

STATE OF MICHIGAN
COURT OF CLAIMS

PLANNED PARENTHOOD OF MICHIGAN, on
behalf of itself, its physicians and staff, and its
patients, and SARAH WALLET, M.D., M.P.H.,
FACOG, on her own behalf and on behalf of her
patients,

Plaintiffs,

v

Case No. 22-000044-MM

ATTORNEY GENERAL OF THE STATE OF
MICHIGAN, in her official capacity,

Hon. Elizabeth L. Gleicher

Defendant,

and

MICHIGAN HOUSE OF REPRESENTATIVES
and MICHIGAN SENATE,

Intervening Defendants.

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OPINION AND ORDER DENYING MOTION FOR STAY OF PROCEEDINGS

Pending before the Court is a July 25, 2022 motion filed by intervening defendants, Michigan House of Representatives and Michigan Senate, seeking a stay of proceedings. The motion is DENIED for the reasons stated in this opinion and order.

Plaintiffs Planned Parenthood and Dr. Sarah Wallet (collectively, Planned Parenthood) filed this declaratory-judgment action on April 7, 2022, seeking a declaration that MCL 750.14 violates the Michigan Constitution and the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*,

and an injunction barring its enforcement. The Court issued a preliminary injunction on May 17, 2022.

Less than one month later, the Court granted the motion of defendant Michigan House of Representatives and Michigan Senate to intervene as party-defendants. The Court then denied intervening defendants' motion for reconsideration of its May 17, 2022 order.

On July 6, 2022, intervening defendants filed an application for leave to appeal in the Michigan Court of Appeals (Court of Appeals Case No. 362078). Intervening defendants did not file a motion for immediate consideration of their application. The application was denied by the Court of Appeals on August 24, 2022.

Other than this motion, the only motions that have yet to be decided by this Court are the cross-motions for summary disposition filed by Planned Parenthood and the intervening defendants.

Intervening defendants contend that a stay of proceedings is warranted for four reasons: the Court of Appeals may assume jurisdiction of the matter if it grants the pending application; a complaint for superintending control filed in the Court of Appeals on May 27, 2022 (Court of Appeals Case No. 361470) may divest this Court of jurisdiction; a separate Michigan Supreme Court action arising from a case brought by Governor Gretchen Whitmer (Michigan Supreme Court Case No. 164256) will supersede this case if the Supreme Court grants leave; and a ballot question "that could render the issue moot" will be submitted to the voters in November 2022.

The factors governing the decision to stay proceedings pending an appeal are as follows: (1) whether the moving party is likely to prevail on the merits; (2) whether the movant will suffer

irreparable harm if the stay is denied; (3) whether the nonmoving party will suffer irreparable harm if the stay is granted; and (4) whether the grant or denial of a stay would harm the public interest. *Detroit Fire Fighters Ass'n IAFF Local 344 v Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008).

Consideration of these factors weighs against the grant of a stay, particularly in light of the Court of Appeals' order denying leave to appeal. The Court concludes that defendant-intervenors are not likely to prevail on the merits, that defendant-intervenors are not likely to suffer any harm, much less substantial harm, if a stay is not issued, and that further delay will cause irreparable harm to Planned Parenthood and the patients whose interests Planned Parenthood represents. Further, the public interest would be served by a final opinion from this Court, given the uncertainties regarding whether MCL 750.14 passes constitutional muster and whether local prosecuting attorneys are bound by this Court's order.


Several other facts have informed the Court's decision. The complaint for superintending control has now been dismissed with the issuance of an order that did not disturb this Court's central holding. See *In re Jarzynka*, unpublished order of the Court of Appeals, entered August 1, 2022 (Docket No. 361470). Whether our Supreme Court will accept jurisdiction of the case brought by Governor Whitmer remains unknown and unknowable. That a ballot question may result in an amendment to Michigan's Constitution also presents a similarly speculative prospect, particularly in light of the Board of State Canvassers' recent deadlock on the proposal.

Moreover, this Court's decision regarding the motions for summary disposition may help to inform the Supreme Court's determination whether to grant leave in Governor Whitmer's case. Furthermore, this Court's final judgment, should it reach one, will not delay the appellate process

already in place, but may accelerate it by providing the Court of Appeals with a fuller record for review. Accordingly, the motion for stay is DENIED.

This is not a final order and does not close the case.

Date: September 7, 2022


Elizabeth L. Gleicher
Judge, Court of Claims