

# Order

Michigan Supreme Court  
Lansing, Michigan

November 29, 2023

Elizabeth T. Clement,  
Chief Justice

ADM File No. 2023-01

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

Appointments to the Commission  
on Diversity, Equity, and Inclusion  
in the Michigan Judiciary

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On order of the Court, pursuant to Administrative Order No. 2022-1, Justice Elizabeth M. Welch and Judge Austin W. Garrett are appointed as co-chairs on the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary, effective January 1, 2024.

WELCH, J. (*concurring*). On January 5, 2022, we issued Administrative Order No. 2022-1, which created the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary (the Commission). The Commission’s stated purpose is “to assess and work towards elimination of demographic and other disparities within the Michigan judiciary and justice system.” Administrative Order No. 2022-1, 508 Mich \_\_\_ (January 5, 2022). In addition to setting forth various goals for the Commission, AO 2022-1 also established the executive leadership of the Commission and outlined the process for selection of the commissioners.

Within 120 days, as required by AO 2022-1(IV)(B)(3) and following a robust selection process, the Commission’s leadership recommended the appointment of the remaining commissioners. This Court did not, however, make those appointments until June 16, 2022. See Appointments to the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary, 509 Mich \_\_\_ (June 16, 2022).

Significantly, AO 2022-1 required the Commission to “work with an expert facilitator to develop a strategic plan to guide the initial work of the Commission.” AO 2022-1(II). Accordingly, the Commission’s leadership researched and selected a strategic planner with broad experience working with governmental entities and court systems. In keeping with the planning process agreed to by the Commissioners, throughout 2023 Commission members have convened for four hours each month and additionally met in smaller work groups on a regular basis. The Commission has remained true to its agreed-to timeline; a draft plan is now complete and will soon be available for the public to review.

I thank my co-chair, Judge Cynthia Stephens (now retired), for her leadership on the Commission and her years of dedication to this important work. I also thank all the Commissioners for their incredible dedication this past year as they devoted countless

hours to the strategic planning process. I look forward to working with Judge Austin Garrett and the Commission in the years ahead as the objectives set forth in the strategic plan are implemented.

VIVIANO, J. (*dissenting*). I maintain my previously expressed objections to the existence of the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary. See Administrative Order No. 2022-1, 508 Mich \_\_\_, \_\_\_ (January 5, 2022) (VIVIANO, J., *dissenting*). Nearly two years after it was created, the Commission still has not defined these key terms or outlined its mission and goals. As I have noted previously, any definition of these terms that would require or encourage the judiciary to engage in unlawful discriminatory practices would certainly place judges and court administrators in an untenable position. See *id.* at \_\_\_ (“If the Commission created today sets about to encourage the judiciary to consider [race, gender, or other protected personal characteristics] in any area under our purview, I fear that our ethics, fidelity to law, and impartiality will justly be called into question”). The United States Supreme Court recently reaffirmed the need for neutral decision-making, striking down the use of race in college admissions programs. *Students for Fair Admissions, Inc v President & Fellows of Harvard College*, 600 US 181, 230 (2023). The Court’s reasoning has potential ramifications far outside the educational setting. See *id.* at 287-291 (Gorsuch, J., concurring) (explaining that the schools’ actions would be unlawful under terms in the Civil Rights Act that apply broadly to various types of entities).

As I indicated when the Court made its initial appointments to the Commission, assessing the applicants is difficult without knowing what the Commission stands for and whether the applicants will serve as a group dedicated to removing obstacles to participation in the courts and fostering viewpoint diversity or a group that will advocate for the unconstitutional use of race and other protected characteristics in the courts’ decision-making processes. See *Appointments to the Commission on Diversity, Equity, and Inclusion in the Michigan Judiciary*, 509 Mich \_\_\_, \_\_\_ (June 16, 2022) (VIVIANO, J., *dissenting*). Thus, while I have no objection to the individuals appointed as co-chairs, at least until we receive more clarity regarding its aims, I remain opposed to the existence of the Commission and respectfully dissent.



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.

November 29, 2023

A handwritten signature in black ink, appearing to read "Larry S. Royster".

Clerk