

# Order

Michigan Supreme Court  
Lansing, Michigan

November 15, 2024

Elizabeth T. Clement,  
Chief Justice

165042

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

MACOMB COUNTY RESTAURANT, BAR,  
AND BANQUET ASSOCIATION,  
Plaintiff-Appellant,

v

SC: 165042  
COA: 357415  
Ct of Claims: 21-000033-MZ

DIRECTOR OF THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, CHAIR  
OF THE LIQUOR CONTROL COMMISSION,  
and GOVERNOR,  
Defendants-Appellees.

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By order of May 31, 2023, the application for leave to appeal the October 13, 2022 judgment of the Court of Appeals was held in abeyance pending the decisions in *Mount Clemens Recreational Bowl, Inc v DHHS Director* (Docket No. 165169) and *The Gym 24/7 Fitness, LLC v State of Michigan* (Docket No. 164557). On order of the Court, leave to appeal having been denied in *Mount Clemens Recreational Bowl, Inc* on August 30, 2024, \_\_\_ Mich \_\_\_ (2024), and leave to appeal having been denied in *The Gym 24/7 Fitness, LLC* on August 30, 2024, \_\_\_ Mich \_\_\_ (2024), the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

VIVIANO, J. (*dissenting*).

This case involves regulatory takings and tort claims brought by plaintiff, Macomb County Restaurant, Bar, and Banquet Association, on behalf of its members, against the Governor and other government officials for their response to the COVID-19 pandemic. I would grant leave to appeal to consider whether plaintiff has associational standing to assert claims for monetary damages against defendants on behalf of its members. The federal courts and some state courts have held that associations generally lack standing to assert claims for monetary damages on behalf of their members. See, e.g., *Warth v Seldin*, 422 US 490, 515-516 (1975); *Hawaii Med Ass'n v Hawaii Med Servs Ass'n, Inc*, 113 Hawaii 77, 96 (2006). But it does not appear that any binding opinion in Michigan has ever adopted this rule. It is unclear whether the rule in *Warth* stems from the federal

case-or-controversy requirement or prudential considerations. This Court has rejected application of the federal case-or-controversy requirement for purposes of our standing doctrine, see *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 366, 372 (2010), which may call into question whether *Warth* carries any persuasive authority for purposes of Michigan standing jurisprudence. “The purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to ensure sincere and vigorous advocacy.” *Lansing Sch*, 487 Mich at 355 (citation and quotation marks omitted). Plaintiff has made a persuasive argument that its interest as an association is sufficient for that purpose. This is a jurisprudentially significant issue that I believe warrants our careful consideration.<sup>1</sup> I respectfully dissent.

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<sup>1</sup> The lower courts resolved the case on standing grounds and did not consider the merits of plaintiff’s claims. While we need not address the merits of plaintiff’s claims at this time, I continue to believe that in an appropriate case, we should clarify whether the government’s temporary closure of businesses during the COVID-19 pandemic constituted a regulatory taking. See *The Gym 24/7 Fitness, LLC v State of Michigan*, \_\_\_ Mich \_\_\_ (August 30, 2024) (Docket No. 164557) (VIVIANO, J., dissenting); *Mount Clemens Recreational Bowl, Inc v Director of the Dep’t of Health & Human Servs*, \_\_\_ Mich \_\_\_ (August 30, 2024) (Docket No. 165169) (VIVIANO, J., dissenting).



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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.

November 15, 2024

Clerk