

**STATE OF MICHIGAN  
IN THE COURT OF APPEALS**

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

Court of Appeals No. 372995

Court of Claims No. 24-000165-MZ

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.

---

**BRIEF OF PROPOSED *AMICI CURIAE* DEMOCRATIC  
PARTY COMMITTEE ABROAD AND MICHIGAN  
DEMOCRATIC STATE CENTRAL COMMITTEE**

MARK BREWER (P35661)  
ROWAN CONYBEARE (P86571)  
Two Towne Square, Suite 444  
Southfield, MI 48076  
(248) 483-5000  
[mbrewer@goodmanacker.com](mailto:mbrewer@goodmanacker.com)  
[rconybeare@goodmanacker.com](mailto:rconybeare@goodmanacker.com)

Attorneys for Proposed *Amici Curiae*

**TABLE OF CONTENTS**

Index of Authorities ..... iv

Dedication .....v

Basis of Jurisdiction..... vi

Statement of Question Involved..... vii

Interests of *Amici Curiae* ..... viii

Introduction..... 1

Statement of Facts.....2

    I.    American and Michigan Citizens Living Overseas .....2

    II.   History of Absentee Voting and Durational Residency Requirements in Michigan.....2

        A.    1835–1864: Six Month Durational Residency and Voting in Person Required.....3

        B.    1864–1866: Absentee Voting Authorized for Union Soldiers.....4

        C.    1867–1956: Expansion of the Right to Vote by Absentee Ballot.....5

        D.    1956: The Cold War Necessitates Further Expansion of Absentee Voting .....6

        E.    1961–1962: Constitutional Convention .....7

        F.    1971: Demands of the Global Economy Lead to Further Expansion of Absentee  
            Voting Rights to Michigan Civilians Unrelated to the Military.....8

        G.    1972: Michigan’s Durational Residency Requirement Is Declared Unconstitutional  
            and Not Replaced.....9

        H.    1996: Establishing Residence by Household for Family Members of Overseas  
            Military and Civilian Voters..... 11

        I.    2018 and 2022: The Rights of Overseas Civilians and Military Members to Vote  
            by Absentee Ballot Placed in the Michigan Constitution ..... 13

        J.    Conclusion: For More Than 160 Years, the Trajectory of Michigan Constitutional  
            and Statutory Change Has Been the Expansion of the Right to Vote an Absentee  
            Ballot.....14

Argument: The Court of Claims Decision Should Be Affirmed.....14

I. Michigan’s Six-Month Durational Residency Requirement Is Entirely Unconstitutional—  
No 50-Day Portion of it Survives .....14

II. Neither the Legislature nor the Court of Claims “Abolished” Michigan’s Residency  
Requirement.....17

III. The Secretary of State’s Instructions Are Consistent with Michigan Election Law.....20

Conclusion and Relief Sought .....20

Certificate of Compliance .....21

## INDEX OF AUTHORITIES

### Cases

<i>Burns v Fortson</i> , 410 US 686; 93 S Ct 1209; 35 L Ed 2d 633 (1973) ( <i>per curiam</i> ) .....	16, 17
<i>Christenson v Secretary of State</i> , 336 Mich App 411; 970 NW2d 417 (2021).....	18
<i>Dunn v Blumstein</i> , 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972) .....	10, 14, 17
<i>Lockwood v Comm’r of Revenue</i> , 357 Mich 517; 98 NW2d 753 (1959) .....	15
<i>Marston v Lewis</i> , 410 US 679; 93 S Ct 1211; 35 L Ed 2d 627 (1973) ( <i>per curiam</i> ) .....	16, 17
<i>Mich Republican Party v Benson</i> , opinion of the Court of Claims, issued October 21, 2024 (Docket No. 24-000165-MZ).....	14, 19
<i>Mothering Justice v Attorney General</i> , ___ Mich ___, ___; ___ NW2d ___ (2024) (Docket No. 165325) .....	15
<i>Nicholls v Schaffer</i> , 344 F Supp 238 (D Conn, 1972) .....	10
<i>O’Halloran v Secretary of State</i> , ___ Mich ___, ___; ___ NW2d ___ (2024) (Docket Nos. 166424 & 166425).....	20
<i>People ex rel Twitchell v Blodgett</i> , 13 Mich 127 (1865).....	4

### Constitutional Provisions

Const 1835, art 2, § 1 .....	4
Const 1850, art 7, § 1 (as ratified) .....	4
Const 1850, art 7, § 1 (as amended).....	4
Const 1850, art 7, § 5 (as ratified) .....	4
Const 1908, art 3, § 1 (as amended).....	3, 7
Const 1963, art 2, § 1 .....	<i>passim</i>
Const 1963, art 2, § 4 (as ratified) .....	9
Const 1963, art 2, § 4(1)(a) and (b) .....	13
Const 1963, art 2, § 4(2) .....	14, 18

Const 1963, art 12, § 1 .....	10
Const 1963, art 12, § 2 .....	10
US Const, Am XIX .....	3
<b>Public Acts</b>	
1864 PA 21 .....	4
1956 PA 21 .....	7, 8
1971 PA 68 .....	8, 9
1975 PA 28 .....	3
1996 PA 207 .....	12
<b>Michigan Compiled Laws</b>	
MCL 168.495(g) and (j) .....	17
MCL 168.759a .....	7, 9, 11
MCL 168.759a(1) and (2) .....	11, 12
MCL 168.759a(3) .....	vii, 12, 18, 19, 20
MCL 169.759a(4) .....	12
<b>Legislative Bills</b>	
1917 HJR 14 .....	3
<b>United States Code</b>	
8 USC 1401 .....	2
52 USC 20501 .....	3
52 USC 10502(d) .....	16
<b>Attorney General Opinions</b>	
1 OAG, 1978, No. 5,356, p 587 (August 23, 1978) .....	10

## Michigan Court Rules

MCR 7.203(A)(1) .....	vi
MCR 7.212(B)(1).....	21
MCR 7.212(B)(5).....	21

## Other Sources

2 Official Record, Constitutional Convention 1961 .....	7, 8, 18, 19
Collins, <i>Absentee Soldier Voting In Civil War Politics</i> (January 1, 2014) (Ph.D. dissertation, Wayne State University) .....	4
Dunbar & May, <i>Michigan: A History of the Wolverine State</i> (Grand Rapids: William B. Eerdmans Publishing Company, 1995).....	4
Federal Voting Assistance Program, <i>U.S. Citizens Abroad and Their Voting Behaviors in 2022: Overseas Citizen Population Analysis Summary Brief</i> .....	2
Keyssar, <i>The Right to Vote: The Contested History of Democracy in the United States</i> (New York: Basic Books, 2000) .....	5, 11
Letter from Secretary of State Richard H. Austin to Hon. Claiborne Pell & Hon. Robert P. Griffin (February 8, 1977), <i>reprinted in</i> Overseas Absentee Voting: Hearing on SB 703 Before the Senate Comm on Rules & Admin, 95th Cong (1977).....	9
Lowenstein, Hasen, & Tokaji, <i>Election Law</i> (5th ed).....	17
Miller, <i>Absentee Voters and Suffrage Laws</i> (Washington, D.C.: The Daylion Company, 1948).....	6
O’Dell, <i>The US Is Sending More Troops to the Middle East. Where In the World Are US Military Deployed?</i> , Blue Marble (October 25, 2023) .....	2
Rocca, <i>A Brief Digest of the Laws Relating to Absentee Voting and Registration</i> (Washington, D.C.: Department of Efficiency in Government, National League of Women Voters, 1928) ....	6
Schuster, <i>GOP Sues Michigan to Block ‘Never Resided’ Voters in Presidential Election</i> , Bridge (October 10, 2024).....	2, 12
Secretary of State, <i>Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs</i> (July 2024) .....	12
The American Presidency Project, <i>Remarks in the Capitol Rotunda at the Signing of the Voting Rights</i> .....	1

## **DEDICATION**

For Michael J. Hodge, 1948–2024,  
Friend, Mentor, and Excellent Election Lawyer

## **BASIS OF JURISDICTION**

The Court has jurisdiction over this appeal under MCR 7.203(A)(1).

## STATEMENT OF QUESTION INVOLVED

Did the Court of Claims correctly hold that the durational state residency requirement in the Michigan Constitution is unconstitutional under federal precedent, that MCL 168.759a(3) does not violate any residency requirement in the Constitution, and that Defendants' instructions do not violate that statute?

Appellants' Answer: No.

Appellees' Answer: Yes.

Court of Claims' Answer: Yes.

*Amici Curiae's* Answer: Yes.

## INTERESTS OF *AMICI CURIAE*<sup>1</sup>

The Democratic Party Committee Abroad (“Democrats Abroad”) is the official Democratic Party arm for millions of Americans living outside the United States. Democrats Abroad has more than 200,000 active members living in more than 190 countries around the globe, including members from Michigan. Those members and their families vote by absentee ballot in every state and in every congressional district in the United States. Democrats Abroad has 52 Country Committees throughout Europe, the Americas, the Middle East, Africa, and Asia. These Country Committees operate to keep Americans overseas informed of their rights, help them participate in the United States political process, and advocate on issues particular to them. Democrats Abroad has a vital interest in ensuring that the right to vote of all Americans living overseas is protected. If Plaintiffs-Appellants were to prevail on the merits, it would mean that many United States citizens living abroad who vote in Michigan would be disenfranchised—specifically, those whose voting address is in Michigan by virtue of their parents or spouse. Members and potential members of Democrats Abroad would be robbed of their constitutional, legal right to vote from overseas.

The Michigan Democratic State Central Committee is the governing body of one of the two major political parties in Michigan. Its responsibilities include protecting the state constitutional right to vote, including the right to vote by absentee ballot of Michigan citizens living overseas.

---

<sup>1</sup> Counsel for the proposed *Amici Curiae* authored this Brief in whole. No party or their counsel made a monetary contribution intended to fund the preparation or submission of this Brief.

## INTRODUCTION

“This right to vote is the basic right without which all others are meaningless.”

– United States President Lyndon B. Johnson<sup>2</sup>

Plaintiffs-Appellants (hereinafter collectively “the MRP”) seek to disenfranchise a group of overseas absentee ballot voters—citizen spouses and dependents of Michigan citizens living overseas—in defiance of Michigan Election Law. These Americans may have never lived in the United States, but they are required as citizens to file income tax returns with the United States government, which taxes them on their worldwide income. Yet, if their voting address happens to be in Michigan, the MRP would deprive them of their right to vote in the United States. The MRP contends this deprivation of voting rights is required by the Michigan Constitution, yet that Constitution has been amended, and additional state laws have been passed, to protect these individuals’ voting rights. The Michigan Legislature has defined “residency,” as it is required to do in the Constitution, to include those Americans. Its definition of “residency” includes this subset of voters whom the Court of Claims noted have a clear nexus to Michigan. The Court of Claims therefore correctly rejected the MRP’s arguments. For the reasons stated in the Court of Claims’ decision and those set forth in this Brief, that decision should be affirmed.

---

<sup>2</sup> The American Presidency Project, *Remarks in the Capitol Rotunda at the Signing of the Voting Rights*, <https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act> (last accessed March 11, 2025).

## STATEMENT OF FACTS

### I. American and Michigan Citizens Living Overseas.

The federal government estimates that, as of 2022, there are 4.4 million United States citizens living overseas, of which 2.8 million are eligible to vote.<sup>3</sup> Of these, about 170,000 are military personnel, the rest being civilian, including civilian spouses and dependents of those military personnel.<sup>4</sup> The children of these American citizens living overseas are American citizens regardless of their country of birth or their current residence.<sup>5</sup>

It is not precisely known how many Michigan citizens live overseas. But of those that do, approximately 16,000 are currently registered to vote.<sup>6</sup> There are undoubtedly many more Michigan citizens living overseas who are eligible to vote but who are not registered and do not vote.<sup>7</sup> The American citizens whose absentee voting rights are attacked in this case—citizens living overseas who have not resided in Michigan, but who are the spouses and dependents of Michigan voters—is a subgroup of all Michigan citizens living overseas.

### II. History of Absentee Voting and Durational Residency Requirement in Michigan.

Throughout its history, Michigan has often been at the forefront of expanding the rights of its citizens to vote and easing the burdens of registering and voting. For example, women gained

---

<sup>3</sup> See Federal Voting Assistance Program, *U.S. Citizens Abroad and Their Voting Behaviors in 2022: Overseas Citizen Population Analysis Summary Brief*, p 1, available at [https://www.fvap.gov/uploads/FVAP/Reports/FVAP-VoterBrief\\_v1b.pdf](https://www.fvap.gov/uploads/FVAP/Reports/FVAP-VoterBrief_v1b.pdf).

<sup>4</sup> O'Dell, *The US Is Sending More Troops to the Middle East. Where In the World Are US Military Deployed?*, Blue Marble (October 25, 2023), <https://globalaffairs.org/bluemarble/us-sending-more-troops-middle-east-where-world-are-us-military-deployed>.

<sup>5</sup> See 8 USC 1401.

<sup>6</sup> See Schuster, *GOP Sues Michigan to Block 'Never Resided' Voters in Presidential Election*, Bridge (October 10, 2024), <https://www.bridgemi.com/michigan-government/gop-sues-michigan-block-never-resided-voters-presidential-election>.

<sup>7</sup> See *U.S. Citizens Abroad and Their Voting Behaviors in 2022*, p 3 (fewer than 4% of eligible overseas voters voted in federal elections in 2022).

the right to vote in Michigan in 1918,<sup>8</sup> before the 1920 adoption of the Nineteenth Amendment to the United States Constitution extended the right to all women.<sup>9</sup> Michigan was also the national pioneer in registering voters when they did business with the Secretary of State, adopting the so-called “Motor Voter Law”<sup>10</sup> 18 years before the National Voter Registration Act mandated the service.<sup>11</sup>

This case involves voting rights issues for which Michigan again has been at the forefront—addressing onerous durational residency obligations as a condition of voting and outdated requirements that Michigan citizens vote only in person at specific locations during limited hours in Michigan on election day. These requirements have been particularly burdensome for Michigan citizens—military and civilian—living overseas, essentially disenfranchising them. Fortunately for them, Michigan’s historical legal trend has been toward enfranchisement of those citizens by significantly easing durational residency obligations and providing ample opportunities for citizens in Michigan and overseas to vote by absentee ballot without reporting to a single site in Michigan during specific hours on election day.

This is a short history of Michigan’s durational residency requirement for voting and the right of Michigan citizens to vote absentee when they are unable to vote at a polling place in Michigan on election day.

**A. 1835–1864: Six Month Durational Residency and Voting in Person Required.**

Michigan’s first two Constitutions set forth a strict durational residency requirement of six months in the state as a condition of voting and permitted voting only in person at a Michigan

---

<sup>8</sup> See 1917 HJR 14, adopted by the voters, November 5, 1918, *amending* Const 1908, art 3, § 1.

<sup>9</sup> See US Const, Am XIX.

<sup>10</sup> See 1975 PA 28.

<sup>11</sup> See 52 USC 20501 *et seq.*

polling location.<sup>12</sup>

### **B. 1864–1866: Absentee Voting Authorized for Union Soldiers.**

While the 1850 Constitution ensured the continuing Michigan residency of civilians and soldiers serving the state or the United States outside of Michigan during the Civil War, it made no provision for those voters to vote outside of the state.<sup>13</sup> This created a significant political problem for the Michigan Republican Party in the 1864 elections because thousands of its voters were soldiers serving outside the state and unable to vote.<sup>14</sup>

This led Michigan and other Union states to enact the first absentee voter ballot laws. In Michigan, it was the Soldiers' Vote Act, 1864 PA 21.<sup>15</sup> The soldiers' vote benefitted the Michigan Republican Party, and the Legislature seated those elected,<sup>16</sup> despite a divided Michigan Supreme Court declaring the Act unconstitutional in early 1865.<sup>17</sup> In 1866, the voters quickly rectified the situation, amending the state Constitution to give military members the right to vote absentee if away from the state.<sup>18</sup>

Election scholars have noted the historic significance of these first absentee voter laws:

Other consequences of the war cut . . . toward expansion of the franchise. For the first time, states were obliged to contend head-on with the issue of absentee voting: reluctant to deny the franchise to men who were bearing arms to defend the Union, nineteen states enacted laws enabling soldiers in the field to vote. *In so doing, they established a*

---

<sup>12</sup> See Const 1835, art 2, § 1; Const 1850, art 7, § 1 (as ratified).

<sup>13</sup> See Const 1850, art 7, § 5 (as ratified).

<sup>14</sup> See Dunbar & May, *Michigan: A History of the Wolverine State* (Grand Rapids: William B. Eerdmans Publishing Company, 1995), pp 332–333.

<sup>15</sup> For a detailed description of how the Soldiers' Vote Act operated, see Collins, *Absentee Soldier Voting In Civil War Politics* (January 1, 2014) (Ph.D. dissertation, Wayne State University), pp 361–370, available at [https://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2042&context=oa\\_dissertations](https://digitalcommons.wayne.edu/cgi/viewcontent.cgi?article=2042&context=oa_dissertations).

<sup>16</sup> See Dunbar & May, p 332.

<sup>17</sup> See *People ex rel Twitchell v Blodgett*, 13 Mich 127 (1865).

<sup>18</sup> See Const 1850, art 7, § 1 (as amended).

*precedent for loosening the links between residence and participation in elections.*<sup>19</sup>

Those links have continued to be loosened in Michigan since the Civil War—and continue to be to the present day—in order to protect the right to vote in a 21st Century mobile and global society very different from the mid-19th Century frontier state of Michigan.

**C. 1867–1956: Expansion of the Right to Vote by Absentee Ballot.**

After acknowledging that the physical presence of military personnel in the state was not a prerequisite to voting, states such as Michigan applied that logic to others who were eligible to vote but also unable to attend their polling place on election day:

The notion that legal residence was tied as much to intention as physical presence inexorably led states to consider mechanisms for absentee voting—for men and women who were temporarily away from home but intended to return. . . . After the [Civil] [W]ar, more and more states made it possible for absent soldiers to vote, particularly if they were stationed within their home state. The laws sometimes specified that they could vote anywhere in the state for statewide offices and anywhere in the district in congressional elections; casting ballots by mail was not the norm. World War I added a new urgency to the issue, since nearly three million men were inducted into the army. Accordingly, by 1918, nearly all states had made provisions for men serving in the military to cast their ballots, at least in time of war.

Soldiers opened the gates to a broader dispensation. The logic of allowing nonresident military personnel to vote seemed to apply almost equally well to others whose jobs forced them to be away from home on election day. . . . [B]y the end of World War I, more than twenty states had provided for absentee voting on the part of anyone who could demonstrate a work-related reason (and in a few cases, any reason) for being absent on election day.<sup>20</sup>

Michigan was part of this trend of greatly expanded absentee voting after the Civil War and through World War II:

---

<sup>19</sup> Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), p 104 (emphasis added).

<sup>20</sup> *Id* at 150–151 (footnote omitted).

Michigan is an example of gradual expansion. Mich. 1915, No. 270 was limited to (a) soldiers in time of war, (b) legislators in attendance at a session, (c) students at school, (d) commercial travelers. The next step was Mich. 1917, No. 203, which added to the list (e) employees of the United States or of the State, (f) railway employees. The third step added two more classes: Mich. 1919, No. 45, (g) any person in lawful business, (h) the ill or physically disabled. After four more years came Mich. 1925, No. 351 with (i) teachers in public schools, (j) any person necessarily absent while engaged in the pursuit of lawful business, or recreation. After six years the list was further extended. Mich. 1931, Jt. Res. No. 3 [which amended the state Constitution in 1932] enumerates (k) citizens in military training camp, (l) members of the families of legislators, (m) sailors on the Great Lakes, (n) other causes than [those] specified.<sup>21</sup>

These laws recognized that the United States and Michigan populations were highly mobile, and that Michigan was part of a global society in which its citizens worked and traveled extensively outside of their home city or township, outside of Michigan, and outside of the United States.

#### **D. 1956: The Cold War Necessitates Further Expansion of Absentee Voting.**

After World War II, an unprecedented historical event took place. While most military service members were demobilized, the military demands of the Cold War meant that the United States, for the first time in its history, maintained a large standing military in the absence of a declared war. Significant numbers of that standing military and its supporting civilians were deployed overseas with their families. That placed new demands on election administration, necessitating that a way be found to protect the right to vote of those citizens and their families serving their country overseas.

---

<sup>21</sup> Miller, *Absentee Voters and Suffrage Laws* (Washington, D.C.: The Daylion Company, 1948), p 111; see also Rocca, *A Brief Digest of the Laws Relating to Absentee Voting and Registration* (Washington, D.C.: Department of Efficiency in Government, National League of Women Voters, 1928), pp 8–9, 10 n 17, 44–45 (detailing Michigan absentee voting laws as of 1928).

Using the authority granted by the 1932 amendment to Article 3, § 1 of the state Constitution, which permitted the Legislature to add categories of absentee voters, the Legislature enacted Public Act No. 21 of 1956 to extend absentee voting rights to members of the military, civilians supporting them, and their families outside the United States:

Any civilian employee of the armed services of the United States outside of the United States or any member of his immediate family outside of the United States, or any member of the armed services of the United States or member of his immediate family, who is a qualified elector of any city or township of this state but is not registered for voting, may apply at the time of making application to register by mail, as provided in section 504 of this act, for absent voters' ballots. . . .

MCL 168.759a, as enacted by 1956 PA 21.

**E. 1961–1962: Constitutional Convention.**

The 1961–1962 Constitutional Convention record of the debates reflects that the delegates sought to completely update the voting rights procedures of the prior Constitution, *see* 2 Official Record, Constitutional Convention 1961, p 2213, because its language reflected “frontier days” instead of the current needs of American society, *id* at 2214. Regarding the issue of voter residency, the delegates clearly intended that their language allow the Legislature the freedom to define residency to meet future needs:

A major feature of the proposed article is found in the last sentence of the first section, which reposes in the legislature the duty of defining residence for voting purposes. Past attempts to define residence in constitutional language have, in this and other states, been highly unsuccessful. Constitutional language, however well considered, tends to leave gaps and ambiguities in the definition of residence, and courts have been reluctant to allow legislatures leeway to modify in any significant way what appears to be the intent of the constitution. *Again, any constitutional language is subject to obsolescence. The committee has concluded that it is not humanly possible for this convention to define residence in a manner which will offer any assurance of future adequacy, and has therefore proposed to leave the matter to the legislature, as one of its continuing responsibilities in the field of elections.*

*Id* (emphasis added). The Address of the People reiterated that the purpose of permitting the Legislature to define residency was to allow it to ensure that it remained adequate to the voters' future needs:

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.

*Id* at 3365.

**F. 1971: Demands of the Global Economy Lead to Further Expansion of Absentee Voting Rights to Michigan Civilians Unrelated to the Military.**

Public Act No. 21 of 1956 applied only to civilian employees of the military and their families, not to Michigan citizen civilians living overseas who had no military connection. Beginning in the 20th Century, Michigan became home to many global businesses, and by 1971 it was finally recognized that the global economy meant that many Michigan citizens and their families were living and working around the world as civilians in occupations unrelated to the military. That recognition led to the passage of Public Act No. 68 of 1971, which allowed those civilians to vote by absentee ballot:

Any civilian employee of the armed services of the United States outside of the United States or any member of his immediate family outside of the United States, or any member of the armed services of the United States or member of his immediate family *or any citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and a spouse or dependent residing with or accompanying such person*, who is a qualified elector of any city or township of this state but is not registered for voting, may apply at the time of making application to register by mail, as provided in section 504 of this act, for absent voters' ballots. A citizen temporarily residing outside the territorial limits of the United States and the District of Columbia shall include with any application for absent voters' ballots or registration, an affidavit in a form and manner approved by the state

director of elections stating his qualifications as an elector at the time he departed from the United States and affirming that he has not relinquished his citizenship or established residence for voting or any other place. . . . *The address in this state shown on the registration shall be deemed the residence of the registrant.* These registrations shall not be considered in determining the size of precincts.

MCL 168.759a, as amended by 1971 PA 68 (emphasis added). This law was enacted under the Legislature’s broad authority to “enact laws . . . to provide for a system of voter registration and absentee voting.” Const 1963, art 2, § 4 (as ratified).

Public Act No. 68 of 1971 once again placed Michigan at the forefront of expanding the franchise, specifically in the area of absentee voting for overseas voters. In 1977, Secretary of State Richard Austin described the positive effects of this pathbreaking law:

The State of Michigan, in 1971, enacted specific legislation dealing with the subject of overseas voting. *The law goes beyond the Overseas Voting Rights Act of 1975 in that overseas registered voters may vote in any state or local election. Because this law has been in effect for many years, Michigan has noticed no significant impact with regard to the 1975 Voting Rights Act other than increased overseas voting in connection with presidential elections.*<sup>22</sup>

**G. 1972: Michigan’s Durational Residency Requirement Is Declared Unconstitutional and Not Replaced.**

Even as these expansions of the right to vote an absentee ballot occurred, the six-month state durational residency requirement to vote remained unchanged through four Michigan Constitutions—1835, 1850, 1908, and 1963. That meant that Michigan overseas citizens still had to reside in Michigan at least six months *before* moving overseas in order to vote by absentee ballot. But the six-month durational residency requirement did not survive the national and Michigan voting rights revolutions of the 1960s and 1970s.

---

<sup>22</sup> Letter from Secretary of State Richard H. Austin to Hon. Claiborne Pell & Hon. Robert P. Griffin (February 8, 1977), *reprinted in* Overseas Absentee Voting: Hearing on SB 703 Before the Senate Comm on Rules & Admin, 95th Cong (1977), p 157 (emphasis added).

As approved by the voters, Article 2, § 1 of the 1963 Michigan Constitution stated that:

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.

In 1972, the United States Supreme Court struck down as unconstitutional Tennessee's one-year in-state durational residency and three-month local residency requirements as conditions for voting. *Dunn v Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972). Based on *Dunn*, the Michigan Attorney General opined in 1978 that the six-month durational residency requirement of Article 2, § 1 was invalid. *See* 1 OAG, 1978, No. 5,356, p 587, at 589 n 2 (August 23, 1978). Federal courts have agreed with the Attorney General that six-month durational residency requirements as a condition of voting are unconstitutional. *See, e.g., Nicholls v Schaffer*, 344 F Supp 238, 241–242 (D Conn, 1972).

A petition drive to amend the state Constitution by ballot proposal to restore a durational residency requirement could have been mounted at any time since 1978, *see* Const 1963, art 12, § 2, but it was not. The Legislature could have placed a state constitutional amendment on the ballot to establish a new durational residency requirement, *see* Const 1963, art 12, § 1, but it did not. With the demise of the state constitutional durational residency requirement, whether Michigan voters must meet a durational residency requirement in order to vote was thus left to the Legislature to determine under its constitutional authority to “define residence for voting purposes.” *See* Const 1963, art 2, § 1. The Legislature has not enacted a new statutory durational residency requirement either.

The end of Michigan's durational residency requirement was consistent with the national trend:

The thrust of the law clearly had become to include rather than exclude, to incorporate citizens into the polity rather than to screen them out. At the end of the twentieth century, the definition of residency was broader than it ever had been, durational requirements in most states had been cut by 90 percent, and absentee ballots, almost everywhere, had become relatively easy to obtain.<sup>23</sup>

With the demise of the state constitutional durational residency requirement, it was thus left to the Michigan Legislature, pursuant to its constitutional authority, to “define residence for voting purposes.” *See* Const 1963, art 2, § 1.

**H. 1996: Establishing Residence by Household for Family Members of Overseas Military and Civilian Voters.**

With a durational residency requirement eliminated in Michigan and the Legislature’s broad authority to create a voter registration system and an absentee voting process, and to define residency for voting purposes, the path was cleared to address a final vexing problem: how to enfranchise American citizens who were spouses or dependents of Michigan civilian and military personnel living overseas but who had not resided in Michigan before living overseas.

In 1996, Section 759a of the Michigan Election Law was reorganized and again expanded to allow spouses and dependents of Michigan military and civilian voters overseas to register and vote even if they were not a qualified elector of a Michigan city or township, and accepting the address on the registration as their residence:

- (1) Except as provided in subsection (5), each of the following persons who is a qualified elector of a city or township in this state and who is not a registered voter may apply for an absent voter ballot pursuant to section 504:
  - (a) A civilian employee of the armed services outside of the United States.
  - (b) A member of the armed services outside of the United States.
  - (c) A citizen of the United States temporarily residing outside of the territorial limits of the United States.

---

<sup>23</sup> Keyssar, p 277 (footnote omitted).

- (d) A citizen of the United States residing in the District of Columbia.
  - (e) *A spouse or dependent of a person described in subdivision (a) through (d) who is a citizen of the United States and who is accompanying that person, notwithstanding that the spouse or dependent is not a qualified elector of a city or township of this state, as long as that spouse or dependent is not a qualified and registered elector anywhere else in the United States.*
- (2) A citizen described in subsection (1) who is temporarily residing outside the territorial limits of the United States or residing in the District of Columbia shall include with an application for an absent voter ballot or registration, an affidavit in the form and manner approved by the state director of elections stating either of the following:
- ...
- (b) That he or she is a spouse or dependent of a person described in subsection (1)(a) to (d), that he or she meets the qualifications as an elector *other than residency in this state, and that he or she has not established a residence for voting in any other place.*

MCL 168.759a(1) and (2), as amended by 1996 PA 207 (emphasis added).

Through subsequent amendments, this provision emerged as it now reads:

A spouse or dependent of an overseas voter who is a citizen of the United States, is accompanying that overseas voter, and is not a qualified and registered elector anywhere else in the United States, 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.

MCL 169.759a(3). When they register, the Michigan “address . . . shown on a registration form is the residence of the registrant.” MCL 169.759a(4). This is a very common provision found in the election laws of 38 states.<sup>24</sup>

The Secretary of State’s guidance on this issue simply restates the statutory requirements. See Secretary of State, *Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs* (July 2024).

---

<sup>24</sup> See Schuster, *GOP Sues Michigan to Block ‘Never Resided’ Voters in Presidential Election*.

**I. 2018 and 2022: The Rights of Overseas Civilians and Military Members to Vote by Absentee Ballot Placed in the Michigan Constitution.**

Protection of the right to vote by absentee ballot has been significantly enhanced recently. In 2018 and 2022, Michigan voters overwhelmingly adopted state constitutional amendments enshrining several voting rights in the Michigan Constitution, including the right of overseas voters to vote by absentee ballot:

(1) Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:

(a) The fundamental right to vote, including but not limited to the right, once registered, to vote a secret ballot in all elections. No person shall: (1) enact or use any law, rule, regulation, qualification, prerequisite, standard, practice, or procedure; (2) engage in any harassing, threatening, or intimidating conduct; or (3) use any means whatsoever, any of which has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.

...

(b) The right, if serving in the military or living overseas, to have an absent voter ballot sent to them at least forty-five (45) days before an election upon application and to have their absent voter ballot deemed timely received if postmarked on or before election day and received by the appropriate election official within six (6) days after such election. For purposes of this part (b) of subsection (4)(1), a postmark shall include any type of mark applied by the United States Postal Service or any delivery service to the return envelope, including but not limited to a bar code or any tracking marks, which indicates when a ballot was mailed.

...

All rights set forth in this subsection shall be self-executing. This subsection shall be liberally construed in favor of voters' rights in order to effectuate its purposes. Nothing contained in this subsection shall prevent the legislature from expanding voters' rights beyond what is provided herein.

Const 1963, art 2, § 4(1)(a) and (b).

These self-executing amendments, which must be liberally construed, reinforce the Legislature’s longstanding, broad authority to “provide for a system of voter registration and absentee voting,” Const 1963, art 2, § 4(2), and strengthen the rights of American citizens living overseas to register and vote by absentee ballot.

**J. Conclusion: For More Than 160 Years, the Trajectory of Michigan Constitutional and Statutory Change Has Been the Expansion of the Right to Vote an Absentee Ballot.**

Driven by historical events—the Civil War, the Cold War necessity of a permanent United States military and civilian presence overseas, more Michiganders working overseas in a global economy, etc.—the trend in Michigan constitutional and statutory law for over 160 years has been steady expansion of the right to vote absentee. The right to vote is now ensured for Michigan citizens and their families, military and civilian, including the group of American citizens the MRP seeks to disenfranchise by judicial fiat.

**ARGUMENT**

**THE COURT OF CLAIMS DECISION SHOULD BE AFFIRMED**

**I. MICHIGAN’S SIX-MONTH DURATIONAL RESIDENCY REQUIREMENT IS ENTIRELY UNCONSTITUTIONAL—NO 50-DAY PORTION OF IT SURVIVES.**

The Court of Claims correctly held that the entire six-month durational residency requirement of Article 2, § 1 was unconstitutional under *Dunn*. See *Mich Republican Party v Benson*, opinion of the Court of Claims, issued October 21, 2024 (Docket No. 24-000165-MZ), pp 16–17. The MRP acknowledges that the six-month period is unconstitutional. See MRP Br, p 20. However, they claim that because the United States Supreme Court has upheld 50-day durational residency requirements, “at least 50 days of article 2, § 1’s durational residency requirement is still valid,” and this Court must so “interpret” the Michigan Constitution. See *id* at 21.

The MRP cites no Michigan authority for this novel argument in which they are not asking for an “interpretation” of the Michigan Constitution, but are asking this Court to *rewrite* the Michigan Constitution, which it cannot do. *See, e.g., Lockwood v Comm’r of Revenue*, 357 Mich 517, 576; 98 NW2d 753 (1959) (BLACK, J., concurring) (“[The people] wrote this . . . into the Constitution. Ours is not to rewrite it . . .”). This bald attempt to have the Court rewrite the Michigan Constitution fails for several reasons.

First, it is contrary to bedrock principles of constitutional interpretation in which the *text* governs:

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.” *Paquin v City of St Ignace*, 504 Mich 124, 129; 934 NW2d 650 (2019), quoting *Studier v Mich Pub Sch Employees’ Retirement Bd*, 472 Mich 642, 652; 698 NW2d 350 (2005). Accordingly, we seek “to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42, 61; 921 NW2d 247 (2018) (quotation marks and citation omitted).

*Mothering Justice v Attorney General*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2024) (Docket No. 165325); slip op at 11 (emphasis added).

The text of the durational residency requirement in Article 2, § 1 is quite plain and clear:

Every citizen of the United States . . . who has resided in this state six months . . . .

This text is what the voters ratified when they adopted the 1963 Constitution. They did not adopt a 50-day back-up or the concept of durational residency—they adopted a specific six-month durational residency requirement that has been invalid since 1972. There is no textual basis whatsoever for this Court to “interpret” Article 2, § 1 to impose a 50-day durational residency requirement that the voters never even considered, let alone approved. To add that requirement is

not a mere “interpretation”—it is an impermissible judicial rewriting of Article 2, § 1, which has no grounding at all in the text or what the voters adopted in 1963.

Moreover, the invitation of the MRP to have the Court impose a 50-day durational residency requirement by fiat would create two classes of voters in Michigan, thus creating an administrative nightmare for election administrators. Under Section 202 of the federal Voting Rights Act, durational residency requirements for presidential and vice-presidential elections of longer than 30 days are illegal. *See* 52 USC 10502(d). Thus, while those voters are subject to a maximum 30-day durational residency requirement, the MRP would have this Court impose a 50-day requirement on voters for all other elections. That is not a policy choice a court should be making—whether to discriminate by having two classes of voters is a policy decision for the voters of the state or their elected representatives.

Next, the MRP’s reliance on *Marston v Lewis*, 410 US 679; 93 S Ct 1211; 35 L Ed 2d 627 (1973) (*per curiam*), and *Burns v Fortson*, 410 US 686; 93 S Ct 1209; 35 L Ed 2d 633 (1973) (*per curiam*), to invent a rump 50-day durational residency is misplaced. *See* MRP Br, pp 21–22. The *Burns* Court only upheld a 50-day voter registration cut-off, *not* a 50-day durational residency requirement, and the *Marston* Court upheld a 50-day durational residency requirement *tied to a* 50-day voter registration cutoff. These cases are factually distinguishable and are simply inapplicable to Michigan’s situation. In addition, they created no “safe harbor” for 50-day requirements. In *Marston* and *Burns*, the United States Supreme Court stressed how fact-specific its decisions were. *Marston* relied on several unique features of Arizona’s election process, *see* 410 US at 680–681, and the *Burns* plaintiffs “introduced no evidence” on the burden of the 50-day registration cutoff, while the state “offered extensive evidence,” 410 US at 686. These cases create no “safe-harbor” to justify inventing a 50-day rump durational residency requirement in Michigan.

As scholars have observed, “*Marston* and *Burns* notwithstanding, nearly all states have 30-day residency requirements and registration cut-offs *or less*.” Lowenstein, Hasen, & Tokaji, *Election Law* (5th ed), p 37 (emphasis added). *Marston* and *Burns* are distinguishable, fact-based outliers that provide no basis for judicial manufacture of a 50-day durational residency requirement.

Finally, the MRP’s analogy to the change in voting age from 21 to 18 does not aid them. *See* MRP Br, p 22. Unlike the unconstitutional durational residency requirement that the Legislature has not replaced, the Legislature stepped in when Michigan’s constitutional voting age of 21 was superseded by a federal constitutional amendment. The Legislature has set 18 as the age to vote in Michigan. *See, e.g.*, MCL 168.495(g) and (j) (must be 18 years old to register to vote). The legislative adjustment of the voting age in fact supports the Court of Claims’ decision that Michigan has no durational residency requirement because, unlike the issue of a voting age, the Legislature has declined to impose a new durational residency requirement after the six-month requirement was declared unconstitutional by the Attorney General based on *Dunn*. The Court should not override the Legislature’s choice.

## **II. NEITHER THE LEGISLATURE NOR THE COURT OF CLAIMS “ABOLISHED” MICHIGAN’S RESIDENCY REQUIREMENT.**

The MRP next claims that the Legislature has illegally “abolish[ed],” “amend[ed,] or waive[d]” the durational residency requirement. MRP Br, p 22–23. The MRP also claims that the Court of Claims’ decision rendered the constitutional durational residency requirement “meaningless” and “written out of the Constitution entirely.” *Id* at 25–26. Neither is true. The requirement remains, although unenforceable due to *Dunn*. Neither did the Court of Claims’ opinion write durational residency out of the Constitution—the *Dunn* decision rendered the durational residency requirement unconstitutional and therefore unenforceable in its entirety.

Finally, the MRP claims that because MCL 168.759a(3) “does not list all the qualifications a spouse or dependent of an overseas voter needs to possess,” it must be read as implicitly including a durational residency requirement. *See* MRP Br, pp 26–27. This is contrary to the rules of statutory interpretation in which the text governs, and that courts may not add, subtract, or read into the text. *See, e.g., Christenson v Secretary of State*, 336 Mich App 411, 419–420; 970 NW2d 417 (2021). The reason that MCL 168.759a(3) does not list those requirements is because they are found on the application to register to vote.

These false claims are part of the MRP’s repeated disparagement and questioning of broad constitutional authority of the Legislature to define residency for voting purposes found in Article 2, § 1 (“The legislature shall define residence for voting purposes.”). This authority is reinforced by the constitutional command of the Legislature to enact systems for voter registration and absentee voting:

[T]he legislature shall enact laws to . . . provide for a system of voter registration and absentee voting.

Const 1963, art 2, § 4(2).

The MRP’s disparagement ignores not only the constitutional text but also the purpose and intent of Article 2, § 1. On the issue of voter residency, the Constitutional Convention delegates clearly intended that their language allow the Legislature the freedom to define residency to meet future needs:

A major feature of the proposed article is found in the last sentence of the first section, which reposes in the legislature the duty of defining residence for voting purposes. Past attempts to define residence in constitutional language have, in this and other states, been highly unsuccessful. Constitutional language, however well considered, tends to leave gaps and ambiguities in the definition of residence, and courts have been reluctant to allow legislatures leeway to modify in any significant way what appears to be the intent of the constitution. *Again, any constitutional language is subject to obsolescence. The committee*

*has concluded that it is not humanly possible for this convention to define residence in a manner which will offer any assurance of future adequacy, and has therefore proposed to leave the matter to the legislature, as one of its continuing responsibilities in the field of elections.*

2 Official Record, Constitutional Convention 1961, p 2214 (emphasis added). The Address of the People reiterated that the purpose of permitting the Legislature to define residency was to allow it to ensure that it remained adequate to the voters' future needs:

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.

*Id* at 3365.

What the Legislature has done for the group of citizens at issue here—United States citizens living overseas who are the spouses and dependents of Michigan voters, but who have not lived in Michigan themselves—is exercise its broad constitutional authority to “define residence for voting purposes” to deem them residents of Michigan at the same Michigan address as the Michigan citizen whom they have accompanied overseas. *See* MCL 168.759a(3). As the Court of Claims correctly explained, those citizens have a clear nexus to Michigan:

[T]he 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 [Election Officials] Manual explains to local election officials that applications and AVBs from these spouses and dependents are to be tabulated even though the individual has never personally resided in Michigan. Rather, *the subject group members are treated as living with their spouse, parent, or someone serving a parental role at that person's last designated Michigan residence for voting purposes.*

*Mich Republican Party v Benson*, pp 17–18 (emphasis added).

Thus, MCL 169.759a(3) is an example of an appropriate use of legislative authority to define residency to protect the right to vote of these citizen spouses and dependents. MCL 169.759a(3) is precisely the type of statute dealing with “future adequacy” of residency requirements envisioned by the Constitutional Convention delegates.

**III. THE SECRETARY OF STATE’S INSTRUCTIONS ARE CONSISTENT WITH MICHIGAN ELECTION LAW.**

The MRP claims that the Secretary of State’s instructions are inconsistent with MCL 168.759a(3) and that they have a right to amend their Complaint to pursue that claim. MRP Br, p 28–30. However, this claim flounders on the simple fact that the instructions are guidance for election officials that do not have the force and effect of law. *See O’Halloran v Secretary of State*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2024) (Docket Nos. 166424 & 166425); slip op at 17–18.

**CONCLUSION AND RELIEF SOUGHT**

For all these reasons, *Amici Curiae* ask that the Court of Claims’ decision be affirmed.

Respectfully submitted,

/s/ Mark Brewer

MARK BREWER (P35661)  
ROWAN CONYBEARE (P86571)  
Two Towne Square, Suite 444  
Southfield, MI 48076  
(248) 483-5000  
[mbrewer@goodmanacker.com](mailto:mbrewer@goodmanacker.com)  
[rconybeare@goodmanacker.com](mailto:rconybeare@goodmanacker.com)

Attorneys for Proposed *Amici Curiae*

Dated: March 17, 2025

## Certificate of Compliance

I certify that this Brief complies with the word volume limitation set forth in MCR 7.212(B)(1) and with the format requirements of MCR 7.212(B)(5). I am relying on the word count of the word-processing system used to produce this document. The word count is 6,811.

Respectfully submitted,

*/s/ Mark Brewer*

MARK BREWER (P35661)  
ROWAN CONYBEARE (P86571)  
Two Towne Square, Suite 444  
Southfield, MI 48076  
(248) 483-5000  
[mbrewer@goodmanacker.com](mailto:mbrewer@goodmanacker.com)  
[rconybeare@goodmanacker.com](mailto:rconybeare@goodmanacker.com)

Attorneys for Proposed *Amici Curiae*

Dated: March 17, 2025

### **Proof of Service**

The undersigned certifies that on March 17, 2025, the foregoing instrument(s) electronically filed the foregoing papers with the Clerk of the Court using the Electronic Filing System, which will send notification of such filing to all attorneys of record.

*/s/ Rowan Conybeare*  
Rowan Conybeare