STATE OF MICHIGAN

COURT OF CLAIMS

REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, and CINDY BERRY,	**OPINION AND ORDER**
Plaintiffs,	
v	Case No. 25-000181-MZ
JOCELYN BENSON, in her official capacity as Secretary of State, and JONATHAN BRATER, in his official capacity as Director of Elections,	Hon. Sima G. Patel
Defendants. ____________________________/	

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

This is the second time plaintiffs—the Republican National Committee, Michigan Republican Party, and Chesterfield Township Clerk Cindy Berry—have filed suit against defendants—Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater—seeking to invalidate an election law and thereby disenfranchise the spouses and voting-age children of Michigan service members and civilians working overseas on behalf of our state and our country. As stated in the Court's opinion in the previous suit:

> "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights. . . ." *Reynolds v Sims*, 377 US 533, 561-562; 84 S Ct 1362; 12 L Ed 2d 506 (1964). Disenfranchisement is a serious matter and "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Id*. at 562. At any given time, tens of thousands of United States citizens (including Michigan residents) live abroad, serving our country in the armed forces and diplomatic

> corps. Others live abroad for civilian purposes. Sometimes, spouses and dependents accompany these overseas United States citizens, sacrificing for the good of their families. And sometimes these spouses and dependents leave the United States before registering to vote, or are born and raised overseas, reaching the age of suffrage without ever residing in this state or country. Congress protects the right of these citizens to vote, as does the Michigan Legislature. [*Michigan Republican Party v Benson*, Court of Claims No. 24-000165-MZ, Opinion and Order, October 21, 2024, aff'd unpublished opinion of the Court of Appeals, issued August 6, 2025 (Docket No. 372995) (2024 Lawsuit Opinion and Order).]

The statute underlying both the 2024 Lawsuit and the current proceedings is MCL 168.759a(3), which provides:

> A spouse or dependent of an overseas voter who [a] is a citizen of the United States, [b] is accompanying that overseas voter, and [c] is not a qualified and registered elector anywhere else in the United States, may apply for an absent voter ballot [AVB] even though the spouse or dependent is not a qualified elector of a city or township of this state.

In the 2024 Lawsuit, this Court determined that plaintiffs' constitutional challenge was barred by the doctrine of laches. Even if not barred, the Court determined that it would have summarily dismissed plaintiffs' action. Plaintiffs did not directly challenge the statute, but rather instructions in Chapter 7 of the Election Officials Manual pertaining to the statute. The Court ruled, "Because the Manual language comports with the Michigan Constitution and statutes, there is no ground to invalidate it." 2024 Lawsuit Opinion and Order. The Court of Appeals affirmed this Court's ruling on laches grounds but found the remainder of this Court's opinion to be dicta. *Mich Republican Party v Secretary of State*, unpublished opinion of the Court of Appeals, issued August 6, 2025 (Docket No. 372995). The Court of Appeals concluded by stating, "The adjudication of the merits of any such claims can await another day and another lawsuit." *Id*. at 5. This is that lawsuit.

Plaintiffs now contend that MCL 168.759a(3) conflicts with Const 1963, art 2, § 1 and § 3, which limit the right to vote in Michigan to Michigan residents. They also continue to challenge

the instructions in Chapter 7 of the Election Officials Manual regarding this statutory provision. The Court concludes that MCL 168.759a(3) is not unconstitutional and, therefore, neither are the Manual instructions. Accordingly, the Court GRANTS defendants' motion for summary disposition.

I. BACKGROUND

As the facts and law have not changed since the 2024 Lawsuit, the Court adopts much of the background from its previous opinion and order.

At stake in this case is the right of the spouses and dependents of absent uniformed services and overseas voters (collectively "the subject group") to register to vote and cast AVBs in Michigan. The subject group members do not currently live in Michigan and therefore cannot vote in person, nor can they easily drop by their local clerk's office to vote in person or to remedy alleged deficiencies with their AVBs before an election. Given this reality, both federal and state law protect the right of the subject group to vote by AVB.

The federal government requires states to permit absent uniformed services and overseas voters, as well as their spouses and dependents, to apply for and vote by AVB. The Uniformed and Overseas Citizens Absentee Voting Act, 52 USC § 20301 *et seq*. (UOCAVA), requires "[e]ach State" to "permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by [AVB] in general, special, primary, and runoff elections for Federal office." 52 USC § 20302(1)(a). The federal act defines "absent uniformed services voters and overseas voters" to include the subject group as follows:

(1) "absent uniformed services voter" means—

> (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 reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and
>
> (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*[.]
>
> * * *
>
> (5) "overseas voter" means—
>
> (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
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> (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. [52 USC § 20310 (emphasis added).]

52 USC § 20310(1)(C) permits a spouse or dependent of an "absent uniformed services voter" to register to vote in the jurisdiction where the "absent uniformed services voter" is qualified to vote.

Michigan amended its election laws long ago to implement the federal mandate. As a general rule, the Legislature provides that a qualified elector must live in the municipality in which he or she registers for 30 days. MCL 168.10(1). The Legislature generally defines "residence" for election purposes in MCL 168.11, in relevant part, as:

> (1) "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.

> (2) 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 . . . .

More directly on point, the Legislature enacted MCL 168.759a, which permits absent uniformed services voters and overseas voters, as well as the subject group, to register to vote in Michigan and to request to vote by AVB:

> (1) An absent uniformed services voter or an overseas voter who is not registered, but possessed the qualifications of an elector under [MCL 168.492], may apply for registration by using the federal postcard application. The department of state, bureau of elections, is responsible for disseminating information on the procedures for registering and voting to an absent uniformed services voter and an overseas voter.
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> (2) Upon the request of an absent uniformed services voter or an overseas voter, the clerk of a county, city, or township shall electronically transmit a blank voter registration application or blank [AVB] application to the voter. The clerk of a county, city, or township shall accept a completed voter registration application or completed [AVB] application electronically transmitted by an absent uniformed services voter or overseas voter. A voter registration application or [AVB] application submitted by an absent uniformed services voter or overseas voter must contain the signature of the voter.
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> (3) *A spouse or dependent of an overseas voter who [a] is a citizen of the United States, [b] is accompanying that overseas voter, and [c] is not a qualified and registered elector anywhere else in the United States, may apply for an [AVB] even though the spouse or dependent is not a qualified elector of a city or township of this state.*
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> (4) An absent uniformed services voter or an overseas voter, whether or not registered to vote, may apply for an [AVB]. Upon receipt of an application for an [AVB] under this section that complies with this act, a county, city, or township clerk shall forward to the applicant the [AVBs] requested, the forms necessary for registration, and instructions for completing the forms. If the ballots are not yet available at the time of receipt of the application, the clerk shall immediately forward to the applicant the registration forms and instructions, and forward the ballots as soon as they are available. If a federal postcard application or an application from the official United States Department of Defense website is filed, the clerk shall accept the federal postcard application or the application from the official United States Department of Defense website as the registration application and shall not send any additional registration forms to the applicant. Subject to subsection (18), if the ballots and registration forms are received before the close of the polls on election day and if the registration complies with the requirements

> of this act, the [AVBs] must be delivered to the proper election board to be tabulated. If the registration does not comply with the requirements of this act, the clerk shall retain the [AVBs] until the expiration of the time that the voted ballots must be kept and shall then destroy the ballots without opening the envelope. *The clerk may retain registration forms completed under this section in a separate file. The address in this state shown on a registration form is the residence of the registrant.* [Emphasis added.]

MCL 168.759a(19) also provides definitions for "absent uniformed services voter" and "overseas voter" identical to the definitions of the UOCAVA.

Chapter 7 of the Secretary of State Election Officials Manual provides instructions regarding MCL 168.759a as follows:

> **Eligibility to register to vote using the FPCA [federal postcard application] or FWAB [federal write-in absentee ballot]**
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> 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.
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> *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*.
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> **Registration address for UOCAVA voters**
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> 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. [Secretary of State Election Officials Manual, Chapter 7: Military and Overseas Votes (July 2024), p 3 (emphasis added).]

In the current action, plaintiffs contend that MCL 168.759a(3) and the above Manual provisions violate Const 1963, art 2, § 1 and § 3, which state:

§ 1 Qualifications of electors; residence.

Sec. 1. Every citizen of the United States who has attained the age of 21 years,[1] 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.

§ 3 Presidential electors; residence.

Sec 3. 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. The legislature shall not permit voting by any person who meets the voting residence requirements of the state to which he has removed.

II. UNDERLYING LEGAL PRINCIPLES

Plaintiffs seek a declaratory judgment that Const 1963, art 2, § 1 and § 3 contain a bona fide state residency requirement; that MCL 168.759a(3) is either unconstitutional or only applies to former Michigan residents voting for president and vice president; and that the quoted instructions in the Manual related to MCL 168.759a(3) are unconstitutional, ultra vires, and violate the separation of powers and the purity of elections clause. Plaintiffs also seek injunctions preventing defendants from registering individuals to vote who have never resided in Michigan. Underlying these claims are plaintiffs' beliefs that the Michigan Constitution requires every voter to have resided in Michigan for a six-month period, and that the federal UOCAVA preempts this state residency requirement only to the extent the absent uniformed services or overseas voter (or a subject group member) each personally last resided in Michigan.

[1] Individuals are now qualified to vote at 18, not 21, years of age. MCL 168.492.

Defendants seek summary disposition of plaintiffs' claims under MCR 2.116(C)(8) and (10). Defendants contend that plaintiffs lack standing to challenge the constitutionality of the statute and the Manual language because they do not have an interest distinguishable from the public at large and the harm they allege is merely hypothetical. They contend that Const 1963, art 2, § 1 does not impose a durational residency requirement or a bona fide residency requirement that prohibits the extension of the right to vote to the nonresident subject group members, nor does § 3 displace the Legislature's authority to determine residency for voting purposes in this State. Indeed, the final sentence of art 2, § 1 permits the Legislature to define residence under the election law. Defendants contend that neither the statutes nor the Manual instructions violate the Michigan Constitution. Defendants assert that the relevant election statutes permit the subject group to register in Michigan if their spouse or parent is qualified to register in Michigan. Defendants contend the Manual language tracks the language of the state and federal statutes.

A motion for summary disposition under MCR 2.116(C)(8) "tests the legal sufficiency of a claim on the pleadings alone." *Armstrong v Ottawa Co Bd of Comms*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 366906); slip op at 3. This Court must accept a plaintiff's factual allegations as true and construe them "in the light most favorable to the nonmoving party." *Id*. Summary disposition is warranted under (C)(8) "only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* (quotation marks and citation omitted).

"A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019) (emphasis omitted). A (C)(10) motion can be granted only if, viewing the evidence in the light most favorable to the

nonmoving party, "there is no genuine issue of material fact." *American Civil Liberties Union of Mich v Calhoun Co Sheriff's Office*, 509 Mich 1, 9; 983 NW2d 300 (2022).

To consider the merits of plaintiffs' challenges, the Court must interpret the statutes. "The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature" by examining the language of the statute, "both the plain meaning of the critical word[s] or phrase[s] as well as its placement and purpose in the statutory scheme." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999) (quotation marks and citation omitted). "If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted." *Tryc v Mich Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996).

III. ANALYSIS

A. STANDING

Defendants contend that plaintiffs lack standing to file this suit. Specifically, they argue that plaintiffs have no greater interest than the general populace to protect the integrity of elections. Plaintiffs request declaratory relief under MCR 2.605, which permits the Court "[i]n a case of actual controversy within its jurisdiction" to "declare the rights and other legal relations of an interested party seeking a declaratory judgment." MCR 2.605(A)(1). If "a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Generally, an "actual controversy" giving rise to standing "under MCR 2.605(A)(1) exists when declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). Our Supreme

Court has explained that "the bar for standing is lower when a case concerns election law." *League of Women Voters of Mich v Secretary of State*, 506 Mich 461, 587; 957 NW2d 751 (2020).

The Court has considered the pleadings, as well as the attached Manual section and affidavits. Clerk Berry's affidavit states that she is responsible for "hiring and training election inspectors (also known as poll workers), preparing [AVBs] for distribution, compiling precinct results on Election Day, and certifying election results," as well as "overseeing the tabulation of [AVBs] in compliance with the Michigan Constitution." Clerk Berry has a clear, concrete, legal interest in how AVBs are tabulated. Given that at least one of the plaintiffs has established standing to bring this lawsuit, the Court DENIES defendants' motion for summary disposition on this basis. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 354; 686 NW2d 756 (2004).

B. MCL 168.759A(3) IS NOT UNCONSTITUTIONAL UNDER CONST 1963, ART 2, § 1

Plaintiffs contend that Const 1963, art 2, § 1 includes a bona fide residency requirement. Plaintiffs focus on § 1's mandate that to be a qualified elector in Michigan, a person must be a United States citizen "who has resided in this state six months." However, such durational requirements to qualify to vote were found unconstitutional by the United States Supreme Court in *Dunn v Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1972) (holding a one-year state and three-month county residency requirement were unconstitutional).

> Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote. [*Id.* at 334-335.]

Further, "[d]urational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of a fundamental political right, preservative of all rights." *Id*. at 336 (cleaned up).

Lower federal courts have applied *Dunn* to six-month residency requirements like that present here. A federal district court in Connecticut, in fact, held that "[w]hether a state has the power to impose a six[-]month durational residence requirement on the right of a citizen to vote is no longer an open constitutional question." *Nicholls v Schaffer*, 344 F Supp 238, 241 (D Ct Conn, 1972). "In view of *Dunn v Blumstein*, it is frivolous for [challengers] to contend that the constitutional and statutory requirements of six months residence in a town as a condition on the right to be admitted as an elector are not unconstitutional." *Id.* at 242. Much like the 21-year age requirement, Const 1963, art 2, § 1's six-month state residency requirement is no longer valid law.

Moreover, this provision must be read in light of the mandate in the same constitutional provision that the Legislature has the power to "define residence for voting purposes." Plaintiffs emphasize that MCL 168.10(1) defines a "qualified elector" as "a person who possesses the qualifications of an elector as prescribed in [Const 1963, art 2, § 1] and who has resided in the city or township 30 days." This is not the only statute relevant to this consideration, however. MC: 168.492 sets for the qualifications for 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." Neither MCL 168.10 nor MCL 168.492 define what it means to reside in a municipality or to be a resident thereof.

MCL 168.11(1) provides the general definition of "residence" for voter registration purposes:

> "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.

MCL 168.11(2) clarifies that "[a]n elector does not gain or lose a residence while employed in the service of the United States or of this state, [or] while engaged in the navigation of the waters of this state, of the United States, or of the high seas. . . ." And of utmost relevance to this action, the Legislature has defined residency for election purposes to include the spouses and dependents of absent uniformed services and overseas voters as long as the spouse or dependent (1) is a United States citizen, (2) is accompanying the absent uniformed services or overseas voter, and (3) is not a qualified and registered voter anywhere else in the United States." MCL 168.759a(3).

Consistent with federal law, the Michigan Legislature made a policy choice to allow a small pool of individuals who accompany family members abroad to qualify as Michigan residents for the purpose of voting in Michigan because they are connected to Michigan through their spouse, parent, or someone serving a parental role. The Legislature has defined the subject group as residents. The Legislature was granted that authority by the Constitution. Accordingly, MCL 168.759a(3) comports with any bona fide residency requirement included in the Constitution.

C. CONST 1963, ART 2, § 3 DOES NOT CHANGE THIS DETERMINATION

Plaintiffs contend, however, that Const 1963, art 2, § 3 limits the Legislature's ability to waive residency requirements for individuals who formerly physically resided in Michigan and, even then, the authority is limited to presidential elections.

> 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. The legislature shall not permit voting by any person who meets the voting residence requirements of the state to which he has removed.

First, as explained above, six-month durational requirements have been declared invalid by the United States Supreme Court. As the six-month residency requirement in § 1 is null and void, so too is the limitation on the Legislature's power to establish lesser residency requirements in § 3. Second, clauses 2 and 3 simply permit a former Michigan resident who has left the State but is not yet eligible to vote in another state, to vote by AVB in federal elections in Michigan. This constitutional provision in no way prevents the Legislature from extending the qualification to vote to the subject class.

D. MANUAL PROVISIONS

Further, Chapter 7 of the Election Officials Manual is not unconstitutional. The challenged Manual language does not quote the statute verbatim, but it does not need to. As held in *O'Halloran v Secretary of State*, ___ Mich ___; ___ NW3d ___ (2024) (Docket Nos. 166424, 166425), the Manual language must explain the statute and not conflict with the statutory language. The challenged language meets both requirements.

MCL 168.31(1)(a) and (c) requires the Secretary of State to issue and publish instructions to guide election officials. As an executive agency, the Secretary of State "has the authority to interpret the statutes it administers and enforces." *O'Halloran*, ___ Mich at ___, slip op at 17. These interpretations are not binding and "may not conflict with the Legislature's clearly expressed language," but are "entitled to respectful consideration and should not be overturned absent cogent reasons for doing so." *Id*. When, as here, "a statute does not require rulemaking for its

interpretation, an agency may choose to issue 'interpretative rules,' " instead of issuing official rules under the Administrative Procedures Act. *Id.*, slip op at 18. The Manual falls into this category. The Manual does not have the effect of law, but rather "interpret[s] and appl[ies] the provisions of the statute under which the agency operates." *Id.* (cleaned up). The interpretation must be within "the scope of the law" subject to the instruction. *Id.*, slip op at 19. Such rules are "intended to interpret and explain the requirements of the Michigan Election Law without restating those statutes verbatim." *Id.*, slip op at 30.

The Manual explains to local election officials that applications and AVBs from the subject group are to be tabulated even though the individual has never personally resided in Michigan. Rather, the subject group members are treated as living with their spouse, parent, or someone serving a parental role at that person's last designated Michigan residence for voting purposes. Because the Manual language comports with the Michigan Constitution and statutes, there is no ground to invalidate it.

VI. CONCLUSION

The Secretary of State Election Officials Manual 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." Const 1963, art 2, § 1 granted the Legislature the authority to define residence for election purposes, and the Legislature granted residency to the subject group in MCL 168.759a(3). The statutory language comports with powers granted by the Constitution and the Manual comports with this statutory language.

IT IS ORDERED:

1. Defendants’ motion for summary disposition is GRANTED.
2. Plaintiffs’ complaint is DISMISSED in its entirety with prejudice.
3. This is a final order resolving all issues in this case.

Date: April 22, 2026

Sima G. Patel
Judge, Court of Claims