

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

RICHARD DEVISSER, MICHIGAN
REPUBLICAN PARTY, and REPUBLICAN
NATIONAL COMMITTEE,

Case No. 22-_____ -MM

Hon. _____

Plaintiffs,

v

**EXPEDITED RELIEF
REQUESTED**

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

Defendants.

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**VERIFIED COMPLAINT
FOR EXPEDITED DECLARATORY AND
INJUNCTIVE RELIEF**

*There is no other pending or resolved civil
action arising out of the same transaction or
occurrence alleged in this complaint.*

NOW COME Plaintiffs Richard DeVisser, the Michigan Republican Party, and the Republican National Committee, by and through their attorneys, Dickinson Wright PLLC, and state as follows in support of their Verified Complaint against Michigan Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater:

INTRODUCTION

1. The Michigan Election Law expressly provides that political parties such as the Michigan Republican Party may appoint election challengers to monitor and observe the election process to ensure that Michigan's elections are conducted in an open, fair, and orderly manner.

2. While the Michigan Election Law expressly provides the requirements for political parties to appoint those election challengers, as well as the rights and duties of those election challengers, Plaintiffs recently learned that Defendants Secretary Benson and Director Brater unilaterally issued a publication, defined below as the "2022 Election Challenger Instructions," directing local election officials to enforce a new set of rules pertaining to the appointment of election challengers, as well as the rights and duties of those elections challengers.

3. Those new rules, however, are directly inconsistent with the plain language of the Michigan Election Law, prior guidance issued by the Secretary of State, and current common practice. And despite the fact that this Court has held on at least two recent occasions that Secretary Benson issued rules in violation of Michigan's Administrative Procedures Act ("APA"), *see Davis v Benson*, No. 20-000207-MZ, 2020 WL 7033534 (Mich. Ct. Cl. Oct. 27, 2020); *Genetski v Benson*, No. 20-000216-MM, 2021 WL 1624452 (Mich. Ct. Cl. Mar. 09, 2021), none of the new rules set forth in the 2022 Election Challenger Instructions were promulgated in accordance with the APA.

4. As a result, and in light of the approaching general election on November 8, 2022, Plaintiffs respectfully ask this Court to: (a) declare that the Defendants' publication defined herein as the "2022 Election Challenger Instructions" is inconsistent with the Michigan Election Law and is therefore unenforceable; (b) declare that the 2022 Election Challenger Instructions set forth "rules" as that term is defined under the APA, that the Defendants failed to follow the applicable requirements under the APA when they promulgated those rules, and that the rules are therefore

invalid; (c) order Defendants to rescind the 2022 Election Challenger Instructions and to reissue the prior version of that document, defined herein as the “October 2020 Election Challenger Guidance”; and (d) enjoin Defendants from implementing the 2022 Election Challenger Instructions in advance of the November 8, 2022 general election.

5. Plaintiffs seek an expedited hearing on this matter under MCR 2.605(D), which authorizes this Court to “order a speedy hearing of an action for declaratory relief” and to “advance [this case] on the calendar.” Expedited consideration is warranted and necessary here. Absent declaratory and injunctive relief, Plaintiffs’ respective rights to appoint election challengers and to carry out their rights and privileges as duly appointed election challengers under Michigan law will continue to be violated and jeopardized by Defendants’ acts, including their issuance and anticipated implementation of the Defendants’ 2022 Election Challenger Instructions.

6. Time remains to adjudicate this case and controversy on the merits in an expedited fashion prior to the November 8, 2022 general election, and without the need for temporary or preliminary injunctive relief.¹ To that end, Plaintiffs will make best efforts to effectuate formal service of process immediately upon the filing of this Verified Complaint and receipt of summonses from this Court, and will contact the Assistant Attorneys General that typically serve as elections counsel for the Defendants to discuss a briefing schedule regarding Plaintiffs’ Expedited Motion for Declaratory Relief under MCR 2.605(D), which is forthcoming.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff the Michigan Republican Party (“MRP”) is a “major political party” as that term is defined by the Michigan Election Law. *See* MCL § 168.16. Formed for the general purposes of, among other things, promoting Republican values and assisting candidates who share

¹ Plaintiffs, of course, reserve the right to seek preliminary injunctive relief should the need arise.

those values with election or appointment to partisan federal, state, and local office, MRP maintains headquarters at 520 Seymour Street, Lansing, Michigan 48912. By virtue of its authority under the Michigan Election Law to appoint election challengers, *see, e.g.*, MCL § 168.732, MRP issued credentials to 665 election challengers for the August 2022 primary election. MRP intends to appoint an even greater quantity of election challengers during the upcoming November 2022 general election. MRP brings this action on behalf of itself and its members.

8. Plaintiff Richard DeVisser is a Michigan citizen and a registered and eligible voter residing in Kalamazoo County, Michigan. Plaintiff DeVisser was appointed by MRP as an election challenger during the August 2022 primary election, and he served in that capacity at the polling place that corresponds with City of Kalamazoo Precinct 17. Plaintiff DeVisser intends to serve as an MRP-appointed election challenger at the same polling place during the upcoming November 2022 general election. Separately, as a registered voter that cast a ballot in the August 2022 primary election and that also intends to vote in future elections, Plaintiff DeVisser has an interest in ensuring that his vote counts and is not diluted.

9. The Republican National Committee (the “RNC”) is a national political party with its principal place of business at 310 First Street, S.E., Washington D.C., 20003. In addition to managing the Republican Party’s business affairs at the national level, the RNC supports state Republican parties (including MRP) by, among other actions, coordinating election strategy—including by supporting MRP’s efforts to appoint and support election challengers to ensure that elections are conducted in an open, fair, and orderly manner. The RNC made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Michigan in past election cycles, and is doing so again in 2022.

10. Defendant Jocelyn Benson is Michigan’s Secretary of State and is being sued in her official capacity. Secretary Benson is the “chief elections officer of the state” responsible for overseeing the conduct of Michigan elections, and has “supervisory control over local election officials in the performance of their duties under the [Michigan Election Law].” MCL § 168.21.

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

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

13. Because Plaintiffs raise statutory claims and ask this Court to order equitable and declaratory relief against Defendants Secretary Benson and Director Brater, this Court has exclusive jurisdiction to hear these claims. For the same reason, venue is appropriate in this Court.

14. An actual controversy exists between Plaintiffs and Defendants. For the reasons explained in this Verified Complaint, Plaintiffs’ respective rights to appoint election challengers and to carry out their rights and privileges as duly-appointed election challengers under Michigan law have been violated and jeopardized by the Defendants’ acts—including but not limited to their issuance of the 2022 Election Challenger Instructions.

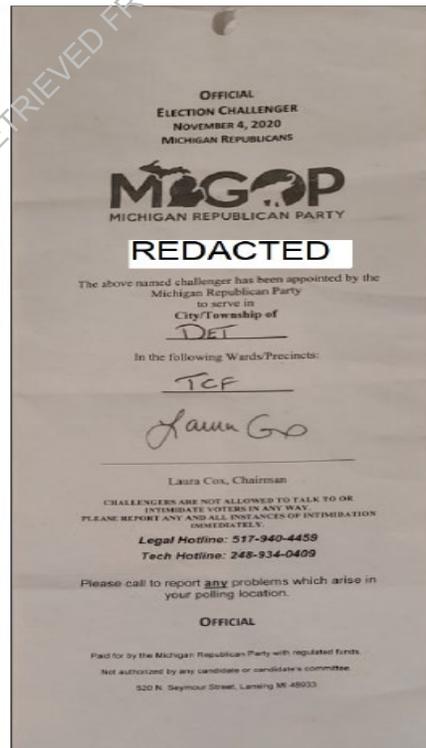
15. The injury to Plaintiffs is at once completed and ongoing. Absent relief from this Court, these injuries will recur indefinitely because Defendants, local election officials, and private citizens alike will consider the 2022 Election Challenger Instructions binding legal authority. Therefore, a decision from this Court will redress the violation of Plaintiffs’ rights and privileges

pertaining to election challengers as expressly provided under Michigan law for the November 2022 general election, and will likewise secure those rights and privileges in future elections, too.

LEGAL AND FACTUAL BACKGROUND

16. As with other states across the country, election challengers play a vital role in ensuring that Michigan’s elections are conducted in an open, fair, and orderly manner by monitoring and observing the election process. To that end, the Michigan Election Law expressly permits political parties such as MRP to appoint election challengers. MCL § 168.732.

17. Political parties such as MRP appoint election challengers by issuing those individuals a credential “signed by the recognized chairman or presiding officer” of MRP that includes “written or printed thereon the name of the challenger to whom it is issued and the number of the precinct to which the challenger has been assigned.” *Id.* A representative example of a credential issued by MRP to an election challenger serving at the City of Detroit Absent Voter Counting Board for the 2020 general election is as follows:



18. Indeed, for many years, the common practice for political parties appointing election challengers has been to provide their election challengers with credentials that satisfy the plain language of MCL § 168.732—*i.e.*, an authority signed by the chair of the party and that includes the written or printed name of the challenger to whom the credential was issued, as well as the corresponding number of the precinct(s) to which that challenger had been assigned. In addition to the example provided above, the following is an election challenger credential issued by the Michigan Democratic Party nearly 20 years ago—dated November 5, 2002—and signed by then-Chair of the Michigan Democratic Party, Mark Brewer:



19. Individuals appointed as election challengers are expressly granted a series of rights under Michigan law, including but not limited to the rights to “[o]bserve the manner in which the duties of the election inspectors are being performed,” to “[c]hallenge the voting rights of a person who the challenger has good reason to believe is not a registered elector,” and to “[c]hallenge an election procedure that is not being properly performed.” MCL § 168.733(1)(b)-(d). Likewise, Michigan law expressly requires election inspectors to “provide space for the challengers within

the polling place that enables the challengers to observe the election procedure and each person applying to vote” for the purpose of carrying out those rights. MCL § 168.733(1).

20. Meanwhile, since at least October 2004, the Secretary of State has maintained on its public website a guidance document entitled “The Appointment, Rights and Duties of Election Challengers and Poll Watchers.” *See, e.g.*, Michigan Department of State, Bureau of Elections, “The Appointment, Rights and Duties of Election Challengers and Poll Watchers,” September 2003 (hereinafter, the “September 2003 Election Challenger Guidance”), attached hereto as **Exhibit A**. *See also* September 2003 Election Challenger Guidance, as was available on the Secretary of State’s website on October 22, 2004, available at https://web.archive.org/web/20041022225113/https://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf (as provided by the Internet Archive, a renowned 501(c)(3) non-profit organization that maintains a digital library of historical Internet sites).

21. That election challenger guidance publication, which was “intended as a summary of the laws and rulings which govern election challengers and poll watchers,” Ex. A, at 2, and which provided the public with additional information regarding the appointment, conduct, and rights of election challengers, as well as the various challenge processes, among other topics, was updated by the Secretary of State as necessary over the course of time to reflect amendments made by the Legislature to the Michigan Election Law.

22. For the sake of illustration, while the September 2003 Election Challenger Guidance was 10 pages in length, that publication evolved over the course of approximately 17 years to an updated version that was 12 pages in length. *See* Michigan Department of State, Bureau of Elections, “The Appointment, Rights and Duties of Election Challengers and Poll Watchers,” October 2020 (hereinafter, the “October 2020 Election Challenger Guidance”), attached hereto as

Exhibit B. *See also* October 2020 Election Challenger Guidance, as was available on the Secretary of State’s website on May 2, 2022, available at https://web.archive.org/web/20220502153205/https://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf (as provided by the Internet Archive’s digital library of historical Internet sites).

23. That document—the October 2020 Election Challenger Guidance—was the “current” version of that publication available on the Secretary’s public website as recently as May 2022—just 4 months ago. *See id.*; *see also* Ex. B.

24. Then, on information and belief, sometime between May 2, 2022, and July 4, 2022—and less than a month before the August 2022 primary election—Secretary Benson caused to be posted on her public website a new version of the publication entitled “The Appointment, Rights, and Duties of Election Challengers and Poll Watchers.” *See* Michigan Department of State, Bureau of Elections, “The Appointment, Rights and Duties of Election Challengers and Poll Watchers,” May 2022 (hereinafter, the “May 2022 Election Challenger Instructions”), attached hereto as **Exhibit C.** *See also* May 2022 Election Challenger Instructions, as was available on the Secretary of State’s website on July 4, 2022, available at https://web.archive.org/web/20220704201831/https://www.michigan.gov/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bfb95184c9b91d5b1779d08cb1b (as provided by the Internet Archive’s digital library of historical Internet sites).

25. A significant departure from the prior versions of “The Appointment, Rights, and Duties of Election Challengers and Poll Watchers,” the Defendants’ new version—the May 2022 Election Challenger Instructions—is 27 pages long, which is more than twice the length of the

versions that preceded it for nearly two decades, and it contains multiple, significant policy changes, some of which are further described herein. *See* Ex. C.

26. Indeed, while the prior versions of that document were clearly “guidance” materials meant to provide the public with helpful background and to summarize the laws pertaining to election challengers and poll watchers, *see* Ex. A, at 2 (“This publication is intended as a summary of the laws and rulings which govern election challengers and poll watchers[.]”); Ex. B, at 2 (“This publication is designed to familiarize election inspectors, voters, interested organizations, and others with the rights and duties of election challengers and poll watchers.”), the Defendants’ 2022 Election Challenger Instructions contain express self-descriptors that are typically associated with documents meant to have the effect of law. For example, the Defendants’ 2022 Election Challenger Instructions state:

This publication is designed to familiarize election challengers, poll watchers, election inspectors, and members of the public with the rights and duties of election challengers and poll watchers in Michigan. Election challengers and poll watchers play a constructive role in ensuring elections are conducted in an open, fair, and orderly manner *by following these instructions*.

Challengers and poll watchers should familiarize themselves with the instructions and directions in this publication governing their conduct, rights, and responsibilities. Election inspectors should likewise familiarize themselves with the instructions and directions in this publication, including their duties to record challenges and their powers to maintain order at the polls.

Any questions or concerns about the procedures laid out in this document may be sent to BOERegulatory@michigan.gov.

Ex. C, at 1 (emphasis added).

27. While neither the September 2003 Election Challenger Guidance nor the October 2020 Election Challenger Guidance contain the words “instructions” or “directions,” *see generally*

Exs. A & B, the Defendants' 2022 Election Challenger Instructions expressly use those same terms to describe the contents of the document "governing [the] conduct, rights, and responsibilities" of election challengers and poll watchers alike. *See e.g.*, Ex. C, at 1.

28. Certainly, the Michigan Election Law requires the Secretary of State to "issue instructions and promulgate rules pursuant to the administrative procedures act [MCL § 24.201 *et seq.*] for the conduct of elections and registrations in accordance with the laws of this state," MCL § 168.31(1)(a).

29. It is undisputed, however, that Secretary Benson must comply with the APA when making a "rule" – a term that the Michigan APA expressly defines as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency." MCL § 24.207 (emphasis added).

30. The Defendants made several rule changes by issuing the 2022 Election Challenger Instructions, including, but not necessarily limited to, each of those described below:

- a. The 2022 Election Challenger Instructions require that the written authority necessary to serve as a challenger—historically accomplished through a party-issued "credential" such as those shown *supra*, at paragraphs 17-18 of this Verified Complaint—now "must be on a form promulgated by the Secretary of State." Ex. C, at 4. Further, if *that* specific form, which Secretary Benson has coined the "Michigan Challenger Credential Card," is not fully completed, "the credential is invalid and the individual presenting the form cannot serve as a challenger." *Id.* 4-5. Contrary to those new requirements, however, the governing statute—MCL §

168.732—does not impose any requirement that a challenger’s written authority be on a specific form.

- b. The 2022 Election Challenger Instructions state that “[p]olitical parties eligible to appear on the ballot may appoint or credential challengers at any time until Election Day,” Ex. C, at 2, apparently meaning that a political party such as MRP cannot, under the new instructions, appoint or credential challengers *on or during* Election Day. As a result, if those instructions were enforced, an election official could reject any challenger credential issued on Election Day. But Michigan law imposes no such requirement on political parties, and the immediate prior publication—the October 2020 Election Challenger Guidance—expressly permitted political parties such as MRP to appoint election challengers “at any time *through* the date of the election.” Ex. B, at 4 (emphasis added). In fact, as recently as the August 2022 primary election, MRP appointed election challengers *on* Election Day to observe election processes when voluminous misprinted ballots in polling locations across Lapeer County were rejected by tabulators, thereby necessitating the on-site duplication of those ballots. The election inspectors in those Lapeer County jurisdictions did not enforce this new rule at that time, despite the fact that it apparently existed in the 2022 Election Challenger Instructions, albeit unbeknownst to Plaintiffs and the election officials in Lapeer County.
- c. The 2022 Election Challenger Instructions also require that every polling place or Absent Voter Counting Board (“AVCB”) “have an election inspector designated as the challenger liaison,” Ex. C at 5, that “[c]hallengers must communicate only with the challenger liaison unless otherwise instructed by the challenger liaison,” *id.* at

6, that “[c]hallengers must not communicate with election inspectors who are not the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk’s staff,” *id.*, and that “[a] challenge must be made to a challenger liaison.” *Id.* at 10. Along the same lines, the 2022 Election Challenger Instructions also state that one of the “restrictions on challengers” is that a challenger “may not...speak with or interact with election inspectors who are not the challenger liaison or the challenger liaison’s designee.” *Id.* at 21. Contrary to those new requirements, however, there is no statutory basis for limiting which election inspectors with whom a challenger can communicate. In fact, the Michigan Election Law expressly authorizes election challengers to speak with election inspectors, which is the complete opposite of the new prohibitions against communicating with election inspectors set forth in the Defendants’ 2022 Election Challenger Instructions. *See, e.g.*, MCL § 168.733(1)(e) (“A challenger may...[b]ring to an election inspector’s attention any of the following: (i) [i]mproper handling of a ballot by an elector or election inspector . . . (ii) [a] violation of a regulation made by the board of election inspectors . . . (iii) [c]ampaigning being performed by an election inspector or other person in violation of [MCL § 168.744] [, or] (iv) [a] violation of election law or other prescribed election procedure.”).

- d. Next, the 2022 Election Challenger Instructions implement a new prohibition on the possession of certain electronic devices in AVCBs, despite the lack of any such prohibition in the Michigan Election Law. Specifically, the 2022 Election Challenger Instructions state that “[e]lectronic devices are not permitted within the

absent voter ballot processing facility,” Ex. C, at 5, and that “[n]o electronic devices capable of sending or receiving information, including phones, laptops, tablets, or smartwatches, are permitted in an absent voter ballot processing facility while absent voter ballots are being processed until the close of polls on Election Day.” *Id.* at 9. The instructions further provide that “[a] challenger who possesses such an electronic device in an absent voter ballot processing facility between the beginning of tallying and the close of polls may be ejected from the facility.” *Id.*; *see also id.* at 21 (stating among a list of “restrictions” on challengers that “[i]f serving at an absent voter ballot processing facility,” a challenger may not “possess a mobile phone or any other device capable of sending or receiving information between the opening and closing of polls on Election Day.”) Yet, while the Michigan Election Law prohibits challengers at an AVCB from *communicating* information related to the counting of votes to the outside world, *see, e.g.*, MCL § 168.765a(9) (requiring each election challenger at an AVCB to swear an oath to “not communicate in any way any information relative to the processing or tallying of votes . . . until after the polls are closed.”), nothing in the relevant statutes precludes poll challengers at an AVCB from *possessing* cell phones or other electronic devices, or even from using those devices to communicate non-prohibited information.

- e. The 2022 Election Challenger Instructions also establish a new rule authorizing election inspectors to *not* record so-called “impermissible challenges.” Ex. C, at 10. Setting aside the fact that the Michigan Election Law does not use the terminology “permissible” and “impermissible” to categorize challenges, there is nothing in the Michigan Election Law that permits election inspectors to refuse to record a

challenge because, in the inspector's mind, the challenger fails to provide an adequate explanation or support for the challenge.

31. As outlined in the above paragraphs, the rule changes set forth in the 2022 Election Challenger Instructions are directly inconsistent with the Michigan Election Law, past guidance, and common past and current practice.

32. Despite the significant rule changes that Defendants caused to be made when they issued the 2022 Election Challenger Instructions, neither that document nor any of the underlying policy changes were announced to the public in a meaningful way.

33. Likewise, and despite the fact that Defendants are subject to the APA, *see* MCL § 24.203(2) (defining "agency" in a way that includes the Secretary of State), none of the above-referenced rule changes were promulgated in accordance with the APA. *See also Genetski v Benson*, No. 20-000216-MM, 2021 WL 1624452, at *4 (Mich. Ct. Cl. Mar. 09, 2021) ("A 'rule' not promulgated in accordance with the APA's procedures is invalid.") (citations omitted).

34. Here, the 2022 Election Challenger Instructions were promulgated without any formal rulemaking or process. Instead, the document merely appeared on the Secretary's website.

35. As a result of the Defendants' failure to abide by the APA's requirements for changing the rules by which Secretary Benson's constituents and direct reports alike are required to conduct themselves, Plaintiffs were not informed of the above-referenced policy changes.

36. Plaintiffs, however, learned of one such rule change on the evening of the August 2022 primary election. Indeed, just as the polls were closing on August 2, 2022, the RNC's Election Day hotline received a call from an MRP-appointed election challenger serving at precincts 9 and 10 in the City of Southfield. During that call, the MRP-appointed election challenger explained to an RNC representative that an election inspector would not allow the

election challenger to access the polling place on the grounds that the MRP-appointed election challenger “had the wrong credential.”

37. The credential presented by that MRP-appointed election challenger was completed on the same form as the other 664 election challengers that the MRP had appointed for the August 2022 primary election, an example of which is shown here:

OFFICIAL ELECTION CHALLENGER
AUG 2, 2022
MICHIGAN REPUBLICANS

MIGOP
MICHIGAN REPUBLICAN PARTY

The above named challenger has been appointed by the Michigan Republican Party
to serve in

City/Township of _____

In the following Wards/Precincts:

Ron Weiser
Ron Weiser, Chairman

**CHALLENGERS ARE NOT ALLOWED TO TALK TO OR INTIMIDATE VOTERS IN ANY WAY.
PLEASE REPORT ANY AND ALL INSTANCES OF INTIMIDATION IMMEDIATELY.**

Legal Hotline: (517) 777-8517

Please call to report any problems which arise in your polling location and email final election results to _____

Paid for by the Michigan Republican Party with regulated funds.
Not authorized by any candidate or candidate's committee.
3201 N. Seymour Street, Lansing MI 48933

38. That form credential, a copy of which is attached hereto as **Exhibit D**, complied with the requirements for an election challenger credential as provided under Michigan law. *See* MCL § 168.732 (*i.e.*, an authority signed by the chair of the party that includes the written or printed name of the challenger to whom the credential was issued, as well as the number of the corresponding precincts to which that challenger had been assigned).

39. Because the MRP-appointed election challenger's credential satisfied Michigan law, the RNC representative spoke with the election inspector in an attempt to clarify that the MRP-appointed election challenger was indeed authorized by law to access the polling place as necessary to exercise their rights, duties, and privileges under Michigan law.

40. But the election inspector refused to allow that MRP-appointed challenger access to the polling place. Specifically, the election inspector denied that challenger access to the polling place because that MRP-appointed challenger's credential was not on the "form" referenced in the 2022 Election Challenger Instructions. Indeed, while the RNC representative attempted to explain that MCL § 168.732 does not require that an election challenger's credential be on any specific form, the election inspection insisted that the Defendants' 2022 Election Challenger Instructions overrode the law. Specifically, the election inspector relied on the provision of the instructions stating that a challenger's credential "must be on a form promulgated by the Secretary of State," otherwise the individual "cannot serve as a challenger." Ex. C, at 4-5.

41. As a result of the election inspector's refusal to apply state law rather than the Defendants' 2022 Election Challenger Instructions, RNC Representatives advised the election challenger at issue to respectfully leave the location. The election challenger left the premises without incident.

42. Importantly, while the MRP had appointed 665 election challengers for the August 2022 primary election, that election inspector's refusal to permit that MRP-appointed election challenger access to the polling place in the City of Southfield was, to Plaintiffs' knowledge, the only instance in which an election inspector enforced the Defendants' new rule requiring that a challenger's credential be on a new form "promulgated by the Secretary."

43. Indeed, to Plaintiffs' knowledge, the other 664 MRP-appointed election challengers—all of whom were credentialed with a completed version of the form attached hereto as Exhibit D, and *none of whom were credentialed with the Secretary's form*—were permitted access to their assigned polling places and/or AVCBs *without incident*.

44. Likewise, Plaintiff DeVisser was permitted access as an election challenger to his assigned polling place *without* the Secretary's form apparently required under the 2022 Election Challenger Instructions. A copy of his respective MRP-issued challenger credential from the August 2022 primary election is attached hereto as **Exhibit E**.

45. Given the extreme rarity it was for that singular election inspector to enforce the Defendants' new credential form rule, Plaintiffs plead that, upon information and belief, Defendants not only failed to notify the public of the rule changes in their 2022 Election Challenger Instructions, but they failed to notify local election officials of those rule changes, too.

46. On August 25, 2022, the RNC and MRP issued a letter to Director Brater requesting that Defendants “rescind those portions of their guidance materials stating that election challenger credentials must be on a form promulgated by the Secretary of State, and replace them with materials that are consistent with MCL 168.732.” A copy of that correspondence is attached hereto as **Exhibit F**.

47. On September 2, 2022, the Defendants' counsel responded, indicating that Defendants declined to rescind their new credential form rule. A copy of that correspondence is attached hereto as **Exhibit G**.

48. Defendants further indicated in their September 2, 2022 letter that “clerks were provided the revised instructions in May.” *See* Ex. G, at 4. Setting aside the fact this statement seems to be contradicted by the inconsistent enforcement of the 2022 Election Challenger

Instructions by election officials during the August 2022 primary election, Defendants at a minimum failed to communicate this information to MRP, one of the two major political parties in the state who are directly impacted by Defendants' new rules.

49. While the RNC and MRP's August 25, 2022 letter pertained only to the Defendants' new credential form rule, it was clear from the Defendants' response that Defendants would not voluntarily comply with the Michigan Election Law or the APA. It was only then that Plaintiffs began to discover the extent of the Defendants' additional unlawful rule changes.

50. Indeed, despite the fact that the new instructions were silently posted to the Secretary's website shortly before the August 2022 primary election, upon information and belief, the new rules set forth in the Defendants' 2022 Election Challenger Instructions went largely unenforced by local election officials during the August 2022 primary election.

51. Nonetheless, and despite the perception that local election officials enforced the 2022 Election Challenger Instructions only sparingly during the August 2022 primary election—if even enforced at all—the reality is that Defendants' new instructions are inconsistent with the Michigan Election Law and have the practical effect of depriving Plaintiffs of certain rights and privileges to appoint and act as election challengers under Michigan Law.

52. As a result, Plaintiffs have no other adequate remedy than to bring this suit to ensure that Michigan's Constitution and Election Law—rather than the Defendants' unlawful 2022 Election Challenger Instructions—are enforced during the November 2022 general election and beyond.

COUNT I – VIOLATIONS OF THE MICHIGAN ELECTION LAW

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

54. As set forth in paragraph 30 of this Verified Complaint, the Defendants made several rule changes by issuing their 2022 Election Challenger Instructions, and those new rules are directly inconsistent with the Michigan Election Law.

55. Injunctive and declaratory relief are therefore necessary to remedy the Defendants' unlawful 2022 Election Challenger Instructions. Plaintiffs are unable to reconcile the mandates set forth in the Defendants' 2022 Election Challenger Instructions with those provided under the Michigan Election Law.

56. There is a current ripe case or controversy between the parties concerning the legality of the Defendants' 2022 Election Challenger Instructions. Absent declaratory or injunctive relief, Plaintiffs' respective rights to appoint election challengers and to carry out their rights and privileges as duly appointed election challengers under Michigan law will continue to be violated and jeopardized by the Defendants' acts, including the issuance and anticipated implementation of the Defendants' 2022 Election Challenger Instructions.

57. For the reasons explained above, Plaintiffs will face irreparable harm if the Defendants' 2022 Election Challenger Instructions remain in place, and justice requires the issuance of injunctive relief.

58. It is in the public interest to issue injunctive relief to ensure that Michigan's elections are carried out in accordance with the Michigan Constitution and the Michigan Election Law, and specifically to ensure that Plaintiffs may exercise their rights to appoint election challengers, and to monitor and observe the election process to ensure that Michigan's elections are conducted in an open, fair, and orderly manner.

59. Plaintiffs lack an adequate remedy at law to prevent the enforcement of the Defendants' unlawful 2022 Election Challenger Instructions.

60. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as those set forth in the Defendants' 2022 Election Challenger Instructions would allow a single state officer to circumvent (and essentially amend) valid and enforceable state laws on the same subject. That is certainly not in the public interest, which expects its public officials to follow the law. Nor would the public be harmed by such relief as they, too, have an interest in ensuring that Michigan's elections are conducted in an open, fair, and orderly manner, and the Michigan Election Law contains sufficient safeguards to ensure that challengers do not interfere with each citizen's right to cast a lawful ballot.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Defendants' publication defined herein as the 2022 Election Challenger Instructions is inconsistent with the Michigan Election law and is therefore unenforceable; that this Court order Defendants to rescind the 2022 Election Challenger Instructions and to reissue the prior version of that document, defined herein as the October 2020 Election Challenger Guidance; that this Court enjoin Defendants from implementing the 2022 Election Challenger Instructions in advance of the November 8, 2022, general election; and that this Court award any other relief that it deems just and equitable.

COUNT II – VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

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

62. Under MCL § 168.31, Defendants are required to "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."

63. As set forth in paragraph 30 of this Verified Complaint, the Defendants issued several rules by releasing their 2022 Election Challenger Instructions.

64. Each of the policy changes referenced in sub-paragraphs 30a – e of this Verified Complaint constitutes a “rule” under the APA because each is an instruction of general applicability, imposing mandatory instructions, standards, and procedures on all election challengers, poll watchers, and election inspectors. *See* MCL § 24.207; *see also* Ex. C, at 1.

65. Defendants issued these rules without following the procedures required under the APA.

66. Because Defendants failed to comply with the APA when issuing their 2022 Election Challenger Instructions, this Court should find each of those rules invalid, and require that the corresponding text of the Michigan Election Law be enforced.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Defendants’ publication defined herein as the 2022 Election Challenger Instructions sets forth rules under the APA, that the Defendants failed to comply with the APA in promulgating those rules, and that the rules are therefore invalid; that this Court order Defendants to rescind the 2022 Election Challenger Instructions and to reissue the prior version of that document, defined herein as the October 2020 Election Challenger Guidance; that this Court enjoin Defendants from implementing the 2022 Election Challenger Instructions in advance of the November 8, 2022 general election; and that this Court award any other relief that it deems just and equitable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court order “a speedy hearing” of this action and “advance it on the calendar” as provided under MCR 2.605(D), and that it issue the following relief:

A. Declare that the Defendants’ publication defined herein as the “2022 Election Challenger Instructions” is inconsistent with the Michigan Election Law and is therefore

unenforceable;

B. Declare that the 2022 Election Challenger Instructions set forth rules under the APA, that the Defendants failed to comply with the APA in promulgating those rules, and that the rules are therefore invalid;

C. Enjoin Defendants from implementing the 2022 Election Challenger Instructions in advance of the November 8, 2022 general election;

D. Order the Defendants to rescind the 2022 Election Challenger Instructions and to reissue the prior version of that document, defined herein as the October 2020 Election Challenger Guidance;

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

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

Dated: September 30, 2022

Respectfully submitted,

/s/ Charles R. Spies
Charles R. Spies (P83260)
Robert L. Avers (P75396)
Thomas F. Christian III (P83146)
Dickinson Wright PLLC
350 S. Main Street, Ste 300
Ann Arbor, MI 48104
(734) 623-1672
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tchristian@dickinsonwright.com
Attorneys for Plaintiffs

VERIFICATION

I, Richard DeVisser, being first duly sworn, depose and say that I am a resident of the state of Michigan and duly qualified as a voter in this state. While I may not have personal knowledge of all of the facts recited in this Verified Complaint, the information contained therein has been collected and made available to me by others, and I declare, pursuant to MCR 2.114(B)(2), that the allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.

Richard DeVisser

Richard DeVisser

Subscribed and sworn to before me this 30th day of September, 2022.

Kelly Ann Armistead
KELLY ANN ARMISTEAD, Notary Public

Livingston County, State of Michigan

My commission expires: 10-2-2024

Acting in Livingston County, Michigan

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VERIFICATION

I, Paul Cordes, a representative of the Michigan Republican Party ("MRP"), being duly sworn, and being authorized to give this Verification on behalf of MRP in support of the allegations contained in the foregoing Verified Complaint, do hereby declare, pursuant to MCR 2.114(B)(2), that the allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.

Michigan Republican Party

By: Paul Cordes

Its: Chief of Staff

Subscribed and sworn to before me this 30 day of September, 2022.

[Signature]

Michael D. Sullivan Jr., Notary Public

West County, State of Michigan

My commission expires: 12/23/27

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VERIFICATION

I, Maxwell Docksey, a representative of the Republican National Committee (the "RNC"), being duly sworn, and being authorized to give this Verification on behalf of the RNC in support of the allegations contained in the foregoing Verified Complaint, do hereby declare, pursuant to MCR 2.114(B)(2), that the allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.

Republican National Committee

By: Max Docksey

Its: Regional Political Director

Subscribed and sworn to before me this 30th day of September, 2022.

Alexandra Kirschbaum

, Notary Public

Washington County, State of District of Columbia

My commission expires: 11/30/26



District of Columbia

Signed and sworn to (or affirmed) before me

on 9/30/22 by Maxwell Docksey

(Name(s) of individual(s) making statement)

Alexandra Kirschbaum

Signature of Notarial Officer

Alexandra Renee Kirschbaum - Notary Public, District of Columbia
My commission expires November 30, 2026

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

RICHARD DEVISSER, MICHIGAN
REPUBLICAN PARTY, and REPUBLICAN
NATIONAL COMMITTEE,

Case No. 22- _____ -MM

Hon. _____

Plaintiffs,

v.

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

Defendants.

Charles R. Spies (P83260)
Robert L. Avers (P75396)
Thomas F. Christian III (P83146)
Dickinson Wright PLLC
350 S. Main Street, Ste 300
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(734) 623-1672
cspies@dickinsonwright.com
ravers@dickinsonwright.com
tchristian@dickinsonwright.com
Attorneys for Plaintiffs

EXHIBIT LIST TO VERIFIED COMPLAINT

Exhibit A	Michigan Department of State, Bureau of Elections, "The Appointment, Rights and Duties of Election Challengers and Poll Watchers," September 2003 Election Challengers Guidance
Exhibit B	Michigan Department of State, Bureau of Elections, "The Appointment, Rights and Duties of Election Challengers and Poll Watchers," October 2020 Election Challenger Guidance
Exhibit C	Michigan Department of State, Bureau of Elections, "The Appointment, Rights and Duties of Election Challengers and Poll Watchers," May 2022 Election Challenger Instructions

Exhibit D	August 2022 MRP Election Challenger Credential Form
Exhibit E	Plaintiff Richard DeVisser's MRP-Issued August 2022 Primary Election Challenger Credential
Exhibit F	August 25, 2022 Letter from MRP and RNC to Secretary of State
Exhibit G	September 2, 2022 Letter from Secretary of State to MRP and RNC

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Exhibit A

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**THE APPOINTMENT, RIGHTS AND DUTIES OF
ELECTION CHALLENGERS
AND POLL WATCHERS**

Michigan Department of State
Bureau of Elections
September, 2003

www.Michigan.gov/sos

The Appointment, Rights and Duties of Election Challengers and Poll Watchers

Allowances are made in law to permit “election challengers” and “poll watchers” to monitor the election process as a protective safeguard against election fraud. Challengers, appointed by political parties and qualified groups and organizations, enjoy special rights and privileges. While poll watchers are not extended the same rights and privileges, there is no appointment process associated with the placement of poll watchers in the polls or absent voter counting boards.

This publication is intended as a summary of the laws and rulings which govern election challengers and poll watchers; it is not intended as a complete interpretation of the law. Questions may be directed to the Michigan Department of State, Bureau of Elections, P.O. Box 20126, Lansing, Michigan 48901. Phone: (517) 373-2540. Fax: (517) 241-4785.

ELECTION CHALLENGERS

Election challengers may be appointed by:

- A state-recognized political party.
- An incorporated organization.
- An organized group of citizens interested in the adoption or defeat of a proposal on the ballot.
- An organized group of citizens interested in preserving the purity of elections and in guarding against the abuse of the elective franchise.

It merits note that a candidate does *not* have the authority to appoint challengers. Similarly, a Candidate Committee registered under Michigan’s Campaign Finance Act or any other type of organization expressly formed to support or oppose a candidate does *not* have the authority to appoint challengers.

Election challengers have the right to:

- Observe the election process in voting precincts and absent voter counting board precincts.
- Challenge a person’s right to vote if the challenger has *good reason to believe* that the person is not eligible to vote in the precinct.
- Challenge the actions of the election inspectors serving in the precinct if the challenger believes that election law is not being followed.

GENERAL INFORMATION

- A challenger must be a registered voter in the State of Michigan.
- A challenger may *not* be a candidate for any elective office in the election. (Exception: a candidate for precinct delegate may serve as a challenger in a precinct other than the precinct in which he or she is a candidate.)
- A person appointed as an election inspector at the election may not act as a challenger at any time throughout the course of the day.
- A challenger may be assigned to serve in any precinct or absent voter counting board established in the state. In addition, a challenger may be assigned to serve in any number of precincts.
- A political party, group or organization may not have more than *two* challengers present in a voting precinct or more than *one* challenger present in an absent voter counting board at any time throughout the course of the day.
- A political party, group or organization may rotate challengers assigned to a voting precinct; a challenger assigned to an absent voter counting board must remain in the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).
- All challengers must carry an identification card issued by the appointing political party, group or organization. The identification card must show the challenger's name; the name of the appointing political party, group or organization; and the precinct or precincts in which the challenger is authorized to serve. It is recommended that challengers wear an identification badge which bears the words "ELECTION CHALLENGER." Upon entering a precinct, the challenger must exhibit the identification card to the precinct chairperson.
- A challenger appointed to serve in an absent voter counting board is required to take and sign the following oath: "I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed." The oath may be administered by any member of the absent voter counting board.

THE APPOINTMENT OF ELECTION CHALLENGERS

Political parties may appoint election challengers to serve at partisan and nonpartisan elections. The appointments may be made at any time through the date of the election. A political party is *not* required to follow an application process to appoint election challengers.

An incorporated organization, a group interested in the adoption or defeat of a proposal on the ballot or a group interested in preserving the purity of elections and in guarding against the abuse of the elective franchise may appoint election challengers if authorized to do so under an application process. To apply for appointment authorization, the organization or

group must file, *not less than 20 days nor more than 30 days prior to the election*, the two items listed below with the clerk of the county, city, township or village where the election will be held. (If a school election, the filing is made with the secretary of the school board.)

- 1.) A statement which sets forth the organization's or group's intention to appoint election challengers and the reason why the right to make the appointments is claimed. The statement must be signed under oath (notarized) by the chief presiding officer, secretary or any other officer of the group or organization.
- 2.) A copy of the identification card which will be carried by the challengers the group or organization appoints. The identification card must have entry spaces for the challenger's name, the group's or organization's name, the precinct or precincts in which the challenger is authorized to serve and the signature of a recognized officer of the group or organization.

APPOINTMENT AUTHORIZATION APPLICATIONS SUBMITTED BY GROUPS AND ORGANIZATIONS: PROCESSING STEPS

A clerk or school board secretary receiving a challenger appointment authorization application from an organization or group is required to approve or deny the request and notify the group or organization of the decision *within two business days*. A clerk or school board secretary has the authority to deny a challenger appointment authorization application if the group or organization fails to demonstrate that it is qualified to appoint challengers.

If the application is denied, the group or organization may appeal the decision to the Secretary of State *within two business days after the receipt of the denial*. Upon the receipt of an appeal, the Secretary of State is required to render a decision on the appeal and notify the organization or group of the decision *within two business days*. Notification of the decision is also forwarded to the clerk or school board secretary who issued the application denial.

Before the opening of the polls, the clerk or school board secretary is required to notify all precincts in the jurisdiction of the groups and organizations that have gained the right to appoint challengers at the election.

CONDUCT

- Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.
- Challenges may *not* be made indiscriminately or without good cause.
- A challenger is *not* permitted to campaign, distribute campaign literature or display any

campaign material (including campaign buttons) while in the polls.

- A challenger is expressly prohibited from threatening or intimidating voters entering the polling place, applying to vote, entering a voting station, voting or leaving the polling place.
- Those present in the polls (including all election inspectors and voters) are expressly prohibited from threatening or intimidating any challengers assigned to serve in the polling place.

RIGHTS OF CHALLENGERS

It is the duty of the precinct board to provide space for challengers which will enable them to observe all election procedures being carried out. In a voting precinct, challengers are permitted to position themselves behind the election inspectors' table. Challengers have the right to:

- Examine the voting equipment before the polls open and after the polls close.
- Observe each person offering to vote. (Challengers may *not* observe electors voting.)
- Observe the processing of voters.
- Bring to the precinct board's attention the improper handling of a ballot by a voter or an election inspector; that the 100 foot campaign restriction is being violated; or that any other election law or prescribed election procedure is being violated.
- Inspect the Applications to Vote, Poll Books, registration records and any other materials used to process voters at the polling place. (When exercising this right, challengers may *not* touch the Applications to Vote, Poll Books, registration records or other materials being used by the precinct board.)
- Inspect ballots (including absent voter ballots) as they are being counted. (When exercising this right, challengers may *not* touch the ballots.)
- Observe the recording of absent voter ballots on voting machines.
- Keep notes on the persons offering to vote, the election procedures being carried out and the actions of the precinct board.
- Remain in the precinct until the precinct board completes its work.

If two challengers are representing a political party, group or organization in the precinct, only *one* of the challengers may hold the authority to challenge at any give time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated.

CHALLENGE PROCEDURE: “UNQUALIFIED VOTER”

If a challenger has *good reason to believe* that a person who offers to vote is not qualified to vote in the precinct, a challenge may be made immediately after the voter completes an Application to Vote. The challenge is directed to the chairperson of the precinct board. The chairperson of the precinct board or an election inspector designated by the chairperson is responsible for supervising the challenge to make sure that it is conducted promptly and courteously. The challenge proceeds as follows:

- 1.) After the challenge is made, the challenged person takes the oath printed below. The oath is administered by the chairperson of the precinct board or a designated election inspector.

“I swear (or affirm) that I will truly answer all questions put to me concerning my qualifications as a voter.”

- 2.) After the oath has been administered, the precinct chairperson or a designated election inspector may question the challenged voter. Election law stipulates that the questions be confined to the person’s qualifications as a voter (citizenship, age and residency).
- 3.) A challenged voter is permitted to vote a specially prepared “challenged ballot” if the answers given under oath prove that he or she is qualified to vote in the precinct. A challenged voter may *not* vote if he or she refuses to take the oath, refuses to answer appropriate questions under oath or is found to be not qualified to vote through the answers given under oath.
- 4.) A complete record of the challenge must be entered on the “CHALLENGED VOTERS” page in the Poll Book. The record must include a description of the election disparities or infractions complained of or believed to have occurred; the name of the person making the challenge; the time of the challenge; the name, address and telephone number of the person challenged; and any other pertinent information.

It merits emphasis that a challenger is not permitted to challenge a voter’s right to vote unless the challenger has *good reason to believe* that the elector is not eligible to vote in the precinct.

Proper challenges: A challenge is proper if it is based on information obtained by the challenger through a reliable source or means. For example, the challenger has obtained information that a particular voter 1.) is not a true resident of the jurisdiction 2.) has not yet attained 18 years of age 3.) is not a United States citizen or 4.) did not register to vote on or before the “close of registration” for the election at hand. A challenger should know the specific individuals he or she intends to challenge *before the polls open on election day*.

Improper challenges: A challenge is improper if it is *not* based on information obtained by the challenger through a reliable source or means. For example, a challenger does not have the right to issue a challenge based on an “impression” that the voter may not be eligible to vote in the

precinct due to the voter's manner of dress, inability to read or write English, perceived race or ethnic background or need for assistance with the voting process. Similarly, a challenger does not have the right to issue a challenge due to any physical or mental disability the voter may have or is perceived to have.

Every effort must be made to ensure that the challenge procedures are properly carried out in the polls as the abuse of the process can have serious consequences including the disenfranchisement of qualified electors, criminal violations and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

CHALLENGE PROCEDURE: ABSENTEE VOTER AT POLLS

A challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received the absentee ballot, lost the absentee ballot or destroyed the absentee ballot. If such a challenge is issued, the precinct inspector handling the challenge permits the voter to vote a specially prepared "challenged ballot" and enters a complete record of the challenge on the "CHALLENGED VOTERS" page in the Poll Book; the questioning of the voter is not required. (Note: A voter issued an absentee ballot who appears at the polls to vote on election day claiming that he or she never received an absentee ballot, lost his or her absentee ballot or destroyed his or her absentee ballot is required to sign an affidavit to that effect before voting in person. This requirement applies regardless of whether the voter is challenged.)

THE PREPARATION AND ISSUANCE OF CHALLENGED BALLOTS

A challenged voter must vote on a paper, punch card or optical scan ballot prepared as explained below; challenged voters are *not* permitted to vote on a voting machine or a direct recording electronic device as votes cast on such voting equipment cannot be retrieved at a later date if necessary.

- The election inspector handling the challenge writes the number appearing on the voter's ballot in pencil on the back of the ballot. If a punch card ballot is used, the number appearing on the voter's ballot is written in pencil on the secrecy envelope.
- After the ballot number is recorded in pencil on the ballot, the number is concealed with a slip of paper. The use of transparent tape and paper that matches the color of the ballot (or secrecy envelope if a punch card ballot is used) is recommended.
- The election inspector enters the voter's name in the Poll Book.

After completing the above steps, the election inspector issues the ballot to the voter. The voter

then votes the ballot in a voting station. After the voter has voted the ballot, the ballot is deposited in the ballot box under routine procedure. (If voting machines or direct recording electronic voting devices are used in the precinct, see below.)

A challenged ballot cannot be retrieved for examination after the election without an appropriate court order.

THE HANDLING OF CHALLENGED BALLOTS IN VOTING MACHINE AND DIRECT RECORDING ELECTRONIC PRECINCTS

If voting machines or direct recording electronic voting devices are used in the precinct, the election inspector handling the challenge has the voter place the ballot in an absent voter ballot return envelope; completes and signs the back of the envelope; directs the voter to sign the envelope; and writes the word “CHALLENGED” across the face of the envelope.

- If the jurisdiction does *not* use an absent voter counting board, the challenged ballot is processed with the absent voter ballots delivered to the precinct.
- If the jurisdiction uses an absent voter counting board, the election inspectors secure the absent voter ballot return envelope containing the challenged ballot and notify the election official in charge of the election. The election official in charge of the election is then responsible for arranging the delivery of the ballot to the absent voter counting board. The voter’s Application to Vote is retained in the precinct.

CHALLENGE PROCEDURE: ABSENT VOTER BALLOTS

If a challenger has reason to believe that an absent voter ballot has been submitted by a person who is not qualified to vote in the precinct, a challenge may be made as the ballot is being processed. If such a challenge is made, the election inspector handling the challenge writes the number appearing on the voter’s ballot in pencil on the back of the ballot (or secrecy envelope if a punch card ballot); conceals the number with a slip of paper; enters a complete record of the challenge on the “CHALLENGED VOTERS” page in the Poll Book; and proceeds with the routine processing and counting of the ballot.

CHALLENGE PROCEDURE: ACTIONS OF THE PRECINCT BOARD

If a challenger has reason to believe that the precinct board is not following election law, the actions of the precinct board may be challenged by consulting with the board chairperson. If the chairperson rejects the challenge, the challenger has the right to contact the election official in charge of the election on the matter at issue. The election inspectors must enter a complete record of the challenge in the Poll Book.

PENALTIES

Michigan election law provides penalties for the following infractions:

- A person who submits a challenger appointment authorization application on behalf of a group or organization that is not authorized to appoint challengers.
- A clerk or school board secretary who knowingly fails to perform the duties related to the challenger appointment process.
- A person who challenges a qualified elector for the purpose of annoying or delaying the voter.
- A challenged elector who gives false information regarding his or her qualifications to vote.
- An election official or precinct board that prevents a challenger from being present in the polls or refuses to provide a challenger with any conveniences needed for the performance of his or her duties.

POLL WATCHERS

An election is an open process that may be observed by any interested person. (However, note that candidates may not remain in the polling place after they have voted because of the possible conflict with the provisions which prohibit campaigning within 100 feet of the polls.) A person who wishes to observe the election process -- who is not a qualified election challenger -- is commonly called a "poll watcher." The qualifications, rights and duties of poll watchers and challengers are contrasted below:

- A challenger must be registered to vote in the State of Michigan; poll watchers do not have to meet this requirement.
- A challenger has the right to challenge a person's right to vote and the actions of the precinct board; a poll watcher does not have this authority.
- A challenger may sit behind the processing table; a poll watcher does not have this privilege. (Poll watchers must sit or stand in the "public area" of the polling place where they will not interfere with the voting process.)
- Challengers have a right to look at the Poll Book; poll watchers may look at the Poll Book at the discretion of the precinct board chairperson. A challenger or a poll watcher may *not* touch the Poll Book or any other voting records.
- A poll watcher who wishes to be present in an absent voter counting board must remain in

the room in which the absent voter counting board is working until the close of the polls (8:00 p.m.).

- A poll watcher who wishes to be present in an absent voter counting board is required to take and sign the following oath: “I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed.” The oath may be administered by any member of the absent voter counting board.

The equal treatment of competing interests is the cornerstone of fair elections! As a result, any special measures taken in the polls to provide challengers and poll watchers with information on the voters who have participated in the election must be administered in such a way as to ensure equal access to the information by all interested persons.

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Exhibit B

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**THE APPOINTMENT, RIGHTS AND DUTIES OF
ELECTION CHALLENGERS AND POLL WATCHERS**

Michigan Department of
State Bureau of Elections
October 2020

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This publication is designed to familiarize election inspectors, voters, interested organizations, and others with the rights and duties of election challengers and poll watchers. Election challengers and poll watchers who follow the guidance provided in this publication can play a constructive role in verifying that the election is conducted openly and fairly.

Challenges must not be based on an “impression” that the voter is ineligible due to his or her manner of dress; inability to read or write English; the voter’s perceived race, ethnic background, physical or mental disability, support for or opposition to a candidate or political party; or the voter’s need for assistance with the voting process. A challenger cannot challenge a voter’s right to vote unless the challenger has “good reason to believe” that the voter is not eligible to vote in the precinct.

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, as long as the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter’s inability to provide acceptable picture ID.

NOTE for November 2020 general election: Pursuant to an MDHHS Emergency Order of October 9, 2020 (and any subsequent orders replacing it), all challengers and poll watchers must wear a face covering over their nose and mouth when in a polling location.

Abuse of the challenge process can have serious consequences including the disenfranchisement of qualified voters, criminal violations, and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

Voters who have questions regarding election challengers or poll watchers must seek assistance from election inspectors or the city or township clerk. Election inspectors should direct any inquiries regarding this publication to their clerk.

Challengers and poll watchers requiring additional information should direct their inquiries to their sponsoring organization and/or legal counsel.

Introduction

Each election is an open and transparent process that may be observed by any interested person. Election challengers may be appointed by political parties and qualified interest groups to observe the election process. A person who wishes to observe but is not a qualified election challenger is commonly called a poll watcher. There are a number of important distinctions between challengers and poll watchers:

ELECTION CHALLENGERS AND POLL WATCHERS: SUMMARY OF RIGHTS AND DUTIES		
	Challengers	Poll Watchers
Must carry credentials issued by appointing authority.	Yes	No
Must be registered to vote in Michigan.	Yes	No
Has the right to challenge a person's eligibility to vote.	Yes	No
Has the right to challenge the actions of election inspectors.	Yes	No
May stand or sit behind processing table.	Yes	No – must remain in public area.
Must wear a face covering over their nose and mouth at all times while inside.	Yes	Yes
Has the right to look at the Pollbook and other election materials.	Yes	Yes – but only as permitted by precinct chairperson and when voting process will not be delayed.
May touch or handle the Pollbook and other election materials.	No	No
May use a video camera or recording device, or the camera or recording features of a smart phone or tablet in polling place or clerk's office.	No	No
May otherwise use a smart phone, tablet, laptop, or other electronic device in polling place or clerk's office.	Yes – if not disruptive.	Yes – if not disruptive.
May use a smart phone, tablet, laptop, camera or other electronic device in absent voter counting board.	No	No
May wear clothing, button, arm band, vest, etc. that identifies organization he or she represents.	No	No
May place tables in the polls.	No	No
Has the right to approach and question voters.	No	No
Can offer assistance to voters.	No	No

May remain in the polling place after the close of polls until the election inspectors complete their work.	Yes	Yes
May obtain the vote results generated in the precinct after the polls close.	Yes	Yes

ELECTION CHALLENGERS

Challenger Eligibility

All election challengers must be registered to vote in Michigan. Additionally, a challenger must not serve as an election inspector in the election, and must not be a candidate for any elective office in the election (except that during the August even-year election, a candidate for precinct delegate may serve as a challenger in a precinct where he or she is not a candidate.)

Appointment of Challengers

Election challengers may be appointed by:

- A political party that is eligible to appear on the ballot in Michigan.
- An organized group of citizens interested in the passage or defeat of a ballot proposal being voted on at the election.
- An organized group interested in preserving the purity of elections and guarding against the abuse of the elective franchise.
- An incorporated organization.

Note that candidates, candidate committees, or any other types of organizations expressly formed to support or oppose candidates are not authorized to appoint challengers.

Political parties may appoint election challengers to serve at partisan and nonpartisan elections, and the appointments may be made at any time through the date of the election. A political party is not required to follow the application process described below in order to appoint election challengers.

However, other sponsoring organizations must successfully complete the appointment authorization application process to appoint challengers. An incorporated organization, a group interested in the adoption or defeat of a proposal on the ballot, or a group interested in preserving the purity of elections and in guarding against the abuse of the elective franchise must file the following with the clerk of the county, city or township where the election will be held, between the 20th and 30th day prior to Election Day:

- A written statement indicating the organization's or group's intention to appoint election challengers and the reason why the right to make the appointments is claimed. The statement must be signed under oath (notarized) by the chief presiding officer, secretary or any other officer of the group or organization; and

- A copy of the challenger identification card which will be carried by the group's or organization's appointed challengers. The identification card must have entry spaces for the challenger's name, the group's or organization's name, the precinct or precincts in which the challenger is authorized to serve, and the signature of a recognized officer of the group or organization.

The county, city or township clerk receiving a challenger appointment authorization application must approve or deny the request **and** notify the group or organization of the decision within two business days. If the application is approved, the clerk must notify all precincts in the jurisdiction of the groups and organizations that have gained the right to appoint challengers at the election before the opening of the polls.

The clerk may deny a challenger appointment authorization application if the group or organization fails to demonstrate that it is qualified to appoint challengers, or the application is not timely filed. If the application is denied, the group or organization may appeal the decision to the Secretary of State within two business days after receipt of the denial. Upon the receipt of an appeal, the Secretary of State must render a decision and notify the organization or group of the decision within two business days. Notice of the decision is also forwarded to the clerk who issued the application denial.

Challenger Identification Cards

A challenger must have in his or her possession a challenger identification card issued by the political party, organization or group he or she represents.

When entering the precinct, the challenger must show the card to the chairperson of the precinct board.

It is recommended that a challenger also wear a badge with the words "ELECTION CHALLENGER," but the badge cannot refer to the challenger's political party or organization.

Challenger Conduct Standards

Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

NOTE: If a challenger violates these standards of conduct, an election inspector will ask them to leave. If they refuse to leave, an election inspector will call law enforcement.

- A challenger is prohibited from threatening or intimidating voters entering the polling place, applying to vote, entering a voting station, voting, or leaving the polling place.
- A challenger must have challenger credentials and have in his or her possession a challenger identification card issued by the political party, organization, or group that he

or she represents. If someone shows up without challenger credentials, then they are a poll watcher. See “POLLWATCHERS” section below. If they do not comply with the requirements of a poll watcher, they will be asked to leave. If they do not, law enforcement will be called.

- Challenges must not be made indiscriminately or without good cause.
- Challengers cannot campaign, distribute literature wear campaign apparel or display any campaign material in the polls or within 100 feet of any doorway used by voters to enter the building where the polling place is located.
- A challenger is prohibited from wearing a button, armband, vest, shirt, hat or similar item which identifies the organization he or she represents.
- **Challengers are not authorized to approach voters or talk directly to voters for any reason.**
- Challengers are prohibited from wearing, displaying, or saying anything that suggests or implies they are available to assist voters in any way or answer questions that voters may have.
- Challengers are not authorized to place tables in the polls.
- Challengers may stand behind the processing table, but must give precinct workers ample space to perform their duties and must not hinder or impede voters.
- Challengers are prohibited from using video cameras or recording devices in the polling place, including the camera or recording features of a smart phone or tablet.
- Challengers are prohibited from using phones, laptops, tablets or other electronic devices in an absent voter counting board.

In the polling place. Note that a challenger may be appointed to serve in more than one precinct. Up to two challengers appointed by the same political party or sponsoring organization may simultaneously serve in the same precinct. If two challengers are representing a political party or an organization in the precinct, only one of the challengers is authorized to challenge at any given time. The challengers may alternate who possesses the authority to challenge, but must advise the precinct board each time the authority is transferred.

In the absent voter counting board. Only one challenger per political party or sponsoring organization may serve in an absent voter counting board. Note that all electronic devices, including phones, laptops, tablets, cannot be used in an absent voter counting board. Additionally, any challenger who serves in an absent voter counting board is required to remain in the room where the absent voter counting board is working until polls close at 8:00 p.m., and must take and sign the following oath:

“I (name) do solemnly swear (or affirm) that I shall not communicate in any way information

relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed.”

Rights of Challengers

Election challengers have the right to:

- Observe the election process in voting precincts and absent voter counting boards at a reasonable distance, allowing precinct workers sufficient room to perform their duties.
- Challenge a person’s right to vote if the challenger has good reason to believe that the person is not eligible to vote in the precinct.
- Challenge the actions of the election inspectors if the challenger believes that election laws are not being followed.
- Examine the voting equipment before the polls open and after the polls close.
- Observe the processing of voters, but in a manner that does not hinder or impede voters.
- Observe each person offering to vote. (Challengers must respect the voter’s right to a secret ballot and cannot monitor voters marking their ballots.)
- Inspect the Applications to Vote, Pollbook, registration list and any other materials used to process voters at the polling place. (When exercising this right, challengers cannot touch any of these materials.)
- Take notes on the persons offering to vote, the election procedures being carried out, and the actions of the precinct board. (Notes may be kept or recorded on a smart phone or tablet, but challengers are prohibited from using the camera or recording features of any electronic device in the polling place.)
- Notify the precinct board of any improper handling of a ballot by a voter or an election inspector; that the 100-foot campaign restriction is being violated; or that any other election law or procedure is being violated.
- Remain in the precinct until precinct inspectors complete their work.

The precinct board must provide space for challengers to enable them to observe all election procedures. Challengers may position themselves behind the election inspectors’ table but must give election inspectors sufficient space to work.

Those present in the polls (including election inspectors and voters) are prohibited from threatening or intimidating any challengers present in the polling place.

Types of Challenges

Against a practice or procedure. In addition, challengers may challenge the actions of election inspectors if the challenger believes that election laws are not being followed.

Against a voter. A challenger cannot challenge a voter's right to vote unless the challenger has good reason to believe that the voter is not eligible to vote in the precinct. Challenges must not be based on an "impression" that the voter may be ineligible due to his or her manner of dress; inability to read or write English; the voter's perceived race, ethnic background, physical or mental disability, or support for or opposition to a candidate or political party; or the voter's need for assistance with the voting process.

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, as long as the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter's inability to provide acceptable picture ID.

Every effort must be made to ensure that challenge procedures are properly carried out. Abuse of the challenge process can have serious consequences including the disenfranchisement of qualified voters, criminal violations, and legal challenges over the election results. The precinct chairperson has the authority to expel challengers who abuse the challenge process.

There are six types of challenges that may be made on Election Day: unqualified voter, absentee voter in the polls, precinct board's failure to issue a challenged ballot when required, challenge against an absent voter ballot, precinct board's failure to comply with election laws, or precinct board's administration of the voter identification requirement.

Unqualified Voter/Voter Lacks Qualifications to Vote. A challenger has the right to challenge a voter if the challenger has good reason to believe that a person who offers to vote: 1) is not a resident of the city or township, 2) is under 18 years of age, 3) is not a United States citizen, or 4) is not registered to vote in the precinct. Generally, these challenges are based on research conducted before Election Day by the challenger or organization he or she represents. In other cases, the voter may make a statement regarding his or her age, residency, registration or citizenship status when offering to vote that gives the challenger good reason to believe that the voter is not qualified to vote in the precinct.

Challenges must be directed to the precinct chairperson before the voter is issued a ballot. After the challenge is made, the chairperson (or an election inspector designated by the chairperson as responsible for supervising the challenge) must ensure it is conducted promptly and courteously. If there are other voters waiting in line, the challenged voter can be taken aside for questioning to avoid processing delays. The challenge proceeds as follows:

1. After the challenge is made, the precinct chairperson or designated election inspector administers the following oath to the voter:

"I swear (or affirm) that I will truthfully answer all questions put to me concerning

my qualifications as a voter.”

2. After the voter takes the oath, the precinct chairperson or designated election inspector questions the voter, confining the inquiry to the person’s qualifications to vote (age, residency, citizenship or registration status).
3. If the answers given under oath prove that the challenged voter is qualified to vote in the precinct, he or she is allowed to vote a specially prepared challenged ballot. **After voting, the voter deposits the ballot in the tabulator under the regular procedure. Challenged ballots are not placed in provisional ballot envelopes unless the voter is required to vote a provisional envelope ballot for some other reason.** However, a challenged voter cannot vote if he or she refuses to take the oath, refuses to answer appropriate questions under oath, or is found to be not qualified to vote through the answers given under oath.
4. A complete record of the challenge must be entered on the Challenged Voters page in the Pollbook. The record must include the name, address and telephone number of the person making the challenge; the reason for the challenge; the time of the challenge; the name, address and telephone number of the person challenged; and any other pertinent information.

Absentee Voter at Polls. A challenger has the right to challenge any voter issued an absentee ballot who appears at the polls to vote on Election Day claiming that he or she never received the absent voter ballot, or that the absent voter ballot was lost or destroyed.

If this type of challenge is made, instruct the voter to either: 1) Surrender the absent voter ballot, or 2) Complete the *Affidavit of Lost or Destroyed Absent Voter Ballot*; an election inspector must contact the clerk to verify that the absent voter ballot was not returned. Allow the voter to vote a specially prepared challenged ballot and enter a complete record of the challenge on the Challenged Voters page in the Pollbook. It is not necessary to question the voter under oath.

Precinct Board’s Failure to Issue a Challenged Ballot When Required: Under the circumstances described below, precinct inspectors must automatically issue a challenged ballot:

1. A voter who refuses to enter the day and month of birth or enters an incorrect birthdate on the *Application to Vote* form is required to vote a challenged ballot.
2. All provisional ballots must be prepared as challenged ballots.
3. If absent voter ballots are processed in the precinct, an absent voter ballot must be prepared as a challenged ballot if the ballot stub is missing or the ballot number does not match the number recorded.
4. A person who registers to vote in the 14 days immediately preceding Election Day without providing a driver’s license or state-issued personal identification card is required to vote a

challenged ballot. (The precinct list or voter registration receipt will indicate whether a challenged ballot is required.)

If a challenger has reason to believe that the precinct board is not issuing a challenged ballot when required, he or she must direct the challenge to the precinct chairperson. If the chairperson rejects the challenge, the challenger may contact the clerk to resolve the matter. The election inspectors must enter a complete record of the challenge on the Challenged Voters page in the Pollbook.

Challenge Against an Absent Voter Ballot. If an absent voter ballot is challenged, prepare the ballot as a challenged ballot and make a notation on the Challenged Voters page in the Pollbook. Proceed with routine processing and tabulation of the ballot.

Precinct Board's Failure to Comply with Election Laws. If a challenger has reason to believe that the precinct board is not following applicable election laws, the actions of the precinct board may be challenged by consulting with the precinct chairperson. If the chairperson rejects the challenge, the challenger may contact the clerk to resolve the matter. The election inspectors must enter a complete record of the challenge in the Pollbook.

Precinct Board's Administration of the Voter Identification Requirement. Every voter who attends the polls must show acceptable picture ID or sign an *Affidavit of Voter Not in Possession of Picture ID*. A challenge may be made if an election inspector attempts to issue a ballot to a voter who has not shown acceptable picture ID nor signed an *Affidavit of Voter Not in Possession of Picture ID*. A challenge may also be made if the challenger has good reason to believe that a person is not qualified to vote in the precinct (i.e., if a voter provides acceptable picture ID with an address that is different than the address in the Pollbook).

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, **as long as** the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter's inability to provide acceptable picture ID.

Penalties

Michigan election law provides penalties in the event of the following:

- A person submits a challenger appointment authorization application on behalf of a group or organization that is not authorized to appoint challengers.
- A clerk knowingly fails to perform the duties related to the challenger appointment process.
- A person challenges a qualified elector for the purpose of annoying or delaying the voter.
- A challenged elector gives false information regarding his or her qualifications to vote.

- An election official or precinct board prevents a challenger from being present in the polls or refuses to provide a challenger with any conveniences needed for the performance of his or her duties.

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POLL WATCHERS

A person who wishes to observe the election process but who is not a qualified election challenger is commonly called a poll watcher. Poll watchers must conduct themselves in an orderly manner at all times. A poll watcher can be expelled from the precinct for acting in a disorderly manner, including by campaigning; threatening or intimidating voters or election inspectors; touching any election equipment; or disrupting the administration of the election.

NOTE: If a poll watcher violates these standards of conduct, an election inspector will ask them to leave. If they refuse to leave, an election inspector will call law enforcement.

Poll watchers:

- Are not required to be registered to vote in Michigan.
- Are subject to the same conduct standards as challengers.
- Cannot be candidates for an elective office to be voted on at the election.
- Are not authorized to challenge a person's right to vote or the actions of the precinct board.
- Are not permitted to position themselves or sit behind the election inspectors' processing table.
- Must sit or stand in the "public area" of the polling place where they will not interfere with the voting process.
- Are not authorized to approach or talk to voters for any reason.
- Are allowed to view the Pollbook at the discretion of the precinct board chairperson.

Poll watchers who wish to be present in an absent voter counting board must remain in the room in which the absent voter counting board is working until close of the polls at 8:00 p.m., and are required to take and sign the following oath:

"I (name) do solemnly swear (or affirm) that I shall not communicate in any way information relative to the processing or tallying of voters that may come to me while in this counting place until after the polls are closed."

Exhibit C

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The Appointment, Rights, and Duties of Election Challengers and Poll Watchers

May 2022

INSTRUCTIONS PROVIDED BY THE MICHIGAN BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
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I. Introduction

This publication is designed to familiarize election challengers, poll watchers, election inspectors, and members of the public with the rights and duties of election challengers and poll watchers in Michigan. Election challengers and poll watchers play a constructive role in ensuring elections are conducted in an open, fair, and orderly manner by following these instructions.

Challengers and poll watchers should familiarize themselves with the instructions and directions in this publication governing their conduct, rights, and responsibilities. Election inspectors should likewise familiarize themselves with the instructions and directions in this publication, including their duties to record challenges and their powers to maintain order at the polls.

Any questions or concerns about the procedures laid out in this document may be sent to BOERegulatory@michigan.gov.

II. Challengers

Challenger-Credentialing Organizations

Credentialing organizations are organizations eligible to appoint and credential challengers in Michigan. Credentialing organizations must be one of the following:

- A political party eligible to appear on the ballot in Michigan;
- An organized group of citizens interested in the passage or defeat of a ballot proposal being voted on at that election;
- An organized group of citizens interested in preserving the purity of elections and guarding against the abuse of the elective franchise; or
- An incorporated organization.

A credentialing organization appoints a challenger by giving a person a credential indicating that the person is serving as a challenger on behalf of the organization. This process is known as credentialing. The credential must conform to the standards set out later in this publication.

Candidates, candidate committees, or organizations formed to support or oppose candidates are not eligible to appoint or credential challengers.



Challenger Credentialing By Political Parties

Political parties eligible to appear on the ballot may appoint or credential challengers at any time until Election Day. A challenger is appointed when they are given a credential by a representative of the political party. Political parties do not need to apply for approval by local election officials in the same way that other challenger-credentialing organizations must be approved; however, political parties should notify local clerks of their intention to appoint or credential challengers prior to Election Day.

Challenger Credentialing By Other Qualified Organizations

All other qualified organizations wishing to appoint or credential challengers must file an application to field challengers with the clerk of each county, city, or township in which the organization intends to field challengers. The application must be filed no less than 20 and no more than 30 calendar days prior to Election Day. The application consists of a written statement indicating the organization's intent to field challengers in that jurisdiction, the reason that the organization believes itself to be an organization qualified to field challengers under the criteria set out above, and a copy of a completed *Michigan Challenger Credential Card* form that the organization will distribute to its challengers. The statement must be signed and sworn by an officer of the organization.

Within two business days of receiving an application from an organization wishing to appoint challengers, the clerk must approve or deny the application and notify the group of the approval or denial. The clerk may deny the application if the group or organization fails to demonstrate that it is qualified to appoint challengers under the criteria explained above or if the application is not timely filed. If the application is denied, the organization may appeal the denial to the Secretary of State within two business days of receiving notice of the clerk's decision. Within two business days of receiving the appeal, the Secretary of State will render a decision on the appeal and notify the organization and the local clerk of that decision.

An organization wishing to appoint or credential challengers whose application is approved by a county clerk is qualified to appoint or credential challengers in any jurisdiction within that county, even if the organization has not filed an application with each specific city or township in the county.

Each county clerk must notify the clerk of every city and township within their county of all political parties and other organizations who have been approved to appoint challengers within their county. Each municipal clerk



must notify election inspectors at all precincts in the clerk's jurisdiction of all political parties and other organizations qualified to appoint and credential challengers within that jurisdiction prior to the opening of the polls on Election Day.

Eligibility to Serve as a Challenger

A person may serve as a challenger only if the person is registered to vote in Michigan and only if the person is provided a challenger credential by a credentialing organization. The credential must be specific to the election at which the person is serving as a challenger; a credential issued for a prior election does not entitle a person to serve as a challenger at a future election. A person cannot serve as a challenger if the person is serving as an election inspector during the same election. Additionally, a person cannot serve as a challenger if the person is running for nomination or for office during the same election, with the exception that precinct delegate candidates can serve as challengers so long as they do not serve at the precinct in which they are running for office.

Training of Challengers

Credentialing organizations are responsible for the behavior and actions of challengers that they credential. As such, credentialing organizations are strongly encouraged to provide challengers with training on both the basic aspects of election administration in Michigan and the rights and duties of challengers in Michigan. Providing challengers with a basic understanding of election administration will allow challengers to fully participate in the election process and to make informed challenges without disrupting or delaying election-related activities. Providing challengers with an explanation of their rights and duties will allow them to realize the full benefit of their status without violating the law.

Challengers should be provided training that is specific to the type of election-related location at which the challenger will be serving. For example, a challenger who will be serving at an absent voter ballot processing facility should be trained in how absent voter ballots are processed, while a challenger serving at a polling place where voters are casting ballots on Election Day should be trained on in-person voting processes. Failure to tailor training confuses challengers about which procedures should be followed in different types of locations, which may lead to confusion, ineffective observation, and impermissible challenges.



III. Rights and Duties of Challengers When Observing Election-Related Procedures

Challengers' Obligation to Follow Election Inspector Directions

Election inspectors are empowered and obligated to maintain order and facilitate the peaceful conduct of elections at the polling place or absent voter ballot processing facility in which the election inspector is serving.

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 challengers to cease any behavior prohibited by these instructions;
- Directing challengers to cease any behavior that intimidates voters or disrupts the voting process; and
- 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.

Form of Challenger Credential

Under Michigan law, each challenger present at a polling place or an absent voter ballot processing facility must possess an authority signed by the chairman or presiding officer of the organization sponsoring the challenger. This authority, also known as the *Michigan Challenger Credential Card*, must be on a form promulgated by the Secretary of State. The blank template credential form is available on the Secretary of State's website. The entire credential form, including the challenger's name, the date of the election at which the challenger is credentialed to serve, and the signature of the chairman or presiding officer of the organization appointing the challenger, must be completed. If the entire form is not completed, the credential is



invalid and the individual presenting the form cannot serve as a challenger. The credential may not be displayed or shown to voters.

A credential form may be digital and may be presented on a phone or other electronic device. If a challenger uses a digital credential, the credential must include all of the information required on the template credential form promulgated by the Secretary of State. A digital credential should not include any information or graphics that are not included or requested on the template credential form. 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.

Clerks may allow or require challengers serving at a polling place on Election Day or at a clerk's office at any time that voters are present to wear a reasonably sized nametag or badge. The nametag or badge cannot include any text or graphics aside from the challenger's name and the words "election challenger". The nametag must be printed on white paper, and the words "election challenger" must be printed in black ink.

Clerks may allow or require challengers serving in absent voter ballot processing facilities where voters are not present to wear nametags or badges that identify challengers and the organization represented by the challenger.

Challenger Liaison

Every polling place or absent voter ballot processing facility should have an election inspector designated as the challenger liaison. Unless otherwise specified by the local clerk, the challenger liaison at a polling place is the precinct chairperson. The challenger liaison or precinct chairperson may designate one or more additional election inspectors to serve as challenger liaison, or as the challenger liaison's designees, at any time. Unless otherwise specified by the local clerk, the challenger liaison at an absent voter ballot processing facility is the most senior member of the clerk's staff present, or, if no members of the clerk's staff are present, the challenger liaison is the chairperson of the facility. Unless otherwise specified by the local clerk, the challenger liaison at the clerk's office is the most senior member of the clerk's staff present.



Challengers must not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee unless otherwise instructed by the challenger liaison or a member of the clerk's staff.

Challenger Identification Upon Entering Polling Place or Absent Voter Ballot Processing Facility

Upon arriving at a polling place, an absent voter ballot processing facility, or a clerk's office, a challenger must introduce themselves and show their credential to the challenger liaison or their designee. A challenger cannot make challenges or take advantage of any of the other rights afforded to challengers until they have properly made their presence known to the challenger liaison. The challenger's name, the organization which the challenger represents, and the time of the challenger's arrival should be noted in the poll book.

If the challenger leaves a polling place prior to the close of polls, the challenger shall inform the challenger liaison of their departure. A challenger may not leave an absent voting ballot processing facility prior to the close of polls on Election Day. The challenger's departure and time of departure should be noted in the poll book.

Communication with Election Inspectors and Election Officials

Challengers must communicate only with the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk's staff. Challengers must not communicate with election inspectors who are not the challenger liaison unless otherwise instructed by the challenger liaison or a member of the clerk's staff. Challengers may not communicate with voters.

Challenger liaisons must be readily accessible to communicate with challengers, to answer questions about the voting and tabulating procedures, and to record any challenges made.

Challengers at Clerks' Offices

Each credentialing organization may assign one challenger to observe the issuance and receipt of absent voter ballots at a clerk's office or a satellite location maintained by the clerk. A challenger may be present only in areas of the clerk's office where an absent voter ballot may be requested. A



challenger may be present in the clerk's office only when the office is open for business and during the period prior to an election when voters may request or return an absent voter ballot at the office. A challenger present in a clerk's office may not view the Qualified Voter File.

Challengers at Polling Places

Only two challengers from any political party or other credentialing organization may be present at a precinct conducting in-person voting on Election Day. If two challengers from the same credentialing organization are present, both challengers enjoy the rights afforded to challengers, except that at any given time only one of the two challengers can be designated to make challenges. The challengers must make known to the challenger liaison which of the two challengers is designated to make challenges. The challengers may agree to change which challenger is designated to make challenges at any time, but the challengers must inform the challenger liaison of that change.

Challengers at Absent Voter Ballot Processing Facilities

Challengers have a right to be present at locations where absent voter ballots are removed from envelopes and tabulated. These locations are referred to as absent voter ballot processing facilities in this publication. Absent voter ballot processing facilities do not include a clerk's office or other locations where absent voter ballots are stored, signatures appearing on absent voter ballot envelopes are checked, or other activities are conducted prior to absent voter ballots being removed from absent voter ballot envelopes and prepared for tabulation.

An absent voter ballot processing facility may contain a single absent voter counting board, multiple absent voter counting boards, a single combined absent voter counting board, or multiple combined absent voter counting boards. The Michigan Election Law uses the term "absent voter counting board" simultaneously to refer to a single absent voter counting board corresponding to an individual in-person precinct; a station within a facility processing absent voter ballots for multiple in-person precincts; the entire facility at which all absent voter ballots are processed for a jurisdiction; and an entire facility at which combined absent voter ballots are processed for multiple jurisdictions in a county. The Michigan Election Law does not expressly state how many challengers may be present at an absent voter



counting board or combined absent voter counting board in each of these scenarios.

When determining how many challengers each credentialing organization is allowed to have in an absent voter ballot processing facility, 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. Clerk considerations in setting the number of challengers each credentialing organization may field in the absent voter ballot processing facility should include:

- The number of processing teams and the number of election inspectors;
- The number of tables or discrete stations at which ballots are processed;
- The physical size and layout of the facility; and
- The number of rooms and areas used to process absent voter ballots within the facility.

The clerk must make publicly available the number of challengers each credentialing organization will be allowed to field in the absent voter ballot processing facility at least seven calendar days prior to the election.

The challenger liaison serving at an absent voter ballot processing facility must administer an oath to any challenger wishing to serve in that facility:

"I (name of person taking oath) do solemnly swear (or affirm) that I shall not communicate in any way any information relative to the processing or tallying of votes that may come to me while in this counting place until after the polls are closed."

A challenger may not enter the absent voter ballot processing facility without taking this oath and signing a document acknowledging the oath. Any person who violates this oath is guilty of a felony.

Once tallying of votes has begun on Election Day, challengers serving at an absent voter ballot processing facility, like all persons present in an absent voter ballot processing facility, are sequestered at the facility and cannot leave until the close of polls at 8 p.m. on Election Day. If absent voter ballot processing or tabulation continues after the close of polls, challengers must be permitted to remain in the absent voter ballot processing facility at any time when absent voter ballots are being processed until processing and tabulation is complete.



No electronic devices capable of sending or receiving information, including phones, laptops, tablets, or smartwatches, are permitted in an absent voter ballot processing facility while absent voter ballots are being processed until the close of polls on Election Day. A challenger who possesses such an electronic device in an absent voter ballot processing facility between the beginning of tallying and the close of polls may be ejected from the facility.

A challenger who is ejected from an absent voter ballot processing facility after the tallying has begun but before the close of polls is still bound by their legal obligation to remain sequestered until the close of polls. To avoid breaching that obligation, the challenger liaison or the clerk should direct the challenger to remain in a room or area of the location containing the absent voter ballot processing facility, but which is separated from the area where absent voter ballots are being processed.

A challenger who breaks sequestration by prematurely leaving the location containing an absent ballot processing facility before the close of polls – whether or not due to an ejection from the facility itself – violates the oath they took upon entering the facility.

Excess Challengers at an Election-Related Location

A credentialing organization may field no more than the number of challengers set out in the above sections at any clerk's office, in-person precinct, or absent voter ballot processing facility. If the credentialing organization already has the total number of challengers allowed present in a particular location, additional challengers credentialed by that organization cannot act as challengers in that location. At the clerk or challenger liaison's discretion, additional challengers seeking access to the location may be given the option to serve as poll watchers in that location. Challengers who agree to act as poll watchers have none of the rights specifically afforded to challengers and must adhere to the same standard of conduct and observe the same rules as any other poll watcher. The rights and duties of poll watchers are set out at the end of this document.

Generally, a credentialing organization will be allowed to replace challengers credentialed by that organization with other challengers credentialed by that organization so long as the replacement process does not disrupt the work of election inspectors or clerk staff present in the location. Because of the sequester, credentialing organizations cannot replace challengers present in facilities processing absent voter ballots prior to the close of polls on Election Day, but credentialing organizations may replace challengers in those locations after the close of polls. In no case during the replacement process



may a credentialing organization have more challengers present in a particular location than would be allowed by the other provisions of this document.

Making Challenges

A challenge must be made to a challenger liaison. The challenger liaison will determine if the challenge is permissible as explained below. Assuming the challenge is permissible, the substance of the challenge, the time of the challenge, the name of the challenger, and the resolution of the challenge must be recorded in the poll book. If the challenge is rejected, the reason for that determination must be recorded in the poll book.

An impermissible challenge, as explained below, need not be noted in the poll book.

Adjudicating and Recording Challenges

There are three categories of challenges: impermissible challenges, rejected challenges, and accepted challenges. The challenger liaison is responsible for adjudicating each challenge by categorizing each challenge and determining what, if any, action should be taken in response to the challenge.

Impermissible Challenges

Impermissible challenges are challenges that are made on improper grounds. Because the challenge is impermissible, the challenger liaison does not evaluate the challenge to accept it or reject it. Impermissible challenges are:

- Challenges made to something other than a voter's eligibility or an election process;
- Challenges made without a sufficient basis, as explained below; and
- Challenges made for a prohibited reason.

Election inspectors are not required to record an impermissible challenge in the poll book. If it is possible to make a note without slowing down the voting or absent voter ballot tabulation process, the election inspector is encouraged to note the content of an impermissible challenge in the poll book, as well as any warning given to the challenger making that impermissible challenge. If the challenger makes multiple impermissible challenges, the election inspector is likewise encouraged to note the general basis of those challenges and the approximate number of challenges, if the election inspector can make that note without slowing down the election



process. In all circumstances, however, the election inspector should prioritize the orderly and regular administration of the election process over noting an impermissible challenge.

Repeated impermissible challenges may result in a challenger's removal from the polling place or absent voter ballot processing facility.

Rejected Challenges

Rejected challenges are challenges which are not impermissible, but which the challenger liaison does not accept. Whether a challenge is permissible but rejected is a context-specific determination that depends on the type of challenge being made. The process for determining whether a challenge to an election process or a voter's eligibility is rejected is set out below in the relevant sections. If a challenge is permissible but rejected, the following information must be included in the poll book:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and
- The reason why the challenge was rejected.

Accepted Challenges

Accepted challenges are challenges which are permissible and which the challenger liaison deems correct. If a challenge is accepted, the following information must be included in the poll book:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and
- The actions taken by the election inspectors in response to the challenge.

Challenges to a Voter's Eligibility

A challenger may make a challenge to a voter's eligibility to cast a ballot only if the challenger has a good reason to believe that the person in question is not a registered voter. There are four reasons that a challenger may challenge a voter's eligibility; **a challenge made for any other reason than those listed below is impermissible.** The four permissible reasons to challenge a voter's eligibility are:

1. The person is not registered to vote;



2. The person is less than 18 years of age;
3. The person is not a United States citizen; or
4. The person has not lived in the city or township in which they are attempting to vote for 30 or more days prior to the election.

The challenger must cite one of the four listed permissible reasons that the challenger believes the person is not a registered voter, and the challenger must **explain the reason the challenger holds that belief**. If the challenger does not cite one of the four permitted reasons to challenge this voter's eligibility, or cannot provide support for the challenge, the challenge is impermissible.

A challenger may challenge a voter's eligibility only by making a challenge to the challenger liaison or the challenger liaison's designee. **The challenger must make the challenge in a discrete manner not intended to embarrass the challenged voter, intimidate other voters, or otherwise disrupt the election process.** An election inspector will warn a challenger who violates any of these prohibitions; if a challenger repeatedly violates any of these prohibitions, the challenger may be ejected from the polling place.

Impermissible Challenge to Voter's Eligibility: Improper Reason for Challenge

A challenger may not challenge a voter's eligibility for any reason other than the four reasons above. Any challenge made for a reason other than those four reasons is impermissible and should not be considered by the challenger liaison or recorded by the election inspectors. Improper reasons for making a challenge to a voter's eligibility include, but are not limited to, the following:

- the voter's race or ethnic background;
- the voter's sexual orientation or gender identity;
- the voter's physical or mental disability;
- the voter's inability to read, write, or speak English;
- the voter's need for assistance in the voting process;
- the voter's manner of dress;
- the voter's support for or opposition to a candidate, political party, or ballot question;
- the appearance or the challenger's impression of any of the above traits; or
- any other characteristic or appearance of a characteristic that is not relevant to a person's qualification to cast a ballot.



Impermissible Challenge to Voter's Eligibility: Non-Specific Challenge

A challenge to a voter's eligibility is impermissible and should not be recorded by the election inspectors if the challenger cannot specify under which of the four permissible reasons the challenger believes the voter to be ineligible to vote, or if the challenger refuses to provide a reason for the challenge to the voter's eligibility.

Impermissible Challenge to Voter's Eligibility: No Explanation for Challenge

A challenge to a voter's eligibility is impermissible and should not be recorded by the election inspectors if the challenger cannot provide a reason for their belief that the voter is ineligible to vote. For example, a challenger cannot simply state that they believe a voter to be ineligible because of their age or citizenship status; the challenger must explain why they believe the voter to be underage or why they believe the voter is not a United States citizen. The challenger liaison may deem the reason for the challenger's belief impermissible if the reason provided bears no relation to criteria cited by the challenger, or if the provided reason is obviously inapplicable or incorrect.

Impermissible Challenge to Voter's Eligibility: Lack of Photo ID

A voter who signs an Affidavit of Voter Not In Possession of Picture ID cannot be challenged on the grounds that the voter is not in possession of photo identification. Any challenge on these grounds must be deemed an impermissible challenge, should not be recorded by the election inspectors, and the challenger must be warned that no such challenge is allowed.

Processing Challenges to a Voter's Eligibility

If a challenge to a voter's eligibility made at an in-person polling location is determined to be permissible, the challenge must be handled using the following process:

1. The voter is sworn in by the precinct chairperson or another election inspector using the following oath:

"I swear (or affirm) that I will truly answer all questions put to me concerning my qualifications as a voter."



2. The election inspector who administered the oath asks the voter to confirm that they meet the criteria to be eligible to cast a ballot. The election inspector may ask the voter only the questions necessary to confirm that they meet the criteria disputed by the challenger; the election inspector may not ask the voter any other questions.
3. If, after questioning under oath, the voter confirms they are eligible to vote, the challenge is rejected and the voter is permitted to vote a challenged ballot. A challenged ballot is prepared by writing the voter's ballot number on the ballot and then covering the number with tape or a slip of paper. **The voter then completes the ballot and casts the ballot by feeding the ballot into the tabulator in the same manner as an unchallenged voter.**
4. If the voter does not confirm they are eligible to vote after questioning under oath, the challenge is accepted and voter is not allowed to cast a ballot.

The election inspector should take the challenged voter aside to administer the oath and ask the required questions. Election inspectors should administer the oath and ask the required questions in a manner that does not humiliate, degrade, or embarrass the challenged voter. The oath and questioning process should be carried out in a manner that does not unduly delay the challenged voter.

If a voter whose eligibility is permissibly challenged refuses to take the above oath or answer questions designed to verify the voter's eligibility, the challenge is accepted, and the voter cannot cast a ballot.

A challenger cannot appeal a determination that a challenged voter is eligible to vote on Election Day. Outstanding challenges to a voter's eligibility after Election Day may be adjudicated through the judicial process.

Recording a Challenge to a Voter's Eligibility

Permissible challenges to a voter's eligibility are recorded in both the electronic poll book and the paper poll book. When a voter's eligibility is permissibly challenged, the election inspector selects "Challenged Voter" in the electronic poll book, which automatically creates a notation of the challenge and the challenge's outcome. In addition, the election inspector should also record the challenge on the "Challenged Voters" page of the physical poll book. Finally, the election inspector should make a comment in the electronic poll book recording:

- The challenger's name;



- The time of the challenge;
- The substance of the challenge; and either
- If the challenge was rejected, the reason why the challenge was rejected; **or**
- If the challenge was accepted, the reason the challenge was accepted.

Because the only action taken by an election inspector in response to an accepted challenge to a voter's eligibility is to disallow that person from casting a ballot, and that denial is automatically recorded in the poll book when the voter is not issued a ballot, the election inspector does not need to record any additional information about an accepted challenge to a voter's eligibility.

Challenges by an Election Inspector to a Voter's Eligibility

An election inspector shall make a challenge to a voter's eligibility if the election inspector knows or has good reason to suspect that the voter is not eligible to cast a ballot. Such a challenge is treated identically to a challenge made by a credentialed challenger as explained above – the election inspector must provide a specific and permissible reason that the election inspector believes the voter is ineligible to cast a ballot, and there must be some explanation for the election inspector's belief. If an election inspector wishes to challenge a voter's eligibility, the election inspector must make that challenge to the challenger liaison. If the election inspector making the challenge is the challenger liaison, the challenger liaison must make the challenge to another election inspector and the local clerk must be notified of the challenge. A challenge made to a voter's eligibility by an election inspector is recorded and resolved using the same process as a challenge made to a voter's eligibility by a credentialed challenger.

Challenges by a Voter to Another Voter's Eligibility

A registered voter of a precinct who is present at that precinct on Election Day may challenge the eligibility of another person to vote in that precinct if the challenging voter either knows or has good reason to suspect that the challenged person is not eligible to cast a ballot in that precinct.

Such a challenge is treated and resolved identically to a challenge made by a credentialed challenger as explained above. If a voter wishes to challenge a person's eligibility to vote under this mechanism, the election inspector must make that challenge to the challenger liaison.

A voter who is not credentialed as a challenger may only challenge the eligibility of persons attempting to vote in the precinct in which the



challenging voter is registered to vote. A voter who is not credentialed as a challenger cannot challenge persons attempting to vote in any other precinct, nor can they challenge the conduct of election processes. A voter making challenges to the eligibility of other voters in their own precinct may not make challenges designed to harass, annoy, or delay voters. A voter making challenges to the eligibility of other voters in their own precinct, like all persons present in the precinct, must follow the directions of the election inspectors assigned to the precinct.

Challenge to an Absent Voter in the Polls

A voter who requested an absent voter ballot may vote in person so long as their local clerk has not received their absent voter ballot by Election Day. In some situations these voters may be subject to challenge as an absent voter in the polling place. **A voter is subject to challenge as an absent voter in the polling place only if the poll book indicates that an absent voter ballot was sent to the voter and only if the voter does not surrender the absent voter ballot at the polling place on Election Day.**

Voters Who Surrender Their Absent Voter Ballot at the Precinct On Election Day

A voter who received an absent voter ballot but who surrenders that absent voter ballot to election inspectors at the polling place on Election Day may vote a regular ballot. **Such a voter is not subject to challenge as an absent voter in the polling place and a challenge on those grounds is impermissible.**

Voters Who Do Not Surrender Their Absent Voter Ballot at the Precinct on Election Day

A voter for whom the poll book indicates an absent voter ballot was sent may not have received the ballot, may have lost or destroyed the ballot, or may have mailed the ballot back to the clerk so close to Election Day that the ballot may not arrive in time to be counted. **In these situations, the election inspector must always call the local clerk to verify that the voter's absent voter ballot has not been returned to the clerk.** Once the clerk verifies to the election inspector that the absent voter ballot was not returned to the clerk, the voter must sign an affidavit of lost or destroyed absentee ballot stating that the voter did not successfully return



the ballot. Absent a challenger issuing a challenge against that voter, the voter is then permitted to cast a regular ballot.

A voter for whom the poll book indicates an absent voter ballot was mailed may be challenged as an absent voter in the polling place even after the clerk verifies the absent voter ballot has not been returned and after the voter signs the affidavit stating that the voter did not return the ballot; if such a voter is challenged, that voter is permitted to cast a challenged ballot. **So long as the clerk confirms that they have not received the voter's absent voter ballot, the voter is permitted to vote in the polling place on Election Day.** A challenged ballot is prepared by writing the voter's ballot number on the ballot, then covering the number with tape or a slip of paper. The voter then completes the ballot and casts the ballot by feeding the ballot into the tabulator in the same manner as an unchallenged voter.

A voter may only be challenged as an absent voter in the polling place if the poll book indicates that the voter was mailed an absent voter ballot. If the poll book does not indicate that the voter was mailed an absent voter ballot, the voter may not be challenged as an absent voter in the polling place.

Voter Eligibility Challenges Are Not Permissible at an Absent Voter Ballot Processing Facility

Challengers at absent voter ballot processing facilities may make challenges to election processes as described below. Permissible challenges at absent voter ballot processing facilities include challenges to ensure that the review of any portion of the absent voter ballot envelope reviewed at the absent voter ballot processing facility is properly completed. City and township clerks review the portion of the absent voter ballot envelope containing the absent voter's signature prior to Election Day, or when the ballot envelope is received by the clerk on Election Day, to ensure that the signature is genuine and the absent voter is eligible to cast a ballot. If the clerk has verified the signature and the absent voter's eligibility prior to the ballot envelope being transmitted to the absent voter ballot processing facility, neither challenges to the voter's signature nor to the voter's eligibility made at the absent ballot processing facility on Election Day are permissible.

Because an absent voter's eligibility is verified by the clerk prior to the absent voter ballot envelope being processed at the absent voter ballot processing facility on Election Day, election inspectors serving at the absent voter ballot processing facility are not responsible for verifying voter eligibility at the facility. Instead, election inspectors serving at the absent



voter ballot processing facility confirm that the clerk has verified the absent voter's eligibility to cast a ballot by confirming that the clerk has reviewed the signature section of the absent voter ballot envelope. Additionally, because the voters are not present at the absent voter ballot processing facility, the oath administration and questioning process set out in the Michigan Election Law and explained above cannot be carried out at an absent voter ballot processing facility and a challenged voter would have no chance to refute the challenge leveled against them. For these reasons, challenges to voter eligibility at absent voter ballot processing facilities are not permissible and need not be recorded.

Individuals who wish to contest the eligibility of an absent voter should raise those concerns with the clerk of the city or township in which the voter is registered to vote prior to Election Day as prescribed by the Michigan Election Law; no information about a particular voter's eligibility would be available to a challenger serving in an absent voter ballot processing facility which would not have also been available to the challenger prior to Election Day.

Challenges to an Election Process

A challenger may challenge a voting process, including the way that election inspectors are operating a polling place or processing absent voter ballots at an absent voter ballot processing facility. A challenge to an election process must **state the specific element or elements of the process that the challenger believes are being improperly performed and the basis for the challenger's belief.**

Impermissible Challenge to an Election Process

A challenge to an election process is impermissible and should not be recorded by the election inspectors if the challenger cannot identify a specific element or multiple elements of the process whose performance the challenger believes improper. A challenge to an election process is also impermissible if the challenger cannot adequately explain why the election process is being performed in a manner prohibited by state law. An explanation for a challenge to an election process must include an explanation of the proper performance of the element or elements in question but need not take the form of a direct citation to statute or election administration materials.

Rejecting a Challenge to an Election Process



A permissible challenge to an election process will be rejected if the challenger liaison determines that the specific element or elements of the election process being challenged are being carried out in accordance with state law. A challenger liaison's determination that a challenge to an election process is rejected may be appealed using the process laid out at the end of this document.

Accepting a Challenge to an Election Process

A permissible challenge to an election process will be accepted if the challenger liaison determines that the challenger is correct and that the specific element or elements of the election process being challenged are not being carried out in accordance with state law. The challenger liaison shall inform the relevant election inspectors how to properly carry out the process and take any other remedial action necessary to correct the error.

Recording Challenges to an Election Processes

A permissible challenge to an election process should be recorded in both the remarks section of the electronic poll book and on the "Challenged Procedures" section of the physical poll book. The record should include:

- The challenger's name;
- The time of the challenge;
- The substance of the challenge; and either
- If the challenge was rejected, the reason why the challenge was rejected; **or**
- If the challenge was accepted, the reason the challenge was accepted, and any remedial actions taken in response to the challenge.

Challenges to Recurring Election Processes: Blanket Challenges

If a challenger wishes to challenge recurring elements of the election process, the challenger must make a blanket challenge. The blanket challenge shall be treated as a challenge to each occurrence of the process but need only be made and recorded in the poll book once. **A challenger may only challenge recurring processes through a blanket challenge; a challenger may not challenge every occurrence of a recurring process in lieu of making a blanket challenge.**

Rights of Challengers

A challenger who has made themselves known to the challenger liaison and who is in possession of a valid credential has the right to:



- Be present in the polling place;
- Make challenges to the challenger liaison or the challenger liaison's designee as provided in these instructions;
- Be treated with respect by election inspectors;
- Be provided with reasonable assistance in performing their duties as a challenger;
- Inspect applications to vote, registration lists, and other printed materials used to conduct elections, so long as the challenger does not touch or handle any of those materials and so long as the inspection does not impede the voting process;
- Observe election inspectors' preparation of voting equipment at the polling place before the opening of the polls on Election Day, and observe election inspectors' handling of voting equipment after the close of polls on Election Day, so long as the challenger does not touch or handle any of that equipment and so long as that observation does not impede the election inspectors in completion of their duties;
- Observe the election process from a reasonable distance, so long as election inspectors have sufficient room to perform their duties and voters are not impeded in any way;
- If serving in a polling place on Election Day, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to make video or audio recordings of the polling place;
- Observe election-related activities at a polling place on Election Day at any time the polling place is open to the public, including prior to the opening of polls or after the closing of polls;
- Take notes about the election process;
- Notify the challenger liaison of perceived violations of election laws by third parties, including electioneering within 100 feet of the precinct, improper handling of a ballot by a voter, or other issues;
- Remain in the precinct after the close of polls or the end of tabulation and until the election inspectors complete their duties;
- If serving in a polling place where ballots are being issued, stand behind the processing table and close enough to view the poll book as ballots are issued to voters and the voters' names are entered into the poll book, so long as the challenger does not touch or handle the poll book or otherwise interfere with the work of the election inspectors; and
- If serving at an absent voter ballot processing facility, to stand in a location where the tabulation of absent voter ballots can be observed, or to stand in a location where the entry of the names of voters whose ballots are being processed into the poll book can be viewed, so long as the challenger does not touch or handle any election-related materials.



Restrictions on Challengers

Challengers may not:

- Speak with or interact in any way with voters;
- Threaten or intimidate voters or election inspectors, or attempt to threaten or intimidate voters or election inspectors at any stage of the voting process;
- Speak with or interact with election inspectors who are not the challenger liaison or the challenger liaison's designee, unless given explicit permission by the challenger liaison or a member of the clerk's staff;
- Make repeated impermissible challenges;
- Make a challenge indiscriminately or without good cause, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or any other person;
- Physically touch or interact with ballots, absent voter ballot envelopes, electronic poll books, physical poll books, or any other election materials;
- Stand so close to the poll book or other materials that the challenger's proximity to those materials interferes with the election inspectors' ability to perform their duties;
- Use a device to make video or audio recordings in a polling place, clerk's office, or absent voter ballot processing facility;
- Provide or offer to provide assistance to voters;
- Wear any clothing or other apparel relating to any party, candidate, or proposition on the ballot or which disrupts the peace or order of the polling place, unless the challenger is serving at an absent voter ballot processing facility and is given permission or instructed to wear such an identifier;
- Wear clothing or other apparel expressly advocating for or against the election of a candidate or advocating the passage or defeat of a ballot measure;
- Set up a table or other furniture in the polling place;
- 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; or
- Take any actions to disrupt or interfere with voting, ballot tabulation, or any other election process.

Warning and Ejecting Challengers

If a challenger acts in a way prohibited by this instruction set or fails to follow a direction given by an election inspector serving at the location at



which the challenger is present, the challenger will be warned of their prohibited action and of their responsibility to adhere to the instructions in this manual and to directions issued by election inspectors. The warning and the reason that the warning was issued should be noted in the poll book. The warning requirement is waived if the prohibited action is so egregious that the challenger is immediately ejected.

A challenger who repeatedly fails to follow any of the instructions or directions set out in this manual or issued by election inspectors may be ejected by any election inspector. A challenger who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may also be ejected by any election inspector. The ejection should be noted in the poll book. If the challenger refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the challenger from the polling place or absent voter ballot processing facility.

As explained above, a challenger who is ejected from an absent voter ballot processing facility before the close of polls and while the challenger is subject to sequestration should, in lieu of being removed from the area containing the facility, be directed to remain in a room or area of the location separate from the area where absent voter ballots are being processed.

Challenger Appeal of Election Inspector Determinations

A challenger may appeal a decision by the challenger liaison or any other election inspector relating to the validity of a challenge, to a challenger's conduct, or to a challenger's ejection to the city or township clerk of the jurisdiction in which the challenger is serving. At the request of a challenger, the challenger liaison must provide the contact information of the city or township clerk. The appeal must be made outside of the hearing of voters. If the challenger is appealing their ejection, the appeal must be made after the challenger has left the polling place or absent voter ballot processing facility. If the city or township clerk rejects the challenger's ejection as improper, the clerk shall inform the challenger liaison and the challenger shall be allowed to reenter the polling place or absent voter ballot processing facility.



The challenger may appeal the decision of the local clerk to the Bureau of Elections.

A challenger may not appeal to the city or township clerk an election inspector's resolution to a challenge to a voter's eligibility to vote. Appeals of an election inspector's resolution to an eligibility challenge can only be adjudicated through the judicial process after Election Day.

IV. Poll Watchers

Members of the public who are not credentialed challengers have a right to observe elections. Members of the public wishing to observe elections, often referred to as poll watchers, do not enjoy the same rights as credentialed challengers. A person does not need to be registered to vote in Michigan to serve as a poll watcher in this state, but a candidate for elective office being voted on in the election cannot serve as a poll watcher. There is no particular number of poll watchers that must be admitted to any election-related location, but poll watchers must be permitted to observe the electoral process so long as the total number of poll watchers does not cause the process to be disrupted.

A poll watcher present in an absent voter ballot processing facility prior to the close of polls on Election Day is sequestered and cannot leave the facility between the time ballot tallying begins and the time that the polls close. Such a poll watcher must take the same oath as a challenger serving at the facility.

Rights of Poll Watchers

Poll watchers are allowed to be present in a polling place or an absent voter ballot processing facility. Clerks or challenger liaisons must designate a Public Viewing Area from which poll watchers can observe the electoral process. The Public Viewing Area must be placed in a location that does not interfere in any way with the work of election inspectors present in the location. If the location is a polling place, the Public Viewing Area must be situated so that the presence of poll watchers does not interfere with voters participating in the voting process. If the Public Viewing Area for a particular election location is full and cannot accommodate more poll watchers, and if the Public Viewing Area cannot be enlarged without disrupting election processes, the clerk or challenger liaison may deny entry to additional poll watchers. If the location is an absent voter ballot processing facility, the poll watcher must take the same oath as a challenger present at such a facility



and is bound by all the same restrictions as a challenger present at such a facility.

A poll watcher may request that the challenger liaison allow the poll watcher to view the poll book without handling it, but the challenger liaison may decline that request. A poll watcher may never handle the poll book or other election equipment or materials.

Restrictions on Poll Watchers

Poll watchers are subject to all of the same restrictions as credentialed challengers, including the prohibitions against speaking with voters and against speaking with election inspectors other than the challenger liaison without the challenger liaison's permission. In addition, poll watchers cannot:

- Issue challenges;
- Stand behind the election inspectors as voters are processed; or
- Be present in any part of the polling place, clerk's office, or absent voter ballot processing facility except the designated Public Viewing Area.

Ejection of Poll Watchers

A poll watcher who repeatedly fails to follow any of the above instructions, who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may be ejected by any election inspector. If the poll watcher refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the poll watcher from the polling place or absent voter ballot processing facility.



Exhibit D

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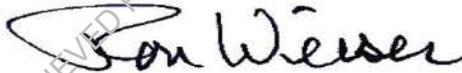
OFFICIAL ELECTION CHALLENGER
AUG 2, 2022
MICHIGAN REPUBLICANS



The above named challenger has been appointed by the Michigan Republican Party
to serve in

City/Township of

In the following Wards/Precincts:



Ron Weiser, Chairman

**CHALLENGERS ARE NOT ALLOWED TO TALK TO OR INTIMIDATE VOTERS IN
ANY WAY.
PLEASE REPORT ANY AND ALL INSTANCES OF INTIMIDATION IMMEDIATELY.**

Legal Hotline: (517) 777-8517

Please call to report any problems which arise in your polling location and
email final election results to

Paid for by the Michigan Republican Party with regulated funds.
Not authorized by any candidate or candidate's committee.
520 N. Seymour Street, Lansing MI 48933

Exhibit E

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OFFICIAL ELECTION CHALLENGER

AUG 2, 2022

MICHIGAN REPUBLICANS



Richard DeVisser

The above named challenger has been appointed by the Michigan Republican Party
to serve in

City/Township of

Kalamazoo

In the following Wards/Precincts:

17

A handwritten signature in black ink that reads "Ron Weiser". The signature is written in a cursive style.

Ron Weiser, Chairman

**CHALLENGERS ARE NOT ALLOWED TO TALK TO OR INTIMIDATE VOTERS IN
ANY WAY.
PLEASE REPORT ANY AND ALL INSTANCES OF INTIMIDATION IMMEDIATELY.**

Legal Hotline: (517) 777-8517

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Exhibit F

RETRIEVED FROM DEMOCRACYDOCKET.COM

August 25, 2022

Mr. Jonathan Brater
Director of Elections
Michigan Department of State
Secretary of State Jocelyn Benson
Via e-mail: BraterJ@Michigan.gov

Director Brater,

On behalf of the Republican National Committee and the Michigan Republican Party (collectively the “Republican Party”), we seek clarification of certain guidance materials that the Michigan Secretary of State and its Bureau of Elections has been providing to local election officials as it pertains to the credentialing of election challengers.

The impetus for this letter is the following passage from the Bureau of Elections’ new May 2022 publication titled *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* (hereinafter, “BOE Poll Challenger Publication”), which states in pertinent part:

Under Michigan law, each challenger present at a polling place or an absent voter ballot processing facility must possess an authority signed by the chairman or presiding officer of the organization sponsoring the challenger. This authority, also known as the *Michigan Challenger Credential Card*, must be on a form promulgated by the Secretary of State. The blank template credential form is available on the Secretary of State’s website.

BOE Poll Challenger Publication, at 4-5, available at https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bfb95184c9b91d5b1779d08cb1b&hash=2CE1F512E8D7E44AFAF60071DD8FD750; see also *id.*, at 1 (claiming that “[t]he credential [issued by a credentialing organization to an appointed election challenger] must conform to the standards set out later in this publication.”).

As a preliminary matter, the RNC agrees with the sentiment of the first sentence of the above-quoted passage—*i.e.*, Michigan law requires that “each challenger present at a polling place or an absent voter ballot processing facility must possess an authority signed by the chairman or presiding officer of the organization sponsoring the challenger.” That statute, MCL 168.732, provides in its entirety:

Authority signed by the recognized chairman or presiding officer of the chief managing committee of any organization or committee of citizens interested in the

adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, or of any political party in such county, township, city, ward or village, shall be sufficient evidence of the right of such challengers to be present inside the room where the ballot box is kept, provided the provisions of the preceding sections have been complied with. The authority shall have written or printed thereon the name of the challenger to whom it is issued and the number of the precinct to which the challenger has been assigned.

MCL § 168.732.

But the next sentence of that passage—the idea that such authority “must be on a form promulgated by the Secretary of State” known as the “*Michigan Challenger Credential Card*”—appears to be untethered to or otherwise inconsistent with Michigan law. Indeed, assuming that the challenger credential “authority” that the Bureau has now coined as the “*Michigan Challenger Credential Card*” is supposed to be the authority referenced in section 732, the RNC is unaware of any statutory authority supporting the notion that the Secretary may create from whole-cloth uniform election challenger credentials.

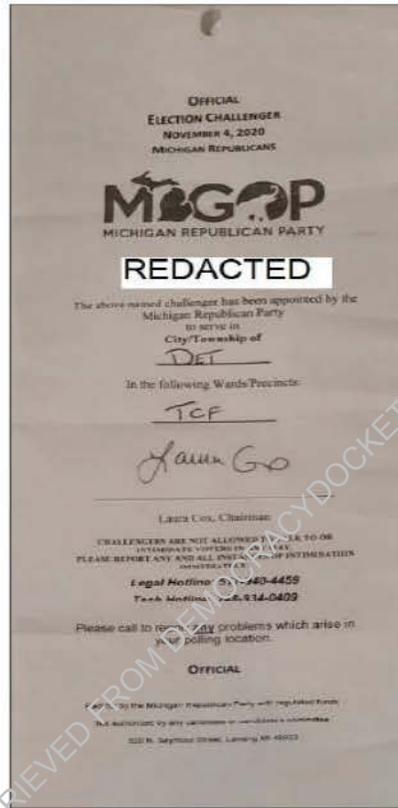
For many years now, the common practice for political parties appointing election challengers has been to provide their respective election challengers with credentials that satisfy the plain language of section 732—that is, an authority signed by the chair of the party that included the written or printed name of the challenger to whom the credential was issued, as well as the number of the precinct to which that challenger had been assigned. For instance, the following election challenger credential, which is dated November 5, 2002 and signed by then-Chair of the Michigan Democratic Party Mark Brewer, is provided in the City of Ann Arbor’s current *Election Inspector’s Manual* as an example of sufficient written authority to carry out the rights and responsibilities of election challengers under Michigan law:



Ann Arbor City Clerk, *Election Inspector’s Manual*, at 49 (August 2020), available at https://www.a2gov.org/departments/cityclerk/Elections/Documents/Manual%202020%2c%2008_04_20.pdf. Importantly, the above-referenced Ann Arbor *Election Inspector’s Manual* is, to this day, the manual that the City of Ann Arbor uses to train its election inspectors. See Ann Arbor City Clerk

Election Inspector Training Materials, available at <https://www.a2gov.org/departments/city-clerk/Elections/Pages/ElectionInspectors.aspx>.

The Michigan Republican Party likewise distributes to its appointed election challengers a credential in the form of written authority that complies with section 732. The following is an example election challenger credential from the Detroit AVCB in 2020:



That practice continued through the August 2022 Primary Election.

Meanwhile, the Secretary appears poised to require that challengers use the *Michigan Challenger Credential Card* as referenced in the BOE Poll Challenger Publication. And while that publication states that the credential “must be on a form promulgated by the Secretary of State,” BOE Poll Challenger Publication at 4-5, the RNC is unaware of any such promulgation under the Administrative Procedures Act. Nonetheless, the following *Michigan Challenger Credential Card* is available on the Election Administrators portion of the Secretary’s website:



Michigan Challenger Credential Card

Name of Challenger:

Name of Credentialing Organization:

Date of Election for Which Challenger Is Credentialed:

Signature of Chairman or Presiding Officer of
Organization Credentialing This Challenger:

Precinct number:

MICHIGAN BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING
1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
(517) 335-3237

Michigan Secretary of State, *Michigan Challenger Credential Card*, available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/25delrio/MichiganChallengerCredentialCard.pdf?rev=8da122fabffe46c7abc3305c467f7c82c&hash=22F600947BCE8A1D1244887A553DCFD>.
D.

This, of course, is troubling. While MCL § 168.31 does permit the Secretary to “issue instructions and promulgate rules . . . for the conduct of elections and registrations,” the law expressly limits that delegated authority by requiring any such promulgation to occur “pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,” and that any such instructions or rules be “in accordance with the laws of this state.” Neither of those conditions appear to have been satisfied here.

Indeed, the RNC is unaware of the lawful promulgation of any such rule that an election challenger credential must be on a form promulgated by the Secretary. And even if such a rule were lawfully promulgated, that rule would not be in accordance with MCL § 168.732, which, as evidenced by the plain language of that provision and the bipartisan examples of historical application set out above, has always permitted political parties appointing election challengers to provide their respective election challengers with credentials that satisfy the plain language of section 732 (*i.e.*, an authority signed by the chair of the party that includes the written or printed name of the challenger to whom the credential was issued, as well as the number of the precinct to which that challenger had been

assigned). Likewise, there is no such record that the Secretary's template, the "*Michigan Challenger Credential Card*," was lawfully promulgated.

Separate and apart from what appears to be an unauthorized and illegal attempt at a rule change—even if well intentioned—this sea change will create disorder and confusion during the coming General Election. The inconsistencies in guidance materials for election inspectors are plain as day. On one hand, the Secretary's materials—materials the RNC views as not compliant with Michigan law—attempt to require the use of a template, while the materials of at least some local officials, such as the above-cited example from the City of Ann Arbor, accurately reflect the current law, which does not require the use of a given template.

Those inconsistencies are already manifesting disorder and confusion. To that end, at least one election challenger appointed by the Michigan Republican Party was denied access to an AVCB during the August 2022 Primary Election on the grounds that the individual's party-issued credential was not on the Secretary's template. While we attempted to resolve the issue with the election inspector denying that challenger's access, the election inspector would not relent on the grounds that the Secretary's BOE Poll Challenger Publication requires the credential be on the Secretary's template.

This is unacceptable and illegal—on several grounds. Indeed, setting aside the unauthorized nature of the attempted rule change, the Secretary's position as to challenger credentials will result in unnecessary confusion that may expose election inspectors to potential criminal liability. Under Michigan law, it is a crime punishable by a fine up to \$1,000.00 or by imprisonment up to 2 years for an election official to "prevent the presence of any such challenger" or "refuse or fail to provide such challenger with conveniences for the performance of the duties expected of him." *See* MCL § 168.734. Thus, election officials who deny access to election challengers in possession of a credential that otherwise complies with MCL § 168.732 run the risk of violating, and subjecting themselves to penalty under, MCL § 168.734.

As a result of the disorder and confusion caused by the Secretary and Bureau's position as to election challenger credentials, as well as the significantly greater disorder and confusion that will arise in weeks to come absent clarification, the Republican Party respectfully requests that the Secretary and the Bureau rescind those portions of their guidance materials stating that election challenger credentials must be on a form promulgated by the Secretary of State, and replace them with materials that are consistent with MCL 168.732. Simply put, the Secretary and the Bureau must make it clear to all election administrators that the practice employed for decades by both major political parties and countless other groups in this state remains permissible.

The Republican Party remains committed to ensuring the integrity and transparency of Michigan Elections in an orderly, lawful, and respectful manner. While we understand that you may purport to have the same goals, the reality is that the discrepancies outlined above will only work to subvert those efforts. With that in mind, and in light of the approaching General Election, we respectfully request written confirmation of the above-requested demand by 5:00 PM on Wednesday, August 31, 2022. In addition to that written response, if you or your counsel wish to discuss the contents of this letter, please do contact us by email to arrange for such a discussion.

Thank you for your prompt attention to this matter. We look forward to continuing to work with you in the weeks to come.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles R. Spies".

Charles R. Spies
Robert Avers

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Exhibit G

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STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

September 2, 2022

Mr. Charles R. Spies
Mr. Robert Avers
Dickinson Wright PLLC
123 Allegan Street
Lansing, Michigan 48933
cspies@dickinson-wright.com
ravers@dickinson-wright.com

Dear Counsel:

This letter is provided in response to your letter sent August 25, 2022, to the Director of Elections in which you requested a response to your stated concerns by 5:00 p.m. on August 31, 2022. Given other obligations, we were unable to meet that timeline but now submit the instant response.

In your letter, you express concern regarding the Secretary of State's decision, through her Bureau of Elections (Bureau), to require parties and organizations sponsoring challengers to use a specific form for creating credentials. You believe that the Secretary's decision to do so was "unauthorized" and "illegal."

Section 732 of the Michigan Election Law requires that challengers possess an "authority" in order to serve as a challenger:

Authority signed by the recognized chairman or presiding officer of the chief managing committee of any organization or committee of citizens . . . or of any political party . . . shall be sufficient evidence of the right of such challengers to be present inside the room where the ballot box is kept, provided the provisions of the preceding sections have been complied with. The authority shall have written or printed thereon the name of the challenger to whom it is issued and the number of the precinct to which the challenger has been assigned. [MCL 168.732 (emphasis added).]

This section is silent as to what form the “authority” should take, requiring only that it be “signed,” include the “name of the challenger” and the “number of the precinct to which the challenger has been assigned.”

As you correctly note, it has been the past practice of the Secretary and the Bureau to allow parties and other organizations to provide for the format of their “authorit[ies]” provided they contain the required elements.

In May 2022, almost four months ago, the Bureau issued updated instructions concerning challengers and poll watchers. See *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*.¹ On page one of the document, it states:

A credentialing organization appoints a challenger by giving a person a credential indicating that the person is serving as a challenger on behalf of the organization. This process is known as credentialing. *The credential must conform to the standards set out later in this publication.* [Emphasis added.]²

Thereafter, on page 4 of the document, it provides:

Under Michigan law, each challenger present at a polling place or an absent voter ballot processing facility must possess *an authority* signed by the chairman or presiding officer of the organization sponsoring the challenger. *This authority, also known as the Michigan Challenger Credential Card, must be on a form promulgated by the Secretary of State. The blank template credential form is available on the Secretary of State’s website.* The entire credential form, including the challenger’s name, the date of the election at which the challenger is credentialed to serve, and the signature of the chairman or presiding officer of the organization appointing the challenger, must be completed. If the entire form is not completed, the credential is invalid and the individual presenting the form cannot serve as a challenger. The credential may not be displayed or shown to voters. A credential form may be digital and may be presented on a phone or other electronic device. If a challenger uses a digital credential, the credential must include all of the information required on the template credential form

¹ See May 2022, https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bfb95184c9b91d5b1779d08cb1b.

² *Id.*, p 1.

promulgated by the Secretary of State. *A digital credential should not include any information or graphics that are not included or requested on the template credential form.* 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. [Emphasis added.]³

As you correctly observe, the new instructions require the use of the credential form created by the Bureau. But you are incorrect in your assertion that the Secretary's determination to require a form is unauthorized.

Under MCL 168.21, the Secretary is the "chief election officer" and has "supervisory control" over local election officials in the performance of their duties. Further, under § 31(1), the "secretary of state *shall* do all of the following":

- (a) . . . *issue instructions* and promulgate rules . . . for the conduct of elections . . . in accordance with the laws of this state.
- (b) *Advise and direct* local election officials as to the proper methods of conducting elections.
- (c) *Publish and furnish* for the use in each election precinct before each state primary and election *a manual of instructions that includes . . . procedures and forms for processing challenges*, and procedures on prohibiting campaigning in the polling places as prescribed in this act.

- (e) *Prescribe and require uniform forms*, notices, and supplies *the secretary of state considers advisable* for use in the conduct of elections and registrations. [MCL 168.31(1)(a)-(c), (e) (emphasis added).]

Along with promulgating rules, these sections provide the Secretary with broad authority to issue instructions, advice, directions, and notices, *etc.*, for the proper conduct of elections. Further, the Secretary "shall" publish a manual that

³ The credential form is available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/25delrio/MichiganChallengerCredentialCard.pdf?rev=8da122fabffe46c7abc3305c467f7c82&hash=22F600947BCE8A1D1244887A553DCFD>
D.

includes “forms for processing challenges” and she “shall” “[p]rescribe and require uniform forms” as she “considers advisable.” MCL 168.31(1)(c), (e).

Here, the Secretary considered it advisable to prescribe and require a uniform credential form. The principal reasons for doing so are to ensure uniformity and consistency and to allow the challenger liaison to clearly identify challengers who have been issued a credential by an authorized entity that has reviewed the challenger instructions and provided required training to the challenger. Accordingly, contrary to your concerns, mandating a uniform credential form does not conflict with § 732, which is silent as to the form of an “authority,” and the new form does not need to be promulgated as a rule where the Secretary can “prescribe and require uniform forms” under § 31(1)(e).

With respect to your concerns about confusion or inconsistent enforcement of the new form, all clerks were provided the revised instructions in May. And these instructions are binding on all local clerks. MCL 168.21, 168.31(1). See also *Hare v Berrien Co Bd of Election Commr's*, 373 Mich 526, 531 (1964) (local election board had “duty to follow” the Secretary of State’s “instructions” under MCL 168.31). The clerks do not have the authority to accept alternative credential forms.⁴ So, there should be no confusion or inconsistent enforcement on the part of local clerks. However, in light of your concerns the Bureau will consider sending a communication to all clerks reminding them of the revised challenger instructions and credential form requirement.

Given the short time for responding, I hope that this response addresses your concerns. Please feel free to contact me if you any questions related to the matters discussed above.

Sincerely,



Heather S. Meingast
Division Chief

⁴ In your letter you include a picture of a credential that appears in the Ann Arbor City Clerk’s manual. In reviewing the manual, it is clear the picture is included as an example of a credential, not a requirement that the credential appear in that format, which of course would be contrary to the Bureau’s instructions. See p 49, [https://www.a2gov.org/departments/city-clerk/Elections/Documents/Manual 2020%2c 08 04 20.pdf](https://www.a2gov.org/departments/city-clerk/Elections/Documents/Manual%202020%2c%2008%2004%2020.pdf).

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September 2, 2022

Civil Rights & Elections Division
517.335.7659

HSM/mr

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