

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

DR. VIKTORIA KOSKENOJA, SAMUEL
HOLCOMB, JAMIE AIRD, NICOLE SAPIRO
VINCKIER, MARK VINCKIER, MADALYN
KNUTSON, DR. LAURA LOZIER, DR.
JEROME WINEGARDEN, and DR. LISA
HARRIS,

Court of Claims No. 25-000165-MM

Honorable Sima G. Patel

Plaintiffs,

v

GRETCHEN WHITMER, in her official
capacity as Governor of the State of Michigan;
DANA NESSEL, in her official capacity as the
Attorney General of the State of Michigan;
JOCELYN BENSON, in her official capacity as
Secretary of State of the State of Michigan;
ELIZABETH HERTEL, in her official capacity
as Director of the Michigan Department of
Health and Human Services; and MARLON
BROWN, in his official capacity as Director of
the Michigan Department of Licensing and
Regulatory Affairs,

Defendants.

Ryan Maddock, Bar No. 1022945 (*pro hac vice*)
Attorney for Plaintiffs
RMaddock@perkinscoie.com
PERKINS COIE LLP
700 13th St NW
Washington, DC 20005

Jameson Ullman, Bar No. 345480 (*pro hac vice*)
JUllman@perkinscoie.com
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, California 94105-3204

Kenneth M. Mogill (P17865)
Mogill & Lemanski, PLLC

Kyla Barranco (P81082)
Assistant Solicitor General
Rebecca Aboona (P81977)
Assistant Attorney General
Michigan Dep't of Attorney General
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
barrancok@michigan.gov
aboonaarl@michigan.gov

Attorneys for Defendants

27 E. Flint Street, 2nd Floor
Lake Orion, MI 48362
(248) 814-9470
kmogill@bignet.net kmogill@miethicslaw.com

Jess Pezley, Bar Nos. OR145193, DC1643406
(*pro hac vice*)
Veronica Darling, Bar Nos. OR180177,
WA50088, CA252158 (*pro hac vice*)
COMPASSION & CHOICES
8156 S Wadsworth Blvd #E-162
Littleton, CO 80128
Telephone: (800) 247-7421
jpezley@compassionandchoices.org
vdarling@compassionandchoices.org

Sara L. Ainsworth, Bar No. 26656 (*pro hac vice*)
Farah Diaz-Tello, Bar No. 4832218 (*pro hac*
vice)
IF/WHEN/HOW: LAWYERING FOR
REPRODUCTIVE JUSTICE
1714 Franklin Street, #100-393
Oakland, CA 94612
(602) 887-6267
sara.ainsworth@ifwhenhow.org
farah.diaz-tello@ifwhenhow.org

Attorneys for Plaintiffs

PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW

Plaintiffs propose the following conclusions of law:

1. This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.6419.
2. **The Right to Reproductive Autonomy:** The Michigan Constitution forbids the government from depriving an individual of the fundamental right to reproductive autonomy,

“which entails the right to make and effectuate decisions about all matters relating to pregnancy.” MICH. CONST. art. I, § 28(1). This fundamental right “shall not be denied, burdened, or infringed upon unless justified by a compelling state interest achieved by the least restrictive means.” *Id.* The State’s interest is “‘compelling’ only if it is for the limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual’s autonomous decision-making.” *Id.* at (4). The State is prohibited from discriminating “in the protection or enforcement of this fundamental right.” *Id.* at (2). Further, the State is prohibited from penaliz[ing], prosecut[ing], or otherwise tak[ing] adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent.” *Id.* at (3).

3. The Pregnancy Exclusion Infringes the Fundamental Right to Reproductive Autonomy under Section 28.

- a. The sections of Michigan’s Estate and Protected Individual Code (“EPIC”) that limit the ability of pregnant individuals to receive the treatment they want at the end of life, limit the ability of patient advocates to assist a pregnant patient in receiving their desired end-of-life care, and limit the ability of health care providers to honor their pregnant patients’ end-of-life decisions, as expressed by a patient advocate, MCL 700.5507(5)(3), 700.5509(1)(d), 700.5512(1) (collectively, “the Pregnancy Exclusion”), violate the constitutional right to reproductive freedom. MICH. CONST. art. I, § 28.
- b. Patient Plaintiffs, and all other pregnant and pregnancy-capable Michiganders, are exercising their fundamental right to reproductive freedom when they

execute a valid advance directive that memorializes their end-of-life decisions—including decisions about what treatment they would consent to or refuse if pregnant—and designate a patient advocate to communicate their healthcare decisions on their behalf if they become incapacitated.

- c. Patient Advocate Plaintiffs, and all other patient advocates, seek to “aid[] or assist[] a pregnant individual in exercising their right to reproductive freedom with their voluntary consent” by communicating the end-of-life decisions of a pregnant, incapacitated patient. MICH. CONST. art. I, § 28(3). The Pregnancy Exclusion unconstitutionally restricts their ability to do so.
- d. Physician Plaintiffs, and all other health care providers, seek to “aid[] or assist[] a pregnant individual in exercising their right to reproductive freedom with their voluntary consent” by honoring the decisions of a pregnant, incapacitated patient, as communicated by their designated patient advocate. *Id.* The Pregnancy Exclusion unconstitutionally restricts their ability to do so.
- e. The Pregnancy Exclusion deprives Patient Plaintiffs, Physician Plaintiffs’ pregnant and pregnancy-capable patients, Physician Plaintiffs, Patient Advocate Plaintiffs, and all individuals capable of becoming pregnant of their right to make or effectuate decisions relating to their pregnancy, including whether to refuse life-sustaining treatment while pregnant.

4. The Pregnancy Exclusion Does Not Survive Section 28 (2)’s Strict Scrutiny Test.

- a. The State lacks a compelling interest in categorically restricting the ability of pregnant and pregnancy-capable people to control their end-of-life decisions through an advance directive and duly designated patient advocate.
- i. The Pregnancy Exclusion categorically and prospectively limits the health care decisions a pregnant or pregnancy-capable person can make.
 - ii. The Pregnancy Exclusion categorically and prospectively limits the right of pregnant or pregnancy-capable people to have a fully enforceable advance directive.
 - iii. The Pregnancy Exclusion's one-size-fits-all approach neglects to consider any individualized circumstances about the pregnant person or their pregnancy before restricting their right to refuse end-of-life treatment.
 - iv. The Pregnancy Exclusion does not further the purpose of protecting the health of the pregnant person.
 - v. The Pregnancy Exclusion is inconsistent with the standard of care and best medical practices. *See* Joint Stipulation of Facts ¶ 35.
 - vi. The Pregnancy Exclusion infringes an individual's right to autonomous decision-making by eliminating their ability to direct their own end-of-life care in advance if they are pregnant or capable of pregnancy.

- b. The Pregnancy Exclusion's categorical and prospective invalidation of a pregnant person's right to refuse life-sustaining treatment is not the least restrictive means to achieve any arguably legitimate state interest.

5. Enforcement of the Pregnancy Exclusion is Unconstitutional Under Section 28.

- a. The State is not authorized to infringe an individual's rights to make decisions about pregnancy by invalidating an otherwise valid advance directive for failure to comply with the Pregnancy Exclusion or the Pregnancy Addendum. *See MCL 700.5507(5); Joint Stipulation of Facts ¶ 4.*
- b. The State is not authorized to prosecute, penalize, or take any adverse action against a patient advocate, including Patient Advocate Plaintiffs, for communicating an incapacitated, pregnant patient's decision to refuse life-sustaining treatment pursuant to a valid advance directive. Any adverse action taken by the State against a patient advocate for refusing treatment consistent with a pregnant, incapacitated patient's advance directive would be unconstitutional under Section 28.
- c. The State is not authorized to prosecute, penalize, or take any adverse action against a health care provider, including Physician Plaintiffs, for honoring the decision of an incapacitated, pregnant patient to refuse life-sustaining treatment, as communicated by their patient advocate. Any adverse action taken by the State against a health care provider for honoring a refusal of treatment communicated by the patient advocate of a pregnant, incapacitated patient would be unconstitutional under Section 28.

d. The Pregnancy Exclusion is unconstitutional under Section 28, both facially and as applied to Plaintiffs.

Plaintiffs' reliance on their Section 28 claims only is contingent on the Court's acceptance of the parties' Joint Stipulation of Facts, filed with this Court on February 27, 2026. In the event the Court does not accept the parties' Joint Stipulation, Plaintiffs reserve the right to pursue all claims as alleged in their Complaint.

Dated: February 27, 2026

Respectfully submitted,

Ryan Maddock, Bar No. 1022945 (*pro hac vice*)
Attorney for Plaintiffs
RMaddock@perkinscoie.com
PERKINS COIE LLP
700 13th St NW
Washington, DC 20005

Jameson Ullman, Bar No. 345480 (*pro hac vice*)
JUllman@perkinscoie.com
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, California 94105-3204

/s/ Kenneth M. Mogill
Kenneth M. Mogill (P17865)
Mogill & Lemanski, PLLC
27 E. Flint Street, 2nd Floor
Lake Orion, MI 48362
(248) 814-9470
kmogill@bignet.net kmogill@miethicslaw.com

Jess Pezley, Bar Nos. OR145193, DC1643406
(*pro hac vice*)
Veronica Darling, Bar Nos. OR180177,
WA50088, CA252158 (*pro hac vice*)

COMPASSION & CHOICES
8156 S Wadsworth Blvd #E-162
Littleton, CO 80128
Telephone: (800) 247-7421
jpezley@compassionandchoices.org
vdarling@compassionandchoices.org

Sara L. Ainsworth, Bar No. 26656 (*pro hac vice*)
Farah Diaz-Tello, Bar No. 4832218 (*pro hac vice*)

IF/WHEN/HOW: LAWYERING FOR
REPRODUCTIVE JUSTICE

1714 Franklin Street, #100-393
Oakland, CA 94612
(602) 887-6267

sara.ainsworth@ifwhenhow.org
farah.diaz-tello@ifwhenhow.org

Attorneys for Plaintiffs

RECEIVED by MCOC 2/27/2026 4:47:05 PM