

STATE OF MICHIGAN
IN THE SUPREME COURT

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

Supreme Court No. 164256

Oakland Circuit Court
No. 22-193498-CZ

GRETCHEN WHITMER, on behalf of the
State of Michigan,

HON. JACOB JAMES CUNNINGHAM

Plaintiff,

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

v

ORAL ARGUMENT REQUESTED

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.

GOVERNOR WHITMER'S NOTICE OF INTERVENING DEVELOPMENT

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GOVERNOR WHITMER'S NOTICE OF INTERVENING DEVELOPMENT

The Governor respectfully submits this notice of intervening development to alert the Court that the US Supreme Court's decision in *Dobbs v Jackson Women's Health Organization*, No. 19-1392, has already resulted in uncertainty, confusion, and efforts to contract abortion access in Michigan, notwithstanding the preliminary injunction entered by the Court of Claims against the enforcement of Michigan's criminal abortion ban. See MCL 750.14.

The same day that *Dobbs* was issued, the President and CEO of Beaumont Health and Spectrum Health (BHSB), which operates in Metro Detroit and West Michigan, advised staffers that the ruling meant that Michigan's 1931 abortion ban "is now in effect."¹ The President and CEO accordingly announced a change to BHSB's policies and practices.² While BHSB had "previously . . . generally allowed pregnancy termination for medical indications, such as when necessary to prevent serious risks to the woman's health or in situations where the fetus is not likely to survive," going forward—because of the US Supreme Court's ruling—BHSB would "follow the guidance of the Michigan 1931 law and only allow pregnancy termination when necessary to preserve the life of the woman."³ BHSB later clarified that it would continue to "perform[] abortions when the mother's life [i]s at

¹ *Ruling adds confusion to Beaumont-Spectrum system abortion access*, The Detroit News (June 25, 2022) <https://www.detroitnews.com/story/news/local/michigan/2022/06/25/merged-beaumont-spectrum-system-ceo-addresses-abortion-access/7731815001/> (accessed June 25, 2022).

² *Id.*

³ *Id.*

risk” and had established a “multidisciplinary committee . . . ‘to provide guidance to [its] physicians and clinical teams.’”⁴ This committee was necessary, in BSHS’s view, because “[t]he ‘legal ambiguity’ about enforcement with a challenge to the injunction places ‘physicians and clinical teams at risk of criminal liability.’” *Id.*

The next day, BSHS reversed course, and, citing the “uncertainties and confusion surrounding” the potential enforcement of MCL 750.14, announced that it would continue its practice “of performing abortions when medically necessary.”⁵ In that press release, BSHS “urge[s] Michigan courts to bring clarity as quickly as possible.”⁶

Relatedly, defendants Jarzynka and Becker have publicly stated, through their lawyer, that they are not bound by the Court of Claims’ preliminary injunction.⁷ After the release of *Dobbs*, Jarzynka and Becker’s lawyer “argued his clients still could enforce the law if they were given a case that met the elements of the 1931 ban.”⁸ He added, “‘If I were a doctor and I’m in Kent County or Jackson

⁴ *Id.*

⁵ BSHS System Reinstates Practices to Terminating Pregnancy When Medically Necessary - Spectrum Health Newsroom, <https://newsroom.spectrumhealth.org/bhsh-system-reinstates-practices-to-terminating-pregnancy-when-medically-necessary/> (accessed June 27, 2022).

⁶ *Id.*

⁷ See Beth LeBlanc, *What loss of Roe means for women who want abortions in Michigan*, The Detroit News (June 24, 2022) <https://www.detroitnews.com/story/news/local/michigan/2022/06/24/michigan-abortion-laws-what-supreme-court-ruling-means-roe-v-wade/7625224001/> (accessed June 25, 2022).

⁸ *Id.*

County or any county with pro-life prosecutors, I wouldn't be performing abortions.”⁹

The Governor firmly disagrees with the positions espoused by the two prosecutors. Contrary to their apparent belief, they are explicitly bound by the Court of Claims order. *Planned Parenthood of Michigan v Attorney General*, Case No 22-44 (Ct Claims May 17, 2022) (enjoining the Attorney General and “anyone acting under [her] control and supervision” and citing MCL 14.30, which states that “[t]he attorney general shall supervise the work of, consult and advise the prosecuting attorneys, in all matters pertaining to the duties of their offices”). And other hospital systems have reached the correct conclusion that, due to the injunction, abortion “remains legal in Michigan while challenges to various state-law criminal statutes continue to proceed.”¹⁰

But as BSHS's rapid changes in policy demonstrate, these intervening developments have sown confusion about abortion access in Michigan and underscore the need for this Court's immediate intervention. The Governor fully agrees with BSHS on one point: the courts should “bring clarity as quickly as possible.” And only this Court has the power to fully and finally resolve whether Michigan's criminal abortion ban can continue to be enforced post-*Dobbs*.

Respectfully submitted,
Christina Grossi (P67482)
Deputy Attorney General

⁹ *Id.*

¹⁰ Michigan Medicine Headlines, *A message from Michigan leaders* (June 24, 2022) <https://mmheadlines.org/2022/06/a-message-from-michigan-medicine-leaders-2/> (accessed June 25, 2022).

/s/ Linus Banghart-Linn

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Dated: June 27, 2022

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