

STATE OF MICHIGAN  
IN THE SUPREME COURT

MICHIGAN HOUSE OF  
REPRESENTATIVES  
and MICHIGAN SENATE,

Plaintiffs-Appellants,

v.

GRETCHEN WHITMER, in her  
official capacity as Governor for the  
State of Michigan,

Defendant-Appellee.

Supreme Court No.

Court of Appeals No. 353655

Court of Claims No. 20-000079-MZ

**This appeal involves a ruling that  
State governmental action is  
invalid.**

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**THE MICHIGAN LEGISLATURE'S  
MOTION FOR EXPEDITED CONSIDERATION  
OF ITS APPLICATION FOR LEAVE TO APPEAL  
AFTER DECISION BY THE COURT OF APPEALS**

Under MCR 7.311(E), the Michigan House of Representatives and the Michigan Senate (together, “the Legislature”) move for expedited consideration of the Legislature’s application for leave to appeal after decision by the Court of Appeals.

The Court’s should expedite its decision on the Legislature’s application given the substantial impact that the challenged executive orders have had—and will continue to have—on both Michigan’s citizens and its constitutional structure. This Court has said the primary statute implicated here “involves the suspension of constitutional liberties of the people ... [and,] in effect, [the] suspen[sion] [of] normal civil government.” *Walsh v City of River Rouge*, 385 Mich 623, 639; 189 NW2d 318 (1971). Every day that the Governor exercises those powers improperly, she imposes significant and irreparable harm on the Legislature itself. The Legislature has been unable to fully fulfill its role in managing the COVID-19 crisis because the Governor has usurped its lawmaking powers.

Members of this Court have already recognized the significance of this case. See *House of Representatives v Governor*, unpublished order of the Supreme Court, entered June 4, 2020 (Docket No. 161377) (Bernstein, J., concurring), p 1 (“I agree with my fellow Justices that this case presents extremely significant issues that affect the lives of everyone living in Michigan today. ... The significance of this case is undeniable.”); *id.* at 7 (Markman, J., dissenting) (“I would grant the applications because they pertain to an issue of the greatest practical importance to the more than 10 million people of this state[.]”); *id.* at 8 (Zahra, J., dissenting) (“This case presents palpable constitutional questions that are of compelling interest to every resident,

business, and employer in Michigan. ... Because each resident’s personal liberty is at stake, it is emphatically our duty to decide this case.”); *id.* at 12 (Viviano, J., dissenting) (“It is enough to recognize the obvious, substantial, and ongoing institutional harm that is being caused if the Legislature’s claim has merit.”).

If this Court does not act quickly on this application, two branches of government would remain in a state of limbo—and all Michiganders would remain in a state of uncertainty. The Governor intends to keep issuing orders premised on her improper declarations of emergency and disaster over the coming weeks and months. This Court’s decision would tell the parties which branch may exercise authority going forward, while letting the matter linger would only extend the period of ambiguity. And this Court’s decision would provide guidance for the lower courts, who are grappling with many other cases brought over the Governor’s emergency orders.

Ambiguity and delay is problematic in the midst of COVID-19, when those in government should not be forced to guess at their respective roles in managing the crisis. The need for emergency action from *all* branches of government is evident. Other courts have recognized the same, moving quickly to address questions of authority in the crisis. See generally, e.g., *Kelly v Legislative Coordinating Council*, 460 P3d 832, 834 (Kan, 2020) (after inter-branch original action concerning exercise of emergency powers during pandemic was filed on April 9, the Supreme Court of Kansas heard and decided case just two days later); cf. *Wisconsin Legislature v Palm*, No. 2020AP765-OA, 2020 WL 2465677, at \*3 (Wis, May 13, 2020) (exercising original

jurisdiction over claim challenging executive's statutory authority to issue pandemic-related order given that "the order ... impact[ed] every person in Wisconsin, as well as persons who c[a]me into Wisconsin, and every 'non-essential' business").

Lastly, this Court is already going to consider these issues in some form in the *Certified Questions* matter pending before it. By expediting its consideration of this application, the Court could hear from the Legislature while it hears from other stakeholders in this dispute. The Legislature is ready, willing, and able to respond to any further briefing schedule that the Court might wish to enter and argue the case at any time the Court might wish to hear it. Given the extensive briefing and argument that has already taken place, the Legislature expects that the Governor could say the same.

The Legislature has served a copy of this motion on the Governor. The parties have agreed to accept service of filings by email.

For these reasons, the Legislature requests that the Court consider its application for leave to appeal immediately and then grant it.

Respectfully submitted,

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