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One Hundred Eighteenth
Congress of the United States
House of Representatives

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September 13, 2024

The Honorable Jocelyn Benson
Michigan Secretary of State
430 W. Allegan St.
Richard H. Austin Building – 4th Floor
Lansing, MI 48918

Dear Secretary Benson,

As Chairman of the U.S. House of Representatives Committee on House Administration (“Committee”), which has broad oversight of our nation’s federal elections,¹ I write today seeking information and clarification regarding whether Michigan observers, known as “challengers,” can be present during the initial processing of mail ballots and signature verification. The Constitution prescribes that the House of Representatives is the “Judge of [its own] Elections,”² and the Committee is required by the Federal Contested Elections Act to adjudicate disputes as to who was legitimately elected to the House.³ Throughout my time as Chairman, the Committee has strived to promote election transparency measures that prevent fraud and give all Americans confidence in our elections. As such, the Committee requests that your office clarify to all County Clerks that challengers are permitted at the *initial stage* of mail-in ballot processing.

For our elections to be secure and instill public confidence, the Committee believes it is good public policy for States to allow observers to witness election procedures—both for in-person and mail voting. After all, “[s]unlight is the best of disinfectants” in elections.⁴ Transparency is especially important for mail voting, which the U.S. Supreme Court has found to be more vulnerable to fraud than in-person voting.⁵ Allowing observers to watch the processing of mail ballots guards against potential fraud and promotes public confidence.

Michigan wisely permits observers—called “challengers”—appointed by both major political parties to observe in-person voting and at least parts of the mail voting process.⁶ For in-person voting, challengers can contest the eligibility of those attempting to cast ballots.⁷ Yet it is unclear whether challengers can perform that function for mail voting.

¹ Rules of the United States House of Representatives, rule X(k)(12), <https://rules.house.gov/sites/evo-subsites/republicans-rules.house.gov/files/documents/118/Additional%20Items/118-House-Rules-Clerk-v2.pdf>.

² U.S. Const. art. I, § 5.

³ 2 U.S.C. §§ 381–96.

⁴ *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam).

⁵ *See, e.g., Crawford v. Bd. of Marion Cnty. Elec. Bd.*, 553 U.S. 181, 195-95 (2008) (opinion of Stevens, J.).

⁶ MCL § 168.730(1).

⁷ MCL § 168.733(1)(c).

Michigan law seems to envision a two-step process for processing mail ballots. In the first step, city and township clerk offices receive and process the mail ballots.⁸ That processing includes verifying whether the elector is properly registered, documenting the time the mail ballot was received, and conducting signature verification.⁹ Signature verification is an essential part of processing mail ballots in Michigan because it ensures that the same person who requested (and signed for) the mail ballot is the one who cast it.¹⁰

In the second step, after a clerk's office concludes a mail ballot is eligible to be tabulated, the ballot is forwarded to an absent voter counting board.¹¹ All agree that challengers can be present at the absent ballot counting boards.¹² However, no signature verification is conducted at the absent voter counting boards.¹³

Michigan law seems unclear on whether challengers can be present during the first step of mail-ballot processing, including signature verification. At least one statutory provision seems to suggest challengers can be present in clerk offices to monitor relevant election activities.¹⁴

If challengers can be present in the clerk offices, they should be able to perform all their usual functions, including challenging the eligibility of voters.¹⁵ But challengers can only perform that function if they are allowed to observe signature verification. However, it is the Committee's understanding that at least some clerk offices believe challengers have no right to be present during the initial processing of mail ballots and signature verification.

There is no legitimate public policy reason to exclude challengers from the initial processing of mail ballots and signature verification. Excluding challengers from the room while clerk offices assess whether mail voters are registered and actually are who they say they are (through signature verification) prevents challengers from being able to vouch for the security of mail voting in Michigan. The Committee cannot think of any countervailing policy considerations justifying the exclusion of challengers.

Indeed, in our Committee hearing on September 11, 2024 where you appeared as a witness alongside five other Secretaries of State, you were asked if your office is prepared and ready to welcome House Election Observers during this election cycle. You and your colleagues from both major political parties all responded with a resounding, "Yes."¹⁶

Therefore, the Committee asks that, by September 23, 2024, you confirm and communicate to the various clerk offices that challengers are permitted to observe initial processing of mail ballots and signature verification. The Committee further requests that, if there is remaining

⁸ See MCL §§ 168.7646(1), 168.766.

⁹ MCL § 168.765.

¹⁰ See MCL § 168.766a.

¹¹ See MCL § 168.765(4).

¹² See MCL § 168.765a.

¹³ See MCL § 168.765(4); see also MCL § 168.768.

¹⁴ MCL § 168.761b.

¹⁵ MCL §§ 168.30(3), 168.733(1)(c).

¹⁶ *American Confidence in Elections: Looking Ahead to the 2024 General Election: Hearing Before the H. Comm. On Admin., 118th Cong. (2024).*

confusion or difference of opinion, pursuant to our authority under the Constitution and the Federal Contested Elections Act, that challengers be permitted to observe. Thus, in the event there is a contested House election in Michigan, it will assist us in assessing the reliability of the results. If challengers are not allowed to observe the initial processing of mail ballots and signature verification, inevitable doubts about the integrity of Michigan's elections will arise. After all, it seems absurd to permit challengers to observe in-person voting, but then to prohibit challengers from observing mail voting.

Thank you for your prompt attention to this matter. Please send any correspondence to Thomas Lane, Elections Counsel and Director of Election Coalitions, at Thomas.Lane@mail.house.gov. If you have any questions, do not hesitate to contact the Committee at 202-225-8281.

Sincerely,



Bryan Steil
Chairman
Committee on House Administration