

**STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT**

MICHIGAN REPUBLICAN PARTY, and  
REPUBLICAN NATIONAL COMMITTEE,

Supreme Court No. \_\_\_\_\_

Plaintiffs-Appellants,

Court of Appeals No. 364048

v

DAVINA DONAHUE, Interim City  
Clerk, in the capacity as member of Flint  
Board of Election Commissioners,  
WILLIAM “BILL” KIM, City Attorney,  
in the capacity as member of Flint Board  
of Election Commissioners, and  
STACEY KAAKE, City Assessor, in the  
capacity as member of Flint Board of  
Election Commissioners,

Genesee County Circuit Court  
Case No. 22-118123-AW

Defendants-Appellees.

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**PLAINTIFFS-APPELLANTS MICHIGAN REPUBLICAN PARTY AND  
REPUBLICAN NATIONAL COMMITTEE’S  
APPLICATION FOR LEAVE TO APPEAL**

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**STATEMENT OF JURISDICTION**

On March 7, 2024, the Court of Appeals issued its published opinion in this case affirming the trial court’s November 15, 2022 “order” disposing of the last remaining claim between the parties on the grounds that the Plaintiffs-Appellants the Michigan Republican Party (“MRP”) and the Republican National Committee (“RNC,” and collectively with the MRP, the “GOP”) lack standing. See generally *Michigan Republican Party v Donahue*, \_\_\_ Mich App \_\_\_; \_\_\_ NW3d \_\_\_ (2024) (Docket No. 364048) COA Op (App161-177a). This Court has jurisdiction over this timely application for leave to appeal under MCR 7.303(B)(1) and 7.305(C)(2).

**STATEMENT OF QUESTIONS PRESENTED**

I. Did the Court of Appeals err in affirming the trial court's dismissal of the GOP's claims for a writ of mandamus under MCR 2.116(I) where both MRP and RNC each have a special injury, right, or substantial interest that was and will be detrimentally affected in a manner different from the citizenry at large under *Lansing Sch Edu Ass'n v Lansing Board of Educ*, 487 Mich 349; 792 NW2d 686 (2010)?

The trial court would answer: No.

The Court of Appeals would answer: No.

Plaintiffs-Appellants MRP and RNC answer: Yes.

II. Did the Court of Appeals err in affirming the trial court's dismissal of the GOP's suit under MCR 2.116(I) when MRP and RNC each met the requirements to seek declaratory judgment under MCR 2.605?

The trial court would answer: No.

The Court of Appeals would answer: No.

Plaintiffs-Appellants MRP and RNC answer: Yes.

III Did the Court of Appeals err in affirming the trial court's dismissal of the GOP's claims for writ of mandamus under MCR 2.116(I) where the statutory scheme governing the appointment of election inspectors clearly implies that the Legislature intended to confer standing on MRP and RNC to enforce the duties and obligations of boards of election commissioners under MCL 168.674(2) under *Lansing Sch Edu Ass'n v Lansing Board of Educ*, 487 Mich 349; 792 NW2d 686 (2010)?

The trial court would answer: No.

The Court of Appeals would answer: No.

Plaintiffs-Appellants MRP and RNC answer: Yes.

**STATUTES INVOLVED**

**MCL 168.673a provides:**

Not later than May 15 of each year, the county chair of a major political party may submit to the city or township clerks in that county a list of individuals who are interested in serving as an election inspector in that county. The county chair may designate in the list the city or township in which each individual on the list wishes to serve.

**MCL 168.674 (emphasis added) provides:**

- (1) Notwithstanding any other provision of law to the contrary and subject to this section, the city and township board of election commissioners, at least 21 days before each election, but in no case less than 5 days before the date set for holding schools of instruction, shall appoint for each election precinct and early voting site at least 3 election inspectors and as many more as in the board's opinion is required for the efficient, speedy, and proper conduct of the election. The board of election commissioners may appoint as election inspector an individual on the list submitted by a major political party under section 673a who is qualified to serve under section 677. An appointment of an election inspector under this section is void if a properly completed application for that election inspector is not on file in the clerk's office as prescribed in section 677.
- (2) The board of election commissioners shall designate 1 appointed election inspector as chairperson. **The board of election commissioners** shall appoint at least 1 election inspector from each major political party and **shall appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party.** The board of election commissioners may appoint election inspectors in an election precinct from minor political parties. Not later than 2 business days following the appointment of election inspectors under subsection (1) for elections in which a federal or state office appears, the board of election commissioners shall notify by certified mail, personal service, or electronic transmission capable of determining date of receipt the county chair of each major political party of the names and political party affiliations of appointed election inspectors and the precincts to which those election inspectors were appointed. A board of election commissioners shall not appoint an individual as an election inspector if that individual declares a political party preference for 1 political party but is a known active advocate of another political party. As used in this section, "a known active advocate" means an individual who meets 1 or more of the following:
  - (a) Is a delegate to the convention or an officer of that other political party.
  - (b) Is affiliated with that political party through an elected or appointed government position.

- (c) Has made documented public statements specifically supporting by name the other political party or its candidates in the same calendar year as the election for which the appointment is being made. As used in this subdivision, “documented public statements” means statements reported by the news media or written statements with a clear and unambiguous attribution to the applicant.
- (3) The county chair of a major political party may challenge the appointment of an election inspector based on the qualifications of the election inspector, the legitimacy of the election inspector’s political party affiliation, or whether there is a properly completed declaration of political party affiliation in the application for that election inspector on file in the clerk’s office. The challenge must be in writing, specifically identify the reason for the challenge, and include any available documentation supporting the challenge. The county chair of the political party shall file a challenge under this subsection with the board of election commissioners not later than 4 business days following receipt of the board of election commissioners’ notice of appointed election inspectors under subsection (2).
- (4) Upon receipt of a challenge under subsection (3), the board of election commissioners shall determine whether the appointee has the necessary qualifications by reviewing the application or any other official records, such as voter registration records, or whether the applicant has a properly completed certification of political party affiliation in the application. If the challenge alleges that the appointee is a known active advocate of a political party other than the one on the appointee’s application, the board of election commissioners immediately shall provide the appointee with a copy of the challenge by certified mail, personal service, or electronic transmission capable of determining date of receipt. The appointee may respond to the challenge within 2 business days after receiving a copy of the challenge. A response must be by affidavit addressing the specific reasons for the challenge. Failure to respond results in revocation of the appointment. Within 2 business days after receiving the challenge or a response from the appointee, whichever is later, the board of election commissioners shall make a final determination and notify the appointee and the county chair of the political party of the determination.
- (5) If a vacancy occurs in the office of chairperson or in the office of election inspector before election day, the chairperson of the board of election commissioners shall designate some other properly qualified applicant or election inspector as chairperson or some other qualified applicant as election inspector, as applicable, subject to this section. If a vacancy occurs in the office of chairperson on election day, the remaining election inspectors shall designate 1 of the election inspectors as chairperson.

**MCL 168.677 provides, in pertinent part:**

- (1) Except as otherwise provided in subsection (4) [which makes limited exceptions for minors], a precinct election inspector must be a qualified and registered elector of this

state, must have a good reputation, and must have sufficient education and clerical ability to perform the duties of the office. An individual must not be appointed to a board of election inspectors unless the individual has filed an application with the county clerk or the city or township clerk in the county where the individual wishes to serve as a precinct election inspector.

- (2) The application must contain the applicant's name, home address, ward and precinct registration if any, date of birth, political party affiliation, education, employment, and other experience qualifications. The application must provide a certification that the applicant is not a member or a known active advocate, as that term is defined in section 674, of a political party other than the political party entered on the application. The form of the application under this section must be approved by the state director of elections. A county, city, or township clerk may allow an applicant for precinct election inspector to file an application through an online application portal or by other electronic means. The clerk shall maintain a file of applications filed under this section and make the applications available for public inspection at the clerk's office during normal business hours.

**MCL 168.765a (emphasis added) provides, in pertinent part:**

- (1) Subject to section 764d, if a city or township decides to use absent voter counting boards, the board of election commissioners of that city or township shall establish an absent voter counting board for each election day precinct in that city or township.

\* \* \*

- (2) Subject to section 764d, the board of election commissioners shall appoint the election inspectors to absent voter counting boards not less than 21 days before the election at which the absent voter counting boards are to be used. **Sections 673a and 674 apply to the appointment of election inspectors to absent voter counting boards under this section.**

\* \* \*

- (3) If more than 1 absent voter counting board is to be used, the city or township clerk shall determine the number of electronic tabulators and the number of election inspectors to be used in each of the absent voter counting boards and to which absent voter counting board the absent voter ballots for each precinct are assigned for counting.

- (4) In a city or township that uses absent voter counting boards under this section, the absent voter ballots must be counted in the manner provided in this section and, except as otherwise provided in section 764d, absent voter ballots must not be delivered to the polling places. [...] The places must be designated as absent voter counting places. **Except as otherwise provided in this section, laws relating to election day precincts, including laws relating to the appointment of election inspectors, apply to absent voter counting places.** The provisions of this section relating to tabulating absent voter ballots by electronic voting systems apply. [. . .]

There is no limit on the number of absent voter counting boards that may be assigned to 1 building.

\* \* \*

- (8) The oaths administered under subsection (7) must be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk. Subject to this subsection, the clerk of a city or township may allow the election inspectors appointed to an absent voter counting board in that city or township to work in shifts. A second or subsequent shift of election inspectors appointed for an absent voter counting board may begin that shift at the time provided by the city or township clerk. If the election inspectors appointed to an absent voter counting board are authorized to work in shifts, at no time shall the absent voter ballots be left unattended during the transition from one shift to the next shift, or at any other time during the day after ballots are removed from the absent voter ballot return envelopes and before the absent voter ballots are sealed in the ballot container. **At all times while absent voter ballots are being processed and tabulated, at least 1 election inspector from each major political party must be present at the absent voter counting place and the policies and procedures adopted by the secretary of state regarding the counting of absent voter ballots must be followed.**

\* \* \*

## I. INTRODUCTION

Each election cycle, local units of government across the state hire thousands of “election inspectors” to conduct the election. These election inspectors—also called poll workers—administer all aspects of the election in each community. They process voters in polling places, tabulate absentee ballots at absent voter count boards, secure voting equipment and records, publish election results, and much more.

Like most states, Michigan law requires that local officials appoint election inspectors from each of the two major political parties: Democrats and Republicans. Specifically, Michigan law mandates that each city and township board of election commissioners “shall appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party.” MCL 168.674(2). This partisan parity requirement applies not only to the appointment of election inspectors to polling places, but also the appointment of election inspectors to the locations where absentee ballots are processed and tabulated, known as absent voter count boards (“AVCBs”). See MCL 168.765a(2). And for good reason: the consensus is that “selecting election workers from both major political parties serves as a transparency mechanism and affirms that the two parties have the same insight into the election process and thus can validate the results.” Gordon & Orey, Bipartisan Policy Center, *Fortifying Election Security Through Poll Worker Policy* <<https://bipartisanpolicy.org/report/poll-worker-policy/>> (accessed April 18, 2024).

Plaintiff-Appellant the Michigan Republican Party (“MRP”) is a “major political party” under Michigan law. See MCL 168.16. MRP was formed for the purposes of, among other things, ensuring that elections are conducted in an open, fair, and orderly manner, and that its rights and privileges and those of its members regarding elections are exercised and preserved. Ver’d Compl, ¶ 6 (App31-32a). Likewise, Plaintiff-Appellant the Republican National

Committee (“RNC”) is a national political party based in Washington D.C. *Id.*, ¶ 7 (App32a). In addition to managing the Republican Party’s business affairs at the national level, the RNC supports state Republican parties such as MRP by, among other things, coordinating election strategy—including by supporting MRP’s efforts to appoint election inspectors. *Id.*

Here, MRP and RNC—referenced together as the “GOP”—recruited Republican election inspectors in 2022 to work in jurisdictions across Michigan that, like the City of Flint, have historically not achieved partisan parity when appointing election inspectors. *Id.* While there may have been a shortage of Republican election inspectors in Flint during previous elections, the GOP made a concerted effort throughout 2022 to recruit Republicans to work there as election inspectors. *Id.*, ¶ 16 (App34a).

Despite the GOP’s successful recruitment efforts, the Flint Board of Election Commissioners (the “Board”) still appointed far more Democrat election inspectors than Republicans. In fact, and despite the Board’s legal duty to appoint equal numbers of election inspectors from each major party, Flint’s election staff openly *rejected* prospective Republican election inspector applicants. Yet, when the GOP asked the Board to appoint additional Republicans to achieve more partisan parity as required by law, the Board refused to do so.

Having exhausted its options, the GOP sued the Board—which at that time was comprised of Davina Donahue (Interim City Clerk), William Kim (City Attorney), and Stacey Kaake (City Assessor)—seeking writs of mandamus to enforce the Board’s duties to appoint an equal number, as nearly as possible, of election inspectors from each major political party to each precinct under subsection 674(2) and to each AVCB under subsections 674(2) and 765a(2). The trial court, however, determined that the GOP lacked standing under *White v Highland Park*

*Election Comm*, 312 Mich App 571; 878 NW2d 491 (2015), and the Court of Appeals affirmed in a split, published decision. Both lower courts erred in several respects.

The GOP has standing to enforce the partisan parity mandate under several distinct principles from this Court’s decision in *Lansing Sch Educ Ass’n v Lansing Bd of Edu*, 487 Mich 349; 792 NW2d 686 (2010) (hereafter “*Lansing Schools*”). Indeed, the GOP has standing to pursue a declaratory judgment because it meets the requirements of MCR 2.605. *Lansing Schools*, 487 Mich at 372. Separately, the GOP also has standing to pursue its mandamus claims based on special injuries, rights, and substantial interests—all of which are detrimentally affected in a manner different from the citizenry at large. *Id.* Finally, the GOP has standing because the statutory scheme—*i.e.*, section 674(2) and its related provisions—clearly implies that the Legislature intended to confer standing on the GOP to enforce the partisan parity mandate as to election inspector appointments under subsection 674(2). *Id.* These fundamental standing principles are of “major significance to the state’s jurisprudence.” MCR 7.305(B)(3).

While each of those independent grounds for standing was and remains sufficient for the GOP to pursue its claims, the published decision of the Court of Appeals will, absent reversal, likely be used by local units of government to shirk their legal duties to appoint equal numbers of election inspectors from each of the Democrat and Republican Parties. Such an affront to our election system is a matter of “significant public interest” requiring this Court’s review. MCR 7.305(B)(2). Indeed, as the Court of Appeals dissent recognized, while bipartisanship in election administration is especially important today, the majority’s opinion could well mean that no one has the authority to enforce the partisan parity mandate under Michigan law. For these reasons, and as further discussed below, the GOP respectfully requests that this Court grant its application for leave to appeal the majority decision of Court of Appeals.

## II. STATEMENT OF MATERIAL FACTS & PROCEEDINGS

### A. Michigan law governs the process for appointing election inspectors.

MCL 168.674 is the main source of the Board’s legal duties in the GOP’s mandamus claims. Specifically, section 674 consists of five distinct subdivisions that, when combined, mandate the process for staffing the polls and AVCBs with election inspectors. Because the language and organization of section 674 are central to the questions before the Court, each of those subsections are summarized below.<sup>1</sup>

#### 1. MCL 168.674(1) establishes the deadline for appointing election inspectors and the pool of eligible appointees.

The first subsection—MCL 168.674(1)—provides the deadline for appointing election inspectors, as well as the pool of potential appointees. As for the appointment deadline, subsection 674(1) provides that “at least 21 days before each election, but in no case less than 5 days before the date set for holding schools of instruction,” each board “shall appoint for each election precinct and early voting site at least 3 election inspectors and as many more as in the board’s opinion is required for the efficient, speedy, and proper conduct of the election.” As for the pool of potential appointees, subsection 674(1) provides that “[a]n appointment of an election inspector under this section is void if a properly completed application for that election inspector is not on file in the clerk’s office as prescribed in [MCL 168.677].” Subsection 674(1) also provides that the Board “may appoint as election inspector an individual on the list submitted by a major political party under [MCL 168.673a] who is qualified to serve under [MCL 168.677].”

Meanwhile, MCL 168.677 governs applications for appointment and eligibility to serve as election inspectors. There, section 677 requires that an “election inspector must be a qualified

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<sup>1</sup> As recognized by the Court of Appeals, while the Legislature recently amended the Michigan Election Law, the amendments do not substantively alter the provisions at issue here. Maj Op at 1 n 1. For ease of reference, citations to the pertinent statutory provision are to the current version of each statute.

and registered elector of this state, must have a good reputation, and must have sufficient education and clerical ability to perform the duties of the office.” MCL 168.677(1).

There’s a partisan requirement, too. A board may not appoint an election inspector unless the individual’s application contains, among other information, the applicant’s “political party affiliation” and “a certification that the applicant is not a member or a known active advocate, as that term is defined in section 674, of a political party other than the political party entered on the application.” MCL 168.677(1)-(2). Thus, an applicant is ineligible if they claim affiliation with one political party but they served as a delegate to the convention or an officer of the other major party, are affiliated with that other party through an elected or appointed government position, or made public statements supporting the other political party or its candidates during the same calendar year for which the applicant seeks appointment. See MCL 168.674(2) (defining “known active advocate”).

**2. MCL 168.674(2) requires the Board to appoint an equal number as possible of election inspectors from each major political party.**

The second subsection—MCL 168.674(2), which is the main basis for the GOP’s mandamus claims—provides that each “board of election commissioners **shall** appoint at least 1 election inspector from each major political party **and shall** appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party.” MCL 168.674(2) (emphasis added). The Board’s legal duty to appoint an equal number of election inspectors from each major party also applies to AVCBs, which many jurisdictions use to tabulate absent voter ballots in a separate location, apart from in-person polling locations. See MCL 168.765a(2) (providing that the partisan parity mandate, among other requirements under section 674, “appl[ies] to the appointment of election inspectors to [AVCBs]”).

Once a board has appointed election inspectors, subsection 674(2) mandates that the board “shall [within two business days] notify . . . the county chair of each major political party of the names and political party affiliations of appointed election inspectors and the precincts to which those election inspectors were appointed.” MCL 168.674(2). Consistent with the partisanship application requirements under subsection 674(1), subsection 674(2) further provides that a board “shall not appoint an individual as an election inspector if that individual declares a political party preference for 1 political party but is a known active advocate of another political party.” *Id.*

In other words, subsection 674(2) mandates that each board appoint as equal a number as possible of election inspectors from each of the two major political parties—Democrat and Republican—in each precinct and each AVCB. And by no means does that mandate make Michigan an outlier here, as “the vast majority of states require a specific political party makeup of poll workers to help ensure fairness.” Center for American Progress, *Recruiting and Retaining Poll Workers During the Coronavirus Pandemic* <https://www.americanprogress.org/article/recruiting-retaining-poll-workers-coronavirus-pandemic/> (accessed April 18, 2024) (citing the National Conference of State Legislatures). See also Gordon & Orey, *Fortifying Election Security Through Poll Worker Policy* (“47 states mandate a specific political party makeup of temporary election workers.”)

In fact, requiring a specific partisan makeup of election inspectors is both common and overwhelmingly viewed as favorable public policy. “[M]ost election offices require that representatives from both major political parties are represented as election workers to ensure bipartisan transparency into the election process.” *Id.* Schemes requiring election inspectors from both major parties “seek[] to ensure that political parties have equal representation in the election

process.” *Id.* “In many states, the purpose of party disclosure [by election inspectors] is to ensure that the management of polling places and the handling of ballots have checks and balances.” *Id.*

Further, Michigan’s partisan parity mandate has been around a long time. Nearly seventy years ago, then-Attorney General Thomas M. Kavanagh issued an Opinion addressing the question of whether an individual that fails to identify their political party preference on their application under section 677 may serve as an election inspector under section 674. OAG, 1955-1956, No 2594 p 562 (September 19, 1956). There, the Attorney General observed that “[t]he legislature has conferred broad powers upon the board of election inspectors,” and “[t]he purity of elections and the defense of the right of franchise of the elector have been entrusted to [election inspectors].” *Id.* at 563. “[F]rom the very moment that the voter enters the polls,” the Attorney General reasoned, “[their] right to vote and the inviolability of [their] ballot, as a qualified elector, rests in the hands of the board of election inspectors.” *Id.*

In light of the powers conferred upon election inspectors, the Attorney General continued, “the legislature has sought to protect the purity of elections and to safeguard the elective franchise by the enactment of the Section 674 of the election code.” *Id.* Section 674, of course, provides the partisan parity mandate at issue here.<sup>2</sup> And by enacting section 677, which governs applications for appointment and eligibility to serve as an election inspector, the Attorney General further explained that “the legislature has provided the means whereby the proper election commission shall carry out the order of the legislature contained in Section 674 of the election code that not more than 50%, as near as possible, of the board of election inspectors shall be of the same political party.” *Id.* at 564-65. Thus, the partisan parity mandate as to the appointment of election inspectors is not only well-established and common across the

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<sup>2</sup> While the language of section 674 has been amended since 1956, both the current version and the version at issue in Attorney General Kavanagh’s opinion include a partisan parity mandate.

United States, but is also a cornerstone of public confidence that elections are run with transparency and integrity.

**3. County chairs of major political parties may challenge the qualifications and partisanship of election inspector appointees under MCL 168.674(3), and boards must address those challenges under MCL 168.674(4).**

The third and fourth subsections—MCL 168.674(3) and (4)—combine to provide the process through which county chairs of major political parties may challenge the qualifications and partisanship of individual election inspector appointees. Specifically, subsection 674(3) permits the county chair of a major political party to challenge the qualifications and partisan bonafides of individual election inspector appointees, while subsection 674(4) requires each board to process those challenges within a certain time. As explained below, however, that challenge process is subject to two important limitations: (a) only county chairs may challenge individual appointees under subsection 674(3), and (b) because county chairs may only challenge the qualifications and partisan bonafides of individual election inspector appointees, they may *not* challenge the partisan makeup of the roster of election inspectors through that process.

To that end, subsection 674(3) expressly provides that “[t]he county chair of a major political party may challenge the appointment of an election inspector based on the qualifications of the election inspector, the legitimacy of the election inspector’s political party affiliation, or whether there is a properly completed declaration of political party affiliation in the application for that election inspector on file in the clerk’s office.” MCL 168.674(3). Such challenges “must be in writing,” must “identify the reason for the challenge,” and must “include any available documentation supporting the challenge.” *Id.*

Put another way, the grounds for a county chair challenge under subsection 674(3) are expressly limited to (a) “the qualifications of the election inspector” and (b) the partisan

bonafides of that individual election inspector (*i.e.*, “the legitimacy” of that appointee’s “political party affiliation,” and “whether there is a properly completed declaration of political party affiliation in the application” for that appointee “on file in the clerk’s office.”). *Id.* Conspicuously absent from subsection 674(3)—an absence significant to this Court’s standing analysis—is any language permitting a county chair to challenge a board’s failure to comply with the partisan parity mandate.

While subsection 674(3) sets forth the process by which a county chair may challenge the qualifications and partisan bonafides of individual appointees, subsection 674(4) sets out the process by which boards must address those county chair challenges. Upon receiving a county chair’s challenge to an individual election inspector’s qualifications or partisanship, the board “shall determine whether the appointee has the necessary qualifications by reviewing the application or any other official records, such as voter registration records, or whether the applicant has a properly completed certification of political party affiliation in the application.” MCL 168.674(4). To the extent a county chair challenges the partisan bonafides of an election inspector, the board “immediately shall provide the appointee with a copy of the challenge,” from which time the appointee has two business days to respond to the challenge. *Id.* Any response from the appointee “must be by affidavit addressing the specific reasons for the challenge,” and “[f]ailure to respond results in revocation of the appointment.” *Id.*

Finally, subsection 674(4) provides that boards “shall make a final determination [as to the county chair challenge] and notify the appointee and the county chair of the political party of the determination” within the later of “2 business days after receiving the challenge or a response from the appointee[.]” Importantly, subsection 674(4) does *not* provide any express cause of action for appealing a board’s determination as to a county chair’s challenge of an election

inspector under subsection 674(3). In fact, the entirety of section 674 is devoid of any express statutory cause of action whatsoever.

**4. The partisan parity mandate runs through Election Day under subsection 674(5).**

The final subsection—MCL 168.674(5)—addresses the process for filling election inspector vacancies. “If a vacancy occurs . . . in the office of election inspector before election day,” the chair of the board “shall designate . . . some other qualified applicant as election inspector, as applicable, subject to [section 674].” In other words, each boards’ legal duties under section 674—including the partisan parity mandate regarding election inspectors—runs through Election Day. See MCL 168.674(5).

**B. It is undisputed that there was a partisan disparity of Election Inspectors in Flint during the 2022 election cycle.**

Understanding that there may have been a shortage of Republican election inspectors in Flint during previous elections, the GOP made a concerted effort over the course of 2022 to encourage Republicans to serve there as election inspectors. Ver’d Compl, ¶ 16 (App34a). For example, on May 12, 2022, the GOP worked to provide former-Flint City Clerk Inez Brown with applications for 122 Republicans interested in serving as election inspectors in Flint for the August 2, 2022 primary election. *Id.*, ¶ 17 (App34a). Notwithstanding the availability of additional, qualified Republican-affiliated election inspector applicants made possible by the GOP’s recruitment and coordination efforts in Flint, a massive disparity existed between the number of Republicans appointed to serve as election inspectors for the primary election and the number of Democrats appointed for the same role. *Id.*, ¶18 (App34a). Indeed, as of July 16, 2022, the Board had appointed only 27 Republican election inspectors compared with 442 Democrat election inspectors—a staggering partisan disparity. *Id.*

Clearly, 1 Republican to 16 Democrats does not satisfy the partisan parity mandate under subsection 674(2). So, the GOP contacted former-Clerk Brown a week before the August 2022 primary election to address the Board's unequal appointment of partisan election inspectors. *Id.*, ¶ 19 (App34a). In response, former-Clerk Brown assured the GOP that the Board would contact the Republican applicants that the GOP had recruited back in May 2022 to achieve a more equal partisan roster of election inspectors. *Id.*, ¶ 20 (App35a).

Soon after the primary election, however, the GOP contacted the 122 Republicans on the list it had provided former-Clerk Brown only to learn that the Board had appointed merely 22 additional Republicans. *Id.*, ¶ 21 (App35a). Thus, the Board had appointed only 1 Republican election inspector for every 15 Democrats for the August 2022 primary election. *Id.* This, despite the availability of additional qualified and willing Republican-affiliated election inspector applicants. Clearly, the Board had failed to satisfy its legal duty under subsection 674(2) to appoint as equal a number as possible of election inspectors from each major political party to each election precinct and each AVCB. *Id.*

Despite the Board's failure to appoint additional Republican election inspectors for the primary election, the GOP continued its efforts to collaborate with the Board to achieve partisan parity among election inspectors. On September 9, 2022, the GOP sent former-Clerk Brown a list of 61 Republicans that had confirmed their interest to work as election inspectors in Flint during the upcoming general election. *Id.*, ¶ 23 (App35a). But when the GOP received the list of election inspector appointees for the November 2022 general election, it was clear that the Board had again failed to comply with the partisan parity mandate. *Id.*, ¶ 25 (App35a). A copy of the Board's correspondence and list were attached to the GOP's Verified Complaint as Exhibit 1.

*Id.*, Ex 1 (App46-74a).<sup>3</sup> Of the approximately 562 election inspectors included on the Board’s list, only 57—or *approximately 10%*—were Republicans. *Id.* This extreme disparity showed that, again, despite the GOP’s efforts to assist the Board, the Board had still failed to comply with the partisan parity mandate. *Id.*, ¶ 6 (App31-32a).

Meanwhile, additional Republicans had contacted the Flint City Clerk’s office to inquire about working as election inspectors. *Id.*, ¶ 27 (App36a). The GOP learned that despite 90% of the election inspector appointees having claimed an affiliation with the Democrat Party, those Republican individuals that contacted the Flint Clerk’s office about serving as election inspectors were *rejected* by the clerk’s staff. *Id.* In one instance, the City Election Supervisor told a prospective Republican election inspector that the clerk had received “a lot” of calls from Republicans about serving as election inspectors, but that Flint did not need more Republican election inspectors because Flint “is a predominately Democratic area.” *Id.*, ¶ 28 (App36a). The Election Supervisor also claimed that partisan affiliation is irrelevant to serving as an election inspector. *Id.* This, despite the longstanding partisan parity requirement under subsection 677(2) that each applicant must identify their “political party affiliation” on their application, and also despite the Board’s clear legal duty to appoint an equal number of election inspectors from each major political party to each election precinct and each AVCB under subsection 674(2). See also MCL 168.765a(8) (“At all times while absent voter ballots are being processed and tabulated, at least 1 election inspector from each major political party must be present at the absent voter counting place.”).

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<sup>3</sup> In its Verified Complaint, the GOP had alleged it received this list from the Board on October 15, 2022. Ver’d Compl, ¶ 25 (App35a). This was an oversight. While the letter from Election Commissioner Donahue is indeed dated October 15, 2022, it was sent as an attachment via email from Ms. Gloria Boone (Election Supervisor, City of Flint) to Matthew Smith (the Chair of the Genesee County Republican Party) on Monday, October 17, 2022 at 2:00 pm.

**C. The GOP attempts to resolve the partisan disparity in election inspector appointments through bipartisan cooperation rather than litigation.**

As of October 21, 2022, merely 10% of the approximately 562 election inspectors appointed by the Board for the 2022 general election were Republicans. Making matters worse, the Board had appointed only four Republican election inspectors to work at its AVCBs, compared to 56 Democrats appointed for the same role. To say the Board had failed to comply with the partisan parity mandate would be a massive understatement.

Continuing its good-faith effort to resolve these illegal partisan disparities, the GOP (through counsel) issued a letter dated October 21, 2022, again requesting that the Board comply with the partisan parity mandate. A copy of that letter was attached to the GOP's Verified Complaint as Exhibit 2. *Id.*, Ex 2 (App76-113a). There, the GOP requested that the Board, among other things, appoint additional Republican election inspectors from a list of applicants provided to the Board, reallocate at least 20 Republican election inspectors from precinct polling places to AVCBs, and assist prospective Republican election inspector applicants rather than turning those individuals away. See *id.*, Ex 2 at 3-4 (App78-79a).

Importantly, the GOP's October 21, 2022 letter did not raise any challenge as to the qualifications or partisan bonafides of individual election inspector appointees. As explained *supra* Section II.A.3, those challenges regarding individual election inspectors may only be submitted by county chairs of major political parties under subsection 674(3). Here, the GOP's letter focused instead on the Board's failure to appoint as equal a number as possible of election inspectors from each major party to each precinct and AVCB under subsection 674(2) and section 765a, respectively—duties that run through Election Day under subsection 674(5). See *id.*, Ex 2 (App76-113a).

Election Commissioner Kim—a member of the Board by virtue of his position as the City Attorney—responded to the GOP’s letter on October 25, 2022. A copy of Election Commissioner Kim’s October 25, 2022 letter was attached to the GOP’s Verified Complaint as Exhibit 3. *Id.*, Ex 3 (App115-116a). Kim acknowledged that Michigan law requires the Board to “appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party” under subsection 674(2), and claimed that recent appointments had brought the total number of Republican election inspectors to over 120, with “almost 50 of the persons listed” in the GOP’s October 21, 2022 letter having been appointed as election inspectors. *Id.* at 1 (App115a). Kim also claimed that the City Clerk’s office intended to contact the persons identified on the GOP’s list to inquire whether those persons remained interested in serving as election inspectors for the November 8, 2022 general election. *Id.* Kim, however, did not explain why the Clerk had not already contacted these individuals, and was otherwise silent as to the remaining actions requested by the GOP. *Id.*

Even if the GOP took Election Commissioner Kim’s numbers to be true, then of the approximately 682 election inspectors appointed by the Board, only 120—or approximately 17.6%—were Republicans. And with the election still more than a week away, the Board was essentially refusing to take the additional steps necessary to comply with the partisan parity mandate. *Id.*, ¶ 3 (App31a).

While the Board’s hiring of *some* additional Republican election inspectors was a nominal step in the right direction—it raised the percentage of Republican appointees from approximately 10% to 17.6%—the Board still fell woefully short of complying with the partisan parity mandate. With that in mind, on October 26, 2022, the GOP requested a telephone conference with Election Commissioner Kim to discuss the Board’s non-compliance with the

partisan parity mandates under subsections 674(2) and section 765a. *Id.*, ¶ 41 (App39-40a). Specifically, the GOP’s counsel asked to discuss the GOP’s prior request that the Board reallocate no fewer than 20 Republican election inspectors from precinct polling places to the City’s AVCBs. *Id.*, ¶ 41(a) (App39a). Election Commissioner Kim, however, refused to discuss the matter with the GOP’s counsel, stating “[the Board] find[s] no clear legal duty to act as requested” and, in a shocking twist of irony given the circumstances, claimed that the Board “would not want to create the appearance of showing undue favoritism to any political party.” *Id.*, ¶ 42 (App40a).

Election Commissioner Kim did, however, provide a list of Republican election inspectors, which was purported to be current as of approximately 4:30pm ET on October 27, 2022. *Id.*, ¶ 43 (App40a). A copy of this list was appended to the GOP’s Verified Complaint as Exhibit 4. *Id.*, Ex 4 (App118-120a). At best, that list indicated that the total number of Republican election inspectors appointed by the Board was 130, with only six of these Republican election inspectors assigned to Flint’s AVCBs. *Id.*, ¶ 44 (App40a); Ex 4 (App118-120a). At this point, it was clear that the Board had no intention whatsoever of complying with the partisan parity mandate.

**D. The GOP seeks writs of mandamus to compel the Board to satisfy its legal duties under sections 674 and 765a.**

On Friday, October 28, 2022, the GOP filed its Verified Complaint for Writ of Mandamus and Motion to Show Cause and to Expedite under MCR 3.305(C). See generally Ver’d Compl (App29a). The Verified Complaint alleged two counts against the members of the Board, each count seeking a writ of mandamus.

For Count I, the GOP sought a writ of mandamus based on the Board’s express duty under subsection 674(2) to “appoint an equal number, as nearly as possible, of election

inspectors in each election precinct from each major political party.” *Id.*, ¶ 15 (App33a). Despite that clear legal duty, and despite the GOP’s significant efforts to facilitate the appointment of additional Republicans, only 120—or approximately 17.6% of the 682 election inspectors appointed by the Board—were Republicans. *Id.* Therefore, and because the Board refused to take the additional steps necessary to right-size the numbers of partisan inspectors with the election still more than a week away, the Board had failed to satisfy its duties under section 674. *Id.*

As a result, the GOP requested a writ of mandamus where: (a) the GOP, as a major political party, had a clear legal right to the performance of the Board’s legal duty to appoint an equal number of election inspectors from each major political party to each precinct under subsections 674(2) and (5); (b) the Board had a clear legal duty to perform those acts under subsections 674(2) and (5); (c) the acts of appointing election inspections were ministerial; and (d) no other adequate legal or equitable remedy existed to achieve the relief sought. *Id.*, ¶ 35 (App38a). Therefore, absent immediate action compelling the Board to appoint additional Republican election inspectors, the GOP’s right under subsection 674(2) to have “an equal number, as nearly as possible, of [Republican-affiliated] election inspectors in each election precinct” would forever be lost. Ver’d Compl, ¶ 36 (App39a), citing MCL 168.674(2), (5).

Count II of the Verified Complaint also sought a writ of mandamus based on subsection 674(2), but based on the Board’s legal duty to appoint an equal number of election inspectors from each major political party to each of Flint’s AVCB. *Id.*, ¶ 38 (App39a), citing MCL 168.765a(2) (providing that the partisan parity mandate, among other requirements under section 674, applies to the appointment of election inspectors to AVCBs).

The GOP alleged that despite those continuing duties, “the ratio of Republican election inspectors to Democrat election inspectors appointed to Flint’s [AVCBs] was still far from equal,

given that, to the best of [the GOP's] knowledge, Flint [had] appointed only six Republicans to serve as election inspectors in its [AVCBs] in comparison to appointing 56 Democrats for that same role." *Id.*, ¶ 45 (App40a). Thus, the GOP alleged the "approximate 1:9 ratio is far from what is required of the Board by their ongoing duties under MCL 168.674(2), (5), and MCL 168.765a(2)." *Id.* The GOP further alleged that "Commissioner Kim's indication that the Board [would] not appoint additional Republican inspectors demonstrate[d] that [the Board had] no intention of satisfying [its] legal duties as to [AVCBs] under subsections 674(2) and (5). *Id.*, ¶ 46 (App40a).

As a result, the GOP requested a writ of mandamus where: (a) the GOP, as a major political party, had a clear legal right to the performance of the Board's legal duty to appoint an equal number of election inspectors from each major political party to each AVCB under subsections 674(2) and (5); (b) the Board had a clear legal duty to perform those acts under subsections 674(2) and (5); (c) the acts of appointing election inspections were ministerial; and (d) no other adequate legal or equitable remedy existed to achieve the relief sought. *Id.*, ¶ 47 (App40-41a). Consequently, without immediate action compelling the Board "to reallocate Republican-affiliated election inspectors to [AVCBs]," the GOP alleged that its "right to have 'an equal number, as nearly as possible, of [Republican-affiliated] election inspectors in each election precinct' will forever be lost." *Id.*, ¶ 48 (App41a), citing MCL 168.674(2), (5), MCL 168.765a(2).

Separately, the GOP also requested a declaratory judgment that the Board violated its clear legal duties under subsections 674(2), (5), and 765a(2). *Id.*, Prayer for Relief (App41-42a). To that end, the GOP requested an expedited hearing under MCR 2.605(D), which authorizes trial courts to "order a speedy hearing of an action for declaratory relief[.]" *Id.*, ¶ 1 (App30a).

Expedited consideration was warranted and necessary because, absent declaratory relief, the GOP's rights under Michigan law to have an "equal number, as nearly as possible," of Republican election inspectors as Democrat election inspectors at each precinct and AVCB in Flint during the upcoming general election would continue to be violated and jeopardized by the Board's refusal to satisfy its legal duties.

The GOP also sought an *ex parte* order to show cause and to expedite consideration of the case under MCR 3.305(C). *Id.*, ¶ 2 (App30a). Immediate action was necessary here because under the default responsive pleading deadlines, "the [Board] would have 21 days to file an answer, which would be Friday, November 18, 2022—10 days after the general election on Tuesday, November 8, 2022." *Id.*, ¶ 3 (App31a). Thus, to ensure relief before the November 8, 2022 general election, the GOP requested that the trial court direct the Board to file its answer to a show cause order by 12:00pm on Tuesday, November 1, 2022, and that the trial court issue a decision by Wednesday, November 2, 2022. *Id.* Because the Board had represented that it intended to continue conducting election inspector training sessions into November, time remained for the trial court to issue relief and for the Board to comply with the partisan parity mandate. *Id.*

Each member of the Board was served with a copy of the Summons and Verified Complaint shortly after 9:00am on Monday, October 31, 2022. Ver'd Return of Service (App129-133a). That same day, the trial court granted the GOP's *ex parte* motion to show cause, ordering the Board to file and serve an answer by 5:00pm on Tuesday, November 1, 2022, showing cause "why the Court should not award the relief requested in the Prayer for Relief contained in Plaintiffs' Verified Complaint, including the writ of mandamus." Order to Show

Cause (App135-136a). The trial court further ordered the parties to appear for a show cause hearing at 12:30pm on Wednesday, November 2, 2022. *Id.*

The Board filed its Brief in Opposition to the GOP's Request for a Writ of Mandamus on November 1, 2022. Board's Br in Opp'n (App138-159a). In addition to responding to the trial court's Order to Show Cause, the Board asked the trial court to dismiss the GOP's claims for lack of standing, failure to exhaust administrative remedies, and as barred by laches. *Id.* at 1, 5-10 (App141a, 145-150a). Because the Board filed its brief the day before the show cause hearing, the GOP was not afforded an opportunity to submit a written response to the Board's procedural defenses.

**E. The trial court dismisses the GOP's suit for lack of standing.**

The trial court held a show cause hearing on November 2, 2022, directing the parties to "address the issue of jurisdiction first," and, "depending on the outcome of that, we'll delve into the other matters thereafter." Tr at 5:3 – 11 (App17a). The issue of standing, of course, had not been briefed by the GOP due to the expedited nature of the proceedings: the only brief in the lower court record is the Board's Brief in Opposition to the GOP's Request for a Writ of Mandamus. Board's Br in Opp'n (App138-159a).

In its brief, the Board had argued that the GOP lacks standing under *White v Highland Park Election Comm*, 312 Mich App 571; 878 NW2d 491 (2015). Board's Br in Opp'n, at 5-6 (App 145-146a). In *White*, the Court of Appeals had concluded that the plaintiff—an individual member of the general public—lacked standing to enforce subsection 674(2). *White*, 312 Mich App at 571. Specifically, the panel in *White* reasoned that the plaintiff, "who as to [the enforcement of subsection 674(2) was] no different than all other members of the public (and she did not even allege that she was a resident of [the city] where the [election inspectors] would

have been working),” lacked “a substantial interest in seeing the statute enforced” under this Court’s leading case on standing to sue, *Lansing Schools*, 487 Mich 349. *Id.*

During the hearing, the GOP countered that unlike in *White*, the Plaintiffs here are not individual citizens, but are MRP—a major political party under Michigan law, and RNC—a national political party. Thus, both MRP and RNC have standing under *Lansing Schools*. While subsection 674(2) does not expressly provide a cause of action, the GOP argued that MRP and RNC each have a special injury or right, or substantial interest, that will be detrimentally affected by the Board’s failure to satisfy its duties under 674(2) in a manner different from the citizenry at large, which, in turn, satisfies standing under *Lansing Schools*. Tr at 6:3 – 16 (App18a); see also Tr at 10:7 – 11:1 (App22-23a) (reiterating argument on rebuttal).

“[I]t makes no sense,” the GOP continued, “to say that the Republican Party wouldn’t have standing [where the] statutory provision that specifically provides rights to people affiliated with the [R]epublican [P]arty by requiring . . . an equal number, as nearly as possible, of election inspectors from each major political party, [where the GOP] meet[s] that defining term as [a] major political party.” Tr at 7:18 – 24 (App19a). Thus, the GOP argued that *White* does not apply here, and that standing in this case is “controlled by *Lansing Schools* and [the GOP’s] unique status as a major political party.” *Id.* at 7:25 – 8:3 (App19-20a). And, separate from that, the GOP also argued that it had standing as a result of meeting the requirements of MCR 2.605, too. *Id.* at 7:7-11 (App19a); see also Ver’d Compl, ¶ 1 (App30a) (seeking expedited declarative relief under MCR 2.605); *id.*, Prayer for Relief (App41-42a) (seeking declarative judgment).

For their part, the Board insisted that *White* applies because the “administrative appeals process [under subsections 674(3)-(4)] is only available . . . to county chairs of major political parties . . . .” Tr at 8:9-24 (App20a). The Board did not, however, explain the relevance of the

administrative process through which county chairs of major parties may challenge individual appointees under subsections 674(3)-(4) where, as here, the qualifications or partisan bonafides of individual appointees is not even at issue. See generally *supra* sec. II at A.2-3 (outlining distinctions between the partisan parity mandate under subsection 674(2), and the administrative process for county chairs challenging individual appointees under subsections 674(3) and (4)).

The Board likewise opposed the proposition that the GOP has standing under *Lansing Schools*. The Board did not, however, directly address the GOP's arguments that it has standing based on special injury, right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large, but instead argued that the GOP lacked standing because, as the Board would have it, the statutory scheme does not imply that the Legislature intended to confer standing on MRP or RNC. Tr at 9:14-25 (App21a). Rather, the Board's interpretation of section 674 is that "the only people who [the Legislature] empowered to bring challenges to the appointments are the [county chairs] of the major political parties and not the major political parties themselves." *Id.* This, again, despite the fact that the statutory provisions granting county chairs the right to challenge the qualifications and partisan bonafides of individual appointees—subsections 674(3)-(4)—are separate and distinct from the provision serving as the basis of the GOP's mandamus claims—subsection 674(2).

Ruling from the bench, the trial court found that the GOP lacked standing under the Court of Appeals' decision in *White*, reasoning that "the circuit court [in *White*] held that the plaintiffs lack standing to challenge the political party composition of the election inspectors because state law gave that right to the county chairs[.]" *Id.* at 12:5-8 (App24a). "[T]he Court of Appeals examined that issue," the trial court continued, "with the *Lansing Schools* case, obviously decided five years previously, they reference it in their opinion and I think it's important also to

point out that the statute at question here, [MCL] 168.674(2), is the same statute that was at issue in the *White v Highland Park* case.” *Id.* at 12:8-14 (App24a).

The trial court rejected the GOP’s argument that its rights, injuries, and interests differ from those of the individual plaintiff in *White*—albeit in conclusory fashion. *Id.* at 12:14-24 (App24a) (“I think that’s a distinction without a difference. I don’t see why that distinction matters, quite frankly, when the statute is the same and the challenge to the statute was the same which was to say [the plaintiffs in *White*] were challenging the composition of the election inspectors, they were not challenging any individual inspector.”). The trial court continued:

So, from this Court’s perspective, the *White* case is controlling of the decision with regard to standing to bring the lawsuit and the Court of Appeals in *White* held that MCL 168.674(2) provides no legal cause of action to the individual plaintiff or [any] other member of the public to enforce its provisions and I would say that the Michigan Republican Party and the [RNC] fall under the definition of other members of the public[.]

\* \* \*

So, with regard to the statutory scheme, the Court can conclude that the legislature intended for the major political party county chairs to be the point of enforcement with regard to these issues not the statewide or national committees. [*Id.* at 12:24 – 13:15 (App24-25a).]

The trial court having found that the GOP lacked standing, an order was entered on November 15, 2022 denying the GOP’s request for a writ of mandamus and dismissing the case under MCR 2.116(I) for the reasons stated on the record during the November 2, 2022 show cause hearing. Order (App2a).

**F. The Court of Appeals affirms the trial court.**

The GOP timely filed an appeal as of right with the Court of Appeals, arguing that the trial court’s dismissal of the GOP’s claims was reversible error because both MRP and RNC have standing to pursue their claims based on several distinct principles under this Court’s

decision in *Lansing Schools*, 487 Mich 349; 792 NW2d 686 (2010). The GOP argued that: (1) both MRP and RNC have standing to seek a declaratory judgment because each meet the requirements of MCR 2.605; (2) MRP and RNC each have a special injury or right, or substantial interest, that has been and will continue to be detrimentally affected in a manner different from the citizenry at large; and, independent of these other grounds for standing; and (3) the statutory scheme under section 674 clearly implies that the Legislature intended to confer standing on both MRP and RNC.

On March 7, 2024, the Court of Appeals issued a split, published opinion affirming the trial court's decision. *Michigan Republican Party v. Donahue*, \_\_\_ Mich App \_\_\_; \_\_\_ NW3d \_\_\_ (2024) (Docket No. 364048); COA Op (App161a). The majority opinion began by rejecting the Board's contention that this case should not be reviewed on mootness grounds. To that end, the majority concluded that although "this case is moot regarding the 2022 general election because there is no relief that this Court can provide to remedy any breach of election laws during that election," it would still review the merits of the GOP's appeal "because the case involves a matter of public significance that is likely to recur, yet evade judicial review." *Id.* at 3-4 (App163-164a). The majority reasoned that election law cases are typically of great public significance where, like here, "the interpretation and application of Michigan's election laws extend beyond a particular election and affect future candidates and the public. *Id.* at 3 (App163a) (internal quotations and citations omitted). And, given that the partisan parity mandate "will be implemented in every election," "challenges to the partisan composition of slates of election-inspector appointees—and who has standing to enforce the requirements—are likely to recur." *Id.* at 3-4 (App163-164a). Finally, due to the "strict time constraints necessitated by the election process," the majority concluded it was likely that "such challenges often will not

be completed before a given election occurs, rendering the discussion, as in this case, moot before appellate review.” *Id.* at 4 (App164a) (cleaned up). Thus, the majority concluded that the issues presented in the GOP’s appeal were likely to evade judicial review. *Id.*

Turning to the merits of the GOP’s appeal, the majority first addressed whether the statutory scheme implies that the Legislature intended to confer standing upon the GOP to enforce the partisan parity mandate. COA Op at 6-9 (166-169a). Affirming the trial court, the majority reasoned that the Legislature cannot have intended to confer standing on the GOP because the Legislature omitted from the statute any express right of a major political party to challenge the partisan composition of the roster of election inspector appointees. *Id.* at 7-9 (App167-169a). The majority likewise affirmed the trial court’s conclusion that the GOP lacked a special injury, right, or substantial interest different than that of the public as to the enforcement of the partisan parity mandate. *Id.* at 9-12 (App169-172a). Finally, the majority declined to find that the GOP had standing to pursue declaratory judgment under MCR 2.605, reasoning that the GOP was not—in the majority’s view—an interested party for the purposes of declaratory judgment. *Id.* at 12-13 (App172-173a).

The Court of Appeals dissent disagreed, concluding that both MRP and the RNC “have standing to bring their claims under the Michigan Election Law.” COA Dissent at 1 (App175a). While neither section 674 nor section 765a provide an express cause of action for enforcing the partisan parity mandate, the dissent would have held that “[MRP and the RNC] have standing because they have a substantial interest in the enforcement of these statutes that will be detrimentally affected in a manner different from the public at large if the statutes are not enforced.” *Id.* at 2 (App176a). As the dissent explained, the GOP has “unique interests in obtaining inspectors to assure that any Republican-designated candidate is fairly and equally

treated during the counting process,” which, of course, is an interest that is “unique and separate from the public at large.” *Id.* And as the dissent reasoned, it “is particularly important today that parity and oversight be addressed in light of current challenges to the integrity of recent elections.” *Id.*

Separately, the Court of Appeals dissent also would have held that the statutory scheme implies that the Legislature intended to confer standing on the GOP to enforce the partisan parity mandate. *Id.* at 2-3 (App176-177a). There, the dissent reasoned that “the Legislature, by specifically stating that a major political party could submit names for potential election inspectors, acknowledged, and it can be implied that it understood, the specific interest the major political party would have in making sure there is parity in appointing election inspectors.” COA Dissent at 3 (App177a), citing *Lansing Schools*, 487 Mich at 372. The dissent focused on the distinction between a county chair’s express authority to challenge the qualifications and partisan bonafides of individual election inspector appointees under subsections 674(3) and (4), and the Board’s failure here to comply with the partisan parity mandate under subsection 674(2). COA Dissent at 3 (App177a). The dissent observed that “[i]f we carry [the Board’s] argument to its logical conclusion that because the county chairperson may challenge credentials, that they have a right to challenge parity, [then] we are met with the plain language of the statute which does not provide the county chairpersons with any explicit authority to challenge the parity requirement.” *Id.* at 2 (App176a).

“Under the majority’s opinion,” the dissent continued, “this could leave no one with the authority to challenge the parity requirement under the statutes.” *Id.* at 2-3 (App176-177a). As a result, the dissent would have vacated the trial court’s order granting Defendants summary

disposition, and would have “remand[ed] to the trial court to consider whether plaintiffs are entitled to a writ of mandamus.” *Id.* at 3 (App177a).

### III. ARGUMENT

#### A. Standard of Review

“Whether a party has standing is a question of law that is reviewed de novo.” *Mich Ass’n of Home Builders v City of Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). Questions of court rules and statutory interpretation are also reviewed de novo. *Safdar v Aziz*, 501 Mich 213, 217; 912 NW2d 511 (2018). “For purposes of determining standing, [this Court] must accept as true all material allegations of the [verified] complaint, and must construe the [verified] complaint in favor of the complaining party[,]” which here is the GOP. *House Speaker v Governor*, 443 Mich 560, 573; 506 NW2d 190 (1993) (cleaned up).

#### B. **MRP and RNC each have multiple, distinct bases for standing under *Lansing Schools*, and the issue of standing to enforce the partisan parity mandate is of major significance to the State’s jurisprudence.**

As the Court of Appeals dissent explained, the GOP’s interests in enforcing the partisan parity mandate is not only “unique and separate from the public at large,” COA Dissent at 3 (App177a), but it is particularly important today in light of the widespread acrimony and mistrust regarding the integrity of recent elections. According to a poll recently commissioned by CNN, “69% of Republicans and Republican-leaners say Biden’s win was not legitimate”—a number that has actually *increased* since the fall of 2022. Jennifer Agiesta & Ariel Edwards-Levy, CNN, *CNN Poll: Percentage of Republicans who think Biden’s 2020 win was illegitimate ticks back up near 70%* (August 3, 2023).<sup>4</sup> And that mistrust is not limited to Republicans: “About half of Americans continue to feel that it is at least somewhat likely that elected officials will

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<sup>4</sup>Available at <<https://www.cnn.com/2023/08/03/politics/cnn-poll-republicans-think-2020-election-illegitimate/index.html>> (accessed April 18, 2024)

successfully overturn the results of a US election if their party does not win (50%),” while “most Americans lack confidence that elections in the US today reflect the will of the people.” *Id.*

This case, then, is clearly one of significance to all Michiganders—Democrats and Republicans alike. Setting aside the GOP’s special injuries, rights, and substantial interests here—all of which were, as further explained below, detrimentally affected in a manner different from the citizenry at large—the Court of Appeals’ published decision will only cause further mistrust within our democratic processes. Unless reversed here, that published decision will unlawfully exclude Republicans from the process (an injury to the GOP that, as explained below, is distinct from the public’s loss of confidence in elections) while permitting local jurisdictions to blatantly disregard the partisan parity mandate.

This Court set forth the general rules of standing in *Lansing Schools*, 487 Mich 349, clarifying that unlike the federal judiciary, which is “bound by the limitations of a case or controversy [and] other federal rules of justiciability,” *id.* at 363, standing principles in Michigan courts are based on prudential doctrines. *Id.* at 372. To that end, “Michigan courts’ judicial power to decide controversies [is] *broader* than the United States Supreme Court’s interpretation of the Article III case-or-controversy limits on the federal judicial power because a state sovereign possesses inherent powers that the federal government does not.” *Id.* at 364 (emphasis added), citing *Washington-Detroit Theater Co v Moore*, 249 Mich 673, 679–80; 229 NW 618, 620 (1930).

Thus, under *Lansing Schools* a litigant may have standing to sue in Michigan courts in any of these four separate and distinct scenarios:

Under [*Lansing Schools*], a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not

provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Schools*, 487 Mich at 372.]

While there is no legal cause of action in this case (*i.e.*, neither sections 674, 677, nor 765a provide and express statutory cause of action to enforce the partisan parity mandate), MRP and RNC each have several distinct and independent grounds for standing under *Lansing Schools*.

First, MRP and RNC each have a special injury or right, or substantial interest that has been and will continue to be detrimentally affected in a manner different from the citizenry at large. *Id.* Second, both MRP and RNC have standing to seek a declaratory judgment because each meet the requirements of MCR 2.605. *Id.* Third, the statutory scheme under section 674 and its related provisions clearly imply that the Legislature intended to confer standing on both MRP and RNC. *Id.*

Any one of those grounds, each of which is addressed separately below, is sufficient to confer standing on MRP and RNC in this case. This is especially true given that “the bar for standing is lower when,” like here, “a case concerns election law.” *League of Women Voters of Michigan v Secretary of State*, 506 Mich 561, 587; 957 NW2d 731 (2020). As this Court has recognized, “[e]lection cases are special . . . because without the process of elections, citizens lack their ordinary recourse.” *Id.* (internal citation omitted). For that reason specifically, this Court has “found that ordinary citizens have standing to enforce the law in election cases.” *Id.* And if “ordinary citizens” have standing to enforce the election law, then the GOP does, too—especially here, and especially now. For the reasons explained below, the lower courts erred in finding that the GOP lacked standing, and their decisions should be reversed.

**1. MRP and RNC have standing based on a special injury, right, or substantial interest that was and continues to be detrimentally affected by the Board's failure to comply with the partisan parity mandate.**

In support of its claims, the GOP alleged standing under *Lansing Schools*, 487 Mich 349, based on its special injury or right, as well as its substantial interest, that were detrimentally affected in a manner different from the citizenry at large. Ver'd Compl, ¶ 12 (App33a); see also Tr 6:3-16 (App18a); 10:7 – 11:1 (App22-23a). The trial court, however, disagreed, reasoning that the question of standing came down to a choice between applying this Court's *Lansing Schools* decision or applying the Court of Appeals' *White* decision. Tr 11:2-15 (App23a).

As the GOP argued in the Court of Appeals, however, the trial court's decision was based on the false premise that *Lansing Schools* and *White* are on equal footing: they are not. *Lansing Schools*—a Supreme Court decision—governs here. To that end, and as explained above, *Lansing Schools* sets forth four distinct bases under which a litigant may obtain standing to sue. 487 Mich at 372. *White*, on the other hand, merely applied some of those standards from *Lansing Schools* to the facts of that case to determine whether that plaintiff had standing under those factual circumstances. 312 Mich App 571. Therefore, the trial court erred when it based its decision in this case on whether to apply either this Court's *Lansing Schools* decision or the Court of Appeals' *White* decision, rather than deciding whether the GOP had standing under the standards in *Lansing Schools*.

The Court of Appeals agreed that the trial court erred by applying *White* instead of applying the test for standing in *Lansing Schools*. See COA Op at 9 (App169a). The Court of Appeals nevertheless held that the GOP lacked standing based on *Lansing Schools*. For the reasons explained below, the Court of Appeals erred because MRP and RNC each have standing based on their special injury, their rights, *and* their substantial interests—all of which are

detrimentally impacted here in a manner different from the citizenry at large, and any one of which is sufficient to confer standing upon the GOP.

- a) **MRP and RNC have standing based on a substantial interest that was and continues to be detrimentally affected in a manner different from the citizenry at large.**

Beginning with the GOP's substantial interest, the Court of Appeals held that while the GOP does have a substantial interest in the enforcement of the partisan parity mandate under subsections 674(2) and 756a(2), that interest is not, from the majority's point of view, different from that of the public. See COA Op at 11 (App171a). In reaching this conclusion, the majority relied on this Court's decision in *Detroit Fire Fighters Ass'n v City of Detroit*, 449 Mich 629; 537 NW2d 436 (1995). *Id.* at 10-11 (App170-171a). There, the Detroit Fire Fighters Association and some of its members sought a writ of mandamus to compel the mayor to spend funds that the city had appropriated for the purpose of hiring more firefighters, but which the mayor refused to spend for that purpose. *Detroit Fire Fighters*, 449 Mich at 632. As the majority interpreted that case, this Court concluded that the plaintiffs there lacked standing because their interest in employing more firefighters was shared with the public at large—*i.e.*, having fewer firefighters “increased the risk of physical harm for both the firefighters and the residents of the city who were at danger during the fires.” See COA Op at 11 (App171a), citing *Detroit Fire Fighters*, 449 Mich 638. The majority reasoned that the instant case is similar to *Detroit Fire Fighters* because the overall benefit of the partisan parity mandate here “falls upon the public at large,” and “[t]he benefit of election integrity is shared by each member of the public, rather than benefiting major political parties more than the public.” See COA Op at 11 (App171a).

The majority, however, erred both in its reliance on, and its application of, *Detroit Fire Fighters*. As a preliminary matter, the precedential value of *Detroit Fire Fighters* is, at best,

questionable in this context. While this Court’s decision in *Lansing Schools* is the seminal case on standing under Michigan Law, *Detroit Fire Fighters* was decided nearly 15 years before this Court issued its *Lansing Schools* decision. Equally problematic, courts have struggled to delineate which of the various competing opinions in *Detroit Fire Fighters* comprise the majority decision there as it pertains to the question here—*i.e.*, the extent of an interest required to confer standing to sue. As acknowledged by the Court of Appeals in *American Family Ass’n of Mich v Mich State Univ Bd of Trustees*, 276 Mich App 42; 739 NW2d 908 (2007), “further explication of the essential elements of standing has proven difficult as demonstrated by this Court’s experience in attempting to fashion a clear majority in [*Detroit Fire Fighters*, where] the separate opinions suggested different inquiries as being central to determining standing.” *Id.* at 47. There, the Court of Appeals explained that while “[s]ome [of the opinions in *Detroit Fire Fighters*] focused on whether the plaintiff could establish an injury distinct from that of the public, others [focused] on whether the plaintiffs were in the zone of interest the statutory or constitutional provision at issue is designed to regulate.” *Id.* With that specifically in mind, then, the majority’s reliance on *Detroit Fire Fighters* as the basis for its conclusion that the GOP lacks a substantial interest here different from the citizenry at large is problematic.

Then, the majority’s substantive application of *Detroit Fire Fighters* is even more problematic. To reiterate, the majority analogized this case to *Detroit Fire Fighters* because, from its perspective, the overall benefit of the partisan parity mandate here “falls upon the public at large” while “[t]he benefit of election integrity is shared by each member of the public, rather than benefiting major political parties more than the public.” COA Op at 11 (App171a). Put another way, the majority agreed that the GOP has a substantial interest here, but held that the GOP’s interest was not different from that of the public. *Id.*

For starters, that line of reasoning ignores the discussion in *Detroit Fire Fighters* regarding the Court of Appeals' decision in *Muskegon Bldg & Constr Trades v Muskegon Area Intermediate Sch Dist*, 130 Mich App 420; 343 NW2d 579 (1983), overruled on other grounds by *Western Mich Univ Bd of Control v State*, 455 Mich 531; 565 NW2d 828 (1997). In *Muskegon Trades*, the plaintiff trade association filed suit to prevent a school district from receiving bids and awarding contracts that did not conform with the prevailing wage act. There, the plaintiffs claimed standing on the grounds that substantial numbers of these workers would be affected differently than the general public because many would receive jobs on the project and be paid at less than prevailing wages. *Id.* at 426. As this Court explained in *Detroit Fire Fighters*, "the Court in *Muskegon* . . . held that the trade organization did demonstrate an adverse effect, separate from the general public, specifically, if the prevailing wage act was upheld, substantial numbers of the association's members would receive jobs on the school district building project. This was distinctly and wholly separate from any interest of the general public." *Detroit Fire Fighters*, 449 Mich at 637.

While the Court went on to distinguish the *Muskegon Trades* plaintiffs from the *Detroit Fire Fighters* plaintiffs, the reality is that the GOP's interests here are on all fours with the plaintiffs in *Muskegon Trades*. If the partisan parity mandate were enforced in this case, then more than 17 percent of those inspectors appointed by the Board would have been Republicans. And, to be clear, the interest in this particular analysis is not that of the *members* of the GOP referenced in footnote 8 of the majority's opinion. Rather, the GOP's interest here is the equal representation (or as equal representation as possible under subsections 674(2) and 765a(2)) of the Republican Party among the hundreds of election inspectors that administered that election in Flint. As recognized by the Court of Appeals dissent, there can be no question that this interest is

different from the citizenry at large. See COA Dissent at 2 (App176a) (“Plaintiffs have unique interests in obtaining inspectors to assure that any Republican-designated candidate is fairly and equally treated during the counting process. This interest is unique and separate from the public at large.”) (emphasis added).

Nor does it matter that a purpose of the partisan parity mandate is to ensure the purity and accuracy of elections (see COA Op at 11 (App171a)). The public’s interest in the purity and accuracy of elections is not the same as the GOP’s interest in ensuring that Republicans are equally represented among those individuals administering the election and also that Republican-affiliated candidates are treated fairly and equally in the vote counting process. Therefore, the Court of Appeals erred in concluding that the GOP’s interest here was not different from that of the public, and its decision should be reversed.

**b) MRP and RNC have standing based on a right that was and continues to be detrimentally affected by the Board’s failure to comply with the partisan parity requirement.**

The Court of Appeals also erred when it concluded that the GOP had not shown a special right that was detrimentally affected in a manner different from the citizenry at large. Here, the GOP has a “special right” under *Lansing Schools* because subsection 674(2) requires that boards appoint an equal number, as nearly as possible, of election inspectors that are members of each major political party. Plaintiff MRP is, of course, a major party under state law. MCL 168.16. To the extent that a board of election commissioners fails to comply with the partisan parity mandate—just as the Board did in this case—then that special right of the GOP (and MRP specifically) has been detrimentally affected in a manner different from the citizenry at large.

The Court of Appeals *did* acknowledge that the GOP has a special right here. See COA Op at 11 (App171a) (recognizing that the partisan parity mandate under MCL 168.674(2) and

MCL 168.765a(2) does “create a right for major political parties”); see also *id.* (acknowledging that “the Michigan Election Law gives the major political parties a role in the administration of elections.”). Nonetheless, the majority concluded that the GOP’s right was insufficient to confer standing because, from its perspective, that right is no different from that of the public. *Id.* That conclusion, however, conflates the GOP’s right as a major political party under MCL 168.674(2) and MCL 168.765a(2) with a benefit that stems from the GOP’s exercise of that right. The GOP’s right, however, is not the same thing as the benefit that flows to the public from the exercise and enforcement of that right.

Put another way, the GOP has the right to equal representation of election inspectors in polling places and AVCBs. That means the GOP—through its affiliated election inspectors—has the right to, among other things, play a *role* in the administration of elections, as well as the right for its affiliated election inspectors to have equal *access* to the inner-workings of administering elections. The public, however, has no such rights under MCL 168.674(2) and MCL 168.765a(2).

Despite the majority’s reasoning otherwise, the fact that the public stands to benefit from partisan parity among election inspectors in the form of more transparent elections as a result of the GOP’s exercise of that right under MCL 168.674(2) and MCL 168.765a(2) does not somehow vanquish the GOP’s right to partisan parity in the first place. And when that right to partisan parity is violated like it was here, that is sufficient to confer standing on the GOP under *Lansing Schools* because it is the GOP—not the public—that was deprived of playing a role in administering the election. The majority erred by conflating the GOP’s rights with one of the many public benefits that stem from those rights, and its decision should be reversed.

- c) **MRP and RNC have standing based on a special injury that was and continues to be detrimentally affected by the Board's failure to comply with the partisan parity mandate.**

In its verified complaint, the GOP alleged that it made significant and continuous commitments of time, energy, and resources to ensure that the Board appointed election inspectors in accordance with the law. Ver'd Compl, ¶ 18 (App34a). Specifically, the GOP provided the Board a list of qualified Republican-affiliated election inspectors and undertook its own campaign to prompt potential Republican-affiliated election inspectors to complete an application for the opportunity to serve in that role. Ver'd Compl, ¶ 17-18 (App34a); *Id.* ¶ 28 (App36a). Those efforts—efforts pursued at the expense of the GOP, alone—were nevertheless ignored or actively thwarted by the Board. Assuming, as this Court must, the truth of the foregoing allegations, it is clear that an injury unique to the GOP exists under *Lansing Schools* and that the GOP thereby has standing to pursue its claims.<sup>5</sup>

The trial court, however, dispensed with any analysis under *Lansing Schools*, opting instead to apply the Court of Appeals' opinion in *White* which contemplated the same statute and similarly considered a challenge regarding the partisan parity mandate. Tr at 12:8-14 (App24a); 12:14-24 (App24a). While the trial court's decision to forego application of this Court's *Lansing Schools* decision was reversible error, *White* is nevertheless instructive here. *White* concerned a local election commission's duty to appoint one or more Republican election inspectors where "none [of the applicants] designated themselves as a Republican Party Representative." *White*, 312 Mich App at 571 (emphasis added). Plaintiff White, moreover, "did not even allege that she was a resident of [the city], where the electors would have been working" and so was held by the

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<sup>5</sup> For standing purposes, courts must, in this posture, "accept as true all material allegations of the [verified] complaint," and construe that complaint in favor of the GOP. House Speaker, 443 Mich at 573.

court to be “no different than all other members of the public” as to the enforcement of the partisan parity mandate under subsection 674(2). *Id.* at 571. In other words, there was simply no special injury to the plaintiff in *White*.

This case, however, is different. Here, additional prospective Republican-affiliated inspectors not only existed because of the GOP’s recruitment efforts undertaken at its own expense, but were turned away by the city’s staff. The Court of Appeals disregarded that special injury to the GOP, holding instead that the Board’s actions “did not injure [the GOP] because [the Board was] not supposed to act in any particular way in response to [the GOP’s]” recruitment efforts. COA Op at 11-12 (App171-172a) (emphasis added). But that ignores the GOP’s sunk recruitment costs, as well as its underrepresentation at polling places and AVCBs compared to the other major political party.

The GOP expended its own significant time, energy, and resources toward ensuring that Republican interests would be safeguarded, and also that Republicans would be represented in polling places as equally as possible as required under the law. As a result, the GOP clearly incurred injuries separate and distinct from the general public—which did not fund or otherwise directly support the GOP’s efforts, and which did not experience the same underrepresentation as the GOP. The Court of Appeals’ failure to recognize these special, distinct injuries constitutes reversible error.

The Court of Appeals also erred by concluding that the GOP lacked organizational standing despite the harm to those individual Republican election inspectors that lost their opportunity to serve as election inspectors in Flint due to the Board’s refusal to comply with the partisan parity mandate. The GOP had argued that the harm to its members that had applied to work as election inspectors but were denied the opportunity to fulfill that role was sufficient to

confer standing here on the GOP. See *Lansing Schools*, 487 Mich at 373 n 21 (“It is not disputed that, under Michigan law, an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest.”) (citations omitted). The Court of Appeals, however, disagreed on the grounds that “MCL 168.674(1) and (2) do not require that any person in particular be appointed,” and also that “individuals do not have a right to hold an appointed governmental position.” COA Op at 10 n 8 (App170a), quoting *Aguirre v Michigan*, 315 Mich App 706, 717; 891 NW2d 516 (2016).

The absence, however, of a legally recognized right does not foreclose standing based on a special injury to or substantial interest of a plaintiff that is different from that of the citizenry at large. Indeed, the Court of Appeals has held that an individual plaintiff has standing to sue based on an injury different from that of the citizenry at large *despite* binding case law standing for the proposition that the right claimed by the same plaintiff was not recognized by Michigan law. See generally *Northern Mich Environmental Action Council v City of Traverse City*, unpublished per curiam opinion of the Court of Appeals, issued October 24, 2017 (Docket No. 332590); 2017 WL 4798638 (App179a). While the panel in *Northern Mich Environmental* acknowledged that “Michigan law does not recognize a legally protected interest in receiving airflow, sunlight, or a view,” the plaintiff’s loss of airflow, sunlight, or even a view was still considered a “special injury” to that plaintiff, “*even if she has no legal entitlement to those things.*” *Id.* at \*2 (App181a) (emphasis added and internal citation omitted). “This special injury would also affect [Plaintiff] differently from the citizenry at large because it would *specifically* affect *her* as the resident a building adjacent to the proposed development,” which in turn was sufficient to confer standing on the plaintiff. *Id.* (emphasis added), citing *Lansing Schools*, 487 Mich at 372.

While *Northern Mich Environmental* is an unpublished opinion, its analysis is persuasive and applies equally here. Even if there is no “right” to serve as an election inspector, the absence of such a right does not vitiate a plaintiff’s injury (or their substantial interest, for that matter) for the purposes of standing. See *Northern Mich Environmental*, unpub op at \*2 (App181a). Here, those individual would-be Republican election inspector applicants were deprived of their opportunity to serve as election inspectors in the City of Flint. There is no question that additional, eligible Republican applicants were available to serve, but lost that chance—not because they were unqualified or there was no time to attend a training,<sup>6</sup> but as a direct result of the Board’s failure to comply with the partisan parity mandate. That missed opportunity to serve as an election inspector in their own community despite the ongoing partisan disparities and the vacancies calling for more Republican inspectors is an injury separate and distinct from any injury experienced by the public, and that is all that is required for standing under *Lansing Schools*.

So, too, is the injury to those Republican inspectors who *were* appointed by the Board and *did* serve but were vastly outnumbered by Democrat-affiliated election inspectors. Remember, while the law refers to these folks as “inspectors,” they are typically community residents and retirees fulfilling their civic duty in exchange for what amounts to a daily stipend. Without other Republicans in their presence, any hesitation of those otherwise-outnumbered Republican election inspectors to ask questions or speak up as to even perceived problems or abnormalities is both an injury and a detriment to that individual’s ability to fulfill their role—

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<sup>6</sup> In the lower courts, the Board attempted to shroud its noncompliance with the partisan parity mandate by claiming that there was insufficient time to train new election inspector appointees. The reality, however, is that when the GOP requested additional Republican appointees on October 21, trainings were scheduled for October 22, 27, and 29. (App158a). And even then, election inspectors may pass an examination in lieu of attending a training. See MCL 168.683.

and the personal experience of that injury and detriment is far different for the individual inspector, than it is for the public.

The GOP's injuries here are sufficient by any measure under *Lansing Schools*. MRP and RNC each have standing, and the Court of Appeals decision holding otherwise should be reversed.

**2. MRP and RNC have standing to seek a declaratory judgment because they meet the requirements of MCR 2.605.**

Separate from their counts seeking writs of mandamus, the GOP sought a declaratory judgment under MCR 2.605 declaring that the Board violated its clear legal duties under subsections 674(2), (5) and 765a(2). Ver'd Compl, ¶ 2 (App30a); *id.*, Prayer for Relief (App41-42a). Relying on the Court of Appeals' decision in *White*, 312 Mich App 571, the trial court concluded that the GOP lacked standing to seek declaratory relief. Tr 13:15-20 (App25a). The trial court, however, did not properly analyze the GOP's claim for declaratory judgment as required under *Lansing Schools*, where this Court held that "whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment." 487 Mich at 372; 792 NW2d 686. Yet instead of analyzing whether MRP and RNC satisfied MCR 2.605 as required by *Lansing Schools*, the trial court simply concluded that because the plaintiff in *White* lacked standing to seek declaratory relief in relation to subsection 674(2), so, too, must the GOP. *Id.*

But the MRP and RNC clearly meet the requirements of MCR 2.605. MCR 2.605(A)(1) provides that "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." Those requirements have been satisfied here.

First, this case was clearly within the trial court’s jurisdiction. MCR 2.605(A)(2) provides that “an action is considered within the jurisdiction of a court” for the purposes of declaratory judgment “if the court would have jurisdiction of an action or the same claim or claims on which the plaintiff sought relief other than a declaratory judgment.” Here, the GOP sought writs of mandamus separate from and in addition to their request for declaratory judgment. Ver’d Compl, Counts I and II (App33-41a). The court rule governing mandamus action—MCR 3.305—expressly provides that except for mandamus actions against state officers, mandamus actions such as this case must be commenced with the circuit court. Thus, this case was properly within the trial court’s jurisdiction when it dismissed the matter on November 15, 2022, and the first step of MCR 2.605(A)(1) is therefore satisfied.

Second, there is an “actual controversy” brought by an “interested party” as required under MCR 2.605(A)(1). Under *Lansing Schools*, “[t]he essential requirement of the term ‘actual controversy’ under [MCR 2.605] is that plaintiffs plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” 487 Mich 372 n 20, quoting *Ass’d Builders & Contractors v Dep’t of Consumer & Indus Servs Director*, 472 Mich 117, 126; 693 NW2d 374 (2005) (internal quotations omitted). While “[t]he ‘actual controversy’ requirement prevents courts from involving themselves in hypothetical issues, . . . it does not prohibit them from deciding issues before the occurrence of an actual injury.” *Groves v Dep’t of Corr*, 295 Mich App 1, 10; 811 NW2d 563 (2011), citing *Shavers v Attorney General*, 402 Mich 554, 589; 267 NW2d 72 (1978).

An actual controversy is clearly present here. The GOP is an interested party alleging a cognizable injury where the Board failed to satisfy its statutory duties in two key respects: (1) it failed to appoint as equal a number as possible of election inspectors from each major political

party to each precinct as required under subsection 674(2), and (2) it failed to appoint as equal a number as possible of election inspectors from each major party to each AVCB as required under subsections 674(2) and 765a(2). Ver'd Compl, Prayer for Relief at a. (App41-42a); see also *id.* at Counts I and II (App33-41a). The Board, however, disagrees. See Board's Br in Opp'n, at 1-14 (App141-154a) (contesting the propositions that subsection 674(2) mandates as equal a number as possible of Republican and Democrat election inspector appointees at each polling place, and that the Board must likewise appoint as equal a number as possible of election inspectors from each major political party to each AVCB). Thus, an actual, live controversy exists between the GOP and the Board, and the remainder of MCR 2.605(A)(1) is satisfied.

A declaratory judgment is also necessary here to guide the GOP's future conduct, and to preserve its legal rights. At the time the GOP filed this suit, declaratory relief was necessary to guide the GOP's conduct for the impending 2022 general election and to preserve its rights to have as equal a number as possible of Republican election inspectors as there were Democrat election inspectors. In that sense, the GOP already suffered cognizable injury when the Board refused to appoint additional Republican election inspectors for its polling places and AVCBs for the 2022 elections. And while the 2022 elections have come and gone, a declaratory judgment still remains necessary to guide the GOP's future conduct. Flint will hold elections in the future and, with each election, the partisan parity mandate will arise yet again. In light of these impending elections, the GOP still requires a declaratory judgment to preserve its legal rights and to guide its future conduct.

The GOP and its members clearly have the right to equal numbers of election inspectors as those affiliated with the Democrat Party. And as for shaping future conduct, had the trial court, for example, issued a declaratory judgment that the law means what it says—*i.e.*, that the

Board must appoint equal numbers of election inspectors from each major political party to each precinct and AVCB—then the GOP would have continued with or perhaps even supplemented its efforts to recruit Republican election inspectors. Conversely, if the trial court had reached the merits but ruled for the Board, then the GOP would have altered its strategy to instead focus on the recruitment of election challengers and poll watchers rather than election inspectors (this, in addition to appealing that ruling as misinterpreting the election law). While election challengers and poll watchers have different rights, duties, and privileges under Michigan law, the GOP would have nonetheless altered its conduct in the event that, for example, the trial court declared that the Board had not violated its duty when it refused to appoint additional Republican election inspectors to Flint’s AVCBs despite having appointed only six Republicans to that position compared to the 56 Democrats appointed to the same role. Ver’d Compl, ¶¶ 44-45 (App40a).

In the Court of Appeals, the GOP argued that the trial court erred when it relied on *White* to conclude that the GOP lacked standing to pursue a declaratory judgment under MCR 2.605. The decision in *White* was simple and straightforward: that panel merely held (1) that “MCL 168.674(2) provides no legal cause of action, neither to White nor to any other member of the public, to enforce its provisions[,]” a proposition that is not disputed here, and (2) that “White, who as to this issue is no different than all other members of the public . . . [does not] have a substantial interest in seeing the statute enforced.” *White*, 312 Mich App 571. But *White* did not analyze whether the plaintiff had standing to pursue a declaratory judgment under MCR 2.605, and it certainly did not hold that no litigant whatsoever may seek declaratory relief as to subsection 674(2)—let alone a major political party like the GOP that, as explained above, *supra* Section III.B.1.a, has a substantial interest here quite different than the citizenry at large under *Lansing Schools*.

The Court of Appeals affirmed the trial court’s decision that the GOP had not shown standing for declaratory judgment under MCR 2.605, but unlike the trial court based its decision on authorities other than *White*. See COA Op at 12-13 (App172-173a). Specifically, the Court of Appeals held that the GOP lacked standing for declaratory judgment due to the lack of a sufficient interest in seeking declaratory relief. See *id.* (reasoning that the standard for determining whether a plaintiff’s interest is sufficient to pursue a declaratory judgment is substantively the same as the standard for determining whether a plaintiff has standing to sue based on a substantial interest in the enforcement of a statute). Therefore, “[g]iven the similarity of the inquiries regarding the two theories of standing,” and because the majority had already concluded that the GOP had not established standing based on a special injury, right, or substantial interest, the majority concluded that the GOP is not an interested party for the purposes of declaratory judgment. *Id.* at 13 (App173a).

As explained above, however, *supra* Section III.B.1, the Court of Appeals erred when it held that the GOP’s interests, rights, and injuries are insufficient to confer standing here. And because the Court of Appeals adopted its reasoning from each of those inquiries to deny standing here, too, the Court of Appeals’ conclusion that the GOP has not demonstrated standing for declaratory judgment under MCR 2.605 suffers from the same reversible errors. For the reasons explained above—as well as those stated in *supra* Section III.B.1, the GOP clearly meets the requirements of MCR 2.605. As a result, the GOP has standing to seek a declaratory judgment, and the Court of Appeals should be reversed accordingly.

**3. The statutory scheme clearly implies that the Legislature intended to confer standing on MRP and RNC to enforce the partisan parity mandate.**

Finally, the GOP also has standing under *Lansing Schools* because the statutory scheme under section 674 and its related provisions clearly imply that the Legislature intended to confer

standing on the GOP when, as here, a board fails to comply with the partisan parity mandate. 487 Mich at 372. As explained below, the Legislature clearly intended for the major political parties to enforce subsection 674(2), and, separately, for major political party county chairs to enforce subsection 674(4). This interpretation is consistent with the statutory language and with this Court's precedent, and the Court of Appeals' decision should be reversed.

As explained above, *supra* sec. II.A, subsection 674(2) is distinct from subsections 674(3) and (4). Subsection 674(2) expressly requires boards to appoint an equal number as possible of election inspectors from each major political party to each precinct. That duty extends to the appointment of election inspectors to AVCBs, too. See subsection 765a(2).

Meanwhile, subsection 674(3) permits a major political party county chair to submit a written challenge as to the qualifications of an individual election inspector, the legitimacy of an election inspector's political party affiliation, and whether there is a properly completed declaration of political party affiliation in the application filed by that specific election inspector. Subsection 674(3) does not, however, permit a county chair to challenge a partisan disparity in the overall composition of election inspectors. And when a county chair challenges an individual election inspector's qualifications or partisan bonafides under subsection 674(3), subsection 674(4) requires a board to process and issue a final determination as to that county chair challenge within two business days after receiving the challenge (or, if the challenged election inspector submits a response, then within two business days of receiving that response).

Despite those clear but distinct legal duties—*i.e.*, a board's duty to appoint an equal number of election inspectors from each major party under subsection 674(2), and its duty to issue a timely final determination when a county chair challenges an individual election inspector's qualifications or partisan bonafides under subsection 674(4)—section 674 does not

provide for an express cause of action if, as here, a board fails to act as required by the statute. Of course, this absence of an express cause of action is precisely why actions for mandamus may lie in election cases. *League of Women Voters of Michigan v Sec’y of State*, 506 Mich 561; 957 NW2d 731 (2020) (“[I]n the absence of a statute to the contrary, . . . a private person . . . may enforce by mandamus a public right or duty relating to elections . . . .”) (cleaned up).

To be clear, that is not to say that just any member of the general public can enforce any of the duties under section 674. It does seem clear, however, that a major political party county chair could, for example, seek a writ of mandamus if a board failed to render a “final determination” on a challenge filed by the chair regarding the qualifications or partisan bonafides of an appointee under subsection 674(3). To that end, subsection 674(4) requires that a board “shall make a final determination” as to such a challenge within the statutory timeline. Thus, the Legislature intended to confer standing upon the county chair in that scenario to seek a writ of mandamus compelling that board to render a final determination on that county chair challenge as required by subsection 674(4). That conclusion would be consistent with *Lansing Schools*, 487 Mich at 372, and to hold otherwise would forever shield boards from legal scrutiny when they fail to address county chair challenges under subsection 674(4). The Board admitted as much when it conceded during the show cause hearing that the statutory scheme here impliedly conferred standing on county chairs regarding challenges to individual election inspector appointments. Tr 9:14-25 (App21a).

The same line of reasoning shows that the statutory scheme implies that the Legislature intended to confer standing on the GOP to enforce the partisan parity mandate under subsection 674(2). Indeed, the Board’s duty to appoint election inspectors from each major political party under subsection 674(2) is owed to each of the two major political parties—Democrat and

Republican. See MCL 168.674(2) (A board “shall appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party.”). That duty is not, however, owed to county chairs. The only duty boards owe to county chairs under subsection 674(2) is to send the county chairs a list of the names and political affiliations of the appointed election inspectors—information that county chairs need when considering whether to challenge any of those individual appointments under section 674(3).

Nonetheless, the Board insisted in the lower courts that the Legislature intended to confer standing to enforce a board’s duty to achieve partisan parity among the election inspector ranks not on major political parties, but on the county chairs. To support its theory, the Board relied on the administrative challenge process under subsection 674(3), through which county chairs may challenge the qualifications and partisan bonafides of individual election inspectors. See Board’s Br in Opp’n, at 5-7 (App145-147a); see also Tr at 9:14-25 (App21a) (arguing that the only litigants upon whom the statutory text implies standing “to bring *challenges to the appointments* are the local county chairs” (emphasis added)). But subsection 674(3) does not permit county chairs to enforce the partisan parity mandate under subsection 674(2). Rather, it expressly permits county chairs to challenge the qualifications of an election inspector, the legitimacy of that appointee’s political party affiliation, and whether the applicant properly completed the declaration of political party affiliation in their election inspector application. Nothing more, nothing less.

In other words, these expressly enumerated grounds for challenging *individual* election inspector appointments are separate and distinct from enforcing the partisan parity mandate like the dispute in this case. And because Michigan courts recognize the maxim *expressio unius est exclusio alterius*—the maxim that the express mention in a statute of one thing implies the

exclusion of another—the absence of any language in subsection 674(3) permitting a county chair to challenge the partisan parity of the election inspector roster is proof positive that the Legislature did not intend to confer upon county chairs standing to enforce the Board’s duty to achieve partisan parity, as closely as possible, under subsection 674(2). See *Michigan Ass’n of Home Builders v Dir of Dep’t of Lab & Econ Growth*, 481 Mich 496, 501; 750 NW2d 593 (2008); see also *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74-75; 711 NW2d 340 (2006) (“This Court long ago stated that no maxim is more uniformly used to properly construe statutes [than is the negative-implicative canon].”) (citation omitted).

The Court of Appeals majority rejected this argument, opting instead to apply the canon *casus omissus pro omissis habendus est*, which prohibits courts “from supplying provisions omitted by the Legislature.” COA Op at 7 (App167a) (citation omitted). The majority reasoned that “the Legislature has shown that it knows how to give authority to a major political party’s statewide organization when it chooses to do so,” and here, it did not give such authority. *Id.* But the majority’s reasoning misses the overarching point of this aspect of *Lansing Schools*. Here, the question under *Lansing Schools* is whether the statutory scheme *implies* that the Legislature intended to confer standing on the GOP, 487 Mich at 372—not whether the Legislature granted an express cause of action. To that end, the majority’s own description of the canon it chose to apply—*i.e.*, that “nothing is to be added to what the text states or reasonably implies,” COA Op at 7 (App167a)—merely begs the question of what it is that may be reasonably implied from the statutory language.

Had the Legislature intended to confer upon county chairs standing to enforce the Board’s duty to appoint equal numbers of election inspectors from each major political party, then it surely would have granted county chairs the ability to submit administrative challenges to

the overall partisan makeup of the election inspector roster when it expressly enumerated the other grounds upon which county chairs may submit administrative challenges under subsection 674(3). Thus, the statutory scheme clearly implies that the Legislature intended to confer standing for the enforcement of subsection 674(2) on major political parties—not on county chairs.

That brings us to the Court of Appeals’ decision in *White*, 312 Mich App 571. The Board latches on to that aspect of *White* discussing the administrative process under subsections 674(3) and (4) through which county chairs of major political parties may “challenge certain inspector appointments.” *Id.*; see also Board’s Br in Opp’n, at 5-7 (App145-147a); Tr at 9:14-25 (App21a). The trial court likewise relied on that aspect of *White* when it determined that the GOP lacks standing. Tr at 12:5-14 (App24a). So, too, did the Court of Appeals. COA Op at 6-7 (166-167a). But the holding in *White* was not that major political party county chairs are the only litigant that could possibly have standing to enforce section 674. To the contrary, the holding in *White* was that (1) subsection 674(2) provides no statutory cause of action, “neither to White nor to any other members of the public, to enforce its provisions,” and (2) that the plaintiff in *White*, specifically, lacked standing to enforce subsection 674(2) under *Lansing Schools*. 312 Mich App 571.

And while the *White* panel did discuss whether the statutory scheme implied that the Legislature intended to confer standing on that plaintiff to enforce subsection 674(2), *id.* (discussing the administrative process for county chair challenges to “certain inspector appointments” under subsections 674(3) and (4)), that aspect of *White* does not preclude standing here. The *White* Court’s analysis as to whether the statutory scheme implied the Legislature intended to confer standing on the plaintiff in that case—an individual member of the general

public that did not even live in the jurisdiction where the election inspectors at issue were appointed to administer elections—has no bearing on whether the statutory scheme implies that the Legislature intended to confer standing on a major political party in this case to enforce the duties at issue here. Thus, *White* does not stand for the proposition that the GOP lacks standing to sue, and the trial court erred by failing to apply the standard of *Lansing Schools* to the particular claimants in this case.

\* \* \*

For the reasons discussed above, the GOP has standing under *Lansing Schools* because the statutory scheme—section 674 and its related provisions—clearly reflect the Legislature’s intent to confer standing on the GOP to enforce the partisan parity mandate. This conclusion is consistent with the plain language of section 674, and it ensures the prudential considerations set forth in *Lansing Schools*—sincere and vigorous advocacy—are satisfied as to enforcing the Board’s duties to appoint equal numbers of election inspectors from each major party. 487 Mich at 355 (“The purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to ensure sincere and vigorous advocacy.”) (cleaned up).

The chief underlying policy considerations—*i.e.*, that partisan parity among election workers leads to greater transparency in and integrity of the electoral process—are far too important to leave enforcement of the partisan parity mandate in the hands of volunteer county chairs that would, more times than not, be outmatched in adversarial litigation against a board like the appellees here which, in addition to being represented by their own municipal legal department, supplemented their defense with outside litigation counsel. To hold that despite *Lansing Schools*, major political parties lack standing to challenge the Board’s failure to satisfy its duties to appoint equal numbers of election inspectors from each major party to each precinct

and AVCB, would make the Board's corresponding failures to satisfy its legal duties invulnerable to challenge. "The primary purpose of the writ of mandamus is to enforce duties created by law . . . where the law has established no specific remedy and where, in justice and good government, there should be one." *State Bd of Educ v Houghton Lake Cmty Sch*, 430 Mich 658, 667; 425 NW2d 80 (1988) (citations omitted).

The GOP has standing to pursue its claims in this case, and it is the appropriate litigant to do so. The Court of Appeals' decision should be reversed.

#### IV. CONCLUSION AND RELIEF REQUESTED

For these reasons, the GOP respectfully requests that this Court grant their application for leave to appeal from the Court of Appeal's March 7, 2024 opinion affirming the trial court's dismissal of the GOP's suit.

Respectfully submitted,

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Dated: April 18, 2024

**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the word limitation of MCR 7.212(B)(1). The brief contains 15,995 words, excluding the parts of the brief exempted by MCR 7.212(B)(2).

/s / Robert L. Avers

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