

SUMMONS

25 -

CASE NO.

—

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

☐ I served ☐ personally ☐ by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

☐ I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

☐ I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

☐ I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____ Date and time

Signature _____ on behalf of _____

Name (type or print) _____

SUMMONS

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Document received by the MI Court of Claims.

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Signature _____ on behalf of _____

Name (type or print) _____

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

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

Plaintiffs,

Case No. 25-_____-MZ

Hon. _____

v

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

Defendants.

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**VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given case number 24-000164-MZ and was assigned to Judge Sima G. Patel. The action is no longer pending.

NOW COME Plaintiffs the Michigan Republican Party, the Republican National Committee, and Cindy Berry, by and through their undersigned counsel, and state as follows in support of their Verified Complaint against Michigan Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater (collectively, the “Secretary”):

INTRODUCTION

1. The Michigan Constitution allows Michigan residents—and *only* Michigan residents—to vote in Michigan elections. *See* Const. 1963, art. 2, § 1 (“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.”) (emphasis added).

2. Article II, § 3 confirms that only current or former Michigan residents may vote in Michigan elections. It empowers the Legislature to reduce the residency requirement “for citizens who have resided in this state for less than six months” or waive the residency requirement “for former citizens of this state who have removed herefrom.” Pursuant to the plain language of Article II, § 3, the Legislature only has authority to waive residency requirements for *former* Michigan residence and, as a result, lacks authority to waive residency requirements for individuals who have *never* resided in Michigan. Even then, the Legislature’s authority to waive or reduce the residency requirement applies “[f]or purposes of voting in the election for president and vice-president of the United States only[.]” Thus, the Legislature’s authority to reduce or waive the residency requirement does not apply to voting for any other state or local office, or for voting on any ballot initiative whatsoever.¹

¹ 52 U.S.C. § 20302 provides that “Each State shall . . . permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office[.]” Thus, by operation of federal law, the residency requirement is preempted for all federal—not state or local—elections for absent uniformed services voters and overseas voters. However, it is important to note that federal law only extends the protections of UOCAVA to *former* residents of the United States. *See* 52 U.S.C. § 20310(1) (defining “absent uniformed services voter” as “(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote; (B) a member of the merchant marine who, by

3. The Michigan Election Law confirms that only current or past residents of Michigan may vote in Michigan elections. For example, MCL 168.10 defines “Qualified elector” as “a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.” By doing so, the Legislature expressly confirmed Article II, § 1’s *bona fide*² residence requirement by incorporating it into the definition of “qualified elector,” along with the local residency requirement the Constitution commands the Legislature to create and define.

4. Similarly, MCL 168.492 defines the qualifications of a person to register to vote as “[t]he individual must be a citizen of the United States; not less than 17-1/2 years of age; *a resident of this state*; and a resident of the township or city.” (emphasis added). This confirms that a person cannot register to vote in a Michigan election unless they are a resident of Michigan.

reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.”); see also 52 U.S.C. § 20310 (5) (defining “overseas voter” as “(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved; (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.”).

² The plain language of Article II, § 1 of the Michigan Constitution establishes a six-month durational residency requirement to vote in Michigan. However, federal law abrogates durational residency requirements like this for the presidential and vice-presidential elections. See 52 USC §10502. It has been further limited by U.S. Supreme Court case law holding durational residency requirements undergo strict scrutiny. See *Dunn v Blumstein*, 405 US 330, 342 (1972). The U.S. Supreme Court has upheld, however, 30-day durational residency requirements as surviving strict scrutiny. See *Burns v Fortson*, 410 US 686 (1973); *Marston v Lewis*, 410 US 679 (1973). Although Michigan has a 30-day residency requirement that is consistent with federal law, Plaintiffs do not raise that argument here because the existence of the *bona fide* residency requirement is sufficient to render MCL 168.759a(3) and Chapter 7 of the Secretary’s guidance unconstitutional. To be clear, Plaintiffs are not conceding that Michigan lacks a durational residency requirement of at least 30 days.

5. Thus, while the right to vote in Michigan is “an absolute constitutional right,” “certain requirements must be met before an individual can exercise his or her fundamental political right to vote.” *Promote the Vote v. Sec’y of State*, 333 Mich. App. 93, 120, 958 N.W.2d 861, 877 (2020). Current or former residency in the State of Michigan is one such requirement.

6. In contrast to these authorities, MCL 168.759a(3) purports to allow certain individuals who have never resided in Michigan to register to vote in Michigan elections. Specifically, it provides that “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.” Significantly, anyone who resided in Michigan before moving overseas but is otherwise a qualified elector falls within the definition of “overseas voter.” MCL 168.759a(19)(c). Thus, by its plain language, MCL 168.759a(3) purports to allow spouses and dependents of overseas voters to register to vote in Michigan elections even if they have *never* resided in Michigan.

7. MCL 168.759a(3) thus conflicts with both Article II, § 1 and Article II, § 3 of the Michigan Constitution. And, because MCL 168.759a(3) is unconstitutional, any guidance issued by the Secretary of State that attempts to implement it is necessarily unconstitutional as well.

8. Despite the Constitution and Michigan Election Law’s unambiguous command that no person may vote in Michigan unless they reside in Michigan, the Secretary of State has issued guidance that “A United States citizen *who has never resided in the United States* but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” Election Officials

Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs guidance at 3 (“Chapter 7”) (Attached as Exhibit A) (emphasis added).

9. On its face, Chapter 7 extends voter qualifications to individuals who have never resided in Michigan. As a result, certain people who have never resided in Michigan (or perhaps anywhere else in this country) are registering to vote and voting in Michigan elections. Michigan election officials have registered persons to vote who have never resided in Michigan and have allowed them to vote in Michigan’s state, local, and federal elections.

10. By allowing individuals who have *never* resided in Michigan to register to vote and cast a ballot in Michigan elections, the Secretary of State’s guidance conflicts with both Article II, § 1 and Article II, § 3 of the Michigan Constitution, as well as MCL 168.10 and MCL 168.492. So the Secretary of State’s guidance is both unconstitutional and unlawful.

11. As noted above, because MCL 168.759a(3) is unconstitutional, Chapter 7 is unconstitutional to the extent it attempts to implement that statute. But, setting aside MCL 168.759a(3)’s constitutional infirmities, the Secretary of State’s guidance also conflicts with MCL 168.759a(3). That statute only purports to allow a United States citizen who has never resided in Michigan to register to vote in Michigan elections if that person is: (1) “[a] spouse or dependent of an overseas voter”; (2) “accompanying that overseas voter”; and (3) “is not a qualified and registered elector anywhere else in the United States.” MCL 168.759a(3). In contrast, Chapter 7 provides that “anyone who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” In other words, Chapter 7 expands the waiver from “[a] spouse or dependent of an overseas voter who . . . is accompanying that overseas voter” to anyone who “has a parent, legal guardian,

or spouse who was last domiciled in Michigan.” Thus, even if MCL 168.759a(3) passes constitutional muster (it does not), the Secretary of State’s guidance is still unlawful.

12. By promulgating instructions that expand beyond the Michigan Constitution and the Michigan Election Law, the Secretary has also violated the Separation of Powers Clause and the Purity of Elections Clause. Simply, she has taken the Legislature’s power and used it to thwart them from fulfilling their duty to “enact laws . . . to preserve the purity of elections.” Const. 1963, art 2, § 4(2).

13. The Secretary’s instructions and MCL 168.759a(3) each violate both the Michigan Constitution and Michigan Election Law. Further, these violations injure Plaintiffs by diluting the votes of their members and harming their organizational missions. Moreover, MCL 168.759(a)(3) and Chapter 7 subject Cindy Berry to conflicting obligations. On the one hand, she takes an oath to uphold the Michigan Constitution and Michigan Election Law; on the other hand, she is supposed to follow the Secretary’s instructions. *See* MCL 168.765a(17) (“The secretary of state shall develop instructions consistent with this act . . . The instructions developed under this subsection are binding on the operation of an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.”). Given the discrepancy between Article II, §§ 1, 3 on the one hand and MCL 168.759a(3) and Chapter 7 on the other (to say nothing of the discrepancy between MCL 168.759a(3) and Chapter 7), Clerk Berry cannot both uphold the Michigan Constitution and follow Chapter 7. Further, MCL 168.759a(3) and Chapter 7 of the Secretary’s guidance injure the RNC’s and MRP’s interests in preventing an illegally structured and anti-competitive election environment. *See* Ex. B; Ex. C. Plaintiffs thus seek declaratory and injunctive relief that MCL 168.759a(3) is unconstitutional and that Chapter 7 misstates the law and must be rescinded. Plaintiffs also seek declaratory relief that,

subject to Article II, § 3 of the Michigan Constitution and federal law, only Michigan residents may register to vote and cast a ballot in Michigan elections.

PARTIES, JURISDICTION, AND VENUE

14. Plaintiff the Republican National Committee (the “RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14), with its principal place of business at 310 First Street, S.E., Washington D.C., 20003. The RNC manages the Republican Party’s business at the national level, including the development and promotion of the Republican Party’s national platform and election strategies. The RNC supports Republican candidates for public office at the federal and state levels across the country, including those on the ballot in Michigan’s forthcoming 2026 elections. The RNC also assists state parties throughout the country, including Plaintiff MRP, to educate, mobilize, assist, and turn out voters, and also by supporting MRP’s efforts to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and to protect the fundamental constitutional right to vote of the RNC’s members and its candidates. The RNC made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Michigan in past election cycles, and is doing so again in anticipation of the 2026 Michigan elections. The RNC has clear and obvious interests in the laws and rules under which it, and those it represents and supports, exercise their constitutional rights to vote and to participate in elections. The RNC brings this action on behalf of itself, its members, and its candidates. As a result, Plaintiff RNC has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its candidates and its members.³

³ See Affidavit of Michael Ambrosini, the Chief of Staff at the RNC (Attached as Exhibit B).

15. Plaintiff the Michigan Republican Party (“MRP”) is a “major political party” as that term is defined by the Michigan Election Law. See MCL 168.16. MRP maintains headquarters at 520 Seymour Street, Lansing, Michigan 48912. Among its general purposes, MRP promotes and assists Republican candidates who seek election or appointment to partisan federal, state, and local office in Michigan. MRP works to further its purpose by, among other things, devoting substantial resources toward educating, mobilizing, assisting, and turning out voters in Michigan. To that end, MRP has made significant contributions and expenditures in support of Republican candidates up and down the ballot in Michigan in past election cycles, and is doing so again in anticipation of the 2026 Michigan elections. Further, MRP works to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and works to protect the fundamental constitutional right to vote of its members and its candidates, and to promote their participation in the political process. MRP brings this action on behalf of itself, its members, and its candidates. As a result, Plaintiff MRP has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its candidates and its members.⁴

16. Both as representatives of their candidates and their voters, and as organizations in their own right, the Republican Committees (*i.e.*, Plaintiffs MRP and RNC) each have a substantial interest in getting Republican candidates elected to office—an interest that is unique and separate from any held by the public at large. See Ex. B; Ex. C. That includes ensuring that Republicans can seek office in a fair, competitive environment where the Michigan Constitution is enforced. Here, the relief sought would, among other things, (1) declare that Article 2, Section 1 of the Michigan Constitution contains a *bona fide* residency requirement; (2) declare that MCL 168.759a(3) is unconstitutional; (3) declare the current version of the Secretary’s Chapter 7

⁴ See Affidavit of Jessica Barefield, the Executive Director of the MRP (Attached as Exhibit C).

guidance is unconstitutional and enjoin its application; (4) declare the current version of the Secretary's Chapter 7 guidance is unlawful because it expands beyond the contours of Michigan Election Law (5) declare the current version of the Secretary's Chapter 7 guidance to be *ultra vires* because it goes beyond the scope of Michigan Election Law and so it must be rescinded under MCL 168.31; and (6) declare the current version of the Secretary's Chapter 7 guidance is unconstitutional because it conflicts with Article II, § 1 and Article II, § 3 of the Michigan Constitution and goes beyond the scope of Michigan Election Law, thus violating the separation of powers and the purity of elections clause. Thus, the interests of RNC and MRP in preventing an illegally structured and anti-competitive election environment is sufficient under MCR 2.605. See Ex. B; Ex. C.

17. Counting ballots of ineligible overseas voters who never resided in Michigan will result in an inaccurate tally of votes. Moreover, historically overseas voters overwhelmingly support Democratic candidates.⁵ Ex. C. Thus, counting the ballots of ineligible overseas voters will disproportionately harm Republican candidates and undermine the Republican candidates' rights to a fair and accurate electoral count. It will also dilute the lawful votes cast by Plaintiffs' members and voters. Counting ballots of ineligible overseas voters who never resided in Michigan also harms the RNC and MRP by subjecting their candidates to an illegally structured and anti-competitive election environment and negatively affecting the administration of elections.

18. The Republican Committees also spend significant resources to preserve voter confidence and turnout. These efforts are harmed when voters see that election officials accept

⁵ See e.g., <https://www.yahoo.com/news/could-overseas-voters-ticket-winning-202651757.html?guccounter=1> (leader of Democratic efforts to engage overseas voters stating "something like 80 percent of Americans abroad vote Democrat").

absent voter ballots without verifying the residency of the voter as required under the Michigan Constitution and Michigan Election Law.

19. Plaintiff Cindy Berry serves as the Clerk for the Township of Chesterfield and resides in Macomb County. Berry has sworn to uphold the Constitution and Michigan Election Law in the execution of her duties as Chesterfield Township clerk. She is also bound Chapter 7. Accordingly, Berry has attempted to reconcile Chapter 7 and MCL 168.759a(3) with Const. 1963, art. 2, § 1, Const. 1963, art. 2, § 3, and the Michigan Election Law, but finds that she cannot. As a local clerk, Berry seeks a declaration regarding whether clerks and election inspectors are, and will continue to be, subject to the Secretary's instructions including—but not limited to—her instruction that electors who have not ever resided in Michigan—may vote in Michigan. Without relief from this Court, Berry will have to choose which contradictory, binding authority she will follow.⁶

20. Plaintiff Berry is also a registered voter that voted in all of the 2024 election; she is registered to vote and plans to vote in all future Michigan elections. Clerk Berry has a direct, personal, and substantial interest in ensuring that her vote counts and is not diluted.

21. Defendant Jocelyn Benson is Michigan's Secretary of State and is being sued in her official capacity. Secretary Benson is the "chief elections officer of the state" responsible for overseeing the conduct of Michigan elections, and has "supervisory control over local election officials in the performance of their duties under the [Michigan Election Law]." MCL 168.21. When the Secretary instructs clerks on how to apply the law, the clerks are bound to follow her instructions. *See* MCL 168.765a(17) ("The secretary of state shall develop instructions consistent with this act . . . The instructions developed under this subsection are binding on the operation of

⁶ See Affidavit of Plaintiff Berry, Clerk of Chesterfield Township (Attached as Exhibit D).

an absent voter counting board or combined absent voter counting board used in an election conducted by a county, city, or township.”).

22. Defendant Jonathan Brater is Michigan’s Director of Elections and is being sued in his official capacity.

23. This Court has exclusive jurisdiction to “hear and determine any claim or demand, statutory or constitutional . . . or any demand for . . . equitable[] or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1)(a). Additionally, this Court has authority to grant injunctive and declaratory relief under MCR 3.310 and MCR 2.605 respectively.

24. Because Plaintiffs raise constitutional claims and ask this Court to order equitable, declaratory, and injunctive relief against Defendants, this Court has exclusive jurisdiction to hear these claims. For the same reason, venue is appropriate in this Court. See MCL 600.6419(1)(a), MCR 3.310, and MCR 2.605.

25. An actual controversy is present here. The Constitution provides: “Every citizen of the United States . . . who has resided in this state six months . . . shall be an elector and qualified to vote in any election[.]” And, while the Constitution empowers the Legislature to reduce or waive the residency requirement in limited circumstances, that authority applies “[f]or purposes of voting in the election for president and vice-president of the United States only,” and then only “for former citizens of this state who have removed herefrom.” Const., art. 2, § 3 (emphasis added). Meanwhile, various provisions of Michigan Election Law, i.e., MCL 168.10, and MCL 168.492 all confirm that state residency is a pre-requisite to register to vote in Michigan and to vote in Michigan. Despite these binding authorities, in Chapter 7 of her Election Officials Manual, the

Secretary has instructed clerks that “[a] United States citizen who has never resided in the United States . . . is eligible to vote in Michigan[.]” Ex. A at 3. The Constitution and Michigan Election Law and the Secretary’s instruction are all incompatible with one another. And Plaintiffs are harmed by the Secretary’s unlawful instruction. The Secretary’s instruction injures Plaintiffs where their members and candidates have their votes diluted by ballots which, under the terms of the Michigan Constitution and Michigan Election Law, ought not be accepted. See Ex. B; Ex. C. It also injures the RNC and MRP by subjecting their candidates to an illegally structured and anti-competitive election environment and negatively affecting the administration of elections. The Secretary’s instruction also injures Plaintiff Berry, who is subjected to competing legal duties. Unless this Court grants declaratory relief, Plaintiff Berry will be forced to apply *either* the Constitution *or* MCL 168.759a(3) *or* the Secretary’s instructions. Ex. D.

26. The injuries to Plaintiffs are at once completed and ongoing—i.e., they have already suffered injuries and will indefinitely continue to suffer additional injuries on an ongoing basis. See Ex. B; Ex. C; Ex. D. Plaintiffs are presently spending money to support candidates who are operating in an unlawful system in which there is a thumb-on-the-scale against them. Plaintiff Berry must soon decide which law she will apply in the upcoming primary and general elections. Absent relief from this Court, these injuries will recur indefinitely because local election officials will continue accepting and tabulating ballots that are constitutionally deficient; their error is caused at least in part by the incomplete direction set forth in Chapter 7. See Ex. B; Ex. C; Ex. D. A decision from this Court will redress the violation of Plaintiffs’ rights under the Michigan Constitution and will guide Plaintiffs’ and Defendants’ future conduct in this regard for the 2026 election and beyond. To be clear, the relief sought by Plaintiffs in this complaint would apply to the 2026 Primary Election, whether it is held in May or in August; the 2026 General Election, and

every other future primary election, general election, special election, school election, local election, or other election that is subject to the Constitution and/or Michigan Election Law.

LEGAL AND FACTUAL BACKGROUND

27. Article II, § 1 of the Constitution provides: “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.” The Constitution thus creates a *bona fide* state residency requirement in Michigan—only Michigan residents may vote in Michigan. To be clear, regardless of whether any durational component of the residency requirement is enforceable, there is still an enforceable *bona fide* state residency requirement.

28. Article II, § 3 confirms that Michigan has a *bona fide* state residency requirement. It provides: “For purposes of voting in the election for president and vice-president of the United States only, the legislature may by law establish lesser residence requirements for citizens who have resided in this state for less than six months and may waive residence requirements for former citizens of this state who have removed herefrom.”

29. Read in conjunction, Article 2, §§ 1 and 3 make clear that while the Legislature may “define residence for voting purposes,” the power to define the residency requirement is limited. That is, the Legislature cannot reduce or waive the residency requirement for all elections. Rather, the Michigan Constitution only empowers the Legislature to reduce or waive the residency requirement “[f]or purposes of voting in the election for president and vice-president of the United States only.” Const. 1963, art. II, § 3. Further, the Legislature may only “waive residence requirements for former citizens of this state who have removed herefrom.” Thus, Article II, § 3

makes plain that the Legislature can only “establish lesser residence requirements” for people who have “resided in this state for less than six months,” and only “waive residence requirements” for people who previously resided in Michigan—i.e., “former citizens of this state who have removed herefrom.” Further, this authority “only” extends to voting for the presidential and vice-presidential election (and, thus, no other elections).

30. If Article 2, § 1 granted the Legislature unlimited authority to define—and, as Defendants have maintained, *eliminate*—the residence requirement, then Article 2, § 3’s language allowing the Legislature to “lessen” or “waive” the residence requirement for the Presidential and Vice Presidential elections “*only*”, and its restriction that residency may only be waved “*for former citizens of this state who have removed herefrom*” would be rendered nugatory and surplusage. (Emphases added).

31. Thus, Article 2, § 1’s command that the Legislature may “define residence for voting purposes” plainly does not allow the Legislature to wholly eliminate the State residency requirement by allowing individuals who have never resided in Michigan to register to vote and cast a regular ballot in Michigan elections.

32. The Legislature fulfilled its Article 2, § 1 duty to “define residence for voting purposes” by enacting MCL 168.11(1). That statute provides that: “‘Residence’, as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a person has a residence separate from that of his or her spouse, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section does not affect existing judicial interpretation of the term residence.”

33. In MCL 168.11(2), the Legislature clarified that “ An elector does not gain or lose a residence while employed in the service of the United States or of this state, while engaged in the navigation of the waters of this state, of the United States, or of the high seas, while a student at an institution of learning, while kept at any state facility or hospital at public expense, or while confined in a jail or prison. Honorably discharged members of the armed forces of the United States or of this state who reside in the veterans’ facility established by this state may acquire a residence where the facility is located. The residence of a person who is a patient receiving treatment at a hospital or other facility under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, is the village, city, or township where the person resided immediately before admission to the hospital or other facility.”

34. In MCL 168.10, the Legislature defined “Qualified Elector” as “a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 *and who has resided in the city or township 30 days.*” (emphasis added). Looking at the definition of “Qualified Elector” from 30,000 feet, there are only two qualifications to be an elector in Michigan: that the putative elector possesses all the sub-qualifications described in Article I, § 1—one of which is state residency—and that the putative elector satisfies the legislature’s requirement of 30 days of local residency. Of course, residence is defined at MCL 168.11(1).

35. While MCL 168.10 and MCL 168.11 define who is a qualified elector and the meaning of local residency to be a qualified elector, MCL 168.492 defines the qualifications “for registration as elector.” (emphasis added). There, the Legislature explicitly states that only “a resident of Michigan” may register to vote. All together, the qualifications to register to vote are: an individual who is a citizen of the United States, is 17.5 years or older, a resident of Michigan,

and a resident of the township or city in which he or she seeks to register is qualified to register. Thus, although the qualifications to register as an elector are lower than the qualifications to cast a ballot as an elector—e.g., a 17.5 year-old can register to vote, but only an 18 year-old can cast a ballot—a person cannot be a qualified elector or even qualified to register as an elector unless they are a current or former resident of the State of Michigan.

36. By reading MCL 168.492’s qualifications for registration as an elector in combination with Article II, § 1’s qualifications to be an elector, it becomes clear that the Legislature intended to mirror the Constitution’s requirements, except that the age requirement is reduced from 18 years old to 17.5 years old.⁷ Thus, MCL 168.492 does not, in and of itself, purport to establish any novel requirements to register to be an elector. Rather, it merely confirms what is already in the Constitution—that only “a resident of this state” is qualified to register as an elector or cast a ballot in Michigan elections.

37. Taken together, Article II, §§ 1 and 3 of the Michigan Constitution, along with MCL 168.10, MCL 168.11, and MCL 168.492, all work in cohort to confirm a simple truth: only past or present Michigan residents may vote in Michigan elections.

**MCL 168.759a(3) violates Article II, § 1 and
Article II, § 3 of the Michigan Constitution.**

38. In contrast to the state-residency requirement embodied in MCL 168.10, MCL 168.11, MCL 168.492, and Article II, §§ 1 and 3, MCL 168.759a(3) purports to allow individuals who have *never* resided in Michigan to register as an elector and cast a ballot in Michigan elections.

⁷ The Legislature allows putative voters to register 6 months before they turn 18 so that those whose birthday’s fall close to the election do not have difficulty registering as an elector in time to vote. While the advent of same-day-voter-registration renders this six-month buffer largely unnecessary, the six-month buffer is still important because it allows putative qualified voters to register in time to select early voting or absent voting—options unavailable on election day or on the eve of election day.

It provides “[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 168.759a(3). As noted above, one of the requirements to be a qualified elector of a city or township of this state is to be “a resident of this state.” See MCL 168.492 (stating that, “to register as an elector in the township or city in which he or she resides,” an “individual must be . . . a resident of this state”); MCL 168.10 (defining “qualified elector” as “a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963”); Const. 1963, Art. II, § 1 (“Every citizen of the United states . . . who has resided in this state six months . . . shall be an elector and qualified to vote in any election except as otherwise provided in this constitution.”).

39. By relieving “[a] spouse or dependent of an overseas voter” of the need to be “a qualified elector of a city or township of this state,” MCL 168.759a(3) effectively waives all residency requirements for spouses and dependents of overseas voters. Indeed, in prior litigation, the Secretary of State has taken that exact position. See e.g. *Michigan Republican Party v Jocelyn Benson*, 24-000165-MZ, 2024 WL 4922921 at 4 (Mich Ct Cl), Defendant’s Brief in Opposition to Plaintiffs’ 10/14/2024 Motion for Summary Disposition, (arguing a spouse or dependent of a military or overseas voter may establish residency “through the primary military or overseas voter” without having ever resided in Michigan) (Ex. __); *Michigan Republican Party v. Jocelyn Benson*, 24-000165-MZ (Mich Ct Cl, Oct. 17, 2024), Hearing Transcript at 21-22 (Mr. Erik Grill, Defendants’ counsel: “The legislature passed 759a(3), which expressly provides for a spouse or dependent accompanying an overseas voter abroad to be able to use that overseas voter’s residence for purposes of verification.”) (Ex. __).

40. If, as Defendants have asserted, MCL 168.759a(3) waives all residency requirements for the spouses or dependents of overseas voters who have never resided in Michigan, that statute irreconcilably conflicts with Article II, § 3, which only permits the waiver of state residency requirements for *former* residents and, even then, only for the purposes of voting in an election for president and vice-president. To be constitutional, MCL 168.759a(3) can only waive state residency requirements for spouses and dependents of overseas voters who formerly resided in Michigan and only for the purpose of voting for the office of president and vice-president. However, nothing in the text of MCL 168.759a(3) suggests that it's residency waiver only applies to former residents who are voting for the office of president and vice president. So that statute is unconstitutional.⁸

Defendants' Election Official's Manual Chapter 7
violates the Michigan Election Law

41. Pursuant to her duty to exercise “supervisory control over local election officials in the performance of their duties under the [Michigan Election Law],” MCL 168.21, the Secretary instructs clerks that “A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” Ex. A at 3. The Secretary’s instructions are binding on all city and township clerks, to include Plaintiff Berry. *See* MCL 168.765a(17).

42. The Secretary’s instructions are contrary to Michigan Election Law. Recall that, in combination, MCL 168.10, MCL 168.11, and MCL 168.492 all unequivocally require that only past or present Michigan residents may register to vote and cast a ballot in Michigan. The

⁸ And, as noted above, because MCL 168.759a(3) is unconstitutional, any guidance that attempts to implement it—including Chapter 7—is necessarily unconstitutional as well.

Secretary's instructions ignore that requirement and allow a person who has "never resided" in Michigan to vote in Michigan elections. Ex. A at 3.

43. The Secretary's instructions also conflict with Michigan Election Law in another way. While MCL 168.759a(3) provides that "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[.]" the Secretary's instructions provide a person "who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan[.]" Thus, to the extent MCL 168.759a(3) is constitutional (it is not), the Secretary's instructions thus allow people to register to vote who are not eligible under MCL 168.759a(3) by expanding the scope of the residency waiver to not only "spouse[s] or dependent[s]" who are "accompanying" an overseas voter, but also to anyone who "has a parent, legal guardian, or spouse" who lived in Michigan before moving overseas, regardless whether they are accompanying that overseas voter.

Defendants' Election Official's Manual Chapter 7
violates the Michigan Constitution

44. In addition to violating the Michigan Election Law, the Secretary's instructions also conflict with Article II, §§ 1 and 3 of the Constitution because they allow persons who have never resided in the United States to vote in all elections, even though Article II, §§ 1 and 3 establish a Michigan residency requirement to register to vote or to actually vote in Michigan and only permit waiver of the residence requirements "for former citizens of this state *who have removed herefrom.*" (emphasis added). "Removal" from Michigan by a "former citizen[]" necessarily requires past residence in Michigan.

45. The Secretary's instructions are unconstitutional because they undo the plain residence requirement of Article II, §§ 1 and 3 by purporting to waive residency requirements for individuals who have never resided in Michigan and by extending that waiver to not only voting for president and vice president, but also voting for any office, question, or initiative that appears on the ballot in the applicable locality.

46. The Secretary's instructions are also unconstitutional because they infringe on the Legislature's powers and conflict with the plain meaning of the Michigan Election Law, thus violating the Separation of Powers Clause and by doing so prevent the Legislature from enforcing the Purity of Elections Clause.

47. Under the Constitution, "[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 3, § 2. Article II, § 4(2) commands "the legislature shall" enact laws "to preserve the purity of elections . . . [and] to guard against abuses of the elective franchise." To fulfill this command and its role as Michigan's legislature, see Article IV, § 1 ("the legislative power of the State of Michigan is vested in a senate and a house of representatives"), the Legislature enacted MCL 168.10

48. The Secretary has enacted instructions contrary to the Michigan Election Law and has thereby expanded the franchise beyond the limits set by MCL 168.10, MCL 168.11, MCL 168.492, and MCL 168.759a. By enacting instructions contrary to the Michigan Election Law, the Secretary has attempted to usurp the Legislature's power for her own, thereby violating Article II, § 4(2).

49. The Secretary's seizure of the Legislature's power has also upset the purity of elections clause, which commands the Legislature to "enact laws . . . to preserve the purity of

elections.” Const 1963, art 2, § 4(2). The Legislature has enacted laws to safeguard the purity of elections—for example, MCL 168.10, MCL 168.11, MCL 168.492, and MCL 168.759a. By issuing Chapter 7, the Secretary attempted to undo those laws and inject impurities into our elections. Accordingly, she has violated the Purity of Elections Clause.

50. As applied to Plaintiff Berry and the Republican Committees’ members, the Secretary’s instructions have impermissibly diluted their votes, and as applied to all Plaintiffs, infringed on their right to a fair and constitutional election. Ex. B; Ex. C; Ex. D. The instructions also place Plaintiff Berry at a crossroads; she must either follow the Constitution or the conflicting requirements of the Secretary’s instruction. Ex. D. Accordingly, Plaintiffs seek a declaration from this Court clarifying the law and holding that the Secretary’s Instructions—specifically the above-referenced section of Chapter 7, page 3—is unconstitutional and/or contrary to the Michigan Election Law.

**COUNT I: REQUEST FOR DECLARATORY JUDGMENT THAT
ARTICLE II, § 1 CONTAINS A *BONA FIDE* STATE RESIDENCY REQUIREMENT**

51. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

52. Under MCR 2.605(A)(1), “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment[.]”

53. Article II, § 1 provides only persons who have resided in Michigan for some period of time may vote in Michigan.

54. Article II, § 3 provides the Legislature may enact Legislation to “waive residence requirements for former citizens of this state,” but even then “[f]or purposes of voting in the election for president and vice-president of the United States only.”

55. Taken together, Article II, §§ 1 and 3 establish a *bona fide* requirement of Michigan residency to vote in Michigan elections.

56. In a prior case before this Court, Defendants argued the state residency requirement contained in the Constitution and the Michigan Election Law would not prevent persons who have never resided in Michigan from voting. *See e.g. Michigan Republican Party v Jocelyn Benson*, 24-000165-MZ, 2024 WL 4922921 at 4 (Mich Ct Cl), Defendant’s Brief in Opposition to Plaintiffs’ 10/14/2024 Motion for Summary Disposition, (arguing a spouse or dependent of a military or overseas voter may establish residency “through the primary military or overseas voter” without having ever resided in Michigan) (Ex. __); *Michigan Republican Party v. Jocelyn Benson*, 24-000165-MZ (Mich Ct Cl, Oct. 17, 2024), Hearing Transcript at 21-22 (Mr. Erik Grill, Defendants’ counsel: “The legislature passed 759a(3), which expressly provides for a spouse or dependent accompanying an overseas voter abroad to be able to use that overseas voter’s residence for purposes of verification.”) (Ex. __).

57. City and township clerks are bound to uphold the Michigan Constitution. See Ex. D.

58. City and township clerks—to include Plaintiff Clerk Berry—have received conflicting reports of the Constitution’s *bona fide* residency requirement.

59. For example, the clear import of Article II, §§ 1 and 3 of the Michigan Constitution—along with MCL 168.10 and MCL 168.492—is that someone who has never resided in Michigan cannot vote in Michigan elections. In contrast, Chapter 7 of the Secretary’s Election Officials Manual instructs clerks that “[a] United States citizen who has never resided in the United States . . . is eligible to vote in Michigan.” Ex A at 3. The Secretary’s instruction binds clerks. *See* MCL 168.765a(17). Similarly, MCL 168.759a(3) provides that spouse and dependents of overseas

voters who reside overseas and have never resided in Michigan can register to vote in Michigan even though they do not meet the qualifications of an elector, including the state-residency requirement

60. The dissonance between the Constitution on the one hand, and MCL 168.759a(3) and the Secretary's guidance on the other hand creates confusion, disorder, and strife because city and township clerks are subjected to two incompatible duties. Put simply, the Secretary instructs clerks accept ballots from persons who reside overseas and who have never been residents of Michigan, while the Constitution states people who have never been residents of Michigan may not vote here, and by extension may not register to vote here because those individuals are constitutionally ineligible to vote in Michigan.

61. Thus, there is an actual controversy between the parties. And injunctive and declaratory relief under MCR 2.605 are necessary to remedy the confusion. Without declaratory relief from this Court, Plaintiffs will be stuck with the Secretary's facially unconstitutional instructions, and Plaintiff Berry will be forced to choose between enforcing the Constitution or the Secretary's instructions. See Ex. B; Ex. C; Ex D. Further, declaratory relief is proper because Plaintiffs lack an adequate remedy at law to enforce the Michigan Constitution's express residency requirements, which have been and will continue to be violated by the unlawful acts such as are caused by the Secretary's Instructions and Michigan Election Law.

62. Therefore, Plaintiffs request the Court enter a declaratory judgment that Article II, § 1 and 3 of the Michigan Constitution create a *bona fide* requirement of Michigan residency for an individual to register to vote and cast a ballot in Michigan elections.

**COUNT II: REQUEST FOR DECLARATORY
JUDGMENT THAT MCL 168.759A(3) IS
UNCONSTITUTIONAL OR IT ONLY APPLIES TO FORMER CITIZENS VOTING
FOR PRESIDENT AND VICE PRESIDENT**

63. MCL 168.759a(3) provides “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.”

64. MCL 168.492 defines the qualifications of a person to register as an elector in a township or city as: “The individual must be a citizen of the United States; not less than 17-1/2 years of age; a resident of this state; and a resident of the township or city.” Similarly, MCL 168.10 defines “Qualified elector” as “a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.” In turn, Article II, § 1 of the Michigan Constitution provides that “Every citizen of the United States . . . who has resided in this state six months . . . shall be an elector and qualified to vote in any election except as otherwise provided in this constitution.”

65. On its face, MCL 168.759a(3) purports to waive *all* the qualifications for being an elector of a city or township in Michigan, including the requirement that a putative elector be “a resident of this state.” And the plain language of MCL 168.759a(3) is not limited to any particular election or any voting for any particular office. Thus, the plain language of MCL 168.759a(3) allows an individual who has never resided in Michigan to register to vote in a Michigan election and vote for not only the office of president and vice president of Michigan, but also every state, federal, and local office, as well as every state and local ballot initiative.

66. The Secretary and the other Defendants have previously taken the position that MCL 168.759a(3) waives *all* residency requirements for the spouses and dependents of overseas voters, even if they have *never* resided in Michigan. *See e.g. Michigan Republican Party v Jocelyn Benson*, 24-000165-MZ, 2024 WL 4922921 at 4 (Mich Ct Cl), Defendant’s Brief in Opposition to

Plaintiffs’ 10/14/2024 Motion for Summary Disposition, (arguing a spouse or dependent of a military or overseas voter may establish residency “through the primary military or overseas voter” without having ever resided in Michigan) (Ex. __); *Michigan Republican Party v. Jocelyn Benson*, 24-000165-MZ (Mich Ct Cl, Oct. 17, 2024), Hearing Transcript at 21-22 (Mr. Erik Grill, Defendants’ counsel: “The legislature passed 759a(3), which expressly provides for a spouse or dependent accompanying an overseas voter abroad to be able to use that overseas voter’s residence for purposes of verification.”) (Ex. __). By waiving all residency requirements and thus allowing individuals who have never resided in Michigan to register to vote and cast a ballot in Michigan, then MCL 168.759a(3) violates Article II, § 3 of the Constitution, which provides that the Legislature may only waive the state residence requirements “for former citizens of this state who have removed herefrom.” MCL 168.759a(3) also violates Article II, § 3 of the Constitution because it purports to waive the state residence requirements for the purposes of voting for all state, federal, and local offices (and ballot initiatives) rather than “for president and vice-president of the United States only.”

67. MCL 168.759a(3) could be held to be constitutional if it were read as waiving the residence requirements for former citizens only, and then only for the purposes of voting for president and vice-president of the United States (and no other state or local offices or initiatives).⁹

68. This controversy is not merely hypothetical. The Secretary supports a reading of MCL 168.759a(3) that waives *all* residency requirements for the purposes of voting for all offices and thus causes it to conflict with Article II, § 3 of the Constitution. If the Secretary’s reading is

⁹ 52 U.S.C. § 20302 provides that “Each State shall . . . permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office[.]” Thus, the residency requirement is preempted for all federal—not state or local—elections for absent uniformed services voters and overseas voters

correct, then MCL 168.759a(3) is unconstitutional. By contrast, if MCL 168.759a(3) is read as waiving the requirements for former residents only, and then only for the presidential and vice-presidential elections only, then MCL 168.759a(3) would not run afoul of Article II, § 3 of the Constitution.

69. The potential dissonance between MCL 168.759a(3) and the Constitution has created confusion, disorder, and strife because city and township clerks—like, for example, Clerk Berry—are subjected to two incompatible duties. The Constitution states that the residency requirement may not be waived except for former residence and then only in presidential or vice-presidential elections, but MCL 168.759a(3) might be—indeed the Secretary has applied this reading—read to waive the residency requirement for all elections.

70. Declaratory relief is necessary to remedy the confusion caused by these competing statements of law. Without declaratory and injunctive relief from this Court, Plaintiffs will be stuck with two incompatible authorities, and Plaintiff Berry will be forced to choose between enforcing the Constitution and MCL 168.759a(3) (as interpreted by Plaintiffs) or the Constitution or MCL 168.759a(3) (as interpreted by Defendants). See Ex. B; Ex. C; Ex D.

71. Therefore, Plaintiffs request the Court enter a declaratory judgment that MCL 168.759a(3) is unconstitutional because it conflicts Article II, § 1 and 3 of the Michigan Constitution. Plaintiffs further request injunctive relief enjoining Defendants from enforcing MCL 168.759a(3) to the extent it conflicts with Article II, § 1 and 3 of the Michigan Constitution.

**COUNT III: REQUEST FOR DECLARATORY AND INJUNCTIVE
RELIEF THAT THE SECRETARY'S GUIDANCE IS UNCONSTITUTIONAL
BECAUSE IT VIOLATES THE STATE RESIDENCY REQUIREMENT**

72. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

73. The Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs Guidance (“Chapter 7”) provides “A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” Chapter 7 at 3.

74. Article II, § 1 of the Michigan Constitution provides only persons who have resided in Michigan are qualified to vote in Michigan.

75. Article II, § 3 of the Michigan Constitution provides “For purposes of voting in the election for president and vice-president of the United States only, the legislature . . . may waive residence requirements for former citizens of this state who have removed herefrom[.]”

76. Thus, while the Legislature is authorized to waive residency requirements for certain individuals, it can only do so for “former citizens” who have “removed” themselves from Michigan, and then “[f]or the purposes of voting in the election for president and vice-president of the United States only” (i.e., not for any other purpose). *Id.*

77. Chapter 7 is inconsistent with the Constitution. While the Constitution contains a *bona fide* residency requirement, Article II, § 1, and permits the *Legislature* to waive the *bona fide* residency requirement only for former residents to vote for presidential and vice-presidential candidates, Chapter 7 purports to waive the residence requirement such that a person who has never resided in Michigan can vote in for all state, federal, and local elections.

78. Accordingly, this section of Chapter 7 conflicts with the Constitution and must be struck down.

79. The dissonance between Chapter 7 and the Constitution has created confusion, disorder, and strife because city and township clerks—like, for example, Clerk Berry—are

subjected to two incompatible duties. The Constitution states that the residency requirement may not be waived except for former residence and then only in presidential or vice-presidential elections, but Chapter 7 purports to waive the residency requirement for all elections.

80. Injunctive and declaratory relief are necessary to remedy the confusion caused by these competing statements of law. Without declaratory and injunctive relief from this Court, Plaintiffs will be stuck with two incompatible authorities, and Plaintiff Berry will be forced to choose between enforcing the Constitution or Chapter 7. *See* Ex. B; Ex. C; Ex D. Therefore, plaintiffs request the Court enter a declaratory judgment that Chapter 7 is unlawful because it violates Article II, § 1 and 3 of the Michigan Constitution. Plaintiffs further request injunctive relief directing the Secretary to rescind her unconstitutional instructions and enjoining her from issuing similarly flawed instructions.

**COUNT IV: REQUEST FOR DECLARATORY AND INJUNCTIVE
RELIEF THAT SECRETARY'S INSTRUCTIONS VIOLATE THE MICHIGAN
ELECTION LAW**

81. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

82. The Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs Guidance (“Chapter 7”) provides “A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” Chapter 7 at 3.

83. MCL 168.10 defines who is qualified to vote in Michigan. It defines “Qualified elector” as “a person who possesses the qualifications of an elector as prescribed in section 1

of article II of the state constitution of 1963 and who has resided in the city or township 30 days.”

84. The Legislature defined who is qualified to register to vote in MCL 168.492. MCL 168.492 provides “Each individual who has the following qualifications of an elector is entitled to register as an elector in the township or city in which he or she resides. The individual must be a citizen of the United States; not less than 17-1/2 years of age; ***a resident of this state***; and a resident of the township or city.” (emphasis added).

85. MCL 168.759a(3) provides a limited waiver of the *local* residency requirement by providing: “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.”

86. Whereas Chapter 7 provides that persons who have never resided in Michigan are eligible to vote, MCL 168.10, MCL 168.492, and MCL 168.759a(3) contemplate Michigan residency as an essential element of the right to register to vote or to actually vote. Accordingly, Chapter 7 is inconsistent with the Michigan Election Law because it expands the franchise beyond the contours contemplated by the Legislation. Chapter 7 and must be struck down.

87. The dissonance between Chapter 7 and Michigan Election Law has created confusion, disorder, and strife because city and township clerks—like, for example, Clerk Berry—are subjected to two incompatible duties. The Michigan Election Law requires state residency, but Chapter 7 purports to waive the residency requirement.

88. Injunctive and declaratory relief are necessary to remedy the confusion caused by these competing statements of law. Without a declaratory judgment from this Court, Plaintiffs will

be stuck with two incompatible authorities, and Plaintiff Berry will be forced to choose between enforcing the Michigan Election Law or the Secretary's instructions. *See* Ex. B; Ex. C; Ex D.

89. Therefore, Plaintiffs request the Court enter a declaratory judgment that Chapter 7 is unlawful because it violates the Michigan Election Law's state residency requirements. Plaintiffs further request injunctive relief directing the Secretary to rescind her unlawful instructions and enjoining her from issuing similarly flawed instructions.

**COUNT V: REQUEST FOR DECLARATORY AND INJUNCTIVE
RELIEF THAT THE SECRETARY'S GUIDANCE IS
ULTRA VIRES BECAUSE IT EXCEEDS HER AUTHORITY UNDER THE MICHIGAN
ELECTION LAW**

90. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully stated herein.

91. The Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs Guidance ("Chapter 7") provides "A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state." Chapter 7 at 3.

92. MCL 168.759a(3) provides "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."

93. MCL 168.759a(3) allows persons to apply for an absent voter ballot even though they are "not a qualified elector of a city or township of this state" if they meet other criteria—it does not permit a complete waiver of the *bona fide* residency requirement. Chapter 7 expands on this limited residency waiver by purporting to waive *all* residency requirements.

94. MCL 168.759a(3) purports to waive all residency requirements for “[a] spouse or dependent of an overseas voter” who “is accompanying” that overseas voter. Chapter 7, however, expands the scope of the statutory language in two ways.

95. First, while MCL 168.759a(3) only purports to waive residency requirements for “spouse[s] or dependent[s] of an overseas voter,” Chapter 7 purports to waive residency requirements for anyone who has “a parent, legal guardian, or spouse who was last domiciled in Michigan.”

96. Second, while MCL 168.759a(3) requires that the spouse or dependent seeking to vote be currently “accompanying” the overseas voter, Chapter 7 eliminates that requirement.

97. Upon information and belief, there are persons who qualify to vote in Michigan elections under Chapter 7’s standard but do not qualify to vote in Michigan under MCL 168.759a(3)’s standard.

98. In two ways, therefore, Chapter 7 impermissibly expands on MCL 168.759a(3) limited waiver of residency requirements.

99. MCL 168.31(1)(a) provides “The secretary of state shall do all of the following: . . . issue instructions . . . for the conduct of elections and registrations in accordance with the laws of this state.”

100. The Secretary’s instructions, which go far beyond the plain language of MCL 168.759a(3), are not “in accordance with the laws of this state.” So they must be rescinded.

101. The Secretary’s instructions, which expand on MCL 168.759a(3) limited waiver of the local residency requirements are *ultra vires* and must be rescinded.

102. Plaintiffs request a declaratory judgment that the Secretary’s instructions at Chapter 7 page 3 are *ultra vires* and not in accordance with the laws of this state. Plaintiffs further request

injunctive relief directing the Secretary to rescind her unlawful instructions and enjoining her from issuing similarly flawed instructions.

103. The dissonance between Chapter 7 and MCL 168.759a(3) has created confusion, disorder, and strife because city and township clerks—like, for example, Clerk Berry—are subjected to two incompatible duties. MCL 168.759a(3) states that the local residency requirement may be waived for a limited class of people, but Chapter 7 purports to waive the state residency requirement for a wider class of people. Chapter 7 and MCL 168.759a(3) are thus in conflict, and without declaratory and injunctive relief from this Court clerks will be subjected to incompatible duties.

104. Injunctive and declaratory relief are necessary to remedy the confusion caused by these competing statements of law. Without a declaratory judgment from this Court, Plaintiffs will be stuck with two incompatible authorities, and Plaintiff Berry will be forced to choose between enforcing the Michigan Election Law or the Secretary's instructions. *See* Ex. B; Ex. C; Ex D.

105. Plaintiffs request a declaratory judgment that the Secretary's instructions at Chapter 7 page 3 are *ultra vires* and not in accordance with the laws of this state. Plaintiffs further request injunctive relief directing the Secretary to rescind her unlawful instructions and enjoining her from issuing similarly flawed instructions.

**COUNT VI: REQUEST FOR DECLARATORY AND INJUNCTIVE
RELIEF THAT THE SECRETARY'S GUIDANCE GOES BEYOND
MICHIGAN ELECTION LAW AND THUS VIOLATES SEPARATION OF POWERS
AND THE PURITY OF ELECTIONS CLAUSE.**

106. Under the Constitution, “[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Const 1963, art 3, § 2.

107. Article II, § 4(2) commands “the legislature shall” enact laws “to preserve the purity of elections . . . [and] to guard against abuses of the elective franchise.” To fulfill this command and its role as Michigan’s legislature, *see* Article IV, § 1 (“the legislative power of the State of Michigan is vested in a senate and a house of representatives”), the Legislature enacted MCL 168.10. MCL 168.10 defines who is qualified to vote in Michigan. It defines “Qualified elector” as “a person who possesses the qualifications of an elector as prescribed in section 1 of article II of the state constitution of 1963 and who has resided in the city or township 30 days.”

108. The Legislature has defined who is qualified to register to vote in MCL 168.492. MCL 168.492 provides “Each individual who has the following qualifications of an elector is entitled to register as an elector in the township or city in which he or she resides. The individual must be a citizen of the United States; not less than 17-1/2 years of age; *a resident of this state*; and a resident of the township or city.” (emphasis added).

109. In contrast, the Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs Guidance (“Chapter 7”) provides “*A United States citizen who has never resided in the United States* but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.” Chapter 7 at 3.

110. The commands of MCL 168.492, and the Michigan Election Law generally, and Chapter 7 page 3 are incompatible. Either only persons who are “a resident of this state” may register to vote, or a person “who has never resided in the United States” may register to vote.

111. The Secretary's instructions thus violate the Separation of Powers because by instructing clerks to register persons to vote that are not qualified to be registered under Michigan law she has effectively legislated new grounds for voter qualifications.

112. Seizing the Legislature's power, the Secretary has also upset the Purity of Elections Clause, which commands the Legislature to "enact laws . . . to preserve the purity of elections." Const 1963, art 2, § 4(2). The Legislature enacted a definition of who is qualified to register to vote, but the Secretary has disregarded those definitions and enacted new, contrary instructions that erode the purity of elections. Thus, the Secretary has violated the separation of powers by taking the Legislature's power and using it in a manner inconsistent with the Legislature's duty to preserve the purity of elections.

113. Plaintiffs request a declaratory judgment that the Secretary's instructions at Chapter 7 page 3 violate the Separation of Powers Clause and the Purity of Elections Clause.

114. Plaintiffs further request injunctive relief ordering the Secretary to rescind her violative instructions and enjoining her from issuing similarly violative instructions.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court

- A. Declare that Article 2, Section 1 of the Michigan Constitution contains a *bona fide* residency requirement;
- B. Declare that MCL 168.759a(3) is unconstitutional to the extent it conflicts with Article II, Sections 1 and 3 of the Michigan Constitution;
- C. Grant declaratory relief finding the current version of the Secretary's Chapter 7 guidance is unconstitutional and enjoin its application;
- D. Declare the current version of the Secretary's Chapter 7 guidance is unlawful

because it expands beyond the contours of MCL 168.759a(3);

E. Declare the current version of the Secretary's Chapter 7 guidance to be *ultra vires* because it goes beyond the scope of MCL 168.759a(3)

F. Declare the current version of the Secretary's Chapter 7 guidance is unconstitutional because it goes beyond the scope of MCL 168.11, thus violating the Separation of Powers Clause and the Purity of Elections Clause;

G. Direct the Secretary to rescind her Chapter 7 guidance because it is unconstitutional, unlawful, and *ultra vires*;

H. Enjoin the Secretary from issuing similarly flawed guidance;

I. Award Plaintiffs their costs, expenses, and attorney fees incurred in this action; and

J. Award any other relief this Honorable Court deems just and equitable.

A word on timing: the primary election is currently scheduled for August 4, 2026. Military and overseas voter ballots must be distributed "not later than 45 days before an election," which for the August primary would be June 20, 2026. *See* MCL 168.759a(5). For the relief sought by Plaintiffs to be effective for the 2026 August primary election, Plaintiffs need final relief, i.e., relief post-any appellate proceedings, **no later than June 20, 2026. Realistically, Plaintiffs need final relief two or three weeks before June 20, 2026** so the Court's order can be disseminated and implemented throughout Michigan, and so overseas voters who are not eligible to vote in Michigan can find another jurisdiction in which they may be eligible to vote. Plaintiffs therefore respectfully ask the Court to advance this case on the docket so that there is final, post-appellate relief well before June 20, 2026. Plaintiffs reserve the right to move for expedited consideration of this case if necessary.

Dated: November 21, 2024

Charles R. Spies (P83260)
Dickinson Wright PLLC
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Respectfully submitted,

/s/ Jonathan B. Koch
Jonathan B. Koch (P80408)
Brandon L. Debus (P81159)
Daniel C. Ziegler (P86312)
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Attorneys for Plaintiffs

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VERIFICATION

I, Michael Ambrosini, a representative of the Republican National Committee (the "RNC"), being duly sworn and being authorized to give this Verification on behalf of the RNC in support of the allegations contained in the foregoing Verified Complaint, do hereby declare pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.



By: Michael Ambrosini
Its: RNC Chief of Staff

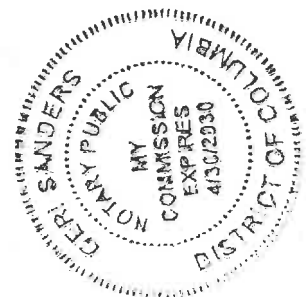
Subscribed and sworn to before me this 21 day of November, 2025.

Geri Sanders
Geri Sanders, Notary Public

DC County, State of

My commission expires: 4/30/2030

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VERIFICATION

I, Jessica Barefield, a representative of the Michigan Republican Party (the "MRP"), being duly sworn and being authorized to give this Verification on behalf of the MRP in support of the allegations contained in the foregoing Verified Complaint, do hereby declare pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.

Jessica Barefield

By: Jessica Barefield
Its: Executive Director

Subscribed and sworn to before me this 18 day of November, 2025.

Katie Clark

Katie Clark, Notary Public

Livingston County, State of Michigan

My commission expires: 10-1-30

Katie Clark

Notary Public

Livingston County, Michigan

Comm Expires 10-1-30

Acting in Livingston County, Michigan

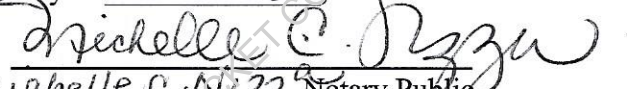
VERIFICATION

I, Cindy Berry, being first duly sworn, depose and declare that I am a resident of the state of Michigan and am a duly qualified as a voter in this state. While I may not have personal knowledge of all of the facts recited in this Verified Complaint, the information contained therein has been collected and made available to me by others, and I declare, pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.


Cindy Berry

Subscribed and sworn to before me this

20th day of November, 2025.

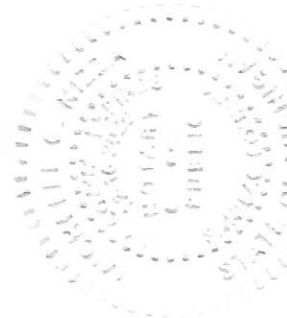

Michelle C. Nizza, Notary Public

SANILAC County, State of MI

My commission expires: 12-16-2029

MICHELLE C. NIZZA
Notary Public, State of Michigan
County of Sanilac
My Commission Expires 12-16-2029
Acting in the County of MACOMB
County

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Document received by the MI Court of Claims.

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

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

Plaintiffs,

Case No. 25-_____-MZ

Hon. _____

v

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

Defendants.

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Attorneys for Plaintiffs

EXHIBIT LIST TO VERIFIED COMPLAINT

Exhibit A	Election Officials Manual Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs
Exhibit B	Affidavit of Michael Ambrosini
Exhibit C	Affidavit of Jessica Barefield
Exhibit D	Affidavit of Cindy Berry

Exhibit A

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Election Officials Manual

Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs

July 2024

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I. Introduction

This chapter explains the federal programs that provide special procedures and protections for military and overseas voters. It includes explanations of the programs, instructions for clerks on how to comply with the programs, and technical information about how to document that compliance in the QVF. Questions about the content of this chapter should be directed to Elections@Michigan.gov.

II. Federal laws for Military and Overseas Voters (UOCAVA and MOVE)

In 1986, the federal government passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which provided special registration and absentee voting provisions for military and overseas civilians. In addition, UOCAVA authorized the use of the Federal Write-In Absentee Ballot (FWAB). The Federal Voting Assistance Program (FVAP) was created by the Department of Defense to oversee UOCAVA. In 2009, the federal Military and Overseas Empowerment Act (MOVE Act) and corresponding state legislation expanded UOCAVA by allowing a UOCAVA voter to submit a single AV application for all elections in a calendar year, allowing ballots to be sent to UOCAVA voters via email or fax, establishing a 45-day absent voter ballot delivery requirement for UOCAVA voters, and expanding the use of the FWAB. In 2012, the Michigan State Legislature passed Public Act 279, which further expanded the FWAB to include local and state offices.

UOCAVA and subsequent federal and state laws protect members of a uniformed service on active duty and dependents of such members, members of the Merchant Marine and dependents of such members, civilians living overseas, and National Guardsmen activated on state orders. This chapter refers to such voters as “UOCAVA voters.”

Due to the strict timing requirements for issuance of absent voter ballots to UOCAVA voters, clerks should give priority to the processing of absent voter ballot applications received from such voters. All UOCAVA voters who request an absent voter ballot more than 45 days prior to an election must be sent that ballot 45 or more days before the election. All UOCAVA voters



who request an absent voter ballot 45 or fewer days prior to the election must be sent an absent voter ballot within 24 hours of the clerk's receipt of the UOCAVA voter's request. The Bureau of Elections provides all clerks with an electronic ballot that can be used to comply with the requirements of UOCAVA and subsequent statutes. Clerks can always send this ballot to a UOCAVA voter if necessary, including by printing and mailing the ballot if printed ballots are not yet available.

Federally required ballot tracking for UOCAVA voters

Ballots sent to and received from UOCAVA voters must be tracked in the QVF. Federal law requires a "free access system" that allows a military or overseas voter to track whether their absent voter ballot request has been received, if their absent voter ballot has been mailed, and if their absent voter ballot has been received and accepted by their local clerk. QVF data is displayed on Michigan.gov/Vote to fulfill this requirement. In addition to tracking UOCAVA voters' ballots in the QVF, the Bureau of Elections recommends that clerks record the dates each absent voter ballot was issued on the absent voter ballot request form submitted by the relevant UOCAVA voter.

III. Registering military and overseas voters

Many military and overseas voters register to vote using the *Federal Post Card Application* (FPCA) or the Federal Write-In Absentee Ballot (FWAB) Voter Information page. The FPCA and FWAB may be mailed, emailed, or faxed to the local clerk. A clerk who receives an FPCA or an FWAB form from a UOCAVA voter must register that person to vote. Additionally, both the FPCA and the FWAB can serve as both a voter registration form and an absent voter ballot application. If the registrant requested an absent voter ballot using the FPCA or FWAB, and if an election is occurring within 45 days of the clerk's receipt of the completed FPCA or FWAB, the clerk must immediately send the voter an absent voter ballot.

Eligibility to register to vote using the FPCA or FWAB

To be eligible to register to vote using the FPCA or the FWAB, the voter must be absent from their jurisdiction of residence. If the voter is a civilian, the voter must be living outside of the United States and its territories. If the voter is a member of a uniformed service on active duty, a member of the Merchant Marine, or a National Guardsman activated on state orders, or if the voter is a dependent of a member of any of the listed organizations, the voter is eligible to register to vote using the FPCA or FWAB regardless of whether the voter is serving overseas or inside the United States. Each UOCAVA voter must submit their own FPCA or FWAB form.

A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.

Registration address for UOCAVA voters

A UOCAVA voter may register to vote at their last address of residence in the jurisdiction in which they are registering even if someone else now resides at that address, if the building where the voter resided has been demolished, or if the address no longer exists. The only requirement is that the address supplied by the voter is the last address which the voter considered their permanent residence within the jurisdiction in question.

Obtaining the FPCA or FWAB form

Protected voters may obtain the FPCA or FWAB forms at fvap.gov. FPCA and FWAB forms are postage paid and provided by the federal government for use by protected voters. Variations of both forms are provided. All variations of the FPCA are acceptable for use.

Clerks must also provide FPCA and FWAB forms to a voter upon request.

Registration deadline for UOCAVA voters

The registration deadline for UOCAVA voters, as for all Michigan voters, is 8 p.m. on Election Day.

Incomplete registration submitted by a UOCAVA voter

If a UOCAVA voter submits an incomplete voter registration, the clerk must notify the voter of the rejection and the reason for the rejection. The clerk must also attempt to correct the incomplete registration, if the incomplete registration was due to a minor or clerical error. The clerk's notification of the UOCAVA voter of the rejection of the voter's registration and the reason for that rejection can be made by letter, fax or email. The fvap.gov website also provides a response card that clerks may use for this purpose.

Entering a UOCAVA voter's registration into the QVF

All UOCAVA registrations must be tracked in QVF. The voter's registration location should be entered as "Federal Post Card Application." The clerk must then select whether the voter is a military or overseas voter, as shown in the following graphic:

The screenshot shows a web form for entering voter registration information. At the top, there are tabs for 'DIGITAL SIGNATURE' (PRIMARY and SECONDARY) and a 'NO IMAGE' placeholder. To the right, the 'UOCAVA STATUS' dropdown menu is open, showing options: 'NON-UOCAVA', 'MILITARY' (highlighted with a blue bar and a circled '1'), 'OVERSEAS CIVILIAN', and 'OVERSEAS - LEGACY'. Below this is an 'FPCA' checkbox. The 'REGISTRATION LOCATION' dropdown menu is also open, showing a list of options with 'FEDERAL POST CARD APPLICATION' highlighted (marked with a circled '2'). Other options include 'CLERKS OFFICE AND OTHER', 'MAIL REGISTRATION', 'SOS BRANCH OFFICES', 'SOS RENEWAL BY MAIL PROGRAM', 'VR AGENCIES SERVING DISABLED PERSONS', and 'VR PUBLIC ASSISTANCE AGENCIES'. At the bottom, there are links for 'ABOUT', 'CONTACT', 'LOGOUT', and 'POLICIES'.

The spouse of a member of the military should be marked as a military voter.

Once the voter has been entered into the QVF, the clerk should prepare a master card for the voter. The clerk should also send the voter a voter information card. The voter information card should be sent in an envelope addressed to the mailing address supplied by the voter. The clerk should not send the voter information card to the UOCAVA voter's address within the clerk's jurisdiction, because federal law permits UOCAVA voters to register to vote at their last permanent residence within the jurisdiction, even if the voter no longer maintains that residence.

IV. Receiving absent voter ballot applications from UOCAVA voters

Absent voter ballot requests from UOCAVA voters are handled differently from absent voter ballot applications from other Michigan voters.

Specifically, an absent voter ballot request from a UOCAVA voter entitles that voter to be sent an absent voter ballot for every election in the calendar year during which the request was made. If an absent voter ballot request from a UOCAVA voter is received after a November election, the request must be treated as having arrived in the following calendar year, and the UOCAVA voter must be sent an absent voter ballot for each election occurring in the following calendar year.

While most UOCAVA voters tend to submit their absent voter ballot request by using an FPCA or FWAB, a UOCAVA voter may request their absent voter ballot using any method that any other voter may use to submit an absent voter ballot application. A UOCAVA voter may request an absent voter ballot by emailing or faxing a signed *Absent Voter Ballot Application* to their clerk. However, in that case, the UOCAVA voter should verify with their clerk that they are identified in QVF as a UOCAVA voter to ensure that they are sent a ballot early enough to allow for overseas mail.

Under federal law, if an absent voter ballot request is received from a UOCAVA voter more than 45 days prior to an election, the clerk must send the UOCAVA voter a ballot 45 or more days prior to the election.

A UOCAVA voter's request for an absent voter ballot should be stored with the other, non-UOCAVA absent voter ballot applications received by the clerk.

Following the Proposal 2022-2 amendments to the State Constitution, Michigan voters may join the state's permanent mail ballot list and receive an absent voter ballot for all future elections. However, UOCAVA voters must complete a FPCA (or ensure they are identified in QVF as a UOCAVA voter) each year to ensure that they are sent a ballot early enough to allow for overseas mail.

Late-mailed UOCAVA ballots

If a UOCAVA voter requests an absent voter ballot more than 45 days prior to the election, and if the ballot is not sent 45 or more days prior to the

election, the UOCAVA voter is granted one extra day to return the ballot for each day between the forty-fifth day prior to the election and the day that the absent voter ballot is sent to the UOCAVA voter.

For example, if the UOCAVA voter requested the ballot more than 45 days prior to the election, and the ballot is sent on the fortieth day prior to the election, the ballot must be counted if it arrives five or fewer days after Election Day, as long as it was executed and sent by the close of polls on Election Day. However, the election may be formally certified before the end of this extension time if the number of outstanding ballots allowed an exception would not alter the outcome of the election.

Recording receipt of an absent voter ballot application in the QVF

The clerk should enter a UOCAVA voter's absent voter activity into the QVF in the same manner as any other voter's, except that the clerk must also ensure that the voter's UOCAVA status, FPCA status, FWAB Received status, and delivery method are completed. Additionally, the clerk must ensure that the voter's email address is completed if the voter has requested their ballot via email.

To record this information in the QVF, the clerk should open the voter's file within the QVF and click the "Absentee Voter Ballot" button. The clerk should record receipt of the absent voter ballot application as normal, except that the clerk should select "UOCAVA" in the "UOCAVA Status" dropdown. The clerk should also check the FPCA box if the application was made via an FPCA form.

The screenshot shows the 'APPLICATIONS' form in the QVF system. It has a blue header bar with the title 'APPLICATIONS'. Below the header, there are two main sections: 'SENT' and 'RECEIVED'. Each section has a text input field and a calendar icon. To the right of these fields is a dropdown menu labeled 'UOCAVA STATUS' with a red circle 'A' next to it. The dropdown is currently set to 'NON-UOCAVA'. To the right of the dropdown is a checkbox labeled 'FPCA' with a red circle 'B' next to it. Below these fields, there are two more sections: 'OUTPUT FORMAT' and 'PRECINCT LABEL'. 'OUTPUT FORMAT' has a dropdown menu set to 'QVF - PRINTED FRONT'. 'PRECINCT LABEL' has a dropdown menu set to 'WARD PRECINCT' and a checkbox labeled 'EXTRA LABEL'. At the bottom of the form, there is a section labeled 'APPLICATION STATUS' with a dropdown arrow.

V. Sending absent voter ballots to UOCAVA voters

Ballot delivery method

UOCAVA voters may request that their absent voter ballot be sent via email, fax, or mail. If a UOCAVA voter requests their absent voter ballot be emailed, city and township clerks who do not have internet access must work with the county clerk to facilitate the emailing of a blank ballot. If the voter does not select a delivery method, the clerk should send the absent voter ballot via mail.

A UOCAVA voter may opt for different ballot delivery methods for different elections by submitting a written request to the clerk via email, fax, or letter. Similarly, the voter can change the address, email address, or fax number at which the voter wishes to receive their absent voter ballot by submitting a written request to the clerk via email, fax, or letter.

Electronic transmission of ballots

The QVF can be used to generate an email or fax ballot. These ballots, called “QVF ballots,” are formatted to fit regular 8.5” x 11” paper. A QVF ballot is printed and completed by the UOCAVA voter. The voter then returns the ballot to the clerk, and the ballot is duplicated onto a standard ballot using the normal duplication procedure explained in *Chapter 13: Precinct Canvass – Closing the Polls* prior to tabulation.

If a UOCAVA voter requests their absent voter ballot be delivered by mail, the clerk should send the voter a standard absent voter ballot. If standard ballots are not available on the 45th day prior to the election, however, the QVF printable ballot may be printed and mailed to a UOCAVA voter to fulfill a clerk’s UOCAVA responsibilities.

In some cases, the county clerk may provide city and township clerks with PDF ballot proofs that may be emailed, faxed, or printed and mailed to UOCAVA voters. If ballot proofs, rather than the QVF-generated ballot, are sent to UOCAVA voters, the clerk must ensure that the appropriate instructions and voter certificate¹ are included in the email, fax, or mailing to the UOCAVA voter. Different instructions have been developed for each

¹ Available at http://www.mi.gov/documents/sos/Move_Voter_Cert_325028_7.pdf.

transmittal method; each set of instructions can be found at the FPCA link on the Military and Overseas Voter Information webpage.²

No matter how the UOCAVA voter receives their absent voter ballot, the voter must return their ballot by mail. If a UOCAVA voter was emailed their ballot, the voter must print the ballot, complete the ballot, and mail the completed ballot back to the clerk.

Generating the QVF ballot

To generate the QVF ballot for transmission to UOCAVA voters, the clerk should begin by logging into the QVF. If the clerk does not have a QVF account or if the clerk's QVF account has become inactive, the clerk should contact the 517-292-5973 mainline and select the QVF option.

The clerk should navigate to a voter's file within the QVF. If the voter has been assigned UOCAVA status, as explained above, the MOVE button will appear in their file. To generate a PDF containing the voter's absent voter ballot and corresponding ballot instructions, the clerk should:

1. Click the "Absentee Voter Ballot" button, which causes the "MOVE Ballot" button to appear.
2. Click the "MOVE Ballot" button.
3. A pop-up will appear when the ballot is ready for download. Click "OK" on the pop-up to download the ballot.

These instructions are illustrated in the following screengrab of QVF.

² Available at <https://www.michigan.gov/sos/elections/voting/military-and-overseas-voters>.

Once the ballot has been downloaded, the clerk should open the PDF and review both the ballot and ballot instructions for accuracy. The ballot generated is specific to the ballot style that the voter is assigned in the QVF based on the address at which the voter is registered. If an error is identified, the county clerk should be contacted to make the correction in the QVF's Ballot Administrator program.

Faxing a QVF ballot

If a UOCAVA voter has requested that their ballot be delivered by fax, the clerk should generate a QVF ballot as explained above, print the PDF, and fax the printed ballot and accompanying documents to the voter. The clerk should ensure that the ballot was transmitted and should retain a copy of the fax confirmation page.

Emailing a QVF ballot

If the UOCAVA voter has requested their absent voter ballot be delivered by email, the clerk should email the PDF of the QVF ballot to the voter. The email should have the subject line "Electronic Ballot" followed by the election date. A suggested template for the email body can be found in the eLearning Center.³

³ Available at <https://mielections.csod.com/ui/lms-learning-details/app/material/064b5d93-bc2a-4af1-a3d8-077d5b323f20>

After emailing the ballot, the clerk should monitor the email account from which the ballot was sent for questions from the UOCAVA voter or for any delivery errors or failures.

Printing and mailing a QVF ballot

If a UOCAVA voter has requested that their absent voter ballot be mailed, but standard absent voter ballots provided by the county clerk will not be available by the 45th day prior to the election, the clerk may print the ballot PDF generated by QVF and send the printed ballot to the voter. After the ballot has been printed, the clerk should place all of the pages included in the PDF into a military/overseas absent voter ballot envelope. The clerk should also include a return overseas absent voter ballot envelope in the mailing to the voter.

Mailing military and overseas ballots

Absent voter ballots mailed to UOCAVA voters must be sent postage paid First Class mail with a special designation provided by the United States Postal Service (USPS). For more information on the special designation, the clerk should contact their local post office and reference Domestic Mail Manual (DMM) 703.8.2.⁴ For more information on how to designate absent voter ballots mailed to UOCAVA voters, refer to the fvap.gov mailing site.⁵

Mailing APO/FPO absent voter ballots

The USPS requests that all absent voter ballots sent from an Army Post Office or Fleet Post Office (indicated as APO/FPO) be separated from regular mail and delivered directly to a USPS clerk or mail carrier rather than being deposited in a USPS collection box. Clerks should ensure that APO/FPO ballots are addressed according to the USPS Domestic Mail standards published on the USPS's website.⁶

Express mail for military voters returning absent voter ballots for November general elections

For even-year November general elections, the USPS provides a unique express mail label for use by overseas military members submitting mail to

⁴ More information available at <https://about.usps.com/what/government-services/election-mail/>

⁵ Available at <https://www.fvap.gov/eo/overview/sending-ballots/creating-envelopes>.

⁶ Available at <https://www.usps.com/ship/apo-fpo-dpo.htm>.



overseas postal locations. This unique label gives the voter the ability to track their ballot via USPS. For more information on this express mail label, consult the USPS Express Mail website.⁷

Undeliverable or returned absent voter ballots

If an absent voter ballot which was faxed or emailed to a UOCAVA voter is returned as undeliverable, the clerk should contact the voter for an alternate email address, fax number or transmittal method. If the clerk is unable to contact the voter for an alternate email address or fax number, the clerk should send a ballot via postal mail to the mailing address provided by the voter.

If an absent voter ballot mailed to a UOCAVA voter is returned as undeliverable, the clerk should contact the voter for an alternate mailing address or transmittal method. Updated mailing addresses for military voters can be obtained by contacting FVAP. Election officials should submit requests to FVAP via email at vote@fvap.gov or fax at 703-696-1352 and include the name of the clerk and jurisdiction requesting the voter's address, as well as the voter's full name and date of birth or the last four digits of the voter's Social Security Number. If the clerk is unable to contact the voter for an alternate mailing address and/or FVAP is unable to assist, the clerk should retain the returned ballot and mark the ballot as Undeliverable in the QVF.

QVF ballot tracking

To record the issuance and mail, fax, or email of an absent voter ballot to a UOCAVA voter, the clerk should take the following steps:

1. Identify the ballot number. If a QVF ballot is being emailed, faxed, or mailed to the voter, as explained above, the ballot is identified as an electronic transmission using the prefix "ET" and the ballot number takes the form ET000000. The first QVF ballot issued to a UOCAVA voter is ET000001, the second is ET000002, etc. If a standard absent voter ballot was mailed to the UOCAVA voter, use the regular absent voter ballot number.
2. If a FWAB was received, enter the date on which the clerk received the FWAB.

⁷ Available at https://about.usps.com/postal-bulletin/2016/pb22443/html/cover_018.htm.



3. Select the delivery method the clerk used to send the absent voter ballot to the UOCAVA voter.
4. Enter the UOCAVA voter's email address, if applicable.
5. Enter the UOCAVA voter's alternate mailing address, if applicable.

The screenshot shows a web form titled "BALLOTS". It has several input fields and buttons. Red callout letters are placed over the form as follows:

- A**: Points to the "SENT" input field.
- B**: Points to the "BALLOT NUMBER" input field.
- C**: Points to the "RECEIVED" input field.
- D**: Points to the "FWAB RECEIVED" input field.
- E**: Points to the "DELIVERY METHOD" dropdown menu, which currently shows "POSTAL MAIL".
- F**: Points to the "EMAIL ADDRESS" input field.
- G**: Points to the "BALLOT ADDRESS" button.

Other visible elements include a "BALLOT STATUS" section with checkboxes for "UNDELIVERABLE", "SPOIL", and "REJECT", and a "BALLOT REJECTION REASON" dropdown menu. At the bottom are "SAVE" and "APP ADDRESS" buttons.

MOVE compliance report

The MOVE compliance report must be completed by every city and township in Michigan, whether or not the city or township received a request for an absent voter ballot from a UOCAVA voter. The report can be found in the eLearning Center. The report must be completed by the Tuesday after the "MOVE deadline," which occurs 45 days before an election.

VI. Receiving absent voter ballots from military and overseas voters

No matter how the UOCAVA voter receives their absent voter ballot, the voter must return their ballot by mail. If a UOCAVA voter was emailed their ballot, the voter must print the ballot and mail the completed ballot back to the clerk. MOVE ballots must be counted if postmarked by Election Day and received no later than six days after Election Day. If the postmark on the ballot envelope is missing or unclear, clerks must deliver the ballot envelope to their county clerk to determine whether the ballot was received on time. All ballots received after Election Day and deemed on time by the municipal or county clerk will be counted by the county clerk in a board of county canvassers meeting.

If a UOCAVA voter attempts to submit their completed absent voter ballot via email or fax, the clerk must attempt to contact the voter to advise the voter that their ballot must be returned by postal mail with a signed voter certificate. A ballot or FWAB Backup Ballot returned by email or fax cannot be processed or counted. Such ballots must be marked as rejected and secured in the clerk's office.

If a UOCAVA voter returns two ballot return envelopes, which may occur because the UOCAVA voter accidentally printed more than one copy of their QVF ballot or because the voter made a technical error on their first ballot, the ballot return envelope that carries the most recent postmark should be processed. If the postmark dates cannot be determined, the return envelope that arrived closest to the election should be processed. If the ballot return envelope that is opened does not contain a signed voter certificate, the other return envelope should be processed. If multiple ballot return envelopes are received from the same UOCAVA voter, to ensure proper handling the clerk should attach a note to the first ballot return envelope sent for processing that advises election inspectors to contact the clerk if that ballot return envelope does not contain a ballot and/or signed voter certificate.

VII. The Federal Write-in Absentee Ballot (FWAB)

The Federal Write-in Absentee Ballot (FWAB) is available for UOCAVA voters to use as a ballot.⁸ A FWAB submitted by a UOCAVA voter that is postmarked by Election Day and received no later than six days after Election Day must be counted, so long as the UOCAVA voter submitting the FWAB requested an absent voter ballot by 2 p.m. the Saturday prior to the election. The voter's request for an absent voter ballot can be the same FPCA that the voter is submitting as their ballot for the election, so long as the FPCA is received by 2 p.m. on the Saturday prior to the election. The voter may also email or fax a signed absent voter ballot application to their clerk by 2 p.m. on the Saturday prior to the election. If the UOCAVA voter returning the FWAB did not request an absent voter ballot prior to 2 p.m. on the Saturday preceding Election Day, and the FPCA is received by the clerk after 2 p.m. on the Saturday preceding Election Day, the FWAB is not valid and is not counted.

⁸ The FWAB is available at <https://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>.



A clerk must enter the receipt of an FWAB into the QVF.

The FWAB has two parts. The first part is the voter information form. The voter's information must be completed by the UOCAVA voter and will likely be returned to the clerk in a regular envelope. If the protected voter is not already registered to vote, the clerk should use the voter information portion of the FWAB to register the voter and to record the UOCAVA's application for an absent voter ballot for every election in the calendar year. The voter information form must be signed. If the voter information form is not signed, the FWAB is invalid.

A UOCAVA voter that did not apply for an absent voter ballot before submitting the FWAB can be registered using the voter information page if the FWAB is received by 2 p.m. the Saturday prior to the election. An absent voter ballot should be sent to the UOCAVA voter via their preferred method as explained above.

The second part of the FWAB is a second envelope, included in the first, marked "Official Ballot – Federal Write-In Absentee Ballot," in which the voter will place the voter's completed Official Backup Ballot. The envelope will be sealed; clerks should not open the sealed envelope. The Official Backup Ballot allows a UOCAVA voter to write in the candidate of their choice for any office or ballot initiative that is on the ballot for the election in which the UOCAVA voter is voting. The UOCAVA voter may write in either the candidate's name or the candidate's political party for each office.

The UOCAVA voter's Official Backup Ballot must be counted by the relevant precinct or absent voter counting board if the UOCAVA voter's regular absent voter ballot is not received by Election Day. The Official Backup Ballot is counted using normal ballot duplication procedures. The UOCAVA voter is not required to mark an oval or box on the Official Backup Ballot in order for their votes to be cast, and any name variations are acceptable so long as the voter's intent is clear.

If the UOCAVA voter's QVF or regular absent voter ballot is returned by 8 p.m. on Election Day, the QVF or regular absent voter ballot supersedes the FWAB submitted by the voter. In that case, the FWAB should not be opened, and the voter's QVF or regular absent voter ballot should be tabulated.

VIII. Processing MOVE and FWAB ballots on Election Day

Regular absent voter ballots received from UOCAVA voters should be processed in the same manner as all other absent voter ballots. QVF ballots or FWAB ballots returned by UOCAVA voters, however, need several additional checks before they are duplicated onto a standard ballot for tabulation. First, election inspectors must verify that the UOCAVA voter signed the signature certificate included with the QVF ballot and ensure that the signature on the certificate matches the voter's signature on the file. If the returned ballot does not include a certificate, the ballot must be rejected. The signature certificate should be stored with the UOCAVA voter's original absent voter ballot application. To preserve ballot secrecy, neither the certificate nor the absent voter ballot application should be attached to the QVF ballot or the FWAB Backup Ballot.

If absent voter ballots are processed in the precinct, QVF ballots and FWAB Backup Ballots must be placed in the auxiliary bin until the close of polls to wait for duplication. If the QVF ballot or the FWAB ballot includes multiple pages, election inspectors must ensure that the pages are stapled or clipped together before placing the ballot in the auxiliary bin. The regular duplication procedures explained in *Chapter 13: Precinct Canvass – Closing the Polls* should be followed to transfer the contents of the QVF ballot or the FWAB Backup Ballot to a standard ballot for tabulation. As with other duplicated ballots, the original QVF ballots or FWAB Backup Ballots must be placed in the original ballot envelope after duplication. For more information on the ballot duplication process, refer to *Managing Your Election Day Polling Place: Election Inspectors Procedure Manual*.⁹

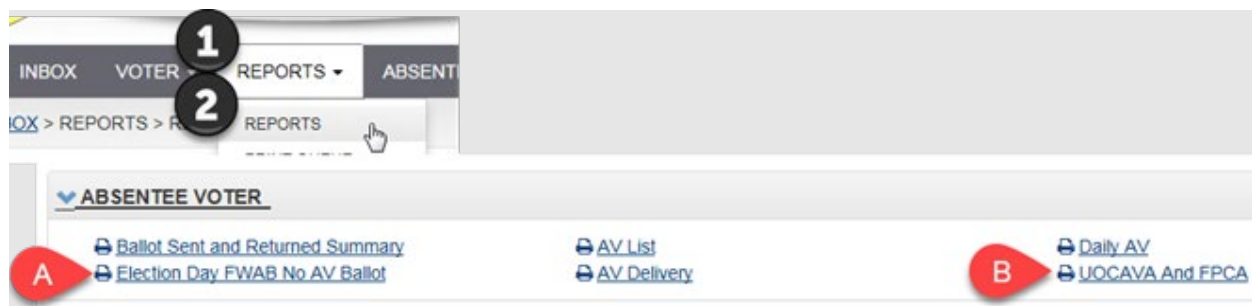
IX. QVF reports

The QVF has two reports for reviewing military and overseas voter absentee activity. To access the reports, a clerk should login to the QVF and do the following:

⁹ Available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/Managing-Your-Precinct-on-Election-Day.pdf?rev=099687d67e9249d98941ce03647543a3&hash=86B2799DC0E246E42596FAF6F720ACD0>.



1. Click on Reports.
2. Click on Reports in the dropdown menu.



Election Day FWAB report

The Election Day “FWAB no AV ballot” report will provide a listing of all of the voters who submitted a FWAB but who did not return a QVF or regular absent voter ballot. The FWAB for each of these voters should be duplicated onto a standard ballot and tabulated. The FWAB of a voter who did return either a QVF ballot or a regular ballot should not be duplicated; the QVF ballot or the regular ballot returned by that voter supersedes the FWAB.

ELECTION DAY FWAB NO AV BALLOT

RETRIEVED FROM DEMOCRATIC DOCUMENTS

*REGION TYPE: JURISDICTION
 *ELECTION DATE: 05/08/2018 - MAY CONSOLIDATED
 *PRECINCT: 00001, 00002
☐ JURIS
 Selected Count #2

*REGION: BOHEMIA TOWNSHIP (09460)
 *PRECINCT TYPE: COMBINED
 *SORT BY: FULL NAME
 *REPORT FORMAT: PDF

ELECTION DATE FWAB NO AV BALLOT RECEIVED REPORT FOR BOHEMIA TOWNSHIP (09460)
 05/08/2018 - MAY CONSOLIDATED

Voter Name / Mailed To Address	COMBINED	Voter Status & Reason(s)	FWAB Received	AV Ballot Received
MCQVF, FAY 10006 OLD LAKE ROAD GRAYLING, MI 49738	00001	ACTIVE - ACTIVE	01/12/2018	
MCQVF, FINN FLINT 10007 OLD LAKE RD GRAYLING, MI 49738	00001	ACTIVE - ACTIVE	01/12/2018	
Total	2			

CONTINUE CANCEL

UOCAVA and FPCA report

The "UOCAVA and FPCA" report will provide a listing of all AV voters entered into QVF as military or overseas voters. The report can be sorted in multiple ways and exported as either a PDF or a CSV file. To generate this report, the clerk should make their selections and click "Continue." The report will open in a new window.

UOCAVA AND FPCA

*REGION TYPE: JURISDICTION

*YEAR: 2018

*REGION: BOHEMIA TOWNSHIP (09460)

*VOTER TYPE: ALL VOTERS

*REPORT FORMAT: PDF

CONTINUE CANCEL

2/23/2018 4:51:58 PM

UOCAVA AND FPCA VOTERS REPORT

FOR THE YEAR 2018

JURISDICTION

Voter Name / Residential Address	Mailing Address	RECEIVED DATE	IS FPCA
		01/16/2018	NO
		01/18/2018	NO

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Exhibit B

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

Case No. 25-_____-MZ

Hon. _____

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Brandon L. Debus (P81159)
Daniel C. Ziegler (P86312)
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Attorneys for Plaintiffs

AFFIDAVIT OF MICHAEL AMBROSINI

STATE OF _____)
) SS
COUNTY OF _____)

I, Michael Ambrosini, being first duly sworn, state as follows under oath:

1. I am the Chief of Staff at the Republican National Committee (the “RNC”). I am over the age of eighteen and I have personal knowledge of the following facts. If called as a witness, I could and would competently testify thereto.

2. The RNC is the national committee of the Republican Party, with its principal place of business at 310 First Street S.E., Washington D.C., 20003. The RNC represents over 30 million registered Republicans in all 50 states, the District of Columbia, and the U.S. territories. It is comprised of 168 voting members representing state Republican Party organizations.

3. The RNC manages the Republican Party's business at the national level, coordinates fundraising and election strategy, and develops and promotes the national Republican platform.

4. The RNC organizes and operates the Republican National Convention, which nominates candidates for President and Vice President of the United States.

5. The RNC works to elect Republican candidates to state and federal office. In May, August, and November 2026, its candidates will appear on the ballot in Michigan for election to federal, state, and local offices.

6. The RNC engages in various activities to help elect Republicans in Michigan. One of these activities is providing support to the Michigan Republican Party in its efforts to elect Republican candidates and educate, mobilize, assist, and turn out voters. The RNC also assists the Michigan Republican Party to recruit and train poll challengers regarding the requirements of the Michigan Election Law.

7. During past election cycles, the RNC has made significant contributions and expenditures to support Republican candidates up and down the ballot in Michigan and to mobilize and educate Michigan voters. It is doing so again in 2025 and 2026.

8. The RNC has vital interests in protecting the ability of Republican voters to cast, and Republican candidates to receive, effective votes in Michigan elections. The RNC is a plaintiff

in this case to vindicate its own rights in this regard, and in a representational capacity to vindicate the rights of its members, affiliated voters, and candidates.

9. The policies challenged in this lawsuit—allowing persons who have never been Michigan residents to vote in elections—violates the Michigan Constitution, which requires—except where preempted by federal law—that a person reside in Michigan to vote in Michigan.

10. Allowing persons who are not Michigan residents and who have never been Michigan residents to vote in elections harms the RNC's interests.

11. The RNC has a substantial interest in seeking and winning political office, and doing so in a legally structured, fair, and competitive environment in which the Michigan Constitution and its residency requirement are enforced.

12. The RNC spends significant resources to preserve voter confidence and turnout, which suffer when voters see that election officials accept absent voter ballots without verifying the residency of the voter as required under Michigan law or enforcing the residency requirements of the Michigan Constitution.

13. The policies challenged here harm the RNC—and its members and candidates—and also places them at a competitive disadvantage.

14. Democrat voters are more likely than Republicans to vote by absentee ballot. As a result, any failure to verify the residency of absentee voters will result in an inaccurate tally of the lawfully cast votes. And given the higher number of Democrat absentee voters than Republican absentee voters, that inaccurate tally undermines the Republican candidates' rights to a fair and accurate electoral count.

15. By counting votes of persons who do not meet the residency requirement of the Michigan Constitution, Michigan dilutes the weight of valid votes cast by the RNC's candidates and its members.

FURTHER AFFIANT SAYETH NOT.

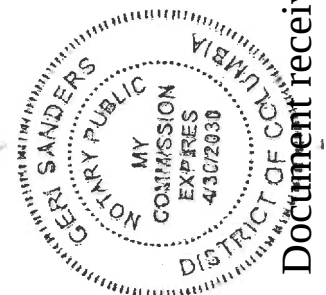
I declare that the above statements are true and correct to the best of my information, knowledge and belief.


Michael Ambrosini

Subscribed and sworn to before me this
21 day of November, 2025.


Notary Public, DC, County, _____
Acting in District of Columbia County
My Commission Expires: 4/30/2030

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Document received by the MI Court of Claims.

Exhibit C

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2. The MRP is a “major political party” as that term is defined by the Michigan Election Law. See MCL 168.16. The MRP’s address is 503 Mall Court, #149, Lansing, MI 48912. Among its general purposes, the MRP promotes and assists Republican candidates who seek election or appointment to partisan federal, state, and local office in Michigan.

3. The MRP works to elect Republican candidates to state and federal office. In May, August, and November 2026, its candidates will appear on the ballot in Michigan for election to federal, state, and local officers.

4. The MRP engages in various activities to help elect Republicans in Michigan, including efforts to educate, mobilize, assist, and turn out voters.

5. During past election cycles, the MRP has made significant contributions and expenditures to support Republican candidates up and down the ballot in Michigan and to mobilize and educate Michigan voters. It is doing so again in 2025 and 2026.

6. The MRP has vital interests in protecting the ability of Republican voters to cast, and Republican candidates to receive, effective votes in Michigan elections. The MRP is a plaintiff in this case to vindicate its own rights in this regard, and in a representational capacity to vindicate the rights of its members, affiliated voters, and candidates.

7. The policies challenged in this lawsuit—allowing persons who have never been Michigan residents to vote in Michigan elections—violates the Michigan Constitution, which requires—except where preempted by federal law—that a person reside in Michigan to vote in Michigan.

8. Allowing persons who have never been Michigan residents to vote in elections harms the MRP’s interests.

9. The MRP has a substantial interest in seeking and winning political office, and in doing so in a legally structured, fair, and competitive environment in which the Michigan Constitution and its residency requirement is enforced.

10. The MRP spends significant resources to preserve voter confidence and turnout, which suffer when voters see that election officials accept absent voter ballots without verifying the residency of the voter as required under Michigan law or enforcing the residency requirements of the Michigan Constitution.

11. The policies challenged here harm the MRP—and its members and candidates—and places them at a competitive disadvantage.

12. Democrat voters are more likely than Republicans to vote by absentee ballot. As a result, any failure to verify the residency of absentee voters will result in an inaccurate tally of the lawfully cast votes. And given the higher number of Democrat absentee voters than Republican absentee voters, that inaccurate tally undermines the Republican candidates' rights to a fair and accurate electoral count.

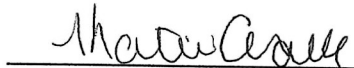
13. By counting votes of persons who do not meet the residency requirement of the Michigan Constitution, Michigan dilutes the weight of valid votes cast by the MRP's candidates and its members.

FURTHER AFFIANT SAYETH NOT.

I declare that the above statements are true and correct to the best of my information, knowledge and belief.


Jessica Barefield

Subscribed and sworn to before me this
19th day of November, 2025.


Notary Public, Livingston, County, Michigan
Acting in Livingston County
My Commission Expires: 10-1-30
4919-2971-6602 v2 [99168-13]

Katie Clark
Notary Public
Livingston County, Michigan
Comm Expires 10-1-30
Acting in Livingston County, Michigan

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Exhibit D

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**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

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

Plaintiffs,

Case No. 25-_____-MZ

Hon. _____

v

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

Defendants.

Jonathan B. Koch (P80408)
Brandon L. Debus (P81159)
Daniel C. Ziegler (P86312)
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Attorneys for Plaintiffs

AFFIDAVIT OF CINDY BERRY

STATE OF MICHIGAN)
) SS
COUNTY OF _____)

I, Cindy Berry, being first duly sworn, state as follows under oath:

1. I am over the age of eighteen and I have personal knowledge of the following facts.

If called and sworn as a witness, I could and would competently testify thereto.

2. I am a resident of Chesterfield Township, Michigan, and a registered Michigan voter.

3. In the 2024 federal, state, and local elections, I voted by absentee ballot in Michigan in both the primary election and general election. I intend to vote by absentee ballot in Michigan in the May 2026, August 2026, and November 2026 federal, state, and local elections.

4. I am the Clerk for the Township of Chesterfield, Michigan. As the Clerk, I am responsible for running the Township's elections, which includes hiring and training election inspectors (also known as poll workers), preparing absent voter ballots for distribution, compiling precinct results on Election Day, and certifying election results.

5. As Township Clerk, I am also responsible for overseeing the tabulation of absent voter ballots in compliance with the Michigan Constitution.

6. For example, the Michigan Constitution provides that "Every citizen of the United States . . . who has resided in this state six months . . . shall be an elector and qualified to vote in any election except as otherwise provided in this constitution." Const. 1963, art. 2, § 1.

7. It is my understanding that under Const. 1963, art 2, § 1 and Const. 1963, art 2, § 3 an election inspector may only tabulate an absent voter ballot of a person who meets the residency requirement as set forth in the Michigan Constitution.

8. As a clerk responsible for overseeing the tabulation of absent voter ballots, it is my belief and understanding that an election inspector may only tabulate an absent voter ballot of a person who meets the residency requirement as set forth in the Michigan Constitution.

9. Despite these clear, constitutional requirements, Secretary of State Jocelyn Benson is instructing local officials that "A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state."

10. Those instructions, which are found on page three of the Secretary's *Election Officials Manual, Chapter 7: Military and Overseas Voters, Federal Voter Registration and Absent Voting Programs*, and which are attached as Exhibit A to the Verified Complaint filed in this case, are referenced here as the "Secretary's Instructions."

11. As a local clerk, I am bound to follow the Secretary's Instructions.

12. As a public official, however, I swore an oath to support the Michigan Constitution and to faithfully discharge the duties of my office.

13. While I have attempted to reconcile the Constitutions requirement that voters must be residence with the Secretary's instruction that some absent voters do not need to be residents of Michigan, the Secretary's Instructions seem incompatible with the requirements of the Michigan Constitution.

14. Given that Michigan law empowers the Secretary to investigate, or cause to be investigated by local authorities, the administration of election laws, and to report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution, see MCL 168.31(h), it seems possible to me that I could face penalty or even removal from my position as Clerk if I apply rules or guidance such as those challenged here that are inconsistent with the Constitution. It also seems possible to me that I could face removal from my position as Clerk if I do not apply rules or guidance to which I am subject as a local clerk.

15. As a result, while I plan to conduct the Chesterfield Township elections in accordance with the Constitution just as I always do, I seek a judicial declaration in this lawsuit as to whether I am and will continue to be subject to those aspects of the Secretary's Instructions challenged in this lawsuit, specifically the Secretary's instruction that "A United States citizen who has never resided in the United States but who has a parent, legal guardian, or spouse who

who has never resided in the United States but who has a parent, legal guardian, or spouse who was last domiciled in Michigan is eligible to vote in Michigan as long as the citizen has not registered or voted in another state.”

FURTHER AFFLIANT SAYETH NOT.

I declare that the above statements are true and correct to the best of my information, knowledge and belief.


Cindy Berry

Subscribed and sworn to before me this
20th day of November, 2025.



Notary Public, SADILAC, County, Michigan
Acting in MACOMB County
My Commission Expires: 12-16-2029

MICHELLE C. NIZZA
Notary Public, State of Michigan
County of Sanilac
My Commission Expires 12-16-2029
Acting in the County of MACOMB.