

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	SUMMONS	CASE NO. 24- MB
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Court address Michigan Court of Claims, 925 W. Ottawa Street, Lansing, MI 48909 **Court telephone no.**
517-373-0807

Plaintiff's name, address, and telephone no.
MICHIGAN REPUBLICAN PARTY, REPUBLICAN NATIONAL COMMITTEE, AND CINDY BERRY

v

Defendant's name, address, and telephone no.
JOCELYN BENSON, in her official capacity as Michigan Secretary of State

 430 W. Allegan St.
 Richard H. Austin Building - 4th Floor
 Lansing, MI 48918

Plaintiff's attorney, bar no., address, and telephone no.
 Robert L. Avers (P75396)
 Joseph A. Vacante (P87036)
 350 South Main Street, Suite 300
 Ann Arbor, MI 48104
 (734) 623-1672

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106.
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Document received by the MI Court of Claims

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

I served personally by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

_____ on _____
 Attachments (if any) Date and time

_____ on behalf of _____
 Signature

_____ Name (type or print)

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MICHIGAN REPUBLICAN PARTY, REPUBLICAN NATIONAL COMMITTEE, AND CINDY BERRY

v

Defendant's name, address, and telephone no.
JONATHAN BRATER, in his official capacity as Director of Elections

 430 W. Allegan St.
 Richard H. Austin Building - 4th Floor
 Lansing, MI 48918

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Name	Date and time of service
Place or address of service	
Attachments (if any)	

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I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____ Date and time

Signature _____ on behalf of _____

Name (type or print) _____

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN REPUBLICAN PARTY,
REPUBLICAN NATIONAL COMMITTEE,
and CINDY BERRY,

Case No. 24-_____ -MZ

Hon. _____

Plaintiffs,

v

EXPEDITED RELIEF
REQUESTED

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

Defendants.

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*Attorneys for Plaintiffs MRP and
Cindy Berry*

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

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

NOW COME Plaintiffs the Michigan Republican Party, the Republican National Committee, and Cindy Berry (collectively, “Plaintiffs”), by and through their undersigned counsel, and state as follows in support of their Verified Complaint against Michigan Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater (collectively, the “Secretary”):

INTRODUCTION

1. Michigan law requires absent voters to sign absent voter ballot return envelopes and mandates that clerks verify those signatures before sending absent voter ballots to election inspectors for tabulation. That is the method by which clerks verify the identity of absent voters as required by the Michigan Constitution and Michigan law. But that’s not all—Michigan law also requires clerks to mark those absent voter ballot return envelopes with a statement indicating that the corresponding voter’s signature (and thus their identity) has been verified. It appears, however, that this requirement is not being universally observed. And it further appears that the Secretary contributed to this confusion by issuing incomplete guidance materials.

2. As recognized in the Carter-Baker Commission Report, absentee voting “has been one of the major sources of fraud.” See, Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform (*i.e.*, the “Carter-Baker Commission Report”), at 35, September 2005, available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF (last visited September 10, 2024). For that reason, the Carter-Baker Commission recommended that “[t]o *verify the identity* of voters who cast absentee ballots, the voter’s signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains,” and that this signature matching “should be done *consistently* in all cases, so that election officials can *verify the identity* of every new registrant who casts an absentee ballot.” *Id.* at 20 (emphasis added).

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

4. The Michigan Election Law requires any voter that chooses to vote by absent voter ballot to sign their absent voter ballot return envelope in order for their ballot to count. MCL 168.764a. Local clerks are then required to verify the signatures on the absent voter ballot return envelopes by comparing those signatures against the voter’s “signature on file,” which, depending on the circumstances, can mean the signature of the voter contained in the qualified voter file (the “QVF”), the signature of the voter contained on the master card, or, in some instances, the signature on the voter’s absent voter ballot application. MCL 168.761. See also MCL 168.766a(7).

5. To that end, MCL 168.765 mandates that city and township clerks “shall review each absent voter ballot return envelope to determine whether the absent voter ballot is approved for tabulation in accordance with [MCL 168.766].” MCL 168.765(2). That mandated review and approval process includes “verifying the signature on each absent voter ballot return envelope in accordance with [MCL 168.766a].”

6. This suit focuses on two vital recordkeeping requirements in the above-referenced signature verification process. Specifically, MCL 168.765(2) mandates that: (1) clerks must write or stamp on each absent voter ballot return envelope the date that the ballot return envelope was received by the clerk (or, if received on Election Day, then clerks must write or stamp *both* the

time and date that the ballot return envelope was received by the clerk); and (2) *after verifying each voter's signature*, clerks must include on *each* approved ballot return envelope “a statement by the city or township clerk that the absent voter ballot is approved for tabulation.” MCL 168.765(2).

7. The latter of these recordkeeping requirements under MCL 168.765(2)—*i.e.*, the requirement that *after* verifying a voter's signature, clerks must include on the corresponding ballot return envelope “a statement by the city or township clerk that the absent voter ballot is approved for tabulation”—is a vital part of the absent voter ballot processing procedure because it enables precinct boards of election inspectors and absent voter counting boards (“AVCBs”) to fulfill their statutory duty to confirm that a voter's signature has been verified by the clerk. See MCL 168.768.

8. To that end, absent voter ballots are processed in two different stages under Michigan law. First, the signature verification process is completed by local clerks outside the presence of election inspectors, election challengers, and poll watchers. See, e.g., MCL 168.765(2) (providing that signature verification must be completed by the “city or township clerk,” and further providing that “a precinct board of election inspectors or an absent voter counting board must *not* make any further signature verification for an absent voter ballot return envelope.”) (emphasis added). If during the signature verification process the “clerk determines that the elector's signature on the absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, the clerk shall reject the absent voter ballot and provide the elector with notice and the opportunity to cure the deficiency in accordance with [MCL 168.766(4)].” *Id.* If, on the other hand, the clerk has verified that the signature on the ballot return envelope sufficiently matches the voter's signature on file, the absent voter ballot is approved for

tabulation and submitted to a precinct board of election inspectors or an AVCB to be processed on Election Day (*i.e.*, the second stage of the absent voter ballot processing procedure).

9. While the clerk is responsible for verifying the voter's signature on absent voter ballot return envelopes, the Michigan Election Law precludes election inspectors from tabulating an absent voter ballot on Election Day if (a) the elector's signature is missing from the return envelope, or (b) the clerk's statement that the absent voter ballot is approved for tabulation as required under MCL 168.765(2) is incomplete. MCL 168.768. Indeed, if either the elector's signature is missing from the return envelope or the clerk failed to complete the statement on the return envelope that the absent voter ballot is approved for tabulation, then election inspectors may *not* tabulate the ballot and "must immediately contact the city or township clerk." *Id.*

10. Put another way, MCL 168.765 requires *both* that a clerk mark the date on which the ballot was received *and* that the clerk provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified) in the section of the return envelope designated "for clerk's use only." A ballot is only eligible for tabulation upon signature verification, and so the clerk's statement of approval under MCL 168.765(2) functions as confirmation to those responsible for tabulating the ballots on Election Day—*i.e.*, either the precinct board of election inspectors or those election inspectors assigned to an AVCB—that the voter's signature on the ballot was, in fact, verified by the clerk. MCL 168.766(1)(b).

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

mismatched signatures have an opportunity to cure their deficient ballot such that the signature verification process does not prevent any qualified elector from voting.

12. Despite this clear statutory framework, it appears that local clerks may not be complying with the requirement to mark absent voter ballot envelopes with a statement that the voter's signature has been verified. For example, Plaintiffs recently learned that thousands of absent voter ballots were apparently tabulated during the August 6, 2024 primary election in Warren, Michigan, despite the complete absence of a statement by the clerk on the corresponding return envelope that the absent voter ballot is approved for tabulation as expressly required under MCL 168.765(2).

13. Plaintiffs also recently learned that the Secretary's guidance document entitled "Election Officials' Manual, Chapter 8: Absent Voter Ballot Processing," (hereinafter, the "AV Ballot Processing Guidance"), which is attached hereto as **Exhibit A**, is likely contributing to the above-referenced confusion by providing incomplete advice. Indeed, while MCL 168.765(2) clearly requires *two* separate markings—*i.e.*, that a clerk mark the date on which the absent voter ballot return envelope was received and that the clerk provide a written statement on the return envelope confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified)—the Secretary's AV Ballot Processing Guidance omits the second of those two statutory requirements. See Ex A, at 5 (instructing clerks to "mark the ballot envelope in the 'Clerk Section' with the date of receipt," but omitting any instruction to include a written statement on the return envelope confirming the ballot is approved for tabulation as required under MCL 168.765(2)).

14. In other words, the Secretary's AV Ballot Processing Guidance fails to mention the clerk's statement of approval (*i.e.*, signature verification confirmation) as required under

subsection 765(2), yet reads as if it contains the entire universe of requirements as to the information that a clerk must write or stamp on an absentee ballot return envelope such that the corresponding ballot can be tabulated. As a result, the AV Ballot Processing Guidance is fatally incomplete.

15. Given the complete absence of a statement by the clerk that the absent voter ballot was approved for tabulation as expressly required under MCL 168.765(2), it is an open question as to whether the clerk in Warren, Michigan, verified voters' signatures on those absent voter ballot return envelopes during the August 6, 2024 primary election.

16. Setting aside that absent voter ballots may have been tabulated even though the Warren clerk failed to provide any indication that it had verified the voter signatures, this apparent confusion is a symptom of a potentially larger issue of local election officials misconstruing the Secretary's incomplete and misleading AV Ballot Processing Guidance as the complete universe of requirements for approving absent voter signatures on ballot return envelopes.

17. Regardless, Plaintiffs' rights and abilities to participate in a free and fair elective franchise have already been damaged. By all accounts and absent the relief sought here, the Secretary's AV Ballot Processing Guidance will apparently remain in effect with respect to upcoming elections, further damaging Plaintiffs' rights and abilities to participate in a free and fair elective franchise in the November 5, 2024 general election and all those beyond.

18. As a result, and in light of the impending general election on November 5, 2024, Plaintiffs respectfully ask this Court to: **(a)** declare that city and township clerks must comply with MCL 168.765(2) by ***both*** (1) writing or stamping on each absent voter ballot return envelope the date that the ballot return envelope was received by the clerk (or, if received on Election Day, then clerks must write or stamp ***both*** the time and date that the ballot return envelope was received by

the clerk); **and** (2) *after verifying each voter's signature*, clerks must also include on *each* approved ballot return envelope “a statement by the city or township clerk that the absent voter ballot is approved for tabulation.” MCL 168.765(2); **(b)** declare that if a clerk fails to include a statement on the ballot return envelope that the voter's signature has been verified, then election inspectors must reject the ballot and immediately notify the clerk as required by MCL 168.768; **(c)** order the Secretary to rescind her AV Ballot Processing Guidance and issue new guidance directing city and township clerks to mark the date on which the ballot was received **and** to provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified) in the section of the return envelope designated “for clerk's use only” as expressly required under MCL 168.765(2); and **(d)** enjoin the Secretary from implementing the February 2024 version of her AV Ballot Processing Guidance in advance of the November 5, 2024 general election.

19. Plaintiffs seek an expedited hearing on this matter under MCR 2.605(D), which expressly authorizes this Court to “order a speedy hearing of an action for declaratory relief” and to “advance [this case] on the calendar.” Expedited consideration is warranted and necessary here. There can be no dispute that the voter signature and identification verification requirements under the Michigan Constitution and the Michigan Election Law are imperative to ensuring the integrity and accuracy of Michigan's elections. To be clear, the relief sought here is prospective in nature: Plaintiffs seek the above-described relief—including a declaration as to a discrepancy between the clear statutory language of MCL 168.765(2) and the Secretary's AV Ballot Processing Guidance—in advance of the November 5, 2024 general election to ensure that local election officials are instructed to follow the law in future elections. Absent declaratory and injunctive relief, the rights of Plaintiffs will continue to be violated and jeopardized by the Secretary's acts—including those

acts relative to the Secretary’s Guidance omitting one of two express statutory requirements under MCL 168.765(2)—in the forthcoming election.

20. Time remains to adjudicate this case and controversy on the merits in an expedited fashion prior to the November 5, 2024 general election, and without the need for temporary or preliminary injunctive relief.¹ Specifically, some jurisdictions will begin verifying absent voter ballot signatures for the general election on September 26, 2024. By seeking prospective relief eight (8) weeks in advance of the general election, there remains ample time for an expedited merits proceeding before this Court; for expedited appellate review (if necessary); for the Secretary to issue AV Ballot Processing Guidance that complies with the Michigan Constitution and the Michigan Election Law; and for local clerks and election officials to implement those instructions.

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

PARTIES, JURISDICTION, AND VENUE

22. Plaintiff the Michigan Republican Party (“MRP”) is a “major political party” as that term is defined by the Michigan Election Law. See MCL 168.16. MRP maintains headquarters at 520 Seymour Street, Lansing, Michigan 48912. Among its general purposes, MRP promotes and assists Republican candidates who seek election or appointment to partisan federal, state, and local office in Michigan. MRP works to further its purpose by, *inter alia*, devoting substantial resources toward educating, mobilizing, assisting, and turning out voters in Michigan. To that end,

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

MRP has made significant contributions and expenditures in support of Republican candidates up and down the ballot in Michigan in past election cycles, and is doing so again in 2024. Further, MRP works to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and works to protect the fundamental constitutional right to vote of its members and its candidates, and to promote their participation in the political process. MRP brings this action on behalf of itself, its members, and its candidates. As a result, Plaintiff MRP has a direct, personal, and substantial interest in this litigation to protect not only its own rights, but those of its candidates and its members.

23. Plaintiff the Republican National Committee (the “RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14), with its principal place of business at 310 First Street, S.E., Washington D.C., 20003. The RNC manages the Republican Party’s business at the national level, including the development and promotion of the Republican Party’s national platform and election strategies. The RNC supports Republican candidates for public office at the federal and state levels across the country, including those on the ballot in Michigan’s forthcoming November 5, 2024 general election. The RNC also assists state parties throughout the country, including Plaintiff MRP, to educate, mobilize, assist, and turn out voters, and also by supporting MRP’s efforts to ensure that elections in Michigan are conducted in a free, fair, and transparent manner, and to protect the fundamental constitutional right to vote of the RNC’s members and its candidates. The RNC made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Michigan in past election cycles, and is doing so again in 2024. The RNC has clear and obvious interests in the laws and rules under which it, and those it represents and supports, exercise their constitutional rights to vote and to participate in elections. The RNC brings this action on behalf

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

24. Both as representatives of their candidates and their voters, and as organizations in their own right, the Republican Committees (*i.e.*, Plaintiffs MRP and RNC) each have a substantial interest in getting Republican candidates elected to office—an interest that is unique and separate from any held by the public at large. That includes ensuring that Republicans can seek office in a fair, competitive environment where the Michigan Election Law is followed and the Legislature’s identity and signature verification requirements aimed at protecting the integrity and reliability of Michigan’s elections—including the ballot return envelope marking requirements under MCL 168.765(2)—are enforced. Given that the relief sought here would, among other things, enjoin the application of the current version of the Secretary’s AV Ballot Processing Guidance in advance of the November 5, 2024 general election, and would also result in judicial declarations that clerks must comply with ***both*** of the ballot return envelope marking requirements under MCL 168.765(2) and also that election inspectors must reject ballots in accordance with MCL 168.768 where clerks fail to complete the ballot marking requirements under MCL 168.765(2), the interests of RNC and MRP in preventing an illegally structured and anti-competitive election environment is sufficient under MCR 2.605.

25. Plaintiff Cindy Berry serves as the Clerk for the Township of Chesterfield and resides in Macomb County. As township clerk, Mrs. Berry is responsible for running the Township’s elections and, pertinent here, is also responsible for ensuring that the identity of all absent voters are verified through the absent voter signature verification process as required by the Michigan Constitution and the Michigan Election Law. Despite those legal duties to verify absent

voter signatures—which include the ballot return envelope marking requirements under MCL 168.765(2)—the Secretary’s AV Ballot Processing Guidance appears to require only one of the two marking requirements under MCL 168.765(2). As a local clerk, Mrs. Berry is subject to the Secretary’s AV Ballot Processing Guidance. As a public official, however, Clerk Berry swore an oath to support the Michigan Constitution and to faithfully discharge the duties of her office. To that end, Plaintiff Berry has attempted to reconcile the Secretary’s AV Ballot Processing Guidance against the text of the Michigan Election Law, but they appear to be inconsistent with one another for the reasons described in this Verified Complaint. As a result, Clerk Berry has been saddled with the impossible choice of whether to enforce state law (*i.e.*, MCL 168.765(2)) or the Secretary’s AV Ballot Processing Guidance—all of which are binding on Clerk Berry. As a result, Clerk Berry is an “interested party” under MCR 2.605 for the purpose of seeking a declaration clarifying the discrepancy between the clear statutory language of MCL 168.765(2) and the Secretary’s AV Ballot Processing Guidance.

26. Separately, Clerk Berry is also a registered voter that cast a ballot in the February 2024 presidential primary election through Michigan’s early voting process, voted by absentee ballot in the August 6, 2024 primary election, and intends to vote by absentee ballot in future elections. Clerk Berry has a direct, personal, and substantial interest in ensuring that her vote counts and is not diluted.

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

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

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

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

31. An actual controversy is clearly present here. It is undisputed that MCL 168.765(2) expressly mandates that: (1) clerks must write or stamp on each absent voter ballot return envelope the date that the ballot return envelope was received by the clerk (or, if received on Election Day, then clerks must write or stamp *both* the time and date that the ballot return envelope was received by the clerk); **and** (2) *after verifying each voter's signature*, clerks must include on *each* approved ballot return envelope "a statement by the city or township clerk that the absent voter ballot is approved for tabulation." MCL 168.765(2). Meanwhile, the Secretary's AV Ballot Processing Guidance clearly omits the latter of those two express statutory marking requirements under MCL 168.765(2), as the Guidance directs city and township clerks to mark the date on which the ballot was received, but fails to direct clerks to provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified). Ex A, at 5. The fact that the AV Ballot Processing Guidance includes the date requirement but omits the

signature-verification-confirmation requirement indicates that the Secretary does not believe that MCL 168.765(2) requires clerks to mark absent voter ballot return envelopes with a statement that the voter's signature has been verified and the ballot is approved for tabulation. Given that Clerk Berry is subject to both MCL 168.765(2) and the Secretary's AV Ballot Processing Guidance, there is no question that an actual controversy exists here such that Clerk Berry (and the hundreds of other local clerks across Michigan) requires a declaratory judgment to guide her future conduct as it pertains to applying MCL 168.765(2).

32. Further, the fact that thousands of absent voter ballots were tabulated during the August 6, 2024 primary election in Warren, Michigan despite the absence of a statement by the clerk that the absent voter ballot is approved for tabulation (and that the voter's signature had been verified by the clerk) as expressly required under MCL 168.765(2), further evidences both the presence of an actual controversy here as well as the need for declaratory relief, *notwithstanding* any material omission in the Secretary's AV Ballot Processing Guidance. Indeed, it appears that, for example, the City of Warren may have tabulated absent voter ballots for which the voter's corresponding signature was not verified in accord with Michigan law, which in turn injures Plaintiffs where their members and candidates have their votes diluted by ballots for which the corresponding signatures did not meet the signature matching criteria under Michigan law but were accepted anyway, or where the interests of MRP and RNC in a fair and competitive electoral environment becomes a competitive *disadvantage* as a result of clerks' failure to verify signatures.

33. The injuries to Plaintiffs are at once completed and ongoing. Absent relief from this Court, these injuries will recur indefinitely because local election officials will continue misapplying MCL 168.765(2) due to confusion caused at least in part by the incomplete direction set forth in the Secretary's AV Ballot Processing Guidance. Therefore, a decision from this Court

will redress the violation of Plaintiffs’ rights under the Michigan Constitution and Michigan Election Law, and will also guide Plaintiffs’ future conduct in this regard for the November 2024 general election and beyond.

LEGAL AND FACTUAL BACKGROUND

The Constitution and the Michigan Election Law expressly provide a framework for ensuring the accuracy and integrity of elections.

34. Under the Michigan Constitution, “[e]very citizen of the United States who is an elector qualified to vote in Michigan” has “[t]he fundamental right to vote, including but not limited to the right, once registered, to vote a secret ballot in all elections.” Const 1963, art 2, § 4(1)(a). To that end, qualified electors have the right to vote either in person or by absent voter ballot. *Id.* § 4(1)(g), (h). Exercising either right carries with it the electors’ obligation to “prove their identity.” *Id.*

35. An elector voting in person may prove their identity by “presenting their photo identification, including photo identification issued by a federal, state, local, or tribal government or an educational institution, or [] if they do not have photo identification or do not have it with them, executing an affidavit verifying their identity.” *Id.* In any case, Michigan law requires that each in-person elector prove their identity *before* an election official gives that elector a ballot. See MCL 168.523(1) (requiring “at each election, before being given a ballot, [that] each registered elector offering to vote must identify himself or herself by presenting identification for election purposes”); MCL 168.523(2) (providing an elector the alternative of an affidavit which must be signed in the presence of an election inspector, and subjecting the elector to challenge under MCL 168.727).

36. The requirement that in person electors prove their identity by photo ID prior to receiving and casting a ballot is consistent with the Constitution’s broader command that “the

legislature shall” enact laws “to preserve the purity of elections . . . [and] to guard against abuses of the elective franchise.” Const 1963, art 2, § 4(2). Indeed, the Supreme Court acknowledged that “[b]y instituting requirements,” such as “the requirement that voters [] present photo identification . . . before voting,” the State “guard[s] against abuse of the elective franchise [and] protects the right of lawful voters to exercise their full share of this franchise.” *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 7, 19; 740 NW2d 444 (2007).

37. As further acknowledged by the Supreme Court, Michigan’s Purity of Elections Clause “[has] been a part of our constitution for almost as long as Michigan has been a state. As [the Michigan Supreme Court] noted in the nineteenth century, the purpose of a law enacted pursuant to these constitutional directives ‘is not to prevent any qualified elector from voting, or unnecessarily to hinder or impair his privilege. *It is for the purpose of preventing fraudulent voting.*’ ” *Id.* at 17. (Emphasis in original and internal citation omitted).

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

39. Not only is the mandate that an elector must “prove their identity” before receiving a ballot in a polling place constitutional, it is also overwhelmingly supported by public opinion. See Detroit Regional Chamber, *Statewide Poll Reveals Opinions on Political Landscape* (June 7, 2021) <https://www.detroitchamber.com/statewide-poll-reveals-opinions-on-political-landscape-covid-19-and-vaccination-perceptions-ongoing-labor-shortage-and-voting-rights/> (last visited

September 10, 2024) (finding that 79.7% of respondents in statewide poll support requiring “every voter coming to the polls present a government-issued identification to cast their ballot”).

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

41. The ballot return envelope within which the absent voter’s ballot must be returned to the clerk is central to the signature verification process. MCL 168.761(4) requires that the back of each return envelope contain printed statements, including one “TO BE COMPLETED BY THE CLERK” and another “TO BE COMPLETED BY THE ABSENT VOTER.” *Id.*

42. A sample absent voter ballot return envelope bearing substantially similar language (as is allowed pursuant to MCL 168.761(4)) follows:

IMPORTANT! DID YOU...

- Sign in the box below in your own handwriting?
- Put your ballot in the envelope?
- Return to the local clerk by 8 p.m. on Election Day?

I assert that:

- I am a United States citizen.
- I am qualified and registered to vote at the address listed.
- I am voting in conformity with state election law.
- I marked my ballot and placed it in this envelope without showing it to anyone.
- I am returning my ballot to the clerk's office by delivering it myself or a member of my immediate family or household, or sending it by public postal, express mail, or parcel post service, or other common carrier.

I understand that knowingly making a false statement is a misdemeanor.

VOTER sign here in ink. Power of attorney is not acceptable.

SIGN HERE

This box must be signed or your vote will not be counted.

If someone assists you or helps you mark your ballot, they must sign and identify themselves.

I assisted the voter who is disabled or unable to mark their ballot according to their directions and without showing it to another person.

Signature of Person Assisting Voter _____

Print Name of Person Assisting Voter _____

Address of Person Assisting Voter _____ City _____ State _____ Zip _____

A person who assists an absent voter and who knowingly makes a false statement is guilty of a felony.

FOR CLERK'S USE ONLY

Returned: _____ Precinct No. _____
Date and Time _____ Ballot No. _____

Voter signature verified (Initials) _____
 Rejected? Reason _____

Keep your ballot secure.
It is a felony for anyone to be in possession of an absent voter ballot except authorized election officials, employees of postal services or other common carriers during the normal course of their job handling mail, or a member of the voter's immediate family or household who the absent voter has asked to return the ballot.

VOTER SIGNATURE REQUIRED

Ballot No. _____
Precinct No. _____

▼ Voter's Name, Address, City, State, Zip ▼

See *Election and Voter Information*, City of Romulus <https://www.romulusgov.com/332/Election-Voter-Information> (accessed September 10, 2024).

43. The portion “to be completed by the absent voter” instructs the elector to sign the envelope on the line designated for that purpose. It is that signature that the clerk must verify for the purpose of confirming the voter’s identity under Michigan law.

44. To that end, when an election official is provided a voter’s signature for the purpose of proving that voter’s identity as a precondition to voting an absent voter ballot, the Michigan Constitution mandates that the election official shall: “**verify the identity** of a voter who votes an absent voter ballot other than in person by comparing the signature on the absent voter ballot envelope to the signature on the voter’s absent voter ballot application or the signature in the voter’s registration record.” Const 1963, art 2, § 4(1)(h) (emphasis added). See also MCL 168.765(2) (“The city or township clerk shall review each absent voter ballot return envelope to determine whether the absent voter ballot is approved for tabulation in accordance with [MCL 168.766]. The review under this subsection includes **verifying** the signature on each absent voter ballot return envelope in accordance with [MCL 168.766a].”) (emphasis added).

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

46. As for verifying the signature on an elector’s absent voter ballot envelope, MCL 168.766a sets forth the standard by which local clerks must determine whether the signature is valid. Specifically, section 766a provides that “[a]n elector’s signature is invalid only if it differs

in significant and obvious respects from the elector’s signature on file. Slight dissimilarities must be resolved in favor of the elector. Exact signature matches are not required to determine that a signature agrees sufficiently with the signature on file.” MCL 168.766a(2). There, a voter’s “signature on file” means “any signature of an elector contained in the qualified voter file[,]” or, “[i]f the qualified voter file does not contain a copy of an elector’s digitized signature, or is not accessible, [then] the signature of the elector contained on the master card [or] the signature on the elector’s absent voter ballot application.” MCL 168.766a(7)(a)-(c).

47. The Michigan Election Law also implements a timing requirement on local clerks’ duty to verify signatures. Specifically, MCL 168.766b governs the amount of time a clerk has to verify a voter’s signature on an absent voter ballot return envelope, providing in pertinent part:

(1) Beginning 45 days before an election, if an . . . absent voter ballot return envelope is received 6 or more calendar days before an election, the clerk must make a reasonable effort to verify or reject the absent voter ballot application or absent voter ballot return envelope **by the end of the next business day following the receipt of that . . . return envelope.**

(2) [If an] absent voter ballot return envelope is received 5 or fewer days before an election or on election day, the clerk must verify or reject the absent voter ballot application or absent voter ballot return envelope **by the end of the calendar day of receiving that . . . return envelope.** [MCL 168.766b(1)-(2) (emphasis added)]

48. For this reason, MCL 168.765(2) expressly mandates that “[w]ritten or stamped on each absent voter ballot return envelope must be the date, and the time and date if received on election day, that the absent voter ballot return envelope was received by the city or township clerk[.]” By mandating that clerks indicate the date of receipt on each ballot return envelope under MCL 168.765(2), the Legislature has further ensured that clerks comply with the signature verification timing requirements such that they know when each ballot return envelope was

received and, as a direct result, the deadline by which the voter's signature on each of those ballot return envelopes must be verified under MCL 168.766b(1)-(2).

49. Moving on to the verification of signatures, if a clerk determines that the signature on an elector's absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, then that ballot must be rejected. MCL 168.766a(3); MCL 168.765(2); MCL 168.766(2).

50. When a clerk rejects an absent voter ballot due to a missing or mismatched signature—and to ensure that the election integrity measures under Michigan law do not prevent any qualified elector from voting—then that voter has the right to be promptly notified and afforded “an equitable opportunity to correct the issue with the signature.” Const 1963, art 2, § 4(1)(h). Likewise, Michigan law requires the Secretary to maintain an electronic system for tracking absent voter ballots to ensure that voters are aware of the status of their ballot. See MCL 168.764c; see also Const 1963, art 2, § 4(1)(i). Separately, Michigan law also requires local election officials to notify voters when their ballot has been rejected due to a missing or mismatched signature so that the voter may cure their deficient signature. MCL 168.761; MCL 168.765; MCL 168.766(3)-(6); MCL 168.766a(3)-(6).

51. If, however, the clerk determines that a voter's signature on their ballot return envelope agrees sufficiently with the voter's signature on file, then Michigan law mandates that clerks “must” include on each approved ballot return envelope “a statement by the city or township clerk that the absent voter ballot is approved for tabulation.” MCL 168.765(2). That requirement may be satisfied by completing the corresponding field in the “FOR CLERK'S USE ONLY” section, such as by checking the box and inserting the clerk's initials in the “Voter signature verified (Initials) _____” field, as in the example provided here:

FOR CLERK'S USE ONLY	
Returned: Date and Time _____	Precinct No. _____
<input type="checkbox"/> Voter signature verified (Initials) _____	Ballot No. _____
<input type="checkbox"/> Rejected? Reason _____	

See *Election and Voter Information*, City of Romulus <https://www.romulusgov.com/332/Election-Voter-Information> (accessed September 10, 2024) (highlighted emphasis added).

52. This particular recordkeeping requirement under MCL 168.765(2)—*i.e.*, the requirement that *after* verifying a voter’s signature, clerks must include on the corresponding ballot return envelope “a statement . . . that the absent voter ballot is approved for tabulation”—is a vital aspect of the signature verification framework.

53. To reiterate, absent voter ballots are processed in two different stages under Michigan law. First, the above-referenced signature verification process is completed by local clerks outside the presence of election inspectors, election challengers, and poll watchers. See, e.g., MCL 168.765(2) (providing that signature verification must be completed by the “city or township clerk,” and further providing that “. . . a precinct board of election inspectors or an absent voter counting board must *not* make any further signature verification for an absent voter ballot return envelope.”) (emphasis added). If at that point the “clerk determines that the elector’s signature on the absent voter ballot return envelope is missing or does not agree sufficiently with the signature on file, the clerk shall reject the absent voter ballot and provide the elector with notice and the opportunity to cure the deficiency in accordance with [MCL 168.766(4)].” *Id.* If, on the other hand, the clerk has verified that the signature on the ballot return envelope sufficiently matches the voter’s signature on file, the absent voter ballot is approved for tabulation and submitted to a precinct board of election inspectors or an AVCB to be processed on Election Day.

54. Therefore, while the clerk is responsible for verifying the voter's signature on each ballot return envelope, Michigan law precludes election inspectors from tabulating an absent voter ballot on Election Day if (a) the elector's signature is missing from the return envelope, or (b) the clerk's statement that the absent voter ballot is approved for tabulation as required under MCL 168.765(2) is incomplete. MCL 168.768. In other words, if the elector's signature is missing from the return envelope or if the clerk fails to complete the statement on the return envelope that the absent voter ballot is approved for tabulation, then election inspectors may not tabulate the ballot and "must immediately contact the city or township clerk." MCL 168.768.

55. Put another way, a ballot is only eligible for tabulation if the voter's signature has been verified by the clerk. So the clerk's statement of approval under MCL 168.765(2) functions as confirmation to those responsible for tabulating the ballots on Election Day—*i.e.*, either the precinct board of election inspectors or those election inspectors assigned to an AVCB—that the voter's signature on the ballot was, in fact, verified by the clerk. MCL 168.766(1)(b); MCL 168.768.

56. Given that the foregoing signature verification process for absent voter ballot return envelopes is conducted by local clerks behind closed doors and outside the presence of election inspectors or partisan poll challengers, those election inspectors responsible for tabulating the absent voter ballots on Election Day have no way of knowing whether the clerk verified the absent voter's signature in accord with Michigan law unless the clerk complies with MCL 168.765(2) by providing the required statement on the ballot return envelope. And if the clerk fails to provide that statement under MCL 168.765(2) confirming that the voter's signature has been verified and the absent voter ballot is approved for tabulation, then those election inspectors are required to reject the ballot and notify the clerk. See MCL 168.768 (mandating that election inspectors "shall

verify . . . that the statement on the absent voter ballot return envelope that the ballot is approved for tabulation is complete” and that if “the statement that the absent voter ballot is approved for tabulation is incomplete, the [board] must immediately contact the city or township clerk.”).

57. Michigan law is clear on this issue: for each and every absent voter ballot return envelope received by a local clerk, that clerk must (1) record on the envelope the date it was received by the clerk, and (2) once the clerk has verified the voter’s signature and approved the ballot for tabulation, they must include a statement “that the absent voter ballot is approved for tabulation.” MCL 168.765(2).

The August 6, 2024 primary election: the Clerk in at least one major Michigan city fails to include a statement on absent voter ballot return envelopes that the corresponding absent voter ballot is approved for tabulation—and yet those ballots were tabulated anyway without any apparent signature verification.

58. The City of Warren is the third largest city in the state of Michigan and is located within Macomb County, which boasts the third highest number of registered voters. *Warren*, State of Mich, PureMichigan.org <https://www.michigan.org/city/warren> (accessed September 10, 2024); see also *Voter registration statistics*, Dep’t of State – Mich Voter Info Ctr <https://mvic.sos.state.mi.us/VoterCount/Index> (accessed September 10, 2024).

59. On August 6, 2024, the AVCB for the City of Warren processed and tabulated thousands of absent voter ballots for the Michigan primary election. In attendance were individuals serving as counting board chairs, including Madison Takala and Ron Takala (see Affidavit of Madison Takala, attached hereto as **Exhibit B**, and Affidavit of Ron Takala, attached hereto as **Exhibit C**). Also in attendance were credentialed poll challengers, such as Dawn Beattie (see Affidavit of Dawn Beattie, attached hereto as **Exhibit D**).

60. Madison and Ron Takala are seasoned election workers, having served as election inspectors in August 2020 and November 2020, respectively, and in almost every election since then. Exs B at ¶ 4; C at ¶ 4.

61. On August 6, 2024, Madison and Ron served as counting board chairs, responsible for managing and overseeing multiple election inspectors tasked with processing and tabulating absent voter ballots for 12 to 13 voting precincts. Exs B at ¶ 14, C at ¶ 5. In total, Madison and Ron each oversaw the processing and counting of thousands of absent voter ballots, personally inspecting hundreds in the process. Exs B at ¶ 14, C at ¶¶ 5-6.

62. Meanwhile, Dawn Beattie—a Regional Election Integrity Director for the MRP—was duly credentialed to serve as a poll challenger at the Warren AVCB on August 6, 2024. Ex D at ¶ 2. With limited exception, Ms. Beattie was present at the AVCB that entire day, observing roughly 16 different tables of election inspectors as they processed and tabulated absent voter ballots and return envelopes. *Id.* at ¶¶ 4-6.

63. The absent voter ballot return envelopes received by the Warren AVCB contained a printed statement in the upper right corner, indicating that portion of the return envelope was “For Clerk’s Use Only.” Exs B at ¶ 12, C at ¶ 7, D at ¶ 7. The clerk’s portion of the return envelope included text prompting the clerk to fill in the following information in the space provided: 1) the date and time of the ballot and envelope’s receipt; 2) the applicable precinct number; 3) the returned ballot number; and 4) confirmation that the voter signature on the return envelope has been verified as indicated by the clerk’s initials. *Id.*; see also *supra* ¶¶ 42, 51 (providing a similar example of the “for clerks use only” portion of a ballot return envelope). The return envelopes also contained a printed statement on the lower left side of the envelope directing the absent voter to sign the envelope on the line designated for that purpose. Ex B at ¶ 13, Ex C at ¶ 8.

64. Throughout the day, election inspectors reviewed each absent voter ballot return envelope to confirm that the clerk had correctly completed all of the required fields designated “For Clerk’s Use Only.” Ex B at ¶ 11, Ex C at ¶ 9.

65. Even though they personally observed *hundreds* of absent voter ballot return envelopes, neither Madison Takala, Ron Takala, nor Dawn Beattie recall a *single* instance in which the clerk had included a statement on the envelope confirming that the voter’s signature had been verified. Ex B ¶ 15-17, C at ¶¶ 10-12, D at ¶¶ 10-12.

66. Making matters worse, at least one poll challenger (Dawn Beattie) notified an election inspector (Madison Takala) that the “For Clerk’s Use Only” section of the ballot envelopes were not marked with either the date received or a statement that the voter’s signature had been verified. Ex B ¶ 23. Consistent with MCL 168.768, that election inspector directed the challenger to the deputy clerk. *Id.* The deputy clerk first responded that she was not sure about the verification process, then stated that she did not know why the “For Clerk’s Use Only” section of the envelopes was incomplete, and finally stated that she was not able to answer the challenger’s inquiry because she was busy. Ex D at ¶¶ 16-18. And while the deputy clerk did tell the challenger that she would follow up with her on this issue, the deputy clerk never explained why none of the “For Clerk’s Use Only” sections of the ballot envelopes were marked with the date received by the clerk’s office nor a statement that the voter’s signature had been verified. Ex D at ¶¶ 18-19.

67. As expressly stated in MCL 168.765(2), anything less than written confirmation by the clerk that the absent voter ballot and return envelope were approved for tabulation is contrary to Michigan law. Upon information and belief, ballots for which there is no evidence or confirmation that clerks verified signatures on absentee ballot return envelopes were tabulated and counted in the August 6 Michigan primary election in derogation of the law.

68. Moreover, the City of Warren’s noncompliance with the marking requirements under MCL 168.765(2) appears to be longstanding. For example, while Ms. Takala worked as a temporary employee of the City of Warren clerk’s office before the November 2020 general election and was responsible for receiving and handling AV ballots that had been returned to the clerk’s office, she was never told to mark any portion of the ballot return envelope to indicate that the voter’s signature had been verified. Ex B ¶¶ 5-8. So, upon information and belief, it appears that some local clerks have not been complying with MCL 168.765(2) for at least four years.

The Secretary’s AV Ballot Processing Guidance.

69. A current version of the Secretary’s guidance document entitled “Election Officials’ Manual, Chapter 8: Absent Voter Ballot Processing” (referenced throughout as the Secretary’s “AV Ballot Processing Guidance”) attached hereto as **Exhibit A**.

70. While one portion of the AV Ballot Processing Guidance permissibly instructs that “upon receipt of the absent voter ballot envelope, the clerk should verify that the signature on a returned absent voter ballot envelope matches the voter’s signature stored in the QVF,” Ex A at 5, the Guidance fails to instruct local clerks to record such verification by written statement in the “to be completed by the clerk” portion of the ballot return envelope as required by MCL 168.765(2).

71. Worse, however, the AV Ballot Processing Guidance obfuscates section 765(2)’s recording requirements by only referencing the requirement that ballot envelopes be marked with the date the ballot was received, and wholly failing to mention the requirement that ballot envelopes be marked with a statement that the voter’s signature has been verified and the ballot is approved for tabulation. The full text of the challenged provision of the AV Ballot Processing Guidance reads as follows:

Signature verification

Immediately upon receipt of the absent voter ballot envelope, the clerk should verify that the signature on a returned absent voter ballot envelope matches the voter's signature stored in the QVF. If the signature does not match, or if the signature is missing, the clerk must immediately attempt to contact the voter and "cure" the signature. Voters have until 5 p.m. on the third day following the election to cure this issue. If the missing or mismatched signature is not cured by election day, the clerk should keep the ballot at their office and not send to the AVCB. If the missing or mismatched signature is not cured by third day after election day, the ballot should be rejected.

Once the ballot is verified and deemed valid, clerk should mark the "received" date in QVF and mark the ballot envelope in the "Clerk Section" with the date of receipt.

A voter may leave the date entry next to the signature on the absent voter ballot return envelope blank, so long as the voter has signed the absent voter return envelope. A signed absent voter ballot envelope that is missing a date is processed in the same way as an absent voter ballot envelope which is not missing the date.

An absent voter ballot envelope whose signature has been determined to match the absent voter's signature on file is referred to as an "accepted absent voter ballot."

Ex. A at 5 (second emphasis added).

72. A plain reading of the foregoing "Signature verification" section of the AV Ballot Processing Guidance imparts two directions, both related to recording only the date on which a ballot was received—clerks must (i) mark the date the ballot envelope was received in the QVF, and (ii) mark the date received on the ballot envelope.

73. But the Secretary's guidance suffers from a material omission. MCL 169.765(2) unambiguously requires a clerk to record both the date an absent voter ballot return envelope was received and a statement by the clerk that the absent voter ballot is approved for tabulation (i.e., confirmation that the clerk, in fact, verified the signature and thus the elector's identity as required under Michigan law).

74. In other words, the Secretary’s Guidance reads-out the one accountability mechanism available to the one class of persons responsible and eligible under the law to “verify” a signature. *Id.* (prohibiting “**any further** signature verification for an absent voter ballot return envelope” after the clerk’s approval) (emphasis added).

75. In Michigan, clerks are required to follow the law. But election inspectors processing absent voter ballots are not allowed to *assume* that the clerk’s office verified a voter’s signature. Rather, clerks are required to make a statement that the signature on “*each*” absent voter ballot return envelope had been verified and therefore approved for tabulation. MCL 168.765(2) (emphasis added). Only when that statement is present on a ballot return envelope are election inspectors permitted to tabulate a ballot; otherwise, the ballot must be rejected. MCL 168.768.

76. Because the Secretary’s Guidance promotes a standard that wholly omits one of the requirements of MCL 168.765(2), it is inconsistent with and directly counter to the express requirements of the Michigan Constitution and Michigan Election Law.

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

77. This Court recently issued an opinion and order declaring inconsistent with Michigan law other guidance materials issued by the Secretary that diminished the constitutional and statutory requirement that clerks must “verify” signatures on absent voter ballot return envelopes. That case was captioned *Republican National Committee v Benson*, Case No 24-000041-MZ (June 12, 2024). In so holding, the Court reasoned that “[w]hether the guidance material includes a gentle nudge instead of a hip check, [its inconsistency with the Michigan Constitution and Michigan Election Law is] still a foul under Michigan law.” *Id.* at p 6.

78. That reasoning applies here, too. The Secretary’s omission gently nudges local clerks to an interpretation of MCL 168.765(2)’s recording requirements that only implicates the

date on which an absentee ballot is received. What it leaves out is the accountability mechanism that is section 765(2)'s written statement of approval for tabulation—the one oversight on the consequential duty of a clerk to ensure the purity of elections and safeguard against abuses of the elective franchise by verifying signatures on absent voter ballots.

79. The occurrences at the Warren AVCB on August 6, 2024 are potentially indicative of a more widespread misunderstanding caused by the Secretary's AV Ballot Processing Guidance.

80. The Secretary's AV Ballot Processing Guidance arrived as one of a string of different directives and changes in the law that local clerks had to sort for themselves since the recent proliferation of absentee and early voting. For example, City of Lansing Clerk Chris Swope reportedly referred to the 2024 presidential primary on February 27 as “one of the craziest” he had seen in the last 18 years serving in that role. Gibbons, *Early voting a 'significant new option' for voters, 'significant challenge' for clerks*, Bridge Mich (February 16, 2024) <https://www.bridgemi.com/michigan-government/early-voting-significant-new-option-voters-significant-challenge-clerks> (accessed September 10, 2024). Swope continued, “[a]s election officials, our priority number one is the accuracy and integrity of the system itself. Sometimes, when you inject a lot of changes into a system, that can be really challenging.” *Id.*

81. In any case, Plaintiffs' rights and ability to participate in a free and fair elective franchise has already been damaged. If absent voter ballot return envelopes are not marked with a statement that the voter's signature has been verified by the clerk during the first stage of the absent voter ballot processing procedure, there is no way for election inspectors conducting the second stage of the process at precinct boards and AVCBs to confirm that signature verification has actually occurred, which in turn means those election inspectors cannot fulfill their statutory duty to confirm that a voter's signature has been verified by the clerk. See MCL 168.768 (“The board

of election inspectors ***shall*** verify . . . that the statement on the absent voter ballot return envelope that the ballot is approved for tabulation is complete.”) (emphasis added).

82. Further, by all indications, the Secretary will maintain her fatally incomplete AV Ballot Processing Guidance into the November 5, 2024 general election, thereby damaging Plaintiffs’ rights and abilities to participate in a free and fair elective franchise in that election, and all those beyond, by creating confusion for clerks and obfuscating the ballot envelope marking requirements imposed on clerks by MCL 168.765(2).

83. Plaintiffs collectively seek to ensure that local election officials are instructed to follow the law in advance of the general election on November 5, 2024.

84. Clerks like Plaintiff Berry are, and will continue to be, subject to this misleading and fatally incomplete Guidance.

85. Immediate declaratory relief is justified so that Plaintiffs receive a declaration of their rights and clarity as to the absent voter ballot processing procedure in advance of the November 5, 2024 general election.

86. Absent declaratory relief, the Secretary’s AV Ballot Processing Guidance will, as it did during the August 6, 2024 primary election, violate and jeopardize the rights and interests of Plaintiffs in the forthcoming general election.

87. Plaintiffs, moreover, lack an adequate remedy at law to clarify the legal requirements of MCL 168.765(2) and prevent the enforcement of the Secretary’s AV Ballot Processing Guidance directing incomplete recording by local clerks.

COUNT I – VIOLATIONS OF THE MICHIGAN CONSTITUTION

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

89. As set forth in this Verified Complaint, city and township clerks' apparent practice of failing to satisfy their duties under MCL 168.765(2) which requires *both* that a clerk mark the date on which each absent voter ballot return envelope was received *and* that the clerk provide a written statement on the envelope confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified), and the apparent practice of election inspectors tabulating absent voter ballots despite the complete absence of the above-referenced statement by the clerk that the absent voter ballot is approved for tabulation (see MCL 168.768 (conditioning tabulation of absent voter ballots on the clerk's satisfaction of the ballot marking requirements under MCL 168.765(2))—all of which appears to be caused at least in part by a material omission in the Secretary's AV Ballot Processing Guidance—is inconsistent with the mandate in the Michigan Constitution requiring that election officials verify the identity of absentee voters. See Const 1963, art 2, § 4(1)(h) (“[E]lection officials shall [*inter alia*] verify the identity of a voter who votes an absent voter ballot other than in person by comparing the signature on the absent voter ballot envelope to the signature on the voter's absent voter ballot application or the signature in the voter's registration record.”)

90. Injunctive and declaratory relief are therefore necessary to remedy these unlawful practices. Plaintiffs are unable to reconcile the above-described practices and the material omission in the Secretary's AV Ballot Guidance with the mandate under the Michigan Constitution requiring that election officials verify the identity of absentee voters through the signature verification process.

91. A current ripe case or controversy between the parties is clearly present here. The Michigan Constitution requires that election officials verify the identity of absentee voters through the signature verification process. Const 1963, art 2, § 4(1)(h). During the primary election on

August 6, 2024, local clerks failed to include a statement on absent voter ballot return envelopes indicating that the ballot is approved for tabulation as required by MCL 168.765(2). Likewise, it further appears that those ballots were tabulated despite missing the statement required by MCL 168.765(2), which is a violation of MCL 168.768. Attributable, at least in part, to the Secretary's incomplete AV Ballot Processing Guidance, these unlawful acts undoubtedly have and will continue to result in absent voter ballots being counted despite not having passed through the entire signature verification process. Absent declaratory and injunctive relief from this Court, these practices will continue to be applied in future elections, in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized.

92. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's incomplete AV Ballot Processing Guidance remains in place, and justice requires the issuance of injunctive relief.

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

94. Plaintiffs lack an adequate remedy at law to enforce the Michigan Constitution's express absent voter identity verification requirements, which have been and will continue to be violated by the unlawful acts such as those described *supra* ¶¶ 89, 91 and the Secretary's AV Ballot Processing Guidance.

95. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary’s AV Ballot Processing Guidance would allow a single state officer to circumvent (and essentially amend) valid and enforceable constitutional mandates on the same subject. That is certainly not in the public interest, which expects its public officials to follow the law. Nor would the public be harmed by such relief as they, too, have an interest in ensuring the integrity and accuracy of Michigan’s elections and that each absent voter ballot originated from and was completed by the intended voter as required by the Michigan Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the local clerk’s failure to satisfy the absent voter ballot marking requirements under MCL 168.765(2), as well as the tabulation of absent voter ballots despite the absence of that required statement of clerk approval, are inconsistent with the Michigan Constitution; order that the Secretary rescind her AV Ballot Processing Guidance and issue new guidance directing clerks to mark the date on which the ballot was received *and* to provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter’s signature has been verified as required by the Michigan Constitution) in the section of the return envelope designated “for clerk’s use only” as expressly required under MCL 168.765(2); enjoin the Secretary from implementing the February 2024 version of her AV Ballot Processing Guidance in advance of the November 5, 2024 general election; and award any other relief that this court deems just and equitable.

COUNT II – VIOLATIONS OF THE MICHIGAN ELECTION LAW

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

97. As set forth in this Verified Complaint, city and township clerks' apparent practice of failing to satisfy their duties under MCL 168.765(2) which requires *both* that a clerk mark the date on which each absent voter ballot return envelope was received *and* that the clerk provide a written statement on the envelope confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified), and the apparent practice of election inspectors tabulating absent voter ballots despite the complete absence of the above-referenced statement by the clerk that the absent voter ballot is approved for tabulation (see MCL 168.768 (conditioning tabulation of absent voter ballots on the clerk's satisfaction of the ballot marking requirements under MCL 168.765(2))—all of which appears to be caused at least in part by a material omission in the Secretary's AV Ballot Processing Guidance—is inconsistent with the Michigan Election Law.

98. Injunctive and declaratory relief are therefore necessary to remedy these unlawful practices. Plaintiffs are unable to reconcile the practices such as those described *supra* ¶ 97 and the material omission in the Secretary's AV Ballot Guidance with provisions in the Michigan Election Law expressly mandating that clerks mark absent ballot return envelopes with “a statement by the city or township clerk that the absent voter ballot is approved for tabulation,” MCL 168.765(2); precluding election inspectors from tabulating absent voter ballots if that clerk's statement of approval is missing from the ballot return envelope, see MCL 168.768; and mandating that clerks verify the signatures on the absent voter ballot return envelopes by comparing those signatures against the voter's “signature on file.” See, e.g., MCL 168.766a.

99. A current ripe case or controversy between the parties is clearly present here. The Michigan Election Law requires that election officials verify the identity of absentee voters through the signature verification process. During the primary election on August 6, 2024, local

clerks failed to include a statement on absent voter ballot return envelopes indicating that the ballot is approved for tabulation as required by MCL 168.765(2). Likewise, it further appears that those ballots were tabulated despite missing the statement required by MCL 168.765(2), which is a violation of MCL 168.768. Attributable, at least in part, to the Secretary's incomplete AV Ballot Processing Guidance, these unlawful acts undoubtedly have and will continue to result in absent voter ballots being counted despite not having passed through the entire signature verification process. Absent declaratory and injunctive relief from this Court, these practices will continue to be applied in future elections, in which case Plaintiffs' respective rights and interests will continue to be violated and jeopardized.

100. Relief is therefore necessary so that this Court can articulate the proper standards of recording dates of receipt and statements of approval for tabulation as to absent voter ballot return envelopes.

101. For the reasons explained above, Plaintiffs will face irreparable harm if the Secretary's incomplete AV Ballot Processing Guidance remains in place, and justice requires the issuance of injunctive relief.

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

103. Plaintiffs lack an adequate remedy at law to enforce the Michigan Election Law's express absent voter identity verification requirements, which have been and will continue to be

violated by the unlawful acts such as those described *supra* ¶ 97 and the Secretary's AV Ballot Processing Guidance.

104. Finally, the balance of harms clearly weighs in favor of granting injunctive relief. To not enjoin unlawful directives such as the Secretary's AV Ballot Processing Guidance would allow a single state officer to circumvent (and essentially amend) valid and enforceable state law mandates on the same subject. That is certainly not in the public interest, which expects its public officials to follow the law. Nor would the public be harmed by such relief as they, too, have an interest in ensuring the integrity and accuracy of Michigan's elections and that each absent voter ballot originated from and was completed by the intended voter as required by Michigan law.

WHEREFORE, Plaintiffs respectfully request that this Court declare that the local clerk's failure to satisfy the absent voter ballot marking requirements under MCL 168.765(2), as well as the tabulation of absent voter ballots despite the absence of that required statement of clerk approval, are inconsistent with the Michigan Election Law; order that the Secretary rescind her AV Ballot Processing Guidance and issue new guidance directing clerks to mark the date on which the ballot was received *and* to provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter's signature has been verified as required by the Michigan Constitution and Michigan Election Law) in the section of the return envelope designated "for clerk's use only" as expressly required under MCL 168.765(2); enjoin the Secretary from implementing the February 2024 version of her AV Ballot Processing Guidance in advance of the November 5, 2024 general election; and award any other relief that this court deems just and equitable.

REQUEST FOR RELIEF

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

A. Declare that city and township clerks must comply with MCL 168.765(2) by both (1) writing or stamping on each absent voter ballot return envelope the date that the ballot return envelope was received by the clerk (or, if received on Election Day, then clerks must write or stamp both the time and date that the ballot return envelope was received by the clerk); and (2) *after verifying each voter’s signature*, clerks must also include on *each* approved ballot return envelope “a statement by the city or township clerk that the absent voter ballot is approved for tabulation.” MCL 168.765(2);

B. Declare that if a clerk fails to include a statement on the ballot return envelope that the voter’s signature has been verified, then election inspectors must reject the ballot and immediately notify the clerk as required by MCL 168.768;

C. Order the Secretary to rescind her AV Ballot Processing Guidance and issue new guidance directing city and township clerks to mark the date on which the ballot was received and to provide a written statement confirming the ballot is approved for tabulation (*i.e.*, confirming that the voter’s signature has been verified) in the section of the return envelope designated “for clerk’s use only” as expressly required under MCL 168.765(2);

D. Enjoin the Secretary from implementing the February 2024 version of her AV Ballot Processing Guidance in advance of the November 5, 2024 general election.

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

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

Dated: September 10, 2024

Respectfully submitted,

/s/ Robert L. Avers

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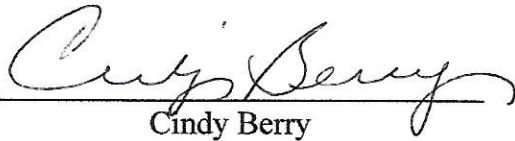
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VERIFICATION

I, Cindy Berry, being first duly sworn, depose and declare that I am a resident of the state of Michigan and am a duly qualified as a voter in this state. While I may not have personal knowledge of all of the facts recited in this Verified Complaint, the information contained therein has been collected and made available to me by others, and I declare, pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.


Cindy Berry

Subscribed and sworn to before me this 10th day of September, 2024.


Michelle C. Nizza Notary Public

Sanilac County, State of Michigan

My commission expires: 12-16-2029

Acting in MACOMB County.

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



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VERIFICATION

I, Alex Latcham, a representative of the Republican National Committee (the “RNC”), being duly sworn and being authorized to give this Verification on behalf of the RNC in support of the allegations contained in the foregoing Verified Complaint, do hereby declare pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.

Alex Latcham

By: Alex Latcham
Its: Senior Deputy Political Director

Subscribed and sworn to before me this 10th day of September, 2024.

Amy M Cumbow

AMY M CUMBOW, Notary Public
Ingham County County, State of Michigan
My commission expires: 03/14/2029

AMY M CUMBOW
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
MY COMMISSION EXPIRES MARCH 14, 2029
ACTING IN THE COUNTY OF Ingham

Notarized remotely online using communication technology via Proof.

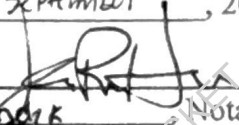
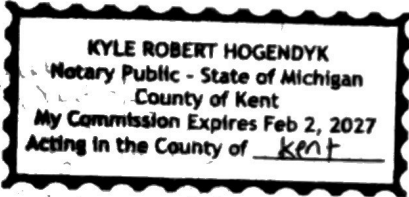
VERIFICATION

I, Tyson Shepard, a representative of the Michigan Republican Party ("MRP"), being duly sworn and being authorized to give this Verification on behalf of the RNC in support of the allegations contained in the foregoing Verified Complaint, do hereby declare pursuant to MCR 1.109 and under the penalties of perjury, that the facts and allegations contained in this Verified Complaint are true to the best of my information, knowledge, and belief.



By: Tyson Shepard
Its: Executive Director

Subscribed and sworn to before me this 10th day of September, 2024.



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

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

MICHIGAN REPUBLICAN PARTY,
REPUBLICAN NATIONAL COMMITTEE, and
CINDY BERRY

Case No. 24-_____ -MZ

Hon. _____

Plaintiffs,

v

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

Defendants.

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EXHIBIT LIST TO VERIFIED COMPLAINT

Exhibit A	Election Officials' Manual, Chapter 8: Absent Voter Ballot Processing (the "AV Ballot Processing Guidance")
Exhibit B	Affidavit of Madison Takala
Exhibit C	Affidavit of Ron Takala
Exhibit D	Affidavit of Dawn Beattie

Exhibit A

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Election Officials' Manual, Chapter 8: Absent Voter Ballot Processing

February 2024

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

Document received by the MI Court of Claims.

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I. Introduction

Every Michigan voter has the right to request, vote, and return an absent voter ballot. Chapter 6: Michigan’s Absent Voter Process, lays out how a voter may apply for, receive, and return an absent voter ballot. This chapter explains how returned absent voter ballots are processed and tabulated. Questions about the content of this chapter should be directed to Elections@Michigan.gov.

II. Overview of absent voter ballot processing

Returned absent voter ballots may be processed in one of three ways. First, absent voter ballots may be counted by election inspectors at the polling place where the absent voter would otherwise have voted on Election Day. Second, the city or township’s election commission may establish one or more absent voter counting boards for the purpose of processing and tabulating absent voter ballots separately from Election Day polling places. Eligible jurisdictions can establish absent voter counting boards in order to process and tabulate returned absent voter ballots. Tabulation can occur starting as early as 8 days before Election Day. Third, city or townships may enter into an agreement with their county clerk to form a combined absent voter counting board.

The absent voter counting board structure: reporting returns and sharing resources

Absent voter counting boards (AVCBs) are precincts specially established to process absent voter ballots. Because AVCBs are precincts separate from in-person polling places operating on Election Day, AVCBs must report their election results separately from in-person precincts. For the county canvass, however, election results that report the vote totals of all in-person ballots cast on Election Day at a particular precinct as well as the vote totals of all absent voters assigned to that precinct must be prepared.

Jurisdictions where absent voter ballots are processed in the precinct on Election Day report their absent voter ballot returns in the Poll Book and the *Statement of Votes*.



Each AVCB must use their own poll book, ballot container, and tabulator. In addition, each AVCB must produce individual precinct ballot summaries and *Statement of Votes*. When time allows, a single tabulator may be used for multiple AVCBs, so long as the tabulator uses an appropriately assigned ballot program, front and back pages of the Poll Book, and ballot containers. If an AVCB uses a single ballot container to secure ballots from multiple precincts, special care shall be taken to sort and bundle each precinct's ballots separately within the ballot container.

Duties of the local election commission

The local election commission decides whether to establish AVCBs or to process returned absent voter ballots at the precinct on Election Day. If the election commission establishes AVCBs, the commission must appoint a minimum of three inspectors to each AVCB. A single group of precinct inspectors may process multiple AVCB precincts. Election inspector appointments must be made under the same procedures established for the appointment of the precinct inspectors who will serve at in person precincts on Election Day. The commission is also responsible for securing a suitable location for the AVCBs to meet to process and tabulate ballots on Election Day. This location, referred to as a "absent voter ballot processing facility" must be sequestered from all other Election Day activity. Multiple AVCBs can be located in the same building or room.

The election commission is required to set the time that election inspectors working at the AVCB must report to the absent voter ballot processing facility. The work of the AVCB may begin as early as 7 a.m., and election inspectors may be required to arrive prior to 7 a.m.

Duties of the local clerk

The city or township clerk is responsible for providing either the precincts or the AVCBs with all necessary supplies to process absent voter ballots, depending on the absent voter ballot processing method selected by the election commission. In addition, the clerk should provide instruction on the operation of the AVCB to election inspectors assigned to work at an AVCB.

Oath required of persons present in the AVCB

All election inspectors, election challengers, and any person other than a member of the clerk's staff present at the absent voter ballot processing facility at the time absent voter ballots begin to be tabulated must take and sign the following oath:

“I (name of individual taking oath) do solemnly swear (or affirm) that I shall not communicate in any way information relative to any ballots or the tabulation of votes that may come to me while in this counting place until after the polls are closed. Further, I shall not photograph, or audio or video record, within the counting place, except for posted election results.”

The oath for election inspectors can be found and completed in the AVCB poll book. All others should complete the oath on a separate sheet and be placed in the local clerk envelope.

A person who discloses an election result or in any manner characterizes how any ballot being counted has been voted before 8:00 p.m. on Election Day is guilty of a felony.

Prohibition on recording video or audio in the absent voter ballot processing facility

Individuals may have a cell phone or other electronic device in an absent voter ballot processing facility. However, no person, including election inspectors and challengers, may record video or audio in an absent voter ballot processing facility at any point. This prohibition, unlike other prohibitions, extends to periods prior to the beginning of tabulation and after the close of polls. A clerk may, at their discretion, create a media area in the absent voter ballot processing area after 8 p.m. on Election Day where audio or video may be recorded, but no person may record audio or video anywhere else in the facility at any time.

Number of AVCBs required

One AVCB must be designated to correspond to each precinct in the jurisdiction. A single AVCB, however, can correspond to more than one precinct. Absent voter ballots should be processed on a precinct basis and should not be intermingled to allow for precinct-level absent voter ballot and combined results to be recorded, so long as absent voter ballots from different precincts are kept separated, a single AVCB can process ballots from multiple precincts.

Establishing early processing AVCBs

Any local election commission may establish an AVCB on the Monday immediately before Election Day to process and tabulate AV ballots. Additionally, the local election commission of a jurisdiction with a population

of over 5,000 can establish an AVCB on any of the 8 days before Election Day, beginning on the second Monday before Election Day.

For each day of early processing and tabulation, the participating city or township clerk will deliver approved absent voter ballots to the AVCB. Absent voter ballots must be processed and tabulated in the same manner as on Election Day (described below).

Clerks should review the Early Absent Voter Ballot Processing and Tabulating procedures document on eLearning for additional and specific procedures.¹

Challengers in an early absent voter counting board

Challengers are allowed in a facility where absent voter ballots are being processed and tabulated before election day, and have the same rights and responsibilities as challengers at an Election Day AVCB. Eligible entities may designate one challenger for every eight election inspectors or one challenger if seven or fewer election inspectors are present.

Notice and posting requirements

Eligible clerks wishing to process and/or tabulate absent voter ballots before Election Day must do the following:

- Provide written notice to the Secretary of State at least 28 days before Election Day.
- Post the hours and location of the AVCB, as well as the number of election inspectors working, on the city or township website and in the clerk's office at least 18 days before Election Day. If the time or location changes after the initial notice, post the revised details on the city or township website and in the clerk's office as soon as possible, but no later than 11 days before Election Day.
- If the time, location, or staffing change after early processing and tabulating begins, updated notice must be provided no later than 10 a.m. on the day before a change occurs.
 - If notice is provided after this time, and a staffing change would reduce the eligible number of challengers in the facility, the previous number of challengers must be allowed to remain.

¹ Available at <https://mielections.csod.com/ui/lms-learning-details/app/material/e6ae8c33-685b-422f-87d3-cff8fa10e61e>.



III. Absent voter ballot counting procedures

The work performed by election inspectors processing AV ballots is divided into two separate tasks: processing absent voter ballots and tabulating absent voter ballots.

Signature verification

Immediately upon receipt of the absent voter ballot envelope, the clerk should verify that the signature on a returned absent voter ballot envelope matches the voter's signature stored in the QVF. If the signature does not match, or if the signature is missing, the clerk must immediately attempt to contact the voter and "cure" the signature. Voters have until 5 p.m. on the third day following the election to cure this issue. If the missing or mismatched signature is not cured by election day, the clerk should keep the ballot at their office and not send to the AVCB. If the missing or mismatched signature is not cured by third day after election day, the ballot should be rejected.

Once the ballot is verified and deemed valid, clerk should mark the "received" date in QVF and mark the ballot envelope in the "Clerk Section" with the date of receipt.

A voter may leave the date entry next to the signature on the absent voter ballot return envelope blank, so long as the voter has signed the absent voter return envelope. A signed absent voter ballot envelope that is missing a date is processed in the same way as an absent voter ballot envelope which is not missing the date.

An absent voter ballot envelope whose signature has been determined to match the absent voter's signature on file is referred to as an "accepted absent voter ballot."

Processing absent voter ballots

If a jurisdiction processes absent voter ballots using AVCBs, all absent voter ballots received by the clerk prior to Election Day are delivered to the absent voter ballot processing facility on Election Day or during the early tabulation period. The absent voter ballots are delivered to the AVCB at the time established by the election commission.



If a jurisdiction processes absent voter ballots at the polling place, all absent voter ballots received by the clerk prior to Election Day, and all absent voter ballot applications corresponding to those ballots, are delivered to the appropriate polling place shortly after the opening of the polls.

After receipt of the absent voter ballots at the absent voter ballot processing facility, ballot processing begins. The processing of absent voter ballots is divided into the two steps explained below. While jurisdictions may deviate from the process described here, jurisdictions must take care that whatever process they settle on does not compromise ballot secrecy.

Ballot envelope verification using AVCBs

During this stage, election inspectors verify that the clerk's record area of the return envelope was completed. If the clerk's record area of the return envelope is incomplete, the election inspectors alert the clerk or a member of the clerk's staff present in the absent voter ballot processing facility of the issue. If the clerk's record area of the return envelope was completed, the election inspector should open the return envelope and continuing processing.

The election inspector should then highlight or place a check by the voter's name using the absent voter ballot button in the QVF Absent Voter List or the ePollbook, depending on which voter list is being used at the absent voter ballot processing facility, to indicate that an absent voter ballot envelope was received for processing. If the certificate for persons assisting an absent voter on the ballot envelope is completed, the election inspector should record the assistance in the Remarks page of the ePollbook. The note should include the name of the voter and the name of the individual who provided the assistance.

Ballot envelope verification at the polling place

After selecting an absent voter ballot envelope, the election inspector should check the ePollbook to confirm that the voter whose absent voter ballot envelope is being processed has not voted in person at the election. If the election inspector cannot confirm either that the voter whose absent voter ballot envelope is being processed has not voted in person at the election or cannot confirm that the signature on the absent voter ballot return envelope matches the signature on the corresponding absent voter ballot application, the election inspector should contact the city or township clerk.

Next, inspectors verify that the clerk's record area of the return envelope was completed. If the clerk's record area of the return envelope is



incomplete, the election inspectors should contact the clerk and alert them of the issue. If the clerk's record area of the return envelope was completed, the election inspector should open the return envelope and continuing processing.

Ballot verification

After the absent voter ballot envelope has been verified at either an AVCB or a polling place, the election inspector should open the absent voter ballot envelope. Without exposing any votes, the election inspector should verify that the number on the ballot stub agrees with the ballot number recorded for the voter in the QVF Absent Voter List or the ePollbook.

If the ballot was returned in a secrecy envelope, the ballot and secrecy envelope may be removed from the return envelope to make the comparison. If the ballot was not returned in a secrecy envelope, the election inspector should first verify that the ballot was folded by the voter so that the votes are concealed before removing the ballot from the return envelope to make the comparison. If the ballot must be placed in a secrecy envelope, the election must take care placing the ballot into a secrecy sleeve to avoid exposing any votes cast on the ballot.

If the number on the ballot does not agree with the ballot number recorded for the voter in the QVF Absent Voter List or the ePollbook and no explanation for the discrepancy can be found, the ballot must be processed as a challenged ballot. Possible explanations for a discrepancy that do not require the ballot to be processed as a challenged ballot include that the voter lives in the same household as a second voter and that the voters accidentally switched absent ballot return envelopes.

If the ballot is missing its stub, the election inspector should check to see if the detached stub is included inside the absent voter ballot envelope. If the stub is inside the envelope, the stub should be treated as if it were attached to the ballot. If the stub is not inside the envelope, the ballot should be processed as a challenged ballot.

If the absent voter ballot envelope or secrecy sleeve is empty, the election inspector should note the missing ballot in the Remarks page of the ePollbook. The note should include the expected ballot number and the fact the ballot was not returned, but it should not include the voter's name.

Finally, the election inspector should remove the absent voter ballot from the absent voter ballot envelope. The envelope should be set aside. At the end of Election Day, all absent voter ballot envelopes should be returned to



the clerk. Without removing the ballot from the secrecy sleeve, the election inspector should remove the numbered stub from the ballot. At the discretion of the clerk, the stub may be either discarded or retained for later review.

After the election inspector completes the above steps, the absent voter ballot in its secrecy sleeves are then sent for tabulation.

Tabulating absent voter ballots

To begin the tabulation process, an election inspector who was not involved in the ballot processing explained above should move the absent voter ballots with stubs detached to a different location within the absent voter ballot processing facility or the polling place. This maintains ballot secrecy by ensuring that the election inspectors who processed the ballots cannot see how a particular ballot was voted.

The election inspector should then remove the anonymized ballots from their secrecy sleeve and feed the ballot into the tabulator. If the ballot is accepted by the tabulator, the ballot's tabulation is complete.

If a ballot is rejected by the tabulator, the election inspector should visually inspect the ballot to determine the reason the ballot was rejected. If the reason for the ballot's rejection can be cured, for example because the ballot was damaged, the ballot should be duplicated using the normal duplication procedures explained below. Duplication cannot occur in an in person polling place until after the close of polls, but duplication can occur in an absent voter ballot counting facility at any time.

After the close of polls at 8:00 p.m., election inspectors should confirm with the clerk that no additional absent voter ballots will be delivered for processing. Once election inspectors have confirmed that no further absent voter ballots will be delivered, that all absent voter ballots have been processed and tabulated, and that all necessary ballot duplication has occurred and those duplicate ballots have been tabulated, election inspectors may begin closing the AVCB or polling place.

If tabulating early, no results can be generated prior to 8:00 p.m. on Election Day.

Closing procedures

Election inspectors processing absent voter ballots at the polling place should follow the regular closing procedures explained below. Election

inspectors serving at AVCBs should follow the instructions below to close their AVCBs.

Once all ballots have been tabulated and all ballots requiring duplication have been duplicated and tabulated, the election inspectors should compare the total number of ballots tabulated displayed on the tabulator's public counter to the total number of absent voter ballots delivered to the board for processing. These totals should agree.

If the total number of ballots tabulated and total number of absent voter ballots received for processing do not agree, the election inspectors should attempt to identify the reason for the discrepancy. Possible explanations for a discrepancy may be noted in the Remarks page of the ePollbook, and may include that an absent voter ballot envelope that did not contain a ballot was opened at the AVCB. If the discrepancy cannot be reconciled after reviewing the Remarks page, the election inspectors should physically count all tabulated ballots. If the number of ballots differs from the number displayed on the tabulator's public counter, the ballots must be retabulated. The election inspectors should contact their clerk for instructions on how to conduct a retabulation.

Once the election inspectors have determined that the total number of tabulated ballots displayed on the tabulator's public counter and the total number of absent voter ballots delivered for processing agree, or the election inspectors have identified the specific reason for any discrepancies and noted those reasons in the *Remarks* page of the Poll Book, the election inspectors must prepare the *Statement of Votes* and *Ballot Summary*. The *Statement of Votes* and *Ballot Summary* for each AVCB should be completed in the same manner each document would be completed for an in person precinct on election day. A minimum of three copies of each document are required. Often, the Poll Book is designed so that completing each document once creates an original and two copies, satisfying the three copy requirement.

Next, the election inspectors should complete the *Certificate of Election Inspectors* included in the Poll Book. The election inspectors must fill in the following four blanks in the Poll Book:

- The number of voters who were issued absentee ballots (according to this Poll Book): _____
- The number of absent voter ballot return envelopes received by the Board: _____

- The number of invalid absent voter ballot return envelopes that the clerk did not deliver to Board (according to this Poll Book):

- The number of absent voters who did not return their absent voter ballot to the clerk (according to this Poll Book): _____

The election inspectors should then complete any remaining required entry in the Poll Book.

After the Poll Book is complete, the election inspectors should seal all ballots into an approved ballot container and record the seal number in the Poll Book, on all three copies of the Statement of Votes, and on the *Ballot Container Certificate*. Two election inspectors who have expressed a preference for different political parties must attest to the sealing. If ballots for more than one AVCB are placed into the ballot container, election inspectors should sort and bundle each AVCB's ballots separately within the container. The absent voter ballot envelopes and the absent voter ballot applications should be placed in the Absent Voter Envelope.

The Poll Book and other materials prepared at the AVCB will be reviewed by a receiving board. If a mistake is found at the receiving board that requires the ballot container to be opened and resealed, the replacement seal number must be recorded on all documents where the original seal number was recorded. Once the Poll Book and other materials are verified by the receiving board, the ballot container may not be opened unless authorized by the Board of County Canvassers.

IV. Absent voter ballots received on Election Day

All accepted absent voter ballots received by the clerk through 8:00 p.m. on Election Day must be delivered to the location where absent voter ballots are being processed. If absent voter ballots are being processed using AVCBs, the election inspectors at the AVCB should record the date on which the absent voter ballot was returned in the QVF Absent Voter List. If absent voter ballots are being processed in the polling place, the election inspectors at the polling place should record the date that the absent voter ballot was returned in the ePollbook.

To ensure the secrecy of all votes cast, the election inspectors at the location where absent voter ballots are being processed should set aside several of

the absent voter ballot envelopes that were returned prior to Election Day until after 8:00 p.m. These envelopes should then be intermingled with any absent voter ballot envelopes delivered by the clerk during or after the close of polls on Election Day. This intermingling preserves ballot secrecy and ensures the votes cast by persons returning their absent voter ballots remains anonymous.

V. Absent voter ballots rejected by tabulator

Tabulators are programmed to reject damaged and invalid ballots. Damaged and invalid absent voter ballots should be duplicated to remove the issue causing the tabulator to reject the ballot.

Damaged and improperly completed ballots

A damaged ballot is a ballot that is crumpled, is water damaged, or has another physical defect that prevents the tabulator from reading the ballot.

Blank ballots

Blank ballots occur when a voter does not complete their ballot, but a tabulator may also interpret a ballot as being blank if the voter attempts to complete their ballot with ink that is not black or blue or if the voter makes marks on the ballot which are insufficiently dark to be detected by the tabulator.

Ballots with overvotes

Overvotes occur when a voter votes for more candidates than permitted for a given office. An overvote may also occur if the voter has crossed out a candidate, attempted to erase a mark on a ballot, or otherwise made a mark on the ballot that the tabulator interprets as an attempt to vote for more candidates that prohibited.

Ballots with crossover votes

Crossover votes occur because a voter has voted in races for both parties during a partisan primary. In partisan primaries, although primary elections for the two major parties appear on the same ballot, the voter is only permitted to participate in one party's primary. The voter cannot participate in one party's primary for one office and the other party's primary for a

second office. As with overvotes, inadvertent or erased marks may be interpreted by the tabulator as an attempt to cast a crossover vote.

Ballots with stray marks

A ballot with stray markings may be interpreted by the tabulator as an ballot with an overvote or a crossover vote.

Duplicating damaged or improperly completed ballots

If an absent ballot is rejected by the tabulator, the election inspector should check the tabulator to determine the reason for the rejection. The election inspector should then examine the ballot to determine where the issue on the ballot occurs.

Once the election inspector has determined what mark or marks are causing the tabulator to reject the absent voter ballot, the election inspector should set the ballot aside for duplication. In an absent voter ballot processing facility, particular teams of election inspectors are often assigned to duplicate ballots. In a precinct processing absent voter ballots on Election Day, the election inspectors should duplicate the ballot after the close of polls.

Two election inspectors, each of whom has expressed a preference for a different political party, must be present for every step of the ballot duplication process.

The duplication process consists of the following steps:

1. The election inspectors should obtain one blank ballot for each ballot which needs to be duplicated. The numbered stub should be removed from the blank ballot and discarded. The election inspectors should then identify the blank ballot and the corresponding ballot to be duplicated by writing numbering the two ballots, starting with the number one. The ballot to be duplicated should be identified with a numeral, and the corresponding blank ballot should be identified with "Dup." followed by the same numeral. For example, the first ballot to be duplicated would be labeled "1", and the corresponding blank ballot would be labeled "Dup. 1"
2. The votes recorded on the ballot to be duplicated should be transferred to the blank ballot using a reader-checker process. One election inspector should call out the valid votes on the original ballot, while



the other election inspector records those votes on the duplicate ballot. If the voter's intent is uncertain, the election inspector should consult the section *Determining Ambiguous Voter Intent* below. If the voter has overvoted in a race, the election inspector should consult the section *Correcting an Overvote* below.

3. After completing the duplication process, both election inspectors should verify that the original ballot and the now-duplicated ballot are identified with the correct number and that all valid votes have been transferred from the original ballot to the duplicate ballot.

After all ballots requiring duplication have been duplicated, the original ballots are placed into an envelope designated to hold ballots rejected by the tabulator. The envelope is sealed into the ballot container with all other ballots. The newly-duplicated ballots are fed into the tabulator and tabulated.

Determining ambiguous voter intent

Different ballot styles require voters to fill in ovals or boxes. While voter intent is ultimately decided by the team of election inspectors assigned to the duplication process, the following are examples of valid and invalid ballot markings.

Valid markings

These are examples of markings on a ballot which may be rejected by a tabulator but which the election inspectors duplicating the ballot should interpret as votes for the candidate or ballot question at issue.



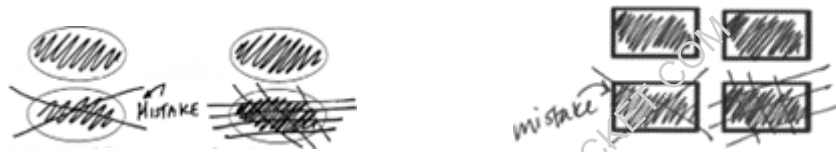
Invalid markings

These are examples of markings on a ballot which may be rejected by a tabulator and which the election inspectors duplicating the ballot should not interpret as votes for the candidate or ballot question at issue because the voter's intent cannot be clearly understood from the marking.



Corrections

These are examples of markings on a ballot which may be rejected by a tabulator but which the election inspectors duplicating the ballot should interpret as a voter's attempt to correct a mistake on the voter's ballot. The election inspectors should duplicate these votes as being cast for the candidate or ballot question at issue.



A corrected crossover vote may also cause a tabulator to reject a ballot. Election inspectors duplicating the ballot should interpret the correction as a voter's attempt to vote for only one party as permitted.

False Crossover/
Ballot Correction:

Proper Duplication:

Stray marks

These are examples of stray marks on a ballot which may be rejected by a tabulator but which the election inspectors duplicating the ballot should not interpret as the voter's attempt to vote for the the candidate or ballot question at issue.



In all three examples above, count the top two positions only.

Correcting an overvote

A true overvote – one which is caused by a voter clearly and intentionally attempting to vote for more candidates than allowed for a particular office – on an absent voter ballot cannot be corrected, because the election inspector cannot determine for which candidate the voter intended to vote. The voter's other validly-cast votes on the ballot, however, can be read. To correct an overvote for one office on the ballot when the correct number of votes have been cast for other offices on the ballot, the election inspectors should leave the office for which the voter has overvoted entirely blank on the duplicate ballot.

Overvotes caused by write-in votes for a write-in candidate who has not submitted a *Declaration of Intent*, however, can be corrected by removing the write-in candidate during duplication.

False Overvote/
Invalid Write-in:

STATE SENATOR
10th DISTRICT
(Vote for not more than ONE)

REPUBLICAN STEVE RICE

DEMOCRATIC MICHAEL SWITALSKI

LIBERTARIAN SCOTT W. ALLEN

NO PARTY AFFILIATION CAROLYN CELETTI

Mickey Mouse

REPRESENTATIVE
IN STATE LEGISLATURE
19TH DISTRICT
Vote For Not More Than ONE (1)

JOHN R. PASTOR
REPUBLICAN

KERRY L. LOWRY
DEMOCRATIC

MIKE SHESTERKIN
LIBERTARIAN

Mickey Mouse

Proper Duplication:

STATE SENATOR
10th DISTRICT
(Vote for not more than ONE)

REPUBLICAN STEVE RICE

DEMOCRATIC MICHAEL SWITALSKI

LIBERTARIAN SCOTT W. ALLEN

NO PARTY AFFILIATION CAROLYN CELETTI

WRITE IN

REPRESENTATIVE
IN STATE LEGISLATURE
19TH DISTRICT
Vote For Not More Than ONE (1)

JOHN R. PASTOR
REPUBLICAN

KERRY L. LOWRY
DEMOCRATIC

MIKE SHESTERKIN
LIBERTARIAN

WRITE IN

Likewise, a crossover write-in vote for a write-in candidate who has not submitted a *Declaration of Intent* may be corrected by removing the write-in candidate during duplication.

False Overvote/
Invalid Write-in:

REPUBLICAN PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

DICK POSTHUMUS

JOHN JOE SCHWABZ

Mickey Mouse

CONGRESSIONAL

DEMOCRATIC PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

JAMES J. BLANCHARD

DAVID E. BONOR

JENNIFER M. GRANHOLM

WRITE IN

REPUBLICAN PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

DICK POSTHUMUS

JOHN JOE SCHWABZ

Mickey Mouse

CONGRESSIONAL

DEMOCRATIC PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

JAMES J. BLANCHARD

DAVID E. BONOR

JENNIFER M. GRANHOLM

WRITE IN

Proper Duplication:

REPUBLICAN PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

DICK POSTHUMUS

JOHN JOE SCHWABZ

WRITE IN

CONGRESSIONAL

DEMOCRATIC PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

JAMES J. BLANCHARD

DAVID E. BONOR

JENNIFER M. GRANHOLM

WRITE IN

REPUBLICAN PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

DICK POSTHUMUS

JOHN JOE SCHWABZ

Mickey Mouse

CONGRESSIONAL

DEMOCRATIC PARTY SECTION

STATE GOVERNOR
(Vote for not more than ONE)

JAMES J. BLANCHARD

DAVID E. BONOR

JENNIFER M. GRANHOLM

WRITE IN

VI. Challengers and poll watchers at absent voter ballot processing facilities

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

Poll watchers should be allowed to observe the operation of the absent voter ballot processing facility if there is sufficient space to accommodate poll watchers within the facility without impeding the processing and tabulation of absent voter ballots.

For more information on challengers and poll watchers at absent voter ballot processing facilities, consult the Bureau of Elections publication *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*.²

Number of challengers at an absent voter ballot processing facility on Election Day

An absent voter ballot processing facility may contain a single absent voter counting board, multiple absent voter counting boards, a single combined absent voter counting board, or multiple combined absent voter counting boards. The Michigan Election Law uses the term "absent voter counting board" simultaneously to refer to a single absent voter counting board corresponding to an individual in-person precinct; a station within a facility processing absent voter ballots for multiple in-person precincts; the entire facility at which all absent voter ballots are processed for a jurisdiction; and an entire facility at which combined absent voter ballots are processed for multiple jurisdictions in a county. Michigan Election Law does not expressly state how many challengers may be present at an AVCB on election day. An early tabulation AVCB is limited to 1 challenger for every 8 election inspectors.

² Available at https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf.



When determining how many challengers each credentialing organization is allowed to have in an absent voter ballot processing facility, clerks must balance the rights of challengers to meaningfully observe the absent voter ballot counting process and the clerk's responsibility to ensure safety and maintain orderly movement within the facility. Clerk considerations in setting the number of challengers each credentialing organization may field in the absent voter ballot processing facility should include:

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

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

Duties of challengers and poll watchers at absent voter ballot processing facilities

Challengers and Poll Watchers must take the same oath as any other person who is present at the absent voter ballot processing facility at the beginning of tabulation. A challenger or poll watcher present at the absent voter ballot processing facility at the beginning of tabulation is sequestered at that facility until the close of polls. Challengers and poll watchers, like all other persons present at the absent voter ballot processing facility, are not allowed to possess cell phones or other messaging devices in the facility before the close of polls.

Challenger liaisons

Every polling place or absent voter ballot processing facility should have an election inspector designated as the challenger liaison. Unless otherwise specified by the local clerk, the challenger liaison at a polling place is the precinct chairperson. The challenger liaison or precinct chairperson may designate one or more additional election inspectors to serve as challenger liaison, or as the challenger liaison's designees, at any time. Unless otherwise specified by the local clerk, the challenger liaison at an absent

voter ballot processing facility is the most senior member of the clerk's staff present, or, if no members of the clerk's staff are present, the challenger liaison is the chairperson of the facility. Unless otherwise specified by the local clerk, the challenger liaison at the clerk's office is the most senior member of the clerk's staff present.

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

Permissible challenges at an absent voter ballot processing facility

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

Because an absent voter's eligibility is verified by the clerk prior to the absent voter ballot envelope being processed at the absent voter ballot processing facility on Election Day, election inspectors serving at the absent voter ballot processing facility are not responsible for verifying voter eligibility at the facility. Instead, election inspectors serving at the absent voter ballot processing facility confirm that the clerk has verified the absent voter's eligibility to cast a ballot by confirming that the clerk has reviewed the signature section of the absent voter ballot envelope. Additionally, because the voters are not present at the absent voter ballot processing facility, the oath administration and questioning process set out in the Michigan Election Law and explained above cannot be carried out at an absent voter ballot processing facility and a challenged voter would have no chance to refute the challenge leveled against them. For these reasons,



challenges to voter eligibility at absent voter ballot processing facilities are not permissible and need not be recorded.

Challenging an election process

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

Impermissible challenge to an election process

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

Rejecting a challenge to an election process

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

Accepting a challenge to an election process

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



process should be recorded in both the remarks section of the electronic poll book and on the “Challenged Procedures” section of the physical poll book. The record should include:

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

Challenges to Recurring Election Processes: Blanket Challenges

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

Warning and ejecting challengers or poll watchers

If a challenger or poll watcher acts in a prohibited manner or fails to follow a direction given by an election inspector serving at the location at which the challenger or poll watcher is present, the challenger will be warned of their prohibited action and of their responsibility to adhere to the instructions in this manual and to directions issued by election inspectors. The warning and the reason that the warning was issued should be noted in the poll book. The warning requirement is waived if the prohibited action is so egregious that the challenger or poll watcher is immediately ejected.

A challenger or poll watcher who repeatedly fails to follow any of the instructions or directions set out in *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* or issued by election inspectors may be ejected by any election inspector. A challenger or poll watcher who acts in a manner that disrupts the peace or order of the polling place or absent voter ballot processing facility, who acts to delay the work of any election inspector, or who threatens or intimidates a voter, election inspector, or election staff, may also be ejected by any election inspector. The ejection



should be noted in the poll book. If the challenger or poll watcher refuses to leave after being informed of their ejection by an election inspector, the election inspector may request law enforcement remove the challenger or poll watcher from the polling place or absent voter ballot processing facility.

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

Challenger appeal of election inspector determinations

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

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

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

A poll watcher may not appeal any determination made by an election inspector.

VII. Emergency absent voter ballots

In certain emergency situations, a voter may apply for an emergency absent voter ballot. This application may be received as late as 4:00 p.m. on

Election Day. If an emergency application is received by the clerk, the AVCB must be instructed to make the necessary entries on the QVF Absent Voter List that would otherwise be completed by the clerk. Once the necessary entries are made, the emergency absent voter application must be returned to the clerk to await the return of the ballot. If the requested ballot is voted and returned to the clerk by 8:00 p.m., the clerk should record the date of the return on the corresponding application and deliver the absent voter ballot envelope to the counting board; the counting board must then record the date of return on the QVF Absent Voter List.

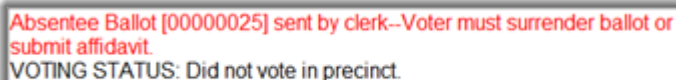
VIII. Absent voters appearing at the polls

If a voter who has been issued an absent voter ballot appears at an early voting site or an in-person precinct on Election Day to offer to vote, the ePollbook will alert the election inspector that the voter was issued an absent voter ballot. The election inspector should take the following actions, depending on whether the voter did not receive their absent voter ballot, received but did not return their absent voter ballot, received and returned their absent voter ballot to the clerk, or is appearing with the absent voter ballot in person.

Voter was sent but did not receive their absent voter ballot

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

Such a voter will appear in the ePollbook with the following alert:



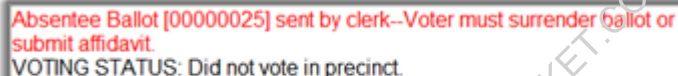
Absentee Ballot [00000025] sent by clerk--Voter must surrender ballot or submit affidavit.
VOTING STATUS: Did not vote in precinct.

A voter who signs the *Affidavit of Lost or Destroyed Absent Voter Ballot* may be subject to challenge by a properly credentialed election challenger as an absent voter in the polls.

Voter was sent and received but did not return their absent voter ballot

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

Such a voter will appear in the ePollbook with the same alert as appears for a voter who was sent but did not receive their ballot:



Absentee Ballot [00000025] sent by clerk--Voter must surrender ballot or submit affidavit.
VOTING STATUS: Did not vote in precinct.

A voter whose signature on their absent voter ballot was rejected by the clerk is treated as a voter who received but did not return their absent voter ballot. Such a voter is entitled to vote in person at a polling place on Election Day by following the procedures above.

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

Voter was sent, received, and returned their absent voter ballot

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

Such a voter will appear in the ePollbook with the following alert:

Absentee Ballot [0000028] sent/received by clerk--Do not issue ballot.
VOTING STATUS: Did not vote in precinct.

Voter appears in person with their absent voter ballot

A voter who requested and received their absent voter ballot may bring the ballot with them to an early voting site or their polling place on Election Day. The voter may either surrender their absent voter ballot or they may vote their absent voter ballot and place it into the tabulator³.

After the voter completes the application to vote, the election inspector should verify that the ballot presented by the voter is the ballot that was issued by comparing the number on the ballot stub to the ballot number appearing in the ePollBook. During this, the election inspector should be careful to not expose the ballot. If the numbers match, the voter will be converted from an "absent voter" to an "election day" or "early" voter. The election inspector should provide the voter with a full-size secrecy sleeve to place their ballot in. The voter may then vote their ballot, if not done already, and place it into the tabulator.

Alternatively, the voter may surrender their ballot and be issued a new one. If the ballot is surrendered, the election inspector should write "surrendered" on the ballot, place it into the clerk envelope, and issue the voter a new ballot. A voter who surrenders their absent voter ballot to election inspectors in the polling place or who appears in person to cast their absent voter ballot is not subject to a challenge as an absent voter in the polls.

IX. Staffing absent voter counting boards and working in shifts

Multiple shifts of election inspectors may be assigned to AVCBs, so long as the following requirements are observed:

- The city or township's board of election commissioners must appoint all election inspectors who will serve on election day between 21 and

³ If the tabulators in an election day polling place cannot be programmed to accept and tabulate absent voter ballots, the voter can instead surrender their AV ballot and be issued a new ballot.

40 days prior to the election. The city or township clerk is responsible for determining how many election inspectors are required to staff each AVCB

- Every election inspector present at the absent voter ballot counting facility at the start of tabulation must take and sign the required oath, as explained above.

Additionally, to avoid delay in the processing of absent voter ballots and to allow the ending shift of election inspectors to instruct the new shift of inspectors, any replacement shift of election inspectors beginning their work after the close of polls should have at least a one hours overlap with the ending shift. This will allow a smooth transition of information from the earlier shift to the replacement shift, including the identification and documentation of any issues that may have arisen during the earlier shift. For AVCBs using high-speed scanners, shifts should overlap by two hours so that the new shift can be instructed on the use of the high-speed equipment.

Documenting shift changes

The shift change should be noted in the remarks section of the Poll Book. The election inspector ending their shift should note the name of the election inspector replacing them and should provide a brief description of the last tasks they completed and handed off to their relief election inspector. The new election inspector must take the oath and sign the oath section at the front of the Poll Book. Any election inspectors present at the close of the AVCB are required to sign both the totals tape and the *Certificate of Election Inspectors*. The signature of election inspectors relieved prior to the closing of the AVCB will not appear on either document, but those election inspectors should sign a separate sign-out sheet provided by the jurisdiction before leaving the absent voter ballot processing facility.

X. Combined absent voter counting boards

City or townships may enter into agreements with each other or with the county in which they are located to operate a combined absent voter counting board. In general, the same rules and procedures apply to combined AVCBs that apply to other AVCBs. To establish a combined AVCB, local and county clerks should enter into an agreement to establish a combined AVCB. The agreement must be entered into at least 75 days prior



to Election Day. The Bureau provides model language for the agreement on eLearning.⁴

Additionally, local and county jurisdictions should agree in advance whether the local clerk or election inspectors working in the AVCB will complete the pre-tabulation processing of the absent voter ballots described above. If the local clerk completes the verification, the local clerk should provide a signed statement that the local clerk has verified that the names on the absent voter ballot envelopes and absent voter list or pollbook match, and that the number of envelopes delivered to the combined AVCB matches the number of names on the absent voter list or pollbook.

Finally, jurisdictions participating in a combined AVCB should also agree on answers to the following issues in advance of the operation of the combined AVCB:

- How and when all necessary equipment will be delivered by the local jurisdiction to the location of the combined AVCB.
- How equipment will be stored at the location of the AVCB and what security measures will be in place at the combined AVCB before Election Day.
- Procedures for the operation of the combined AVCB, including the number of challengers and poll watchers who will be permitted in the facility, how election inspectors will be selected, and shift schedules for election inspectors.
- In consultation with election management system vendors, establish procedures for how unofficial election results will be reported.
- How ballot containers will be used, sealed, and stored.
- How election equipment will be returned to local jurisdictions following the canvass.

⁴ Available at <https://mielections.csod.com/ui/lms-learning-details/app/material/5efeb893-d754-4472-bea5-4aa059b26408>.



Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

Affidavit of Madison Takala

STATE OF MICHIGAN)
) ss
COUNTY OF MACOMB)

Madison Takala, being first duly sworn, deposes and says as follows:

1. If called as a witness, I would testify as follows based on my personal knowledge to the best of my information, knowledge, and belief.

2. I am employed by the City of Warren as an election inspector.

3. The first time I worked as an election inspector for the City of Warren was the August 2020 primary election. In that election, I was assigned to the Absent Voter Counting Board (AVCB).

4. Since August 2020, I have worked every subsequent election as an election inspector for the City of Warren. Following the November 2020 general election, I have always worked as a counting board precinct chair at the City of Warren AVCB. During the August 6, 2024 primary election, I was a precinct chair at the City of Warren AVCB.

5. Following the August 2020 primary election, I was asked by the City of Warren Deputy Clerk to work as a temporary employee in the clerk's office to help prepare for the November 2020 general election.

6. As part of that job, I was responsible for: (1) receiving and processing AV ballot applications; (2) preparing the ballot envelopes for being sent to voters on the AV ballot list; (3) putting ballots into the envelopes before being sent to voters.

7. As a temporary employee of the City of Warren clerk's office, I was also responsible for receiving and handling AV ballots that had been returned to the clerk's office. As soon as I received a ballot envelope, I would stamp the envelope with the date it was received.

Then, after stamping the envelop, I would take the envelop to a computer and scan a bar code on it, which would pull up the voter's signature from the QVF so the signature on the envelop could be verified. If there were any questions about the signature on the envelope, I would set the envelop aside for additional review.

8. During the entire time I worked for the clerk's office before the November 2020 general election, I was never told to mark any portion of the ballot envelope to indicate that the voter's signature had been verified. Nor was I ever told to mark the date on the portion of the envelope for the clerk's use.

9. During the August 6, 2024 primary election, I worked as a counting board chair at the City of Warren AVCB. On that day, I arrived at the AVCB by 7:50 a.m. and left around 10:55 p.m. Because my group was short-staffed, I only took a 30 minute lunch break and a 10 minute dinner break.

10. As a counting board chair, I was responsible for managing the group of election inspectors assigned to my counting board and helping new workers get adjusted. After we were sworn in, I would also manage the pollbook for the precincts assigned to my counting board and, as the ballots were tabulated, I would make sure that the precincts were in balance.

11. One of the first steps of processing an absent voter ballot at the AVCB involves an election inspector looking at the envelope in which the absent voter ballot was returned to the clerk's office to check whether: (1) the precinct number is correct; (2) the ballot number matches the number on the envelope; (3) the clerk's office marked the envelop to indicate that the ballot was received on or before election day; and (4) the clerk's office marked the envelop to confirm that the voter's identity has been verified.

12. To simplify this process, the envelopes in which the ballots are returned to the clerk's office include a grey rectangle in the upper right-hand corner that states "For Clerk's Use Only" and includes blanks for the clerk's office to fill in the following items: (1) Return Date and Time; (2) Precinct Number; (3) Ballot Number; and (4) Voter Signature Verified (Initials).

13. In addition to the "For Clerk's Use Only" section in the upper right-hand corner, the envelopes in which the ballots are returned to the clerk's office includes a section on the lower left-hand side of the envelope where the voter is directed to sign the envelope for the purpose of verifying their identity.

14. As a precinct chair on August 6, 2024, I personally observed a large number of AV ballots and ballot envelopes from the City of Warren. My counting board was assigned 12-13 precincts, which means we processed several thousand AV ballots.

15. All of the ballot envelopes I observed had the "For Clerk's Use Only" section only partially filled out. That is, while the precinct number and number blanks were filled in, I do not remember seeing a single envelope where the "Return Date and Time" or "Signature Verified (Initials)" blanks were filled in.

16. I do not remember ever seeing an envelope where the "For Clerk's Use Only" section was signed or initialed by the clerk's office, or otherwise marked with a statement that the voter's signature had been verified by the clerk's office. I did see a small number of ballot envelopes where the *voter* had signed in the "For Clerk's Use Only" section of the envelope.

17. I do not believe that any of the ballots that were forwarded from the clerk's office to the counting board included a statement—or signature or initials—indicating that the corresponding voter's signature had been verified by the clerk's office.

18. I do remember seeing around 4 or 5 ballots where the envelopes indicated that the voter's identity had been verified. But the appearance of these ballot envelopes indicated to me that the voter's identity had been verified as part of the curing process by which, because of an issue with (or omission of) the voter's signature on the envelope, the voter had gone to the clerk's office in person to have their identity verified.

19. I do not remember ever seeing an envelope where the "For Clerk's Use Only" section was marked with the date that the ballot had been received. However, I do remember seeing some envelopes that were stamped with the date the envelope had been received the clerk's office.

20. Many of the ballots I observed on August 6, 2024 had a green highlighter mark running through the section of the envelope where the voter was supposed to put their signature.

21. I did not see any ballot where the highlighter mark was placed in the "For Clerk's Use Only" section of the envelope such that the highlighting would have indicated that the voter's signature had been verified by the clerk's office.

22. I believe that the highlighter mark is placed on the voter's signature line by the clerk's office *before* the envelopes are mailed to voters for the purpose of drawing the voter's attention to the signature line and limiting the number of AV ballots that require curing due to a missing signature.

23. On August 6, 2024, a poll challenger brought to my attention that the "For Clerk's Use Only" section of the ballot envelopes were not marked with either the date received or a statement that the voter's signature had been verified. I directed the challenger to the deputy clerk and believe they spoke, although I am not aware of the outcome of their conversation.

Madison Takala
Madison Takala

Subscribed and sworn to before me, a Notary Public, this 10 day of SEPT, 2024.



[Signature], Notary Public
County acting in Wayne County, MI
My Commission Expires: 1/27/2030

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Exhibit C

RETRIEVED FROM DEMOCRACYDOCKET.COM

8. In addition to the “For Clerk’s Use Only” section in the upper right-hand corner, the envelopes in which the ballots are returned to the clerk’s office includes a section on the lower left-hand side of the envelope where the voter is directed to sign the envelope for the purpose of verifying their identity.

9. One of the first steps of processing an absent voter ballot at the AVCB involves an election inspector looking at the envelope in which the absent voter ballot was returned to the clerk’s office to check whether: (1) the precinct number is correct; (2) the ballot number matches the number on the envelope; (3) the clerk’s office marked the envelop with the date on which the clerk received the envelope and that such date fell on or before Election Day; and (4) the clerk’s office marked the envelop to confirm that the voter’s identity has been verified.

10. For all of the 500-600 ballot envelopes I observed, the “For Clerk’s Use Only” section of the envelope was only partially filled out. That is, the ballot envelopes I observed only had the precinct number and ballot number blanks “filled in,” while the fields for “return date and time” and “voter signature verified” had not been completed by the clerk’s office.

11. I do not remember seeing a single AV ballot envelope where the “Return Date and Time” or “Signature Verified (Initials)” blanks in the “For Clerk’s Use Only” section were filled in. Nor do I remember a single ballot envelope that had any other indication that a clerk’s office employee had verified the voter’s signature on the envelope.

12. I also do not remember seeing any ballot envelopes that were stamped with the date and/or time the envelope was received.

13. There were a handful of ballots—less than 20—that had a paper attached to the envelope by paperclip that indicated that the voter’s signature had been verified through the curing process.

14. Many of the ballots I observed on August 6, 2024 had a highlighter mark running through the section of the envelope where the voter was supposed to put their signature.

15. I did not see any ballot where the highlighter mark was placed in the “For Clerk’s Use Only” section of the envelope.

16. Although it is my understanding that the AV ballots that are brought to the City of Warren AVCB by the clerk’s office have had the ballot envelope signature verified, that is an assumption—there was nothing on the face of any of the ballot envelopes I saw on August 6, 2024, indicating that the signatures had been verified.

Ron Takala

Ron Takala

Subscribed and sworn to before me, a Notary Public, this 10th day of September, 2024.

Amy M Cumbow

AMY M CUMBOW, Notary Public
Ingham County acting in Ingham County, MI
My Commission Expires: 03/14/2029

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AMY M CUMBOW NOTARY PUBLIC - STATE OF MICHIGAN COUNTY OF INGHAM MY COMMISSION EXPIRES MARCH 14, 2029 ACTING IN THE COUNTY OF <u>Ingham</u>
--

Notarized remotely online using communication technology via Proof.

Exhibit F

RETRIEVED FROM DEMOCRACYDOCKET.COM

8. In addition to the “For Clerk’s Use Only” section in the upper right-hand corner, the envelopes in which the ballots are returned to the clerk’s office includes a section on the lower left-hand side of the envelope where the voter is directed to sign the envelope for the purpose of verifying their identity.

9. As I watched the election inspectors process absent voter ballots on August 6, 2024, I noticed that, for every ballot envelope I remember looking at, the “For Clerk’s Use Only” section was not fully filled out and was instead incomplete.

10. Although the precinct number and ballot number blanks were filled in on every ballot envelope I observed, I did not observe a single ballot envelope where either the “Return Date and Time” or “Voter Signature Verified (Initials)” blanks were filled in.

11. That is, I did not see a single ballot envelope where the clerk’s office marked the envelope with the date and/or time when it was received as directed in the “For Clerk’s Use Only” section of the return envelope.

12. I also did not see a single ballot envelope where the clerk’s office signed, initialed, or otherwise marked the ballot envelope with a statement or indication that the voter’s signature had been verified or that the voter’s identity had otherwise been confirmed as directed in the “For Clerk’s Use Only” section of the return envelope.

13. I did notice that many of the ballot return envelopes had a highlighter mark on the section where the voter is supposed to sign the envelope.

14. Although I initially speculated that the above-referenced highlighter marks on the section where a voter is supposed to sign the envelope might be evidence that the signature was verified, I was informed by one of the counting board chairs that this was not true.

15. In fact, the highlighter marks I observed were exclusively located in the voter's section of the envelope. That is, I did not see a single highlighter mark in the "For Clerk's Use Only" section of a ballot return envelope.

16. I brought this issue to the attention of the Deputy City Clerk. I pointed out that the "For Clerk's Use Only" section was not filled out and asked her to help me understand the verification process.

17. The Deputy City Clerk responded that she was not sure about the verification process and did not know why the "For Clerk's Use Only" section of the envelopes was incomplete.

18. The Deputy City Clerk also told me that she was not able to find out the answer because she needed to do something else, but that she would follow up with me. However, she never followed up with me.

19. I was never provided with an explanation why none of the "For Clerk's Use Only" sections of the ballot envelopes were marked with either the date it was received by the clerk's office or a statement that the voter's signature and identity had been verified.

Dawn Beattie

Dawn Beattie

Subscribed and sworn to before me, a Notary Public, this 10th day of September, 2024.

Amy M Cumbow

AMY M CUMBOW _____, Notary Public
Ingham County acting in Ingham County, MI
My Commission Expires: 03/14/2029

AMY M CUMBOW
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
MY COMMISSION EXPIRES MARCH 14, 2029
ACTING IN THE COUNTY OF Ingham

Notarized remotely online using communication technology via Proof.