhaps other avenues to pursue, but even accepting that proposition does

¹⁴ As will be discussed shortly, the Legislature has also spoken on the issue of how to address emergent situations. MCL 10.21; MCL 30.401 *et seq.* Additionally, the Court takes notice that the Legislature recently established an oversight committee to review the measures implemented through the Governor’s various executive orders.

not make what the Governor reasonably chose to do invalid. Instead, the Governor's determination as to the speed and ease with which the virus spreads, and the potential impact that spread would have on the health care system, and the threat it had to the lives of thousands of Michigan residents in a short period of time, allows for the conclusion that the two challenged provisions had a real and substantial relation to the public health crisis. *Jacobson*, 197 US at 31. There is nothing presented to the Court to draw any other legal conclusion.¹⁵

Nor is there any evidence (or even a suggestion) that the stay-at-home provision was a pretext to accomplish some other objective. Additionally, the record is clear that these measures are temporary, and limited in time to address the speed at which the virus spreads, the status of the available health care system, and the need to get Michigan residents back to enjoying their liberties. Indeed, since this lawsuit was filed last week, the Governor issued EO 2020-59, easing some of the very restrictions challenged by plaintiffs, and has indicated more lifting of restrictions are imminent. Plaintiffs have not shown a substantial likelihood of success on the merits in their challenge to the executive order restrictions.

C. CONSTITUTIONALITY OF THE EMA¹⁶

Turning again to *In re Forfeiture of 2000 GMC Denali and Contents*, the Court set forth the rather difficult standards governing a challenge to the constitutionality of a state statute:

A party challenging the constitutionality of a statute has the burden of proving the law's invalidity. *Gillette Commercial Operations North America & Subsidiaries v*

¹⁵ Plaintiffs submitted documentary evidence which, if believed, could allow a governor to issue a more narrowly tailored order. But because this Governor made a different conclusion that was likewise based on other supporting evidence related to the virus, her decision had a real and substantial relation to the public health crisis.

¹⁶ Plaintiffs do not challenge the Governor's exercise of authority under either statute, nor whether she needs legislative approval to continue her emergency declaration.

Dep't of Treasury, 312 Mich App 394, 414-415; 878 NW2d 891 (2015). The challenging party must overcome a heavy burden because “[s]tatutes are presumed to be constitutional, and we have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.” *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 516; 857 NW2d 529 (2014). When interpreting a statute, our primary goal is to “give effect to the intent of the Legislature.” *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 628; 765 NW2d 31 (2009). To do so, we examine the plain language of the statute itself, and “[i]f the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted.” *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). [*In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App at 569.]

As far as the Court can discern, plaintiffs’ challenge to the EMA is an as-applied one:

A constitutional challenge to the validity of a statute can be brought in one of two ways: by either a facial challenge or an as-applied challenge. This is an as-applied challenge, meaning that claimant has alleged “ ‘a present infringement or denial of a specific right or of a particular injury in process of actual execution’ of government action.” *Bonner v City of Brighton*, 495 Mich 209, 223 n 27; 848 NW2d 380 (2014), quoting *Village of Euclid v Ambler Realty Co*, 272 US 365, 395; 47 S Ct 114; 71 L Ed 303 (1926). “The practical effect of holding a statute unconstitutional ‘as applied’ is to prevent its future application in a similar context, but not to render it utterly inoperative.” *Ada v Guam Society of Obstetricians & Gynecologists*, 506 US 1011, 1012; 113 S Ct 633; 121 L Ed 2d 564 (1992) (SCALIA, J., dissenting). See also *United States v Frost*, 125 F3d 346, 370 (CA 6, 1997). [*In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App at 569-570.]

Plaintiffs’ challenge to the delegation of power from the Legislature to the executive will likely not succeed. It is certainly true that the Legislature cannot grant some vague, unfettered discretion to the executive to carry out what is a legislative function. But if the challenged legislation contains sufficient guidance to the executive on how to execute the law to further the Legislature’s policy, it does not violate the non-delegation doctrine. *City of Ann Arbor v Nat’l Ctr for Mfg Sciences, Inc*, 204 Mich App 303, 308; 514 NW2d 224 (1994) (“[T]he standards must be sufficiently broad to permit efficient administration so that the policy of the Legislature may be complied with, but not so broad as to give uncontrolled and arbitrary power to the administrators.”).

As defendants point out, plaintiffs allege in their complaint that the powers granted to the Governor are “limited,” and none of the provisions in the act are such that the executive would have “uncontrolled, arbitrary power.” *Dep’t of Natural Resources v Seaman*, 396 Mich 299, 308; 240 NW2d 206 (1976). The provisions of the EMA are not vague, and contain specific procedures and criteria for the Governor to declare a state of disaster or emergency, and what conditions qualify as a disaster or emergency. See MCL 30.402(e) and (h); MCL 30.403(3) and (4). The EMA also grants the Governor additional, specific duties and powers when addressing any declared disaster or emergency, MCL 30.405, and sets for a comprehensive state and local jurisdictional system to address declared state-wide disasters or emergencies. MCL 30.407-MCL 30.411. As a result, plaintiffs are unable to establish a likelihood of success on the merits on this claim.

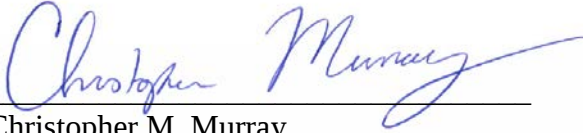
D. HARM TO THE PUBLIC INTEREST

Finally, and for many of the same reasons, the Court concludes that entry of a preliminary injunction would be more detrimental to the public than it would to plaintiffs. Although the Court is painfully aware of the difficulties of living under the restrictions of these executive orders, those difficulties are temporary, while to those who contract the virus and cannot recover (and to their family members and friends), it is all too permanent. That is not to say that every new virus will require the action taken here, but given the authority of the Governor to do so in the face of these circumstances, the Court must conclude issuing injunctive relief would not serve the public interest, despite the temporary harm to plaintiffs’ constitutional rights.

VI. CONCLUSION

For these reasons, plaintiffs' motion for a preliminary injunction is DENIED.

Date: April 29, 2020



Christopher M. Murray
Judge, Court of Claims

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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D.D.S., & THERESE F. SHORTT,
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and MIDWEST CARWASH
ASSOCIATION,

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

Defendants.

No. 1:20-cv-00360

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Exhibit B

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Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations

Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations

Scientific brief

29 March 2020

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This version updates the 27 March publication by providing definitions of droplets by particle size and adding three relevant publications.

Modes of transmission of the COVID-19 virus

Respiratory infections can be transmitted through droplets of different sizes: when the droplet particles are >5-10 μm in diameter they are referred to as respiratory droplets, and when then are <5 μm in diameter, they are referred to as droplet nuclei.¹ According to current evidence, COVID-19 virus is primarily transmitted between people through respiratory droplets and contact routes.²⁻⁷ In an analysis of 75,465 COVID-19 cases in China, airborne transmission was not reported.⁸

Droplet transmission occurs when a person is in in close contact (within 1 m) with someone who has respiratory symptoms (e.g., coughing or sneezing) and is therefore at risk of having his/her mucosae (mouth and nose) or conjunctiva (eyes) exposed to potentially infective respiratory droplets. Transmission may also occur through fomites in the immediate environment around the infected person.⁸ Therefore,

transmission of the COVID-19 virus can occur by direct contact with infected people and indirect contact with surfaces in the immediate environment or with objects used on the infected person (e.g., stethoscope or thermometer).

Airborne transmission is different from droplet transmission as it refers to the presence of microbes within droplet nuclei, which are generally considered to be particles $<5\mu\text{m}$ in diameter, can remain in the air for long periods of time and be transmitted to others over distances greater than 1 m.

In the context of COVID-19, airborne transmission may be possible in specific circumstances and settings in which procedures or support treatments that generate aerosols are performed; i.e., endotracheal intubation, bronchoscopy, open suctioning, administration of nebulized treatment, manual ventilation before intubation, turning the patient to the prone position, disconnecting the patient from the ventilator, non-invasive positive-pressure ventilation, tracheostomy, and cardiopulmonary resuscitation.

There is some evidence that COVID-19 infection may lead to intestinal infection and be present in faeces. However, to date only one study has cultured the COVID-19 virus from a single stool specimen.⁹ There have been no reports of faecal–oral transmission of the COVID-19 virus to date.

Implications of recent findings of detection of COVID-19 virus from air sampling

To date, some scientific publications provide initial evidence on whether the COVID-19 virus can be detected in the air and thus, some news outlets have suggested that there has been airborne transmission. These initial findings need to be interpreted carefully.

A recent publication in the New England Journal of Medicine has evaluated virus persistence of the COVID-19 virus.¹⁰ In this experimental study, aerosols were generated using a three-jet Collison nebulizer and fed into a Goldberg drum under controlled laboratory conditions. This is a high-powered machine that does not reflect normal human cough conditions. Further, the finding of COVID-19 virus in aerosol particles up to 3 hours does not reflect a clinical setting in which aerosol-generating procedures are performed—that is, this was an experimentally induced aerosol-generating procedure.

There are reports from settings where symptomatic COVID-19 patients have been admitted and in which

no COVID-19 RNA was detected in air samples.¹¹⁻¹² WHO is aware of other studies which have evaluated the presence of COVID-19 RNA in air samples, but which are not yet published in peer-reviewed journals. It is important to note that the detection of RNA in environmental samples based on PCR-based assays is not indicative of viable virus that could be transmissible. Further studies are needed to determine whether it is possible to detect COVID-19 virus in air samples from patient rooms where no procedures or support treatments that generate aerosols are ongoing. As evidence emerges, it is important to know whether viable virus is found and what role it may play in transmission.

Conclusions

Based on the available evidence, including the recent publications mentioned above, WHO continues to recommend droplet and contact precautions for those people caring for COVID-19 patients. WHO continues to recommend airborne precautions for circumstances and settings in which aerosol generating procedures and support treatment are performed, according to risk assessment.¹³ These recommendations are consistent with other national and international guidelines, including those developed by the European Society of Intensive Care Medicine and Society of Critical Care Medicine¹⁴ and those currently used in Australia, Canada, and United Kingdom.¹⁵⁻¹⁷

At the same time, other countries and organizations, including the US Centers for Diseases Control and Prevention and the European Centre for Disease Prevention and Control, recommend airborne precautions for any situation involving the care of COVID-19 patients, and consider the use of medical masks as an acceptable option in case of shortages of respirators (N95, FFP2 or FFP3).¹⁸⁻¹⁹

Current WHO recommendations emphasize the importance of rational and appropriate use of all PPE,²⁰ not only masks, which requires correct and rigorous behavior from health care workers, particularly in doffing procedures and hand hygiene practices.²¹ WHO also recommends staff training on these recommendations,²² as well as the adequate procurement and availability of the necessary PPE and other supplies and facilities. Finally, WHO continues to emphasize the utmost importance of frequent hand hygiene, respiratory etiquette, and environmental cleaning and disinfection, as well as the importance of maintaining physical distances and avoidance of close, unprotected contact with people with fever or respiratory symptoms.

WHO carefully monitors emerging evidence about this critical topic and will update this scientific brief as more information becomes available.

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WHO continues to monitor the situation closely for any changes that may affect this interim guidance. Should any factors change, WHO will issue a further update. Otherwise, this scientific brief will expire 2 years after the date of publication.

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WHO reference number: WHO/2019-nCoV/Sci_Brief/Transmission_modes/2020.2

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Modes of transmission of virus causing COVID-19



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MAG. PHILLIP J. GREEN

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Exhibit C

Coronavirus Disease 2019 (COVID-19)

Social Distancing



Keep Your Distance to Slow the Spread

[Other Languages ▼](#)[Print Page](#)

Limiting face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).

What is social distancing?

Social distancing, also called “physical distancing,” means keeping space between yourself and other people outside of your home. To practice social or physical distancing:

- Stay at least 6 feet (2 meters) from other people
- Do not gather in groups
- Stay out of crowded places and avoid mass gatherings

In addition to [everyday steps to prevent COVID-19](#), keeping space between you and others is one of the best tools we have to avoid being exposed to this virus and slowing its spread locally and across the country and world.

When COVID-19 is spreading in your area, everyone should limit close contact with individuals outside your household in indoor and outdoor spaces. Since people can spread the virus before they know they are sick, it is important to stay away from others when possible, even if you have no symptoms. Social distancing is especially important for [people who are at higher risk of getting very sick](#)



prolonged period. Spread happens when an infected person coughs, sneezes, or talks, and droplets from their mouth or nose are launched into the air and land in the mouths or noses of people nearby. The droplets can also be inhaled into the lungs. Recent studies indicate that people who are infected but do not have symptoms likely also play a role in the spread of COVID-19.

It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes. However, this is not thought to be the main way the virus spreads. COVID-19 can live for hours or days on a surface, depending on factors such as sun light and humidity. Social distancing helps limit contact with infected people and contaminated surfaces.

Although the risk of severe illness may be different for everyone, anyone can get and spread COVID-19. Everyone has a role to play in slowing the spread and protecting themselves, their family, and their community.

Tips for social distancing

- Follow guidance from authorities where you live.
- If you need to shop for food or medicine at the grocery store or pharmacy, stay at least 6 feet away from others.
 - Use mail-order for medications, if possible.
 - Consider a grocery delivery service.
 - Cover your mouth and nose with a [cloth face cover](#) when around others, including when you have to go out in public, for example to the grocery store.
 - Stay at least 6 feet between yourself and others, even when you wear a face covering.
- Avoid large and small gatherings in private places and public spaces, such a friend's house, parks, restaurants, shops, or any other place. This advice applies to people of any age, including teens and younger adults. Children should not have in-person playdates while school is out. To help maintain social connections while social distancing, learn [tips to keep children healthy while school's out](#).
- Work from home when possible.
- If possible, avoid using any kind of public transportation, ridesharing, or taxis.
- If you are a student or parent, talk to your school about options for digital/distance learning.

Stay connected while staying away. It is very important to stay in touch with friends and family that don't live in your home. Call, video chat, or stay connected using social media. Everyone reacts differently to stressful situations and having to socially distance yourself from someone you love can be difficult. [Read tips for stress and coping.](#)

What is the difference between quarantine and isolation?

Quarantine

Quarantine is used to keep someone who might have been exposed to COVID-19 away from others. Someone in self-quarantine stays separated from others, and they limit movement outside of their home or current place. A person may have been exposed to the virus without knowing it (for example, when traveling or out in the community), or they could have the virus without feeling symptoms. Quarantine helps limit further spread of COVID-19.

Isolation

Isolation is used to separate sick people from healthy people. People who are in isolation should stay home. In the home, anyone sick should separate themselves from others by staying in a specific "sick" bedroom or space and using a different bathroom (if possible).

What should I do if I might have been exposed? If I feel sick? Or have confirmed COVID-19?

If you think you have been exposed to COVID-19, [read about symptoms.](#)

If you or someone in your home might have been exposed

Self-Monitor

Be alert for symptoms. Watch for fever,* cough, or shortness of breath.

- Take your temperature if symptoms develop.

- Practice social distancing. Maintain 6 feet of distance from others, and stay out of crowded places.
- Follow [CDC guidance](#) if symptoms develop.

If you feel healthy but:

- [Recently had close contact](#) with a person with COVID-19, or
- Recently [traveled](#) from somewhere outside the U.S. or on a cruise ship or river boat

Self-Quarantine

- Check your temperature twice a day and watch for symptoms.
- Stay home for 14 days and self-monitor.
- If possible, stay away from people who are [high-risk](#) for getting very sick from COVID-19.

If you:

- Have been diagnosed with COVID-19, or
- Are waiting for test results, or
- Have symptoms such as cough, fever, or shortness of breath

Self-Isolate

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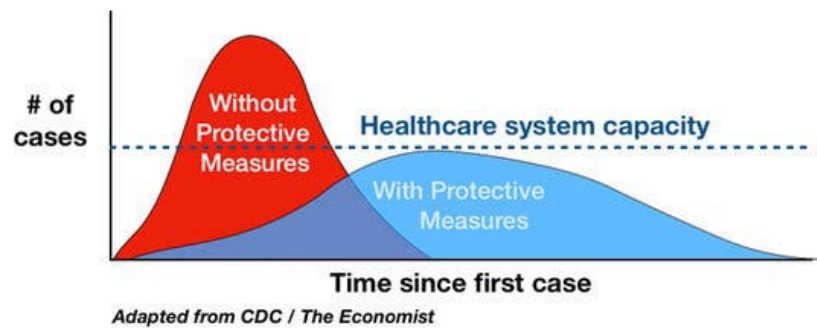
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Flattening the Coronavirus Curve

One chart explains why slowing the spread of the infection is nearly as important as stopping it.



The longer it takes for coronavirus to spread the population, the more time hospitals have to prepare. Drew Harris

By Siobhan Roberts

March 27, 2020

At the end of February, Drew Harris, a population health analyst at Thomas Jefferson University in Philadelphia, had just flown across the country to visit his daughter in Eugene, Ore., when he saw an article on his Google news feed. It was from [The Economist](#), and was about limiting the damage of the coronavirus.

The accompanying art, by the visual-data journalist Rosamund Pearce, based on a graphic that had appeared in a C.D.C. paper titled “[Community Mitigation Guidelines to Prevent Pandemic Influenza](#),” showed what Dr. Harris called two epi curves. One had a steep peak indicating a surge of coronavirus outbreak in the near term; the other had a flatter slope, indicating a more gradual rate of infection over a longer period of time.

The gentler curve results in fewer people infected at this critical moment in time — preventing a surge that would inundate the healthcare system and ultimately, one hopes, resulting in fewer deaths. “What we need to do is flatten that down,” said Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, during the coronavirus task force briefing at the White House on a Tuesday evening in early March. “You do that with trying to interfere with the natural flow of the outbreak.”

The infographic reminded Dr. Harris of something similar that he had designed years earlier for a pandemic preparedness training program. “Folks in the preparedness and public health community have been

thinking about all of these issues for many years,” Dr. Harris said in an email. “Understanding and managing surge is an important part of preparedness.” But during the training course, Dr. Harris’s students had struggled with the concept of reducing the epidemic curve, so he added a dotted line indicating hospital capacity — “to make clear what was at stake,” he said.

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After his visit with his daughter, Dr. Harris was waiting for his return flight in Portland when the first Oregon coronavirus case was [announced](#); he had dinner at a busy airport bar and thought about how quiet the place would be in a week or two when the reality of the outbreak set in. Once home, he recreated his graphic and posted it on [Twitter](#) and [LinkedIn](#), and was pleased to see the enthusiastic interest in flattening the curve.

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“Now I know what going viral means,” Dr. Harris said. (For a more detailed analysis, see a [recent paper](#) in The Lancet, “How will country-based mitigation measures influence the course of the COVID-19 epidemic?”)

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The following is an edited version of our email conversation.

What does it mean to “flatten the curve”?

The ideal goal in fighting an epidemic or pandemic is to completely halt the spread. But merely slowing it — mitigation — is critical. This reduces the number of cases that are active at any given time, which in turn gives doctors, hospitals, police, schools and vaccine-manufacturers time to prepare and respond, without becoming overwhelmed. Most hospitals can function with 10 percent reduction in staff, but not with half their people out at once.

Some commentators have argued for getting the outbreak over with quickly. That is a recipe for panic, unnecessary suffering and death. Slowing and spreading out the tidal wave of cases will save lives. Flattening the curve keeps society going.

What exactly do those two curves show?

Both curves add up the number of new cases over time. The more people reporting with the virus on a given day, the higher the curve; a high curve means the virus is spreading fast. A low curve shows that the virus is spreading slower — fewer people are diagnosed with the disease on any given day. Keeping the curve down — diminishing the rate at which new cases occur — prevents overtaxing the finite resources (represented by the dotted line) available to treat it.

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Think of the health care system capacity as a subway car that can only hold so many people at once. During rush hour, that capacity is not enough to handle the demand, so people must wait on the platform for their turn to ride. Staggering work hours diminishes the rush hour and increases the likelihood that you will get on the train and maybe even get a seat. Avoiding a surge of coronavirus cases can ensure that anyone who needs care will find it at the hospital.

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What sorts of mitigation measures help transform the red curve into the blue curve?

Diseases spread when one person gives it to one or more others, who go on to give it to more people, and so on. How fast this occurs depends on many factors, including how contagious the disease is, how many people are vulnerable and how quickly they get sick.

The difference between seasonal flu and coronavirus is that many people have full or partial immunity to the flu virus because they have had it before or were vaccinated against it. Far more people are vulnerable to coronavirus, so it has many more targets of opportunity to spread. Keeping people apart in time and space with social distancing measures, self-isolation and actual quarantine decreases opportunities for transmission.

To take the subway example again, a packed car — or a packed subway platform — is a great place to spread the virus. But reducing the number of people on the train or platform, by asking people to work from home or to stagger their working hours, enables individuals to stay farther apart, limiting the spread of the virus. That is social distancing in action.

Mitigation efforts keep people farther apart, making every transmission opportunity marginally less likely. This slows the spread. We should, and will, take the most vulnerable people out of the population altogether by keeping them totally separate. This is what Washington State is trying to do by limiting visitors to nursing homes. Think of this as a reverse quarantine.

What are you doing day-to-day in response to these unusual times?

Like most everyone else, I'm more aware of my surroundings and behaviors. I try to use a sleeve or elbow to open doors, and I wash my hands or use hand sanitizers after I touch a surface that might be contaminated. And I made sure to have a good supply of my prescription and nonprescription medications, just in case any shortages occur after the shutdown of Chinese pharmaceutical suppliers. I'm following the lead of my public health officials here in Philadelphia, where there is only one case as of Tuesday, and travel isn't restricted. I'm avoiding crowds and sick people. I am going out, and will continue to do so unless a quarantine is ordered or public places are closed.

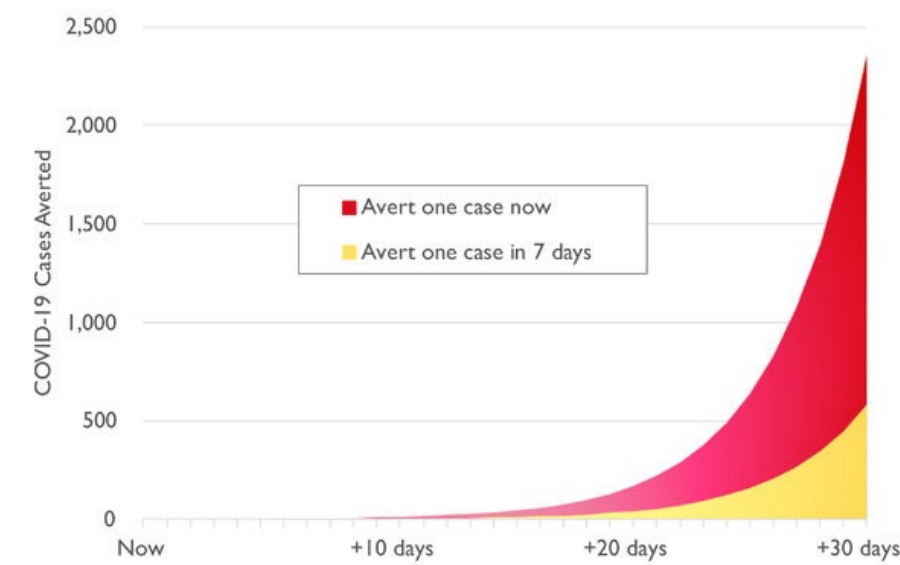
I know there is a good chance that I will catch the virus before a vaccine becomes available, but I also believe I'm very likely to do fine. I'm not in any high-risk group. But I worry about the more vulnerable folks and want

to do what I can to prevent the spread. I also worry about people who lack the resources I have. What happens to the self-employed, hourly workers and people in the gig economy when business stops? What about the homeless who depend upon charity and services for support? It's these second-order effects that could be just as devastating if this epidemic really takes off.

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Coronavirus and statistics
The Exponential Power of Now
March 13, 2020



The Coronavirus, by the Numbers
March 5, 2020

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and MIDWEST CARWASH
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ROBERT GORDON,

Defendants.

No. 1:20-cv-00360

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Exhibit E



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-4

Declaration of State of Emergency

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 that had not been previously identified in humans and can easily spread from person to person.

COVID-19 has been identified as the cause of an outbreak of respiratory illness first detected in Wuhan City in the Hubei Province of China. Person-to-person spread of the virus has occurred in the United States, with some of those occurring in people with no travel history and no known source of exposure. On January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, and affected state and local governments have also declared states of emergency.

The State of Michigan has been taking proactive steps to prevent and prepare for the spread of this disease. On February 3, 2020, the Michigan Department of Health and Human Services (MDHHS) activated the Community Health Emergency Coordination Center, and has been working diligently with local health departments, health systems, and medical providers throughout Michigan to make sure appropriate screening and preparations for COVID-19 are being made. On February 28, 2020, I activated the State Emergency Operations Center to maximize coordination with state, local and federal agencies, as well as private partners, and to help prevent the spread of the disease. On March 3, 2020, I created four task forces comprising key state government agencies to coordinate the state's response and work closely with the appropriate community and non-governmental stakeholders to combat the spread of COVID-19 and assess the impact it may have on Michiganders' day-to-day lives. And throughout this time, the State has been working with schools, businesses, medical providers, local health departments, and residents to make sure they have the information they need to prepare for potential cases.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

SENATE ENROLLING
MAR 11 '20 AM 9:36

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.403(4), provides that “[t]he governor shall, by executive order or proclamation, declare a state of emergency if he or she finds that an emergency has occurred or that the threat of an emergency exists.”

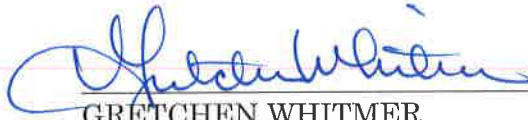
The Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31(1), provides that “[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, . . . the governor may proclaim a state of emergency and designate the area involved.”

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

1. A state of emergency is declared across the State of Michigan.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. The state of emergency is terminated when emergency conditions no longer exist and appropriate programs have been implemented to recover from any effects of the emergency conditions, consistent with the legal authorities upon which this declaration is based and any limits on duration imposed by those authorities.

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

Date: March 10, 2020


GRETCHEN WHITMER
GOVERNOR



By the Governor:


Jocelyn Benson
SECRETARY OF STATE

FILED WITH SECRETARY OF STATE

ON 3/10/2020 AT 11:30pm

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WESTERN DISTRICT OF MICHIGAN
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and MIDWEST CARWASH
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No. 1:20-cv-00360

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MAG. PHILLIP J. GREEN

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v

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ROBERT GORDON,

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Exhibit F



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-5

Temporary prohibition on large assemblages and events, temporary school closures

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. 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 mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this state's health care system and other critical infrastructure, it is reasonable and necessary to impose limited and temporary restrictions on large events and assemblages of people.

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

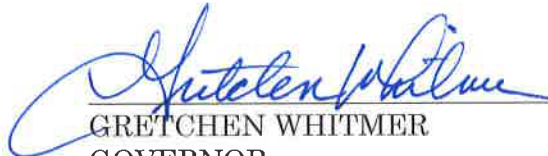
1. Beginning on March 13, 2020 at 5:00 pm, and continuing through April 5, 2020 at 5:00 pm, all assemblages of more than 250 people in a single shared space and all events of more than 250 people are prohibited in this state, except for assemblages for the purpose of: industrial or manufacturing work; mass transit; or the purchase

of groceries or consumer goods. A single shared space includes but is not limited to a room, hall, cafeteria, auditorium, theater, or gallery. This prohibition does not abridge protections guaranteed by the state or federal constitution under these emergency circumstances.

2. Beginning on March 16, 2020, all elementary school buildings and secondary school buildings in this state must close to students for educational purposes through April 5, 2020. This requirement includes all public, nonpublic, and boarding schools in the state. This requirement does not apply to residential facilities at schools and childcare providers at schools.
3. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order shall constitute a misdemeanor.

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

Date: March 13, 2020


GRETCHEN WHITMER
GOVERNOR



By the Governor:


Jocelyn Benson
SECRETARY OF STATE

SECRETARY OF SENATE
2020 MAR 13 AM 11:43

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Exhibit G



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-9

Temporary restrictions on the use of places of public accommodation

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. 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 mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is reasonable and necessary to impose limited and temporary restrictions on the use of places of public accommodation.

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

1. Beginning as soon as possible but no later than March 16, 2020 at 3:00 pm, and continuing until March 30, 2020 at 11:59 pm, the following places of public accommodation are closed to ingress, egress, use, and occupancy by members of the public:
 - (a) Restaurants, food courts, cafes, coffeehouses, and other places of public accommodation offering food or beverage for on-premises consumption;

- (b) Bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption;
- (c) Hookah bars, cigar bars, and vaping lounges offering their products for on-premises consumption;
- (d) Theaters, cinemas, and indoor and outdoor performance venues;
- (e) Libraries and museums;
- (f) Gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, and spas;
- (g) Casinos licensed by the Michigan Gaming Control Board, racetracks licensed by the Michigan Gaming Control Board, and Millionaire Parties licensed by the Michigan Gaming Control Board; and
- (h) Places of public amusement not otherwise listed above.

Places of public accommodation subject to this section are encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and to use precautions in doing so to mitigate the potential transmission of COVID-19, including social distancing. In offering food or beverage, a place of public accommodation subject to this section may permit up to five members of the public at one time in the place of public accommodation for the purpose of picking up their food or beverage orders, so long as those individuals are at least six feet apart from one another while on premises.

This section does not prohibit an employee, contractor, vendor, or supplier of a place of public accommodation from entering, exiting, using, or occupying that place of public accommodation in their professional capacity.

2. The restrictions imposed by this order do not apply to any of the following:
 - (a) Places of public accommodation that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries, other than those portions of the place of public accommodation subject to the requirements of section 1;
 - (b) Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
 - (c) Crisis shelters or similar institutions; and
 - (d) Food courts inside the secured zones of airports.
3. For purposes of this order:

- (a) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, or recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes the facilities of private clubs, including country clubs, golf clubs, boating or yachting clubs, sports or athletic clubs, and dining clubs.
- (b) "Place of public amusement" means a place of public accommodation that offers indoor services or facilities, or outdoor services or facilities involving close contact of persons, for amusement or other recreational or entertainment purposes. A place of public amusement includes an amusement park, arcade, bingo hall, bowling alley, indoor climbing facility, skating rink, trampoline park, and other similar recreational or entertainment facilities.
4. The director of the Department of Health and Human Services, the Michigan Liquor Control Commission, and the executive director of the Michigan Gaming Control Board must issue orders and directives and take other actions pursuant to law as necessary to implement this order.
5. This order does not alter any of the obligations under law of an employer affected by this order to its employees or to the employees of another employer.
6. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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

Date: March 16, 2020



GRETCHEN WHITMER
GOVERNOR

By the Governor:


SECRETARY OF STATE

SECRETARY OF SENATE
2020 MAR 16 PM1:38

SECRETARY OF SENATE
2020 MAR 16 PM1:38

FILED WITH SECRETARY OF STATE

3

ON 3/16/20 AT 1:10 P.M.

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Exhibit H



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-11

Temporary prohibition on large assemblages and events, temporary school closures

Rescission of Executive Order 2020-5

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. 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 mitigate the spread of COVID-19 and to provide essential protections to vulnerable Michiganders and this state's health care system and other critical infrastructure, it is reasonable and necessary to impose limited and temporary restrictions on large events and assemblages of people.

Executive Order 2020-5 imposed such restrictions. This order changes the temporary restrictions imposed on events and assemblages by Executive Order 2020-5, in light of the most recent guidance from the Centers for Disease Control and Prevention. This order does not change the scope of temporary restrictions imposed by Executive Order 2020-5 as to the closure of elementary school buildings and secondary school buildings. When the new restrictions set forth in this order take effect, Executive Order 2020-5 is rescinded.

While this order continues to permit certain assemblages and events, these assemblages and events should only occur as necessary and in adherence with the measures needed to mitigate the potential transmission of COVID-19, including social distancing, proper hand hygiene and respiratory etiquette, and using electronic communication platforms in lieu of in-person interaction as feasible.

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

1. Beginning on March 17, 2020 at 9:00 am, and continuing through April 5, 2020 at 5:00 pm, all assemblages of more than 50 people in a single indoor shared space and all events of more than 50 people are prohibited in this state. A single indoor shared space includes but is not limited to a room, hall, cafeteria, auditorium, theater, or gallery. The prohibition on assemblages set forth in this section does not apply to:
 - (a) health care facilities;
 - (b) workplaces or portions thereof not open to the public;
 - (c) the state legislature; and
 - (d) assemblages for the purpose of mass transit, the purchase of groceries or consumer goods, or the performance of agricultural or construction work.

The prohibition set forth in this section does not abridge protections guaranteed by the state or federal constitution under these emergency circumstances.

2. Beginning on March 16, 2020, all elementary school buildings and secondary school buildings in this state must close to students for educational purposes through April 5, 2020. This requirement includes all public, nonpublic, and boarding schools in the state. This requirement does not apply to residential facilities at schools and childcare providers at schools.
3. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order shall constitute a misdemeanor.
4. On March 17, 2020 at 9:00 am, Executive Order 2020-5 is rescinded.

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

Date: March 16, 2020

Time: 6:07 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:



SECRETARY OF STATE



SECRETARY OF SENATE
2020 MAR 17 AM 10:47

FILED WITH SECRETARY OF STATE

ON 3/17/20 AT 10:22 A.M.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
INTERNATIONAL REALTY, INC.,
EXECUTIVE PROPERTY
MAINTENANCE, INC., INTRACO
CORPORATION, INC., CASITE
INTRACO, LLC, BAHASH &
COMPANY, LLC, d/b/a HILLSDALE
JEWELERS, WILLIAM A. SHORTT,
D.D.S., & THERESE F. SHORTT,
D.D.S., d/b/a SHORTT DENTAL,
and MIDWEST CARWASH
ASSOCIATION,

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

Defendants.

No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

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Exhibit I

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

Executive Order 2020-17 (COVID-19)

EXECUTIVE ORDER

No. 2020-17

Temporary restrictions on non-essential medical and dental procedures

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. 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 “cope 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 mitigate the spread of COVID-19, protect the public health, provide essential protections to vulnerable Michiganders, and ensure the availability of health care resources, it is reasonable and necessary to impose temporary restrictions on non-essential medical and dental procedures.

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

1. Beginning as soon as possible but no later than March 21, 2020 at 5:00 pm, and continuing while the state of emergency declared in Executive Order 2020-4 is in effect, all hospitals, freestanding surgical outpatient facilities, and dental facilities, and all state-operated outpatient facilities (collectively, "covered facilities"), must implement a plan to temporarily postpone, until the termination of the state of emergency under section 3 of Executive Order 2020-4, all non-essential procedures ("non-essential procedure postponement plan" or "plan"). For purposes of this order, "non-essential procedure" means a medical or dental procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.
2. A plan for a covered facility that performs medical procedures, including any medical center or office that performs elective surgery or cosmetic plastic surgery, must postpone, at a minimum, joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery where postponement would significantly impact the health, safety, and welfare of the patient. A plan for a covered facility that performs medical procedures should exclude from postponement: surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures; labor and delivery; organ transplantation; and procedures related to dialysis. A plan for a covered facility that performs medical procedures must exclude from postponement emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient.
3. A plan for a covered facility that performs dental procedures must postpone, at a minimum: any cosmetic or aesthetic procedures (such as veneers, teeth bleaching, or cosmetic bonding); any routine hygiene appointments; any orthodontic procedures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; initiation of any crowns, bridges, or dentures that do not relieve pain or infection, do not restore oral function, or are not trauma-related; any periodontal plastic surgery; any extractions of asymptomatic non-carious teeth; and any recall visits for periodontally healthy patients. If a covered facility that performs dental procedures chooses to remain

4. A covered facility must comply with the restrictions contained in its non-essential procedure postponement plan.
5. This order does not alter any of the obligations under law of an affected health care facility to its employees or to the employees of another employer.
6. The director of the Department of Licensing and Regulatory Affairs shall issue orders or directives pursuant to law as necessary to enforce this order.
7. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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




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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
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No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

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Exhibit J

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

Executive Order 2020-96 (COVID-19)

EXECUTIVE ORDER

No. 2020-96

Temporary requirement to suspend certain activities that are not necessary to sustain or protect life

Rescission of Executive Orders 2020-17, 2020-34, and 2020-92

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. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the 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 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

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, to establish the public health infrastructure necessary to contain the spread of infection, 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. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, 2020-77, and 2020-92, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by these executive orders have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on May 20, 2020, Michigan reported 53,009 confirmed cases and 5,060 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

With this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-92, while also allowing gatherings of no more than ten people statewide, effective immediately, and permitting retailers and motor vehicle dealerships to see customers by appointment, beginning on May 26, 2020. In addition, because our health-care capacity has improved with respect to personal protective equipment, available beds, personnel, ventilators, and necessary supplies, I find it reasonable to rescind Executive Orders 2020-17 and 2020-34, which required health-care and veterinary facilities to implement plans to postpone some medical and dental procedures. Those rescissions will take effect on May 29.

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



- I. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
- II. For purposes of this order, Michigan comprises eight separate regions:
 - a. Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
 - b. Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
 - c. Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.

- d. Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
- e. Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
- f. Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
- g. Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
- h. Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

III. Subject to the exceptions in section 8 of this order, 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.

IV. 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 ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.

V. 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, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.

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 9 and 10 of this order.

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. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in Executive Order 2020-97 and any orders that may follow from it.

c. Workers who perform resumed activities are defined in section 11 of this order.

VI. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following

conditions:

- a. Consistent with sections 9, 10, and 11 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities 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. Workers need not carry copies of their designations when they leave the home or place of residence for work. 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 7 of this order.
 3. Workers and volunteers described in section 10(d) of this order.
- b. In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
- c. Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in Executive Order 2020-97 and any orders that may follow from it.
- d. Any business or operation that employs workers who perform resumed activities under section 11(a) of this order, but that does not sell necessary supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.

VII. All in-person government activities at whatever level (state, county, or local) are suspended unless:

- a. They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 9 and 10 of this order.
- b. They are performed by workers who are permitted to resume work under section 11 of this order.
- c. They are necessary to support the activities of workers described in sections 9, 10, and 11 of this order, or to enable transactions that support businesses or operations that employ such workers.
- d. They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
- e. For purposes of this order, necessary government activities include minimum basic operations, as described in 5(b) of this order. Workers performing such activities need not be designated.
- f. 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 Executive Order 2020-97 and any orders that may follow from it.

VIII. Exceptions.

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

1. To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
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 6(a) of this order may leave their home for work without being designated.)
3. To conduct minimum basic operations, as described in section 5(b) of this order, after being designated to perform such work by their employers.
4. To perform resumed activities, as described in section 11 of this order, after being designated to perform such work by their employers.
5. To perform necessary government activities, as described in section 7 of this order.
6. 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 for themselves or a household or family member.
7. To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
 - A. 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 or motor vehicles.
 - B. Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 10(i) of this order, or to go to a motor vehicle dealership showroom by appointment, as permitted under section 11(p) of this order.
 - C. Individuals may leave the home to have a bicycle repaired or maintained.
 - D. Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
8. To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
9. To care for a family member or a family member's pet in another household.
10. To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
11. To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
12. To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing



agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.

13. To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
14. To work or volunteer for businesses or operations (including both 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.
15. To attend a funeral, provided that no more than 10 people are in attendance.
16. To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
17. To view a real-estate listing by appointment, as permitted under section 11(g) of this order.
18. To participate in training, credentialing, or licensing activities permitted under section 11(i) of this order.
19. For individuals in Regions 6 or 8, to go to a restaurant or a retail store.
20. To go to a retail store by appointment, as permitted under section 11(q) of this order.
21. To attend a social gathering of no more than 10 people.

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. Between two residences in this state, including moving to a new residence.
4. As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

c. All other travel is prohibited, including all travel to vacation rentals.

IX. 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](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure 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.

X. 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, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- b. Workers at suppliers, distribution centers, or service providers, as described below.
 - 1. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - 2. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in sub-provision (1) of this subsection may designate their workers as critical infrastructure workers provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - 3. Consistent with the scope of work permitted under sub-provision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 - 4. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law. 
- c. 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 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.

- f. Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
- g. Workers at laundromats, coin laundries, and dry cleaners.
- h. Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
- i. Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic until May 26, 2020 at 12:01 am.

XI. For purposes of this order, workers who perform resumed activities are defined as follows:

- a. Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
- b. Workers who perform bicycle maintenance or repair.
- c. Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations.
- d. Workers for moving or storage operations.
- e. Workers who perform work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and outdoor workers at places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it.
- f. Workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers).
- g. Workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
 - 1. Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be limited to no more than four people on the premises at any one time. No in-person open houses are permitted.
 - 2. Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
- h. Workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
- i. Workers necessary to train, credential, and license first responders (e.g., police officers, fire fighters, paramedics) and health-care workers, including certified nursing assistants, provided that as much instruction as possible is provided remotely.
- j. Workers necessary to perform manufacturing activities. Manufacturing work may not commence under this subsection until the facility at which the work will be



performed has been prepared to follow the workplace safeguards described in section 4 of Executive Order 2020-97 and any orders that may follow from it.

- k. Workers necessary to conduct research activities in a laboratory setting.
- l. For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers necessary to perform retail activities. For purposes of this order, retail activities are defined:
 - 1. As the selling of goods and the rendering of services incidental to the sale of the goods (e.g., any packaging and processing to allow for or facilitate the sale and delivery of the goods).
 - 2. To exclude those places of public accommodation that are closed under Executive Order 2020-69 and any orders that may follow from it.
- m. For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers who work in an office setting, but only to the extent that such work is not capable of being performed remotely.
- n. For Regions 6 and 8, beginning at 12:01 am on May 22, 2020, workers in restaurants or bars, subject to the capacity constraints and workplace standards described in Executive Order 2020-97. Nothing in this subsection should be taken to abridge or otherwise modify the existing power of a local government to impose further restrictions on restaurants or bars. For restaurants and bars subject to this subsection, this subsection supersedes the limitations placed on those restaurants and bars by Executive Order 2020-69 and any order that may follow from it.
- o. Workers necessary to prepare a workplace to follow the workplace standards described in Executive Order 2020-97 and to otherwise ready the workplace for reopening.
- p. Beginning at 12:01 am on May 26, 2020, workers at motor vehicle dealerships, provided that showrooms are open only by appointment.
- q. Beginning at 12:01 am on May 26, 2020, workers necessary to perform retail activities by appointment, provided that the store is limited to 10 customers at any one time. For purposes of this order, retail activities are defined:
 - 1. As the selling of goods and the rendering of services incidental to the sale of the goods (e.g., any packaging and processing to allow for or facilitate the sale and delivery of the goods).
 - 2. To exclude those places of public accommodation that are closed under Executive Order 2020-69 and any orders that may follow from it.
- r. Consistent with section 10(b) of this order, workers at suppliers, distribution centers, or service providers whose in-person presence is necessary to enable, support, or facilitate another business's or operation's resumed activities, including workers at suppliers, distribution centers, or service providers along the supply chain whose in-person presence is necessary to enable, support, or facilitate the necessary work of another supplier, distribution center, or service provider in enabling, supporting, or facilitating another business's or operation's resumed activities. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.

XII. Any store that is open for in-store sales under section 10(f), section 11(c), or section 11(q) of this executive order:

- a. May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.
 - b. Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
- XIII. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
- XIV. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
- XV. Rules governing face coverings.
- a. Except as provided in subsection (b) of this section, any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
 - b. An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes. An individual may also remove a face covering while seated at a restaurant or bar.
 - c. All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
 - d. Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - e. The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
- XVI. Except as otherwise expressly stated in this order, 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, neither a place of religious worship nor its owner is subject to penalty under section 22 of this order for allowing religious worship at such place. No individual is subject to penalty under section 22 of this order for engaging in or traveling to engage in religious worship at a place of religious worship, or for violating section 15(a) of this order.
- XVII. 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. Similarly, nothing in this order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances.
- XVIII. This order takes effect immediately, unless otherwise specified in this order, and continues through May 28, 2020 at 11:59 pm.
- XIX. Executive Order 2020-17, which imposed temporary requirements regarding the postponement of non-essential medical and dental procedures, is rescinded as of May 28,

2020 at 11:59 pm. Executive Order 2020-34, which imposed temporary requirements regarding the postponement of veterinary services, is rescinded as of May 28, 2020 at 11:59 pm. Outpatient health-care facilities, including veterinary offices, are subject to the workplace safety rules described in Executive Order 2020-97.

XX. Executive Orders 2020-92 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.

XXI. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I 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.

XXII. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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

GRETCHEN WHITMER
GOVERNOR

Date: May 21 2020

Time: 9:49 am

RELATED CONTENT

Executive Order 2020-95 (COVID-19) (May 21, 2020)

Executive Order 2020-97 (COVID-19) (May 21, 2020)

Executive Order 2020-93 (COVID-19) (May 20, 2020)

Executive Order 2020-94 (May 19, 2020) - Declaration of State of Emergency

Executive Order 2020-85 (COVID-19)

Executive Order 2020-88 (COVID-19)

Executive Order 2020-92 (COVID-19) (May 18, 2020) - Rescinded

Executive Order 2020-91 (COVID-19) (May 18, 2020) - Rescinded

Executive Order 2020-86 (COVID-19)

Executive Order 2020-87 (COVID-19)



Executive Order 2020-89 (COVID-19)

Executive Order 2020-90 (COVID-19)

Executive Order 2020-84 (COVID-19) - Rescinded

Executive Order 2020-81 (COVID-19)

Executive Order 2020-83 (COVID-19)

Executive Order 2020-82 (COVID-19)

Executive Order 2020-79 (COVID-19)

Executive Order 2020-80 (COVID-19)

Executive Order 2020-78 (COVID-19)

Executive Order 2020-75 (COVID-19)




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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
INTERNATIONAL REALTY, INC.,
EXECUTIVE PROPERTY
MAINTENANCE, INC., INTRACO
CORPORATION, INC., CASITE
INTRACO, LLC, BAHASH &
COMPANY, LLC, d/b/a HILLSDALE
JEWELERS, WILLIAM A. SHORTT,
D.D.S., & THERESE F. SHORTT,
D.D.S., d/b/a SHORTT DENTAL,
and MIDWEST CARWASH
ASSOCIATION,

No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

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Exhibit K



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

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.
 - (c) 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.
 - 14. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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

Date: March 23, 2020

Time: 10:39 am



GRETCHEN WHITMER
GOVERNOR

By the Governor:



SECRETARY OF STATE



FILED WITH SECRETARY OF STATE

ON 3/23/2020 AT 11:51 am

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
INTERNATIONAL REALTY, INC.,
EXECUTIVE PROPERTY
MAINTENANCE, INC., INTRACO
CORPORATION, INC., CASITE
INTRACO, LLC, BAHASH &
COMPANY, LLC, d/b/a HILLSDALE
JEWELERS, WILLIAM A. SHORTT,
D.D.S., & THERESE F. SHORTT,
D.D.S., d/b/a SHORTT DENTAL,
and MIDWEST CARWASH
ASSOCIATION,

No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

Defendants.

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Exhibit L



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-110

Temporary restrictions on certain events, gatherings, and businesses

Rescission of Executive Orders 2020-69 and 2020-96

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. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the 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 (EMA), MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

Those executive orders have been challenged in *Michigan House of Representatives and Michigan Senate v Whitmer*. On May 21, 2020, the Court of Claims ruled that Executive Order 2020-67 is a valid exercise of authority under the Emergency Powers of the Governor Act but that Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

On May 22, 2020, I issued Executive Order 2020-99, again finding that the COVID-19 pandemic constitutes a disaster and emergency throughout the State of Michigan. That order constituted a state of emergency declaration under the Emergency Powers of the Governor Act of 1945. And, to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has declined to grant an extension request, that order also constituted a state of emergency and state of disaster declaration under that act.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it 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).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency on the people of Michigan, with the intent to preserve the rights and protections provided by the EMA. The EMA 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). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

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, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it was reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42, 2020-59, 2020-70, 2020-77, 2020-92, and 2020-96, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by these executive orders have been effective: the number of new confirmed cases each day continues to drop. Although the virus remains aggressive and persistent—on May 31, 2020, Michigan reported 57,397 confirmed cases and 5,491 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We are now in the process of gradually resuming in-person work and activities. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

With this order, I find it reasonable and necessary to move the state to Stage 4 of the Michigan Safe Start Plan. As a result, Michiganders are no longer required to stay home. Instead, certain businesses will remain closed and specific activities that present a

heightened risk of infection will remain prohibited. Any work that is capable of being performed remotely must be performed remotely.

Under this order, retailers will be allowed to resume operations on June 4. Restaurants and bars may reopen fully on June 8. Swimming pools and day camps for kids will also be permitted to reopen on the same day. Those businesses and activities will be subject to safety guidance to mitigate the risk of infection. Other businesses and activities that necessarily involve close contact and shared surfaces, including gyms, hair salons, indoor theaters, tattoo parlors, casinos, and similar establishments, will remain closed for the time being.

Michiganders must continue to wear face coverings when in enclosed public spaces and should continue to take all reasonable precautions to protect themselves, their co-workers, their loved ones, and their communities. Indoor social gatherings and events of more than 10 people are prohibited. Outdoor social gatherings and events are permitted so long as people maintain six feet of distance from one another and the assemblage consists of no more than 100 people.

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

1. For purposes of this order, Michigan comprises eight separate regions.
 - (a) Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
 - (b) Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
 - (c) Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.
 - (d) Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
 - (e) Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
 - (f) Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
 - (g) Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
 - (h) Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

2. Any work that is capable of being performed remotely (i.e., without the worker leaving his or her home or place of residence) must be performed remotely.
3. Any business or operation that requires its employees to leave their home or place of residence for work is subject to the rules on workplace safeguards in Executive Order 2020-97 or any order that may follow from it.
4. Any individual who leaves his or her home or place of residence must:
 - (a) Follow social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
 - (b) Wear a face covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space, unless the individual is unable medically to tolerate a face covering.
 - (1) An individual may be required to temporarily remove a face covering upon entering an enclosed public space for identification purposes. An individual may also remove a face covering to eat or drink when seated at a restaurant or bar.
 - (2) Businesses and building owners, and those authorized to act on their behalf, are permitted to deny entry or access to any individual who refuses to comply with the rule in this subsection (b). Businesses and building owners will not be subject to a claim that they have violated the covenant of quiet enjoyment, to a claim of frustration of purpose, or to similar claims for denying entry or access to a person who refuses to comply with this subsection (b).
 - (3) Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - (4) The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
5. Indoor social gatherings and events among persons not part of a single household are permitted, but may not exceed 10 people.
6. Outdoor social gatherings and events among persons not part of a single household are permitted, but only to the extent that:
 - (a) The gathering or event does not exceed 100 people, and
 - (b) People not part of the same household maintain six feet of distance from one another.

7. Unless otherwise prohibited by local regulation, outdoor parks and recreational facilities may be open, provided that they make any reasonable modifications necessary to enable employees and patrons not part of the same household to maintain six feet of distance from one another, and provided that areas in which social distancing cannot be maintained be closed, subject to guidance issued by the Department of Health and Human Services.
8. Unless otherwise prohibited by local regulation, public swimming pools, as defined by MCL 333.12521(d), may open as of June 8, 2020, provided that they are outdoors and limit capacity to 50% of the bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code, and subject to guidance issued by the Department of Health and Human Services. Indoor public swimming pools must remain closed.
9. Day camps for children, as defined by Rule 400.11101(i) of the Michigan Administrative Code, may open as of June 8, 2020, subject to guidance issued by the Department of Licensing and Regulatory Affairs. Residential, travel, and troop camps within the meaning of Rule 400.11101(n), (p), or (q) of the Michigan Administrative Code must remain closed for the time being.
10. Unless otherwise prohibited by local regulation, libraries and museums may open as of June 8, 2020, subject to the rules governing retail stores described in Executive Order 2020-97 or any order that may follow from it.
11. Stores that were closed under Executive Order 2020-96 (or that were open only by appointment under the same order) must remain closed to the public (or open only by appointment) until June 4 at 12:01 am. Such stores may then resume normal operations, subject to local regulation and to the capacity constraints and workplace standards described in Executive Order 2020-97 or any order that may follow from it.
12. Subject to the exceptions in section 14, the following places are closed to ingress, egress, use, and occupancy by members of the public:
 - (a) Indoor theaters, cinemas, and performance venues.
 - (b) Indoor gymnasiums, fitness centers, recreation centers, sports facilities, exercise facilities, exercise studios, and the like.
 - (c) Facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services that involve close contact of persons.
 - (d) Casinos licensed by the Michigan Gaming Control Board, racetracks licensed by the Michigan Gaming Control Board, and Millionaire Parties licensed by the Michigan Gaming Control Board.

- (e) Indoor services or facilities, or outdoor services or facilities involving close contact of persons, for amusement or other recreational or entertainment purposes, such as amusement parks, arcades, bingo halls, bowling alleys, indoor climbing facilities, indoor dance areas, skating rinks, trampoline parks, and other similar recreational or entertainment facilities.
13. Unless otherwise prohibited by local regulation, restaurants, food courts, cafes, coffeehouses, bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and like places may be open to the public as follows:
- (a) For delivery service, window service, walk-up service, drive-through service, or drive-up service, and may permit up to five members of the public at one time for the purpose of picking up their food or beverage orders, so long as those individuals are at least six feet apart from one another while on premises.
 - (b) In Regions 1, 2, 3, 4, 5, and 7, beginning at 12:01 am on June 8, 2020, for outdoor and indoor seating, subject to the capacity constraints and workplace standards described in Executive Order 2020-97 or any order that may follow from it.
 - (c) In Regions 6 and 8, for outdoor and indoor seating, subject to the capacity constraints and workplace standards described in Executive Order 2020-97 or any order that may follow from it.
14. The restrictions imposed by sections 12 and 13 of this order do not apply to any of the following:
- (a) Outdoor fitness classes, athletic practices, training sessions, or games, provided that coaches, spectators, and participants not from the same household maintain six feet of distance from one another at all times during such activities, and that equipment and supplies are shared to the minimum extent possible and are subject to frequent and thorough disinfection and cleaning.
 - (b) Services necessary for medical treatment as determined by a licensed medical provider.
 - (c) Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities.
 - (d) Crisis shelters or similar institutions.
 - (e) Food courts inside the secured zones of airports.
 - (f) Employees, contractors, vendors, or suppliers who enter, use, or occupy the places described in section 12 of this order in their professional capacity.
15. 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. Similarly, nothing in this order shall be taken to abridge

protections guaranteed by the state or federal constitution under these emergency circumstances.

16. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 19 of this order for allowing religious worship at such place. No individual is subject to penalty under section 19 of this order for engaging in religious worship at a place of religious worship, or for violating the face covering requirement of section 4(b) of this order.
17. Executive Orders 2020-69 and 2020-96 are rescinded. Except as specified, nothing in this order supersedes any other executive order. This order takes effect immediately unless otherwise specified.
18. In determining whether to maintain, intensify, or relax the restrictions in this order, I 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.
19. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

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



Date: June 1, 2020

Time: 2:27 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SIGNATURE SOTHEBY'S
INTERNATIONAL REALTY, INC.,
EXECUTIVE PROPERTY
MAINTENANCE, INC., INTRACO
CORPORATION, INC., CASITE
INTRACO, LLC, BAHASH &
COMPANY, LLC, d/b/a HILLSDALE
JEWELERS, WILLIAM A. SHORTT,
D.D.S., & THERESE F. SHORTT,
D.D.S., d/b/a SHORTT DENTAL,
and MIDWEST CARWASH
ASSOCIATION,

No. 1:20-cv-00360

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

Plaintiffs,

v

GRETCHEN E. WHITMER and
ROBERT GORDON,

Defendants.

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Exhibit M

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ROBERTS, C. J., concurring

SUPREME COURT OF THE UNITED STATES

No. 19A1044

SOUTH BAY UNITED PENTECOSTAL CHURCH, ET AL.
v. GAVIN NEWSOM, GOVERNOR OF
CALIFORNIA, ET AL.

ON APPLICATION FOR INJUNCTIVE RELIEF

[May 29, 2020]

The application for injunctive relief presented to JUSTICE KAGAN and by her referred to the Court is denied.

JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application.

CHIEF JUSTICE ROBERTS, concurring in denial of application for injunctive relief.

The Governor of California’s Executive Order aims to limit the spread of COVID–19, a novel severe acute respiratory illness that has killed thousands of people in California and more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others. The Order places temporary numerical restrictions on public gatherings to address this extraordinary health emergency. State guidelines currently limit attendance at places of worship to 25% of building capacity or a maximum of 100 attendees.

Applicants seek to enjoin enforcement of the Order. “Such a request demands a significantly higher justification than a request for a stay because, unlike a stay, an injunction does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.” *Respect Maine PAC v. McKee*, 562 U. S. 996 (2010) (internal quotation marks omitted). This

2 SOUTH BAY UNITED PENTECOSTAL CHURCH *v.* NEWSOM

ROBERTS, C. J., concurring

power is used where “the legal rights at issue are indisputably clear” and, even then, “sparingly and only in the most critical and exigent circumstances.” S. Shapiro, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, *Supreme Court Practice* §17.4, p. 17-9 (11th ed. 2019) (internal quotation marks omitted) (collecting cases).

Although California’s guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials “undertake[] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985).

That is especially true where, as here, a party seeks

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ROBERTS, C. J.,concurring

emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground. The notion that it is “indisputably clear” that the Government’s limitations are unconstitutional seems quite improbable.

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1

KAVANAUGH, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 19A1044

SOUTH BAY UNITED PENTECOSTAL CHURCH, ET AL.
v. GAVIN NEWSOM, GOVERNOR OF
CALIFORNIA, ET AL.

ON APPLICATION FOR INJUNCTIVE RELIEF

[May 29, 2020]

JUSTICE KAVANAUGH, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting from denial of application for injunctive relief.

I would grant the Church’s requested temporary injunction because California’s latest safety guidelines discriminate against places of worship and in favor of comparable secular businesses. Such discrimination violates the First Amendment.

In response to the COVID–19 health crisis, California has now limited attendance at religious worship services to 25% of building capacity or 100 attendees, whichever is lower. The basic constitutional problem is that comparable secular businesses are not subject to a 25% occupancy cap, including factories, offices, supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, bookstores, florists, hair salons, and cannabis dispensaries.

South Bay United Pentecostal Church has applied for temporary injunctive relief from California’s 25% occupancy cap on religious worship services. Importantly, the Church is willing to abide by the State’s rules that apply to comparable secular businesses, including the rules regarding social distancing and hygiene. But the Church objects to a 25% occupancy cap that is imposed on religious worship services but not imposed on those comparable secular businesses.

2 SOUTH BAY UNITED PENTECOSTAL CHURCH *v.* NEWSOM

KAVANAUGH, J., dissenting

In my view, California’s discrimination against religious worship services contravenes the Constitution. As a general matter, the “government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits.” *McDaniel v. Paty*, 435 U. S. 618, 639 (1978) (Brennan, J., concurring in judgment). This Court has stated that discrimination against religion is “odious to our Constitution.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. ___, __ (2017) (slip op., at 15); see also, *e.g.*, *Good News Club v. Milford Central School*, 533 U. S. 98 (2001); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520 (1993); *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993); *McDaniel*, 435 U. S. 618.

To justify its discriminatory treatment of religious worship services, California must show that its rules are “justified by a compelling governmental interest” and “narrowly tailored to advance that interest.” *Lukumi*, 508 U. S., at 531–532. California undoubtedly has a compelling interest in combating the spread of COVID–19 and protecting the health of its citizens. But “restrictions inexplicably applied to one group and exempted from another do little to further these goals and do much to burden religious freedom.” *Roberts v. Neace*, 958 F. 3d 409, 414 (CA6 2020) (*per curiam*). What California needs is a compelling justification for distinguishing between (i) religious worship services and (ii) the litany of other secular businesses that are not subject to an occupancy cap.

California has not shown such a justification. The Church has agreed to abide by the State’s rules that apply to comparable secular businesses. That raises important questions: “Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister?” *Ibid.*

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KAVANAUGH, J., dissenting

The Church and its congregants simply want to be treated equally to comparable secular businesses. California already trusts its residents and any number of businesses to adhere to proper social distancing and hygiene practices. The State cannot “assume the worst when people go to worship but assume the best when people go to work or go about the rest of their daily lives in permitted social settings.” *Ibid.*

California has ample options that would allow it to combat the spread of COVID–19 without discriminating against religion. The State could “insist that the congregants adhere to social-distancing and other health requirements and leave it at that—just as the Governor has done for comparable secular activities.” *Id.*, at 415. Or alternatively, the State could impose reasonable occupancy caps across the board. But absent a compelling justification (which the State has not offered), the State may not take a looser approach with, say, supermarkets, restaurants, factories, and offices while imposing stricter requirements on places of worship.

The State also has substantial room to draw lines, especially in an emergency. But as relevant here, the Constitution imposes one key restriction on that line-drawing: The State may not discriminate against religion.

In sum, California’s 25% occupancy cap on religious worship services indisputably discriminates against religion, and such discrimination violates the First Amendment. See *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U. S. 1312 (1986) (Scalia, J., in chambers). The Church would suffer irreparable harm from not being able to hold services on Pentecost Sunday in a way that comparable secular businesses and persons can conduct their activities. I would therefore grant the Church’s request for a temporary injunction. I respectfully dissent.