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TO: CAI Members

FROM: CAI-MI va Karoub Associates

DATE: October 5, 2020

RE: Michigan Supreme Court Ruling on Emergency Powers

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On Friday, October 2, Governor Gretchen Whitmer likely lost her battle to retain power under the 1945 Emergency Powers of Governors Act, which a split Michigan Supreme Court said violates the Constitution because it purports to indefinitely delegate legislative power to the Executive Branch. According to [MIRS Capitol Capsule](#) the majority's opinion held that Governor Whitmer "only possessed the authority or obligation to declare a state of emergency or state of disaster once, and ...the Governor possessed no authority to redeclare the same state of emergency or state of disaster and thereby avoid the Legislature's limitation on her authority." According to Supreme Court Justice Stephen Markman, "our decision leaves open many avenues for the Governor and Legislature to work together to address this challenge and we hope that this will take place."

In a press release in response to the ruling, Governor Whitmer stated her disappointment but also said the ruling will not take effect for at least 21 days, although there is speculation on the force of that suggestion. Michigan Court rules state that all Supreme Court opinions take effect no sooner than 21 but no later than 28 days from their issuance unless specified otherwise. The Governor has further asked the Michigan Supreme Court to delay the effective date of the ruling until October 30. On Sunday, October 4, Attorney General Dana Nessel said her department will no longer enforce Governor Whitmer's Executive Orders related to the COVID-19 pandemic. It is important to note that the Attorney General's decision is not binding on other law enforcement agencies or state departments. In fact, state regulators indicate that citations they have issued for non-compliance with COVID-19 rules will not be rescinded. Michigan Director of COVID-19 Workplace Safety Sean Egan said employees must still comply with workplace safety protocol provided by the Centers for Disease Control and Prevention and public health guidance of the Occupational Health Safety and Health Administration.

It is also important to note that local health departments have the ability to enact orders replacing or extending state executive orders regardless of the 21 day waiting period such as face mask requirements, social distancing, and other preventative measures. As of this writing several counties have already announced enforcement regulations on these and other requirements.

The Supreme Court ruling came down hours after the group Unlock Michigan turned in over 500,000 signatures to the Secretary of State for certification of their citizen-led petition drive to overturn the Governor's powers under the 1945 Emergency Powers of Governors Act. The Republican-led Michigan Legislature is prepared to work with Governor Whitmer to find "common ground" on many of her COVID-19 related Executive Orders. The Republicans have long complained that the Governor has unilaterally imposed burdensome restrictions on Michigan businesses and individuals without legislative input. The Michigan Supreme Court ruling will change that dynamic. Karoub Associates anticipates numerous bills to be introduced in the Legislature within the next few weeks to address the multitude of regulations and mandates contained in the 192 Executive Orders issued since March 10, 2020.