STATE OF MICHIGAN
MICHIGAN SUPREME COURT

In re CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

SC: 161492
USDC-WD: 1:20-cv-414

/

MIDWEST INSTITUTE OF HEALTH, PLLC, d/b/a GRAND HEALTH PARTNERS, WELLSTON MEDICAL CENTER, PLLC, PRIMARY HEALTH SERVICES, PC, and JEFFERY GULICK,

Plaintiffs,

v.

GOVERNOR OF MICHIGAN, MICHIGAN ATTORNEY GENERAL, and MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES DIRECTOR,

Defendants.

/

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LONANG INSTITUTE'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AMICUS CURIAE BRIEF

LONANG Institute moves this Court for leave to file a Supplemental brief as amicus curiae in this Court pursuant to this court's September 9, 2020 order and states in support of its motion:

1. LONANG Institute is a Michigan-based, nonprofit and nonpartisan research and educational institute concerned with application of the "Laws Of Nature And Nature's God", a foundation phrase referenced in the United States Declaration of Independence, 1776. The "law of nature" was a common term used by historic legal writers. The framers of the Declaration of Independence made the necessary claim that the laws of nature and of nature's God served as legal authority justifying the people in declaring independence and establishing certain principles of human freedom that preexist civil governments. This same law also presupposed that any such government to be created was obliged to secure those freedoms, not infringe or alienate them.

2. LONANG Institute has a deep interest in the outcome of this matter. It is well able to address the questions raised by this court in its September 9, 2020 order. It encourages this court not to use its red editing pencil to add various terms to the EPGA: "28 days", "public health" or "epidemic." Amicus also bring the wisdom of Chief Justice John Marshall to bear on the doctrine of "constitutional avoidance." Such a doctrine rules afoul of the judicial duty of courts to squarely decide constitutional questions. Those who "controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law." Such is what is happening in the instant case.

3. As friend of the Court, LONANG Institute seeks to present to the Court a different perspective regarding the issues in this case than those presented by the parties.

4. Michigan's judicial policy favors amicus filings. *Grand Rapids v Consumers Power Co*, 216 Mich 409, 414-415; 185 NW 852 (1921).

WHEREFORE, LONANG Institute requests that this Court enter an order granting this Motion for Leave to File Supplemental Amicus Curiae Brief and accept for filing the proposed Supplemental amicus curiae brief, which is attached as **Exhibit A**.

Date: September 15, 2020

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EXHIBIT A

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SUPPLEMENTAL AMICUS BRIEF OF LONANG INSTITUTE

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.
> Marbury v. Madison, 5 U.S. 137, 178, 2 L. Ed. 60 (1803)

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SUPPLEMENTAL QUESTIONS PRESENTED

1. Question 1, Does the Emergency Powers of the Governor Act (EPGA), MCL 10.31 et seq., apply in the context of public health generally or to an epidemic such as COVID-19 in particular?

   Amicus LONANG Institute Answers: "No."

2. Question 2. Is "public safety," as that term is used in the EPGA, a term of ordinary meaning or has it developed a specialized legal meaning as an object of the state's police power, and whether "public safety" encompasses "public health" events such as epidemics?

   Amicus LONANG Institute Answers: "Public Safety has no specialized meaning. Nor does it encompass public health or epidemics."

Now comes Amicus LONANG Institute, by and through undersigned counsel, and for its Supplemental Amicus brief, states as follows. [1]

I. SUPPLEMENTAL QUESTIONS

Two questions were posed by the court in its September 9, 2020 Order addressing supplemental briefing. The Order permits Amici to file supplemental briefs addressing: (1) whether the Emergency Powers of the Governor Act (EPGA), MCL 10.31 et seq., applies in the context of public health generally or to an epidemic such as COVID-19 in particular; and (2) whether "public safety," as that term is used in the EPGA, is a term of ordinary meaning or has developed a specialized legal meaning as an object of the state's police power, and whether "public safety" encompasses "public health" events such as epidemics.

Plaintiffs ask this court to look in its desk drawer, take out its red editorial pencil and insert "28 days" into the EPGA. Then the pencil goes back in the drawer. Defendants want the court to take the red pencil out and insert the words "public health" and "pandemic" into the EPGA, and then put the pencil back in the drawer. Amicus ask this court to keep the red pencil in the drawer, but pull the drawer out a bit further to find the Michigan Constitution. Then use that document as written to answer the certified questions.

A. Question 1. Does The Emergency Powers Of The Governor Act (EPGA), MCL 10.31 et seq., Apply In The Context Of Public Health Generally Or To An Epidemic Such As COVID-19 In Particular?

MCL 10.31 states: "During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a

[1] The undersigned counsel authored the brief in whole. The undersigned counsel has not made any monetary contribution intended to fund the preparation or submission of the brief. No other person (excluding the amicus curiae, its members, or its counsel) made a contribution for the preparation and filing of this brief.

public emergency of that kind, when public safety is imperiled. . . ." In construing this statute, public safety is the second consideration, not the first. First, there must be a finding that a great public emergency exists of the type specified—"disaster, rioting, catastrophe, or similar public emergency." Once the existence of this type of great crisis exists, there must be an additional finding that the great public emergency also imperils public safety, before the Governor's emergency powers are triggered.

In other words, the phrase "public safety" does not control the definition of circumstances in which emergency powers are triggered. Rather, the term "public crisis … or similar public emergency" is the term that controls whether emergency powers are triggered.

A virus, epidemic or pandemic is not a disaster or riot. It is not a catastrophe or similar emergency. A virus is none of these things because it is not "similar" as the text says, to these things-- crisis, disaster, rioting, catastrophe. The fact that an epidemic is listed in MCL 30.402 (the Emergency Management Act, or EMA) does not make an epidemic a form of disaster under the EPGA. The EPGA lumps together very specific types of events being a "great public crisis, disaster, rioting, catastrophe, or similar public emergency." These particulars do not mean or carry with it a broader health component or an epidemic meaning.[2] Instead, the terms used are indicative of natural disasters (or "Acts of God") and violent conflicts, especially riots of the type which were very much in the public mind when the EPGA was adopted near the end of World War II.

[2] MCL 30.402(e) defines "Disaster" to mean "an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders."

Nor is an epidemic a great public crisis as that phrase also must draw its similar substance from riot or catastrophe. Since it is none of these things, the EGPA does not warrant any declaration of emergency under the current COVID situation.[3]

If the legislature wanted to connect a "great public crisis, disaster, rioting, catastrophe, or similar public emergency" with public health generally or to an epidemic specifically in the EPGA, it can do so explicitly. MCL 10.122 is a good example. It pertains to the declaration of a public health state of emergency, but of course this emergency is limited to adulterated food and medical products, not an epidemic. It states; "(1) Subject to subsection (3), if the governor has a reasonable basis to believe that a consumer product has been adulterated and presents a threat to *public safety and health,* the governor may declare a public health state of emergency and order any of the following with regard to that consumer product . . . ." (emphasis added). [4] Here the legislature explicitly employs the phrase "public health state of emergency." No hint of any such language exits in MCL 10.31. And absent the express inclusion of such language, it should not be inferred.

Moreover, the legislature refers to the phrase "public health" 1,442 times in the Compiled Laws of Michigan, but never in MCL 10.31.[5] This usage strongly suggests that riots and similar

[3] What evidence exists in the record that COVID is a pandemic or epidemic? Is the court now taking judicial notice of what is written on the internet, the newspapers or the Governor's self-emulating orders? There is a difference of opinion among experts on this subject and the Court should exercise restraint in either declaring, or assuming the existence of, a pandemic absent expert testimony about the virus and its threat, either real or imagined.

[4] Under MCL 10.122, the Governor could establish a reasonable basis to believe that a consumer product has been adulterated and presents a threat to public safety and health. MCL 10.121 states that "Consumer product" means "any medicine including a prescription drug that is consumed or used by humans." The Governor may declare a public health state of emergency and to protect and save lives, order that any incompletely tested or inadequately approved COVID based vaccine "shall not be sold or offered for sale during the public health state of emergency."

[5] See Exhibit 1, Search results for the term "Public Health" (not "public" and "health").

emergencies are not legislative shorthand for public health or epidemic situations. Therefore, the term "public crisis … or similar public emergency" does not include either a pandemic or epidemic as that phrase is used in the EPGA. Further, whether or not a pandemic or epidemic are included within the meaning of the phrase "public safety" is irrelevant. "Public safety" only enters into the consideration of whether emergency powers have been triggered after it has been determined that a "public crisis … or similar public emergency" consisting of a natural disaster or violent conflict has been determined to exist.

B. Question 2. Is "Public Safety," As That Term Is Used In The EPGA, A Term Of Ordinary Meaning Or Has It Developed A Specialized Legal Meaning As An Object Of The State's Police Power, And Whether "Public Safety" Encompasses "Public Health" Events Such As Epidemics?

1. Is "public safety," as that term is used in the EPGA, a term of ordinary meaning or has it developed a specialized legal meaning?

Of the 255 times the term "public safety " is used in the Complied Laws of Michigan, not once is it defined as such "Definition: Public Safety."[6] When the word "epidemic" is searched within this field, it produces zero results. In other words, though the legislature has referenced public safety liberally, it has never defined it. Each of the legislative uses of "public safety" appears to derive its meaning from how it is used in each statute, not how it might be used or is used elsewhere. This simple fact does not bode well for the idea that the phrase has some special meaning in the EPGA.

As to whether it has evolved into a special meaning, or as the court phrased it "developed a special meeting," Amicus does not know how a statue can develop a special meaning absent the statute itself declaring it so. In contrast, the Governor's orders "develop" special meanings that differ from their often badly worded text via her press conferences and internet posting on

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[6] See Exhibit 2, Search results for the term "Public Safety" (not "public" and "safety").

Michigan.gov. However, the meaning of a statute does not "develop" absent an amendment. If the phrase has a special meaning, it would be because the legislature declares it so in the statute. Any other evolution of the term is purely social and not legal.

2. *Does "public safety" encompasses "public health" events such as epidemics?*

The court also asks whether "public safety" encompasses "public health" events such as epidemics. Amicus suggests that this inquiry is irrelevant in the context of the EPGA. As stated above the first consideration in interpreting the text requires a finding of "great public crisis, disaster, rioting, catastrophe, or *similar public emergency* within the state." To wit, a natural disaster or a violent conflict. If none of these are first established then there is no opportunity to determine "when public safety is imperiled" and no opportunity to determine if "public safety" encompasses "public health" events such as epidemics.[7]

Oral Argument referenced the authority of the public health director. MCL 333.2251 states that:

> Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order that shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger."

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[7] See https://www.mlive.com/public-interest/2020/05/detroit-george-floyd-police-brutality-protest-turns-violent-as-police-fire-tear-gas-rubber-bullets.html
This is an example of an emergency in which the Governor could have relied upon MCL 10.31 (were it not unconstitutional). However, five days later she instead elected to march with protestors in solidarity. See https://www.detroitnews.com/story/news/local/michigan/2020/06/04/whitmer-appears-break-social-distance-rules-highland-park-march/3146244001/

The question is whether the Director of Public Health has the power under this statute to issue orders of the breadth and scope of the Governor's COVID executive orders to date. Amicus answers in the negative. This statute is a highly individualized approach and has nothing to do with general orders affecting 10 million persons.

MCL 333.2253 also gives the Director of Public Health the authority to "determine[] that control of an epidemic is necessary to protect the public health." If so, the "director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code."

This law is problematic for a number of reasons. First, the power granted on its face violates several Constitutional rights including the right to assemble, religious freedom, keep and bear arms, free speech, etc., (See Mich. Const., Art 1, secs. 3, 4, 5, 6, 13, 14, 20, 23 and 25). Second, this law is confined to gatherings, health services and health laws. It is not an open invitation to rewrite, update and revise the statutes of Michigan regarding matters such as the open meetings act, the liquor control commission, or to determine who is an essential worker as the Governor has freely undertaken.

C. **"The Legislature Cannot Meet" Rationale Is Irrelevant**.

There were statements made during oral argument regarding the inability of the legislature to meet as a basis for or justification of the Governor's exercise of emergency power. While the Constitution itself speaks to the inability of the legislature to meet because the seat of government becomes dangerous, or because of enemy attack on the United States, the EPGA

does not reference the legislature's ability or status.[8] As such it serves as no justification for the exercise of executive power. If the legislature cannot meet in Lansing, the Constitution authorizes the Governor to call them into session at a location where they can meet. In this case, Luce or Baraga counties come to mind with 11 and 12 COVID cases reported county wide, respectively.[9] Rather than doing this as she should have, the Governor exercised the whole power of the legislative and ignored the legislature when it did meet.

For this court to accept this argument, however, requires it to get out its red pencil and write timelines, duration, safeguards and legislative absence into the statute. In other words, write in timelines as to how quickly the legislature must convene, how much time must go by before the legislature is deemed to have failed to act, whether the Governor has a positive duty to convene the legislature, etc. If this court were to do any of these things, such action itself would be a violation of separation of powers. The judicial branch is not the legislature's editor in chief.

Thus, in answer to the two questions, The Emergency Powers of the Governor Act (EPGA), MCL 10.31 et seq., does not apply in the context of public health generally nor to an epidemic such as COVID-19 in particular. "Public safety," as that term is used in the EPGA, is a

[8] Article V § 16 states that "The governor may convene the legislature at some other place when the seat of government becomes dangerous from any cause." Article IV § 39 states: "In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state caused by enemy attack on the United States, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section."

[9] https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html (as of September 14, 2020).

term of ordinary meaning and has no specialized legal meaning as an object of the state's police power. Nor does the phrase "public safety" encompass "public health" events such as epidemics in the context of the EPGA.

II. "CONSTITUTIONAL AVOIDANCE" MUST YIELD TO JUDICAL DUTY.

Amicus finds the court's apparent willingness to chase down the meaning of "public safety," a phrase having little or nothing to do with the task at hand - namely, answering the two certified questions - to be troubling. This court's task is merely to answer two questions of state law, and then pass those answers to another court for the actual decision and disposition in this particular case.

Consequently, this Court cannot, and must not, shrink back from its duty to answer both of the legal questions it has already agreed to answer. Including, most notably, the constitutional question as to whether the EPGA and/or the numerous COVID related executive orders issued by the Governor have violated the Separation of Powers and/or the Non-Delegation Clauses of the Michigan Constitution.

This means the Court must double back to the questions of whether the legislature's 1945 grant of the "entire police power" by a statute to the governor in perpetuity where she is the sole judge of the emergency, sole judge of the propriety of any and every responsive order, and sole judge of their duration (if any), contravenes the constitutional prohibition that the legislature may not grant legislative power to the Governor by a statute. Mich. Const. Art. III, sec. 2. For this reason, Amicus prays this Court not apply the doctrine of "constitutional avoidance" in this case.[10]

[10] "The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction;

"Constitutional avoidance," has been characterized as a "rule," a "doctrine," a "well-established rule," a "widely accepted and venerable rule" and a "canon" in various opinions. But where did it actually come from? The court in People v. McKinley, 496 Mich. 410, 417, 852 N.W.2d 770, 774 (2014) declared that the "rule is well established in both United States Supreme Court case law and this Court's precedent." See Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 347, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of."); Slack v. McDaniel, 529 U.S. 473, 485, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) (quoting Justice Brandeis's concurring opinion in referring to "[t]he *Ashwande*r rule"); Smith v. Curran, 267 Mich. 413, 418, 255 N.W. 276 (1934) (articulating seven judicially created doctrines including that the "constitutionality of an act will not be passed upon where a case may be otherwise decided").

But Amicus see a different and frankly far superior rule operating in this Republic than that laid down by Chief Justice Sharpe in 1934 or formulated from pragmatic whole cloth by Justice Brandeis in 1936.

Chief Justice John Marshall in Marbury v. Madison, 5 U.S. 137, 177-178 (1803) asked: "If an act of the Legislature repugnant to the Constitution is void, does it, notwithstanding its invalidity, bind the Courts and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law?" He answers: "This would be to overthrow in fact what was established in theory, and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration."

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and the canon functions as a means of choosing between them." Clark v. Martinez, 543 U.S. 371, 385, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005) (emphasis added; original emphasis omitted).

The Chief Justice goes on to hammer home the argument for straight up constitutional adjudication. He is having none of the pop glory of constitutional avoidance. He observes the foundation, first stating:

> It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each. So, if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. Marbury, 5 U.S. at 177.

Does the Michigan Constitution have anything to say about the "very essence of judicial duty? " It certainly has nothing to say about the 1934 judicially created canon of constitutional avoidance. Those who framed the Michigan Constitution wrote in Article VI, section 1 that "the judicial power of the state is vested exclusively in one court of justice . . . ." Does the judicial power so vested carry with it the power to make rules that justify avoiding a decision on the constitutionality of a statute where the parties seek that relief? Chief Justice Marshall says no, for that would contravene the "very essence of judicial duty."

Indeed Marshall concludes "If, then, the Courts are to regard the Constitution and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply." What would the Chief Justice say to Justice Brandeis or this Court about its doctrine of constitutional avoidance? There is no need to guess here, for the Chief Justice says:

> Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law. This doctrine would subvert the very foundation of all written Constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that, if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It

> would be giving to the Legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure. *Id*. at 178.

Frankly, Chief Justice John Marshall is not merely saying that the Courts have the power to declare statutes unconstitutional. He is saying that the courts have the duty to do so when the statute is unconstitutional regardless if it can be also be construed as constitutional. The doctrine of constitutional avoidance on the other hand implies that if the statute is unconstitutional under one argument but could be constitutional under another, that the court may indeed "close their eyes on the Constitution, and see only the law." This fog of injustice if followed here would have the Court prescribe the limits of the EPGA, and then "declar[e] that those limits may be passed at pleasure."

Can such a simple rule, indeed a near contemporaneous constitutional rule as laid down by Chief Justice Marshall regarding judicial duty and judicial power in 1803, be waylaid by what some Justice said in 1936 and was repeated in 2014?

The judicial duty of this Court is to tackle the constitutionality of the 1945 and 1976 statutes head on and avoid all the unfavorable statutory exit ramps.[11]

II. THE LEGISLATURE MAY NOT DELEGATE ITS POLICE POWER TO THE GOVERNOR.

MCL 10.32 invests "the governor with sufficiently broad power of action in the exercise of the *police power* of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster." If, as the Court of Appeals has

[11] Amicus have previously filed briefs same explaining the Acts' unconstitutionally. See https://lonang.com/
- Midwest Institute of Health v. Governor Whitmer – LONANG Amicus Brief
- Mich House & Senate v. Governor Whitmer – LONANG Amicus Brief
- COVID-19 Response to the State: Lockdown the Governor, Not the People

held, this statute authorizes the Governor to issue the many COVID related executive orders she has issued, then this is a clear violation of Article III, sec. 2 which declares: "No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

Indeed, taken at face value, MCL 10.32 gives the broadest possible police power to the Governor. The police power, however, is a legislative power. Of the 15 references to the phrase "Police Power" found in the Compiled Laws of this state, only MCL 10.32 purports to give such a boundless power to the Governor, a completely distinct branch of the government from the Legislature.[12] The Legislature cannot consistent with Article III, sec. 2 give the Governor any such power, and certainly not for an unlimited duration. Nor can she constitutionally exercise it.

Rather than trying to make the statute good by importing a duration or health element, the court should simply read the statue as written having neither. But from a constitutional analysis point of view, duration or not, the EPGA grants legislative power by a statue to the Governor, a transfer that grants the legislative police power contrary to Mich. Const. Art, III, sec. 2.

Furthermore, each member of this Court has sworn an oath to support the constitution of this state. To support the constitution does *not* mean to defer to a statutory interpretation, to avoid the constitutional interpretation, nor to defer to the executive branch because of political exigencies. "We must never forget that it is a *constitution* we are expounding." McCulloch v. Maryland 17 U.S. 316, at 407 (1819).

[12] See Exhibit 3, Search results for the term "Police Power" (not "police" and "power").

CONCLUSION

For the forgoing reasons, Amicus pray the court will answer the certified questions as follows. Both the EPGA and EMA are unconstitutional because they trample down multiple rights of the People guaranteed under Michigan's Constitution, Article 1 and Article 10, sec. 2.

The EPGA is unconstitutional as the legislature may not delegate its police power to the Governor as it has under MCL 10.32 without violating Article III, section 2.

Closing our eyes to the Constitution, in the alternative, under the 1976 Emergency Management Act, MCL § 30.401, et seq., Governor Whitmer does not have the authority after April 30, 2020, to issue or renew any executive orders related to the COVID-19 pandemic.

Under the 1945 EPGA and the 1976 EMA, if they are construed to delegate the Governor any authority over other than the public's use of public property (not meaning public space), public roads, public access to a restricted zone, and public gatherings upon public property, they exceed the statutory powers actually given.

Respectfully Submitted,

Date: September 15, 2020

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