

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM THE
UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION,

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 JEFFERY GULICK,

Plaintiffs,

v

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

Defendants.

**PLAINTIFFS' RESPONSE TO THE
MOTION OF GOVERNOR AND
DIRECTOR OF DEPARTMENT OF
HEALTH AND HUMAN SERVICE
TO DELAY PRECEDENTIAL
VALUE**

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Stephen J. van Stempvoort (P79828)
Amy E. Murphy{ TA \l "*People v Murphy*,
364 Mich 363; 110 NW2d 805 (1961)" \s
"Murphy" \c 1 } (P82369)
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The Governor and Director of the Department of Health and Human Services have filed a motion seeking an order that provides that any precedential value of this Court's October 2 decision does not take effect until October 30. The motion should be denied.

Argument

The stated reason for the motion is to “create an orderly transition from the current set of executive orders in place to the measures that will replace them.” Plaintiffs support an orderly transition and further support cooperation between the executive and legislative branches to accomplish that transition.

Despite this, because this Court ruled that the executive orders related to COVID-19 that were issued after April 30, 2020 are without any basis under Michigan law, Plaintiffs do not believe that any postponement of the opinion's precedential value is appropriate. In essence, because the Emergency Powers of the Governor Act is unconstitutional, and because the Governor's authority under the Emergency Management Act had expired on April 30, any COVID-19 related executive orders issued after April 30 were without legal basis when issued and remain without legal basis today.

As the United States Supreme Court observed in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), “the magnitude of a legal wrong is no reason to perpetuate it.” *Id.* at 2480. The Court further observed that many legal doctrines have been designed to “protect those who have reasonably labored under a mistaken understanding of the law. And it is precisely because those doctrines exist that we are ‘fre[e] to say what we know to be true...today, while leaving questions about...reliance interest[s] for later proceedings crafted to account for them.’” *Id.* at 2480 (citation omitted).

Here, as in *McGirt*, the wide impact of the Defendants' mistaken reliance on an erroneous interpretation of the Emergency Management Act and on the unconstitutional Emergency Powers of the Governor Act highlights the importance of correcting this legal wrong rather than perpetuating it. The Legislature and the Governor are free to work together expeditiously to effectuate an orderly transition and to ameliorate any adverse consequences that may result from this Court's opinion.

Conclusion

The Defendants' motion should be denied.

Respectfully submitted,

Dated: October 6, 2020

By /s/ James R. Peterson

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