

Order

Michigan Supreme Court
Lansing, Michigan

December 28, 2005

Clifford W. Taylor,
Chief Justice

128656

DPG YORK, LLC, MICHAEL HOROWITZ,
STEVEN FRIEDMAN, RICHARD
LEWISTON, RYAN ROSETT, and
ALBERT LUDWIG,
Plaintiffs-Appellants,

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

v

SC: 128656
COA: 260337
Ingham CC: 04-001392-CZ

STATE OF MICHIGAN, STATE
ADMINISTRATIVE BOARD,
SECRETARY OF THE STATE
ADMINISTRATIVE BOARD,
DEPARTMENT OF MANAGEMENT
AND BUDGET, and DIRECTOR OF
THE MICHIGAN DEPARTMENT OF
MANAGEMENT AND BUDGET,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the February 15, 2005 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals order and REMAND this case to the Court of Appeals for plenary consideration. We DIRECT the Court of Appeals to issue an abbreviated briefing schedule to the parties and to issue its decision within 45 days of the date of this order. Among the issues to be addressed, the Court of Appeals shall consider whether 2004 PA 326 affords due process protection against unnecessary and uncontrolled discretionary power in conformance with *Highway Comm'n v Vanderkloot*, 392 Mich 159, 169 (1974), and *Westervelt v Natural Resources Comm'n*, 402 Mich 412 (1978). That is, the court shall consider whether, pursuant to 2004 PA 326, the “totality of protections against arbitrariness, including both safeguards and standards,” is adequate to protect against arbitrary administrative action, “irrespective of what [2004 PA 326] say[s] or fail[s] to say.” *Westervelt*, p 443, n 20 (quoting Davis, *Administrative Law Treatise*, 1970 Supplement, pp 40-41).

We do not retain jurisdiction.



s1221

I, Corbin R. Davis, 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, 2005

Corbin R. Davis

Clerk