

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

REPUBLICAN NATIONAL COMMITTEE,
MICHIGAN REPUBLICAN PARTY,
NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE, DENNIS
GROSSE, BLAKE EDMONDS, and CINDY
BERRY,

Case No. 24-_____ -MZ

Hon. _____

Plaintiffs,

**EXPEDITED RELIEF
REQUESTED**

v

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**

*Although there is no other pending or resolved civil action arising
out of the specific transaction or occurrence alleged in this Verified
Complaint, one policy of the Secretary of State that is challenged*

here is substantively the same as one of the Secretary's policies that was struck down by this Court in Genetski v Benson, No. 20-000216-MM, 2021 WL 1624452 (Mich Ct Cl, 2021).

NOW COME Plaintiffs Cindy Berry, Dennis Grosse, Blake Edmonds, the Michigan Republican Party, the National Republican Congressional Committee, and the Republican National Committee (collectively, "Plaintiffs"), 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 (collectively, the "Secretary"):

INTRODUCTION

1. Under the Michigan Constitution, each "citizen of the United States who is an elector qualified to vote in Michigan" has the "right, once registered, to vote an absent voter ballot without giving a reason." Const 1963, art 2, § 4(1)(h). This action seeks to enforce those provisions under the Michigan Constitution and the Michigan Election Law requiring that "election officials shall: (1) verify the identity of a voter who applies for an absent voter ballot other than in person by comparing the voter's signature on the absent voter ballot application to the voter's signature in their registration record; and (2) verify the identity of a voter who votes an absent voter ballot other than in person by comparing the signature on the absent voter ballot envelope to the signature on the voter's absent voter ballot application or the signature in the voter's registration record." *Id.*

2. The Michigan Election Law requires voters to sign applications for absent voter ballots in order to receive a ballot. See MCL 168.759 and MCL 168.761. Likewise, any voter that chooses to vote by absent voter ballot is required by law to sign their absent voter ballot return envelope in order for their ballot to count. MCL 168.764a. Local election officials are then required to verify the respective signatures on the absent voter ballot applications and the absent voter ballot return envelopes by comparing those signatures against the voter's "signature on file," which, depending on the circumstances, can mean the signature of the voter contained in the qualified

voter file, the signature of the voter contained on the master card, or, in some instances regarding absent voter ballot return envelopes, the signature on the voter's absent voter ballot application. MCL 168.761. See also MCL 168.766a(7).

3. If, when “verify[ing] the identity” of an absent voter as required under the Michigan Constitution, the local election official determines that the signature on a voter's absent voter ballot application or absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, then that application or ballot must be rejected. See MCL 168.761(2) (regarding applications); MCL 168.765(2) (regarding ballots).

4. In the event an election official rejects an application or absent voter ballot due to a missing or mismatched signature, then that voter has the right to be promptly notified and afforded “an equitable opportunity to correct the issue with the signature.” Const 1963, art 2, § 4(1)(h). To that end, the Michigan Election Law requires the Secretary to maintain an electronic system for tracking absent voter applications and ballots to ensure that voters are aware of the status of their application and ballot, MCL 168.764c, and, separately, also requires local election officials to notify voters when their application or ballot has been rejected due to a missing or mismatched signature so that the voter may cure their deficient signature. MCL 168.761; MCL 168.765; MCL 168.766; MCL 168.766a.

5. Together, the above-referenced provisions create a framework that (a) preserves the purity of elections and guards against abuses of the elective franchise by ensuring that each absent voter application and absent voter ballot originated from, and was completed by, the intended voter, while also (b) ensuring that those absentee voters whose identities could not be verified as a result of missing or mismatched signatures have an opportunity to cure their deficient application

or ballot such that the signature verification process does not prevent any qualified elector from voting.

6. Plaintiffs, however, recently learned that Defendants Secretary Benson and Director Brater covertly issued a publication entitled “Signature Verification, Voter Notification, and Signature Cure” that directs local election officials to apply a standard to the signature verification process that is inconsistent with this balanced constitutional and statutory framework.

7. The Secretary’s publication, referenced herein as the “Signature Verification Instructions,” is attached hereto as **Exhibit A**. While the Michigan Constitution expressly mandates that election officials “verify the identity” of any voter who applies for an absent voter ballot or who votes an absent voter ballot other than in person by completing the signature comparison scheme outlined above, see Const 1963, art 2, § 4(1)(h), the Secretary has instructed local election officials to apply a “presumption of validity” to those signatures. Ex. A, at 3.

8. This new rule, however, is directly inconsistent with the plain language of the Michigan Constitution and the Michigan Election Law. And despite the fact that this Court has held on at least three recent occasions that the Secretary 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, 2020); *Genetski v Benson*, No. 20-000216-MM, 2021 WL 1624452 (Mich Ct Cl, 2021), and *DeVisser v Benson*, No. 22-000164-MM, *aff’d O’Halloran v Secretary of State*, Nos. 363503, 363505, --- Mich App ---, 2023 WL 6931928 (Mich Ct App, 2023), *app’n for leave to appeal docketed*, Nos. 166424-25 (Mich, 2023), the Secretary’s “presumption of validity” rule was not promulgated in accordance with the APA.

9. The Secretary’s presumption of validity is not the only unlawful policy that was applied to absent voter applications and ballot return envelopes during the February 2024

presidential primary election. Similar to the Secretary’s presumption of validity, Rule 168.24 of the Michigan Administrative Code—recently promulgated by the Secretary—is also inconsistent with the Michigan Constitution and the Michigan Election Law.

10. Indeed, while the Michigan Election Law clearly requires election officials to “verify” the signatures on both absent voter ballot applications and absent voter ballot return envelopes (see e.g., MCL 168.765(2); MCL 168.766(1)), and while the Michigan Constitution likewise requires election officials to “verify the identity” of the absent voter by comparing the voter’s signatures on absent voter ballot applications and ballot return envelopes to the corresponding voter’s signature in their registration file, Rule 168.24 purports to allow election officials to approve an absent voter’s signature based on mere speculation. See Mich Admin Code R 168.24(1) (permitting election officials to consider a litany of “possible explanations” for “discrepancies in signatures” such as the possibility that a “voter’s signature may have changed slightly over time,” that a signature was “written in haste,” or that the signature may have been made on a “rough, soft, uneven, or unstable [surface].”).

11. Speculation, however, is incompatible with verification. Requiring election officials to approve signatures with discrepancies based on mere speculation is completely inconsistent with the Michigan Constitution and the Michigan Election Law, both of which mandate that election officials *verify* the identity of absent voters through the above-described signature verification process.

12. Nevertheless, the Secretary’s presumption of validity as well as Rule 168.24 were recently applied during the February 27, 2024 presidential primary election for which more than 1.26 million absent voter ballots were distributed to applicants across Michigan, and at least 934,000 absent voter ballots were submitted by Michigan voters.

13. By all accounts, neither the application of the presumption of validity set forth in the Secretary’s Signature Verification Instructions, nor the application of Rule 168.24, was limited to the February 2024 presidential primary and, absent relief, both will apparently remain in effect with respect to upcoming elections.

14. As a result, and in light of the impending primary election on August 6, 2024, and the general election on November 5, 2024, Plaintiffs respectfully ask this Court to: **(a)** declare that the Secretary’s presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is inconsistent with the Michigan Constitution and the Michigan Election Law and is therefore unenforceable; **(b)** declare that the Secretary’s presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is a “rule” as that term is defined under the APA, that the Secretary failed to follow the applicable requirements under the APA when she promulgated that rule, and that the rule is therefore invalid; **(c)** declare that Rule 168.24 of the Michigan Administrative Code is inconsistent with both the Michigan Constitution and the Michigan Election Law and is therefore unenforceable; **(d)** order the Secretary to rescind her Signature Verification Instructions, strike the language instructing local election officials that signatures on absent voter ballot applications and absent voter ballot return envelopes are entitled to a presumption of validity, strike the language requiring election officials to speculate as to “possible reasons for discrepancies in signatures” under Rule 168.24, and issue new Signature Verification Instructions directing local election officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Constitution and the Michigan Election Law; and **(e)** enjoin the Secretary from implementing her presumption of validity and Rule 168.24 as to signatures on absent voter

ballot applications and absent voter ballot return envelopes in advance of the August 6, 2024 primary election and the November 5, 2024 general election.

15. Plaintiffs seek an expedited hearing on this matter under MCR 2.605(D), which expressly 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. There can be no dispute that the voter signature and identification verification requirements under the Michigan Constitution and the Michigan Election Law are imperative to ensuring the integrity and accuracy of Michigan’s elections. To be clear, the relief sought here is prospective in nature: Plaintiffs seek the above-described relief—including a declaration as to their legal rights with respect to the validity of a currently existing directive issued by the Secretary, as well as a provision of the Michigan Administrative Code (i.e., Rule 168.24)—in advance of the next election to ensure that local election officials are instructed to follow the law in future elections. Absent declaratory and injunctive relief, the rights of Plaintiffs will continue to be violated and jeopardized by the Secretary’s acts—including those acts relative to the Secretary’s guidance directing the application of an unlawful presumption of validity as to absent voter signatures and the unlawful speculation as to “possible explanations” for “discrepancies in signatures” under Rule 168.24, both of which are contrary to Michigan law—in the forthcoming election.

16. Time remains to adjudicate this case and controversy on the merits in an expedited fashion prior to the August 6, 2024 primary election and the November 5, 2024 general election, and without the need for temporary or preliminary injunctive relief.¹ Specifically, some jurisdictions will begin verifying absent voter ballot signatures for the August primary election on June 27, 2024, and will likewise begin verifying absent voter ballot signatures for the general

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

election on September 26, 2024. By seeking prospective relief several months in advance of these elections, there remains ample time for an expedited merits proceeding before this Court; for expedited appellate review (if necessary); for the Secretary to issue signature verification instructions that comply with the Michigan Constitution and the Michigan Election Law; and for local election officials to implement those instructions.

17. To that end, Plaintiffs will make best efforts to effectuate formal service of process as soon as possible upon the filing this Verified Complaint and receipt of corresponding summonses from this Court, and will contact the Assistant Attorneys General that typically serve as elections counsel for the Secretary to discuss a briefing schedule regarding the motion practice necessary to promptly decide the questions of law presented in this case.

PARTIES, JURISDICTION, AND VENUE

18. Plaintiff Dennis Grosse is a Michigan citizen and a registered and eligible voter residing in Berrien County, Michigan. As a registered voter that cast an absentee ballot in the February 2024 presidential primary election who also intends to vote by absentee ballot in future elections, Plaintiff Grosse has a direct, personal, and substantial interest in ensuring that his vote counts and is not diluted, and that his opportunity to vote in future elections is equal to the opportunity provided to other eligible Michigan voters that cast an absentee ballot as well as those Michigan voters that cast a ballot in a polling place.

19. Plaintiff Blake Edmonds is a Michigan citizen and a registered and eligible voter residing in Kent County, Michigan. As a registered voter that cast a ballot in a polling place for the February 2024 presidential primary election who also intends to vote in-person at polling places in future elections, Plaintiff Edmonds has a direct, personal, and substantial interest in ensuring that his vote counts and is not diluted, and that his opportunity to vote in future elections

is equal to the opportunity provided eligible Michigan voters that cast an absentee ballot as well as those Michigan voters that cast a ballot in a polling place.

20. Plaintiff Cindy Berry serves as the Clerk for the Township of Chesterfield and resides in Macomb County. Plaintiff Berry has attempted to reconcile the Secretary’s Signature Verification Instructions—and especially the Secretary’s presumption of validity as to absent voter signatures, and the language from Rule 168.24 permitting election officials to speculate as to “possible reasons for discrepancies in signatures”—against the text of the Michigan Constitution and the Michigan Election Law. As a local clerk, Plaintiff Berry is subject to the instructions and the Rules at issue here, and seeks a declaration regarding whether clerks are, and will continue to be, subject to Rule 168.24 and the Secretary’s presumption of validity as to absent voter signatures that by all accounts appear to remain in effect at this time. Plaintiff Berry is also a registered voter that cast a ballot for the February 2024 presidential primary election through Michigan’s early voting process, who also intends to vote by absentee ballot in future elections, and who has a direct, personal, and substantial interest in ensuring that her vote counts and is not diluted.

21. 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 those values with election or appointment to partisan federal, state, and local office, MRP maintains headquarters at 520 Seymour Street, Lansing, Michigan 48912. Further, MRP works to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and works to protect the fundamental constitutional right to vote of its members and all Americans, and to promote their participation in the political process. MRP brings this action on behalf of itself and

its members. As a result, Plaintiff MRP has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its candidates and members.

22. Plaintiff the National Republican Congressional Committee (the “NRCC”) is a national committee, as defined by 52 U.S.C. § 30101(14), and the Republican Party’s congressional campaign committee with its principal place of business at 320 First Street S.E., Washington, D.C. 20003. The NRCC is the only national political party committee exclusively devoted to electing Republican candidates to the U.S. House of Representatives from across the United States, including from Michigan’s 13 congressional districts. Each election cycle, including in 2024, the NRCC supports the election of Republicans to the United States House of Representatives by providing direct financial contributions, technical and political guidance, and by making independent expenditures to advance political campaigns. The NRCC also undertakes voter education, voter registration, and voter turnout programs, as well as other party-building activities. The NRCC brings this action on behalf of itself and its members—six of whom currently serve as congressional representatives for districts in Michigan. As a result, Plaintiff NRCC has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its members as well as its candidates in the 2024 Michigan elections.

23. Plaintiff the Republican National Committee (the “RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14), 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, supporting MRP’s efforts to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and to protect the fundamental constitutional right to vote of its members and of all Americans and to promote their participation in the political

process. 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 2024. The RNC has clear and obvious interests in the rules under which it, and those it represents and supports, exercise their constitutional rights to vote and to participate in elections. RNC brings this action on behalf of itself and its members. As a result, Plaintiff RNC has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its candidates and members.

24. 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.

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

26. 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.

27. Because Plaintiffs raise statutory and constitutional 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.

28. An actual controversy exists here between Plaintiffs and the Secretary. For the reasons explained in this Verified Complaint, Plaintiffs’ respective rights—ranging from the rights of voters casting ballots in person at polling places or by mail, to clerks that are subject to the unlawful guidance and policies at issue here, and to political parties and committees (and their members) supporting candidates up and down the ballot and mobilizing and educating voters in Michigan—have been violated and jeopardized by the Secretary’s acts, including but not limited to the issuance of the Signature Verification Instructions and the Secretary’s unlawful directives that local election officials apply a presumption of validity as to absent voter signatures and that those same officials must speculate as to “possible reasons for discrepancies in signatures” rather than verifying those signatures as required by Michigan law.

29. The injury to Plaintiffs is at once completed and ongoing. Absent relief from this Court, these injuries will recur indefinitely because the Secretary, local election officials, and private citizens alike will consider the Signature Verification Instructions and Rule 168.24 binding legal authority and will continue applying the unlawful presumption of validity and speculating as to possible reasons for discrepancies in absent voter signatures. Therefore, a decision from this Court will redress the violation of Plaintiffs’ rights under the Michigan Constitution and Michigan Election Law for the August 2024 primary election, the November 2024 general election, and beyond.

LEGAL AND FACTUAL BACKGROUND

The Constitution and the Michigan Election Law Expressly Provide a Framework for Ensuring the Accuracy and Integrity of Elections

30. Under the Michigan Constitution, “[e]very citizen of the United States who is an elector qualified to vote in Michigan” has “[t]he fundamental right to vote, including but not

limited to the right, once registered, to vote a secret ballot in all elections.” Const 1963, art 2, § 4(1)(a).

31. Balanced against that right, of course, “are the constitutional commands given by the people of Michigan to the Legislature in Const 1963, art 2, § 4” to regulate elections. *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 16; 740 NW2d 444 (2007). There, the Michigan Constitution commands that “the legislature shall,” in addition to regulating the “time, place and manner” of elections, enact laws “to preserve the purity of elections . . . to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” Const 1963, art 2, § 4(2).

32. As the Michigan Supreme Court acknowledged, “[t]hese provisions have been a part of our constitution for almost as long as Michigan has been a state. As [the Michigan Supreme Court] noted in the nineteenth century, the purpose of a law enacted pursuant to these constitutional directives ‘is not to prevent any qualified elector from voting, or unnecessarily to hinder or impair his privilege. *It is for the purpose of preventing fraudulent voting.*’ ” *In re Request for Advisory Opinion*, 479 Mich at 17. (Emphasis in original and internal citation omitted).

33. This balance is paramount to the electoral process. “In sum, while a citizen’s right to vote is fundamental, this right is not unfettered. It competes with the state’s compelling interest in preserving the integrity of its elections and the Legislature’s constitutional obligation to preserve the purity of elections and to guard against abuses of the elective franchise, including ensuring that lawful voters not have their votes diluted.” *Id.* at 20.

34. For example, any registered elector that votes in-person is required to prove their identity *before* an election official gives that elector a ballot. This mandate that an elector “prove their identity” is expressly provided in both the Michigan Constitution and the Michigan Election

Law. See MCL 168.523(1) (requiring “at each election, before being given a ballot, [that] **each registered elector offering to vote must identify himself or herself by presenting identification for election purposes**”); MCL 168.523(2) (providing electors without photo identification the opportunity to verify their identity by signing an affidavit in the presence of an election inspector, with the caveat that “an elector being allowed to vote without identification for election purposes as required under this section is subject to challenge as provided in [MCL 168.727]”); Const 1963, art 2, § 4(1)(g) (granting registered electors qualified to vote in Michigan the right “**to prove their identity** when voting in person or applying for an absent voter ballot in person by (1) presenting their photo identification, including photo identification issued by a federal, state, local, or tribal government or an educational institution, or (2) if they do not have photo identification [then by] executing an affidavit verifying their identity.”).

35. The mandate that an elector must “prove their identity” before receiving a ballot in a polling place either by presenting photographic ID or by executing an affidavit in the presence of an election official is, indeed, constitutional. See *In re Request for Advisory Opinion*, 479 Mich at 22–28 (holding that the requirements in MCL 168.523, i.e., that an in-person voter prove their identity by either presenting photographic identification or by signing an affidavit affirming that the voter lacks photographic identification, provide a reasonable, nondiscriminatory restriction on the state and federal constitutional right to vote that is warranted by the state’s compelling regulatory interest to preserve the purity of elections and guard against abuses of the elective franchise).

36. That mandate is also overwhelmingly supported by public opinion. See Detroit Regional Chamber, *Statewide Poll Reveals Opinions on Political Landscape* (June 7, 2021) <https://www.detroitchamber.com/statewide-poll-reveals-opinions-on-political-landscape-covid->

[19-and-vaccination-perceptions-ongoing-labor-shortage-and-voting-rights/](#) (last visited March 25, 2024) (finding that 79.7% of respondents in statewide poll support requiring “every voter coming to the polls present a government-issued identification to cast their ballot”).

37. While the process is somewhat different for those voting by absent voter ballot, the Constitution nonetheless requires voters “to **prove their identity** when applying for or voting an absent voter ballot other than in person by providing their signature to the election official authorized to issue absent voter ballots.” Const 1963, art 2, § 4(1)(h) (emphasis added); see also MCL 168.759(3) (“An elector must sign the absent voter ballot application.”); MCL 168.764a (requiring electors to sign and date their absent voter ballot return envelope).

38. To that end, when an election official is provided a voter’s signature for the purpose of proving that voter’s identity as a precondition to that voter applying for an absent voter ballot other than in person, the Michigan Constitution mandates that the election official shall “**verify the identity** of a voter who applies for an absent voter ballot other than in person by comparing the voter’s signature on the absent voter ballot application to the voter’s signature in their registration record.” Const 1963, art 2, § 4(1)(h) (emphasis added); see also MCL 168.761(1) (“If the clerk of a city or township receives an application for an absent voter ballot, the clerk must immediately determine if the applicant is registered to vote in that city or township and if the signature on the application agrees sufficiently with the signature on file for the individual as required in subsection (2).”); MCL 168.761(2) (“The signature on file must be used to determine the genuineness of a signature on an application for an absent voter ballot. Signature comparisons must be made using the procedures required under [MCL 168.766a].”).

39. Likewise, when an election official is provided a voter’s signature for the purpose of proving that voter’s identity as a precondition to that elector voting an absent voter ballot other

than in person, the Michigan Constitution mandates that the election official shall: “**verify the identity** of a voter who votes an absent voter ballot other than in person by comparing the signature on the absent voter ballot envelope to the signature on the voter’s absent voter ballot application or the signature in the voter’s registration record.” Const 1963, art 2, § 4(1)(h) (emphasis added). See also MCL 168.765(2) (“The city or township clerk shall review each absent voter ballot return envelope to determine whether the absent voter ballot is approved for tabulation in accordance with [MCL 168.766]. The review under this subsection includes **verifying** the signature on each absent voter ballot return envelope in accordance with [MCL 168.766a].”) (emphasis added); MCL 168.766(1) (mandating that city or township clerks “shall determine” whether an absent voter ballot is approved for tabulation “by **verifying** both of the following: (a) [t]he elector is a registered elector and has not voted in person in that election [and] (b) [u]sing the procedures required under [MCL 168.766a], the signature on the absent voter ballot return envelope agrees sufficiently with the elector’s signature on file.”) (emphasis added).

40. As for verifying the signature on an elector’s absent voter ballot application or absent voter ballot envelope, MCL 168.766a sets forth the standard by which local clerks must determine whether the signature is valid. Specifically, section 766a provides that “[a]n elector’s signature is invalid only if it differs in significant and obvious respects from the elector’s signature on file. Slight dissimilarities must be resolved in favor of the elector. Exact signature matches are not required to determine that a signature agrees sufficiently with the signature on file.” MCL 168.766a(2).

41. For the purposes of verifying the signature on an elector’s absent voter ballot application or absent voter ballot envelope, a voter’s “signature on file” means “any signature of an elector contained in the qualified voter file[,]” or, “[i]f the qualified voter file does not contain

a copy of an elector's digitized signature, or is not accessible, [then] the signature of the elector contained on the master card." MCL 168.766a(7)(a)-(b). Further, and "[o]nly for purposes of the signature comparison conducted under [MCL 168.766] for an elector's absent voter ballot envelope," the term "signature on file" may also mean "the signature on the elector's absent voter ballot application." MCL 168.766a(7)(c).

42. If a clerk determines that the signature on an elector's absent voter ballot application or absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, then that application or ballot must be rejected. MCL 168.766a(3); see also MCL 168.761(2) (regarding applications); MCL 168.765(2) (regarding ballots); MCL 168.766(2) (regarding ballots).

43. When a clerk rejects an absent voter ballot application or absent voter ballot due to a missing or mismatched signature—and to ensure that the election integrity measures outlined herein do not prevent any qualified elector from voting—then that voter has the right to be promptly notified and afforded "an equitable opportunity to correct the issue with the signature." Const 1963, art 2, § 4(1)(h).

44. In that vein, Michigan law requires the Secretary to maintain an electronic system for tracking absent voter applications and ballots to ensure that voters are aware of the status of their application and ballot. See MCL 168.764c; see also Const 1963, art 2, § 4(1)(i).

45. Separately, the Michigan Election Law also requires local election officials to notify voters when their application or ballot has been rejected due to a missing or mismatched signature so that the voter may cure their deficient signature. MCL 168.761; MCL 168.765; MCL 168.766(3)-(6); MCL 168.766a(3)-(6).

46. Importantly, while the Michigan Constitution and the Michigan Election Law set forth a detailed framework for verifying the identity of absent voters through signature verification, neither the Michigan Constitution nor the Michigan Election Law provides that those signatures should be presumed valid as instructed by the Secretary in her Signature Verification Instructions. Nor does the Michigan Constitution or the Michigan Election Law provide that election officials may speculate as to possible reasons for discrepancies in signatures, despite contrary provisions under Rule 168.24 and the Secretary’s Signature Verification Instructions.

Genetski v Benson: This Court finds that the Secretary’s guidance regarding signature verification as to AV ballot applications and AV ballot return envelopes—which mandated a presumption of validity as to those signatures—violated the Administrative Procedure Act.

47. This is not the first time that the Secretary has improperly attempted to direct local election officials to apply a presumption of validity as to absent voter signatures. On October 6, 2020, the Secretary issued guidance to local clerks and election officials instructing them to, among other things, apply a presumption of validity when verifying signatures on absent voter applications and ballots.

48. The MRP and Allegan County Clerk Robert Genetski sued the Secretary, alleging, *inter alia*, that the Secretary’s presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes conflicted with the Michigan Election Law and, separately, that the Secretary’s presumption of validity constituted a “rule” that failed to comport with APA rule-issuance procedures. That case was captioned as *Genetski v Benson*, No. 20-000216-MM (Mich Ct Cl, 2021).

49. In a written Opinion and Order dated March 9, 2021, this Court granted summary disposition in favor of the *Genetski* plaintiffs because the challenged signature verification guidance—including the Secretary’s instruction that signatures on absent voter applications and

absent voter ballot return envelopes be presumed valid—were issued in violation of the APA. See *Genetski v Benson*, No. 20-000216-MM (Mich Ct Cl, 2021), Opinion and Order Granting Summary Disposition, at 14, attached hereto as **Exhibit B** (concluding that the Secretary’s signature verification standards “amounted to a ‘rule’ that should have been promulgated in accordance with the APA. And absent compliance with the APA, the ‘rule’ is invalid.”); see also *id.* at 10 (“Policy determinations like the one at issue—which places a thumb on the scale in favor of a signature’s validity—should be made pursuant to properly promulgated rules under the APA or by the Legislature.”).

50. Because the Court concluded that the Secretary’s signature verification guidance was invalid for failing to comply with the APA, it did not address the *Genetski* plaintiffs’ claim that the Secretary’s presumption of validity as to absent voter signatures conflicted with the Michigan Election Law. *Id.* at 10 n 5 (“Given that the standards are invalid for being enacted without compliance with the APA, the Court declines, for now, to determine whether the mandatory presumption [of validity] imposed is contrary to the law, as plaintiffs have alleged in Count I.”). As a result, the *Genetski* plaintiffs’ claim that the Secretary’s presumption of validity as to absent voter signatures conflicted with the Michigan Election Law was dismissed without prejudice. *Id.* at 1, 14–16.

The Secretary promulgates rules regarding signature verification as to AV ballot applications and AV ballot return envelopes, but abandons the “presumption of validity” mid-rulemaking due to an onslaught of opposition during the public hearing and comment period.

51. Several months after the *Genetski* court concluded that the Secretary’s signature verification instructions violated the APA, the Secretary commenced the rulemaking process under the APA by proposing rule set number 2021-61 ST, entitled “Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes.” See generally Michigan Legislative

Council, Joint Committee on Administrative Rules Documents for 2021-061 ST (available at <https://council.legislature.mi.gov/JCAR/Documents?path=/JCARFiles/Rule%20Documents%20by%20Department%20and%20Rule%20Number/Department%20of%20State/2021-061%20ST>) (last visited March 25, 2024) (public rulemaking record for 2021-061 ST).

52. An early draft of the ruleset proposed by the Secretary, dated August 5, 2021, is attached hereto as **Exhibit C**. Among those proposed rules, the Secretary included language that would require local election officials to presume the validity of signatures on absent voter ballot applications and absent voter ballot return envelopes during the verification process. Specifically, draft R 168.22(2) / Rule 2(1) stated as follows at that time:

(1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, whether a voter's absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter's signature on file, **signatures must be reviewed beginning with the presumption that the voter's signature is his or her genuine, valid signature.**

Ex. C, at 1 (emphasis added).

53. That presumption of validity, however, was met with an onslaught of public opposition during the public hearing and comment period.

54. For example, State Senator Ruth Johnson—former Oakland County Clerk, Michigan Secretary of State from 2011-2019, and then-Chair of the Senate Elections Committee—submitted a written comment stating that she “strongly oppose[s] these rules as written and find[s] them to be in direct contradiction to existing Michigan election law.” Senator Johnson’s Public Comment on Proposed Ruleset 2021-61 ST is attached hereto as **Exhibit D**.

55. As for the Secretary’s proposed presumption of validity regarding absent voter signatures, Senator Johnson wrote that the presumption “is in direct conflict with the statutory language which instructs clerks to ‘determine’ the genuineness of signatures.” Ex. D, at 1. See also

id., at 2 (“I feel strongly that the presumption of genuineness contained in these proposed administrative rules is inappropriate and not in conformance with existing Michigan election law.”). From Senator Johnson’s perspective as a former county clerk and former Secretary of State, the proposed rules would “abrogate clerks’ statutory role by presuming signatures to be valid upon receipt....” *Id.*

56. Similarly, State Representative Ann Bollin—former Brighton Township clerk from 2003-2018, and then-Chair of the House Elections and Ethics Committee—also submitted a written comment in opposition to the proposed rules. Representative Bollin’s Public Comment on Proposed Ruleset 2021-61 ST is attached hereto as **Exhibit E**.

57. As explained by Representative Bollin, “[s]ignature verification is a hallmark standard that protects the voter.” Ex. E, at 2. Representative Bollin, who, again, served as a local clerk for sixteen years, commented that “[t]he makers of these proposed rules would have us believe that this standard of ‘initial presumption of validity’ is common practice. This is false.” *Id.* at 3. Rather, “[t]his alleged standard was a directive put forth by the [Secretary] last year that resulted in a lot of confusion and potential fraud,” and, as acknowledge by Representative Bollin, the standard was then struck down by the Court of Claims in *Genetski*. *Id.* Thus, while Representative Bollin detailed her “serious concerns about the changes the Department of State is proposing,” she believed “we can work together with our local clerks to improve upon these proposed rules and create a better product that both advances democracy AND protects the vote and ensures our elections are secure.” *Id.* at 4 (emphasis in original).

58. Following the public hearing and comment period, Secretary Benson abandoned the presumption of validity in the proposed ruleset. To that end, and in response to ruleset changes proposed by the Legislature’s Joint Committee on Administrative Rules (“JCAR”), the Secretary

formally notified JCAR that she “accepts JCAR’s proposal to strike the instruction in R 168.22(1) that local election officials must begin review of a voter’s signature on an absent voter ballot application or an absent voter ballot envelope with a ‘presumption’ that the signature is valid.” A copy of the Secretary’s March 4, 2022 Response to JCAR’s Proposed Changes to JCAR No. 21-73, MOAHR No. 2021-61ST, is attached hereto as **Exhibit F**. Thus, the Secretary represented that she would “remove the term presumption from R 168.22(1) without otherwise substantially changing the text of the Ruleset already reviewed by JCAR.” *Id.* at 1.

59. Shortly thereafter, the Secretary issued an updated version of the draft ruleset that excluded the prior language that would have required local election officials to presume the validity of signatures on absent voter ballot applications and absent voter ballot return envelopes. One such version of the updated draft ruleset that was generated in redline form indicated the above-referenced change to draft R 168.22(2) / Rule 2(1) as follows:

(1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, or for the purposes of 766(2), 1954 PA 116, MCL 168.766, whether a voter’s absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter’s signature on file, ~~signatures must be reviewed beginning with the presumption that the voter’s signature is his or her genuine, valid signature. An election official may determine that decline to accept a signature~~ **does not agree sufficiently with the signature on file** only if, after reviewing the ~~an~~ absent voter ballot application signature or absent voter ballot envelope signature using the process set forth in these rules, ~~the election official determines that the signature does not agree sufficiently with the signature on file.~~

A redlined copy of the amended ruleset proposed by the Secretary, dated March 7, 2022, is attached hereto as **Exhibit G**.

60. The amended ruleset, which excluded the Secretary’s previous proposed instruction requiring local election officials to presume the validity of signatures on absent voter ballot

applications and absent voter ballot return envelopes during the verification process, was added to the Michigan Administrative Code, effective December 19, 2022. See Mich Admin Code R 168.22.

61. Aside from the rulemaking record, the Secretary’s abandonment of the presumption of validity was highly publicized. See, e.g., David Eggert, *Benson rejects GOP changes to signature-verification rules*, Associated Press (Mar. 4, 2022) <https://apnews.com/article/elections-michigan-jocelyn-benson-f0bd1e768957e1b60aaf16f5f504b69c> (last accessed March 25, 2024) (reporting that while the Secretary rejected most of JCAR’s proposed revisions to the ruleset, the Secretary “said she will remove language instructing election officials to presume that a signature is genuine and valid[,]” and “Rep. Luke Meerman, a Republican member of [JCAR] from Coopersville, welcomed Benson’s decision to strike the presumption that signatures are valid, saying ‘we are making it so people can have faith in Michigan’s election process.’”).

62. Indeed, State Representative Luke Meerman—the alternate chair of JCAR—announced in a press release that JCAR had “succeeded in its push for greater security measures in Secretary of State Jocelyn Benson’s proposed election rules.” Mich. House Republicans, *Benson withdraws attempt to water down signature verification standards after legislative push back* (Mar. 4, 2022) <https://gophouse.org/posts/benson-withdraws-attempt-to-water-down-signature-verification-standards-after-legislative-push-back> (last accessed Mar. 25, 2024). While the Secretary had “proposed administrative rules to require local election officials to review signatures on absentee applications and ballots starting with a presumption that the signature is valid,” Rep. Meerman stated he was “pleased” that the Secretary had withdrawn that aspect of the proposed ruleset and “that Secretary Benson has acknowledged that state law does not give her the power to water down signature requirement standards.” *Id.*

63. Thus, there can be no question that the presumption of validity was removed from proposed ruleset number 2021-61 ST before those rules were added to the Michigan Administrative Code.

Despite abandoning the “presumption of validity” during the rulemaking process, the Secretary nonetheless continues to direct local election officials to apply a presumption of validity when verifying signatures on AV ballot applications and AV ballot return envelopes.

64. Meanwhile—and *despite* the express mandates under the Michigan Constitution that voters must “prove their identity when applying for or voting an absent voter ballot” and that election officials shall “verify the identity” of those voters by comparing the aforementioned voters’ signatures to the corresponding signature in each voter’s registration record, *despite* the holding in *Genetski* that the Secretary’s previous signature verification instructions (which directed local election officials to presume that absent voters’ signatures are valid) were issued in violation of the APA, and *despite* the fact that the Secretary abandoned the presumption of validity when she finally promulgated signature verification rules under the APA—the Secretary is *still* instructing local election officials to apply a “presumption of validity” to absent voter signatures.

65. On the Department of State’s public website, the Secretary maintains a guidance document entitled, “Election Officials’ Manual, Chapter 6: Michigan’s Absent Voter Process.” A copy of the February 2024 version of the “Election Officials’ Manual, Chapter 6: Michigan’s Absent Voter Process” (hereinafter, the “Absent Voter Process Manual”) is attached hereto as **Exhibit H**.

66. Section VIII of the Absent Voter Process Manual provides instructions regarding the process for verifying signatures on absent voter ballot applications. See Ex. H at 12 (“VIII. Absent voter ballot application signature verification requirement”). Likewise, section XVI of the

Absent Voter Process Manual provides instructions regarding the process for verifying signatures on absent voter ballot return envelopes. See *id.* at 18-19 (“XVI Ballot verification requirement”).

67. While the Secretary’s presumption of validity is not included in the Absent Voter Process Manual, that publicly-available manual is not the only set of instructions that the Secretary has issued regarding the verification of absent voter signatures.

68. Indeed, both of the above-referenced sections of the Absent Voter Process Manual—Section VIII regarding the verification of signatures on absent voter ballot applications, and Section XVI regarding the verification of signatures on absent voter ballot return envelopes—incorporate by reference an entirely separate set of instructions issued by the Secretary regarding the verification of absent voter signatures. See Ex. H at 12 (“For further guidance on reviewing signatures, contacting voters, and curing missing or mismatched signatures, refer to Signature and Cure Guidance in the eLearning Center.”) *Id.* at 19 (“For further guidance on reviewing signatures, contacting voters, and curing missing or mismatched signatures, refer to Signature and Cure Guidance in the eLearning Center.”)

69. According to the Absent Voter Process Manual, this separate set of signature verification instructions is “[a]vailable in the eLearning Center at <https://mielections.csod.com/ui/lms-learning-details/app/material/ae9edc3b-8bfd-4494-a5c1-eb7022679d7a>.” *Id.* at 12, n 4; *id.* at 19, n 5.

70. That document, however, is protected from public scrutiny and is not publicly available, as the corresponding hyperlink launches the Secretary’s “Michigan Elections eLearning Center,” access for which is restricted to local election officials (i.e., clerks, deputy clerks, etc.). As demonstrated in the screenshot below, individualized credentials issued by the Secretary are required to access documents housed in the Secretary’s Michigan Elections eLearning Center:



<p>Enter your login information:</p> <p>User Name: <input type="text"/></p> <p>Password: <input type="password"/></p> <p>Login </p> <p>Need help with your login?</p> <p>Questions? EASupport@michigan.gov</p>	<p>For additional information, select a link:</p> <p>Announcements</p> <p>Need to set up an eLearning Center Account?</p> <p>Need help using the eLearning Center?</p> <p>Need to contact the Bureau of Elections?</p>
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71. Upon information and belief, the document attached hereto as **Exhibit A** (and referenced throughout as the Secretary’s “Signature Verification Instructions”) is the “Signature and Cure Guidance in the eLearning Center” incorporated by reference in—and available at the hyperlinks in footnotes 4 & 5 of—the Absent Voter Process Manual.

72. The Secretary’s Signature Verification Instructions clearly instruct local election officials to apply a presumption of validity to absent voter signatures:

Clerks must determine whether the signature being validated agrees sufficiently with the signature on file. **Voter signatures are entitled to an initial presumption of validity.** An initial presumption of validity does not mean that all signatures are “presumed valid” without further review. Instead, clerks must review all signatures and should determine that a signature does not agree sufficiently on file only after completing review of the signature as described in these instructions and in Michigan election law, MCL 168.766a, et seq.; and R 168.21, et seq.

Ex. A, at 3 (bold and underlined emphasis added).

The Secretary’s presumption of validity violates the Administrative Procedures Act and is otherwise inconsistent with the Michigan Constitution and the Michigan Election Law.

73. The Secretary’s presumption of validity as to absent voter signatures violates the APA, the Michigan Constitution, and the Michigan Election Law.

74. Regarding the APA, the Secretary’s presumption of validity was not among ruleset No. 2021-61ST recently promulgated by the Secretary.

75. In fact, while the Secretary included the presumption of validity in the initial proposed ruleset, the Secretary’s then-proposed presumption of validity was met with an onslaught of public opposition during the rulemaking process such that the Secretary expressly abandoned the presumption during the rulemaking process.

76. The Secretary’s Signature Verification Instructions—which expressly include the presumption of validity as to absent voter signatures—are clearly intended to be binding on local election officials.

77. The cover of both the Absent Voter Process Manual and the Signature Verification Instructions expressly indicates that the respective documents are “INSTRUCTIONS PROVIDED BY THE MICHIGAN BUREAU OF ELECTIONS.” Ex. A, at cover (emphasis in original); Ex. H, at cover (emphasis in original).

78. Moreover, the Signature Verification Instructions contain express self-descriptors that are typically associated with documents meant to have the effect of a rule or law. For example, the Signature Verification Instructions expressly provide that:

This document provides instructions for:

1. Reviewing signatures immediately upon receipt and providing voter notification for a mismatched signature.
2. **Verifying the voter’s signature against the QVF.**

3. Curing missing or mismatched signatures.

Ex. A, at 1 (emphasis added).

79. Instructions issued by the Secretary of State are binding on local election officials conducting elections. See *Davis v Secretary of State*, 333 Mich App 588, 598; 963 NW2d 653 *appeal denied*, 506 Mich 1040; 951 NW2d 911 (2020) (citing *Secretary of State v Berrien Co Bd of Election Comm'rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964)).

80. 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).

81. 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).

82. The Secretary’s presumption of validity as to absent voter signatures therefore constitutes a rule as defined under the APA.

83. Contrary to the Secretary’s instruction to apply a presumption of validity to absent voter signatures, neither the Michigan Constitution nor the Michigan Election Law indicate that absent voter signatures should be presumed valid.

84. Rather, the Michigan Election Law clearly requires election officials to “verify” the signatures on both absent voter ballot applications and absent voter return envelopes. See MCL

168.765(2) (“The city or township clerk shall review each absent voter ballot return envelope to determine whether the absent voter ballot is approved for tabulation in accordance with [MCL 168.766]. The review under this subsection includes **verifying** the signature on each absent voter ballot return envelope in accordance with [MCL 168.766a].”) (emphasis added); MCL 168.766(1) (mandating that city or township clerks “shall determine” whether an absent voter ballot is approved for tabulation “by **verifying** both of the following: (a) [t]he elector is a registered elector and has not voted in person in that election [and] (b) [u]sing the procedures required under [MCL 168.766a], the signature on the absent voter ballot return envelope agrees sufficiently with the elector’s signature on file.”) (emphasis added).

85. More importantly, the Michigan Constitution expressly requires that election officials shall “**verify the identity**” of voters who apply for an absent voter ballot and of those who vote an absent voter ballot by comparing each voter’s signature on the absent voter ballot application or the absent voter ballot return envelope to the voter’s signature in their registration record. Const 1963, art 2, § 4(1)(h) (emphasis added).

86. The term “verify” as used in both the Michigan Constitution and the Michigan Election Law is incompatible with the term “presumption” as used in the Secretary’s Signature Verification Instructions. Compare “Verify.” Merriam-Webster.com Dictionary, Merriam-Webster, *available at* <https://www.merriam-webster.com/dictionary/verify> (last visited March 25, 2024) (defining “**verify**” as “**to establish the truth, accuracy, or reality of**”) and “Establish.” Merriam-Webster.com Dictionary, Merriam-Webster, *available at* <https://www.merriam-webster.com/dictionary/establish> (last visited March 25, 2024) (defining “**establish**” as “**to put beyond doubt**”), with “Presume.” Merriam-Webster.com Dictionary, Merriam-Webster,

available at <https://www.merriam-webster.com/dictionary/presume> (last visited March 25, 2024) (defining “presume” as “to suppose to be true without proof.”)

87. As outlined above, the Secretary’s presumption of validity as to absent voter signatures is directly inconsistent with both the Michigan Constitution and the Michigan Election Law. When the Michigan Constitution and Michigan Election Law expressly mandate that election officials verify the identity of absent voters through a signature comparison process, the Secretary is not authorized to change that standard to something less than verification, be it through a presumption of validity or otherwise.

88. 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), the above-referenced rule change was *not* promulgated in accordance with the APA. See also *Genetski v Benson*, No. 20-000216-MM, 2021 WL 1624452, at *4 (Mich Ct Cl, 2021) (Ex. B at 7) (“A ‘rule’ not promulgated in accordance with the APA’s procedures is invalid.”) (citations omitted).

89. Instead, it appears that the Signature Verification Instructions and the Secretary’s underlying presumption of validity as to absent voter signatures were promulgated without any formal rulemaking or process. Indeed, the Signature Verification Instructions are not even available to the public, and are instead maintained by the Secretary on her Michigan Elections eLearning Center, access to which is restricted to local election officials.

The Secretary’s Rule 168.24, which directs election officials to speculate regarding “possible explanations for discrepancies in signatures,” is inconsistent with the Michigan Constitution and the Michigan Election Law.

90. The Secretary’s policy requiring election officials to consider “possible explanations for discrepancies in signatures” as embodied by Rule 168.24 of the Michigan Administrative Code violates the Michigan Constitution and the Michigan Election Law.

91. Under Rule 168.24, election officials are required to consider as “possible explanations” for “discrepancies in signatures” the notions that, *inter alia*, a “voter’s signature style may have changed slightly over time,” the voter’s “signature may have been written in haste,” or the voter may have signed their absent voter application or ballot return envelope on a surface that was “rough, soft, uneven, or unstable.” See Mich Admin Code R 168.24(1).

92. Contrary, however, to the Secretary’s mandate under Rule 168.24, neither the Michigan Constitution nor the Michigan Election Law permit election officials to speculate as to possible explanations for discrepancies in signatures.

93. Rather, the Michigan Election Law clearly requires election officials to “verify” the signatures on both absent voter ballot applications and absent voter return envelopes. See MCL 168.765(2) (“The city or township clerk shall review each absent voter ballot return envelope to determine whether the absent voter ballot is approved for tabulation in accordance with [MCL 168.766]. The review under this subsection includes **verifying** the signature on each absent voter ballot return envelope in accordance with [MCL 168.766a].”) (emphasis added); MCL 168.766(1) (mandating that city or township clerks “shall determine” whether an absent voter ballot is approved for tabulation “**by verifying** both of the following: (a) [t]he elector is a registered elector and has not voted in person in that election [and] (b) [u]sing the procedures required under [MCL 168.766a], the signature on the absent voter ballot return envelope agrees sufficiently with the elector’s signature on file.”) (emphasis added).

94. More importantly, the Michigan Constitution expressly requires that election officials shall “**verify the identity**” of voters who apply for an absent voter ballot and of those who vote an absent voter ballot by comparing the voter’s signature on the absent voter ballot

application or the absent voter ballot return envelope to the voter's signature in their registration record. Const 1963, art 2, § 4(1)(h) (emphasis added).

95. If a clerk determines that the signature on an elector's absent voter ballot application or absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, then that application or ballot must be rejected, see MCL 168.766a(3); MCL 168.761(2) (regarding applications); MCL 168.765(2) (regarding ballots); and MCL 168.766(2) (regarding ballots), which in turn initiates the local election official's duty to notify that voter that their application or ballot has been rejected due to a missing or mismatched signature so that the voter may cure their deficient signature. See MCL 168.761; MCL 168.765; MCL 168.766(3)-(6); MCL 168.766a(3)-(6).

96. As outlined above, the Secretary's Policy mandating that election officials speculate as to "possible explanations for discrepancies in signatures" under Rule 168.24 is directly inconsistent with both the Michigan Constitution and the Michigan Election Law. When the Michigan Constitution and Michigan Election Law mandate that election officials verify the identity of absent voters through a signature comparison process, the Secretary is not authorized to change that standard to something less than verification, whether through a promulgated rule or otherwise.

97. An administrative rule simply cannot conflict with a statute. *Brightmoore Gardens, LLC v Marijuana Regulatory Agency*, 337 Mich App 149, 161; 975 NW2d 52 (2021) ("[A]n [administrative] agency is not empowered to change law enacted by the Legislature. . . .When an administrative rule conflicts with a statute, the statute controls"). When, as here, "a statute and an administrative rule conflict, the statute necessarily controls." *Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 366; 891 NW2d 884 (2016).

Judicial intervention is necessary to ensure that the Michigan Constitution and the Michigan Election Law are enforced during the August 2024 primary election and the November 2024 general election.

98. As recognized in the Carter-Baker Commission Report, absentee voting “has been one of the major sources of fraud.” See, Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform (*i.e.*, the “Carter-Baker Commission Report”), at 35, September 2005, available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF (last visited March 25, 2024).

99. For that reason, the Carter-Baker Commission recommended that “[t]o verify the *identity* of voters who cast absentee ballots, the voter’s signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains,” and that this signature matching “should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.” *Id.* at 20 (emphasis added)

100. To that end, the Michigan Constitution and the Michigan Election Law expressly provide the above-described signature verification framework that (a) preserves the purity of elections and guards against abuses of the elective franchise by ensuring that each absent voter application and absent voter ballot originated from, and was completed by, the intended voter, while also (b) ensuring that those absentee voters whose identities could not be verified as a result of missing or mismatched signatures have an opportunity to cure their deficient application or ballot such that the signature verification process does not prevent any qualified elector from voting.

101. Akin to verifying a voter’s identity at a polling place through either the showing of an approved form of identification or completing an affidavit in the presence of an election

inspector under Michigan law, this signature verification process is pivotal to protecting the integrity of Michigan elections.

102. Unlike the verification of identity at polling places, however, the signature verification process is completed by local clerks *outside* the presence of election inspectors, election challengers, and poll watchers. See, e.g., MCL 168.765(2) (providing that signature verification must be completed by the “city or township clerk,” and further providing that “. . . a precinct board of election inspectors or an absent voter counting board must *not* make any further signature verification for an absent voter ballot return envelope.”) (emphasis added); MCL 168.768 (“If the elector’s signature is missing or the statement that the absent voter ballot is approved for tabulation is incomplete, the board of election inspectors must immediately contact the city or township clerk.”).

103. In other words, unlike the verification of the identity of those voters who vote in-person, which occurs in the presence of election inspectors, election challengers, and poll watchers, the verification of the identity of an absent voter through the signature verification process occurs behind closed doors and only in the presence of clerks and their subordinates.

104. The Secretary’s Signature Verification Instructions—including the presumption of validity as to absent voter signatures and Rule 168.24—were applied during the February 27, 2024 presidential primary election. In other words, the Secretary’s unlawful presumption of validity and Rule 168.24 were applied to signatures on more than one million absent voter applications leading up to the February 27, 2024 presidential primary election, and were then applied to more than 934,000 absent voter ballot return envelopes during the election itself.

105. This, despite the fact that the Secretary’s presumption of validity as to absent voter signatures was not promulgated in accordance with the APA, and despite the fact that both the

presumption of validity and Rule 168.24 are directly inconsistent with both the Michigan Constitution and the Michigan Election Law.

106. 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 Secretary's unlawful presumption of validity and Rule 168.24—are enforced during the August 2024 primary election, the November 2024 general election, and beyond.

**COUNT I – VIOLATIONS OF THE MICHIGAN CONSTITUTION
(PRESUMPTION OF VALIDITY)**

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

108. As set forth in paragraphs 1-7, 37-39, 46, 64, 83, and 85-87 (among others) of this Verified Complaint, the Secretary's presumption of validity as to absent voter signatures is directly inconsistent with the Michigan Constitution.

109. Injunctive and declaratory relief are therefore necessary to remedy the Secretary's unlawful presumption of validity as to absent voter signatures. Plaintiffs are unable to reconcile the mandate set forth in the Secretary's Signature Verification Instructions requiring that absent voter signatures are entitled to a presumption of validity with those provided under the Michigan Constitution.

110. There is a current ripe case or controversy between the parties concerning the legality of the Secretary's Signature Verification Instructions. Local clerks have already reviewed absent voter ballot applications and absent voter ballot return envelopes pursuant to the Secretary's unlawful presumption of validity. This undoubtedly has and will continue to result in invalid ballots being counted despite missing or mismatched absent voter signatures. Absent declaratory or injunctive relief from this Court, that presumption will continue to be applied in future elections,

in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized by the Secretary's acts, including the issuance of the Secretary's Signature Verification Instructions and corresponding continued implementation of the Secretary's mandate that absent voter signatures be entitled to a presumption of validity.

111. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's Signature Verification Instructions and corresponding presumption of validity as to absent voter signatures remain in place, and justice requires the issuance of injunctive relief.

112. 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 specifically to ensure that, *inter alia*, election officials verify the identity of absentee voters as required under the Michigan Constitution. Aside from being mandated by the Michigan Constitution, this signature verification process is critical to election security and designed to ensure that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter.

113. Plaintiffs lack an adequate remedy at law to prevent the enforcement of the Secretary's unlawful Signature Verification Instructions and corresponding presumption of validity as to absent voter signatures.

114. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary's presumption of validity as to absent voter signatures set forth in the Secretary's Signature Verification Instructions would allow a single state officer to circumvent (and essentially amend) valid and enforceable constitutional mandates 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

the integrity and accuracy of Michigan's elections and that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter as required under the Michigan Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Secretary's presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is inconsistent with the Michigan Constitution and is therefore unenforceable; that this Court enjoin the Secretary from implementing her presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes in advance of the August 6, 2024 primary election and the November 5, 2024 general election; that this Court order the Secretary to rescind her Signature Verification Instructions, strike the language in that document instructing local election officials that signatures on absent voter ballot applications and absent voter ballot return envelopes are entitled to a presumption of validity, and issue new Signature Verification Instructions directing local election officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Constitution; and that this Court award any other relief that it deems just and equitable.

**COUNT II – VIOLATIONS OF THE MICHIGAN ELECTION LAW
(PRESUMPTION OF VALIDITY)**

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

116. As set forth in paragraphs 1-6, 37-42, 46, 64, 83-84, and 86-87 (among others) of this Verified Complaint, the Secretary's presumption of validity as to absent voter signatures is directly inconsistent with the Michigan Election Law.

117. Injunctive and declaratory relief are therefore necessary to remedy the Secretary's unlawful presumption of validity as to absent voter signatures. Plaintiffs are unable to reconcile

the mandate set forth in the Secretary's Signature Verification Instructions requiring that absent voter signatures are entitled to a presumption of validity with those provided under the Michigan Election Law.

118. There is a current ripe case or controversy between the parties concerning the legality of the Secretary's Signature Verification Instructions. Local clerks have already reviewed absent voter ballot applications and absent voter ballot return envelopes pursuant to the Secretary's unlawful presumption of validity. This undoubtedly has and will continue to result in invalid ballots being counted despite missing or mismatched absent voter signatures. Absent declaratory or injunctive relief from this Court, that presumption will continue to be applied in future elections, in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized by the Secretary's acts, including the issuance of the Secretary's Signature Verification Instructions and corresponding continued implementation of the Secretary's mandate that absent voter signatures be entitled to a presumption of validity.

119. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's Signature Verification Instructions and corresponding presumption of validity as to absent voter signatures remain in place, and justice requires the issuance of injunctive relief.

120. It is in the public interest to issue injunctive relief to ensure that Michigan's elections are carried out in accordance with the Michigan Election Law, and specifically to ensure that, *inter alia*, election officials verify the identity of absentee voters as required under the Michigan Election Law. Aside from being mandated by the Michigan Election Law, this signature verification process is critical to election security and designed to ensure that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter.

121. Plaintiffs lack an adequate remedy at law to prevent the enforcement of the Secretary's unlawful Signature Verification Instructions and corresponding presumption of validity as to absent voter signatures.

122. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary's presumption of validity as to absent voter signatures set forth in the Secretary's Signature Verification 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 the integrity and accuracy of Michigan's elections and that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter as required under Michigan law.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Secretary's presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is inconsistent with the Michigan Election Law and is therefore unenforceable; that this Court enjoin the Secretary from implementing her presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes in advance of the August 6, 2024 primary election and the November 5, 2024 general election; that this Court order the Secretary to rescind her Signature Verification Instructions, strike the language in that document instructing local election officials that signatures on absent voter ballot applications and absent voter ballot return envelopes are entitled to a presumption of validity, and issue new Signature Verification Instructions directing local election officials to verify the identity of any

voter who applies for or who votes an absent voter ballot as required by the Michigan Election Law; and that this Court award any other relief that it deems just and equitable.

COUNT III – VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

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

124. Under MCL 168.31, the Secretary is 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.”

125. As set forth in paragraphs 6-8, 47-50, 64-72, 74-82, and 88-89 (among others) of this Verified Complaint, the Secretary issued a rule by including in her Signature Verification Instructions the mandate that local election officials apply a presumption of validity as to all absent voter signatures.

126. The Secretary’s presumption of validity as to absent voter signatures constitutes a “rule” under the APA. The Secretary’s presumption of validity is an instruction, standard, and/or procedure generally applicable to all absent voter ballot applications and absent voter ballots, and contains a mandatory statement from this state’s chief elections office declaring that clerks must presume that signatures are valid. See MCL 24.207; see also Ex. A, at 3 (“Voter signatures are entitled to an initial presumption of validity.”).

127. The Secretary issued this rule without following the procedures required under the APA.

128. Because the Secretary failed to comply with the APA when she included in her Signature Verification Instructions the mandate that local election officials apply a presumption of validity as to all absent voter signatures, this Court should find that the Secretary’s presumption

of validity rule is invalid, and should require that the corresponding text of the Michigan Constitution and Michigan Election Law be enforced.

129. The Secretary's actions here are also subject to collateral estoppel.

130. The elements of collateral estoppel are: (1) a question of fact or law essential to the judgment that was actually litigated and determined by a valid and final judgment; (2) the same parties had a full and fair opportunity to litigate the issue; and (3) mutuality of estoppel.

131. The legal question addressed in *Genetski* was whether the Secretary's signature verification guidance, which included the Secretary's instruction that signatures on absent voter applications and absent voter ballot return envelopes be presumed valid, was issued in violation of the APA. See Ex B (concluding that the Secretary's signature verification standards "amounted to a 'rule' that should have been promulgated in accordance with the APA. And absent compliance with the APA, the 'rule' is invalid."); see also *id.* at 10 ("Policy determinations like the one at issue—which places a thumb on the scale in favor of a signature's validity—should be made pursuant to properly promulgated rules under the APA or by the Legislature."). Therefore, the first element of collateral estoppel is satisfied here.

132. The Michigan Republican Party, which was a plaintiff in *Genetski*, is a plaintiff here, too. Likewise, Secretary Benson and Director Brater were both defendants in *Genetski* just as they are here, too. Therefore, the second and third elements of collateral estoppel are satisfied here.

133. The burden of persuasion in *Genetski* was the same as in the present matter.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Secretary's presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is a "rule" as that term is defined under the APA, that the Secretary failed to

follow the applicable requirements under the APA when she promulgated that rule, and that the rule is therefore invalid; that this Court find that the doctrine of offensive collateral estoppel applies here by virtue of this Court's decision in *Genetski*; that this Court enjoin the Secretary from implementing her presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes in advance of the August 6, 2024 primary election and the November 5, 2024 general election; that this Court order the Secretary to rescind their Signature Verification Instructions, strike the language in that document instructing local election officials that signatures on absent voter ballot applications and absent voter ballot return envelopes are entitled to a presumption of validity, and issue new Signature Verification Instructions directing local election officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Constitution and the Michigan Election Law; and that this Court award any other relief that it deems just and equitable.

**COUNT IV – VIOLATIONS OF THE MICHIGAN CONSTITUTION
(RULE 168.24)**

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

135. As set forth in paragraphs 1-5, 9-11, 37-39, 46, 90-92, 94, and 96-97 (among others) of this Verified Complaint, the Secretary's Rule 168.24 of the Michigan Administrative Code is directly inconsistent with the Michigan Constitution.

136. Injunctive and declaratory relief are therefore necessary to remedy the Secretary's unlawful mandate under Rule 168.24 requiring election officials to approve signatures with discrepancies based on mere speculation. Plaintiffs are unable to reconcile that mandate with those provided under the Michigan Constitution.

137. There is a current ripe case or controversy between the parties concerning the legality of Rule 168.24. Local clerks have already reviewed absent voter ballot applications and absent voter ballot return envelopes pursuant to Rule 168.24. This undoubtedly has and will continue to result in invalid ballots being counted despite missing or mismatched absent voter signatures. Absent declaratory or injunctive relief from this Court, this unlawful acceptance of absent voter signatures based on mere speculation will continue in future election, in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized by the Secretary's acts, including the promulgation of Rule 168.24, the issuance of the Secretary's Signature Verification Instructions, and the corresponding continued implementation of the Secretary's mandate that election officials accept signatures with discrepancies based on mere speculation.

138. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's Rule 168.24 remains in place, and justice requires the issuance of injunctive relief.

139. 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 specifically to ensure that, *inter alia*, election officials verify the identity of absentee voters as required under the Michigan Constitution. Aside from being mandated by the Michigan Constitution, this signature verification process is critical to election security and designed to ensure that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter.

140. Plaintiffs lack an adequate remedy at law to prevent the enforcement of the Secretary's unlawful mandate under Rule 168.24 requiring election officials to accept signatures with discrepancies based on mere speculation.

141. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary's Rule 168.24 mandate would allow a single state officer to circumvent (and essentially amend) valid and enforceable constitutional mandates 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 the integrity and accuracy of Michigan's elections and that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter as required under the Michigan Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Secretary's mandate under Rule 168.24 requiring election officials to accept signatures with discrepancies based on mere speculation is inconsistent with the Michigan Constitution and is therefore unenforceable; that this Court enjoin the Secretary from implementing Rule 168.24 in advance of the August 6, 2024 primary election and the November 5, 2024 general election; that this Court order the Secretary to rescind her Signature Verification Instructions, strike the language in that document instructing local election officials to accept signatures with discrepancies based on mere speculation, and issue new Signature Verification Instructions directing local election officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Constitution; and that this Court award any other relief that it deems just and equitable.

**COUNT V – VIOLATIONS OF THE MICHIGAN ELECTION LAW
(RULE 168.24)**

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

143. As set forth in paragraphs 1-5, 9-11, 37-42, 46, 90-93, and 95-97 (among others) of this Verified Complaint, the Secretary's Rule 168.24 of the Michigan Administrative Code is directly inconsistent with the Michigan Election Law.

144. Injunctive and declaratory relief are therefore necessary to remedy the Secretary's unlawful mandate under Rule 168.24 requiring election officials to accept signatures with discrepancies based on mere speculation. Plaintiffs are unable to reconcile that mandate with those provided under the Michigan Election Law.

145. There is a current ripe case or controversy between the parties concerning the legality of Rule 168.24. Local clerks have already reviewed absent voter ballot applications and absent voter ballot return envelopes pursuant to Rule 168.24. This undoubtedly has and will continue to result in invalid ballots being counted despite missing or mismatched absent voter signatures. Absent declaratory or injunctive relief from this Court, this unlawful acceptance of absent voter signatures based on mere speculation will continue in future elections, in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized by the Secretary's acts, including the promulgation of Rule 168.24, the issuance of the Secretary's Signature Verification Instructions, and the corresponding continued implementation of the Secretary's mandate that election officials approve signatures with discrepancies based on mere speculation.

146. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's Rule 168.24 remains in place, and justice requires the issuance of injunctive relief.

147. It is in the public interest to issue injunctive relief to ensure that Michigan's elections are carried out in accordance with the Michigan Election Law, and specifically to ensure that, *inter alia*, election officials verify the identity of absentee voters as required under the

Michigan Election Law. Aside from being mandated by the Michigan Election Law, this signature verification process is critical to election security and designed to ensure that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter.

148. Plaintiffs lack an adequate remedy at law to prevent the enforcement of the Secretary's unlawful mandate under Rule 168.24 requiring election officials to approve signatures with discrepancies based on mere speculation.

149. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary's Rule 168.24 mandate 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 the integrity and accuracy of Michigan's elections and that each application for an absent voter ballot and each corresponding absent voter ballot originated from and was completed by the intended voter as required under the Michigan Election Law.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the Secretary's mandate under Rule 168.24 requiring election officials to approve signatures with discrepancies based on mere speculation is inconsistent with the Michigan Election Law and is therefore unenforceable; that this Court enjoin the Secretary from implementing Rule 168.24 in advance of the August 6, 2024 primary election and the November 5, 2024 general election; that this Court order the Secretary to rescind her Signature Verification Instructions, strike the language in that document instructing local election officials to approve signatures with discrepancies based on mere speculation, and issue new Signature Verification Instructions directing local election

officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Election Law; 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 Secretary’s presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is inconsistent with the Michigan Constitution and the Michigan Election Law and is therefore unenforceable;

B. Declare that the Secretary’s presumption of validity as to signatures on absent voter ballot applications and absent voter ballot return envelopes is a “rule” as that term is defined under the APA, that the Secretary failed to follow the applicable requirements under the APA when she promulgated that rule, and that the rule is therefore invalid;

C. Declare that Rule 168.24 of the Michigan Administrative Code is inconsistent with both the Michigan Constitution and the Michigan Election Law and is therefore unenforceable;

D. Enjoin the Secretary from implementing her presumption of validity and Rule 168.24 as to signatures on absent voter ballot applications and absent voter ballot return envelopes in advance of the August 6, 2024 primary election and the November 5, 2024 general election;

E. Order the Secretary to rescind their Signature Verification Instructions, strike the language in that document instructing local election officials that signatures on absent voter ballot applications and absent voter ballot return envelopes are entitled to a presumption of validity,

strike the language in that document requiring election officials to speculate as to “possible reasons for discrepancies in signatures” under Rule 168.24, and issue new Signature Verification Instructions directing local election officials to verify the identity of any voter who applies for or who votes an absent voter ballot as required by the Michigan Constitution and the Michigan Election Law;

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

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

Dated: March 28, 2024

Respectfully submitted,

/s/ Charles R. Spies

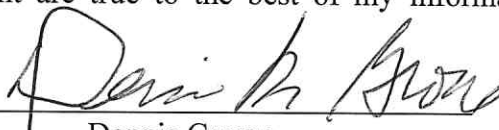
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Attorneys for Plaintiffs

VERIFICATION

I, Dennis Grosse, 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.


Dennis Grosse

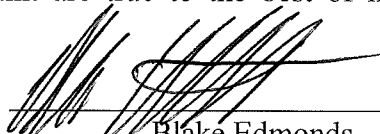
Subscribed and sworn to before me this 27th day of March, 2024.


Jodie A. Haughey, Notary Public
Bernier County, State of Michigan
My commission expires: 9/8/2025

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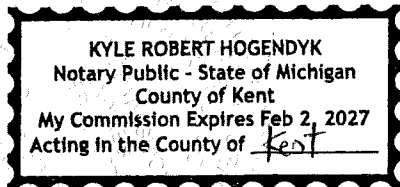
VERIFICATION

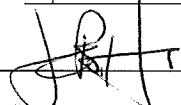
I, Blake Edmonds, being first duly sworn, depose and say that I am a resident of the state of Michigan and duly qualified as a voter in this state. While I may not have personal knowledge of all of the facts recited in this Verified Complaint, the information contained therein has been collected and 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.



Blake Edmonds

Subscribed and sworn to before me this 27th day of March, 2024.





Notary Public
Kent County, State of Michigan
My commission expires: 2-2-2027

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VERIFICATION

I, Tyson Shepard, 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

Tyson Shepard

By: Tyson Shepard

Its: Executive Director

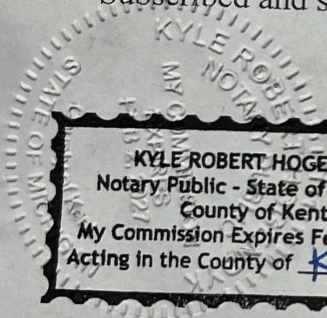
Subscribed and sworn to before me this 27th day of March, 2024.

KRH

Kyle Robert Hogendyk, Notary Public

Kent County, State of Michigan

My commission expires: 2-2-2027



KYLE ROBERT HOGENDYK
Notary Public - State of Michigan
County of Kent
My Commission Expires Feb 2, 2027
Acting in the County of Kent

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VERIFICATION

I, Ashley Walukevich, 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

Ashley Walukevich

By: Ashley Walukevich

Its: Deputy Political Director

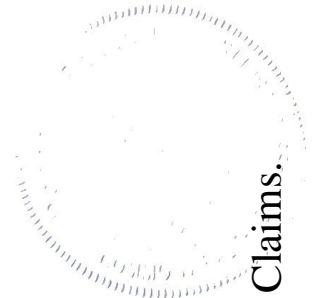
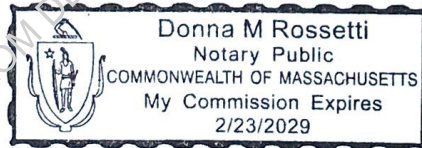
Subscribed and sworn to before me this 27 day of March, 2024.

Donna Rossetti

Donna Rossetti, Notary Public

ESSEX County, State of Massachusetts

My commission expires: 2/23/2029



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VERIFICATION

I, James Zenn, a representative of the National Republican Congressional Committee (the “NRCC”), being duly sworn, and being authorized to give this Verification on behalf of the NRCC 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.

National Republican Congressional Committee

James Zenn

By: James Zenn

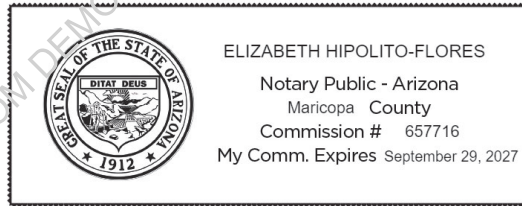
Its: Regional Political Director

Subscribed and sworn to before me this 27th day of March, 2024.

E. Hipolito-Flores

Elizabeth Hipolito-Flores, Notary Public
Maricopa County, State of Arizona

My commission expires: 09/29/2027



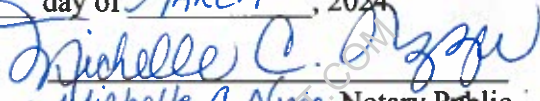
Notarized remotely online using communication technology via Proof.

VERIFICATION

I, Cindy Berry, 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.


Cindy Berry

Subscribed and sworn to before me this 27th day of MARCH, 2024


Michelle C. Nizza Notary Public
Sanilac County, State of Michigan
My commission expires: 12/16/2029

MICHELLE C. NIZZA
Notary Public, State of Michigan
County of Sanilac
My Commission Expires 12-16-2029
Acting in the County of Macomb

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

REPUBLICAN NATIONAL COMMITTEE,
MICHIGAN REPUBLICAN PARTY,
NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE, DENNIS
GROSSE, BLAKE EDMONDS, and CINDY
BERRY,

Case No. 24-_____ -MZ

Hon. _____

Plaintiffs,

v

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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Attorneys for Plaintiffs

EXHIBIT LIST TO VERIFIED COMPLAINT

Exhibit A	Signature Verification Instructions
Exhibit B	Opinion and Order Granting Summary Disposition in <i>Genetski v Benson</i> , No. 20-000216-MM (Mich Ct Cl, 2021)

Exhibit C	Draft Ruleset 2021-061 ST dated August 5, 2021
Exhibit D	Senator Ruth Johnson’s Public Comment on Proposed Ruleset 2021-61 ST
Exhibit E	Representative Ann Bollin’s Public Comment on Proposed Ruleset 2021-61 ST
Exhibit F	Secretary Benson’s March 4, 2022 Response to JCAR’s Proposed Changes to JCAR No. 21-73, MOAHR No. 2021-61ST
Exhibit G	Redlined copy of Amended Ruleset 2021-61 ST Proposed by Secretary Benson, dated March 7, 2022
Exhibit H	Absent Voter Process Manual

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Exhibit A

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Signature Verification, Voter Notification, and Signature Cure

December 2023

Introduction

Michigan election law requires absent voter (AV) ballot applications to be signed for an AV ballot to be issued. It also requires election officials to verify that the signature on an AV ballot envelope agrees sufficiently with the voter's signature in the Qualified Voter File (QVF) or the voter's signature on the AV ballot application for the ballot to be tabulated. Michigan election law and the department's administrative rules require AV applications and ballots to be accepted unless the signature does **not** agree sufficiently with the voter's signature on file. MCL 168.761, 765a, 766, 766a, 766b, R 168.21, et seq.

This document provides instructions for:

1. Reviewing signatures immediately upon receipt and providing voter notification for a mismatched signature.
2. Verifying the voter's signature against the QVF.
3. Curing missing or mismatched signatures.

Reviewing signatures immediately upon receipt and providing voter notification for a mismatched signature

Upon receipt, clerks must review absent voter ballot applications and absent voter ballot envelopes (AV application or ballot envelope) as soon as possible to determine whether a signature has been provided and whether the signature agrees sufficiently with the signature on file. If a clerk determines that the voter's signature on the AV ballot application or AV ballot return envelope is missing or does not agree sufficiently with the signature on file, the clerk must reject that application or return envelope and provide the voter with notice and the opportunity to cure the deficiency. Under the Michigan Constitution, the voter "has a right to be notified immediately and afforded due process, including an equitable opportunity to correct the issue with the signature." Mich. Const. Art II, Sec 4(1)(h).

Beginning 45 days before an election, Michigan election law requires clerks to notify a voter of a missing or mismatched signature on the voter's AV ballot or AV return envelope.

Between 45 and six calendar days before an election, the clerk must make a reasonable effort to verify or reject the AV ballot application or AV return



envelope and to notify the voter of a signature deficiency no later than the end of the next business day following receipt.

Beginning five calendar days before the election and on Election Day, the clerk must verify or reject the AV ballot application or AV return envelope by the end of the calendar day of receipt.

The clerk must notify the voter of the signature deficiency by telephone, email, or text message, if available, or by U.S. mail if the other options are not available. The notice must indicate all of the following:

- The nature of the deficiency and that the deficiency has resulted in the rejection of the voter's AV ballot application or AV ballot return envelope
- The need to cure the deficiency in order for the AV ballot application to be accepted or for the AV ballot to be tabulated
- How to cure the deficiency
- The deadline for curing the deficiency
- The alternative methods of voting if the deficiency is not cured

A voter may cure a deficiency by completing and submitting a cure form. Michigan election law requires voters be permitted to receive and return a cure form electronically, in person, or by mail with postage prepaid. A voter must be permitted to submit an electronic image of the voter's physical signature for a cure form returned electronically. A cure form must be accepted if the signature on the cure form agrees sufficiently with the signature on file. If the clerk determines that the signature on the cure form does not agree sufficiently with the signature on file, the clerk must reject the cure form and contact the voter to provide information on other options to cure the deficiency and to provide the alternative methods of voting available for that election. If an AV application or AV ballot is rejected because the signature is missing or does not sufficiently agree with the signature on file, the cure form will be available to print from QVF for that voter.

For **AV applications**, the clerk must inform the voter of the need to cure the signature deficiency and the voter's options for doing so:

- **Before 4 p.m. on the Friday before Election Day**, by returning a cure form electronically, in person, or by mail. (Clerks must **not** send an AV ballot to an applicant by first-class mail after 5 p.m. on the fourth day before Election Day.)



- **Between 4 p.m. on the Friday and 4 p.m. on the Monday before Election Day**, in person at the clerk's office.
- **After 4 p.m. on the Monday before Election Day**, (if available for that election) or at the precinct on Election Day (it is too late to cure the application for an AV ballot).

For **AV ballot return envelopes**, the clerk should inform the voter of the need to cure the signature deficiency and the voter's options for confirming that the voter signed the ballot or for providing a signature:

- **By 5 p.m. on the third day after Election Day**, the voter must confirm that the voter signed the ballot return envelope or provide a signature, either in person or by submitting an electronic image of the physical signature. An AV ballot return envelope that has not been cured by 8 p.m. on Election Day must be retained at the clerk's office.

An AV ballot return envelope that is cured after the close of polls on Election Day but before 5 p.m. on the third day after the election must be tabulated if the voter did not vote in person. If a cure form which resolves the signature deficiency on a voter's AV ballot return envelope is received by the clerk by 5 p.m. on the third day following the election, the clerk must approve the AV ballot for tabulation. Any AV ballot return envelopes that have not be cured by the deadline remain rejected.

Verifying the voter's signature against the QVF

Clerks must determine whether the signature being validated agrees sufficiently with the signature on file. Voter signatures are entitled to an *initial* presumption of validity. An initial presumption of validity does *not* mean that all signatures are "presumed valid" without further review. Instead, clerks must review all signatures and should determine that a signature does not agree sufficiently on file only after completing review of the signature as described in these instructions and in Michigan election law, MCL 168.766a, et seq.; and R 168.21, et seq.

Clerks should consider a voter's signature questionable only if it differs in significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter. Exact matches are not required.

Redeeming qualities

When reviewing petition signatures that are not a perfect match with the signature on file, clerks must consider whether there are redeeming qualities



in the signature as compared to the signature on file. The following list includes some possible explanations for signatures that do not match exactly, but keep in mind that other legitimate reasons may exist.

Redeeming qualities include but are not limited to the following:

- Similar distinctive flourishes between the application or envelope and the QVF
- More matching features than nonmatching features
- Signature features do not match because it appears as if the voter's hand is trembling or shaking
- Only part of the signature matches the signature on file, for example, if only the first letters of the first and last name match
- Signature is partially printed but partially matches the signature on file
- Signature is a recognized diminutive of the voter's full legal name
- Signature omits a middle name, replaces a middle name with an initial, or replaces a middle initial with a name
- Signature style has changed slightly from signature on file

Explanations for differences in signatures

Clerks must also consider the following as possible reasons for discrepancies in signatures:

- Evidence of trembling or shaking in a signature could be health-related or the result of aging
- The voter may have used a diminutive of their full legal name, including, but not limited to, the use of initials, or the rearrangement of components of their full legal name, or omitting a second last name
- The voter's signature style may have changed slightly over time
- The signature may have been written in haste
- The surface of the location where the signature was made may have been rough, soft, uneven, or unstable

Clerks may also consider factors applicable to a particular voter, such as the age of the voter, the age of the signature or signatures contained in the voter's record, the possibility that the voter is disabled, the voter's primary language, and the quality of any digitized signature or signatures contained



in the voter's record, and any other plausible reason given by the voter that satisfies the clerk when following up on a questionable signature.

Voter communication

If clerks have genuine concerns about a signature's validity, they have the option of contacting the voter during the review process and obtaining an explanation from a voter (for example, the voter injured their hand), that satisfies the clerk that the signature is valid. This communication does *not* satisfy the separate requirement to notify voters who are found to have a missing or mismatched signature, which must be provided when required as discussed in the next section.

Voters should be encouraged to sign AV ballot applications and AV ballot return envelopes in a way that reasonably resembles the signature given for driver's license/state ID or voter registration purposes, so that the signature agrees sufficiently with the signature on file.

Curing a missing or mismatched signature

Clerks should review for missing or questionable signatures, and notify voters of these issues, using the timeline and procedures specified in the section of this document regarding "Reviewing signatures immediately upon receipt and providing voter notification for a mismatched signature." As noted, clerks should use any and all means available to contact voters, including phone, email, and mail. Written notice must always be issued. Two sample written notices are included at the end of this document; one asks the voter to provide a signature to compare against the ballot application signature and the other to provide a signature to compare against the ballot signature. Clerks do not need to use these exact notices.

The clerk must retain proof of having provided written notice to the voter and any signed forms returned to the clerk for 22 months following the final certification of the election.



Sample notice to voter who must provide application signature

Dear Voter,

Your **absent voter ballot application** will be REJECTED because of a missing signature or because of your signature did not match the signature on file. You WILL NOT BE ISSUED an absentee ballot because of the signature discrepancy, unless you TAKE ONE OF THE FOLLOWING ACTIONS:

- Sign this signature cure form and mail it back to the clerk's office at [address], fax it to [number], or scan/photograph and email this signed form to [email]. The form must be received by 4 p.m. on the Friday before Election Day to allow time for the mailing of your absentee ballot. Please come to your local clerk's office in person if there are seven or fewer days to Election Day.
- You may visit the clerk's office at [address] and re-sign the application until 4 p.m. on the Monday before Election Day.
- If you do not cure the absent voter ballot application by 4 p.m. the Monday before Election Day, you may still vote at your early voting site (if available for the election) or at your precinct on Election Day.

VOTER CERTIFICATE FOR PROVIDING ABSENT VOTER BALLOT APPLICATION SIGNATURE

- I returned my absent voter ballot application to my clerk, and I have been notified that my signature on the application was either missing or did not seem to match my signature on file.
 - I requested an absent voter ballot for the election. I am the individual whose name appears on the absent voter ballot application. I am signing this signature cure form instead of submitting a new application.
 - I am a United States citizen.
 - I am qualified and registered to vote in the city or township to which I returned my absent voter ballot.

If you are unable to provide a signature that is similar to the signature on file, please check the box below.

[] My signature differs from the signature on file due to a medical condition, advancing age, or the number of years that have elapsed since I last provided a signature for driver's license/state ID or voter registration purposes.

SIGN HERE IN INK (Power of attorney is not acceptable).

Signature

Printed name

Date: / / Address: (number and street) (city or township) (ZIP code)

Date of birth: _____ (00/00/0000)



Sample notice to voter who must provide ballot signature

Dear Voter,

Your **absent voter ballot** will be REJECTED because of a missing signature or because your signature did not match the signature on file. Your absent voter ballot WILL NOT BE COUNTED UNLESS YOU TAKE ONE OF THE FOLLOWING ACTIONS:

- Until 5 p.m. on the second Friday before Election Day, you may make a written request that your absent voter ballot be "spoiled" and have a new ballot issued immediately.
- You may sign this signature cure form and mail it back to the clerk's office at [address], fax it to [number], or scan/photograph and email it to [email], or deliver it to the clerk's office at [address]. The form must be received by 5 p.m. on the Friday after Election Day.
- You may visit the clerk's office and re-sign the absent voter ballot return envelope or provide a signature. You must re-sign by 5 p.m. on the Friday after Election Day in order to have your ballot counted for this election.
- Alternatively, you may vote at an early voting site (if available for the election) or at the precinct on Election Day instead of voting an absent voter ballot.

VOTER CERTIFICATE FOR PROVIDING ABSENT VOTER BALLOT SIGNATURE

I returned my absent voter ballot to my clerk, and I have been notified that my signature on the absent voter ballot return envelope was either missing or did not seem to match my signature on file. I hereby affirm, under penalty of perjury, that:

- I requested and returned an absent voter ballot for the general election. I am the individual whose name appears on the absent voter ballot return envelope that I returned to my city or township clerk's office. I am signing this signature cure form instead of submitting a new absent voter ballot return envelope.
- I am a United States citizen.
- I am qualified and registered to vote in the city or township to which I returned my absent voter ballot.
- I or another authorized individual delivered my absent voter ballot to the clerk's office.

If you are unable to provide a signature that is similar to the signature on file, please check the box below.

My signature differs from the signature on file due to a medical condition, advancing age, or the number of years that have elapsed since I last provided a signature for driver's license/state ID or voter registration purposes.

Signature

Printed name

Date: ___ / ___ / ___ Address: _____
(number and street) (city or township) (ZIP code)

Date of birth: _____ (00/00/0000)



Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT GENETSKI, County of Allegan Clerk,
individually and in his official capacity, and
MICHIGAN REPUBLICAN PARTY,

Plaintiffs,

OPINION AND ORDER GRANTING
SUMMARY DISPOSITION IN PART TO
PLAINTIFFS AND GRANTING
SUMMARY DISPOSITION IN PART TO
DEFENDANTS

v

Case No. 20-000216-MM

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

Hon. Christopher M. Murray

Defendants.
_____ /

Before the Court is defendants' January 20, 2021 motion for summary disposition filed pursuant to MCR 2.116(C)(4) and (C)(8), as well as plaintiffs' February 3, 2021 cross-motion for summary disposition filed pursuant to MCR 2.116(C)(8). Plaintiffs' cross-motion will be GRANTED in part with respect to Count II of the amended complaint because the challenged signature-matching standards were issued in violation of the Administrative Procedures Act. As a result of the grant of summary disposition in plaintiffs' favor on Count II, Count I of the amended complaint will be dismissed without prejudice. In addition, defendants' motion for summary disposition will be GRANTED in part with respect to Counts III and IV of the amended complaint.

I. BACKGROUND

The issues raised implicate signature-matching requirements for absent voter ballot applications and absent voter ballot return envelopes contained in this state's election law. MCL

168.759 and MCL 168.761 require voters to sign applications for absent voter ballots in order to receive a ballot. In addition, this state’s election laws require voters who choose to vote by absent voter ballot to sign their absent voter ballot return envelopes in order to have their ballots counted. MCL 168.764a. The signatures on the applications and the return envelopes are compared against signatures in the qualified voter file or those that appear on the “master registration card” in order to determine whether the signatures match. Signatures on applications or return envelopes that do not “agree sufficiently” with those on file are to be rejected. MCL 168.761(2). As of October 6, 2020, MCL 168.761(2)¹ was amended by 2020 PA 177 to give notice to voters’ whose signatures do not “agree sufficiently” with those on file that their absent voter ballot application has been rejected. The purpose of the notice is to give voters the opportunity to correct inaccuracies with absent voter ballot signatures. The same notice requirements also apply to rejected signatures for absent voter ballots. MCL 168.765a(6). There is no dispute that this state’s election law does not define what it means for signatures to “agree” or to “agree sufficiently” for purposes of comparing the signature on file with the signature on a received absent voter ballot application or absent voter ballot.

On the day PA 177 became effective, defendant Jocelyn Benson issued what defendants refer to as “guidance” for local clerks who are charged with inspecting signatures on absent voter ballot applications and ballots. The document, which was entitled “Absent Voter Ballot Processing: Signature Verification and Voter Notification Standards” largely mirrored guidance

¹ 2020 PA 302 further amended MCL 168.761 and other provisions of this state’s election law. Those amendments do not become effective until June 27, 2021. This opinion and order only examines those provisions of the statute that are currently in effect at this time. And no issues have been raised with respect to the yet-to-be-effective statutory requirements.

defendant Benson had previously issued. This guidance regarding signature verification forms the heart of the issues in the present case and it requires additional examination.

The stated purpose of the at-issue document was to “provide[] standards” for reviewing signatures, verifying signatures, and curing missing or mismatched signatures. Under a heading entitled “Procedures for Signature Verification,” the document stated that signature review “begins with the presumption that” the signature on an absent voter ballot application or envelope is valid. Further, the form instructs clerks to, if there are “any redeeming qualities in the [absent voter] application or return envelope signature as compared to the signature on file, treat the signature as valid.” (Emphasis in original). “Redeeming qualities” are described as including, but not being limited to, “similar distinctive flourishes,” and “more matching features than nonmatching features.” Signatures “should be considered questionable” the guidance explained, only if they differ “in multiple, significant and obvious respects from the signature on file.” (Emphasis in original). “[W]henever possible,” election officials were to resolve “[s]light dissimilarities” in favor of finding that the voter’s signature was valid.²

The section on signature-verification procedures goes on to repeat the notion that “clerks should presume that a voter’s [absent voter] application or envelope signature is his or her genuine signature, as there are several acceptable reasons that may cause an apparent mismatch.” (Emphasis omitted). Next, the guidance gave excuses or hypothetical explanations for why signatures on absent voter ballot applications and absent voter ballots might not be an exact match to those that are on file. Finally, the document again mentioned the presumption when, in

² The guidance included a chart with what were deemed to be acceptable and unacceptable “defects” in signatures.

conclusion, it stated that clerks “*must perform* their signature verification duties with the presumption that the voter’s [absent voter] application or envelope signature is his or her genuine signature.” (Emphasis added). By all accounts, the guidance set forth in that document was not limited to the then-upcoming November 2020 general election, nor has it been rescinded. Rather, it appears that the guidance remains in effect for local clerks with respect to upcoming elections.

II. PLAINTIFFS’ COMPLAINT

Plaintiff Robert Genetski is the Allegan County Clerk. He, along with plaintiff Michigan Republican Party, filed a complaint alleging that defendant Benson’s October 6, 2020 guidance is unlawful. The December 30, 2020 amended complaint alleges that the presumption in favor of finding valid signatures is unlawful, as is the directive to find “any redeeming qualities” for signatures. They contend that the presumption contained in the guidance issued by defendant Benson will allow invalid votes to be counted. Plaintiff Genetski has not, however, alleged that this guidance caused him to accept a signature that he believed was invalid.

The four-count amended complaint asks the Court to issue declaratory and injunctive relief with respect to future elections. Count I alleges that defendant Benson violated various provisions of this state’s election law by issuing the challenged guidance regarding signature-matching requirements which allegedly conflicts with this state’s election law. They ask the Court to issue injunctive relief to remedy the allegedly unlawful guidance. Additionally, they seek a declaratory ruling regarding the validity of defendant Benson’s guidance.

Count II of the amended complaint alleges that defendant Benson’s guidance was a “rule” as defined by the Administrative Procedures Act (APA) that was issued without compliance with the APA. Plaintiffs allege that the guidance is in fact a rule because it is generally applicable and

requires local election officials to apply a mandatory presumption of validity to signatures. Plaintiffs ask the Court to declare that the “rule” is invalid.

Count III alleges a violation of Const 1963, art 1, §§ 2 and 5, as defendant Benson’s guidance will result in the counting of invalid absent voter ballots which will ultimately result in the dilution of valid votes cast by this state’s electorate. They argue that defendant Benson’s guidance is so vague and imprecise that it cannot be applied uniformly throughout the state.³

Count IV alleges that plaintiff Genetski had a right to request an audit of his choosing under Const 1963, art 2, § 4(1)(h) as it relates to absent voter ballots. Plaintiffs acknowledge that defendants have announced and/or completed a state-wide audit of the November 2020 general election; however, according to plaintiffs, the audit does not address plaintiffs’ concerns because it did not review whether signatures on absent voter ballots were properly evaluated. Plaintiffs ask the Court to declare that the right to request an audit under art 2, § 4(1)(h) encompasses the type of absent-voter-ballot review requested in the amended complaint. Plaintiff also suggests the manner in which such an audit should be conducted.

III. ANALYSIS

A. MOOTNESS AND RIPENESS

Defendants argue that this Court should refrain from evaluating the merits of plaintiffs’ complaint because the issues are either moot or not ripe. With respect to mootness, there is no dispute that Count III, which raises an equal protection claim arising out of the November 2020

³ Plaintiffs’ briefing has conceded that this claim is now moot, with the November 2020 election having already come and gone. As a result, the Court will not address this claim in any additional detail.

general election, is moot and must be dismissed. However, the Court declines to find that plaintiffs' remaining challenges are either moot or not ripe. Those issues concern the validity of guidance that is still in effect (Counts I and II), or an audit (Count IV) that, according to the plain text of art 2, § 4(1)(h) and MCL 168.31a, may be requested after the election has occurred. Moreover, defendants have not advanced a specific mootness/ripeness argument with respect to the audit claim. As a result, the Court declines to find that the issues raised in Counts I, II, and IV of the amended complaint would have no practical effect on an existing controversy or that it would be impossible to render relief. Cf. *Garrett v Washington*, 314 Mich App 436, 449-450; 886 NW2d 762 (2016) (describing the mootness doctrine).

The Court also rejects defendants' contention that there is no actual controversy. As noted, plaintiffs seek declaratory relief. MCR 2.605(A)(1) requires that there be "a case of actual controversy" for the issuance of declaratory relief. "In general, 'actual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Shavers v Kelley*, 402 Mich 554, 588; 267 NW2d 72 (1978). Here, plaintiffs—particularly plaintiff Genetski, who is a local clerk subject to the guidance at issue—sought a declaration regarding whether he is and will continue to be subject to guidance that by all accounts remains in effect at this time. This clearly presents an actual controversy that is appropriate for declaratory relief. See *id.*

Defendants argue that no actual controversy exists because the Legislature could change the applicable law, or because defendant Benson could decide to revoke the guidance. That argument would seek to turn the requirements of declaratory relief on their head and would eviscerate the purpose of declaratory relief. If the Court were to adopt the view that no actual controversy exists because the law could change, there could be no limit to the number of cases

that could be dismissed as moot. Here, plaintiffs have sought a declaration as to their legal rights with respect to the validity of a currently existing directive issued by defendant Benson in advance of the next election. That the law could hypothetically change in the future is not a reason to avoid issuing a declaration of the parties' currently existing legal rights, as plaintiffs have sought here. Indeed, the ability to seek an advance declaration of legal rights on an existing policy is one of the very reasons why the declaratory judgment rule was adopted in the first instance. See *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012) (discussing the purposes of the declaratory judgment rule).

B. WHETHER DEFENDANT'S ACTIONS VIOLATED THE APA

The dispositive issue, as the Court see it, concerns the APA and whether defendant Benson was required to comply with the APA when she issued the "Signature Verification and Voter Notification Standards." The Secretary of State has authority, under MCL 168.31(1)(a), 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." Under the APA, a "rule" is defined 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."⁴ MCL 24.207. A "rule" not promulgated in accordance with the

⁴ There is no dispute that defendant Benson is subject to the APA, generally. See MCL 24.203(2) (defining "agency" in a way that includes the Secretary of State). The only dispute is whether this particular action is subject to the APA.

APA's procedures is invalid. MCL 24.243; MCL 24.245; *Pharris v Secretary of State*, 117 Mich App 202, 205; 323 NW2d 652 (1982).

An agency must utilize formal APA rulemaking procedures when establishing policies that “do not merely interpret or explain the statute or rules from which the agency derives its authority,” but rather “establish the substantive standards implementing the program.” *Faircloth v Family Indep Agency*, 232 Mich App 391, 403-404; 591 NW2d 314 (1998). “[I]n order to reflect the APA’s preference for policy determinations pursuant to rules, the definition of ‘rule’ is to be broadly construed, while the exceptions are to be narrowly construed.” *AFSCME v Dep’t of Mental Health*, 452 Mich 1, 10; 550 NW2d 190 (1996). It is a question of law whether an agency policy is invalid because it was not promulgated as a rule under the APA. *In re PSC Guidelines for Transactions Between Affiliates*, 252 Mich App 254, 263; 652 NW2d 1 (2002).

As for whether the guidance or directive at issue is a “rule” subject to the APA, the Court must look beyond the labels used by the agency and make an independent determination of whether the action taken by the agency was permissible or whether it was an impermissible rule that evaded the APA’s requirements. *AFSCME*, 452 Mich at 9. In other words, the Court “must review the actual action undertaken by the directive, to see whether the policy being implemented has the effect of being a rule.” *Id.* (citation and quotation marks omitted).

Examining the “Signature Verification and Voter Notification Standards” through that lens, the Court agrees with plaintiffs that the same constitutes a “rule” that should have been promulgated pursuant to the APA’s procedures. The standards are generally applicable to all absent voter ballot applications and absent voter ballots, and it contains a mandatory statement from defendant, this state’s chief election officer, see MCL 168.21, declaring that all local clerks

“*must perform* their signature verification duties” in accordance with the instructions. (Emphasis added). In addition, clerks must presume that signatures are valid. That this presumption is mandatory convinces the Court that it is not merely guidance, but instead is a generally applied standard that implements this state’s signature-matching laws. See MCL 24.207 (defining “rule”); *AFSCME*, 451 Mich at 8 (describing what constitutes a “rule” under the APA); *Spear v Mich Rehab Servs*, 202 Mich App 1, 5; 507 NW2d 761 (1993) (focusing on the mandatory nature of policies in support of the conclusion that the same constituted a “rule” under the APA).

Defendants cite three statutory exceptions to rulemaking—MCL 24.207(g), (h), and (j)—but the Court is not persuaded that the standards are saved by any of these exceptions. The first argument is that MCL 24.207(j), which is sometimes referred to as the “permissive power exception,” applies and exempts the standards from the APA’s rulemaking requirements. MCL 24.207(j) exempts from the APA’s definition of “rule,” a “decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.” Here, defendant Benson points to MCL 168.31(1)(a) as the source of her “permissive statutory power.” That statute provides that the Secretary of State “shall” “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.” MCL 168.31(1)(a). According to defendant Benson, MCL 168.31(1)(a) allows her to eschew the rule-making process in order to issue “instructions” like the standards at issue.

The Court disagrees. First, the Court disagrees with defendants’ characterization of the standards at issue, for the reasons stated above. Second, the cited statutory authority requires defendant Benson to issue instructions that are “in accordance with the laws of this state.” MCL 168.31(1)(a). Here, it is not apparent that the mandatory presumption of signature validity is “in

accordance with the laws of this state.”⁵ To that end, nowhere in this state’s election law has the Legislature indicated that signatures are to be presumed valid, nor did the Legislature require that signatures are to be accepted so long as there are any redeeming qualities in the application or return envelope signature as compared with the signature on file. Policy determinations like the one at issue—which places a thumb on the scale in favor of a signature’s validity—should be made pursuant to properly promulgated rules under the APA or by the Legislature. See *AFSCME*, 452 Mich at 10.

Third, a review of the plain language of MCL 168.31(1) and of caselaw discussing the permissive-power exemption does not support defendants’ argument.⁶ The primary problem with defendant Benson’s argument is that the language in MCL 168.31(1) is too generic to support her positions. MCL 168.31(1)(a) simply states that the secretary shall “issue instructions and promulgate rules pursuant to the” APA “for the conduct of elections.” If that were sufficient to constitute an explicit or implicit grant of authority to be excepted from the APA rule-making process, then defendants would never have to issue APA-promulgated rules for any election-related matters. This view, where the exception would effectively swallow the rule, does not find support in caselaw. See, e.g., *AFSCME*, 452 Mich at 12. That is, while defendant has statutory discretion to decide whether to take certain actions, the implementation of her discretionary decisions—absent a more precise directive than is contained in the statutes at issue—

⁵ Given that the standards are invalid for being enacted without compliance with the APA, the Court declines, for now, to determine whether the mandatory presumption imposed is contrary to the law, as plaintiffs have alleged in Count I. Resolution of that issue becomes unnecessary in light of the decision to grant relief to plaintiffs on Count II of the complaint.

⁶ The Court incorporates and restates its reasoning and discussion of a similar issue from *Davis v Benson*, (Docket Nos. 20-000207-MZ & 20-000208-MM).

must still adhere to the APA if that implementation takes the form of a rule. See *id.* (recognizing that the Department of Mental Health did not need to take a certain action; however, once the Department exercised its discretion to act, the implementation of the decision “must be promulgated as a rule.”); *Spear*, 202 Mich App at 5 (holding that while the agency’s “decision to employ a needs test represents the discretionary exercise of statutory authority exempt from the definition of a rule under [MCL 24.207(j)], the test itself, which is developed by the agency, is not exempt from the definition of a rule and, therefore, must be promulgated as a rule in compliance with the Administrative Procedures Act.”). Thus, while defendant Benson undoubtedly has discretion under MCL 168.31 to issue guidance or to instruct local clerks regarding signature validity requirements, the implementation of her discretionary decision can still be subject to the APA’s requirements.

Furthermore, the caselaw relied on by defendants in arguing for a different conclusion is easily distinguishable, and, in some cases, even lends support for the Court’s conclusion. See e.g., *Detroit Base Coalition for Human Rights of Handicapped v Dep’t of Social Servs*, 431 Mich 172, 187-188; 428 NW2d 335 (1988); *Mich Trucking Ass’n v Mich Pub Serv Comm*, 225 Mich App 424, 430; 571 NW2d 734 (1997); *By Lo Oil Co v Dep’t of Treasury*, 267 Mich App 19, 47; 703 NW2d 822 (2005). In the cases cited above, the pertinent agency’s enabling statute expressly or impliedly authorized the specific action later taken by the administrative agency; additionally, and significantly, those statutes also permitted the specific action to be achieved either through rulemaking *or* other means. See *Detroit Base Coalition*, 428 Mich at 187-188 (“The situations in which courts have recognized decisions of [an agency] as being within the [MCL 24.207(j)] exception are those in which explicit or implicit authorization for the actions in question has been found.”). Here, MCL 168.31(1) provides generalized authority to defendant, and it lacks

specificity with respect to the action taken (implementation of a mandatory presumption of signature validity), making the statute distinguishable from the statutes at issue in cases such as *Detroit Base Coalition*, *Mich Trucking Ass'n*, and *By Lo Oil Co.*⁷

Defendants raise concerns that this Court's interpretation of MCL 168.31(1)(a) would leave the term "instructions" without any practical effect. According to defendants, this Court's view would raise questions regarding whether defendant Benson could do anything when advising and directing local election officials as to the proper methods of conducting elections. The Court disagrees with the premise of defendants' position because, regardless of what is permissible under MCL 168.31, it is apparent that that which occurred here is not permissible, absent compliance with the APA. Here, defendant issued a mandatory directive and required local election officials to apply a presumption of validity to all signatures on absent voter ballot applications and on absent voter ballots. The presumption is found nowhere in statute. The mandatory presumption goes beyond the realm of mere advice and direction, and instead is a substantive directive that adds to the pertinent signature-matching statutes. And for similar reasons, defendants' arguments about efficiency and the need for quick action do not change the Court's decision. That is, nothing about the Court's opinion should be read as limiting the Secretary of State's ability to take quick action when she so desires. However, when that action takes the form of a rule, then the APA and MCL 168.31 require that the APA be invoked. In other words, the statute gives the Secretary of State

⁷ Remarkably, defendants continue to place reliance on the conclusions of the majority in *Pyke v Dep't of Social Servs*, 182 Mich App 619; 453 NW2d 274 (1990). But as noted in prior opinions, Judge Shepard's dissent in *Pyke* was later adopted by the *Palozolo* Court, and as that Court noted, its decision was binding under what is now MCR 7.215(J)(1). *Palozolo v Dep't of Social Servs*, 189 Mich App 530, 533-534 & n 1; 473 NW2d 765 (1991). The *Pyke* Court's view on MCL 24.207(j) is irrelevant.

the authority and the ability to meet the needs of a situation. But when the action taken constitutes a “rule” under MCL 24.207, the appropriate procedures must be followed.

Defendants’ citation to the rule-making exceptions contained in MCL 24.207(g) and (h)—which are the primary exemptions cited in their reply briefing—are no more convincing. Turning first to MCL 24.207(g), this subsection is an exception to the APA’s rule-making requirements for an “intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.” This exception is inapplicable, however, because the at-issue standard involves a mandatory presumption that directly affects local election officials’ duties with respect to the determination of whether a voter’s signature on either an absent voter ballot or a returned ballot will be deemed to be valid. Cf. *Kent Co Aeronautics Bd v Dep’t of State Police*, 239 Mich App 563; 609 NW2d 593 (2000) (finding that a directive fit within the exception where it did not create any obligations or require compliance).

Nor is defendants’ citation to the exception contained in MCL 24.207(h) convincing. That exception applies to a “form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.” MCL 24.207(h). This exception “must be narrowly construed and requires that the interpretive statement at issue be merely explanatory.” *Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 248; 501 NW2d 88 (1993) (citation and quotation marks omitted). If the purported “interpretive” statement changes the requirements of the law it is alleged to have interpreted, the exception does not apply. *Id.* See also *Schinzel v Dep’t of Corrections*, 124 Mich App 217, 221; 333 NW2d 519 (1983). Here, because nothing in this state’s election law refers to a presumption of validity, let alone a mandatory presumption, the standards at issue cannot be

deemed to be merely explanatory. See *Clonlara*, 442 Mich at 248, 251. That is, rather than merely explaining existing obligations under the law, the standards have imposed new obligations that do not appear within the plain language of this state’s signature-matching statutes.

In sum, the standards issued by defendant Benson on October 6, 2020, with respect to signature-matching requirements amounted to a “rule” that should have been promulgated in accordance with the APA. And absent compliance with the APA, the “rule” is invalid. Whether defendant Benson had authority to implement that which she did not need not be decided at this time because it is apparent the APA applied to the type of action taken in this case. Accordingly, plaintiffs are entitled to summary disposition on Count II of the complaint, and the Court will dismiss Count I without prejudice as a result.

C. PLAINTIFFS’ AUDIT CLAIMS ARE WITHOUT MERIT

Finally, the Court examines Count IV of the complaint, which concerns plaintiffs’ request for an audit. Const 1963, art 2, § 4(1)(h), provides that a qualified Michigan voter has the right to have “*the results of statewide elections audited*” in a manner prescribed by law. (Emphasis added). MCL 168.31a, amended after adoption of the aforementioned audit language, provides as follows:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) *The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks shall conduct election audits, including statewide election audits, as set forth in the prescribed procedures. The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results*

of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state shall supervise each county clerk in the performance of election audits conducted under this section.

(3) Each county clerk who conducts an election audit under this section shall provide the results of the election audit to the secretary of state within 20 days after the election audit. [Emphasis added.]

Plaintiffs acknowledge that an audit of the November 2020 general election results was conducted. They argue that they have the right to request an audit with respect to the subject of their choosing—signatures on absent voter ballot applications and on absent voter ballots—and in the manner of their choosing. For at least two reasons this claim is not supported by art 2, § 4 or the implementing statute, MCL 168.31a. First, the constitution speaks of an audit of election *results*, not signature-matching procedures. Second, while the statute allows for an audit that includes “reviewing the documents, ballots, and procedures” used in the election, the statute plainly leaves it to the Secretary of State to “prescribe the procedures for election audits” and mandates that the Secretary of State shall conduct audits “as set forth in the prescribed procedures.” In other words, there is no support in the statute for plaintiffs to demand that an audit cover the subject of their choosing or to dictate the manner in which an audit is conducted. MCL 168.31a(2) leaves that to the Secretary of State. As a result, plaintiffs have failed to state a claim on which relief can be granted as it concerns Count IV, and this count will be dismissed with prejudice pursuant to MCR 2.116(C)(8).

IV. CONCLUSION

IT IS HEREBY ORDERED that pursuant to MCR 2.116(C)(10), plaintiffs’ cross-motion for summary disposition is GRANTED in part with respect to Count II of the amended complaint because the guidance issued by the Secretary of State on October 6, 2020, with respect to signature-matching standards was issued in violation of the Administrative Procedures Act.

IT IS FURTHER ORDERED that pursuant to MCR 2.116(C)(8) defendants' motion for summary disposition is GRANTED in part on Counts III and IV of the amended complaint.

IT IS FURTHER ORDERED that Count I of the amended complaint is dismissed without prejudice, for the reason that the at-issue standards are invalid under the Administrative Procedures Act.

This is a final order that resolves the last pending claim and closes the case.

Date: March 9, 2021



Christopher M. Murray
Judge, Court of Claims

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Exhibit C

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DEPARTMENT OF STATE

BUREAU OF ELECTIONS

SIGNATURE MATCHING FOR ABSENT VOTER BALLOT APPLICATIONS AND
ABSENT VOTER BALLOT ENVELOPES

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by sections 31, 759, 761, 765, and 765a of the Michigan election law, 1954 PA 116, MCL 168.31, 168.759, 168.761, 168.765, and 168.765a)

R 168.21, R 168.22, R 168.23, R 168.24, R 168.25, and R 168.26 are added to the Michigan Administrative Code, as follows:

R 168.21 Definitions.

Rule 1. As used in these rules:

- (a) "Election official" means the township, city, or county clerk or their staff responsible for verifying signatures.
- (b) "Qualified voter file" means the voter registration database maintained by the Secretary of State.
- (c) "Signature on file" means the signature of the voter contained in the qualified voter file or on the absent voter ballot application.

R 168.22 Sufficient agreement of voter signature; initial presumption of validity.

Rule 2. (1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, whether a voter's absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter's signature on file, signatures must be reviewed beginning with the presumption that the voter's signature is his or her genuine, valid signature.

(2) A voter's signature should be considered invalid only if it differs in multiple, significant, and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter. Exact matches are not required to determine that a signature agrees sufficiently with the signature on file.

R 168.23 Redeeming qualities.

Rule 3. (1) If there are any redeeming qualities in the absent voter ballot application signature or absent voter ballot envelope signature as compared to the signature on file, the signature must be treated as valid. The bureau of elections shall provide examples of signatures with redeeming qualities and questionable signatures.

(2) Redeeming qualities include, but are not limited to, the following:

- (a) Similar distinctive flourishes.
- (b) More matching features than nonmatching features.
- (c) Signature features do not match because it appears as if the voter's hand is trembling or shaking.
- (d) Only part of the signature matches the signature on file, for example, if only the first letters of the first and last name match.
- (e) Signature is partially printed but partially matches the signature on file.
- (f) Signature is a recognized diminutive of the voter's full legal name.
- (g) Signature omits a middle name, replaces a middle name with an initial, or replaces a middle initial with a name.
- (h) Signature style has changed slightly from signature on file.

R 168.24 Explanations for differences in signatures.

Rule 4. (1) Elections officials shall consider the following as possible explanations for the discrepancies in signatures:

(a) Evidence of trembling or shaking in a signature could be health-related or the result of aging.

(b) The voter may have used a diminutive of their full legal name, including, but not limited to, the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.

(c) The voter's signature style may have changed slightly over time.

(d) The signature on the absent voter ballot envelope or provisional ballot envelope may have been written in haste.

(e) The surface of the location where the signature was made may have been rough, soft, uneven, or unstable.

(2) In addition to the characteristics listed in R 168.23(2)(f) and (g), the elections official may also consider factors applicable to a particular voter, such as the age of the voter, the age of the signature or signatures contained in the voter's record, the possibility that the voter is disabled, the voter's primary language, and the quality of any digitized signature or signatures contained in the voter's record, and any other plausible reason given by the voter that satisfies the clerk when following up on a questionable signature.

R 168.25 Timing of signature review and notification.

Rule 5. (1) If the absent voter ballot application or the absent voter ballot envelope is received at least 6 calendar days prior to the election, the clerk must notify the voter of issues with the voter's signature by the end of the next business day following receipt of the application or ballot envelope.

(2) If the absent voter ballot application or the absent voter ballot envelope is received less than 5 calendar days prior to the election, the clerk must review applications and envelopes immediately upon receipt and immediately contact a voter upon determination that the voter's signature on the application or the envelope is missing or does not match the signature on file.

(3) If the absent voter ballot application or the absent voter ballot envelope is missing the voter's signature, or if the clerk determines that the voter's signature on the absent voter ballot application or on the absent voter ballot envelope does not agree sufficiently with the voter's signature on file, the clerk shall inform the voter using any and all contact information available that their absent voter ballot application or their absent voter ballot envelope is missing a signature or has a non-matching signature, and the need to cure the signature deficiency. The clerk must notify the voter by phone and email, and, in the absence of the voter's email address, by United States mail.

R 168.26 Curing signature deficiencies.

Rule 6. A voter may cure a missing or mismatched signature by providing a signature on the absent voter ballot application or ballot envelope with the missing or mismatched signature or by providing a signature on another form or method as specified by the election official on their website or in the election official's office. A voter may cure a missing or mismatched signature up until the close of polls on Election Day.

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Exhibit D

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**THE SENATE
STATE OF MICHIGAN**

October 1, 2021

Via Electronic Mail to: Elections@Michigan.gov

Michigan Bureau of Elections
PO Box 20126
Lansing, MI 48901

Re: Public Comment on Proposed Ruleset 2021-61 ST

I write to provide comment on the Department of State, Elections & Campaign Finance proposed Administrative Rules for Signature Matching Standards for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes (Rule Set 2021-61 ST). I strongly oppose these rules as written and find them to be in direct contradiction to existing Michigan election law.

MCL 168.761 states in part that:

*(2) The qualified voter file must be used to **determine the genuineness** of a signature on an application for an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file. If the qualified voter file does not contain a digitized signature of an elector, or is not accessible to the clerk, the city or township clerk shall compare the signature appearing on the application for an absent voter ballot to the signature contained on the master card. [emphasis added]*

While MCL 168.766 states in part that:

*(2) The qualified voter file must be used to **determine the genuineness** of a signature on an envelope containing an absent voter ballot. Signature comparisons must be made with the digitized signature in the qualified voter file. If the qualified voter file does not contain a digitized signature of an elector, or is not accessible to the clerk, the city or township clerk shall compare the signature appearing on an envelope containing an absent voter ballot to the signature contained on the master card. [emphasis added]*

However, the proposed administrative rules state in part that “signatures must be reviewed **beginning with the presumption that the voter’s signature is his or her genuine**, valid signature.” [emphasis added] This is in direct conflict with the statutory language which instructs clerks to “**determine**” the genuineness of signatures.

Furthermore, the proposed administrative rules go on to say that “if there are **any** redeeming qualities...the signature **must** be treated as valid.” [emphasis added] This is a vague and biased standard that would serve to always err on the side of declaring a signature to be genuine and valid and which again does not conform to the statutory language which states that a clerk’s determination should be based on whether “the signature on the absent voter ballot application does not **agree sufficiently** with the signature on the master card or the digitized signature contained in the qualified voter file”. [MCL 168.761, emphasis added]

Document received by the MI Court of Claims.

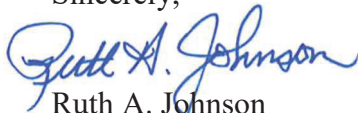
Finally, the proposed rules also provide for a clerk to utilize hypothetical factors such as “the possibility that the voter is disabled” without any due diligence or contact with the voter to make such a determination. This goes beyond the authority of the administrative rulemaking process and seeks to instead make changes to election law that would be properly considered by the legislature.

I would further comment, that current law provides for a cure process to be used by clerks when there is a doubt as to the genuineness of a signature submitted on an absentee ballot application or absentee ballot envelope. And in fact, the legislature strengthened and added new protections for voters in this regard in my sponsored Senate Bill 757 of 2020 which was passed by the legislature and signed into law by the governor on October 7, 2020. This legislation made statutory changes which require clerks to notify a voter so that they have an opportunity to rectify cases in which the signature submitted does not agree sufficiently with the signature on file “as soon as practicable, but in no event later than 48 hours after determining the signatures do not agree sufficiently or that the signature is missing.”

I feel strongly that the presumption of genuineness contained in these proposed administrative rules is inappropriate and not in conformance with existing Michigan election law. Nor is the provision to mandate the acceptance of a signature as genuine if it has “any” redeeming quality whatsoever. The “determination” of genuineness as provided in law should be a wholistic one to ensure that the signature - as stated in statute - “agrees sufficiently” with the signature on file. Finally, guidance to clerks that they may consider hypothetical factors such as the “possibility that the voter is disabled” without contacting the voter or having other factual grounds to make such a determination is also not consistent with existing law and constitutes an overreach in the rulemaking process which spills into the sole domain of the legislature.

Administrative rules for signature matching should pertain to signature matching (i.e. guidance to clerks with the input of handwriting experts which assists clerks in making a determination as to the genuineness of a signature). These proposed rules as written would instead serve to abrogate clerks’ statutory role by presuming signatures to be valid upon receipt, accepting signatures regardless of whether they “agree sufficiently” if they have “any” redeeming quality, and by allowing clerks to guess reasons as to why a signature may not match with no further verification or grounds for that determination.

Sincerely,



Ruth A. Johnson
State Senator, 14th District
Chair, Senate Elections Committee

Cc: Representative Luke Meerman, Chairperson
Senator Jon Bumstead, Alternate Chairperson
Joint Committee on Administrative Rules

Exhibit G

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MICHIGAN HOUSE OF REPRESENTATIVES

ANN M. BOLLIN

STATE REPRESENTATIVE

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Oct. 1, 2021

Secretary of State Jocelyn Benson
Richard H. Austin Building
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430 W. Allegan St.
Lansing, MI 48909

Secretary Benson:

The Department of State has proposed rules that will compromise the integrity of Michigan elections. As a former clerk for over 16 years and now serving as a legislator and Chair of the House Elections and Ethics Committee, I find it imperative that these rules not advance until we can ensure that the rules will protect the vote and the voter.

Presidential elections are always anomalies and 2020 was no different. It was an unprecedented election cycle. This was Michigan's first general election since the passage of Proposal 3 with no reason AV's and same day registration, a contentious presidential election cycle, and one that saw a record influx of outside money directly interfering with our elections. These factors, coupled with a pandemic and changes made to our election laws through executive orders or by the bench, eroded public trust and voter confidence. Politics have taken precedence over principles. Personal agendas over good governance and policy.

While Michigan's election is behind us, we need to learn from it. It is clear there are opportunities to improve our elections to help restore voter and candidate confidence.

Creating a pathway to make it easier to cheat or harder to vote should not be our goal. It should be easy to vote and hard to cheat. It is that simple. Our common goal – no matter where you stand politically – should be that every eligible voter can vote freely, secretly, independently, and securely and with confidence that their vote counted.

These proposed rules will erode the public's trust and allow political agendas to take precedence over sound public policy. We simply cannot adopt these rules in current form for the following reasons:

Document received by the MI Court of Claims.

MOAHR 2021-60 – Disqualification from Ballot Based Upon Contents of Affidavit of Identity

The Department of State will be doing a disservice to the people of Michigan if you enact a rule that disqualifies candidates simply because they forget to disclose every single jurisdiction in which they previously sought nomination or election – and without giving them a chance to correct mistakes caught before the filing deadline. It's overly harsh and goes against the goal of encouraging voter participation and expanding competition in races.

This same rule would put cumbersome new requirements on city and township election officials who are not responsible for campaign finance records. Campaign finance reports are filed with the Secretary of State's office or a county clerk's office.

Many campaign finance reports are not available online. This means county, township, and city staff would have to spend time and manpower to manually search records across the state on a quest to try and determine whether a candidate should be disqualified. Having to review potentially thousands of campaign finance records will be a major undertaking that will increase costs and cause delays for clerks' offices that are already understaffed.

MOAHR 2021-61 –Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes

This rule would weaken the signature matching standards that are currently in place for absent voter applications and absent voter ballot envelopes. Signature verification is a hallmark standard that protects the voter. With the elimination of the requirement that a first-time voter must appear in person before an authorized election official since Proposal 3 to validate their identity, it is even more important that we tighten the signature rules, not loosen them.

The proposed rule definition of "signature on file" is not in accordance with state law. MCL 168.761 (2) and MCL 168.766 (2) clearly state that signatures must be compared to the QVF or the mastercard file. It should not include the signature on the absent voter ballot application as a point of reference because that assumes that signature is valid without proper verification techniques being applied. The definition should only include those signatures that are "actually" on file either in the QVF, or the mastercard file.

This proposed rule would also create an automatic presumption that any signature on an absentee voter ballot application and absentee voter ballot envelope is valid. This rule includes overly broad "redeeming qualities" that would allow mismatched signatures to be accepted. It also includes vague "explanations for differences" that would be subject to vastly different interpretations from election officials in communities across our state.

Common sense dictates that the standard that should be followed for signature verification is that the signature should bear a "significant resemblance" to the signature on file. The rule components dealing with redeeming qualities and explanations for differences should default to a "significant resemblance" standard.

Accepting signatures where only part of the signature, a partially printed signature or a person who has changed their signature to only use initials instead of what is on file is not appropriate.

As a former clerk who verified signatures for thousands of voters, it easy to determine that a voter has signed on a rough surface but it is utterly ridiculous to think this standard should carry the same weight in

verifying a voter's signature as signature characteristics that can readily validate a voter's signature. For example, how the I's are dotted, the capital letters are made, the spacing, etc.

We must rely on a "significant resemblance" standard. Signatures must have certain consistent markers. Again, this includes the way capital letters are written, and the way in which the letters "i" and "t" are dotted and crossed.

The makers of these proposed rules would have us believe that this standard of "initial presumption of validity" is common practice. This is false.

This alleged standard was a directive put forth by the SOS last year that resulted in a lot of confusion and potential fraud. This was challenged in Robert Genetski and Michigan Republican Party v. Jocelyn Benson and Jonathon Brater in the Court of Claims. On March 9, 2021 Judge Christopher Murray ruled that the SOS had no authority to provide this directive "because the challenged signature-matching standards were issued in violation of the Administrative Procedure Act."

As for the rules on timing of signature review and notification Rule 168.25, those provisions are set out in statute under MCL 168.761 (2) and MCL 168.765a (6) which were just signed into law last year. It should also be noted that the statute does not require the clerk to notify the voter by phone and email. It states by mail, phone, or email. This was also passed just last year and should remain as an option. Clerks have many responsibilities leading up to the election and with unreliable internet in many parts of state, we need to provide reasonable accommodations for our 1,500-plus clerks.

Rule 168.26 on curing signatures is overly simplistic. It essentially states that if the clerk thinks the signature is mismatched, they contact the voter and request they provide another signature which may also not match the signature on file. More diligence is necessary to cure mismatched signatures. It may even be on a separate piece of paper as written in the proposed rule.

Additionally, these rules should require regular updates of signatures and uniform signature verification training for election officials.

MOAHR 2021-62 Online Absent Voter Ballot Applications

The rules pertaining to online voter ballot applications are also insufficient. Local clerks currently rely upon physical signatures on absent voter applications and ballots to verify that an absentee ballot is being mailed to and voted by the person eligible to receive that ballot. These signatures are compared to the QVF and the master card if necessary. This has been a long-standing practice.

Confirmation that the signature has been checked is required to be noted on the AV application and the ballot before it is forwarded for processing should be incorporated into statute or the rule.

In 2020, the SOS directed voters to simply take a picture of their signature and submit it electronically to the local clerk. These images were often distorted, unreadable and resulted in delays in providing voters with their ballots until the signatures could be cured.

Local clerks were often not equipped with quality printers and supplies to print these "pictures." Signature curing took longer than necessary and resulted in voter confusion, duplicate applications, and disenfranchisement. The SOS's public service announcements were often confusing and misleading.

Electronic uploads via unsecured email portals can lead to voter fraud and serve as a potential identity theft threat. It's just not that hard to find access to another person's name, address, birthday, and driver's license number. Slapping the digital signature of a voter that's already on file with the Secretary of State onto an online absentee ballot application – as Rule 168.33 proposes – strips away this important safeguard. Of course, the two signatures are going to match – they're the same exact file. There should be a two-factor authentication to prevent fraud and ensure absentee voting is a system the public can trust.

There are several other factors that make this practice difficult for clerks. Not all clerks have the same technological capabilities to move away from paper forms and applications. Rule 3 (4) which would allow voters to upload a copy of their physical signature ignores these potential technical limitations. Only a limited number of states have implemented this, and the security risks may not be fully known.

There are multiple ways for individuals to apply for an absentee ballot and with permanent AV application lists, we should not compromise perceived convenience for security.

The impact statement implies that these proposed rules are common practices in the SOS office. However, the idea of an online voter ballot application was only created last year because of a public health pandemic with no input from anyone. Something that has been used only once is not a common practice.

As I have detailed, I have serious concerns about the changes the Department of State is proposing – and so do hundreds of other residents and election officials. I believe we can work together with our local clerks to improve upon these proposed rules and create a better product that both advances democracy AND protects the vote and ensures our elections are secure.

Sincerely,



Ann Bollin
State Representative
42nd House District

CC: Jonathan Brater

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Exhibit F

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STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 4, 2022

Senator Jon Bumstead, Chair
Representative Luke Meerman, Alternate Chair
Joint Committee on Administrative Rules
124 W. Allegan, Lansing, MI 48909

RE: Proposed Changes to JCAR No. 21-73, MOAHR No. 2021-61ST

Dear Senator Bumstead and Representative Meerman,

The Secretary of State acknowledges receipt of the changes proposed by the Joint Committee on Administrative Rules (JCAR) on February 23, 2022 to ruleset JCAR No. 21-73, MOAHR No. 2021-61ST (Ruleset). The Department appreciates JCAR's engagement with the Ruleset. For the following reasons the Secretary declines eight of JCAR's nine proposed changes, but accepts one of the proposed changes:

1. The Secretary rejects the suggestion that definition of "signature on file" in R 168.21(1)(d) be changed. JCAR's suggestion – that "[t]he Secretary should change this definition to say that a signature on file is limited to the QVF digital signature and that a master[]card signature be considered a signature on file only when a QVF digital signature is missing" – is indistinguishable from the definition of "signature on file" in R 168.21(1)(d) as originally submitted to JCAR ("Signature on file' means the signature of the voter contained in the qualified voter file. If the qualified voter file does not contain the voter's digitized signature, the signature of the voter contained on the master card is the signature on file."). Because the proposed change is no different than the language in the proposed rule, the Secretary rejects the change.
2. The Secretary accepts JCAR's proposal to strike the instruction in R 168.22(1) that local election officials must begin review of a voter's signature on an absent voter ballot application or an absent voter ballot envelope with a "presumption" that the signature is valid. While the language reflects current practice, and while the Secretary does not read the presumption language in the same manner the language was read by JCAR, the confusion created by the term justifies its removal from the rule. The Secretary will remove term presumption from R 168.22(1) without otherwise substantially changing the text of the Ruleset already reviewed by JCAR.
3. The Secretary rejects the suggestion that the voter contact process laid out in R 168.22(3) be made mandatory, or that the term "genuine concerns" is insufficiently clear. A clerk has a genuine concern about a voter's signature when the clerk cannot determine whether

the signature on an absent voter ballot application or an absent voter ballot envelope does or does not match the signature on file, but still believes the voter may have signed the absent voter ballot application or the absent voter ballot envelope in question. For example, a clerk in a small jurisdiction may personally know the voter whose signature is in question, or know of a reason that the voter's signature may not match the signature on file. R 168.22(3) allows clerks in this position the option to contact the voter directly and inquire as to the origin of the signature before determining the signature's validity. In other words, the clerk may contact the voter to ask if the voter did, in fact, sign the absent voter ballot application or absent voter envelope in question, rather than requiring that the clerk reject the absent voter ballot application or absent voter envelope and requiring that the voter complete a more onerous cure process. The pre-determination contact process is made optional because it may not be practical to implement in every jurisdiction across Michigan, but it is provided as an option to avoid the burdens of unnecessary signature curing for clerks and voters alike.

4. The Secretary rejects the suggestion that the list of redeeming qualities in Rule 168.23(2) should be changed. In the Secretary's judgement, the list of redeeming qualities included in the Ruleset submitted to JCAR properly addresses the many ways in which a voter's signature may permissibly vary from the signature on file, while creating clear criteria for finding that a signature provided on an absent voter ballot application or an absent voter ballot envelope does not adequately match the signature on file. Additionally, the list of redeeming qualities correctly balances the need for a uniform floor on signature match processes across the state while allowing clerks flexibility to tailor the process to the needs of their jurisdiction. Finally, the Secretary does not find the list of redeeming qualities included in the ruleset to be confusing, nor does JCAR provide any evidence that JCAR's suggested language would add any clarity beyond the criteria included in the Ruleset.
5. The Secretary rejects the suggestion that R 168.24(1) be amended. The five factors in R 168.24(1) are similar to factors included in signature matching guidance in other states and election jurisdictions. In the Secretary's judgment, the factors provided in the rule are neither vague nor ambiguous, and JCAR provides no evidence to the contrary. Likewise, JCAR declares, with no evidence, that some of the five factors "seem unlikely" to occur. JCAR's opinion is not born out in the real world - all five factors are drawn from real-world situations that filing officials observe election after election. The Secretary also finds JCAR's suggestion that the rule should be changed because the rule envisions such common situations as a signature being made in haste, or a voter's signature changing as the voter ages, unconvincing. Finally, the Secretary disagrees with JCAR's assertion that the rule creates undue flexibility in the signature-matching process. As with R 168.23(2), the Secretary believes that R 168.24(1) strikes the correct balance between creating a uniform, statewide floor on the signature matching process while allowing local election officials to tailor the process to the needs of their communities.
6. The Secretary rejects the suggestion that the timing of the notification required in R 168.25(1) be modified. First, the statute cited by JCAR deals only with notification of an invalid signature; it is silent on the timing of the notification of the process by which a

voter may cure an invalid signature. As a practical matter, informing voters of the cure procedure in a timely fashion makes the cure process available to more voters. Second, in the Secretary's view the statutory deadlines for informing voters of issues with their signatures creates a floor, but not a ceiling, on notification timing, and the Secretary retains the power to require a compressed, and thus a more voter friendly, notification timeline.

7. The Secretary rejects the suggestion that R 168.25(8) be changed to reduce the ways in which a voter may be informed of an issue with their signature. As explained above regarding the timing of such a notification, in the Secretary's view the statutory requirements surrounding the method of notification establish a floor, but not a ceiling, on the methods that clerks may be required to employ. The Secretary, in the role of chief election official, retains the power to require clerks take actions above the statutory floor. Additionally, the ability of the voter to take advantage of the cure process laid out in this ruleset is contingent upon quick and effective notification of an issue with the voter's ballot.
8. The Secretary rejects the suggestion that R 168.26(1)(b) provides insufficient detail about the appearance or structure of a cure form for signature match issues. Under MCL 168.31(1)(e), the Secretary has the power to "[p]rescribe and require uniform forms . . . the [S]ecretary considers advisable for use in the conduct of elections and registrations." The Secretary will use that power to create and distribute the cure form envisioned by this rule and need not include any additional detail about that form in this Ruleset.
9. The Secretary rejects the suggestion that R 168.26(3) be clarified to forbid clerks from using the mail system to cure a received absent voter ballot envelope that contains a non-matching signature or that does not bear a signature. There are no reports of this process ever being employed in Michigan, and the Secretary has no reason to believe such a process would be employed under the Ruleset. Such a process would be ineffective and result in delays that may prevent curing prior to 8 p.m. on Election Day. Moreover, such a process would be cumbersome – the clerk would need to package the absent voter ballot envelope to allow a new mailing, print the appropriate labels, and either include a second package for the voter to use to return the absent voter ballot envelope or rely on the voter to find a package to use for to return the newly-cured absent voter ballot envelope. These burdens and the accompanying complexity, combined with the lack of discernable advantage over the other methods of signature curing provided in the Ruleset, make it unlikely that a clerk would engage in multiple-mailing process with which JCAR is concerned.

This letter serves to notify JCAR that the Secretary is withdrawing this Ruleset under MCL 24.245a(10)(a) as permitted by MCL 24.245c(2), effective immediately. The Secretary will submit notice of the change to R 168.22(1) explained above to the Michigan Office of Administrative Hearings and Rules (MOAHR) for review, as required under MCL 24.245c(2). Upon receiving approval from MOAHR as to the form of the changes and a decision from MOAHR as to any burden created by the changes, the Secretary will take the appropriate action under MCL 24.245c(3) or MCL 24.245c(4).

Sincerely,



Adam Fracassi
Regulatory Manager
Michigan Bureau of Elections

cc:

Katherine Wienczewski, Administrative Rules Division Director, Michigan Office of
Administrative Hearings and Rules;
Deidre O'Berry, Michigan Office of Administrative Hearings and Rules;
Tim Reeves, Legal Counsel, Michigan Joint Committee on Administrative Rules;
Rachel Hughart, Legal Counsel, Michigan Joint Committee on Administrative Rules;
Members of the Joint Committee on Administrative Rules

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Exhibit G

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DEPARTMENT OF STATE

BUREAU OF ELECTIONS

SIGNATURE MATCHING FOR ABSENT VOTER BALLOT APPLICATIONS AND
ABSENT VOTER BALLOT ENVELOPES

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by sections 31, 759, 761, 765, and 765a of the Michigan election law, 1954 PA 116, MCL 168.31, 168.759, 168.761, 168.765, and 168.765a)

R 168.21, R 168.22, R 168.23, R 168.24, R 168.25, and R 168.26 are added to the Michigan Administrative Code, as follows:

R 168.21 Definitions.

Rule 1. As used in these rules:

- (a) "Election official" means the township, city, or county clerk or their staff responsible for verifying signatures.
- (b) "Master card" means the master card document referenced in 761(2), 1954 PA 116, MCL 168.761, and 766(2), 1954 PA 116, MCL 168.766.
- (c) "Qualified voter file" means the voter registration database maintained by the Secretary of State.
- (d) "Signature on file" means the signature of the voter contained in the qualified voter file. If the qualified voter file does not contain the voter's digitized signature, the signature of the voter contained on the master card is the signature on file. If an absent voter ballot application signature has been compared against the signature of the voter contained in the qualified voter file or on the master card and the absent voter ballot application signature has been determined to agree sufficiently with the signature of the voter contained in the qualified voter file or on the master card, the absent voter ballot application signature is also a "signature on file" for the purpose of this ruleset. Nothing in this ruleset shall be construed to allow an absent voter ballot application signature to be used to validate an absent voter ballot envelope signature unless the absent voter ballot application signature has been found to agree sufficiently with the signature of the voter contained in the qualified voter file or on the master card.

R 168.22 Sufficient agreement of voter signature; initial presumption of validity; voter contact by clerk.

March 7, 2022

Document received by the MI Court of Claims.

Rule 2. (1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, or for the purposes of 766(2), 1954 PA 116, MCL 168.766, whether a voter's absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter's signature on file, ~~signatures must be reviewed beginning with the presumption that the voter's signature is his or her genuine, valid signature. An election official may~~ **determine that** ~~decline to accept a signature~~ **does not agree sufficiently with the signature on file** only if, after reviewing ~~the an~~ absent voter ballot application signature or absent voter ballot envelope signature using the process set forth in these rules, ~~the election official determines that the signature does not agree sufficiently with the signature on file.~~

(2) A voter's signature should be considered invalid only if it differs in significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter. Exact matches are not required to determine that a signature agrees sufficiently with the signature on file.

(3) If, after examining a voter's absent voter ballot application signature or absent voter ballot envelope signature using the process set forth in these rules, an election official has genuine concerns about the signature's validity, the election official may contact the voter to address those concerns prior to determining that a signature is not valid. Any efforts by the election official to contact a voter under this subsection is not notification for the purposes of R 168.25 that the absent voter ballot application signature or absent voter ballot envelope signature has been found not to agree sufficiently with the signature on file. An election official who is unable to determine that the absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the signature on file after contacting or attempting to contact the voter for clarification under this subsection is still bound by the notification timelines set forth in R 168.25.

R 168.23 Redeeming qualities.

Rule 3. (1) In determining whether an absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with a signature on file, election officials shall consider whether any redeeming qualities are present. The bureau of elections shall provide examples of signatures with redeeming qualities and questionable signatures.

(2) Redeeming qualities include, but are not limited to, the following:

- (a) Similar distinctive flourishes.
- (b) More matching features than nonmatching features.
- (c) Signature features do not match because it appears as if the voter's hand is trembling or shaking.
- (d) Only part of the signature matches the signature on file, for example, if only the first letters of the first and last name match.
- (e) Signature is partially printed but partially matches the signature on file.
- (f) Signature is a recognized diminutive of the voter's full legal name.
- (g) Signature omits a middle name, replaces a middle name with an initial, or replaces a middle initial with a name.
- (h) Signature style has changed slightly from signature on file.

R 168.24 Explanations for differences in signatures.

Rule 4. (1) Elections officials shall consider the following as possible explanations for the discrepancies in signatures:

(a) Evidence of trembling or shaking in a signature could be health-related or the result of aging.

(b) The voter may have used a diminutive of their full legal name, including, but not limited to, the use of initials, or the rearrangement of components of their full legal name, such as a reversal of first and last names, use of a middle name in place of a first name, or omitting a second last name.

(c) The voter's signature style may have changed slightly over time.

(d) The signature may have been written in haste.

(e) The surface of the location where the signature was made may have been rough, soft, uneven, or unstable.

(2) In addition to the characteristics listed in R 168.23(2)(f) and (g), the elections official may also consider factors applicable to a particular voter, such as the age of the voter, the age of the signature or signatures contained in the voter's record, the possibility that the voter is disabled, the voter's primary language, and the quality of any digitized signature or signatures contained in the voter's record, and any other plausible reason given by the voter that satisfies the clerk when following up on a questionable signature.

R 168.25 Timing of signature review and notification.

Rule 5. (1) If the absent voter ballot application or the absent voter ballot envelope is received at least 6 calendar days prior to the election, the clerk must notify the voter of issues with the voter's signature by the end of the next business day following receipt of the application or ballot envelope.

(2) If the absent voter ballot application or the absent voter ballot envelope is received less than 5 calendar days prior to the election, an election official must review that absent voter ballot application or absent voter ballot envelope by the end of the calendar day on which the absent voter ballot application or absent voter ballot envelope was received by the clerk. If the election official determines that the voter's signature on the absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file, the election official must contact the voter by the end of the calendar day on which the absent voter ballot application or absent voter ballot envelope was received by the clerk.

(3) If the absent voter ballot application or the absent voter ballot envelope is received by the clerk by 8 p.m. on the calendar day prior to an election, an election official must review the absent voter ballot application or absent voter ballot envelope before the end of the calendar day prior to the election. If the election official determines that the voter's signature on the absent voter ballot application or absent voter ballot envelope does not agree sufficiently with the signature on file, the election official must contact the voter by the end of the calendar day prior to the election.

(4) For the purposes of this rule, if the absent voter ballot application or absent voter ballot envelope comes into the physical control of the clerk's office before or during the clerk's scheduled business hours, that absent voter ballot application or absent voter

ballot envelope is considered to have been received by the clerk on the day of submission. If an absent voter ballot application or absent voter ballot envelope comes into the physical control of the clerk's office after the end of the clerk's scheduled business hours, or if the absent voter ballot application or absent voter ballot envelope comes into the physical control of the clerk's office on a day on which the clerk does not have scheduled business hours, that absent voter ballot application or absent voter ballot envelope is considered to have been received on the first subsequent day during which the clerk has scheduled business hours.

(5) If a clerk's jurisdiction maintains one or more absent voter ballot application or absent voter ballot envelope drop boxes, each drop box must be checked by an election official for any absent voter ballot applications or absent voter ballot envelopes that have been deposited prior to the end of the clerk's scheduled business hours on every day during which the clerk has scheduled business hours. The election official checking the drop box must retrieve each absent voter ballot application or absent voter ballot envelope contained in the drop box at that time. Each absent voter ballot application or absent voter ballot envelope retrieved at that time is considered to have been received by the clerk on that day. An absent voter ballot application or absent voter ballot envelope deposited in those drop boxes on a day during which the clerk does not have scheduled business hours will not be considered to have been received by the clerk until the next day on which the clerk has scheduled business hours.

(6) An absent voter ballot envelope that is collected by an election official through the procedure laid out in 764b(4) or (5), 1954 PA 116, MCL 168.764b, shall be considered received when the election official comes into physical possession of the ballot envelope.

(7) Nothing in this rule shall prevent an election official from providing notification more quickly than mandated by this rule to a voter that the voter's absent voter ballot application signature or absent voter ballot envelope signature has been determined not to agree sufficiently with the signature on file.

(8) If the absent voter ballot application or the absent voter ballot envelope is missing the voter's signature, or if the clerk determines that the voter's signature on the absent voter ballot application or on the absent voter ballot envelope does not agree sufficiently with the voter's signature on file, the clerk shall inform the voter using any and all contact information available that their absent voter ballot application or their absent voter ballot envelope is missing a signature or has a non-matching signature, and the need to cure the signature deficiency. The clerk must notify the voter by phone and email, and, in the absence of the voter's email address, by United States mail.

R 168.26 Curing signature deficiencies.

Rule 6. (1) Any of the following methods may be used to cure a missing or mismatched signature:

(a) A voter may provide a signature on the absent voter ballot application or ballot envelope with the missing or mismatched signature;

(b) A voter may complete and submit a signature cure form prescribed by the Secretary of State; or

(c) A voter may follow another form or method of curing a missing or mismatched signature as specified by the election official on their website or in the election official's office.

(2) A voter may cure a missing or mismatched signature up until the close of polls on Election Day.

(3) If a request is made by a voter, an election official may facilitate the cure of a missing or mismatched signature by making arrangements to

(a) collect a cure form; or

(b) provide the absent voter ballot application or absent voter ballot envelope missing a signature to the voter so that the voter might sign the absent voter ballot application or absent voter ballot envelope.

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Exhibit H

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Election Officials' Manual, Chapter 6: Michigan's Absent Voter Process

February 2024

INSTRUCTIONS PROVIDED BY THE MICHIGAN BUREAU OF ELECTIONS
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I. Introduction

Michigan's state constitution and the Michigan Election Law allow any voter to request and vote an absent voter ballot. This chapter covers the absent voter (AV) ballot process, including applications, deadlines, procedures for issuing absent voter ballots, emergency absent voter ballots, and receipt of absent voter ballots. Questions about the content of this chapter should be directed to Elections@Michigan.gov.

II. Eligibility

Every person registered to vote in Michigan is entitled to request, receive, and vote an absent voter ballot for an upcoming election. A request from a voter is not required for the Secretary of State or any county or municipal clerks to provide an absent voter application to a voter in person, electronically, or by mail with prepaid return postage.

III. Absent voter ballot application process

A voter must request their absent voter ballot in writing from their city or township clerk. An emailed request for an absent voter ballot is considered to be a written request, so long as the mandatory elements explained below are present. A clerk cannot issue an absent voter ballot in response to an oral request made over the phone or in person. However, upon receiving an oral request, a clerk may issue the voter making that request an absent voter ballot application.

A written request for an absent voter ballot is sufficient and must be honored by the clerk so long as the request includes the voter's name and a visible signature. This application may be submitted in-person or via mail, fax, email, or online at Michigan.gov/Vote. A physical written application may be scanned or otherwise digitized and emailed to the voter's local clerk, so long as the voter's signature is visible. The city or township clerk is required to issue an absent voter ballot application to any registered voter who requests one at any time during which an absent voter ballot application may be accepted.



To ease the absent voter ballot application process for voters and clerks wishing to use a paper application, the Bureau of Elections provides a fillable absent voter ballot application form, available online.¹ Local clerks are also permitted to design their own absent voter ballot application form, so long as the form requests the voter's name and signature and follows all other requirements laid out in this chapter.

Absent voter ballot must be sent immediately

City and township clerks must immediately process absent voter applications. As noted below, to facilitate immediate delivery the clerk should send the ballot immediately after reviewing the AV ballot application, which must be done by the end of the next business day following receipt of the application in most cases. If the signature on the application agrees sufficiently with the signature on file, and it is within the 40-day period before the election listed in the application, the clerk must immediately send or deliver the ballot to the applicant. If it is sent by mail, the ballot must be sent with a postage prepaid absent voter ballot return envelope. For information on using the state-funded prepaid postage permit, see the Prepaid Postage Guide and FAQ.²

Voters may submit an absent voter ballot application prior to the time at which absent voter ballots are delivered to the clerk. If a voter has submitted an absent voter ballot application to the clerk and the clerk has verified the signature on that absent voter application the clerk must send the voter an absent voter ballot immediately upon delivery of absent voter ballots to the clerk.

Opportunity to cure a deficiency and notice

If the application is found to be deficient, the voter must be notified of the insufficiency and the voter's options to cure that deficiency.

Between 45 and 6 days before an election, the clerk must make a reasonable effort to verify or reject the AV ballot application received during this time by the end of the **next business day** following receipt. If the clerk determines that the voter's signature on the application is deficient, the clerk

¹ Available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Election-Forms/Absent-Voter-Ballot-Application-Fillable.pdf?rev=c35e859a2abe40dfbca3c95027c8072a&hash=4430F4C6B6C603D59A7E196EB7E5B05A>.

² Available on eLearning at <https://mielections.csod.com/ui/lms-learning-details/app/material/f48cc379-22c8-44d1-b6b6-c169aaf51f00>.

must notify the voter by telephone, email, or text message, if available, or by U.S. mail if the other methods are unavailable.

Beginning five days before an election and on Election Day, the clerk must verify or reject the AV ballot application received during this time by the end of the **calendar day** of receipt. If the clerk determines that the elector's signature on the application is missing or does not agree sufficiently with the signature on file, the clerk must notify the elector by phone, email, or text message, if available, or by U.S. mail if the other methods are unavailable.

After 4 p.m. on the Friday before the election, if the clerk determines that the voter's signature on an AV ballot application is missing or does not agree sufficiently with the signature on file after this time, the clerk must **immediately** notify that voter of the rejection of their application.

Online absent voter ballot application

Voters who have a Michigan state driver's license or state ID can also request an absent voter ballot online at Michigan.gov/Vote. Applications submitted through Michigan.gov/Vote are signed using the signature that the voter submitted when applying for their driver's license or state identification card.³ A digital signature is an acceptable signature for the absent voter ballot application.

Requirements for in-person absent voter ballot applications

If a voter applies to receive an absent voter ballot in person at their city or township clerk's office, the voter is required to present a picture ID or sign the *Affidavit of Voter not in Possession of Picture Identification* form. Both the acceptable picture IDs and the *Affidavit* are the same as those required for in-person voter registration and in-person voting on election day. For more information, see *Chapter 2: Voter Registration in Michigan*. A copy of the *Affidavit of Voter not in Possession of Picture Identification* is also included in Appendix I.

A voter who does not have an acceptable picture ID and who signs the *Affidavit of Voter not in Possession of Picture Identification* **must** be issued a ballot.

³ Later in 2024, registered voters without a Michigan Driver's License or state ID will be able to apply for an AV ballot online by taking a picture of their signature and uploading it with their online application.



A voter who applies for an absent voter ballot in person at their local clerk's office before 5 p.m. on the Friday prior to the election may choose to either receive the absent ballot at the clerk's office at the time the application is submitted or to have the clerk mail the absent voter ballot to the voter's address. A voter who applies for an absent voter ballot in person at their local clerk's office after 5 p.m. on the Friday prior to the election must receive the ballot at the clerk's office after submitting the application; the voter cannot opt for the ballot to be mailed to the voter's address. If a voter applying for an absent voter ballot does not have a valid picture ID and signs the *Affidavit of Voter not in Possession of Picture Identification*, and if the voter receives their absent voter ballot at the clerk's office, the voter's absent voter ballot must be processed as a challenged ballot. For more information on how to process a challenged ballot, see the section *Preparing a Challenged Absent Voter Ballot* below.

Voters who submit an absent voter ballot application through the mail, fax, or email, who submit the application through a municipal drop box, or who submit their application using any method that does not include an in-person interaction with their local clerk or the clerk's staff, are not required to show a picture ID to be issued their absent voter ballot.

Multiple-Election (or "Dual") absent voter ballot applications

Voters submitting an absent voter ballot application to receive an absent voter ballot for a primary election or presidential primary may opt for that application to also serve as the voter's application to receive an absent voter ballot for multiple elections – specifically, all elections following that primary or presidential primary in the calendar year. While the application has been referred to as a "dual" application in the past, when it typically applied to a primary and its corresponding general election, the application now functions as a multiple-election application. For example, a voter can submit a single absent voter ballot application for both the August primary election and the November general election. A voter could also submit a single absent voter ballot application for a presidential primary election and every election that follows it, which may include a May regular election, August primary election, and November general election. The multiple-election or "dual" application could also include any special elections that follow the primary or presidential primary.

A voter may also choose to submit their absent voter ballot application for only the primary election. A voter may request their absent voter ballot



application not be treated as a multiple-election or dual application for any reason, including because the voter wishes to vote in person in certain elections. The number of voters who submit these types of applications will likely decline in future years as more voters join the permanent ballot list, described further below.

Any absent voter ballot application form developed by a local clerk must allow voters to select from the options described.

Accessible absent voter ballot applications

Voters with print disabilities can apply for an accessible electronic absent voter ballot through the Democracy Live OmniBallot program, which is available at Michigan.Gov/Vote.

Print disabilities are disabilities that interfere with the effective reading, writing, or use of printed material. This definition includes persons who are blind or visually impaired, those with learning disabilities, as well as those with a physical disability that interferes with holding or manipulating paper or a pen and pencil.

Accessible applications must include the voter's Michigan driver's license number, state ID number, or the last four digits of the voter's Social Security Number along with other voter registration information. Accessible applications do not need to be signed. When voters complete the application for an accessible ballot, the Bureau of Elections verifies the information provided matches the voter's QVF information and the application is added to the voter's QVF record. The Bureau of Elections then generates the voter's ballot in the OmniBallot platform. Finally, the Bureau emails the clerk two links: one for the clerk to verify the OmniBallot ballot is accurate, and one for the voter to access the ballot. The Bureau also provides instructions on how to use the OmniBallot system in this email.

When a clerk receives the email, the clerk should first open the designated clerk link and verify that the ballot is accurate. Next, the clerk should email the designated voter link and instructions on how to use the OmniBallot system to the voter. The instructions supplied in the email from the Bureau to the clerk should appear in the body of the email sent to the voter. Finally, the clerk marks in QVF that the voter has been sent an accessible ballot and records the letter "A" followed by the ballot number (for example A0001). The voter completes the ballot on the OmniBallot platform, prints it, and returns the completed ballot to the clerk in a signed envelope.



Absent ballot applications received from military and overseas voters

If a voter applies for an absent voter ballot using a Federal Postcard Application (FPCA) or submits a Federal Write-in Absentee Ballot (FWAB), the voter should be processed as a MOVE voter. If a voter applies for an absent voter ballot using a regular application and lists a foreign address as the mailing address or temporary address, the voter should also be processed as a MOVE voter. If the voter provides an address in the United States that appears to be a military address, the clerk should contact the voter to determine if the voter is a MOVE voter. For instructions on receiving absent voter ballot applications and issuing absent voter ballots to military and overseas voters, see *Chapter 7: Federal Registration and Absent Voter Programs*.

IV. Maintaining a permanent ballot list

When applying for an absent voter ballot, a voter may also request to receive an absent voter ballot by mail for all future elections. Once this application is verified, the voter becomes a permanent mail ballot voter and must be sent an absent voter ballot for every election. The local clerk must retain these applications. In the future, these applications or a report verifying that a voter on the permanent ballot list has moved will be able to be added to the voter's record in QVF to more easily document a voter's move to different jurisdictions.

The Secretary of State or appropriate clerk can remove a voter from the permanent ballot list only in the following circumstances:

- The voter submits a signed request to remove their name from the permanent ballot list.
- The voter is no longer qualified to vote in Michigan.
- The Secretary of State or appropriate clerk receives reliable information that the voter has moved residences to another state, or has moved to another residence within the state without updating the voter's registration address.
- The voter does not vote for 6 consecutive years. If an application is rescinded for this reason, the clerk must send a notice to the voter that the application has been rescinded.



Presidential primary ballot selection form

For presidential primary elections, the two major political parties have separate ballots with their party's prospective candidates, and each voter may select only one party's ballot to vote. To indicate which partisan primary they intend to vote in, a permanent mail ballot voter must submit a presidential primary ballot selection form to their clerk online, by mail, or in person.

Clerks will send presidential primary ballot selection forms with prepaid return postage to all permanent mail ballot voters who have not made a ballot selection no later than 60 days before the presidential primary. If a voter becomes a permanent mail ballot voter after this deadline, the clerk must immediately send a ballot selection form with prepaid return postage.

Clerks must send ballot selection forms to the same addresses that voters requested for mailing absent voter ballots.

Clerks must notify permanent mail ballot voters who have not made of ballot selection by the 40th day before the presidential primary of the requirement to make a selection in order to receive a presidential primary ballot. The notification must be by phone, email, and text message if available. If the voter's phone number and email address are unavailable, clerks must send notice by mail, and may additionally notify the voter by other available methods.

If the presidential primary has offices or proposals on the ballot other than President of the United States, a separate ballot with only those other offices or proposals will be mailed to the voter, along with a notice indicating that the voter did not make a presidential primary ballot selection and the process by which the voter can still participate in the presidential primary election, including early voting or voting in-person on Election Day.

The Bureau of Elections will provide future instructions regarding the discontinuation of the permanent absent voter ballot *application* list; until that time, clerks should continue to issue absent voter ballot applications for all elections to those on the list.



V. Deadlines for requesting an absent voter ballot

There are several deadlines affecting the submission of absent voter ballot applications. The municipal clerk, or authorized personnel appointed by the clerk, must be available in the election official's office or at another publicly published or posted location to accept and process absent voter ballot applications at the deadlines laid out in this section.

Deadline to request an absent voter ballot be mailed to a voter

If a voter wishes to have their absent voter ballot mailed to their address, the absent voter ballot application must be received by the clerk no later than 5 p.m. on the Friday prior to the election.

While a voter has the legal right to request that their absent voter ballot be mailed to their address so long as the clerk receives the voter's absent voter ballot application by 5 p.m. on the Friday prior to the election, the Bureau recommends that clerks encourage voters submitting near the deadline to request their absent voter ballot be issued in person at the clerk's office to avoid mail delays or other issues.

If a voter's absent voter ballot application is received by the clerk after 5 p.m. on the Friday prior to the election and indicates that the voter wishes the absent voter ballot to be mailed to the voter's address, the clerk should alert the voter that their absent ballot request cannot be fulfilled. The clerk should inform the voter that the voter may appear in person at the clerk's office to request their absent voter ballot or may vote in person at their early voting site, if early voting is available for that election or at their polling place on Election Day. An absent voter ballot application rejected as untimely for one election must still be processed for any future elections listed on the application.

Deadline to request an absent voter ballot be issued to the voter at the clerk's office

Absent voter ballots can be issued to a registered voter at the clerk's office at any time until 4 p.m. on the day prior to the election. A voter may then complete and submit the absent voter ballot at the clerk's office, return the absent voter ballot to the clerk or an absent voter ballot dropbox until 8

p.m. on Election Day, or tabulate the absent voter ballot at the voter's polling place on Election Day.

Every voter waiting in line at their clerk's office to request an absent voter ballot at 4 p.m. on the day prior to the election must be issued an absent voter ballot and allowed to complete the ballot in the clerk's office.

Same day voter registration

A voter who registers to vote or who updates their registration on Election Day by appearing in person at their clerk's office is also eligible to request and receive an absent voter ballot until 8 p.m. on Election Day. If the voter requests an absent voter ballot in person at the clerk's office on Election Day after registering to vote or updating their voter registration, the voter must complete the absent voter ballot in the clerk's office and must return the completed ballot to the clerk prior to leaving the clerk's office.

Every person waiting in line to register to vote or to update their voter registration at 8 p.m. on Election Day, and who is able to meet the requirements to register to vote, must be given the opportunity to request an absent voter ballot and allowed to complete the ballot in the clerk's office, including after 11:59 p.m. on Election Day if necessary.

Election Day vote centers

Cities or townships that processed at least 500 Election Day voter registrations in either or both of the previous two November general elections are also able to establish an Election Day vote center to tabulate ballots for voters who register or update their registration on Election Day.

Election Day vote centers function as polling places and must be located in the same building where the city or township clerk provides Election Day registration, which may include the clerk's satellite office.

For municipalities with an Election Day vote center, every person waiting in line to register or update voter registration at 8 p.m. on Election Day, and who is able to meet the requirements to register to vote, must be allowed to complete that transaction and to cast a ballot at the Election Day vote center, including after 11:59 p.m. on Election Day if necessary.

Deadline to submit an emergency ballot request

A voter may make an emergency request for an absent voter ballot if the voter cannot vote in person on Election Day because the person has become

physically disabled or because of a family death or illness, the timing of which made it impossible for the voter to apply for an absent voter ballot by the statutory deadline.

A voter facing an emergency prior to 5 p.m. on the Friday before Election Day may submit a normal absent voter ballot application. An emergency absent voter ballot request must be made after 5 p.m. on the Friday before the election and before 4 p.m. on Election Day.

To submit an emergency absent voter ballot, the voter must complete a written request that includes the following elements:

- The voter's name and address.
- A statement that the voter is qualified to vote in the election.
- A statement indicating whether the emergency is caused by a physical disability or by a family death or illness requiring the voter to be absent from the jurisdiction on Election Day.
- A statement that the emergency occurred at a time that made it impossible for the voter to submit an absent voter ballot application by the statutory deadline.

Clerks may, but are not required to, provide an Emergency Absent Voter Application form that a voter may use in lieu of creating the written statement described above.

The voter requesting the emergency absent voter ballot may authorize another person to receive the voter's absent voter ballot, and to deliver that absent voter ballot to the voter. The authorization to receive an emergency absent voter's ballot and to deliver that ballot to the voter must be in writing and must be signed by the applicant. An emergency absent voter ballot may also be delivered by hand to the applicant by a person authorized by the clerk to handle this task.

VI. Required office hours on the weekend before the election

The clerk or a deputy clerk of each city or township must be available at the clerk's office to issue and receive absent voter ballots applications and absent voter ballots for any combination of at least 8 hours on the Saturday or Sunday immediately before Election Day. The clerk is required to publicly

post the hours at which the clerk will be available to issue and receive absent voter ballots applications and absent voter ballots. The clerk must also enter these hours into *QVF Clerk Contacts* at least 30 days prior to Election Day.

VII. Restrictions on possession of signed absent voter ballot applications

Only the following persons may lawfully possess a signed absent voter ballot applications:

- The voter requesting an absent voter ballot.
- A member of the applicant’s immediate family.
- A person residing in the applicant’s household.
- A person handling of mail during the course of their employment.
- A person registered to vote in Michigan who was asked to submit the absent voter ballot application by the applicant.
- An authorized election official.

A person registered to vote in Michigan who returns an absent voter ballot application at the request of the applicant must sign the *Certificate of Authorized Registered Elector Returning Absent Voter Ballot Application*. If the application the person is returning is made on the absent voter ballot application form provided by the Bureau of Elections, the Certificate appears on the back of that form. Otherwise, the person should submit a completed, signed, and dated version of the following text:

I certify that my name is , and my address is; that I am delivering the absent voter ballot application of at the applicant’s request; that I did not solicit or request to return the application; that I have not made any markings on the application; that I have not altered the application in any way; that I have not influenced the applicant; and that I am aware that a false statement in this certificate is a violation of Michigan election law.



VIII. Absent voter ballot application signature verification requirement

When a clerk receives a completed absent voter ballot application, the clerk must check that the signature appearing on the application matches the signature on the applicant's voter registration record to verify the applicant's identity. If the application contains a digital image of the voter's signature, which may occur because the voter has faxed or scanned and emailed an application or because the voter has applied online using the voter's driver's license signature, the clerk should compare the digital signature image to the voter's signature on file. A signature is invalid only if it differs in significant and obvious respects from the voter's signature on file. Slight dissimilarities must be resolved in favor of the voter, and an exact signature match is not necessary to determine that a signature agrees sufficiently with the signature on file.

If the clerk determines that a signature on an application does not match the individual's voter registration record, or if the application is not signed, the clerk should notify the voter of the issue and of the voter's options to cure the issue as described in the "Opportunity to cure a deficiency and notice" section of this chapter. For further guidance on reviewing signatures, contacting voters, and curing missing or mismatched signatures, refer to Signature and Cure Guidance⁴ in the eLearning Center.

An absent voter application with Power of Attorney (POA) signature in lieu of the voter's signature cannot be accepted. Michigan election law allows a voter unable to sign due to physical disability to make a "mark" or to use a signature stamp.

IX. Issuance of absent voter ballots

An absent voter ballot application must be processed immediately upon receipt of the application by the clerk. Absent voter ballot applications that were not submitted in person at the clerk's office should be processed in the order they are received. An absent voter ballot should be immediately issued to a voter who submits their absent voter ballot application in person at the clerk's office.

⁴ Available in the eLearning Center at <https://mielections.csod.com/ui/lms-learning-details/app/material/ae9edc3b-8bfd-4494-a5c1-eb7022679d7a>.

A voter can request that an absent voter ballot be mailed to the voter's registration address or to a different address as provided on the absent voter ballot application. Additionally, an absent voter ballot may be mailed or delivered to a post office box if the post office box is where the voter normally receives mail and the voter does not receive mail at their registration address.

Absent voter ballots cannot be sent by forwardable mail. Absent voter ballot envelopes should be printed with the postal instruction "Return Service Requested."

Campaign brochures or any material other than the absent voter ballot and instructions explaining how to complete and return the absent voter ballot may not be mailed with absent voter ballots. Additionally, the name of an elected or appointed official cannot appear on any ballot-related materials. Ballot-related material is defined as anything distributed with an absent voter ballot, including the instructions, the secrecy sleeve, the envelope in which the absent voter ballot is mailed, and the absent voter ballot return envelope.

An absent voter ballot must be mailed to the voter if there is an adequate amount of time for the voter to receive the ballot by mail, vote the ballot, and return the ballot to the clerk prior to 8 p.m. on Election Day. To avoid any appearance of impropriety, absent voter ballots should not be delivered by hand when the voter has requested the ballot be mailed unless the hand delivery of the ballot is necessary to ensure the timely return of the ballot.

X. Anatomy of an absent voter ballot

Each absent voter ballot mailing includes the following elements placed inside the outer mailing envelope. The clerk should check that each of the elements is present in every envelope before the envelope is mailed to the voter. Examples of each element may be found in *Appendix I*:

- Ballot instructions appropriate for election being held.
- Instructions for Absent Voters (usually printed on the secrecy sleeve).
- Secrecy Sleeve (if required to cover ballot markings).
- Correct Ballot (be mindful of ballot splits within a precinct caused by different geography such as school districts, villages, county commission districts, etc.).

- Ballot Return Envelope addressed to the local clerk’s office, including the voter signature certification.

XI. Absent voters who receive assistance

If an absent voter receives assistance from another person when marking their absent voter ballot, the individual who provided assistance must sign the certificate printed on the outside of the ballot return envelope. The certificate must be signed by any person who assists an absent voter in marking their ballot, including the voter’s spouse, a member of the voter’s household, an election official, or an individual employed as an election assistant.

XII. Return of absent voter ballots

Absent voter ballots must be returned to the clerk by 8 p.m. on Election Day. The clerk must make arrangements with the post office to pick up any absent voter ballots which are received by the post office after the post office on Election Day has made its final mail delivery of the day to the clerk’s office. The clerk and the post office should also coordinate to ensure that the post office conducts a final check of its premises for any absent ballots delivered to the post office prior to 8 p.m., to ensure those ballots are delivered to the clerk by the deadline.

The 8 p.m. deadline applies to absent voter ballots returned to a clerk’s office, a satellite clerk’s office, or a ballot drop box. Voters in line to register to vote at 8 p.m. on Election Day must be allowed receive, complete, and return an absent voter ballot after registering to vote, including after 11:59pm if necessary.

Individuals allowed to return an absent voter ballot

Only certain persons are legally allowed to return a completed absent voter ballot. Persons who may return a completed absent voter ballot are limited to:

- The voter.
- A member of the voter’s immediate family.

- A person residing in the voter’s household who the voter has been asked to return the voter’s completed absent voter ballot.
- A person handling of mail during the course of their employment.
- An authorized election official.

Tabulation of an absent voter ballot at an early voting site or Election Day polling place

A voter may also bring their own completed absent voter ballot to their early voting site or Election Day polling place to place into a tabulator to be counted. The absent voter ballot should be concealed inside its secrecy sleeve and the voter should indicate to the election inspectors that they would like to tabulate their ballot. For more information about processing these voters, refer to *Chapter 11: Election Day* and a forthcoming chapter on early voting.

XIII. Retrieval of absent voter ballot by election official

A clerk is required to retrieve a voter’s completed absent voter ballot from the voter if all of the following conditions are satisfied:

- The clerk issued the absent voter ballot to the voter.
- The voter is unable to return the ballot using any permitted return options.
- The voter contacts the clerk to request retrieval of the voter’s completed absent voter ballot before 5 p.m. on the Friday immediately prior to Election Day.
- The clerk does not need to travel outside of their jurisdiction to retrieve the ballot.

A clerk is permitted, but not required, to retrieve a completed absent voter ballot from a voter if the voter contacts the clerk to request retrieval after 5 p.m. on the Friday prior to Election Day or if the absent voter ballot is located outside of the clerk’s jurisdiction.

Clerks or election assistants authorized to pick up absent voter ballots must carry appropriate credentials and show those credentials to the voter at the voter's request. An election official should not retrieve voter's completed absent voter ballot without a request for retrieval from the voter.

XIV. Ballot drop boxes

Absent voter ballot drop boxes allow voters, or anyone authorized to be in possession of a voter's completed absent voter ballot or absent voter ballot application, to quickly and easily deliver completed absent voter ballots to the clerk. Proposal 2022-2 guarantees the right of all voters to a state-funded absent voter drop box. Each municipality must have at least one absent voter drop box, and for municipalities with more than 15,000 voters, one absent voter drop box for each 15,000 registered voters. Voters may use drop boxes to return absent voter ballot applications and marked absent voter ballots. For Bureau of Election guidance on locations, security, staffing and ballot retrieval, signage, and other considerations, see [Ballot Drop Box Guidance](#) in the eLearning Center. Absent voter ballot drop boxes must be distributed equitably throughout the municipality. In determining AV drop box locations, municipal clerks must, at minimum consider all of the following:

- Population density and distribution.
- Proximity to public transportation and parking.
- Accessibility, including for electors with disabilities.
- Any other factors the clerk considers relevant.

The Michigan Election Law requires that absent voter ballot drop boxes conform to the following requirements:

All AV drop boxes must be:

- Clearly labeled as an Absent Voter Ballot Drop Box that can be used to return completed absent voter applications and voted absent voter ballots.
- Securely locked, affixed to the ground or another stationary object and designed to prevent removal of applications and ballots when locked.
- Secured to prevent the AV drop box from being removed from its location.

- Accessible 24 hours each day during the 40 days before Election Day, and be accessible until 8 pm on election day.
- Equipped with a single slot or mailbox-style lever to allow absent voter ballot applications and absent voter ballot return envelopes to be placed in the AV drop box, and all other openings on the AV drop box must be securely locked.
- Regularly inspected to confirm that the AV drop box complies with all requirements, beginning 75 days before each election and until election day.
- Located in a publicly accessible, well-lit area with good visibility.
- Video monitored by the municipal clerk to ensure effective monitoring of that AV drop box, beginning 75 days before each election and until Election Day.
 - Only for AV drop boxes that were not ordered or installed before October 1, 2020.
 - Beginning January 1, 2026, all AV drop boxes must be video monitored, regardless of when it was ordered or installed.
- Subject to immediate reporting to local law enforcement if vandalism or suspicious activity occurs in the immediate vicinity of the AV drop box.

Only a clerk, deputy clerk, or sworn member of the clerk's staff can collect absent ballots from the drop box. Ballots that have been deposited into ballot drop boxes by 8 p.m. on Election Day must be collected and counted.

75 days before each election and until election day, an authorized individual must regularly inspect each absent voter ballot drop box used in that city or township to confirm that the absent voter ballot drop box complies with all above requirements.

Beginning 35 days before each election and until election day, an authorized individual must collect, on any day in which the city or township clerk's office is open for business, the election materials deposited in an absent voter ballot drop box located in the city or township. Those materials must be immediately returned to the city or township clerk's office.

All absent voter ballot return envelopes collected from an absent voter ballot drop box must be transported in an approved ballot container.



Collection from any drop box located off grounds of the city or township clerk's office or satellite office must be documented utilizing the collection form available in the eLearning Center.

XV. Military and Overseas Voters and accessible absent voter ballot envelopes

The completed ballots of military and overseas voters, as well as the completed ballots of voters using accessible ballots, will not arrive in a standard ballot return envelope. These voters receive their ballots electronically and do not receive an absent voter ballot return envelope, so they cannot return their ballot in such an envelope. Federal Write-In Absentee Ballots (FWAB), MOVE ballots that have been printed and returned, and accessible ballots that have been printed and returned will likely arrive in plain envelopes. Clerks should check their incoming mail for plain envelopes that look like they may contain the completed ballots of military and overseas voters, as well as the completed ballots of voters using accessible ballots. Some indicators that a plain envelope may contain such a ballot include envelopes that have "Official Ballot Material" written on them and envelopes with a signature on the back of the envelope.

If an envelope containing the completed ballots of a military and overseas voter, or the completed ballot of a voter who used an accessible ballot, is accidentally opened before Election Day, the envelope should be immediately resealed and placed with other returned absent voter ballots for processing on Election Day.

XVI. Ballot verification requirement

A voter must sign the certificate on the absent voter ballot envelope prior to returning the envelope containing the ballot to the clerk. By signing the certificate, the voter verifies the voter's eligibility to vote, the secrecy of the voter's ballot, and the lawful return of the voter's ballot.

An absent voter application with Power of Attorney (POA) signature in lieu of the voter's signature cannot be accepted. The Michigan Election Law allows a voter unable to sign due to physical impairment to make a "mark" or to use a signature stamp.

Upon receiving a returned absent voter ballot envelope, the clerk must verify the voter's identity by checking that the voter's signature on the certificate matches the voter's signature saved in the QVF. Just as with absent voter ballot applications, a signature is invalid only if it differs in significant and obvious respects from the voter's signature on file. Slight dissimilarities must be resolved in favor of the voter, and an exact signature match is not necessary to determine that a signature agrees sufficiently with the signature on file. Because signatures on absent voter ballot applications have already been checked against the QVF and found to match prior to the absent voter ballot being issued, a clerk may check the signature on the absent voter ballot envelope against the voter's signature on their absent voter ballot application in lieu of checking the signature against the voter's signature stored in the QVF.

If the voter fails to sign the certificate or if the signature on the certificate does not match the signature on the voter's registration record, the ballot cannot be removed from the envelope, transported to an absent voter counting board, or counted unless the signature mismatch is cured. The ballot should be marked rejected in the QVF. **The clerk should immediately contact the voter and instruct the voter to visit the clerk's office to sign their absent voter ballot envelope or cure the mismatched signature on the absent voter ballot envelope.** If the voter is unable to sign their absent voter ballot envelope or otherwise cure their signature, the original ballot may be spoiled and the voter may be reissued a replacement ballot. The voter must make a request for a new ballot in writing.

For further guidance on reviewing signatures, contacting voters, and curing missing or mismatched signatures, refer to Signature and Cure Guidance⁵ in the eLearning Center.

XVII. Spoiling an absent voter ballot

Voters have a right to spoil an absent voter ballot that has been received but not tabulated by the clerk for any reason. After the ballot has been spoiled, the voter must be issued a new absent voter ballot. The voter's request to spoil their ballot must be made in writing and must be signed by the voter.

⁵ Available in the eLearning Center at <https://mielections.csod.com/ui/lms-learning-details/app/material/ae9edc3b-8bfd-4494-a5c1-eb7022679d7a>.

There are three ballot-spoiling scenarios, and each has different timing requirements. Those scenarios are explained below:

Voter did not receive their absent voter ballot

A voter who requested but never received their absent voter ballot may request that the ballot sent to them by the clerk be spoiled and a new ballot be issued. If the request is made before 5 p.m. on the second Friday prior to the election, the voter may request the clerk mail the newly issued absent voter ballot to the voter, or the voter may opt to complete the ballot in person at the clerk's office. If the request is made after 5 p.m. on the Friday before the election, but before 4 p.m. on the day before the election, the voter may only be issued a new ballot by appearing in person at the clerk's office. If the request is made on or before the Sunday prior to the election, the voter may leave the clerk's office with their newly issued absent voter ballot. If the request is made on the day prior to the election, the voter must complete and return the newly issued absent voter ballot in the clerk's office; the voter cannot leave the office with the ballot.

A voter who requested but not receive their absent voter ballot may opt to vote in person at their polling place on Election Day instead of requesting a new absent voter ballot. The voter will be asked to complete an *Affidavit of Lost or Destroyed Absent Voter Ballot* at their precinct when they appear to vote, and then will be permitted to cast a normal ballot. A voter who signs the *Affidavit of Lost or Destroyed Absent Voter Ballot* may be subject to challenge by a properly credentialed election challenger as an absent voter in the polls.

Voter received but did not return their absent voter ballot

A voter who requested and received, but did not return, their absent voter ballot may request that the ballot sent to them by the clerk be spoiled and a new ballot be issued. If the request is made before 5 p.m. on the Friday prior to the election, the voter may request the clerk mail the newly issued absent voter ballot to the voter, or the voter may opt to complete the ballot in person at the clerk's office. If the request is made after 5 p.m. on the Friday before the election, but before 4 p.m. on the day before the election, the voter may only be issued a new ballot by appearing in person at the clerk's office. If the request is made on or before the Sunday prior to the election, the voter may leave the clerk's office with their newly issued absent voter ballot. If the request is made on the day prior to the election, the voter

must complete and return the newly issued absent voter ballot in the clerk's office; the voter cannot leave the office with the ballot.

A voter who requested and received, but did not return, their absent voter ballot may opt to vote in person at their polling place on Election Day instead of requesting a new absent voter ballot. The voter will be asked to complete an *Affidavit of Lost or Destroyed Absent Voter Ballot* at their precinct when they appear to vote, and then will be permitted to cast a normal ballot. Alternatively, the voter may surrender their absent voter ballot to the election inspectors at the precinct, and then will be permitted to cast a normal ballot.

A voter who surrenders their absent voter ballot to election inspectors in the polling place is not subject to a challenge as an absent voter in the polls. A voter who signs the *Affidavit of Lost or Destroyed Absent Voter Ballot* may be subject to challenge by a properly credentialed election challenger as an absent voter in the polls.

Voter received and returned their absent voter ballot

Voter's signature verified by clerk

A voter who requested, received, and returned their absent voter ballot, and whose ballot was accepted by the clerk after the voter's signature was found to match the signature on file with the clerk, may request that their returned absent voter ballot be spoiled by the clerk and that the clerk issue them a new absent voter ballot. If the request is made before 5 p.m. on the second Friday prior to the election, the voter may request the clerk mail the newly issued absent voter ballot to the voter, or the voter may opt to complete the ballot in person at the clerk's office. A voter cannot request that a returned and accepted absent voter ballot be spoiled after 5 p.m. on the second Friday prior to Election Day. Additionally, once tabulated, verified ballots cannot be spoiled for any reason.

A voter who requested, received, and returned their absent voter ballot, and whose ballot was accepted by the clerk after the voter's signature was found to match the signature on file with the clerk, cannot request that their ballot be spoiled on Election Day. Such a voter is not eligible to cast a ballot at their precinct on Election Day.

Voter's signature not verified by clerk

A voter who requested, received, and returned their absent voter ballot, but whose ballot was not accepted by the clerk after the voter's signature was found not to match the signature on file with the clerk, is treated in the same manner as a voter who requested but never received their absent voter ballot for the purposes of ballot spoilation. Such a voter may request that their ballot be spoiled. If the request is made before 5 p.m. on the Friday prior to the election, the voter may request the clerk mail the newly issued absent voter ballot to the voter, or the voter may opt to complete the ballot in person at the clerk's office. If the request is made after 5 p.m. on the Friday before the election, but before 4 p.m. on the day before the election, the voter may only be issued a new ballot by appearing in person at the clerk's office. If the request is made on or before the Sunday prior to the election, the voter may leave the clerk's office with their newly issued absent voter ballot. If the request is made on the day prior to the election, the voter must complete and return the newly issued absent voter ballot in the clerk's office; the voter cannot leave the office with the ballot.

A voter whose returned ballot was not accepted by the clerk after the voter's signature was found not to match the signature on file with the clerk may opt to vote in person at their polling place on Election Day instead of requesting a new absent voter ballot. The voter will be asked to complete an *Affidavit of Lost or Destroyed Absent Voter Ballot* at their precinct when they appear to vote, and then will be permitted to cast a normal ballot.

In addition to spoilation, a voter whose returned ballot was not accepted by the clerk after the voter's signature was found not to match the signature on file with the clerk may appear in person at the clerk's office to cure the signature issue by verifying that the signature on the absent voter ballot envelope is the voter's signature. Voters may cure a missing or mismatched signature on a returned ballot envelope until 5 pm on Friday after Election Day. The voter should contact their clerk for more information about the signature cure process.

Surrendered ballots

A voter who has received an absent voter ballot but who wishes to vote a new ballot in person at their polling place on Election Day may surrender their absent voter ballot to their clerk prior to Election Day or may surrender their absent voter ballot to election inspectors at their polling place on Election Day. To surrender an absent voter ballot, the voter should write "I am surrendering my ballot" on the absent voter ballot envelope and sign the

envelope. A clerk receiving a surrendered ballot prior to Election Day should mark the ballot as surrendered in the QVF. A voter who has surrendered their absent voter ballot cannot be issued a new absent voter ballot; the voter's only opportunity to vote after surrendering their absent voter ballot is to appear at their polling place on Election Day.

XVIII. Deceased or incarcerated absent voters

If a clerk receives notice that a voter has died within the 40 days before an election, they must check whether that voter was issued an absent voter ballot. If the deceased notice comes after the voter has completed and returned their absent voter ballot, but prior to that ballot's tabulation, the local clerk should reject and should not tabulate the absent voter ballot.

Additionally, if a clerk is certain that a voter is currently serving a sentence in jail or prison, and is thus ineligible to vote, the voter's ballot should be rejected. In either case, the clerk should write "rejected as illegal" on the absent voter ballot return envelope and record the rejection and the reason for the rejection in the QVF.

A person who is incarcerated in a jail awaiting trial or sentencing is permitted to vote in Michigan. A clerk should not reject a person's ballot solely because the person is currently incarcerated. Instead, the clerk must verify that the person has been found guilty and has been sentenced to a term of incarceration before the clerk rejects the person's ballot.

XIX. Posting absent voter information

For any election involving a state or federal office, clerks are required to make the following public postings:

- Before 8:00 a.m. on Election Day, the clerk must publicly post the number of absent voter ballots distributed to absent voters, the number of absent voter ballots returned prior to Election Day, and the number of absent voters delivered to absent voter counting boards for tabulation on Election Day.
- Immediately upon completion of all precinct returns, the clerk must publicly post the total number of absent voter ballots tabulated for the election.

The Bureau has developed a form that clerks may use to report this information; that form is included in *Appendix I*.

XX. Required recording of AV Ballot information in the QVF

Clerks are required to immediately record the sending and receipt of absent voter ballots in the Absent Voter module of the Qualified Voter File. This module provides an easy and efficient way for election officials to print absent voter ballot applications and ballot labels and to manage the list of voters sent ballots as required by law. Immediate recording of sent and received absent voter ballots also allows voters to track the status of their absent voter ballot via Michigan.Gov/Vote. Information regarding which absent ballots have been sent and received is also included in the ePollbook download of voter information in the Electronic Poll Book on Election Day. This information must be kept current to ensure that election inspectors do not issue an in-person ballot to any voter whose absent voter ballot has already been returned to and accepted by the clerk.

XXI. Voting after registering to vote or updating voter registrations on Election Day

In Michigan, voters may register to vote and obtain an absent voter ballot in the same transaction. The period where a voter may register and obtain an absent voter ballot starts 40 days prior to the election and runs until 8 p.m. on Election Day. While the deadline for persons who are registered to vote at their current address to request an absent voter ballot is 4 p.m. on Election Day, eligible persons may register to vote or update their registration to reflect their current address and receive an absent voter ballot until 8 p.m. on Election Day. A person registering to vote or updating their address on Election Day also has the option of bringing the QVF receipt printed after their successful registration to their precinct and casting a ballot in person at that precinct on Election Day.

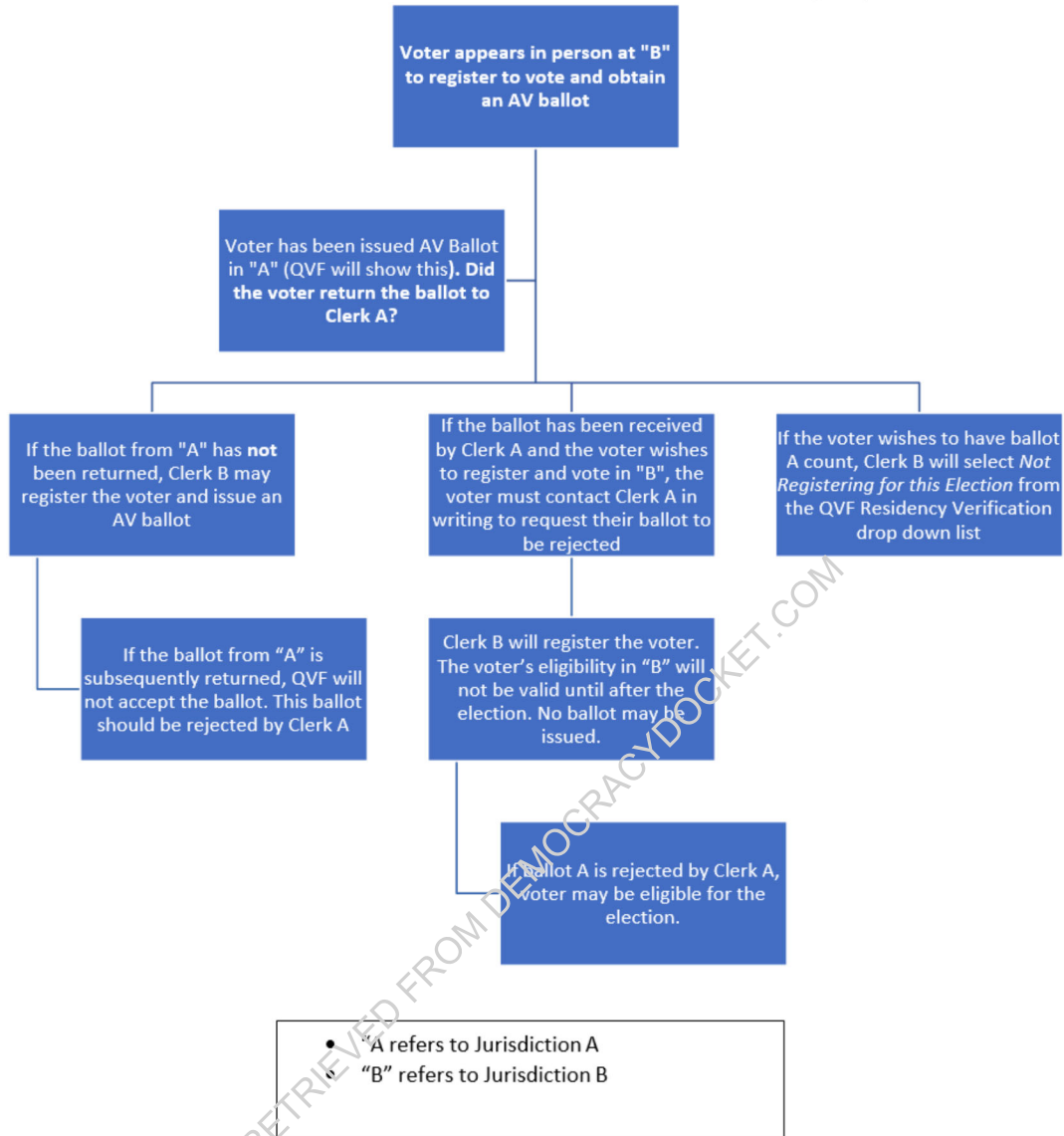
The availability of absent voter ballots in Michigan tightens the timelines for clerks to prepare electronic poll books containing all relevant absent voter ballot information for Election Day. Clerks in jurisdictions with 50 or fewer precincts are now required to export electronic pollbook lists from the QVF after 4:00 p.m. on the day before the election to ensure that the electronic poll book has the current information for all voter who requested absent voter ballots or who registered to vote and cast an absent voter ballot on the Monday prior to election.

XXII. Issuing AV Ballots to election-eligible voters who have moved

Voters frequently move during the 40-day absent voting period that precedes every election. Consult the following graphic to determine where such voters are eligible to vote and how the clerk of each jurisdiction should process those voters.

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XXIII. Reporting postal service issues

Any clerk experiencing recurring issues with mail delivery may report those issues to electionmail.org. This website aggregates and tracks postal issues and the U.S. Postal Service's response. Reports made to electionmail.org by election officials in Michigan are forwarded to the Bureau of Elections. Issues that may be reported at electionmail.org include:

- Delivery delays;
- Damaged mail;



- Lost mail;
- Undeliverable or returned mail; and
- Misdirected mail.

Please be as detailed as possible when reporting issues to electionmail.org. If possible, include specific addresses and mailing dates to assist USPS in identifying which postal facilities may be involved.

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