



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

March 4, 2022

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

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

Dear Senator Bumstead and Representative Meerman,

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

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

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

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

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

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

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

Sincerely,



Adam Fracassi
Regulatory Manager
Michigan Bureau of Elections

cc:

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

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

Tim Reeves, Legal Counsel, Michigan Joint Committee on Administrative Rules;

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