

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

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

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.



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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