

# Order

Michigan Supreme Court  
Lansing, Michigan

April 9, 2021

Bridget M. McCormack,  
Chief Justice

ADM File No. 2020-08

Amendment of Administrative  
Order No. 2020-17

Priority Treatment and New  
Procedure for Landlord/Tenant  
Cases

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

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Administrative Order No. 2020-17 – Priority Treatment and New Procedure for  
Landlord/Tenant Cases

Since the early days of the pandemic, state and national authorities have imposed restrictions on the filing of many landlord/tenant cases. As those restrictions are lifted and courts return to full capacity and reopen facilities to the public, many will experience a large influx of landlord/tenant case filings. Traditionally, the way most courts processed these types of cases relied heavily on many cases being called at the same time in the same place, resulting in large congregations of individuals in enclosed spaces. That procedure is inconsistent with the restrictions that will be in place in many courts over the coming weeks and months as a way to limit the possibility of transmission of COVID-19. In addition, courts are required to comply with a phased expansion of operations as provided under [Administrative Order No. 2020-14](#), which may also impose limits on the number of individuals that may congregate in public court spaces.

Therefore, the Court adopts this administrative order under 1963 Const, Art VI, Sec 4, which provides for the Supreme Court’s general superintending control over all state courts, directing courts to process landlord/tenant cases using a prioritization approach. This approach will help limit the possibility of further infection while ensuring that landlord/tenant cases are able to be filed and adjudicated efficiently. All courts having jurisdiction over landlord/tenant cases must follow policy [guidelines](#) established by the State Court Administrative Office. Courts should be mindful of the limitations imposed by federal law (under the CARES Act) as these cases are filed and processed, and follow the guidance in [Administrative Order No. 2020-8](#) in determining the appropriate timing for beginning to consider these cases.

For courts that are able to begin conducting proceedings, the following provisions apply to landlord/tenant actions.

(1)-(11) [Unchanged.]

(12) A court shall discontinue prioritization of cases when it has proceeded through all priority phases and no longer has any landlord/tenant filings that allege a breach of contract for the time period between March 20, 2020, and July 15, 2020 (the period in which there was a statewide moratorium on evictions). At that point, the court may notify the regional administrator of its completion of the prioritization process and will not be required to return to the procedure even if a subsequent case is filed that alleges rent owing during the period of the eviction moratorium. A court must continue compliance with all other aspects of this order while the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19—issued by the Centers for Disease Control and Prevention and published at 85 FR 55292, and extended by order dated March 28~~January 29~~, 2021—is in effect.

(13)-(14) [Unchanged.]

The chief judge shall submit a summary of the discussion and proposed recommendations to the regional administrator within two weeks following the meeting.

This order is effective until further order of the Court.

VIVIANO, J. (*dissenting*). I dissent from the Court’s decision to quietly extend our previous order administratively suspending our state’s laws governing landlord-tenant proceedings. The Court has no authority to dispense with duly enacted laws by administrative veto. That we are doing so, at least in part, to enforce a constitutionally suspect eviction moratorium order issued by the Centers for Disease Control and Prevention (CDC) only makes matters worse.<sup>1</sup> And that we continue to issue such directives—this is our seventh order on this topic in the last 12 months—without utilizing our normal and transparent court rule amendment process only serves to further undermine the public’s confidence in the institutions of our government.

I have discussed my objections to the Court’s staggering assertion of power to suspend duly enacted laws at some length in my prior dissenting statements. I incorporate those objections here for the sake of brevity.<sup>2</sup> Suffice it to say that I continue to find it alarming that a Court whose job is to interpret our state’s laws and apply them faithfully to the cases that come before it can so easily switch gears and become a Court that dispenses with laws on the basis of administrative convenience. That power is not available (or should not be) to the judiciary in a system of separated powers.

One would think that recent legal developments might give the Court pause. Several lower federal courts, including the United States Court of Appeals for the Sixth Circuit, have now weighed in on the constitutionality of the CDC’s eviction moratorium. A federal eviction moratorium has now been in effect, in one form or another, for most of the time since March 27, 2020—meaning that, during that time, landlords have not been able to recover possession of their property for nonpayment of rent by tenants who have met the various moratorium requirements.<sup>3</sup> A number of federal district court judges have recently

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<sup>1</sup> See CDC, *Temporary Halt in Residential Evictions*, 85 Fed Reg 55,292 (September 4, 2020); CDC, *Temporary Halt in Residential Evictions*, 86 Fed Reg 16,731 (March 31, 2021).

<sup>2</sup> See Administrative Order No. 2020-17, 506 Mich \_\_\_\_ (October 22, 2020) (VIVIANO, J., dissenting); Administrative Order No. 2020-17, \_\_\_\_ Mich \_\_\_\_ (January 30, 2021) (VIVIANO, J., dissenting); Administrative Order No. 2020-17, \_\_\_\_ Mich \_\_\_\_ (March 22, 2021) (VIVIANO, J., dissenting).

<sup>3</sup> Less than half of the period of the moratorium has been authorized by Congress. See Coronavirus Aid, Relief, and Economic Security Act, 15 USC 9058(b) (establishing a 120-day moratorium from March 27 to July 24, 2020); Consolidated Appropriations Act, 2021, PL 116-260, Title V, § 502 (extending the CDC’s unilateral moratorium order from December 31, 2020 to January 31, 2021).

As I noted in a previous concurring statement, when the eviction moratorium was authorized by Congress, I believed our administrative order was justified and that any challenges to it could be resolved in the normal course of litigation. Administrative Order No. 2020-17, 506 Mich \_\_\_\_ (December 29, 2020) (VIVIANO, J., concurring). It is one thing

held that the CDC's eviction moratorium is unconstitutional on various grounds.<sup>4</sup> The first federal circuit court to opine on the merits of the matter has rejected the CDC's defenses of the order, recognizing that the statute does not appear to give such sweeping power and that, if it did, the statute would be vulnerable on separation-of-powers grounds. See *Tiger Lily, LLC v US Dep't of Housing & Urban Dev*, order of the United States Court of Appeals for the Sixth Circuit, entered March 29, 2021 (Case No. 21-5256), p 7 (denying the government's motion for a stay pending appeal of the district court's declaratory judgment that the CDC's eviction moratorium is unenforceable on the ground that "the government is unlikely to succeed on the merits"). As the court noted, the CDC's interpretation of its statutory authority could be used to justify "any number of regulatory actions . . ." *Id.* at 6.

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to defer in this manner to a law duly enacted by the Congress and signed by the President. However, it is quite another to continue blind adherence to an administrative agency's directive that (1) on its face, raises serious questions about its constitutional validity; (2) has been subject to numerous court challenges; and (3) has been ruled unconstitutional by numerous courts, including a well-reasoned finding by a federal appellate court that the government is unlikely to succeed on the merits of its appeal because of these constitutional infirmities.

<sup>4</sup> See *Tiger Lily, LLC v US Dep't of Housing & Urban Dev*, \_\_\_ F Supp 3d \_\_\_, \_\_\_ (WD Tenn, 2021) (Case No. 2:20-cv-02692) (concluding that the CDC's eviction moratorium "exceeds the statutory authority of the Public Health Act, 42 USC § 264" and is "unenforceable"); *Skyworks, LTD v Ctrs for Disease Control & Prevention*, opinion and order of the United States District Court for the Northern District of Ohio, issued March 10, 2021 (Case No. 5:20-cv-2407) (determining that the CDC's orders establishing and extending the eviction moratorium "exceed the agency's statutory authority provided in Section 361 of the Public Health Service Act, 42 USC § 264(a), and the regulation at 42 CFR § 70.2 promulgated pursuant to the statute, and are, therefore, invalid"); *Terkel v Ctrs for Disease Control & Prevention*, \_\_\_ F Supp 3d \_\_\_, \_\_\_ (ED Tex, 2021) (Case No. 6:20-cv-00564) (determining that the CDC's eviction moratorium "exceeds the power granted to the federal government to 'regulate Commerce . . . among the several States' and to 'make all Laws which shall be necessary and proper for carrying into Execution' that power" and holding that it is "unlawful as 'contrary to constitutional . . . power'"), quoting US Const, art I, § 8, and 5 USC 706(2)(B). But see *Chambless Enterprises, LLC v Redfield*, \_\_\_ F Supp 3d \_\_\_ (ED La, 2020) (Case No. 3:20-cv-01455) (denying the landlord-plaintiffs' motion for a preliminary injunction after finding that the plaintiffs had not satisfied any of the four prerequisites for a preliminary injunction, including substantial likelihood of success on the merits); *Brown v Azar*, \_\_\_ F Supp 3d \_\_\_ (ND Ga, 2020) (Case No. 1:20-cv-03702) (same).

Unfazed by these federal court rulings, our Court presses forward with its administrative suspension of statutory law. And it does so outside the normal procedures for promulgating rules, thus shielding the order from any public input. See Administrative Order No. 2020-17, \_\_\_ Mich \_\_\_ (March 22, 2021) (VIVIANO, J., dissenting). At an earlier stage of the COVID-19 pandemic, I wondered whether the rule of law would itself become yet another casualty of this dreadful disease. See *Dep’t of Health & Human Servs v Manke*, 505 Mich 1110 (2020) (VIVIANO, J., concurring). Some courts have stood firm. See *South Bay United Pentecostal Church v Newsom*, 592 US \_\_\_, \_\_\_; 141 S Ct 716, 718 (2021) (statement of Gorsuch, J.) (“Even in times of crisis—perhaps *especially* in times of crisis—we have a duty to hold governments to the Constitution.”). Unfortunately, this Court continues to choose a different path.

For these reasons, I dissent.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 9, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk