

Order

Michigan Supreme Court
Lansing, Michigan

May 13, 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.

On April 6, 2022, the Court heard oral argument on the application for leave to appeal the April 8, 2021 judgment of the Court of Appeals. We DIRECT the parties to file supplemental briefs within 21 days of the date of this order addressing: (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 application for leave to appeal remains pending.



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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.

May 13, 2022

Clerk