

Order

Michigan Supreme Court
Lansing, Michigan

March 28, 2025

Elizabeth T. Clement,
Chief Justice

168181 & (45)(46)

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 168181
COA: 371542
Wayne CC: 24-001354-FH

MICHAEL JOSEPH KVASNICKA,
Defendant-Appellee.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the February 13, 2025 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and REMAND this case to that court for further consideration. We express no opinion on whether MCL 750.543m violates constitutional free-speech protections by imposing criminal liability without proof “that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” *Counterman v Colorado*, 600 US 66, 69 (2023). On remand, the Court of Appeals shall address the proper interpretation of MCL 750.543m in light of: (1) MCL 750.543z, which provides that “a prosecuting agency shall not prosecute any person or seize any property for conduct presumptively protected by the first amendment to the constitution of the United States in a manner that violates any constitutional provision”; and (2) the constitutional-doubt canon, see *Sole v Mich Econ Dev Corp*, 509 Mich 406, 419-420 (2022). The Court of Appeals shall also address: (3) whether it is appropriate to adopt a limiting construction of MCL 750.543m to remedy any remaining constitutional deficiency, see *People v Burkman*, 513 Mich 300, 340 (2024); see also *Osborne v Ohio*, 495 US 103, 115 (1990); (4) if so, what that limiting construction should be; and (5) whether the Wayne Circuit Court abused its discretion by dismissing the case without prejudice on February 24, 2025, where doing so necessarily implicated “aspects of the case involved in the interlocutory appeal” while an application for leave to appeal remained pending with this Court. *People v Scott*, 513 Mich 180, 200 (2024); see

MCR 7.215(F)(1)(a); MCR 7.305(C)(6)(a). The motion to expedite and/or stay precedential effect is GRANTED to the extent it requests expedited consideration of the application and is DENIED in all other respects.

We do not retain jurisdiction.



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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 28, 2025

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

Clerk