

Order

Michigan Supreme Court
Lansing, Michigan

December 9, 2022

Elizabeth T. Clement,
Chief Justice

164463

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

WILLIAM BAILEY,
Plaintiff-Appellant,

v

SC: 164463
COA: 357838
Antrim CC: 2020-009238-CZ

ANTRIM COUNTY,
Defendant-Appellee,

and

SECRETARY OF STATE,
Intervening Defendant-Appellee.

On order of the Court, the application for leave to appeal the April 21, 2022 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

VIVIANO, J. (*concurring*).

I concur in the Court's denial order because I believe the Court of Appeals properly rejected plaintiff's argument that he has a right to conduct an independent audit of election results under Const 1963, art 2, § 4(1)(h). That constitutional provision, which was added in 2018, states that "[e]very citizen of the United States who is an elector qualified to vote in Michigan shall have . . . [t]he right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections." The precise contours of this new audit right are unclear and have never been addressed by this Court. As I have explained in the past, the language of this provision could ensure an audit that facilitates timely challenges to election results or allows for assessments of election procedures that lead to future improvement. *Costantino v Detroit*, 506 Mich___; 950 NW2d 707, 711-712 (2020) (VIVIANO, J., dissenting). The proper interpretation of the audit right represents a significant question that this Court should address. See *Johnson v Secretary of State*, 506 Mich 975, 984-985 (2020) (VIVIANO, J., dissenting); *Costantino*, 506 Mich at ___; 950 NW2d at 713 (VIVIANO, J., dissenting). The need for such guidance

is especially important because our laws regulating challenges to election results are unclear. See *Johnson*, 506 Mich at 987 (VIVIANO, J., dissenting) (noting the “rampant confusion in our state concerning the proper mechanism for contesting elections in general, and presidential elections in particular, on the basis of fraud”). But whatever Const 1963, art 2, § 4(1)(h) means, it surely cannot be that each qualified elector can undertake his or her own separate audit of an election. The present case therefore does not offer the opportunity to add any clarity on this important topic. Accordingly, I concur.

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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.

December 9, 2022

Handwritten signature of Larry S. Royster in black ink.

Clerk