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STATE OF MICHIGAN

IN THE SUPREME COURT

WARREN CONSOLIDATED SCHOOL DISTRICT,

Plaintiff/Appellant,

v

Supreme Court No. 167643
Court of Appeals No. 362948
Case No. 2020-000352-CZ

SCHOOL DISTRICT OF HAZEL PARK,

Defendant/Appellee.

_____/

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APPELLANT WARREN CONSOLIDATED SCHOOL DISTRICT'S SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE CIRCUIT COURT ERRED IN CONCLUDING THAT MCL 24.263 REQUIRED WCS TO APPEAL THE STATE SUPERINTENDENT'S ACT OF DECLINING TO ISSUE A DECLARATORY RULING TO THE CIRCUIT COURT?

PLAINTIFF/APPELLANT ANSWERS: YES.

DEFENDANT/APPELLEE ANSWERS: NO.

THIS COURT SHOULD ANSWER: YES.

II. WHETHER AN AGENCY'S DECLINING TO ISSUE A DECLARATORY RULING ENABLES A LITIGANT TO PURSUE A DECLARATORY JUDGMENT ACTION IN THE CIRCUIT COURT UNDER MCL 24.264?

PLAINTIFF/APPELLANT ANSWERS: YES.

DEFENDANT/APPELLEE PRESUMABLY ANSWERS: NO.

THIS COURT SHOULD ANSWER: YES

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I. STATEMENT OF RELEVANT FACTS

Warren Consolidated School District ("WCS") alleges that School District of Hazel Park ("Hazel Park") systemically violated the State School Aid Act of 1979, MCL 388.1601, *et seq.*, by improperly counting over one thousand students in its membership, causing WCS to lose millions of dollars of state funding. WCS filed a civil action against Hazel Park seeking declaratory relief to stop Hazel Park's violations. However, the Macomb County Circuit Court dismissed WCS' claims and forced it to seek an administrative declaratory ruling under MCL 24.264 with the State Superintendent (Appellant's App'x I, pg. 4.) Thereafter, the Superintendent sent a letter to WCS "declin[ing] to issue a declaratory ruling" because its administrative policies do not allow school districts to challenge each other's membership counts through the administrative declaratory ruling process.[1] WCS then re-instituted its civil action against Hazel Park, but it was dismissed once again by the Circuit Court, this time under MCL 24.263, because WCS did not appeal the Superintendent's action. (Appellant's App'x P. pg. 5-7.)

II. LAW AND ARGUMENT

A. SUMMARY OF THE ARGUMENT.

At different times, the Circuit Court dismissed WCS' claims under MCL 24.263 and MCL 24.264 of the Administrative Procedures Act ("APA") without explaining why or addressing the critical differences between the two statutes, which are often misunderstood. MCL 24.263 "gives agencies the permissive authority to issue declaratory rulings regarding the applicability of a statute or rule administered by an agency." LeDuc, *Declaratory Judgments under Michigan Administrative Procedures Act*, Mich Admin Law § 8:11 (2024). Whereas, MCL 24.264 "explicitly requires exhaustion of the [MCL 24.263] declaratory ruling provision only for actions challenging the validity or applicability of a rule." *Id.* This Court has now directed

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[1] The appeal process is currently found in the *Michigan Pupil Membership Auditing Manual 2024-2025*, pg. 82-83, *available at* https://www.michigan.gov/mde/-/media/Project/Websites/mde/OFM/Audits/2024-2025-Pupil-Membership-Audit-Manual.pdf (last visited Apr. 24, 2025).

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the parties to submit supplemental briefing on two issues that bear on the critical distinctions between these statutes.

The first question is whether the Macomb County Circuit Court erred in concluding that MCL 24.263 required WCS to appeal the State Superintendent's act of declining to issue a declaratory ruling to the Circuit Court. The answer to that question is "Yes."

MCL 24.263 does not require a person to request a declaratory ruling before a civil action may be filed in circuit court, and it does not require an agency to respond to a request for declaratory ruling. *Human Rights Party v Michigan Corrections Commission*, 76 Mich App 204 (1977) ignored the unambiguous language of the statute and wrongly concluded that a refusal to issue a declaratory ruling requires an appeal to circuit court under MCL 24.263. This is especially true considering the Court of Appeals holding in *Huron Valley Schools v Secretary of State*, 266 Mich App 638 (2005) that there is no declaratory ruling under MCL 24.263 where, as here, there is no hearing before the agency.

The second question is whether an agency's act of declining to issue a declaratory ruling enables a litigant to pursue a declaratory judgment action in circuit court under MCL 24.264. The answer to that question is also "Yes."

MCL 24.264 provides that a civil action for declaratory relief may be filed in circuit court where a request for declaratory ruling challenging the applicability of a rule is either denied or not expeditiously acted upon by an agency. Assuming the Michigan Pupil Membership Auditing Manual consists of "rules," which the Macomb County Circuit Court apparently believed, then the State Superintendent's act of declining to issue a declaratory ruling allows WCS to file a civil action in circuit court for declaratory relief following the denial of that request.

This places the unambiguous language of MCL 24.264 in direct conflict with the holding of *Human Rights Party* because the act of declining to issue declaratory relief under MCL 24.264, which then allows the filing of a civil action, would also require an appeal to circuit court under MCL 24.263. This is a wholly incongruous outcome, and it improperly renders the language of MCL 24.264 surplusage.

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B. NO CIRCUIT COURT APPEAL WAS REQUIRED UNDER MCL 24.263.

The Macomb County Circuit Court erred in concluding that MCL 24.263 requires WCS to appeal the State Superintendent's act of declining to issue a declaratory ruling to the Circuit Court. MCL 24. 263 provides that:

> On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

(Emphasis added). The Michigan Department of Education provides, "by rule," a procedure for requesting a declaratory ruling in Mich Admin Code R 340.1352 ("Rule 340.1352"). Under that rule, "An interested person may request that the superintendent issue a declaratory ruling on how a statute administered by the department or a rule or order of the department applies to an actual state of facts." Mich Admin Code R 340.1352(1) (emphasis added).

Under MCL 24.263 and Rule 340.1352, three things are true:

First, MCL 24.263 and Rule 340.1352 *do not* require a person to request a declaratory ruling under any circumstance—it is optional. Rule 340.1352 makes this clear through its usage of the term "may," which indicates that a declaratory ruling request is permissive, not mandatory. See, e.g., *Murphy v Sears, Roebuck & Co*, 190 Mich App 384, 387 (1991) (holding that the use of the term "may" in relation to an administrative dispute resolution process was optional). This is also made clear by the language of MCL 24.264 (discussed more fully below) that requires administrative exhaustion only when a request for declaratory ruling seeks to challenge the validity or applicability of a rule. Had the Legislature wanted to extend the administrative exhaustion requirement to a statute, like the State School Aid Act, it could have easily done so with just a few words. However, the Legislature did not

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do so and that is dispositive. See, e.g., *American Civil Liberties Union of Mich v Calhoun Co Sheriff's Office*, 509 Mich 1, 15 (2022).

Second, MCL 24.263 *does not* require an agency to respond to a request for a declaratory ruling; rather, it states that "an agency may issue a declaratory ruling," which again is permissive. (Emphasis added.)

Third, MCL 24.263 and Rule 340.1352 *do not* provide the right to a hearing before the MDE.

Despite the permissive nature of MCL 24.263 and Rule 340.1352, WCS was forced by the Macomb County Circuit Court to seek a declaratory ruling from the State Superintendent. Then, when the Superintendent declined to issue a declaratory ruling because WCS lacked standing, the Circuit Court dismissed WCS' claims because it did not appeal the Superintendent's action to the Circuit Court. This dismissal was based upon *Human Rights Party v Michigan Corrections Commission*, 76 Mich App 204 (1977), which was decided in contravention of the unambiguous language of MCL 24.263.

In *Human Rights Party*, a prisoner challenged prison overcrowding by seeking a declaratory ruling under the APA from the Michigan Department of Corrections ("MDOC"). MDOC denied the request "on the theory that they lacked authority to issue such rulings." *Id.* at 207. The prisoner then filed a civil action in circuit court, with MDOC claiming that circuit court lacked jurisdiction. On review, the Court of Appeals considered whether "an agency's refusal to make any ruling" required an appeal to circuit court under MCL 24.263. *Id.* at 209. Even though MCL 24.263 provided that "an agency may issue a declaratory ruling," the same as it does today, the court concluded that an appeal was required even where an agency refuses to issue a declaratory ruling. In doing so, the court acknowledged that its decision was *not* based on the language of MCL 24.263; it simply presumed the intent of the Legislature:

> Although this is not specifically provided for in the statute, we find that the intent of the Legislature in establishing this declaratory ruling provision is to afford judicial review of an agency's refusal to make any ruling.

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Id. This holding, from nearly 50 years ago,[2] is clearly contrary to the longstanding canons of statutory interpretation, which were not addressed by the *Human Rights Party* court.[3]

"The primary goal of statutory interpretation is to give effect to the legislative intent, which begins by examining the plain language of the statute." *O'Halloran v Secretary of State*, --- NW3d ---, 2024 WL 3976495, at *6 (Mich Aug 28, 2024), citing *In re Reliability Plans of Electric Utilities for 2017–2021*, 505 Mich 97, 119 (2020). "'In so doing, we examine the statute[,] as a whole, reading individual words and phrases in the context of the entire legislative scheme.'" *People v Pinkney*, 501 Mich 259, 268 (2018), quoting *Madugula v Taub*, 496 Mich 685, 696 (2014). "'Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.'" *In re Lange*, --- NW3d ---, 2025 WL 1108082, at *4 (Mich Apr 14, 2025), quoting *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515 (2012). Dictionary definitions may be consulted for this purpose. *In re Lang*, 2025 WL 1108082, at *4, citing *People v Feeley*, 499 Mich 429, 437 (2016).

"Two longstanding principles of our jurisprudence are that we strive to avoid an interpretation that would render any part of the statute surplusage or nugatory, and that we generally presume the Legislature's use of different words demonstrates an intent that the words have different meanings." *Dine Brands Glob, Inc v Eubanks*, --- NW3d ---, 2025 WL 898837, at *10 (Mich Mar 24, 2025) (citations omitted).

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[2] Under the Michigan Court Rules, *Human Rights Party* was not binding on the Court of Appeals because it was issued before November 1, 1990. MCR 7.215(J)(1).

[3] *Human Rights Party* has been relied upon by several other Court of Appeals cases that have furthered the problem. For example, in *Bentley v Department of Corrections*, 169 Mich App 264 (1988), it held that an agency letter responding to a request for declaratory ruling under MCL 24.263 stating it should be considered denied if not responded to within thirty days required an appeal to circuit court. And, in *Standifer v Department of Corrections*, 187 Mich App 388 (1990), it held that a denial of a request for declaratory ruling under MCL 24.263 without explanation requires an appeal to circuit court.

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Additionally, "[t]his Court recognizes the maxim *expressio unius est exclusio alterius;* that the express mention in a statute of one thing implies the exclusion of other similar things." *Bradley v Saranac Community Sch Bd of Educ*, 455 Mich 285, 298 (1997) (emphasis in original). "'When a statute's language is unambiguous, . . . the statute must be enforced as written. No further judicial construction is required or permitted.'" *Pinkney*, 501 Mich at 268, quoting *Madugula*, 496 Mich at 696.

As stated above, MCL 24.263 unambiguously provides that an agency is not required to respond to a request for a declaratory ruling. Therefore, *Human Rights Party's* holding that an agency's failure to act requires an appeal to circuit court under MCL 24.263 is simply incorrect. But the errors of *Human Rights Party* go beyond that. The only action by an agency that requires an appeal to circuit court under MCL 24.263 is a "declaratory ruling," which is "subject to judicial review in the same manner as an agency final decision or order in a contested case." The *Human Rights Party* court treated not making a declaratory ruling the same as making a declaratory ruling. This is incorrect. The APA does not define "declaratory ruling." However, Black's Law Dictionary defines "declaratory" as "[e]xplanatory" and "ruling" as "[t]he outcome of a court's decision either on some point of law or on the case as a whole." Black's Law Dictionary further explains that a "legal ruling" is "a term ordinarily used to signify the outcome of applying a legal test when that outcome is one of relatively narrow impact. The immediate effect is to decide an issue in a single case." Black's Law Dictionary (12th ed. 2024).

In *Human Rights Party*, the MDOC refused to act because it believed it lacked legal authority. In this case, the MDE refused to act because its policies do not allow WCS to challenge Hazel Park's membership count through the administrative declaratory ruling process. In each case, the factual issue presented to the agency was not decided on the law or a legal test. Instead, the agencies declined to address the law or merits of the requests out of a perceived or actual lack of authority to do so. Definitionally, that is *not* a "declaratory ruling," it is the absence of a declaratory ruling that MCL 24.263 does not require the agency to issue in the first place, so no appeal is required.

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The errors of *Human Rights Party* do not stop there. *Human Rights Party* turns an agency's refusal to act into a *de facto* declaratory ruling that requires an appeal to circuit court. However, MCL 24.263 provides that appeal is in the same manner as a "contested case." The APA defines "contested case" as "a proceeding . . . in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3).[4] Yet, when an agency refuses to act on a request for a declaratory ruling there is no evidentiary hearing, and no record is made for a circuit court to review on appeal. This makes requiring an appeal where an agency has refused to act an exercise in futility. The *Human Rights Party* court recognized this glaring problem and noted that a circuit court may need to remand an appeal to the agency to create a record to review:

> The difficulty in the present case is that there is no record from the administrative agency. The circuit court would have no way of ascertaining the merits of plaintiff's claims. It may be necessary for the circuit court to remand this case to the Department of Corrections for a hearing to facilitate its judicial review.

Human Rights Party, 76 Mich App at 211. However, this statement improperly presumes that all agencies have a rule that provides a right to a hearing. As discussed above, the MDE's rules for requesting a declaratory ruling *do not* include the right to a hearing, and it is undisputed that no hearing was afforded to WCS. This begs the question of how an agency's refusal to act can be a "declaratory ruling" when there is no right to a hearing and no record to created for review? It can't. The Court of Appeals acknowledged as much in *Huron Valley Schools v Secretary of State*, 266 Mich App 638 (2005). In that case, the Court of Appeals concluded that

[4] It should be noted that judicial review under the APA is far more limited in scope than a civil action for declaratory relief would be. Under MCL 24.306(1), an agency's decision will be affirmed if, among other things, it is supported by "competent, material and substantial evidence." This is commonly known as the "substantial evidence" test, and it allows a decision to be affirmed if it is supported by "more than a scintilla of evidence," but it can be "substantially less than a preponderance." *In re Payne*, 444 Mich 679, 692 (1994).

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memorandums and letters from the Secretary of State were not declaratory rulings under MCL 24.263 precisely because there was no opportunity for a hearing prior to a decision:

> Neither M.C.L. § 24.263 nor M.C.L. § 24.301 permits a binding decision to be imposed on a party before it has had the opportunity for a hearing. O'Brien and the Huron Valley Schools assert that they had a due process right to a hearing before defendant issued an opinion. We agree that, pursuant to these statutes, this is true. However, defendant's memorandum and letters were not declaratory rulings or decisions. Indeed, pursuant to M.C.L. § 24.263 and M.C.L. § 24.301, we could not construe defendant's memorandum and letters to be "decisions" precisely because they were not preceded by a hearing.

Id. at 651-52. With all the above being said, it simply cannot be that declining to issue a declaratory ruling for reasons not on the merits constitutes a "declaratory ruling" subject to appeal to circuit court under MCL 24.263. It would force WCS, and school districts like it, into an administrative and appellate process that can yield nothing while simultaneously denying a right to a civil action. Such a situation is nothing less than the denial of due process.

C. A CIVIL ACTION IS ALLOWED UNDER MCL 24.264 AFTER THE DENIAL OF A REQUEST FOR DECLARATORY RULING.

Under MCL 24.264, an agency's act of declining to issue a declaratory ruling enables a litigant, like WCS, to pursue a declaratory judgment action in circuit court where the applicability of a rule is challenged.

MCL 24.264 provides that:

> Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff

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> has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

(Emphasis added). MCL 24.207 defines "Rule" as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency." This Court recently held that an agency action is a "rule" under the APA only if it meets the following elements: "(1) it is an agency regulation, statement, standard, policy, ruling, or instruction; (2) it is of general applicability; (3) it implements or applies law enforced or administered by the agency, or it prescribes the organization, procedure, or practice of the agency; and (4) it, in itself, has the force and effect of law." *Mich Farm Bureau v Dep't of Env't, Great Lakes, & Energy*, --- NW3d ---, 2024 WL 3610196, at *12 (Mich July 31, 2024).

When the Macomb County Circuit Court first ordered that WCS needed to request an administrative declaratory ruling from the MDE, it did so only in reference to MCL 24.264, which only pertains to "rules." Based on that order, WCS assumes for purposes of this Supplemental Brief that the Michigan Pupil Membership Auditing Manual is a "rule" within the meaning of the APA. If it is, then the outcome is clear. Stated in the affirmative, MCL 24.264 provides "an action for declaratory judgment may [] be commenced under this section [if] the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously." The APA does not define "action," but it is defined in the Michigan Court Rules as a "civil action," which is commenced with the filing of a complaint. MCR 2.101(A)-(B). Likewise, the APA does not define "denied," but its most contextually appropriate dictionary definition is "to refuse to grant or give." Webster's New World Dictionary, Third College Edition (1988).

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With these definitions in mind, MCL 24.264 unambiguously provides that if an agency refuses to grant declaratory relief regarding the applicability of a rule, then that person has exhausted their administrative remedies and is free to file a civil action in circuit court for declaratory relief. The Court of Appeals held as much in *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 51 (2000), stating:

> Plaintiff could have requested a declaratory ruling regarding § 57 [of the Michigan Campaign Finance Act], and, if the Secretary of State refused to issue such a ruling, plaintiff could have sought a declaratory judgment in the circuit court. MCL 24.264.

See also *Huron Valley Sch v Secretary of State*, 266 Mich App 638, 646 (2005). That is what happened here. The Circuit Court dismissed WCS' claims because it found that WCS needed to seek an administrative declaratory ruling under MCL 24.264 and the Michigan Pupil Membership Auditing Manual. WCS did just that, and the State Superintendent refused to issue the declaratory ruling. However, when WCS re-instituted its civil action against Hazel Park, as is plainly allowed under MCL 24.264, the Circuit Court changed the legal basis and dismissed the claims because WCS did not appeal the State Superintendent's refusal under MCL 24.263.

As discussed above, WCS was not required to appeal to circuit court under MCL 24.263, but the change by the Circuit Court raises an entirely different problem with *Human Rights Party's* holding. Under MCL 24.264, the denial of a declaratory ruling—for any reason—allows a civil action to be filed in circuit court for declaratory relief. Yet, under *Human Rights Party*, the very same denial requires an appeal to circuit court under MCL 24.263. This cannot be the interpretative outcome because it renders an entire portion of MCL 24.264 meaningless, effectively eliminating the right to file a civil action following the denial of a declaratory ruling.

Consequently, WCS' civil action should have been allowed to proceed in the Circuit Court because it was denied the declaratory ruling the Circuit Court originally ordered it to seek under MCL 24.264.

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III. CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Appellant, Warren Consolidated School District, respectfully requests this Honorable Court issue a peremptory order reversing the Macomb County Circuit Court's September 8, 2022 order and allowing Appellant's civil action to proceed.

Respectfully submitted,

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Dated: April 24, 2025

CERTIFICATE OF COMPLIANCE WITH MCR 7.212(B)(1)

I certify that Appellant Warren Consolidated School District's Supplemental Brief complies with the type-volume limitation of MCR 7.212(B)(1) because this brief contains 3,860 words, as counted by the word processing system employed by O'Reilly Rancilio P.C.

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