

# Michigan: 2020 Election Policies & Practices

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## I. Contemporary Controversies in Michigan

### A. Delays in Counting the Vote

Although Michigan has an [7.2% chance](#) of being the state that decides the election<sup>1</sup>, it is not [expected](#) to report results for the 2020 general election until the Thursday or Friday after the election. This is largely because the state has done little to update its counting procedures for absentee ballots, even while [anticipating a record-breaking](#) number this election. Absentee ballots are expected to make up [60-70%](#) of all votes in the state, with 3.1 million [requested](#) and 2.6 million already [returned](#). This explosion in absentee voting is likely attributable to the coronavirus pandemic, as well as an expansion of voting accessibility due to a series of 2018 [ballot proposals](#) allowing all eligible and registered voters to request absentee ballots without providing a reason. However, despite expecting up to [350% of the number](#) of absentee ballots in this election compared to the 2016 general election, Michigan election officials are not [statutorily](#) permitted to pre-process mail-in ballots until the day before the election.

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<sup>1</sup> As of November 1st.

While this is an improvement on previous law, which did not allow absentee ballots to be pre-processed until election day, it still constitutes a much smaller pre-processing period than the [up to seven](#) days allowed by many other states. And, while Michigan did [extend](#) work shifts for counting absentee ballot, this alone will likely not be enough to speed up the canvassing process.

Further, if a recount in Michigan is necessary, it may be conducted problematically. Recounts in Michigan are [automatically triggered](#) if the vote count is within 2,000 votes. Additionally, candidates can petition for a recount in certain counties if they have a good-faith belief that, but for voter fraud or mistake, they would have had a reasonable chance of winning the election. However, precincts with ballots that are inaccurately counted<sup>2</sup> [are ineligible](#) to be recounted, even though one might expect such precincts to be the priority during a recount. Since voting centers are expected to grapple with incredibly high absentee voting this election, opportunity for errors that would make precincts ineligible for a recount may be increased. In Detroit, for example, [72% of voting centers](#) reported inaccurate ballot counts during the August 4th primary. Marking these precincts as ineligible for recount could tip the election.

## B. Rejection of Mail-in Ballots

In 2016, the presidential race in Michigan was [decided](#) by 10,704 votes. In the 2020 August primary, only ten fewer mail-in ballots than that number were [rejected](#), mostly due to lateness, signature mismatch, or missing signature. It is likely that even more mail-in ballots will be rejected in the 2020 general election, as almost twice as many Michiganers are expected to vote by mail than did in the August primary. If a close race, it is possible that the rejection of mail-in ballots could be a factor that could swing the state.

While a decision by a Michigan lower court would have allowed ballots postmarked by November 3rd to be counted so long as they were received up to two weeks after election day, this decision was recently [overturned](#) by a Michigan appeals court. In other words, no change in Michigan election procedures has been effected to reduce the number of ballots rejected for lateness. This is unfortunate as 60% of the ballots rejected in the August primary were [rejected](#) for lateness.

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<sup>2</sup> If the following three numbers don't match, absentee ballots in a precinct are considered inaccurately counted: The number of absentee ballots recorded in the precinct's poll book, the number of absentee ballots from a precinct tabulated in the counting machine, and the number of counted ballots held in the precinct's ballot container.

Additionally, the problem of late ballots could be compounded by [critical mail delays](#) that have hit some Michigan cities, including Detroit, as well as [a failure](#) by Detroit's city clerk to send some absentee ballots out on time. However, the Michigan legislature did pass a bill on September 24 to reduce the number of absentee ballots rejected for other defects. This [bill](#) requires election officials to notify voters within 48 hours of determining that a signature does not match, or to notify voters by 8 p.m. the day before the election if the signature is contested less than 48 hours before election day. The enactment of this bill will likely allow more ballots with missing signatures or signature mismatches, which [composed](#) 20.8% of rejected ballots in the August primary, to be remedied.

### C. Voter Intimidation

Voter intimidation in Michigan has already occurred. On October 1st, 2020, Michigan's Attorney General [charged two](#) political operatives with voter intimidation for orchestrating a series of robocalls aimed at suppressing the vote in the November general election. These robocalls presented false and misleading information about mail-in voting, including [claims](#) that personal information submitted on mail-in ballots could be used to execute outstanding arrest warrants or to collect unpaid debts. This was not the first instance of alleged voter intimidation in Michigan. In 2016, the Michigan Democratic Party [filed](#) claims that the state's Republican Party and the Trump campaign were planning to conspire to prevent minorities from voting. In the complaint, the Democratic party [cited](#) pledges by Trump supporters "to descend upon polling places in 'certain areas' where many minority voters live in order to interfere with their efforts to exercise the franchise." Additionally, some Michigan clerks and Democrats [fear](#) that poll challengers descend upon polling places and engage in intimidating conduct, including frivolously challenging ballots. This may have [already](#) happened on November 2nd, the first day of absentee ballot processing, as two poll challengers were removed for causing disruptions. One of these challengers was [expelled](#) for wearing a horror movie mask, using racist language, and shouting that the process was "crooked", while the other was removed for refusing to properly wear her mask.

Governor Gretchen Whitmer has recently [spoken out](#) about voter intimidation, stating that attempts to disseminate false election information to voters, videotape voters, or block access to polling places "will not be tolerated". Additionally, police will be [patrolling](#) outside polling locations on election day in Warren in order to be ready to respond to attempted voter intimidation or violence. While Michigan's Secretary of State attempted to address some voter intimidation concerns by

[banning](#) the open carrying of guns at polling places, this directive was [blocked](#) on October 28th by a Michigan Court of Claims judge. This ruling may reraise the spectre of voter intimidation in a state where “self-styled” militia groups have [shown no qualms](#) about carrying their guns in public spaces, such when they carried semi-automatic weapons into the Michigan state house to protest the state’s stay-at-home orders. Additionally, there is a dearth of relevant case law about what constitutes voter intimidation in Michigan, or what remedies may be available if it occurs. Between instances of voter intimidation that have already occurred, [the presence](#) of armed far right extremist groups, and President Trump’s [directive](#) in the first presidential debate for his supporters to “go into the polls and watch very carefully,” voter intimidation in Michigan may pose a serious issue on election day.

## II. Election Calendar

- **September 19:** Absentee ballots available for pickup at county clerk’s Office.
- **September 24:** Mailing out of absentee ballots begins.
- **October 19:** End of online and mail-in voter registration.
- **November 2:** From 10 a.m. to 8 p.m., pre-processing of absentee ballots begins.
- **November 3:** General Election. Polls are open from 7 a.m. to 8 p.m.
  - Absentee ballots must be [received](#) by election day to be counted.
- **November 6:** Expected date by which the bulk of Michigan’s results will be [tabulated](#).

## III. Voter Registration in Michigan

As of October 24, over eight million people have registered to vote in [Michigan](#). The online and mail-in voter registration period ended on September 24, but residents may register to vote in person until election day, November 3rd. In 2016, nearly 4.8 million Michigan residents [voted](#), representing 63% of the voting age population and 64.9% of registered voters.

## IV. Absentee Balloting

## A. Ballot Drop-Off and Collection

Absentee voters in Michigan may vote by mail [without an excuse](#). Over three million Michigan voters [requested absentee](#) ballots for the November general election and nearly two million have already returned their ballots. Michigan voters may either mail in their absentee ballots, [use](#) a drop box, or drop off their completed ballot at early voting [sites or](#) at their town clerk's [office](#). Michigan has a [website](#) that voters can use to locate drop box locations. In order to be counted, a mailed-in ballot must be [received](#) by election day. Additionally, while secrecy sleeves (inner envelopes) are [provided](#) when voter's request their absentee ballot, it is unclear whether lack of a secrecy sleeve would be a cause for spoilage.

Per [M.C.L.A. 168.764\(a\)](#), Michigan [allows](#) a member of a voter's immediate family or household to drop off mail-in ballots on behalf of the voter. Additionally, a Michigan state court [expanded](#) that class to anyone a voter chooses to render them assistance between 5:01 p.m. on the Friday before the election and Election Day. In that case, [Michigan Alliance for Retired Americans v. Benson](#), the court found that "in ordinary times, the [ballot collection prohibition] likely poses no constitutional issue. These are not, however, ordinary times." The court relied on lack of evidence supporting the existence of voter fraud, including "little evidence to suggest that fraud would increase with a larger pool of persons eligible to assist absentee voters."

## B. Signature Verification

In Michigan, election officials are [required](#) to compare the signature on the voter's mail-in ballot envelope with the "Qualified Voter File" to "determine the genuineness of [the] signature." Per Michigan's recent [guidance](#) on signature matching, a signature is deemed insufficient only if it has "multiple, significant, and obvious differences" from the signature on file. On October 7, 2020, Governor Gretchen Whitmer signed a new [bill](#) that requires election officials to notify voters within 48 hours of determining that a signature does not match. If the signature is contested less than 48 hours before election day, officials must notify voters by 8 p.m. the day before the election. Another recent bill would require election clerks to notify voters of signature mismatches and provide cure

opportunities until 10 days before the election is certified. That bill [was referred](#) to the Michigan House Committee on Elections and Ethics on July 23, 2020, but appears unlikely to pass before Election Day.

In response to a [lawsuit alleging](#) that Michigan lacks any uniform standards for reviewing signatures, Michigan Secretary of State Jocelyn Benson released [new signature verification guidance](#). This guidance set the standard that election officials should [presume](#) the intended voter signed their ballot unless there are “multiple, significant, and obvious differences” between signatures. This guidance also [includes](#) examples of matching and non-matching signatures, as well as a list of legitimate reasons, such as illness, that may cause a variation in one person’s signatures. Additionally, the guidance [instructs](#) that “[s]light dissimilarities [in a voter’s signature] should be resolved in favor of the voter whenever possible” and that the presence of “any redeeming qualities,” such as “distinctive flourishes” and “more matching features than non-matching features” should render the signature valid.

Michigan requires all new election clerks to undergo a two-day training that includes signature verification. The Michigan Bureau of Elections (MBE) offers an in-person refresher training during election years. For health and safety reasons, the 2020 training has mostly been provided through online courses on the state’s Elections eLearning Platform. The MBE provides training materials to jurisdictions primarily through the counties, although it works directly with the election clerks of larger jurisdictions. In this process, the digital signature in the state’s Qualified Voter File (QVF) is the first site of comparison, by law and in practice. During training of election clerks, the MBE recommends that clerks also use a second signature from the application for an absentee ballot or, in some cases, a third signature from the voter registration application (called the master card). In Detroit, clerks typically turn to physical records only if there is a question of mismatch.

Although some jurisdictions use temporary staff to support their signature matching process, temporary workers are not typically given the ability to make a final decision that a ballot signature is a mismatch. For example, jurisdictions may hire and train temporary staff to support the signature verification process, but only the election clerk for that jurisdiction, who undergoes formalized

signature verification training, can make a final determination that a signature is a mismatch, per a conversation with an election training specialist at the Michigan Bureau of Elections on 9/23/20. In Detroit, there are intermediate supervisors below the City Clerk who can declare a mismatch.

In addition to election officials, Michigan law [provides](#) that one appointed election challenger per eligible group may observe the conduct of the “absent voter counting board,” which tallies absentee votes on Election Day and the day before Election Day. If a challenger believes an absentee ballot was submitted by a person unqualified to vote in the precinct, the challenger may [challenge](#) that ballot. An election law specialist at the MBE for the past 15 years, however, reported that he was unaware of any requests to observe the signature verification process per se, and the procedures are unclear.

If a ballot envelope is missing a signature, a voter can [sign](#) the unsigned ballot in-person at the clerk’s office until the close of polls. If a ballot envelope suffers from a signature mismatch, there is no “cure” process set forth in law, but voters can submit a written request to spoil their original ballot and receive a replacement. Voters can [request](#) and receive a new ballot by mail until 2 p.m. on October 31, 2020, and in person at the clerk’s office until 4 p.m. on November 2, 2020. A proposed state bill, [HB 5991](#), would require clerks to notify voters of signature mismatch by 10 days before election certification and allow voters to cure the defect through a signature verification statement until three days before certification. The bill is not expected to pass before Election Day, as it has been pending in the Michigan House Committee on Election and Ethics since July without action.

In the August primary, around 10,700 ballots were rejected, representing .7% of all mail-in ballots. Of those, sixty percent were rejected for lateness, 13% were rejected for missing signature and 7.4% were rejected for signature mismatch. However, the Michigan legislature passed a [bill](#) requiring election officials to notify voters within 48 hours of determining that a signature does not match, or, to notify voters by 8 p.m. the day before the election if the signature is contested less than 48 hours before election day. Its enactment will likely allow more ballots to be remedied. Furthermore, Michigan statutorily [requires](#) ballot tracking. Tracking is [provided](#) by Michigan’s Secretary of State.



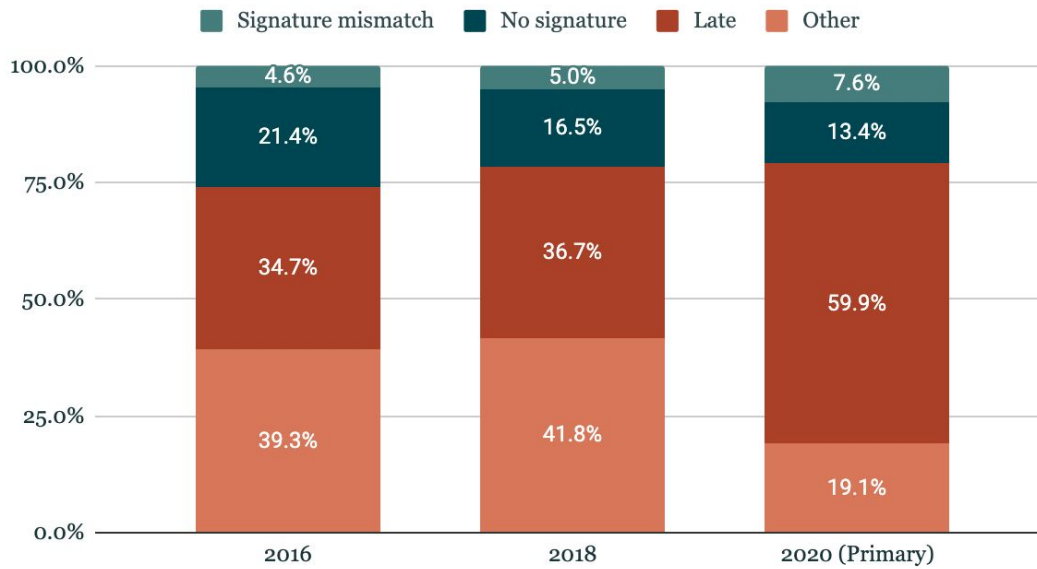
Additionally, BallotTrax provides tracking in [the City of Detroit](#), and Ballot Scout provides services to [Delta Township](#), and select other Michigan counties.

*Table 1: Michigan Vote-by-Mail (VBM) Rejection Rates*

	<i>Ballots received</i>	<i>VBM total</i>	<i>Total VBM rejections</i>	<i>Rejected for lateness</i>	<i>Rejected for missing signature</i>	<i>Rejected for signature mismatch</i>
<b>2016 General (#)</b>	4,874,619	1,260,218	6,171	2,140	1,319	283
<b>2016 General (%)</b>		25.85%	0.49%	34.7%	21.4%	4.6%
<b>2018 Midterm (#)</b>	4,341,340	1,061,835	6,013	2,207	990	300
<b>2018 Midterm (%)</b>		24.46%	0.6%	36.7%	16.5%	5.0%
<b>2020 Primary (#)</b>	2,520,850	1,600,000	10,694	6,405	1,438	787
<b>2020 Primary (%)</b>		63%	0.7%	59.9%	13.4%	7.4%

(2016 & 2018 EAVS data; 2020 data from [Michigan Secretary of State](#))

Figure 1: Reasons for ballot rejections



(2016 & 2018 EAVS data)

## V. Early Voting

Early voting in Michigan begins on September 24th, and continues through November 2nd. Voters may [cast](#) their ballots early by either delivering their absentee ballot to their election clerk’s office or filling out their ballot in-person at that office. Exact hours for in-person early voting varies from county to county.

As of October 19, more than 1.5 million voters [voted early](#), either by submitting an absentee ballot by mail or hand-delivering it to the appropriate site. In comparison less than 1.3 million voters [voted early](#) in Michigan in 2016. Sixty percent of early voting has so far [occurred](#) in eight counties that Clinton won in 2016.

## VI. Election Day

## A. Rules on Election Violence and Voter Intimidation

In [Michigan](#), it is a felony to, “influence, deter, or interrupt an elector while they’re giving their vote” using “bribery, menace, or other corrupt means.” While the law itself does not further specify what behavior is prohibited, the state’s Bureau of Elections has done so, [describing such](#) conduct by poll watchers and election challengers. Additionally, Michigan’s Attorney General has created a [hotline](#) for voters to report suspected cases of voter intimidation.

Michigan’s Secretary of State has also issued [guidance governing](#) the conduct of election challengers and poll watchers. This guidance [prohibits both](#) classes from approaching or talking directly to voters for any reason. If either violates this standard, they can be asked to leave by election officials, and, if they refuse, the election inspector “will call law enforcement.” And, although challengers are allowed to observe the processing of voters from behind the processing table, they must give precinct workers ample space to perform their duties and may not hinder or impede voters in any way. Further, challengers are allowed to challenge the registrations of voters, but must not do so indiscriminately so as to avoid voter intimidation. For example, challengers [may not challenge](#) an elector’s registration based on mere “impressions,” including ones based on the elector’s manner of dress, race, disability, inability to read or write English, need for assistance with voting, or lack of picture ID. Any challenger who is found to have challenged a qualified and registered elector for the purposes of annoying or delaying their vote is guilty of a [misdemeanor](#).

In the case of disruption at a polling location, [Michigan](#) grants the local board of election inspectors full authority to maintain order at polling places, which likely includes the power to invite law enforcement agents into polling places. Additionally, Michigan allows the governor to suspend “regulatory statutes” (i.e., rules issued by executive agencies) in an emergency. Depending on the state, regulatory statutes “may include statutes related to elections.” These types of emergency powers may grant state governors broad power to prevent or respond to electoral violence in addition to those we outline below. Likewise, courts may make a variety of emergency interventions in response to disrupted elections.

Voter intimidation in the 2020 election in Michigan has already occurred. On October 1st, 2020, Michigan's Attorney General [charged two](#) political operatives with voter intimidation for orchestrating a series of robocalls aimed at suppressing the vote in the November general election. These robocalls presented false and misleading information about mail-in voting, including [claims](#) that personal information submitted on mail-in ballots could be used to execute outstanding arrest warrants or to collect unpaid debts. This was not the first instance of alleged voter intimidation in Michigan. In 2016, the Michigan Democratic Party [filed](#) claims that the state's Republican Party and the Trump campaign was planning to conspire to prevent minorities from voting. In the complaint, the Democratic party [cited](#) pledges by Trump supporters "to descend upon polling places in 'certain areas' where many minority voters live in order to interfere with their efforts to exercise the franchise." To address some of these voter intimidation concerns, Michigan's Secretary of State even [banned](#) the open carrying of guns at polling places, even with a license. However, on October 28th, this directive was [blocked](#) by a Michigan Court of Claims judge.

## B. Rules Governing Poll Watchers & Election Challengers

Michigan designates [two entirely different positions](#), poll watchers and poll challengers, with different rights and responsibilities. Poll challengers have more rights than poll watchers. These challengers are appointed by state-recognized political parties, incorporated organizations, and political committees formed for the purpose of advocating for a particular ballot measure. Poll challengers, however, cannot be appointed by a candidate or group affiliated with a candidate. There can be no more than two challengers per precinct. Poll challengers must be registered voters in the state of Michigan and carry identification cards. Many poll watchers are [currently](#) being trained by a wide variety of groups, ranging from the ACLU to the GOP.

Poll challengers have significant latitude in their operation. They may observe the voting precincts and absentee voter counting board precincts and also examine voting equipment before and after polls are open. They may also observe the processing of voters; inspect the pollbook, registration list, or other materials; and remain in the precinct until the precinct board completes its work. Poll challengers may challenge, with good reason, any person's right to vote in the precinct, and they may also challenge the actions of election inspectors serving in the precinct. They may also report the

improper handling of a ballot by a voter or precinct official, and they may challenge any voter that was issued an absentee ballot who appears to vote in person on election day. That said, challengers are prohibited from “[disorderly conduct](#),” including drinking alcohol in the precinct, and may not speak to voters or use recording devices or in any way touch the voting equipment.

Poll watchers comprise a different group of poll observers. These watchers can be any interested non-candidate person who wishes to observe the integrity of the election. Distinctions between poll watchers and challengers include the provision that watchers do not need to be registered to vote in Michigan, are not permitted to challenge a person’s right to vote or the actions of the board, and are only permitted to observe until the polls close at 8PM.

### C. Poll Workers Recruitment and Training

The Michigan Secretary of State has [recruited more](#) than 30,000 poll workers. This number is likely to increase as poll worker applications are [open until](#) election day. All Michigan residents over the age of sixteen are [eligible to](#) become poll workers, so long as they are not challengers, candidates, immediate family members of a candidate, members of a local Board of Canvassers or convicted of a felony or election-related crime. Poll workers in Michigan are [paid at](#) least minimum wage. Training is conducted by each county’s election clerk, and additional training material is available on Michigan’s Secretary of State’s Website.

Since this is the first election in which many poll workers are working, [some town clerks are](#) worried about their reliability and training, especially in the face of potential voter intimidation. On the other hand, due to a new bill allowing poll workers to work shorter shifts, [some clerks are](#) optimistic they will commit fewer errors.

### D. Mask Rules

Election administrators in Michigan have [recommended](#), but have not mandated, that voters wear masks at polling places. For example, Governor Gretchen Whitmer [signed](#) an executive order in July 2020 that mandates masks in public. However, the [order](#) specifically exempts individuals who “[a]re at a polling place for purposes of voting in an election” from the mask requirement, due to “constitutional questions” [involved](#) in barring a qualified resident from casting a ballot.

### E. Arena Voting

The Pistons Performance Center will be used [as a Satellite Voting Center](#), where people will be able to register, drop off absentee ballots, and vote absentee on-site. While Satellite Centers allow voters to submit absentee ballots, they do not allow electors to vote directly there. [Michigan law only allows up](#) to six precincts at any one site and prohibits sites owned by for-profit businesses from serving as polling locations. Therefore, to allow the Pistons Performance Center to host actual voting precincts would require these restrictions to be temporarily waived.

## VII. Post-Election Period

### A. Grounds for Disqualification of Ballots

Ballots in Michigan may be [disqualified for](#) missing or invalid signature or for arriving after election day. For a ballot to be accepted in Michigan, it must be received by 8 p.m. on election day, November 3rd. Ballots are rejected if they are not signed or if there are multiple, significant, and obvious differences between the ballot signature and the electronic signature stored in the Qualified Voter File. [Per Michigan’s recent guidance on signature matching](#), a signature is deemed insufficient only if it has “multiple, significant, and obvious differences” from the signature on file. For more information on signature verification, see section III (B) above.

### B. Canvassing rules

In Michigan, election officials are only allowed to begin pre-processing ballots for ten hours on November 2nd, which may push out the final result of the election to days or weeks after November 3, 2020. Michigan's signature verification procedures could result in high numbers of rejected mail-in ballots. The process raises concerns because officials now must accommodate huge surges in ballots cast by mail in 2020 due to the coronavirus pandemic while navigating laws that anticipated much lower numbers of ballots.

Michigan officials are [anticipating a record-breaking](#) amount of ballots this year, with mail-in ballots expected to make up [60-70%](#) of all votes in the state. The pandemic is predicted to put immense strain on Michigan's election system, with the number of absentee ballot applications on track to hit [350% of the number](#) of ballots from 2016. Furthermore, since the 2016 election, Michigan has greatly expanded voting accessibility. In 2018, voters passed a series of [statewide ballot proposals](#) allowing all eligible and registered Michigan voters to request an absentee ballot without providing a reason and allowing same-day voter registration. With so many changes implemented, this November is set to be an eventful election season.

### ***Processing Mail-In Ballots***

Under [MCL §168.764a-b](#), voters must submit their marked absent voter ballots [before polls close](#) on November 3rd either by mail or hand-delivered to their city or township clerk. A lower court [decision](#) extending this deadline was recently [overturned](#) by the Michigan Court of Appeals, meaning that only ballots received by 8 p.m. election day will be counted.

Once election precincts receive the absentee ballots, they can employ one of two options: (1) the clerk may deliver the ballot to the absent voter's precinct, where it will be processed and counted by election inspectors, [MCL 168.765](#), or (2) if the city or township election commission has established an absent voter counting board ("AVCB"), then the ballot must be taken to the AVCB for processing and counting, [MCL 168.765a, 168.765d](#). AVCBs are dedicated [election counting boards](#) that meet at a separate location away from the polls and focus solely on processing absentee ballots under the supervision of election inspectors. For reporting purposes, AVCBs are precincts, so their results are reported separately from the precinct established for in-person voting; in contrast, ballots delivered directly to the absent voter's precinct are included as part of the precinct's total ([Elec. Offs.](#)

[Manual, Ch. 8](#)). On June 23, 2020, Governor Whitmer [signed into law](#) an amendment that gives municipalities the option to combine resources with other cities and townships in the county to create AVCBs whereas the law had previously only allowed AVCBs to serve an individual precinct.

According to [MCL §168.765a\(8\)](#), absentee ballots cannot be processed until 8:00 AM on Election Day. However, a bill with bipartisan support was [just signed into law](#) on October 6th, 2020, expanding work shifts for absentee ballot counting and [allowing municipalities](#) of at least 25,000 to process absentee ballots the day before the election from 10:00 AM to 8:00 PM. Processing an absent-voter ballot [requires](#) ensuring that various formalities are satisfied, including that the clerk has completed relevant portions of the return envelope and that the ballot stub number matches the number recorded for that voter. According to [MCL §168.766](#), the board of inspectors must then verify the voter's signature against their signature in their qualified voter file, registration record, or master card (depending on their method of voter registration). See the Healthy Elections Signature Verification report for more details on Michigan's verification process. If the signature is verified, the ballot is then removed from its exterior mailing envelopes and the ballot 'processing' is complete.

Only once an absent-voter ballot has been fully processed [can it be removed](#) from its secrecy envelope and placed into a tabulator for counting. Under [MCL §168.798c\(1\)](#), absentee ballots may be cast as paper ballots, ballot cards, or a combination thereof, depending on the precinct. If the ballot is received as a paper ballot, election inspectors are authorized to record the ballot on a paper ballot card that is then fed into the tabulator. These tabulators must automatically reject ballots that are 'overvoted' or blank per [MCL §168.795\(2\)](#) (consistent with tabulators used for in-person voting described in the next section). Per [MCL §168.809\(2\)](#), after the precinct or AVCB completes its vote count, a sealed statement of returns is reported to the county clerk, who may then provide an unofficial tabulation of the returns to the public, pending an official canvass by the county canvassing board.

### ***Tabulating the Vote***

Each Michigan County has the discretion to choose its own electronic voting system so long as it meets all of the rigorous requirements outlined in [MCL §168.795\(1\)](#). The statute also lays out that the system must include: (1) usage of paper ballots for tabulating purposes([§168.795\(1\)\(b\)](#)); (2) electronic tabulation equipment that automatically rejects all choices recorded on an elector's ballot if



the elector votes for more choices than they are allowed to (also known as overvoting)(§168.795(1)(c)); (3) electronic tabulating equipment that can reject a ballot if no valid votes are cast(§168.795(1)(g)); and (4) electronic tabulation equipment that can alert the elector if their ballot is spoiled and give them the opportunity to cast another ballot(§168.795(1)(c)). Additionally, the tabulators should also provide a method for them to be rendered ‘inoperable’ if vote totals are revealed before polls close per §168.795(2). Under [MCL §168.803\(2\)](#), a vote will only count if the elector places a mark properly in the predetermined area. Lastly, if, for whatever reason, the counting center is separate from the precinct and the ballot is being fed separately into the tabulator, a ballot that is rejected by the tabulator for being physically damaged or otherwise physically defective can be duplicated and re-fed [under MCL §168.798a](#). There are currently [three companies](#) that supply tabulators that meet these requirements of the state.

Every electronic tabulating system is tested at least twice under Michigan Law. According to the [Test Procedure Manual](#), both tests seek to confirm that “1) the equipment is performing properly, 2) the ballots have been properly prepared for each precinct, and 3) the programs will accurately count votes.” The full procedure can be found [here](#). The first test is known as the “preliminary accuracy test” and must be run as soon as clerks receive the tabulator and ballots. The second test, known as the “public accuracy test,” is mandated by [MCL §168.798\(1\)](#). Public notice of the time and place of the test must be given 48 hours beforehand in a newspaper “published in the county, city, village, township, or school district where the electronic [tabulating](#) equipment is used.” Both of these tests run a series of ballots through the tabulator, checking to make sure that ballots are accurately counted, but also that ballots are rejected based on the guidelines outlined in [MCL §168.795\(1\)](#) (i.e. ballots that are blank or ‘overvoted’).

Under [MCL §168.798b](#), once the count is fully tabulated and write-in and absentee votes have been separately added (if necessary), the return of the electronic tabulating equipment constitutes the official return of each precinct or election district once it has been duly certified.

### ***Reporting the Vote***

Michigan state law requires county clerks to tabulate unofficial results and report them to the public upon receipt of statement of returns. According to [MCL §168.798b](#), unofficial results of Michigan elections must be made available to the public. Additionally, according to [MCL §168.809](#),

upon receipt of the sealed statement of returns from the county election inspectors, county clerks must compile unofficial results for the county and make them available to the public. However, no timeline is placed on this requirement by law, and counties seem to post results anywhere from hours to months after the close of polls.

There is no centralized statewide election results resource in Michigan. Many counties directly post unofficial results on their websites as PDFs, a list of which can be found [here](#). Additionally, a few counties employ [ElectionSource](#), a local Michigan company, as an Election Management Service (EMS) vendor. ElectionSource provides a variety of services to Michigan counties, such as poll station materials and ballot production, as well as an unofficial results reporting site for county-level results, found [here](#). Michigan's largest county, Wayne County, cut ties with ElectionSource's results reporting service shortly before the 2018 general election due to [operational mishaps](#) during the 2018 primary.

### ***Certifying the Vote***

Each of Michigan's 83 Boards of County Canvassers [is responsible](#) for certifying its county's votes to the [Michigan Board of State Canvassers](#). Under [MCL §168.822](#), the Board of County Canvassers must certify its county's votes within 14 days of the election. Once a county has finished its certification, then under Michigan Coded Laws [§168.824](#), it must prepare a sealed statement containing data on the county's votes, including, for instance, the number of votes cast for each office. If the Board of County Canvassers fails to certify its votes and prepare this sealed statement within 14 days, it must deliver all relevant voting records on hand to the Board of State Canvassers, and the Board of State Canvassers will finish certifying that particular county's votes within 10 days of receiving those records. As a broader matter, under [MCL §168.842\(1\)](#), the Board of State Canvassers must begin the state certification process within 20 days after the election and must be finished with certification within 40 days after the election.

Michigan can also require counties to certify their votes on an expedited basis. Under [MCL §168.842\(2\)](#), if the unofficial election returns show that the vote differential between the first-place and second-place candidates for the presidential election is less than 25,000 votes, the Secretary of State may direct the Boards of County Canvassers to finish certification more quickly than the ordinarily mandated 14 days in §§168.822 and 168.824. Indeed, the Secretary of State may require the Boards of

County Canvassers to finish certification and prepare their sealed statements between 7 and 14 days after the election.

Candidates can also petition the Michigan Secretary of State to conduct a vote recount in certain counties. Under Michigan Coded Laws [§168.879](#), the candidate must petition for a recount within 48 hours of the completion of certification. The candidate must be able to allege a good-faith belief that but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition need only allege specific instances of wrongdoing if the candidate has such evidence, but the candidate must specify the counties in which he or she requests a recount. Under Michigan Coded Laws §§[168.867](#) and [168.881](#), the candidate requesting a recount must pay \$25 deposit per precinct. This fee is raised to \$125 per precinct if the pre-petition margin of victory for the winning candidate over the petitioner is greater than 50 votes, or 0.5 percent of all votes cast, whichever is greater. If the outcome of the election is altered as a result of the recount, the deposit is refunded. Notably, under Michigan Coded Laws §§[168.880](#) and [168.880a](#), registered voters in Michigan can also petition for a vote recount, and in any case, Michigan will automatically trigger a statewide vote recount if its election was determined by 2,000 votes or less.

### ***Observation of Canvassing***

Michigan provides for observation of mail-in ballot counting. One appointed election challenger per eligible group may observe the conduct of the “absent voter counting board.” If a challenger believes an absentee ballot was submitted by a person unqualified to vote in their precinct, they may challenge that ballot. Additionally, members of the public may also observe the conduct of the board. However, unlike election challengers, who may come and go as they please, if a member of the public wishes to observe, that person must remain in the room in which the board is working until close of the polls.

### **C. Recount Procedures**

Candidates can petition the Michigan Secretary of State to conduct a vote recount in certain counties. Under Michigan Coded Laws [§168.879](#), the candidate must petition for a recount within 48

hours of the completion of certification. The candidate must be able to allege a good-faith belief that but for voter fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition need only allege specific instances of wrongdoing if the candidate has such evidence, but the candidate must specify the counties in which he or she requests a recount. Under Michigan Coded Laws §§[168.867](#) and [168.881](#), the candidate requesting a recount must pay \$25 deposit per precinct. This fee is raised to \$125 per precinct if the pre-petition margin of victory for the winning candidate over the petitioner is greater than 50 votes, or 0.5 percent of all votes cast, whichever is greater. If the outcome of the election is altered as a result of the recount, the deposit is refunded. Notably, under Michigan Coded Laws §§[168.880](#) and [168.880a](#), registered voters in Michigan can also petition for a vote recount, and in any case, Michigan will automatically trigger a statewide vote recount if its election was determined by 2,000 votes or less.

[Michigan law mandates](#) that if the vote count is within 2,000 votes, a statewide vote recount will automatically trigger. However, precincts with ballots that are inaccurately counted [are ineligible](#) to be recounted. This would not usually be a problem, except for the fact that voting centers are expected to grapple with incredibly high absentee voting, introducing opportunity for error. In Detroit for example, [72% of voting centers](#) during the August 4th primary reported inaccurate ballot counts. Marking these precincts as ineligible for recount could tip the election.

## Appendix

### A. Assessment of Primaries

Michigan tested its election readiness during its presidential primary and two state elections. This section examines how the state dealt with mail-in voting and in-person voting in the March, May, and August elections.

#### *Mail-in Voting*

Over the past three federal and state elections in March, May, and August 2020, Michigan saw an increase in absentee voting. In the March presidential primary, absentee votes accounted for

approximately 38% (876,845) of the 2.3 million votes cast in Michigan. However, officials rejected roughly [4,500 mail-in ballots](#) for arriving late. This was less than one percent of the total mail-in vote, but [some are concerned](#) that those votes “could prove crucial in a close election,” especially one in which the majority of voters will likely cast absentee and mail-in ballots to avoid going to the polls during the pandemic.

For the May municipal elections, the secretary of state mailed absentee ballot request forms to [every registered voter](#) in Michigan, and even newly registered voters automatically received an absentee ballot. A total of 180,000 absentee ballots were cast, representing [99% of all ballots cast](#), and [only 1,775 individuals voted in-person](#). Although the number of total votes cast in the May municipal election paled in comparison to those cast in the March presidential primary, May voter turnout was [significantly higher than that of previous municipal elections](#). Many jurisdictions also took advantage of the Governor’s executive order to move their elections to August 2020.

In the August primary, [1.6 million Michiganders](#), constituting 65% of registered voters statewide, cast absentee ballots. The previous record for absentee ballots cast in a Michigan election was 1.3 million in the [2016 Presidential Election](#). Despite (or perhaps because of) the large number of absentee voters, voting rights advocates noted that [some residents who had requested absentee ballots did not receive them](#), although it is unclear exactly how many. The state Elections Department reported that it had received a “small number of complaints about delayed absentee ballots,” which it [attributed to delivery delays from the USPS](#). Election officials rejected [10,000 ballots](#) for arriving after 8 PM on Election Day, the deadline set by Michigan law.

Furthermore, election workers faced a [counting backlog](#) because many clerks’ offices follow a local policy that prohibits them from counting ballots until the day of the election. This occurred despite Secretary of State Benson’s [instructions](#) to local clerks to count ballots within 24 hours of their receipt. Moreover, [475,000 absentee ballots were never turned in](#). Some [news coverage has suggested](#) that many voters may have requested absentee ballots thinking they were for presidential and competitive statewide races and opted not to fill them out when they realized it was a municipal election.

### ***In-Person Voting***

### *1. Accessibility at In-Person Polling Locations*

Beginning with the May 5 elections, Michigan has increasingly shifted from in-person voting to vote-by-mail. However, the state also has taken measures to ensure that polling locations are available for those who must vote in person. Although [Executive Order No. 2020-27](#) “strongly discouraged” voters from voting in person, the order required every jurisdiction to have at least one in-person voting location open during the day of the election, where any voter could appear in person and cast a ballot or return an absentee ballot. Unregistered voters were able to register and receive an absentee ballot at these polling locations on Election Day. The Governor’s office also required that available polling locations follow “best practices to mitigate the spread of COVID-19 and [...] comply with any applicable restrictions or requirements to that effect.”

### *2. Poll Worker Recruitment and Safety*

The coronavirus pandemic forced Michigan to tackle many logistical challenges in staffing its in-person polling centers. Like many states, Michigan has faced a shortage of campaign volunteers and poll workers, since the state has traditionally relied on elderly volunteers to staff most polling centers. In response to this shortage, the secretary of state has conducted an [expansive outreach campaign](#) to recruit younger poll workers. This campaign, titled Democracy MVP, focuses on recruiting young, healthy election workers to aid officials in processing absentee ballots and other poll-related tasks. Secretary Benson continues to call on Michiganders “[to be the MVPs in the team sport of Democracy.](#)” The campaign allows any registered voter to apply, and ensures that workers will be compensated for their time.

The Governor’s office did not provide detailed guidance for health and safety measures for Michigan’s May 5 elections. However, anticipating a higher turnout for the August primary, the Michigan Bureau of Elections provided detailed protocols [on hygiene, sanitation, and social distancing measures](#) to local clerks, and explicit guidance on processing absent-voter ballots and carrying out other election duties while observing strict health precautions.

## **B. Ongoing Litigation**

**[Michigan Alliance for Retired Americans v. Benson](#), No. 20-000108-MM (Court of Claims)**

Plaintiffs allege that Michigan restrictions on absentee voting deprives Michigan voters of their right to vote absentee, right to vote, right to due process, right to free speech, and rights under the federal Voting Rights Act. Specifically, they challenge the laws requiring all ballots to be delivered to election officials by 8pm on Election Day, requiring Michigan voters to pay their own postage to mail-in ballots, and restricting which individuals may return a ballot on a voter's behalf.

**[Black v. Benson](#), No. 20-000096-MZ (Mich. Ct. Claims)**

Plaintiff sought Immediate Declaratory Relief and Preliminary Injunction against the MI Secretary of State's action to mail out applications for absentee voter ballots to all registered voters in MI. In a consolidated decision based upon similar claims to Plaintiff's, the Court denied Plaintiff's Complaint following MI's 4-prong test from *Slis v. State*. The Court only addressed the first two prongs of the *Slis* test finding (i) Plaintiff failed to demonstrate a showing of irreparable harm because no constitutionally guaranteed choice has been taken away from Plaintiff, and (ii) Plaintiff failed to show any likelihood of success on the merits of Plaintiff's ultimate claim.

**[RNC v. Benson](#), No. 20-000191-MM (Mich. Ct. Claims)**

Plaintiff (Republican National Committee) was barred from intervening in *Mich. Alliance for Retired Americans*. Plaintiff seeks a declaratory judgment that the state's ballot collection ban and codified ballot receipt deadline, both enjoined in *Mich. Alliance for Retired Americans*, are instead enforceable.

**[Reed-Pratt v. Winfrey](#), No. 20-1876 (6th Cir.)**

**[Reed-Pratt v. Winfrey](#), No. 3:20-cv-12129 (E. D. Mich.)**

Plaintiff sued City Clerk for the City of Detroit, Detroit Department of Elections, and Detroit Election Commission in federal and state court for violating her procedural and substantive due process rights by mailing of an unsolicited absentee voter application. Plaintiff voted in person in the August 4, 2020 democratic primary elections. Purportedly due to the COVID-19 pandemic, Defendants mailed unsolicited absentee voter applications to plaintiff and other registered voters in

the City of Detroit. Plaintiff alleged that the pandemic did not authorize Defendants to violate Michigan Election Law, including the right to apply to vote by absentee ballot. Plaintiff also contended that she had been denied her constitutional and statutory rights to request an absentee voter application as well as procedural due process rights under the Fourteenth Amendment. Finally, plaintiff requested the court to find Defendants in criminal contempt for violating the Wayne County Circuit Court's March 23, 2006 permanent injunction issued in the case *Taylor v Currie*, 05-524513-AW, and affirmed on appeal, 277 Mich. App. 85; 743 NW2d 571 (2007), lv denied, 483 Mich. 907; 762 NW 2d 169, (2009).

**[Ryan v. Benson](#), No. 20-000198-MZ (Mich. Ct. Claims)**

Plaintiffs challenge the use of money from private interests to fund the conduct of Michigan elections under the Michigan state constitution and Michigan law. They seek an emergency motion for declaratory judgment in favor of their claim (the document provided here is their Reply Brief on an Emergency Motion for Declaratory Judgment, as the Complaint was unavailable online.)