

Whitmer abuse of emergency powers is déjà vu all over again

Governor plays fast and loose with executive authority, again

By Michael Van Beek | September 2023

Strong winds and heavy rain, accompanied by half a dozen tornados, damaged areas of Michigan in August. Hundreds of thousands of people lost power for days, but fortunately, casualties were minimal.

In response, Gov. Gretchen Whitmer declared a state of emergency for some areas of the state. But the governor has since unilaterally extended those emergencies, in a manner similar to what she tried to do during the 2020 COVID-19 pandemic.

Whitmer issued the first emergency declaration Aug. 25, related to the late summer thunderstorms. The declaration covered Wayne and Monroe counties. Michigan's Emergency Management Act enables governors to issue emergency declarations for a maximum of 28 days, so this order was set to expire on Sept. 22.

The governor's second emergency declaration came three days later and covered Eaton, Livingston and

Ingham counties, as well as the city of South Lyon. This order was set to expire 28 days later, on Sept. 25. But this second declaration also included Wayne and Monroe counties. This means that, technically, the governor redeclared an emergency for these counties, effectively extending the Aug. 25 one beyond 28 days.

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But the governor was only half done. She issued a third emergency declaration on Aug. 30 that added Kent and Ionia counties to the growing list of areas covered by her orders. The expiration date on this declaration was Sept. 27. Much like the previous order, this one included the areas covered by the first two orders — extending the duration of emergencies in those areas beyond 28 days.

Whitmer issued yet another emergency declaration two weeks later, on Sept. 13. This order added New Baltimore and Chesterfield Township to the areas under emergency declarations. It did not expire until Oct. 11. Once again, the declaration included areas the governor had included in previous declarations,

effectively redeclaring emergencies and pushing the duration far past the limit of 28 days. The result is that the emergency in Wayne and Monroe counties lasted 48 days; 45 days in Eaton, Livingston and Ingham counties; and 43 days in Kent and Ionia.

This pattern of sweeping local areas covered under old declarations into new ones appears to violate the state's Emergency Management Act. The law says that an emergency declaration persists "until the declared state of emergency has been in effect for 28 days."

The areas covered by the first three orders saw declared emergencies that lasted longer than that.

The governor tried something similar in 2020.

Lacking legislative approval to extend her lockdown orders further, Whitmer simply redeclared a new emergency for the COVID-19 pandemic after her original order expired. The Mackinac Center Legal Foundation brought a lawsuit, and the Michigan Supreme Court ruled, in a unanimous, 7-0 decision in October 2020, that Whitmer's unilateral attempt to extend an emergency declaration beyond 28 days under the Emergency Management Act was illegal.

"The Governor possesses no authority," the court wrote, "to redeclare the same state of emergency ... and thereby avoid the Legislature's limitation on her authority under the EMA."

Thankfully, the governor, this time, is not using emergency powers to regulate the daily activities of 10 million Michiganders, as she did in 2020. The point of these declarations is to deploy state resources to help Michigan communities recover from these damaging storms faster than they could on their own.

But no matter the purpose or the stakes, the governor needs to follow the law and exercise her executive authority properly.

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