

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs,

v.

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

Case No. 22-000044-MM

Hon. Elizabeth Gleicher

**JUNE 6, 2022 MOTION OF
THE MICHIGAN HOUSE OF
REPRESENTATIVES AND
MICHIGAN SENATE TO
INTERVENE AS DEFENDANTS
AND FOR RECONSIDERATION**

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**Pro hac vice application forthcoming*

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Defendants Michigan House of
Representatives and Michigan Senate*

Under Michigan Court Rules 2.209 and 2.119(F), the Michigan House of Representatives and Michigan Senate (together, the “Legislature”) respectfully move (i) to intervene as Defendants, and (ii) for reconsideration of the Court’s May 17, 2022 Opinion and Order granting Plaintiffs’ motion for a preliminary injunction and enjoining enforcement of MCL 750.14 during the pendency of this action (the “PI Order”).

In support, the Legislature relies on the attached brief. The Legislature also submits as Exhibit 1 a proposed answer to Plaintiffs’ Verified Complaint for Declaratory and Injunctive Relief, in accordance with MCR 2.209(C)(2). On June 6, 2022, counsel for the Legislature sought the concurrence of Plaintiffs’ counsel and Defendant’s counsel regarding the relief requested in this motion. Plaintiffs’ counsel stated that they will not oppose the Legislature’s intervention but will oppose any reconsideration of the order granting preliminary injunctive relief. Defendant’s counsel stated that they take no position on the motion to intervene.

**BRIEF IN SUPPORT OF
THE MICHIGAN HOUSE OF REPRESENTATIVES AND MICHIGAN SENATE'S
MOTIONS TO INTERVENE AS DEFENDANTS AND FOR RECONSIDERATION**

INTRODUCTION

Just a few weeks ago, this Court took the extraordinary step of finding a new constitutional right under the Michigan Constitution despite binding precedent saying no such right exists. What is more, the Court did so without receiving any meaningful opposition because the sole defendant—the state official charged with defending the statute in court—informed the Court that she would not defend the statute. The Attorney General argued only—but correctly—that the Court lacked subject matter jurisdiction because there is no adversity between the parties. But instead of dismissing for lack of jurisdiction, the Court granted Plaintiffs' requested injunction, allowing the case to proceed without any genuine defendant. The Legislature now moves to intervene to, first and foremost, challenge this Court's jurisdictional ruling and, if necessary, to defend against Plaintiffs' claims. It also moves for reconsideration to correct the Court's errors.

Regarding intervention, the Legislature is entitled to intervene as of right under MCR 2.209(A)(3). The Legislature's motion to intervene is timely, coming just weeks after the Court entered the PI Order. There is no question that the Legislature has strong interests in ensuring that constitutional challenges to Michigan statutes present an actual controversy suitable for judicial resolution and, when necessary, in defending justiciable challenges. No existing party will adequately represent those interests here—the Attorney General refused to move for summary disposition under MCR 2.116(C)(4) (lack of subject matter jurisdiction) or to otherwise defend the constitutionality of MCL 750.14. Alternatively, and for the same reasons, the Legislature is entitled to permissive intervention under MCR 2.209(B)(2).

The Court should also grant the Legislature's motion for reconsideration. Aside from the lack of adversity at the time the Court issued its Order, there are numerous other jurisdictional

defects that deprive this Court of jurisdiction, most significantly the fact that Plaintiffs’ claims are based on a stack of hypotheticals and thus unripe. Even if the Court had jurisdiction, it was a palpable error to grant a preliminary injunction, as binding precedent says there is no right to abortion under the Michigan Constitution and the hypotheticals undergirding Plaintiffs’ claims show that they suffer no harm—much less irreparable harm.

PROCEDURAL BACKGROUND

Plaintiffs filed the Verified Complaint on April 7, 2022, seeking a declaration that MCL 750.14 violates the Michigan Constitution and the Elliott-Larsen Civil Rights Act and requesting a permanent injunction barring its enforcement. The same day, Plaintiffs moved for a preliminary injunction to enjoin enforcement of MCL 750.14. The Attorney General agreed that the statute is unconstitutional and said she would not defend it. Def’s Response at 4. She also correctly argued there was “a lack of adversity” and thus no “actual, live controversy before the Court” to support jurisdiction. *Id.* at 7–8. For that reason, the Attorney General further suggested that the Court take it upon itself to dismiss this case *sua sponte*. *Id.* at 10. Nonetheless, on May 17, 2022, this Court granted Plaintiffs’ motion, enjoining the Attorney General, and those under her control and supervision, from enforcing MCL 750.14 during the pendency of the action. PI Order at 27.

ARGUMENT

I. This Court Should Grant the Legislature’s Motion to Intervene to Challenge This Court’s Subject Matter Jurisdiction and, if Necessary, to Oppose Plaintiffs’ Claims.

A. The Legislature Is Entitled to Intervene as of Right.

“On timely application,” MCR 2.209(A)(3) allows intervention as of right if the applicant

claims an interest relating to the ... transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

Intervention as of right therefore requires three elements: (1) a timely request; (2) a disposition of

the action that may, as a practical matter, impair or impede the applicant’s ability to protect his interests; and (3) a showing that representation of the applicant’s interest by existing parties is or may be inadequate. See *Weber Land & Dev, LLC v Deerfield Twp*, unpublished opinion of the Court of Appeals, issued March 25, 2004 (Docket No. 245392), 2004 WL 595053, at *4 (per curiam) (citing *Oliver v State Police Dep’t*, 160 Mich App 107, 115–116 (1987)).¹ The “rule should be liberally construed to allow intervention when the applicant’s interest otherwise may be inadequately represented.” *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612 (2009) (citing *Precision Pipe & Supply Inc v Meram Constr Inc*, 195 Mich App 153, 156 (1992).

1. The Legislature’s motion to intervene is timely.

A motion is timely if it is “asserted within a reasonable time,” an inherently contextual standard. *D’Agostini v City of Roseville*, 396 Mich 185, 188 (1976); see also *Cameron v EMW Women’s Surgical Ctr, PSC*, 142 S Ct 1002, 1012 (2022) (timeliness under federal intervention rules “is to be determined from all the circumstances”).² Although Michigan courts have not enumerated the specific factors that should be analyzed in determining timeliness, courts have generally found that “a right to intervene should be asserted within a reasonable time.” *D’Agostini*, 396 Mich at 188.

The point at which the need for intervention arises bears directly on the timeliness question. The Court of Appeals permitted intervention as of right eight years after a lawsuit was filed, when the intervening party made its motion soon after learning a court order adversely affected its interests in the real property at issue. See *People v 14925 Livernois*, unpublished opinion of the

¹ This decision, attached as Exhibit 2, is offered to demonstrate how the Court of Appeals has distilled MCR 2.209(A)(3)’s requirements into three elements. See MCR 2.119(A)(2).

² “Because of the similarity of the state and Federal provisions,” the Michigan Supreme Court “deem[s] it proper to look to the Federal courts for guidance” in applying the intervention rules. *D’Agostini v City of Roseville*, 396 Mich 185, 188 (1976).

Court of Appeals, issued September 15, 2016 (Docket No 327377), 2016 WL 4947279, at *4. Similarly, in *Johnson v Titan Indemnity Co*, unpublished opinion of the Court of Appeals, issued May 21, 2013 (Docket No 308685), 2013 WL 2226962, at *3, the court held timely a hospital's motion to intervene filed after the original parties settled the case because, contrary to a party's expectation, the settlement agreement did not provide for payment of its claim.³

Federal caselaw supports these holdings. For example, just a few months ago in *Cameron*, the U.S. Supreme Court reversed the Sixth Circuit's denial of the Kentucky Attorney General's motion to intervene that it filed after years of litigation, a bench trial, and a decision on appeal. 142 S Ct at 1008, 1012. After the Sixth Circuit affirmed the district court's grant of a permanent injunction against enforcing the abortion statute at issue, the state official defending the case decided his office would not seek rehearing or certiorari. See *id.* at 1012. The Attorney General then moved to intervene. The Supreme Court, reversing the Sixth Circuit, held the motion timely, explaining that "the most important circumstance relating to timeliness is that the attorney general sought to intervene as soon as it became clear that the Commonwealth's interests would no longer be protected by the parties in the case." *Id.* (quotation marks and citation omitted).

These authorities confirm that the Legislature's motion to intervene in this case is timely. Despite announcing she would not defend MCL 750.14, the Attorney General questioned the existence of subject matter jurisdiction in this case given the lack of adversity between the parties and the lack of an "actual controversy" within the meaning of the declaratory judgment statute. Def's Response at 8–9. It was only once the Court granted Plaintiffs' motion for a preliminary injunction, despite the Attorney General's argument that the Court lacked jurisdiction, that the

³ These decisions, attached as Exhibits 3 and 4, are offered as persuasive authority to illustrate Michigan courts have concluded that motions filed far later in the proceedings were nonetheless timely under Rule 2.209. See MCR 2.119(A)(2).

Legislature needed to intervene.

This motion is being made less than three weeks later and within the deadline for seeking reconsideration—a motion any *truly* adverse defendant would have made. Further, discovery has not begun, and the Court has not issued a scheduling order outlining any future proceedings. See *Karrip v Cannon Twp*, 115 Mich App 726, 731 (1982) (motion to intervene was timely when filed two months after lawsuit commenced, because no “proceedings or discovery had been taken.”); *United States v Marsten Apartments, Inc*, 175 FRD 265, 267–268 (ED Mich, 1997) (intervention was timely where motion filed “only two months” after movants learned of their potential claims and “the suit is still in the pretrial stage, and although some discovery has been taken the case is not significantly close to trial”). Therefore, the Legislature’s motion is timely and will not impact or delay future proceedings.

2. The Legislature has a sufficient interest affected by the disposition of this case.

The Legislature has a sufficient interest in this case, and “the disposition of the action may as a practical matter impair or impede [its] ability to protect [its] interest.” *Precision Pipe & Supply*, 195 Mich App at 156 quoting MCR 2.209(A)(3).

The Legislature’s interest in defending a statute against constitutional challenge is overwhelming where, as here, the executive branch official charged with defending statutes refuses to do so from the outset. Such an abdication “poses grave challenges to the separation of powers,” as the executive is effectively “nullif[ying] [the Legislature’s] enactment solely on its own initiative.” *United States v Windsor*, 570 US 744, 762 (2013); *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 578 (2020) (“[F]ailure to permit the Legislature’s intervention in such circumstances would enable the executive branch to nullify the Legislature’s work.”). This is particularly true when a constitutional challenge presents no justiciable controversy.

The Michigan Supreme Court has recognized the Legislature’s right to intervene in

instances where the executive branch refused to defend the laws of the State:

An executive's nondefense of statutes thus poses grave risks to our constitutional structure. It also greatly disrupts the proper functioning of our adversary system. In these circumstances, as our Court of Appeals recently observed, the Legislature, as elected representatives of the citizens of Michigan, is essentially taking the place of defendants in this case to ensure an actual controversy with robust contrary arguments. In light of these considerations, we agree the Legislature has a sufficient interest in defending its own work and can fill the breach left by the Attorney General. [*League of Women Voters*, 506 Mich at 578–579 (cleaned up).]

For its part, the U.S. Supreme Court, recognizing that the Legislature is a separate and coequal branch of government, has “long held” that a legislative body “is the proper party to defend the validity of a statute” when the executive charged with enforcing the statute believes “that the statute is inapplicable or unconstitutional.” *INS v Chadha*, 462 US 919, 940 (1983). See also *Cameron*, 142 S Ct at 1011–12 (explaining “the weighty interest that a State has in protecting its own laws” and the “strength of the Kentucky attorney general’s interest in taking up the defense of” the law when a different Kentucky official “elected to acquiesce” in plaintiffs’ challenge to it).

The Court’s preliminary injunction order highlights the degree to which the disposition of the case will impede—and even negate—the Legislature’s ability to protect its interest in defending against constitutional challenges to state laws. This Court enjoined a state law without the benefit of the full adversarial presentation of the jurisdictional defects in Plaintiffs’ claims and the lack of factual and legal bases for the extraordinary remedy of a preliminary injunction. If this case proceeds with no party defending MCL 750.14, the Court could skip discovery and trial, and simply enter final judgment for Plaintiffs. This would upend our adversarial system and degrade the Legislature’s role in our constitutional structure.

3. The Legislature’s interests are not represented by any existing party.

The burden of showing that representation by existing parties “is or may be inadequate” is “minimal.” *Karrip*, 115 Mich App at 731. The Legislature more than satisfies this “minimal”

burden. The Legislature “certainly has an interest in defending” against lawsuits challenging the constitutionality of statutes, *Mich Alliance for Retired Americans v Secretary of State*, 334 Mich App 238, 250 (2020), including by ensuring that such challenges present justiciable controversies. The Attorney General publicly announced, then reiterated in her response brief, that she would not defend against Plaintiffs’ lawsuit or permit use of her office’s resources to do so.⁴ Because both existing parties believe the challenged law is unconstitutional, and because the Attorney General refused to move to dismiss this action for lack of jurisdiction and has stated in court papers that she will not defend the statute, no existing party will adequately represent the Legislature’s interest. Indeed, it is not that the Legislature’s interest “may be inadequately represented;” its interest is *wholly* unrepresented.

B. The Legislature Also Meets the Standard for Permissive Intervention.

In addition to being entitled to intervene as of right, the Legislature also meets the standard for permissive intervention. Such intervention is appropriate when: (1) the application is timely; (2) the applicant’s claim or defense has a common question of law or fact with the main action; and (3) there will be no prejudice or delay to the original parties. See *Dean v Dep’t of Corrections*, 208 Mich App 144, 150 (1994) citing MCR 2.209(B). The Legislature satisfies these elements.

First, the Legislature’s motion is timely as explained above. Second, the Legislature’s defense overlaps with the main action because it is the *only* defense in the main action. Third, as shown below in support of its Motion for Reconsideration, the Legislature directly addresses this Court’s lack of subject matter jurisdiction and Plaintiffs’ challenges to the constitutionality of MCL 750.14. Finally, the Legislature’s intervention will not result in any prejudice or delay. The

⁴ Press Release, Dana Nessel, Mich Attorney General, AG Nessel’s Statement on Efforts to Preserve Abortion Rights in Michigan, <https://tinyurl.com/2jftwjbh> (April 7, 2022) (accessed June 5, 2022).

Legislature moved to intervene promptly after this Court issued a preliminary injunction, within the deadline for seeking reconsideration, and before any discovery has taken place. As with intervention as of right, the Legislature readily meets the requirements for permissive intervention.

II. This Court Should Grant the Legislature’s Motion for Reconsideration.

For reconsideration of a trial court’s decision, “[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F)(3). The rule “allows the court considerable discretion in granting reconsideration to correct mistakes.” *Kokx v Bylenga*, 241 Mich App 655, 659 (2000).

Reconsideration is required here because in its decision to enjoin the enforcement of MCL 750.14, the Court made a palpable error in concluding, first and foremost, that it had jurisdiction and, alternatively, that the preliminary injunction factors weighed in favor of enjoining the law.

A. The Court Lacks Jurisdiction.

Plaintiffs cannot surmount the threshold questions of jurisdiction and justiciability in this case for several independent reasons. As an initial matter, the Michigan Constitution provides that “the judiciary is to exercise the ‘judicial power.’” *Nat’l Wildlife Fedn v Cleveland Cliffs Iron Co*, 471 Mich 608, 613 (2004), citing Const 1963, art 6, § 1, overruled on other grounds by *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349 (2010) (hereinafter “*Lansing*”). The “judicial power” of a court pertains to “the right to determine actual controversies arising between adverse litigants.” *Anway v Grand Rapids R Co*, 211 Mich 592, 616 (1920). Put differently, “the doctrines of justiciability” affect “judicial power, the absence of which renders the judiciary constitutionally powerless to adjudicate the claim.” *Michigan Chiropractic Council v Comm’r of Office of Fin & Ins Servs*, 475 Mich 363, 372 (2006), overruled on other grounds by *Lansing*.

Further, because Plaintiffs seek a declaratory judgment, they must satisfy the requirements of MCR 2.605(A)(1), which states that “a Michigan court of record may declare the rights and other legal relations” of parties only “[i]n a case of actual controversy within its jurisdiction.” This rule incorporates “the traditional restrictions on justiciability such as standing, ripeness, and mootness.” *Associated Builders & Contractors v Dir of Consumer & Indus Servs*, 472 Mich 117, 125 (2005), overruled on other grounds by *Lansing*. The rule “does not limit or expand the subject-matter jurisdiction of the courts.” See *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495 (2012) (per curiam).

In sum, declaratory relief is not an end run around jurisdiction. And thus, any one of the jurisdictional deficiencies in this case—the lack of a controversy, the unripe claims, and Plaintiffs’ lack of standing—requires reconsideration.

1. The court lacks subject matter jurisdiction because there is no controversy here.

To find an “actual controversy” that warrants declaratory relief, “the court must examine the facts of each case and make a determination as to whether a real, immediate, and substantial controversy exists between persons with adverse legal interests.” 3 Longhofer, Michigan Court Rules Practice, Text (7th ed), § 2605.3. Thus, the “actual controversy” requirement contains two elements: (1) there must be true adversity about the merits and (2) a real (not hypothetical) dispute. If these elements are not met, “the circuit court lacks subject matter jurisdiction to enter a declaratory judgment.” *Fieger v Comm’r of Ins*, 174 Mich App 467, 470 (1988).

Here, the Court decided there was a controversy by (1) relying on *Lansing* to hold that the broad purposes of declaratory relief, and not the controversy requirement, govern; (2) finding sufficient adversity based on the Attorney General’s refusal to agree to the requested relief; and (3) citing *INS v Chada*, 462 US 919 (1983) and *United States v Windsor*, 570 US 744 (2013) as “somewhat similar case[s] procedurally.” PI Order at 9–13. These reasons are flawed.

First, *Lansing* did not alter the “actual controversy” rule. The *Lansing* case concerned only the doctrine of standing. And regarding declaratory judgments, the Supreme Court stated that “whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.” *Lansing*, 487 Mich at 372.⁵ Thus, “the requirements of MCR 2.605”—requiring adversity on the merits and a present (not future) controversy—remain the rule.

Second, the Attorney General’s unwillingness to consent to an injunction does not create adversity. The “actual controversy” rule requires adversity on the merits. See *id.* at 372 n 20 (“[T]he essential requirement of the term ‘actual controversy’” is “an adverse interest necessitating the sharpening of the issues raised.”). Here, it is undisputed that the existing parties agree on the merits of Plaintiffs’ challenge to MCL 750.14. Their only disagreement is whether this Court has jurisdiction to hear the case, which the Attorney General offered to remedy by allowing the Plaintiffs “to add an appropriate party to ensure adversity exists.” Def’s Response at 1. Using a disagreement about jurisdiction to justify jurisdiction has no basis or support in caselaw.

Third, *Chadha* and *Windsor* are nothing like this case. In both of those cases, third parties intervened to vigorously defend the challenged statute. *Chadha*, 462 US at 939; *Windsor*, 570 US at 754. Indeed, the intervenors’ “sharp adversarial presentation of the issues” in those cases “satisfie[d] the prudential concerns that otherwise might counsel against hearing an appeal from a decision with which the principal parties agree.” *Windsor*, 570 US at 761. These cases highlight

⁵ In fact, the sources this Court relied upon actually undermine the notion that *Lansing* allows the Court to ignore the requirements for an “actual controversy.” In *Lansing* itself, the Supreme Court emphasized that the “the term ‘actual controversy’ under the rule is that plaintiffs ‘plead and prove facts which indicate an *adverse* interest.’” 487 Mich at 372 n 20 (emphasis added). Further, the Longhofer text, which the Court cited extensively, states that MCR 2.605 requires “a disagreement or adverse position as between the parties respecting their status or rights and duties with reference to the subject of the action.” 3 Longhofer, Michigan Court Rules Practice, Text (7th ed), § 2605.3. The text goes on to emphasize that the court must determine whether there is a “real, immediate, and substantial controversy.” *Id.*

that adversity is not about disagreement on a threshold issue of jurisdiction arising from the parties' very agreement on the merits. Rather, adversity requires the presence of an opposing party to ensure "sharp adversarial presentation of the issues" at all stages in the litigation. *Id.* But when the Court issued the preliminary injunction, there was no party defending the case and thus no justiciable controversy over which to exercise the judicial power. This Court's order was therefore entered without jurisdiction and is void. See *Bowie v Arder*, 441 Mich 23, 56 (1992) ("When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void."). The Legislature's motion to intervene does not cure that initial lack of jurisdiction or create, ex post facto, the necessary adversity that was absent when the court entered the preliminary injunction.⁶ Thus, this case is distinguishable from *Chadha* and *Windsor*.

2. Plaintiffs' claims are not ripe and thus the court lacks constitutional jurisdiction.

The "requirement of an 'actual controversy' prevents a court from deciding hypothetical issues." *Shavers v Kelley*, 402 Mich 554, 589 (1978). Without a "real, immediate, and substantial controversy," a court lacks subject matter jurisdiction over declaratory-judgment actions. 3 Longhofer, Michigan Court Rules Practice, Text (7th ed), § 2605.3. The related principle of ripeness deprives the court of a different type of jurisdiction—constitutional jurisdiction. *Michigan Chiropractic Council*, 475 Mich at 378–379. Because the two requirements are nearly identical and result in the same outcome—no jurisdiction—they are analyzed together.

The ripeness doctrine ensures that the "harm asserted has matured sufficiently to warrant judicial intervention." *Warth v Seldin*, 422 US 490, 499 n 10 (1975). "A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at

⁶ One of the Legislature's interests in intervening is, first and foremost, to ensure that the Court does not preliminarily enjoin a duly enacted statute where it lacks subject matter jurisdiction, thereby gravely undermining the separation of powers.

all.” *Mich Chiropractic Council*, 475 Mich at 371 n 14 (cleaned up).

When it comes to pre-enforcement harm, the plaintiff must show “a real and immediate threat to protected constitutional rights.” *Dep’t of Social Servs v Emmanuel Baptist Preschool*, 434 Mich 380, 410 (1990) (CAVANAGH, J., concurring). The threat of injury cannot be mere speculation. *Id.*; see also *League of Women Voters*, 506 Mich at 585–587. For example, in *Emmanuel Baptist Preschool*, the Michigan Supreme Court refused to decide whether a statute regarding financial disclosures violated the defendants’ First Amendment rights because “the state ha[d] not exercised its statutory authority to compel financial disclosure, making these issues unripe for review.” 434 Mich at 389.

Neither has the state done so here. This case is premised purely on speculative and remote events. The statute does not subject a pregnant woman to prosecution. And Plaintiffs do not allege that any woman has been denied an abortion based on MCL 750.14 or that any doctor has refused to perform an abortion due to a supposed threat of prosecution. Moreover, there are no pending prosecutions or threatened prosecutions of any person under MCL 750.14.

In fact, the available information strongly suggests that prosecutors will *not* enforce the law. The Attorney General has repeatedly made clear that “[a]s this state’s top law enforcement officer, ... I will not prosecute women or their doctors.”⁷ A few weeks later, she “reiterated her refusal to prosecute” anyone under the statute.⁸ The Attorney General also claimed that enforcement “falls principally on the elected prosecutors,” Def’s Response at 3 n 3, and she

⁷ Press Release, Dana Nessel, Mich Attorney General, AG Nessel’s Statement on Efforts to Preserve Abortion Rights in Michigan, <https://tinyurl.com/2jftwjbh> (April 7, 2022) (accessed June 5, 2022).

⁸ LeBlanc, *Nessel: Dismiss Planned Parenthood abortion case; Whitmer’s suit should take precedence*, THE DETROIT NEWS, <https://tinyurl.com/53wh3u9n> (May 3, 2022) (accessed June 1, 2022).

admitted that there would be no controversy unless the prosecutors created one “down the road should *Roe* be overturned.”⁹ Many of those prosecutors are defendants in Governor Whitmer’s related lawsuit and have stated that they will not enforce the law.¹⁰

Given these realities, Plaintiffs are forced to rely only on conjecture, arguing that “overzealous prosecutors” may capitalize on the “uncertainty” surrounding federal abortion law and may “attempt[] to enforce the Criminal Abortion Ban” after *Dobbs* is decided. PI Motion at 7. They further theorize that:

some PPMI staff *may* be afraid to continue working at PPMI *if* the Criminal Abortion Ban were enforced . . . [E]ven *if* PPMI and its staff complied with the Ban, a prosecutor *might* accuse staff of violating it. . . . Some staff *might* prefer to leave PPMI given this risk. . . . Other staff *might* simply be unable to bear turning patients away. [*Id.* at 13 (emphasis added).]

The Court’s decision does not account for Plaintiffs’ conjecture. Indeed, the Court acknowledges that “[a]s of the date this opinion is issued, it is unknown whether the United States Supreme Court will overrule *Roe v Wade*.” PI Order at 13. This type of speculation is insufficient to establish an “actual controversy” or ripeness. See *League of Women Voters*, 506 Mich at 579–580; *Delaware Women’s Health Org, Inc v Wier*, 441 F Supp 497, 501 (D Del, 1977) (dismissing plaintiffs’ application for declaratory relief because the parties agreed on the merits regarding the constitutionality of the abortion statutes and there was no threat of prosecution under those statutes). It follows, then, that this Court lacks jurisdiction to decide Plaintiffs’ claims.

3. Plaintiffs lack standing.

In *Lansing*, the Court stated that “whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.” 487 Mich at 372. The

⁹ *Id.*

¹⁰ News Release, Seven Michigan Prosecutors Pledge to Protect a Woman’s Right to Choose, Joint Statement, <https://tinyurl.com/ya7r5am9> (April 7, 2022) (accessed June 1, 2022).

inverse is also true: If “plaintiffs do not meet the requirements of MCR 2.605, they do not have standing.” *League of Women Voters*, 506 Mich at 585–587.

As discussed in detail above, Plaintiffs’ preliminary injunction motion did not meet the requirements of MCR 2.605 because at the stage the motion was made and decided, this case lacked both genuine adversity and a present controversy. Even if the Legislature is permitted to intervene, Plaintiffs will still lack standing due to the absence of an actual controversy. See *id.*

Plaintiffs also lack standing to challenge MCL 750.14 on behalf of their patients. On its face, the statute does not apply to pregnant women. See *People v Nixon*, 50 Mich App 38, 39–40 (1973). Even if it did, “plaintiffs must assert their own legal rights and cannot rest their claims to relief on the rights or interests of third parties.” *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 622 (2015). Thus, Plaintiffs cannot bring claims to vindicate their patients’ alleged right to an abortion under our Constitution, nor can they rely on those claims to establish standing.

For the myriad reasons addressed above, this Court lacks jurisdiction to decide this case. The Court should therefore grant the Legislature’s motion for reconsideration to correct that error and preserve the bounds of the judicial power.

B. Plaintiffs Are Not Entitled to a Preliminary Injunction.

If this Court declines to reconsider its jurisdictional ruling, the Legislature moves to intervene to oppose Plaintiffs’ claims and for reconsideration of the Court’s decision that Plaintiffs satisfied the requirements for a preliminary injunction. “An injunction represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” *Davis v City of Detroit Fin Review Team*, 296 Mich App 568, 613–614 (2012). There are four preliminary injunction factors:

(1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Id.* at 613.]

None of these factors weigh in Plaintiffs’ favor.

1. Plaintiffs are unlikely to prevail on the merits.

In *Mahaffey v Attorney General*, 222 Mich App 325, 336 (1997) (per curiam), the Court of Appeals squarely held “that there is no right to abortion under the Michigan Constitution.” Further, the Supreme Court has made clear that “[i]t is the public policy of the state to proscribe abortion.” *People v Bricker*, 389 Mich 524, 529 (1973). These binding precedents leave no room for doubt about whether our Constitution provides a right to abortion—it does not.

To avoid these precedents, however, the Court held that *Mahaffey* was about a *different* set of abortion statutes and a generalized right to privacy. PI Order at 15. Recognizing the Court of Appeals’ decision in *Mahaffey* foreclosed any constitutional argument premised on the right to privacy, the Court turned to Plaintiffs’ argument that MCL 750.14 “unconstitutionally infringes on the right to bodily integrity,” to ensure the claims’ survival. *Id.* The Court further found that because the right to bodily integrity encompassed the right to *refuse* medical treatment, there was a corresponding “liberty interest in *seeking* medical treatment” protected by the Due Process Clause. *Id.* at 22. Based on this alleged liberty interest to seek medical treatment, the Court held that Plaintiffs were likely to succeed on their claim that MCL 750.14 violates Michigan’s Due Process Clause. *Id.* at 24–25. Every premise leading to this conclusion is flawed.

First, *Mahaffey* was not about a distinct right separate from the right to bodily integrity, but instead involved the “generalized right of privacy.” 222 Mich App at 334. And the right to bodily integrity stems from that general right to privacy. Borgmann, *The Constitutionality of*

Government-imposed Bodily Intrusions, 2014 U Ill L Rev 1059, 1066 (2014). Saying *Mahaffey*'s right-to-privacy holding does not apply to a bodily-integrity claim is like saying the prohibition on driving while intoxicated does not apply to those who drink wine. Of course it does. Just like wine is a type of intoxicant, bodily-integrity claims are merely a kind of right-to-privacy claim. The Court acknowledges this point: "[E]very medical procedure implicates a person's liberty interests in personal privacy and bodily integrity." PI Order at 22. The *Mahaffey* court's sweeping statement that "there is no right to abortion under the Michigan Constitution," 222 Mich App at 336, does not leave room for a lower court to create such a right—whether rooted in the broad right to privacy or any of privacy's subsidiary rights. *Mahaffey* therefore controls.

Further, the Court's conclusion ignores *Mahaffey*'s robust reasoning. The *Mahaffey* court held there is no right to abortion under the Michigan Constitution because "[w]hen the 1963 constitution was adopted, abortion was a criminal offense." 222 Mich App at 335. "The drafters of a constitutional provision are presumed to have known the existing laws and to have drafted the provision accordingly." *Id.* The court also noted that "less than ten years after the adoption of the constitution, essentially the same electorate that approved the constitution rejected a proposal brought by proponents of abortion reform to amend the Michigan abortion statute." *Id.* at 336. Finally, the court pointed to two Michigan Supreme Court cases dealing with *Roe v Wade*, both of which "suggest that in Michigan[,] a woman's right to abortion is derived solely from the federal constitution." *Id.* at 338. The Court's PI Order did not confront any of this reasoning.

Second, the right to refuse medical treatment does not necessarily provide for a right to obtain medical treatment. To reach the opposite conclusion, the Court relied on *Rochin v California*, 342 US 165 (1952) and *Cruzan v Director, Mo Dep't of Health*, 497 US 261 (1990). But these cases bear no similarity to the issue of abortion. In *Rochin*, the U.S. Supreme Court

found three deputy sheriffs' actions unconstitutional because their involuntary pumping of the plaintiff's stomach to obtain evidence "shock[ed] the conscience." 342 US at 172. In *Cruzan*, the Court "assume[d] that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." 497 US at 279.

Both *Rochin* and *Cruzan* involved nonconsensual intrusion into the plaintiffs' bodies by medical professionals. Here, no such "intrusion" is involved. In fact, the statute at issue guards against an intrusion into the life of the unborn, which the State has a profound interest in protecting. *O'Neill v Morse*, 385 Mich 130, 137 (1971) ("The fact of life is not to be denied. Neither is the wisdom of the public policy which regards unborn persons as being entitled to the protection of the law."); *Planned Parenthood of Se Pa v Casey*, 505 US 833, 870 (1992) ("[T]he State has a legitimate interest in promoting the life or potential life of the unborn.").

Thus, nothing in *Rochin* or *Cruzan* supports a right to obtain medical treatment. The heart of the due process question in those cases was whether the individual had the right to *exclude* an outsider from forcing a procedure on his or her body. See *Cruzan*, 497 US at 279 ("forced administration of life-sustaining medical treatment"); *Rochin*, 342 US at 172 ("[i]llegally breaking into the privacy of the petitioner"). The right to exclude does not by any logic or doctrine include the contrary right to *obtain*. The Supreme Court recognized this critical distinction in *Washington v Glucksberg*, 521 US 702 (1997), in holding there is no right to obtain a physician-assisted death.

Finally, rooting the newly created right to abortion in the right to "bodily integrity" is at odds with the State's competing interest in "promoting the life or potential life of the unborn." *O'Neill*, 385 Mich at 137; *Casey*, 505 US at 870. The Court's "bodily integrity" theory leaves no room for protecting that interest.

In sum, there is no case that supports a right to obtain an abortion as a corollary to the right

to refuse medical treatment. Nor does the Court cite any such case—the only support the Court could scrounge up for such a right came from Justice Blackmun’s concurring opinion in *Casey*. PI Order at 22. Considering the binding Michigan authority holding there is no right to abortion under the Michigan Constitution, and the fact that the current Michigan Constitution was adopted over 100 years *after* MCL 750.14’s enactment, there is simply no basis for the Court’s holding that Plaintiffs will likely prevail on their claims.

2. Plaintiffs will suffer no harm without an injunction.

Irreparable harm is “an indispensable requirement to obtain a preliminary injunction. The mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8–9 (2008) (citation omitted). Plaintiffs must show they face “real and imminent danger” from the conduct they want enjoined. *Id.* A court thus errs “in granting any preliminary injunction without a showing of concrete irreparable harm.” *Michigan Coalition of State Employee Unions v Michigan Civil Serv Comm*, 465 Mich 212, 225–226 (2001).

Here, Plaintiffs have proven no harm, much less a “particularized showing of irreparable harm.” *Id.* at 213. As discussed above, Plaintiffs’ alleged harm depends on multiple, hypothetical events: the overturning of *Roe*, the creation of a right to abortion under the Michigan Constitution, and the enforcement (or threat of enforcement) of MCL 750.14. Even if the first two events occur, the Attorney General has vowed not to enforce the law. Further, no pregnant woman has ever been prosecuted under the law, and there is zero indication such a prosecution is a “real and imminent” danger. Nor do Plaintiffs point to any indication that doctors will be prosecuted under the law. Plaintiffs will suffer no harm in the absence of a preliminary injunction, and the Court therefore erred in granting the injunction without a showing of concrete irreparable harm.

3. The balance of harms and public interest weigh against a preliminary injunction.

Plaintiffs will suffer no harm without a preliminary injunction, but the harm of enjoining an unenforced statute is immense. The justiciability doctrines exist to constrain the “judicial power.” *Michigan Chiropractic Council*, 475 Mich at 373–374. “The judiciary arrogates to itself the powers of the executive and legislative branches whenever it acts outside the constitutional confines of ‘judicial power.’ Fidelity to our constitutional structure compels this Court to be ‘vigilant in preventing the judiciary from usurping the powers of the political branches.’” *Id.* By enjoining an unenforced statute solely based on a chain of hypothetical future events, this Court steps outside its “judicial power” and does grave harm to the separation of powers. See *Maryland v King*, 567 US 1301, 1303 (2012) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”).

This overreach will be just as concerning if the U.S. Supreme Court overturns *Roe*. If that does happen, the Legislature will have the opportunity to revisit MCL 750.14 and other abortion-related laws. The democratic process will then allow for debate and compromise among the public and its elected representatives. By contrast, a judicial opinion that overreaches to settle this issue usurps the power of the Legislature, exacerbates polarization, and smothers the potential for a democratic solution and public buy-in.

Indeed, this is one of the chief criticisms of the *Roe* decision. Even the late Justice Ginsburg stated the U.S. Supreme Court should not have issued such a sweeping ruling.¹¹ She instead thought the abortion issue should have stabilized through the democratic process.¹² Justice Ginsburg was right. The public is best served by letting the democratic process play out, and it is

¹¹ Frommer, *Justice Ginsburg thought Roe was the wrong case to settle abortion issue*, Washington Post (May 6, 2022), <https://tinyurl.com/32z64we2>.

¹² *Id.*

harméd when the judiciary seizes the issue from the people constitutionally empowered—and, practically, best poised—to resolve it.

In sum, none of the preliminary injunction factors weigh in Plaintiffs' favor. Moreover, the tremendous harm in this case stems from the issuance of a preliminary injunction—not the absence of it. The Court erred by holding otherwise and should reconsider its decision.

CONCLUSION AND RELIEF REQUESTED

The Legislature's motion to intervene should be granted. Upon intervention, the Court should grant the Legislature's motion for reconsideration to (i) vacate the preliminary injunction order and deny Plaintiffs' preliminary injunction motion for lack of subject matter jurisdiction, or (ii) in the alternative, vacate the order and deny Plaintiffs' motion on the ground that Plaintiffs have failed to establish their entitlement to preliminary relief.

Dated this 6th day of June, 2022

Respectfully submitted,

/s/ Nicholas P. Miller

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**Pro hac vice applications forthcoming*

EXHIBIT 1

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Case No. 22-000044-MM

Hon. Elizabeth Gleicher

Plaintiffs,

v.

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

Defendant.

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**Pro hac vice applications forthcoming*

*Counsel for Proposed Intervenor-
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Representatives and Michigan Senate*

[PROPOSED] ANSWER AND DEFENSES TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Proposed Intervenor-Defendants Michigan House of Representatives and Michigan Senate (together, the “Legislature”), by their attorneys, Schaerr | Jaffe LLP, for their Proposed Answer to Plaintiffs’ Verified Complaint for Declaratory and Injunctive Relief (the “Complaint”) state as follows:

INTRODUCTION

1. **Answer:** The allegations in paragraph 1 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

2. **Answer:** The allegations in paragraph 2 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent that a response is required, the Legislature denies the allegations because they rest on speculation and/or contested arguments.

3. **Answer:** The allegations in paragraph 3 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

4. **Answer:** The allegations in paragraph 4 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because they rest on speculation and/or contested arguments, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

5. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. **Answer:** The allegations in paragraph 7 of the Complaint contain characterizations of Plaintiffs' lawsuit and their requested relief to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and respectfully refers the Court to the Complaint for a true and correct statement of Plaintiffs' lawsuit and the requested relief.

JURISDICTION

8. **Answer:** The allegations in paragraph 8 of the Complaint state conclusions of law to which no response is required. To the extent a response is required the Legislature denies the allegations because the Complaint fails to meet the jurisdictional requirements for seeking declaratory and injunctive relief, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

PARTIES

9. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint, except it denies that any party or non-party's state constitutional and statutory rights are being violated or are at risk of being violated.

10. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint, except it denies that any party or non-party's state constitutional and statutory rights are being violated or are at risk of being violated.

11. **Answer:** The allegations in paragraph 11 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. . To the extent a response is required, the Legislature admits that the Attorney General is tasked with representing the state and its interests in legal proceedings and is the chief law enforcement office of the state charged with defending and enforcing the state's duly enacted laws. But the Legislature denies any allegation or inference that the statutory provisions cited in paragraph 11 or naming the Attorney General as defendant creates the adversity necessary to exercise the judicial power, as the Attorney General has expressly disclaimed her duty to defend the law.

FACTS

HISTORY OF MICHIGAN'S 1931 CRIMINAL ABORTION BAN

12. **Answer:** The allegations in paragraph 12 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature admits that the foregoing block quote reflects the contents of MCL 750.14.

13. **Answer:** The allegations in paragraph 13 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

14. **Answer:** The allegations in paragraph 14 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature admits that the allegations in paragraph 14 accurately describe statements from the Court of Appeals' decision in *People v Nixon*, 42 Mich App 332 (1972), but denies any allegation or inference that they are an accurate statement of the law regarding the status of abortion at common law. The Legislature respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

15. **Answer:** The allegations in paragraph 15 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

16. **Answer:** The allegations in paragraph 16 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

17. **Answer:** The allegations in paragraph 17 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as the truth of the allegations and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

18. **Answer:** The allegations in paragraph 18 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature admits that MCL 750.14 makes it a felony to “procure the miscarriage of any” pregnant woman, “unless the same shall have been necessary to preserve the life of such woman,” and otherwise respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

19. **Answer:** The allegations in paragraph 19 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because they are an incomplete description of the Supreme Court’s decision in *Roe*. The Legislature further denies any allegation or inference that paragraph 19 represents an accurate description of current law or an accurate interpretation of the U.S. Constitution. The Legislature respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

20. **Answer:** The allegations in paragraph 20 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature denies the allegations as untrue, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

21. **Answer:** The allegations in paragraph 21 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature admits only that, except for the bracketed language, paragraph 21 is an accurate quote from the *Bricker* opinion. The Legislature further denies any allegation or inference that paragraph 21 represents an accurate interpretation of the U.S. Constitution. The Legislature respectfully refers the Court to the cited authority for a true and correct statement of its contents.

22. **Answer:** The allegations in paragraph 22 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because they are an incomplete description of this Court's decision in *Bricker*. The Legislature respectfully refers the Court to the cited authorities for a true and correct statement of its contents.

23. **Answer:** The allegations in paragraph 23 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

24. **Answer:** The allegations in paragraph 24 and footnote 1 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because they are an incomplete description of this Court's decision in *Larkin*. The Legislature respectfully refers the Court to the cited authorities for a true and correct statement of their contents. The Legislature further denies that Plaintiffs are

entitled to declaratory and injunctive relief against MCL 750.323 or any other Michigan statute or regulation to the extent it prohibits abortions.

25. **Answer:** The allegations in paragraph 25 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes their mischaracterization of *Mahaffey*'s holding, and the Legislature respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

26. **Answer:** The allegations in paragraph 26 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the characterizations in the argument, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

27. **Answer:** The allegations in paragraph 27 of the Complaint advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the stated arguments, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

28. **Answer:** The allegations in paragraph 28 of the Complaint advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the stated arguments, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

29. **Answer:** The allegations in paragraph 29 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations, except it admits that MCL 750.14 has not been repealed, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

STATEMENT OF FACTS RELATIVE TO EACH PLAINTIFF

A. PPMI

30. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint.

32. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint.

33. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaint.

34. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Complaint.

35. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint.

36. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint.

37. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint.

38. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaint.

39. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Complaint.

40. **Answer:** The allegations in paragraph 40 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint.

41. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

B. SARAH WALLETT, M.D., M.P.H., FACOG

43. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint.

45. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Complaint.

46. **Answer:** The allegations in paragraph 46 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Complaint.

47. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Complaint.

48. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Complaint.

**PREGNANCY HAS SIGNIFICANT MEDICAL, FINANCIAL, AND PERSONAL
CONSEQUENCES**

49. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Complaint.

50. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Complaint.

51. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint.

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63. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint.

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65. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint.

67. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

68. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

69. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 of the Complaint.

70. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Complaint.

71. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.

ABORTION IS SAFE, COMMON, AND ESSENTIAL HEALTH CARE

72. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 of the Complaint.

73. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Complaint.

74. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74 of the Complaint.

75. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 of the Complaint.

76. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 of the Complaint.

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78. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint.

79. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint.

80. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint.

81. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 of the Complaint.

82. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Complaint.

83. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 83 of the Complaint.

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88. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 88 of the Complaint.

89. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint.

90. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint.

91. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint.

92. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint.

93. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint.

**IF ENFORCED AS WRITTEN, THE CRIMINAL ABORTION BAN WILL OUTLAW
VIRTUALLY ALL ABORTIONS IN MICHIGAN**

94. **Answer:** The allegations in paragraph 94 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature admits only that MCL 750.14, “as written,” states that “[a]ny person who shall wilfully administer to any pregnant woman any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall be guilty of a felony, and in case the death of such pregnant woman be thereby produced, the offense shall be deemed manslaughter.”

95. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 95 of the Complaint. The Legislature admits that, at the time of Plaintiffs’ Verified Complaint, no court order enjoined any Michigan official from enforcing MCL 750.14, but denies that the allegation is still true, as this Court entered a state-wide preliminary injunction on May 17, 2022, prohibiting the Attorney General and all county prosecutors from enforcing MCL 750.14.

96. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint.

97. **Answer:** The allegations in paragraph 97 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Complaint.

98. **Answer:** The allegations in paragraph 98 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature denies the allegations because it disputes the stated arguments, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

99. **Answer:** The allegations in paragraph 99 and footnote 5 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the stated arguments, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

100. **Answer:** The allegations in paragraph 100 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the stated arguments.

101. **Answer:** The allegations in paragraph 101 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations because it disputes the stated arguments.

102. **Answer:** The allegations in paragraph 102 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 of the Complaint.

103. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 of the Complaint.

104. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104 of the Complaint.

105. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105 of the Complaint.

106. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 106 of the Complaint.

107. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 107 of the Complaint.

108. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 108 of the Complaint.

109. **Answer:** The Legislature lacks knowledge of information sufficient to form a belief as to the truth of the allegations in paragraph 109 of the Complaint.

110. **Answer:** The allegations in paragraph 110 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 110 of the Complaint.

111. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 of the Complaint.

112. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Complaint.

113. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113 of the Complaint.

114. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 of the Complaint.

115. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 115 of the Complaint.

116. **Answer:** The allegations in paragraph 116 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 116 of the Complaint because it disputes that Plaintiffs are suffering irreparable harm or that their rights are being violated.

117. **Answer:** The allegations in paragraph 117 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 117 of the Complaint because it disputes that Plaintiffs are entitled to any remedy whether at law or otherwise.

CLAIMS FOR RELIEF

COUNT I

Michigan Constitution - Due Process - Vagueness

118. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 118.

119. **Answer:** The allegations in paragraph 119 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 119 of the Complaint because the Legislature disputes the stated contentions.

120. **Answer:** The allegations in paragraph 120 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 120 of the Complaint because the Legislature disputes the stated contentions as applied in this context, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

121. **Answer:** The allegations in paragraph 121 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 121 of the Complaint because the Legislature disputes the stated contentions.

122. **Answer:** The allegations in paragraph 122 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 122 of the Complaint because it disputes the stated contentions.

123. **Answer:** The allegations in the first sentence of paragraph 123 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 123 of the Complaint, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

124. **Answer:** The allegations in paragraph 124 of the Complaint state a conclusion of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 124 of the Complaint.

COUNT II

Michigan Constitution - Due Process - Liberty and Bodily Integrity

125. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 125.

126. **Answer:** The allegations in the first sentence of paragraph 126 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 126 of the Complaint because the Legislature disputes the stated contentions.

127. **Answer:** The allegations in paragraph 127 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 127 of the Complaint because the Legislature disputes the stated contentions, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

128. **Answer:** The allegations in paragraph 128 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 128 of the Complaint because the Legislature disputes the stated contentions, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

129. **Answer:** The allegations in paragraph 129 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 129 of the Complaint because the Legislature disputes the stated contentions.

130. **Answer:** The allegations in paragraph 130 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 130 of the Complaint because the Legislature disputes the stated contentions.

131. **Answer:** The allegations in paragraph 131 of the Complaint state a conclusion of law and/or advance legal arguments to which no response is required. To the extent a response is required the Legislature denies the allegations in paragraph 131 of the Complaint because the Legislature disputes the stated contentions.

132. **Answer:** The allegations in paragraph 132 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature denies the allegations in paragraph 132 of the Complaint because the Legislature disputes the stated contentions.

COUNT III

Michigan Constitution - Equal Protection

133. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 133.

134. **Answer:** The allegations in paragraph 134 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 134 of the Complaint because the Legislature disputes the stated contentions.

135. **Answer:** The Legislature admits the allegations in paragraph 135 of the Complaint.

136. **Answer:** The allegations in paragraph 136 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature respectfully refers the Court to the cited authority for a true and correct statement of its contents.

137. **Answer:** The allegations in paragraph 137 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature respectfully refers the Court to the cited authority for a true and correct statement of its contents.

138. **Answer:** The allegations in paragraph 138 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature denies the allegations in paragraph 138 of the Complaint because the Legislature disputes the stated contentions.

139. **Answer:** The allegations in paragraph 139 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 139 of the Complaint because the Legislature disputes the stated contentions.

140. **Answer:** The allegations in paragraph 140 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature respectfully refers the Court to the cited authority for a true and correct statement of its contents.

141. **Answer:** The allegations in paragraph 141 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 141 of the Complaint because the Legislature disputes the stated contentions, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

142. **Answer:** The allegations in paragraph 142 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 142 of the Complaint because the Legislature disputes the stated contentions.

143. **Answer:** The allegations in paragraph 143 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 143 of the Complaint because the Legislature disputes the stated contentions.

144. **Answer:** The allegations in paragraph 144 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 144 of the Complaint because the Legislature disputes the stated contentions.

145. **Answer:** The allegations in paragraph 145 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 145 of the Complaint because the Legislature disputes the stated contentions.

146. **Answer:** The allegations in paragraph 146, of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 146 of the Complaint because the Legislature disputes the stated contentions.

COUNT IV

Elliott-Larsen Civil Rights Act - MCL 37.2302 - Sex Discrimination in Public Accommodations and Services

147. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 147.

148. **Answer:** The allegations in paragraph 148 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 148 of the Complaint because the Legislature disputes the stated contentions.

149. **Answer:** The allegations in paragraph 149 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required,

the Legislature denies the allegations in paragraph 149 of the Complaint because the Legislature disputes the stated contentions.

150. **Answer:** The allegations in paragraph 150 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 150 of the Complaint because the Legislature disputes the stated contentions.

151. **Answer:** The allegations in paragraph 151 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 151 of the Complaint because the Legislature disputes the stated contentions.

152. **Answer:** The allegations in paragraph 152 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 152 of the Complaint because the Legislature disputes the stated contentions.

153. **Answer:** The allegations in paragraph 153 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 153 of the Complaint because the Legislature disputes the stated contentions.

154. **Answer:** The allegations in paragraph 154 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required.

155. **Answer:** The allegations in paragraph 155 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 155 of the Complaint because the Legislature disputes the stated contentions.

COUNT V

Michigan Constitution - Retained Rights - Liberty and Privacy

156. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 156.

157. **Answer:** The allegations in paragraph 157 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 157 of the Complaint because the Legislature disputes the stated contentions.

158. **Answer:** The allegations in paragraph 158 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 158 of the Complaint, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

159. **Answer:** The allegations in paragraph 159 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 159 of the Complaint, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

160. **Answer:** The allegations in paragraph 160 of the Complaint state conclusions of law and/or legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 160 of the Complaint, and respectfully refers the Court to the cited authority for a true and correct statement of its contents.

161. **Answer:** The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 161 of the Complaint.

162. **Answer:** The allegations in paragraph 162 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 162 of the Complaint because the Legislature disputes the stated contentions.

163. **Answer:** The allegations in paragraph 163 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 163 of the Complaint because the Legislature disputes the stated contentions.

164. **Answer:** The allegations in paragraph 164 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 164 of the Complaint because the Legislature disputes the stated contentions.

COUNT VI

Michigan Constitution—Due Process—Liberty and Privacy

165. **Answer:** The Legislature repeats, realleges, and incorporates by reference all of the foregoing responses to the Complaint's allegations as though fully set forth in this answer to paragraph 165.

166. **Answer:** The allegations in paragraph 166 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 166 of the Complaint because the Legislature disputes the stated contentions.

167. **Answer:** The Legislature admits the allegations in paragraph 167 of the Complaint.

168. **Answer:** The allegations in paragraph 168 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 168 of the Complaint, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

169. **Answer:** The allegations in paragraph 169 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 169 of the Complaint, and respectfully refers the Court to the cited authorities for a true and correct statement of their contents.

170. **Answer:** The allegations in the first sentence of paragraph 170 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations in that sentence and in the rest of paragraph 170 of the Complaint.

171. **Answer:** The allegations in paragraph 171 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 171 of the Complaint because the Legislature disputes the stated contentions

172. **Answer:** The allegations in paragraph 172 of the Complaint state conclusions of law and/or advance legal arguments to which no response is required. To the extent a response is required, the Legislature denies the allegations in paragraph 172 of the Complaint because the Legislature disputes the stated contentions.

RELIEF REQUESTED

A.–E. **Answer:** The foregoing paragraphs, under “Relief Requested,” state Plaintiffs’ request for relief, to which no response is required. To the extent a response is required, the Legislature denies that Plaintiffs are entitled to the requested relief, or to any relief.

DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. This Court lacks jurisdiction.
3. Plaintiffs’ claims are not justiciable.
4. Plaintiffs lack standing.
5. Plaintiffs are barred from raising others’ rights and generalized grievances under the doctrine of prudential standing.
6. Plaintiffs do not allege an actual case or controversy.
7. Plaintiffs’ claims are not ripe for adjudication.

The Legislature reserves the right to add additional defenses as the result of discovery or otherwise.

Respectfully submitted,

/s/ Nicholas P. Miller

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Counsel for Proposed Intervenor-Defendants

Michigan House of Representatives and

Michigan Senate

**Pro hac vice applications forthcoming*

Dated: June 6, 2022

EXHIBIT 2

2004 WL 595053

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

WEBER LAND & DEVELOPMENT, LLC, and
Weber Sand & Gravel, Inc., Plaintiffs-Appellees,
v.DEERFIELD TOWNSHIP, Defendant-Appellee,
andLarry LOCKREY, Gladys Lockrey, William Tolen,
Judith Tolen, James Tolen, Marilyn Tolen, Robert
Tolen, Rose Tolen, Lyndon Johnson, and Sharon
Johnson, Intervening Defendants-Appellants.

No. 245392.

|

March 25, 2004.

Before: COOPER, P.J., and O'CONNELL and FORT HOOD,
JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Intervening defendants (petitioners) appeal as of right from the trial court's order denying their petition for intervention and granting the parties' motion for entry of consent judgment. We affirm.

Plaintiffs purchased 143 acres of property in defendant Deerfield Township in 1995. The majority of the property was zoned R1, Residential Agricultural, while a small portion was zoned commercial. According to the township ordinances, quarrying and mining were permitted uses in the R1 district after special use approval was granted by the planning commission. Before the purchase, prior permits to allow commercial mining on the property had been granted to plaintiffs' predecessors in interest.

Plaintiffs allegedly took a cooperative approach when seeking special use approval. They retained an entity to perform an environmental impact statement (EIS) regarding the

business operation. Additionally, when defendant township consulted with another entity regarding the environmental concerns, plaintiffs attempted to address the concerns raised by defendant township and its residents. Plaintiffs' business operation became the subject of numerous commission meetings where residents attended and voiced their objections to approval of the mining activity. Plaintiffs were unable to obtain approval to operate through the planning commission and zoning board of appeals. Consequently, plaintiffs filed a complaint, alleging, in essence, that a taking had occurred. Plaintiffs noted that their purchase of the property was with the reasonable expectation that minerals could be extracted, consistent with the use by predecessors. Therefore, plaintiffs sought reversal of the township's position, contending that the decision to deny the special use had no basis in law or in fact and was arbitrary and capricious.

Defendant township filed an answer to the complaint, denying the allegations contained within the complaint and challenging the request for relief. Despite the opposition, petitioners, purportedly neighboring and adjacent property owners to plaintiffs' land, sought to intervene in the litigation as of right. Petitioners alleged that the criteria to allow intervention as of right was satisfied. Specifically, petitioners alleged that their motion was timely filed, the representation of their rights by defendant township may be inadequate, and it was possible that petitioners would be bound by the judgment.

After reviewing the pleadings for and in opposition to the motion to intervene, the trial court denied petitioners' motion. The trial court concluded that petitioners failed to demonstrate that the representation by defendant township would be inadequate. The trial court further held that this was a land use, not a zoning case. Consequently, petitioners would not be bound by the judgment in the action and could pursue their own cause of action. A written order delineating the trial court's denial of the petition for intervention was not filed with the trial court.

***2** Seven months after the hearing regarding intervention, petitioners filed a pleading entitled "motion for restraining order to bar negotiations between plaintiff and defendant leading to consent judgment during pendency of litigation and appeals thereto." Specifically, petitioners alleged that, after the intervention hearing, it was understood that defendant township would submit an order reflecting the trial court's decision. However, an order was never submitted. Petitioners alleged that the failure to submit an order violated their due

process rights and pursuit of appellate remedies. Petitioners requested an order barring any settlement negotiations and sanctions for the failure to timely submit an order. Defendant township and plaintiffs opposed the motion, noting that the court rules did not limit the submission of an order by the prevailing party. Consequently, petitioners could have submitted their own order documenting the trial court's ruling to seek relief at the appellate level. It was alleged that the late objection was an obstruction of the judicial process for political purposes. Therefore, the parties to the litigation asked for sanctions against petitioners. On September 17, 2002, an written order denying petitioners' request for intervention was entered.

On September 25, 2002, petitioners filed a motion for relief from judgment or order, a motion for stay of proceedings pending disposition of motion for relief from judgment, and an emergency motion for rehearing or reconsideration of the denial of petitioners' motion for intervention as of right. Petitioners also sought to name additional intervening defendants to the petition. They presented supplemental information to the trial court that had not been presented with the first motion seeking intervention. It was alleged that the information was not available at the time of the original hearing addressing intervention. Petitioners cited to quotations from township officials in newspaper articles indicating that settlement was in the best interests of defendant township. It was alleged that this information demonstrated that their interests would not be represented by defendant township. Moreover, petitioners alleged that defendant township had committed a fraud upon the court when it was represented that they would adequately protect petitioners' interest.

In response, the parties to the litigation alleged that the documentation submitted by petitioners did not substantiate the allegations raised by petitioners. Additionally, the parties to the litigation questioned petitioners' failure to challenge the trial court's ruling regarding intervention earlier, rather than after the parties had engaged in substantial negotiations toward settlement.

A hearing was held before the trial court.¹ The trial court noted that the township board was to render a decision regarding settlement on October 28, 2002. Therefore, the trial court continued the hearing until after the board decision. After the township board approved the settlement between plaintiffs and defendant township, the parties filed a motion for entry of consent judgment before the trial court. At

this hearing, the parties addressed key points of the consent judgment before the trial court. Petitioners' counsel did not seek to respond to the consent judgment, but sought to proceed with the motion for stay, motion for relief from judgment, and the motion to add parties. The trial court noted that the motion for reconsideration had to be decided first, and oral argument would not occur. The trial court denied petitioners' motion for reconsideration. The trial court held that petitioners failed to present evidence of compromised negotiations, failed to present evidence of a lack of authority to negotiate and bind the settlement, and failed to present evidence of standing. The trial court further held that the motion merely presented the same issues previously ruled upon by the trial court. Lastly, the trial court reviewed the consent judgment and granted the motion for entry of judgment. The trial court directed counsel for defendant township to file an order documenting the rulings under the seven-day rule to ensure that there would be no dispute regarding the time frame for pursuit of appellate remedies.

¹ This hearing held on October 14, 2002, did not specify the motions that were considered by the trial court. The parties to the litigation asserted that petitioners' motion for restraining order was withdrawn after their responses to the motion were sent to petitioners' counsel. However, the trial court, during this hearing, questioned whether the motion for restraining order was premature in light of the fact that it was unknown whether the township board would agree to any settlement. It is unclear from the record whether the motion for restraining order was dismissed by petitioners.

***3** Petitioners then sought to address the motion for relief from judgment. The trial court did not render a decision on the remaining motions. The trial court indicated that a decision was unnecessary because the request for intervention and reconsideration of the denial of intervention had not been granted by the trial court. Petitioners appeal as of right.

Petitioners first allege that the trial court erred in denying their request for intervention as of right. We disagree. A trial court's decision on a motion to intervene is reviewed for an abuse of discretion. *Vestevich v. West Bloomfield Twp*, 245 Mich.App 759, 761; 630 NW2d 646 (2001). MCR 2.209 governs intervention and provides:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a Michigan statute or court rule confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(C) Procedure. A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107. The motion must

(1) state the grounds for intervention; and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

Intervention is defined in the civil law as "an action by which a third party becomes party in a suit pending between others." *Ferndale School District v. Royal Oak Twp*, 293 Mich. 1, 12; 291 NW 199 (1940). It requires timeliness of action on the part of the intervener. *Id.* Generally, one entering an action as an intervener must take the case as he finds it and cannot delay the trial of the cause. *Id.* "[A]n intervention in the exercise of an intelligent discretion by the trial court, will not be granted where the intervener has been guilty of laches after knowledge of the pendency of the suit, if any part of the same is thereby retarded, rendered nugatory or changes the position of the original parties to their detriment, although the original action has not resulted in a judgment." *Id.*

The general rule is that the municipality represents the citizen in litigation relating to municipal interests. *Id.* at 8. Where litigation is brought by or against a municipality, the

taxpayer is heard through the accredited representative of the municipality, generally the municipality attorney. *Id.* at 9. If the taxpayer is misrepresented, if the attorney is not as able as counsel of his own choosing might be, if the litigation is ill advised or unfortunate, the remedy is the selection of another municipal attorney. *Id.* "Those chosen either directly or indirectly by the people to conduct a litigation for the city rather than the taxpayer himself must have control of such litigation. Petitioner must find something more substantial than his right as a taxpayer before he can come into a case brought by the city." *Id.* Where a motion discloses that "the applicant may have been sitting by during the entire period the suit was pending, watching the progress of events, waiting to see what would develop, and only after the end had been reached and he found the result to be unsatisfactory did he conclude to try his own hand. The motion having been addressed to the discretion of the court, its ruling cannot be reversed without a clear showing that it abused its authority." *Id.* at 13.

*4 "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v. Neal*, 219 Mich.App 490, 492; 557 NW2d 133 (1996). However, intervention may be improper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action. *Id.* at 493.²

² Petitioners cite *D'Agostini v. City of Roseville*, 396 Mich. 185, 186; 240 NW2d 252 (1976), for the proposition that three elements are required to intervene: "(1) timely application; (2) representation of the applicant's interest by existing parties is or may be inadequate; (3) applicant may be bound by a judgment in the action." *Id.* at 188. However, this decision was rendered under the prior version of the court rule. GCR 1963, 209.1(3). The court rule was subsequently amended to eliminate the requirement that the applicant may be bound by the judgment. *Oliver v. State Police Dep't*, 160 Mich.App 107, 109; 408 NW2d 436 (1987); MCR 2.209(A)(3).

In *Oliver v. State Police Dep't*, 160 Mich.App 107, 109; 408 NW2d 436 (1987), the minor's mother attempted to intervene on her son's behalf in the cause of action for injury to the minor's father. The minor's father filed a civil lawsuit against his employer alleging civil rights violations. Two other lawsuits were consolidated with the

initial lawsuit. When the mother learned of an impending settlement of the consolidated lawsuit, she filed petitions for appointment as next friend of the minor and a petition for the minor's intervention. The minor's claims were based on loss of parental society and companionship. The trial court concluded that the minor did not meet the requirements of MCR 2.209(A)(3) to establish a right of intervention.

On appeal, this Court held that there were three elements for intervention: (1) a timely request; (2) a showing that representation of the applicant's interest by existing parties is or may be inadequate; and (3) a disposition of the action that may, as a practical matter, impair or impede the applicant's ability to protect his interests. It was concluded that the minor's application was timely, and representation may be inadequate because the father never attempted to represent the minor's interests. However, this Court held that intervention as of right was properly denied because it was not established that disposition would impair the minor's ability to protect his own interests. *Id.* at 115-116. *Because the minor had the ability to prosecute his own claim*, the trial court properly denied the motion. *Id.* at 116.

Although the court rule itself does not contain a requirement regarding standing, case law provides that the petitioners must also demonstrate standing to intervene in litigation. "Although [petitioners] have a basis to intervene as of right, they must also demonstrate that they have standing to assert their claims." *Karrip v. Cannon Twp.*, 115 Mich.App 726, 732; 321 NW2d 690 (1982).

As an initial matter, petitioners assert that timeliness is not at issue. However, in the manner in which this case was conducted, timeliness is at issue based on laches. While petitioners *initially* filed the motion to intervene in a timely manner, after the motion was denied an order did not enter. Petitioners waited seven months without any additional activity occurring in the lawsuit. Then, when petitioners knew that the parties to the litigation were close to a settlement, petitioners filed a motion for restraining order, alleging that defendant township did not enter an order evidencing the denial of the motion to intervene. Consequently, it was alleged that petitioners were denied due process and their right to appeal. However, the court rule addressing entry of an order delineates the available procedures and does not limit the submission of the order by the prevailing party. MCR 2.602(B). The court rule addresses the procedure for entry of an order, and the plain language of the court rule, see *ISB Sales Co v. Dave's Cakes*, 258 Mich.App 520, 528-529;

672 NW2d 181 (2003), places no limitation on the party that submits the order. While traditionally the prevailing party may submit the order, there was nothing to prevent petitioners from submitting an order of their own. Moreover, petitioners waited seven months until they knew that settlement was approaching. If petitioners genuinely believed that they were deprived of due process or a right to appeal, there was nothing to preclude petitioners from seeking court assistance to compel defendant to prepare the order or to submit one on their own behalf.

*5 Although petitioners filed the motion timely, the trial court repeatedly questioned petitioners' inactivity for seven months until settlement approached, and the failure to raise defendant township's omission in presentation of an order or petitioners' own entry of an order earlier. As previously stated, an applicant may not fail to act while a lawsuit is pending, watch the progress of events, and, when the end was reached, attempt to object to the conclusion of the lawsuit. *Ferndale School District, supra*. Under the circumstances of this case, we cannot conclude that the denial of the motion for intervention was an abuse of discretion. *Vestevich, supra*.

Moreover, petitioners failed to satisfy the standing requirement. *Karrip, supra*. The standing requirement was addressed in *Unger v. Forest Home Twp.*, 65 Mich.App 614, 616; 237 NW2d 582 (1975). In that case, the appellant Unger filed a claim of appeal from the issuance of a building permit for the construction of an apartment/condominium complex by appellee township. The recipient of the permit, a construction company, was allowed to intervene in the lawsuit based on the parties' stipulation. However, when examining the position of Unger, it was concluded that he did not have standing to challenge the issuance of the permit:

In order to have any status in court to challenge the actions of a zoning board of appeals, a party must be "aggrieved," ... The plaintiff must allege and prove that he has suffered some special damages not common to other property owners similarly situated ...

It has been held that the mere increase in traffic in the area is not enough to cause special damages ... Nor is proof of general economic and aesthetic losses sufficient to show special damages.... Consequently, when the plaintiff alleges facts showing only those type of damages, summary judgment against him is proper ...

John Unger in his claim of appeal to the circuit court and in one affidavit alleged that he owned real property in

the township bordering on the same lake as the land in question. Those allegations showed no special damages. The only inferences one might draw from those stated facts are that the traffic on the lake might increase, and that property values in general for lake property might go down. As discussed above, those allegations are insufficient to prevent summary judgment against the appellant [Unger] for lack of standing.” [*Id.* at 617-618 (citations omitted.)]

Furthermore, petitioners failed to establish the third requirement to permit intervention as of right. Specifically, petitioners failed to demonstrate that disposition of the action may as a practical matter “impair or impede the applicant's ability to protect that interest.” MCR 2.209(A)(3). There is no indication that petitioners are precluded from filing their own cause of action to address their concerns. *Oliver, supra*. Accordingly, we cannot conclude that the trial court's decision to deny was an abuse of discretion. *Vestevich, supra*.

*6 We note that in support of their motion for intervention, petitioners raised serious allegations regarding violations of a voter's right of referendum, violations of the Open Meetings Act, health concerns, and conflicts of interest. However, a statement of position by a party without citation to authority is insufficient to raise an issue. *Sherman v. Sea Ray Boats, Inc.*, 251 Mich.App 41, 57; 649 NW2d 783 (2002). A party may not leave it to this Court to search for authority to sustain a position. *Id.* It does not appear that petitioners could find support for their position. For example, petitioners asserted that their submission of petitions should have caused defendant township to place the issue of the mining of the property on the ballot for referendum. Case law is to the contrary. Actions by a zoning board are divided into “legislative” and “administrative” actions. *Palmer v. Superior Twp.*, 60 Mich.App 664, 672-675; 233 NW2d 14 (1975). When a decision is based on general grounds, it is generally deemed to be legislative action. However, when a decision is based on individual grounds, it is generally characterized as administrative. A right of referendum extends only to legislative acts. *Beach v. Saline*, 412 Mich. 729, 730-731; 316 NW2d 724 (1982). A decision to acquire real estate was not subject to referendum because there was nothing inherently legislative about such a decision. *Id.* at 731. See also *Sun Communities v. Leroy Twp.*, 241 Mich.App 665, 669; 617 NW2d 42 (2000) (approval of special use permit requests are essentially administrative in nature.) The decision at issue did not involve a township or area wide classification, but rather involved the issuance of a special use permit for a specific property. Therefore, it was an administrative

decision that was not subject to referendum. *Beach, supra*. Accordingly, these blanket allegations regarding impropriety are insufficient to warrant reversal of the trial court's decision regarding intervention.

Petitioners also allege that the trial court abused its discretion by denying their motion for reconsideration. We disagree. A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Churchman v. Rickerson*, 240 Mich.App 223, 233; 611 NW2d 333 (2000). An abuse of discretion occurs when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Id.* It is not an abuse of discretion to deny a motion for reconsideration based on legal theory and facts that could have been pleaded or argued prior to the trial court's original order. *Charbeneau v. Wayne Co General Hosp.*, 158 Mich.App 730, 733; 405 NW2d 151 (1987).

In the motion for reconsideration, petitioners continued to raise the allegations that a conflict of interest was presented where the attorney for defendant township was provided by the township's insurance provider, revealing that it only had an interest in settling the litigation. This blanket assertion was not supported with citation to authority. *Sherman, supra*. Nonetheless, the trial court held that a conflict of interest was not presented. The conclusion that a conflict of interest exists is a question of fact and is reviewed under the clearly erroneous standard. *Camden v. Kaufman*, 240 Mich.App 389, 399; 613 NW2d 389 (2000). We cannot conclude that the trial court's conclusion in this regard was clearly erroneous. *Id.*

*7 Petitioners also alleged that defendant township committed a fraud upon the court because the township supervisor gave statements to the newspapers indicating that the lawsuit should settle if possible. Petitioners alleged that these statements demonstrated that defendant township would not adequately address their interests. However, the adequacy of representation is only one element of the three required for intervention, and petitioners did not address the requirement regarding impairment of their ability to file their own lawsuit. *Oliver, supra*. Moreover, public policy is in favor of simplifying litigation and encouraging settlement. *Domako v. Rowe*, 438 Mich. 347, 361; 475 NW2d 30 (1991). “[I]n the practical realities of civil litigation, the vast majority of cases must be and are in fact settled. Wise judicial policy favors settlement between the parties.” *Putney v. Haskins*, 414 Mich. 181, 189; 324 NW2d 729 (1982). “Deciding whether to try a case to judgment or to settle it involves elements of legal

evaluation, of financial capacity to take risk, and of appetite for court room conflict which vary widely among litigants.” *Farmer v. Christensen*, 229 Mich.App 417, 429; 581 NW2d 807 (1998) (citations omitted.) In light of the public policy of this state favoring settlements, the recommendation by the township supervisor and township counsel to settle does not establish a palpable error warranting reconsideration. Accordingly, the trial court did not abuse its discretion by denying the motion for reconsideration. *Churchman, supra*.

Furthermore, while petitioners criticize the statements and ultimate settlement by defendant township, petitioners acknowledge the high cost of litigation and asserted that they needed to intervene in the litigation because they could not afford to challenge the corporate plaintiff. Defendant township should not be forced to bear the cost of the litigation that petitioners either could not or were unwilling to bear themselves.

Petitioners next allege that the trial court erred in failing to hear oral argument with regard to the motions for relief from judgment or order, to amend to add parties, and for stay pending the motion for rehearing. We disagree. Because petitioners failed to meet their burden of proof regarding standing and the elements of intervention, the filing of additional motions was an exercise in futility that the trial court need and did not address. In any event, the trial court has discretion to eliminate or limit oral argument with regard to motions. MCR 2.119(E)(3); *American Transmissions, Inc v. Channel 7 of Detroit, Inc*, 239 Mich.App 695, 709; 609 NW2d 607 (2000).

Petitioners also assert that the trial court erred in failing to grant their request for an evidentiary hearing where it was alleged that defendant township committed a fraud upon the court. We disagree. Strict factual proof of a dissatisfied party's claim of fraud must be presented to the trial court. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich.App 379, 405; 651 NW2d 756 (2002). Where a party fails to present

specific allegations of fraud, the trial court need not proceed to an evidentiary hearing. *Id*. Defendant township's decision to engage in settlement negotiations and the limitation on scientific information did not present specific allegations of fraud. Rather, it was a decision that involved elements of legal evaluation, the financial capacity to take risk, and the appetite for conflict. *Farmer, supra*. The trial court did not err by failing to hold an evidentiary hearing under the circumstances.³

3

We note that petitioners also challenge the merits of the motion for relief from judgment, motion to add parties, and the entry of the consent judgment. Because petitioners were not admitted into the litigation, they are not entitled to challenge any decision on those motions. Indeed, the trial court did not address the merits of petitioners' remaining motions after it refused to permit intervention into the litigation. See *Miller v. Inglis*, 223 Mich.App 159, 163; 567 NW2d 253 (1997). We note, however, that those motions were merely repetitive of the allegations contained within the motions decided by the trial court. Lastly, since petitioners were not admitted into the litigation, they do not have standing to challenge the entry of the consent judgment. However, we note that the withholding of mineral or gravel rights through zoning is not permissible unless “very serious consequences” will follow therefrom. *Silva v. Ada Twp*, 416 Mich. 153, 159; 330 NW2d 663 (1982). The documentation submitted by petitioners failed to meet this standard.

*8 Affirmed.

All Citations

Not Reported in N.W.2d, 2004 WL 595053

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EXHIBIT 3

2016 WL 4947279

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.UNPUBLISHED
Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff–Appellee,

v.

14925 LIVERNOIS, Defendant,

and

Stanley White doing business as

Tropical Hut Lounge, Claimant,

and

Intelligent Investment Group, L.L.C., Appellant.

Docket No. 327377.

I

Sept. 15, 2016.

Wayne Circuit Court; LC No. 07–727338–CF.

Before: CAVANAGH, P.J., and SAAD and FORT HOOD, JJ.

Opinion

PER CURIAM.

*1 Intelligent Investment Group, L.L.C. (“IIG”) appeals the trial court’s decision to deny its motion to intervene and for relief from an order of abatement. The trial court concluded that IIG’s motion to intervene was untimely because it was filed after a final judgment had been issued. The court consequently denied IIG’s motion for relief from the order of abatement because IIG was not a party. IIG argues on appeal that the court’s decisions were erroneous. We agree and reverse and remand for proceedings consistent with this opinion.

I. BACKGROUND FACTS AND
PROCEDURAL POSTURE

In October 2007, plaintiff filed a complaint for abatement of nuisance, pursuant to MCL 600.3801 *et seq.* and MCL 333.7521 *et seq.*, against defendant real property (“the property”) and other parties, including claimant Stanley

White, who owned the liquor license and operated the business, the Tropical Hut Lounge (“Tropical Hut”), on the property. The complaint alleged that Tropical Hut had “a reputation for violence, disorderly persons, underage drinking, and use of controlled substances,” and that it had been cited for serving alcohol to minors on several occasions. In addition, it alleged that between 2006 and 2007, Detroit Police officers responded to two shootings and an armed robbery outside of Tropical Hut. Plaintiff asked the court to abate the nuisance by padlocking the property for a period of one year pursuant to MCL 600.3801 *et seq.*, and/or to enter a permanent injunction against defendants to cease from operating Tropical Hut, and to order that the furniture, fixtures, and other contents of the building be sold to pay any outstanding taxes, liens, or other outstanding costs against the property, and that the court order the forfeiture of the property and authorize the appointment of a receiver.

Other than White’s answer to the complaint, nothing of substance happened in the case until October 2014. At that time, White entered into a consent judgment with plaintiff and stipulated that he was the owner of the property and that no other person or entity had a valid legal claim or interest in the property. White agreed to make several changes to the property and his business operations under the terms of the judgment, including installing lighting in the parking lots and alley; installing security cameras; instructing employees to ensure that customers of Tropical Hut were age 21 or older; and training security staff in “de-escalating” situations in which patrons had to be escorted out of the bar. White also agreed to pay a “redemption fee” of \$1,500 to the prosecutor’s office by October 24, 2014. When White failed to pay the redemption fee, the circuit court ordered the property to be padlocked for one year, beginning November 21, 2014, and ordered any occupants of the property to vacate during the padlocking. The court further ordered that the property was not to be mortgaged, exchanged, or transferred during the padlocked period.

*2 In January 2015, IIG moved (1) to intervene and (2) for relief from the order of abatement. According to IIG, the Wayne County Treasurer had foreclosed on the property on April 20, 2011, for the failure to pay property taxes, and in October 2011, IIG purchased the property from the treasurer. Thus, IIG claimed that it was the sole owner of the property and that it learned of the order of abatement only after it discovered that the property had been padlocked. The court denied IIG’s motion to intervene as untimely because a final judgment had already been entered in the case. It also denied

IIG's motion for relief from the order of abatement because it was not a real party in interest.

IIG filed with this Court an application for leave to appeal the trial court's decision, which we granted. See *People v. 14925 Livernois*, unpublished order of the Court of Appeals, entered July 27, 2015 (Docket No. 327377).

II. MOTION TO INTERVENE

IIG argues that the trial erred when it denied IIG's motion to intervene. We agree. This Court reviews a trial court's decision on a motion to intervene for an abuse of discretion. *Auto-Owners Ins. Co. v. Keizer-Morris, Inc.*, 284 Mich.App 610, 612; 773 NW2d 267 (2009). “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Id.* (quotation marks and citation omitted).

Pursuant to MCR 2.209(A)(3), a person who submits a timely application has a right to intervene

when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The trial court denied IIG's motion to intervene solely because it determined that the motion was untimely, as a final judgment had already been entered. The court relied on *Dean v. Dep't. of Corrections*, 208 Mich.App 144, 150–151; 527 NW2d 529 (1994), *aff'd* 453 Mich. 448 (1996), and *WA Foote Mem. Hosp. v. Mich. Dep't. of Pub. Health*, 210 Mich.App 516, 525; 534 NW2d 206 (1995), for this proposition. We, however, disagree that a final judgment acts as a bar in all circumstances and that these cases are controlling.

In *Dean*, a panel of this Court held that the intervening plaintiffs' postjudgment motion to intervene was untimely, and stated that “[t]here should be considerable reluctance on

the part of the courts to allow intervention after an action has gone to judgment and a strong showing must be made by the applicant.” *Dean*, 208 Mich.App at 150. We further stated:

[The] intervening plaintiffs made a less-than-strong showing that intervention was appropriate. They merely claimed that their action and the main action had a question of law in common and that intervention would not unduly delay or prejudice the adjudication of the original parties' rights. *Nowhere in their motion do intervening plaintiffs explain why they failed to move for intervention while the main action was pending.* [*Id.* at 150–151 (emphasis added).]

*3 We concluded that “[a]llowing intervening plaintiffs to intervene after a judgment is entered promotes a bad public policy: intervening plaintiffs reap the benefits of a favorable judgment but would not be bound by an adverse judgment.” *Id.* at 151.

However, *Dean* is distinguishable from the present case in three primary aspects. First, unlike the applicants in *Dean*, IIG did explain why they moved to intervene when they did. IIG claims it only became aware of any proceedings when it found the property padlocked pursuant to the trial court's order of abatement. Nothing in the record gives any indication that IIG could have or should have known about the proceedings earlier.

Second, the Court's concerns in *Dean*—that allowing parties to intervene after judgment has been entered promotes gamesmanship because a party could wait to intervene only after a favorable judgment has been entered, and thereby not be bound by any unfavorable judgment—are not present in the instant case. Here, no such favorable judgment had been entered from which IIG sought to benefit. Although White was permitted to continue operating the Tropical Hut under the terms of the consent judgment, the judgment was not entirely in his favor, as White was required to expend monies to purchase lights and security cameras, and for additional employee training, in addition to the \$1,500 redemption fee. Assuming that IIG would have been subject to the same terms under the judgment as White, there is no indication that

IIG moved to intervene in order to benefit from a favorable judgment. And with respect to the later order for abatement, there is no question that this order was not advantageous to IIG. Under this order, the property was to be padlocked for a year, thereby preventing IIG, the clear owner of record, from utilizing the property in any fashion.

Third, the proposed intervenors in *Dean* sought *permissive intervention* through MCR 2.209(B), and here, IIG sought *intervention of right* through MCR 2.209(A). Under the rules for permissive intervention, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” MCR 2.209(B). Notably, under MCR 2.209(A) for intervention of right, there is no corresponding consideration. Thus, unlike with intervention of right, when a request for permissive intervention occurs, a court must evaluate any potential prejudice to the original parties, which necessarily includes consideration of whether a judgment may have already been entered in the action.

Similarly, in *W A Foote*, we concluded that the trial court abused its discretion when it allowed the intervening plaintiff to intervene. *W A Foote*, 210 Mich.App at 525. The intervening plaintiff argued “that the parties’ claims arose out of the same transactions and occurrences, and that the identical question of law was at issue in both cases,” which presumably entitled it to permissive intervention. *Id.* at 522; see MCR 2.209(B)(2). We cited our holding in *Dean* “that a trial court abuses its discretion in granting a motion to intervene after a judgment favorable to the intervenor has already been entered for the original party to the suit with whom the intervenor is attempting to align.” *W A Foote*, 210 Mich.App at 525. Further, we stated that “[f]ollowing the rationale of *Dean*, it would be equally unfair to permit [the intervening plaintiff] to intervene in the case *when it knew that Foote had just received a favorable ruling from the trial court.*” *Id.* (emphasis added).

*4 Here again, the facts in the instant case are not similar, as IIG did not wait to intervene until after entry of a favorable judgment. Rather, there is nothing in the record to show that it was aware of the litigation at any time before its building was padlocked pursuant to the order of abatement, a decision which certainly was not favorable to IIG.

Therefore, we hold that the trial court erred when it ruled that IIG’s motion to intervene was untimely based on *Dean* and *W A Foote* because our holdings were not that, regardless of

the circumstances, a motion to intervene as of right may *never* be granted after entry of a final judgment. In fact, in other decisions, we have held that entry of a final judgment is not a bar to a motion to intervene. See, e.g., *Vestevich v. West Bloomfield Twp.*, 245 Mich.App 759, 762–763; 630 NW2d 646 (2001); *Mahesh v. Mills*, 237 Mich.App 359, 364–365; 602 NW2d 618 (1999). Additionally, IIG correctly points out that MCR 2.209(A) does not contain any express language that an application to intervene must be made prior to entry of a final judgment.

In *Vestevich*, the plaintiff owned a piece of property zoned as residential, which he sought to develop commercially, and challenged the defendant’s enforcement of a zoning ordinance as unconstitutional. *Vestevich*, 245 Mich.App at 760–761. The trial court upheld the ordinance, and we affirmed. *Id.* at 761. The plaintiff filed, but did not notice, a motion for reconsideration, and the parties entered into a consent judgment that allowed the plaintiff to develop the property commercially in exchange for “certain concessions.” *Id.* However, adjacent and other nearby property owners objected to the plaintiff’s development and filed motions to intervene, which were granted by the trial court. *Id.* We affirmed the decision of the trial court granting permissive intervention under MCR 2.209(B), stating that “the concern of inadequate representation of interests need only exist; inadequacy of representation need not be definitely established. Where this concern exists, the rules of intervention should be construed liberally in favor of intervention.” *Id.* at 762–763. Further, we stated that although the consent judgment included terms that were “obviously intended to address the concerns of nearby landowners, this does not mean that defendant could not have failed to address all concerns of all affected landowners” and the “defendant’s representation of the intervenors’ interests might well have been inadequate”; thus, intervention was appropriate. *Id.* at 762–763.

Likewise, in the instant case, neither of the existing parties adequately represented IIG’s interests in the litigation. White was no longer the owner of the property at the time of the entry of the consent judgment or order of abatement and, thus, was not similarly situated to IIG and could not have adequately represented its interests in the litigation. IIG’s ownership interest in the property was not represented by the existing parties pursuant to MCR 2.209(A)(3). As a result, the trial court erred when it denied IIG’s motion to intervene as of right.

*5 Incidentally, we note that plaintiff did not dispute that IIG was the owner of the property. Instead, plaintiff argued that IIG was nevertheless bound by the consent judgment because White was “associated” with IIG, and IIG had acted inequitably in order to avoid liability under the judgment. However, plaintiff offered no evidence to support these allegations. Because there was no evidence that IIG had acted in concert with White to avoid the consent judgment, or that IIG was aware of the foreclosure action, we hold that the trial court abused its discretion when it denied IIG's motion to intervene.

III. MOTION FOR RELIEF FROM JUDGMENT

IIG argues that the trial court improperly denied its motion for relief from the order of abatement under MCR 2.612(C). We review a court's decision on a motion for relief from judgment or order for an abuse of discretion. *Detroit Free Press v. Dep't. of State Police*, 233 Mich.App 554, 556; 593 NW2d 200 (1999).

MCR 2.612(C)(1) governs how a party may obtain relief from judgment or order and states as follows:

On motion and on just terms, the court may relieve *a party or the legal representative of a party* from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

* * *

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

* * *

(f) Any other reason justifying relief from the operation of the judgment.

[Emphasis added.]

Here, the trial court did not analyze the merits of IIG's claims that it was entitled to relief due to mistake under subsection (a) or any other reason under subsection (f). Instead, because the court denied IIG's request to intervene, it found that IIG's motion for relief from judgment was improper because IIG

was not “a party or the legal representative of a party,” as the court rule requires. But because we have ruled that IIG should have been allowed to intervene, the court necessarily erred when it relied on IIG's status as a nonparty. Normally, we would allow the trial court on remand to consider the underlying merits of IIG's motion first, but the facts as presented are straight-forward and, due to the interests of justice, we will address whether IIG was entitled to relief.

When the underlying consent judgment and order for abatement were entered in October and November 2014, respectively, the trial court was under the impression that White was still the owner of the property, as he had been when the case was initiated seven years earlier in October 2007. However, the evidence clearly establishes that this was erroneous, i.e., a “mistake.” IIG provided to the trial court the October 2011 deed, which established that it had been the owner of the property for the three years preceding the entry of both the consent judgment between the prosecutor and White and the subsequent order of abatement. Consequently, the derivative order of abatement was not valid as to IIG because White was not the property's owner and did not have authority to enter into the earlier consent judgment on behalf of IIG or the defendant property.¹

¹ Additionally, assuming that the facts as presented do not constitute a “mistake” under subsection (a), White's representations that he was the owner of the property at the time of the consent judgment would constitute “fraud” or “misrepresentation” under subsection (b).

*6 Because we hold that IIG was entitled to intervene as of right and obtain relief from the abatement order, we need not address IIG's other argument that the consent judgment and order of abatement were void because plaintiff's interest in the property was extinguished by the judgment of foreclosure. See *Ryan v. Ryan*, 260 Mich.App 315, 330; 677 NW2d 899 (2004) (“Generally, this Court need not reach moot issues or declare legal principles that have no practical effect on the case....”).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2016 WL 4947279

EXHIBIT 4

2013 WL 2226962

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.

Anthony JOHNSON, Plaintiff,

and

Southeast Michigan Surgical Hospital

LLC d/b/a Southeast Michigan Surgical

Hospital, Intervening Plaintiff–Appellant,

and

Great Lakes Anesthesia PLLC and Greater Lakes

Ambulatory Surgical Center PLLC d/b/a Endosurgical

Center at Great Lakes, Intervening Plaintiffs,

v.

TITAN INDEMNITY COMPANY, Defendant,

and

Victoria General Insurance

Company, Defendant–Appellee,

and

Lee Boma Johnson, Defendant.

Docket No. 308685.

|

May 21, 2013.

Wayne Circuit Court; LC No. 09–020352–NI.

Before: BORRELLO, P.J., and K.F. KELLY and MURRAY,
JJ.**Opinion**

PER CURIAM.

***1** In this action to recover benefits under the no-fault act, intervening plaintiff Southeast Michigan Surgical Hospital (Southeast) appeals as of right a February 3, 2012, trial court order granting defendant Victoria General Insurance Company's (Victoria General's) motion for reconsideration wherein the court set aside an October 14, 2011, order reopening the case to allow Southeast to intervene in the proceeding. The trial court also held that Victoria General and plaintiff Anthony Johnson had a binding settlement agreement and held that Southeast's patient lien agreement

was void and stricken from the record. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

In August 2008, Johnson was a passenger in an automobile that was involved in an accident. Victoria General was the no-fault insurer of the automobile. Johnson suffered injuries that necessitated professional medical treatment from several medical care providers including Southeast. According to Southeast, Johnson's medical bill totaled \$56,182.19.

On August 18, 2009, Johnson commenced this lawsuit against Victoria General seeking to recover personal injury protection (PIP) benefits under the no fault act, MCL 500.3101 *et seq.* After Johnson filed his complaint and commenced discovery, on August 24, 2010, he signed a “Patient Lien Agreement” with Southeast wherein he agreed to grant the hospital a lien “against any judgments, settlements or other recoveries, for any and all services provided” by the hospital. Johnson agreed that the lien would extend to “any settlements or litigation proceeds, including proceeds from third party actions related to any injuries or conditions for which I am receiving treatment....” Further, the lien instructed Johnson's attorney to “withhold from any and all judgment, settlements or other recoveries monies owed to [Southeast] prior to any distribution....”

At or about the time Johnson signed the lien, according to Southeast, the hospital retained Ira Saperstein as counsel to “look into” Johnson's unpaid medical bills. According to Southeast, Saperstein wrote a letter to Kevin Geer, counsel for Johnson, inquiring about the instant lawsuit. Geer responded by letter on May 23, 2011, wherein he stated that Southeast was aware that “we filed a first party lawsuit *and have been pursuing claims on their behalf*” (emphasis added). Geer further stated, “[a]ccordingly please fully expect that any proceeds payable to your client will have our office as a payee due to our attorney lien.”

On May 24, 2011, the parties proceeded to case evaluation. Thereafter, Johnson and Victoria General agreed to terms of a settlement agreement where Johnson would receive \$50,000 and relinquish his right to any further recovery for all medical services provided between August 2008 and August 2011. The parties did not place a settlement agreement on the record.

Document received by the MI Court of Claims.

*2 When Southeast learned of the terms of the settlement agreement, Saperstein wrote a letter to Geer and counsel for Victoria General indicating that Geer failed to include Southeast's bill at case evaluation. Saperstein indicated that Southeast would move to intervene as a party plaintiff. The next day, on September 22, 2011, Southeast moved to intervene pursuant to MCR 2.209(A) and (B), arguing that the parties would not adequately represent its right to recover from Victoria General.

On September 30, 2011, the trial court granted Southeast's motion to intervene after a hearing where Geer indicated that he had been under the mistaken belief that Southeast had already intervened or filed a separate suit to recover the unpaid medical bill. Victoria General opposed the motion to intervene. Two weeks later, on October 14, 2011, following a settlement conference, the trial court entered an order reopening the case.

Victoria General moved for reconsideration, arguing that Southeast was not entitled to intervene because it was aware of the pending litigation before case evaluation, yet failed to become involved until after the parties agreed to settle. At a motion hearing, Geer argued that Southeast lost its right to assert the patient lien because Southeast failed to become involved in the case until after case evaluation. Geer argued that it would be unjust to allow Southeast to assert the lien against Johnson.

In response, Southeast argued that it had no reason to suspect that Geer would fail to include its bill at case evaluation where Geer requested documents from Southeast to include in the case evaluation and where Southeast sent Geer the hospital bill, records, and the patient lien prior to case evaluation.

After hearing arguments, the trial court granted Victoria General's motion for reconsideration and held that Southeast's patient lien was void because Southeast "sat on their rights." On February 3, 2012, the trial court entered a written order granting Victoria General's motion for reconsideration, setting aside its October 14, 2011, order reopening the case, and declaring the Southeast patient lien "stricken and void." This appeal ensued.

II. ANALYSIS

Southeast contends that the trial court erred in denying its motion to intervene and in granting Victoria General's motion

for reconsideration. We review a trial court's decision on a motion to intervene for an abuse of discretion. *Auto-Owners Ins. Co. v. Keizer-Morris, Inc.*, 284 Mich.App 610, 612; 773 NW2d 267 (2009). Similarly, we review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tinman v. Blue Cross & Blue Shield*, 264 Mich.App 546, 556-557; 692 NW2d 58 (2004). A trial court abuses its discretion when it reaches a decision that falls "outside the principled range of outcomes." *Auto-Owners Ins. Co.*, 284 Mich.App at 612. "This Court reviews de novo a trial court's resolution of issues of law including the interpretation of statutes and court rules." *Hill v. L.F. Transp., Inc.*, 277 Mich.App 500, 507; 746 NW2d 118 (2008). "A court by definition abuses its discretion when it makes an error of law." *In re Waters Drainage Dist.*, 296 Mich.App 214, 220; 818 NW2d 478 (2012).

*3 MCR 2.209(A)(3) provides that a party has a right to intervene when:

the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"The decision whether to grant a motion to intervene is within the court's discretion." *Precision Pipe & Supply, Inc. v. Meram Const., Inc.*, 195 Mich.App 153, 156; 489 NW2d 166 (1992). "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v. Neal*, 219 Mich.App 490, 492; 557 NW2d 133 (1996). However, "intervention may not be proper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action." *Precision Pipe & Supply, Inc.*, 195 Mich.App at 157.

Southeast contends that it had the right to intervene pursuant to MCR 2.209(A)(3), because it had an interest in the underlying action where its unpaid medical bill was a component of the PIP benefits that Victoria General owed Johnson.

Having reviewed the record, we conclude that Southeast had a right to intervene under MCR 2.209(A)(3) and that the trial court erred as a matter of law in concluding otherwise. In this case, Southeast had an interest in the “property or transaction” that was the subject of the underlying no-fault action. Specifically, Southeast provided over \$56,000 of medical treatment to Johnson. The benefits were directly related to Johnson's no fault action. In addition, disposition of the present action absent Southeast's participation would impair or impede Southeast's ability to protect its interest in recovering the unpaid medical bill. The proposed settlement agreement between Johnson and Victoria General did not take into account the amounts owed to Southeast, and the agreement would either impair or impede Southeast's future recovery from Victoria General.

Moreover, Southeast did not intentionally delay its motion to intervene by sitting on its rights. See *Precision Pipe & Supply, Inc.*, 195 Mich.App at 157 (reversing the trial court's order denying the appellant's motion to intervene in part because any delay caused by the intervention was not the fault of the appellant). Here, the record does not support that Southeast “sat on its rights.” Rather, Southeast had reason to believe that Geer would include its bill in case evaluation and settlement talks. In particular, on the day before case evaluation, Geer sent a letter to Southeast's counsel representing that he was “pursuing claims” on Southeast's behalf. Furthermore, Geer acknowledged that Southeast sent him copies of the medical bill, records, and a copy of the patient lien agreement. Nevertheless, contrary to the representations in his letter, Geer did not include Southeast's unpaid medical bill in the case evaluation or settlement talks. Instead, Geer and Victoria General reached an informal settlement agreement without considering Southeast's interests. Once Southeast learned that Geer did not include its bill in agreeing to terms of the settlement agreement, it timely moved to intervene two weeks later.¹ Moreover, Southeast's intervention will not overcomplicate the proceedings where its claim is similar to the other claims involved in the case. See *id.* In short, we find that the trial court abused its discretion in denying Southeast's motion to intervene.

¹ We are mindful that Geer claimed at oral argument that he did not include Southeast's bill in the case evaluation because he thought that Saperstein indicated that he would move separately to recover the bill. However, at most, this assertion created an issue of fact regarding the communications

between Geer and Saperstein concerning their respective plans going forward. It did not constitute proof that Southeast lost its right to intervene under MCR 2.209(A)(3) by sitting on its rights.

*4 Southeast also contends that the trial court erred in finding that Johnson and Victoria General had an enforceable settlement agreement. We review a trial court's decision to enforce a settlement agreement for an abuse of discretion. *Keyser v. Keyser*, 182 Mich.App 268, 270; 451 NW2d 587 (1990). An agreement to settle litigation is contractual in nature. *Kloian v. Domino's Pizza LLC*, 273 Mich.App 449, 456; 733 NW2d 766 (2006). “We review for clear error the findings of fact underlying the circuit judge's determination whether a valid contract was formed.” *46th Circuit Trial Court v. Cty. of Crawford*, 476 Mich. 131, 140; 719 NW2d 553 (2006).

In this case, the record supports that the parties negotiated terms of a settlement agreement, but had not finalized the agreement. Here, the parties did not place a settlement agreement on the record. Further, at the time Southeast moved to intervene, based on the assertions of the attorneys for both Victoria General and for Johnson, it appears that Johnson had not yet signed the settlement agreement. At a hearing to address Victoria General's motion for reconsideration, Johnson's counsel agreed that, “the only reason that there isn't a settlement anymore is because of this intervention.” Counsel for Victoria General stated: “The settlement was with Mr. Geer. When the intervenor hit ... following that negotiation, everything came to a screeching halt....” Thus, based on the representations of counsel for both parties, the trial court clearly erred in concluding that there was a binding settlement agreement as of January 6, 2012.

Finally, Southeast contends that the trial court erred in voiding its patient lien agreement. Whether a lien is authorized in a particular case involves a question of law that we review de novo. *Ypsilanti Charter Twp. v. Kircher*, 281 Mich.App 251, 281; 761 NW2d (2008).

Here, the trial court stated that the lien was void after finding that Southeast “sat on its rights.” Given our conclusion above that the record does not support that Southeast “sat on its rights,” the trial court necessarily erred in voiding the lien agreement on that basis. Furthermore, at the time the court made its ruling, Johnson had not yet finalized the settlement with Victoria General; thus, Southeast could not have “sat on its rights” with respect to asserting the lien against the settlement.

In sum, we conclude that Southeast had the right to intervene under MCR 2.209(A)(3), and that the trial court erred as a matter of law in concluding otherwise. Consequently, the trial court abused its discretion in denying Southeast's motion to intervene and in granting Victoria General's motion for reconsideration.² See *Waters Drainage Dist.*, 296 Mich.App at 220 (“A court by definition abuses its discretion when it makes an error of law”). In addition, the trial court clearly erred in concluding that there was a binding settlement agreement between Johnson and Victoria General and in voiding Southeast's lien agreement.

² Given our conclusion that Southeast had a right to intervene under MCR 2.209(A)(3), we need not address Southeast's argument that it also had a right to intervene under MCR 2.209(A)(1).

***5** Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Appellant having prevailed, may tax costs. MCR 7.219(A).

All Citations

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