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April 3, 2020

The Honorable Mike Shirkey
Senate Majority Leader
Michigan Senate
P.O. Box 30036
Lansing, Michigan 48909

By Email and First Class Mail

The Honorable Lee Chatfield
Speaker of the House
Michigan House of Representatives
P.O. Box 30014
Lansing, Michigan 48909

**RE: Governor Whitmer's Executive Order 2020-33,
Requesting a Concurrent Resolution.**

Dear Leader Shirkey and Leader Chatfield:

As a licensed Michigan attorney conversant with limited constitutional government, I'm writing to you both today concerning the Governor's egregious Executive Order 2020-33. Essentially the Governor identifies the health consequences of COVID-19 and speculates about its increasing threat in the near future. To combat this threat, she unilaterally issued Executive Order 2020-33 and now seeks a "partnership" with the legislative branch in affirming same. Specifically, she has requested a concurrent resolution extending the State of Emergency and Disaster by 70 days, or at least until June 10, 2020.

Claiming authority under Article V, section 1 of the Michigan Constitution of 1963, MCL 10.31(1) and predominately MCL 30.403(3)-(4), she purports to order that "the state of emergency and the state of disaster will terminate when emergency and disaster conditions no longer exist and appropriate programs have been implemented to recover from any effects of the statewide emergency and disaster, consistent with the legal authorities upon which this declaration is based and any limits imposed by those authorities, including section 3 of the Emergency Management Act, 1976 PA 390, as amended, MCL 30.403."

In other words she proclaims, "The emergency will end when I say it will end. Until then, I shall continue to rule at my discretion." She now offers the legislature political cover if it will assent to her metallic voice of command. This is political theater featuring a cast of copycat Governors and obeisant legislators.

A competent review of these provisions and statutes, however, suggest no such power is given to the Governor as purported to be exercised in Executive Orders 2020-33 or 2020-21. The Governor has power to alter and modify state functions within her branch and other related functions under MCL 30.405. She does not have power to order people to stay at home, prohibit the right of assembly with as many people as one would desire, alienate the free exercise of religion with as few or many people as one's conscience dictates, or close firearm retailers.

These rights are guaranteed by the Michigan Constitution, not Executive good will. See Article 1, sections 3 (assembly), 4 (religion), 5 (Speech and press), and 6 (bear arms). These rights are not rights merely to be borne in one's home while "sheltering in place." These rights are rights to be enjoyed when and where Michigan citizens desire, not when and where the Governor of the State of Michigan might permit.

I note that the right of habeas corpus may specifically be suspended under certain Constitutionally specified circumstances. Remarkably and prudently, the framers of our Constitution never entrusted the Governor or the Legislature with any such power to suspend or curtail Article 1, sections three, four, five or six. Even my dog knows that the 9th and 10th amendments to the federal Constitution protect these and other enumerated unalienable rights. How is it that the state legislature has not noticed this obvious suppression of liberties?

Do you as state legislators honestly believe that the legislature's statutory grants under the Emergency Management and other Acts, or Article V, section 1 of the Michigan Constitution, can ever empower any Governor, through an Executive Order, to suspend a single provision of the Michigan Constitution, including portions of Article 1? How have we gotten to the position in our thinking that any Governor could claim an express Constitutional power to set aside other sections of the Constitution itself?

Article V, section 1 simply vests the executive power in the Governor. The executive power is the power to carry the law into execution, not the power to set it aside as one's revolutionary conscience might dictate. Nor does Article V vest any Article XII, section 3 powers in the Governor to tamper with the Constitution, make general revisions to the Constitution in time of emergency, cross out sections here and there, or vest that office with the power to temporarily suspend or curtail Article 1 rights.

When this Executive's power is unmasked from its public façade, it is easy to see a phobic disregard of the rule of law. No Governor has authority to "safeguard" the people from their own freedoms. Nor may the legislature grant such authority, even to a likeable autocrat.

Inexplicably, I see Majority Leader Shirkey has stated: "We will pursue a reasonable extension of the emergency declaration and look forward to working with the Governor." Speaker Chatfield addressed the Michigan House earlier on March 17, saying the chamber will work deliberatively and collaboratively. With leadership like this, why not just burn the Constitution on the open floor of each Chamber and get it over with? At least that would be honest.

Are the rights of the people not absolute? Must they yield in times of crisis? What then of your Constitutional legislative powers? Must they too yield? It is easy to concede that your neighbor's rights may be temporarily curtailed in a crisis while comfortably seated in your taxpayer-funded office. But what of your own Constitutional powers? Shall they be measured with the same congenial measuring stick? No, my friends, your power cannot be absolute by this broken standard. If the rights of the people are not absolute, then how can the power of their legislative servants be any greater?

Yet, if you are convinced the rights of the people must yield to cordial bipartisanship, then add this to your concurrent resolution:

Whereas the Constitutional rights and power of the People under Article 1, and the power of the legislature under Article IV not being absolute, they may be temporarily suspended by the Governor pursuant to Article V, section 1 for up to seventy days, or until June 10, 2020.

Perhaps you never knew that the sovereign constituent power and rights of the people to be governed by *their own* written constitution cannot be frittered away in times of emergency. If the Governor by her will, using the pretext of an emergency either real or contrived, whether based on actual or voodoo science, remains unopposed by the legislature, then the degrading truth must be admitted that we are all incapable of self-government. And where will this lead but to martial law and the final slaying of the peoples' remaining goods and property along with their liberties.

Where will you draw the line? Sacrifice sections 3 to 6 and then draw the line there? When is suspension of our rights a Constitutional crisis worthy of your notice? Where is your line drawn? You don't really have a line, do you? Do not be naïve at the anticipated easy promises that may be offered to the effect "I will never go that far" or "Come let us reason about the suspension of freedom together." Do not trust in deceptive words. Do not return to the misplaced belief of our Tory colonial ancestors. What will it take for the legislature to gather its wits and be aroused from its administrative stupor? I also exhort you not to be satisfied simply because one kernel of the authoritarian loaf making section 3 punishments inapplicable against religious organizations has been "granted." Only a fool would commend the keeping of his or her soul to another to determine when, where or with whom it will be exercised.

Now the Governor requests your collusion in her authoritarian style of governing.

Perhaps you object to these concerns on the grounds that I don't really understand the severity of the virus. Perhaps you are simply being politically astute about the consequences of taking any position other than the official line that government knows best, with its accompanying plunder of Michigan's economy. Or perhaps, because you are part of the government itself, the retention of your feedbag inclines you to complicity and passivity. Indeed, it must have occurred to you, as it has to the Governor, that any failure to make a public denunciation of those who oppose the Governor's Orders will subject you to endless media attacks. These are the times that test the measure of a leader. Servile complaisance has never

been a virtue. It cannot compare favorably to your oath supporting the Constitution of this State. Article XI, sec. 1.

I encourage you both to oppose and remonstrate against the Governor's demand that the Legislature affirm her unlimited executive power for any period of time. Capitulation to the personal edicts of a Monarch is unworthy of a free people.

No aspect of the current pandemic can ever be a sufficient justification to warrant the alienation of the unalienable and Constitutional rights of the People. The Declaration of Independence tells us that the core purpose of government is to secure the unalienable and constitutionally enumerated rights of the people in a liberal fashion. That purpose leaves no room to collude with either the Governor in the administrative suspension of our rights, or the Attorney General in their misdemeanor criminalization for temporary periods of time.

Can an analogy be drawn regarding that document drafted at a time when the American people were in lockdown under British rule, to a time when Michiganders are ordered to stay in their own homes under Executive rule?

Alternative means must be found. Reject the mechanical deployment of the police to club our souls into submission. Use of threats, force and coercion against the People of Michigan (in whom all political power is inherent) as asserted in the various executive orders of the Governor and championed by our Attorney General is myopic. Discovery of alternative means is your job. This is what the legislature is supposed to do. It is a deliberative and investigative body. It holds hearings. Have you held hearings on the suppression of freedom, the purge of liberty, and destruction of jobs, wealth, contract, property and association?

The legislature should start the process of recovery by first chaining the Governor down to her actual Constitutional authority. President Thomas Jefferson's advice is applicable today: "In questions of power then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution." Chains are needed, not wings. The legislature should amend MCL 30.405 to add a new section (3) and move the current section (3) to section (4) to state:

(3) Nothing in this Act, or any law or regulation of this state or a political subdivision of this state, or the Constitution of Michigan, authorizes the Governor or any state or local executive official or officer, to suspend, curtail or criminalize, either temporarily or otherwise, the exercise of any rights or privileges specified in Article 1 of the Mich. Const., 1963.

The People of Michigan, when gracefully called upon, have amply demonstrated recognition of their own vulnerability to the virus. The ability of the Governor to make her case and voluntarily ask Michiganders, and businesses to practice social distancing and voluntarily close to the public is one of her hidden talents. The people are capable of self-government. They are capable of understanding their own financial interests. They are more than capable of understanding their own medical interests and circumstances that directly threaten their own

body, health and life. The fear is palpable. Visit any grocery store and you can feel it. Adding the threat of force and coercion is a needless hammer.

There is something greater at stake here beyond the crisis. What faith has the Governor in the People to govern themselves? Has she the faith that the people will voluntarily govern their social distancing without the use of her coercive commands? She seems to have no faith that the people will restrain themselves from interfacing with others in social groups without threats of a misdemeanor prosecution. At root the Governor may claim to have great faith in the People of Michigan, but her actions say she does not trust them to do the right thing absent fines and imprisonment. The Attorney General simply prefers intolerance over freedom. They still both have time to recover faith in the People, but to do so each must first deny faith in themselves and their accompanying reliance on the almighty sword.

But these faithless missteps need not be yours. This is the critical moment, not just the next step which the Emergency Management Act contemplates. Are you confident in the People of Michigan to voluntarily govern themselves during this time of pandemic? Will you free them to help each other rather than making them dependent on legislative largess? Your public statements so far do not seem to support that faith. Or will you be counted among that class of politicians who think the people are just too stupid to understand that group exposure could harm them and as such the use of force, coercion and ultimately violence against your own constituents is your preferred remedy?

President James Madison once said: “It is proper to take alarm at the first experiment on our liberties. . . . The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it.”

We are well past any first experiment with our liberties. The legislature’s duty is clear-- lockdown the Governor, not the People.

Respectfully submitted,

Kerry Lee Morgan

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