STATE OF MICHIGAN
COURT OF CLAIMS

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

Plaintiffs,

v

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

Defendants.

No. 25-000181-MZ

HON. SIMA G. PATEL

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

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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 its 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. It is 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 Plaintiffs' requested relief and supporting legal arguments harm military and overseas voters and fundamentally misunderstand both Michigan and federal election law.[1] SFI and ACLU submitted an amicus brief in the Court of Appeals in the

[1] Pursuant to MCR 7.212(H)(4), 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

prior case brought by the same plaintiffs alleging similar claims. See *Michigan Republican Party v Benson*, unpublished per curiam opinion of the Court of Appeals, issued August 6, 2025 (Docket No. 372995).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Republican National Committee, Michigan Republican Party, and Cindy Berry ("Plaintiffs") challenge longstanding 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. Plaintiffs 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 punishing a group of voters whose only "error" is to be a spouse or child of another Michigander serving their country or living abroad. This result would be fundamentally unfair to these 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.

Plaintiffs' tortured reading of the 1963 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 and 3 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, Plaintiffs argue that Article 2, §§ 1 and 3's purported durational residency requirements invalidate MCL 168.759a(3). That argument fails because: (1) it is squarely

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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.

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

For these reasons, amici urge the Court to grant Defendants' motion for summary disposition on the merits.[2]

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[2] Defendants, in part, move for summary disposition on the grounds that Plaintiffs—including the state and federal wings of one of the two major political parties in this nation—lack standing to challenge Michigan's voting rules. Def Br, pp 10-14. While the focus of this brief is on the harmful ways Plaintiffs' position seeks to disenfranchise vulnerable Michigan voters living abroad, amici feel it is important to register their disagreement with Defendants' arguments relating to standing. Defendants' assertion that a major political party's interest in the counting of votes is "not special or unique to [such] Plaintiffs, and is instead shared by all citizens equally," Def Br, p 11, does not withstand scrutiny. The purpose of Michigan's "limited" and "prudential" standing doctrine is to "assess whether a litigant's interest in [an] issue is sufficient to ensure sincere and vigorous advocacy." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 352-353, 355; 792 NW2d 686 (2010) (internal quotation omitted). The standard is even more permissive when a plaintiff seeks declaratory relief. MCR 2.605 "was intended to and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people." *Shavers v Kelley*, 402 Mich 554, 588; 267 NW2d 72 (1978). Put another way, a plaintiff in a declaratory action need only show that there is a "tangible present interest" in determination of a legal question such that "a useful purpose is . . . served" by issuance of a declaration. *Merkel v Long*, 368 Mich 1, 13-14; 117 NW2d 130 (1962), quoting Borchard, *Declaratory Judgements* (2d ed), pp 422-424. At the end of the day, the purpose of Michigan's prudential limits on standing for declaratory actions is to ensure "an adverse interest necessitating the sharpening of the issues raised." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012).

Common sense compels the conclusion that voting rights organizations and major political parties have standing to challenge voting rules, voting restrictions, and other critical matters bearing on the right to vote. Major political parties—who plan state and national political strategies, conduct voter outreach, fund campaigns, etc.—have an obvious and distinct interest in who votes in an election sufficient to ensure adversity and vigorous advocacy. See, e.g., *Michigan Republican Party v Donahue*, __ Mich __; 22 NW3d 564 (2025) (reversing a lower court's erroneous determination that national political party did not have a distinct interest in challenging rules governing the appointment of election inspectors). And to the extent Defendants suggest that a political party (or voting advocacy organization) must plead a likelihood that a change in voting

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."[3] Put plainly, Michigan law, like the 38 other states with provisions extending the right to vote to certain populations who have never physically lived in the corresponding state,[4] reasonably classify such voters as residents. Such dependents and spouses of overseas Michiganders gain residency status through their

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rules might actually swing an election, such a proposition, as applied to political candidates, has recently been rejected by the United States Supreme Court, even under Article III's restrictive standing rules that govern in federal court, as being "as practically untenable as it is undemocratic." *Bost v Illinois State Bd of Elections*, 607 US __; __ S Ct __; 2026 WL 96707, at *4 (2026); see also *id.* ("The democratic consequences can be even more dire if courts intervene only after votes have been counted. 'Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires.'"), quoting *Bush v Gore*, 531 US 1046, 1047; 121 S Ct 512; 148 L Ed 2d 553 (2000) (Scalia, J, concurring in grant of stay).

[3] 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>.

[4] 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 January 26, 2026) (listing the 38 other states in question and the conditions under which "never resident" voting is permitted).

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, *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>.

Plaintiffs nevertheless ask this Court to "[d]eclare that Article 2, Section 1 of the Michigan Constitution contains a *bona fide* residency requirement," and thus declare MCL 168.759a(3) unconstitutional because it permits individuals who have never physically resided in the state to vote. Complaint at ¶ 16. 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—because, as Plaintiffs acknowledge, they find political advantage in disenfranchising such voters. Complaint at ¶ 17 & n 5; *id.*, Ex C at ¶ 12.

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 are 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,"[5] 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 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 Plaintiffs

[5] 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>

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 would be barred entirely from having a voice in our 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 *Michigan Republican Party v Benson*, unpublished opinion of the Court of Claims, issued October 21, 2024 (Docket No. 24-000165-MZ), pp 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.

Plaintiffs' sought-after relief is particularly pernicious given the myriad barriers overseas voters must already overcome to cast their ballots abroad; those voters who make the time and effort to overcome these barriers demonstrate their commitment to Michigan as their democratic and political home. 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. Studies conducted as recently as 2020 demonstrate that 14% of overseas citizens reported difficulties "[r]equesting a ballot."[6] And even if an overseas voter knows how to request their ballot, doing so may still require

[6] 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>.

internet access. In 2020, however, 14% of overseas voters characterized their internet connection as "very unreliable" or "unreliable."[7] Further, 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."[8] The consequence: ultimately, only an estimated 7.8% of eligible overseas citizens voted in the 2020 election, compared to 79.2% of domestic voters.[9] This disparity persists regardless of election: in the 2022 midterm elections, for example, only an estimated 3.4% of eligible overseas citizens voted, compared to 62.5% of domestic voters.[10] The voters Plaintiffs 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 partisan affiliation. These voters represent a diverse swath of American society.[11] In terms of party preference, military members were near-

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[7] *Id*., p 101.

[8] Federal Voting Assistance Program, *2020 Report to Congress* (July 27, 2020), pp 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>.

[9] *Id*.

[10] Federal Voting Assistance Program, *2022 Overseas Citizen Population Analysis* (2023), p 31, available via Internet Archive at < https://web.archive.org/web/20251125175153/https://www.fvap.gov/uploads/FVAP/Reports/2022-OCPA-Report_Combined_Final_20230925.pdf>.

[11] 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/>.

evenly split among the two major party presidential candidates in the 2020 federal election,[12] and, historically, enlisted personnel are about three times more likely to identify as independents than their civilian counterparts.[13] Whatever partisan calculation 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 this Court itself has previously recognized, the Michigan Constitution provides the Legislature with authority to define residency for voting purposes, and the Legislature properly exercised that 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); see also *Michigan Republican Party*, No. 24-000165-MZ, pp 17-18 . 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 military and overseas voters whose enfranchisement is challenged here.

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

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[12] 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/>.

[13] 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>.

> 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 terms are to be given their general meaning" and "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), pp 95, 101. The text does not indicate that the meaning of "residence," and thus the Legislature's power to define that term, should be limited in any of the ways Plaintiffs 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 whom the Legislature has identified as a Michigan resident for voting purposes in the first place. See *infra* section III. Whether someone is a Michigan resident and for how long are two separate questions that Plaintiffs 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). 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).[14] Here, the Convention cComments regarding Article 2, § 1 speak *directly* to the issue at hand and undermine Plaintiffs' 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).][15]

As this language reflects, the Constitutional Convention refused to define what it means to reside in Michigan for voting purposes. Instead, it gave 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 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 to draw the Legislature's power to define residence for voting purposes under Article 2, § 1 broadly.

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[14] 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).

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

When first introduced to the Constitutional Convention by the Committee on Declaration of Rights, Suffrage and Elections, the original version of § 1 read:

> Every citizen of the United States who has attained the age of 21 years, and has resided in this state 6 months, shall be an elector and qualified to vote in an 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 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.

Plaintiffs ignore both plain language and constitutional history, suggesting 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." Pl Br, p 15. According to Plaintiffs, the unconditioned second sentence must instead authorize the Legislature to define only "local residence," but not the general meaning of what it is to reside in Michigan. Complaint at ¶ 3. 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 also the canon of textual interpretation disfavoring surplusage, which Plaintiffs rely on elsewhere, Pl Br, pp 17-18. See *Reading Law*, p 175 ("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 Plaintiffs' interpretation, the entire second sentence of Article 2, § 1 is rendered surplusage, such that 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 Plaintiffs' (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, Pl Br, p 15. 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 would have drafted the second sentence to say that the Legislature "shall define *local* residence for voting purposes." That they did not do so 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. That result is 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 147; see also *People v Lewis*, 503 Mich 162, 167, 926 NW2d 796 (2018) ("When the Legislature includes language in one part of a statute that it omits in another, it is assumed that the omission was intentional.").

Moreover, Plaintiffs misrepresent Article 2, § 1's reference to "requirements of local residence provided by law." This language is not directed to and does not qualify the Legislature's broad mandate to define residency for voting purposes, as Plaintiffs 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). Plaintiffs' 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 this Court already, 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." *Michigan Republican Party*, No. 24-000165-MZ, p 6.

Plaintiffs' additional argument under Article 2, § 3 does not save them. Plaintiffs insist that, because Article 2, § 3 expressly permits the Legislature to waive any residency requirement in the presidential and vice presidential elections, that it impliedly *forbids* the Legislature from defining "residence" for the spouses and dependents of military and overseas voters to include voters who never physically lived in Michigan. Pl Br, pp 17-18. But this reading butchers the text of the provision and would inappropriately render § 1 a nullity. In interpreting constitutional provisions, "every provision must be interpreted in the light of the document as a whole, and no provision should be construed to nullify or impair another*." Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003). Following Plaintiffs' argument, the plain language of § 1, which broadly allows the Legislature to "define residence for voting purposes,"

would be later nullified to permit the Legislature to define residency only for elections for president and vice president for those who previously resided in Michigan. See Complaint at ¶ 29. This interpretation would limit the Legislature's authority beyond what the Constitution provides, with the transparent outcome of disenfranchising Plaintiffs' disfavored part of the electorate. *See* Complaint, Ex C. at ¶ 13 (noting that "Democrat voters are more likely than Republicans to vote by absentee ballot" pursuant to the challenged provisions).

Moreover, this interpretation is wholly unnecessary: reading the provisions together with "the interpretation . . . that which reasonable minds, the great mass of the people themselves, would give it," Article 2, § 1 allows the Legislature to define residence, and Article 2, § 3, allows the Legislature to impose "lesser requirements" for people who have "resided in this state for less than six months" for elections for president and vice president if not otherwise provided by law. *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 61; 921 NW2d 247 (2018).

For similar reasons, Article 2, § 3 is not "rendered nugatory and surplusage" as Plaintiffs baselessly claim. Pl Br, p 17. Instead, the provisions can be properly read together to provide additional protections for newly arrived (or newly departed) voters in elections for president and vice president not otherwise provided by law. Such a purpose is perfectly sensible, particularly given that the Constitution was drafted at a time when six-month residency restrictions were common among the states and Article 2, § 1 included just such a (now-unconstitutional) residency clause. Section 3 allowed the Legislature to ensure that even brand new residents *without* prior ties to the state—unlike voters abroad who the Legislature has determined *are* connected to Michigan via a family member—can vote for the two elected federal positions that are not directly tethered to the geography and politics of the state or district where the voter lives. Indeed, that is precisely what the history of the provision shows. 2 Official Record, Constitutional Convention 1961, p

2214-2215 (explaining that while a brand new arrival might lack an "opportunity to become familiar with issues and candidates before he is called upon to vote . . . this justification loses much of its force when applied to presidential elections."); *id.* at 2215 ("[A] voter does not lose whatever knowledge he may have had of the presidential campaign simply by moving from one state to another.").

In sum, Plaintiffs' indefensible legal claims improperly attempt to limit the Legislature's role in determining voting eligibility and provide this Court with no grounds to disenfranchise military and overseas voters whom the Legislature has properly defined as Michigan residents for voting purposes.

III. Even if the Challenged Statute 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 Both the Purpose *and* the Length of the Provision to Make It Enforceable.

Plaintiffs argue that MCL 168.759a(3) does not comply with the Michigan Constitution's purported requirement for eligible voters to have resided in this state for six months. See Pl Br, pp 10-18. That argument fails at the threshold because, as already explained *supra*, the Constitution gives the Legislature authority to define "residence." And, with respect to the spouses and dependents of military and overseas voters, it has done so by treating them as residents based on their lack of ties to another state combined with their familial relationship to someone who has physically lived in Michigan. Nonetheless, even assuming the Legislature had not been given full authority to define residence, Plaintiffs' request that this Court salvage a piece of the unconstitutional six-month residency requirement by shortening it and treating it either as a shorter durational residence ban, Pl Br, pp 10-12, or as a *bona fide* voting requirement, *id*., pp 12-18, is meritless. Both attempts to ask this Court to redraft an unconstitutional residency requirement fail.

It is helpful to clarify terminology in trying to understand Plaintiffs' confusing arguments. A "durational residence requirement" is one that "completely bar[s] from voting all residents not meeting the fixed durational standard." *Dunn v Blumstein*, 405 US 330, 336; 92 S Ct 995; 31 L Ed 2d 274 (1972). They "divide residents into two classes, old residents and new residents, and discriminate against the latter," *id*. at 334, and, as such, are subject to strict scrutiny, *id*. at 342. Durational residency requirements cannot survive such scrutiny by reference to hypothetical concerns about non-residents flooding the state and voting, at least in the modern world, where "this purpose is served by a system of voter registration." *Id*. at 346. Nor can they be justified by the argument that longer-term residents are more knowledgeable about the state or candidates: "the fact that newly arrived [voters] may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they have come, is a constitutionally impermissible reason for depriving them of their chance to influence the electoral vote of their new home State." *Id*. at 355-356 (citations and internal quotation marks omitted).

By contrast, "*bona fide* residence requirements," which *Dunn* did not prohibit, are merely requirements that a would-be voter demonstrate they meet whatever (lawful) test the state has established for defining who is actually a resident of the state, however that term is defined by that state. See *id*. at 351. This is most often done by the voter attesting that they meet the legislatively established residency standards. *Id*. at 351 n 22. Thus, *bona fide* residency requirements are a question of the state being permitted to require a would-be voter to establish that the voter is actually a resident as defined by law; it is not a backdoor way to introduce durational residency requirements, as Plaintiffs propose here.

Turning back to Plaintiffs' arguments, their requests that this Court reconstruct the Michigan Constitution's invalid six-month residency requirement as either a shorter durational requirement or a *bona fide* residence requirement both fail.

As to durational residence, this Court itself has already recognized that the six-month requirement violates the United States Constitution, which does not allow such durational residency requirements. See *Michigan Republican Party*, No. 24-000165-MZ, pp 16-17, citing *Dunn v Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972). Plaintiffs all but concede this point. See Pl Br, p 10 (recognizing that *Dunn* struck down a *three*-month durational residency requirement). Nevertheless, Plaintiffs ask the Court to rewrite the Michigan Constitution's invalid six-month residency provision to create a shorter durational residency requirement which does not otherwise exist in the text. This argument conflicts with clear precedent, which holds that durational residency requirements can survive strict scrutiny—to which they must be subjected—only in limited circumstances, specifically where states have made specific and reasonable findings that such requirements are necessary for election administrability. See *Dunn*, 405 US at 335, 346 (Supreme Court striking down both 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 Fortson*, 410 US 686; 93 S Ct 1209; 35 L Ed 2d 633 (1973).

Plaintiffs' argument is a transparent attempt to subvert this binding precedent, which indicates that a (short) durational residency requirement *may* be proper *if* it is supported by a record

reflecting "state legislative judgment" that it is necessary for election administrability reasons. *Marston*, 410 US at 680. Plaintiffs cannot plausibly contend that Article 2, § 1 reflects any such findings. Quite the opposite: drafters of the 1963 Constitution thought that "Residence requirements are justifiable on the grounds that the voter should have an opportunity to become familiar with issues and candidates before he is called upon to vote." 2 Official Record, Constitutional Convention 1961, p 2214-2215. That, of course, is the reason expressly rejected in *Dunn*. 405 U.S. at 355-356. And Plaintiffs certainly cannot show that the Michigan Legislature made findings that a shorter durational residence restriction is justified on administrability grounds. To the contrary, in enacting MCL 168.759a(3), the Legislature long ago made a judgment that there is *not* any administrative need for certain military and overseas voters to have physically resided in Michigan prior to registering. See *Michigan Republican Party*, No. 24-000165-MZ, pp 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.").

Plaintiffs perversely attempt to distort and preserve vestiges of the concededly unconstitutional six-month residence requirement by ascribing to it an administrative purpose and function that it never had in order to elide *Dunn*. This constitutional contortion is all the less justified because *the second half of the same first sentence* of Article 2, § 1 is the relevant constitutional clause that confers authority upon the Legislature to enact *administrative* residency requirements of the type that *can* potentially be justified under *Marston* and *Burns*. See 2 Official Record, Constitutional Convention 1961, p 2214 (explaining that a reason the second sentence of

the section authorized the Legislature to impose local residency requirement was "administrative[] practical[ity]" and the need to "conform to the needs" of the "registration system").

Furthermore, Michigan's modern system of election administration 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 residency 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 U.S. at 680-681. *Marston*'s 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*, 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 2026 is not Georgia or Arizona in 1973, and there is no basis for Plaintiffs or this Court to impute the justifications supporting those states' administrability-linked residency requirements to Michigan, when the Michigan Legislature has made no "state legislative judgment" that a residency requirement is necessary, at least for those military and overseas voters

specifically singled out by the Legislature. *Marston*, 410 US at 680. Again, 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 *other* voters a 30-day local residency requirement to become a qualified elector, the Legislature has determined that there is no need to impose that requirement on the spouses and dependents of Michiganders living and serving abroad, explicitly treating them as residents despite 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").

Recent developments in Michigan law likewise reflect an explicit judgment that a "closing date" for registration akin to the ones in *Marston* and *Burns* is not required for, and cannot be justified by, administrability reasons in Michigan in 2026. To the contrary, the 1963 Constitution was recently amended to provide for registration by mail up to 15 days before an election and for registration in person *up to and on election day*. Const 1963, art 2, § 4(1)(e)-(f). The Legislature has codified this constitutional requirement through implementing legislation. See MCL 168.497(1)-(2).

Particularly in light of these recent developments, asking this Court to transmute a legislatively imposed 30-day requirement for many voters into a constitutionalized residence requirement for certain military and overseas voters invites this Court to make a "state legislative judgment" that it has no grounds 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 whom 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) ("declin[ing] to rewrite the plain statutory language and substitute [its] own policy decisions for those already made by the Legislature").[16]

Plaintiffs' *bona fide* residency requirement fares no better. Again, a *bona fide* residency requirement within the meaning of *Dunn* is simply a requirement designed to ensure that a putative voter has, in fact, established residency within a state, as defined by the state. *Dunn*, 405 US at 351 & n 22. Such tests can "easily be applied to new arrivals." *Id*. at 351-352. But nothing in the six-month clause of Article 2, § 1 attempts to *define* residence constitutionally by reference to the amount of time the voter has spent physically living in Michigan. At the risk of repetition, the opposite is true: Article 2, § 1's "major feature" is that it "reposes in the legislature the duty of defining residence for voting purposes" because "it is not possible to define residence" via the Constitution "in a manner which will offer any assurance of future adequacy . . . ." 2 Official Record, Constitutional Convention 1961, p 3365. And, again, the Legislature has done so by laying out *bona fide* requirements for the voters at issue in this case to establish residency by requiring

[16] While *Roberts* and *DiBenedetto* 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 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*, 515 Mich 328, 346; 29 NW3d 346 (2024); order clarifying opinion 515 Mich 920; 10 NW3d 845 (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.") (citations and internal quotation marks omitted); *id*. at 378 (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.").

them to show ties to Michigan by showing that they lack sufficient ties to any other state to vote in those states, but are connected *to Michigan* by their relationship with someone who has physically lived here. Plaintiffs' attempt to distort what is plainly an invalid durational requirement into a *bona fide* requirement "confuse[s] a bona fide residence requirement with a durational requirement" and ignores that the six-month requirement existed "not because the[] bona fide residence" of residents of less than six months "is questioned, but because they are recent rather than longtime residents." *Dunn*, 405 US at 354. The six-month durational requirement should not, and constitutionally cannot, be salvaged by judicial fiat by twisting it into something that it is not.

Plaintiffs do not ask this 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, as the constitutional provisions governing the minimum voting age have been narrowed.[17] They ask the Court to impose a residency requirement that is based on *policy judgments* that are reserved by the 1963 Constitution to the Legislature and, in so doing, to impose policies that run contrary to the express intent of the Legislature in enacting MCL 168.759a(3). All of this in order to cynically disenfranchise the family members of Michiganders living and serving overseas—American citizens whom the Legislature has determined deserve a voice in our democracy in light of the fact that they have closer ties to Michigan than to any other state.[18] The Court should not take such a remarkable and unprecedented step.

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

[18] Breaking down the many steps involved in Plaintiffs' argument further underscores the radical nature of their proposal. Not only do Plaintiffs ask the Court to conjure up a constitutionalized residency requirement (with a new legislative purpose), they also ask the Court to rewrite MCL 168.759a(3) by inserting a limitation on its scope to only spouses and dependents who "formerly resided in Michigan and only for the purpose of voting for the office of president and vice-

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion.

Respectfully submitted,

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president," Complaint at ¶ 40—in short, asking this Court to read into the statute a new requirement that such individuals have physically resided in the state. Notably, this proposed extrajudicial revision would likely run afoul of federal law, which sets the requirements for military and overseas voters in federal elections. See 52 U.S.C.A. § 20302(a)(1)-(4).