STATE OF MICHIGAN
IN THE COURT OF APPEALS

MICHIGAN REPUBLICAN PARTY, REPUBLICAN NATIONAL COMMITTEE, and CINDY BERRY,

Plaintiffs-Appellants,

v

JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as Director of Elections,

Defendants-Appellees.

Court of Appeals No. 372995

Michigan Court of Claims
Case No. 24-000165-MZ
Hon. Sima G. Patel

AMICUS CURIAE BRIEF OF SECURE FAMILIES INITIATIVE AND THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Other Authorities

INTEREST OF AMICI CURIAE

Secure Families Initiative ("SFI") is a nonpartisan 501(c)(4) not-for-profit organization comprising military spouses and family members that advocates for federal and state policies to increase accessibility for absentee voters, especially registered military-affiliated and overseas voters. SFI also educates and registers those voters and engages in nonpartisan "get-out-the-vote" efforts for military voters in all elections. The vast majority of SFI's Michigander members reside out of state due to military service. Given its mission, SFI has a strong interest in ensuring that their Michigander members, as well as all military and overseas Americans voting in Michigan, can exercise their right to vote.

The American Civil Liberties Union of Michigan ("ACLU") is a non-profit, nonpartisan membership organization devoted to protecting civil rights and liberties for all Michiganders, and an affiliate of the national American Civil Liberties Union, which has approximately 1.6 million members and is among the oldest, largest, and most active civil rights organizations in the country. The ACLU regularly litigates in courts throughout Michigan in cases involving voting rights and helps coordinate voter protection efforts throughout the state to reduce obstacles to voting and encourage an engaged electorate.

Drawing on the experiences of SFI's staff and the military and overseas voters they serve, as well as the ACLU's direct experience advocating to remove barriers that voters face in casting their ballots, amici aim to inform the Court how Appellants' requested relief and supporting legal arguments harm military and overseas voters and fundamentally misunderstand both Michigan and federal election law.[1]

[1] Pursuant to MCR 7.212(H)(3), amici state that no counsel for a party authored this brief in whole or in part, no such counsel or party made a monetary contribution intended to fund the preparation

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff-Appellants Michigan Republican Party, Republican National Committee, and Cindy Berry ("Appellants") challenge longstanding Michigan elections guidance (the "Challenged Rule"), which tracks even longer-standing state law, MCL 168.759a(3), allowing the spouses and dependents of military and overseas Michiganders to register and vote in Michigan when they have no other place to vote due to their residence abroad. Appellants seek a court order disenfranchising United States citizens who have a strong and unique connection to the state of Michigan, overriding the judgment of the Legislature and Secretary of State and punishing a group of voters whose only "error" was being a spouse or child of another Michigander serving their country or living abroad. This result would be fundamentally unfair to voters who already face significant barriers to exercising their right to vote and often must go to great lengths to participate in elections in the only American community they consider home.

Appellants' tortured reading of the Michigan Constitution provides no grounds to disenfranchise these voters. MCL 168.759a(3) is a valid exercise of the Michigan Legislature's express authority under Article 2, § 1 of the Michigan Constitution to define residency for voting purposes. That authority was purposefully designed to allow the Legislature flexibility to address evolving and unique residency circumstances precisely like those of the voters challenged here.

Nevertheless, Appellants argue that Article 2, § 1's purported six-month residency requirement invalidates not only the Challenged Rule but, by implication, the supporting statute. That argument fails because: (1) it is squarely contradicted by the Michigan Constitution's plain language, which expressly grants the Legislature unfettered authority to define residence for voting purposes, as well as the history of that plain language; and (2) under binding United States

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or submission of this brief, and no person other than amici curiae, their members, or their counsel made any such monetary contribution.

Supreme Court precedent, Michigan's six-month residency requirement is unenforceable because it violates the federal Equal Protection Clause.

For these reasons, amici urge the Court to affirm the decision below.

ARGUMENT

I. The Court Should Not Disenfranchise the Family Members of Michiganders Living and Serving Their Country Overseas.

In Michigan, the United States citizen spouses, children, and other dependents of overseas Michiganders can vote even if they have never physically resided in the state, so long as they have not registered to vote in another state. MCL 168.759a(3). This has long been the law in Michigan: after what is now MCL 168.759a was first enacted, the 1996 bill amending the statute sought to "specify that a spouse or dependent of an elector living outside the U.S. . . . could apply for an absent voter ballot when applying to register by mail 'notwithstanding that the spouse or dependent is not a qualified elector of a city or township of this state', as long as he or she is a U.S. citizen and is not a registered or qualified elector anywhere else in the U.S."[2] Put plainly, Michigan law and the Challenged Rule, like the laws of 38 other states with provisions extending the right to vote to certain populations who have never physically lived in the corresponding state,[3] reasonably classify such voters as residents. Such dependents and spouses of overseas Michiganders gain residency status through their relationship with that overseas Michigander, based on their superior ties to Michigan over any other state. See MCL 168.759a(3); Michigan Bureau of Elections,

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[2] House Legislative Analysis Section, *Overseas Absent Voters, Etc.: House Bill 4443 as Enrolled* (July 26, 1996), p 1, available at <https://www.legislature.mi.gov/documents/1995-1996/billanalysis/House/pdf/1995-HLA-4443-B.pdf>.

[3] Federal Voting Assistance Program, *Never Resided in the U.S.?* <https://web.archive.org/web/20250228101132/https://www.fvap.gov/citizen-voter/reside> (accessed via Internet Archive February 11, 2025) (listing the 38 other states in question and the conditions under which "never resident" voting is permitted).

Election Officials Manual: *Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs* (July 2024), pp 2-3, available at <https://www.michigan.gov/-/media/Project/Websites/sos/01mcalpine/MOVE-Federal-Registration-and-Absentee-Voting-Programs.pdf?rev=029b4b6973744c24bae24d2139958954>.

Appellants nevertheless ask this Court to "hold[] that the Secretary's guidance violates the Michigan Constitution and Michigan Election Law" because it permits individuals who have never physically resided in the state to vote. Appellants' Am Br at 31. The Court should recognize and reject this for what it is: a thinly veiled attempt to disenfranchise the family members of Michiganders living and serving their country overseas.

The Legislature's decision to define these voters as Michigan residents reflects its accurate—and explicit—determination that they are part of their families' home state communities and entitled to cast their ballots here. Indeed, despite needing to "navigate the[] added complexities of citizenship and residency, in addition to . . . time, distance, and mobility challenges,"[4] these voters are strongly connected to their family home and often feel more connected to Michigan than to the country where they physically reside (but of which, they may not be citizens). For example, they may still have close family residing in Michigan and may frequently visit the state for holidays or to see family and friends. Moreover, some of the voters Appellants target—particularly the children of those living abroad—may very well have never lived in Michigan precisely *because* of their family member's military duty assignments to safeguard freedom and democracy at home. If stripped of their ability to vote in their family's home state—the state with which they have the strongest nexus—these United States citizens may be barred entirely from having a voice in our

[4] Federal Voting Assistance Program, *A Policy Brief: Never Resided Voters* (2017), p 5, available via Internet Archive at <https://web.archive.org/web/20250305205525/https://www.fvap.gov/uploads/FVAP/EO/FVAPNeverResidedPolicyBrief_20170222_FINAL.pdf>

democracy, even though, like other United States citizens, they contribute to our society, for example, through regular tax payments. These voters deserve the ability to participate in the very democratic processes their families serve to protect. See Court of Claims Op at 17-18 ("Consistent with federal law, the Michigan Legislature made a policy choice to allow a small pool of individuals who accompany family members abroad to qualify as Michigan residents for the purpose of voting in Michigan because they are connected to Michigan through their spouse, parent, or someone serving a parental role."). The Michigan Legislature was well within its rights to make that policy choice. See *infra* section II.

Appellants' sought-after relief is particularly pernicious given the myriad barriers overseas voters must already overcome to cast their ballot abroad. From the outset, overseas voters find it difficult to register to vote, to request and return absentee ballots, and to know key absentee ballot deadlines. In 2020, 14% of overseas citizens reported difficulties "[r]equesting a ballot."[5] And even if an overseas voter knows how to request her ballot, doing so may still require internet access. In 2020, however, 14% of overseas voters characterized their internet connection as "very unreliable" or "unreliable."[6] Indeed, the overwhelming majority of overseas voters who requested and received but did not return a ballot did not do so because they "couldn't complete [the] process."[7] The consequence: ultimately, only an estimated 7.8% of eligible overseas citizens voted

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[5] Federal Voting Assistance Program, *2020 Overseas Citizen Population Analysis Report* (September 2021), p 35, available via Internet Archive at <https://web.archive.org/web/20250309034053/https://www.fvap.gov/uploads/FVAP/Reports/OCPA-2020-Final-Report_20220805.pdf>.

[6] *Id*., p 101.

[7] Federal Voting Assistance Program, *2020 Report to Congress* (July 27, 2020), p 17-18, available via Internet Archive at <https://web.archive.org/web/20250306194917/https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2020-Report-to-Congress_20210916_FINAL.pdf>.

in the 2020 election, compared to 79.2% of domestic voters.[8] The voters Appellants seek to disqualify here thus have already had to go above and beyond to have their voices heard in their state's elections, underscoring the degree to which they have cultivated and sustained ties to their family home state of Michigan.

Amici submit this brief not to favor one political party or another but rather to safeguard the voices of *all* voters abroad, regardless of their affiliation. These voters represent a diverse swath of American society.[9] In terms of party preference, military members were near-evenly split among the two major party presidential candidates in the 2020 federal election[10] and, historically, enlisted personnel are about three times more likely to identify as Independents than their civilian counterparts.[11] Whatever partisan advantage may motivate the challenges at issue here, acceding to such challenges would unfairly disenfranchise voters from a wide variety of political, social, racial, and economic backgrounds, many of whom are supporting family members protecting America overseas. The Court should not permit this result.

II. The Michigan Constitution Unambiguously Grants the Michigan Legislature Authority to Define Residency to Include the Challenged Voters.

As the Court of Claims recognized, the Michigan Constitution provides the Legislature with authority to define residency for voting purposes, and the Legislature properly exercised that

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[8] *Id.*, pp 17-18.

[9] Parker, Cilluffo & Stepler, *6 Facts About the U.S. Military and Its Changing Demographics*, Pew Research Center (April 13, 2017) <https://www.pewresearch.org/fact-tank/2017/04/13/6-facts-about-the-u-s-military-and-its-changing-demographics/>.

[10] McCarthy, *U.S. Military Voting Intention in 2016 and 2020*, Statista (September 1, 2020) <https://www.statista.com/chart/22761/us-military-voting-intention-in-the-november-election/>.

[11] Inbody, *Grand Army of the Republic or Grand Army of the Republicans?: Political Party and Ideological Preferences of American Enlisted Personnel* (August 2009), p 100, available at <https://repositories.lib.utexas.edu/items/596313fa-4545-4735-8a75-299c5b91fe8a>.

authority when it extended residency to spouses and dependents of overseas Michiganders who have never physically resided in the state. See MCL 168.759a(3). This holding is supported not only by the plain language of the Michigan Constitution, but also by the expressed intent of the Michigan Constitutional Convention, which sought to provide the Legislature with flexibility to accommodate Michiganders with unique or changing circumstances—exactly like the voters challenged here, and military and overseas voters more broadly.

The 1963 Michigan Constitution's Article 2, § 1 reads:

> Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. *The legislature shall define residence for voting purposes*. [Const 1963, art 2, § 1 (emphasis added).]

There is no need to battle the text: the Michigan Constitution straightforwardly provides the Legislature power—indeed, requires it—to define what it means to reside in this state for voting purposes. As articulated in the second sentence of Article 2, § 1, that power is broadly framed to cover all aspects of "residence," without qualification, and is a separate concluding sentence that refers back to all the subclauses referencing "resided" and "residence" in the preceding sentence. This reading is supported by the general-terms canon of construction, which states that "[w]ithout some indication to the contrary, general words . . . . . are to be accorded their full and fair scope . . .[and] not be arbitrarily limited." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thompson/West, 2012), p 101. The text does not indicate that the meaning of "residence" should be limited in any of the ways Appellants propose. *Id*. Nor does the reference to a period of time in the first part of Article 2, § 1—six months—change this analysis, as it has no bearing on the central question of who the Legislature has identified as a Michigan resident for voting purposes in the first place. Whether someone is a Michigan resident and for how long are two separate questions that Appellants wrongly conflate.

The Constitutional Convention Comments accompanying this provision express the delegates' clear intent to give the Legislature flexibility in defining residency to accommodate special circumstances exactly like those addressed by MCL 168.759a(3) and the Challenged Rule. In general, the comments "constitute[] an authoritative description of what the framers thought the proposed constitution provided" and thus are "a valuable tool" in interpreting the text. *Mich United Conservation Clubs v Secretary of State*, 464 Mich 359, 379 n 11; 630 NW2d 297 (2001) (YOUNG, J., concurring).[12] Here, the Convention Comments regarding Article 2, § 1 speak *directly* to the issue at hand and completely undermine Appellants' interpretation:

> A *major feature* of the section is found in the last sentence *which reposes in the legislature the duty of defining residence for voting purposes*. *The convention has determined that it is not possible to define residence in a manner which will offer any assurance of future adequacy and has therefore left the matter to the legislature,* as one of its continuing responsibilities in the field of elections. [2 Official Record, Constitutional Convention 1961, p 3365 (emphasis added).][13]

As this language reflects, the Constitutional Convention expressly refused to define what it means to reside in Michigan for voting purposes itself, giving that power to the Legislature without limitation as a way of "future-proofing" for unforeseeable challenges that could arise from an oversimplified and constitutionally ossified definition of residence. The circumstances of military and overseas voters reveal the wisdom of that judgment: the Legislature has accounted for

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[12] The Constitutional Convention Comments were originally part of the "Address to the People," an explanation of the framers' intent approved by the general convention and disseminated prior to the final adoption of the Constitution. *Regents of Univ of Michigan v State*, 395 Mich 52, 60; 235 NW2d 1 (1975) ("[T]he reliability of the [Convention Comments] . . . lies in the fact that [they were] approved by the general convention[.]"); see also 2 Official Record, Constitutional Convention 1961, p 3357. Courts have long looked at the Comments to interpret the 1963 Constitution's provisions. See, e.g., *Advisory Opinion on Constitutionality of 1978 PA 426*, 403 Mich 631, 641; 272 NW2d 495 (1978).

[13] Available at <https://lmdigital.contentdm.oclc.org/digital/collection/p16110coll7/id/138123/rec/3>.

the unique position of spouses, children, and dependents of Michiganders serving their country and living overseas, who maintain ties to this state as their family home despite never having physically resided here, and who will otherwise be excluded from voting in any state.

The record of the 1961 Constitutional Convention further reinforces the framers' intent with respect to the breadth of the Legislature's power to define residence for voting purposes under Article 2, § 1. When first introduced to the Constitutional Convention by the Committee on Declaration of Rights, Suffrage and Elections, the original version read:

> Every citizen of the United States who has attained the age of 21 year, and has resided in this state 6 months, shall be an elector and qualified to vote in any election, except as otherwise provided in this Constitution. The legislature shall by law define residence for voting purposes, and may impose a local residence requirement of 30 days. [2 Official Record, Constitutional Convention 1961, p 2213.]

When the original provision was amended from the initially proposed version into its current form, the delegates emphasized that "[t]he purpose of this amendment is to give the legislature more flexibility in defining residence for voting purposes . . . ." 2 Official Record, Constitutional Convention 1961, p 2893. The Convention thus sought at every turn to *augment* the Legislature's power to define residency. The Legislature has exercised that power here, making clear in statute, as affirmed in the Challenged Rule, that the spouses and dependents of Michiganders serving and living overseas have the right to vote in this state when they have nowhere else to do so.

Appellants ignore both plain language and constitutional history, arguing instead that the phrase "provided by law" in the first sentence of Article 2, § 1 requires disregarding the second sentence's express grant of power to the Legislature "to define residence for voting purposes." According to Appellants, the unconditioned second sentence must instead authorize the Legislature only to define "local residence," but not the general meaning of what it is to reside in Michigan. Appellants' Am Br at 23-24. This argument fails on its own terms. Reading into the

words "provided by law" a limitation on the Legislature's power where none exists ignores not just constitutional text and history, but Appellants' own often-cited canons of textual interpretation. *Reading Law*, p 176 ("If a provision is susceptible of (1) a meaning that gives it an effect already achieved by another provision, or that deprives another provision of all independent effect, and (2) another meaning that leaves both provisions with some independent operation, the latter should be preferred."). That is because, under Appellants' interpretation, the entire second sentence of Article 2, § 1 is rendered surplusage. It would be doing nothing more than what the "provided by law" clause already expressly does in the first sentence—namely, allowing the Legislature to define "local residence." The fact that the second sentence is a separate sentence of its own also untethers it from Appellant's (mis)use of the nearest reasonable referent canon to try to limit the scope of the second sentence's command to the Legislature to define residence. See *Reading Law*, p 162 ("Periods . . . insulate words from grammatical implications that would otherwise be created by the words that precede or follow them . . . .").

Further, if the framers *had* intended the second sentence to be surplusage in this manner, they presumably would have drafted the second sentence to say that the Legislature "shall define *local* residence for voting purposes." That they did not do so clearly demonstrates that the framers intended for the Legislature to have the ability to define "residence" for all of its several uses in Article 2, § 1, as consistent with yet another canon of interpretation: the "presumption of consistent usage," see *id*., pp 170-173, which states that "[a] word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning," *id*., p 170; see also *People v Lewis*, 503 Mich 162, 167, 926 NW2d 796 (2018) ("[W]hen the Legislature includes language in one part of a statute that it omits in another, it is assumed that the omission was intentional.").

Moreover, Appellants misrepresent Article 2, § 1's reference to "requirements of local residence provided by law." This language is not directed to or qualifying of the Legislature's broad mandate to define residency for voting purposes, as Appellants suggest. Instead, it is a separate provision meant to allow the Legislature to determine the *period of time* after which a state resident must change their registration after having moved from one locality within the state to another. This is the only coherent reading of the text that avoids the surplusage problem identified above. There is also direct evidence that it is precisely what the delegates to the Constitutional Convention intended. The only delegate to speak on the final version of the first sentence of Article 2, § 1 confirmed this understanding, stating that part of the revision's "purpose" was "*to provide in the election statute for registered, qualified electors who shall move into another city or township in this state*." 2 Official Record, Constitutional Convention 1961, p 2893 (emphasis added). Appellants' gross misinterpretation of this provision is a weak attempt to manufacture a conflict with the final sentence's unequivocal grant of broad legislative authority. As recognized by the Court of Claims, however, the only clause governing the Legislature's power to define state residence for purposes of voting is the final clause of the Section. It does so without qualification: "The legislature shall define residence for voting purposes." Court of Claims Op at 6.[14]

In sum, Appellants' indefensible legal claims improperly attempt to limit the Legislature's role in determining voting eligibility and provide this Court with no grounds to disenfranchise

[14] For these same reasons, Appellants' assertion that the Court of Claims held "that the legislature may amend or waive the third Constitutional element," Appellants' Am Br at 23—that is, the requirement of state residence for six months—is wrong. The Court of Claims did not find that the Legislature amended or waived that element, but that the Legislature properly exercised its power to define what "resided" for purposes of that element means. Court of Claims Op at 17-18.

military and overseas voters whom the Legislature has properly defined as Michigan residents for voting purposes.

III. Even if the Challenged Rule Were Inconsistent with the Michigan Constitution, Which It Is Not, the Six-Month Residency Requirement Would Be Unenforceable Under the United States Constitution and the Court Cannot Override the Judgment of the Legislature by Rewriting the Provision to Make It Enforceable.

Appellants argue that the Challenged Rule does not comply with the Michigan Constitution's purported requirement for eligible voters to "ha[ve] resided in this state six months." See Appellants' Am Br at 17-22. But, as the Court of Claims recognized, this requirement on its face violates the United States Constitution, which does not allow general durational residency requirements. See Court of Claims Op at 16-17, citing *Dunn v Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972). Appellants all but concede this point. See Appellants' Am Br at 20 ("So while *Dunn* may be read to hold that the entire six month element of article 2, § 1 is unconstitutional . . ."; "Following *Dunn*, the Supreme Court has repeatedly reiterated that only *overlong* durational residency requirements are impermissible."). Instead, they ask the Court to re-write the Michigan Constitution's six-month residency provision to replace it with another period of time. Appellants' Am Br at 21-22. The Court should reject this argument, as it conflicts with clear precedent that only allows limited residency requirements in circumstances where states have made specific and reasonable findings that such requirements are necessary for election administrability. See *Dunn*, 405 US at 335, 346 (striking down Tennessee's one-year state durational residency requirement and three-month county durational residency requirement because "the State [did not] show a substantial and compelling reason for imposing durational residence requirements," partially due to the fact that the "the record [was] totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents"); *Marston v Lewis*, 410 US 679; 93 S Ct 1211; 35 L Ed 2d 627 (1973); *Burns v Forston*,

410 US 686; 93 S Ct 1209; 35 L Ed 2d 633 (1973). The Court should likewise reject this argument, as it would not only require this Court to engage in impermissible constitutional redrafting, but would directly contradict the Legislature's clearly expressed intent in MCL 168.759a(3) and improperly cabin its constitutionally-given power to define residency for voting purposes. See *supra*, section II.

Appellants specifically ask this Court to transform the Michigan Constitution's six-month provision into an at least 30- to 50-day durational residency requirement, pointing to laws in other states which impose similar time periods and which have been upheld by the Supreme Court. See Appellants' Am Br at 21 ("Because the Supreme Court has upheld 50-day durational residency requirements, the Michigan Constitution must be interpreted to require at least a 50-day durational residency requirement."); *id*. ("Nor does the Michigan Constitution run afoul of the United States Constitution or United States Supreme Court precedent to the extent its ***durational*** residency requirement is not overlong (i.e., at least 30 to 50 days).") (emphasis in original). Appellants ignore, however, that United States Supreme Court precedent indicates that a durational residency requirement is only proper where it is supported by a record reflecting "state legislative judgment" that it is necessary for election administrability. *Marston*, 410 US at 680. Appellants do not, and cannot, contend that the Michigan Legislature has made any such findings, let alone offered any evidence of such. Cf. Court of Claims Op at 17-18 ("Consistent with federal law, the Michigan Legislature made a policy choice to allow a small pool of individuals who accompany family members abroad to qualify as Michigan residents for the purpose of voting in Michigan because they are connected to Michigan through their spouse, parent, or someone serving a parental role.").

Michigan's system of election administration likewise demonstrates that a limited durational residency requirement could *not* be justified under the principles articulated in United

States Supreme Court precedent. The *Marston* Court upheld Arizona's 50-day requirement because, unlike the residency requirement at issue in *Dunn*, the Arizona requirement was "tied to the closing of the State's registration process at 50 days . . . and reflect[ed] a state legislative judgment that the period is necessary to achieve the State's legitimate goals," namely to allow Arizona's election clerks to "prepar[e] accurate voter lists." 410 US at 680-681. This holding was based on a factual record showing Arizona's reliance on a "massive" volunteer registrar system which was prone to inaccuracy, and, as a result, strained the resources of the county recorder responsible for ensuring accuracy of voter lists before certifying the vote. *Id*. The Court further noted that Arizona's fall primary system, which overlapped with peak registration season, caused further backlogs at the country recorder office. *Id*. at 681. In *Burns v Forston*, the Supreme Court similarly upheld a 50-day registration requirement where the "State had demonstrated that the 50-day period is necessary to promote . . . the orderly, accurate, and efficient administration of state and local elections, free from fraud." 410 US at 686-687. There too, the Court's holding was based on a record showing Georgia's need for a 50-day registration cut-off, "given the vagaries and numerous requirements of the Georgia elections laws." *Id*. at 686.

Michigan in 2025 is not Georgia or Arizona in 1973, and there is no basis for Appellants or this Court to impute the justifications supporting those states' durational residency requirements to Michigan, when the Michigan Legislature has made no "state legislative judgment" that a residency requirement is necessary. *Marston*, 410 US at 680. Indeed, the Legislature has come to the exact opposite conclusion with respect to the spouses, children, and other dependents of Michiganders living and serving abroad. While MCL 168.10(1) imposes on all other voters a 30-day local residency requirement to become a qualified elector, the Legislature has refused to impose that requirement on the spouses and dependents of Michiganders living and serving abroad,

explicitly exempting them from MCL 168.10(1)'s requirement. See MCL 168.759a(3) (spouses and dependents of overseas voters "may apply for an absent voter ballot even though the spouse or dependent is not a qualified elector of a city or township of this state"). Appellants fail to offer *any* evidence justifying a limited durational requirement under Supreme Court precedent.

Furthermore, Michigan law now reflects an explicit judgment that a "closing date" for registration akin to the ones in *Marston* and *Burns* is not required for administrability reasons in Michigan. To the contrary, the 1963 Constitution was recently amended to provide for registration by mail up to 15 days before an election and has further provided for registration in person *up to and on election day*. Const 1963, art 2, § 4(1)(e)-(f). The Legislature, in turn, has codified this constitutional requirement through implementing legislation. See MCL 168.497(1)-(2).

Even beyond the fact that the record does not and cannot support a durational residency requirement based on election administrability grounds, there is no basis for the Court to specifically declare a 30- to 50-day residence requirement, and doing so would require the Court to usurp the role of the Legislature. There is no basis in the text or history of the Michigan Constitution or Michigan legislation for such a requirement. Rather, the requirement is nothing more than a reflection of the decades-old legislative judgment of two other states, which the United States Supreme Court ruled was within a zone of state legislative discretion, not a constitutional benchmark. Moreover, asking the Court to impose a 30- to 50-day residence requirement would be the equivalent of asking it to make a "state legislative judgment" that it has no basis or authority to make and that is inconsistent with the actual Legislature's judgment—through MCL 168.759a(3)—to facilitate the voting of the very citizens Appellants seek to disenfranchise. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) (prohibiting the court from "read[ing] [anything] into an unambiguous statute that is not within the manifest intent of the

Legislature as derived from the words of the statute itself"); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 405; 605 NW2d 300 (2000) (court "declin[ing] to rewrite the plain statutory language and substitute [its] own policy decisions for those already made by the Legislature").[15]

For all these reasons, Appellants draw a false equivalence when they assert that substituting 30 to 50 days for six months is "analogous to the Michigan Constitution's age requirement," which specifies that a person must be 21 years old to vote, but which the United States Constitution lowered to 18 years old without eliminating the Michigan Constitution's language. See Appellants' Am Br at 22. Appellants here do not ask the Court merely to narrow a legal provision to a specified federal constitutional minimum to preserve the intent of the provision's drafters within constitutional limitations.[16] They ask the Court to impose an arbitrary standard (30 to 50 days) borrowed from others states' discretionary decisions made in a different era on a factual record unlike that here—where the record and law in Michigan actively undermine the validity of any election administrability purpose—in order to achieve a result directly contrary to the legislated intent of the People of the State of Michigan: namely, disenfranchising the family members of

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[15] While these cases speak to the restraint required in judicial interpretation of statutes, not constitutional provisions, if anything, the principle applies with even greater force to constitutional provisions, which cannot be so easily corrected by legislative action, and thus should be even more carefully protected from judicial overreach. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 62; 921 NW2d 247 (2018) (noting that there are only three mechanisms to amend the Constitution, none of which include the judiciary); *Mothering Justice v Attorney General*, ___ NW3d ___ (Mich, 2024) (Docket No. 165325); slip op at 11, opinion clarified, 10 NW3d 845 (Mich, 2024) ("When interpreting our Constitution, this Court's 'primary objective . . . is to realize the intent of the people by whom and for whom the constitution was ratified.'"); *id*. at 2 (CLEMENT, C.J., dissenting) ("It goes without saying that we have no power to add terms to the Constitution that are not there or that cannot be fairly implied by the existing terms. The people have reserved to themselves the power to amend the Constitution, see Const 1963, art 12, and they have delegated to us only the power to interpret the constitutional text they have ratified, see Const 1963, art 6, § 1.").

[16] Nor could they, as there is no equivalent default residency requirement in the United States Constitution.

Michiganders living and serving overseas.[17] The Court should not take such a remarkable and unprecedented step.

[17] Breaking down the many steps involved in Appellants' argument further underscores the radical nature of their proposal. Not only do Appellants ask the Court to substitute a 30- to 50-day residency requirement (with a new legislative purpose) for the six-month requirement, they also ask the Court to rewrite MCL 168.759a(3) in order to find it inconsistent with the Challenged Rule. Appellants' relief relies on the Court first inserting into MCL 168.759a(3) a provision limiting its scope to only spouses and dependents who "no longer resid[e] in Michigan"—that is, legislating a new requirement that they previously did physically reside in the state. Appellants' Am Br at 26.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the court below.

Respectfully submitted,

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Pursuant to MCR 7.212(B), I certify that this brief contains 5,172 words in the sections covered by MCR 7.212(c)(6)-(8).

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