

Order

Michigan Supreme Court
Lansing, Michigan

March 17, 2023

Elizabeth T. Clement,
Chief Justice

164557

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

THE GYM 24/7 FITNESS, LLC, and
All Others Similarly Situated,
Plaintiffs-Appellants,

v

SC: 164557
COA: 355148
Ct of Claims: 20-000132-MM

STATE OF MICHIGAN,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the March 31, 2022 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing whether the Court of Appeals erred in holding that the defendant was entitled to summary disposition on the putative class's alleged inverse condemnation and takings claims under the Michigan and United States constitutions, Const 1963, art 10, § 2; US Const, Am V. In particular, the parties shall address: (1) whether the temporary impairment of business operations can be a categorical regulatory taking if there are no reasonable alternative uses of the business property during the period in which its intended and normal use is prohibited, see *Lucas v South Carolina Coastal Council*, 505 US 1003 (1992); and (2) if not, whether the Court of Appeals properly weighed the factors from *Penn Central Transp Co v City of New York*, 438 US 104 (1978), in addressing plaintiff's claims involving a temporary prohibition of its normal business operations, see *Tahoe-Sierra Preservation Council, Inc v Tahoe Regional Planning Agency*, 535 US 302, 334 (2002) (leaving open the possibility that a temporary taking could constitute a taking under *Penn Central*); *Lingle v Chevron USA Inc*, 544 US 528, 538-539 (2005) ("Primary among [the *Penn Central*] factors are '[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.' In addition, the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good'—may be relevant in discerning whether a taking has occurred.") (citations omitted).

The Real Property Law Section of the State Bar of Michigan, Pacific Legal Foundation, Institute for Justice, Michigan Association of Counties, Michigan Township Association, and Michigan Municipal League are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 17, 2023

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk