IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL CAVANAUGH, and ROBERT MUISE,

Plaintiff,

v

GRETCHEN WHITMER, in her official capacity as Governor for the State of Michigan, ALLEN TELGENHOF, in his official capacity as Charlevoix County Prosecuting Attorney, BRIAN L. MACKIE, in his official capacity as Washtenaw County Prosecuting Attorney, and WILLIAM J. VAILLIENCOURT, JR., in his official capacity as Livingston County Prosecuting Attorney,

Defendants.
_____/

Case No. 1:20-cv-00323-PLM-PJG

Hon. Paul L. Maloney

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DEFENDANT TELGENHOF'S RESPONSE TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Question Presented

1. Whether the Court issue a Preliminary Injunction against Defendant Telgenhof where Plaintiffs and have shown only that he has general enforcement authority in Charlevoix County, have failed to allege or demonstrate actual or threatened enforcement of Executive Order 2020-42 against Plaintiffs, and have failed to show an exception to Immunity from suit in Federal Court against him under the 11th Amendment to the United States Constitution?

Defendant answers, "*No*."

Plaintiff presumably answers, "*Yes*."

I. Introduction

Allen Telgenhof is the Charlevoix County Prosecutor. Plaintiffs Beemer and Cavanaugh, both residents of counties located in the Eastern District of Michigan, own cottages in Charlevoix County. Governor Gretchen Whitmer, as part of the State of Michigan's efforts to curb the spread of COVID-19, issued Executive Order 2020-42, which took effect on April 9, at 11:59 pm. That order increased the scope of prior temporary restrictions aimed at slowing the spread of COVID-19 and included a prohibition on individuals with more than one residence from travelling between those residences. It also expanded the scope of essential and non-essential businesses and recreational activity. Since its issuance, Plaintiffs Beemer and Cavanaugh assert they have been deprived of their right to visit their vacation homes and use their motorboats on Lake Charlevoix. Plaintiffs seek a preliminary injunction so they can visit their cottages and use their motorboats. For the reasons that follow, no such injunction should be imposed against this Defendant, Charlevoix County Prosecuting Attorney Allen Telgenhof.

II. Statement of Facts[1]

1. Pursuant to Michigan's Emergency Management Act, M.C.L. 30.401, et seq, and Emergency Powers Act, M.C.L. 10.31, et seq., and in direct response to the current COVID-19 pandemic, Governor Gretchen Whitmer enacted Executive Order 2020-

[1] Only those facts that pertain to Charlevoix County, the extent of Defendant Telgenhof's jurisdiction as Charlevoix County Prosecuting Attorney, are referenced here. Defendant Telgenhof takes no position regarding Plaintiff Cavanaugh's private landscape business in Livingston County, nor Plaintiff Muise's desire to purchase additional firearms and ammunition, or gather to break bread with family members outside of his immediate household for religious and companionship purposes.

42. The Order provides a number of measures aimed at slowing or reducing the spread of the novel coronavirus that causes COVID-19. The order provides that willful violations of its provisions shall be punishable as a misdemeanor.

2. Plaintiff Kimberly Beemer is a resident of Saginaw County. She owns a cottage in East Jordan, in Charlevoix County.
3. Plaintiff Beemer asserts that since EO 2020-42 was issued, she has not gone to her cottage in East Jordan. She also asserts that she has not boated on Lake Charlevoix, ostensibly because she can only do so with a gas-powered boat. Like many people, she believes she and her family present little risk of spreading COVID-19.
4. Plaintiff Paul Cavanaugh is a resident of Livingston County. He owns a cottage in Charlevoix County.
5. Plaintiff Cavanaugh asserts that since EO 2020-42 was issued, he has not gone to his cottage in Charlevoix County. He also asserts he has not boated on Lake Charlevoix since issuance of EO 2020, also because he has a gas-powered boat. Like Plaintiff Beemer, he believes he and his family present little risk of spreading COVID-19.
6. The remaining Plaintiff, and counsel for the other Plaintiffs, Robert Muise, does not assert any claim related to Charlevoix County or Defendant Telgenhof.
7. Plaintiffs filed this declaratory and injunctive action on April 15, 2020. They filed the present motion for a temporary restraining order and preliminary injunction on April 20, 2020.

8. On April 23, 2020, Defendant Telgenhof issued his office's official statement on the Executive Order at issue, which includes the following related to enforcement by the Charlevoix County Prosecuting Attorney's office:

> When the governor announced the first "Stay Home" executive order, we were told that the Attorney General's Office would handle all enforcement issues. Enforcement has now been deferred to local prosecutors.
>
> While we did not sign up for this, we have been doing our best to interpret the provisions of the order and provide guidance to individuals and businesses and, together with law enforcement, to seek voluntary compliance.
>
> As of yesterday, we have 12 confirmed cases of COVID-19 in Charlevoix County and one tragic death as a result. My heart aches for those who have been diagnosed and those close to them, especially the friends and family of the gentleman who lost his battle with the deadly virus.
>
> Charlevoix County residents and businesses have great at following the directives and the only individuals we have charged for violating the order have been people engaged in criminal activity, such as drug sales. (Exhibit 1)

9. No enforcement action has been initiated or threatened to be initiated by Defendant Telgenhof or his office against anyone engaged in the activities Plaintiffs Beemer and Cavanaugh complain they have not done since the April 9 order went into effect.

10. On Friday, April 24, 2020, at 11:00 am, Governor Whitmer issued Executive Order 2020-59, which lifted the restrictions as they relate to Plaintiffs' concerns regarding Charlevoix County. Thus, it would seem the claim is moot as to this Defendant.[2]

[2] If a case no longer relates to an "actual, live controversy, it is considered moot." ***Pettrey v. Enter. Title Agency, Inc.***, 584 F.3d 701, 703 (6th Cir. 2009). Once a case is moot, it must be dismissed for lack of jurisdiction. ***Id.*** "The test for mootness is whether the relief sought would, if

III. Standard of Review

The granting of a preliminary injunction is committed to the sound discretion of the court. ***United States v. Any and All Radio Station Transmission Equip.***, 204 F.3d 658, 665 (6th Cir. 2000). Under FRCP 65, injunctive relief is an extraordinary remedy whose purpose generally is to preserve the status quo. ***Univ of Texas v. Camenisch***, 451 U.S. 390, 395 (1981); ***Barber v. Dearborn Public Schools***, 286 F. Supp. 2d 847, 851-852 (E.D. Mich. 2003). Plaintiffs "carry a heavy burden to demonstrate entitlement to a preliminary injunction." ***Erard v. Johnson***, 905 F. Supp. 2d 782, 796 (E.D. Mich. 2012). When deciding whether to issue a preliminary injunction under Federal Rule of Civil Procedure 65, courts typically consider four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury if the injunction does not issue; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction. ***Leary v. Daeschner***, 228 F.3d 729, 736 (6th Cir. 2000). "A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it."

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granted, make a difference to the legal interests of the parties." ***McPherson v. Mich. High Sch. Athletic Ass'n, Inc***. 119 F.3rd 453, 458 (6th Cir. 1978). "Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief." ***Carras v. Williams***, 807 F.2d 1286, 1289 (6th Cir. 1986). Courts have repeatedly dismissed claims for injunctive relief as moot when the sought relief has already been achieved. See, e.g. ***Bench Billboard Company v. City of Cincinnati***, 675 F.3d 974 (6th Cir. 2012) (court determined claims based on statutory challenge were moot when City revised statutory scheme after the lawsuit was filed). It would appear that Governor Whitmer's EO 2020-59 would moot the case as it relates to any potential claim regarding Charlevoix County or its Prosecuting Attorney, Defendant Telgenhof.

Overstreet v. Lexington-Fayette Urban Cty. Gov't, 305 F.3d 566, 573 (6th Cir. 2002) (citing ***Leary***, 228 F.3d at 739).

IV. Argument[3]

A. Defendant Telgenhof Defers to Defendant Whitmer Regarding the Constitutionality of EO 2020-42

The duties of Michigan's county prosecuting attorneys are provided by law. MI. CONST. Art. 7, § 4.[4] These duties include the prosecution and defense of suits in their respective counties in which the state or the county is a party. M.C.L. § 49.153. It is long established that in Michigan, a prosecuting attorney retains discretion whether to prosecute, and which charges to file, if any. ***People v. Herrick***, 216 Mich. App. 594, 598; 550 N.W.2d 541 (1996) (collecting cases) ("The county prosecutor is a constitutional officer with discretion to decide whether to initiate criminal charges."); see also ***United States v. Oldfield***, 859 F.2d 392, 398 (6th Cir. 1988).

While given this discretion on enforcement, in a situation like the present case, where there has been no showing of actual enforcement, let alone an allegation of a threat of enforcement by local prosecuting attorney, for engagement in the activities Plaintiffs

[3] As noted in footnote 2, *supra*, it would appear that Plaintiffs' claims are now moot as to this Defendant. These arguments are presented in the event this Court does not dismiss for mootness.

[4] "Prosecuting attorneys shall, in their respective counties, appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be a party or interested." M.C.L. § 49.153. Similarly, the Michigan Attorney General possesses all the powers of a prosecuting attorney unless that power has been specifically withdrawn by the Legislature." ***Fieger v. Cox***, 274 Mich. App. 449, 466, 734 N.W.2d 602, 612 (2007) (quoting ***People v. Karalla***, 35 Mich. App. 541, 544, 192 N.W.2d 676 (1971)). Given that the Attorney General's office had initially indicated it would undertake enforcement of EO 2020-42, and there has been no revocation of the general authority of the Attorney General to take such action, that office has the same enforcement authority over criminal enforcement of EO 2020-42 as does any local prosecutor.

assert they would prefer to do, it is not the duty of that local prosecuting official to defend the constitutionality of the challenged order or statute. See, e.g., Fed. R. Civ. P. 5.1 (requiring notice to the state attorney general when an action challenges the constitutionality of a state statue or order). Here, this burden has been taken up by Defendant Whitmer, through her counsel the Attorney General, and this Defendant defers to the arguments set forth in that response, Dkt. No. 10.

B. Plaintiffs Beemer and Cavanaugh Lack Standing to Seek Injunctive Relief Against Defendant Telgenhof

At the outset, Defendant Telgenhof incorporates by reference all arguments presented by co-Defendants regarding standing, including those made by Defendants Whitmer and Vailliencourt. Federal courts are constitutionally limited to adjudicating actual cases or controversies. U.S. Const., art. III, § 2. To maintain an action, Plaintiff's personal interest in the litigation must exist both at the commencement of the suit and throughout the suit. ***Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.***, 528 U.S. 167, 189 (2000). Plaintiffs bear the burden of showing that the court has standing to hear their particular case. ***AFGE v. Clinton***, 180 F.3d 727, 729 (6th Cir. 1999). To establish Article III standing to sue in federal court, a plaintiff must show that:

> (1) He or she has suffered an "injury in fact"; (2) there is a causal connection between the injury and the conduct complained of; and (3) the injury will likely be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 497 U.S. 871, 883 (1990). Since these elements are not mere pleading requirements, but rather an indispensable part of the plaintiffs' case, each element must be supported in the same way as any other matter on which plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the

successive stages of the litigation. ***Id***. at 883-889; ***Gladstone, Realtors v. Village of Bellwood***, 441 U.S. 91, 114-115 (1979).

In addition to the Article III requirements, a plaintiff must also satisfy three prudential standing restrictions. First, a plaintiff must "assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." ***Warth v. Seldin***, 422 U.S. 490, 499 (1975) (citations omitted). Second, a plaintiff's claim must be more than a "generalized grievance" that is pervasively shared by a large class of citizens. ***Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.***, 454 U.S. 464, 474-75 (1982). Third, in statutory cases, the plaintiff's claims must fall within the "zone of interests" regulated by the statute in question. ***Id***. A state official only becomes a proper party when their actions demonstrate "a realistic possibility" the official will take legal or administrative actions against the plaintiff's interests. ***Russell v. Lundergan-Grimes***, 784 F.3d 1037, 1048 (6th Cir. 2015). There must be an actual threat that proceedings are actually going to commence, not that there was merely authority to commence proceedings. ***Children's Healthcare is a Legal Duty, Inc. v. Deters***, 92 F.3d 1412, 1416 (6th Cir. 1996).

Plaintiffs' claims against Defendant Telgenhof are a classic example of a "generalized grievance" which lacks an "injury in fact." Plaintiffs have failed to allege any past enforcement, ongoing enforcement, or a threat of imminent enforcement of the Executive Order against either Plaintiff with a connection to Charlevoix County, or anyone partaking in the activities Plaintiffs are seeking to engage in. The only claims alleged against Defendant Telgenhof is that he has general authority to enforce Executive Order 2020-42. Such a general claim that contains absolutely no injury or reasonable threat of

injury to Plaintiffs is insufficient to justify naming Defendant Telgenhof as a party. Plaintiffs are merely relying on Defendant Telgenhof's authority to prosecute, not on his actual or realistic threat of prosecution of the Executive Order – a position argument the Sixth Circuit has rejected. *See* ***Children's Healthcare***, *supra* at 1416.

Additionally, Plaintiffs have failed to show how their alleged injuries are casually connected to Defendant Telgenhof's activity, as Plaintiffs have not even alleged a single action taken by Defendant Telgenhof. Again, Defendant Telgenhof has not taken any enforcement action, or threatened an enforcement action against Plaintiff, or anyone partaking in the activities Plaintiffs are seeking to engage in. It is impossible to connect any alleged injury to a nonexistent action, especially in a suit where Plaintiffs are seeking the Prosecutor's inaction. Stated differently, Defendant Telgenof is already partaking in the inaction Plaintiffs are seek through this suit.

Therefore, Plaintiffs have failed to meet their burden in providing this Courts' jurisdiction over Defendant Telgenhof, and he must be dismissed.

C. Because Defendant Telgenhof Has Not Threatened Enforcement Against Plaintiffs or Anyone Similarly Situated, Plaintiffs Cannot Establish a Likelihood of Success, and therefore, Cannot Show the Need for Injunctive Relief as to Him and His Office

The 11th Amendment to the United States Constitution provides broad immunity for state governments and state officials. It provides as follows:

> The Judicial power of the United States shall not be construed to extend to **any suit in law or equity**, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State. [U.S. Const. amend XI. (emphasis added)]

This immunity not only applies to the states themselves, but also to "state instrumentalities" and "entities acting as "arm[s] of the State." ***S.J. v. Hamilton Cty., Ohio***, 374 F.3d 416, 419 (6th Cir. 2004) (quoting ***Regents of Univ. of Calif. v. Doe****,* 519 U.S. 425, 429 (1997) and ***Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle***, 429 U.S. 274, 280 (1977)). In § 1983 litigation, "[a]n official capacity claim filed against a public employee is equivalent to a lawsuit directed against the public entity which that agent represents." ***Claybrook v. Birchwell***, 199 F.3d 350, 355 n. 4 (6th Cir. 2000) (citing ***Kentucky v. Graham***, 473 U.S. 159, 165 (1985)); see also ***Monell v. Dep't of Soc. Servs.***, 436 U.S. 658*,* 690, n. 55 (1978) (Official-capacity suits ... "generally represent only another way of pleading an action against an entity of which an officer is an agent."). Likewise, "neither states, nor state officials acting in their official capacities are 'persons' within the meaning of § 1983. Consequently, a cause of action for damages against these parties will not lie." ***Wilson v. Brown****,* 889 F.2d 1195, 1197 (1st Cir.1989).

Courts in the Sixth Circuit have repeatedly held that 11th Amendment immunity is available to county prosecutors when acting as state officials. See ***Cady v. Arenac Cty.,*** 574 F.3d 334, 342 (6th Cir. 2009); ***Gavitt v. Ionia Cty.,*** 67 F. Supp. 3d 838, 858 (E.D. Mich. 2014), aff'd sub nom. ***Gavitt v. Born***, 835 F.3d 623 (6th Cir. 2016). Whether a county prosecutor is a "state official" depends, at least in part, on state law. ***Mt. Healthy City****, supra* at 280. The Sixth Circuit has previously provided that a county prosecutor acts "as a state agent when prosecuting state criminal charges". ***Cady***, *supra* at 343. Therefore, a prosecutor acting in such a manner is entitled to 11th Amendment immunity when sued in his official capacity. ***Id.*** at 345.

Plaintiffs attempt to avoid the application of Defendant's immunity by relying on ***Ex parte Young***, 209 U.S. 123 (1908), which recognizes one of the limited exceptions to 11th Amendment immunity. In ***Ex parte Young***, the Court held the 11th Amendment "does not preclude actions against *state officials* sued in their official capacities for prospective injunctive or declaratory relief." ***Thiokol Corp. v. Dep't of Treasury, State of Mich., Revenue Div.***, 987 F.2d 376, 381 (6th Cir. 1993) (emphasis added, citing ***Ex parte Young***, *supra*). The ***Ex parte Young*** exception permits a federal court to "compel[ ] a *state official* to comply with federal law." ***Kanuszewski v. Mich. Dep't of Health & Human Servs.***, 927 F.3d 396, 417 (6th Cir. 2019) (emphasis added, citing ***Will v. Mich. Dep't of State Police***, 491 U.S. 58, 71 & n.10 (1989)).

Claims under the ***Ex parte Young*** exception must also meet a number of additional conditions to survive dismissal. To start, claims under this exception must seek prospective relief to end a continuing violation of federal law as retroactive relief is barred by the 11th Amendment. *See* ***MacDonald v. Vill. of Northport, Mich.,*** 164 F.3d 964, 970–72 (6th Cir. 1999); ***Pennhurst State Sch. & Hosp. v. Halderman,*** 465 U.S. 89, 103 (1984). Moreover, the ***Ex parte Young*** doctrine only permits lawsuits that can be meaningfully described as being against the named official, not those that 'merely mak[e] him a party as a representative of the state, and thereby attempt[ ] to make the state a party.'" ***McNeil v. Community Probation Servs., LLC***, — F.3d —, No. 19-5262, 2019 WL 7043172, at *4 (6th Cir. Dec. 23, 2019) (quoting ***Ex parte Young***, *supra* at 157); see also ***Hoover v. Michigan Dep't of Licensing & Regulatory Affairs***, No. 19-CV-11656, 2020 WL 230136, at *7 (E.D. Mich. Jan. 15, 2020)). This exception is also generally

narrowly construed by the courts. ***Children's Healthcare***, 92 F.3d at 1415 (courts "have not read ***Young*** expansively.").

The ***Ex parte Young*** doctrine also requires a nexus between the official and the conduct at issue. In fact, the Sixth Circuit has provided that "***Young*** does not apply when a defendant state official has neither enforced nor threatened to enforce the allegedly unconstitutional state statute." ***Children's Healthcare****, supra* at 1415. To be liable, a state actor "must have some connection with the enforcement" of the allegedly unconstitutional act, and this connection must be "more than a bare connection." ***Ex parte Young****, supra* at 157; ***Russell v. Lundergan–Grimes***, 784 F.3d 1037, 1047 (6th Cir. 2015). "General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." ***Russell***, *supra* at 1048 (quoting ***1st Westco Corp. v. Sch. Dist. of Philadelphia***, 6 F.3d 108, 113 (3rd Cir. 1993)); see also ***Libertarian Party of Kentucky v. Grimes***, 164 F. Supp. 3d 945, 949 (E.D. Ky.), aff'd, 835 F.3d 570 (6th Cir. 2016).

Here, there no dispute that Charlevoix County Prosecuting Attorney Allen Telgenhof is not a proper party for liability in his official capacity. To start, he lacks the requisite relationship to support application of the ***Ex parte Young*** exception. As Plaintiff's own Motion suggests, Defendant has not enforced and has not even threatened to enforce Executive Order 2020-42 against the named Plaintiffs, or against others for the sort of behavior Plaintiffs claim they have been prevented from engaging. (Doc. 8). In fact, Defendant has not enforced the Order against any persons similarly situation to Plaintiffs, i.e. persons solely traveling to secondary vacation residences or attempting to motorboat on Lake Charlevoix. Therefore, without such a threat of imminent enforcement,

Plaintiffs have failed to meet the high burden of such an extraordinary remedy against this Defendant.

The only "connection" Plaintiffs have offered between Defendant Telgenhof and their anticipated harm is Plaintiffs' citation to Defendant's authority to prosecute persons under this Executive Order. However, the "[g]eneral authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." ***1st Westco Corp.,*** *supra at* 113; see also ***Russell***, *supra* at 1048. Government officials are proper parties only "when there is a *realistic possibility* the official will take legal or administrative actions against the plaintiff's interests." ***Russell****, supra* at 1049 (citations omitted, emphasis added). "Consistent with the ***Young*** requirement of action on the part of the state official, we note that the phrase 'some connection with the enforcement of the act' does not diminish the requirement that the official threaten and be about to commence proceedings." ***Children's Healthcare****, supra* at 1416. Plaintiffs have not made their requisite showing, and therefore, injunctive relief is inappropriate.

Further, as noted above, Defendant is not even required to enforce this Executive Order, as local prosecutors enjoy broad discretion on what charges, if any, to file and pursue. See ***Herrick***, *supra*; ***Oldfield***, *supra*. Given this discretion, and no indication or even allegation that this Defendant has enforced or threatened to enforce the Executive Order for the actions Plaintiffs complaint, the ***Ex parte Young*** doctrine is inapplicable and Defendant is entitled to 11th Amendment immunity. Plaintiffs may have an internal belief about whether they would be prosecuted for traveling to their vacation cottages, but they have submitted nothing to support their allegations, other than speculation and conjecture. There is no realistic possibility Plaintiffs would be prosecuted by Defendant

here and their claims accordingly will fail to overcome Defendant's 11th Amendment immunity.

V. Conclusion

For the reasons stated above, Defendant Telgenhof respectfully requests that no injunctive relief is necessary as to him, sued only in his official capacity, as a decision on the merits of Plaintiff's claim against Defendant Whitmer will be sufficient to determine whether any enforcement action would or could be undertaken by him pursuant to a violation of EO 2020-42.

Respectfully Submitted,

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Dated: April 24, 2020

PROOF OF SERVICE AND CERTIFICATE OF COMPLIANCE WITH LCivR 7.2

I hereby certify that on April 24, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record identified in the caption. I also certify that this Response Brief was created using Microsoft Word 2016, and that the Response Brief contains 3,714 words in the text and footnotes, exclusive of the caption, index, signatures, and this certificate.

Respectfully Submitted,

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Dated: April 24, 2020

Kimberly Beemer, et al v Gretchen Whitmer, et al

Case No. 1:20-cv-00323-PLM-PJG

Defendant Telgenhof's Response to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction

Exhibit 1 – Lawsuit Statement

STATEMENT OF PROSECUTING ATTORNEY ALLEN TELGENHOF
April 23, 2020

A federal lawsuit was filed last week challenging the constitutionality of Governor Whitmer's "Stay Home" executive order. Because two of the parties own second homes in Charlevoix County, I have been included as a party in my capacity as Charlevoix County Prosecuting Attorney as have prosecutors from other counties.

The suit asks the United States District Court for the Western District of Michigan to rule on the constitutionality of the Governor's actions and she will have the opportunity to defend the scope and validity of her order.

The plaintiff's claim specific to Charlevoix County is that the governor's order does not allow them to visit their vacation homes here. Neither has been prosecuted nor had prosecution threatened by law enforcement or by my office.

When the governor announced the first "Stay Home" executive order, we were told that the Attorney General's Office would handle all enforcement issues. Enforcement has now been deferred to local prosecutors.

While we did not sign up for this, we have been doing our best to interpret the provisions of the order and provide guidance to individuals and businesses and, together with law enforcement, to seek voluntary compliance.

As of yesterday, we have 12 confirmed cases of COVID-19 in Charlevoix County and one tragic death as a result. My heart aches for those who have been diagnosed and those close to them, especially the friends and family of the gentleman who lost his battle with the deadly virus.

Charlevoix County residents and businesses have great at following the directives and the only individuals we have charged for violating the order have been people engaged in criminal activity, such as drug sales.

This lawsuit asks the court to rule on the constitutionality of the governor's actions and does not state or even imply we have done anything wrong in Charlevoix County.

We are a nation of laws and this type of lawsuit is one way a citizen can legally challenge the acts of the government. The plaintiffs are exercising their right to contest the governor's actions. The governor will respond and defend her actions. The court will decide whether the order is constitutional.