



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

March 4, 2022

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

RE: Proposed Changes to JCAR No. 21-72, MOAHR No. 2021-60ST

Dear Senator Bumstead and Representative Meerman,

The Secretary of State acknowledges receipt of the changes proposed by the Joint Committee on Administrative Rules (JCAR) on February 23, 2022 to ruleset JCAR No. 21-72, MOAHR No. 2021-60ST (Ruleset). The Department appreciates JCAR's engagement with the Ruleset. For the following reasons the Secretary declines four of JCAR's five proposed changes, but accepts one of the proposed changes:

1. The Secretary rejects the suggestion that R 168.2(2) should be struck. MCL 168.558(4) requires a candidate for office to affirm, under penalty of perjury, on their affidavit of identity that "all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act . . . have been filed or paid." Because the vast majority of candidates required to file campaign finance statements required by the Michigan Campaign Finance Act (MCFA) file with county clerks, the only practical way that a filing official accepting an affidavit of identity can verify that the candidate is actually in compliance with the duties created by the MCFA during prior candidacies is for the candidate to provide the filing official a list of the jurisdictions in which the candidate previously sought election. If the filing official is not given such a list, the only way the filing official could confirm the candidate has no outstanding MCFA obligations would be to contact all 83 county clerks in Michigan. In the Secretary's view, requiring each of Michigan's more than 1,500 affidavit-accepting filing officials to contact all 83 county clerks to verify that each of the candidates for which the filing official is responsible is in compliance with the MCFA is much more burdensome than requiring candidates to supply a list of the jurisdictions in which they previously ran for office.
2. The Secretary rejects the suggestion that R 168.2(3) be changed to require filing officials to only review campaign finance records maintained by the Secretary of State. As explained above, MCL 168.558 requires candidates to affirm they have no outstanding campaign statements or unpaid late filing fees stemming from MCFA obligations in prior

elections, and most candidates file the campaign finance statements required under the MCFA with county clerks, not the Secretary. Recognizing this, MCL 168.558 does not limit those obligations to elections where candidates are required to file campaign finance statements with the Secretary. Requiring filing officials to examine only records maintained by the Secretary would unduly limit the reach of the statute and make the candidate's affirmation of compliance with the MCFA substantially less valuable.

3. The Secretary rejects the suggestion that a cure process be added to the R 168.2(4). MCL 168.558 forbids a candidate from appearing on the ballot if the candidate "executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." A candidate "executes" an affidavit of identity by submitting the signed and notarized affidavit to the filing official, no matter if the affidavit is submitted weeks, days, or hours prior to the filing deadline. Allowing a candidate to submit a new affidavit of identity after submitting an affidavit with false or incorrect information would be contrary to the language of MCL 168.558. Additionally, a cure process like the one suggested by JCAR would create myriad practical difficulties and inequities. Because most affidavits are filed close to the filing deadline, many filing officials will not have the time to check all affidavits for accuracy prior to the filing deadline. If a filing official checks the accuracy of some, but not all, of the affidavits submitted prior to the filing deadline, candidates may be given opportunities to cure based on nothing more than chance. Different filing officials may implement different processes for checking affidavits and notifying candidates of inaccuracies, creating improper inequities in ballot access between jurisdictions. Finally, a cure process would allow candidates acting in bad faith to submit false affidavits of identity, knowing that if the filing official discovered the falsification prior to the filing deadline the candidate could submit a new, corrected affidavit.
4. The Secretary accepts the suggestion that R 168.3(1) be redrafted to mirror the language of MCL 168.558. The Ruleset was proposed before the most recent amendments to MCL 168.558 were signed into law. Those amendments adequately clarify the information that must be included on the Affidavit of Identity, making R 168.3(1) redundant. Thus, the Secretary is removing R 168.3(1) from the Ruleset.
5. The Secretary rejects the suggestion that a cure process be added to R 168.3(3). This rejection is made for the same reasons that the Secretary rejects the suggestion that a cure process be added to R 168.2(4).

This letter serves to notify JCAR that the Secretary is withdrawing this Ruleset under MCL 24.245a(10)(a) as permitted by MCL 24.245c(2), effective immediately. The Secretary will submit notice of the change to R 168.3(1) explained above to the Michigan Office of Administrative Hearings and Rules (MOAHR) for review, as required under MCL 24.245c(2). Upon receiving approval from MOAHR as to the form of the changes and a decision from MOAHR as to any burden created by the changes, the Secretary will take the appropriate action under MCL 24.245c(3) or MCL 24.245c(4).

Sincerely,



Adam Fracassi
Regulatory Manager
Michigan Bureau of Elections

cc:

Katherine Wienczewski, Administrative Rules Division Director, Michigan Office of Administrative Hearings and Rules;

Deidre O'Berry, Michigan Office of Administrative Hearings and Rules;

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Members of the Joint Committee on Administrative Rules