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In dire times, liberty falls to safety

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Most of us understand why Gov. Gretchen Whitmer and other governors are taking drastic action to prevent the spread of COVID-19. But I'm sure I'm not alone in also feeling uncomfortable with how far some of her executive orders have gone.

Closing schools for weeks. Banning gatherings of 50 or more, even at churches. Shuttering bars and restaurants, except for carry-out service.

To most Americans, these unprecedented actions rub against our most treasured liberties.

“We have no collective memory of going through this kind of thing,” says Walter Olson, a senior fellow at the Cato Institute’s Robert A. Levy Center for Constitutional Studies. “It’s an invasion of rights we normally wouldn’t let the government get away with.”

We’re all getting a crash course on what exactly the government can do in times of crisis. It turns out, it’s a lot.

State Rep. Beau LaFave, R-Iron Mountain, recently blasted Whitmer for her initial executive order limiting gatherings, saying she cannot “unilaterally prohibit” our right to assemble. Yet everything Whitmer has done is perfectly under her purview in state law. Plus, the U.S. Constitution gives states “police powers” for the health, safety and welfare of citizens, and the courts have given states a wide berth in using them.

Some fear that giving the government such power, even during a pandemic, could lead to future abuses. For instance, what if states start issuing similar bans and edicts during the normal flu season?

Olson doesn’t think such measures would stand up in court, and states would have to find less restrictive measures to protect the public.

But in times of actual crisis, the government leaders can do it if they must.

As Keith Whittington, a politics professor at Princeton University, wrote in Reason, “I regret to inform you that we have always lived in a country in which political officials can order private

businesses closed.” He adds, “drastic governmental action to stop an epidemic has long been understood to be an appropriate limit on individual liberty in order to protect public safety.” Michael Van Beek, director of research for the Mackinac Center, says Whitmer’s actions are legal, but her emergency powers are limited and temporary. The laws, while broad, offer parameters.

“It’s a more controlled way of dealing with these kinds of things,” Van Beek says. Whitmer’s working under Public Act 302 of 1945, which allows her during a “great public crisis” to establish a curfew and prohibit the use of buildings and public spaces, among other actions.

Second Amendment-loving Michiganians may be pleased to know that the law was updated in 2006 to prohibit a governor from confiscating legal weapons during an emergency. Public Act 390 of 1976 gives Whitmer the authority to declare an emergency and consequently issue orders with the weight of law. An emergency can only last 28 days, and after that, the Legislature must approve an extension.

Some executive orders have seemed unnecessarily intrusive. For instance, Whitmer has banned retailers from “price gouging” to protect citizens. Attorney General Dana Nessel is on the case. Yet by fighting natural supply and demand, the administration may inadvertently be exacerbating the panic buying that has emptied shelves.

Once the virus subsides, limited-government champions should watch whether all the regulations in effect during the threat go away, too.

“The government must put away these dangerous weapons once the emergency is over,” says Olson.