

# Order

Michigan Supreme Court  
Lansing, Michigan

September 16, 2021

Bridget M. McCormack,  
Chief Justice

163486 & (3)

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

ROBERT DAVIS,  
Plaintiff,

v

SC: 163486

INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION,  
Defendant.

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On order of the Court, the motion for immediate consideration is GRANTED. The complaint for mandamus is considered, and it is DISMISSED, because the Court is not persuaded that it should grant the requested relief at this time.

The Court will issue emergency rules forthwith establishing the procedural requirements for original actions filed under Const 1963, art 4, § 6(19).

ZAHRA, J. (*concurring*).

I concur in the dismissal of plaintiff's request for a writ of mandamus because plaintiff's claim is not properly before the Court at this time. Plaintiff Robert Davis filed an original complaint requesting that this Court enter a writ of mandamus "compelling" defendant Independent Citizens Redistricting Commission to publish proposed redistricting plans no later than September 17, 2021, and to adopt a final plan by November 1, 2021, as is required by Const 1963, art 4, §§ 6(7) and 6(14)(b). Plaintiff argues that mandamus is required because defendant, at its August 19, 2021 meeting, "by a 10-2 vote, approved a timeline to allow the 45-day public comment period to commence November 14, 2021, with [defendant] adopting a final redistricting plan as early as December 30, 2021." Plaintiff maintains that "[d]efendant's refusal to comply with the deadline set forth under Mich.Const. 1963, art 4, §6(7) requires this Court to exercise its original jurisdiction to direct [defendant] to perform their respective duties as required under Mich.Const. 1963, art. 4, §6(7)." Plaintiff accurately describes "[defendant's] clear legal duty to comply with the November 1, 2021 deadline set forth under Mich.Const. 1963, art. 4, §6(7) because it uses the mandatory word 'shall.' "

A party seeking mandamus must show four elements: “(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.”<sup>1</sup>

Even assuming that a mandamus action is the proper vehicle,<sup>2</sup> plaintiff has not shown that defendant failed to comply with the deadlines imposed on it by Const 1963, art 4, §§ 6(7) and 6(14)(b). Accordingly, plaintiff has not shown that defendant has the clear legal duty to perform the act requested. In addition, because plaintiff’s claim rests on “ ‘contingent future events that may not occur as anticipated, or indeed may not occur at all,’ ” plaintiff’s claim is not yet ripe.<sup>3</sup> For these reasons, plaintiff’s claim is not properly before the Court at this time.

CLEMENT, J. (*concurring in part and dissenting in part*).

I concur with the Court’s decision to promulgate emergency rules to implement Const 1963, art 4, § 6(19). Our current court rules do not describe procedures for plaintiffs to use when invoking our original jurisdiction under that constitutional section, but we obviously owe it to the public to provide them a mechanism to invoke our original jurisdiction under that constitutional section. But I dissent from the Court’s handling of plaintiff’s case. Plaintiff Robert Davis filed a complaint for a writ of mandamus to require defendant Independent Citizens Redistricting Commission to comply with the deadlines in Const 1963, art 4, § 6(19). He alleges a specific interest in enforcement of those deadlines because he claims to be considering a run for the United States House of Representatives. That interest has been imperiled, he contends, by the commission’s avowed intention to breach the deadlines. I would grant the relief he has requested.

When the voters ratified Proposal 18-2, they amended the Michigan Constitution to revive and revise the redistricting commission originally provided for in our Constitution but which had been inactive since our decision in *In re Apportionment of State Legislature*—1982, 413 Mich 96 (1982). It is presently charged with the duty to draw election districts for Michigan’s seats in the United States House of

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<sup>1</sup> *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248 (2016) (quotation marks and citation omitted); see also *Comm’r of Ins v Lapeer Circuit Judge*, 302 Mich 614, 621 (1942).

<sup>2</sup> It is not clear whether a mandamus action is appropriate given that Const 1963, art 4, § 6(19) requires this Court to exercise jurisdiction over an original action to “direct [defendant] to perform [its] . . . duties” as required under Const 1963, art 4, § 6(7).

<sup>3</sup> *Thomas v Union Carbide Agricultural Prod Co*, 473 US 568, 580-581 (1985) (citation omitted).

Representatives, as well as both chambers of the Michigan Legislature. Const 1963, art 4, § 6(1) and (22). The voters gave the commission the duty to adopt district maps “[n]ot later than November 1 in the year immediately following the federal decennial census,” as well as the duty to “provide at least 45 days for public comment on the proposed plan or plans” before adoption. Const 1963, art 4, § 6(7), (14)(b). To provide these 45 days of comment before November 1, district plans must be proposed by September 17. By constitutionalizing these procedures—including these deadlines—the voters have imposed upon the commission a clear duty to comply with them. The voters have also unambiguously vested this Court with the authority to “direct the . . . commission to perform [its] duties . . . .” Const 1963, art 4, § 6(19).

As plaintiff notes, at its August 19 meeting, the commission adopted a timeline that would begin the required 45-day comment period on November 14 and adopt districting plans by December 30—clearly inconsistent with the constitutional timeline. As a result of the commission’s threatened noncompliance with the deadlines, a live controversy exists between adverse parties. Reinforcing my conclusion that this is a live controversy is the fact that after the deadlines have passed it will be impossible to provide the relief plaintiff requests, i.e., enforcement of the deadlines. In these circumstances, a writ of mandamus may properly issue. See *Northern States Power Co v US Dep’t of Energy*, 327 US App DC 20 (1997) (finding that plaintiffs had a right to relief and the defendant had a clear legal duty to comply with a future statutory deadline, and issuing a writ of mandamus in part to prevent defendant from excusing its compliance with the deadline).<sup>4</sup> I would exercise our authority to “direct the . . . commission to perform [its] duties” and issue the writ requested.

When the voters ratified Proposal 18-2, they did not ratify the concept of a redistricting commission independent from its terms. They ratified *this* commission—this, and no other. As we said when we allowed the proposal to be submitted to the voters, “‘there is no more constitutionally significant event than when the wielders of ‘[a]ll political power’ under that document, Const 1963, art 1, § 1, choose to exercise their extraordinary authority to directly approve or disapprove of an amendment thereto.’” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42, 59 (2018), quoting *Blank v Dep’t of Corrections*, 462 Mich 103, 150 (2000) (MARKMAN, J., concurring). I therefore believe we owe it to the voters who ratified this proposal to give them everything to which they are entitled. That includes proposed maps by September 17, and adopted maps by November 1. I would therefore issue the writ of mandamus plaintiff requests and make clear that the commission must adhere to the constitutional deadline.

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<sup>4</sup> We would not need to decide now whether the deadlines are directory or mandatory in order to resolve this case: the deadlines have not passed and the consequences of their violation are not before the Court.

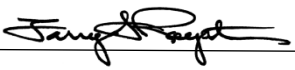
VIVIANO, J., joins the statement of CLEMENT, J.



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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.

September 16, 2021

  
Clerk