

STATE OF MICHIGAN  
IN THE SUPREME COURT

---

GRETCHEN WHITMER, on behalf  
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 Case No. 164256

**PROPOSED INTERVENORS'  
MOTION UNDER RULE 7.311(E) FOR  
IMMEDIATE CONSIDERATION OF  
THEIR MOTION TO INTERVENE**

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

Oakland Circuit Court No. 22-193498-  
CZ

HON. D. LANGFORD MORRIS

RECEIVED by MSC 4/22/2022 1:27:01 PM

John J. Bursch (P57679)  
ALLIANCE DEFENDING FREEDOM  
440 First Street NW, Street 600  
Washington, DC 20001  
(616) 450-4235  
jbursch@ADFlegal.org

Michael F. Smith (P49472)  
THE SMITH APPELLATE LAW FIRM  
1717 Pennsylvania Avenue, NW  
Suite 1025  
Washington, DC 20006  
(202) 454-2860  
smith@smithpllc.com

Rachael M. Roseman (P78917)  
Jonathan B. Koch (P80408)  
SMITH HAUGHEY RICE & ROEGGE  
100 Monroe Center NW  
Grand Rapids, MI 49503  
(616) 458-3620  
roseman@shrr.com  
jkoch@shrr.com

*Counsel for Proposed Intervenors Right to  
Life of Michigan and Michigan Catholic  
Conference*

Christina Grossi (P67482)  
Deputy Attorney General

Linus Banghart-Linn (P73230)  
Christopher Allen (P75329)  
Kyla Barranco (P81082)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
P.O. Box 30212  
Lansing, MI 48909  
(517) 335-7628  
Banghart-LinnL@michigan.gov

Lori A. Martin (*pro hac vice* to be submitted)  
Alan E. Schoenfeld (*pro hac vice* to be submitted)  
Emily Barnet (*pro hac vice* to be submitted)  
Cassandra Mitchell (*pro hac vice* to be submitted)  
Benjamin H.C. Lazarus (*pro hac vice* to be  
submitted)  
Special Assistant Attorneys General  
Wilmer Cutler Pickering Hale and Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
(212) 230-8800  
[lori.martin@wilmerhale.com](mailto:lori.martin@wilmerhale.com)

Kimberly Parker (*pro hac vice* to be submitted)  
Lily R. Sawyer (*pro hac vice* to be submitted)  
Special Assistant Attorneys General  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
(202) 663-6000  
kimberly.parker@wilmerhale.com

*Counsel for Governor Gretchen Whitmer*

**PROPOSED INTERVENORS' MOTION UNDER RULE 7.311(E) FOR IMMEDIATE CONSIDERATION OF THEIR MOTION TO INTERVENE**

Proposed Intervenors Right to Life of Michigan and the Michigan Catholic Conference, by and through counsel, respectfully move this Court under Michigan Court Rule 7.311(E) for immediate consideration of their Motion to Intervene and submission of their brief in opposition to certification. In support of this motion, Right to Life of Michigan and the Michigan Catholic Conference state as follows:

1. On April 7, 2022, Plaintiff Governor Gretchen Whitmer filed an action in the Oakland County Circuit Court, Case No. 22-193498-CZ, seeking a determination that the Michigan Constitution includes a right to abortion, and therefore, that the State's longstanding ban on abortion adopted at MCL 750.14, 1931 PA 328, is unconstitutional.

2. The same day, Governor Whitmer submitted an Executive Message to this Court, seeking immediate certification of the questions presented below. And also on the same day, a plaintiffs group represented by Planned Parenthood filed still another action against the Attorney General seeking similar relief in the Michigan Court of Claims. *Planned Parenthood of Michigan v Attorney General of the State of Michigan*, Court of Claims No 22-000044-MM.

3. Governor Whitmer nominally brought this action against Prosecuting Attorneys of Michigan counties with abortion providers, but at least seven of those Defendants have already issued public statements that they will not defend the law. In doing so, these Prosecuting Attorneys followed the lead of the Attorney General,

who issued a prepared public statement that she would also not defend the law in the litigation pending before the Court of Claims.

4. This unmistakably coordinated attempt to suddenly fabricate a right to abortion and strike down a longstanding law—with express support and cooperation from the defendants—raises issues of great significance to the Proposed Intervenor, and indeed, to the whole State.

5. As set forth more fully in their Motion to Intervene, Right to Life of Michigan and the Michigan Catholic Conference are deeply concerned about this litigation. Plaintiff's claims are not justiciable because they are based on speculative future legal events and present no facts upon which any court could base a decision. This matter also involves parties—Governor Whitmer and allied Prosecuting Attorneys—who lack adversity because they agree on the outcome they desire.

6. Proposed Intervenor also respectfully submit that this Court should decline to certify and immediately consider the issues raised in this matter and should instead allow this case to run its normal course.

7. In the event that this Court agrees to certify and consider issues raised in this matter, the Court must address the issues of justiciability before considering any substantive legal issues on the merits that Plaintiff seeks to certify. And on the merits, this Court should allow Proposed Intervenor to intervene and vigorously defend Michigan's longstanding law, raising legal claims and defense that Defendants may not. Accordingly, this Court should give immediate consideration to the Proposed Intervenor's Motion to Intervene.

WHEREFORE, Right to Life of Michigan and the Michigan Catholic Conference respectfully request that this Court immediately consider their Motion to Intervene in this case.

Respectfully submitted,

Dated: April 22, 2022

ALLIANCE DEFENDING FREEDOM

By /s/ John J. Bursch  
John J. Bursch (P57679)  
440 First Street NW, Street 600  
Washington, DC 20001  
(616) 450-4235  
jbursch@ADFlegal.org

Michael F. Smith (P49472)  
The Smith Appellate Law Firm  
1717 Pennsylvania Avenue NW  
Suite 1025  
Washington, DC 20006  
(202) 454-2860  
smith@smithpllc.com

Rachael M. Roseman (P78917)  
Jonathan B. Koch (P80408)  
Smith Haughey Rice & Roegge  
100 Monroe Center NW  
Grand Rapids, MI 49503  
(616) 458-3620  
roseman@shrr.com  
jkoch@shrr.com

*Attorneys for Proposed Intervenors  
Right to Life of Michigan and the  
Michigan Catholic Conference*