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‘Unlock Michigan’ group appears likely to succeed in limiting governor’s use of state-of-emergency proclamations

By Steve Horton

It was hardly a surprise that the ‘Unlock Michigan’ group is nearing its goal of collecting enough signatures that would, when all is said and done, repeal the 1945 law that Gov. Gretchen Whitmer has used to extend her state of emergency proclamations—declarations that, in turn, give her the legal authority to issue executive orders dealing with the COVID-19 pandemic.

These orders, which amongst other things have kept different businesses closed and mandated certain public safety protocols, have been criticized by the Republican legislative leadership as too harsh, too sweeping, and too long-lasting. The GOP lawmakers, along with others, have filed lawsuits challenging the governor’s use of the 75-year-old law as the means to make her decisions and bypass any legislative input or approval.

Thus far, the state’s lower courts have sided with Whitmer concerning her interpretation of the law, although the Michigan Supreme Court is now hearing the case and could overturn that verdict.

But whatever the court finally decides may be beside the point due to the ballot drive.

Organizers announced that they have collected more than 400,000 signatures in two months, on-route to their goal of 500,000. They actually need only 340,000 valid signees to get their measure on the 2022 ballot, but its unlikely this will be necessary—and it never really was their intention to initiate a statewide, up-and-down vote on the proposed measure.

Instead, they're counting on the Republican majorities in the House and Senate, who have the option of accepting the petition and repealing the law, to do just that. And if they do so, Gov. Whitmer would be unable to veto the legislation.

And, just like that, any decisions she makes regarding such matters as school closings, requiring face masks, and how many people can sit down in a restaurant or attend a sporting event as a way of combating the novel coronavirus—or some similar threat to public health in the future—would require a legislative OK.

This sort of ballot drive is not a new maneuver. It's been used to enact anti-abortion laws that Gov. Jennifer Granholm opposed and, more recently, overturned 'prevailing wage' requirements that Gov. Rick Snyder said he would veto.

It's almost the opposite of what we're used to when it comes to a citizen-led initiative.

In most instances, groups wishing to put a proposition before voters—like Recreational Marijuana or No-Reason Absentee Voting that were on the 2018 ballot—collect the necessary number of signatures and submit the petitions to the election board. The board then makes sure enough valid ones have been turned in to meet the 340,000 minimum and that everything was done properly and above board. Once approved, the Legislature can accept what's been presented and put it into law or allow the proposal to go on the ballot for voters to decide. In most cases they've chosen the latter course of action which is why we're often greeted with several propositions each election season.

But social conservatives, with Republican Party support, figured out that they didn't need to bother with a statewide vote, nor worry about a governor's support. They just needed to be able to collect the signatures and have a Republican majority in both chambers of the legislatures.

Which is one of the reasons why the GOP leaders opposed the anti-gerrymandering proposal that was also on the 2018 ballot. Without having control of both the House and Senate, something they've been able to sustain due to having control over how districts are drawn up, this end-run around a statewide vote and/or a governor's support would likely come to an abrupt end

If there is a way to repeal this Constitutional loophole, I'd be the first to sign the petition. I support the right of citizens to enact laws—or overturn them—with ballot proposals. And I've also voiced opposition to recent legislative efforts that were undertaken after the last election (during the *Lame Duck* session) to make it more difficult, if not impossible, for these ballot drives to succeed unless well-funded. And even then, it might be a heavy lift given the hurdles that were put in place.

I view a citizen-led initiative as another tool in the 'checks and balances' under which our government operates, even though I realize that many of them are not 'citizen-led' but rather the effort of a special interest or advocacy group. Yet, even so, the outcome is decided by all those who cast a ballot in that particular election.

On the other hand, with this strategy, legal though may be, you have less than a half-million residents and a simple majority of one party in the Legislature making a law—or in this case, repealing one—that impacts the entire state and, by deliberate design, bypasses the governor.

The pros and cons of Gov. Whitmer's response to the COVID-19 pandemic, whether the 1945 law should stand or be revoked, and the proper balance of power between the executive and legislative branches, along with the courts, are all worthy of discussion and debate. But the outcome, if it involves a petition drive, ought to be decided at the ballot box and by a majority

of Michigan voters—or else via the normal route of the Legislature passing a bill, the governor choosing to sign it or issue a veto, and, if vetoed, then the lawmakers attempting an override.

I realize if the shoe was on the other foot, the Democrats and Republicans would be reversed in their roles, with the partisans switching their arguments in either support and opposition.

This sort of gamesmanship is why governmental policy can't always be left solely at the discretion of politicians.

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