



ALERTS

Michigan Court Rules Gov. Whitmer's Unilateral State Of Emergency Extension As Valid

May 27, 2020 | [Southeast Michigan](#) | [Grand Rapids](#)

Highlights

Michigan Gov. Gretchen Whitmer scores win against the state legislature's challenges to her COVID-19 emergency executive orders

The Michigan Court of Claims ruled that the Emergency Powers of the Governor's Act provides sufficiently precise standards to validly delegate broad emergency authority to the governor

This decision comes shortly after another, recent opinion regarding the governor's handling of the crisis, which similarly found that the broad authority granted to the governor in emergency situations was within the scope of the authority granted to her by the EPGA and EMA in issuing numerous executive orders

Michigan Gov. Gretchen Whitmer is facing numerous challenges as a result of the emergency executive orders issued in response to the COVID-19 pandemic – without approval from the Michigan House of Representatives or the Michigan Senate.

On May 21, Gov. Whitmer [achieved a major victory](#) in an action filed by

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the Michigan House and Senate. Specifically, the Michigan Court of Claims ruled that the governor's declaration of a state of emergency pursuant to the Emergency Powers of the Governor Act (EPGA) was a valid exercise of authority under a constitutionally valid act.

On April 1, Gov. Whitmer, with the consent of the Legislature, continued the originally declared state of emergency originally declared, pursuant to the Emergency Management Act (EMA). Following the Legislature's refusal to extend the state of emergency a second time under the EMA, Gov. Whitmer issued [Executive Order 2020-67](#), unilaterally extending the state of emergency pursuant to the EPGA on April 30, 2020. The Legislature subsequently filed suit against the governor, alleging the extension was unlawful and in violation of the Michigan Constitution.

In its decision, the court determined that the EPGA was a constitutionally valid grant of power to the governor and in connection Gov. Whitmer acted legally within the scope of the EPGA in issuing EO 2020-67.

The court analyzed the EPGA under the Michigan Supreme Court's "guiding principle" that the standards of the act must be reasonably precise as the subject matter permits. It acknowledged that the very purpose of the EPGA was to address the uncommon and complex issues that arise because of "great public cris[e]s" and when "public safety is imperiled." As a result, the court reviewed the preciseness of the standards of the EPGA taking into account "the complexities inherent in an emergency situation."

In light of the inherent complexities, the court concluded that the EPGA contains sufficient standards and that it is not an unconstitutional delegation of legislative authority. The authority exercised under the EPGA is limited and appropriately places parameters and limitations on the governor's power to declare a state of emergency.

The EPGA additionally provides limitations on what the governor can do once a state of emergency is declared. Any rules or regulations imposed by the governor pursuant to the EPGA must be reasonable and "necessary to protect life and property or to bring the emergency situation within the affected area under control." Additionally, the EPGA provides an express list of examples of what the governor can and cannot do, including controlling places of amusement and assembly. Accordingly, the court ruled that the EPGA provides reasonably precise standards for the power granted to the governor, such that the grant of legislative authority is valid and constitutional.

The Legislature had argued that the statewide declaration of a state of emergency was outside the scope of the EPGA, noting that it only grants authority to issue local and regional state of emergencies. Taking into account the EPGA as a whole, however, the court found that the express legislative intent of the act was to provide the governor with broad authority in emergency situations. As a result, the court rejected the Legislature's argument that the EPGA is limited to local and regional emergencies only. The court also noted that the EPGA specifically references "the police power of the state" as it related to the "sufficiently broad" power granted to the governor. "In general, the police power of the state refers to the state's inherent power to 'enact regulations to promote the public health, safety, and welfare' of the citizenry at large." As such, the court was unconvinced that the EPGA was limited to local and regional emergencies given the statewide authority granted to the state's

highest executive official.

Conversely, while the court found that the governor's extension of the state of emergency was not valid under the other authoritative law, the Emergency Management Act (EMA); given the validity of the extension pursuant to the EPGA, it did not invalidate the executive orders providing for the extension.

The court's decision comes on the heels of another recent opinion regarding Gov. Whitmer's handling of the COVID-19 crisis. In [Michigan United v. Governor Whitmer](#), the Court of Claims also analyzed the governor's actions in light of the EPGA and EMA and similarly found that the broad authority granted to the governor in emergency situations was valid. Additionally, at the injunctive stage of the case, the court ruled that the governor was likely within the scope of the authority granted to her by the EPGA and EMA in issuing numerous executive orders to address the coronavirus.

Shortly after these opinions were issued, on Friday, May 22, Gov. Whitmer issued [Executive Order 2020-100](#). EO 2020-100 extends previously issued "Stay Home Stay Safe" orders until June 12, 2020.

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