

March 27th, 2020

GOA Analysis on Michigan Governor Gretchen Whitmer's Executive Order 2020-21 Permitting the Continued Operation of Critical Infrastructure Businesses

Gun Owners of America issued the following analysis in response to Michigan Governor Gretchen Whitmer's Executive Order 2020-21.

Governor Whitmer's shelter-in-place Order shuts down much of the state, including many businesses.

The Governor's EO 2020-21 does not expressly address gun stores, and GOA's analysis of that Order indicates that it should not impair the continued operation of federally licensed retail firearm businesses ("FFLs") in Michigan, or purchases by the public from those businesses. Although Michigan FFL's certainly may temporarily cease business of their own volition, it appears clear that they are not required to do so based on the Order.

Although GOA certainly hopes that the Governor will agree that gun stores provide critical services and may continue to serve the public, should any store be visited by law enforcement in an effort to shut it down, we would urge that it provide this analysis in its defense.

Section 4 of the Order permits "worker[s] who are necessary to sustain or protect life" designated as critical infrastructure workers, to travel to and from their residence to their place of employment. Based on the inherent right of persons to self-defense, the Second Amendment and the Michigan Constitution's recognition of that pre-existing right (in Article I § 6), the *Heller* and *McDonald* decisions of the U.S. Supreme Court, and the ubiquitous use of firearms in self-defense, gun stores certainly fit that description.

Pursuant to section 9 (d) of the Order, critical infrastructure workers include designated employees who work or volunteer for businesses or operations that provide "**necessities of life**" for "**individuals who need assistance as a result of this emergency.**" The retail sale of firearms, ammunition and related products to the public no doubt constitutes the provision of the necessities of life. The necessities of life include obtaining the means to preserve life. The ability to defend one's self means ensuring domestic safety and security from the threat of both harmful and criminal activity, for individuals who need such assistance as a result of this emergency.

These "necessities of life" are made all the more significant during the current emergency, given the limited resources available to law enforcement -- and given that police may not be able to respond if they either perceive a threat from COVID-19, are operating with reduced staffing, or are occupied with other emergency tasks. There also have been reports of jails and prisons opening their doors and releasing inmates due to coronavirus concerns. At a time like this, self-defense is shown to be a "necessity of life" more than ever.

Not only does it appear that gun stores qualify as critical infrastructure, it appears under sections 7 (2) and (6) of the Order, both employees and members of the general public may leave their residence to shop or work at the FFL's place of business. The Order provides that individuals may leave their home or place of residence, and travel as necessary: "(a)(2) To perform their jobs as critical infrastructure workers after being so designated by their employers." The order also provides that individuals may leave their homes "(a)(6) To obtain necessary services or supplies for themselves, their family or household members, and their vehicles." As needed, "individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, **and any other products necessary to maintain the safety, sanitation, and basic operation of their residences.**"

The sale of firearms, ammunition and related products to the public certainly constitutes providing supplies and products necessary to maintain the safety of persons within their residence. Since the Governor's Order requires Michiganders to shelter in their homes, the necessity of ensuring that the home is equipped with appropriate self-defense items is critically important and necessary.

Even if the Order had purported to shut down gun stores, that requirement would violate both federal and state constitutions. It would impair the right that, as Justice Scalia described for the U.S. Supreme Court in *District of Columbia v. Heller*, "surely elevates above all other interests the right of law-abiding responsible citizens to use arms in defense of hearth and home." *Id.* 554 U.S. 570, 635 (2008). Moreover, no Executive Order purportedly deriving its authority from the Michigan Constitution can be effective to suspend rights guaranteed by that same Constitution.

Governor Whitmer's Executive Order 2020-21 became effective March 24, 2020, at 12:01 am, and continues through April 13, 2020 at 11:59 pm.