

Order

Michigan Supreme Court
Lansing, Michigan

December 28, 2020

Bridget M. McCormack,
Chief Justice

162007 & (63)(69)(70)

David F. Viviano,
Chief Justice Pro Tem

ROBERT DAVIS,
Plaintiff-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 162007
COA: 354622
Ct of Claims: 20-000099-MM

SECRETARY OF STATE,
Defendant-Appellee.

On order of the Court, the motions for immediate consideration and for leave to file brief amicus curiae are GRANTED. The application for leave to appeal the September 16, 2020 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. The motion to intervene is DENIED as moot.

VIVIANO, J. (*dissenting*).

I would grant leave to hear this case to review whether the Secretary of State had legal authority to mail millions of applications for absentee ballots to voters who did not request them. Our Constitution requires the Secretary of State to “perform duties *prescribed by law*.” Const 1963, art 5, § 9 (emphasis added). In general, “[t]he extent of the authority of the people’s public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority.” *Mich Ed Ass’n v Secretary of State (On Rehearing)*, 489 Mich 194, 225-226 (2011), quoting *Sittler v Bd of Control of Mich College of Mining & Tech*, 333 Mich 681, 687 (1952). The Court of Appeals’ partial dissent examined the statutes at issue and concluded that the Secretary of State’s action exceeded her authority. I believe the partial dissent raises a number of issues that this Court should address. Therefore, I respectfully dissent.



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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 28, 2020

Clerk