Order

Michigan Supreme Court
Lansing, Michigan

September 9, 2024

Elizabeth T. Clement,
Chief Justice

167545 & (31)(32)

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

ROBERT F. KENNEDY, JR.,
Plaintiff-Appellee,

v

SC: 167545
COA: 372349
Ct of Claims: 24-000138-MB

SECRETARY OF STATE,
Defendant-Appellant.

_____/

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the September 6, 2024 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and VACATE the opinion and order of the Court of Claims except for that part of the Court of Claims order denying the motion for immediate mandamus relief and temporary restraining order/injunction and dismissing the complaint with prejudice, which we REINSTATE. The motion for stay is DENIED as moot.

Plaintiff filed this motion seeking a writ of mandamus. The motion was docketed by the Court of Claims on September 3, 2024. To obtain the extraordinary remedy of a writ of mandamus, the plaintiff bears the burden of showing that: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 82 (2021), quoting *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518 (2014). " 'A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' " *Taxpayers*, 508 Mich at 82, quoting *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11 (2013). Assuming, without deciding, that the Court of Appeals was correct in its interpretation of MCL 168.686a(4), plaintiff has neither pointed to any source of law that prescribes and defines a duty to withdraw a candidate's name from the ballot nor demonstrated his clear legal right to performance of this specific duty, let alone identified a source of law written with " 'such precision and certainty as to leave nothing to the exercise of discretion or judgment.' " *Taxpayers*, 508 Mich at 82, quoting *Hillsdale*, 494

Mich at 58 n 11. Thus, the plaintiff has not shown an entitlement to this extraordinary relief, and we reverse.

WELCH, J. (*concurring*).

I join the Court's order in full. I write separately to express in greater detail my concerns with the Court of Appeals' opinion.

Michigan's Natural Law Party nominated plaintiff, Robert F. Kennedy, Jr., as its candidate for President of the United States on April 17, 2024. More than four months later, on August 23, 2024, as the deadline for ballot printing neared, plaintiff e-mailed the director of the Michigan Bureau of Elections, requesting that he withdraw plaintiff's name from the ballot. Shortly thereafter, the Natural Law Party chairperson reached out to the director of elections, indicating that the Natural Law Party opposed plaintiff's request. The chairperson opined that the Natural Law Party would face severe prejudice if its candidate were removed from the ballot.

Defendant, the Secretary of State, refused to remove plaintiff from the ballot, prompting plaintiff to commence this action in the Court of Claims. Plaintiff filed his complaint, through which he sought a writ of mandamus, after the close of business on Friday, August 30, 2024, the night before the start of the Labor Day holiday. Acting expeditiously and under a tight time line, the Court of Claims denied plaintiff's request for mandamus relief. Specifically, Judge YATES noted that MCL 168.686a(4) directly states that minor party candidates " 'nominated and certified' " under that provision " '*shall not be permitted to withdraw*.' " *Kennedy v Secretary of State*, unpublished opinion and order of the Court of Claims, issued September 3, 2024 (Case No. 24-000138-MB), p 4, quoting MCL 168.686a(4). The Court of Appeals reversed the Court of Claims, finding that plaintiff had "a clear legal right to have his name removed from the ballot." *Kennedy v Secretary of State*, unpublished per curiam opinion of the Court of Appeals, issued September 6, 2024 (Docket No. 372349), p 5. The Court of Appeals relied upon a sentence in MCL 168.686a(4), which states that "[t]he convention may nominate candidates for all state offices." See *id*. at 3. Based upon that sentence, the Court of Appeals concluded that MCL 168.686a(4) does not apply to candidates for the President of the United States. *Id*. Instead, the panel held that MCL 168.686 applied to plaintiff. MCL 168.686 contains no express restriction on the ability for a candidate to withdraw from the election.

I agree with the Court's decision that the Court of Appeals misapplied the standard for granting mandamus relief. Mandamus is an "extraordinary remedy." *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 81-82 (2021). To obtain that extraordinary remedy, the plaintiff must show that " '(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.' " *Id*. at 82, quoting *Rental Props Owners Ass'n*

of Kent Co v Kent Co Treasurer, 308 Mich App 498, 518 (2014). The Court reviews de novo whether a defendant had "a clear legal duty to perform and whether [a] plaintiff has a clear legal right to performance of any such duty." *Berry v Garrett*, 316 Mich App 37, 41 (2016), citing *Rental Props Owners*, 308 Mich App at 518.

The Court of Appeals held that MCL 168.686 controls the nomination process for the office of President, including for so-called minor parties. Even if the Court of Appeals is correct on that matter, plaintiff and the Court of Appeals failed to demonstrate that MCL 168.686 would entitle plaintiff to mandamus relief. First, as the Court of Appeals acknowledged, MCL 168.686 is silent as to whether a minor party's nominee may withdraw from the ballot. The Court of Appeals took the statute's silence as a "clear" indication that plaintiff has a right to have defendant remove his name from the ballot. But given its silence, the statute "is susceptible to more than one reasonable interpretation" and is therefore ambiguous. *People v Koert*, ___ Mich App ___, ___ (February 15, 2024) (Docket No. 363169), quoting *People v Rutledge*, 250 Mich App 1, 5 (2002); see also *Frame v Nehls*, 452 Mich 171, 176 (1996). Because the statute is ambiguous as to whether defendant must remove plaintiff's name from the ballot, defendant does not have a " 'clear legal duty to' " do so. *Taxpayers for Mich Constitutional Gov't*, 508 Mich at 82, quoting *Rental Props Owners*, 308 Mich App at 518.

The Court of Appeals also misapplied the standard for mandamus relief when discussing MCL 168.686a(4). MCL 168.686a(4) concerns the nomination process for so-called minor political parties. The provision provides that the state "convention *may* nominate candidates for all state offices." MCL 168.686a(4) (emphasis added). With very little discussion, the Court of Appeals concluded that the provision's dictate that state conventions "may" nominate candidates for state offices means that they may "*only*" nominate candidates for state office and that the provision does not concern nominations for federal office. *Kennedy*, unpub op at 3-4 (emphasis added).

The Court of Appeals' holding that MCL 168.686a(4) does not govern plaintiff's nomination is relevant because candidates nominated under MCL 168.686a(4) "shall not be permitted to withdraw." MCL 168.686a(4). As discussed earlier, the Court of Claims held that MCL 168.686a(4) governs plaintiff's nomination and that plaintiff therefore could not withdraw. Regardless of whether the Court of Claims or Court of Appeals is correct, the Court of Appeals misapplied the standard for mandamus relief: whether "may" means "may only" is anything but clear. For that reason, I believe that mandamus relief is inappropriate. See *Taxpayers for Mich Constitutional Gov't*, 508 Mich at 82.

Adding to the errors, the Court of Appeals suggested that MCL 168.686a and MCL 168.532 include "circular references" that make statutory interpretation difficult. *Kennedy*, unpub op at 5. MCL 168.532, for example, provides that "[t]he nomination of *all* candidates of [minor] parties shall be made by means of caucuses or conventions which shall be held and the names of the party's nominations filed at the time and manner

provided in" MCL 168.686a. (Emphasis added.) Recall that candidates nominated under MCL 168.686a(4) may not withdraw. See MCL 168.686a(4). The Court of Appeals ignored this clear language by referring back to its questionable holding that MCL 168.686a(4) only applies to state offices. Based upon that holding, the Court of Appeals held that MCL 168.532 cannot possibly mean what it expressly says: that MCL 186.686a(4), including its withdrawal prohibition, applies to "all" minor parties. Thus, based upon the Court of Appeals' opinion, "may" seems to mean "may only," but "all" seems to mean "some." Although I doubt that the Court of Appeals' statutory interpretation is correct, the statutory ambiguity makes it impossible to conclude that defendant had a *clear* legal duty to remove plaintiff from the ballot. See *Taxpayers for Mich Constitutional Gov't*, 508 Mich at 82.

Finally, I am concerned about the manner in which the Court of Appeals disposed of defendant's argument concerning the doctrine of laches. The doctrine of laches is an equitable principle that "denotes 'the passage of time combined with a change in condition which would make it inequitable to enforce a claim against the defendant.' " *Lothian v Detroit*, 414 Mich 160, 168 (1982) (citation omitted). The doctrine "reflects the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair and unjust." *Id*. (quotation marks and citation omitted). Laches intends to "remedy 'the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert.' " *Pub Health Dep't v Rivergate Manor*, 452 Mich 495, 507 (1996), quoting *Lenawee Co v Nutten*, 234 Mich 391, 396 (1926) (some quotation marks omitted). Importantly, "legal challenges that affect elections are especially prone to causing profound harm to the public and to the integrity of the election process the closer in time those challenges are made to the election, making laches especially appropriate to apply in such matters." *Davis v Secretary of State*, ___ Mich App ___, ___ (April 20, 2023) (Docket No. 362841), slip op at 9 (citing cases).

In this case, Michigan's Natural Law Party nominated plaintiff as its candidate for President on April 17, 2024. Plaintiff waited more than four months before asking defendant to remove his name from the ballot. When plaintiff made his request, defendant faced a deadline for ballot printing that was two weeks away. Additionally, the Natural Law Party, which opposed plaintiff's efforts to remove himself from the ballot, had no opportunity to field a candidate and faced considerable prejudice. The Court of Appeals acknowledged that plaintiff "waited four months after his nomination to attempt to have his name withdrawn from the ballot," *Kennedy*, unpub op at 3, but it then opined that it was "not apparent that he delayed in withdrawing, as there is no evidence in the record about when the desire to withdraw arose," *id*. But laches does not concern a plaintiff's inner motives or desires—instead, it concerns the "effect" of a plaintiff's delay. *Lothian*, 414 Mich at 168 (quotation marks, citation, and emphasis omitted). Given plaintiff's delay and the effects thereof, it is unclear to me that plaintiff had a "clear, legal right to" relief. *Taxpayers for Mich Constitutional Gov't*, 508 Mich at 82.

In sum, plaintiff failed to demonstrate that he had a clear right to mandamus relief. For that reason, I agree that the Court of Appeals' opinion was legally erroneous.

ZAHRA and VIVIANO, JJ. (*dissenting*).

I. INTRODUCTION

The Secretary of State seeks an order to place Robert F. Kennedy, Jr.'s name on the general election ballot as a candidate for President of the United States, claiming that Kennedy's name must be on the ballot under MCL 168.686a. But no statute prohibits a presidential candidate from withdrawing his or her candidacy. And there is no practical reason for denying a request to withdraw before the ballots have been printed for the general election. There is, however, a significant cost to the integrity of the election: the voters will be improperly denied a choice between persons who are actually candidates, and who are willing to serve if elected. There is great distrust in the American voting system. The ballots printed as a result of the Court's decision will have the potential to confuse the voters, distort their choices, and pervert the true popular will and affect the outcome of the election. In short, the Court's ruling will do nothing to rebuild the public's trust in the fairness and accuracy of our elections.

Kennedy filed an action in the Court of Claims to compel the Secretary to remove his name from the ballot. The Court of Claims denied relief. On appeal, a unanimous panel of the Court of Appeals reversed the Court of Claims and ordered Kennedy's name to be removed from the ballot. The Secretary filed an appeal in this Court on September 6, 2024, at 6:05 p.m., and noted in its motion for immediate consideration that earlier that day, "at 3:42 p.m., . . . the Secretary sent the call of the election and certification of candidates to the 83 county clerks without Kennedy's name listed as the Natural Law Party's candidate for President." Under MCL 168.648, September 6 is the deadline for the Secretary to deliver the list of candidates and ballot questions that will appear on the ballot for the upcoming general election on November 5, 2024.

As matters currently stand, with Kennedy absent from the ballot, there has not been any violation of Michigan election law. The Secretary of State plainly had the power to remove Kennedy's name from the ballot, and the majority order does not question that power to remove Kennedy's name from the ballot. Further, the Secretary's claim that Kennedy is barred from withdrawing his name from the ballot under MCL 168.686a is meritless.[1] As explained in a thorough and convincing opinion from the Court of Appeals,

---

[1] Moreover, Kennedy's answer, filed this morning with this Court, provides the following astute observation:

because the presidency is not a "state office," presidential candidates are not prohibited under MCL 168.686a(4) from withdrawing their names from the ballot to allow the voters to select another candidate. The language of MCL 168.686a is unambiguous and clear. Moreover, as admitted in the Secretary's application for leave to appeal, she has delivered to the county clerks the list of candidates to be placed on the general election ballot. In short, the Legislature created a process that would certify ballots for distribution to the local clerks by September 6, and the Secretary had complied with this requirement. Accordingly, the current application for leave to appeal, which asks the Court to act outside the legislative framework for preparing and printing ballots, appears to be moot. This Court should not be exercising judicial power to sanction conduct outside this legislative framework.

Nonetheless, despite the fact that the Secretary of State has lawfully delivered the list of candidates to the county clerks and that the September 6 deadline for delivering the list of candidates has passed, this Court intervenes to vindicate the Secretary's legally unsupported position. Worse yet, it does so on a completely novel claim, a claim not even advanced by the Secretary herself: that there exists no legal requirement for the Secretary to accept a withdrawal request at all. No provision in law supports the Secretary's decision to reject Kennedy's request. Yet, the Court inverts the analysis, concluding that there is no provision that expressly permits Kennedy's request to proceed when no other provision on withdrawal is implicated.

Still, after this Court's intervention, there is no identifiable source of law that permits the Secretary of State's decision to deny Kennedy's request to withdraw from the ballot. The majority's counterintuitive and circular reasoning grants the Secretary of State extraordinary and undefined discretion found nowhere in the election law of Michigan to reject any withdrawal requests as she sees fit. Ultimately, the Court implicitly holds that the Secretary made a discretionary decision that she has never asserted. In fact, the legal justification the Secretary actually proffered and relied upon for her decision was clearly meritless. Now countless Michigan voters may be deluded and deceived into casting their ballots for a candidate who has no intention to hold the office. Because there is no legal authority for the Secretary's decision to deny Kennedy's withdrawal, mandamus is

---

> In fact, [the Secretary of State] until this appeal screamed at every turn that there would be harm to the public interest if the identity of what candidates to print on the ballots were not finalized and certified this past Friday. That occurred. She now seeks to cause the very harm to the public interest she said must be avoided at all costs—potentially, if she obtains a stay, upend the certainty as to the candidates she certified to all 83 candidates to print on the ballots and which they were to begin printing forthwith.

warranted and this appeal should be denied. For these reasons, more fully explained below, we dissent.

II. FACTS AND PROCEDURAL HISTORY

This is an election dispute involving Robert F. Kennedy, Jr., who received the nomination for President of the United States as the candidate for the Natural Law Party on April 17, 2024, at its statewide convention. The Natural Law Party held its convention and sent its slate of presidential electors and its certification for Kennedy as its nominee on the same day as the convention.

Immediately upon making a public determination to not seek the office of President, at 7:20 p.m. on August 23, 2024, Kennedy sent an e-mail to Director of Elections Jonathan Brater with an attached withdrawal form. The form was rejected by the Bureau of Elections (BOE) on August 26, 2024, under MCL 168.686a, and Kennedy protested in a responsive e-mail near the close of business the next afternoon. The e-mail argued that the BOE had erroneously relied on MCL 168.686a(4), which states that candidates "for all state offices . . . nominated and certified [under the subsection] shall not be permitted to withdraw." On August 29, 2024, the BOE again denied Kennedy's request to withdraw, reiterating its position that MCL 168.686a(4) prohibited the request.

Kennedy sued the Secretary of State the next day, August 30, 2024, in the Court of Claims, seeking mandamus as well as declaratory and injunctive relief. On Tuesday, September 3, 2024, the Court of Claims denied Kennedy's requested relief and dismissed his complaint with prejudice.

On the night of September 4, Kennedy appealed, challenging only the denial of injunctive and mandamus relief. The Secretary of State responded. Around noon on September 6, 2024, the Court of Appeals issued an unpublished per curiam opinion that unanimously reversed the Court of Claims and granted mandamus relief. It held that the legal basis offered by the Secretary of State to reject Kennedy's request to withdraw was baseless and ordered the Secretary of State to keep plaintiff's name off the ballot. The Secretary filed this application for leave to appeal around 6:30 p.m. on Friday, September 6, asking for expedited review and a stay of the Court of Appeals order. Apparently, the Secretary seeks a Court order by Monday, September 9, at 3:00 p.m., even though the deadline for the Secretary of State to send the call of the election and certification of candidates to the 83 county clerks has already passed. See MCL 168.648. For most of the duration of the Court's deliberations, we have lacked adversarial briefing from the opposing side.[2]

---

[2] Indeed, Kennedy managed to file well-written answer with this Court on the same date that the Court's order is to be entered.

III. ANALYSIS

A majority of this Court now reverses the Court of Appeals opinion removing Kennedy from the November general election ballot in a cursory order without substantive analysis or explanation. The majority does not order this outcome because the Court of Appeals opinion removing Kennedy from the ballot is legally erroneous. It in fact expressly assumes that the Court of Appeals is correct.[3] Instead, the Court concludes Kennedy has failed to show he is entitled to a writ of mandamus because there is no legal provision that permits Kennedy to withdraw when none of the provisions specifically governing withdrawal authorizes the Secretary of State to deny the request. On its face, a rationale as confounding, imprecise, and counterintuitive as this should garner significant skepticism.

Mandamus is an extraordinary remedy that will only issue if the plaintiff demonstrates that "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result."[4] "In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided."[5] " '[T]he requirement that a duty be clearly defined to warrant issuance of a writ does not rule out mandamus actions in situations where the interpretation of the controlling statute is in doubt. As long as the statute, once interpreted, creates a peremptory obligation for the officer to act, a mandamus action will lie."[6]

While woefully unexplained and lacking in reasoning, the majority order ultimately errs when it concludes that "plaintiff has neither pointed to any source of law prescribes and defines a duty to withdraw a candidate's name from the ballot nor demonstrated his clear legal right to performance of this specific duty, let alone identified a source of law written with 'such precision and certainty as to leave nothing to the exercise of discretion

---

[3] *Ante* at 1 ("Assuming, without deciding, that the Court of Appeals was correct in its interpretation of MCL 168.686a(4) . . . .").

[4] *Taxpayers for Mich Constitutional Gov't v Michigan*, 508 Mich 48, 82 (2021) (quotation marks and citation omitted).

[5] *Berdy v Buffa*, 504 Mich 876 (2019), quoting *Berry v Garrett*, 316 Mich App 37, 41 (2016) (emphasis and some quotation marks omitted).

[6] *Berdy*, 504 Mich at 876, quoting 55 CJS, Mandamus, § 74, p 107.

or judgment.' "[7] In essence, the majority order can be inferred as holding that even though the Secretary has relied upon MCL 168.686a(4) to deny Kennedy's withdrawal and even if no identifiable provision governing withdrawal supports the Secretary's action, the Secretary nevertheless has a broad and undefined discretionary authority to reject any withdrawal request. Or the majority perhaps believes that despite Kennedy's *right* to withdraw, the Secretary lacks any corresponding *duty* to remove him from the ballot (even though no other official could do so). This would be surprising, as many members of the current majority recently explained that "a right must have a remedy. If not, it is not a right at all but only 'a voluntary obligation that a person can fulfill or not at his whim,' or merely 'a hope or a wish.' "[8] No reason is offered, here, why Kennedy's right fails to produce such a duty. Or maybe the majority means that there is a right to withdraw and, in cases involving nonmandamus relief such as injunctions, the Secretary would have a duty to allow it. But because the duty is not clearly enough spelled out, mandamus fails. This sort of formalism would be unique in our law, which eschews reliance on the title of relief sought and looks at the substance of the request.[9] And in any event, Kennedy sought injunctive relief here, one of the many things the majority conveniently overlooks.[10]

Yet, under the newly adopted understanding of mandamus expressed in the majority order, the Secretary of State can simply reject a withdrawal request for any reason at any time for no express legal justification and without any statutory standards to guide the Secretary's discretion. The aggrieved candidate would never have an avenue for relief. Nothing in Michigan election law grants the Secretary of State such wide discretionary

---

[7] Quotation marks and citations omitted.

[8] *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 691 (2022) (citation omitted).

[9] See *Dep't of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 270-271 (2021) (ZAHRA, J., dissenting) ("[I]t is well settled in the law of pleadings that '[a] party's choice of label for a cause of action is not dispositive. We are not bound by the choice of label because to do so "would exalt form over substance." ' ") (Citation omitted).

[10] It also passes over in silence Kennedy's constitutional claim that forcing him to remain on the ballot violates his First Amendment rights. This is a properly preserved and potentially dispositive claim that has not yet been addressed on appeal. A responsible court would also address the fact that the Secretary has already submitted to the county clerks the list of the candidates under MCL 168.686, without Kennedy's name. The statutory deadline for her submission has now passed. See MCL 168.648. The case therefore may be moot, unless there is some legal authority for disregarding the statutory deadline. But as with so much else, the majority pays no mind to this potentially dispositive question.

power,[11] which one would reasonably expect to be written in the detailed and intricate manner in which the election laws of our state have been developed.[12] As will be demonstrated below, the Secretary has erroneously interpreted Michigan law, which, properly interpreted, gives Kennedy a clear legal right to withdraw. In the face of that right, the Secretary has no authority to refuse Kennedy's decision to withdraw.

Putting aside the fact that the Secretary of State did not raise this novel theory of undefined discretion at any stage of the legal proceedings below, the action for mandamus should come down to the simple question of whether the Secretary is correct that MCL 168.686a(4) applies and whether the Court of Appeals properly determined that MCL 168.686 applies here. The Secretary has a "clear legal duty" not to reject Kennedy's request without support in the law, i.e., to act with support under the law.[13] This Court has repeatedly entertained mandamus actions to place or remove a candidate or initiative from the ballot.[14] And other courts have routinely entertained mandamus actions against

---

[11] *Davis v Secretary of State*, 506 Mich 1040, 1040 (2020) (VIVIANO, J., dissenting) ("Our Constitution requires the Secretary of State to 'perform duties prescribed by law.' Const 1963, art 5, § 9. In general, '[t]he extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority.' ") (quotation marks, citation, and emphasis omitted); see MCL 168.31 and MCL 168.32 (stating the duties and powers provided to the Secretary of State in relation to elections, none of which provides the wide-reaching authority to deny withdrawal requests as the Secretary feels is warranted); see also *People v Arnold*, 502 Mich 438, 480 n 18 (2018) (explaining that "the Legislature 'does not, one might say, hide elephants in mouseholes' " and enact "sea change" departures from understood law and practice through imprecise language), quoting *Whitman v American Trucking Ass'ns*, 531 US 457, 468 (2001); see also *Whitman*, 531 US at 468 (explaining that Congress "does not hide elephants in mouseholes" by "alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions").

[12] Cf. *Northwest Airlines, Inc v Transport Workers Union of America, AFL-CIO*, 451 US 77, 97 (1981) ("The judiciary may not, in the face of such comprehensive legislative schemes, fashion new remedies that might upset carefully considered legislative programs."); accord *Gardner v Wood*, 429 Mich 290, 304 (1987) (warning against an interpretation "where a balance struck by a comprehensive regulatory scheme could be undermined").

[13] *Teasel v Dep't of Mental Health*, 419 Mich 390, 415 n 13 (1984).

[14] *Promote the Vote 2022 v Bd of State Canvassers*, 510 Mich 884 (2022) (mandamus directing a constitutional amendment question to be placed on the ballot, despite the Board of State Canvassers' decision to reject the petition because it abrogated other provisions of the Michigan Constitution and failed to include any notice to the public of such

government officials in cases where the plaintiff seeks removal from the ballot, without any suggestion that the duty to strike a candidate from the ballot is too unclear for mandamus relief.[15]

Moreover, it is unsurprising that when the Legislature enacted provisions specifically governing the withdrawal of candidates, it did not expressly state the obvious: that when the prohibitions on withdrawal are not triggered, otherwise valid withdrawals can proceed. Statutes routinely speak in negative terms, proscribing categories of behavior that are not permitted.[16] Notably, there are no statutory provisions stating that a candidate or initiative petition has an explicit *right* to be placed on the ballot only if the requisite number of signatures are submitted to the Board of State Canvassers and nothing else *prevents* placement on the ballot.[17] Under the myopic understanding of a writ of mandamus set forth in the majority order, if the Board of State Canvassers refuses to approve a candidate or initiative on illegal grounds, mandamus relief would not be available to an aggrieved party because there is no statute expressly commanding the officials to place a matter on the ballot when no other legal basis to refuse access to the ballot exists. We have never so limited our understanding of an action for mandamus, and nothing in our election laws or Michigan common law supports adopting such a standard now.

Further, other provisions of Michigan election law prescribe that withdrawal from ballot placement is not permitted in certain instances.[18] In fact, the election law is littered with provisions that govern the exact manner and timing by which candidates are permitted

---

abrogation); *Reproductive Freedom for All v Bd of State Canvassers*, 510 Mich 894 (2022) (mandamus mandating constitutional amendment question to be placed on the ballot, overruling the board's decision to reject the petition because of its failure to include legible spacing in a copy of the amendment circulated among the public); *Stand Up for Democracy v Secretary of State*, 492 Mich 588 (2012) (mandamus order to mandate placement on referendum on the ballot despite decision of the Board to reject the petition because of a failure to comply with form requirements for petitions); *Johnson v Bd of State Canvassers*, 509 Mich 1015 (2022) (review of a challenge to the manner by which the board reasonably determined the validity of signatures in a nomination petition).

[15] See, e.g., *Conroy v Nulton*, 48 A2d 831 (NJ, 1946); *State ex rel Rogers v Secretary of State*, 53 Wyo 267 (1938) (*Rogers*).

[16] See, e.g., MCL 445.903 (describing methods of "trade or commerce" that are prohibited as "unfair, unconscionable, or deceptive"); MCL 750.411a (prohibiting false reports of a crime or emergency).

[17] See MCL 168.476; MCL 168.552.

[18] See, e.g., MCL 168.686a(2) and (4).

to withdraw from elections.[19] Yet under the theory endorsed by the majority, there is no legal standard that controls or limits the determination of the Secretary to deny withdrawals as the Secretary sees fit. There is substantially less meaning and value to provisions specifically written by the Legislature to determine when withdrawals are allowed if the Secretary can simply reject withdrawal requests for any reason at any time with no express legal justification.[20] We must presume the Legislature acted intentionally when barring certain candidates from withdrawing their placement on the ballot, while remaining silent as to other candidates.[21] Ultimately, considering the context of Michigan election law as a

---

[19] See, e.g., MCL 168.134 (governing withdrawals for certain candidates for the House of Representatives); MCL 168.138; MCL 168.54 and MCL 168.58 (stating rules for withdrawal for certain candidates for Governor).

[20] See *Johnson v Recca*, 492 Mich 169, 177 (2012) ("[C]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.") (quotation marks, citations, and brackets omitted); *Bronner v Detroit*, 507 Mich 158, 173 n 11 (2021) (" '[E]xpress mention in a statute of one thing implies the exclusion of other similar things.' ") (citation omitted); see also, e.g., *Bradley v Saranac Community Sch Bd of Ed*, 455 Mich 285, 298-299 (1997) (because the Legislature expressly excluded disclosure of personnel records of police from the Freedom of Information Act, the conclusion that "the Legislature rejected the opportunity to extend this exemption" to other employees in other contexts was "inescapable"); *Detroit City Council v Detroit Mayor*, 283 Mich App 442, 455-456 (2009) (statute expressly stating parameters of power provided to a city council excluded the possibility that the same power could also be separately exercised by the mayor); *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 249-250 (2005) (holding that an express statutory grant of legal privileges to individuals in certain instances negated the ability of those individuals to exercise distinct privileges that were not stated and reasoning, given that "the Legislature was silent" as to source of other legal rights, that "it would be entirely improper for this Court to read into the statutory language a provision guaranteeing . . . such rights").

[21] *Jama v Immigration & Customs Enforcement*, 543 US 335, 341 (2005) (stating that the court "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest"; explaining that a consent requirement for deportation by another country expressly found in neighboring provisions could not be extended to portions that do not include that language); *Sosa v Alvarez-Machain*, 542 US 692, 711 n 9 (2004) ("It is difficult to reconcile the Government's contrary reading with the fact that two of the Act's other exceptions specifically reference an 'act or omission.' The Government's request that we read that phrase into the foreign country exception, when it is clear that Congress knew how to specify 'act or omission' when it wanted to, runs afoul of the usual rule that

whole, if the Secretary of State's interpretation of the law is indeed erroneous and there is no legal basis to refuse Kennedy's request, Kennedy has a legal right to withdraw from the general election ballot. Relief is fully warranted in this case.

Having concluded that the majority order has erroneously construed the requirements for mandamus, we next consider the merits of Kennedy's claim that the Secretary of State has erred in the application of Michigan election law. Simply put, the Court of Appeals correctly concluded that Kennedy is entitled to relief. As noted by the Court of Appeals, the statute relied upon by the Secretary to conclude that Kennedy must remain on the ballot, MCL 168.686a, does not speak of, state, or refer to the presidency or any federal office. The office of President is not mentioned once. Instead, the statute prescribes specific nomination processes for "office[s] of representative in congress, state senator, and state representative" and "county and township offices" for MCL 168.686a(2), and "state offices" and "district offices" for MCL 168.686a(4).

Contrary to the suggestions by Justice WELCH, there is no basis in the text of MCL 168.686a(4) to conclude that the withdrawal prohibition can be expanded to include offices other than "state or district offices." MCL 168.686a(4) is a single cohesive statutory paragraph that describes the rules for minor party state conventions to nominate candidates for state and district offices. At the state conventions, the party "may nominate candidates for all state offices." District candidates, by comparison, "may be nominated at district caucuses held in conjunction with the state convention attended by qualified delegates of the district." And under MCL 168.686a(4), "the candidates nominated for state or district offices shall be certified" to the Secretary of State by the party. After the provision describes in detail the procedure for nominating candidates for state and district offices in the immediately preceding sentences, the provision concludes, stating that "[c]andidates *so nominated and certified* shall not be permitted to withdraw."[22] Reading the plain text as a whole, the withdrawal provision clearly applies only to "state or district offices," for whom

---

'when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.' ") (citations omitted); *Mississippi ex rel Hood v AU Optronics Corp*, 571 US 161, 169 (2014) ("To start, the statute says '100 or more persons,' not '100 or more named or unnamed real parties in interest.' Had Congress intended the latter, it easily could have drafted language to that effect."); *SBC Health Midwest, Inc v Kentwood*, 500 Mich 65, 74-75 (2017) (holding that it would be improper to read the word "nonprofit" into an unambiguous statutory provision that did not contain it on the ground that the word appeared in a similar statute).

[22] MCL 168.686a(4); *Recca*, 492 Mich at 177 ("We interpret the words in the statute in light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole.") (quotation marks, brackets, and citation omitted).

the entire provision details a certification process.[23] The separate subsection MCL 168.686a(2) operates in the same manner, describing the procedure and withdrawal limitations for the "office of representative in congress, state senator, and state representative." And notably, there is an entirely separate provision for the certification of presidential nominees, and there is no withdrawal provision included.[24] There is simply no basis to stretch the text of MCL 168.686a(4) to include offices that categorically fall outside its tailored and specific language.[25]

Notably, the Legislature clearly knew how to write out separate federal offices, as it identified a specific process for candidates for Congress under MCL 168.686a(2). It did not do so for President. "State office" under MCL 168.686a(4) means an office governed

---

[23] *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 295 (2020) ("Each word and phrase in a statute must be assigned such meanings as are in harmony with the whole of the statute, construed in light of history and common sense.") (quotation marks and citation omitted); see also, e.g., *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 371 (2018) (explaining that "such a permit" and "his or her permit" refer to "previously mentioned permits" and "[s]uch a petition" in one sentence "refer[s] back to the subject of the preceding sentence" and "impose[s] additional limitations").

[24] MCL 168.686.

[25] Justice WELCH's reliance on MCL 168.532 is also misplaced. MCL 168.532 addresses the procedures by which minor party candidates are *nominated* and establishes that such candidates are nominated at caucuses or conventions pursuant to MCL 168.686a. But this case does not concern how Kennedy was nominated by the Natural Law Party. It concerns whether Kennedy may withdraw after being nominated, and as already discussed, nothing in MCL 168.686a(4) prohibits Kennedy from withdrawing. Furthermore, Justice WELCH's interpretation of MCL 168.532 is in tension with MCL 168.686, which implicitly recognizes that some minor parties may nominate their presidential and vice presidential candidates at a national convention rather than a state convention. See MCL 168.686 ("In each presidential election year, the state central committee of each political party shall, not more than 1 business day after the state convention *or the national convention of that party*, whichever is later, forward to the secretary of state the typewritten or printed names of the candidates of that party for the offices of president of the United States and vice-president of the United States certified to by the chairperson and secretary of the committees.") (emphasis added). If MCL 168.532 applied as Justice WELCH suggests, then following Michigan law could lead to an absurd result in which a candidate for a minor party on the ballot in Michigan is different from the candidate nominated at that party's national convention.

by state authority. That is well in line with the basic meaning of "state" and with how this Court has previously interpreted the meaning of state offices.[26]

For the above reasons, MCL 168.686a is not applicable to Kennedy, even though his candidacy emanated from a minor party. The applicable statute, as the Court of Appeals explained, is MCL 168.686, in which the Legislature addressed presidential candidates. The provision specifically addresses presidential candidates and has its own separate and distinct requirements. MCL 168.686 contains no limits or statements indicating it extends only to major parties or does not extend to minor parties; it applies to all candidates for the presidency. And significantly, MCL 168.686 does not prohibit withdrawal.

The existence of general provisions governing the process for nominating candidates to most offices and separate provisions specifically governing the process for nominating a candidate for President is by no means unusual or surprising. A very similar statutory framework exists for the two major parties. Major party candidates are governed by specific statutes for statewide primaries, conducted in August.[27] Yet this general provision does not apply to the two major parties' presidential nominations, which have targeted provisions specifically governing their conduct.[28] The Legislature has clearly delineated general rules for most candidates for office, whether their nomination emanates from a minor or major party. But there are special rules applicable to all candidates for President of the United States, regardless of the party that generated the nomination. This is intentional. [29]

---

[26] See, e.g., *Massey v Secretary of State*, 457 Mich 410, 419-420 (1998) (distinguishing and explaining the legal difference between "federal" and "state" offices, whose term limits could be different); *Young v Detroit City Clerk*, 389 Mich 333, 349-350 (1973) (thoroughly examining historical caselaw on the meaning of "state office," tying it to authority and power vested in state authorities under state law; explaining that the recorder's court was, "when exercising jurisdiction to try persons accused of crimes, under the general laws of the State, a State court; its judges exercising the powers of a circuit judge" and that "[i]f a vacancy in the office is filled by appointment, the appointment must be made by the governor"; explaining that "even without specific duties," "public schools throughout the state are state schools and agencies of the state" and that because a public university's board of regents represents a "State institution, with obligation on the legislature to maintain it," a state legislator was ineligible to serve) (quotation marks and citations omitted).

[27] MCL 168.531.

[28] E.g., MCL 168.613a, MCL 168.614a, MCL 168.615a, and others.

[29] Indeed, in the context of ballot access, the United States Supreme Court has observed that "state-imposed restrictions implicate a uniquely important national interest."

In line with this plain meaning, the election law repeatedly describes federal offices and the presidency as separate and categorically distinct from "state offices."[30] And in other provisions, the Legislature has shown the ability to describe and lay out in detail specific federal and state offices, including the provision at issue that identifies congressional nominees.[31] In the numerous examples of the election law defining and referring to governmental offices, not once has the Legislature identified or categorized a federal office or the presidency as a "state office." This is unsurprising, as a state's power over the election and qualification of federal officers is limited compared to its power over state officers.[32]

Further, other provisions clearly and explicitly prohibiting withdrawal in certain defined instances are routinely found in the election law.[33] As the Court of Appeals explained, we must presume the Legislature acted intentionally when barring certain candidates from withdrawing their placement on the ballot, while remaining silent as to other candidates. The absence of a withdrawal provision is particularly important because the universal rule, according to every American jurisdiction that has addressed the issue, is that "in the absence of statutory inhibition, a candidate has a natural or inherent right to

---

Anderson v Celebrezze, 460 US 780, 794-795 (1983). Thus, it is unsurprising that Michigan law treats presidential candidates differently than it does state- and local-level candidates.

[30] MCL 168.558(1) (referring to filing requirements for candidates seeking a "*federal*, county, *state*, city, township, village, metropolitan district, or school district office in any election") (emphasis added); MCL 168.582 (referring to "[a] person who is voted for on a party ballot for a *state*, district, township, county, city, or ward office *or for the office of United States senator or representative in Congress*") (emphasis added).

[31] See MCL 168.534 (stating that registered voters "may vote for party candidates for the office of governor, *United States Senator, Representative in Congress*, state senator, representative in the legislature, county executive, prosecuting attorney, sheriff, county clerk, county treasurer, register of deeds, drain commissioner, public works commissioner, county road commissioner, county mine inspector, surveyor, and candidates for office in townships") (emphasis added); MCL 168.581(4) (explaining the procedure for "canvassing the returns of a primary election for the nomination of candidates for the offices of *Representative in Congress*, state senator, and representatives in the legislature") (emphasis added); MCL 168.686a(4).

[32] Cf. *Trump v Anderson*, 601 US 100, 111 (2024).

[33] See, e.g., MCL 168.686a(2) and (4); MCL 168.134; MCL 168.138 (governing withdrawals for certain candidates for the House of Representatives); MCL 168.58; MCL 168.54 (stating rules for withdrawal of certain candidates for Governor).

resign at any time and to have his name deleted from the ballot."[34] This is true regardless of whether a statute expressly grants a right to withdraw.[35] The rationale for this rule has been expressed as follows:

> This interpretation of the statute is in accord with the fundamental purpose of all election laws; i.e., to enable the voters to exercise a free, orderly, and intelligent choice. We can conceive of no good reason why a ballot should contain the name of a person who is not in fact a candidate for

---

[34] *Battaglia v Adams*, 164 So 2d 195, 198 (Fla, 1964). See also *Black v Bd of Supervisors of Baltimore City*, 232 Md 74, 79 (1963) ("It appears to be well settled that in the absence of a statutory prohibition against resignation a candidate has a natural or inherent right to resign at any time and to have his name deleted from the ballot."); *Introcaso v Burke*, 3 NJ Super 276, 279 (1949) ("The right of a candidate for public office to resign is an inherent right of the individual. The right, however, must give way to reasonable legislative restrictions . . . ."), citing *Conroy*, 48 A2d at 832; *Rogers*, 53 Wyo at 273 ("Other cases support the view that in the absence of statutory regulation or prohibition a candidate has a natural right to withdraw, if his application be made in time to enable the officials to have the necessary alterations put in effect."); *State ex rel La Follette v Hinkle*, 131 Wash 86, 93 (1924) ("If at one time Mr. LaFollette gave consent to use his name [as a candidate for president], it was nothing more than a bare license or permission which may be revoked by him at any time . . . ."); *Bordwell v Williams*, 173 Cal 283, 285 (1916) ("A citizen is, however, under no obligation to seek election to an office. He may be a candidate or refuse to be such, at his option, and in the absence of statutory provision to the contrary, the mere fact that he has once announced his candidacy for an office does not prevent him from withdrawing as a candidate whenever he sees fit so to do."); 29 CJS Elections § 183 (May 2024 update) ("Under the common law and under statute, a candidate for public office has the right to withdraw his or her candidacy. However, to be valid and effective, it is essential that such withdrawal be made in the manner and filed within the time prescribed by statute.") (citations omitted); 26 Am Jur 2d, Elections, § 206 (August 2024 update) ("A citizen may refuse to be a candidate and seek withdrawal of a nomination, at his or her option.").

[35] See *Bergeson v Mullinix*, 399 Ill 470, 476 (1948) ("The statute makes provision in the event a candidate should withdraw or decline the nomination, and the general rule seems to be that unless there is some statute requiring him to serve he may have his name removed from the ballot."); *Bordwell*, 173 Cal at 288 (Henshaw, J., concurring) ("Therefore, no right to withdraw his name as a candidate from the primary ballot is expressly or impliedly given to any candidate because it is not necessary that it should be expressly or impliedly given. The right is his, unless it is taken away by positive law, and there is no positive law so doing. Nor is it necessary that there should be any specific mode prescribed by which any withdrawal can be effected.").

> nomination, even though he may once have taken the steps which entitle him to become such candidate. The presence of his name (like that of a candidate who has died) could operate only to deprive uninformed electors of their votes, to the injury of one or more of the actual candidates, and to the possible perversion of the true popular will. We are not prepared to hold that the law requires this result. To give to the certificate of the Secretary of State the conclusive effect contended for by the respondent would be to elevate form above substance. We believe, on the contrary, that the statute contemplates a submission to the electors of a choice between persons who are candidates in fact, and that where, from any cause, the ballots do not present that choice, the courts are authorized, under section 27 of the act, to direct the officials having control of the preparation of the ballots to prepare them in proper form.[36]

---

[36] *Bordwell*, 173 Cal at 287. See also *id*. at 289 (Henshaw, J., concurring) ("To attribute such a meaning to the legislature is deliberately and unnecessarily to charge it with the design of deluding and deceiving the electors of the state. For under that construction it is not denied that it means that the name of a candidate who has died may not, even though the fact be timely and officially brought to the notice of the county clerks, be omitted from the ballot to be printed; that if the sole candidate of a political party has been convicted of a felony and thus disqualified from holding office, the legislature designed in both such and all like cases that the name of the dead man and that the name of the felon should remain upon the ballot, notwithstanding that, if they received a majority of the votes, neither could take office, and the result would be, either that a man whom the people by their votes had not selected would fill the office, or that the state must be subjected to the added and unnecessary expense of another election. I am unwilling myself to charge the legislature in its enactment of the primary law with any such stupidity or evil design."); cf. *Myers v Gant*, 49 F Supp 3d 658, 668 (D SD, 2014) ("Moreover, the State's current system causes more voter confusion than it alleviates if the withdrawn candidate, Collier, who has no intention of serving as lieutenant governor, is left on the ballot and the actual running mate, Hubbel, is not on the ballot. Voters deserve to know the names and ideas of the candidates on the ballot and that they are ready to serve."); *Regalado v Curling*, 430 NJ Super 342, 346 (2013) ("We reject the City's contention that printing ballots without plaintiff's name will cause confusion to the voting public. Rather, we conclude the greater harm results from plaintiff's name remaining on the ballot, potentially resulting in a voter casting a vote for a candidate who is no longer pursuing the office, thereby depriving that voter of the opportunity to cast a meaningful vote for another viable candidate. Such a result is 'inimical to the public interest[,]' . . . and inconsistent with the overriding public policy that 'election laws are to be liberally construed' so as not to disenfranchise voters.") (citations omitted).

Thus, the absence of any prohibition on withdrawal would alone entitle Kennedy to remove his name from the ballot—the fact that the Legislature included such prohibitions elsewhere but not here is simply icing on the cake. In sum, the Legislature clearly knows how to state different language to include the presidency in specific requirements such as withdrawal under MCL 168.686a(4), which explicitly applies to "state offices." It chose not to do so in this case. We must honor that decision expressed in the plain text, and the Court lacks authority to override it.[37] Therefore, Kennedy has a clear right to withdraw.

Finally, the Secretary of State asserts the doctrine of laches as a defense to her refusal to withdraw Kennedy from the general election ballot. Laches is best summed up in *Dep't of Pub Health v Rivergate Manor*, 452 Mich 495, 507 (1996), as an equitable principle that applies "in cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party."

Estoppel by laches is the failure to do something which should be done under the circumstances or the failure to claim or enforce a right at a proper time. To successfully assert laches as an affirmative defense, a defendant must demonstrate prejudice occasioned by the delay. Typically, "[l]aches is an equitable tool used to provide a remedy for the inconvenience resulting from the plaintiff's delay in asserting a legal right that was practicable to assert. A party guilty of laches is estopped from asserting a right it could have and should have asserted earlier."[38] There is no merit to a claim that laches bars Kennedy's mandamus claim. Both the Court of Claims and the Court of Appeals were able to address the issue in time for the Secretary of State to meet her statutory deadline. Moreover, although the Secretary of State argued that the delay in seeking withdrawal was inordinate, as noted by the Court of Appeals there is nothing in the record demonstrating that there was any undue delay between the desire to withdraw and the actual request.

In a similar vein, the Supreme Court has observed that " 'the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.' " *Anderson*, 460 US at 786 (citation omitted). And in interpreting our own election laws, we have stated that "[i]t has been the legislature's constant purpose to insist upon full and complete identification of candidates for public office in order to provide the electorate with the information necessary to cast their ballots effectively for the candidates of their choice." *Sullivan v Secretary of State*, 373 Mich 627, 631 (1964). The majority order today cuts against these principles and can only obstruct voters casting a meaningful vote for the presidency.

[37] See note 22 of this statement.

[38] *Nykoriak v Napoleon*, 334 Mich App 370, 382 (2020), quoting *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 589 (2019) (quotation marks omitted).]

Kennedy publicly determined he no longer intended to seek the presidency on August 23, 2024, and he filed a formal request for withdrawal that same day. The Secretary has not demonstrated that she would suffer prejudice by acquiescing to Kennedy's request. Rather, her position has always been that harm will fall on the Natural Law Party, a minor political party that has not bothered to intervene in these proceedings. The Secretary's assertion in this regard is dubious in light of the Secretary's overarching duty to maintain the integrity of Michigan elections.

The doctrine of laches rests in equity. There is no equity in requiring a candidate to be placed on the ballot for President who has announced he will not accept the office if elected. And there is no equity in placing a name on a ballot with the potential of creating confusion for voters who may misconstrue the defunct state of the Kennedy presidential campaign by virtue of his name appearing on the ballot.[39]

IV. CONCLUSION

The Secretary's duty to maintain the integrity of Michigan elections includes an obligation to present actual candidates and associate them with the offices that they are seeking. By requiring Kennedy's name to appear on the general election ballot, the Secretary of State is improperly and needlessly denying the electorate a choice between persons who are actual candidates willing to serve if elected. We can only hope that the Secretary's misguided action—now sanctioned with the imprimatur of this Court—will not have national implications.

[39] See note 22 of this statement.