

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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-Appellees,

v

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

Defendant-Appellee,

and

MICHIGAN HOUSE OF  
REPRESENTATIVES and MICHIGAN  
SENATE,

Intervenor Defendants-  
Appellants.

Court of Appeals Docket No. 363125

Court of Claims Case No. 22-000044-MM

**RIGHT TO LIFE OF MICHIGAN  
AND MICHIGAN CATHOLIC  
CONFERENCE'S MOTION TO  
INTERVENE AS APPELLANTS**

**This Case Involves a Claim That a  
Michigan Statute Is Unconstitutional**

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**RIGHT TO LIFE OF MICHIGAN AND THE MICHIGAN CATHOLIC  
CONFERENCE'S MOTION TO INTERVENE AS APPELLANTS**

Right to Life of Michigan and the Michigan Catholic Conference (“Proposed Intervenors”) move to intervene as appellants under MCR 2.209 and MCR 7.211. In support, Proposed Intervenors state the following:

1. On April 7, 2022, Planned Parenthood and one of its doctors filed suit against Attorney General Nessel in the Court of Claims, challenging MCL 750.14’s constitutionality. The Attorney General promptly issued a prepared public statement declaring that she would not defend MCL 750.14.

2. Right to Life of Michigan and the Michigan Catholic Conference, as private organizations, could not intervene as defendants in the Court of Claims under this Court’s precedent. But they did everything legally possible as non-intervenors to defend against Planned Parenthood’s lawsuit.

3. On April 20, 2022, Proposed Intervenors filed a motion and proposed *amici curiae* brief that the Court of Claims accepted. Their brief maintained that the Court of Claims lacked jurisdiction because there was no adversity between the parties or actual controversy for the trial court to resolve, and the case was not ripe. Proposed Intervenors also argued that the presiding judge should recuse based on an objective appearance of impropriety.

4. After the Court of Claims accepted Right to Life of Michigan and the Michigan Catholic Conference’s *amici* brief, the Attorney General agreed with Proposed Intervenors’ position that because there was no adversity between the

parties or actual controversy, the Court of Claims lacked jurisdiction. Yet the Court of Claims refused to dismiss Planned Parenthood’s case.

5. On May 17, 2022, without a hearing or any opposition on the merits from the Attorney General, the only named defendant, the Court of Claims granted Planned Parenthood’s request for a preliminary injunction and enjoined MCL 750.14’s enforcement. The Court of Claims’ preliminary injunction purported to apply to the Attorney General’s Office *and* every county prosecutor in the state. *Id.*

6. On May 20, 2022, Right to Life of Michigan and the Michigan Catholic Conference, along with Jackson County Prosecutor Jerard M. Jarzynka and Kent County Prosecutor Christopher R. Becker, filed a complaint for order of superintending control in this Court, asking the Court to order the Court of Claims to dismiss the case or vacate its preliminary injunction.

7. After comprehensive briefing, on August 1, 2022, this Court concluded that the Court of Claims lacked jurisdiction over county prosecutors because they are local—not state—officials. Thus, the Court of Claims’s preliminary injunction did not apply to local prosecutors and Prosecuting Attorneys Jarzynka and Becker were free to enforce MCL 750.14. This Court dismissed the complaint based on the standing doctrine.

8. Back in the Court of Claims, Planned Parenthood and the Legislature—which had intervened as a defendant to ensure that the court’s injunction order did not become appeal proof—filed competing motions for summary disposition.

9. On August 22, 2022, Right to Life of Michigan and the Michigan Catholic Conference filed a motion and proposed *amici curiae* brief, opposing Planned

Parenthood’s motion for summary disposition and supporting the Legislature’s motion for summary disposition. The Court of Claims granted their motion and accepted the *amici* brief.

10. On September 7, 2022, the Court of Claims issued an opinion and order that declares MCL 750.14 facially unconstitutional and permanently enjoins the Attorney General’s Office—as well as all county prosecutors in the state—from enforcing the law.

11. The Court of Claims’ ruling not only flouts this Court’s precedential decision that “there is *no* right to abortion under the Michigan Constitution,” *Mahaffey v Attorney General*, 222 Mich App 325, 336; 564 NW2d 104 (1997) (emphasis added), but also this Court’s Order in *In re Jarzynka* that county prosecutors are local officials not subject to the Court of Claims’s jurisdiction. Though the Court of Claims judge brushed aside *In re Jarzynka*’s directive as unpublished and thus non-binding, the order *is* binding on her because she was the defendant and has not appealed it.

12. On September 23, 2022, the Legislature appealed the Court of Claims’ summary disposition ruling to this Court.

13. Now that this case is no longer pending in the Court of Claims, there is no jurisdictional bar that prevents non-state entities or officials from intervening as defendants. Accordingly, Right to Life of Michigan and the Michigan Catholic Conference now move to intervene as appellants in this Court.

14. Proposed Intervenors meet all the requirements for mandatory and permissive intervention, and there is no impediment to them intervening on appeal, as the brief in support explains.

15. Of all the parties involved in lawsuits regarding MCL 750.14's constitutionality, only Right to Life of Michigan and the Michigan Catholic Conference have been actively involved in the Court of Claims, Oakland County Circuit Court, and Supreme Court litigation, as well as the superintending-control action in this Court. And Proposed Intervenors have not merely filed amicus briefs in those cases, they sought to intervene in *all of the first three proceedings*, and along with the two prosecutors, filed the superintending-control action in this Court. *No one else* moved to intervene in any of these cases.

16. Proposed Intervenors' unique interest, dedication, and involvement in defending MCL 750.14 is unmatched. Only by allowing Right to Life of Michigan and the Michigan Catholic Conference to intervene as appellants, will their ability to protect their exceptional and weighty interests in passing, sustaining, and defending Michigan's pro-life laws be ensured.

17. Recently, the Supreme Court unanimously allowed intervention by Citizens to Support MI Women and Children, a pro-life ballot-question committee spearheaded by Right to Life of Michigan and the Michigan Catholic Conference, in a matter involving whether voters should be asked to add to the Constitution a right to abortion (which the Court of Claims insists already exists). *Reproductive Freedom for All v Bd of State Canvassers*, \_\_ Mich \_\_ (Order), 2022 Westlaw 4117489, \*1 (Sept. 8, 2022).

18. This Court should follow the Supreme Court's lead and grant Right to Life of Michigan and the Michigan Catholic Conference's motion to intervene here.

For these reasons and those set forth in the brief in support, Right to Life of Michigan and the Michigan Catholic Conference ask this Court to (1) grant their motion and enter an order allowing Proposed Intervenors to intervene as an appellant in Case No. 363125 and (2) issue a briefing schedule.

Dated: September 26, 2022

Respectfully submitted,

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