

STATE OF MICHIGAN
IN THE SUPREME COURT

GRETCHEN WHITMER, in her
capacity as Governor of the State of
Michigan,

Plaintiff,

v

JAMES R. LINDERMAN, Prosecuting
Attorney of Emmet County, DAVID S.
LEYTON, Prosecuting Attorney of
Genesee County, NOELLE R.
MOEGGENBERG, Prosecuting
Attorney of Grand Traverse County,
CAROL A. SIEMON, Prosecuting
Attorney of Ingham County, JERARD
M. JARZYNKA, Prosecuting Attorney
of Jackson County, JEFFREY S.
GETTING, Prosecuting Attorney of
Kalamazoo County, CHRISTOPHER R.
BECKER, Prosecuting Attorney of Kent
County, PETER J. LUCIDO,
Prosecuting Attorney of Macomb
County, MATTHEW J. WIESE,
Prosecuting Attorney of Marquette
County, KAREN D. McDONALD,
Prosecuting Attorney of Oakland
County, JOHN A. McCOLGAN,
Prosecuting Attorney of Saginaw
County, ELI NOAM SAVIT,
Prosecuting Attorney of Washtenaw
County, and KYM L. WORTHY,
Prosecuting Attorney of Wayne County,
in their official capacities,

Defendants.

Supreme Court No. 164256

**Upon Certification From Oakland
County Circuit Court**

Oakland Circuit Court No. 22-193498-CZ

HON. JACOB J. CUNNINGHAM

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

**GOVERNOR WHITMER'S SECOND NOTICE OF INTERVENING
DEVELOPMENTS**

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The state of Michigan law governing abortion is currently changing by the day and even by the county, a precariousness that carries very real and irreparably damaging consequences for Michiganders' rights and health. This Court's review of the constitutional questions presented in Governor Whitmer's Executive Message is urgently needed, now more than ever.

On April 7, 2022, the Governor filed a complaint in the Oakland Circuit Court, seeking to protect Michiganders' constitutional right to abortion and to strike down Michigan's criminal abortion statute, MCL 750.14. She also filed an Executive Message with this Court, asking it to certify the constitutional questions presented. That same day, Planned Parenthood of Michigan and Dr. Sarah Walleff filed suit in the Michigan Court of Claims, seeking similar relief.

On May 17, 2022, the Court of Claims preliminarily enjoined the Attorney General and all county prosecutors (including Defendants) from enforcing MCL 750.14, holding that the statute likely violated the Michigan Constitution's Due Process Clause and would result in irreparable harm if not enjoined. *Planned Parenthood of Michigan, et al v Attorney General of the State of Michigan*, unpublished opinion and order of the Court of Claims, issued May 17, 2022 (Docket No. 22-000044-MM).

On August 1, 2022, the Michigan Court of Appeals issued an order holding that the injunction issued by the Court of Claims in the *Planned Parenthood* case "does not apply to county prosecutors" because "jurisdiction of the Court of Claims does not extend to them." *In re Jarzynka*, unpublished order of the Court of

Appeals, issued August 1, 2022 (Docket No. 361470), pp 3, 5 (attached as App’x A). The Court of Appeals did not otherwise disturb the decision of the Court of Claims—including that MCL 750.14 likely was unconstitutional and its enforcement would cause irreparable harm—and the Attorney General remains bound by the Court of Claims’ injunction. The Court of Appeals’ technical ruling regarding the Court of Claims’ jurisdiction, however, cleared a path for county prosecutors to begin enforcing the criminal abortion statute in full, which several such prosecutors have publicly said they mean to do. And health-care providers in Michigan, in turn, suddenly faced the prospect of having to choose whether to continue offering critical and time-sensitive health-care services to women in Michigan or to potentially face criminal prosecution.

The Governor took action in response that same day, moving the Oakland Circuit Court on August 1 for a temporary restraining order against enforcement of MCL 750.14 in the instant case. The circuit court granted the request by the end of that day, “order[ing] that Defendants must [r]efrain from enforcing MCL 750.14 until further Order of the Court.” *Governor v Linderman*, unpublished order of the Oakland County Circuit Court, issued August 1, 2022 (Docket No. 22-193498-CZ) (attached as App’x B). Thus, for the time being, the thirteen county prosecutors named as Defendants in this case are prohibited from enforcing the criminal abortion statute.

The rapid churn of these lower-court rulings over the course of August 1—a single day—was enough to plunge Michiganders into a state of confusion and

uncertainty about what their rights and healthcare options may be, and how those answers may change from one county in the state to the next. See, e.g., “Where Michigan stands after a tumultuous day for abortion rights,” *Detroit Free Press*, August 2, 2022 (“It was the most tumultuous day for abortion rights in Michigan since late June, when the U.S. Supreme Court overturned the national right to an abortion by reversing *Roe v. Wade*.”);¹ “Michigan abortion ban is — then isn’t — in effect after two court rulings,” *Bridge Michigan*, August 2, 2022 (“It was a head-spinning day on an issue that was thrown into uncertainty after the U.S. Supreme Court overturned *Roe vs. Wade* in June and left the legality of abortion to individual states.”).²

Even after the circuit court’s issuance of the TRO, providers across the State were left scrambling, unsure whether their job may now involve committing a felony. “They came to Michigan for an abortion. Now, that’s uncertain too,” *Michigan Radio*, August 1, 2022 (“uncertainty” because of the Court of Appeals August 1 order, “still plagued providers Monday evening, after an Oakland Circuit judge issued a temporary restraining order at about 5 p.m. . . . And several clinicians said the legal limbo couldn’t have come at a worse time”).³ For example,

¹ <<https://www.freep.com/story/news/politics/2022/08/02/michigan-abortion-rights/10206131002/>> (last accessed August 3, 2022).

² <<https://www.bridgemi.com/michigan-government/michigan-abortion-ban-then-isnt-effect-after-two-court-rulings>> (last accessed August 3, 2022).

³ <<https://www.michiganradio.org/criminal-justice-legal-system/2022-08-01/they-came-to-michigan-for-an-abortion-now-thats-uncertain-too>> (last accessed August 3, 2022).

“doctors at the University of Michigan had to tell patients they had no idea if they’d be able to get the abortions they were scheduled for.” *Id.* And Northland Family Planning Centers announced that they will, for now, stop providing abortion care at their Macomb County clinic given Defendant Macomb County Prosecutor Lucido’s pledge to prosecute. *Id.*

And even before the developments on August 1, the judiciary itself illustrated the need for this Court’s intervention. In a case concerning whether a circuit court had jurisdiction to hear a minor child’s request for waiver of parental consent to an abortion under MCL 722.901 *et seq.*, Michigan Court of Appeals judges were at odds about the legal status of MCL 750.14. Compare *In re AST Minor*, published order of the Court of Appeals, issued July 29, 2022 (Docket No. 362349) (Riordan, P.J., concurring) (“Therefore, MCL 750.14 remains valid law in Michigan. It merely is enjoined from being enforced on a temporary basis by the public officials identified in the preliminary injunction”), with *id.* (GARRETT, J., concurring in judgment only) (“[T]he Presiding Judge erroneously asserts that ‘because MCL 750.14 remains valid law in Michigan, the PRRA prohibits any abortion that is prohibited by MCL 750.14.’ This understanding of the effect of the Court of Claims’ preliminary injunction is untenable. The Presiding Judge’s concurrence ignores that MCL 750.14 is currently unenforceable based on a binding court order finding that its enforcement violates a woman’s fundamental due-process right to bodily integrity.”) (attached as App’x C).

Throughout our state, Michiganders need assurance that their constitutional rights are intact and will be respected by the courts; women need confidence that they can safely access reproductive health care just as they have been able to do for decades; doctors and nurses need certainty that they can continue to provide that care without facing criminal prosecution and jail time; and the bench and bar need clarity about the state of the law. This Court is the only one that can fully address these concerns and conclusively settle the important constitutional questions underlying them. So long as the present state of uncertainty persists, it will work to deny Michiganders their rights under the Michigan Constitution and have profound and irreversible consequences on their lives.

The Governor respectfully reiterates her request that the Court authorize certification of the questions presented in her Executive Message.

Respectfully submitted,

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