

Michigan Supreme Court overturns governor's executive orders on COVID-19 pandemic

Benefits for hundreds of thousands of jobless workers in jeopardy

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On October 2, the State of Michigan Supreme Court decided that emergency powers invoked by Governor Gretchen Whitmer earlier in the year violated the state's Constitution.

Whitmer has issued 192 executive orders in 2020 (up from 19 in 2019), the vast majority of which pertained to the COVID-19 outbreak. Michigan was among the hardest hit of US states early in the pandemic, but has been overtaken in case rates and deaths as the pandemic has expanded, particularly in the south and west of the country.

The orders date back to late winter, as the spread of COVID-19 across the US became undeniable. On March 10, Michigan's first two cases were identified by the state's Department of Health and Human Services. On the same day, Whitmer issued executive order 2020-04 declaring a state of emergency due to the threat to public health arising from the outbreak of the pandemic.

The legal basis for the state of emergency was given as the 1945 Emergency Powers of the Governor Act (EPGA). On April 1, in a new executive order, a state of emergency was declared once again, along with a state of disaster, drawing upon the Emergency Management Act (EMA) of 1976.

At the end of April, the states of emergency and disaster were reaffirmed in the ending of the original orders and the issuing of a new one. The legislature, however, which had adopted a resolution in early April backing the state of emergency through the end of April, refused to endorse a new one.

By that point, with the CARES Act having been

passed at the federal level, flooding the largest US corporations with cash, the campaign to "reopen the economy" was in full swing. It was also in mid- and late April that the first right-wing demonstrations were mounted against the executive orders, which were attended by several of those arrested last week in connection with the fascist plot to kidnap and execute Whitmer.

The legal challenge to the emergency order was mounted by the right-wing Mackinac Center on behalf of a Grand Rapids-based health care clinic that had been compelled by an executive order, since rescinded, to stop elective procedures so as to make beds available for the expected influx of COVID-19 patients. A patient whose knee surgery was delayed by the effect of the order was also a plaintiff.

The case was filed in the United States District Court for Western Michigan. On June 17, the court "certified" to the Michigan Supreme Court (i.e., asked the court to rule on) two questions: (1) whether either the EPGA or the EMA allowed Whitmer to extend the emergency orders, and (2) whether either of those acts violated the Michigan Constitution.

In its October 2 decision, the Michigan Supreme Court ruled that the EPGA violates the Michigan Constitution by unlawfully ceding to the executive branch powers belonging to the legislature.

On Monday, the Supreme Court, brushing aside arguments from the governor and state Attorney General Dana Nessel that the ruling not be put into effect for 28 days (i.e., until October 30), allowed the ruling to take effect immediately. Among the

arguments made by the state executive was that the immediate termination of the emergency would jeopardize the supplemental unemployment compensation that had been part of the orders, as there would be no period of transition from the protections afforded to an alternative set of rules that could be legislated.

Successive executive orders had loosened eligibility restrictions for workers seeking unemployment compensation, particularly those who were required to quarantine for COVID-19 because they had compromised immune systems. It also allowed more time to file, and it dropped the requirement that a worker be deemed (by the unemployment agency, i.e., the state) to be actively seeking work in order to receive compensation.

With the executive orders struck down, all of these provisions are immediately nullified. As a result, extra income for hundreds of thousands of unemployed workers is in jeopardy.

This coincides with the demands of the ruling elite that workers return to work under dangerous conditions so that profitability can be restored. The official unemployment rate, which significantly undercounts joblessness, remains at 8.7 percent in Michigan, more than double the rate in March.

During the spring, as “non-essential” workers not given the chance to work from home had their employment terminated on a mass scale, the official rate skyrocketed to 24 percent, representing a growth in the ranks of the unemployed from just over 200,000 to 1.1million.

The Republican-controlled Michigan Senate has taken up a bill to extend unemployment protections that had been introduced by means of the executive orders, but has inserted language that requires passage of several state House bills that limit employer liability for workers who become infected with COVID-19 on the job.

In other words, the price that employers are seeking to extract for a limited lifting of the burdens imposed on workers seeking to collect unemployment benefits is that owners and management be given free rein to operate without social distancing, proper cleaning or other measures required to fight the pandemic.

Significantly, the majority leader in the Senate, Mike Shirkey, stated in a weekend interview that “herd

immunity” needed to be “part of the discussion” on how the state responds to the pandemic. In a written rebuke, a former head of the US Centers for Disease Control and Prevention argued that a policy of “herd immunity” would lead to 30,000 additional deaths in the state. With the grim current total at more than 7,200, this means a quintupling of COVID-19 fatalities.

As these developments were taking place, Michigan recorded more than 1,800 new cases on Monday, more than any day since June and roughly equivalent to the rapid spread of late March and early April. The ruling elite is fully aware that workers returning to factories, other workplaces and schools will result in a growth in both the number of cases and the number of fatalities.



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