

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

KAREN WAESCHLE, individually and on behalf
of others similarly situated,

Plaintiff,

vs.

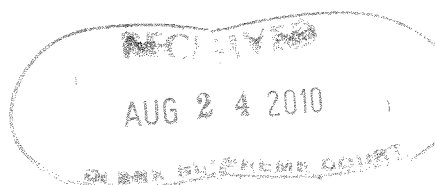
Supreme Court No. 140263

US District Court No. 08-10393

**OAKLAND COUNTY MEDICAL EXAMINER,
LJUBISA J. DRAGOVICH, M.D.**, individually and
in his official capacity as the Medical Examiner of
Oakland County, Michigan, and on behalf of others
similarly situated, et al.,

Defendants.

**AMICUS CURIAE MICHIGAN STATE MEDICAL SOCIETY'S
CONCURRENCE IN THE BRIEF OF AMICI CURIAE**



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JURISDICTIONAL STATEMENT

On March 12, 2010, this Court accepted this Certified Question from the United States District Court for the Eastern District of Michigan in *Waeschle v Oakland County Medical Examiner*, No 08-10393 (ED Mich filed Jan 28, 2008) (Roberts, J.). *See Waeschle v Oakland County Medical Examiner*, 485 Mich 1116 (2010).

STATEMENT OF QUESTIONS INVOLVED

On remand from the United States Court of Appeals for the Sixth Circuit, the United States District Court for the Eastern District of Michigan in *Waeschle v Oakland County Medical Examiner*, No 08-10393 (ED Mich filed Jan 28, 2008) (Roberts, J.), presented the following Certified Question to this Court:

Assuming that a decedent's brain has been removed by a medical examiner in order to conduct a lawful investigation into the decedent's cause of death, do the decedent's next-of-kin have a right under Michigan law to possess the brain in order to properly bury or cremate the same after the brain is no longer needed for forensic examination?

See Waeschle v Dragovic, 576 F3d 539, 551 (CA 6 2009).

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Michigan State Medical Society (“MSMS”) is a professional association that represents the interests of over 15,000 physicians in the State of Michigan. Organized to promote and protect the public health and to preserve the interests of its members, MSMS has a continuing interest in issues which affect the medical profession and the patients it serves. Over the course of many years, MSMS has been privileged to share its views when issues pertinent to physicians have been presented to this Court and the Michigan appellate courts. This case presents such an issue.

MSMS’ members includes pathologists and practicing medical examiners. The standards of their profession will be directly impacted by the certified question. Requiring notification and control by family members of the disposition of all tissues and body parts following a medicolegal autopsy is, in many instances, impractical, undesirable from a public health standpoint, and bordering on the impossible. The holding sought by Plaintiff will have a chilling effect on forensic pathology in the State of Michigan.

For these reasons, MSMS respectfully concurs in the Brief of *Amici Curiae*, Michigan Association of Medical Examiners, National Association of Medical Examiners, Wayne County, Michigan, Michigan Association of Counties, and Kent County, Michigan supporting Defendant Oakland County Medical Examiner.

STATEMENT OF FACTS

Amicus Curiae Michigan State Medical Society refers this Court to Statement of Facts as stated by the Brief of *Amici Curiae* Michigan Association of Medical Examiners, National Association of Medical Examiners, Wayne County, Michigan Association of Counties, and Kent County.

ARGUMENT

Amicus Curiae Michigan State Medical Society concurs in the Argument as stated by the Brief of *Amici Curiae* Michigan Association of Medical Examiners, National Association of Medical Examiners, Wayne County, Michigan Association of Counties, and Kent County.

RELIEF REQUESTED

For the reasons stated in the Brief of *Amici Curiae*, MSMS urges this Court to answer the Certified Question in the negative.

Respectfully submitted,

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