

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

KIMBERLY BEEMER, PAUL CAVANAUGH,  
and ROBERT MUISE,  
Plaintiffs,

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.

No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Kimberly Beemer, Paul Cavanaugh, and Robert Muese (collectively referred to as “Plaintiffs”), by and through undersigned counsel, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following upon information and belief:

**INTRODUCTION**

1. John Adams warned: “But a Constitution of Government once changed from Freedom, can never be restored. Liberty once lost is lost forever.” Plaintiffs bring this action because they reasonably fear that the draconian encroachments on their freedom set forth in this Complaint will, unfortunately, become the “new norm.” It has been said that all tyranny needs to gain a foothold is for people of good conscience to remain silent.

2. This case seeks to protect and vindicate fundamental liberties that citizens of the United States enjoy free from government interference. These liberties are not conferred or granted by government to then be rescinded at the will and whims of government officials.

These God-given liberties are possessed by the people, and they are guaranteed against government interference by the United States Constitution, which is the supreme law of the land, and by the Constitution of the State of Michigan.

3. This civil rights action is brought under the First, Second, and Fourteenth Amendments to the United States Constitution, the Contracts Clause of the United States Constitution, 42 U.S.C. § 1983, and Article I, § 6 of the Michigan Constitution, challenging Defendant Whitmer's authority to issue Executive Order 2020-42 and its draconian measures as applied to criminalize Plaintiffs' peaceful activity and thus deprive Plaintiffs of their fundamental liberties and freedom.

4. Plaintiffs seek a declaration that the enactment and enforcement of the challenged measures ordered by Defendant Whitmer in Executive Order 2020-42 as set forth in this Complaint violate their fundamental liberties and rights secured by the United States and Michigan Constitutions and an order enjoining the same. Plaintiffs also seek an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and other applicable laws.

### **JURISDICTION AND VENUE**

5. This action arises under the Constitution and laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the State law claim pursuant to 28 U.S.C. § 1367(a).

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by *Ex parte Young*, 209 U.S. 123 (1908), and by the general legal and equitable powers of this Court.

7. Plaintiffs' claim for an award of their reasonable costs of litigation, including attorneys' fees and expenses, is authorized by 42 U.S.C. § 1988 and other applicable law.

8. Venue is proper under 28 U.S.C. § 1391(b) because the Office of the Governor of Michigan and the Charlevoix Prosecuting Attorney are located in this judicial district and all Defendants are residents of the State in which this district is located.

### **PARTIES**

9. Plaintiffs Kimberly Beemer, Paul Cavanaugh, and Robert Muise are adult citizens of the United States and residents of Michigan.

10. Plaintiffs Beemer and Cavanaugh own cottages in Charlevoix County, Michigan.

11. Plaintiff Beemer, a licensed attorney, resides in Saginaw, Michigan. Plaintiff Cavanaugh resides in Brighton, Michigan. Plaintiff Muise, a licensed attorney, resides in Superior Township, Michigan, which is in Washtenaw County.

12. Plaintiff Cavanaugh is the owner of a landscaping business, Cavanaugh's Lawn Care LLC, which is located in Livingston County, Michigan.

13. Defendant Gretchen Whitmer is the Governor of the State of Michigan.

14. Under color of State law, Defendant Whitmer issued Executive Order 2020-42.

15. Defendant Whitmer is sued in her official capacity only.

16. Defendant Allen Telgenhof is the Charlevoix County Prosecuting Attorney. As a County Prosecuting Attorney, Defendant Telgenhof is responsible for criminally prosecuting persons who violate Executive Order 2020-42 in his County.

17. Defendant Telgenhof is sued in his official capacity only.

18. Defendant Brian L. Mackie is the Washtenaw County Prosecuting Attorney. As a County Prosecuting Attorney, Defendant Mackie is responsible for criminally prosecuting persons who violate Executive Order 2020-42 in his County.

19. Defendant Mackie is sued in his official capacity only.

20. Defendant William J. Vaillencourt, Jr. is the Livingston County Prosecuting Attorney. As a County Prosecuting Attorney, Defendant Vaillencourt is responsible for criminally prosecuting persons who violate Executive Order 2020-42 in his County.

21. Defendant Vaillencourt is sued in his official capacity only.

### **STATEMENT OF FACTS**

22. On March 24, 2020, Defendant Whitmer issued Executive Order 2020-21, which was described as a “[t]emporary requirement to suspend activities that are not necessary to sustain or protect life.”

23. On April 9, 2020, Defendant Whitmer issued Executive Order 2020-42, which “reaffirm[ed] the measures set forth in Executive 2020-21, clarif[ied] them, and extend[ed] their duration to April 30, 2020.” The executive order took effect “on April 9, 2020 at 11:59 pm.” When Executive Order 2020-42 took effect, it rescinded Executive Order 2020-21. A true and correct copy of Executive Order 2020-42, which is incorporated herein by reference, is attached to this Complaint as Exhibit 1.

24. By its own terms, Executive Order 2020-42 will remain in effect until April 30, 2020 at 11:59 pm. It is more likely than not that Defendant Whitmer will extend the measures challenged here beyond April 30, 2020 via a new executive order. Defendant Whitmer publicly expressed a desire to extend the measures of Executive Order 2020-42 into June 2020.

25. A “willful violation” of Executive Order 2020-42 is a misdemeanor.

26. Executive Order 2020-42 put in place draconian measures that arbitrarily and unreasonably impose restrictions and thus criminal sanctions on Plaintiffs’ fundamental rights and liberty.

27. Executive Order 2020-42, states, in relevant part, the following:

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.

\* \* \*

7. Exceptions.

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

1. To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.

\* \* \*

6. To obtain necessary services or supplies for themselves, their family or household members, their pets, and their 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. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

\* \* \*

7. To care for a family member or a family member's pet in another household.

\* \* \*

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

1. To return to a home or place of residence from outside the state.
2. To leave this state for a home or residence elsewhere.
3. Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.

\* \* \*

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

(Executive Order 2020-42 at Ex. 1).

28. Plaintiff Beemer and members of her household frequently travel to her cottage, property which she owns, located in Charlevoix County. She would often leave from her residence in Saginaw, Michigan and travel to the cottage on a Thursday, remaining at her cottage over the weekend and returning late on Sunday or early Monday morning. Her cottage is a second home, and it is her private retreat from the daily grind of her law practice.

29. Under the measures set forth in Executive Order 2020-42, if Plaintiff Beemer were to travel to her cottage, she would be subject to prosecution for violating the executive order. As a result, Plaintiff Beemer has ceased her travel and has thus been denied the use and enjoyment of her private property by the government. Plaintiff Beemer has no recourse for this deprivation of her property rights other than seeking redress in a court of law, which she is doing here.

30. There is little to no chance that Plaintiff Beemer will cause the spread of COVID-19 by travelling with members of her household from her residence in Saginaw, Michigan to her

cottage in Charlevoix County. In fact, she and members of her household are more isolated at the cottage than when they are at their home in Saginaw.

31. Plaintiff Cavanaugh and members of his household frequently travel to his cottage, property which he owns, located in Charlevoix County. It was a Cavanaugh family tradition to spend Easter at the cottage.

32. Under the measures set forth in Executive Order 2020-42, if Plaintiff Cavanaugh were to travel to his cottage, he would be subject to prosecution for violating the executive order. As a result, Plaintiff Cavanaugh has ceased his travel and has thus been denied the use and enjoyment of his private property by the government. In fact, as a result of Executive Order 2020-42, Plaintiff Cavanaugh and his family had to cancel their Easter tradition. Plaintiff Cavanaugh has no recourse for this deprivation of his property rights other than seeking redress in a court of law, which he is doing here.

33. There is little to no chance that Plaintiff Cavanaugh will cause the spread of COVID-19 by travelling with members of his household from his residence in Brighton, Michigan to his cottage in Charlevoix County. In fact, he and members of his household are more isolated at the cottage than when they are at their home in Brighton.

34. There is no reasonable justification for restricting Michigan residents from travelling to cottages that they own or rent during this current pandemic. Indeed, under Executive Order 2020-42, a Wisconsin resident could travel from his State to his cottage in Charlevoix County, Michigan without violating Executive Order 2020-42. Thus, the executive order discriminates against individuals, including Plaintiffs Beemer and Cavanaugh, based upon their State of residence, it impairs their right to travel, and it deprives them of the use and enjoyment of their property.

35. Prohibiting individuals from traveling from one place of residence in the State to another place of residence or cottage within the State has no real or substantial relation to promoting the objectives of Executive Order 2020-42, particularly in light of the exceptions permitted under the order.

36. Following the issuance of Executive Order 2020-21, and reaffirmed in Executive Order 2020-42, Defendant Whitmer has refused to order abortion centers in Michigan to close even though abortion is an elective procedure, it is never necessary to protect the life of a mother, and it results in the death of an unborn child, which is contrary to the stated goal of Executive Order 2020-42 “to sustain or protect life.” Moreover, it is impossible to practice social distancing in an abortion center due to the nature of the procedure.

37. Defendant Whitmer also permits marijuana businesses to remain open during this pandemic. In fact, because Secretary of State offices are closed and “individuals may not be able to renew their driver’s licenses or government-issued identification cards while the Executive Order is in effect . . . , licensed provisioning centers and adult-use retailers are temporarily allowed to sell or transfer marijuana to a patient, caregiver, or customer who has an expired driver license or government-issued identification card during home delivery and curbside sales.” [https://www.michigan.gov/documents/lara/Verifying\\_ID\\_and\\_Sales\\_of\\_Marijuana\\_in\\_Response\\_to\\_COVID-19\\_684786\\_7.pdf](https://www.michigan.gov/documents/lara/Verifying_ID_and_Sales_of_Marijuana_in_Response_to_COVID-19_684786_7.pdf).

38. For the past ten years, Plaintiff Cavanaugh has worked hard to develop and expand his landscaping business, Cavanaugh’s Lawn Care LLC. As a result of Defendant Whitmer’s executive orders, his company came to an abrupt halt. The early spring brought an early start to the season. Eleven of Plaintiff Cavanaugh’s fulltime employees had returned to work for two weeks before the shutdown. One additional, fulltime employee was returning from



a trip abroad. Plaintiff Cavanaugh had high hopes of getting ahead of the workload and having a normal start to the season. As a result of Defendant Whitmer's shutdown of his business, Plaintiff Cavanaugh missed out on approximately \$25,000 for spring cleanups, \$12,000 for fertilizing for first round preemergent, \$30,000 for mowing for the month of April, and \$35,000 for landscape installs. The lost revenue is impossible to replace. Eighty percent of Plaintiff Cavanaugh's business is contract work with existing customers. Consequently, the measures set forth in Defendant Whitmer's executive orders have impaired Plaintiff Cavanaugh's right to contract protected by the U.S. Constitution.

39. There is little to no chance that Plaintiff Cavanaugh's landscaping business will spread COVID-19. Plaintiff Cavanaugh's employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee's household. The business is an outdoor business, which can operate without any personal contact with customers. Indeed, there is far less likelihood of Plaintiff Cavanaugh's business spreading COVID-19 than other businesses that Defendant Whitmer permits under her executive orders, specifically including hardware stores, grocery stores, gas stations, marijuana businesses, and abortion centers.

40. During his free time, which he now has in abundance due to the fact that Defendant Whitmer's executive orders have shut down his business, Plaintiff Cavanaugh enjoys time with his son fishing in Plaintiff Cavanaugh's boat on Lake Charlevoix. However, Defendant Whitmer's executive order has now stripped that away from him as well. Under her executive order, Defendant Whitmer permits kayaking or canoeing, but arbitrarily prohibits the use of boats with motors.

41. Plaintiff Muisse served as an officer on activity duty in the United States Marine Corps for thirteen years. He was an infantry officer, he is a veteran of Operations Desert Shield and Desert Sword, and he trained with 42 Commando, British Royal Marines. Plaintiff Muisse resigned his commission as a Major in 2000.

42. Plaintiff Muisse has a valid Michigan Concealed Pistol License. He is professionally trained in the use of firearms, he legally owns firearms, and he is a staunch defender of the Second Amendment, which constitutionally guarantees him the right to bear arms for self-defense, defense of his family, and for the defense of a free State. He also uses firearms to hunt in Michigan and in other States.

43. To support his right to bear arms, which necessarily includes the right to purchase firearms and ammunition, Plaintiff Muisse patronizes local gun shops, specifically including a gun shop located in Washtenaw County.

44. Executive Order 2020-42 orders all nonessential businesses and activities to cease. Though this order exempts “critical infrastructure,” Defendant Whitmer purposefully references an outdated list of such industries (issued March 19, 2020) rather than the most current federal guidelines (issued March 28, 2020) that designate firearm and ammunition retailers as critical. This deliberate action shuts down gun stores in order to deny citizens, including Plaintiff Muisse, access to their Second Amendment rights and their rights protected by Article 1, § 6 of the Michigan Constitution.

45. Executive Order 2020-42 also bans travel to gun stores. However, the order permits individuals to travel to buy food for a pet, marijuana, or gum at a grocery store, among other items.

46. Due to the panic caused by the pandemic and the unemployment, loss of income, poverty, and uncertainty caused by Defendant Whitmer's executive orders, owning and possessing firearms is critically important at this time.

47. Plaintiff Muisse and his wife have been blessed with twelve children and ten grandchildren (with two more grandchildren expected by June). Three of his adult children are married and reside locally in homes they own in Michigan, and two of his adult children reside locally in rental properties in Michigan. His other seven children reside at his home in Superior Township.

48. On most Sundays and Holy Days, the family would gather at Plaintiff Muisse's home for a meal, fellowship, and prayer.

49. Plaintiff Muisse and his family are devout Catholics. Because of COVID-19, there are no public Masses in the Lansing Diocese. However, Jesus Christ taught that where two or more gather in His name, He is present. Plaintiff Muisse would like his family to gather together on Sundays and other Holy Days to associate for a meal, fellowship, and prayer, and thus gather as a family in Christ's name. During these gatherings, Plaintiff Muisse's family members would adhere to social distancing measures recommended by the Centers for Disease Control and Prevention. However, under the measures set forth in Executive Order 2020-42, it is now a crime in Michigan to engage in such family associations and gatherings.

50. The challenged measures of Executive Order 2020-42, as set forth in this Complaint, lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the order, and are beyond all question, a plain, palpable invasion of rights secured by fundamental law. Consequently, it is the duty of this Court to so

adjudge, and thereby give effect to the United States and Michigan Constitutions by declaring these measures unlawful and enjoining their enforcement.

**FIRST CLAIM FOR RELIEF**

**(Equal Protection—Fourteenth Amendment)**

51. Plaintiffs hereby incorporate by reference all stated paragraphs.

52. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

53. As set forth in this Complaint, Executive Order 2020-42 deprives Plaintiffs of their fundamental rights and freedom, yet the order provides exceptions for other activity and conduct that is similar in its impact and effects. The challenged measures lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the order, and are a palpable invasion of rights secured by fundamental law in violation of the Equal Protection Clause.

54. When the government treats an individual disparately as compared to similarly situated persons and that disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis, such treatment violates the equal protection guarantee of the Fourteenth Amendment. As set forth in this Complaint, the challenged measures of Executive Order 2020-42 violate the equal protection guarantee of the Fourteenth Amendment.

55. As a direct and proximate result of Defendants' violation of the equal protection guarantee of the Fourteenth Amendment as set forth in this Complaint, Plaintiffs have suffered

irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

## **SECOND CLAIM FOR RELIEF**

### **(Due Process—Fourteenth Amendment)**

56. Plaintiffs hereby incorporate by reference all stated paragraphs.

57. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiffs of their right to due process in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

58. The challenged measures of Executive Order 2020-42, as set forth in this Complaint, lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the order, and are a palpable invasion of rights secured by fundamental law in violation of the Due Process Clause of the Fourteenth Amendment.

59. Defendants' actions, as set forth in this Complaint, deprived Plaintiffs Beemer and Cavanaugh of the use and enjoyment of their property without due process in violation of the Fourteenth Amendment.

60. The Due Process Clause of the Fourteenth Amendment protects the right to travel locally through public spaces and roadways.

61. Executive Order 2020-42 fails intermediate and strict scrutiny because it broadly prohibits Plaintiffs Beemer and Cavanaugh from traveling through public spaces and roadways to their cottages, and yet the executive order permits other travel with the same impact and effect of Plaintiffs' forbidden travel, in violation of the Fourteenth Amendment.

62. As a direct and proximate result of Defendants' violation of the Fourteenth Amendment as set forth in this Complaint, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

### **THIRD CLAIM FOR RELIEF**

#### **(Contracts Clause—Article I, § 10)**

63. Plaintiffs hereby incorporate by reference all stated paragraphs.

64. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiff Cavanaugh of his right to contract without government infringement guaranteed by Article I, Section 10 of the United States Constitution and 42 U.S.C. § 1983.

65. The Contracts Clause of Article I, Section 10 states, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

66. It long has been established that the Contracts Clause limits the power of the States to regulate contracts between private parties.

67. As set forth in this Complaint, the measures of Executive Order 2020-42 have impaired and thus regulated the contracts between Plaintiff Cavanaugh and his clients, in violation of the Contracts Clause of the United States Constitution. This impairment will continue absent declaratory and injunctive relief.

68. As a direct and proximate result of Defendants' violation of the Contracts Clause as set forth in this Complaint, Plaintiff Cavanaugh has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Second Amendment & Michigan Constitution Article 1, § 6)**

69. Plaintiffs hereby incorporate by reference all stated paragraphs.

70. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiff Muise of his rights secured by the Second Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Article 1, § 6 of the Michigan Constitution.

71. Both the United States Constitution and the Michigan Constitution grant individuals a right to keep and bear arms for self-defense and to ensure the security of a free State. The Second Amendment of the United States Constitution provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const., Am. II. Article 1, § 6 of the 1963 Michigan Constitution, which is Michigan’s equivalent to the Second Amendment, states, “Every person has a right to keep and bear arms for the defense of himself and the state.” The Second Amendment is fully applicable to the states through the Fourteenth Amendment.

72. The Second Amendment and Article 1, § 6 guarantee the individual the right to possess and carry weapons in case of confrontation. At the core of this protection is the right of law-abiding, responsible citizens, such as Plaintiff Muise, to use arms in defense of “hearth and home.” In order for this right to have any meaning and effect, individuals must be permitted to purchase firearms and ammunition within the State.

73. When a law burdens the fundamental right to bear arms, the government bears the burden of establishing that there is a reasonable fit between the asserted substantial or important

governmental objective and the burden placed on the individual. Executive Order 2020-42 fails to satisfy this burden, and this is evident by the numerous exceptions it provides for activity that is not protected by the United States or Michigan Constitutions.

74. As a direct and proximate result of Defendants' violation of the Second Amendment and Article 1, § 6 as set forth in this Complaint, Plaintiff Muise has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief.

### **FIFTH CLAIM FOR RELIEF**

#### **(First Amendment—Right of Association)**

75. Plaintiffs hereby incorporate by reference all stated paragraphs.

76. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, Defendants have deprived Plaintiff Muise of his right to association in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

77. The freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech. Indeed, implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.

78. As a direct and proximate result of Defendants' violation of the First Amendment as set forth in this Complaint, Plaintiff Muise has suffered irreparable harm, including the loss of his fundamental constitutional rights, entitling him to declaratory and injunctive relief.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this Court:

- A) to declare that Defendants violated Plaintiffs' fundamental constitutional rights as set forth in this Complaint;
- B) to enjoin Defendants' enforcement of the challenged measures of Executive Order 2020-42 as set forth in this Complaint;
- C) to award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;
- D) to grant such other and further relief as this Court should find just and proper.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

PO Box 131098

Ann Arbor, Michigan 48113

Tel: (734) 635-3756; Fax: (801) 760-3901

rmuise@americanfreedomlawcenter.org

/s/ David Yerushalmi

David Yerushalmi, Esq. (Ariz. Bar No. 009616;

DC Bar No. 978179; Cal. Bar No. 132011;

NY Bar No. 4632568)

1901 Pennsylvania Avenue NW, Suite 201

Washington, D.C. 20006

Tel: (646) 262-0500; Fax: (801) 760-3901

dyerushalmi@americanfreedomlawcenter.org

# EXHIBIT 1

OFFICIAL WEBSITE OF MICHIGAN.GOV

THE OFFICE OF

**GOVERNOR GRETCHEN  
WHITMER**

WHITMER / NEWS / EXECUTIVE ORDERS

# Executive Order 2020-42 (COVID-19)

EXECUTIVE ORDER 2020-42 FAQs

## EXECUTIVE ORDER

**No. 2020-42**

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

### Rescission of Executive Order 2020-21



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

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the 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.

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. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

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 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.
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 ("CDC"), 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 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 section 10 of this order.

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 of this order, 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. 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 6 of this order.
  3. Workers and volunteers described in section 9(d) of this order.
  - 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, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.
  6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support 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 (including recycling and composting), 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 activity permitted under this order.

- c. For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. 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 10 of this order.

## 7. Exceptions.

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

- 1. To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical 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 5(a) of this order may leave their home for work without being designated.)

3. To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
4. To perform necessary government activities, as described in section 6 of this order.
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, their pets, and their 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. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

- B. Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
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  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.

12. To attend a funeral, provided that no more than 10 people are in attendance at the funeral.


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, through April 10, 2020. After that date, travel between two residences is not permitted.
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.

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](#)). 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.

- Financial services.

m. Chemical supply chains and safety.

- 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 workers required to perform in-person work as permitted under this order. 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 subprovision (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 subprovision (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, 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.




10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
- a. Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available **here**. Such plan must be available at company headquarters or the worksite.
  - b. Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's, operation's, or government agency's critical infrastructure functions or its minimum basic operations.
  - c. Promoting remote work to the fullest extent possible.
  - d. Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible. 
  - e. 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.

- f. Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- g. Any other social distancing practices and mitigation measures recommended by the CDC.
11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:
- a. Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
- b. Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
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- c. For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
- d. For stores of more than 50,000 square feet:

1. Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.
2. Close areas of the store—by cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:
  - A. Carpet or flooring.
  - B. Furniture.
  - C. Garden centers and plant nurseries.
  - D. Paint.
3. By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.



4. Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
  - e. The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.
  12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.
  13. 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 17 of this order.
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14. 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.
  15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30, 2020 at 11:59 pm. When this order takes effect,

Executive Order 2020-21 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.

16. 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.
17. 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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