STATE OF MICHIGAN

IN THE COURT OF CLAIMS

PHILIP M. O'HALLORAN, M.D.
BRADEN GIACOBAZZI, ROBERT CUSHMAN,
PENNY CRIDER, and KENNETH CRIDER

Plaintiffs

v.

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

Defendants
_____/

Case No. 22-000162-MZ

Hon. Brock A. Swartzle

RICHARD DEVISSER, MICHIGAN REPUBLICAN PARTY AND REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs,

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

Defendants.

_____/

Case No. 22-000164MM

Hon. Brock A. Swartzle

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PLAINTIFFS O'HALLORAN, GIACOBAZZI, CUSHMAN, CRIDER AND CRIDER'S OBJECTION TO DEFENDANTS' BENSON AND BRATER'S MOTION FOR SUMMARY DISPOSITION AND RESPONSE TO SHOW CAUSE

NOW COME PLAINTIFFS O'HALLORAN, GIACOBAZZI, CUSHMAN, CRIDER AND CRIDER, by and through their attorney, Ann M. Howard, P.C., and hereby respond and object to Defendant's motion for summary disposition as follows:

RESPONSE TO ALLEGATION I: "JURISDICTION"

1. In response to allegation - I in defendants' motion for summary disposition, seeking dismissal for lack of jurisdiction, plaintiffs object to the dismissal of their case based on lack of jurisdiction.
2. MCR 2.118(A)(1) allows a party to file an amended pleading as a matter of course within 14 days after being served with a responsive pleading by an adverse party.
3. In this case, plaintiffs have done just that – filed an amended complaint – within two days of receiving defendants' answer, to correct an alleged technical error that defendants raised as an issue. Plaintiffs are within the 14-day period prescribed by statute.

4. Time is of the essence. If plaintiffs' case was dismissed, they would immediately refile the same case, seeking the same relief. On October 3, 2022, defendants were ordered to show cause by October 11 why the Court should not issue the relief sought by plaintiffs. With the generous resources enjoyed by the attorney general's office, defendants have timely responded to plaintiffs' complaint, addressing all issues deemed relevant, as ordered.

5. The Court of Appeals alludes to judicial discretion in allowing an amended complaint to be filed to correct minor technical issues. In *Reighard v. Central Michigan University*, No. 358196 Court of Claims LC No. 21-000056-MK and *Jonaitis v. Central Michigan University*, No. 358759, Court of Claims LC No. 20-000188-MK, the Court, in its unpublished opinion on May 26, 2022, referenced the following: See *Progress Mich v Attorney General*, 506 Mich 74, 91; 954 NW2d 475 (2020). Plaintiffs took *no* steps whatsoever to amend their complaints to comply with either MCL 600.6431 or MCL 600.6434. Cf. *Progress Mich*, 506 Mich at 82 (plaintiff filed an amended complaint that was signed and verified); *Elia Cos, LLC*, 335 Mich App at 444-445, 458 (plaintiff attempted to verify the complaint through an affidavit).

RESPONSE TO ALLEGATION II: "LACHES"

6. In response to allegation II in defendants' motion for summary disposition, plaintiffs object to the dismissal of their case on the grounds of laches, as it does not apply.

7. Defendants claim plaintiffs' case must be barred by laches. Defendants' Response p8 cites:

> "*Detroit Unity Fund v Whitmer*, 819 F App'x 421, 422 (CA 6, 2020). An action may be barred by laches if: (1) the plaintiff delayed unreasonably in asserting their rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co v Central States, Southeast and Southwest Areas Pension Fund*, 206 F3d 680, 684 (CA 6, 2000). Laches applies in this case where both elements are satisfied."

To address (1) above, a brief timeline must be developed. First, defendants claim that concerns with the 2020 election, and not changes in statute, have driven the need to amend the 'directive'. Page 1 of defendants' Response states "*After certain issues and disputes surrounding the 2020 election, the Bureau again revised its guidance in May of 2022 (the Challenger Guidance).*" With the vast resources available to the state, the directive was posted to the state website a full **18 months** after the "critical need" for its amendment was identified. At the time of the updated 'directive' posting, defendants released an 'internal' memo, (See EXHIBIT B of Defendants' Response), which claims to make various improvements to the document, but does not once mention the previously expressed critical need to address 2020 election concerns.

8. Plaintiff O'Halloran, with very limited resources at his disposal, reviewed the updated 'directive' after being made aware of its existence and immediately provided a list of concerns to the secretary of state regarding the legitimacy of much of the new content, as well as lingering concerns with some of the 'legacy' content. This complaint was in the form of a July 20 and July 22, 2022, set of emails whose receipt by the secretary of state is verified. The substance of the complaint was supplied to the secretary of state in the form of a PDF attached to the email. (See Exhibit A). Approximately 10 days later, the August primary election was held, at which time Plaintiff O'Halloran and others were aggrieved as indicated in the Plaintiff's original complaint, p15. After collecting and documenting their concerns, Plaintiffs spent weeks seeking counsel in a political environment extremely adversarial to any counsel attempting to support citizens exercising their rights. On

September 13, present counsel agreed to file the complaint, with a filing date of September 29, 2022 – a mere two weeks after starting the case.

9. On a parallel timeline, Defendants engaged in negotiations with the state Legislature, which has the effect of placing additional burden on the activities of both Defendants and Plaintiffs. Amended statutes will emerge due to the passage of (HB4491). A brief paraphrasing of the provisions would include the need for both election inspectors and election challengers to support ballot processing activities in the two days prior to the Nov. 08, 2022 election day. This has resulted in not only a last minute, self-inflicted burden to Defendant's, but also impacts plaintiffs' effort to support the election in the capacity of election Challengers. Indeed, these last-minute changes provide evidence that defendants are not really concerned with making "late changes" when they are initiating large, last-minute changes themselves.

10. For these reasons, dismissal of plaintiffs' complaint due to laches does not apply. Plaintiffs did not delay in their initiation of the matter. And defendants are not prejudiced by the delay, in part due to their own parallel actions.

RESPONSE TO ALLEGATION III: "CHALLENGER INSTRUCTIONS"

11. In response to Allegation III in defendants' motion for summary disposition, plaintiffs object to the dismissal of their case on the grounds that the challenger instructions are lawful. They are not. Given the 48-hour constraint on plaintiffs to draft a response and amend their complaint, plaintiffs will discuss the most pertinent issues within this allegation.

12. *Defendants state there is no actual controversy.* On Page 11 of Defendants response, they insist that no "actual controversy" exists stating "*Simply put, Plaintiffs will still be able to appoint election challengers who will be able to make any challenges allowed under the law.*" Even if this is narrow point is partially true to the extent that some challenges are possible, it ignores that challengers have rights in addition to issuing challenges. They are also afforded the right to 'keep records' and have a presence at all counting tables per R 168.791:

> Rule 21. Challengers designated pursuant to section 730 of the act may be at the counting center and a receiving station, including 1 challenger for each separate receiving, ballot inspection, duplicating, and certifying board and for each computer being used to tabulate the ballots.

Further MCL 168.794 provides the definition:

> (d) "Counting center" means 1 or more locations selected by the board of election commissioners of the city, county, township, village, or school district at which ballots are counted by means of electronic tabulating equipment or vote totals are electronically received from electronic tabulating equipment and electronically compiled.

13. Given the aforementioned properly promulgated rule and statute definitions, Challengers' rights are severely curtailed with the present 'directive's' mandatory p8 instructions stating clerks must:

> "Balance the rights of challengers to meaningfully observe the absent voter ballot counting process and the clerk's responsibility to ensure safety and maintain orderly movement within the facility."

14. But for the unlawful instructions in Defendants' 'directive,' plaintiff O'Halloran would have been able to access the central accumulating computers per his affidavit referenced on p2 of Plaintiffs' original complaint:

> "I also insisted that our poll challengers be allowed to inspect an area where there was a raised platform in the center of the counting board. This location contained a server and other computers where electronic vote totals from 24 tabulators are electronically compiled. Election officials prevented any of our challengers from entering the area."

Put another way, if the election inspectors and other election officials at the counting center were made aware of Plaintiff O'Halloran's right to presence at the '*raised platform*' computers in the Defendants' 'directive,' violation of Plaintiff's rights would have been avoided. With current directive text, election officials are mistakenly exercising 'flexibility' to trample challengers' rights to meaningfully and selectively observe at all locations identified in existing election law and rules.

15. *Defendants state that the "directive" does not violate election laws with respect to challengers' ability to keep records:* Related to this concern, on page 28 of their Response, Defendants' claim instructions in their 'directive' do not violate election law. Plaintiffs disagree. As in the original complaint, Plaintiffs note that the Defendants' 'directive' states on p23:

> "Challengers may not: … If serving at an absent voter ballot processing facility, possess a mobile phone or any other device capable of sending or receiving information between the opening and closing of polls on Election Day; …"

Additionally, defendants state on p5 of their Response:

> "If a challenger using a digital credential is serving in an absent voter ballot processing facility on Election Day, the challenger must display the credential to the appropriate election official, gain approval to enter the facility, and then store the device in a place outside of the absent voter ballot processing facility. Electronic devices are not permitted within the absent voter ballot processing facility."

Clearly these instructions are presented as mandatory actions required of election challengers. The net effect deprives Challengers of their rights set forth in MCL 168.733(1)(h) to "*Keep records of votes cast and other election procedures as the challenger*

desires." At an AVCB, the absence of voters actively voting, and other processing techniques used by election inspectors, negates the concern that audio and video captures would violate voters privacy rights. This passage must reasonably be interpreted to indicate both that it is completely at the discretion of the election challenger whether or not to create records, and how to create those records. Alternatively, at p27 of their Response, Defendants suggest "keep records" in this context is limited to "… *taking handwritten notes, as paper, notebooks, pens, etc. are not prohibited within AVCBs* …" However, in light of the speed at which ballots are now processed with the aid of electronic devices, particularly at AVCBs, a ballot may be visible to a challenger for only a matter of seconds. In this reality, the right to "*keep records of votes cast,*" if exercised, is meaningless except through electronic devices capable of capturing images much faster than manual methods. Plaintiffs in no way want to exercise this right in a manner that might "*unduly delay*" the efficient movements of election inspectors while processing (unchallenged) ballots, as such action would put them at risk of violating MCL 168.727(3).

16. Absent lawful instructions in defendant's 'directive' to preserve plaintiffs' rights in this capacity, claims like Giacobazzi's affidavit p1 will continue to surface:

> "I was told by men in black with ICU on the shirt and poll workers that I could not stand in certain places and had to remain standing in others which prevented me from doing my lawful duties as a challenger. When I cited the law and showed them the Michigan Election law at MCL 168, some said that "the law doesn't apply here." Others said that "I don't care what the law says. The only thing that matters is what I tell you." I told them that "under Michigan law, it's possible that you are committing a felony right now." They ignored me."

The absence of any reference to MCL 168.734 and its associated felony penalties, along with Defendants' instructions to explicitly forbid election challenger possession of device

with which to "*keep records*," and thereby infringe upon, challengers' rights, directly caused the situation as those interacting with the challenger were unaware of the unlawful nature of their action. This constitutes unlawful guidance that must be corrected. When conditions like this turn from amicable to adversarial, emotions can sometimes distort the true perception of events. Preservation of records via video and/or audio recording media, as plaintiff suggests is a right applicable to AVCBs, has the added benefit of dispassionately preserving the situation for later review. Plaintiffs' have even suggested a means by which inadvertent disclosures in violation of 'processing secrecy' oaths taken to participate at an AVCB may be avoided. As indicated in p26 of Plaintiffs' original complaint, operating with electronic devices in "airplane mode" completely disables their communication and network capabilities. This is exactly the same strategy used by election inspectors to prevent accidental disclosure of ePB data on network capable laptop computers.

17. *Defendants argue that restricting challengers' communications to a single liaison does not violate the law.* Defendants argue that restricting election challengers' communications to a single appointed 'challenger liaison,' is consistent with statute text, per p24 of their Response. More specifically Defendants' claims that the passage in MCL 168.733(1)(e) "*Bring to **an** election inspector's attention*" may and must be treated and enforced as singular. One must note that the word "**a**" or "**an**" is used in several instances in the statute. In proper context, these references must be interpreted as "any."

> *"(a) Under the scrutiny of **an election inspector**, inspect without handling the poll books as ballots are issued to electors and the electors' names being entered in the poll book.*

...

(c) Challenge the voting rights of ***a person*** *who the challenger has good reason to believe is not a registered elector.*

(d) Challenge ***an election procedure*** *that is not being properly performed.*

(e) Bring to ***an election inspector****'s attention any of the following:*

(i) Improper handling of ***a ballot*** *by an elector or election inspector.*

(ii) A violation of ***a regulation*** *made by the board of election inspectors pursuant to section 742.*

(iii) Campaigning being performed by an election inspector or other person in violation of section 744. ..."

Clearly the Legislature's intent was not to limit the challengers to challenge a singular *voter*, or a singular *election procedure*, or a singular *ballot*, or a singular *regulation* that is defined by the clerk or election inspector chairperson. In context, all references to **an** election inspector must be interpreted as **any** appropriate election inspector based on the situation encountered by the election challenger. In this way, the defendants' 'directive' is providing instructions contrary to statute text, and must be amended.

18. *Defendants argue the directive's instructions are valid*: Judge Murray's order in *Davis v Benson* is on point in addressing this issue. More specifically:

> "A directive that is inconsistent with the law is not a directive but a rule requiring promulgation under the APA. *Jordan v Dep't of Corrections*, 165 Mich App at 27 ("A policy directive cannot be considered an 'interpretive statement' of a rule if it is in fact inconsistent with the rule or contains provisions which go beyond the scope of the rule."). And, compliance with the APA is no mere procedural nicety. Instead, our appellate courts have repeatedly emphasized the importance of the democratic principles embodied in the APA, which requires notice and an opportunity to be heard on the subject under consideration. See *AFSCME*, 452 Mich at 14-15. Thus,

> the directive is a rule which defendant intends to have enforced as a law, and was required to be promulgated through the procedures of the APA."

Thus, if this Court recognized the merits in Plaintiffs' arguments that many instructions presented in Defendants' 'directive' are unlawful, then a similar line of reasoning would find that Defendants have in effect promulgated rules without complying with the APA. Even if Defendants have authority to promulgate rules for these situations, they are not valid until properly promulgated.

19. *Defendants argue that the 'directive' is valid due to APA provisions 24.207(g) and (h).*

Defendants suggest on p27 of their Response that the 'directive' instructions, even if in conflict with existing statutes and not promulgated in compliance with the APA, are validly implemented due to provisions in 24.207(g) and (h) to wit:

> "Even if this Court were to conclude that the permissive power exception does not apply, the Challenger Guidance instructions do not constitute "rules" as that term has been defined and explained by the courts. Under MCL 24.207(g) a "rule" does not include "[a]n intergovernmental . . . memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public." Similarly, under § 207(h), "rule" does not include "[a] form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory." MCL 168.207(h)."

In fact, Plaintiffs contend that 24.207(g) does not apply as election challenger rights are diminished or negated through either their own or their election inspector counterparts' faithful adherence to the mandatory instructions present in the Defendant's directive. Election challengers are voluntary positions that do not fall under the umbrella of any government agency when acting in their capacity of an election challenger.

24.207(h) does not apply for the simple reason that the contended components of the Defendants' directive are written as mandatory instructions issued by the secretary of state with force of law per MCL 168.931(1)(h):

"Sec. 931. (1) A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor …
(h) A person shall not willfully fail to perform a duty imposed upon that person by this act, or disobey a lawful instruction or order of the secretary of state as chief state election officer or of a board of county election commissioners, board of city election commissioners, or board of inspectors of election. …"

20. *Defendants argue the secretary of state has authority to issue instructions through MCL 168.31(1)(a).* One of the Defendant's arguments for the validity of their 'directive's' guidelines asserts that even if all of Plaintiffs' other claims are true (and Plaintiffs have sworn that they are), Defendants have special powers to 'act quickly' to implement instructions in place of rules or to implement rules per their Response p16:

> ""The secretary of state shall . . . issue instructions and promulgate rules pursuant to the [APA] . . . for the conduct of elections[.]" MCL 168.31(1)(a) (emphasis added). While the use of "shall" connotes mandatory action, the statutory language itself contemplates two different acts that the Secretary "shall do": either (1) issue instructions, or (2) promulgate rules. 3 Thus, § 31 does not mandate that the Secretary promulgate rules for the conduct of elections. 4 Rather, the Secretary, in her discretion, can either issue instructions or promulgate rules. MCL 168.31(1)(a). Here, the Secretary issued instructions."

Plaintiffs ponder if this argument is a good place to reference *Hopkins* case details. The oversimplified crux of that case might be described as:

> Plaintiffs asserted Defendant's actions to hold 'meetings' were unlawful because Defendants were required to promulgate 'meeting' rules prior to scheduling such meetings, and as a result of the meetings Plaintiffs' interests were harmed. The (appeal) opinion found that the statutes granting authority to Defendants to

promulgate 'meeting' rules was not in fact required (i.e., it was discretionary), and the existing statutes outlining 'meeting' requirements were sufficient and faithfully observed by Defendants, and the final ruling was in favor of the Defendants.

21. In the current matter, the secretary has claimed broad powers to "*issue instructions and promulgate rules*" based on authority provided in MCL 168.31(1)(a). However, unlike the situation for *Hopkins*, the authority granted in MCL 168.31(1)(a) is subject to mandatory precondition(s). This becomes evident when viewing the statute subsection in its full context:

> "Sec. 31. (1) The secretary of state shall do all of the following: (a) **Subject to subsection (2)**, issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state. …"

The precondition(s) of subsection (2) take the form:

> (2) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the secretary of state shall promulgate rules establishing uniform standards for state and local nominating, recall, and ballot question petition signatures. The standards for petition signatures may include, but need not be limited to, standards for all of the following:
> (a) Determining the validity of registration of a circulator or individual signing a petition.
> (b) Determining the genuineness of the signature of a circulator or individual signing a petition, including digitized signatures.
> (c) Proper designation of the place of registration of a circulator or individual signing a petition.

22. To Plaintiffs' best knowledge and belief, all election related rules currently (properly) promulgated by the secretary of state related to election administration are posted to the state website ElectionsAndCampaignFinance:

MI Administrative Code

MI Administrative Code(s) for State - Elections & Campaign Finance

Show 10 entries Search:

Title	Start	End	Admin Code File	Last Updated On
Campaign Financing Rules -- Solicitations by Separate Segregated Funds	R 169.1	169.65	1300_2013-102ST_AdminCode.pdf PDF HTML	N/A
Casino Interest Registration	R 432.1001	432.1003	790_10759_AdminCode.pdf PDF HTML	N/A
Conduct of Election Recounts	R 168.901	168.930	77_10073_AdminCode.pdf PDF HTML	N/A
Lobbyist Registration and Reporting	R 4.411	R 4.473	R 4.411 to R 4.473.pdf PDF HTML	12/13/2019 2:37:11 PM
Procedures	R 168.841	168.845	76_10072_AdminCode.pdf PDF HTML	N/A
Use of Optical Scan Tabulators by Absentee Voters	R 168.771	168.793	941_2009-068ST_AdminCode.pdf PDF HTML	N/A

23. To Plaintiff's best information and belief, none of these rules were promulgated under the authority of MCL 168.31(2), and none satisfy the requirements set forth in MCL 168.31(2).

24. Given the content in subsection (2), it seems most appropriate that "*Subject to subsection (2)*" is best interpreted as '*Contingent upon subsection (2).*' This implies that any authority exercised under MCL 168.31(1)(a), first requires the completion of action(s) identified in MCL 168.31(2) (i.e., APA compliant promulgation of rules "… *establishing uniform standards for state and local nominating, recall, and ballot question petition signatures.* …"). As such action does not appear to have been completed, any present actual or hypothetical authority wielded under MCL 168.31(1)(a) is invalid.

The current matter requires a set of 'prerequisite' rules to be promulgated by an agency before another set of (desired) actions may be taken by the same agency. This is a different situation than was found in *Hopkins*. In that case, the agency had discretion to decide whether or not to promulgate rules before taking subsequent (desirable) action.

25. The current matter requires a set of 'prerequisite' rules to be promulgated by an agency before another set of (desired) actions may be taken by the same agency. This is a different

situation than was found in *Hopkins*. In that case, the agency was afforded statutory discretion for promulgating rules before taking subsequent (desirable) action.

26. WHEREFORE, Plaintiffs respectfully request that the Motion for Summary Disposition be denied and that their case proceed on the merits.

RESPECTFULLY SUBMITTED BY COUNSEL:

October 13, 2022

/s/Ann M. Howard
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STATE OF MICHIGAN

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EXHIBIT A

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July 20, 2022

To the Secretary of State, Jocelyn Benson:

A citizen inquiry to address concerns for August 2nd Primary and Subsequent Elections in Michigan:

Over the past few weeks, poll worker selection and training has been rolled out across our state. Our observations regarding this rollout have generated concerns that the 2022 Election Manual conflicts with Michigan Election Law under MCL 168.733. With the Michigan Primary being less than two weeks away, we respectfully request an expedite response to the queries enclosed within this letter within 24 hours in a manner that would assure us and other citizens that our election laws will be adhered to in the upcoming elections.

For your reference, the provisions of MCL 168.733 state:

> 168.733 Challengers; space in polling place; rights; space at counting board; expulsion for cause; protection; threat or intimidation.
>
> (1) The board of election inspectors shall provide space for the challengers within the polling place that enables the challengers to observe the election procedure and each person applying to vote. A challenger may do 1 or more of the following:
>
> (a) Under the scrutiny of an election inspector, inspect without handling the poll books as ballots are issued to electors and the electors' names being entered in the poll book.
>
> (b) Observe the manner in which the duties of the election inspectors are being performed.
>
> (c) Challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector.
>
> (d) Challenge an election procedure that is not being properly performed.
>
> (e) Bring to an election inspector's attention any of the following:
>
> (i) Improper handling of a ballot by an elector or election inspector.

(ii) A violation of a regulation made by the board of election inspectors pursuant to section 742.

(iii) Campaigning being performed by an election inspector or other person in violation of section 744.

(iv) A violation of election law or other prescribed election procedure.

(f) Remain during the canvass of votes and until the statement of returns is duly signed and made.

(g) Examine without handling each ballot as it is being counted.

(h) Keep records of votes cast and other election procedures as the challenger desires.

(i) Observe the recording of absent voter ballots on voting machines.

(2) The board of election inspectors shall provide space for each challenger, if any, at each counting board that enables the challengers to observe the counting of the ballots. A challenger at the counting board may do 1 or more of the activities allowed in subsection (1), as applicable.

(3) Any evidence of drinking of alcoholic beverages or disorderly conduct is sufficient cause for the expulsion of a challenger from the polling place or the counting board. The election inspectors and other election officials on duty shall protect a challenger in the discharge of his or her duties.

(4) A person shall not threaten or intimidate a challenger while performing an activity allowed under subsection (1). A challenger shall not threaten or intimidate an elector while the elector is entering the polling place, applying to vote, entering the voting compartment, voting, or leaving the polling place.

The May 2022 edition of the SOS manual, "The Appointment, Rights and Duties of Poll Challengers," contains brand NEW language and directives not based on Michigan law. The new manual says:

> Challengers present at a polling place or absent voter ballot processing facility must follow the directions of the election inspectors operating the polling place or absent voter ballot processing facility. The directions election inspectors may give to challengers include, but are not limited to:
>
> • Directing challengers on where to stand and how to conduct themselves in accordance with these instructions…
>
> • Directing a challenger who violates these instructions to leave the polling place or absent voter ballot processing facility, or requesting that the local clerk or local law enforcement remove the challenger from the polling place or absent voter ballot processing facility."

The manual and Michigan Election Law are in direct conflict. Specifically, we believe that the Michigan Election Manual conflicts with the provisions of subsection (e).

We are concerned that this could open up many possibilities for abuse of power by precinct captains and poll inspectors. According to the language in the manual, Poll Challengers are subject to the direction of Poll Inspectors. According to our election law, Poll Challengers have been delegated with specific authority that is not subservient to the direction of Poll Inspectors. As currently stated in the election manual, poll Challengers will have their statutory authority subject to the arbitrary directives of poll inspector. The use of the phrase "…include but are not limited to…" seems to open the door to an abuse of authority by poll inspectors and seems to be in direct conflict with established election law.

The language is vague enough in the manual that Poll Challengers could be told to leave or stand where told for any reason. Based on the manual (not Michigan Election law) the poll Challengers would be subject to unlawful directives by Poll Inspectors.

We desire to know what course of action you would like us to pursue in the case that poll challengers are directed by the precinct captain and/or poll/election inspector to take actions that preclude our ability to execute our statutory oversight authority?

Please advise as to how you believe challengers will be able to report violations of election law if they are not able to access all areas where "prescribed election procedure" is being executed.

What actions are being taken by your office to ensure that the Michigan Election Manual is updated to ensure that it does not conflict with current Michigan election law?

We look forward to a resolution on the above matters. For the essence of time, kindly respond within 24 hours. Your attention to our concerns is much appreciated.

Kind Regards,

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philipohalloran@gmail.com

References

1. "The Appointment, Rights and Duties of Election Challengers and Poll Watchers" May, 2022 https://www.michigan.gov/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bfb95184c9b91d5b1779d08cb1b

2. "The Appointment, Rights and Duties of Election Challengers and Poll Watchers" September, 2020 https://jxngop.org/wp-content/uploads/2021/10/SOS-poll-challenger-watcher-2020.pdf

3. MICHIGAN ELECTION LAW (EXCERPT) Act 116 of 1954 Section 168.733: http://www.legislature.mi.gov/(S(fqy05sa511vk5qg33slg4uvh))/mileg.aspx?page=getObject&objectName=mcl-168-733

From: Office of Secretary of State Jocelyn Benson <secretary@michigan.gov>
Date: July 22, 2022 at 12:53:51 PM EDT
To: philipohalloran@gmail.com
Subject: RE: 2nd Request. URGENT: Citizen Inquiry regarding the August 2nd Primary Election #SecI00819471
Reply-To: secretary@michigan.gov

Greetings,

Thank you for contacting my office. Your message is important to me.

This email confirms I have received your correspondence. Please know my staff and I read every email and appreciate your patience as we respond to your message.

Sincerely,

Jocelyn Benson
Secretary of State

SECRETARY OF STATE ALERT: Customers are welcome but not required to wear a face mask inside state buildings. If a customer chooses to wear a face mask and their transaction requires a new photo for a license or ID, they will be asked and required to

momentarily remove their face mask.

Those who need to visit a Secretary of State office can schedule a visit up to six months in advance and thousands of office visits are released every business day at 8 a.m. and noon. To schedule a visit in advance please go to Michigan.gov/SOS and select Schedule an office visit or call 888-SOS-MICH (888-767-6424). Customers can also walk up to any office without scheduling in advance and will be served right away if there is availability or staff will assist with scheduling a return visit, often for the next day.

Secretary of State offices are open 9 a.m. – 5 p.m. (Eastern Time) Monday, Tuesday, Thursday, and Friday; and Wednesdays from 11 a.m. – 7 p.m. (Eastern Time).

Email ID: #SecI00819471
Message: Secretary of State, Jocelyn Benson

Madame Secretary,

Please find attached, in PDF form, an urgent Citizen Inquiry involving the August 2nd, 2022Primary Election.

Thank you in advance for your immediate attention to this time sensitive matter.

Yours truly,

Melissa Williams
Michigan Poll Worker

Philip O'Halloran
Michigan Poll Challenger

From: Office of Secretary of State Jocelyn Benson <secretary@michigan.gov>
Date: July 20, 2022 at 7:28:33 PM EDT
To: philipohalloran@gmail.com
Subject: RE: URGENT: Citizen Inquiry regarding the August 2nd Michigan Primary Election #SecI00818703
Reply-To: secretary@michigan.gov

Greetings,

Thank you for contacting my office. Your message is important to me.

This email confirms I have received your correspondence. Please know my staff and I read every email and appreciate your patience as we respond to your message.

Sincerely,

Jocelyn Benson
Secretary of State

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Email ID: #SecI00818703
Message:

Secretary of State, Jocelyn Benson

Madame Secretary,

Please find attached, in PDF form, an urgent Citizens Inquiry involving the August 2nd, 2022 Primary Election. Thank you in advance for your immediate attention to this time sensitive matter.

Yours truly,

Melissa Williams
Michigan Poll Worker

Philip O'Halloran
Michigan Poll Challenger