



DETAILED EXECUTIVE BRIEF

**MARTINKO et al. v WHITMER et al**

**APPENDIX (A)**

DATE: May 7, 2020

RE: Strategic Recommendations for Legal Counsel

CASE: MARTINKO et al. v WHITMER et al

CLIENT: Steve Martinko

**PURPOSE:** TNALC.org is a citizen operated non-profit organization engaged in providing critical research and strategic planning to clients, to assist in their endeavors. The purpose of this brief is to provide back-office assistance in gathering strategic information support a legal matter involving the client, represented by licensed Attorney David Helm, Michigan.

**SCOPE:** TNALC.org was engaged midstream on the above-mentioned case and has used its best efforts to research, locate, strategically consider and present additional information to assist the Attorney of Record with ongoing efforts in the above-mentioned case. All aspects of the case have been researched and considered in the information presented herein.

**LIMITS OF SCOPE:** TNALC.org is not a law firm and the work presented herein, was done by researchers and strategic planners, not by licensed attorneys. The information presented is CONFIDENTIAL in nature and circulation or use of this information by anyone other than client, for any other purpose, is strictly prohibited.

**FOUNDATION FOR RECOMMENDATIONS**

Citizens of the United States and the Great State of Michigan do NOT have “Constitutional Rights.” They enjoy “Constitutional Protections” of their Rights and Liberties as a free people, broken down into three specific categories.

**Natural Rights:** The foundation for all LAW in the United States is established in the U.S. Declaration of Independence. “to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them;” – “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator

with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”  
– These Rights are “inalienable” in nature, beyond the authority of any governmental body.  
These Rights are “absolute.”

**Civil Liberties:** “are protections against government actions, as in protections found in the Bill of Rights, which is NOT an enumeration of the Rights of the People, but rather very specific exclusions of the Rights and Powers of government.” – All Civil Liberties are derived from the inalienable Natural Rights of the people, at liberty to live free and pursue happiness.

**Civil Rights:** The Civil Rights of the people existed before the Civil Rights Acts were adopted. The Civil Rights Acts were only adopted to provide further definition and protections for all citizens, regardless of Race, Creed or Religion, via equal application under the law; further providing constitutional checks and balances established to prevent the making of any laws that would in any way, infringe upon the Natural Rights and Civil Liberties of every United States citizen.

The recommendations made herein are based upon these foundations.

#### **CASE: MARTINKO et al. v WHITMER et al**

The related pending legal case asserts, and we agree that the numerous actions taken by Michigan Governor Whitmer via Executive Orders, directly and severely infringe upon the Natural Rights, Civil Liberties and Civil Rights of the people of the Great State of Michigan, and thereby, are “unconstitutional” in nature.

Among others, specifically, Governor Whitmer’s Executive Orders dictating:

- Who can and cannot leave their home for any reason
- Who may work and who may not
- Which businesses may remain open and which must close
- Who has the Right to earn a living and who doesn’t
- Preventing peaceful assembly, in public and private
- Preventing the free exercise of Religion
- Penalizing free speech
- How far apart people may stand from one another
- How people must dress in public
- Where people may shop and where they may not
- Travel restrictions

#### **Governor Whitmer’s Constitutional Authority**

The Michigan Constitution - ARTICLE I - § 1 Political power.

Sec. 1.

All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Sec. 2.

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof;

Sec. 3.

The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Sec. 4.

Every person shall be at liberty to worship God according to the dictates of his own conscience. -

The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Sec. 5.

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

Sec. 12.

The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

Sec. 23.

The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

#### **ARTICLE IV - § 1 Legislative power.**

Sec. 1.

Except to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.

#### **§ 51 Public health and general welfare.**

Sec. 51.

The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

#### **ARTICLE XI - § 1 Oath of public officers.**

Sec. 1.

All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.

#### **Michigan State of Emergency Powers**

##### **EMERGENCY POWERS OF GOVERNOR Act 302 of 1945**

AN ACT authorizing the governor to proclaim a state of emergency, and to prescribe the powers and duties

of the governor with respect thereto; and to prescribe penalties.

**History:** 1945, Act 302, Imd. Eff. May 25, 1945.

*The People of the State of Michigan enact:*

### **10.31 Proclamation of state of emergency; promulgation of orders, rules, and regulations; seizure of firearms, ammunition, or other weapons.**

Sec. 1. (1) During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled, either upon application of the mayor of a city, sheriff of a county, or the commissioner of the Michigan state police or upon his or her own volition, the governor may proclaim a state of emergency and designate the area involved. After making the proclamation or declaration, 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. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area; designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation, and use of alcoholic beverages and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety.

(2) The orders, rules, and regulations promulgated under subsection (1) are effective from the date and in the manner prescribed in the orders, rules, and regulations and shall be made public as provided in the orders, rules, and regulations. The orders, rules, and regulations may be amended, modified, or rescinded, in the manner in which they were promulgated, from time to time by the governor during the pendency of the emergency, but shall cease to be in effect upon declaration by the governor that the emergency no longer exists.

(3) Subsection (1) does not authorize the seizure, taking, or confiscation of lawfully possessed firearms, ammunition, or other weapons.

**History:** 1945, Act 302, Imd. Eff. May 25, 1945;—CL 1948, 10.31;—Am. 2006, Act 546, Imd. Eff. Dec. 29, 2006.

### **10.32 Construction of act.**

Sec. 2. It is hereby declared to be the legislative intent to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this act shall be broadly construed to effectuate this purpose.

**History:** 1945, Act 302, Imd. Eff. May 25, 1945;—CL 1948, 10.32.

### **10.33 Violation; misdemeanor.**

Sec. 3. The violation of any such orders, rules and regulations made in conformity with this act shall be punishable as a misdemeanor, where such order, rule or regulation states that the violation thereof shall constitute a misdemeanor.

**History:** 1945, Act 302, Imd. Eff. May 25, 1945;—CL 1948, 10.33.

The primary issue in the Emergency Powers of the Governor Act is - "Sec. 2. It is hereby declared to be the legislative intent to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this act shall be broadly construed to effectuate this purpose."

Article IV – Sec. 51 of the Michigan Constitution assigns the legislature (not the Governor) accordingly – "The legislature shall pass suitable laws for the protection and promotion of the public health." However, the EMERGENCY POWERS OF GOVERNOR Act 302 of 1945 states – "It is hereby declared to be the legislative intent to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions;"

**Key to this conflict is two issues:**

- 1) Is the EMERGENCY POWERS OF GOVERNOR ACT itself constitutional? Does the Michigan Constitution grant the Michigan Legislature the power to expand the authority and power of the Governor beyond the authority limited by the Michigan Constitution?
- 2) Who has the authority to determine what is or is not a true State of Emergency and on what basis? State of Emergency is fundamentally limited to “rebellion or invasion” in the Michigan Constitution, not different strains of virus that show up each year, directly affecting less than 1% of the population.

**STATE QUARANTINE POWERS PER THE U.S. SUPREME COURT**

The U.S. Supreme Court has already issued rulings on the very limited authority and power of State Governments to institute broad quarantine or Civil Confinement rules in a number of landmark cases protecting the individual Rights and Liberties of the people at large.

“As fears of Ebola sweep the nation, several governors are instituting quarantine and other restrictive policies based on fear, not science. These appear to reflect political agendas and responding to the public’s clamoring for greater protection, expressed as an over-abundance of caution. But the rule of law stands precisely to prevent the state from depriving individuals of liberty based on irrational or exaggerated public fear. Legal standards on the state’s police powers to protect the public’s health and safety are well developed.” - *by Lawrence O. Gostin, University Professor and Founding O’Neill Chair in Global Health Law at Georgetown University Law Center, and Eric A. Friedman, Associate at O’Neill Institute for National and Global Health Law at Georgetown University Law Center.*

- Although the states undoubtedly have the authority to issue quarantine orders, the Supreme Court has set clear standards for civil confinement or commitment, recognizing that quarantines implicate fundamental liberty interests. The Supreme Court has primarily examined constitutional standards for civil commitment of persons with mental illness. Lower courts have applied constitutional standards for civil commitment to other forms of civil confinement, notably quarantines. See, e.g., *Best v. St. Vincents Hosp.* (2003), 2003 U.S. Dist LEXIS 11354 (overturned in part on other grounds). Civil commitment and quarantine implicate similar individual interests because both entail state-imposed non-criminal confinement to prevent a future risk to the public’s well-being.

The U.S. Supreme Court has established three key requirements for civil commitment.

***Individualized risk assessment***

“An individual risk assessment means that before a state may confine a person, it must make a determination that the particular individual presents a risk to the public. As Justice Souter has explained succinctly, “Due process calls for an individual determination before someone is locked away.” *Demore v. Hyung Joon Kim*, 538 U.S. 510, 551 (2003)

“As quarantines constitute a major infringement of liberty, it would be unconstitutional to quarantine a generalized class of people absent a determination that the particular individual poses a public health risk. It is not enough, for example, that a person has tuberculosis; the state must also demonstrate that the individual will not voluntarily comply with treatment.” *Best*

### ***Least restrictive means***

“Curtailing a person’s fundamental personal liberties, if justified by a sufficiently strong state interest, must be narrowly tailored. The Supreme Court has stated, “Even [when] the governmental purpose [is] legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.” *Shelton v. Tucker*, 364 U.S. 479, 488.”

“The Court determined that “[a] statute sanctioning such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law.” *Covington v. Harris*, 419 F. 2d 617, 623 (1969).

### ***Procedural due process***

“As the Supreme Court has stated plainly: “The Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Civil confinement is such an interest. See, e.g., *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975) (Berger, C.J., concurring) (“There can be no doubt that involuntary commitment to a mental hospital, **like involuntary confinement of an individual for any reason**, is a deprivation of liberty which the State cannot accomplish without due process of law.”). See also *Lessard v. Schmidt*, 349 F. Supp. 1078, 1091 (E.D. Wis. 1972)”

In the case of *MARTINKO et al. v WHITMER et al*, It’s not only very clear that Governor Whitmer issued and continues to issue Executive Orders in direct violation of her Constitutional authority and Oath of Office, but that she also failed to meet any of the three basic standards established by the U.S. Supreme Court before ordering mass public confinement of every citizen of the Great State of Michigan.

The entire mismanagement of the COVID19 matter in Michigan has resulted in the complete and total deprivation of Natural Rights and Civil Liberties. It cannot be allowed to stand.

Centers for Disease Control and Prevention (CDC) set guidelines for states on preventing transmission of Ebola Virus Disease (EVD) use scientific evidence to calibrate risk. The agency recommends restricting the movement of individuals only to prevent genuine risks, using a tiered approach depending on the level of risk. Because they recommend individualized risk assessment based on scientific evidence they comport with constitutional standards.

### **THE COURT OF CLAIMS OPINION**

On page 7 of his 18-page opinion concerning Case No. 20-00062-MM, Judge Christopher Murray stated unequivocally –

“In other words, the constitutional right asserted does not make a difference when considering this issue, because both are subject to a balancing with the state’s interest to protect the public health. This holds true because, and perhaps contrary to common knowledge, most, if not all, individual constitutional rights are not absolute and are subject to a balancing with the countervailing state interest.” *Case No. 20-00062-MM, Judge Christopher Murray*

**“individual constitutional rights are not absolute and are subject to a balancing with the countervailing state interest.”**

In other words, according to Judge Murray of the Michigan Court of Claims, the good citizens of Michigan have no Constitutionally protected Rights at all, beyond that which the Governor decides, from time to time, at her discretion, for the greater good of society at large.

In numerous U.S. and State Supreme Court decisions over 244-years of history, the courts have decided that even in the case of “National Security,” the interests of the state do not supersede, nor are they equal to, the Rights of the people. All governmental power is derived from the people, in a system of self-governance of, by and for the people. Under Constitutional Law, any power not specifically granted to any governmental office in the Constitution, is not a power held by that office. Period...

Nothing in the Michigan Constitution grants the Governor, Legislature or Courts, the power or authority to issue or enforce any of the Executive Orders Governor Whitmer has issued under her “Declared State of Emergency.” Nothing in Michigan Law grants Governor Whitmer the Constitutional authority to issue or enforce her COVID19 Executive Orders. Nothing in the Michigan Constitution grants the legislature or courts the power to expand the constitutional authority of the Governor’s office, other than by constitutional amendment process.

When an elected official operates within the confines of the law and constitutional authority granted their office by the people, they usually have individual immunity from civil suits seeking damages resulting from their actions. But when an elected or appointed servant of the people acts outside of their legal and constitutional authority, they do so under “the color of law,” NOT the law. In this case, they are often not protected by any individual immunity protecting the office itself and its lawful occupant. Officials acting only under “color or law” may be held individually and personally responsible for damages arising out of their unlawful acts.

**EMERGENCY INJUNCTIVE RELIEF FROM THE MICHIGAN SUPREME COURT**

SEE COVER SUMMARY BRIEF