



HILLSDALE COLLEGE
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Legal Experts: Hillsdale College Commencement Complies with Executive Orders, Is Protected by First Amendment

Hillsdale, Mich. — Hillsdale College looks forward to its outdoor commencement ceremony scheduled for Saturday, July 18—a ceremony that College officials say fully complies with Governor Gretchen Whitmer’s Executive Orders and is protected by the First Amendment.

“This unique event is deserving of unique legal treatment,” said Robert Norton, Vice President and General Counsel for Hillsdale College. “It is consistent with the governor’s executive orders providing that you can have these outdoor First Amendment expressive events subject to CDC guidelines. The governor took part in one herself (which did *not* comply with CDC guidelines), and afterwards, her spokesperson said that was an appropriate thing for the governor to do because it had been an expressive First Amendment event. We agree.”

Hillsdale College communicated with state officials, including Governor Gretchen Whitmer and Attorney General Dana Nessel, about commencement more than one month prior to the event.

The College also reached out to local officials. Hillsdale County’s prosecutor Neal Brady independently concluded in writing that Hillsdale College’s commencement ceremony is entirely appropriate under Governor Whitmer’s [Executive Order 2020-110](#). Although that order restricts the size of certain outdoor gatherings, it makes clear that “nothing in th[e] order shall be taken to abridge protections guaranteed by the state or federal constitution under these emergency circumstances,” including the rights to free speech, assembly, association, and academic freedom secured by the First Amendment.

In fact, the Governor has also confirmed in her official FAQs—which she and the Attorney General directed the College to rely upon—that, under her orders, persons may freely engage in outdoor “expressive activities protected by the First Amendment within the State of Michigan,” provided that those activities follow federal social-distancing guidelines, as the College’s commencement ceremony surely will.

“This is not an act of defiance—this is totally legal,” said Norton. “Because this is a core First Amendment expressive activity, the governor’s own guidance and the FAQs tell us that it is appropriate for us to be able to hold such an event as this if we follow leading medical guidelines. We’re not only following those guidelines—we’re exceeding them.”

The following timeline records Hillsdale College’s correspondence with government officials regarding commencement:

- June 12, 2020:** Hillsdale College President Larry P. Arnn writes to Governor Gretchen Whitmer, copying Attorney General Dana Nessel and Prosecutor Neal Brady, to explain the College's plan to safely hold commencement. The letter explained the importance of commencement to the College, described the College's safety precautions, and expressed the College's confidence that it could conduct the ceremony "safely and lawfully." Dr. Arnn asked the Governor to respond by June 19, 2020, if she believed commencement would violate any executive order or if she intended to stop the College's commencement from occurring.
- June 18, 2020:** The Governors' Office responds via email to Robert Norton, Hillsdale's Vice President and General Counsel, but declines to answer Dr. Arnn's question, instead indicating that it "speak[s] only through the orders themselves, the FAQs posted online, and agency guidance. Enforcement is handled by the Attorney General, local law enforcement, or departments with regulatory authority, where applicable."
- June 19, 2020:** Mr. Norton responds via e-mail, reminding the Governor's Office that it has "in fact [spoken] on the applicability of the Governor's lockdown orders to expressive assemblies, having announced its (correct) position that recent, spontaneous protests are constitutionally protected and therefore not forbidden." Mr. Norton informs the Governor that the College would "continue diligently preparing for a safe commencement week," and he "welcome[d] any input from [the Governor] or any other office of the executive branch regarding best practices for holding a public event of this kind safely."
- June 19, 2020:** Mr. Norton sends a follow-up letter to the Attorney General, which summarizes Dr. Arnn's original letter and requests that the Attorney General respond "as soon as possible" if it was her "conclusion that the College's July commencement activities would be unlawful." Mr. Norton sends a copy of the letter to the County Prosecutor for Hillsdale County, Neal Brady.
- June 26, 2020:** The Office of the Attorney General responds to Hillsdale College by letter. The letter states that "issues surrounding the interpretation of the Governor's Executive Orders are addressed by the order's plain language, the publicly posted FAQs, and any agency guidance that is issued." The letter declines to "provid[e] legal advice to members of the general public" and notes that local law enforcement and state regulatory agencies are "charged with enforcement of the Governor's Executive Orders." The letter notes that "local agencies . . . use their discretion to determine whether enforcement action is appropriate and necessary."
- July 2, 2020:** Given the Attorney General's deflection to local officials, Mr. Norton calls Neal Brady to ask whether the County intends to prosecute Hillsdale or interfere with commencement.
- July 7, 2020:** Mr. Brady sends Mr. Norton a letter indicating that, in the view of his office, "holding commencement plainly would not violate any Executive Order." The letter clarifies that the County Prosecutor's office does "not intend to interfere with commencement or prosecute anyone involved." As Mr. Brady's letter explains, the "Order does not prohibit gatherings in excess of the otherwise-applicable numerical limits when those gatherings involve constitutionally protected conduct," and "Hillsdale's commencement involves 'expressive activities' protected by the First Amendment."

About Hillsdale College

Hillsdale College is an independent liberal arts college located in southern Michigan. Founded in 1844, the College has built a national reputation through its classical liberal arts core curriculum and its principled refusal to accept federal or state taxpayer subsidies, even indirectly in the form of student grants or loans. It also conducts an outreach effort promoting civil and religious liberty, including a free monthly speech digest, *Imprimis*, with a circulation of more than 5.3 million. For more information, visit hillsdale.edu.

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