

No. 25-1726

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STATE OF CALIFORNIA; STATE OF NEVADA; COMMONWEALTH OF MASSACHUSETTS; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; PEOPLE OF THE STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN,

Plaintiffs-Appellees,

v.

PRESIDENT DONALD J. TRUMP, in the official capacity as President of the United States; PAMELA BONDI, in the official capacity as Attorney General of the United States; UNITED STATES ELECTION ASSISTANCE COMMISSION; DONALD L. PALMER, in the official capacity as Chairman of the U.S. Election Assistance Commission; THOMAS HICKS, in the official capacity as Vice Chair of the U.S. Election Assistance Commission; CHRISTY MCCORMICK, in the official capacity as Commissioner of the U.S. Election Assistance Commission; BENJAMIN W. HOVLAND, in the official capacity as Commissioner of the U.S. Election Assistance Commission; PETE HEGSETH, in the official capacity as Secretary of Defense,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Massachusetts

**BRIEF *AMICI CURIAE* OF THE MICHIGAN REPUBLICAN PARTY
AND CINDY BERRY IN SUPPORT OF DEFENDANTS-APPELLANTS
AND REVERSAL**

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Michigan Republican Party states that it is an unincorporated association located in Michigan that has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Amicus Cindy Berry is an individual who resides in Michigan.

STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amicus Michigan Republican Party (MRP) is a major political party under Michigan law and an unincorporated association that actively and extensively participates in campaigns, elections, and public policy debate. As a state-level organization of the Republican Party in Michigan, MRP promotes and assists Republican candidates who seek election or appointment to partisan federal, state, and local office in Michigan, and works to foster political debate and the exchange of ideas among its members and the public, and to express, promote, and support its members' political beliefs and ideas regarding public policy issues, including those relating to elections. The MRP engages in various other activities to help elect Republicans in Michigan, including efforts to register, educate, mobilize, assist, and turn out voters. The MRP also devotes significant resources to preserve voter confidence and turnout, which suffer when voters see news reports of non-citizens voting in Michigan elections and observe that election officials entrusted with

¹ All parties consented to the filing of this brief. This brief was authored by Dickinson Wright, PLLC on behalf of amici Michigan Republican Party and Cindy Berry. Under F.R.A.P. 29(a)(4)(E), amici MRP and Cindy Berry disclose that no party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund the preparation or submission of this brief. A non-party, the Republican National Committee, the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), provided funding to MRP for the preparation and submission of this brief.

ensuring the integrity of Michigan elections are failing to enforce the citizenship requirements of state and federal law.

Amicus Cindy Berry is the elected Clerk for the Charter Township of Chesterfield, Michigan. She joins this brief in her individual capacity. As the Clerk, she is responsible for administering local, state, and federal elections in Chesterfield Township elections. Her duties include hiring and training election inspectors (also known as poll workers), receiving and processing voter registration applications (including confirming an applicant's proof of residency), maintaining voter registration and absent voter records, removing unqualified voters from her registration records, and safeguarding the election materials of Chesterfield Township,

In Michigan, to be qualified to vote, a person “must be a citizen of the United States.” M.C.L. 168.492. Clerk Berry “shall not register an individual if [she] knows or has good reason to believe that the individual is not a resident and qualified.” M.C.L. 168.519. Likewise, she is authorized to “remove [a] name from the registration records” whenever she “determines that any name has been illegally or fraudulently entered upon the registration records of any precinct in the township....” M.C.L. 168.521. Further, Clerk Berry has “the power and duty to make a full investigation...and to ascertain whether any name has been illegally or fraudulently registered” whenever she has “knowledge that there is a probable illegal

or fraudulent registration in the township.” M.C.L. 168.520. As a result, one of Clerk Berry’s statutory responsibilities is ensuring that the individuals registered to vote in Chesterfield Township are United States citizens.

In sum, elections are the cornerstone of MRP’s and Clerk Berry’s activities. For that reason, MRP and Clerk Berry both have a strong interest in the enforcement of laws and rules that pertain to Michigan elections and election administration, including the requirement that only United States citizens are allowed to vote in Michigan elections.

This action, which revolves around President Trump’s executive order (EO) concerning a potential requirement that an individual provide documentary proof of citizenship before registering to vote in a federal election, has a direct and significant impact on MRP, its members, its affiliated political candidates, and Clerk Berry. To that end, MRP and Clerk Berry seek to provide their unique and direct perspective to assist the Court in its deliberations. MRP and Clerk Berry also seek to respond to the arguments advanced in the lower court by the Michigan local Democratic election clerks who filed an amicus brief, ECF 87, and Michigan Bureau of Elections Director Jonathan Brater, ECF 76-8, about the alleged effects of Sections 2(a) and 2(d) of the EO on the people of the state of Michigan. Specifically, MRP and Clerk Berry want to make clear to this Court that President Trump’s executive order will make Michigan’s elections safer and more secure, and that implementing the

provisions of the executive order are workable and consistent with the efficient administration of Michigan elections.

I. INTRODUCTION

A person must be a United States citizen to vote in any federal election. 18 U.S.C. § 611. Likewise, the Michigan Constitution requires that a person be a “citizen of the United States” to “be an elector and qualified to vote in any election” in Michigan. Mich. Const. of 1963, Art. II, § 1. Despite these crystal-clear prohibitions on non-citizen voting, at least 16 non-citizens voted in Michigan during the 2024 general election.

In March 2025, to stop non-citizen voting, President Donald J. Trump issued Executive Order (EO) 14248, “Preserving and Protecting the Integrity of American Elections.” Among other things, section 2(a) of the EO directed the Election Assistance Commission to “take appropriate action” to update the federal voter registration form to require a person to provide “documentary proof of United States citizenship” when they are seeking to register to vote. Additionally, section 2(d) of the EO required the head of each *Federal* voter registration agency under the NVRA to “assess citizenship prior to providing a Federal voter registration form to enrollees of public assistance programs.”

A patchwork of states challenged the legality of these and other portions of the EO. The lower court entered a preliminary injunction on June 13, 2025, as amended on July 18, 2025, barring the Government from enforcing Sections 2(a), 2(d), 3(d), and 7(a) of EO 14248. The Government has appealed the lower court’s

entry of the preliminary injunction. Given their interest in ensuring the integrity of Michigan elections, Amici MRP and Clerk Berry submit this brief to address errors in the lower court's conclusions that, as it pertains to Sections 2(a) and 2(d) of the EO, (a) Michigan (and the other Plaintiffs) showed irreparable harm and (b) the balance of equities and the public interest tipped in favor of *granting* injunctive relief. In fact, neither Michigan nor any of the other Plaintiffs have shown irreparable harm and the balance of equities and the public interest tip in favor of *denying* injunctive relief.

Indeed, despite assertions otherwise from Michigan Bureau of Elections Director Jonathan Brater, ECF 76-8, and the amicus brief signed by several local Democratic election officials from Michigan, ECF 87—all of which were relied upon by the lower court when it entered the preliminary injunction being challenged here—it is both possible and workable for the federal voter registration form to require documentary proof of citizenship, and implementation of that aspect of the EO would not lead to widespread disenfranchisement. Thus, the court erred in finding otherwise when it concluded that Michigan and the other Plaintiffs have shown the requisite risk of irreparable harm.

Likewise, while Plaintiffs and the lower court paid short shrift to the perils of non-citizens participating in our elections, make no mistake: non-citizen voting is a real problem in Michigan, and directing the EAC to take steps to require

documentary proof of citizenship when registering to vote (and requiring election officials to record the details of that proof) is a common-sense and effective way to address that very real problem. While it's unfortunate that Michigan's Attorney General decided to ignore this problem and undercut her constituents' interests in a court several federal jurisdictions away from the people that the Attorney General is supposed to serve and protect, the reality is that a majority of Michiganders agree with the mandates under the United States and Michigan Constitutions that only U.S. Citizens have the right to vote in Michigan elections, and the vast majority of those Michiganders support requiring people to prove their U.S. citizenship when registering to vote. When you couple that reasonable perspective of the overwhelming majority of Michiganders with the public acknowledgement by Michigan's Secretary of State that non-citizens voting in Michigan is a "serious issue" and that "it's the government's job to verify voter citizenship," there's no question that lower court erred by concluding the balance of equities and the public interest tipped in favor of injunctive relief.

For these reasons, amici MRP and Clerk Berry respectfully request that this Court reverse the judgment below and vacate the preliminary injunction.

II. ARGUMENT

A. **The lower court erred by concluding that Michigan had shown “risk of irreparable harm” absent injunctive relief.**

In seeking injunctive relief, Plaintiffs (through, among other things, Director Brater’s declaration) and the local election officials claimed that requiring documentary proof of citizenship on the registration form—and requiring local election officials to record the details of the proof of citizenship offered—would significantly disrupt election administration and cause mass disenfranchisement of voters. The lower court agreed, and, relying on those arguments, found that the Plaintiff States had shown the risk of irreparable harm in the absence of an injunction. *State of California v. Trump*, 25-cv-10810 at 4, 33-40 (D. Mass., June 13, 2025 as amended July 18, 2025) (hereinafter “Memorandum and Order”) This was reversible error.

For example, Director Brater and the local Democratic election officials have claimed that any action taken by the EAC to implement a documentary-proof-of-citizenship requirement pursuant to Section 2(a) of the EO would massively disrupt local election administration and strain election offices’ allegedly scarce resources. Democrat Election Official Amicus Brief, ECF 87, PgID 16; Declaration of Jonathan Brater, ECF 76-8, PgID 2. The lower court relied on Director Brater’s statement in concluding the presence of a risk of irreparable harm. Memorandum and Order at 4,

36. That conclusion, however, was based on hypothetical and speculative statements. And it is inconsistent with reality.

The primary flaw with the local Democratic election officials' claim that any action taken to implement the documentary proof of citizenship requirement called for by Section 2(a) will disrupt and overwhelm local election administration—and the lower court's reliance on it—is that it's nothing but speculation and conjecture. For example, the local election officials assert that, if the EAC amends the federal voter registration form to require documentary proof of citizenship, it would result in waves of calls from confused voters and longer lines at voter registration locations. Democrat Election Official Amicus Brief, ECF 87, PgID 16. These claims may be correct, or they may not be. Nobody—not the lower court, nor the local Democratic election officials making such claims—has any way to know one way or the other, and the local Democratic election officials' amicus brief filed below provided no evidence to support these claims. *See generally* Democrat Election Official Amicus Brief, ECF 87. Along the same lines, while Director Brater likewise claims that implementing a federal voter registration form with the amendments called for by Section 2(a) would potentially require hiring more election administration staff and performing unspecified list maintenance tasks, he offers no support for such assertions. Declaration of Jonathan Brater, ECF 76-8, PgID 16.

Director Brater and the local Democratic election officials also listed a number of administrative tasks that they claim would either be expanded or added to their lists of pre-election responsibilities if the EAC were to amend the federal voter registration application to require documentary proof of citizenship. These include additional staff training, creating new voter education materials, additional voter application processing time, modifying the QVF registration system, and educating the public. Democrat Election Official Amicus Brief, ECF 87, PgID 16–17; Declaration of Jonathan Brater, ECF 76-8, PgID 5–8. Director Brater and the local Democratic election officials base their claims on their purported experience working in election administration and their sense of what the amended voter registration application contemplated by Section 2(a) could require before the next election.

But the fact that implementing the changes called for in the EO might affect how Director Brater and the local Democratic election officials who signed the amicus allocate their time between now and November 2026 has nothing to do with the legality of the EO. Put another way, the amount of work necessary to implement an executive branch directive, administrative regulation, or statutory provision has never been an adequate basis for challenging the legal validity of that directive, regulation, or provision, and neither the lower court, Plaintiffs, nor the local election officials provide any authority to the contrary. Indeed, the best the lower court could

muster was reliance on *Abbott v. Perez*, 585 U.S. 579, 603 n.17 (2018), Memorandum and Order at 37, for the notion that “the inability to enforce [] duly enacted plans clearly inflicts irreparable harm.” The lower court skipped a step in its reliance on *Abbott* because it’s not that the election officials are “unable” to enforce the EO—it’s that they claim it will be disruptive or cause extra work.

Indeed, many of Director Brater’s and the local Democratic election officials’ claims about Section 2(a)’s workability are contradicted by Clerk Berry, who, as the elected clerk of Chesterfield Township, Michigan, is directly and personally involved in the election processes implicated by Section 2(a) in a way that Director Brater isn’t. *See Exhibit A, Affidavit of Clerk Berry*, p. 2. Unlike Director Brater, Clerk Berry personally processes voter registration applications, removes unqualified voters from voter registration records, and safeguards the election-related materials of Chesterfield Township. *Id.* In short—and unlike Director Brater—Clerk Berry is directly involved in almost every aspect of election administration in a boots-on-the-ground capacity. She is therefore well-situated to opine on matters of election integrity and election administration, including those raised by Section 2(a) of the EO.

Based on her experience administering elections, Clerk Berry disagrees with Director Brater and the local election clerks that Section 2(a) would disrupt or overwhelm current election administration processes. *Id.* at 3. Local election clerks,

she explains, already have voter registration checklists in place. At most, Section 2(a) would add a simple layer to those existing checklists by requiring local election clerks and their staff to (1) determine whether a voter registration application is accompanied by documentary proof of citizenship and (2) record the nature of the proof provided. *Id.* Assuming that the EAC provides clear guidance about what constitutes documentary proof of citizenship, incorporating Section 2(a)'s documentary proof of citizenship requirement into those checklists will not be inordinately difficult. *Id.* And because much of the infrastructure for implementing Section 2(a) is already in place, local election clerks and their staffs will not require unusual training to be able to implement Section 2(a) in time for the 2026 election. *Id.* at 3-4. Thus, the lower court erred in relying on the Local Democrat Election Official's brief for their notion that their "offices could be overwhelmed" if each voter registration application took "only a few more minutes to process." Memorandum and Order at 35-36. Their statement was both speculative and overblown, and the lower court's reliance on it was misplaced.

The same goes for the lower court's analysis of Section 2(d) of the EO. The lower court concluded that implementing Section 2(d) would irreparably harm Plaintiffs by "impos[ing] new and complex duties" on state agencies and by "divert[ing] and requir[ing] significant resources to train personnel in [those] agencies to assess citizenship...." Memorandum and Order at 34-35. However,

Section 2(d) merely requires the “head of each *Federal* voter registration department” to “assess citizenship prior to providing a Federal voter registration form to enrollees of public assistance programs.”² If implemented, that would be nothing but a positive development for election administration in the state of Michigan. As Clerk Berry explains in her affidavit, Section 2(d) would not only bolster the integrity and security of elections, but would also make local election officials’ jobs that much easier by adding an additional layer of citizenship verification into the voter-registration process before the application gets sent to a local clerk. *See Exhibit A*, p. 4. And, critically, given the EO’s limited application to *federal* voter registration departments, this citizenship verification would occur *before* those applications reach the desks of state and local election clerks. So, contrary to the lower court’s conclusion, Section 2(d) would in fact have no harmful effect whatsoever on Plaintiffs’ *state* agencies or their personnel (let alone irreparable harm). *See* Memorandum and Order at 34-35. Therefore, Section 2(d) actually helps effectuate the NVRA’s purpose of enabling *eligible* U.S. citizens to register to vote. *See* 52 U.S.C. § 20501(b)(3).

² *See* President Donald J. Trump, *Preserving and Protecting the Integrity of American Elections*, THE WHITE HOUSE (March 25, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preserving-and-protecting-the-integrity-of-american-elections/>.

The lower court also erred in relying on Brater’s conclusory statement that the changes and procedures allegedly called for by the provisions of the EO are too complicated and confusion for local election officials to understand without creation and implementation of additional training. Memorandum and Order at 34, fn 11, citing Declaration of Jonathan Brater, ¶¶11-15, 21-22, ECF 76-8 (asserting that the Michigan Bureau of Elections will have to “creat[e] and implement[] an education process for state election officials to learn about the EO’s directed changes and requirements” to avoid a “substantial risk of confusion or mistake by election officials”). As Clerk Berry explains in her affidavit, local clerks are accustomed to implementing frequent changes in election law and election-related procedures. *Id.* at 3. They regularly review new legal authorities and attend trainings on how to incorporate those authorities into their election administration systems. *Id.* Thus, adapting to the guidance of Section 2(a) would not be an anomalous or overly difficult task for local election clerks. Rather, it would be accomplished as a routine part of their election administration responsibilities.

Nor would Section 2(a) result in widespread disenfranchisement. Director Brater and the local Democratic election officials asserted below that amending the federal voter registration form to require documentary proof of citizenship as called for in Section 2(a) would disenfranchise wide swaths of voters by imposing additional administrative hurdles before they can obtain the documentation

necessary for registering to vote. Democrat Election Official Amicus Brief, ECF 87, PgID 10; Declaration of Jonathan Brater, ECF 76-8, PgID 9. While those arguments were speculative at best, the lower court nonetheless agreed with the Plaintiffs' logic there and relied on their statements to find irreparable harm. Memorandum and Order at 38-40. But those concerns are exaggerated, largely hypothetical, and—given Plaintiffs' lack of faith in their fellow citizens—deeply condescending.

To begin with, Director Brater's and the local Democratic election officials' claims about administrative hurdles for certain populations are overblown. Individuals who change their names because of marriage or personal reasons already have to go through various administrative hurdles to apply that name change to the various types of documentation they use. This is just as true for voting as it is for any number of other public activities, including boarding an airplane, booking a hotel room, or purchasing a fishing license. That a person who has changed their name one or more times might have to go through similar administrative hurdles to obtain the documentation necessary to vote is not a sufficient reason to do away with the administrative hurdle altogether.

The same is true for low-income individuals. The Local Democratic Election Officials claimed below that low-income individuals would be disenfranchised if they are required to provide documentary proof of citizenship under Section 2(a) because obtaining one of the accepted documentation forms is cost-prohibitive for

them. Democrat Election Official Amicus Brief, ECF 87, PgID 13. Obtaining a driver's license in Michigan, however, costs \$25.³ Ordering a copy of one's birth certificate costs only \$34 if ordered from the State of Michigan, unless a person is over 65, in which case the birth certificate costs \$14.⁴ And those costs may be even lower if the birth certificate is ordered from a county clerk's office.⁵ Beyond that, an individual could obtain a "U.S. Passport card" that "is proof of U.S. Citizenship and identity, and has the same length of validity as the passport book" and only costs \$30.⁶ Such fees are, for the vast and overwhelming majority of Americans, not cost-prohibitive, especially when measured against the importance of ensuring that only U.S. citizens are allowed to vote in federal elections.

³ See *First-time license or ID*, MICHIGAN DEPARTMENT OF STATE, <https://www.michigan.gov/sos/all-services/first-time-license-or-id>.

⁴ See *Michigan Vital Records Fee Structure 2013 – House Bill 4786*, https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Folder1/Folder12/Fee_Structure.pdf.

⁵ See *Birth Certificates*, COUNTY OF SAGINAW, <https://www.saginawcounty.com/departments/county-clerk/birth-certificates/> (\$15 if in person; \$16 if by mail; and \$26 if online); *Order Birth Certificate Online*, GENESEE COUNTY, https://www.geneseecountymi.gov/order_a_vital_record_online/order_birth_certificate_online.php (\$25; \$5.00 for anyone over 65); *Birth Records FAQs*, MACOMB COUNTY, <https://www.macombgov.org/clerk/birth-records-faqs> (\$15); *Order Birth Certificates*, KENT COUNTY, <https://www.kentcountymi.gov/791/Order-Birth-Certificates> (\$10).

⁶ See *id.*; see also *Compare a Passport Card and Book*, U.S. DEPARTMENT OF STATE — BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/travel/en/passports/need-passport/card.html>.

For his part, Director Brater professed his “understanding” that most Michiganders do not have any of the four types of documentation necessary to satisfy a documentary proof of citizenship requirement. Declaration of Jonathan Brater, ECF 76-8, PgID 3. In his view, the burden of obtaining such documentation could result in widespread disenfranchisement. *Id.* at 9. But, like so many of his other claims, Director Brater offers no factual basis for his entirely hypothetical claims other than his personal belief rather than knowledge. *See id.* at 3. Thus, the lower court erred by relying on Brater’s unsupported conjecture to conclude that Michigan had shown irreparable harm here. Memorandum and Order at 38. While Brater may be correct when he speculates that many Americans do not have a passport, the requirements in Section 2(a) can also be satisfied by other types of documentation, such as a birth certificate or a driver’s license. And nearly every American has—or can easily obtain—a birth certificate,⁷ driver’s license,⁸ or other state identification.

⁷ *See How to get a certified copy of a U.S. birth certificate*, USA.GOV, <https://www.usa.gov/birth-certificate#:~:text=Contact%20your%20birth%20state%20or,to%20get%20a%20copy%20fast> (link for USAgov instructions on how to order a copy of your birth certificate).

⁸ *See How Many People Drive in the US?*, HEDGES & COMPANY (May 24, 2025), <https://hedgescompany.com/blog/2024/01/number-of-licensed-drivers-us/>; Lisa Ro Judy, *How many people drive in the U.S.? 2025*, CONSUMER AFFAIRS (January 24, 2024), <https://www.consumeraffairs.com/automotive/number-of-drivers-in-us.html>; *see also supra* n.18.

Nor do Sections 2(a) or 2(d) cut against the National Voter Registration Act (NVRA) for support, which empowers state and local governments to “increase the number of *eligible* citizens who register to vote in elections for Federal office . . . [and] make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of *eligible* citizens as voters.” 52 U.S.C. § 20501(b) (emphases added). Indeed, while the Local Democratic Election Officials argued below the sort of documentary proof of citizenship requirement contemplated by Section 2(a) would “render ineffective” their efforts to make eligible voter registration more accessible under the NVRA, Democrat Election Official Amicus Brief, ECF 87, PgID 10, the truth is that a documentary proof of citizenship requirement would actually work in tandem with the NVRA, which aims to increase the number of *eligible* citizens who register to vote, by enabling local election officials processing voter registration application to determine that an applicant is, in fact, *eligible*. Section 2(a) therefore furthers the work necessary for the NVRA to accomplish its stated goals. By helping local election officials to determine whether an individual is qualified to register to vote, the sort of documentary proof of citizenship requirement called for in Section 2(a) would streamline the NVRA’s process of increasing the ability of those eligible voters to register and cast their votes. Accordingly, any claim that Section 2(a) would hamper local election officials’ efforts to implement the NVRA is simply incorrect.

The lower court abused its discretion by finding that the Michigan Attorney General had shown irreparable harm in the absence of injunctive relief. This Court should reverse that decision and vacate the preliminary injunction.

B. The lower court erred by concluding that the balance of equities and the public interest tipped in favor of granting injunctive relief.

In their respective briefs, Plaintiffs (again through Director Brater’s declaration) and the local Democratic election officials downplay the importance and necessity of the EO. As they would have it, non-citizen voting in Michigan and other states is so rare that it’s not a meaningful problem and, thus does not warrant taking action to require documentary proof of citizenship before registering. The lower court relied on those statements in determining that the balance of equities and the public interest tipped in favor of enjoining the implementation of EO 14248. Memorandum and Order at 41-42. This constitutes reversible error.

Contrary to the lower court’s attempts to downplay the gravity of this issue, non-citizen voting in Michigan is a real problem that’s worthy of meaningful solutions like those called for in sections 2(a) and 2(d) of the EO. As Michigan Secretary of State spokesperson Benander explained before the filing of this suit, non-citizens voting in Michigan is a “serious issue,” and “it’s the government’s job to verify voter citizenship.”⁹ Of course, the Constitution and laws of the United

⁹ Craig Mauger, *Michigan review finds 15 probably non-US Citizens who voted in November*, THE DETROIT NEWS (April 3, 2024),

States limit the right to vote to citizens of the United States. *See* 18 U.S.C. § 611 (prohibiting non-citizens from voting); 18 U.S.C. § 1015(f) (prohibiting non-citizens from making false statements about their citizenship in order to register to vote); 52 U.S.C. § 20511(a)(2) (making it a crime to knowingly and willfully procure a materially false or fraudulent voter registration application); and 18 U.S.C. § 911 (making it illegal to knowingly and willfully make a false assertion of U.S. citizenship). So do the laws of most, if not all states, including Michigan. *See* Mich. Const. of 1963, Art. II, §1 (a person must be a “citizen of the United States” to “be an elector and qualified to vote in any election” in Michigan); M.C.L. 168.492.

States like Michigan therefore have a legitimate interest in preventing non-citizen voting. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (opinion of STEVENS, J.) (noting that “the risk of voter fraud [is] real . . . [and] could affect the outcome of a close election”). That’s because non-citizen voting poses a significant threat to the public’s confidence in our electoral system. After all, as the Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James A. Baker III recognized, “[t]he electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or confirm the identify of voters.” *Id.*, at 197 (citation omitted).

<https://www.detroitnews.com/story/news/politics/2025/04/03/michigan-non-citizens-voted-2024-election-jocelyn-benson-voter-rolls-review-drivers-licenses/82791504007/>.

Non-citizen voting has recently gained prominence as a matter of public concern in MRP's and Clerk Berry's home state of Michigan. In October 2024, just days before the November 2024 general election, news broke that "[a] University of Michigan student who is from China and not a U.S. Citizen" voted in Ann Arbor, Michigan, even though "he couldn't legally cast a ballot."¹⁰ The individual, a man named Haoxiang Gao, registered to vote using his University of Michigan student identification card.¹¹ Despite Gao allegedly making "false statements regarding his citizenship on his voter registration application and his early voting application" in order to vote, his ballot was still counted as part of the November 2024 election.¹²

Initially, Gao was criminally charged by state and local authorities with perjury and attempting to vote as an unauthorized elector.¹³ Despite having surrendered his passport to the authorities, Gao nonetheless fled the country using a

¹⁰ See Craig Mauger and Kim Kozlowski, *Chinese student to face criminal charges for voting in Michigan. Ballot will apparently count*, THE DETROIT NEWS (October 30, 2024),

<https://www.detroitnews.com/story/news/politics/elections/2024/10/30/chinese-university-of-michigan-college-student-voted-presidential-election-michigan-china-benson/75936701007/>.

¹¹ See *US says student fled to China after being charged with voting illegally in Michigan*, AP NEWS (May 30, 2025), <https://apnews.com/article/chinese-student-illegal-voting-michigan-674cff347c275fd2f1ca6cc5645e195b>.

¹² See *Chinese National at the University of Michigan Charged with Illegally Voting in the 2024 Election*, UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF MICHIGAN (June 3, 2025), <https://www.justice.gov/usao-edmi/pr/chinese-national-university-michigan-charged-illegally-voting-2024-election>.

¹³ See *supra*, n.5.

second passport after being let out on personal bond.¹⁴ And even though he's now been charged with federal crimes, his vote counted and he is still unlikely to be prosecuted.¹⁵ And if that wasn't enough, Gao was only caught because he contacted the local elections clerk and asked for his ballot back—in other words, *because he turned himself in*.¹⁶

The number of other non-citizens that voted without subsequently confessing their misrepresentations to the authorities remains an open question. It's undisputed that Gao wasn't the only non-citizen to vote in Michigan last year. A subsequent limited investigation by the Michigan Department of State revealed that at least sixteen non-citizens voted in Michigan during the November 2024 presidential election.¹⁷ And because of the cursory nature of Secretary of State Jocelyn Benson's investigation, it's extremely likely that list of sixteen individuals is incomplete. Per the Michigan Department of State's own press release, the investigation was limited to simply comparing Michigan motor vehicle records to voting records in the state's Qualified Voter File (QVF).¹⁸ There is no indication that Secretary Benson did

¹⁴ *See supra*, n.6.

¹⁵ *See supra*, n.5.

¹⁶ *See supra*, n. 4.

¹⁷ *See Michigan Department of State review confirms instances of noncitizen voting are extremely rare*, MICHIGAN DEPARTMENT OF STATE (April 3, 2025), <https://www.michigan.gov/sos/resources/news/2025/04/03/michigan-department-of-state-review-confirms-instances-of-noncitizen-voting-are-extremely-rare>.

¹⁸ *Id.*

anything to identify any other voting non-citizens by, for example, comparing the QVF with any federal databases like the United States Citizenship and Immigration Services' Systematic Alien Verification for Entitlements (SAVE) database.¹⁹

In other words, Secretary Benson's limited "investigation" could identify only those individuals who—like Gao—fraudulently self-identified themselves as citizens on their voter registration application and illegally cast a ballot *after* having self-identified themselves as noncitizens on their motor vehicle records.²⁰ She has, thus, never investigated the extent to which other non-citizens who didn't happen to self-incriminate might have voted in the 2024 election. There may be many more individuals like Gao whose ballots counted in the 2024 election but who never self-identified as a non-citizen voter. Secretary Benson, as with so many of her other claims about the integrity of Michigan's elections, gave lip service to election integrity but failed to follow through.²¹

Secretary Benson and her office's downplaying of the problem of non-citizen voting in Michigan and her failure to adequately investigate the issue is all the more egregious given the high level of public concern from Michigan citizens—the very

¹⁹ See *SAVE*, U.S. CITIZENSHIP AND IMMIGRATION SERVICE, <https://www.uscis.gov/save>.

²⁰ See *supra*, n.11.

²¹ See, e.g., *Jocelyn Benson Brought to Hell in Federal Lawsuit Settlement, but she blames Ruth Johnson*, THE BALLENGER REPORT (February 20, 2021), <https://www.theballengerreport.com/jocelyn-benson-brought-to-heel-in-federal-lawsuit-settlement-but-she-blames-ruth-johnson/>.

people Secretary Benson purports to represent—about the prevalence of non-citizens compromising Michigan’s election through their illegal votes. Clerk Berry, the elected official responsible for administering elections in the Charter Township of Chesterfield Township, was approached many times before and after the 2024 election by citizens who were concerned about non-citizens casting ballots. *See Exhibit A, Affidavit of Cindy Berry*, p. 2. In fact, the issue of non-citizen voting was by far the most common concern brought to Clerk Berry’s attention after the 2024 election. *Id.* And many of the people who raised these concerns were shocked to learn that local election clerks like Clerk Berry have no way to actually verify citizenship and can, instead, only confirm that the individual registering to vote checked a box *attesting* that they are a citizen. *Id.*

In other words, these Michiganders were shocked to learn there is no requirement for prospective voters to present documentary proof of citizenship before registering to vote, and that citizenship-verification in Michigan is nothing more than a box-checking exercise. Yet, rather than take this public concern over non-citizen voting and the weakness of the attestation requirement seriously, Secretary Benson did nothing more than conduct a surface-level, bare-minimum investigation. And, since then, she’s doubled down by making numerous public

statements stridently opposing any attempt to require applicants to provide any proof of citizenship when they apply to register to vote.²²

Disregarding what happened in Michigan, the local Democratic election officials' amicus brief, upon which the lower court relied in its decision granting the preliminary injunction on appeal here, Memorandum and Order at 11, fn 2, nonetheless claims that non-citizen voting is "exceedingly rare" and, thus, doesn't warrant a solution. Democrat Election Official Amicus Brief, ECF 87, PgID 20. They reference several cases that, in their view, support their claim. *Id.*, citing *Fish v. Schwab*, 957 F.3d 1105, 1128 (10th Cir. 2020) (finding that 39 non-citizens made it into Kansas voting records between 1999 and 2013); and *Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 967, 1011 (D. Ariz. 2024) (finding that non-citizen voting in Arizona was rare even though local officials had initiated 13 prosecutions for non-citizen voting in 2007 alone). The local election officials also reference a report showing that 20 non-citizens voted in Georgia in the 2024 election.²³

²² See Hayley Harding, *Michigan secretary of state aims to fix loophole that allowed noncitizen to vote in 2024*, MICHIGAN ADVANCE (March 3, 2025), <https://michiganadvance.com/2025/03/03/michigan-secretary-of-state-aims-to-fix-loophole-that-allowed-noncitizen-to-vote-in-2024/>; *Michigan GOP Wants Voters To Prove Citizenship — Benson Warns of Disenfranchisement*, MEDIUM (January 30, 2025) <https://medium.com/michigan-news/michigan-gop-wants-voters-to-prove-citizenship-benson-warns-of-disenfranchisement-2cd075f5b1f9>.

²³ See Olivia Rubin, *Georgia voter roll audit finds only 20 noncitizens out of 8 million registered voters*, ABC NEWS (October 23, 2024), <https://abcnews.go.com/US/georgia-voter-roll-audit-finds-20-noncitizens-8/story?id=115072461>

But these examples, rather than establishing that non-citizen voting is so rare that it isn't a real problem, actually show that non-citizen voting is a widespread problem in multiple states and has been for decades. Indeed, if states as geographically diverse as Georgia, Arizona, Michigan, and Kansas are experiencing at least some level of non-citizen voting, it's apparent that non-citizen voting is a meaningful problem that is worthy of both serious consideration and an effective solution. That's especially true at the local level, where races can be decided by a very narrow margin of just a handful of votes.

It follows then that the concerns about non-citizen voting addressed by the EO are legitimate and should not be dismissed as breezily as they were in the lower court's opinion. *See* ECF No. 107 at 41-42. The lower court simply missed the boat in its "public interest" analysis which, despite covering *nineteen* states from various corners of the county, is a mere 2 pages in length. *Id.* Despite the lower court's conclusory decision otherwise, the public interest of Michiganders would be best served by vacating the preliminary injunction as it pertains to EO Sections 2(a) and 2(d). Indeed, if, as the lower court observed, "the public has an important interest in making sure government agencies follow the law" and "agencies have no countervailing interest in perpetuating unlawful practices," ECF No. 107 at 41 (citations omitted), then, it cannot possibly be in the public interest to bar the government from ensuring that baseline election laws limit the right to vote to U.S.

Citizens *only*, when the illegal conduct of non-citizen voting is eroding the integrity of our elections.

Fortunately, the public has spoken on these issues and the interests of the public are clear. In a poll of likely Michigan voters conducted by Remington Research Group in January 2025, 87% of the respondents believe that only United States Citizens should have the right to vote in Michigan elections?²⁴ Moreover, 84% of those questioned support requiring people to show proof of U.S. citizenship when they register to vote.²⁵ And the fact that 74% of Democrats (and 92% of Non-Partisans) believe that only U.S. citizens should have the right to vote in Michigan elections, and that 69% of Democrats (and 82% of Non-Partisans) support a requirement that people *show proof* of U.S. citizenship when they register to vote shows that this is not a partisan issue.²⁶

²⁴ See Remington Research Group, *Michigan Statewide Public Opinion Survey* at Question 4, available at <https://onlycitizens.vote/wp-content/uploads/2025/04/MICHIGAN-STATEWIDE-PUBLIC-OPINION-SURVEY-012625.pdf> (In response to Question 4, “Do you believe that only United States Citizens should have the right to vote in Michigan elections? Or should non-citizens also have the right to vote in some Michigan elections?” 87% of respondents answered that “[o]nly U.S. citizens should vote in Michigan elections.”).

²⁵ See *id.* at Question 5 (In response to Question 5, “In general, do you support or oppose requiring that when people register to vote, they must show proof of U.S. Citizenship?” 73% indicated that they “[s]trongly support” requiring proof of citizenship when registering to vote, and 11% indicated that they “[s]omewhat support” such a requirement).

²⁶ See *id.* at page 8-9.

The lower court abused its discretion by finding that the equities and public interest tipped in favor of barring the federal government from taking certain actions to prevent non-citizens from voting in our elections. The lower court's conclusion—as incredible as it sounds—is inconsistent with the law, the equities, and the public interest. Its decision should be reversed and the preliminary injunction should be vacated.

III. CONCLUSION

For these reasons stated above, amici MRP and Clerk Berry respectfully request that this Court reverse the judgment below and vacate the preliminary injunction.

Dated: October 14, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: October 14, 2025

/s/ Robert N. Driscoll

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CERTIFICATE OF SERVICE

I certify that on October 14, 2025, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

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/s/ Robert N. Driscoll
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