

STATE OF MICHIGAN  
IN STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM  
THE U.S. DISTRICT COURT, WESTERN  
DISTRICT OF MICHIGAN.

Supreme Court No. 161492  
USDC-WD: 1:20-cv-414

---

MIDWEST INSTITUTE OF HEALTH,  
PLLC, D/B/A GRAND HEALTH  
PARTNERS, WELLSTON MEDICAL  
CENTER, PLLC, PRIMARY HEALTH  
SERVICES, PC, and JEFFREY GULICK,

Plaintiffs,

v

GOVERNOR OF MICHIGAN, MICHIGAN  
ATTORNEY GENERAL, and MICHIGAN  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES DIRECTOR,

Defendants.

---

**The appeal involves a question  
that a provision of the  
Constitution, a statute, rule or  
regulation, or other State  
governmental action is invalid.**

**MOTION FOR IMMEDIATE CONSIDERATION  
OF MOTION OF GOVERNOR AND DIRECTOR OF DEPARTMENT OF  
HEALTH AND HUMAN SERVICES TO PROVIDE THAT  
ANY PRECEDENTIAL VALUE OF THE COURT’S OCTOBER 2 DECISION  
DOES NOT TAKE EFFECT UNTIL OCTOBER 30**

Governor Gretchen Whitmer and Director of the Department of Health and Human Services, Robert Gordon, by and through their attorneys, Deputy Solicitor General B. Eric Restuccia and Assistant Solicitor General Christopher Allen, move for immediate consideration of their motion for this Court to provide that any precedential value of the Court’s October 2 decision does not take effect for 28 days, and they state the following in support of this motion under MCR 7.311(E):

1. On October 2, 2020, this Court issued an opinion in which a majority of the Court ruled that “the EPGA cannot continue to provide a basis for the Governor to exercise emergency powers.” Slip op, p 48 (Markman, J., for majority).

2. Concurrent with this filing, the Governor and the Director of the Department of Health and Human Services have filed a motion to provide that the precedential value of the October 2, 2020 is not effective for 28 days, until October 30, 2020.

3. The matter demands immediate consideration to enable an orderly transition to manage this ongoing crisis. In their motion to stay any precedential effect of the opinion, the Governor and Director seek to ensure that some responsive measures can be placed under alternative executive authority and that the Governor and Legislature can work together to address many other pandemic-related matters that currently fall under executive orders, the very avenue identified by the Court, see slip op, p 3 n 1 (“Our decision leaves open many avenues for the Governor and Legislature to work together to address this challenge and we hope that this will take place”).

4. The Governor and the Director have served the other parties in this motion by e-service consistent with MCR 7.311(E).

**CONCLUSION AND RELIEF REQUESTED**

The Governor and the Director of the Department of Health and Human Services request that this Court immediately consider their motion that this Court provide that any precedential value of the Court’s October 2 decision does not take effect for 28 days, consistent with the enforcement date under MCR 7.315(C)(2)(a).

Respectfully submitted,

*s/B. Eric Restuccia*

B. Eric Restuccia (P49550)  
Deputy Solicitor General

Christopher M. Allen (P75329)  
Assistant Solicitor General

Department of Attorney General  
Attorneys for the Governor  
P.O. Box 30212  
Lansing, Michigan 48909  
(517) 335-7628  
[restucciae@michigan.gov](mailto:restucciae@michigan.gov)

Dated: October 5, 2020