

STATE OF MICHIGAN
COURT OF CLAIMS

MOTHERING JUSTICE, MICHIGAN ONE
FAIR WAGE, MICHIGAN TIME TO CARE,
RESTAURANT OPPORTUNITIES
CENTER OF MICHIGAN, JAMES HAWK,
and TIA MARIE SANDERS,

Plaintiffs,

v

DANA NESSEL, in her official capacity as
Attorney General and head of the Department
of Attorney General, and the STATE OF
MICHIGAN,

Defendants.

No. 21-000095-MM

HON. DOUGLAS SHAPIRO

**The State requests a ruling on its
motion to stay by August 2, 2022.**

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THE STATE OF MICHIGAN'S MOTION FOR STAY

Dated: July 20, 2022

Now comes the State of Michigan by and through its counsel, Deputy Solicitor General B. Eric Restuccia, Assistant Solicitor General Chris Allen, and Division Chief Heather Meingast, pursuant to MCR 2.119(E) and MCR 2.614(A), moves this Court for a stay of this Court’s July 19, 2022 opinion and order and present the following in support of this motion:

1. On June 27, 2022, the parties held an oral argument on their respective motions for summary disposition.
2. On July 19, 2022, this Court issued an opinion and order granting the motions for summary disposition of the plaintiffs and of the Attorney General, ruling that Public Acts 368 and 369 of 2018 “are voided” and that Public Acts 337 and 338 of 2018 “remain in effect.” Slip op, p 25.
3. Consistent with the comments at argument by counsel, the State of Michigan asks that this Court stay this judgment during the pendency of the State’s appeal. The State is filing its claim of appeal today.
4. Under the ordinary rules of judgments, a party may not seek to enforce a judgment until “21 days after a final judgment.” See MCR 2.614(A). See also MCL 600.6422 (general court rules govern the Court of Claims unless otherwise provided). And strictly speaking, a declaratory judgment as the one issued here only binds the parties in their relationship to each other. See *Associated Builders & Contractors v Dir of Consumer & Indus*, 472 Mich 117, 124 (2010) (“A declaratory judgment is a binding adjudication of the rights and status of litigants which is conclusive in a subsequent action between the parties as to the matters declared[.]”)

(cleaned up), overruled on other grounds by *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349 (2010). See also *State of Florida v United States Dep't of Health and Human Services*, 780 F Supp 2d 1307, 1316 (ND Fl, 2011) (“A declaratory judgment establishes and declares ‘the rights and other legal relations’ between the parties before the court”). Thus, based on these principles, this judgment will become enforceable by party plaintiffs against the State and the Attorney General on August 9, 2022.

5. That being said, there are important principles of governance at issue here, and the Public Acts that are the subject of this appeal govern employers and employees throughout Michigan. The people of the State deserve predictability and stability in the status of the law governing sick leave and the minimum wage. For this reason, the State asks this Court to grant the stay during the pendency of the appeal, so that it will be clear to all relevant stakeholders that they remain in a position of status quo until this question reaches final disposition on appeal.

6. The factors for granting a stay pending appeal are the same as those for granting injunctive relief. The State therefore addresses the following factors: (1) whether it is likely to prevail on the merits; (2) the irreparable harm if a stay is not issued; (3) the harm to the parties absent a stay against the harm that a denial would cause; and (4) the harm to the public interest. See, e.g., *Detroit Fire Fighters Ass'n v Detroit*, 482 Mich 18, 34 (2008) (addressing factors for granting injunctive relief).

7. For the first factor, the consideration of the merits of the issue supports the grant of the stay. The State will not repeat its arguments here, but the arguments at issue are first order ones under Michigan’s constitution, and the State’s claims are substantial ones. In fact, as noted at argument, these are the kinds of questions that merit the review of the Michigan Supreme Court.

8. For the remaining factors, the considerations of harm also support a stay. The parties and the stakeholders of the State are entitled to stability and predictability in the law. Notably, Public Acts 337 and 338 were enacted by the Legislature on September 5, 2018.¹ They were scheduled to take effect on March 29, 2019,² more than six months later. In this way, there was significant lead time to enable employers and employees to prepare for the significant changes to Michigan’s minimum wage law and sick leave laws. These laws never took effect as originally enacted, because they were subsequently amended by the Legislature during the same session. In this regard, it is not strictly accurate to order Public Acts 337 and 388 to “remain in effect” because they never took effect as passed.

¹ [http://www.legislature.mi.gov/\(S\(ni1b2wajqouw0pqde1oglasf\)\)/mileg.aspx?page=initiative](http://www.legislature.mi.gov/(S(ni1b2wajqouw0pqde1oglasf))/mileg.aspx?page=initiative) (last accessed July 20, 2022.)

² See [http://www.legislature.mi.gov/\(S\(1kfxjuviycuac4rhkoelrb5v\)\)/mileg.aspx?page=GetObject&objectname=mcl-Act-337-of-2018#:~:text=An%20initiation%20of%20legislation%20to,the%20violation%20of%20the%20act%3B](http://www.legislature.mi.gov/(S(1kfxjuviycuac4rhkoelrb5v))/mileg.aspx?page=GetObject&objectname=mcl-Act-337-of-2018#:~:text=An%20initiation%20of%20legislation%20to,the%20violation%20of%20the%20act%3B) and

[http://www.legislature.mi.gov/\(S\(wqyxwigdhjnff0e21ns5r3vl\)\)/mileg.aspx?page=GetObject&objectname=mcl-act-338-of-2018#:~:text=AN%20ACT%20to%20require%20certain,and%20duties%20of%20certain%20state](http://www.legislature.mi.gov/(S(wqyxwigdhjnff0e21ns5r3vl))/mileg.aspx?page=GetObject&objectname=mcl-act-338-of-2018#:~:text=AN%20ACT%20to%20require%20certain,and%20duties%20of%20certain%20state) (last accessed July 20, 2022.)

9. There is also a question about whether the date-based steps for the minimum wage law would remain applicable for the plaintiff parties or whether the first three steps would be bypassed, and the current minimum would take effect. Section 4 of Public Act 337 contemplated a three-year period in which the minimum wage would increase from \$10.00 on January 1, 2019, to \$10.65 on January 1, 2020, to \$11.35 on January 1, 2021, to \$12.00 on January 1, 2022. See PA 337 of 2018, § 4 (MCL 408.934). Under the statutory scheme, the increases would occur gradually and at 60 or 65 cent intervals. This scheme of gradual increases would be lost if the Court contemplated that the party plaintiffs were entitled to \$12 per hour immediately under law without the intervening steps. The same considerations apply to non-parties – both employers and employees – insofar as they rely on this Court’s decision.

10. The question also arises if the State prevails on appeal in the Michigan Court of Appeals, about which legislative scheme should then govern during the time in which the plaintiffs sought leave to appeal to the Michigan Supreme Court. Such a fluctuation of standards would be unstable and confusing.

11. To sum it up, any effort to give this ruling immediate effect would be chaotic. In a *Detroit News* article from yesterday, Justin Winslow, president and CEO of the Michigan Restaurant & Lodging Association, cogently stated: “If this were to be immediately implemented, the chaos it would wreak on the already battered hospitality industry during peak travel season would be almost inconceivable.”³

³ <https://www.detroitnews.com/story/news/politics/2022/07/19/michigan-judge-revives-sick-leave-minimum-wage-policies-legislature-weakened/10101508002/>

12. The State of Michigan sought concurrence in this motion from the plaintiffs Mothering Justice and Attorney General Dana Nessel. The Attorney General took no position in response to the motion, and the plaintiffs opposed the motion.

Wherefore, the State asks this Court to stay the opinion and order pending the final disposition of all appeals of its ruling. Given that the opinion and order as a judgment becomes enforceable by the party plaintiffs on August 9, 2022, the State would ask for a ruling one week before that date, i.e., August 2, 2022.

RELIEF REQUESTED

This Court should grant the State of Michigan’s motion for stay pending the final disposition of all appeals of its ruling.

Respectfully submitted,

/s B. Eric Restuccia

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Dated: July 20, 2022

PROOF OF SERVICE

B. Eric Restuccia certifies that on July 20, 2022, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

/s/B. Eric Restuccia
B. Eric Restuccia

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THE STATE OF MICHIGAN'S BRIEF IN SUPPORT OF MOTION FOR STAY

Dated: July 20, 2022

For the reasons stated in the accompanying motion, the State asks this Court to stay the opinion and order pending the final disposition of all appeals of its ruling. Given that the opinion and order as a judgment becomes enforceable by the party plaintiffs on August 9, 2022, the State would ask for a ruling one week before that date, i.e., August 2, 2022.

Respectfully submitted,

/s/B. Eric Restuccia

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Dated: July 20, 2022

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/s/B. Eric Restuccia

B. Eric Restuccia

STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: 2021-000095-MM
Case Title: MOTHERING JUSTICE V. DANA NESSEL		
Priority: NONE	Filing Option: File & Serve	

Filer Information

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Filing Summary

Filing Type	Filing Name	Fee
Motion (fee \$20)	mot02 emerg stay MJ	\$20.00
Brief	brief03 emerg stay MJ	\$0.00
	NON-REFUNDABLE Automated Payment Service Fee:	\$0.60
	Total:	\$20.60

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

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STATE OF MICHIGAN

MI Court of Claims

Proof of Service

Case Title: MOTHERING JUSTICE V. DANA NESSEL	Case Number: 2021-000095-MM
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1. Title(s) of the document(s) served:

Filing Type	Document Title
Motion (fee \$20)	mot02 emerg stay MJ
Brief	brief03 emerg stay MJ

2. On 7-20-2022, I served the document(s) described above on:

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/s/ B. Eric Restuccia

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Michigan Department of Attorney General

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