

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

GRETCHEN WHITMER, on behalf of  
the State of Michigan,

Plaintiff,

v

JAMES R. LINDERMAN, Prosecuting  
Attorney of Emmet County, NOELLE  
R. MOEGGENBERG, Prosecuting  
Attorney of Grand Traverse County,  
JERARD M. JARZYNKA, Prosecuting  
Attorney of Jackson County,  
CHRISTOPHER R. BECKER,  
Prosecuting Attorney of Kent County,  
PETER J. LUCIDO,  
Prosecuting Attorney of Macomb  
County, and JOHN A. McCOLGAN,  
Prosecuting Attorney of Saginaw  
County, in their official capacities,

Defendants,

and

DAVID S. LEYTON, Prosecuting  
Attorney of Genesee County, CAROL A.  
SIEMON, Prosecuting Attorney of  
Ingham County, JEFFREY S.  
GETTING, Prosecuting Attorney of  
Kalamazoo County, MATTHEW J.  
WIESE, Prosecuting Attorney of  
Marquette County, KAREN D.  
McDONALD, Prosecuting Attorney of  
Oakland County, ELI NOAM SAVIT,  
Prosecuting Attorney of Washtenaw  
County, and KYM L. WORTHY,  
Prosecuting Attorney of Wayne County,  
in their official capacities,

Defendants-Appellees,

and

Court of Appeals Docket No. \_\_\_\_\_

Oakland Circuit Case No. 22-193498-CZ

**RIGHT TO LIFE OF MICHIGAN AND  
MICHIGAN CATHOLIC  
CONFERENCE'S MOTION FOR  
IMMEDIATE CONSIDERATION OF  
THEIR EMERGENCY APPLICATION  
FOR LEAVE TO APPEAL OR  
PEREMPTORY REVERSAL OF  
DENIAL OF THEIR MOTION TO  
INTERVENE**

**This case involves a claim that state  
governmental action is invalid**

RIGHT TO LIFE OF MICHIGAN AND  
MICHIGAN CATHOLIC  
CONFERENCE,

Proposed Intervenors-Appellants.

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**RIGHT TO LIFE OF MICHIGAN AND MICHIGAN CATHOLIC  
CONFERENCE'S MOTION FOR IMMEDIATE CONSIDERATION OF THEIR  
EMERGENCY APPLICATION FOR LEAVE TO APPEAL OR PEREMPTORY  
REVERSAL OF DENIAL OF THEIR MOTION TO INTERVENE**

Right to Life of Michigan and the Michigan Catholic Conference (together, “Proposed Intervenors”) move for immediate consideration of their emergency application for leave to appeal or peremptory reversal of denial of their motion to intervene. In support, Proposed Intervenors state the following:

1. On April 7, 2022, Governor Whitmer filed a complaint in the Circuit Court seeking to enjoin MCL 750.14, a longstanding Michigan law protecting unborn life. *Whitmer v. Linderman*, Oakland Cnty No. 2022-193498-CZ.

2. On May 4, 2022, Proposed Intervenors filed a timely motion to intervene as defendants in the Circuit Court action.

3. On May 24, 2022, the Circuit Court adjourned Proposed Intervenors’ motion, indicating that it would suspend proceedings to await guidance from the Michigan Supreme Court.

4. On August 1, 2022, the Circuit Court suddenly reactivated the case by granting Governor Whitmer’s *ex parte* motion for a temporary restraining order.

5. On August 3, 2022, Proposed Intervenors renewed their motion to intervene.

6. On August 10, 2022, Governor Whitmer filed a motion for preliminary injunction, seeking to completely enjoin enforcement of MCL 750.14.

7. On August 16, 2022, one day before the evidentiary hearing on the Governor’s motion for preliminary injunction, the Circuit Court denied Proposed

Intervenors' renewed motion to intervene, and also denied Proposed Intervenors' motion to file any opposition to the motion for preliminary injunction.

8. On August 19, 2022, following a 3-day evidentiary hearing in which counsel for Proposed Intervenors was prohibited from participating, the Circuit Court granted a preliminary injunction completely enjoining MCL 750.14.

9. The Circuit Court manifestly erred and abused its discretion in denying Proposed Intervenors' motion to intervene, resulting in substantial prejudice.

10. The Circuit Court has repeatedly taken substantial action prejudicing Proposed Intervenors while excluding them and their counsel from participation.

11. The Circuit Court set a pretrial conference for November 21, 2022.

12. For Proposed Intervenors to participate in the pretrial conference—or any intervening matters—this Court must review Proposed Intervenors' appeal before November 21, 2022.

13. So far, in these proceedings, the Governor's counsel and multiple attorneys representing pro-abortion county prosecutors have been allowed to oppose MCL 750.14's constitutionality. But only counsel for Defendants Jarzynka and Becker have offered a substantive defense of MCL 750.14's constitutionality.

14. Proposed Intervenors have separate counsel and interests from the existing defendants, and their briefs in opposition to Governor Whitmer's claims make and preserve different arguments.

15. This Court’s immediate consideration of Proposed Intervenors’ appeal will remedy what has—thus far—been an imbalanced proceeding that favors the pro-abortion side.

16. Granting Proposed Intervenors’ motion for immediate consideration and considering their briefs in advance of the November 21, 2022, pretrial conference, is in the interests of justice and “fairness.” **Exhibit 1**, 5/20/22 Order, *Whitmer v Linderman*, S. Ct. No. 164256 (Bernstein, J., concurring).

17. Indeed, “[g]iven the gravity of the issues presented in this case,” this Court “should strive to open the courtroom doors to as many voices as possible.” *Id.* (Bernstein, J., concurring).

For these reasons, Proposed Intervenors ask this Court (1) to grant their motion for immediate consideration, (2) grant their application for leave to appeal and for preemptory reversal of the Circuit Court’s order denying intervention; and (4) review Proposed Intervenors’ application in advance of the November 21, 2022, pretrial conference.

Dated: September 6, 2022

Respectfully submitted,

ALLIANCE DEFENDING FREEDOM

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# EXHIBIT 1



# Order

Michigan Supreme Court  
Lansing, Michigan

May 20, 2022

Bridget M. McCormack,  
Chief Justice

164256 & (3)(7)(8)(9)(10)(15)

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

*In re* EXECUTIVE MESSAGE OF THE  
GOVERNOR REQUESTING THE  
AUTHORIZATION OF A CERTIFIED  
QUESTION.

(GRETCHEN WHITMER, Governor v  
JAMES R. LINDERMAN, Prosecuting  
Attorney of Emmet County, *et al.*)

SC: 164256

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On order of the Court, the motions for immediate consideration and motions for leave to respond or reply are GRANTED. The Executive Message of the Governor pursuant to MCR 7.308(A)(1) was received on April 7, 2022, requesting that this Court direct the Oakland Circuit Court to certify certain questions for immediate determination by this Court. Having received responses from several county prosecutors, as well as amici briefs, we direct the Governor to file a brief with this Court within 14 days of the date of this order, providing a further and better statement of the questions and the facts. MCR 7.308(A)(1)(b). Specifically, the Governor shall address: (1) whether the Court of Claims' grant of a preliminary injunction in *Planned Parenthood v Attorney General*, 22-000044-MM, resolves any need for this Court to direct the Oakland Circuit Court to certify the questions posed for immediate determination; (2) whether there is an actual case and controversy requirement and, if so, whether it is met here; (3) given the infrequent application of the Executive Message process by current and former governors, what is required under MCR 7.308(A) and, specifically, whether the question is of "such public moment as to require an early determination"; (4) whether the Executive Message process limits the Governor's power to defending statutes, rather than calling them into question; and (5) whether the questions posed should be answered before the United States Supreme Court issues its decision in *Dobbs v Jackson Women's Health Organization*, No. 19-1392, and whether a decision in that case would serve as binding or persuasive authority to the questions raised here.

The county prosecutors may file responsive briefs. Amici who have filed briefs with the Court to date are invited to file supplemental briefs addressing the questions identified in this order. Other persons or groups interested in the determination of the

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issues presented in this case may move the Court for permission to file briefs amicus curiae. All responsive and amicus curiae briefs shall be filed within 14 days of the Governor's brief.

The Executive Message, motion to intervene, and motion to dismiss remain pending.

BERNSTEIN, J. (*concurring*).

Given the gravity of the issues presented in this case, I believe we should strive to open the courtroom doors to as many voices as possible. In the interest of fairness, I strongly prefer to allow the county prosecutors, as well as any other persons or groups interested in these issues, the same two-week briefing period that we are giving the Governor. While I believe an expedited briefing schedule is warranted under the circumstances, the schedule we have set in our order balances our interest in timely considering these issues while giving everyone a full and fair opportunity to participate.

CAVANAGH, J. (*concurring in part and dissenting in part*).

I join the Court's order granting further briefing in this case on these important threshold procedural questions. I dissent only with regard to the briefing schedule. Given the potential urgency underlying the issues in this case, I would have ordered that the supplemental briefing be completed within two weeks. If the injunction issued by the Court of Claims gives the Governor the relief she seeks, the timing will not matter. If not, and if this Court believes we should grant the Governor's request to authorize the circuit court to certify the questions posed by the Governor in the pending lawsuit, the schedule the majority has set here may leave insufficient time to determine the merits of the case. Although I echo Justice BERNSTEIN's sentiment that we should strive to allow all interested persons the opportunity to have their voices heard, operating on an expedited basis—as we are often called on to do—in no way closes the courtroom doors to any interested voices. Because I believe the Court's order today fails to treat this case with the urgency it deserves, I respectfully dissent from the majority's refusal to expedite this supplemental briefing schedule.

MCCORMACK, C.J., and WELCH, J., join the statement of CAVANAGH, J.



p0519

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 20, 2022

Clerk

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**STATE OF MICHIGAN**

MI Court of Appeals

**Proof of Service**

<b>Case Title:</b> Gretchen Whitmer v James R. Linderman, et al.	<b>Case Number:</b> TEMP-POK2SOOJ
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1. Title(s) of the document(s) served:

<b>Filing Type</b>	<b>Document Title</b>
ISI_CASE_INIT_FORM_DT	Case Initiation Form
Application	Right to Life of MI & MI Catholic Conference's Emergency App for Lv to Appeal or Peremptory Reversal
Appendix	COA Appendix of Exhibits to Proposed Intervenor's AFLTA re denial of intervention
Motion for Immediate Consideration	COA Motion for Immediate Consideration of Intervenor's AFLTA re denial of intervention

2. On 09-06-2022, I served the document(s) described above on:

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09-06-2022

Date

/s/ Francine Robinson

Signature

Smith Haughey Rice & Roegge

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