

Order

Michigan Supreme Court
Lansing, Michigan

July 22, 2022

Bridget M. McCormack,
Chief Justice

163073

Brian K. Zahra

David F. Viviano

Richard H. Bernstein

Elizabeth T. Clement

Megan K. Cavanagh

Elizabeth M. Welch,

Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163073

COA: 351308

Alpena CC: 17-007577-FH

17-007941-FH

TRAVIS MICHAEL JOHNSON,
Defendant-Appellant.

By order of May 13, 2022, the Court directed supplemental briefing from the parties. On order of the Court, the briefs having been received, the application for leave to appeal the April 8, 2021 judgment of the Court of Appeals is again considered, and it is GRANTED. The parties shall address: (1) whether MCL 769.1k(1)(b)(iii) violates separation of powers by assigning the judicial branch “ ‘tasks that are more properly accomplished by [the Legislature],’ ” *Mistretta v United States*, 488 US 361, 383 (1989), quoting *Morrison v Olson*, 487 US 654, 680-681 (1988); see also *Houseman v Kent Circuit Judge*, 58 Mich 364, 367 (1885); (2) whether MCL 769.1k(1)(b)(iii) violates due process by creating a “ ‘potential for bias’ ” or an “objective risk of actual bias,” *Caperton v A T Massey Coal Co, Inc*, 556 US 868, 881, 886 (2009), quoting *Mayberry v Pennsylvania*, 400 US 455, 465-466 (1971); see also, e.g., *Williams v Pennsylvania*, 579 US 1, 8-9 (2016); and (3) should we find MCL 769.1k(1)(b)(iii) facially unconstitutional under either theory, what remedy follows. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

We direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *People v Edwards* (Docket No. 163942).

The Michigan Senate and the Michigan House of Representatives, the Michigan District Judges Association, the Criminal Defense Attorneys of Michigan, the Prosecuting Attorneys Association of Michigan, the Detroit Justice Center, and the Institute for Justice 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.

July 22, 2022

Clerk