No. 16-2490

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOEL CROOKSTON,

Plaintiff-Appellee,

v.

RUTH JOHNSON, Michigan Secretary of State, in her official capacity

Defendant-Appellant.

Appeal from the United States District Court
Western District of Michigan, Southern Division
Honorable Janet T. Neff

PLAINTIFF-APPELLEE'S RESPONSE IN OPPOSITION TO DEFENDANT-APPELLANT'S EMERGENCY MOTION FOR STAY

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INTRODUCTION

On election day in November, 2012, Joel Crookston took a photograph of his marked ballot – a so-called "ballot selfie" – in a Michigan polling place and posted it to social media. He did not know it was a misdemeanor under Michigan law or that he risked forfeiting his vote for these actions. Upon learning late this summer of these potential penalties, Crookston expeditiously brought suit and has thus far vindicated both his past action and secured protection for future actions under the First Amendment. "Ballot selfies" are not a problem to be solved: they are an exciting form of political expression. They allow voters such as Crookston to express to their friends, and the world over, not merely that they voted, and not merely whom they claim to have voted for, but for whom they actually voted. Crookston and all Michigan voters are entitled to retain First Amendment protection.

This Court is not tasked with reviewing every aspect of this case, but only a narrow preliminary injunction that prohibits enforcing the challenged laws against "the photographing of one's own ballot and display of such photographs outside of polling places." Injunction, R. 19, Page ID # 284. "'[B]allot-selfie' electioneering" within a polling place, or *any* electioneering within or around the polling place, is still prohibited. *Compare* Emergency Motion, 6th Cir. R. 3, Page ID ## 24-25 *with* PI Memo, R. 13, Page ID # 41. The speech protected by the injunction is simple,

but robust, and Michigan Secretary of State Johnson's claims that such protection cannot be implemented before election day are without merit.

The Secretary asks this Court to require the voters of Michigan to weight their right to vote against their right to free speech. *See* Emergency Motion, 6th Cir. R. 3, Page ID ## 24-25 ("[T]he penalty for violating these provisions is forfeiture of the right to vote."). This Court should deny the Appellant's motion to stay the lower court's preliminary injunction and allow the voters of Michigan to speak freely *and* exercise their right to vote.

STATEMENT OF FACTS

This case challenges four provisions that prohibit photography in polling places and voting stations. Complaint, R. 1, Page ID # 4-5. Only two of these are actual state laws; the remainder are orders within the Secretary of State's "Actionable Election Day Offenses" publication. *See* "Actionable Election Day Offenses and Duty to Act Under State and Federal Statutes," Oct. 2014, at 2, *available at* http://www.michigan.gov/documents/sos/Actionable_Election_Day_offenses_472371_7.pdf (hereinafter "Actionable Election Day Offenses").

In Michigan primary elections, the following law applies:

> If an elector, after marking his or her ballot, exposes it to any person in a manner likely to reveal the name of any candidate for whom the elector voted, the board of election inspectors shall reject the ballot and the elector shall forfeit the right to vote at the primary. A note of the occurrence shall be made upon the poll list opposite the name of the elector.

MICH. COMP. LAWS § 168.579. The following applies to Michigan general elections:

> If an elector shows his or her ballot or any part of the ballot to any person other than a person lawfully assisting him or her in the preparation of the ballot or a minor child accompanying that elector in the booth or voting compartment . . . after the ballot has been marked, to disclose any part of the face of the ballot, the ballot shall not be deposited in the ballot box, but shall be marked "rejected for exposure", and shall be disposed of as are other rejected ballots. If an elector exposes his or her ballot, a note of the

> occurrence shall be entered on the poll list opposite his or her name and the elector shall not be allowed to vote at the election.

MICH. COMP. LAWS § 168.738(2). The Secretary's Rules in this case prohibit not only ballot selfies, but almost any photography within polling places. The first rule states:

> Persons shall not use video cameras, cell phone cameras or video recording, cameras, television or recording equipment in the polling place, except that broadcast stations and credentialed media may be permitted to briefly film from public area [sic]. Personnel working for broadcast stations or media shall not set up cameras in the polling place . . . .

Actionable Election Day Offenses at 2 (hereinafter "Secretary's Rule 1"). Finally, the second rule states:

> Persons shall not use cell phones once they have entered voting station. Cell phones may be used in the polling place by voters (while waiting in line), challengers and pollwatchers as long as they are not disruptive to the voting process.

Actionable Election Day Offenses at 2 (hereinafter "Secretary's Rule 2").

As authority to make these rules, the Secretary of State cites MICH. COMP. LAWS § 168.931(1)(h). *Id.* at 2. Assuming the Secretary's authority has been lawfully exercised, willful violation of these rules constitutes a misdemeanor punishable with up to $500 in fines and 90 days of imprisonment. *See* MICH. COMP. LAWS §§ 168.931(2), 168.934

Crookston's counsel has suggested language that the Secretary may use to modify the rules to comply with the injunction from the court below. Orally or in the form of a written sign, poll workers may inform voters:

> You may, if you would like, photograph your own marked ballot within the voting station before placing it in the secrecy sleeve. However, you may not display your marked ballot in a way that would reveal it to someone else here in the polling place or otherwise take pictures.

Response to Stay Motion, R. 24, Page ID # 309. This is such a simple modification, that it may be told to poll workers on the morning of the election with little to no controversy, difficulty, or confusion; the "chaos" that the Secretary predicts will result from this simple change has no basis in reality.

ARGUMENT

I. Crookston is likely to prevail under the First Amendment.

This is a straightforward First Amendment case, as recognized by every other court that has address the issue. *Rideout v. Gardner*, --- F.3d ---, 2016 WL 5403593 (1st Cir. 2016) (striking down a ballot photography ban under intermediate scrutiny); *Rideout v. Gardner*, 123 F.Supp.3d 218 (D. N.H. 2015) (striking down a ballot photography ban under strict scrutiny); *Am. Civil Liberties Union (ACLU) of Indiana v. Indiana Secretary of State*, 15-cv-01356, Doc. No. 32 (S.D. Ind. 2015) (preliminary injunction under strict scrutiny) (**Exhibit 1**). Crookston will continue to pursue his challenge to the Secretary's Rules to allow for photography in polling places more broadly than the current unequivocal ban placed upon citizens, but for purposes of the injunction, limited strictly to ballot photography, the Secretary's arguments for reinstating censorship of ballot selfies are no different and as unpersuasive as those made unsuccessfully in New Hampshire and Indiana.

Photography implicates free speech under the First Amendment. *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir. 2003). Ballot photography implicates a major purpose of the First Amendment—the protection of political speech. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Finally, sharing such photographs on social media, or the Internet, is also First Amendment activity. *Reno v. ACLU*,

521 U.S. 844, 868–70 (1997). The prohibitions challenged here are unconstitutional abridgments of free speech, and appropriately limited by the injunction in the court below.

A. The laches doctrine is inapplicable to this case.

The Secretary argues that laches should cause this Court to stay the preliminary injunction, no matter the merits of Crookston's case. "Crookston's unexplained four-year delay is inexcusable." Emergency Motion, 6th Cir. R. 3, Page ID # 18. The Secretary assumes (1) that Crookston knew or had reason to know his action was illegal when it occurred; (2) that the facts of Crookston's case are comparable to laches precedents; and (3) that the state's alleged administrative burden in this case is prejudicial. None of these are true.

Crookston had little reason to know in November, 2012 that his ballot selfie was illegal under the law. *See* PI Memo, R. 13, Page ID # 44–45 (discussing reasonable alternative interpretations of the challenged laws). As to the Secretary's Rules, the publication on which the Secretary relies—to the point of presenting it as an inalterable reference tool—includes nothing about displaying warnings in polling places regarding the use of cameras. *See* "Managing Your Precinct on Election Day Election Inspectors' Procedure Manual," Jan. 2016, at 2, *available at* http://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf; Emergency Motion, 6th Cir. R. 3, Page ID # 12. The

publication requires election inspectors to display many other things, including a flag, sample ballots, and directional signage, but nothing regarding cameras. It requires display of the "What Every Voter Should Know" poster—which amounts to seven printed pages—but this contains no reference to camera restrictions, either. *See* "What Every Voter Should Know: Election Date: Nov. 8, 2016," *available at* https://www.michigan.gov/documents/sos/ED-125_Instrc_for_Voting_444406_7.pdf; *but see id.* at 2 ("[p]lace the ballot in the secrecy sleeve to conceal your votes *before leaving the voting station*" (emphasis added)). Instead, the Secretary expects Crookston was aware of guidance on the Secretary of State's website, where the challenged orders Secretary's Rule 1 and Secretary's Rule 2 are apparent. PI Reply, R. 16, Page ID # 44–45; Actionable Election Day Offenses at 2. Notice did not actually occur until this August of this year, when Crookston's counsel consulted the rules in question and advised Crookston that, absent injunctive relief, engaging in similar activity could lead to misdemeanor charges and forfeiting his vote in the upcoming election.[1] *See* Complaint, R. 1, Page ID # 2.

[1] On this point the Secretary's position is troubling that she will not, at her discretion, enforce the criminal law at issue here. *See* Emergency Motion, 6th Cir. R. 3, Page ID ## 11, 12; Response to PI, R.16, Page ID # 77; Affidavit of Christopher M. Thomas, R. 16-2, Page ID # 105. Contrary to the Secretary's nonbinding assurance, the first line of the Actionable Election Day Offenses document reads, in bold print, "[t]he activities listed below provide a basis for

This misdemeanor distinction is the most important of the plethora of differences between Crookston's notice in this case and precedents upon which Defendant relies, though all of these foreclose the Defendant's attempt to deny hearing the merits of his case. This is not a ballot access case. *See* R. 16-5; 16-7; 16-8; 16-9; 16-11; Emergency Motion, 6th Cir. R. 3, Page ID ## 16-17. This is not a case of a sore loser, whether in an election or in a separate court case, trying to get another shot in the same election. *Id.* This is a case where voters are threatened with jail time for engaging in political speech—Defendant's assurances about not referring violations for prosecution notwithstanding. *See also* MICH. COMP. LAWS § 168.942 ("An offense under this act shall not be prosecuted unless the prosecution

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prosecution under Michigan election law." Actionable Election Day Offenses at 1. The section noting the camera prohibition and cell phone restrictions cite to MICH. COMP. LAWS § 168.931(1)(h) as statutory authority for the camera restriction. *Id.* at 2. By its very terms, anyone who violates this subdivision "*is guilty of a misdemeanor*." MICH. COMP. LAWS § 168.931(1) (emphasis added). The Defendant states she "has not and will not instruct local election officials to refer voters who expose their ballots in the polling place for prosecution." Emergency Motion, 6th Cir. R. 3, Page ID # 11. This does not alleviate the threat of punishment for violating orders issued by the Defendant and only further discredits any laches argument against challenging rules that by their very terms and the Defendant's own guidance are misdemeanors, but suddenly—arbitrarily—less so after the filing of this lawsuit. *See U.S. v. Stevens*, 559 U.S. 460, 480 (2010) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly."); *see also* MICH. COMP. LAWS § 168.939 (placing an affirmative duty on election inspectors to report Election Code offenses to the prosecuting attorney).

is commenced within 3 years after the time the offense is discovered."). Moreover, upon learning of the potential penalties, Crookston and his counsel acted as expeditiously as possible and continues to do so. *See, e.g.*, Executed Summons, R. 5, Page ID # 18 (serving Defendant the day after summons was issued); Motion for PI, R. 12, Page ID # 38 (filing preliminary injunction motion and supporting memorandum within four days of scheduling order); Reply to Emergency Stay Motion, R. 24, Page ID # 308 (filing reply to emergency stay motion the day following the motion and the day before it was due).

The prejudicial concerns and burdens raised by the Defendant are of no moment in light of the simplicity of the preliminary injunction order and the importance of Crookston's, and every other Michigan voter's, First Amendment rights. *See Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) ("[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). *See infra* part III.

B. The challenged provisions are content-based and subject to strict scrutiny.

"[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2230 (2015). The laws are content-based because they restrict the display of only marked ballots. "The speech restricted . . . obviously is political speech." *Burson v. Freeman*, 504 U.S. 191, 196 (1992). A

voter is not prohibited from myriad other displays in a polling place, from their favorite sports team to, importantly, an unmarked ballot. "The required examination of the content of the image in order to enforce the terms of this statute plainly demonstrates its content-based nature." *See ACLU of Indiana*, *supra*, at 7. Content-based restrictions are subject to strict scrutiny, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest[.]" *Reed*, 135 S.Ct. at 2231–32 (citation omitted).

The injunction at issue in this appeal does not implicate intimidation or distractions in a polling place, interests previously recognized by Michigan federal courts. *See, e.g.*, *Am. Federation of State, County & Municipal Employees Council 25 v. Land*, 583 F.Supp.2d 840, 848–49 (E.D. Mich. 2008). To take a ballot photograph in a voting station after marking it and before concealing it in the secrecy sleeve is an act practically unnoticeable by other voters.

As for delays in the polling place, the seconds it takes to snap one's ballot, even taking time to focus and crop, does not realistically delay the voting process for others. For example, one is afforded under state law a full *two minutes* after one leaves the voting station to enter the "secret and obscure" area to deposit the marked ballot in the voting machine to accomplish inserting their ballot, an act that usually takes all of a few seconds. *See* MICH. COMP. LAWS § 168.786. If wait times

in the polling place are a serious issue in Michigan, they may be addressed without abridging the First Amendment rights secured in the injunction.

In other recent successful challenges to laws that restrict ballot selfies, states have argued one additional interest to justify ballot display bans beyond the polling place: ballot integrity. Specifically, states have argued that allowing one to photograph and publish his or her own marked ballot would too easily facilitate vote-buying schemes. *See Rideout*, 123 F.Supp.3d at 231–33; *ACLU of Indiana*, *supra*, at 10–12. In both of these cases, the courts rightfully rejected this interest as wholly speculative.

> Although it is true that vote buying was a problem in this country before the adoption of the Australian [secret] ballot, the historical record establishes that vote buying has not been a significant factor in elections in more than 100 years. Further, because . . . the technology [the law] targets has been in use for many years, it is reasonable to expect that if the problem the state fears were real, it would be able to point to some evidence that the problem currently exists.

Rideout, 123 F.Supp.3d at 233.

The Secretary of State's office has banned ballot photography for at least a decade, and has previously warned against efforts to engage in ballot selfie activity, but the office has not prosecuted a vote-buying scheme relating to the practice, and plaintiff's counsel could not locate a single instance of denying someone a vote for the taking a ballot selfie. Moreover, if this is truly a

governmental interest, the restrictions in Michigan election law are under-inclusive, for there are no prohibitions on the photography or display of marked absentee ballots outside of polling places, undermining the argument that such secrecy is required to prevent vote-buying. *See People v. Pinkney* opinion, R. 16-12, Page ID # 219 (upholding a conviction for vote-buying via absentee ballots).

C. The challenged provisions fail under intermediate or other relaxed forms of scrutiny.

Under intermediate scrutiny, the laws in question still fail. "Even content-neutral restrictions are required to be narrowly tailored to fend off any untoward attempt by the government to suppress speech out of mere convenience." *ACLU of Indiana*, *supra*, at 15, *citing McCullen v. Coakley*, S. Ct. 2518, 2534 (2014). Recent precedent from the Supreme Court affirms that while intermediate scrutiny does not require the government to utilize the least restrictive means to serve compelling interest, the government may not "forgo[] options that could serve its interests just as well, without substantially burdening the kind of speech in which petitioners wish to engage." *McCullen*, 134 S. Ct. at 2537. That is, even under intermediate scrutiny this Court must determine whether the interests at issue may be addressed with "less intrusive means" or "more targeted means." *Id.* at 2538.

That photography, absent some other action or attendant circumstances (such as, perhaps, using a flash or photographing someone else without their permission), can serve as distraction to other voters or even intimidation in a

polling place—particularly when one is photographing one's own ballot within a voting station—is incredible. Given the ubiquity of cameras and camera phones it is hardly a surprise one may see someone using a camera; indeed, to vote in Michigan an elector must already accept that he or she can be filmed by broadcast stations or credentialed media. *See* Secretary's Rule 1. It serves no interest to place a blanket prohibition on citizen photography to the extent it bans photographing one's own ballot and displaying it outside of a polling place.

Vote-buying may also be cured by means less intrusive upon free speech, as the Secretary has demonstrated. Exposure of absentee ballots has played a role in vote buying in Michigan. It has been punished. *See* R. 16-2. The state has accomplished this without banning exposure of absentee ballots. Emergency Motion, 6th Cir. R. 3, Page ID # 22; *id.* at 26 ("The provisions and instructions are narrowly tailored because they apply only to precinct voting, not absent voting.").

No governmental interests are upset by the injunction. Voters taking ballot selfies to reflect patriotism and civic pride may be regulated in sensible ways—*and remain sensibly regulated under the injunction*—but an outright ban is unsupportable. "At best, this statute is a blunt instrument designed to remedy a so-far undetected problem. As such, it does not survive even intermediate scrutiny." *ACLU of Indiana*, *supra*, at 16. To be sure, there is a great deal of election

malfeasance that may be suitably prevented by state law, the Secretary can offer no ties between ballot selfies and any of these acts.

The *Burson* standard of relaxed strict scrutiny is inapplicable to the injunction at issue, as are time, manner and place restrictions. *See generally Burson*, 504 U.S. at 191; *United Food & Commercial Workers*, 364 F.3d 738, 749 (6th Cir. 2007) (concluding the inside of a polling place is a nonpublic forum). Although a ballot selfie is First Amendment conduct that can occur partially within a polling place, the display of a ballot selfie under the injunction does not actually occur within a polling place unless another voter accesses that specific social media while there on election day. Even in that instance, the speech in question is not imposed upon the viewer, and is thus outside of the governmental interests at issue. *See Reno*, 521 U.S. at 868–69 ("'[c]ommunications over the Internet do not 'invade' an individual's home or appear on one's computer screen unbidden.'" (citation omitted)). A modern cell phone takes an image of a ballot and can transmit it to servers on the Internet, such as Facebook or Snapchat, where viewers may review and comment on it. Because of this, the forum in question is more accurately the Internet, not polling places. Thus, this Court should not apply the relaxed strict scrutiny standard of *Burson* to the conduct at issue in the injunction.

Even applying *Burson* scrutiny, however, the laws and rules at issue are unreasonable and significantly impinge upon free speech. *See generally Russell v.*

Lundergan-Grimes, 784 F.3d 1037 (6th Cir. 2015). For reasons quite similar to the analysis for selecting scrutiny, restricting ballot selfies serves no governmental interest. A ballot selfie is an inseparable component of advocacy that actually occurs in a forum removed from a polling place or voting booth, posing no distractions upon other voters, and triggering no campaigning or debates within polling places.

"[Michigan] law seems far more likely to ensnare a large number of voters wishing to make a political point or expressing their pride in voting or recording the moment for some innocuous personal reason than it is to achieve the State's goal of protecting voters from vote-buying predators" or preventing undue influence or distractions within polling places. *ACLU of Indiana*, *supra*, at 14. The advancement of technology and the advent of new outlets for political speech through social media on the Internet require existing law to be more reasonably tailored. The injunction from the court below is a simple step in that direction by prohibiting the enforcement of the laws at issue "against the photographing of one's own ballot and display of such photographs outside of polling places[.]"

II. Crookston will be irreparably harmed by a stay.

Where First Amendment rights are at issue, irreparable harm is established. *Elrod v. Burns*, 427 U.S. at 373–74; *see Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson City*, 274 F.3d 377, 400 (6th Cir. 2001) ("even minimal

infringement upon First Amendment values constitutes irreparable injury"). Particularly in the contentious 2016 election, Crookston should not be deprived of the ability to unequivocally show his vote for major party candidates, minor party candidates, or to make another write-in statement as he did in 2012. *See, e.g.*, *Rideout*, 123 F.Supp.3d at 227 ("'Because all of the candidates SUCK, I did a write-in . . .'").

III. Other voters will be irreparably harmed by a stay.

Michigan voters, and voters across the country, are not "accustomed to a ban on photography in polling places." Emergency Motion, 6th Cir. R. 3, Page ID # 19. Cursory review of social media reveals Crookston is not the only one who has taken a ballot selfie in Michigan. PI Motion, R. 13, Page ID. # 49–50.

On the same day the lower court issued its injunction, popstar Justin Timberlake faced a deluge of media coverage for a similarly innocuous but powerfully-messaged photograph in a voting place. *See* Kate Feldman, *DA won't investigate Justin Timberlake's voting booth selfie*, NY DAILY NEWS, Oct. 25, 2016, *available at* http://www.nydailynews.com/news/politics/justin-timberlake-broken-law-voting-election-article-1.2844406. Late last month, Peg Lautenschlager, the former attorney general of Wisconsin and current chairwoman of the Wisconsin Ethics Commission posted a ballot selfie, receiving a shellacking in the press for celebrating her vote and setting an example for her granddaughter.

Matthew DeFour, *State Ethics Commission chairwoman posts photo of ballot online*, WISC. STATE J., Oct. 1, 2016, *available at* http://host.madison.com/wsj/news/local/govt-and-politics/state-ethics-commission-chairwoman-posts-photo-of-ballot-online/article_3d9eb3f8-e68e-51e7-a371-0a6d2f9d19b5.html. Both Timberlake and Lautenschlager removed their pictures from social media, censored and threatened under the law for celebrating civic engagement, their speech was chilled. The prospect of similar censorship is met here by the Secretary with a patronizing suggesting that Crookston don an "I Voted" sticker and take a selfie outside of a polling place, as if the message is at all comparable to the depth and power of a ballot selfie.

The press coverage of this case and others indicates Michigan voters will already have plenty of questions for poll workers about ballot selfies on election day. *Compare* Kathleen Gray, *Federal court lifts Michigan ban on selfies of ballots*, DETROIT FREE PRESS, Oct. 24, 2016, *available at* http://www.freep.com/story/news/politics/2016/10/24/federal-court-lifts-michigan-ban-selfies-ballots/92698010/ *with* Abby Ohlheiser, *Yes, your ballot selfie might be illegal. Sorry.*, WASH. POST, Oct. 26, 2016, *available at* https://www.washingtonpost.com/news/the-intersect/wp/2016/10/26/yes-your-ballot-selfie-still-might-be-illegal-sorry/ (graphical map that, at the time of viewing, showed the legality of ballot selfies in Michigan as "somewhere in

between" legal and illegal). The Secretary may provide the instruction previously suggested or something similar to accommodate the narrowly tailored injunction from the court below that simply protects Crookston and other Michigan voters from forfeiting their votes and criminal charges for doing what many of them were already doing.

Crookston and Michigan voters are, according to the Secretary's brief, diligent enough citizens to have complete understanding of Michigan law as well as the Secretary's Rules. Simultaneously, Michigan voters and poll workers are automatons that cannot be expected to make a single, simple adaptation without unleashing electoral anarchy. Neither of these are reasonable positions. Voters are human and, as Americans, still instinctively engage in free speech without combing bureaucratic rules, as Crookston did in 2012. Simultaneously, so long as they are given notice, voters and poll workers are able to comprehend a minor change in the application of laws and rules without a full retraining by the state.

IV. The public's interest lies in preserving First Amendment rights.

"[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) ("injunctions protecting First Amendment freedoms are always in the public interest"). Permitting Crookston and other Michigan voters

to speak freely serves the important goal of protecting an "essential mechanism of democracy" and our safeguard to "hold officials accountable to the people." *Citizens United*, 558 U.S. 310, 339 (2010).

CONCLUSION

Common sense dictates that citizens in a free republic should not be put in jail, fined, or forfeit their very right to vote for taking photographs of their own marked ballots and displaying them outside of a polling place. Thanks to the injunction from the court below, that is the *status quo* in Michigan. The injunction from the court below may be swiftly and simply implemented to safeguard free speech in time for election day on November 8, and this Court should not stay that implementation.

Respectfully submitted,

Dated: October 28, 2016

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CERTIFICATE OF SERVICE

I certify that on October 28, 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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