



Written by [Michael Tennant](#) on April 16, 2020

Michiganders Challenge Governor's "Invasive" COVID-19 Orders in Federal Court

Four Michigan residents have mounted a constitutional challenge to Governor Gretchen Whitmer's COVID-19 shelter-in-place orders. Their [lawsuit](#) contends that Whitmer's March 23 and April 10 orders, which require "nonessential" businesses to close and residents to stay home except for "essential" activities, violate their rights to property and freedom of association.

While the lawsuit, filed Tuesday in U.S. District Court in Detroit by Plymouth attorney David Helm, does not challenge Whitmer's authority to issue the orders, it does question whether the contents of those orders pass constitutional muster.

"Never in the modern history of the United States — even in war time — has such an invasive action striping [sic] citizen[s] of fundamental rights been taken by a government order," declares the complaint.

The bulk of the complaint concerns Contender's Tree and Lawn Specialists, an Oakland County business owned by Steve Martinko. As a result of Whitmer's orders, Contender's Tree and Lawn Specialists was forced to close at the start of its busiest time of year, after it had already "ordered and received hundreds of thousands of dollars in chemicals and equipment from its suppliers." The suit notes that much of the company's business comes from applying pesticides and disease-control chemicals, and "any delay beyond the first weeks of April may prevent the ability to control dangerous tree and plant diseases and invasive insects."

Furthermore, because of the costs imposed by Whitmer's orders, Contender's Tree and Lawn Specialists had to cut expenses immediately, including laying off 15 employees. The closure has "caused considerable damage to [the company], its reputations, and to its relationships with its customers, vendors and employees," reads the suit. And to top it all off, Martinko is forbidden to travel to his business.

Oakland County couple Michael and Wendy Lackomar are also suing Whitmer. According to the complaint, the Lackomars are considered "essential" workers and thus should be allowed to travel to their jobs. Unfortunately, they happened to be visiting their cabin in Sanilac County when the April 10 order, which prohibits people from traveling between residences in the state, took effect. They have since been unable to return home and go to work.

Both Martinko and the Lackomars "have been called upon to sacrifice all usage of their properties in the name of the common good, that is, to leave their properties economically and otherwise idle, and for this, they have suffered a taking," argues the complaint, adding that Whitmer's orders have "extinguished" their property rights. Since the Fifth Amendment requires the government to pay "just





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compensation” for taking private property and the orders make no provision for doing so, they are unconstitutional, say the plaintiffs.

The final plaintiff is Jerry Frost of Roscommon County. Frost contends that Whitmer’s orders violate his right to freedom of association because they forbid him from visiting his girlfriend and other friends and family members who live nearby.

“Governor Whitmer has acted intentionally, willfully, wantonly, and with callous and reckless disregard for plaintiffs’ constitutional rights,” the complaint charges, asking the court to declare Whitmer’s orders unconstitutional and to order the state to make just compensation for the plaintiffs’ losses. The plaintiffs are also requesting a jury trial.

Whitmer’s orders are set to expire on April 30. (The legislature could extend the state-of-emergency declaration under which the orders were issued, but then Whitmer would have to issue a new order.) Considering the courts’ notoriously slow pace, it seems unlikely that this case will be concluded before the orders expire, so why bother?

“My concern here and our primary goal is to make sure we don’t have any more infringements moving forward,” Helm told Grand Rapids’ [WZZM](#). “Going forward we don’t want the governor to be able to set the precedent that this is okay. We need the courts to step in and say this is not okay.”

Whitmer’s office declined comment on the case; but it’s safe to say that, given the governor’s less-than-enthusiastic response to [Wednesday’s protests of her orders](#), she’s probably not too happy about it.

As for Helm, he maintains that the state should concentrate on individual cases in future emergencies instead of taking such sweeping measures. As he put it, “They can’t use a sledge hammer to kill an ant.



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