STATE OF MICHIGAN
COURT OF CLAIMS

NORTHLAND FAMILY PLANNING CENTER, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. EAST, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. WEST, on behalf of itself, its staff, its clinicians, and its patients; and MEDICAL STUDENTS FOR CHOICE, on behalf of itself, its members, and its members' patients,

Plaintiffs,

v.

DANA NESSEL, Attorney General of the State of Michigan; MARLON I. BROWN, Acting Director of Michigan Licensing and Regulatory Affairs; and ELIZABETH HERTEL, Director of the Michigan Department of Health and Human Services, each in their official capacities, as well as their employees, agents, and successors,

Defendants,

The PEOPLE OF THE STATE OF MICHIGAN,

Intervening Defendant.

No. 24-000011-MM

HON. SIMA G. PATEL

DEFENDANT ATTORNEY GENERAL'S 6/3/25 MOTION UNDER MCR 2.119(F)(3), 2.517(B), AND 2.611(A)(1) AND BRIEF IN SUPPORT

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DEFENDANT ATTORNEY GENERAL DANA NESSEL'S 6/3/25 MOTION UNDER MCR 2.119(F)(3), 2.517(B), AND 2.611(A)(1) AND BRIEF IN SUPPORT

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Pursuant to MCR 2.119(F)(3), 2.517(B), and 2.611(A)(1),[1] Defendant Attorney General Dana Nessel, through counsel, moves this Court to amend and/or reconsider in part its May 13, 2025 Opinion and Order. In support, the Attorney General states as follows:

INTRODUCTION

This case presents significant issues of first impression related to the proper interpretation of a constitutional provision granting a fundamental right to "[e]very individual" in Michigan. Const 1963, art 1, § 28(1). The parties have zealously advocated their positions before this Court, and this Court issued a thorough and well-reasoned Opinion and Order on May 13, 2025 (the "Opinion").

However, two aspects of the Opinion warrant a second look. *First*, the Opinion's statement of the Attorney General's post-trial position on Plaintiffs' claims does not fully align with the Attorney General's arguments in her 4/4/25 Proposed Findings of Fact and Conclusions of Law. *Second*, by declining to address discrimination in the context of the coercion screening provisions, the Opinion did not fully dispose of Plaintiffs' claims. As such, amendment and/or reconsideration is appropriate.

[1] While MCR 2.611 contemplates a motion for new trial, the Attorney General is seeking *only* the relief set forth in MCR 2.611(A)(2)(c)–(d), as there was sufficient evidence presented at trial from which the Court could rule on this motion.

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LEGAL STANDARD

To succeed on a motion for reconsideration under MCR 2.119(F)(3), "[t]he moving party must demonstrate palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." The court rule does not prohibit the court from giving previously raised issues a second look. *In re Estate of Moukalled*, 269 Mich App 708, 714 (2006). Instead, MCR 2.119(F)(3) "allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Kokx v Bylenga,* 241 Mich App 655, 659 (2000).

A motion under MCR 2.517(B) and 2.611(A)(1)(g) "may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected" by an "[e]rror of law occurring in the proceedings, or a mistake of fact by the court." MCR 2.611(A)(1)(g); MCR 2.517(B) ("The motion [to amend the judgment] may be made with a motion for new trial pursuant to MCR 2.611."). Upon such motion "in an action tried without a jury, the court may[,]" among other things, "amend findings of fact and conclusions of law" or "make new findings [of fact] and conclusions [of law] and direct the entry of a new judgment." MCR 2.611(A)(2)(c)–(d).

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ARGUMENT

I. The Attorney General argued that *all* aspects of the challenged laws are unconstitutional under § 28's anti-discrimination provision.

The Opinion summarized the Attorney General's position in this case as follows:

> AG Nessel concurs with plaintiffs that the challenged laws do not pass constitutional strict-scrutiny muster. AG Nessel contends that a judgment invalidating the entirety of the challenged statutes would be overbroad. MCL 333.17015(17) is a severability provision that preserves those statutory provisions that are not deemed unconstitutional. [(5/13/25 Op, p 7.)]

While this accurately states the Attorney General's stance at the preliminary injunction stage (see AG's Resp to 2/6/24 Mot for PI), it does not take into account the arguments made in the Attorney General's 4/4/25 Proposed Findings of Fact and Conclusions of Law.

In that filing, the Attorney General argued that *all* provisions of the challenged laws must fall under the anti-discrimination provision of § 28(2) because they are facially discriminatory and fail to satisfy the applicable strict-scrutiny test. (See AG's 4/4/25 Proposed FOF and COL, pp 10–13.) Amendment of the Opinion is warranted to accurately summarize the Attorney General's position.

II. Declining to analyze § 28's anti-discrimination provision in the context of the coercion screening provisions was erroneous.

In an exercise of judicial restraint, the Opinion declined to reach Plaintiffs' claim that the challenged laws violate § 28(2)'s anti-discrimination provision because it "concluded that the challenged laws are unconstitutional for the reasons

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discussed." (5/13/25 Op, p 69 n 18.) In the context of the coercion screening provisions (which were upheld under § 28(1)), this was error, correction of which necessitates amendment and/or reconsideration of the Opinion.

To be sure, it is a "fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App 562, 570 n 3 (2016) (quotations omitted). But " 'courts cannot shun the discussion of constitutional questions when fairly presented.' " *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 632 n 21 (2004), overruled on other grounds by *Lansing Schs Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349 (2010), quoting Constitutional Limitations, ch 7, § 2 (1868).

Here, the Opinion appropriately exercised judicial restraint in refraining from addressing § 28(2) in the context of the 24-hour delay, the mandatory counseling requirement, and the provider ban. Because those provisions were struck down as unconstitutional on other grounds (i.e., under § 28(1)'s burden analysis), it was unnecessary to analyze their discriminatory nature. *J & J Const Co v Bricklayers and Allied Craftsmen*, 468 Mich 722, 734 (2003) ("This Court will not unnecessarily decide constitutional issues. . . ."); *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234 (1993) ("[T]here exists a general presumption by this Court that we will not reach constitutional issues that are not necessary to resolve a case.").

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The same is not true for the coercion screening provisions. After concluding that the coercion screening provisions pass muster under § 28(1)'s burden analysis, the Opinion should have then confronted Plaintiffs' claim that the provisions discriminate against individuals seeking to terminate their pregnancy. *Nat'l Wildlife Federation*, 471 Mich at 632 n 21. Had the Opinion done so, for the reasons stated in the Attorney General's 4/4/25 Proposed Findings of Fact and Conclusions of Law, it should have struck down the coercion screening provisions as unconstitutionally discriminatory under § 28(2). (See AG's 4/4/25 Proposed FOF and COL.)

By declining to address the impact of § 28(2) on the coercion screening provisions in the name of judicial restraint, error has occurred. Correction of that error—making findings and conclusions related to § 28(2) in the context of the coercion screening provisions—requires amendment and/or reconsideration of the Opinion. Ultimately, all provisions of the challenged laws should be struck down.[2]

[2] Despite Intervening Defendant filing a claim of appeal, this Court retains authority to amend the judgment for two reasons: (1) this motion follows "a decision on the merits in an action in which a preliminary injunction was granted," MCR 7.208(A)(3); and (2) the Opinion did not "dispose[ ] of all the claims and adjudicate[ ] the rights and liabilities of all the parties," and therefore was not a "final order" from which an appeal of right could be taken, MCR 7.203(A)(1); MCR 7.202(6).

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CONCLUSION AND RELIEF REQUESTED

For these reasons, the Attorney General respectfully requests that this Court amend and/or reconsider in part its May 13, 2025 Opinion and Order, revise its statement of the Attorney General's post-trial position, and hold that the challenged coercion screening provisions unconstitutionally discriminate against individuals seeking to terminate their pregnancy in violation of § 28(2).

Respectfully submitted,

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