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Case No. 20- \_\_\_\_\_ -MZ

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**STATE OF MICHIGAN  
IN THE COURT OF CLAIMS**

Assigned Judge: Hon. \_\_\_\_\_

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MICHIGAN UNITED FOR LIBERTY, a Michigan nonprofit corporation,  
*Plaintiff*

v.

GRETCHEN WHITMER, in her capacity as Governor of the State of Michigan,  
*Defendant*

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**VERIFIED COMPLAINT**

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## INTRODUCTION

1. All political power in the State of Michigan is inherent in the people. Const 1963, art 1, § 1. Through the Michigan Constitution of 1963, the people of the State of Michigan both established the architecture of and set limitations on their government. These confines are absolute, inviolable, and without exception.
2. The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided by the Constitution. Const 1963, art 3, § 2.
3. In response to an outbreak of COVID-19 within the State of Michigan, Defendant has unilaterally made spending appropriations, suspended and/or modified legislatively enacted statutes, and seriously infringed upon basic individual liberties and property rights guaranteed by both the state and federal constitutions through a series of executive orders beginning on March 10, 2020.
4. However well-intentioned and prudent, these measures are inconsistent with our unique form of government and the liability to the treasury arising from mass deprivations of liberty and property will be so staggering as to be almost incomprehensible. There is simply no pandemic exception under the state and federal constitutions.

5. But these deprivations will be addressed on a case by case through a rapidly mounting number of civil rights lawsuits. This complaint, on the other hand, presents the primal question: does Defendant have constitutional authority to be doing any of this?
6. For the reasons discussed below, Plaintiff alleges that she does not.

#### PARTIES

7. Defendant GRETCHEN WHITMER is the duly elected governor of the State of Michigan.
8. Plaintiff MICHIGAN UNITED FOR LIBERTY is a nonprofit corporation formed and existing under laws of the State of Michigan. Plaintiff was organized and formed shortly following Defendant's issuance of Executive Order Number 2020-21 (more commonly known as the first "Stay at Home Order") for the purpose of advocating against the unconstitutionality of that and like orders within the State of Michigan. Plaintiff's membership body is comprised of nearly 8,000 persons and entities.

#### JURISDICTION

9. This Court, the Michigan Court of Claims, has *exclusive* jurisdiction to hear any and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding

another law that confers jurisdiction of the case in the circuit court. MCL 600.6419.

10. This complaint presents such a claim; namely, Plaintiff seeks a declaration that Defendant's actions are unconstitutional in that: (1) she is exceeding the legal authority granted to her under Article V of the Michigan Constitution of 1963; and (2) the Emergency Management Act, MCL 30.401 et seq, and Emergency Powers of Governor Act, MCL 10.31 et seq, are an impermissible delegation of legislative authority by the Michigan Legislature.

#### STANDING

11. A plaintiff must have standing to sue meaning that the plaintiff's interest in the issue presented is sufficient to ensure sincere and vigorous advocacy. *Lansing Schools Educational Association v Lansing Board of Education*, 487 Mich 349, 355; 792 NW2d 686 (2010).

12. It is well established under Michigan law that a nonprofit corporation has standing to advocate interests of its members where the members themselves have a sufficient stake or have sufficiently adverse and real interests to a defendant in the matter being litigated. *Trout Unlimited, Muskegon White River Chapter v City of White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992).

13. The rights, privileges, and interests of all residents of the State of Michigan are being directly violated, suspended, and injured by a series of unconstitutional executive orders issued by Defendant.

14. A substantial portion of Plaintiff's membership currently reside within the State of Michigan and thus have actual injury. Plaintiff therefore has standing to bring this suit.

#### GENERAL ALLEGATIONS

15. On March 10, 2020, the Michigan Department of Health and Human Services identified two presumptive cases of COVID-19 within the State of Michigan.

16. COVID-19, which is also often referred to as coronavirus, is a novel respiratory disease. Although there is not as of yet scientific consensus, it has been widely speculated that COVID-19 may cause serious illness and death at rates higher than other widespread viruses such as influenza particularly in elderly and infirm populations.

17. As of April 16, 2020, mass statewide testing has fortunately only confirmed COVID-19 infections in 0.3% (32,000 cases) of the State of Michigan's population.<sup>1</sup>

18. In the days leading up to the date of this complaint, Defendant has publicly stated that infection rates have either peaked or plateaued based on her available evidence. Unclear is what her evidence actually is: Defendant has purported to unilaterally limit to the point of effectively suspending governmental transparency laws.

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<sup>1</sup> Total infection numbers are published daily by the State of Michigan at <https://www.michigan.gov/coronavirus>. The United States Census Bureau's most recent (July 1, 2019) estimate places Michigan's population at 9,986,857 persons.

19.It's against this factual backdrop that Defendant declared a "state of emergency" on March 10, 2020 for the purpose of invoking legislatively delegated authority under the Emergency Management Act, MCL 30.401 et seq, and the Emergency Powers of Governor Act, MCL 10.31 et seq. From the date of that declaration, Defendant has so far issued 48 executive orders pursuant to those acts. These orders, which are often vague, are further supplemented by an ever changing "Frequently Asked Questions" section on Defendant's website which she also claims to have the full force and effect of law.

#### COUNT 1

DECLARE DEFENDANT'S ONLY LEGISLATIVE AUTHORITY IS THAT SPECIFIED IN SECTION 6, ARTICLE 3 OF THE MICHIGAN CONSTITUTION OF 1963.

20.All previous paragraphs are incorporated into this complaint as if fully restated.

21.This Court has jurisdiction and power to declare the rights and other legal relations of an interested party seeking a declaratory judgment, as Plaintiff does here, whether or not other relief is or could be sought or granted. MCL 2.605.

22.As a legal basis for her authority to issue orders having the effect of law, Defendant expressly cites Section 6, Article 5 of the Michigan Constitution of 1963 which states, in full:

“Except to the extent limited or abrogated by article V, section 2, or article IV, section 6, the executive power is vested in the governor.”

23. Section 6, Article 5 of the Michigan Constitution of 1963 does not confer upon Defendant the authority to enact law. To the contrary: the power to enact law is solely vested with the Legislature. Const 1963, art 4, § 1. There are only two exceptions: (1) the independent redistricting commission has limited legislative power to enact a redistricting plan; and (2) the governor has limited legislative power to enact changes in the organization of the executive branch. Const 1963, art 4, § 6; Const 1963, art 5, § 2.

24. It should therefore be declared that Section 6, Article 5 of the Michigan Constitution of 1963 does not independently authorize Defendant to promulgate orders having the full force and effect law.

## COUNT II

DECLARE THE EMERGENCY MANAGEMENT ACT, MCL 30.401 ET SEQ, TO BE AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY TO THE GOVERNOR.

25. All previous paragraphs are incorporated into this complaint as if fully restated.

26. As a legal basis for her authority to issue orders having the effect of law, Defendant express cites to the Emergency Management Act, MCL 30.401 et seq.

27. The Emergency Management Act grants Defendant the authority to “issue executive orders, proclamations, and directives having the force and effect of law” upon her declaring a “state of emergency.” MCL 30.403. The Act does not

require Defendant to obtain legislative approval prior to declaring a state of emergency nor does it allow the Legislature to control, limit, or revoke her authority within the first 28 days of declaring such an emergency. MCL 30.403. After the expiration of 28 days, Defendant's authority under the Act may be extended by resolution of the Legislature. *Id.*

28. The Michigan Constitution of 1963 codifies the separation of powers doctrine and divides the government into three branches: legislative, executive and judicial. Const 1963, art 3, § 2. The state constitution further states: "no person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided." *Id.*

29. The Legislature may not delegate its constitutionally prescribed powers to the executive branch. The Legislature may, however, delegate a task to the executive branch if it provides "sufficient standards." *Taylor v. Gate Pharmaceuticals*, 468 Mich 1, 10; 658 NW2d 127 (2003).

30. The Legislature did not merely delegate some task with detailed policy guidance to Defendant through the Act; it has authorized her to act as dictator for a period of 28 days without limitation or countermand (or longer, if it allows as it has here).

31. No less than six weeks ago, such an allegation would have been so theoretical as to seem absurd. But it is no longer theoretical: Defendant has, without any constitutional legislative authority, unilaterally:

- a. Prohibited citizens from leaving their residences except for reasons expressly permitted by Defendant. Executive Order 2020-42.
- b. Modified and, in many instances, suspended public officials' required compliance with governmental transparency laws duly enacted by the Legislature. Executive Order 2020-38; Executive Order 2020-48.
- c. Suspended real property tax collection under the General Property Tax Act, MCL 211.1 et seq. Executive Order 2020-14.
- d. Suspended any business activity that requires a person to leave their home unless the activity has been deemed "essential" by Defendant. Executive Order 2020-42.
- e. Prohibited citizens from associating with any person who is not a member of their immediate household or even being within a six-foot radius of another person. *Id.*
- f. Terminated the educational school year (which was scheduled to end well past the termination of her authority under the Act), commanded noncompliance with the complex statutory scheme governing education, and set new educational standards and budgetary appropriations. Executive Order 2020-35.
- g. Set new standards governing medical professionals and suspended compliance with legislatively enacted standards. Executive Order 2020-30; Executive Order 2020-25.

h. Abrogated and suspended portions of the Income Tax Act. Executive Order 2020-26.

32. And this is just a small sampling of the vast and unchecked power assumed by Defendant over the affairs and law of this State.

33. It should therefore be declared that the Emergency Management Act, MCL 30.401 et seq, is an unconstitutional delegation of legislative power to Defendant.

### COUNT III

DECLARE THE EMERGENCY POWERS OF GOVERNOR ACT, MCL 10.31 ET SEQ, TO BE AN UNCONSTITUTIONAL DELEGATION OF AUTHORITY TO THE GOVERNOR.

34. All previous paragraphs are incorporated into this complaint as if fully restated.

35. As a legal basis for her authority to issue orders having the effect of law, Defendant express cites to the Emergency Powers of Governor Act, MCL 10.31 et seq.

36. The Emergency Powers of Governor Act grants Defendant the authority to “promulgate reasonable orders, rules, and regulations” upon her proclamation of a “state of emergency.” Apart from condition that orders be “reasonable,” a term that is not defined, there is no limitation or oversight on Defendant’s apparent authority to enact law under the Act.

37. Unlike the Emergency Management Act, Defendant’s authority to act Emergency Powers of Governor Act is apparently without time limitation. It

only ceases when she, in her own discretion, declares that the emergency no longer exists. MCL 10.31.

38. But like the Emergency Management Act, the Legislature has handed Defendant a blank check to legislate – so to speak - through the Act and declared that failure to follow her commands, whatever they may ultimately be, is criminal.

39. The Act is an unconstitutional delegation of legislative authority by the Legislature as it has granted Defendant limitless and standardless discretion to create law.

40. It should therefore be declared that the Emergency Powers of Governor Act, MCL 10.31 et seq., is an unconstitutional delegation of legislative power to Defendant.

#### CONCLUSION AND REQUEST FOR RELIEF

41. For over two hundred years, a foundational bedrock of this nation's governance has been the separation of powers doctrine. The deconsolidation of power commanded by the doctrine provides the best chance of preserving individual liberty and property rights.

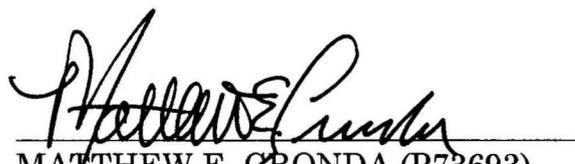
42. While Defendant's intentions may be pure, this level of unilateral control is entirely inconsistent with our constitutional system of government – even if it seems necessary.

43. Within our constitutional framework, this state and nation has successfully weathered every storm in its history. There is simply no lawful or practical reason to discard it now.

44. The judiciary must place the executive and legislative branches of our government back within their respective constitutional confines by:

- a. Declaring that Section 6, Article 5 of the Michigan Constitution of 1963 does not independently authorize Defendant to promulgate orders having the full force and effect law.
- b. Declaring that the Emergency Management Act, MCL 30.401 et seq, is an unconstitutional delegation of legislative power to Defendant.
- c. Declaring that the Emergency Powers of Governor Act, MCL 10.31 et seq., is an unconstitutional delegation of legislative power to Defendant.
- d. Awarding Plaintiff any other relief that is necessary and just.

Dated: April 21, 2020

  
MATTHEW E. GRONDA (P73693)  
Attorney for Plaintiff

Dated: April 21, 2020

  
PHILIP L. ELLISON (P74117)  
Attorney for Plaintiff

VERIFICATION

JENNIFER MARY DARLING, D.C., and ASHLEY ANN PHIBBS, being duly sworn, state as follows:

1. JENNIFER MARY DARLING is the founder of Plaintiff MICHIGAN UNITED FOR LIBERTY. ASHLEY ANN PHIBBS is a co-founder of the same. They are both citizens of the United States of America and residents of the State of Michigan.
2. On behalf of Plaintiff, they both have knowledge of the facts stated in this complaint.
3. By signature below, they declare under the penalties of perjury that this complaint has been examined by them and that its contents are true to the best of their information, knowledge, and belief.

Dated: April 21, 2020

Dated: April 21, 2020

  
\_\_\_\_\_  
JENNIFER MARY DARLING, D.C.  
Founder,  
MICHIGAN UNITED FOR LIBERTY

  
\_\_\_\_\_  
ASHLEY ANN PHIBBS  
Co-Founder,  
MICHIGAN UNITED FOR LIBERTY

Subscribed and sworn to before me by JENNIFER MARY DARLING, D.C., and  
ASHLEY ANN PHIBBS on April 21, 2020 in Ingham County, Michigan.

A handwritten signature in black ink, appearing to read "Matthew E. Gronda", written over a horizontal line.

MATTHEW E. GRONDA  
Notary Public, State of Michigan, County of Saginaw.  
My commission expires on May 5, 2025.  
Acting in Ingham County, Michigan.