

Court of Appeals, State of Michigan

ORDER

Robert Davis v Secretary of State

Patrick M. Meter
Presiding Judge

Docket No. 355169

Stephen L. Borrello

LC No. 20-000196-MZ

Michael F. Gadola
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for peremptory reversal is also GRANTED. As appellee appears to concede it is manifest that the trial court erred by dismissing this entire case as moot based on this Court’s opinion in *Michigan Alliance for Retired Americans v Secretary of State*, ___ Mich App ___; ___ NW2d ___ (Docket No. 354993, issued October 16, 2020), because nothing in that opinion addresses or decides the matters presented in Counts II, III, and IV of appellant’s amended complaint regarding, respectively, appellee’s authority to process absentee ballot applications online, appellant’s allegation that appellee was required to make a report of alleged election law violation to the Attorney General, or the Freedom of Information Act claim presented by appellant. See *TM v MZ*, 501 Mich 312, 319; 916 NW2d 473 (2018) (holding matter involving “live controversy” is not moot). Thus, we REVERSE the trial court’s October 19, 2020 order and REMAND this case to the trial court for further appropriate proceedings on Counts II, III, and IV of the amended complaint. However, we note that we disagree with appellant’s indication that Count I of his amended complaint is not moot because of his request for a declaration that appellee is subject to the Administrative Procedures Act. This Court’s opinion in *Michigan Alliance* resolved the practical matter presented in Count I by holding that absentee ballots received after the close of polls on election day cannot be counted. Thus, for purposes of Count I, whether appellee is subject to the Administrative Procedures Act is a moot issue because it presents only an abstract question of law. See *Gleason v Kincaid*, 323 Mich App 308, 314-315; 917 NW2d 685 (2018).

We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

October 23, 2020

Date



Chief Clerk