

# WELCOME!

**We are a  
Constitutionally Compliant  
Business.**

We are not infringing on anyone's unalienable rights. By law, we do not follow any of the governor's, mayor's, health department's, or other government agency orders or suggestions pertaining to social distancing or mask wearing.

Your health is your responsibility.

## NOTICE

To all government officials

You are in violation of your oath of office by trespassing unlawfully on the property of this business establishment and committing an act of domestic terrorism under Section 802 of the Extortion Act.

You are knowingly and willingly violating the rights of a business owner. You are no longer protected under judicial immunity and are now subject to being arrested and prosecuted in your private capacity.

Rick Martin

ConstitutionalLawGroup.US

**IN RE CERTIFIED QUESTIONS FROM the UNITED STATES DISTRICT COURT, WESTERN  
DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

**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.**

**No. 161492**

**Supreme Court of Michigan.**

**Argued on request to answer certified questions September 9, 2020**

**Decided October 2, 2020**

Miller Johnson, Grand Rapids (by James R. Peterson, Stephen J. van Stempvoort, and Amy E. Murphy )  
and the Mackinac Center Legal Foundation (by Patrick J. Wright ) for Midwest Institute of Health, PLLC;  
Wellston Medical Center, PLLC; Primary Health Services, PC, and Jeffery Gulick.

B. Eric Restuccia, Deputy Solicitor General, Christopher M. Allen, Assistant Solicitor General, and Joseph  
T. Froehlich, Joshua Booth, John Fedynsky, and Kyla Barranco, Assistant Attorneys General, for the  
Governor and the Department of Health and Human Services Director.

Dana Nessel, Attorney General, Fadwa A. Hammoud, Solicitor General, Ann M. Sherman, Deputy Solicitor  
General, and Rebecca A. Berels, Assistant Attorney General, for the Attorney General.

We hereby respond to the federal court in the affirmative by choosing to answer the questions the federal court has certified, concluding as follows: first, **the Governor did not possess the authority** under the Emergency Management Act of 1976 (the EMA), MCL 30.401 et seq. , **to declare a "state of emergency" or "state of disaster" based on the COVID-19 pandemic after April 30, 2020;** and second, **the Governor does not possess the authority to exercise emergency powers** under the Emergency Powers of the Governor Act of 1945 (the EPGA), MCL 10.31 et seq. , because that act is an **unlawful delegation of legislative power** to the executive branch **in violation of the Michigan Constitution.** **Accordingly, the executive orders issued by the Governor in response to the COVID-19 pandemic now lack any basis under Michigan law.**



WEATHER ALERT

There are 20 areas with 20 active weather alerts. >

CORONAVIRUS

# Nessel will no longer prosecute COVID-19 executive order violations

by: Whitney Barney, WOODTV.com staff  
Posted: Oct 4, 2020 / 04:46 PM EDT  
Updated: Oct 5, 2020 / 12:02 AM EDT



E COURT RULING

0:00 / 3:24



SHARE



LANSHING, Mich. (WOOD) — In the wake of Friday's ruling by the Michigan Supreme Court, Attorney General Dana Nessel says she will no longer prosecute people who violate the governor's COVID-19 executive orders.

Nessel said her decision is not binding on other law enforcement departments.

On Friday, the Supreme Court declared a 1945 law used by Gov. Gretcher Whitmer in response to

Nessel said her decision is not binding on other law enforcement departments.

On Friday, the Supreme Court declared a 1945 law used by Gov. Gretcher Whitmer in response to the COVID-19 pandemic **unconstitutional**. The law granted governors in the state unchecked authority. Officials said Whitmer can still use a 1976 law, which gives lawmakers a say in emergency declarations.

Nessel's office said in a statement that she hopes Michiganders will continue to use common sense to prevent the spread of COVID-19.

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Michigan Attorney General Dana Nessel

@MIAttyGen · [Follow](#)



## AG Press Secretary Issues Statement Regarding Michigan Supreme Court's Recent Decision:



"In light of the Supreme Court's decision on Friday, the Attorney General will no longer enforce the Governor's Executive Orders through criminal prosecution. However, her decision is not binding on other law enforcement agencies or state departments with independent enforcement authority. It's her fervent hope that people continue to abide by the measures that Governor Whitmer put in place - like wearing face masks, adhering to social distancing requirements and staying home when sick - since they've proven effective at saving lives. If it weren't for the Governor's actions, countless more of our friends, family and neighbors would have been lost to COVID-19. We can respect both the court's decision and the advice of medical experts by continuing with these important measures voluntarily."

**RYAN JARVI**  
**AG PRESS SECRETARY**

11:12 AM · Oct 4, 2020



**949 N.W.2d 276 (Mem)**

**HOUSE OF REPRESENTATIVES and Senate, Plaintiffs-Appellants,  
v.GOVERNOR, Defendant-Appellee.**

**SC: 161917**

**COA: 353655**

**Supreme Court of Michigan.**

**October 12, 2020**

As stated in *In re Certified Questions* , the Emergency Powers of the Governor Act is incompatible with the Constitution of our state, and therefore, **executive orders issued under that act are of no continuing legal effect.** This order is effective upon entry. MCR 7.315(D). We REMAND this case to the Court of Claims for the immediate entry of an order granting declaratory relief consistent with this order.

It should again be emphasized, see *In re Certified Questions* , — — Mich. at ——— n. 1, ——— N.W.2d ———, slip op. at 3 n. 1, that our decision today, **like our decision in *In re Certified Questions* , leaves open many avenues for our Governor and Legislature to work together in a cooperative spirit and constitutional manner to respond to the COVID-19 pandemic.**

Governor taps MDHHS to Issue New Mandates  
under MCL 333.2253, Despite Supreme Court's  
Decision Requiring Legislative Approval



**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Michigan Department of Agriculture  
and Rural Development,  
Petitioner**

**v**

**Zante Inc., d/b/a Marlena's Bistro &  
Pizzeria,  
Respondent**

**Docket No.: 21-001401**

**Case No.: N/A**

**Agency: Agriculture**

**Case Type: AG Food & Dairy**

**Filing Type: Summary Suspension**

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**Issued and entered  
this 11<sup>th</sup> day of February 2021  
by: Lauren G. Van Steel  
Administrative Law Judge**

**DECISION AND ORDER CONTINUING SUMMARY SUSPENSION**

This matter concerns a summary suspension order issued by Petitioner, Michigan Department of Agriculture and Rural Development (MDARD), regarding the food establishment license of Respondent, Zante Inc., d/b/a Marlena's Bistro & Pizzeria, under Section 4125 of the Michigan Food Law, MCL 289.1101 *et seq.*, and Section 92(2) of the Administrative Procedures Act (APA), MCL 24.201 *et seq.* This decision denies Respondent's petition to dissolve summary suspension and continues the summary suspension order.

On January 20, 2021, Petitioner issued an Emergency Summary Suspension Order Pursuant to MCL 289.4125 and MCL 24.292(2) and Notice of Hearing. Upon receipt of the request for hearing from MDARD, on January 21, 2021, the Michigan Office of Administrative Hearings and Rules issued a Notice of Video Conference Hearing, which

The following exhibits were offered by Petitioner and admitted into evidence (except those exhibits noted as withdrawn):

1. Petitioner's Exhibit No. 1 is a copy of a Michigan Department of Health and Human Services (MDHHS) Emergency Order under MCL 333.2253-Gatherings and Face Mask Order, dated November 15, 2020.
2. Petitioner's Exhibit No. 2 is a copy of a MDHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order, dated December 7, 2020.
3. Petitioner's Exhibit No. 3 is a copy of a MDHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order, dated December 18, 2020.
4. Petitioner's Exhibit No. 4 is a copy of a MDHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order, dated January 13, 2021.
5. Petitioner's Exhibit No. 5 is a copy of a MDHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order, dated January 22, 2021.
6. Petitioner's Exhibit No. 6 is a copy of an Allegan County Health Department Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action, dated December 2, 2020.
7. Petitioner's Exhibit No. 7 is a copy of an Allegan County Health Department Cease and Desist Order, dated December 15, 2020.

12. The November 15, 2020 MDHHS Emergency Order, effective as of 12:01 a.m. on November 18, 2020, through December 9, 2020, prohibited gatherings at food service establishments such as Respondent's restaurant. Indoor dining was allowed at certain other types of facilities. The Emergency Order allowed outdoor dining with social distancing at food service establishments and further required that face masks to be worn at gatherings subject to certain exceptions. The MDHHS Emergency Order authorized local health departments to carry out and enforce the terms of the order. [Pet. Exh. 1].
13. On November 18, 2020, following the Allegan County Health Department's receipt of a complaint about indoor dining, Rebecca Long (food program coordinator for the health department) visited Respondent's establishment and observed customers inside drinking coffee, per Ms. Long's credible testimony.

66. Respondent did not attempt in any manner to comply with the MDHHS Emergency Order, the Allegan County Health Department Warning Order and Cease and Desist Order or the MDARD Cease and Desist Order. It has further acted contrary to the MDARD Emergency Summary Suspension Order by continuing to allow indoor dining after the date of the Order.

Based on the above findings of fact, the undersigned concludes that Respondent has failed to comply with COVID-19 mitigation measures required for the protection of the public, contrary to MDHHS' emergency orders, the local health department staff's instructions, the local health department's warning order and cease and desist order, and the cease and desist order of Petitioner MDARD. The record evidence shows that for several months Respondent knowingly has not complied with both local and state health department requirements that were established to prevent the spread of COVID-19 to employees, customers, and the community.



<https://www.youtube.com/watch?v=09i-j5iTM64>

**From:** Holton, Jennifer (MDARD)  
**To:** Deacon, Brad (MDARD); McFarlane, Kenneth (MDARD); McDowell, Gary (MDARD); Ryan, Joseph (MDARD); Brown, Tiffany; Banner, Shannon (MSP); Lewis, Chelsea; Bossmann-McKinney, Kelly (AG)  
**Cc:** Hausler, Jeanne (MDARD); Allison-Yokom, Danielle (AG); Whipple, Eileen (AG); Stawinski, Tim (MDARD)  
**Subject:** HEADS UP- Marlena and Tucker Carlson  
**Date:** Friday, March 12, 2021 3:43:15 PM  
**Attachments:** image012.png

---

Hey Gov, AG, MSP and MDARD Exec Team -

I wanted to be sure and flag this for you for situational awareness as it was recently brought to my attention.

Marlena and her "assistance of counsel" will be on national Fox News's "Tucker Carlson" tonight.

I'm happy to chat more about it if needed. I'm planning on sticking to the talking points we've been using.

Jen

**From:** Nessel, Dana (AG) <[REDACTED]>

**Sent:** Friday, March 12, 2021 3:44 PM

**To:** Rossman-McKinney, Kelly (AG) <[RossmanMcKinneyK@michigan.gov](mailto:RossmanMcKinneyK@michigan.gov)>; Whipple, Eileen (AG) <[WhippleE@michigan.gov](mailto:WhippleE@michigan.gov)>

**Cc:** Grossi, Christina (AG) <[GrossiC@michigan.gov](mailto:GrossiC@michigan.gov)>; Hammoud, Fadwa (AG) <[hammoudf1@michigan.gov](mailto:hammoudf1@michigan.gov)>; VanDeventer, John (AG) <[vandeventerj1@michigan.gov](mailto:vandeventerj1@michigan.gov)>; Jarvi, Ryan (AG) <[JarviR1@michigan.gov](mailto:JarviR1@michigan.gov)>; Covington, Courtney (AG) <[CovingtonC1@michigan.gov](mailto:CovingtonC1@michigan.gov)>; McCann, Amber (AG) <[AmberMcCannA@michigan.gov](mailto:AmberMcCannA@michigan.gov)>; Manning, Peter (AG) <[ManningP@michigan.gov](mailto:ManningP@michigan.gov)>; Potchen, Joseph (AG) <[PotchenJ@michigan.gov](mailto:PotchenJ@michigan.gov)>; Edgerson, Mia (AG) <[EdgersonM@michigan.gov](mailto:EdgersonM@michigan.gov)>; Teszlewicz, Barbara (AG) <[TeszlewiczB@michigan.gov](mailto:TeszlewiczB@michigan.gov)>; King-Piepenbrok, Pier (AG) <[KingP1@michigan.gov](mailto:KingP1@michigan.gov)>; Gustafson, Holly (AG) <[GustafsonH@michigan.gov](mailto:GustafsonH@michigan.gov)>; Reichel, Robert (AG) <[ReichelR@michigan.gov](mailto:ReichelR@michigan.gov)>; Synk, Polly (AG) <[SynkP@michigan.gov](mailto:SynkP@michigan.gov)>; Allison-Yokom, Danielle (AG) <[AllisonYokomD@michigan.gov](mailto:AllisonYokomD@michigan.gov)>; Schumaker, Kelly (AG) <[SchumakerK@michigan.gov](mailto:SchumakerK@michigan.gov)>; LaMore, Laura (AG) <[LaMoreL1@michigan.gov](mailto:LaMoreL1@michigan.gov)>; Hiar, Robin (AG) <[HiarR@michigan.gov](mailto:HiarR@michigan.gov)>

**Subject:** Re: AG Heads-Up: Marlena's to Appear on Fox News with Tucker Carlson Tonight 8 p.m.

Do we know her whereabouts? We should just have her picked up before she goes on. This is outrageous.



TO:

CC:

FROM:

NESSEL, DANA (AG)

**SUBJECT:**

RE: AG-HEADS-UP: MARLENA'S TO APPEAR ON FOX NEWS WITH  
TUCKER CARLSON TONIGHT 8 P.M.

**FRIDAY, MARCH 12, 2021**

**"Do we know her whereabouts? We should just have her picked up before she goes on. This is outrageous"**

**"Should I be prepared to respond to this?...I hope she gets the full 93 days for this. (Is that the max for civil contempt or just criminal contempt?)"**

**NEXT: DON VITIELLO**



Daily  
Caller  
June 11,  
2021

<https://dailycaller.com/2021/06/11/michigan-dana-nessel-arrest-marieta-pavlos-hackney-tucker-carlson-tonight-defy-lockdown-orders/>



(Photo by Elaine Cronio/Getty Images)

• **POLITICS**

• **Michigan AG Sought To Arrest Bistro Owner Defying Lockdowns Before Appearance On 'Tucker Carlson Tonight'**

**BRIANNA LYMAN** NEWS AND COMMENTARY WRITER

June 11, 2021 3:43 PM ET

Democratic Michigan Attorney General Dana Nessel allegedly sought to arrest a lockdown-defying restaurant owner before she went on Tucker Carlson Tonight to

**From:** Disselkoen, Keith (MSP)  
**Sent:** Wednesday, March 10, 2021 9:57 AM  
**To:** Brown, Michael (MSP) <[BrownM51@michigan.gov](mailto:BrownM51@michigan.gov)>  
**Cc:** Dunlap, Michele (MSP) <[DunlapM1@michigan.gov](mailto:DunlapM1@michigan.gov)>  
**Subject:** RE: Marlena's Bistro & Pizzeria

Captain Brown,

I spoke with the law division clerk at the 30<sup>th</sup> Circuit Court, Daniel, this morning. He is the clerk that contacted the post a few days ago. The 30<sup>th</sup> Circuit has not requested MSP to attempt pickup, he was calling us to make us aware of the warrant. He understands the current lodging restrictions in place at the county jails He also contacted the Rockford Post and the Holland DPS to make them aware.

- Determine if there is a valid bench warrant for the named individual
  - Yes. [REDACTED] Civil for Contempt of Court

- Determine if either Holland PD, or Allegan SD are planning any action, they declined on the original referral, the establishment is in Allegan City of Holland
  - Allegan Co has no plans. I left a message with Chief Messer, Holland DPS this morning. I spoke with him several weeks ago and HDPS did not intend to take any enforcement action. The nature of this warrant does not meet Allegan nor Ottawa county jails' COVID lodging restriction requirements.



Tweet



Dana Nessel

@DanaNessel

Marlena Pavlos-Hackney had countless opportunities to comply with even the most basic health and safety protocols to protect her community from the spread of Covid. She defied her local health department and the court at every turn: read the full of timeline of events here:



Marlena Pavlos-Hackney had countless opportunities to comply with even the most basic health and safety protocols to protect her community from the spread of Covid. She defied her local health department and the court at every turn, instead choosing to taunt health inspectors, law enforcement and the courts at every turn—going on Tucker Carlson and setting up a lucrative Go Fund Me account instead of making even the slightest effort to protect her customers, her workers and her community. She is no martyr and no hero. One cannot repeat the mantra of “Law & Order” and support the activities of Ms. Pavlos-Hackney. But if you cheered Donald Trump when he bragged about the many ways he avoided military service while others complied with their legal obligations, it’s no wonder you revere this woman. Making personal sacrifice for the greater good of our state and nation was once considered admirable. Not anymore.



STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	JUDGMENT OF CONTEMPT	CASE NO 21-000113-CZ-C30 HON. WANDA M. STOKES
Court Address 313 W. Kalamazoo-Lansing, MI 48933		Court Telephone No. (517) 483-6300
In the matter of <u>Zanic, Inc / RA: Marlene Katsch Parties / DBA: Marlene's Biers and Pizzeria</u> , contemnor,		
909 Lincoln Ave Address	Holland City	MI 48423 State Zip

## THE COURT FINDS:

1. The contemnor was found guilty of ☒ civil ☐ criminal contempt on 03/19/2021 for the following:
- ☐ by plea ☒ by summary contempt after hearing
- ☐ failing to pay.
  - ☐ failing to serve a sentence as ordered.
  - ☐ failing to appear.
  - ☐ violating a condition of a bond.
  - ☐ failing to complete and return juror qualification questionnaire.
  - ☐ failing to complete and return juror personal history questionnaire.
  - ☐ failing to appear for jury service.
  - ☐ disobeying a subpoena.
  - ☐ refusing to testify.
  - ☐ failing to comply with investigative subpoena.
  - ☐ failing to obey a grand jury summons.
  - ☐ taking improper action, as an employer, against a juror.
  - ☐ disobeying an injunctive order against a public nuisance.
  - ☒ failing to comply court order signed on d. 03/04/2021
  - ☐ other: \_\_\_\_\_

2. The contemnor was ☐ represented by an attorney. ☐ advised of the right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.

## IT IS ORDERED:

3. ☐ a. The contemnor is sentenced to jail for criminal contempt as follows: Report as is.

Court	Date Sentence Begins	Sentence		Credit		To Be Served		Release Authorized for the Following Purposes	Release Period	
		Min.	Max.	Min.	Max.	Min.	Max.		From	To
C	03/19/2021		93					<input type="checkbox"/> Upon payment of fine and costs... <input type="checkbox"/> To work or seek work... <input type="checkbox"/> For attendance at school... <input type="checkbox"/> For medical treatment... <input type="checkbox"/> Other: _____		

- ☐ b. The contemnor is committed to the county jail for civil contempt and may be released when:

- ☐ 4. The contemnor is ordered to probation for criminal contempt. (for separate order.)

5. The contemnor shall pay:

State Minimum	Civil Victim	Restoration	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$	\$	\$	\$	\$	\$ 1500.00	\$	\$

The due date for payment is 03/19/2021. Fine, costs, and fees not paid within 56 days of the due date *of arrest at* are subject to a 30% late penalty on the amount owed. Only the fine and some costs may be satisfied by serving time in jail.

- ☒ 6. Other: **DF MAY BE RELEASED EARLY UPON FULL PAYMENT OF \$1500.00 AND UPON VERIFICATION AND FURTHER ORDER OF THE COURT.**

19 March 21  
Date

(SEAL)

*for* Rosemarie E. Spaulina  
Judge WANDA M. STOKES  
for so. P4483

<https://www.youtube.com/watch?v=fTNJ6yjh3js>



March 26, 2021

Attorney General Dana Nessel  
G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, MI 48909

Dear Attorney General Nessel:

We are writing to formally request that you end your office's inconsistent, selective and seemingly politically motivated application of state law and of your investigatory responsibilities.

Senate Republicans do not condone any Michigan resident violating the law. However, your office's selective enforcement of some laws and not others indicates an intent not to uphold the rule of law, but to protect political allies and punish political foes.

Mrs. Mariena Pavlos-Hackney immigrated to the United States to escape a communist regime. This week, she found herself jailed for operating her family business. Your decision to arrest Mrs. Pavlos-Hackney was met with overwhelming outrage not because Michiganders condone violating the law, but because it was evident you intentionally brought the full weight of your office down upon someone for political purposes.

Meanwhile, the pandemic has resulted in a backlog of cases involving violent offenders facing felony charges in courts across our state. Perhaps your office's assets and personnel would be better deployed assisting counties in clearing their pending criminal cases rather than coordinating the pre-dawn arrest of a 55-year-old woman for serving pizza.

As your office carried out this operation against Mrs. Pavlos-Hackney, thousands of Michigan families still await answers about the loss of their loved ones in nursing homes.

As you know, Gov. Whitmer was warned by experts in the early days of the pandemic against returning COVID-19 positive patients to nursing homes. She and four other governors ignored those warnings, with tragic results.

In New York, your Democrat counterpart conducted her law enforcement responsibilities in a nonpartisan manner and investigated the Democrat governor's decision. In doing so, she uncovered a gross underreporting of deaths in these facilities. Meanwhile, you have belligerently refused to conduct a similar investigation here in Michigan, again putting your politics before the people of our state.

Michigan residents expect and deserve fair and equal treatment from law enforcement – especially the top law enforcement official in the state. With respect, what they are too often seeing from your office is selective enforcement of our laws, and the wielding of the power entrusted to you by the people as a political weapon.

Sincerely,

Mike Shirkey  
Senate Majority Leader, 16<sup>th</sup> District

Dan Laurs  
Majority Floor Leader, 25<sup>th</sup> District

Tom Barrett  
State Senator, 24<sup>th</sup> District

Kevin Daley  
State Senator, 31<sup>st</sup> District

Ken Horn  
State Senator, 32<sup>nd</sup> District

Kim LaSata  
State Senator, 21<sup>st</sup> District

Michael D. MacDonald  
State Senator, 10<sup>th</sup> District

Aric Nesbitt  
State Senator, 26<sup>th</sup> District

Rick Osman  
State Senator, 33<sup>rd</sup> District

Jim Runestad  
State Senator, 15<sup>th</sup> District

Wayne A. Schmidt  
State Senator, 37<sup>th</sup> District

Lana Theis  
State Senator, 22<sup>nd</sup> District

Curtis S. VanderWall  
State Senator, 35<sup>th</sup> District

Roger Victory  
State Senator, 30<sup>th</sup> District

Dale Zorn  
State Senator, 17<sup>th</sup> District



Sen. Mike Shirkey

@SenMikeShirkey

11:11

Today we sent a letter to AG @dananesel to formally request that she end her office's inconsistent, selective and seemingly politically motivated application of state law and of her investigatory responsibilities. Full letter below 📄



2:42 PM · Mar 26, 2021 · Scroll Social



# Michigan Gov. Whitmer apologizes for dinner party that broke pandemic rules: 'I am human. I made a mistake.'

By [Katie Shepherd](#)

May 24, 2021 at 4:36 a.m. EDT

As new daily coronavirus cases continued to decline in Michigan, 13 diners congregated at the Landshark Bar and Grill, near Michigan State University in East Lansing on Saturday.

The group pushed several tables together, ordered the bar's signature bright blue "shark bowl" cocktails, and chatted without masks — despite a statewide rule put in place May 15 that restricts indoor dining to no more than six at a table.



STATE OF MICHIGAN  
IN THE 46<sup>th</sup> CIRCUIT COURT  
OTSEGO COUNTY

MOORE MURPHY HOSPITALITY, LLC  
D/B/A IRON PIG SMOKEHOUSE,  
Petitioner-Appellant,

File No.:21-18522-AE  
Hon. Colin G. Hunter

vs.

MICHIGAN DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,  
Respondent-Appellee.

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**OPINION AND ORDER REGARDING PETITIONER'S APPEAL**

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**Procedural History and Background Facts**

On November 15, 2020, the Michigan Department of Health and Human Services (MDHHS) Director Robert Gordon<sup>1</sup> issued what he termed an emergency order under MCL 333.2253 entitled the "Gathering and Face Masks Order" (the Order). The Order, pertinent to this appeal, prohibited gatherings of individuals and specifically required that restaurants and food service establishments not permit any indoor dining. After the effective date of the Order, Petitioner's restaurant, known as the Iron Pig Smokehouse, refused to comply with the Order

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<sup>1</sup> Director Gordon was replaced effective January 21, 2021 with current Director Elizabeth Hertel. Because the identity of the specific Director does not appear to be a relevant issue, however, all references to the MDHHS Director will refer broadly to the current Director at any relevant time.

### Conclusion & Order

In sum, the Court finds that MCL 333.2253, while likely the product of well-meaning forethought by the Legislature to permit quick action in times of actual emergency, fails to pass Constitutional muster because, read as a whole, the statute fails to include any meaningful standards that channel either the scope of the Director's exercise of sweepingly broad authority, or the duration of the exercise of such authority, in any material way. As such, the delegation of power contained within MCL 333.2253 violates the Michigan Constitution's non-



As MCL 333.2253 has not survived Petitioner's non-delegation challenge under the Michigan Constitution and is clearly an unconstitutional delegation of power from the Legislative to the Executive branch, MCL 333.2253 is hereby severed from Michigan's Public Health Code.

*This Order constitutes a final Order and closes this case.*

**IT IS SO ORDERED.**

Date: 1-13-2022

  
\_\_\_\_\_  
Hon. Colin G. Hunter  
46<sup>th</sup> Circuit Court  
Otsego County

---

**972 N.W.2d 43 (Mem)**

**MOORE MURPHY HOSPITALITY, LLC, d/b/a Iron Pig Smokehouse, Petitioner-Appellee,  
v.DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent-Appellant.**

**SC: 164039**

**COA: 360175**

**Supreme Court of Michigan.**

**April 1, 2022**

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## **Order**

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal prior to decision by the Court of Appeals is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court before consideration by the Court of Appeals.

---

Viviano and Bernstein, JJ. (dissenting).

The Department of Health and Human Services (DHHS) seeks this Court's immediate review of the circuit court's decision declaring unconstitutional the statute that the DHHS has cited as authority for many of its COVID-19 orders. We would take the case now to give the Court an opportunity to provide clarity on a topic of great importance to our citizens: the extent of the executive branch's powers to respond to the COVID-19 pandemic. Because the majority has declined to do so, we respectfully dissent.

# 10/11/2022 Motion for Declaratory Judgment AG's Office Denies That They Were Seeking to Enforce Marlena's Compliance With Covid-19 Mandates or Suppression of Her Right to Free Speech and Asks For a Permanent Injunction

THE COURT: At a time when MDARD filed its  
petition with this Court, was the petition related  
to the merits of why her license was revoked?

MS. LANORE: No. The petition was not related to the merits of why the license was revoked. It was solely intended to have Defendant come into compliance with the Food Law and not operate an establishment without a valid food license.



be shut down. She was not shut down for any rule under the Food Law. They cannot provide the Court with any valid rule authorizing the government to remove her license. Without that, nothing can proceed. It is unconstitutional.

Having fully considered the Defendant's motion for summary disposition, and Defendant's motion for declaratory judgment, and dismissal at MDARD's brief in opposition, the Court is going to deny the Defendant's motion, and find that it is appropriate to grant the Plaintiff's motion pursuant to MCR 2.116(C)(10), and MCR 2.116(I)(2),

In re CONTEMPT OF PAVLOS-HACKNEY.

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, Plaintiff-  
Appellee,

v.

ZANTE, INC, d/b/a MARLENA'S BISTRO AND PIZZERIA, Defendant-Appellant,  
  
and MARLENA PAVLOS-HACKNEY, Appellant.

No. 357407

Court of Appeals of Michigan

October 20, 2022

We conclude that the second fine must be remanded for the trial court to refashion it to be civil in nature, as applied under the circumstances.[15] We conclude that in so doing, the trial court must choose one of three options: (1) determine whether MDARD is entitled to reimbursement; (2) determine whether the contemnors sufficiently complied with the trial court's orders to be returned the second fine, in whole or in part; or (3) some combination of (1) and (2). The first option would, of course, require a factual determination of MDARD's expenditures as part of these enforcement proceedings.

**Moore Murphy Hospitality LLC**  
**v.**  
**Dept of Health and Human Services**  
  
**No. 360175**  
  
**Court of Appeals of Michigan**  
  
**December 12, 2022**

LC No. 21-018522-AE

Stephen L. Borrello Brock A. Swartzle Judges

**ORDER**

Elizabeth L. Gleicher Presiding Judge

The Court orders that appellant's motion for voluntary withdrawal of this appeal under MCR 7.218 is GRANTED because we do not believe there is any sound reason that appellant should be precluded from voluntarily dismissing its own appeal. This order does not constitute approval (or disapproval) of any other assertion or implication of fact or law in the motion.



June 29, 2023 - *T&V Associates* also holds  
the mandates under MCL 333.2253  
Unconstitutional.

STATE OF MICHIGAN  
COURT OF APPEALS

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T & V ASSOCIATES, INC d/b/a RIVER CREST  
CATERING,

Plaintiff-Appellant,

v

DIRECTOR OF HEALTH AND HUMAN  
SERVICES,

Defendant-Appellee.

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FOR PUBLICATION  
June 29, 2023

No. 361727  
Court of Claims No.  
21-000075-MM

Before: BOONSTRA, P.J., and GADOLA and YATES, JJ.

YATES, J. (*dissenting*).

For far too long, in courts all across this country, the COVID-19 wars have raged on despite the fact that nearly every governmental authority at the federal, state, and local levels has declared an end to the COVID-19 emergency. The overheated rhetoric in briefs and oral arguments suggests that the remaining COVID-19 disputes on court dockets are sacred causes, rather than mere court cases, and the litigants and attorneys in these disputes seem determined to keep these battles going endlessly. But it doesn't have to be this way. We judges have the power and, in my view, the duty under the mootness doctrine to dismiss the combatants from the COVID wars and bring down the curtain on this chapter in our history. Because the majority has decided instead to resolve the case

# AG Petitions the Circuit Court to Impose Costs in Order to Retain the Improper Fines and Avoid Refunding to Marlena

STATE OF MICHIGAN  
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

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MICHIGAN DEPARTMENT OF  
AGRICULTURE AND RURAL  
DEVELOPMENT,

Plaintiff,

v

ZANTE INC., d/b/a MARLENA'S  
BISTRO & PIZZERIA,

Defendant.

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ORDER GRANTING COSTS

CASE NO. 21-113-CZ

HON. WANDA M. STOKES

At a session of said Court  
held in the City of Mason, County of Ingham,  
this 28<sup>th</sup> day of November 2023

PRESENT: HON. WANDA M. STOKES

This matter comes before the Court on Plaintiff's Bill of Costs submitted following an Order finding the Defendants in Contempt of Court and issuing a fine against the Defendants. The fine issued with this Court's Order was designed to compensate the Plaintiff for the costs they incurred as a result of the Defendant's contemptuous behavior. Plaintiff's Bill of Costs includes \$8,580.95 in attorney fees, \$1,071.61 in costs incurred by the Michigan Department of Agriculture and Rural Development (MDARD), and \$143.04 in costs incurred by the Michigan State Police.

Court agrees that the Plaintiff's proposed amendments would more accurately reflect the Court's intent given the procedural history of this case.

**THEREFORE, IT IS ORDERED** that the Defendant's Motion for Reconsideration of Order Appropriating Costs from Reimbursement of Fines is **DENIED** and the Plaintiff's Motion for Clarification is **GRANTED**.

**IT IS FURTHER ORDERED** that this Court's November 28, 2023 Order shall be amended to reflect that the Plaintiff's action was filed to prevent the Defendant from operating as [REDACTED] a food establishment without a valid food establishment license.

**IT IS FURTHER ORDERED** that this Court's November 28, 2023 Order shall be amended to reflect that it intended to compensate the Plaintiff from the \$7500.00 contempt fine in this case and that amount shall be paid to the Plaintiff.

**IT IS FURTHER ORDERED** that this Court's November 28, 2023 Order shall be amended to reflect that it resolved the last remaining issue remanded from the Court of Appeals.

**SO ORDERED.**

In accordance with MCR 2.602(A)(3), this Order disposes of the last pending claim, and the case remains closed.

Date \_\_\_\_\_

*Wanda M. Stokes*  
Hon. Wanda M. Stokes  
Circuit Court Judge

This matter comes before the Court on Plaintiff's Bill of Costs submitted following an Order finding the Defendants in Contempt of Court and issuing a fine against the Defendants. The fine issued with this Court's Order was designed to compensate the Plaintiff for the costs they incurred as a result of the Defendant's contemptuous behavior. Plaintiff's Bill of Costs includes \$8,580.95 in attorney fees, \$1,071.61 in costs incurred by the Michigan Department of Agriculture and Rural Development (MDARD), and \$143.04 in costs incurred by the Michigan State Police.



**DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT,  
Plaintiff-Appellee,**

**v.**

**ZANTE, INC., doing business as MARLENA'S BISTRO  
&PIZZERIA, Defendant-Appellant.**

**No. 363515**

**Court of Appeals of Michigan**

**September 21, 2023**

Ingham Circuit Court LC No. 2021-000113-CZ

BEFORE: GLEICHER, C.J., AND JANSEN AND RICK, JJ.

GLEICHER, C.J.

Pavlos-Hackney appeals, offering a smorgasbord of challenges to the license suspension and the contempt judgments. None of Pavlos-Hackney's arguments have merit, and we affirm.

**DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT, Plaintiff-Appellee, v.  
ZANTE, INC., d/b/a MARLENA'S BISTRO & PIZZERIA, Defendant-Appellant.**

**No. SC 166321**

**COA 363515**

**Supreme Court of Michigan**

**January 31, 2025**

Ingham CC: 2021-000113-CZ

Elizabeth T. Clement, Chief Justice Brian K. Zahra Richard H. Bernstein Megan K. Cavanagh Elizabeth M.  
Welch Kyra H. Bolden Kimberly A. Thomas, Justices.

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**ORDER**

On order of the **Court**, the application for leave to appeal the September 21, 2023 judgment of the **Court** of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this **Court**.