

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

v

No. 26-13454

JOCELYN BENSON, in her official and individual capacities as the duly elected Secretary of State for the State of Michigan, JONATHAN BRATER, in his official and individual capacities as the duly appointed Director of Michigan Bureau Elections, WAYNE COUNTY ELECTION COMMISSION, and BRENDA GREEN, in her official capacity as the duly elected City Clerk for the City of Highland Park,

HON. TERRENCE G. BERG

MAG. KIMBERLY G. ALTMAN

Defendants.

**DEFENDANTS' SECRETARY OF STATE JOCELYN BENSON AND
DIRECTOR OF ELECTIONS JONATHAN BRATER'S BRIEF IN
OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

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Dated: October 2, 2026

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CONCISE STATEMENT OF ISSUE PRESENTED

1. Whether Plaintiff's motion for TRO/PI must be denied because there is no likelihood of success on the merits, Plaintiff will not suffer any irreparable harm absent an injunction, and the harms to the Defendants—and to the public—outweigh the harm to the Plaintiff?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Crookston v. Johnson, 841 F.3d 396 (6th Cir. 2016)

EOG Res., Inc. v. Lucky Land Mgmt., LLC, 134 F.4th 868 (6th Cir. 2025)

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INTRODUCTION

Plaintiff Robert Davis's motion for temporary restraining order or preliminary injunction must be denied where he has failed to establish any of the necessary factors for granting such extraordinary relief. Most critically, Plaintiff has failed to demonstrate a likelihood of success on the merits of his claim that Rule 168.48 is preempted by Title III of the Civil Rights Act of 1960, 52 U.S.C. § 20701, or that he will suffer irreparable harm absent an injunction. Where there is no likelihood of either success on the merits or irreparable harm, an injunction is unwarranted—regardless of any showing on the other factors. *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 883 (6th Cir. 2025).

STATEMENT OF FACTS

A. Michigan requires the use of electronic pollbooks for elections.

The use of an electronic pollbook (EPB) to process voters on Election Day is a longstanding practice in Michigan and is required under the Michigan Election Law. Mich. Comp. Laws § 168.668b(1) (“Each city or township shall use the electronic poll book software developed, acquired, or approved by the bureau of elections in each election precinct in the city or township on election day to process voters and generate election precinct reports.”) The Michigan Department of State (Department) has also promulgated administrative rules to provide further instruction for the use of the EPBs. *See* Mich. Admin. Code R. 168.41–168.48.

1. Promulgation of administrative rules.

Given changes in election processes, including the advent of early voting and technological advances, in March 2025 the Department submitted a request for rulemaking regarding EPBs to the Michigan Office of Administrative Hearings and Rules (MOAHR). (Defs' Ex A, pp 3-4.) The request was approved on March 6, 2025. (*Id.*, p 1.) Draft language was approved on May 27, 2025, which included language for printing and downloading reports from the EPBs for retention:

Rule 6. (1) If the polling place produces required reports after the close of polls on election day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

Uploading voter history and other files from the EBP to the qualified voter file (QVF):

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

And deleting local copies of software and associated files from the EPBs after the data has been uploaded to QVF and post-certification of an election:

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election. [*Id.*, pp 5-7.]

The Department submitted its required regulatory impact statement on April 28, 2025, which was approved on May 14, 2025. (*Id.*, pp 1, 8-15.) The Department also prepared a Notice of Public Hearing which was approved by MOAHR on May 27, 2025; the hearing was held on July 15, 2025. (*Id.*, pp 2, 15.)

On July 28, 2025, MOAHR transmitted the ruleset to the Joint Committee on Administrative Rules (JCAR). (*Id.*, pp 20-33.) At that point, JCAR had 15 session days to consider the rules and take certain specified actions. Mich. Comp. Laws § 24.245a(1)(a)-(d). Alternatively, JCAR may opt to take no action. Mich. Comp. Laws § 24.245a(3). If JCAR takes no action, “the office may immediately file the rule, with the certificate of approval required under section 45(1), with the secretary of state. The rule takes effect immediately on

being filed with the secretary of state unless a later date is indicated in the rule.” *Id.*

With respect to the EPB ruleset JCAR took no action and the 15 session days elapsed. MOAHR filed the ruleset with the Michigan Office of the Great Seal on October 23, 2025, and the rules became effective the same day.

2. The use and function of the electronic pollbooks.

How the EPBs are used for elections was recently explained in a declaratory ruling issued by the Department on September 30, 2026:

In order to use the Election Day EPB, election jurisdictions must possess, for each precinct, a laptop computer that meets technical and security requirements (the “EPB laptop”). Prior to Election Day, clerks download the EPB package from [the qualified voter file or QVF] onto the computer they typically use to conduct election responsibilities. The EPB package exported from QVF includes the EPB software and a data file that includes the list of registered voters for each precinct, including any relevant status indicators for each voter (for example, whether the voter has already returned an absentee ballot). This is essentially a “snap shot” of the QVF for each precinct to use on Election Day. Clerks export the EPB software and data file onto encrypted flash drives corresponding to each precinct’s EPB laptop. Next, they use the encrypted flash drive to install the EPB software and data file to the laptop to be used on Election Day.

The EPB laptop is operated offline on Election Day, using the EPB software and data file loaded onto the laptop from the encrypted flash drive. When voters appear to vote on Election Day, they first complete a paper application to vote. After completing the application to vote, the voter is then checked in using the EPB. The election inspector enters the voter’s information into the EPB along with relevant information about the voter, including that the voter has been issued a ballot and any remarks or other information (such as provisional ballot information). Election inspectors also have a paper printout of the pollbook on hand in case the EPB becomes unavailable.

(Defs' Ex B, Fracassi Aff., Attachment 3, p 5, 9.30.26 Dec. Ruling.) After the polls close, election inspectors perform additional duties, including printing reports from the EPB (Mich. Comp. Laws § 168.735):

After the polls have closed, election inspectors, . . . collect the paper applications to vote for each precinct, which are delivered to the municipal clerk in a sealed envelope. When closing out the election on the EPB laptop, as required by R 168.46, election inspectors are instructed to save the three following reports in .pdf format, as well as a file that contains voting history, to the flash drive. Then, either the precinct inspectors or a receiving board will print out these three reports on paper:

- Ballot summary report
- List of voters report
- Remarks report

After these required reports are printed, the encrypted flash drive is removed from the EPB laptop and delivered to the municipal clerk in a sealed envelope.

(*Id.*, pp 5-6.) Rule 168.47 provides that “within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file.” The following information is uploaded to the QVF as part of that process:

- List of voters (used to update voter history in QVF)
- Provisional ballot information (from the EPB)
- A log of activity on the EPB

(Defs' Ex B, Fracassi Aff., Attachment 3, p 6.) “After all these steps are taken, R 168.48 requires that ‘the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and

certification of the election,’ unless an exception applies.” (*Id.*) As explained by the Department:

In total, the following information for each voter and for EPB activity in general is retained after the clerk copy of EPB software and associated files are deleted:

- A physical, paper application to vote completed by each voter
- A physical, paper printout of the list of voters, including all voters issued a ballot and all remarks entered into the pollbook by election inspectors
- An electronic list of voters
- Electronic voter history, which is added to the QVF from the list of voters
- Records of provisional ballots
- An electronic log of activity on the EPB

(*Id.*) So, as explained in the ruling, EPB data is retained in multiple formats.

B. A state court challenge is filed regarding Rule 168.48.

On August 12, 2026, Michelle McQueer, Clerk for Bridgewater Township, filed a complaint in the Michigan Court of Claims against Defendants requesting expedited declaratory and injunctive relief. (Defs’ Ex. C, McQueer Compl w/o exs.) McQueer seeks to invalidate Rule 168.48 on three grounds; (1) that it is preempted by federal law, 52 U.S.C. § 20701, (2) that it exceeds the Secretary’s authority and conflicts with other state statutes, and (3) that it was promulgated in violation of Michigan’s Administrative Procedures Act, Mich. Comp. Laws § 24.201 *et seq.* (*Id.*, ¶¶ 47-69.) The court granted a temporary restraining order

permitting McQueer to retain her EBP materials for the August 4, 2026, primary election. (Defs' Ex. D, 8.13.26 Order.) The court also permitted Defendants to conclude pending administrative actions, including issuance of the declaratory ruling discussed above, before consideration of the merits of McQueer's claims. (Defs' Ex. E, 8.27.26 Order; ECF No. 22-3, Plf's Brf, PageId.320-342, 9.22.26 Order.) Under the court's most recent order, dated September 22, Defendants' next brief is due October 7, the date of this Court's hearing on the TRO motion. (ECF No. 22-3, Plf's Brf, PageId.320-342, 9.22.26 Order.)

C. Plaintiff files suit.

Plaintiff filed his original six-count complaint on or about September 11, 2026, naming Defendants along with the Wayne County Election Commission and the City Clerk for Highland Park. (ECF No. 1, PageID.1.)¹ His claims generally revolved around his repeated efforts to disqualify Eli Savit and Garlin Gilchrist, the Michigan Democratic Party's nominees for Attorney General and Secretary of State, respectively, from the November general election ballot.

But on September 21, 2026, Plaintiff requested a declaratory ruling from the Department of State regarding whether Rule 168.48 was preempted by § 20701,

¹ This is the 13th election-related lawsuit Plaintiff has filed against the Secretary and/or the Director of Elections this year. The others were filed in the Michigan Court of Claims. *See Davis v. Benson, et al.*, 26-000099, 26-000103, 26-000104, 26-000114, 26-000135, 26-000145, 26-000147, 26-000148, 26-000153, 26-000158, 26-000167, 26-000187. Davis did not prevail in any of these cases.

the same issue pending in *McQueer*. (Defs' Ex. F.) The following day, September 22, 2026, the same day the court in *McQueer* issued its order, Plaintiff submitted another declaratory ruling request and filed an amended complaint adding Count VII in which he alleges, as in *McQueer*, that Rule 168.48 is preempted by § 20701. (Defs' Ex. F; ECF No. 20, PageID.246-250, ¶¶ 258-279.) On September 23, 2026, Plaintiff filed an emergency motion for temporary restraining order and/or for preliminary injunction regarding Count VII. (ECF No. 22, PageID.283.) This Court later ordered a response to Plaintiff's motion. (ECF No. 23, PageID.343.)

On September 30, 2026, the Department denied Plaintiff's requests for a declaratory ruling because he is not an "interested person" for purposes of seeking a ruling but provided a copy of the September 30 ruling. (Defs' Ex. F.)

ARGUMENT

I. Plaintiff's motion for temporary restraining order or preliminary injunction must be denied because he does not satisfy the necessary factors required for such extraordinary relief.

Like a preliminary injunction, a temporary restraining order is an extraordinary remedy "designed to preserve the relative positions of the parties until a trial on the merits can be held." *Cf. Tennessee Scrap Recyclers Ass'n v. Bredesen*, 556 F.3d 442, 447 (6th Cir. 2009). A court considers "four factors when determining whether to grant a temporary restraining order: '(1) whether the movant has a "strong" likelihood of success on the merits; (2) whether the movant

would otherwise suffer irreparable injury; (3) whether issuance of [a TRO] would cause substantial harm to others; and (4) whether the public interest would be served by issuance of [a TRO].’ ” *Kendall Holdings, Ltd. v. Eden Cryogenics LLC*, 630 F. Supp.2d 853, 860 (S.D. Ohio 2008) (citation omitted).

No one factor is dispositive; rather the court must balance all four factors. *In re De Lorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985). But “where there is no likelihood of either success on the merits or irreparable harm, an injunction is unwarranted—regardless of the showing on the other factors.” *Union Home Mortg. Corp. v. Cromer*, 31 F.4th 356, 366 (6th Cir. 2022) (citation modified); *see also Child Evangelism Fellowship of Ohio, Inc. v. Cleveland Metro. Sch.*, 600 F. App’x 448, 452–53 (6th Cir. 2015) (“Because [movant] cannot demonstrate a likelihood of success on the merits of its claim, we need not consider the other preliminary injunction factors.”). The burden of persuasion is on the party seeking injunctive relief. *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978).

A. Plaintiff has not demonstrated a strong likelihood of success on the merits with respect to Count VII of his Amended Complaint.

Plaintiff must demonstrate a “strong likelihood of success on the merits.” *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 543 (6th Cir. 2007). To meet his burden, Plaintiff “must show more than a mere possibility of success.” (*Id.*) (citation omitted). But Plaintiff has not shown a strong likelihood of success on his preemption claim for multiple reasons.

1. Plaintiff's preemption claim is not cognizable as pled.

Plaintiff's Count VII is premised on a violation of the Supremacy Clause through preemption. (ECF No. 20, PageID.246-279.) But "the Supremacy Clause is not the source of any federal rights ... and certainly does not create a cause of action." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325 (2015). Because the clause is not a source of any federal right, "[a] claim premised solely on Supremacy Clause preemption 'is not cognizable under 42 U.S.C. § 1983.' " *Baskin v. Bath Tp. Bd. of Zoning Appeals*, 101 F.3d 702, *5 (Table) (6th Cir. 1996) (quoting *Gustafson v. City of Lake Angelus*, 76 F.3d 778, 792 (6th Cir. 1996)). Rather, only an equitable cause of action may exist to vindicate the pre-emptive aspect of the Supremacy Clause. *KalshiEX, LLC v. Schuler*, ___ F.4th ___, 2026 WL 2884087 at * 7 (Sept. 25, 2026, 6th Cir.) (discussing *Armstrong* and holding that plaintiff in that case could maintain equitable action to enjoin state from subjecting it to preempted state law).

Plaintiff recognizes these principles. (ECF No. 22-1, PageID.299-300.) But as pleaded, he only seeks relief under § 1983, (ECF No. 20, PageID.246-279), and his Supremacy Clause claim thus fails. *See SS Management, LLC, Plaintiff, v. Douglas County, et al.*, No. 3:25-CV-00555-CLB, 2026 WL 2906851, at *13 (D. Nev. Sept. 28, 2026) (dismissing Supremacy Clause claim brought only under § 1983.) Nevertheless, Plaintiff argues that he has a cognizable implied cause of

action to enjoin Defendants from taking or threatening action against him pursuant to a preempted law. (ECF No. 22-1, PageID.299-300.)

The Sixth Circuit recently addressed this issue in *KalshiEX, LLC*, 2026 WL 2884087, observing that *Armstrong* does not foreclose an equitable action:

In *Armstrong*, the Supreme Court held that the Supremacy Clause is not “the source of any federal rights” and does not “create a cause of action.” 575 U.S. at 324 [] (citation modified). But that limitation applies to circumstances in which a litigant seeks to “wield *Ex parte Young* as a cause-of-action-creating sword.” *Mich. Corr. Org. v. Mich. Dep’t of Corr.*, 774 F.3d 895, 906 (6th Cir. 2014). By contrast, a litigant has an equitable cause of action separate from the Supremacy Clause to seek an injunction where it claims that “federal law immunizes [it] from state regulation.” *Armstrong*, 575 U.S. at 326 . . . ; see also *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 642–43 [] (2002). We may entertain “the pre-emptive assertion in equity of a defense that would otherwise have been available in the State’s enforcement proceedings at law.” *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 262 [] (2011) (Kennedy, J., concurring).

KalshiEX, LLC, 2026 WL 2884087, at *7. But here, Plaintiff, as a private person or voter, is not subject to Rule 168.48, and there is no enforcement proceeding against him, nor will there ever be one. Plaintiff has no equitable cause of action against Defendants under these circumstances. Moreover, it is more than likely that Title III of the Civil Rights Act of 1960 “displace[s]” any equitable cause of action. *KalshiEX, LLC*, 2026 WL 2884087, at *8. Title III is only enforceable by the U.S. Attorney General, see 52 U.S.C. § 20703, and multiple courts have held that there is no private remedy or right of action under the Act. See *Smith v. DeBoyer*, No. 2:22-cv-1572, 2022 WL 16641857 at * 3 (Oct 12, 2022, E.D. Mich.

2022); *Ickes v. Whitmer*, 1:22-cv-817, 2022 WL 4103030 at * 3 (Sept 8, 2022, W.D. Mich.); *United States ex rel Feliciano v. Ardoin*, 127 F.4th 382, 384 (4th Cir., 2025), cert denied 145 S. Ct. 2799 (2025); *Thompson v. Nevada Secretary of State*, No. 2:25-cv-01284-CDS-EJY, 2026 WL 84538 at *1 (D. Nev. Jan. 12, 2026); *Soudelier v. Dep't of State Louisiana*, No. 22-2436, 2022 WL 3686422, at *1 (E.D. La. Aug. 25, 2022); *Pirtle v. Nago*, No. 22-381, 2022 WL 3915570, at *3 (D. Haw. Aug. 31, 2022); *Fox v. Lee*, No. 4:18CV529-MW/CAS, 2019 WL 13141701, at *1 (N.D. Fla. Apr. 2, 2019).

2. Plaintiff lacks standing to challenge Rule 168.48.

Plaintiff's claim also fails for lack of standing. Standing is one component of Article III jurisdiction. If a plaintiff lacks Article III standing, the court has no subject matter jurisdiction to hear the claim. *Imhoff Inv., LLC v. Alfoccino, Inc.*, 792 F.3d 627, 631 (6th Cir. 2015). This Court has no authority to render advisory opinions, issue opinions on abstract principles, or hear generalized grievances. See *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *North Carolina v. Rice*, 404 U.S. 244, 246 (1971).

When a plaintiff lacks standing, the Court lacks jurisdiction and dismissal is warranted. *Taylor v. KeyCorp.*, 680 F.3d 609, 612–13 (6th Cir. 2012). “[T]he standing requirement limits federal court jurisdiction to actual controversies so that the judicial process is not transformed into a ‘vehicle for the vindication of the

value interests of concerned bystanders.’ ” *Coal Operators & Assocs., Inc. v. Babbitt*, 291 F.3d 912, 915–16 (6th Cir. 2002) (cleaned up).

A plaintiff can satisfy this requirement only by “clearly . . . alleg[ing] facts demonstrating” that: (1) he suffered an injury-in-fact; (2) such injury is “fairly traceable to the challenged conduct” of a named-defendant; and (3) such injury is “likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (internal quotations omitted). An injury in fact requires “‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560). The alleged harm “‘must affect the plaintiff in a personal and individual way.’” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n. 1 (1992).) These elements are “not mere pleading requirements,” but an “indispensable part of plaintiff’s case[.]” *Lujan*, 504 U.S. at 561–62. Where a plaintiff’s allegations fail to satisfy these elements, a court is “powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing.” *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990).

Here, Plaintiff has failed to make allegations establishing any actual “injury in fact” or a concrete interest at stake in the application of Rule 168.48. By its own terms, Rule 168.48 only applies to clerks and their staff, and neither imposes any

duty upon nor restricts the actions of ordinary citizens like Plaintiff. Simply put, Rule 168.48 does not have anything to do with the Plaintiff.

The only allegation in the amended complaint describing any effect upon Plaintiff claims merely that, “Plaintiff is concerned that his properly cast votes for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District and other voting and election data will be unlawfully deleted and unpreserved under the provisions of the Mich Admin Code, R 168.48.” (ECF 20, PageID.249-250, ¶ 276). Of course, as explained earlier, this allegation is erroneous, and R 168.48 only concerns EPB data and does not provide for the deletion of any “votes.” It is also entirely unclear about what “other voting and election data” Plaintiff is concerned, and whether his requested relief is limited only to his data in his local precinct, or to other jurisdictions in the state where Plaintiff does not vote. Regardless, Plaintiff does not allege any injury he claims to have suffered when the same process described in Rule 168.48 has been applied over the last decade, or that any of his votes or election data from past elections were lost. Instead, Plaintiff has alleged only a generalized concern that his data might be deleted.

But federal courts have repeatedly rejected claims to standing based on subjective fears or abstract concerns regarding the integrity of elections.

Glennborough Homeowners Ass'n v. United States Postal Serv, 21 F.4th 410, 415

(6th Cir. 2021); cf. *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 619–20 (2007) (Scalia, J., concurring) (recognizing that a plaintiff whose only injury is subjective mental angst “lacks a concrete and particularized injury” under Article III). *See also Ladies Mem’l Ass’n, Inc. v. City of Pensacola, Fla.*, 34 F.4th 988, 993 (11th Cir. 2022) (“purely psychic injuries, like disagreeing with government action, are not concrete, so they do not give rise to standing.”) (citing *Diamond v. Charles*, 476 U.S. 54, 67 (1986); *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (a plaintiff who is “claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large ... does not state an Article III case or controversy.”); *Hotze v. Hudspeth*, 16 F.4th 1121, 1124 (5th Cir. 2021) (generalized grievance where “plaintiffs asserted ... that drive-thru voting hurt the ‘integrity’ of the election process”). Further, merely invoking “the possibility and potential for voter fraud,” based only on “hypotheticals, rather than actual events,” does not suffice. *Donald J. Trump for President, Inc., v. Boockvar*, 493 F. Supp. 3d 331, 406 (W.D. Pa. 2020).

Plaintiff’s claims are plainly in the same vein, and present only generalized concerns about the proper administration of elections. Plaintiff has failed to demonstrate any harm to himself, and his claim is instead premised upon interests he shares with every citizen in the proper application of the Constitution and state

or federal laws. Rather, Plaintiff's allegations do little more than express his disagreement with the rule promulgated by the Department of State, and the relief he seeks would provide no direct or tangible benefit to him. Plaintiff thus lacks standing to bring this challenge to Rule 168.48.

3. Plaintiff's challenge to Rule 168.48 is barred by laches.

Laches is rooted in the principle that "equity aids the vigilant, not those who slumber on their rights." *Lucking v. Schram*, 117 F.2d 160 (6th Cir. 1941). An action may be barred by the equitable defense of laches if: (1) the plaintiff delayed unreasonably in asserting their rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co. v. Central States, Southeast and Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000). Laches applies in this case.

First, Plaintiff failed to act diligently and unreasonably delayed asserting his claims regarding Rule 168.48. It is well-established that eleventh-hour requests for injunctions on the eve of an election are disfavored. "As a general rule, last-minute injunctions changing election procedures are strongly disfavored." *Serv. Employees Int'l Union Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012)(citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006)("Court orders affecting elections...can themselves result in voter confusion...As an election draws closer, that risk will increase.")); *William v. Rhodes*, 393 U.S. 23, 34-35 (1968) (affirming denial of request for injunction requiring last-minute changes to ballots, given risk of

disrupting election process). The Sixth Circuit has also recognized that the federal courts should not quickly “become entangled, as overseers and micromanagers, in the minutiae of state election processes.” *Ohio Democratic Party v. Husted*, 834 F.3d 620, 622 (6th Cir. 2016).

In *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (cleaned up), the Sixth Circuit stayed an injunction affecting election procedures:

There are many reasons to grant the stay. The first and most essential is that Crookston offers no reasonable explanation for waiting so long to file this action. When an election is “imminen[t] and when there is “inadequate time to resolve [] factual legal disputes” and legal disputes, courts will generally decline to grant an injunction to alter a State’s established election procedures. That is especially true when a plaintiff has unreasonably delayed bringing his claim, as Crookston most assuredly has. Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.

The Court’s reasoning is just as apt here, where the election process Plaintiff seeks to change is already underway.

Here, Plaintiff unreasonably delayed seeking relief from this Court.

Michigan’s process for handling EPB data has been consistent for well over a decade, and the current form of the rule Plaintiff seeks to enjoin went into effect in October of 2025. (Defs’ Ex. B, Fracassi Aff., ¶ 17; Mich Admin R 168.48). But Plaintiff raised no objection to it until the 43rd day before the November 3, 2026 election when he submitted his request for a declaratory ruling. (*Id.*, ¶ 20). Under Michigan law “there is a rebuttable presumption of laches if [an] action” that

affects elections “is commenced less than 45 days before the date of the election affected.” Mich. Comp. Laws § 691.1031. Neither the amended complaint nor Plaintiff’s motion offers any explanation or excuse for his delay in seeking relief from the courts.

Second, Defendants have been prejudiced by Plaintiffs’ delay. The Department of State will issue guidance to election officials directing them to delete their local copy of the EPB data from the flash drives and EPB software on or after November 10. (Defs’ Ex. B, Fracassi Aff., ¶ 23). EPB training for clerks for this election cycle has already been completed. (*Id.*, ¶ 28). If that directive were changed, the Department would have to issue new directives to all 83 counties and Michigan’s 1,521 local jurisdictions. (*Id.*, ¶ 25-26). Also, because this process has been in place for over a decade, a sudden change to that process is likely to cause confusion or uncertainty among clerks during a time when there are many other matters vying for their attention. (*Id.*, ¶ 27). At the time of this brief, there are less than 32 days before the election. Moreover, leaving the EPB data on the laptops or flash drives can give rise to technical issues and pose security risks. (*Id.*, ¶ 29-31).

Had Plaintiff acted sooner, the Court could have decided the matter, and any subsequent appeal could have been resolved, well in advance of the filing deadline, and the resulting prejudice to Defendants could have been avoided. But, because

of Plaintiff's unreasonable delay, that is no longer possible. Plaintiff's claim, therefore, is barred by laches and he is therefore not likely to prevail on the merits.

4. Rule 168.48 does not conflict with 52 U.S.C. § 20701.

Even if Plaintiff could surmount the preceding arguments, his claim still fails where the rule does not conflict with 52 U.S.C. § 20701.

"Federal law can preempt state law in three ways: express preemption, conflict preemption, or field preemption." *United States v. County of Washtenaw*, No. 26-11166, ___ F. Supp. 3d ___, 2026 WL 2453724, at *6 (E.D. Mich. Aug. 21, 2026), citing *Murphy v. NCAA*, 584 U.S. 453, 477 (2018). Based on the pleadings, conflict preemption is at issue here. (ECF No. 22-1, PageID.306.)

"[S]tate law may be preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law." State law may also be preempted if it "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." "In other words, if the state law would cause the federal law's operation to be frustrated and its provisions to be refused their natural effect, the state law must yield to the regulation of Congress."

KalshiEX, LLC, 2026 WL 2884087, at *25 (cleaned up). In this case, neither form of preemption applies to preempt Rule 168.48.

Title III of the Civil Rights Act of 1960 requires, in relevant part, that:

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any . . . election of which [federal] candidates . . . are voted for, *all records and papers which come into his possession relating to any application, registration, . . . or other act requisite to voting in such election*, except that, when

required by law, such records and papers may be delivered to another officer of election

52 U.S.C. § 20701 (emphasis added).² As set forth in the Department’s declaratory ruling, any record data from the EPB is retained either through the printing of physical, paper copies, by uploading data to the QVF, or both. (Defs’ Ex. B, Fracassi Aff., Attachment 3, pp 5-6.) The Department also explained how Rule 168.48 complies with § 20701 by retaining records related to “any application” or “other act requisite to voting.” (*Id.*, pp 7-8.)

First, there is the paper application to vote completed by each voter. Second, there is the paper pollbook that is printed and includes the list of voters. Third, the uploaded EPB data includes a list of voters, which is used to update voter history in QVF. The materials also cover “acts requisite to voting”, including the aforementioned items and provisional ballot information, which is uploaded to and stored on QVF. To the extent inspector remarks can be said to relate to either applications or acts requisite to voting, these are also included in the printed pollbook.

The Department is not aware of any other information or data on the EPB that could be said to comprise records or papers relating to applications or other acts requisite to voting that are not reflected in the above information, ... Accordingly, the materials described above include all items relevant to 52 USC 20701.

² This provision was recently interpreted by the Sixth Circuit in *United States v. Benson, et al.*, 179 F.4th 470 (6th Cir. 2026). There, the Court concluded that § 20701 applies to records and papers election officials receive from an external source, which did not include Michigan’s QVF as an “internally generated electronic database.” 179 F.4th at 478-79.

(*Id.*, p 8.) With respect to retention and preservation, the Department explained that nothing in § 20701 indicates that information must be kept in multiple formats, or specifically in paper or in electronic form, and that all the records are retained in one or more formats:

[The] data is retained either in paper format or by uploading the data to the QVF (or both), consistent with the Department's administrative rules, R 168.46, R 168.47, and retention schedule. Rule 168.46 requires election inspectors to print any reports that are required to be retained from the EPB and include those reports in the physical pollbook. Printed reports include the ballot summary report, list of voters report, and the remarks report. Next, R 168.47 requires the upload of all voter history and other required files from the EPB to the QVF within 7 days after an election.

Following these procedures, all record information that is deleted from the [EPB] devices under R 168.48 has already been retained and preserved either in a paper format or in the QVF and the deleted information is simply a copy of the information that is saved (more securely) elsewhere. At the point when the EPB software and associated files are deleted from the devices under R 168.48, they represent merely extra copies of papers and records that have been securely retained in other formats.

(*Id.*, pp 8-9.) Thus, as the Department interprets § 20701, "all [EPB] records required to be retained under [§ 20701] are preserved." (*Id.*, p 9.)

Neither in his complaint nor his brief does Plaintiff explain what records or papers he believes are not properly preserved. He simply states that he is "concerned that his properly cast votes" for federal offices "and other voting and election data will be unlawfully deleted and unpreserved" under Rule 168.48.

(ECF No. 22-1, PageID.307, 308.) But any "properly cast votes" by Plaintiff in the

November election will be reflected on his ballot, which will be preserved for 22 months. Mich. Comp. Laws § 168.811.³ Defendants do not know what Plaintiff is referring to when he mentions “other voting and election data” refers to but any application related to voting, any poll list containing his name, and his voter history for the election will all be preserved.

Plaintiff has simply failed to state a plausible claim for relief that Rule 168.48 is preempted. See, e.g., *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (“[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’ ”)

Where Plaintiff has no likelihood of succeeding on the merits of Count VII, his motion should be denied.

B. Plaintiff will suffer no irreparable harm absent an injunction.

Even if a plaintiff can show a likelihood of success on the merits, “a preliminary injunction does not follow as a matter of course.” *EOG Res., Inc.*, 134

³ Michigan has principally implemented § 20701 in Mich. Comp. Laws §§ 168.811, 168.761d(14), and Mich. Admin. Code, R. 168.790.

F.4th at 883 (quoting *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam)). The Sixth Circuit has clarified that even a strong showing on one factor does not eliminate the need for showing others, holding that, “it’s true that courts ‘balance’ the four factors, but while ‘the extent of an injury may be balanced against other factors, the existence of an irreparable injury is mandatory.’” (*Id.*) (internal citation omitted.) Showing irreparable harm is “indispensable,” and “If the plaintiff isn’t facing imminent and irreparable injury, there’s no need to grant relief now as opposed to at the end of the lawsuit.” *Id.* at 885 (quoting *D.T. v. Sumner Cty. Sch.*, 942 F.3d 324, 327 (6th Cir. 2019)). Moreover, “where there is no likelihood of either success on the merits or irreparable harm, an injunction is unwarranted—regardless of the showing on the other factors.” *Id.* (quoting *James B. Oswald Co. v. Neate*, 98 F.4th 666, 672 (6th Cir. 2024) (internal citation omitted)).

Irreparable harm may exist where a plaintiff can demonstrate a substantial likelihood of success on the merits of the plaintiff’s claim that their constitutional rights have or will imminently be violated. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). But here, Plaintiff’s discussion of irreparable harm is limited to his own conclusion that his “ ‘constitutionally protected right to participate in elections on an equal basis with other citizens in the’ State of Michigan has been significantly impaired and denied,” on the basis of a restraining order entered by the Court of

Claims affecting the clerk in the Township of Bridgewater, Michigan—where Plaintiff does not vote. (ECF 22-1, PageID.308-313). Plaintiff thus argues that his vote is being treated differently than votes cast in Bridgewater. But this argument misses the mark.

First, once again, neither the rule nor the Court of Claims’ order affects anyone’s votes, because Rule 168.48 only concerns EPB data and *how* it is to be preserved. Plaintiff’s argument is conspicuously lacking in any discussion or explanation as to how his vote is treated differently at all, let alone how he is being irreparably harmed as a result.

Second, while the Court of Claims’ order is binding on the Secretary of State, Plaintiff does not explain how that court order is attributable to either the Secretary of State or Highland Park City Clerk and their enforcement of Rule 168.48. Rather, the Court of Claims’ temporary restraining order is just that—a temporary order that preserves the status quo for the litigants while the case is litigated. Plaintiff’s motion does not demonstrate how the Defendants in this case or their compliance with Rule 168.48 have caused him any injury that his requested TRO would redress.

Thus, Plaintiff has not demonstrated that he will suffer irreparable injury absent an injunction.

C. The balance of equities and public interest weigh against granting any injunction.

Courts next turn from the harms the plaintiff might suffer to the harms the defendant might suffer and then ask where the greatest harm would fall. *EOG*, 134 F.4th at 885-86. Courts must “balance the competing claims of injury[,] . . . consider[ing] the effect on each party of the granting or withholding of the requested relief.” *Id.* (quoting *Winter*, 555 U.S. at 24). The balance of harms and public interest factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In this case, the public interest is furthered by allowing the upcoming election to be administered according to the laws and rules enacted and promulgated by the state government. Also, upending the established processes so close to an election risks creating confusion among the public or inviting errors by election officials.

In contrast, Plaintiff will be in no different position without a preliminary injunction than he already is today—and has been for more than a decade under the same policy. That is more so where the Plaintiff unreasonably delayed raising this challenge until just before an election to challenge a long-standing practice.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendants respectfully request that this Honorable Court deny Plaintiff’s motion for a temporary restraining order or preliminary injunction.

Respectfully submitted,

s/Heather S. Meingast

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Dated: October 2, 2026

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

s/Heather S. Meingast

Heather S. Meingast (P55439)

Assistant Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

v

No. 26-13454

JOCELYN BENSON, in her official and individual capacities as the duly elected Secretary of State for the State of Michigan, JONATHAN BRATER, in his official and individual capacities as the duly appointed Director of Michigan Bureau Elections, WAYNE COUNTY ELECTION COMMISSION, and BRENDA GREEN, in her official capacity as the duly elected City Clerk for the City of Highland Park,

HON. TERRENCE G. BERG

MAG. KIMBERLY G. ALTMAN

Defendants.

**DEFENDANTS' SECRETARY OF STATE JOCELYN BENSON AND
DIRECTOR OF ELECTIONS JONATHAN BRATER'S BRIEF IN
OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

EXHIBIT LIST

- A. Administrative Record
- B. Affidavit of Deputy Director of Elections Adam Fracassi
- C. *McQueer v Benson, et al* Court of Claims Complaint
- D. *McQueer v Benson, et al* Court of Claims 08/13/2026 Order
- E. *McQueer v Benson, et al* Court of Claims 08/27/2026 Order
- F. Declaratory Ruling Requests and Response

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EXHIBIT A

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ARS Public - RFR Transaction

Request For Rulemaking

Rule set #:

2025-14 ST

Department:

State

Bureau:

Elections & Campaign Finance

Title of rule set:

Use of Electronic Pollbook

Rule number(s) or rule set range of numbers:

168.41 – R 168.51

Filing date:

10/23/2025

Effective date:

10/23/2025

Click on the link(s) below to download

Request for Rulemaking  **PDF**  **HTML**

Request for Rulemaking Approved on: 3/6/2025 8:07:21 AM

Draft Rule Language  **Word**

Draft Rule Language Approved on: 5/27/2025 11:09:48 AM

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<https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1587>

1/2

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8/18/26, 4:38 PM

ARS Public - RFR Transaction

Regulatory Impact Statement **PDF** **HTML**

Regulatory Impact Statement Received on: 4/28/2025 6:05:11 PM

Regulatory Impact Statement Approved on: 5/14/2025 2:56:33 PM

Notice of Public Hearing **PDF** **HTML**

Notice of Public Hearing Approved on: 5/27/2025 11:09:48 AM



ARS - Administrative Rulemaking System



Final Rule Strike Bold Approved on: 10/23/2025 10:51:56 AM

Final Rule Language **PDF** **HTML**

Final Rule Language Approved on: 10/23/2025 10:51:56 AM

Joint Committee on Administrative Rules Report **PDF** **HTML**

Joint Committee on Administrative Rules Report Approved on: 7/28/2025 9:22:39 AM

Joint Committee on Administrative Rules Package Comments **PDF** **HTML**

Joint Committee on Administrative Rules Package Comments Approved on: 7/28/2025 9:22:39 AM

Joint Committee on Administrative Rules Package Transcript **PDF** **HTML**

Joint Committee on Administrative Rules Package Transcript Approved on: 7/28/2025 9:22:39 AM

Joint Committee on Administrative Rules Report Affidavit **PDF** **HTML**

Joint Committee on Administrative Rules Package Affidavit Approved on: 7/28/2025 9:22:39 AM

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Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)
MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. **Department:**
State
2. **Bureau:**
Elections & Campaign Finance
3. **Promulgation type:**
Full Process
4. **Title of proposed rule set:**
Use of Electronic Pollbook
5. **Rule numbers or rule set range of numbers:**
168.41 – R 168.51
6. **Estimated time frame:**
6 months

Name of person filling out RFR:
Jenny McInerney

Email of person filling out RFR:
McInerneyJ1@michigan.gov

Phone number of person filling out RFR:
517-331-7825

Address of person filling out RFR:
430 W. Allegan, Lansing, MI 48918

7. **Describe the general purpose of these rules, including any problems the changes are intended to address.**
The purpose of these rules is to clarify rules regarding the electronic pollbook, given technological advances, the introduction of early voting and the early voting pollbook, and the security benefits of real time connection with the Qualified Voter File.
8. **Please cite the specific promulgation authority for the rules (i.e., department director, commission, board, etc.).**
MCL 168.31(1)(a) 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."
 - A. **Please list all applicable statutory references (MCLs, Executive Orders, etc.).**
MCL 168.31.
 - B. **Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.**
MCL 168.31(1)(a) 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."
Because these rules pertain to the use of the electronic pollbook--a vital tool in conducting elections in Michigan--they fall under this section.
9. **Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The rules do not conflict with any similar rules, requirements, or standards. The proposed rules do not explicitly duplicate any similar rules, compliance requirements, or other standards but they do update the interpretation of the electronic pollbook download in MCL 168.668b of the Michigan Election Law to account for technological and security advances and the use of live connectivity for the early voting pollbook in 2024.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The early voting subject matter is in the Bureau publication Early Voting Electronic Poll Book (EV EPB) Manual.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

The rules are not listed on the department's 2024 annual regulatory plan.

12. Will the proposed rules be promulgated under Section 44 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes. Following the success of the EV EPB during the 3 elections for which it was used in 2024, the Bureau of Elections convened a Lean Process Improvement (LPI) workshop to identify successes, opportunities for improvement, and ways the Election Day EPB (ED EPB) could more closely align with the EV EPB. Prior to the LPI, a survey was sent to clerk staff and over 350 stakeholders responded. The LPI also included 13 expert participants who serve as clerks, deputy clerks, and clerk staff in cities and townships around Michigan. The recommendation of the LPI, supported overwhelmingly by survey responses, was that all EPBs have live connectivity like the EV EPB.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The proposed rules do not amend existing rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No, there are no changes or developments because the rules do not amend existing rules.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Reorganization Order No. 2019-1, MCL 324.99923.

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

USE OF ELECTRONIC POLLBOOK

Filed with the secretary of state on

These rules become effective immediately after 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 section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48 are added to the Michigan Administrative Code, as follows:

R 168.41 Definitions.

Rule 1. (1) As used in these rules:

(a) “Act” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(b) “Approved form of transmission” means an encrypted or password protected, or both, flash drive or other electronic media used to store election files and transfer files between the electronic pollbook and qualified voter file, or another form of secure storage and transmission if approved by the bureau of elections.

(c) “Department” means the department of state.

(d) “Electronic pollbook” means computer software that receives information from the qualified voter file and is used during elections to process voters and generate reports. Electronic pollbook includes, but is not limited to, the early voting electronic pollbook, the election day vote center electronic pollbook, and the election day electronic pollbook, or any combination of those electronic pollbooks.

(e) “Secretary of state’s duly authorized agent” includes bureau of elections staff, other necessary department staff, county, city, and township clerks or their designees, election inspectors, and relevant department of technology, management, and budget staff as determined by the director of elections.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.42 Access to electronic pollbook data and software.

Rule 2. (1) The voter data contained in the electronic pollbook are public records subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Voter data that is exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, must not be released.

May 13, 2025

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(2) Records regarding electronic pollbook software programming are confidential and must not be released if disclosure of the records may compromise the confidentiality, integrity, or availability of cybersecurity of election information systems.

(3) The secretary of state's duly authorized agents shall have access to the electronic pollbook software and complete the security verification required by the department to access the electronic pollbook software.

R 168.43 Download and backup.

Rule 3. (1) For the early voting period, if a jurisdiction conducts early voting, the clerk designated in the early voting agreement shall access the early voting electronic pollbook software as instructed by the department.

(2) For election day, the clerk conducting the election shall download the electronic pollbook software as instructed by the department.

(3) If the electronic pollbook software as described in section 668b(1) of the act, MCL 168.668b, has a secure live connection to the qualified voter file software at a polling place or early voting site, the electronic pollbook software with the secure live connection must be used to process voters and to generate election precinct reports, and the downloaded electronic pollbook software, or a paper copy of the downloaded electronic pollbook software, serves as a backup.

R 168.44 Electronic pollbook during the early voting period.

Rule 4. (1) If an early voting site has internet access, the electronic pollbook software used during the early voting period must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

(2) At the conclusion of each day of early voting, election inspectors at an early voting site shall print from the electronic pollbook a list of voters who voted that day at the early voting site and include the list in the physical pollbook.

R 168.45 Electronic pollbook on election day.

Rule 5. If a polling place has internet access and the bureau of elections has established live connectivity functionality with the qualified voter file, the electronic pollbook software used on election day must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

R 168.46 Production of reports.

Rule 6. (1) If the polling place produces required reports after the close of polls on election day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

R 168.47 Upload of electronic pollbook files to the qualified voter file.

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

R 168.48 Data retention.

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

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Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)
MOAHR-Rules@michigan.gov

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

AGENCY INFORMATION:

Department name:
State

Bureau name:
Elections & Campaign Finance

Name of person filling out RIS:
Jenny McInerney

Phone number of person filling out RIS:
517-331-7825

Email of person filling out RIS:
McInerneyJ1@michigan.gov

RULE SET INFORMATION:

ARD assigned rule set number:
2025-14 ST

Title of proposed rule set:
Use of Electronic Pollbook

COMPARISON OF RULE(S) TO FEDERAL/STATE/ASSOCIATION STANDARDS

1. **Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.**
There are no parallel federal rules or standards.
 - A. **Are these rules required by state law or federal mandate?**
MCL 168.31(1)(a) says 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."
 - B. **If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.**
The rules do not exceed a federal standard.
2. **Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.**
Minnesota prohibits the connection of electronic pollbooks (EPBs) to the internet. Indiana, Maryland, and New Mexico EPBs are networked and receive immediate updates on who has voted at other voting locations. Michigan currently uses a live-connected electronic pollbook for early voting and Election Day vote centers, and this would expand their use to Election Day polling places. Similarly to Indiana, Maryland, and New Mexico, Michigan's EPBs would be connected to the QVF and would receive immediate live updates on voting activity.
 - A. **If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.**
The rules do not exceed standards in other states.
3. **Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.**

There are no laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The rules provide additional context for MCL 168.668b of the Michigan Election Law. Section 668b requires jurisdictions to download the electronic pollbook beginning at 4pm on the day before Election Day (or beginning at 2pm on the Saturday preceding Election Day, for populous jurisdictions). The rules would clarify that the download must be completed as provided in statute and that it serves as a backup to a live connected electronic pollbook. There is nothing that needs to be coordinated with the rules.

PURPOSE AND OBJECTIVES OF THE RULE(S)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Historically, clerks have downloaded the voting list to the electronic pollbook pursuant to MCL 168.668b, and the electronic pollbook has been offline on Election Day. Following the adoption of Proposal 2022-2 and the inclusion of its provisions in the Michigan Constitution, early voting was offered to voters for 9 days ahead of statewide and federal elections. Because of the many voter activities that occur during the early voting period (registration, the return of absent voter ballots, etc.) the early voting electronic pollbook was connected to the internet via a secure live connection during the early voting period. Similarly, the Vote Center electronic pollbook was connected to the internet via a secure live connection, as it concerns voters who are registered on Election Day (and those voters are immediately added to the Qualified Voter File.) However, the Election Day electronic pollbook was still not connected to the internet following the download provided in section 668b. As they do currently, under the rules clerks would still download the electronic pollbook at 4pm or 2pm, as applicable, but that would serve as a backup if they did not have internet connectivity for any reason. Unlike current practice, on Election Day, election inspectors would use the live-connected electronic pollbook rather than the downloaded copy.

Moving the Election Day electronic pollbook to a secure live connection (to mirror the early voting pollbook and Vote Center pollbook) would alter the behavior of clerks for all elections—generally three elections per year (May, August, and November), but four elections in presidential election years (February in addition to the aforementioned elections), and special elections, when applicable.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

Because secure live connection is not currently used on Election Day, but would be used for all elections going forward, the frequency would increase from zero times per year to approximately three or four times per year.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Secure live connection is not currently used on Election Day but would be used for all elections going forward.

C. What is the desired outcome?

The desired outcome is a secure live connection between the electronic pollbook and Michigan's Qualified Voter File. This would provide real-time updates of information to election inspectors and clerks, to show if a voter has already submitted a ballot and prevent the issuance of more than one ballot to a voter.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

When the electronic pollbook is offline, election inspectors must call a clerk when a voter appears to vote and the electronic pollbook (last updated at 4pm on the day before Election Day) indicates that the voter was sent an absentee ballot and the ballot has not been returned. The clerk then has to check if the ballot was returned after the time of the download. Because the voter may not vote twice, either (a) the clerk must cancel the issued absentee ballot in QVF so that the voter may vote in person (and the absentee ballot, even if it is later returned, is not counted) or (b) the clerk tells the election inspector that the voter has returned their absentee ballot and may not be issued an Election Day ballot.

A live electronic pollbook would eliminate this process. Because it would update QVF in real time, election inspectors would be able to see if the absentee ballot has been returned at the moment a voter requests an Election Day ballot. If it had not, they could issue an Election Day ballot, thereby cancelling the absentee ballot. If it had, they would allow the absentee ballot to be tabulated and refuse to issue an Election Day ballot.

Additionally, a single type of electronic pollbook would create greater efficiency for the Bureau of Elections in making updates and more clarity for clerks in using a single system.

A. What is the rationale for changing the rules instead of leaving them as currently written?

There are no pre-existing rules to modify.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules would simplify the system for Michigan voters but generally would not have an impact on the health, safety, or welfare of Michigan citizens.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no obsolete or unnecessary rules in the rule set that can be rescinded because these rules create a new rule set and there is no existing rule set.

FISCAL IMPACT ON THE AGENCY

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e., hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The savings would be at the state and local level. The creation and maintenance of a single type of electronic pollbook would create greater efficiency at the state level because staff would not need to make duplicative updates and fixes across multiple system. Additionally, the state would field fewer questions from clerks about the electronic pollbook with a streamlined single system.

At the local level, clerks would spend less time training election inspectors on the differences between the two systems.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No specific agency appropriation has been made for these proposed rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The rules are not anticipated to place a burden on individuals and will instead alleviate current burdens. The rules would extend the popular improvements in the early voting electronic pollbook and the Vote Center electronic pollbook to the Election Day electronic pollbook.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There are no expected burdens on individuals.

IMPACT ON OTHER STATE OR LOCAL GOVERNMENTAL UNITS

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e., cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e., cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no estimated increases or decreases in revenue to other state or local governmental units. There are no estimated increases or reductions in cost to other state or local governmental units.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

Michigan election officials with internet access will be required to use a secure live connection to access the online version of the electronic pollbook.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

To be in compliance with the proposed rules, Michigan election officials with internet access will be required to use the online/live connected version of the electronic pollbook. This version is already used for early voting and Vote Centers, so the change in operational practices is minimal and will minimize operational requirements, as live connectivity will allow certain data to update in real time rather than via an upload in the days following an election.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There will not be any increase or decrease to funding to other state or local government units.

RURAL IMPACT**14. In general, what impact will the rules have on rural areas?**

The proposed rules are not expected to impact rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules should have no impact on public or private interests in rural areas.

ENVIRONMENTAL IMPACT**15. Do the proposed rules have any impact on the environment? If yes, please explain.**

The proposed rules will not have an impact on the environment.

SMALL BUSINESS IMPACT STATEMENT**16. Describe whether and how the agency considered exempting small businesses from the proposed rules.**

Small businesses will not be governed or impacted by the proposed rules, so the agency did not consider small businesses.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not apply to small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not apply to small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not apply to small businesses and will not have an impact on their reporting requirements.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses as the proposed rules do not apply to small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not apply to performance, design, or operation standards in relation to small businesses.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rule set will have no disproportionate impact on small businesses.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rule set will have no impact on small businesses and require no compliance from small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rule set will have no impact on small businesses and require no legal, consulting, or accounting services on behalf of small businesses.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no costs for small businesses to absorb.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There will be no costs to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance for small businesses.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

There is no impact on the public interest by exempting or setting lesser standards of compliance for small business.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The agency has not involved small businesses in the development of the proposed rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Small businesses were not involved in the development of the proposed rules.

COST-BENEFIT ANALYSIS OF RULES (INDEPENDENT OF STATUTORY IMPACT)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There will be no compliance costs on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The rules do not affect businesses. The rules will directly benefit the 1604 county, city, and township clerks and several thousand election inspectors, all of whom use electronic pollbooks in administering elections in Michigan. There may also be a benefit to Michigan voters, as a streamlined, consistent, real-time system may provide minimal time savings when voting.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e., new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no costs imposed on businesses and other groups as a result of these proposed rules.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

There will be no additional statewide compliance cost. The Bureau is making updates to the early voting electronic pollbook in response to user feedback following its first year of use in 2024; those updates will be extended to the Election Day electronic pollbook.

A. How many and what category of individuals will be affected by the rules?

Michigan's 1,604 county and local clerks, thousands of election inspectors, and BOE staff who maintain the electronic pollbook will be positively affected. Additionally, it is anticipated that under the rules all of Michigan's 7.3 million registered voters will be issued ballots using the single electronic pollbook (whereas now early voters and those voting at Vote Centers are issued ballots using the online version and those voting at their Election Day polling place are issued ballots using the offline version); it is unlikely that voters will notice any difference.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

Qualitatively, clerks, election inspectors, and BOE staff will maintain and use a single system rather than two parallel systems, which will lead to greater efficiency. There is no anticipated qualitative impact on registered voters, except for possible minimal time savings.

Quantitatively, there is no anticipated impact.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The rules are expected to result in a cost reduction to governmental units charged with administering elections because a single system rather than two parallel systems would have to be maintained, but the amount of the expected savings is unknown. The rules are not expected to have any cost impact to businesses, individuals, or groups or individuals outside of individuals that are part of governmental units charged with administering elections.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as any assumptions.

In primary or direct benefits, the proposed rules will allow for greater efficiency because clerks, election inspectors, and BOE staff will be using, maintaining, and accessing a single system. Additionally, the single system will be simplified and streamlined to incorporate feedback from the first year the online electronic pollbook was used (for early voting, in 2024). In secondary or indirect benefits, BOE staff and contractors will be freed up from performing duplicative tasks and will be able to perform needed work on other projects. The department assumes that a simplified and streamlined single system provides a qualitative benefit to clerks, election inspectors, and BOE staff who need to use, maintain, and access that system. There is no relevant quantitative information or assumptions related to quantities as no quantities are being affected by these rules.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth and job creation in Michigan. The rules are not anticipated to result in job creation or elimination.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There are no individuals or businesses who will be disproportionately affected by the rules.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency relied upon the Department's current practice and comments provided by county, city, and township clerks, especially those submitted during a Lean Process Improvement workshop completed in January regarding potential improvements to the electronic pollbook. By far the most common request was making the Election Day electronic pollbook as similar as possible to the early voting electronic pollbook.

A. How were estimates made, and what assumptions were made? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The Lean Process Improvement's report on identified improvements relied on survey feedback from over 350 stakeholders, of whom 66% were city and township clerks, 4% were county clerks, 12% were deputy clerks, 6% were election directors, and 12% were other parties. The following are a sample of the feedback received:

1. Making the switch the online version (like Early Voting EPB) for Election Day EPB
2. Election Day Poll Book should be the same as the Early Voting poll book. Election Day Poll book especially the ballot summary is a nightmare after a 16-hour day. The entire platform needs to be revamped and easier to use for all including the elderly which consists of almost all my election workers.
3. I would like to see the EV poll book implemented on election day. It makes sense, easier to navigate and less training for workers that only work a few times a year.
4. It would be nice if the Election Day poll book was live like during the early voting. It is cumbersome with voters that have been sent a ballot but not returned them. Early voting EPB runs so much more efficient and simplified.
5. Now that we have had the year 2024 under our belt with LIVE PB. It would be nice to allow Election Day EPB to be LIVE too.
6. Please think about EV and Election Day being the same Poll Book.
7. Make it live.
8. I would strongly advise a legislative push/policy change to allow the EPB to be online/live, similar to the EV EPB. Not only would this allow for greater protection from error (for example, someone voting, then registering to vote and voting in another place on election day, OR someone voting in person, then dropping off an AV ballot). While I understand there are procedural things in place to help with this, it would take significant work (on the day of the election) off the clerk if the EPB was live online and could cross check for these items. And it would add protection in case these steps were missed.
9. Having the election day poll book online (like the Early Voting Poll Book) would save my office from receiving hundreds of election worker phone calls on election day about spoiling/invalidating av ballots.
10. If the EPB could be set up to be live like the Early Voting computer is, Election Day would run faster and smoother. It is extremely helpful having the information in real time with the number of people who register to vote on Election Day and the people who turn in their absentee ballot on Election Day.
11. It would be nice for the Election day poll book to be online like the EV Poll book and still have the downloaded Poll book as a back up option going forward.
12. There is just enough difference between the EVEPB and the ED EPB to make it confusing for our EPB workers. I love the live update capability of the EVEPB. It would be nice if they were combined into one improved system.
13. I would support a live EPB as used in Early Voting for Election Day. This would be consistent for election workers, provide a live database to eliminate typing in newly registered voters, and reduce errors.
14. The election inspectors that work both election day and early voting prefer the format of the early voting EPB.
15. I would like it to be more like the Early Voting EPB.
16. It would be a great feature if the pollbook was live on election day as it is during early voting.
17. It would be nice if the ED poll book could be in real time.
18. Live QVF, Setup like the Early Voting EPB. Seems silly that the Election Day EPB would be different than EV EPB, especially the livetime function.
19. Come up with a system like the Early Voting Poll Book for jurisdictions with internet to use. The "real-time" data is more efficient and would help reduce fraud.

ALTERNATIVE TO REGULATION

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The only reasonable alternative to the proposed rules that would achieve the same or similar goals is amendment of the Michigan Election Law to explicitly require live connectivity to be used on Election Day. However, the Department cannot amend the law, so there is no reasonable alternative that is within the Department's control.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

The alternative would likely provide for an explicit allowance for live connectivity to be added to the Michigan Election Law in MCL 168.668b.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There are no private market-based mechanisms available to address the needs covered by the proposed rules.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The proposed rules represent the only reasonable procedure going forward. The Bureau has sent the rules out to the county and municipal clerk associations for initial feedback and the only additional suggestion was that the rules include specific procedures for when and how electronic pollbooks should be switched between online and offline functionality (in the case of an internet outage, etc). However, the Bureau determined that specific procedures were more appropriate for instructions issued periodically as needed, as the procedure may change slightly from year to year to address technological changes and potential future efficiencies.

ADDITIONAL INFORMATION

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules explicitly inform persons of requirements and methods of compliance.

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Department of State
Elections & Campaign Finance
Administrative Rules for Use of Electronic Pollbook
Rule Set 2025-14 ST

NOTICE OF PUBLIC HEARING

**Tuesday, July 15, 2025
09:30 AM**

**Public Meeting Room A
Delta Charter Township Building, 7710 West Saginaw Hwy, Lansing, MI 48917**

The Department of State will hold a public hearing to receive public comments on proposed changes to the Use of Electronic Pollbook rule set.

To provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, to provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as backup to the live connection.

By authority conferred on the secretary of state by section 31 of the Michigan election law, 1954 PA 116, MCL 168.31.

The proposed rules will take effect immediately after filing with the Secretary of State. The proposed rules are published on the State of Michigan's website at <http://www.michigan.gov/ARD> and in the 7/1/2025 issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail or email at the following email address: Elections-PublicComment@Michigan.gov.

Comments on these proposed rules may be made at the hearing, by mail, or by email at the following addresses until 7/15/2025 at 05:00 PM:

Bureau of Elections
P.O. Box 20126, Lansing, Michigan 48901-0726
Elections-PublicComment@Michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 800-292-5973 to make arrangements.

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

USE OF ELECTRONIC POLLBOOK

Filed with the secretary of state on

These rules become effective immediately after 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 section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48 are added to the Michigan Administrative Code, as follows:

R 168.41 Definitions.

Rule 1. (1) As used in these rules:

(a) “Act” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(b) “Approved form of transmission” means an encrypted or password protected, or both, flash drive or other electronic media used to store election files and transfer files between the electronic pollbook and qualified voter file, or another form of secure storage and transmission if approved by the bureau of elections.

(c) “Department” means the department of state.

(d) “Electronic pollbook” means computer software that receives information from the qualified voter file and is used during elections to process voters and generate reports. Electronic pollbook includes, but is not limited to, the early voting electronic pollbook, the election day vote center electronic pollbook, and the election day electronic pollbook, or any combination of those electronic pollbooks.

(e) “Secretary of state’s duly authorized agent” includes bureau of elections staff, other necessary department staff, county, city, and township clerks or their designees, election inspectors, and relevant department of technology, management, and budget staff as determined by the director of elections.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.42 Access to electronic pollbook data and software.

Rule 2. (1) The voter data contained in the electronic pollbook are public records subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Voter data that is exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, must not be released.

(2) Records regarding electronic pollbook software programming are confidential and must not be released if disclosure of the records may compromise the confidentiality, integrity, or availability of cybersecurity of election information systems.

(3) The secretary of state's duly authorized agents shall have access to the electronic pollbook software and complete the security verification required by the department to access the electronic pollbook software.

R 168.43 Download and backup.

Rule 3. (1) For the early voting period, if a jurisdiction conducts early voting, the clerk designated in the early voting agreement shall access the early voting electronic pollbook software as instructed by the department.

(2) For election day, the clerk conducting the election shall download the electronic pollbook software as instructed by the department.

(3) If the electronic pollbook software as described in section 668b(1) of the act, MCL 168.668b, has a secure live connection to the qualified voter file software at a polling place or early voting site, the electronic pollbook software with the secure live connection must be used to process voters and to generate election precinct reports, and the downloaded electronic pollbook software, or a paper copy of the downloaded electronic pollbook software, serves as a backup.

R 168.44 Electronic pollbook during the early voting period.

Rule 4. (1) If an early voting site has internet access, the electronic pollbook software used during the early voting period must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

(2) At the conclusion of each day of early voting, election inspectors at an early voting site shall print from the electronic pollbook a list of voters who voted that day at the early voting site and include the list in the physical pollbook.

R 168.45 Electronic pollbook on election day.

Rule 5. If a polling place has internet access and the bureau of elections has established live connectivity functionality with the qualified voter file, the electronic pollbook software used on election day must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

R 168.46 Production of reports.

Rule 6. (1) If the polling place produces required reports after the close of polls on election day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

R 168.47 Upload of electronic pollbook files to the qualified voter file.

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

R 168.48 Data retention.

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

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DEPARTMENT OF STATE
BUREAU OF ELECTIONS
USE OF ELECTRONIC POLLBOOK

Filed with the secretary of state on October 23, 2025

These rules become effective immediately after 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 section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48 are added to the Michigan Administrative Code, as follows:

R 168.41 Definitions.

Rule 1. (1) As used in these rules:

- (a) “Act” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.
 - (b) “Approved form of transmission” means an encrypted or password protected, or both, flash drive or other electronic media used to store election files and transfer files between the electronic pollbook and qualified voter file, or another form of secure storage and transmission if approved by the bureau of elections.
 - (c) “Department” means the department of state.
 - (d) “Electronic pollbook” means computer software that receives information from the qualified voter file and is used during elections to process voters and generate reports. Electronic pollbook includes, but is not limited to, the early voting electronic pollbook, the election day vote center electronic pollbook, and the election day electronic pollbook, or any combination of those electronic pollbooks.
 - (e) “Secretary of state’s duly authorized agent” includes bureau of elections staff, other necessary department staff, county, city, and township clerks or their designees, election inspectors, and relevant department of technology, management, and budget staff as determined by the director of elections.
- (2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.42 Access to electronic pollbook data and software.

Rule 2. (1) The voter data contained in the electronic pollbook are public records subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Voter data that is exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, must not be released.

(2) Records regarding electronic pollbook software programming are confidential and must not be released if disclosure of the records may compromise the confidentiality, integrity, or availability of cybersecurity of election information systems.

(3) The secretary of state's duly authorized agents shall have access to the electronic pollbook software and complete the security verification required by the department to access the electronic pollbook software.

R 168.43 Download and backup.

Rule 3. (1) For the early voting period, if a jurisdiction conducts early voting, the clerk designated in the early voting agreement shall access the early voting electronic pollbook software as instructed by the department.

(2) For election day, the clerk conducting the election shall download the electronic pollbook software as instructed by the department.

(3) If the electronic pollbook software as described in section 668b(1) of the act, MCL 168.668b, has a secure live connection to the qualified voter file software at a polling place or early voting site, the electronic pollbook software with the secure live connection must be used to process voters and to generate election precinct reports, and the downloaded electronic pollbook software, or a paper copy of the downloaded electronic pollbook software, serves as a backup.

R 168.44 Electronic pollbook during the early voting period.

Rule 4. (1) If an early voting site has internet access, the electronic pollbook software used during the early voting period must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

(2) At the conclusion of each day of early voting, election inspectors at an early voting site shall print from the electronic pollbook a list of voters who voted that day at the early voting site and include the list in the physical pollbook.

R 168.45 Electronic pollbook on election day.

Rule 5. If a polling place has internet access and the bureau of elections has established live connectivity functionality with the qualified voter file, the electronic pollbook software used on election day must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

R 168.46 Production of reports.

Rule 6. (1) If the polling place produces required reports after the close of polls on election day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

R 168.47 Upload of electronic pollbook files to the qualified voter file.

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

R 168.48 Data retention.

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

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**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)
MOAHR-Rules@michigan.gov**

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

AGENCY INFORMATION:

Agency name:
State

Division/Bureau/Office:
Elections & Campaign Finance

Name of person completing this form:
Jenny McInerney

Phone number of person completing this form:
517-331-7825

Email of person completing this form:
McInerneyJ1@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:
Doug Novak

RULE SET INFORMATION:

MOAHR assigned rule set number:
2025-14 ST

Title of the proposed rule set:
Use of Electronic Pollbook

1. Purpose of the proposed rules and background:

The purpose of these rules is to clarify rules regarding the electronic pollbook, given technological advances, the introduction of early voting and the early voting pollbook, and the security benefits of real time connection with the Qualified Voter File.

2. Summary of the proposed rules:

To provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, to provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as backup to the live connection.

3. List names of newspapers in which the notice of public hearing was published and publication dates:

Marquette Mining Journal—6/14/25
Adrian Daily Telegram—6/15/25
Grand Haven Tribune—6/14/25

4. Date of publication of the proposed rules and notice of public hearing in the Michigan Register:
7/1/2025

5. Date, time, and location of the public hearing:

7/15/2025 09:30 AM at Public Meeting Room A, Delta Charter Township Building, 7710 West Saginaw Hwy, Lansing, MI 48917

6. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTTransaction?TransactionID=1587>

7. List of the name and title of agency representative(s) who attended the public hearing:

Jenny McInerney, Michigan Bureau of Elections, Regulatory Attorney

Alessa Boes, Michigan Bureau of Elections, Regulatory Attorney

8. Persons submitting comments of support:

Melanie Macey, Promote the Vote, Policy & Government Affairs Director

Ray Moulden, Cannon Township, Election & Technology Specialist

9. Persons submitting comments of opposition:

No individual submitted comments in opposition to the rules.

10. Persons submitting other comments:

No individual submitted other comments.

11. Identify any changes made to the proposed rules based on comments received during the public comment period:

None.

12. Date report completed:

5/7/2026

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From: [Melanie Macey](#)
To: [MDOS-Elections-PublicComment](#)
Subject: Promote the Vote comment on 2025-14 ST
Date: Tuesday, July 15, 2025 3:44:43 PM

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Promote the Vote writes in support of proposed rule 2025-14-ST, which would require a secure live connection between the electronic pollbook (EPB) and the Qualified Voter File (QVF) during voting, when internet access is available. The success of the live EPB system during early voting in 2024 demonstrates its reliability and builds confidence that extending this functionality to Election Day would significantly enhance both accuracy and efficiency. While procedural safeguards exist to address rare but serious ballot errors, real-time updates offer an added layer of protection and would ease the burden on clerks who currently rely on manual checks and post-election reconciliation.

Importantly, this change would also streamline Election Day operations. Clerks in some jurisdictions report receiving hundreds of phone calls from election workers about absentee ballot issues, many of which could be avoided with real-time access to voter data. A live connection would allow for instant updates as voters register or as absentee ballots are received, improving consistency, reducing confusion among poll workers, and decreasing the risk of data-entry errors. Retaining the pre-downloaded EPB as a backup, as required in statute, ensures election continuity even in the event of connectivity issues. This rule strikes the right balance between modernizing election infrastructure and maintaining reliability.

Melanie Macey

Policy & Government Affairs Director | Promote The Vote

734-277-1311 | she/her

www.promotethevote.org

<https://calendly.com/melanie-macey>

This e-mail message and its attachments are confidential, intended only for the addressee(s) named above and may contain information that is proprietary, privileged, attorney work product or otherwise exempt from disclosure. If you receive this message in error please notify me at melanie@promotethevote.org and immediately delete this message and its attachments from your system.

From: [Ray Moulden](#)
To: [MDOS-Elections-PublicComment](#)
Subject: Live Connectivity for Polling Places on Election Day
Date: Tuesday, July 15, 2025 1:02:05 PM

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Live connectivity on Election Day between Pollbooks and QVF **ON A SECURE CONNECTION** would be a distinct improvement over the current process.

It would:

1. Reduce the need for calls to the Clerk's Office to verify if an AV Ballot has been received
2. Reduce the burden on Clerks to go into QVF and reject the AV Ballot
3. Speed up the service for the voter since no call to the Clerk is needed.
4. Facilitate a more procedurally similar experience for the voter to Early Voting leading to more voter confidence in the system
5. Reduce training needs for Election Inspectors
6. Reduce the possibilities for double voting

I strongly recommend proceeding with allowing for Live Connectivity on Election Day **AS WE ALREADY DO IN EARLY VOTING.**

Ray Moulden
Election & Technology Specialist
Cannon Township, Kent County
rmoulden@cannontwp.org

No individuals attended or testified at the public hearing regarding Use of Electronic Pollbook, held July 15, 2025, at the Delta Charter Township Building.

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DEAR ANNIE

Regretting the evidence of having a good time

Dear Annie:

Last year, I married the nicest guy I've ever met. I'm 40 and wish I'd met him sooner, but better late than never. On our month-long honeymoon in Europe, we attended a music festival. During the festival, my husband and I saw some other women in pasties, and in a moment of flirting, I did something totally out of character and bought some pasties myself and a glittery thong. I spent the next day dancing and partying in this revealing attire with my husband. I think everyone needs to have one wild moment in



Annie

their life, and I had lots of fun.

After we got home, I found out the festival had hired a photographer to take pictures for their social media accounts. There I was in three photos online wearing only the glittery thong and pasties over my breasts, dancing on a mini stage they set up in the crowd. The pictures are untaged, so no one would connect them to me anyway, and my friends all think I look hot and that it isn't a big deal. I own my own business, so I don't need to worry about employment, and for now, only my friends know. Even so, I'm too embarrassed to tell my husband.

Should I confess to him that I'm in these pictures that will exist forever? Should I try to get the photos removed somehow? Should I even feel embarrassed? When I really think about it, it's probably no big deal, but when the feelings of embarrassment kick in, I don't know what to do!

— Festival Flashback

Dear Festival Flashback:

Honesty is the best policy, especially in marriage, and this isn't so much a confession to your husband as it is simply sharing with him what you found. He was right there with you, participating in the event, too, even if there are no pictures of him to prove it.

You're in a fortunate position that the pictures don't affect your job or personal life. Still, if contacting the festival or social media account is easy enough, it's worth asking if the photos can be taken down; you may care more later on and wish you had done so sooner. Don't let this happy, carefree, innocent moment in the past become something you beat yourself up for now.

Shouldn't the host have mentioned that in the invitation? Is it appropriate to ask about costs like this before RSV'ing? My friend could easily have afforded to pick up the check for the gathering. I'm certainly glad I had the money to cover what we ordered.

— Perplexed About the Etiquette

Dear Perplexed:

Yes, the host should've made that clear in the invitation. If the party had been at their home instead, no one would expect to pay for food or drinks, so it's reasonable to think the same would be true of a different venue, especially one you traveled hours to get to. If the hosts weren't prepared to foot the bill, they

should've been upfront about it.

In the future, there's nothing wrong with asking for more details when an invite is vague and especially at public venues again. "Will food and drinks be provided?" is a completely fair question to ask ahead of time, and it lets you make a fully informed decision before committing to anything.

Annie Lane's second anthology — "How Can I Forgive My Cheating Partner?" featuring favorite columns on marriage, infidelity, communication and reconciliation — is available as a paperback and e-book. Visit <http://www.creatorspublishing.com> for more information. Send your questions for Annie Lane to dearannie@creators.com.

CAR TALK

Turn off useful safety feature so you can run into walls

Dear Car Talk:

Our new Toyota Tundra uses ALL of the available space in our garage. And if I want to close the garage door, I have to pull within inches of the front wall. Here's the problem: The automatic brake system continually hits the brakes for me every time I approach the wall, even though I am just creeping at 1 mph.

Is there a danger in repeatedly having the auto brake system activate when I park each time? Will this damage the brakes?

— Dan

Dear Dan:

No, but it might damage your neck, Dan. For those who don't have this feature, lots of newer cars have automatic emergency braking. If the car's sensors conclude that there's an obstacle ahead (a stopped car, for instance), and you haven't given any indication that you're aware of it by taking your foot off the gas or hitting the brakes, the automatic braking system kicks in.

As a first step, the vehicle will issue an

audible and/or visual warning. And then, if you continue to browse your wife's sister's Instagram photos while the obstacle gets closer, it will actually apply the brakes for you to prevent a crash.

Many cars and trucks also have a slow-speed version of this system for use in parking. It works in both forward and reverse. So, if trying to parallel park between two Maseratis, and you're about to take out the hood of the one

behind you, the system will warn you and then apply the brakes to keep you from hitting it and having to join the witness protection program.

This can be incredibly useful. It can also be irritating, as you've learned, Dan. So, your vehicle (and most others) allows you to turn off the slow-speed auto brake feature in situations where you'd rather it mind its own business. On the Tundra,

there's a button to the left of your steering wheel with an image of a traffic cone and the word "OFF" underneath it. When you pull into your garage, just press that button.

An orange light with that same image will show up on your dashboard, letting you know that the system is off. You'll still hear the audio warning when the sensors detect a nearby obstacle (like the garage wall), but the truck will not apply its own brakes. Once that light is off,

Dan, you are free to drive right into your radial arm saw.

It's also useful for going through a car wash. Just keep in mind that most vehicles will reset the system to "On" when you restart. So, you'll have to hit the button each time you pull into the garage. But that's better than the whiplash, right?

Got a question about cars? Write to Ray in care of King Features, 628 Virginia Drive, Orlando, FL 32803, or email by visiting the Car Talk website at www.cartalk.com.

Panton made first all-plastic chairs in '60s

By TERRY and KIM KOVEL

A chair is a chair is a chair, isn't it? Four legs to stay on the floor, a high back to keep the sitter upright, and maybe a stretcher base for support. And everything is made of wood, of course, with variety coming from upholstery, decorative carvings or the shape of the legs.

That may have been true up to the 20th century. Furniture changed dramatically when designers took advantage of new materials that opened up previously unheard-of possibilities: plastics.

Man-made plastics were used for household implements by the 1920s, but it wasn't until after World War II that the potential for full-sized, functional plastic furniture was realized. One of the most famous plastic chair designs was the Panton chair, named after its designer, Danish architect Verner Panton. Considered the world's first molded plastic chair, it is a cantilevered chair made from a single piece of plastic. Its shape and weight distribution allow it to be made without back legs.

Panton came up with the design in about 1960, but it wasn't until the middle of the decade that he found a manufacturer, German furniture company Vitra, that would make it. Vitra started producing the Panton chair in 1968.

Later, the Vitra Design Museum commemorated the Panton chair with sets of miniature versions in 1-to-6 scale. A group of 14 sold for \$100 at an auction by Eldred's; a bargain when compared to the price of

a full-sized Panton chair.

The chair is still in production today, and designers are adapting it to contemporary sensibilities by creating versions in eco-friendly materials like bamboo and rattan.

Question:

One of my favorite antique pieces is a large copper bowl about 21 inches across. It has a round bottom and fits into a three-legged stand. I think it's for making candy. Can you tell me about it and what it might be worth?

Answer:

You're right; copper bowls like yours have been used to make candy, at least since the 1800s. Despite their bowl shape, they are usually called candy kettles. Cooks know that copper has excellent thermal conductivity, meaning that it heats and cools rapidly and spreads heat evenly across its surface. This is especially important for making candy; sugar syrup needs to be heated to precise temperatures and handled very carefully to prevent scorching. Unlike most present-day copper cookware, copper candy kettles are usually unlined. Sugar does not react with copper the way acidic foods do. The rounded bottom of the kettle allows for easier, more thorough mixing.

Today, there are many candy companies that advertise that they use copper kettles, often insisting that discerning customers can taste the difference. Antique and vintage copper candy kettles sell for about \$200 to \$300 without an

identified maker or date. More information generally increases the value.

Check your kettle for marks and take a close look at any seams, rivets or signs of construction. Most copper cookware was entirely handmade before 1850. By the early 1900s, manufacturers used electric machinery.

Question:

Can you tell me about my deck of "Go Fish" children's playing cards? The box says "Copyright 1951" and "Mfg. by Ed-U-Cards N.Y.," but I haven't been able to find out more information about the company or the cards' value. I was also told that there is a toy museum that accepts donations of very old toys. Any information you can provide about it is greatly appreciated.

Answer:

The Ed-U-Cards company started in the 1940s in Long Island, New York, and appears to have operated until the 1960s. As the name indicates, they made educational card games for children. These included flashcards and memory games to teach subjects like vocabulary, basic math, science concepts and history. They also made related toys like puzzles and anagram tiles. Many games they made featured popular cartoon characters and other licensed properties. Some of their card games were less overtly educational, like sports games and trading cards.

Decks of Ed-U-Cards decks can be worth anywhere from about \$10 to \$50, depending on their subject matter and condition. Games

with pictures of historical figures or famous fictional characters usually sell for the highest prices.

There is a toy museum called the Strong National Museum of Play in New York (museumofplay.org) that accepts donations of old toys. They are known for their Toy Hall of Fame, which annually

inducts a selection of classic toys.

Tip: Plastic furniture from the 1950s often scratches. A good polishing with automobile wax might help cover the blemishes.

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identification. Find auction houses, collectors' clubs, museums, repair services, and more in our Business Directory. Discuss antiques and collectibles with other collectors on our forums. Find events on our Event Calendar. Stay up-to-date with our latest news and blog. And sign up on Kovels.com to receive Kovels Comments, our free weekly email full of information about antiques and collectibles. Look for it every Wednesday.

Department of State
Elections & Campaign Finance
Administrative Rules for Use of Electronic Pollbook
Rule Set 2025-14 ST

NOTICE OF PUBLIC HEARING
Tuesday, July 15, 2025 — 9:30 a.m.

Public Meeting Room A
Delta Charter Township Building, 7710 W. Saginaw Highway,
Lansing, MI 48917

The Department of State will hold a public hearing to receive public comments on proposed changes to the Use of Electronic Pollbook rule set.

The proposed rules would provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, the proposed rules would provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as a backup to the live connection.

By authority conferred on the secretary of state by Section 31 of the Michigan Election Law, 1954 PA 116, MCL 168.31.

The proposed rules will take effect immediately after filing with the secretary of state. The proposed rules are published on the State of Michigan's website at Michigan.gov/ARD and in the July 1, 2025, issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail at the address below or by electronic mail at the following email address: Elections-PublicComment@Michigan.gov.

Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 5 p.m. on July 15, 2025.

Bureau of Elections
P.O. Box 20126, Lansing, MI 48901-0726
Elections-PublicComment@Michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 800-292-5973 to make arrangements.

Defendants' Appendix Page 028

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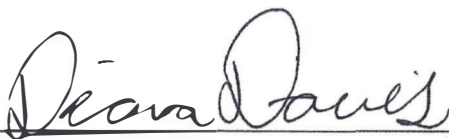
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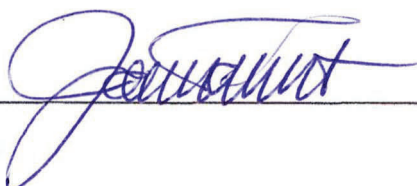
This is to certify that the Public Notice scheduled to run in the newspaper listed ran as the placement details below and proof of publication is attached.

Newspaper Name: Marquette Mining Journal

Run Date	Ad Size	Caption/Position/Special Instructions
6/14/2025	1/4 Page	Public Notice

Signed by  (MP1/MANSI Representative)
June 14, 2025

Notary Public:

Signed by  (Notary Public)
June 14, 2025

JAMES R. TARRANT
NOTARY PUBLIC – STATE OF MICHIGAN
COUNTY OF VAN BUREN
My commission expires April 12, 2029
Acting in the County of Ingham

the TRIBUNE

The Tribune is published Tuesday through Saturday. Our office, 700 Washington Ave., Suite 140, Grand Haven, is open from 8 a.m. to 4 p.m. Monday through Friday. Our website, www.ghtrib.com, is open 24/7.

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POLICE

No injuries when car strikes building in SL Twp.

By TRIBUNE STAFF

SPRING LAKE TWP. — Police say no one was injured when a car slammed into a building in Spring Lake Township early Friday morning.

According to the Ottawa County Sheriff's Office, a 34-year-old Muskegon woman driving a Subaru Crosstrek crashed into the building at Johnson Auto Sales, 14658 Apple Drive.

There were no injuries in the crash, which occurred shortly after midnight, although the building did suffer some damage, police said.

The incident remains under investigation.

13 ON YOUR SIDE WEATHER



Today: 81, Partly Cloudy
Sunday: 84, 62, Partly Cloudy
Monday: 85, 64, Partly Cloudy
Tuesday: 86, 66, T-STORMS
Wednesday: 84, 58, T-STORMS
Thursday: 82, 60, T-STORMS

AG Nessel issues summer travel tips

CONTRIBUTED

LANSING — As the summer travel season ramps up across the state, Michigan Attorney General Dana Nessel has reissued her travel tips alert to help consumers avoid common travel scams and stay informed about their rights while vacationing.

With many Michiganders planning trips during the warmer months, Nessel released a video urging travelers to remain vigilant when booking and taking vacations.

"Summer is the perfect time to create lasting memories with your family, and that experience shouldn't be disrupted by financial headaches or travel scams," Nessel said. "A few precautions can go a long way in protecting your plans and your wallet."

Nessel encourages travelers to:

Research agents and booking sites: Verify phone numbers and websites independently rather than relying on web search results. Check reviews, seek personal recommendations, and consult the Better Business Bureau as well as the Attorney General's Consumer Protection Team for information.

Get promises in writing: Before providing your payment information, request that all agreements be provided in writing, including any special requests or terms.

Read contracts carefully: Pay close attention to fine print, fees, and service charges, especially for "all-inclusive" deals. Make copies of all documents to dispute any unexpected fees.

Pay with a credit card: Avoid paying for travel with cash, checks, or prepaid cards. Use a credit card, if possible, preferably a designated travel credit card for booking flights, hotels, and other expenses. Credit cards offer better fraud and cancellation protections than other payment methods.

Beware of fraudulent listings on vacation rental sites: Scammers can hijack legitimate listings or create fake properties on vacation home rental websites like Airbnb and Vrbo to lure travelers into sending payments for rentals that don't exist. Always book through verified sources.

"Pizza Flyer" Scam: Flyers slipped under hotel doors that advertise local food delivery may be fraudulent. When ordering, never give your credit card information to unknown sources.

Fake Front Desk Calls: Scammers may call your hotel room claiming to be from the front desk and request your credit card information due to a "computer glitch."

Bait-and-Switch Tactics: Be wary of offers with unrealistically low prices that result in additional charges or pressure to buy more expensive services.

Nessel also encourages consumers to watch for increased fees and surcharges this season, as some travel-related businesses adjust rates to offset inflation and tariffs.

She says to check all costs carefully, including transportation fares, ferry and parking passes, and ensure season passes purchased prior to any rate increase are still honored.

Because of the busy travel season during the summer, some delays on bridges and airlines are to be expected.

However, airline passengers are entitled to a refund for:

Canceled or significantly changed flights: Passengers



Michigan's attorney general is warning state residents to be aware of travel scams as summer travel picks up.

will be entitled to a refund if their flight is canceled or significantly changed and they do not accept alternative transportation or offered travel credits. Significant changes to a flight include: departure or arrival times that are more than 3 hours domestically and 6 hours internationally; departures or arrivals from a different airport; increases in the number of connections; instances where passengers are downgraded to a lower class of service; or connections at different airports or flights on different planes that are less accessible or accommodating to a person with a disability.

Significantly delayed baggage return: Passengers who file a mishandled baggage report will be entitled to a refund of their checked bag fee if it is not delivered within 12 hours of their domestic flight arriving at the gate, or 15-30 hours of their international flight arriving at the gate, depending on the length of the flight.

Extra services not provided: Passengers will be entitled to a refund for the fee they paid for an extra service — such as Wi-Fi, seat selection, or in-flight entertainment — if an airline fails to provide this service.

Airlines are also required to provide automatic, prompt and complete refunds in the same method of payment used by the consumer to purchase their tickets.

"With air travel on the rise in the summer, it's important for passengers to know their rights," said Nessel, who previously served as chair of the U.S. Department of Transportation Aviation Consumer Protection Advisory Committee that evaluates existing aviation consumer protection programs.

"Federal regulations ensure you're not footing the bill for canceled flights or lost baggage."

Department of State Elections & Campaign Finance Administrative Rules for Use of Electronic Pollbook Rule Set 2025-14 ST

NOTICE OF PUBLIC HEARING
Tuesday, July 15, 2025 — 9:30 a.m.

Public Meeting Room A
Delta Charter Township Building, 7710 W. Saginaw Highway,
Lansing, MI 48917

The Department of State will hold a public hearing to receive public comments on proposed changes to the Use of Electronic Pollbook rule set.

The proposed rules would provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, the proposed rules would provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as a backup to the live connection.

By authority conferred on the secretary of state by Section 31 of the Michigan Election Law, 1954 PA 116, MCL 168.31.

The proposed rules will take effect immediately after filing with the secretary of state. The proposed rules are published on the State of Michigan's website at Michigan.gov/ARD and in the July 1, 2025, issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail at the address below or by electronic mail at the following email address:

Elections-PublicComment@Michigan.gov.

Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 5 p.m. on July 15, 2025.

Bureau of Elections
P.O. Box 20126, Lansing, MI 48901-0726
Elections-PublicComment@Michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 800-292-5973 to make arrangements.

COMMUNITY CALENDAR

Sunday, June 15

Alcoholics Anonymous:

7:30 a.m., 9:30 a.m. and 4 p.m. at Tri-Cities Alano Club, 419 Fulton St., Grand Haven.

Feast of the Strawberry

Moons: 9 a.m. to 4 p.m., Harbor Island.

AA Speaker Meeting:

7 p.m. at Tri-Cities Alano Club, 419 Fulton St., Grand Haven. Open to the public.

Monday, June 16

Alcoholics Anonymous:

7:30 a.m., noon, 4 p.m. and 6 p.m. at Tri-Cities Alano Club, 419 Fulton St., Grand Haven.

Family Planning Clinic:

8 a.m. to 5 p.m. at Ottawa Department of Public Health, 1207 S. Bechtel St., Suite B, Grand Haven. By appointment only.

SMART Recovery:

12:30 p.m. at The Momentum Center, 401 N. Seventh St., Grand Haven.

Alzheimer's and Dementia Caregiver Group:

1-2:30 p.m. at United Methodist Church of the Dunes, 717 Sheldon Road, Grand Haven.

Chair Yoga:

5:30 p.m. at United Methodist Church of the Dunes, 717 Sheldon Road, Grand Haven.

Al-Anon:

7 p.m. at St. John's Episcopal Church, 524 Washington Ave., Grand Haven.

Alcoholics Anonymous:

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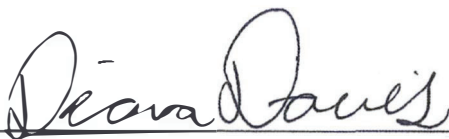
Advertiser: Michigan Dept of State

Date of order: June 10, 2025

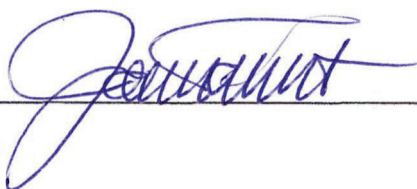
This is to certify that the Public Notice scheduled to run in the newspaper listed ran as the placement details below and proof of publication is attached.

Newspaper Name: Grand Haven Tribune

Run Date	Ad Size	Caption/Position/Special Instructions
6/14/2025	1/4 Page	Public Notice

Signed by  (MP1/MANSI Representative)
June 14, 2025

Notary Public:

Signed by  (Notary Public)
June 14, 2025

JAMES R. TARRANT
NOTARY PUBLIC – STATE OF MICHIGAN
COUNTY OF VAN BUREN
My commission expires April 12, 2029
Acting in the County of Ingham

Stonewall

Continued from Page 1A

They fought back, with the fists and fury of a people tired of being targeted and condemned for who they are.

The Stonewall riots represent such a significant chapter in American history that President Barack Obama designated the bar's exterior, an adjacent park and the surrounding streets a national monument in 2016 so that what happened there, and the people involved, would never be forgotten.

Less than a decade later, President Donald Trump wants Americans to remember only part of the story. In February, the National Park Service stripped references to transgender people from the monument's website. The move was part of Trump's broader campaign to recognize the existence of just two sexes — male and female — and combat what he calls "gender ideology."

Trans people who battled police alongside gay men and lesbians at Stonewall have now been erased from the government's official history of that event.

"That's just wrong," said Miss Major Griffin-Gracy, who participated in the riots and now lives in Little Rock, Arkansas. Miss Major, as she is known, is a transgender activist who has argued for years that trans Americans' involvement in Stonewall has never been fully acknowledged.

Mark Segal, a gay rights activist from Philadelphia who was inside Stonewall the night of the raid, is appalled by Trump's attempt at trans-washing LGBTQ+ history.

"I am a witness to history, and my trans brothers and sisters were with me that night," Segal said. "I won't allow him to censor history. I want people to realize that when a government tries to erase a group of people, that's dangerous."

'Go get 'em, girls!'

Segal was at the back of the bar, near the dance floor, where other young people hung out, when police came barreling through. It was 1:20 a.m., a Saturday.

Segal, then 18, had been in New York for just six weeks. Growing up in Philadelphia, he had felt as if he were the only gay man in the world. Gay men were practically invisible in 1969. He had heard that Greenwich Village was a place where people could be themselves, so he headed to New York and found his way to Christopher Street in the heart of the city's gay scene.

There, he found a circle of friends like himself. He found Stonewall.

Fredd "Tree" Sequoia had discovered Greenwich Village a few years earlier. He had heard about it from a friend. So one day, while he was a teenager, he sneaked off from his home in Brooklyn and boarded a train to the city. He was so taken by the neighborhood's thriving mixture of clubs, coffee shops and easy sex that he moved there and never left.

Stonewall opened in early 1967 and quickly became his main hangout. He was there, along with Segal and others, dancing at the back of the bar, when the police charged in.

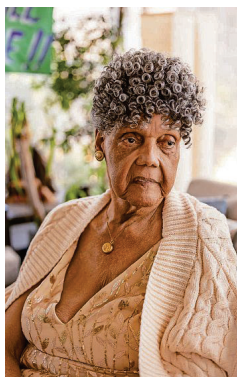
What happened next is legend, one that has been repeated and embellished so often that it can be hard to separate fact from fiction.

About 200 people were inside the bar that morning. Some, like Sequoia, were dancing. Others were just standing around, talking to friends, openly flirting — something that could have gotten them arrested in an era where same-sex relations were considered deviant and criminal.



A placard placed by police on the doors of the Stonewall Inn in New York City's Greenwich Village after their raid in June 1969 is now part of the national historic monument that honors the struggle for LGBTQ+ rights.

DREW ANGERER/GETTY IMAGES FILE



Major Griffin-Gracy was at the Stonewall Inn in New York City on the early morning of June 28, 1969, when patrons fought back against a police raid that would trigger the modern movement for LGBTQ+ rights.

JACOB SLATON/SPECIAL TO USA TODAY

Suddenly, the lights in the bar blinked on and the music stopped. Sequoia heard a friend known as Gypsy scream at the top of his lungs, "Don't touch me!"

Then, pandemonium. A dozen or so police officers moved swiftly through the bar. They justified the raid by saying they were investigating the illegal sale of alcohol. Until 1966, New York had barred the sale of booze to known or suspected homosexuals. Gay bars like Stonewall had tried to get around that rule by operating as private clubs, but with homosexuality a crime, they were still easy targets and often subjected to police raids and brutality.

Officers smashed bottles of liquor against the bar, shattered the jukebox and cigarette machine, and shoved people up against the wall.

"I was scared out of my mind," Segal said. "I had never seen such violence in my life."

Police demanded to see IDs. Most patrons, including Segal and Sequoia, were eventually allowed to leave. Trans people were isolated in a back room so police could examine them to verify their sex. Some refused to cooperate. Lesbians in the front of the bar recoiled at what they considered unnecessary frisking. One reportedly punched a cop.

Out on the street, rumors of the raid spread. A crowd gathered in front of the bar and watched as police officers yanked drag queens and trans people through the door, some kicking and screaming, and shoved them into the back of a waiting van.

"They were just rude," said Miss Major, who was in the crowd. "They put their hand where it didn't belong. They shoved them and pushed them around and then they didn't help us when we had to go up the steps to the paddy wagon."

Boyce and a friend, Robert "Birdie" Rivera, were on their way to Stonewall when the raid happened. They were dressed in "scare drag" — a looser gender-bending style that would later be popularized by the singer Boy George — instead of full drag, which could have gotten them thrown in jail. Police were known to arrest anyone who wasn't wearing at least three items of clothing that corresponded to their sex at birth.

All at once, Boyce, then 21, felt a surge of people behind him that seemed unusual, even for a weekend. He looked toward Stonewall and could see the police cars' red bubble lights, twirling and brightening up the night sky. The crowd was pushing toward the bar. Boyce and

Rivera headed in that direction. By the time they got to Stonewall, the number of onlookers had grown and formed a semi-circle outside the bar's doors.

Boyce watched as an officer dragged the skinny queen in the rhinestone-studded pumps out the door. The bystanders giggled as she fought back and the officer struggled to get her into the police van. They laughed harder when she kicked him to the pavement with her sparkly footwear. He got up and bolted into the vehicle.

When the beating was over, he stepped back onto the sidewalk, jaws clenched, Boyce recalls, and barked a slur at the crowd. "You saw what you came to see. Now get out of here!"

Instead of scattering, the onlookers moved in his direction. Boyce could see the officer's anger rise as he commanded the crowd to disperse and ducked back inside the bar.

Exactly what turned the resistance into a riot remains an open debate. By some accounts, the tipping point was the lesbian punching the officer. Boyce suggests it was the officer's menacing response after he was kicked to the ground. Whatever the cause, the crowd's frustration gave way to fury.

"People started throwing things at the door, whether it be coins from their pockets or a stone they picked up, or an empty can of soda," Segal said.

Segal saw drag queens, loud and boisterous, hurl anything that wasn't fastened to the street. "Whoever assumes that a swishy queen can't fight

See STONEWALL, Page 5A

Department of State
Elections & Campaign Finance
Administrative Rules for Use of Electronic Pollbook
Rule Set 2025-14 ST

NOTICE OF PUBLIC HEARING
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Public Meeting Room A
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Lansing, MI 48917

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Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 5 p.m. on July 15, 2025.

Bureau of Elections
P.O. Box 20126, Lansing, MI 48901-0726
Elections-PublicComment@Michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 800-292-5973 to make arrangements.

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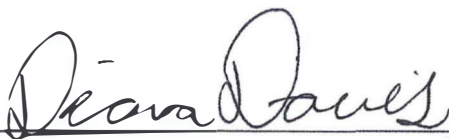
Advertiser: Michigan Dept of State

Date of order: June 10, 2025

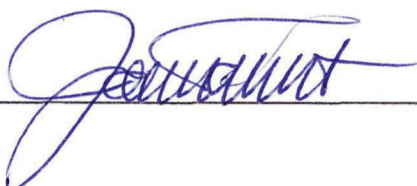
This is to certify that the Public Notice scheduled to run in the newspaper listed ran as the placement details below and proof of publication is attached.

Newspaper Name: Adrian Daily Telegram

Run Date	Ad Size	Caption/Position/Special Instructions
6/15/2025	1/4 Page	Public Notice

Signed by  (MP1/MANSI Representative)
June 15, 2025

Notary Public:

Signed by  (Notary Public)
June 15, 2025

JAMES R. TARRANT
NOTARY PUBLIC – STATE OF MICHIGAN
COUNTY OF VAN BUREN
My commission expires April 12, 2029
Acting in the County of Ingham

EXHIBIT B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAVIS,

Plaintiff,

No. 26-13454

v

HON. TERRENCE G. BERG

JOCELYN BENSON, in her official and individual capacities as the duly elected Secretary of State for the State of Michigan, JONATHAN BRATER, in his official and individual capacities as the duly appointed Director of Michigan Bureau Elections, WAYNE COUNTY ELECTION COMMISSION, and BRENDA GREEN, in her official capacity as the duly elected City Clerk for the City of Highland Park,

MAG. KIMBERLY G. ALTMAN

Defendants.

**AFFIDAVIT OF DEPUTY DIRECTOR OF ELECTIONS ADAM
FRACASSI**

I, Adam Fracassi, being duly sworn, voluntarily state as follows:

1. I can testify competently to the facts contained within this affidavit based upon my personal knowledge.

2. I am the Deputy Director of Elections with the Michigan Bureau of Elections (Bureau). I have served in this capacity since September 16, 2024. The Bureau of Elections is an agency within the Michigan Department of State

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(Department). I have been with the Bureau since May 6, 2018, and have served in a variety of different capacities.

3. I bring this affidavit in support of Defendants Jocelyn Benson and Jonathan Brater (“Defendants”)’ Response in Opposition to Plaintiff’s Emergency Motion for Temporary Restraining Order (TRO) and/or Preliminary Injunction Under Fed. R. Civ. P. 65 with respect to Count VII of First-Amended Verified Complaint (“Request for TRO”). If called as a witness, I could testify truthfully and accurately as to the information contained within this affidavit.

4. I am personally knowledgeable about the Department’s work implementing the provisions of the Michigan Election Law that govern the Electronic Pollbook, or EPB, and the team that performs voter list maintenance activities at the state level, including work with the Qualified Voter File, or QVF and any other applications that interface with it, including the EPB.

The Electronic Pollbook

5. Michigan has developed and maintains its own electronic pollbook software application. This is typically referred to as the EPB. *See* MCL 168.668b, *and see generally* Election Officials Manual, Chapter 12, “Election Day and the Voting Process,” and Chapter 13, “Closing the Polls and the Precinct Canvass” (July 2024) (“Manual”).

6. Beginning at 4 p.m. the day before the election (or beginning at 2 p.m. Saturday for Detroit), authorized election officials download current voter data from the QVF and onto encrypted flash drives which then populate the data in the EPB software on a laptop. MCL 168.668b.

7. Election officials use the EPB to process each voter. That process may include assigning a voter the proper ballot, resolving any outstanding issues related to a voter's eligibility, or informing a voter in the wrong polling location the location of their correct polling location. *See* Manual, Ch. 12, pp. 8, 9, 11.

8. In addition to the EPB, all precincts have a backup paper poll book that can be used if the EPB is unavailable for any reason.

9. Voter activity is saved in the EPB software, and after the close of polls, the software is saved onto the encrypted flash drive.

10. Election officials print a number of reports from the EPB software which are then added to the paper pollbook, including a list of voters, remarks, and a ballot summary. *See* R 168.46. Paper records must be retained by the election official according to the retention schedule for each type of document. *See* Manual, Ch. 13, pp. 13-14, *and see* MCL 168.811.

11. Election officials also upload the EPB files onto the QVF, typically within seven days of an election. R 168.47.

12. Once uploaded to QVF, BOE becomes the custodian of the records and can access the EPB data from QVF by using a number of EPB-specific reports that query EPB uploads.

13. EPB data is available after the election in the same manner that other voting information is available: through QVF, and through the printed paper reports that are stored subject to the relevant retention schedules.

14. It is only after the data has been uploaded to QVF and the Bureau of Elections has notified election officials that security has been released that the officials may remove the local copy of the data and the EPB software from the laptops and flash drives. Security may be released after seven days following canvass and certification, so long as no recount, audit, or litigation is pending, and only upon the Bureau of Elections' instructions. *See* Manual, Ch. 13, pp. 13-14, MCL 168.799a(4), *and* R 168.48.

15. Removal of the EPB software and data from the laptops and flash drives relating to a prior election prevents the confusion that could arise from multiple sets of data, and the technical issues that might arise from multiple versions of the software remaining on the flash drives and laptops. Attempts to download EPB data for a current election onto a device that already contains data from a prior election will cause the device to malfunction and/or the new data not to download. This means voter information like status of absent voter ballots,

precinct changes, or voter registration status may be incorrect or out of date, or that election officials will be unable to use the EPB at all, preventing the election officials from being able to properly administer the election.

16. Removal of the EPB data from EPB software, flash drives, and laptops also ensures security of election and voter data. This is because electronic data containing sensitive voter information remaining on thousands of flash drives throughout the state is far less secure than data uploaded to the password-protected and regularly audited QVF.

17. The current process for handling EPB data has been a consistent part of Michigan's vote processing system for well over a decade and under multiple administrations. *See, e.g.,* Electronic Pollbook Clerk's Manual For Windows 10 & BitLocker Flash Drives, Michigan Department of State Bureau of Elections, June 2017, p. 3 ("All EPB files should be deleted seven days after the final canvas. This keeps voter data secure and prevents the wrong files from being used in future elections") (excerpt attached as Defendants' Attachment 1), *and see* Electronic Pollbook Election Inspector's User Manual, Michigan Department of State Bureau of Elections, October 2012, p. 3 (same) (excerpt attached as Defendants' Attachment 2).

18. The rule formalizing this long-standing process was effective as of October 23, 2025. No comments were made at the public hearing, and while two written comments were received via email, neither was from Plaintiff.¹

19. The Bureau recently issued a declaratory ruling to a number of parties regarding the exact issue Plaintiff now raises, which describes the process for saving, transferring, and storing the EPB-related records required to be retained by state and federal law, and explains, in depth, how the statutes and administrative rule codifying this process comply with federal law. That declaratory ruling, dated September 30, 2026 and addressed to Michelle McQueer, is incorporated here by reference, and attached as Defendants' Attachment 3.

20. Plaintiff also submitted a request for a declaratory ruling on this exact issue on September 21, 2026. While the Department determined he is not an interested party under MCL 24.263, and rejected his request for that reason, a copy of this declaratory ruling was provided to him via email, also on September 30, 2026.

Impact of Delay and Change to Retention Policies

21. As stated above, the existing process for treatment of voting data in the EPB has been in place for at least 14 years. It is unclear why Plaintiff has chosen to wait to bring these claims until after the 2026 primary, and less than

¹ Request for Rulemaking record available here: [ARS Public - RFR Transaction](#).

three months before the 2026 general election. It is further unclear why Plaintiff is raising these claims since he is not a clerk and the promulgated rules do not apply to him.

22. Plaintiff has requested that the Court enjoin the Department from “enforc[ing] Mich Admin Code, R 168.48 in the impending November 3, 2026 general election,” and elaborates that he wants “his properly cast votes for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District in the November 3, 2026 general election and other voting and election data to be properly preserved under 52 U.S.C. § 20701.” Request for TRO, pp. 20, 28.

23. The Department will issue guidance to all election officials requiring removal of their local copy of the EPB data for the general election from the flash drives and EPB software on or after November 10, 2026, after they have uploaded the data to QVF and after security is lifted and the canvass is completed (barring a recount, audit, or legal order prohibiting the removal). *See* MCL 168.799a, MCL 168.581, *and* R 168.48.

24. Currently, only one township in Michigan – Bridgewater Township – has been ordered to retain its EPB flash drives and EPB laptops from the August 2026 primary, and no jurisdictions in Michigan have been ordered to retain their EPB flash drives and/or laptops for the November 2026 general election.

25. There are 1,521 local jurisdictions, and 83 counties, that would be affected by any changes to this procedure.

26. If the directive were changed, the Department would need to immediately issue additional instructions to election officials with an entirely new procedure for securely storing this sensitive information and possibly an alternative method of using the EPB for the next election if copies of EPB data have not been deleted. There is also a possibility that clerks would need to purchase additional materials to comply.

27. In addition, given the longstanding nature of the processes for treatment of EPB data, and the imminent general election, changing these processes would cause enormous confusion among clerks, during one of their busiest times of the year and in an election year for many state and federal offices.

28. Should a court deem the existing process invalid for any reason, the amount of work needed to re-educate all election officials, revise existing guidance, and ensure the availability of additional devices to store previous EPB data would be a massive undertaking. EPB training for this election cycle is already complete, as part of election cycle training that took months to complete and finished in June 2026. This would be a difficult undertaking in general, but is exacerbated by the fact that we are 33 days away from the general election as of the date of this affidavit.

29. As noted above, failure to delete the existing additional copy of EPB data from the EPB software, laptop, and/or flash drive can cause technical issues, as well as pose serious security risks. Plaintiff has not offered any assurances as to how these risks could be avoided.

30. Furthermore, if local copies of the data cannot be deleted statewide, election officials would need to purchase new equipment, including, at minimum, thousands of flash drives, and potentially EPB laptops as well, purchases for which local jurisdictions have had no reason to budget.

31. The Department anticipates a large volume of incidents caused by clerks using out-of-date software or data files for future elections if clerks across the state are ordered to maintain additional copies of EPB data as contemplated by Plaintiff's request for a TRO. The Department would also have to develop and implement new security protocols for thousands of flash drives, EPB laptops, and pollbook software kept around the state for months or years. This may also include reprogramming all or part of the pollbooks themselves. The Department therefore anticipates it will need to shift some of its limited resources to addressing the inevitable technical and security issues that would arise from such a drastic change.

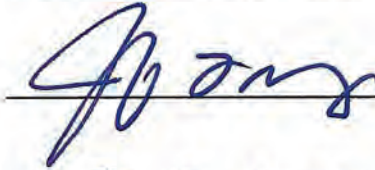
AFFIANT SAYS NOTHING FURTHER.



Adam Fracassi
Deputy Director of Elections
Michigan Department of State

Subscribed and sworn to before me, a Notary Public,

on the 1st day of October, 2026.

 10/1/26

Jennifer L. McCreary

Print name exactly as it appears on application for commission as a notary public.

Notary Public, State of Michigan, County of Ingham

My Commission Expires: 4/30/29

Acting in the County of: Ingham

Attachment 1

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Electronic Pollbook Clerk's Manual For Windows 10 & BitLocker Flash Drives



**Michigan Department of State
Bureau of Elections**

June 2017

Electronic Pollbook User Manual - Table of Contents

The Electronic Pollbook User Manual is structured to be a comprehensive manual that covers the duties of all election officials using the EPB software. Pages 15-34 are designed to be used by election inspectors in the precinct while pages 36-37 are designed for receiving boards. The remaining pages are focused on the preparation of the EPB software and post-election day responsibilities.

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Introduction to the Electronic Pollbook

The Bureau of Elections developed computer software that can be used in the polling place on Election Day to process voters and generate precinct reports. The electronic pollbook (EPB) software is a unique download from the Qualified Voter File (QVF) software or the Elections Management Portal (EMP) web application that can be loaded on to a laptop prior to each election. Once the EPB software is loaded on the laptop, the software allows election inspectors to look up a voter's registration record, confirm their registration is correct, and assign a ballot to that voter, essentially automating the typical paper process. After the election is complete, the EPB software will generate reports to complete the official precinct record (paper binder pollbook) and a voter history file that can be uploaded into the QVF or EMP to update voter history in a matter of minutes.

Key Features

- ☆ *Up to date voter registration and absent voter information in the precincts.*
The EPB software takes minutes to download from QVF/EMP and install on the EPB laptop, making it possible to wait until all voter registration information is entered and all absentee ballots have been issued before creating the file containing the voter registration list.
- ☆ *The ability to locate the voter's registration record by swiping their driver's license with a magnetic card reader.*
The EPB laptop comes with a magnetic card reader. The magnetic card reader will read the magnetic stripe on the back of the voter's Michigan driver's license. The EPB software takes the license number and matches it to the voter's voter registration record and brings it up on the laptop screen for the election inspector to review.
- ☆ *The ability to assign and record the voter's ballot immediately upon registration confirmation.*
Once the election inspector reviews the voter's voter registration record in the EPB software, the election inspector types the voter's ballot number in and clicks a couple of buttons to assign a ballot to the voter. Ultimately, once the voter reaches the EPB laptop, the entire process takes only a few moments before the voter is verified, has a ballot and is directed to a voting booth.
- ☆ *The ability to look up voters registered within the jurisdiction but not in the assigned precinct.*
If a match is not found for the voter, the EPB software can show the election inspector if the voter is registered in a different precinct, eliminating the need to call the local Clerk and sending the voter to the proper precinct quickly and efficiently.
- ☆ *Accurate printable reports, including a ballot summary that calculates for the election inspector.*
The EPB software keeps track of the List of Voters, including crossing out spoiled ballot numbers and labeling them as spoiled ballots. In addition, the Ballot Summary is designed to complete the math for the election inspector after they type in the numbers the EPB software cannot track.
- ☆ *Quick and accurate voter history entry.*
Coming full circle, after the election is over the EPB software saves a voter history file that is taken back to the QVF/EMP software. With a few clicks of the mouse, voter history for a precinct is uploaded in minutes. The entire EPB software process takes information from the QVF/EMP software and then puts it back into the QVF/EMP software.

Important Considerations

When reviewing this comprehensive EPB manual, it's important to pay close attention to the setup of the encrypted flash drive and how it works. The encrypted flash drive is key to maintaining security throughout the process. The flash drive must be password protected, and passwords should **never** be kept with flash drives. The encrypted flash drive is used to transfer files back and forth between the QVF or EMP computer and the EPB laptop.

In addition to the security features of the encrypted flash drive, it is also important to understand when to delete files. All EPB files should be deleted seven days after the final canvas. This keeps voter data secure and prevents the wrong files from being used in future elections. Most importantly, practice! Walking through the manual well before every election will ensure you understand all of the features of the EPB software and will prepare you for successful implementation come election day. Just remember it is important to delete all practice files too!

Attachment 2

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Electronic Pollbook Election Inspector's User Manual



Michigan Department of State
Bureau of Elections

October 2012

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The Electronic Pollbook Election Inspector's User Manual is designed to be used by election inspectors in the precinct.

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Introduction to the Electronic Pollbook

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Key Features

- ☆ *Up to date voter registration and absent voter information in the precincts.*
The EPB software takes minutes to download from QVF and install on the EPB laptop, making it possible to wait until all voter registration information is entered and all absentee ballots have been issued before creating the file containing the voter registration list.
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Once the election inspector reviews the voter's voter registration record in the EPB software, the election inspector types the voter's ballot number in and clicks a couple of buttons to assign a ballot to the voter. Ultimately, once the voter reaches the EPB laptop, the entire process takes only a few moments before the voter is verified, has a ballot and is directed to a voting booth.
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Coming full circle, after the election is over the EPB software saves a voter history file that is taken back to the QVF software. With a few clicks of the mouse, voter history for a precinct is uploaded in minutes. The entire EPB software process takes information from the QVF software and then puts it back into the QVF software.

Important Considerations

When reviewing this comprehensive EPB manual, it's important to pay close attention to the setup of the encrypted flash drive and how the Privacy Zone works. The encrypted flash drive and Privacy Zone are key to maintaining a secure system. The encrypted flash drive is used to transfer files back and forth between the QVF computer and the EPB laptop. Those files must be saved in the Privacy Zone to keep voter data secure. The Privacy Zone is password protected by a password chosen by the jurisdiction.

In addition to the security features of the encrypted flash drive and Privacy Zone, it is also important to understand when to delete files. All EPB files should be deleted seven days after the final canvas. This keeps voter data secure and prevents the wrong files from being used in future elections. Most importantly, practice! Walking through the manual well before every election day will ensure you understand all of the features of the EPB software and will prepare you for successful implementation come election day. Just remember it is important to delete all practice files too!

Attachment 3

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

AGHOGHO EDEVBIE
DEPUTY SECRETARY

September 30, 2026

Michelle McQueer, Bridgewater Township Clerk
The Honorable Representative Rachelle Smit
Shelly Lake, Irving Township Deputy Clerk
Tessa Stout, Irving Township Clerk
Kristie Walls, Otisco Township Deputy Clerk
Bill Richardson, Waterloo Township Clerk
David Olson, Hastings Township Clerk
Vicky Byrne, Otisco Township Clerk
Jo DeMarco, Ada Township Clerk
Patrice Johnson

Dear Requesters:

The Department of State (Department) acknowledges receipt of three¹ letters, in which requesters sought a declaratory ruling under the Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.* The following lists the requesters and dates of request:

Rep. Rachelle Smit and all listed clerks and deputy clerks, received October 22, 2025
Patrice Johnson, received October 22, 2025
Michelle McQueer, received July 6, 2026

An agency may issue a declaratory ruling if an "interested person" submits a request that presents a question of law and a reasonably complete statement of facts. MCL 24.263.²

Timeline

In separate requests on October 22, 2025, Representative Smit and eight local clerks, as well as Patrice Johnson, submitted a declaratory ruling request asking the following:

¹ Clerk DeMarco did not sign the Smit request; rather, Smit submitted a letter signed by DeMarco on Ada Township letterhead, with the request otherwise identical to the Smit request. As such, DeMarco is considered a signatory of the Smit request for purposes of this declaratory ruling.

² Here, because at least one or more requesters is an interested person, it is unnecessary for the Department to consider whether all requesters are interested persons under MCL 24.263.

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How can a local clerk comply with both proposed rule R 168.48's requirement that EPB's be deleted shortly after certification of a given election and 52 USC 20701's requirement that election records be retained for twenty-two months?

On November 25, 2025, the Department advised the requesters that the requests were received and that they would be considered after the Department's related Help America Vote Act (HAVA) complaints were resolved. See 52 USC 21112. This was because both the complaints and the requests concerned the applicability of R 168.48 in light of the federal retention statute; one requester had submitted a HAVA complaint on the same question; and the Department had instituted an isolation wall for resolution of the HAVA complaint, which prevented the Department and Bureau of Elections (Bureau) from discussing the questions presented in these declaratory ruling requests.

On July 6, 2026, one of the requesters, Michelle McQueer, submitted a request which asked the same question regarding deletion and retention, as well as two other questions. Thereafter, on August 12, 2026, McQueer initiated litigation on the same topic.³

The Department reviewed all relevant state and federal statutes when promulgating R 168.48. The Bureau also considered the applicability of the rule with regard to the HAVA in the complaint resolved August 31, 2026.⁴

All requests ask about the interplay between the rule and a federal (and in some cases, state) statute. Because the McQueer request includes the most detailed description of the purported facts underlying the request, as well as additional questions, this declaratory ruling responds primarily to that request. However, because the other requests involve the same federal statutory section, this declaratory ruling is issued in response to all requests.

McQueer request

The McQueer request presents a series of alleged facts, including purported facts about what information is recorded in the electronic pollbook (EPB). According to the request, "reports are printed and placed in the paper pollbook," and "the voter history file" is uploaded into the qualified voter file (QVF). The request then notes that R 168.48(1) requires deletion of the EPB software and its associated electronic files off devices by the seventh day following the final canvass and certification of the election, subject to certain exceptions. Finally, the statement of facts in the request cites 52 USC 20701 of the Civil Rights Act of 1960 (CRA), which requires retention of certain election records for 22 months when there is a federal office on the ballot, and MCL 168.811, which similarly requires retention of certain election records for 22 months. The federal statute, 52 USC 20701, also provides that "any officer of election or custodian who

³ See *McQueer v Benson*, Court of Claims Case No. 26-000172-MZ.

⁴ The HAVA complaint determination is available on the Department's [website](#).

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willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.”

The request presents 3 questions:

1. Does R 168.48(1) require deletion of the electronic pollbook software and its associated electronic files for the August 4, 2026, primary election by the seventh day following the final canvass and certification of that election?
2. Can electronic pollbook files instead be retained for 22 months without violating R 168.48?
3. If R 168.48 requires deletion of the records, how does a clerk comply with the rule and the retention requirements in MCL 168.811 and 52 USC 20701?

The first two questions ask about the meaning of R 168.48.

The same principles that apply when construing a statute apply to the construction of administrative rules. *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 167 (2017). “We begin by examining the language of the [rule], which provides the most reliable evidence of its intent.” *City of Coldwater*, 500 Mich App at 167 (quotation marks, citations, and alteration omitted). If the language is unambiguous, the rule must be enforced as written, and no further construction is permitted. *Id.* (citation omitted).

A plain reading of the language of R 168.48 answers both the first and second questions. Rule 168.48 provides:

(1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files *must be* deleted from all devices by the seventh day following the final canvass and certification of the election, *unless* a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files *must not be* deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election. [Emphasis added.]

The term “must” “indicates mandatory action.” *GWCC Holdings, LLC v Alpine Twp*, 351 Mich App 333, 350 (2024). Relying on the plain language of the rule, the answer to the first question is yes, a clerk must delete the EPB software and its associated files from devices within 7 days of the final canvass and certification as long as security has been released for the election and

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there are no pending recounts, audits, or orders from a court or the Secretary of State staying deletion of the data.

It follows then that the answer to the second question is no, a clerk cannot retain that information contrary to the requirement to delete it unless one of the stated exceptions to deletion are present (i.e., security has not been released or there is a pending recount, audit, or court order/order from the Secretary of State). *See, e.g., Grass Lake Improvement Bd v Dep't of Environmental Quality*, 316 Mich App 356, 366-367 (2016) (It is well settled “that agencies are bound to follow their own duly promulgated rules.”)⁵ To be clear, however, while the software and associated files are deleted from the devices (often referred to as flash drives), the election-related data contained in the EPB is preserved in multiple ways, as discussed below.

The third question asks how to comply with both R 168.48 and the retention requirements of MCL 168.811 and 52 USC 20701. The request appears to presume that R 168.48 conflicts with the retention requirements in those statutes. Answering this question requires interpretation of both statutes in addition to the rule. As a general matter, an “agency has the authority to interpret the statutes it administers and enforces.” *O’Halloran v Sec’y of State*, 515 Mich 606, 635–636 (2024) (cleaned up). Further, “an agency’s interpretation of its own regulation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation.” *In re Petition of Attorney General for Investigative Subpoenas*, 274 Mich App 696, 701 (2007) (cleaned up).

MCL 168.811 provides in relevant part:

All election returns, including *poll lists*, statements, tally sheets, absent voters’ return envelopes bearing the statement required by [MCL 168.761], absent voters’ records required by [MCL 168.760], and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used. . . . [Emphasis added]

52 USC 20701 provides in relevant part:

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any . . . election of which [federal] candidates . . . are voted for, *all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election*, except that, when required by law, such records and papers may be delivered to another officer of election [Emphasis added]

⁵ In McQueer’s case, deletion has been stayed by order of the court. *McQueer v Benson*, Case No. 26-000172-MZ, Orders of the Michigan Court of Claims, issued August 27, 2026 and September 22, 2026.

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The question posed, in light of these statutory sections, is whether the state's longstanding practice, now codified in rule, of requiring municipal clerks to delete copies of EPB information on flash drives after information has been printed and uploaded to QVF results in a failure to retain specified election returns as defined by MCL 168.811 or specified records and papers as defined by 52 USC 20701. In answering this question, the Department will first describe how EPBs are used and information is retained under the rule. Next, the Department will describe the requirements of MCL 168.811 and 52 USC 20701. Finally, the Department will address how the practice codified in R 168.48 results in compliance with these requirements.

Operation of the EPB

Rule 168.48 codified the Department's longstanding instruction regarding EPB data. The Department has not determined the exact date at which this instruction was first given, but it dates to at least 2012. Use of an electronic pollbook, also a longstanding practice, is required under MCL 168.668b(1) ("Each city or township shall use the electronic poll book software developed, acquired, or approved by the bureau of elections in each election precinct in the city or township on election day to process voters and generate election precinct reports.")

In order to use the Election Day EPB, election jurisdictions must possess, for each precinct, a laptop computer that meets technical and security requirements (the "EPB laptop"). Prior to Election Day, clerks download the EPB package from QVF onto the computer they typically use to conduct election responsibilities. The EPB package exported from QVF includes the EPB software and a data file that includes the list of registered voters for each precinct, including any relevant status indicators for each voter (for example, whether the voter has already returned an absentee ballot). This is essentially a "snap shot" of the QVF for each precinct to use on Election Day. Clerks export the EPB software and data file onto encrypted flash drives corresponding to each precinct's EPB laptop. Next, they use the encrypted flash drive to install the EPB software and data file to the laptop to be used on Election Day.

The EPB laptop is operated offline on Election Day, using the EPB software and data file loaded onto the laptop from the encrypted flash drive. When voters appear to vote on Election Day, they first complete a paper application to vote. After completing the application to vote, the voter is then checked in using the EPB. The election inspector enters the voter's information into the EPB along with relevant information about the voter, including that the voter has been issued a ballot and any remarks or other information (such as provisional ballot information). Election inspectors also have a paper printout of the pollbook on hand in case the EPB becomes unavailable.

After the polls have closed, election inspectors, in addition to other responsibilities, collect the paper applications to vote for each precinct, which are delivered to the

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municipal clerk in a sealed envelope. When closing out the election on the EPB laptop, as required by R 168.46, election inspectors are instructed to save the three following reports in .pdf format, as well as a file that contains voting history, to the flash drive. Then, either the precinct inspectors or a receiving board will print out these three reports on paper:

- Ballot summary report
- List of voters report
- Remarks report

After these required reports are printed, the encrypted flash drive is removed from the EPB laptop and delivered to the municipal clerk in a sealed envelope.

Rule 168.47 provides that “within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file.” The following information is uploaded to QVF as part of this process:

- List of voters (used to update voter history in QVF)
- Provisional ballot information (from the EPB)⁶
- A log of activity on the EPB

After all these steps are taken, R 168.48 requires that “the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election,” unless an exception applies.

In total, the following information for each voter and for EPB activity in general is retained after the clerk copy of EPB software and associated files are deleted:

- A physical, paper application to vote completed by each voter
- A physical, paper printout of the list of voters, including all voters issued a ballot and all remarks entered into the pollbook by election inspectors
- An electronic list of voters
- Electronic voter history, which is added to the QVF from the list of voters
- Records of provisional ballots
- An electronic log of activity on the EPB

⁶ Additional provisional ballot information is incorporated during the canvass.

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Rule 168.48 is consistent with MCL 168.811

Relevant to Election Day voters, MCL 168.811 requires preserving all election returns, “including *poll lists, statements, tally sheets, absent voters’ return envelopes bearing the statement required by [MCL 168.761], absent voters’ records required by [MCL 168.760], and other returns made by the election inspectors of the several precincts.*” (Emphasis added).

These documents include “poll lists” in multiple formats. First, there is a completed paper application to vote for each voter. Second, there is a paper pollbook that is printed and includes the list of voters. Third, the EPB data uploaded to QVF includes a list of voters, which is used to update voter history in QVF. To the extent “statements” or “returns” could be read as applying to voters (as opposed to results, which is more likely in this context), the documents also include “statements” in the form of election inspector remarks, which are on the paper pollbook, and as applied to Election Day voters, assuming “other returns made by the election inspectors” could include provisional ballot information, this information is uploaded to and stored in QVF.

The Department is not aware of any other information that could be said to comprise poll lists, statements, or other returns made by election inspectors that are not reflected in the above information, nor do the declaratory ruling requests list or describe any such information. Accordingly, the materials described above include all items relevant to MCL 168.811.

Regarding preservation, Michigan law generally requires the preservation of public records. MCL 399.811, MCL 750.491, MCL 18.1285. A public record is recorded information “prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.” MCL 15.232(i). This definition encompasses electronic records that constitute public records. See also MCL 15.232(l).⁷ The law also permits the reproduction of a record in a different format for retention, including by “data transfer,” “digital migration,” or “[p]rinting.” MCL 24.402(1)(e), (g), (j), MCL 24.406. The law does not require government agencies to retain a public record in multiple formats and does not generally specify a format in which records must be preserved; similarly, MCL 168.811 does not expressly refer to the retention of electronic election records.

Consistent with these laws and the state’s approved retention schedule, the EPB data is either printed or transferred via upload from the encrypted flash drives to the QVF for purposes of retention.⁸ All EPB data or information that constitutes a public record is preserved as required in MCL 168.811 either electronically or in printed form (or both).

⁷ Software is not a public record. See MCL 15.232(i), (j). See also *United States v. Benson, et al.*, 179 F4th 470, 478-479 (CA 6, 2026), holding that software created by the state is not a record that comes into possession of the state for purposes of 52 US 20701.

⁸ See Item # 23.242, 23.339, General Retention Schedule #23 – Election Records, available at [GS23 Elections Records](#).

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Rule 168.48 is consistent with 52 USC 20701

Turning to the CRA, as relevant to the EPB, 52 USC 20701 requires retaining and preserving “all election records and papers which come into the possession of an election official relating to any application ... or other act requisite to voting in such election.” These documents include “applications” in multiple formats.

First, there is the paper application to vote completed by each voter. Second, there is the paper pollbook that is printed and includes the list of voters. Third, the uploaded EPB data includes a list of voters, which is used to update voter history in QVF. The materials also cover “acts requisite to voting”, including the aforementioned items and provisional ballot information, which is uploaded to and stored on QVF. To the extent inspector remarks can be said to relate to either applications or acts requisite to voting, these are also included in the printed pollbook.

The Department is not aware of any other information or data on the EPB that could be said to comprise records or papers relating to applications or other acts requisite to voting that are not reflected in the above information, nor do the declaratory ruling requests list or describe any such information. Accordingly, the materials described above include all items relevant to 52 USC 20701.

Regarding retention and preservation, these materials relate to applications and acts requisite to voting in the election. The EPB data also includes voter history, which includes records of who voted in the election. Nothing in the plain language of section 20701 suggests that election officials must retain and preserve the same election records in multiple formats. See, e.g., *General Medicine, P.C. v. Azar*, 963 F.3d 516, 521 (6th Cir. 2020) (“Although courts should not read statutory language as surplusage, courts also should not add language that Congress has not included.”) Section 20701 does not specify whether materials are to be kept in paper or electronic form or otherwise refer to electronic records, but the U.S. Department of Justice (DOJ) has interpreted it to include such records.⁹

As explained above, this data is retained either in paper format or by uploading the data to the QVF (or both), consistent with the Department’s administrative rules, R 168.46, R 168.47, and retention schedule. Rule 168.46 requires election inspectors to print any reports that are required to be retained from the EPB and include those reports in the physical pollbook. Printed reports include the ballot summary report, list of voters report, and the remarks report. Next, R 168.47 requires the upload of all voter history and other required files from the EPB to the QVF within 7 days after an election.¹⁰

⁹ See U.S. Department of Justice, Federal Law Constraints of Post-Election “Audits,” April 2024, p 2, <https://www.justice.gov/crt/media/1348586/dl?inline>.

¹⁰ In addition to the rules, the Department’s instructions include the requirement to print the listed reports and upload all voter history. See Election Day Electronic Pollbook: Election Inspector Manual, pages 35-46. This manual contains confidential information about the operation of the EPB and is not available to the general public.

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Following these procedures, all record information that is deleted from the devices under R 168.48 has already been retained and preserved either in a paper format or in the QVF and the deleted information is simply a copy of the information that is saved (more securely) elsewhere. At the point when the EPB software and associated files are deleted from the devices under R 168.48, they represent merely extra copies of papers and records that have been securely retained in other formats. EPB software and associated files are deleted from the devices only after a digital or paper copy (or both) has been created and security has been released. Deletion does not occur if there is a pending recount, audit, or contrary order.

Accordingly, as the Department interprets the law, all records required to be retained under 52 USC 20701 are preserved.

The declaratory ruling requests could be interpreted to argue implicitly that even if the municipal clerks print or upload required reports, they nevertheless have an obligation under federal law to keep their local copy of the information as well. The Department notes, however, that section 20701 explicitly allows delivery of records that must otherwise be retained by one custodian to another custodian. 52 USC 20701 does not require retention of multiple copies of the same information; rather, it contemplates only one copy of each required record be preserved. Specifically, 52 USC 20701 states in relevant part:

[E]xcept that, when required by law, such records and papers *may be delivered to another officer of election* and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, *and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian*. [Emphasis added.]

Even if one interprets the statute's requirement that "all" records and papers must be retained and preserved to mean that, in general, all copies of the same records and papers must be retained, there is an express exception to this requirement where, as here, the law requires the records and papers to be delivered to another officer of election (in this case, the county clerk with respect to the paper pollbook printouts and the Secretary of State with respect to the EPB electronic data). Accordingly, when the EPB records are uploaded to the QVF, the local clerk transfers the retention responsibility for those records to the Department, as permitted by section 20701. The county clerk retains the reports that are printed from the EPB and placed in the physical pollbook and is the custodian responsible for their retention. The Secretary of State is the custodian responsible for the uploaded electronic data. Pursuant to Section 20701, therefore, local clerks retain no responsibility for retention after complying with their duties to upload the EBP and deliver the paper printouts to the county clerk.

The request could also be interpreted to argue implicitly that the EPB software and associated files (that is, the flash drive and its contents) are themselves "records" and therefore must be

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retained and preserved in the exact state in which they were used on Election Day. This is a fundamental misunderstanding of the difference between election software and equipment on the one hand, and election records on the other. Software and election equipment may *contain*, but are not *themselves*, records under the ambit of section 20701.

Federal courts recently confirmed this when interpreting the statutory language “all records and papers which come into [an official’s] possession” in the context of QVF. In *United States v Benson, et al.*, DOJ argued that the unredacted QVF must be produced to DOJ in part because it was a record relating to registration. However, the federal district court rejected this argument because while QVF relates to registration, it is a software program created by the state, not a registration record that came into the state’s possession:

This interpretation of “come into [their] possession” is bolstered by the next words in the sentence: “relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” Each of these terms refers to something that the voter submits or does as part of the registration process. Here, the meaning of “come into possession” is clarified by the rest of the sentence, which indicates the sorts of records covered by the statute: namely, records that election officials receive, rather than create. [819 F Supp 3d 753, 768-769 (WD Mich, 2026), affirmed *United States v Benson, et al.*, 179 F4th 470 (CA 6, 2026).]

The court went on to explain that just because materials may have some relationship to the voting process, that does not mean section 20701 requires retention: “nothing in the CRA’s text implies an intent to require states to preserve every election-related record they *create*.” *Id.* at 770 (emphasis in original).

In upholding the District Court’s decision, the Sixth Circuit Court of Appeals noted that the state “did not acquire, obtain, or receive the qualified voter file from a third party. Instead, Michigan officials created it themselves.... So it is an internally generated electronic database, not a record acquired from an outside source.” 179 F4th at 478-479. The Sixth Circuit also determined that the list of records contemplated by section 20701 are those records received by voters, not created by officials:

And the statutory context confirms our conclusion. Election officers must preserve records that come into their possession relating to “any application, registration, payment of poll tax, or other act requisite to voting in such election.” 52 U.S.C. § 20701. Election officers do not create these kinds of records. Rather, they obtain them from third parties—generally voters or prospective voters. [*Id.* at 479.]

Thus, while QVF may contain (and in some contexts, could be considered to be) a record, it is not a record that comes into the possession of the state relating to registration, because it is a

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software program. By the same token, the EPB software and associated files are programs that are created by the state and used by clerks and election inspectors to administer elections. The fact that the EPB is used to administer voting on Election Day does not in and of itself render the entirety of the EPB program a record to be retained and preserved under the CRA. Rather, only those records on the EPB that come into the possession of election officials and relate to applications or acts requisite to voting are records covered by the CRA.

This does not mean none of the materials contained on the encrypted flash drive are records subject to retention and preservation – this determination assumes that the specific reports noted above are. But section 20701 requires retention of encrypted flash drive contents (in some form) only to the extent they are records or papers that come into the election official's possession. If they are, they must be retained or preserved (or transferred for retention and preservation as required by law). If they are not, they need not be. The declaratory ruling requests do not identify any specific element of the contents of the encrypted flash drive that are claimed to be records that come into the possession of an election official and are alleged to be unretained by the state's procedures.

This interpretation is supported not only by recent federal court precedent but also the reality of election administration in Michigan and other states for well over a decade. Michigan's current EPB retention practice has spanned not only multiple Michigan Secretary of State administrations but multiple federal administrations.

Even more pertinent, the longstanding practice of storing data externally, deleting the copy of the data remaining on the equipment, and then re-using the equipment is not limited to EPBs and is not limited to Michigan. For years, Michigan and virtually every election jurisdiction in the country has used electronic voting equipment to tabulate ballots. In order to function, tabulators rely upon removable drives (similar to encrypted flash drives used in the EPB). These drives contain the programming for a specific election and ballot style, and on Election Day also store the electronic copies of election results (including cast vote records). After each election, data from these drives is uploaded to an external source for retention and then the copies of the data on these drives are deleted, so that the drives can be used for future elections. This practice is specifically authorized by the Voluntary Voting System Guidelines (VVSG), and has been for more than 20 years. See VVSG 1.0 (2005), page 82 (Removable storage media)¹¹ VVSG 1.1 (2015), page 92, (Removable storage media)¹² VVSG 2.0 (2021), page 100 (Erasable storage media preparation).¹³

Given this longstanding guidance, it is overwhelmingly unlikely that the practice of using a removable media device to upload data to an external source for retention for the 22-month retention period, deleting the copy of the data on the removable media device, and then re-using the removable media for future elections violates the record retention requirements of

¹¹ See [Voluntary Voting System Guidelines Overview](#)

¹² See [VVSG.1.1.VOL.1.FINAL1.pdf](#)

¹³ See [Voluntary Voting System Guidelines Version 2.0](#)

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the CRA. The VVSG is approved by the Election Assistance Commission, a bipartisan federal agency that coordinates with the DOJ and other federal agencies. It is equally implausible that voting equipment used nationwide to administer federal elections for more than two decades would be designed to be used in a way to follow a practice that violates federal law.

The state's EPB retention practice mirrors tabulator data practice almost exactly: a removable drive containing software/programming and data is used to temporarily store the electronic data when it is removed from the operating device (laptop computer or tabulator), the electronic data is uploaded to an external source for retention, and the removable device is then deleted and re-used for future elections. The state's practice falls well within federal requirements.

Further, the ability to re-use equipment from election to election (after records required to be retained are stored separately) is a practical necessity. If an encrypted flash drive must be retained in its exact election-day state, it is difficult to see why the same would not be true of the EPB laptop itself—and for that matter, the Election Day tabulator. Meaning, all jurisdictions in Michigan would have to purchase multiple sets of laptops, flash drives, and tabulators to conduct the multiple elections held during the 2-year election cycle. The costs of doing so likely would far exceed the means of these jurisdictions.¹⁴

Additional policy considerations underlie Rule 168.48

Finally, the Department notes that deleting duplicative copies of the data from the EPB software and associated files serves other practical purposes. Removal of the EPB software and data from the laptops and encrypted flash drives relating to a prior election prevents the confusion that could arise from multiple sets of data, and the technical issues that will arise from multiple versions of the software remaining on the encrypted flash drives and laptops. Attempts to download EPB data for a current election onto a device that already contains data from a prior election will cause the device to malfunction and/or the new data not to download. This means voter information like status of absent voter ballots, precinct changes, or voter registration status may be incorrect or out of date, or that election officials will be unable to use the EPB at all.

Removal of the EPB data from EPB software, encrypted flash drives, and laptops also ensures security of electronic election and voter data. This is because electronic data containing sensitive voter information remaining on thousands of flash drives throughout the state is far less secure than data uploaded to the password-protected and regularly audited QVF. Although

¹⁴ Under a conservative estimate, the cost of a laptop computer and removable drive for each precinct is \$1,000, and the cost of a tabulator and removable drive for each precinct is \$7,000. That means the costs of these technology elements alone are \$8,000 per precinct. With approximately 5,000 precincts in the state, the total statewide cost of this equipment alone is \$40,000,000. A two-year election cycle can include up to 7 election dates (not counting special elections), meaning the cost could be up to \$280,000,000.

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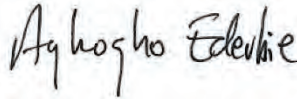
the flash drives are encrypted and should be stored securely during retention, secure disposal of personal identifying information is more difficult to ensure if it is done 22 months later, potentially with a different clerk or staff, as opposed to right after the election.

Therefore, given the plain language of R 168.48 in context with the requirements to preserve the information in paper and electronically in the QVF, the Department finds the requirement in R 168.48 to delete the copy of the information from devices does not conflict with state and federal retention laws. Further, it serves important practical security purposes that help to protect the efficiency and integrity of our elections.

Accordingly, with respect to the third question, so long as the clerk follows the requirements of the ruleset and ensures required reports are printed and uploaded for retention, deletion of the extra copy of the EPB software and associated files does not violate state or federal law. Local clerks' duty to retain and preserve these records ends when local clerks deliver them to other officers of election, namely the Secretary of State and the county clerk. 52 USC 20701.

The foregoing constitutes a declaratory ruling with respect to the questions presented in the July 6, 2026, McQueer request, as well as the related requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Aghogho Edevbie".

Aghogho Edevbie
Deputy Secretary of State

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EXHIBIT C

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

MICHELLE McQUEER, individually
and in her official capacity as Clerk of
the Township of Bridgewater,

Plaintiff,

Case No. 2026-

-MZ

v

HON.

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State,
JONATHAN BRATER, in his official
capacity as Director of Elections, and
the **MICHIGAN DEPARTMENT OF
STATE**,

Defendants.

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Attorney for Plaintiff

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**PLAINTIFF'S VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

IMMEDIATE AND EXPEDITED CONSIDERATION REQUESTED

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

NOW COMES Plaintiff Michelle McQueer, individually and in her official

capacity as Clerk of the Township of Bridgewater, by and through her attorney, Kevin

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Kijewski, and for her Complaint against Defendants Jocelyn Benson, in her official capacity as Michigan Secretary of State, Jonathan Brater, in his official capacity as Director of Elections, and the Michigan Department of State, states as follows:

INTRODUCTION

1. This action asks the Court to resolve a direct conflict between one administrative rule and three higher sources of law: federal statute, the Michigan Election Law, and the Michigan Constitution. Plaintiff seeks declaratory and injunctive relief against the State and its officers.
2. Plaintiff is a Michigan clerk, an officer of election, and a custodian of election records. The Secretary of State has promulgated R 168.48 of Rule Set 2025-014. That rule directs clerks to delete the electronic poll book software and associated files within seven days after the election is certified.
3. The seven-day command conflicts with each higher source. Under 52 USC 20701, Plaintiff must preserve voting records for twenty-two months, and 52 USC 20702 makes their willful destruction a crime. State law bars destruction of election returns and federal-office ballots before twenty-two months elapse. MCL 168.811. The Constitution requires election officials to keep ballots and election materials secure during an audit. Const 1963, art 2, § 4(1)(l).
4. Plaintiff does not seek to enjoin any election. Plaintiff seeks only a declaration that R 168.48 is invalid, or must be read narrowly, where it commands destruction of records the law requires be kept, and an injunction barring its enforcement against those records.

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5. Plaintiff brings two claims. Each is independently sufficient to grant relief, and Plaintiff prevails if either one is sustained.

PARTIES

6. Plaintiff Michelle McQueer is the duly elected Clerk of the Township of Bridgewater, Washtenaw County. The law charges her with conducting the township's elections, operating the electronic poll book under MCL 168.668b, and keeping the election records in her custody. R 168.48 operates on her directly. She sues in her official capacity, in her own right and not on behalf of the township as a corporate entity, because the conflicting duties the rule creates and the exposure it imposes run to her as the officer.

7. Defendant Jocelyn Benson is the Secretary of State and the State's chief election officer. MCL 168.21. The Secretary, through the Department, promulgated and enforces Rule Set 2025-014. She is sued in her official capacity, so this action is against the State.

8. Defendant Jonathan Brater is the Director of Elections. He directs the Bureau of Elections and, under the Secretary's supervision, administers the election laws, including the electronic poll book program and the data deletion R 168.48 requires. He is sued in his official capacity.

9. Defendant Michigan Department of State is the principal department housing the Bureau of Elections, through which the Secretary administers the election laws.

JURISDICTION AND VENUE

10. This Court has exclusive jurisdiction. MCL 600.6419(1)(a) gives the Court of Claims exclusive jurisdiction over claims for declaratory and equitable relief

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against the State and its officers, notwithstanding any other law that confers jurisdiction on the circuit court. An official-capacity suit against the Secretary is a suit against the State. *See Mays v Snyder*, 323 Mich App 1, 89 (2018), *aff'd sub nom Mays v Governor*, 506 Mich 157 (2020).

11. This Court may grant declaratory relief under MCR 2.605 and injunctive relief under MCL 600.6419(1)(a) and MCR 3.310. Plaintiff's claims arise under the Supremacy Clause, the Michigan Constitution, and the Michigan Election Law, and seek relief against state officers. They fall within this Court's exclusive jurisdiction.

12. Plaintiff has satisfied any prerequisite to suit. On July 6, 2026, Plaintiff herself asked the Secretary in writing, in a request for a declaratory ruling under MCL 24.263, whether R 168.48 requires her to delete these records, how she can comply with both the rule and the retention statutes, and for a stay of the deletion under the rule's own stay provision, and she asked for a response by July 27, 2026. **Exhibit 1.** As of the filing of this complaint, thirty-seven days after the request, the Department has not ruled, granted the stay, or otherwise responded, and the deletion deadline is imminent; the agency has failed to act expeditiously upon the request.

13. That silence is a pattern in this case: written testimony presented to the Joint Committee on Administrative Rules on September 10, 2025 raised the conflict between the proposed rule and 52 USC 20701, and on October 22, 2025 the Speaker Pro Tempore of the Michigan House of Representatives asked the Secretary in writing, in a request for a declaratory ruling under MCL 24.263, how a local clerk can comply with both R 168.48 and the twenty-two month retention

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requirement of 52 USC 20701; on information and belief, neither has ever been answered. **Exhibit 2.** In any event, an agency may rule only on how a rule applies to facts; it cannot declare its own rule invalid, preempted, or unconstitutional, which is the relief Plaintiff seeks, so any further request would be futile. The Administrative Procedures Act preserves the right to assert a rule's invalidity in any proceeding. MCL 24.264, and Plaintiff's constitutional claims stand apart from that Act.

14. Venue is proper in this Court under MCL 600.6419 and the rules governing claims against the State and its officers.

15. Plaintiff has satisfied the Court of Claims Act. This claim arose on or about October 23, 2025, when Rule Set 2025-014 took effect, in Washtenaw County, where Plaintiff administers elections and would be compelled to delete the records the rule reaches. **Exhibit 3.** The state department involved is the Michigan Department of State, acting through the Bureau of Elections. The nature of the claim is that R 168.48 is preempted by federal law and exceeds the Secretary's authority under, and conflicts with, Michigan law, as set forth below. Plaintiff seeks only declaratory and injunctive relief and claims no money damages. Plaintiff files this verified complaint within one year of accrual, and it satisfies the notice and verification requirements of MCL 600.6431 and MCL 600.6434.

STANDING AND ACTUAL CONTROVERSY

16. Plaintiff has standing. A litigant has standing who holds a special right or a substantial interest harmed differently from the public at large. *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 (2010).

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17. R 168.48 is directed at Plaintiff. She sues individually as well as in her official capacity because the retention duties, the rule's command, and the criminal exposure run to her personally as the officer of election. Plaintiff bears the very federal, statutory, and constitutional duties to preserve the records the rule orders her to destroy, including the custody duty the Constitution places on election officials. Const 1963, art 2, § 4(1)(l). Because the rule commands her, by virtue of her office, to delete records the law requires her to keep, it impairs her own legal rights and duties as the officer it regulates, an interest different in kind from the citizenry's general interest in lawful elections. She need not be the only clerk the rule reaches; the test is whether her interest differs from the public's, and it does.
18. An actual controversy exists. A declaratory action needs no completed injury; it lets a litigant fix rights before acting at peril. *Shavers v Attorney General*, 402 Mich 554, 588-589 (1978). *Accord MedImmune, Inc v Genentech, Inc*, 549 US 118, 128-129 (2007) (where threatened action by government is concerned, a plaintiff need not expose herself to liability before suing to challenge the basis for the threat).
19. Plaintiff faces that dilemma now. The rule and the retention laws give her contradictory commands she cannot both obey. Comply with R 168.48 and destroy records, risking federal criminal exposure under 52 USC 20702 and the destruction of public records outside an approved schedule contrary to MCL 750.491; or keep the records and face the Secretary's enforcement, including the misdemeanor mechanism of MCL 168.931. Without a declaration she must choose which binding authority to obey, and a declaration of rights resolves the conflict.

20. The controversy is ripe and immediate. The August 4, 2026 primary elected nominees for the United States Senate and House, so it generated records subject to the twenty-two-month federal retention period, and Plaintiff holds those records now. Under MCL 168.822(1) the Board of County Canvassers of Washtenaw County must canvass and certify the primary within fourteen days, and R 168.48 then requires Plaintiff to delete the electronic poll book and its associated files by the seventh day after that certification. **Exhibit 4.**

21. Deletion is therefore certain and only days away. No recount, scheduled post-election audit, or stay applies or is anticipated, so none of R 168.48's exceptions will excuse it. Because deletion is irreversible, Plaintiff cannot wait for the clock to run before seeking relief; once the records are destroyed the controversy can no longer be remedied. Plaintiff therefore brings this action now, while the records still exist, and asks the Court to preserve them pending judgment.

22. The rule's exceptions do not dissolve the controversy. The recount, audit, and stay exceptions operate only on a contingency or an act of the Department or a court. In the ordinary election with no recount, audit, or stay, they preserve nothing as of right. The deletion bar lifts only when the Department issues its own release of security memorandum, and the Department issues that release as a matter of course. To keep federal records past day seven, then, Plaintiff must win discretionary relief the rule does not guarantee.

23. An informal promise not to enforce would not moot the dispute. The rule stays in force, backed by the Secretary's supervisory authority and the misdemeanor

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mechanism of MCL 168.931. Guidance the Department can withdraw at will is no substitute for a binding declaration.

GENERAL ALLEGATIONS

A. The Electronic Poll Book and the Records at Issue

24. Each city and township uses electronic poll book software supplied by the Bureau of Elections to process voters and generate precinct reports. MCL 168.668b. On election day the poll book records who was processed, the ballots issued, each voter's processing time, and entries for challenges, spoiled ballots, and other irregularities.

25. After the election, the clerk generates reports, transfers data to approved media, uploads voter history to the qualified voter file, and, under R 168.48, deletes the poll book software and associated files.

26. The electronic poll book and its associated files hold records relating to acts requisite to voting in elections that include federal candidates. During voting the software maintains an Activity Log Report that records every action taken in the poll book: the issuance, spoiling, rejection, and challenge of each ballot, and every entry that reverses or corrects a prior action, each stamped with its time and the operator who took it. The poll book also records the time each voter was processed.

These records document each elector's statutorily required application to vote: under MCL 168.523(1) every registered elector must execute an application before being given a ballot, and under MCL 168.523(3) the number of the ballot issued is noted on the approved application, which serves as one of the two poll lists required to be kept as a record of a person who has voted. The electronic poll book

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is the instrument through which those applications are processed and the resulting ballot transactions are recorded. Those records come into the clerk's possession from the electors themselves in the course of voting; the clerk does not create them. Each such action is an act requisite to voting, and the Activity Log Report is the record of those acts and of the custody and handling of the poll book and the ballots it controls.

27. The Bureau's own poll book manual describes what the closing procedure retains.

The Activity Log Report may be viewed and printed on the device, but it is not among the reports the closing procedure requires the clerk to retain, and whether a clerk separately prints or keeps it is a matter of local practice the rule does not require. At closing the procedure prints the ballot summary, the list of voters, and the remarks reports into the paper binder pollbook, and the voter history enters the qualified voter file. In Plaintiff's township, the poll book inspector also backs up the election day electronic pollbook to a secure USB drive every hour during election day; the final backup at the close of the polls is saved to the same drive, an encrypted drive of the kind the rules themselves designate for storing election files, R 168.41(b); and that drive remains in the Clerk's records after the election. The contents of that drive are subject to the same deletion requirement: R 168.48 requires deletion of the pollbook software and every associated electronic file from all devices by the seventh day, the drive is such a device, and neither the rule nor the closing procedure retains the electronic records themselves in any form.

Exhibit 5.

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28. The nonpartisan House Fiscal Agency's analysis likewise recognizes that the contents of the electronic poll book are unique to each precinct. **Exhibit 6.**

29. The printed precinct reports do not capture this detail. The printed list of voters shows only each voter's name, address, voting category, and summary status flags. It omits the per-voter processing times, the ballot-transaction and reversal log, the operator login and failed-login audit, and the device security metadata that reside in the electronic poll book.

30. The qualified voter file does not fill the gap. On information and belief, whether the poll book uploads its data after the election or transmits it over a secure live connection during voting, the qualified voter file records only that a voter participated and does not preserve the transaction-level detail above. The Department has confirmed related limits in writing. In a December 8, 2025 response to a Freedom of Information Act request for the list of voters in the November 5, 2024 general election, the Bureau stated that its report omits the precinct in which the voter voted, omits any column showing whether the voter voted absentee or in person, and is limited to persons who remain active registered voters. **Exhibit 7.** The qualified voter file thus provides, in the reports the Department produces, no fixed precinct-level record of who voted in a given federal election, and its contents change as voters move or are cancelled.

31. The retention duties imposed by 52 USC 20701 and MCL 168.811 attach to the records themselves. Deleting the electronic poll book and its associated files destroys those records regardless of what any printed report contains. The printed reports are outputs generated from the poll book database; they are not the

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electronic records and are not complete copies of the data those records hold, just as the Department's own qualified voter file reports omit fields the database contains. Retaining a printed output is not retaining the electronic record. R 168.48 orders deletion of the software and all associated files without requiring that any electronic copy of the poll book's records be retained by any office, so in the ordinary cycle the electronic records are destroyed in their entirety.

B. The Federal Retention Requirement

32. 52 USC 20701 makes every officer of election keep, for twenty-two months after any federal election, all records that come into the officer's possession relating to an act requisite to voting. Under 52 USC 20706, an "officer of election" is anyone who, under color of state law, performs a function connected to such an act.

33. 52 USC 20702 makes it a federal crime, punishable by fine and imprisonment, for any person to willfully steal, destroy, conceal, mutilate, or alter any record or paper required to be retained under 52 USC 20701.

34. Section 20701 is not limited to paper; its text reaches all records. The United States Department of Justice, which enforces the statute, has published guidance stating that the covered materials extend beyond papers to include other records, that jurisdictions must therefore retain and preserve records created in digital or electronic form, and that the retention duty requires election officials to maintain the security and integrity of those records and their chain of custody so that a complete and uncompromised record of federal elections remains available. On information and belief, that guidance remains published as current policy of the Department's Civil Rights Division. The electronic poll book files are records

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relating to acts requisite to voting, including each elector's application to vote, and they fall within 52 USC 20701.

35. The Department's own instructions to clerks state the same duty. The Bureau of Elections' current Election Officials' Manual instructs that if the office of President, United States Senator, or Representative in Congress appears on the ballot, all documents relating to the election, including ballots and tabulator programs, must be retained for twenty-two months. The electronic poll book files are documents relating to the election. **Exhibit 5.**

C. The Michigan Retention Statute

36. The Legislature has fixed how long election records survive. MCL 168.811 bars destruction of election returns, including poll lists, statements, and tally sheets, and of federal-office ballots, until twenty-two months pass. The statute sets a twenty-two-month floor.

D. The Records Retention and Disposal Scheme

37. Michigan law fixes the exclusive path for disposing of a public record. A public record may be disposed of only as an approved records retention and disposal schedule provides. MCL 750.491(1); MCL 399.811. A schedule that governs the disposal of records is submitted to the State Administrative Board, which approves or disapproves it and orders the destruction of valueless records accordingly. MCL 399.811(3). Willful destruction of a public record outside an approved schedule is a misdemeanor. MCL 750.491(2).

38. The electronic poll book and the records it holds are public records subject to that scheme. The challenged rule itself confirms as much: R 168.42(1) declares that the

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voter data contained in the electronic poll book are public records subject to the Freedom of Information Act. The Bureau of Elections publishes an Election Document Retention Schedule that treats poll books and their component lists, statements, and tally sheets as records governed by MCL 168.811, preserves them for years after the election, and preserves federal-office records for twenty-two months. **Exhibit 8.**

39. Retention does not turn on the medium of the record. A record must be kept for its full retention period whatever the format in which it exists, and the office must keep it accessible throughout that period. A clerk does not satisfy the retention duty by keeping a paper summary while deleting electronic records that exist nowhere else.

40. The State's approved retention schedule does contain a seven-day item for electronic pollbook data. Item 23.339 of General Schedule #23, with a county counterpart at item 23.242, approved October 24, 2023, permits destruction of electronic pollbook data seven days after the canvass, but only after the data is uploaded into the qualified voter file or converted to paper. That approval does not authorize this destruction, for two reasons. First, the item's own condition is not satisfied: the electronic records the rule destroys are neither uploaded into the qualified voter file, into which R 168.47 directs the upload of the voting history and other required files, extracts generated from the poll book rather than the poll book's records, nor converted to paper, because the printed reports are field-limited outputs rather than conversions of the records. Second, the same schedule retains ballots from federal elections for twenty-two months, expressly citing 52 USC

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20701, item 23.306, while giving the electronic pollbook data seven days; a schedule, like a rule, is subordinate to the statutes and cannot shorten the retention that MCL 168.811 and 52 USC 20701 command.

E. The Constitutional Audit Right

41. The Constitution guarantees audits of statewide elections and requires public election officials to maintain the security and custody of all ballots and election materials during an audit. Const 1963, art 2, § 4(1)(I). The right is self-executing and is construed in favor of voters. The Legislature implemented it in MCL 168.31a(2), which makes audits review the documents, ballots, and procedures used in an election. Deleting the electronic poll book on day seven, within the retention and audit windows, removes from any audit the documents and data the audit exists to review.

F. The Challenged Rule

42. Rule Set 2025-014, Mich Admin Code R 168.41 to R 168.48, governs the use of the electronic poll book. The rule defines the electronic poll book to include the early voting electronic poll book, the election day vote center electronic poll book, and the election day electronic poll book, or any combination of them. R 168.41. The deletion command therefore reaches every electronic poll book a clerk uses. The Department filed the rule set with the Secretary of State on October 23, 2025, under the authority of MCL 168.31, and it took effect on filing. R 168.48(1) requires that the electronic poll book software and associated files "must be deleted from all devices by the seventh day following the final canvass and certification of

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the election," subject to exceptions for a pending recount, a scheduled post-election audit, and a stay ordered by a court or the Secretary of State. **Exhibit 9.**

43. The rule bars deletion until the Bureau of Elections or county clerk issues a release of security memorandum. R 168.48(2). The rule's own audit exception extends retention whenever a precinct is selected for a post-election audit, and the Department's manual identifies the electronic poll book among the subjects of those audits; the State's own oversight process uses the records the rule otherwise destroys.

44. The rule has already operated in Plaintiff's township. Following at least one election conducted since the rule took effect on October 23, 2025, the electronic pollbook files for that election were deleted as the rule requires, and they cannot be recovered. No election involving a federal office was conducted under the rule before the August 4, 2026 primary; this primary presents the first collision between the rule's deletion command and the federal retention duty.

45. R 168.48's exceptions reach only recounts, scheduled audits, and stays. They do not reach the ordinary election that generates twenty-two-month records under 52 USC 20701 and MCL 168.811 but draws no recount, audit, or stay. In that ordinary case, including the August 4, 2026 primary, the rule orders deletion on day seven, far short of the twenty-two months federal and state law require.

**COUNT I. DECLARATORY JUDGMENT: FEDERAL PREEMPTION OF
R 168.48 BY 52 USC 20701 AND 20702 UNDER THE SUPREMACY CLAUSE
(AS APPLIED)**

46. Plaintiff realleges and incorporates the preceding paragraphs.

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47. A state rule that conflicts with federal law is void to the extent of the conflict. US

Const, art VI, cl 2. Conflict preemption arises when a party cannot obey both commands at once, or when the state rule obstructs the purposes of Congress.

48. As an officer of election, Plaintiff must keep all voting records from a federal election for twenty-two months. 52 USC 20701. Their willful destruction is a federal crime. 52 USC 20702. The August 4, 2026 primary is such an election.

49. R 168.48 makes destruction the default, ordering that the files "must be deleted" by day seven absent a recount, audit, or stay. R 168.48(1). Federal law sets the opposite default: under 52 USC 20701 the officer "shall retain and preserve" the records for twenty-two months, and 52 USC 20702 makes their destruction a crime.

The federal duty attaches to the records that come into the officer's possession, the poll book files themselves, not to substitutes the officer might generate, so deleting those files violates the federal duty even if some of the same information survives in another form. R 168.48 inverts the federal command and orders destruction of what federal law requires be kept.

50. The discretionary stay does not cure the conflict. The federal duty is mandatory and self-operative; it does not wait on a clerk persuading the Secretary or a court to suspend a state deletion order. A rule that forces destruction unless the clerk wins relief each cycle to do what federal law already requires obstructs the purpose of 52 USC 20701: preserving records for the full twenty-two months for federal inspection. A State may not make a mandatory federal duty hinge on a discretionary state dispensation.

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51. In the ordinary election with no recount, audit, or stay, R 168.48 and 52 USC 20701 give Plaintiff opposite commands as to the same records, and Plaintiff cannot obey both. To that extent R 168.48 is preempted, invalid, and unenforceable.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 is preempted by 52 USC 20701 and 20702, and is invalid and unenforceable, to the extent it requires deletion of records within the twenty-two-month federal retention period, together with the further relief set forth below.

COUNT II. DECLARATORY JUDGMENT: R 168.48 EXCEEDS THE SECRETARY'S AUTHORITY AND CONFLICTS WITH MICHIGAN RETENTION LAW

52. Plaintiff realleges and incorporates the preceding paragraphs.

53. Statute both grants and limits the Secretary's rulemaking power. MCL 168.31(1)(a) lets her promulgate rules for the conduct of elections and registrations in accordance with state law. A rule is valid only if it falls within the enabling statute, fits the legislative intent, and is not arbitrary or capricious. *Ins Institute of Mich v Comm'r of Financial & Ins Services*, 486 Mich 370, 385 (2010); *see also Luttrell v Dep't of Corrections*, 421 Mich 93, 100 (1984). When a rule conflicts with the governing statute, the statute controls. *Brighmoore Gardens, LLC v Marijuana Regulatory Agency*, 337 Mich App 149, 161 (2021).

54. A rule that conflicts with a statute is invalid to that extent, and an agency may not swap its policy for the Legislature's. *Slis v State*, 332 Mich App 312, 335-336 (2020). An agency's interpretation cannot conflict with the plain meaning of the statute. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 108 (2008).

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55. The Legislature has fixed how long these records survive. MCL 168.811 bars destruction of election returns, poll lists, and federal-office ballots before twenty-two months pass. Outside its narrow exceptions, R 168.48 orders deletion on day seven. Where the poll book files are or contain election returns or poll lists under MCL 168.811, the rule shortens the statutory period and conflicts with it. It is invalid to that extent.

56. R 168.48 also collides with the statutes governing how a public record may be destroyed. A public record may be disposed of only as an approved retention and disposal schedule provides, through the process the Legislature prescribed, MCL 750.491(1); MCL 399.811, and only to the extent the schedule is itself lawful.

Exhibit 10. The schedule item that purports to authorize seven-day deletion, General Schedule #23 item 23.339, authorizes destruction only of data uploaded into the qualified voter file or converted to paper, a condition the electronic records do not meet, and neither that item nor R 168.48 can authorize destruction the retention statutes forbid.

57. That the Department directed similar deletion through its election manuals in earlier cycles, and obtained a schedule item reflecting the practice, does not cure the defect. A retention and disposal schedule is an administrative instrument subordinate to the statutes; it can no more shorten the twenty-two months that MCL 168.811 and 52 USC 20701 require than the rule can, because neither an agency nor the records-management process can change a period the Legislature and Congress fixed. To the extent R 168.48 orders destruction those statutes forbid, it conflicts with MCL 168.811, MCL 750.491, and MCL 399.811 and is invalid.

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58. That a clerk may keep a paper summary does not save the rule. The retention duty attaches to the record in whatever medium it exists. The electronic poll book files are records, and deleting them destroys those records whatever paper remains.

59. A rule ordering the destruction of election records is also not a rule for the "conduct of elections and registrations" under MCL 168.31(1)(a). By ordering destruction the Legislature never authorized and the retention statute forbids, R 168.48 exceeds the Secretary's delegated power, intrudes on the records-retention-schedule process the Legislature committed to the State Administrative Board, and is ultra vires. MCL 168.668b authorizes the Secretary to prescribe procedures for using the electronic poll book, but not to destroy records the retention statutes require be kept; regulating how the poll book is used is not authority to erase the records it holds.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 exceeds the Secretary's authority under MCL 168.31 and conflicts with MCL 168.811, MCL 750.491, and MCL 399.811, and is invalid and unenforceable to the extent it requires deletion of records within the statutory retention period, together with the further relief set forth below.

**COUNT III. IN THE ALTERNATIVE: R 168.48 IS INVALID FOR FAILURE
OF SUBSTANTIAL COMPLIANCE WITH THE ADMINISTRATIVE
PROCEDURES ACT**

60. Plaintiff realleges and incorporates the preceding paragraphs.

61. A rule is not valid unless it is processed in compliance with MCL 24.242 and in substantial compliance with MCL 24.241(2), (3), (4), and (5). MCL 24.243(1).

Among the requirements is that the notice of the public hearing include a statement

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of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date. MCL 24.241(2)(c).

62. The notice of public hearing for the rule set that became R 168.41 through R 168.48 was published in three newspapers on June 14 and 15, 2025 and in the Michigan Register on July 1, 2025. Its entire statement of the substance of the proposed rules read: "The proposed rules would provide that an electronic pollbook must have a secure live connection to the Qualified Voter File while voting is taking place, if the site has internet access. Further, the proposed rules would provide that the electronic pollbook software download provided in MCL 168.668b must still take place and serve as a backup to the live connection." **Exhibit 11.** The notice added that the proposed rules were published on the State of Michigan's website and in the July 1, 2025 issue of the Michigan Register. **Exhibit 12.**

63. Deletion of the electronic poll book appears nowhere in that statement and nowhere in any description of the subjects and issues involved. A reader of the notice was told that the rule set concerned a secure live connection to the qualified voter file and the retention of the statutory download as a backup. The reader was not told that the rule set would order the destruction of the poll book's records seven days after certification.

64. The omission pervades the rulemaking record. The request for rulemaking that opened the docket, approved March 6, 2025, described the purpose as clarifying the electronic pollbook rules in light of technological advances, early voting, and the security benefits of a live connection, and certified that the rules do not conflict with any similar rules, requirements, or standards. The regulatory impact statement

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stated that there are no parallel federal rules or standards, the comparison MCL 24.245(3)(a) requires, and that no laws, rules, or other legal requirements duplicate,

overlap, or conflict with the proposed rules; it contains no demonstration that the deletion requirement is necessary and suitable to achieve its purpose in proportion to its burdens, MCL 24.245(3)(k), no identification of any harm the deletion requirement addresses, and no estimate of its benefits. The agency's report to the

Joint Committee on Administrative Rules summarized the rules in the same terms.

65. No individual attended or testified at the July 15, 2025 public hearing; the only two written comments supported the live connection proposal and addressed nothing else; and the clerk feedback the agency relied on concerned only live connectivity.

Exhibits 13, 14, and 15.

66. The notice requirement exists to invite public participation, to prevent precipitous agency action, and to notify affected persons of the subjects and issues involved so that they may be heard. As to the deletion command, that purpose failed completely: no member of the public, no clerk, and no organization commented on, testified about, or was told of the requirement that election records be destroyed, and the first public opposition came only after the comment period closed.

67. A notice whose affirmative statement of substance omits the rule set's most consequential command is not in substantial compliance with MCL 24.241(2)(c), and R 168.48 is therefore invalid. MCL 24.243(1). This claim is brought within two years after the rules' October 23, 2025 effective date. MCL 24.243(2).

68. In the alternative and at minimum, the regulatory impact statement's certifications were inaccurate as to R 168.48, and its failure to analyze the deletion requirement

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at all deprived the rulemaking of the analysis the Administrative Procedures Act requires, which independently supports declaratory relief in this action. MCL 24.264.

69. R 168.48 is severable from R 168.41 through R 168.47. The notice described the live connection and download provisions those rules contain, the defect identified in this count is specific to the deletion requirement, and the remaining rules operate independently of it.

WHEREFORE, Plaintiff requests judgment declaring that R 168.48 was not processed in substantial compliance with MCL 24.241(2) and is invalid under MCL 24.243(1), together with the further relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michelle McQueer respectfully requests that this Honorable Court:

- A. Declare that R 168.48 is preempted by 52 USC 20701 and 20702, and is invalid and unenforceable, to the extent it requires deletion of records within the twenty-two-month federal retention period;
- B. Declare that R 168.48 exceeds the Secretary's authority under MCL 168.31 and conflicts with MCL 168.811, MCL 750.491, and MCL 399.811, and is invalid and unenforceable to the extent it requires deletion of records within the statutory retention period;
- C. In the alternative to the foregoing declarations of invalidity, declare that R 168.48 must be construed so as not to require deletion of any records within the retention periods established by 52 USC 20701 and MCL 168.811;

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D. Enter preliminary and permanent injunctive relief restraining Defendants, their officers, agents, and employees from enforcing R 168.48 against Plaintiff, and from deleting or requiring the deletion of the electronic poll book and its associated files, insofar as they hold records within the retention periods established by 52 USC 20701 and MCL 168.811;

E. Order a speedy hearing of this action and advance it on the Court's calendar under MCR 2.605(D);

F. Award Plaintiff her costs and, to the extent authorized by applicable law, her reasonable attorney's fees; and

G. Grant such other and further relief as this Honorable Court deems just and equitable.

Respectfully submitted by:

Dated: August 12, 2026

/s/ Kevin Kijewski
KEVIN KIJEWSKI (P74153)
Attorney for Plaintiff

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VERIFICATION

STATE OF MICHIGAN)
) ss
 COUNTY OF WASHTENAW)

Michelle McQueer, being first duly sworn, deposes and states that she is the Plaintiff in the above-captioned action; that she has read the foregoing Complaint; and that the factual allegations contained in it are true to her own knowledge, except as to those matters alleged on information and belief, and as to those matters, she believes them to be true.

Michelle McQueer
 Michelle McQueer

Subscribed and sworn to before me this 12th day of August, 2026.

Lydia Tannis
 Notary Public, State of Michigan
 County of Washtenaw
 My commission expires: 02/12/2030
 Acting in the County of Washtenaw



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EXHIBIT D

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STATE OF MICHIGAN
COURT OF CLAIMS

MICHELLE MCQUEER, individually and in her
official capacity as Clerk of the Township of
Bridgewater,

Plaintiff,

v

Case No. 26-000172-MZ

JOCELYN BENSON, in her official capacity as
Michigan Secretary of State, JONATHAN
BRATER, in his official capacity as Director of
Elections, and MICHIGAN DEPARTMENT OF
STATE,

Hon. Michael J. Riordan

Defendants.

**ORDER GRANTING EXPEDITED CONSIDERATION, SETTING INITIAL
SCHEDULE, AND TEMPORARILY PRESERVING EVIDENCE**

On August 12, 2026, plaintiff filed a complaint, motion for temporary restraining order, and motion for a preliminary injunction challenging Mich Admin Code, R 168.48's requirement that "the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election." Because that date is fast approaching, the Court will consider this matter on an expedited basis. To that end:

1. The Court DIRECTS plaintiff to serve on defendants all material filed in this Court along with this order by **2:00 p.m. on Thursday, August 13, 2026.**
2. The Court DIRECTS defendants to file responses to plaintiff's complaint and motions by **4:00 p.m. on Thursday, August 20, 2026.**
3. If defendants respond to the complaint with a motion for summary disposition, plaintiff's response to that motion must be filed by **4:00 p.m. on Monday,**

August 24, 2026. Defendants may file a reply brief by **4:00 p.m. on Wednesday, August 26, 2026.**

4. Plaintiff may only file reply briefs in support of the motions for a preliminary injunction and temporary restraining order upon leave of the Court.
5. The Court will schedule oral argument or an evidentiary hearing if deemed necessary upon reviewing the pleadings.
6. The Court DIRECTS defendants to preserve “the electronic pollbook software and associated files” in a secure manner pending the resolution of this matter.

Date: August 13, 2026



Michael J. Riordan
Judge, Court of Claims



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EXHIBIT E

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STATE OF MICHIGAN
COURT OF CLAIMS

MICHELLE MCQUEER, individually and in her
official capacity as Clerk of the Township of
Bridgewater,

Plaintiff,

v

Case No. 26-000172-MZ

JOCELYN BENSON, in her official capacity as
Michigan Secretary of State, JONATHAN
BRATER, in his official capacity as Director of
Elections, and MICHIGAN DEPARTMENT OF
STATE,

Hon. Michael J. Riordan

Defendants.

**ORDER GRANTING 8/12/26 MOTION FOR TEMPORARY RESTRAINING ORDER,
8/17/26 MOTION TO DEEM SERVICE TIMELY, 8/20/26 AND 8/26/26 MOTIONS TO
EXCEED PAGE LIMITS, 8/27/26 MOTION TO TAKE JUDICIAL NOTICE, AND
8/27/26 MOTION FOR LEAVE TO FILE A SUR-REPLY, AND DIRECTING NOTICE
UPON THE COMPLETION OF THE HAVA PROCEEDING**

There are several motions pending before the Court in this expedited election matter. The Court will consider these motions in turn.

Along with her complaint, plaintiff filed motions for a temporary restraining order (TRO) and preliminary injunction. Because the Court anticipated that defendants would respond with a motion for summary disposition, the Court declined to consider either motion at that time, instead directing “defendants to preserve ‘the electronic pollbook software [EPB] and associated files’ in a secure manner pending the resolution of this matter.” On August 27, 2026, plaintiff requested

the Court take judicial notice of a memorandum sent to county and local clerks on August 26, 2026. The Court GRANTS that motion. The memorandum advised:

All jurisdictions must upload the EPB into the [Qualified Voter File] QVF for proper retention and preservation. Once uploaded, the local copy of the EPB software and associated files must be deleted from all devices by the seventh calendar day following the final canvass and certification of the election (August 31, 2026). . . .

This instruction is inconsistent with this Court's August 13, 2026 order. Having reviewed the briefing, to ensure the preservation of the EPB during the pendency of this litigation, the Court GRANTS plaintiff's motion for a TRO, and DIRECTS that plaintiff shall retain the EPB until further order of this Court.

In the August 13, 2026 order, the Court directed plaintiff to serve defendants by 2 p.m. that day. Plaintiff personally served defendants at 3:08 p.m. Defendants accepted service and filed appearances in this Court. Plaintiff requested the Court to deem this service as timely. The Court GRANTS that motion.

On August 20, 2026, defendants filed a motion for summary disposition and a 25-page accompanying brief. Defendants requested permission to file this brief which exceeded the 20-page limit of Court of Claims LCR 2.119(A)(3) and MCR 2.119(A)(2)(a). On August 26, 2026, defendants filed a 12-page reply brief. Defendants requested permission to file this reply brief which exceeded the five-page limit of MCR 2.116(G)(1)(a)(iii). The Court GRANTS both motions to exceed the page limit and ACCEPTS for filing the briefs submitted to the Court.

On August 27, 2026, plaintiff moved to file a sur-reply. The proposed sur-reply also exceeds the page limit for reply briefs. The Court GRANTS the motion to file a sur-reply and accepts the brief for filing.

On the Court's own motion, and having been advised in defendants' motion for summary disposition that "[a] decision on the complaints is expected by the end of August," the parties are DIRECTED to notify the Court within 24 hours of the administrative proceedings being conducted pursuant to the Help Americans Vote Act (HAVA) is concluded.

IT IS SO ORDERED. This is not a final order.

Date: 08/27/2026


Michael J. Riordan
Judge, Court of Claims

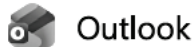


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Expedited Request for Declaratory Ruling Under MCL 24.264 of APA Regarding Validity and Applicability of Mich Admin Code, R 168.48

From Robert Davis <[REDACTED]>
Date Mon 9/21/2026 5:35 PM
To MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Brater, Jonathan (MDOS) <[REDACTED]>; Fracassi, Adam (MDOS) <[REDACTED]>; Benson, Jocelyn (MDOS) <[REDACTED]>; Meingast, Heather (AG) <[REDACTED]>; [REDACTED]

CAUTION: This is an External email. Please report suspicious emails via the "Report to Abuse" button in Outlook

Dear SOS Benson, Director Brater, Ms. Meingast and Mr. Fracassi:

Pursuant to MCL 24.264 of the Administrative Procedures Act (APA), as a duly registered and qualified voter of the County of Wayne, State of Michigan, I am respectfully submitting this expedited request for a declaratory ruling concerning the validity and applicability of Mich Admin Code, R 168.48 with respect to the upcoming November 3, 2026 general election.

As a duly registered and qualified voter of the State of Michigan, I will be voting in the upcoming November 3, 2026 general election. I intend to vote in person at the polls on November 3, 2026 in the state-wide general election.

However, on October 23, 2025, the Secretary of State's promulgated rule, Mich Admin Code, R 168.48 went into effect. Mich Admin Code, R 168.48 requires and mandates "**the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election**, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state." (emphasis supplied).

Mich Admin Code, R 168.48, however, contravenes and conflicts with 52 U.S.C. §20701, which governs state elections where federal offices appear on the ballot.

52 U.S.C. §20701 provides:

"Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that,

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if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, ***and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian.*** Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both." [emphasis supplied.]

In Michigan, on the November 3, 2026 general election ballot, the office of U.S. Senator and Members of the U.S. House of Representatives will appear. On November 3, 2026, I will be voting for his preferred candidate for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District, which is where Plaintiff resides and is registered to vote.

I am concerned, however, that my properly cast votes for U.S. Senator and Member of the U.S. House of Representatives for the 13th Congressional District will be unlawfully deleted and unpreserved under the provisions of the Mich Admin Code, R 168.48.

268. Because candidates for the offices of U.S. Senator and Members of the U.S. House of Representatives will be voted for in the November 3, 2026 general election in the State of Michigan, 52 U.S.C. §20701 controls.

Because time is of the essence in this election-related matter, I am respectfully requesting a written response to this expedited request for declaratory ruling is issued within 7 calendar days of the date of this expedited request.

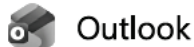
Please send all written responses to this expedited request for declaratory ruling to my email address:

[REDACTED]

Please confirm and acknowledge receipt of this email with a reply email.

Respectfully submitted,
/s/ ROBERT DAVIS
ROBERT DAVIS
180 Eason
Highland Park, MI 48203

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Outlook

Expedited Request for Declaratory Ruling Under MCL 24.264 of APA Regarding Validity and Applicability of Mich Admin Code, R 168.48 Conflicting With MCL 168.811 of Michigan Election Law

From Robert Davis <[REDACTED]>
Date Tue 9/22/2026 8:13 PM
To MDOS-BOERegulatory <MDOS-BOERegulatory@michigan.gov>; Brater, Jonathan (MDOS) [REDACTED]; Fracassi, Adam (MDOS) [REDACTED]; Benson, Jocelyn (MDOS) [REDACTED]; [REDACTED]; [REDACTED]; Meingast, Heather (AG) [REDACTED]

1 attachment (55 KB)

Secretary of State Promulgated Rules R 168.41 to R 168.48 regarding Voter Data Retention Elections.pdf;

CAUTION: This is an External email. Please report suspicious emails via the "Report to Abuse" button in Outlook

Dear SOS Benson, Director Brater, Ms. Meingast, and Mr. Fracassi:

This expedited request for declaratory ruling MCL 24.264 of Administrative Procedures Act (APA) is **separate and distinct from the expedited request for declaratory ruling I submitted on Monday, September 21, 2026.**

Pursuant to MCL 24.264 of the Administrative Procedures Act (APA), as a duly registered and qualified voter of the County of Wayne, State of Michigan, I am respectfully submitting this expedited request for a declaratory ruling concerning the validity and applicability of Mich Admin Code, R 168.48 with respect to the upcoming November 3, 2026 general election considering it conflicts with MCL 168.811 of Michigan Election Law.

As a duly registered and qualified voter of the State of Michigan, I will be voting in the upcoming November 3, 2026 general election. I intend to vote in person at the polls on November 3, 2026 in the state-wide general election.

However, on October 23, 2025, the Secretary of State's promulgated rule, Mich Admin Code, R 168.48 went into effect. Mich Admin Code, R 168.48 requires and mandates "the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state." (emphasis supplied).

Mich Admin Code, R 168.48, however, contravenes and conflicts with MCL 168.811 of Michigan Election Law, which governs preservation of ALL election-related data and documents pertaining to

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any state, county or local primary and/or general elections held in this state.

MCL 168.811 of Michigan Election Law provides:

"All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing the statement required by section 761, absent voters' records required by section 760, and other returns made by the election inspectors of the several precincts must be carefully preserved and may be destroyed after the expiration of 22 months following the primary or election at which the same were used. All applications executed under section 523, all voter registration applications executed by applicants under section 497(3) and (4), and all absent voters' applications must be carefully preserved and may be destroyed after the expiration of 6 years following the primary or election at which those applications were executed. All ballots used at any primary or election, other than ballots containing a federal office, may be destroyed after 30 days following the final determination of the board of canvassers with respect to the primary or election unless a petition for recount has been filed and not completed or unless the destruction of the ballots is stayed by an order of a court. **All ballots containing a federal office, and all presidential primary ballot selection forms, may be destroyed after the expiration of 22 months following the primary or election at which those ballots were cast or forms were used.**" [emphasis supplied.]

Because time is of the essence in this election-related matter, I am respectfully requesting that a written response to this expedited request be issued within 7 calendar days of the date of this expedited request.

Please send all written responses to this expedited request for declaratory ruling to my email address:

Please confirm and acknowledge receipt of this email with a reply email.

Respectfully submitted,

/s/ ROBERT DAVIS

ROBERT DAVIS

180 Eason

Highland Park, MI 48203

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From: [MDOS-BOERegulatory](#)
To: [Robert Davis](#)
Subject: Declaratory ruling requests
Date: Wednesday, September 30, 2026 4:20:51 PM
Attachments: [2026.9.30 McQueer.pdf](#)

Dear Robert Davis,

The Department acknowledges receipt of your declaratory ruling requests dated September 21, 2026 and September 22, 2026, in which you sought a declaratory ruling regarding the validity and applicability of R 168.48. The Department denies your request to issue a declaratory ruling because you are not an interested person under MCL 24.263. R 168.48 governs the conduct of clerks and their staff. Because you are not a clerk or a member of a clerk's staff, R 168.48 does not apply to you. However, the Department received a declaratory ruling request from an interested person addressing the same subject as your two requests. The Department's response to that request was in the process of being finalized when your requests were received. That declaratory ruling was issued today, and in the spirit of cooperation, is attached to this email.

Bureau of Elections, Regulatory Division

Michigan Department of State

P.O. Box 20126

Lansing, Michigan 48901

/ATB

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