

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division**

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Lansing, MI 48933

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JCAR AGENCY REPORT/PACKAGE

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

Marquette Mining Journal (September 17, 2021)
Flint Journal (September 17, 2021)
Kalamazoo Gazette (September 17, 2021)

2. List of the name and agency representative(s) attending public hearing:

Adam Fracassi (Bureau of Elections – Designated Agency Representative)
Doug Novak (Department of State – Regulatory Affairs Officer)
Jonathan Brater (Bureau of Elections – Director)
Brian Remlinger (Bureau of Elections – Law Fellow)

3. Persons submitting comments of support:

See below.

4. Persons submitting comments of opposition:

See below.

Name & Organization	Comments Made At: (Public Hearing or Written)	Comments	Rule Number & Citation Changed	Agency Rational for Rule Change
Rep. Ann Bollin	Written	Identified that the proposed ruleset did not incorporate references to the voter registration master card.	R 168.21	Rep. Ann Bollin Written Identified that the proposed ruleset did not incorporate references to the voter registration master card. R 168.21 Added a

				subsection defining master card and edited the subsection defining "signature on file" to explicitly include the signature on the voter registration master card.
Rep. Ann Bollin	Written	Expresses concern that, as drafted, the ruleset allowed a signature on an absentee voter ballot application that had not been verified against the signature in the Qualified Voter File to serve as a signature for verifying a signature on an absent voter ballot envelope.	R 168.21	Rep. Ann Bollin Written Expresses concern that, as drafted, the ruleset allowed a signature on an absentee voter ballot application that had not been verified against the signature in the Qualified Voter File to serve as a signature for verifying a signature on an absent voter ballot envelope. R 168.21 Added language clarifying that signatures on absent voter ballot applications can only be used to verify signatures on absent voter ballot envelopes if the signature on the application has been checked against and determined to match the signature in the

				Qualified Voter File.
Shira Roza, on behalf of Promote the Vote	Written	Identifies an inconsistency in the statute references and the language used in the ruleset.	R 168.22(1)	Added a second statutory reference to clarify that the ruleset applies to both absent voter ballot applications and absent voter ballot envelopes.
Sen. Ruth Johnson	Written	Expresses concern that the ruleset would prevent an election official from rejecting a signature that the official believes is invalid by requiring a the election official to presume the validity of the signature.	R 168.22(1)	Adds language clarifying that the election officials retain discretion to make the final determination regarding a signature's validity, and clarifying that the ruleset sets out a process to follow in determining validity but does not require election officials to accept signatures the election official believes is invalid.
Ronna McDaniel, on behalf of the Republican National Committee	Written	Expresses concern that the draft ruleset would require an obviously non-matching signature to be accepted if there was only one major difference from the signature on file, rather than multiple differences.	R 168.22(3)	Adds a subsection explicitly clarifying the ability of the clerk to contact a voter prior to making a determination regarding the validity of a signature.
Sen. Ruth Johnson	Written	Expresses concern that a clearly non-matching signature must be accepted	R 168.23(1)	Clarifies that redeeming qualities must be considered when determining

		if a redeeming feature is present.		whether a provided signature matches the signature on file, but that the presence of a redeeming quality does not require an election official to accept an obviously invalid signature.
Shira Roza, on behalf of Promote the Vote	Written	Shira Roza, on behalf of Promote the Vote Written Identifies concern that the subsection will be interpreted to apply only to absent voter ballot envelopes, rather than both envelopes and absent voter ballot applications. R 168.24(d) Removes the reference to provisional ballot envelopes to clarify the subsection applies to both envelopes and applications.	R 168.24(d)	Removes the reference to provisional ballot envelopes to clarify the subsection applies to both envelopes and applications.
Shira Roza, on behalf of Promote the Vote	Written	Identifies possible ambiguity in the use of the term “immediately” without providing a definition of “immediately.”	R 168.25	Added subsections clearly specifying timelines for various election official responsibilities under the ruleset
Shira Roza, on behalf of Promote the Vote	Written	Expresses concern that a uniform signature cure process will not be	R 168.26(1)	Adds language clarifying that all clerks must accept the signature cure

		available across the state.		form created by the Secretary of State.
Mark McWilliams, on behalf of Disability Rights Michigan	Written	Expresses concern that the ruleset does not explicitly provide protections for voters with disabilities.	R 168.26(3)	Adds a subsection clarifying that clerks are permitted to make the same accommodations for the signature cure process that they may make for collecting absent voter ballot envelopes.

Persons Submitting Written Comments in Support of Proposed Ruleset

Keith Daenzer, Paula Bowman (League of Women Voters of Michigan), Christina Schlitt (League of Women Voters of Michigan), Darlene Paulauski, Lisa Lawitzke (Bellevue Township Clerk).

Persons Submitting Written Comments in Opposition to Proposed Ruleset

Joe Welsh, Tara Kiilunen, Kathy Brooks, Scott George, Leanne Beduhn, Philip Hoffiz, Matt Halonen, Anne Ackerman, Paula Owen, Roseann Callaghan, kyraamellia19@gmail.com, Colleen Mulcahy, Carol Knoblauch, Kari West, Judith Walsh, Andrew Halonen, Gary Metzger, David Halonen, Thomas Konesky, Kathleen Handyside, Jack F. Neveau li, Bruce Jones, Deanne J. Oswald-Debottis, Pam Harpst, G Walsh, Natalie Johnson, Lisa Texas, Leon Kamps, C Fog, Ken Jonkman, Joyce Jonkman, Carol Garcia, Brenda S Branch, Mary S. Vaughan, Cornish Gayle Albano, Wonda F. Branch, Paul Okoniewski, Michele Okoniewski, Sierra Okoniewski, Jessie Okoniewski, Shari Paulsen, Raymond Bryde, Michelle White, James Doner, Kerry Kuzak, Kathleen Parrottino, Judy Hudecz, Lori Levi, Claude Fish, Doug Sharrott, David Martin, John Baldwin, Andrea Smith, Valentin Dumitrescu, Rebecca Simkins, Ryan Serge, Elizabeth Joseph, Daniel Pattison, Shane Ross, Melanie Sage, Denie Perkola, Gary Alan, Broderick Johnson, Colleen Quinn, Shelly Stanley, Mark Jerding, Kimberly Townsend, Melissa Beckley, Dan Nickels, Thomas Sullivan, Rodney Sherwood, John Michalek, Shayne Doorn, Mina Postman, Bonnie Burgess, Susana Bercea, John Buckley, Wendy Baker, Cash Harvey, Anna Pennala, Karen Dennis, Patricia Little, John Harris, Tami Huf, Andrew Kujawiak, Robert Brush, Harriet Austin, Robert Micknak, Randall Vanmourik, Jill Horton, Barbara Carter, Paul Kolb, Ellie Nicoloff, Jackie Gales, Nancy Tiseo, Antoinette Connolly, Charles Wright, David Janman, Stephen O'Neill, Nsncy Faber, Lisa Bruck, Penny Demario, Brenda Branch, Charles Schunck, Nancy Maier, Amy Rice, Kristi Neely, Leo Ohlendorf, Vicky Gorsuch, Barbara Ellsworth, Lise Tetrault, Christy Petill, Stacey Klein, Susan Nickels, Samuel Burkett, Trudy Foley, Ryan Krafft, Leonard Corwin, John Hawkinson, Duane Cross, Bobby Penrod, Cheryl Spotts, Shawn Tidey, Barbara Doyle, Brittney Perkins, Christine Johnson, James Dishman, Sally Barbo, Ellen Brace, Jean Dehaan, Patrick Decker, Kathleen Caldwell, Donald Eichstaedt, Chris Thibodeau, Shannon Faaa, Beth Striegle, Benjamin D. Phenicie, Kathy Jacksey, Sandra Helzerman, Lisa Luks, Sandra Bonkowski-Koelzer, Amy Waldo, Cari Wiersema, Susan Sterner, Lisa Finn, Ted Vandenberg, Patricia Pickelmann, Michael Koenes, Susann Young, Marvin Yatooma, Joseph Cunnings, James Sterner, Shannon McClintock, Shelly Moreland, Jared Allen, Janine Bradbury, Karmen Kinsey, David Richardson, Deborah Barone, Sheila Pomaranski, Lori

Bucalo, Constance Hill-Coryell, Meryl Way, Jane May, Bonnie Kendall, Jennifer Kalee, Serena Schwartz, William Hamlin, Amy Goodrich, Nancee Mooney, Michael Dietz, Mary Henman, Stencil Douglas, Martha Radtke, Maria Vulaj, Alex Yarber, Julie Meredith, Ron Foster, Andrea Dumitrescu, John Chapin, Glenn Fye, drkew1@comcast.net, Steve Paquette, Meghan Reckling, Anna Graziosi, Barbara Harburg, John Harburg, Steve Cencich, Anne Langlois, Keith Eichholz, Patricia Fuson, Greg Kett, Nick Kamps, Marilyn Pavlov, Anita Spehar, Ken Stults, Cyndy Ross, Eric Gerwin, Robert Esselink, Bryan Boyl, Susan Rockwell, Martin William, Laurie Katerberg, Susan Watrous, Katie Valencia, Mary Alstead, Cynthia Pettit, Agnes Marko, Kathleen Walega, Wanda Kett, Wanda White, David Thomas, Octavian Dumitrescu, Kathleen Haller, Dean Schrauben, Pat Smith, Shelly Mason, Carol Towns, Saralee Rehkopf, Nancy Dyer, Carol Dukarski, Gary Gerds, James Ashby, Seth Vankoeving, Robert Goryca, Sarah Springer, Jc Bradley, Stephen Lance, Randy Rice, Kathy Yesh, Frank Blake, Beth Anderson, Daniel Dobbins, Devora Dumitrescu, Thomas Berta, Kris Mahoney, Edward Kehoe, Cecile Jean, Michael Laethem, Gloria Hensley, Nita Kitson, Joe Michaels, Denise Thornton, Annette Lebaron, Marsha Young, Brian Young, Joe Torrice, Susan Moss, Gayle Adams, Shannon Kilpela, Joann Mehki, Dianne Schley, Mary Vaughan, Paul Potter, Erin Rockwell, Dawn Steffes, Timothy Quinn, Warren Patton, Kristina Smith, Leonard Knotwood, David Stamp, Diane Sheppard, Kahleen Tenaglia, Bruce Atherton, Jola Britton, Susan Childers, Jennifer Corwin, Lesley Heinonen, Ty W. Krauss, Andrew Warber, Glenn Laffy, Hank Levine, Geri Cerilli, Gregg Kebler, Johannah Smith, Margaret Urban, Taylor Almy, Michelle Dekuiper, Rebecca Marsland-Hill, Daniel Boes, Mark Reiman, Steven Legal, James Bliss, Cindy Ankoviak, Dorthea Harvey, Nathan Tithof, Angela Eckles, Don Kebler, Beverly Postema, Nathaniel Bean, Sarah Schrottenboer, Steven Van Houten, Marie Gravel, Paul Lubienski, Joseph Coyle, Angeline Smith, Jessica Sharpe, Trisha Cuellar, Gina Brooks-Kwolek, Christine Winowiecki, Charles Weddle, Patty Steffes, Linda Martin, Deanna Cypher, Lisa Palmer, Dave Ruhle, Rebecca Dunlavy, Robert Payne, Sharon Hile, Curt Michaels, Pamela Bycraft, Sarah Husman, Sean Kuhl, Marie Barrett, Heather Ciantar, Steve Kincius, Earl Tipper, Dennis Little, Miller Marilyn, Judith Burns, Ross Greenstein, Beth Johnson, Floyd Behmlander, Gloria Folding, Yvonne Rush, Patrick Collings, Dennis Ross, Gina Brewer, Elaine S. Page, Anne Howarth, Jana Leining, Linda Nimmerguth, Kris Mcbride, Pat Schultz, George Jewett, Maureen Hill, Gloria Zapata, Dorothy Koprowicz, Joe Barge, Sandra Rogowski, Rick Morris, Erick Fair, Kim Corey, Nicholas Robison, Albert Maier, Susan Penegor, Todd Hyde, Lisa Zulcosky, Roland Johnson, Dianna Solmes, Joseph Riker, Tammy Beal, Kelly Farver, Stephen Ghostley, Patricia Denny-Diget, Lynnae Haveman, Julie Redinger, Amanda Horton, Robert Netzel, Connie Langeland, Gail Peura, Jodi Raymond, Susan Wieggers, Denise Wardosky, Patrick Devota, Jennifer Kittredge-Hageman, Karla Perez-King, Mary Jo Marchetti, Betsy Southern, No Change No Change, Rebecca Steele, Kelly Joseph-Tirador, Bronwyn Groeneveld, Patty Preuss, Mark Pallo, Dawn Vollmer, Shannon Setlock, Rachel Pridr, Ryan Anderson, James Barnard, Joel Hugen, Misty Vogel, Kathleen Nelson, Sarah Wyma, Jaime Pilbeam, Lacey Rabie, Lindsey Armstrong, Stephanie Debrabander, Noah Cecil, Esther Fenwick, Dawn Barnhouse, Janie Wakefield, Steve Tugan, Sharon Howdyshell, Dennis Howdyshell, Debbie Sewers, Amie Ackerman, Gerard Essiambre, Judith Martin, Donna Kauzlarich, Brook Burg, Rhea Rinke, Elaine Nabor, Carol Kauzlarich, Hall Derkin, Richard Kirby, Jason Fine, Stephen Sawdon, John Stokes, Patricia Roelofs, Carol Wooten, Mark Outman, Rep. Ann Bollin, Donald P McGaffey, Susan Topoleski, Connie Robinson, Mark Fosdick, Joseph Bridgman, Michele Blond, Todd Hoogland, Mike Dolan (Hamburg Township Clerk), Elizabeth Hundley (Livingston County Clerk), Jeff Witters, David Walus, Larry R. Hull, David G Halford, Lori Shaffer, Marcus Puste, Jason Welter, John Poelstra, Tammy L. Beal (Marion Township Clerk), Shaun Halaberda, Louis Urban, Madelyn Thomas, Kristie Walls, Leah Riley, Mark Van Den Branden, Tom Caldwell, Beth Donaldson, Jay Donaldson, Laura Shiel, Joy Bos, Theresa Carrier-Torrealba, Yvonne Black, Barbara Giles, Sandra Lafond, Kim Zapor, Paula Seiter, Mark Redford.

Persons Offering Comment at Public Hearing Comments in Opposition to Ruleset

Kristina Karamo, Gabriel Rees, Matthew Rees, Valentin Dumitrescu, Jaki Lovrinca, Ryan Roberts, Rob Remelius, William Lethemon.

No Hearing Comments Offered in Support of Ruleset.



42ND DISTRICT
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MICHIGAN HOUSE OF REPRESENTATIVES

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Oct. 1, 2021

Secretary of State Jocelyn Benson
Richard H. Austin Building
P.O. Box 30204
430 W. Allegan St.
Lansing, MI 48909

Secretary Benson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MOAHR 2021-62 Online Absent Voter Ballot Applications

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ann M. Bollin". The signature is cursive and somewhat stylized.

Ann Bollin
State Representative
42nd House District

CC: Jonathan Brater



October 1, 2021

Michigan Bureau of Elections
PO Box 20126
Lansing, MI 48901

By email (elections@michigan.gov)

Re: PROMOTE THE VOTE'S WRITTEN COMMENTS IN SUPPORT OF PROPOSED RULES

To Whom it May Concern:

Promote the Vote ("PTV") is a nonpartisan coalition of pro-voter organizations and voting rights advocates. We submit the below written comments in support of proposed rule sets 2021-61 ST and 2021-62 ST. We also urge the Secretary of State, pursuant to MCL 168.31, to expand the rules to help ensure that all Michiganders may exercise their constitutional right to vote by absentee ballot.

By law, as enacted by the Michigan Legislature, the Secretary is charged with overseeing "the conduct of elections and registrations" in Michigan. MCL 168.31. As such, the Secretary has the authority to promulgate rules. The Secretary's views on these matters are "entitled to respectful consideration and, if persuasive, should not be overruled without cogent reasons." In re Complaint of Rovas Against SBC Mich., 482 Mich. 90, 108 (2008). No such "cogent reasons" exist to warrant setting aside the Secretary's proposed rules or our recommendations below. The Secretary would not be acting "in excess of [her] statutory authority or jurisdiction," Clam Lake Township v. LARA, 500 Mich. 362, 372 (2017), or taking a position that "conflict[s] with the Legislature's intent as expressed in the language of the statute[s] at issue," Younkin v. Zimmer, 497 Mich. 7, 10 (2014) (internal quotation omitted).

Neither the Secretary's proposed rules, nor our recommendations, are in conflict with the language of the statutes at issue. Furthermore, it makes no difference if some specific aspects of the rules are not expressly contemplated by statute, which is invariably the case when agencies move to implement the laws they administer. Instead, as the U.S. Supreme Court has emphasized, "[t]he question is always whether the agency has gone beyond what [the legislature] has permitted it to do." City of Arlington v. FCC, 133 S.Ct. 1863 (2013). The Secretary would thus exceed her powers were she to attempt to regulate matters unconnected to her statutory charge, which is not the case here. Railway Labor Executives' Ass'n v. Nat'l Mediation Bd., 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc) ("Were courts to presume a delegation of power absent an express withholding of such power, agencies would enjoy virtually limitless hegemony."). Here, rule sets 2021-61 ST and 2021-62 ST, as well as our

recommendations for revising and expanding these rules, deal exclusively with “the conduct of elections and registrations,” MCL 168.31, and therefore must be afforded due deference. Mich Emp't Relations Comm v Detroit Symphony Orchestra, Inc., 393 Mich 116, 124 (1974) (noting that any judicial review “must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding”).

I. Promote the Vote Strongly Supports Providing Uniform Standards For Determining Signature Validity and Urges the Secretary to Expand 2021-61 ST to Provide Greater Protections for Registered Voters.

Promote the Vote strongly supports 2021-61 ST, which is designed to provide clerks with uniform standards for determining the validity of signatures on absent voter applications and ballot envelopes. Providing uniform, enforceable guidance for determining signature validity - starting with a presumption of validity - will go a long way towards ensuring that all Michiganders are able to fully exercise their constitutional right to vote by absentee ballot.

A. A Presumption of Validity Is the Right Place to Start, as the Government Should Not Interfere With the Fundamental Right to Vote Without Clear and Specific Evidence.

PTV strongly supports rule 168.22(1). This proposed rule does not conflict with the statutory requirement that a signature on an absent voter application or an absent voter ballot must match the signature on file. Rather, the rule clarifies specific issues not addressed by the statute. Rule 168.22(1) specifies where the signature verification process should begin, i.e, with a presumption that a voter's signature is their genuine, valid signature. This presumption dissipates if a voter's signature “differs in multiple, significant, and obvious respects from the signature on file.” A presumption, as that concept is well understood in the law, is simply a starting point. In this instance, the presumption ensures a government official has specific evidence before silencing the voice of a registered voter in Michigan.

The process of evaluating each voters' signature must begin somewhere. And because the voters of this state have a constitutionally-protected right to vote by absentee ballot, Mich. Const. 1963, Art. II, § 4(1)(g), a presumption of validity is the right place to start. Promote the Vote is unaware of any other state with the same constitutionally-protected right. This fact must be taken into consideration when comparing Michigan's signature verification system to that of other states.

Any contention that the proposed rules are intended “to sacrifice election security” is wholly without merit. Michigan's elections - including the November 2020 presidential election for which the Secretary's almost identical signature verification guidance was in place - have time and time again been proven secure. See, e.g., Michigan Senate Oversight Committee, Report on

the November 2020 Election in Michigan

(<https://www.misenategop.com/oversightcommitteereport/>). Michigan must not infringe upon the constitutional rights of voters based on false and unsupported claims that Michigan's voting system is insecure.

In opposing this rule, some parties have claimed that the Secretary's "nearly identical guidance," issued in October 2020, was struck down by the Court of Claims as "illegal." While it is true that this guidance was struck down by the Court of Claims, it was not struck down because of any defect in the substance of the guidance. Rather, the Court found the guidance to be a "rule" that should have been promulgated pursuant to the state's Administrative Procedures Act. Opinion and Order Granting Summary Disposition in Part to Plaintiffs and Granting Summary Disposition in Part to Defendants, Genetski v. Benson, Michigan Court of Claims, No. 20-000216-MM, Mar. 9, 2021 at 14. This is the exact process that the Secretary is engaged in now.

Finally, PTV notes that rule 168.22(1) should apply equally to signatures on absent voter ballot envelopes. As written, the proposed rule provides: "[i]n determining for purposes of section 761(2) of the Michigan election law . . . whether a voter's absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter's signature on file, signatures must be reviewed beginning with the presumption that the voter's signature is his or her genuine, valid signature." Section 761(2) pertains only to signatures on absent voter ballot applications. In order for the presumption of validity to apply equally to signatures on absent voter ballot envelopes, section 766 should be referenced in the rule as well.

B. The Proposed Rule Should Be Revised to Direct Elections Officials to Treat Signatures as Valid Under Certain Circumstances.

R 164.24(1) provides that "[e]lections officials shall consider the following as possible explanations for the discrepancies in signatures," and then lists reasons for the possible discrepancies. We recommend clarifying this provision by stating that election officials should treat a voter's signature as valid if the officials determine that any discrepancies are a result of the enumerated examples. For example, R 164.24(1) could state: "A voter's signature should be treated as valid if an election official determines that the discrepancies are the result of the following"

In addition, as written, R 164.24(1)(d), which references signatures written "in haste," appears to only pertain to signatures on absent voter ballot envelopes or provisional ballot envelopes and not to signatures on absentee ballot applications. As signatures on absentee ballot applications can also be written in haste, PTV recommends simply saying "signature" in this provision, rather than referring specifically to "[t]he signature on the absent voter ballot envelope or provisional ballot envelope."

C. To Strengthen the Notice Provisions in this Proposed Rule, It Must Provide for MVIC to Include Timely Information About Signature Rejections and Establish Reporting Requirements to Ensure that Clerks Are Complying with the Rule's Notice Requirements.

PTV urges the Secretary to include a provision requiring the Michigan Voter Information Center ("MVIC") to include timely information about signature rejections. MVIC is the online portal that voters use to check the status of their absentee ballot applications and their absentee ballots. MVIC shows when a clerk receives a voter's absentee ballot application, when the clerk sends the voter their absentee ballot, and when the clerk receives the voter's completed absentee ballot. To further strengthen the notice provisions contained within this proposed rule, MVIC should also clearly indicate any signature issues with a voter's application or ballot and how and by what deadline the voter may cure these issues.

In addition, to ensure compliance with the notice requirements in the proposed rule, PTV urges the Secretary to amend the rule to create a requirement that clerks document notice to voters in the Qualified Voter File.

D. The Proposed Rules Should Be Amended to Clarify Certain Requirements, Extend the Cure Deadline Beyond Election Day, and Standardize the Cure Process.

Promote the Vote commends the Secretary for requiring city and township clerks, in rule 168.25, to immediately review absent voter ballot applications and envelopes received less than five calendar days prior to an election and to immediately contact a voter whose signature is rejected. This provision will go a long way towards ensuring that all registered voters attempting to exercise their constitutional right to vote by absentee ballot will be able to do so.

Promote the Vote also notes that "immediately" may mean different things to different election officials. See, e.g., Election Officials' Manual, "Chapter 6: Michigan's Absentee Voting Process" at 7

(https://www.michigan.gov/documents/sos/VI_Michigans_Absentee_Voting_Process_265992_7.pdf) (defining "immediately" in the context of issuing absent voter ballots to mean within 24 hours). Therefore, Promote the Vote urges the Secretary to define that term in the rule to ensure that voters receive adequate notice and opportunity to cure.

Furthermore, by providing in rule 168.26 that "[a] voter may cure a missing or mismatched signature up until the close of polls on Election Day," the proposed rule fails to afford due process to those voters whose signatures are rejected on or close to Election Day. For example, even if a clerk immediately reviews a ballot envelope that is returned at 4 p.m. on Election Day, and even if that clerk immediately reaches the voter by phone to tell her that her signature has been rejected, the voter has an unreasonably limited amount of time within which to cure the issue by the 8pm deadline. Therefore, PTV urges the Secretary to amend this rule to provide

that any voter whose signature is rejected on or close to Election Day has until six days after the election to cure any signature issues. The legislature has already determined that six days is a reasonable cure period, as it is the existing cure period for provisional ballots under MCL 168.813. Amending this rule to provide that voters with signature issues may cure up until six days after an election will ensure that all voters will have due process before being denied their constitutional right to vote by absentee ballot.

In addition, rule 168.26 provides that voters may cure signature issues “by providing a signature on the absent voter ballot application or ballot envelope . . . or by providing a signature on another form or method as specified by the election official on their website or in the election official’s office.” Allowing each election official to determine the way in which signature issues may be cured will lead to cure processes which vary by jurisdiction, are unequal and potentially unlawful, and which threaten to disenfranchise voters. For example, some local clerks may allow voters to cure signature issues remotely - by faxing or emailing a new signature - while others may require voters to come to their office to do so. And, as has unlawfully been done in the past, other clerks may require voters to appear in the office with photo identification to cure a signature issue.

Therefore, Promote the Vote urges the Secretary to provide uniform procedures and uniform forms, such as a cure form, to ensure that Michigan voters have a single, simple, straightforward, and readily-accessible system for curing any signature issues. Uniform procedures and forms will ensure Michigan has an equally-accessible system for curing signature issues throughout the state. Finally, all standardized cure forms must be available on the Secretary’s website, as not all city and township clerks have the ability to post such forms on their websites.

As explained more fully above, amending the proposed rule in these ways is well within the Secretary’s authority, as it fits squarely within her obligation to oversee “the conduct of elections and registrations.” MCL 168.31. Because the Secretary would not be acting “in excess of [her] statutory authority or jurisdiction,” Clam Lake Township v. LARA, 500 Mich. 362, 372 (2017), or taking a position that “conflict[s] with the Legislature’s intent as expressed in the language of the statute[s] at issue,” Younkin v. Zimmer, 497 Mich. 7, 10 (2014) (internal quotation omitted), no grounds would exist for setting aside such revisions.

II. Promote the Vote Strongly Supports the Availability of an Online Absentee Ballot Application and Urges the Secretary to Expand 2021-62 ST to Ensure Online Access to a Printable Application as Well for Voters Who Prefer To Apply by Mail.

The availability of an online application for absent voter ballots for all registered voters in Michigan is critical. Our state constitution provides the right to an absentee ballot for all registered voters, Mich. Const. 1963, Art. II, § 4(1)(g), and Michiganders overwhelmingly support making absentee voting more accessible. Robust access to an online application is

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necessary to ensure that all registered voters in Michigan can fully exercise this constitutional right without undue burden. Indeed, registered voters continue to use absentee voting at extraordinarily high rates - over 60% - and this rule would codify an important option that voters currently use to do so.

Finally, while providing an online application option is crucial, other voters may prefer to apply for an absentee ballot by mail. To facilitate this process, Promote the Vote encourages the Secretary to add to this rule a requirement that the Secretary provide a pdf of the application form on the Secretary's website. Again, this is critical because not all city and township clerks have the ability to post such a form on their websites.

III. Conclusion

Michigan's absentee voting system has existed for generations. However, for far too long, it was only available to certain voters. In 2018, Michigan voters changed the law to give all registered voters a full and equal constitutional right to vote by absentee ballot. This change ended years of discrimination and exclusion of some registered voters from the benefits of absentee voting. Comments submitted by some of the rules' critics represent a full assault on the system of absentee voting that Michigan has enjoyed for years - a system that these critics took no issue with when it was unequal and exclusionary. Now that millions of voters in Michigan - voters of all ages, races, religions, and political persuasions - are exercising their constitutional right to vote by absentee ballot, these critics want to make it harder to do so by erecting numerous, burdensome hurdles. The effect will be to once again return to an unequal system of absentee voting that excludes large swaths of our fellow Michiganders.

As stated above, Promote the Vote commends the Secretary for promulgating these rules, which will help ensure that all Michiganders may exercise their constitutional right to vote by absentee ballot and urges her to expand them to provide greater protection for registered voters. Voting is a fundamental right - a right preservative of all other rights - and we must do everything we can to protect it.

Sincerely,



Shira Roza
Voting Rights Manager



THE SENATE
STATE OF MICHIGAN

RUTH A. JOHNSON

14TH DISTRICT

P.O. BOX 30036

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senrjohnson@senate.michigan.gov

October 1, 2021

Via Electronic Mail to: Elections@Michigan.gov

Michigan Bureau of Elections
PO Box 20126
Lansing, MI 48901

Re: Public Comment on Proposed Ruleset 2021-61 ST

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

MCL 168.761 states in part that:

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

While MCL 168.766 states in part that:

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

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

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

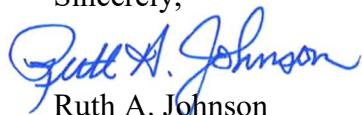
Finally, the proposed rules also provide for a clerk to utilize hypothetical factors such as “the possibility that the voter is disabled” without any due diligence or contact with the voter to make such a determination. This goes beyond the authority of the administrative rulemaking process and seeks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

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

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

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

Sincerely,



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

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

VIA Electronic Mail

October 1, 2021

Michigan Secretary of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, MI 48918
Elections@Michigan.gov

Re: Republican National Committee Comment Regarding Proposed Rule MCL 168.21-26

The Republican National Committee (“RNC”) submits this comment with respect to the notice for proposed rules to the Michigan Administrative Code, specifically the Administrative Rules of Signature Matching Standards for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes, or what can be summarized as your office’s “signature verification nullification” proposal. The RNC is the national political committee responsible for managing the party’s business at the national level, supports Republican candidates for public office, and represents the party’s interests in protecting election integrity and voting rights. The RNC has a specific interest in ensuring all state election laws are fair, equal, and maintain adequate safeguards, including in Michigan. The RNC opposes the new rule proposed by the Michigan Department of State.

Background

Michigan law requires voters to sign applications for absent voter ballots in order to receive a ballot. MCL 168.759, MCL 168.761. In addition, voters who choose to vote by absent voter ballot are required to sign their absent voter ballot return envelopes in order to have their ballots counted. MCL 168.764a. Under Michigan law, signatures on applications or return envelopes that do not “agree sufficiently” with those on file must be rejected. MCL 168.761(2).

Secretary Benson has consistently, and unfortunately, made clear that she does not want serious or meaningful signature verification to take place, and instead will use all tools at her disposal—and even some outside her legitimate scope of authority—to attempt to nullify verification provisions. The RNC strongly disagrees with this politicization of the Secretary of State’s office, as well as the disregard for meaningful absentee integrity safeguards in the form of proposed rules like those discussed below that undermine the rule of law by sending the message that in Michigan signatures will be presumed valid, even if the majority of information indicates that they are not.

Last year, Secretary Benson ramped up her attempts at signature verification nullification under the guise of guidance for local clerks in a document entitled “Absent Voter Ballot Processing: Signature and Voter Notification Standards,” which manufactured presumptions that the signatures on an absent voter ballot application or return envelope are valid. As Secretary Benson is fully aware, her efforts to create from whole cloth such presumptions of signature validity were struck down by the Michigan Court of Claims as violating the Administrative Procedure Act, with the Court noting that “the presumption is



found nowhere in statute.” *Genetski v. Benson*, No. 20-000216-MM, 2021 WL 1624452, at *6 (Mich. Ct. Cl. Mar. 09, 2021).

Proposed R 168.22 is Unworkable and Inconsistent with Michigan Statute

Apparently undaunted by her setback in the *Genetski* case, Secretary Benson is at it again, ignoring the provisions of Michigan law requiring sufficient agreement with signatures on file and instead attempting to create a new, initial presumption of signature validity in this newly proposed R 168.22 and 168.23. This presumption is unworkable for any sort of serious verification effort, and in practice will serve to nullify the verification requirement under MCL 168.761(2).

Proposed Rule 2(2) creates a new standard that “[a] voter’s signature should be considered invalid only if it differs in multiple, significant, and obvious respects from the signature on file.” (Emphasis added). Under this proposed rule, if a signature differs in an obvious and significant manner from the one on file, it would still be considered valid because there are not multiple differences. In other words, even a signature with one huge significant and obvious difference from the one on file would have to be treated as valid under the proposed rule. This, of course, is at odds with the statutory standard of sufficient agreement and is not only a solution in search of a problem,¹ but also is a solution that will invite and enable mischief. A simple edit to this proposed rule that would make it closer to being in line with Michigan law would be to replace the word “and” with “or” so the rule would then read: “(2) A voter’s signature should be considered invalid only if it differs in multiple, significant, or obvious respects from the signature on file.”

Proposed R 168.23 Creates a “1 Redeeming Quality” Loophole for Fraud

For a proposed regulation to be consistent with Michigan law, it should require an evaluation of multiple characteristics to determine if signatures agree sufficiently. An example of an approach that would be consistent with Michigan’s statutory requirement is Colorado’s two-step analysis of a signature’s broad and local characteristics. This thoughtful approach promulgated by Colorado does not rely upon presumptions, but instead acknowledges that “verification plays an important role in our elections because it ensures that only those individuals eligible to vote have their vote counted.”²

In contrast to the Colorado two-step analysis verification approach, and to the requirement in Michigan law, Secretary Benson’s Proposed Rule 3(1) mandates that a signature must be treated as valid if there are any “redeeming qualities.” That would mean that if there were nine factors which indicate a signature is fraudulent, but just one factor – such as one letter in a signature matches one letter in the signature on file – that one “redeeming quality” would mean that the signature must be treated as valid. In fact, the proposed Rule goes on to spell out in part (d) that the signature must be treated as valid even if only the first letters of the first and last names match. This made-up approach of relying upon one letter for verification is not something that could with a straight face be described as any sort of actual verification and/or checking for sufficient agreement. We urge the Secretary to scrap this whole proposed rule section and instead adopt a serious verification process based upon Colorado, where

¹ No evidence has been presented to indicate that valid signatures are being disregarded through the verification process, so this effort to replace verification with a presumption is created for no reason.

² See Signature Verification Guide, COLO. SEC’Y OF STATE (2018), <https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf>.

multiple objective factors such as the type of writing, the speed of writing, overall spacing, overall size and proportions, slant of writing and spelling are all examined.

Conclusion

Secretary Benson's insistence here on getting rid of any sort of serious verification and instead creating a presumption of signature validity is not only incompatible with the statutory requirements of MCL 168.761(2), but also raises the question of why she is so focused on nullifying Michigan law and eliminating effective signature verification?

The Republican National Committee is committed to ensuring the fundamental right for U.S. Citizens to vote is protected. Part of that commitment includes instilling confidence in the electoral system. Unfortunately, these proposed rules are nothing more than a signature verification nullification proposal that will deeply undermine confidence in Michigan's electoral process.

Sincerely,

A handwritten signature in black ink that reads "Ronna McDaniel". The signature is written in a cursive, flowing style.

Ronna McDaniel
RNC Chairwoman

Copy to (via email only):

Michael Brady
Chief Legal Director, Michigan Department of State
bradym@michigan.gov

Jonathan Brater
Director, Michigan Bureau of Elections
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September 30, 2021

VIA E-MAIL elections@michigan.gov

Michigan Bureau of Elections
P.O. Box 20126
Lansing, MI 48901

RE: Comments on Rules 2021-61 ST and 2021-62 ST

Dear Friends,

Disability Rights Michigan (DRM) is the independent, nonprofit, nonpartisan organization mandated to provide information and advocacy to people with disabilities in Michigan.

DRM is pleased to comment on Rules 2021-61 ST and 2021-62 ST. People with disabilities experience barriers to exercising their hard-won freedom to vote at twice the level faced by voters without disabilities. They are especially sensitive to increased paperwork requirements, additional ID requirements, barriers to obtaining and casting absentee ballots, requirements that rely on easy access to transportation or physical access to public offices, or amplification of selective, partisan interference with the counting of ballots.

Viewed in this context, proposed rule 2021-61 reduces barriers to voting for people with disabilities. In particular, the presumptive validity of voter signatures, the ability to use secure electronic signatures from drivers' license records, the consideration of disability in reviewing differences in signatures, and the relatively broad range of opportunities to cure signature differences can make successful voting more likely for people with disabilities. We assume the range of cures includes the opportunity to offer reasonable accommodations as required by federal and state law in providing or curing defects in signatures.

Likewise, proposed rule 2021-62 reduces barriers to access by providing for a standardized online application which includes the opportunity to use a stored digital signature.



Both rules could be strengthened by explicitly acknowledging the possibility that voters may request accommodations and could engage in an interactive process to determine specific reasonable accommodations in the voting process.

Thank you for the opportunity to comment on these proposed rules. Please contact me in our Lansing office or at mmcwilliams@drmich.org if you have any questions or need further information.

Very truly yours,

Mark McWilliams

Mark McWilliams, Attorney
Director, Public Policy and Media Relations
(he, him)

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