

# Court of Appeals, State of Michigan

## ORDER

Michigan United for Liberty v Governor of Michigan

Docket No. 353643

LC No. 20-000061-MZ

Amy Ronayne Krause  
Presiding Judge

Michael F. Gadola

Brock A. Swartzle  
Judges

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The motion for immediate consideration is GRANTED.

The application for leave to appeal is GRANTED, limited to the issue of whether the trial court abused its discretion in ruling that plaintiff's claim regarding the unconstitutionality of the Emergency Powers of Governor Act (EPGA), MCL 10.31 *et seq.*, was unlikely to succeed. MCR 7.205(E)(4). The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3).

  
Presiding Judge

Ronayne Krause, J., would deny the application for leave to appeal and states: With regard to the EPGA, the trial court correctly concluded that this statute passes constitutional muster because it set standards for the Governor's authority, which can be exercised only when public safety is in peril. Further, under the EPGA, governor-imposed rules must be reasonable and necessary. The trial court remarked, again correctly, that any constitutional analysis of the EPGA must account for the fact that the situations at issue typically are emergencies that are unpredictable, dangerous, and disastrous. It would be unreasonable to attempt to define with meticulous precision every standard required to manage a dynamic and complex public health emergency, particularly one that involves a novel coronavirus about which there is still much to learn except for the uncontroverted facts that it is highly communicable and is a serious harm to the public health.

In its application, plaintiff argues that the Court of Claims failed to apply the text of the Constitution and instead "added a more 'enlightened' twist" by ruling that the Governor may exercise legislative power if the courts discover a standard within the words of the EPGA, which plaintiff alleges was poorly drafted. This completely misses the point that in fact the EPGA is a statute that, by its plain language, gives the Governor authority to issue executive orders in emergency situations. The issuance of these orders is statutorily authorized by the Legislature.

Most importantly, the constitutional propriety of this very type of exercise of the State's police powers has been precedent, *i.e.*, the rule of law, for over a century by the Supreme Court of the United States. "That until Congress has exercised its power on the subject, such state quarantine laws and laws for the

purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.” *Campagne Francais de Navagation a Vapeur v Louisiana State Board of Health*, 186 US 380, 387; 22 S Ct 811; 46 L Ed 2d 1209 (1902).

For 75 years, the EPGA has provided broad authority to the Governor to manage emergencies, such as the instant public health crisis, which imperils the health of the citizens of Michigan like no other crisis in recent history. To the extent that the unambiguous language of the statute permits extraordinary power, any subsequent restriction to that power is available to the Legislature, which has authority to amend the law, *Houghteling v Gogebic Lumber Co*, 165 Mich 498, 503; 131 NW 109 (1911).



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 29, 2020

Date

  
Chief Clerk