

## Examples of Election Manual Guidelines that Conflict with Election Law Statutes

In a few critical areas, state election manuals provide guidance that conflicts with statute language and promotes unlawful actions. These flawed guidelines likely resulted in acceptance of countless invalid ballots by otherwise diligent election officials who were unfamiliar with statute text. Comprehensive auditing of all election documents including ballots, ballot envelopes, ballot applications, and poll book records, may be crucial to fully assess the magnitude of this effect at past elections for which those records still exist.

Perhaps the most important discrepancies are found in the following areas:

1. Unlawful signature matching guidelines
2. Unlawful acceptance of absentee ballots with incorrect stubs
3. Omission of key requirements for appointing election inspectors
4. Omission of key election inspector obligations

Even if introduced unintentionally, or with honorable intentions, the errors and unlawful instructions in the training material need to be corrected immediately. Otherwise the state of Michigan will continue to perpetuate unrecognized violations of election laws.

Every violation of election law by any election official is punishable as a misdemeanor, or worse. If strict statutory requirements no longer serve the public interest, the Legislature has the authority and responsibility to make appropriate amendments. Such amendments should always honor the constitutional directive to preserve voters' rights – including the Article II Section 4(2) mandate to “*guard against abuses of the elective franchise*” (i.e., voting fraud).

The material in this document should not be construed as a complete list of unlawful election manual instructions. If there are additional questions regarding the contents of this document, I, or other PIME contributors would be happy to try to answer them.

## 1. UNLAWFUL SIGNATURE MATCHING GUIDELINES

Background...

### UNLAWFUL SIGNATURE RULES WERE ONLY PART OF THE PROBLEM

In the Genetski case, the court found Secretary Benson violated the Administration Procedures Act by prematurely implementing rules before completing all process steps required for their adoption. This ruling completely overlooked, perhaps intentionally, that several provisions in the (signature verification) rules are in direct conflict with election law statutes. All legislators should be curious as to how much the election results may have been ‘corrupted’ from the unlawful application of the rogue signature matching rules, alone. Unfortunately, some of the flawed instructions from Secretary Benson’s signature matching rules were already present in ‘core’ election manuals as described below.

### STATUTES CLEARLY INDICATE ALLOWABLE REFERENCE SIGNATURES

Signature verification procedural requirements are specific and clear in all relevant statutes. The statutes limit the secretary of state’s authority to the role of defining the technical criteria by which one would confirm that signatures are “sufficiently matched” when two specific documents are compared. In every instance, the statutes are explicit: the only allowed reference image for signature verification is that which is contained in the QVF, or on the ‘master registration card’ – a physical source of the QVF digitized signature. In contrast, the state election manuals allow either the signature from the QVF or from the absentee ballot application to be used to verify the signature of an absentee ballot return envelope.

### ELECTION OFFICIAL CONFIRM COMMON USE OF AB APPLICATION SIGNATURE

Sworn testimony to the MI Senate Oversight Committee from Chris Thomas, in his capacity as an advisor to the Detroit clerk and a 40 year election expert, confirmed it is common practice for the signature of an absentee ballot application to be used to validate the signature of an absentee ballot return envelope. Although violating the statute in this manner likely does not create negative consequence in many instances, it removes process safe-guards that can lead to the acceptance of fraudulent absentee ballots. An established reference image from the QVF must be used in all cases so that unrecognized signature errors on an absentee ballot application do not cascade into acceptance of an invalid signature on an absentee ballot return envelope.

It is unknown when such instructions were first incorporated into the election manuals. As a result, this unlawful guidance may have given rise to more violations of election law statutes than are possible to count. Under election law, each infraction is punishable as a misdemeanor.

#### Election Manual Citations...

##### ELECTION MANUALS ALLOW AB APPLICATION AS SIGNATURE SOURCE

Election manuals explicitly state an absentee ballot return envelope signature may be validated using the signature from the corresponding absentee ballot application. Below is an excerpt from ELECTION OFFICIALS' MANUAL, Michigan Bureau of Elections, Chapter 6, October 2020 "Chapter 6 Michigan's Absentee Voting Process" (VI\_Michigans\_Absentee\_Voting\_Process\_265992\_7.pdf)

Page 11 asserts that a voter's absentee ballot application signature can be used to verify the authenticity of the signature on the absentee ballot return envelope.

**BALLOT VERIFICATION REQUIREMENT:** A voter who has obtained an absentee ballot must sign the following certificate which appears on the return envelope prior to returning the ballot to the clerk:

**assert that:**

- I am a United States citizen.
- I am qualified and registered to vote at the address listed.
- I am voting in conformity with state election law.
- I marked my ballot and placed it in this envelope without showing it to anyone.
- I am returning my ballot to the clerk's office by delivering it myself or a member of my immediate family or household, or sending it by public postal, express mail, or parcel post service, or other common carrier.

I understand that knowingly making a false statement is a misdemeanor.

**Voter, sign here in ink.** Power of attorney is not acceptable.  
This box must be signed or your vote will not be counted.

Sign Here  

Upon the receipt of a returned absentee ballot, the signature appearing on the above certificate must be checked against the **signature on the applicant's application or QVF** to verify the applicant's identity.

#### Election Law Citations...

##### ALL STATUTES REQUIRE QVF OR MASTER CARD AS SIGNATURE SOURCE

MCL 168.761(1), MCL 168.761(2), MCL 168.765a(6), MCL 168.766(1), MCL 168.766(2), and MCL 168.767 define requirements for absentee ballot application and absentee ballot return envelope signature verification. In all cases, the signature from the 'master registration card' or its digitized image saved in the QVF must be used to verify the validity of the signature on an absentee ballot application, or the signature on an absentee ballot return envelope.

MCL 168.761(1):

*“If the clerk of a city or township receives an application for an absent voter ballot from a person registered to vote in that city or township and if the signature on the application agrees with the signature for the person contained in the qualified voter file or on the registration card as required in subsection (2)....”*

MCL 168.761(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....”*

MCL 168.765a(6):

*“Written or stamped on each of the return envelopes must be the time and the date that the envelope was received by the clerk and a statement by the clerk that the signatures of the absent voters on the envelopes have been checked and found to agree with the signatures of the voters on the registration cards or the digitized signatures of voters contained in the qualified voter file as provided under section 766....”*

MCL 168.766(1):

*“Upon receipt from the city or township clerk of any envelope containing the marked ballot or ballots of an absent voter, the board of inspectors of election shall verify the legality of the vote by doing both of the following: Examining the digitized signature for the absent voter included in the qualified voter file under section 509q or the registration record as provided in subsection (2) to see that the person has not voted in person, that he or she is a registered voter, and that the signature on the statement agrees with the signature on the registration record....”*

MCL 168.766(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....”*

MCL 168.767:

*“If upon an examination of the envelope containing an absent voter's ballot or ballots, it is determined that the signature on the envelope does not agree sufficiently with the signature on the registration card or the digitized signature contained in the qualified voter file as provided under section 766 so as to identify the voter or if the board shall have knowledge that the person voting the ballot or ballots has died, or if it is determined by a majority of the board that such vote is illegal for any other reason, then such vote shall be rejected....”*

#### MASTER CARD AND AB APPLICATION ARE NOT THE SAME THING

MCL 168.501 provides a definition of the “master registration cards,” and citations in MCL 168.761(1) make it clear that an ‘absentee ballot application’ is not the same thing as a ‘registration card’.

MCL 168.501:

*“The master registration cards must be filed alphabetically and must be termed the “master file.” The master file must contain the signature of each elector registered in the city or township, unless the clerk of the jurisdiction has access to the qualified voter file and the elector has a digitized signature in the qualified voter file. If an elector is unable to write or sign his or her name because of a physical disability, the master file must contain the mark or signature stamp used by that elector when a signature is required....”*

All election law statutes dealing with signature verification require the absentee ballot application or absentee ballot return envelope signature to be compared explicitly to the signature on the ‘registration master card’ or its equivalent digitized image stored in the QVF. Some statutes reference the ‘master

registration card' as the 'master card' and others reference the 'registration card' or 'registration record'. These references are all to the same document – which is the physical record containing the clerk obtained 'master' signature of the voter.

MCL 168.761(2) makes it absolutely clear that the 'absentee ballot application' is not the same document as the 'registration card'. This statute instructs that the signatures on these two distinct documents are to be compared to validate the signature on the 'absentee ballot application'.

#### WHY USING THE QVF SIGNATURE REALLY MATTERS

It may seem reasonable that if the signature on an absentee ballot application is first verified using the QVF, then this 'verified' signature from the absentee ballot application can be used as a reference to verify the signature on the absentee ballot return envelope. At first glance, one is tempted to think few negative outcome spawn from this unlawful practice as outlined in election manuals. However, an unrecognized 'flawed' or 'fraudulent' signature on an absentee ballot application could subsequently result in acceptance of a similarly 'flawed' or 'fraudulent' signature on an absentee ballot envelope. This possibility is greatly diminished when election law is observed, and the QVF signature image, exclusively, is used as the reference signature.

Recommendations...

#### CORRECT THE ERRORS IN ELECTION MANUALS

The election manuals should be immediately corrected to provide only lawful instructions, as election officials that provide unlawful instructions are themselves presumed to be guilty of a misdemeanor.

Signature verification is subject to partisan oversight in many other states. Although the vast majority of clerks likely execute the signature verification task with the expected neutrality, one bad actor in a thousand can seriously compromise an election.

#### HONESTLY CONSIDER ADOPTING ELECTRONIC SIGNATURE VERIFICATION SYSTEMS

Electronic signature verification could serve to eliminate all subjective bias concerns with the current manual signature verification process. An electronic signature verification system, by design, would always use the statute specified reference signature image for signature verification. This technology would apply unbiased, consistent, and uniform scrutiny to all signatures. Such systems are or may soon be viable, as recently demonstrated in the report: *Pattern Recognition Classification of Early Voting Ballot (EVB) Return Envelope Images for Signature Presence Detection: An Engineering Systems Approach to Identify Anomalies to Advance the Integrity of U.S. Election Processes* by Dr. Shiva Ayyadurai, MIT PhD: [https://c692f527-da75-4c86-b5d1-8b3d5d4d5b43.filesusr.com/ugd/2f3470\\_05deb65815ab4d4b83938d71bc53459b.pdf](https://c692f527-da75-4c86-b5d1-8b3d5d4d5b43.filesusr.com/ugd/2f3470_05deb65815ab4d4b83938d71bc53459b.pdf).

#### ELECTRONIC SIGNATURE VERIFICATION WOULD REDUCE CLERKS BURDEN

Objective computer imaging based signature matching technologies should be evaluated as a means to reduce clerk workload burden as more voters opt to cast absentee ballots. Despite extensive claims by election officials, a simple process flow diagram can easily prove that handling and tabulating absentee ballots is less time consuming than handling and tabulating in-person ballots. For absentee ballot processing, the 'voter identity confirmation' step is completely transferred from the election inspectors to the clerk.

#### SECRETARY BENSON ALREADY PROMISED ELECTRONIC SIGNATURE VERIFICATION

Adoption of this type of strategy remains an unfulfilled promise from Secretary Benson who publicly announced her intention to institute this change on Frank Beckman's radio show:

<https://www.senatorruthjohnson.com/senate-elections-committee-hears-from-local-clerks-frustrated-with-secretary-of-states-office/>.

At best, this announcement appears to have been a head-fake to convince Michigan voters that the secretary of state recognized the importance of ballot security. Soon after making the public statements, she executed an illegal 180 degree U-turn and instituted her 'anything goes' signature verification rules.

## 2. UNLAWFUL ACCEPTANCE OF ABSENTEE BALLOTS WITH INCORRECT STUBS

Background...

### BALLOT STUB HANDLING IS INCONSISTENT WITHIN ELECTION MANUALS

Serialized stubs on ballots are one of the few existing ballot security measures capable of preventing fraudulent ballots from being introduced into the voting pool. Election manuals for in-person precincts are 'partially correct' in that they dictate ballots with missing stubs are to be rejected, and the voter is not allowed access to another ballot. However, when similar (potentially fraudulent) absentee ballots with incorrectly numbered stubs are encountered (in-precinct or at a counting board), they are to be prepared as "challenged ballots" – which means they are marked for future review, but still tabulated with all of the normal ballots. These instructions are inconsistent with statutory requirements. At in-person precincts, statutes mandate the rejection of all ballots that are presented with incorrect or missing stubs. Other statutes extend the same requirements to absent voter counting boards.

### ABSENTEE BALLOT FRAUD IS NOT JUST FANTASY

One can imagine that a fraudster with sufficient resources and commitment will always find a way to perpetrate their crime of choice. In relation to election security, the Legislature should aim to make this a difficult and expensive exercise, and enshrine in statute all reasonable steps to prevent it. With a little creativity, one can imagine scenarios in which a voter's absentee ballot return envelope may be 'intercepted,' steamed open, and the ballot replaced with another that no longer represents the will of the qualified voter. In fact, one does not have to imagine it at all, it is a fully documented and confessed scenario from a NY POST report prior to the 03Nov2020 election

(<https://nypost.com/2020/08/29/political-insider-explains-voter-fraud-with-mail-in-ballots/>).

Unfortunately, current election manuals completely bypass instructions regarding the legal protections on absentee ballots provided by serialized ballot stubs.

Election Manual Citations...

### ONLINE TRAINING INSTRUCTS AB WITH INCORRECT STUBS ARE TABULATED

A Bureau of Elections online training video instructs that absentee ballots without correct stubs are to be prepared as 'challenged ballots' and then tabulated. The screenshot below comes from MI SoS YouTube training found at: <https://www.youtube.com/watch?v=2EhUddpcDns> (9:41/17:20).

The screenshot shows a video player interface for "Bureau of Elections - AVCB Processing Ballot Training". The video title is "Open Ballot Envelope Troubleshooting - Stub Issues". There is a "See Text" button. The video content displays three columns of instructions:

Stub missing	Stub does not match	Stub detached
<ul style="list-style-type: none"><li>Prepare the ballot as a <b>challenged ballot</b></li></ul>	<ul style="list-style-type: none"><li>Research! It's possible two ballots were placed in wrong envelopes. Make remarks in poll book and process normally</li><li>If no reason, prepare as <b>challenged ballot</b></li></ul>	<ul style="list-style-type: none"><li>Continue processing if the numbers match</li><li>Prepare as <b>challenged</b></li></ul>

## ELECTION MANUALS INSTRUCT AB WITH INCORRECT STUBS ARE TABULATED

Similarly, secretary of state election manuals instruct that absentee ballots without correct stubs are to be prepared as ‘challenged ballots’ and then tabulated. Below are excerpts from MANAGING YOUR PRECINCT ON ELECTION DAY ELECTION INSPECTORS’ PROCEDURE MANUAL ED-124 (1/29/2020) (ManagingYourPrecinctonElectionDay.pdf).

Page 37-38 screen shot – absentee ballots without stubs to be prepared as ‘challenged ballots’

### Step 2: Open Absentee Ballot Return Envelope

- A. Check the *Absentee Ballot Return Envelope* to determine whether the voter received assistance in voting the ballot. If the envelope indicates that assistance was provided, make a notation in the Remarks section of the ePollbook.
- B. Without exposing any votes, **verify that the number on the ballot stub agrees** with the ballot number recorded on the AV list or *Absentee Ballot Return Envelope*. If the ballot was returned in a secrecy envelope, the ballot and secrecy envelope may be removed from the return envelope to  
If a ballot was not returned by the voter (i.e., the return envelope was empty), note the missing ballot on the Remarks page of the ePollbook.

**If the ballot numbers do not agree or the ballot stub is missing and no explanation** for the discrepancy can be found (i.e., voters residing in the same household switched their ballots), the **ballot must be prepared as a challenged ballot.**

## CHALLENGED BALLOT PREPARATION DETAILS IN ELECTION MANUALS

Page 22-23 screen shot – instructions for preparing ‘challenged ballots’

**A challenger cannot challenge a voter’s right to vote** unless the challenger has good reason to believe **that the voter is not qualified to vote in the precinct.** **A challenge must not be based on an “impression” that the voter is ineligible due to his or her manner of dress; inability to read or write English; the voter’s perceived race, ethnic background, physical or mental disability, support for or opposition to a candidate or political party; or the voter’s need for assistance with the voting process.**

### Preparing and Issuing Challenged Ballots

Some types of challenges may result in the issuance of a specially prepared “challenged ballot.” Before issuing a challenged ballot:

1. Write the ballot number in pencil on the upper left-hand corner of the ballot, being sure to avoid any barcodes or timing marks (**not** on the ballot stub).
2. Conceal this number with a small piece of white paper taped over the number.
3. Use the Challenged ballot button to enter the voter’s ballot number into the ePollbook.
4. Make a record of the challenge in the Remarks section of the ePollbook.

## PRECINCT BALLOTS WITH INCORRECT STUBS ARE TO BE REJECTED

Page 16-17 of the same election manual instructs that in-person precinct ballots returned without the correct stub are to be rejected and the clerk is to be consulted.

## STEP 5: Verify Ballot Number and Instruct Voter to Insert Ballot into Tabulator

Maintain a ten-foot privacy perimeter around the tabulator. The precinct inspector who monitors the tabulator must position himself or herself at least 10 feet away from the tabulator to protect ballot secrecy and voter privacy.

**Verify Ballot Number:** After voting, the voter must insert the ballot into the ballot secrecy sleeve with only the numbered ballot stub exposed and present the ballot and the *Application to Vote* to an election inspector for verification. Ensure that the voted ballot remains inside the sleeve showing only the numbered stub during the verification step. If necessary, instruct the voter to insert the ballot into the secrecy sleeve. **Verify that the number on the stub of the voter's ballot matches** the ballot number recorded on the *Application to Vote*.

### Important Notes

- **If the number on the ballot stub does not match the number of the ballot issued to the voter,** verify with the election inspector that the number was accurately recorded, then if necessary, question the voter and enter the facts in the Remarks section of the ePollbook. If the voter cannot give a satisfactory answer, **contact the clerk for instruction.**
- **If the ballot stub is missing and cannot be accounted for, reject the ballot.** Enter a notation in the Remarks section of the ePollbook and contact the clerk for further instruction.
- A voter is prohibited from leaving the polling place with his or her *Application to Vote*, ballot or ballot stub. If a voter attempts to leave the polls with any of these materials, instruct him or her to return them. If the voter refuses to comply, record the facts in the Remarks section of the ePollbook and contact the clerk.

### Election Law Citations...

#### STATUTES CALL FOR REJECTION OF PRECINCT BALLOTS WITH INCORRECT STUBS

In contrast to election manuals' guidance to accept absentee ballots with incorrect stubs, the statutory instructions explicitly reject (any) ballots received with incorrect stubs.

First, several statutes define the conduct for in-precinct voting. They make it clear that ballots with missing or incorrect stubs, and stubs that were not removed by the election inspector, are to be rejected.

#### MCL 168.797a:

*"...(2)...An election inspector shall ascertain, by comparing the number appearing on the ballot stub with the number recorded on the poll list, that the ballot delivered by the voter is the same ballot that was issued to the elector. If the numbers do not agree, the ballot shall be marked as "rejected", and the elector shall not be allowed to vote...."*

*"...(3) A ballot from which the stub is detached shall not be accepted by the election inspector in charge of the ballot box or other approved ballot container. ..."*

*"...(5) Except as otherwise provided in this act, an election inspector shall not allow any portion of a ballot, including a ballot stub, to be removed by any person other than an election inspector from the polling place...."*

#### STATUTES MANDATE CONSISTENT PROCESSING FOR CB AND PRECINCT BALLOTS

Second, other statutes include passages that require ballot processing at absent voter counting boards to be the same as that of paper (i.e. in-person) precincts, and that verifying the correctness of ballot stub numbers is mandatory for absentee ballot processing. The included verbiage *"as nearly as possible the same manner"* cannot possibly grant unlimited discretionary authority to apply a completely different set of rules. Rather, it seems to allow for minor deviations when they are critically necessary. It is simply an acknowledgment that procedural steps such as those specifically required for interactions with voters at in-

person precincts have no meaning at counting boards where there are no voters present. Additionally, there exists no statutory assertion or suggestion that any ballot with incorrect or missing stubs may be prepared as a “challenged ballot”. The only statutory disposition of such ballots is “rejection”.

MCL 168.765a(8):

*“... The absent voter counting boards and combined absent voter counting boards shall process the ballots and returns in as nearly as possible the same manner as ballots are processed in paper ballot precincts. ...”*

MCL168.765(6):

*“...a city or township clerk, or his or her authorized designee, on the day before election day is only authorized to perform standard processing activities up to and including the opening of absent voter ballot return envelopes and the removal of absent voter ballot secrecy envelopes containing absent voter ballots and to verify that the ballot number on the ballot stub agrees with the ballot number on the absent voter ballot return envelope label...”*

#### ‘OLD’ STATUTE MAY ADD TO AB PROCESSING CONFUSION

MCL 168.768 provides provides a bit of both clarity and confusion. It confirms the voters right to cast an absentee ballot is verified through examination of their signature on the return envelope. Consistent with other statutes, it affirms the procedural step whereby an election inspector must remove the numbered stub attached to the ballot. However, it does not mention additional steps, including those required for electronic tabulation (i.e., stub number verification, opening and flattening the ballot for insertion into tabulator). This particular statute looks to have been implemented in 1955, and has not been amended since then to include references to accommodate use of electronic voting machines. There is no explicit indication that the additional instructions outlined in section 797a do not apply (i.e. rejection of ballots with incorrect stub numbers).

MCL 168.768:

*“If upon such examination of the envelope containing an absent voter's ballot or ballots, the board of inspectors of election shall determine that such vote is legal, the member of the board receiving ballots at such election shall open the absent voter's envelope, take out the ballot or ballots therein contained and shall, without unfolding such ballot or ballots, detach from each such ballot the perforated numbered corner, and shall deposit each such ballot in the proper ballot box. One of the inspectors of election shall note upon the poll book and list the fact that such voter voted at such election by means of an absent voter's ballot.”*

#### CHALLENGED BALLOT PROCESSING STEPS ARE ACCURATE IN ELECTION MANUALS

Lastly, the only election manual instructions cited above that are fully consistent with statute text is in the description of how challenged ballots are to be prepared – although such instructions have limited bearing on the processing of absentee ballots with incorrect stubs. An absentee ballot may be prepared as a “challenged ballot”, but only based on credible challenges to the voter’s qualifications to vote (i.e. information that the voter is deceased, or not a legal resident of the jurisdiction).

MCL 168.745 provides guidance on how to process challenged ballots:

*“...said inspectors shall cause to be plainly endorsed on said ballot, with pencil, before depositing the same in the ballot box, the number corresponding to the number placed after such voter's name on the poll lists...”*

MCL 168.746 provides additional guidance to preserve the ballot secrecy of challenged ballots:

*“To prevent the identification of said ballot, except as hereinafter provided for in case of a contested election, the inspectors of election shall cause to be securely attached to said ballot, with mucilage or other adhesive substance, a slip or piece of blank paper of the same color and appearance, as nearly as may be, as the paper of the ballot, in such manner as to cover and wholly conceal said endorsement but not to injure or deface the same;...”*

#### STATUTES DO NOT JUSTIFY CHALLENGE OF BALLOTS WITH INCORRECT STUBS

A “challenged ballot” is prepared only when a person’s qualification to vote is questioned. In such cases, the ballots are discretely marked so that if an election is contested, all ‘challenged voters’ who are later deemed ineligible to vote can have their specific ballots removed from the voting pool. In a contested election, the challenged ballots from absentee voters would remain undisturbed (i.e., not harvested or exposed) unless there is evidence that the voter credited with casting a ballot was not a qualified voter. The stub number, even if incorrect, has no bearing on whether or not a voter (absent or otherwise) was qualified to cast a ballot.

MCL 168.747:

*“In case of a contested election, on the trial thereof before any court of competent jurisdiction, it shall be competent for either party to the cause to have produced in court the ballot boxes, ballots and poll books used at the election out of which the cause has arisen, and to introduce evidence **proving or tending to prove that any person named on such poll lists was an unqualified voter** at the election aforesaid, and that the ballot of such person was received...”*

### BALLOTS WITH INCORRECT STUBS SHOULD BE REJECTED, NOT CHALLENGED

When a ballot is returned with an incorrect stub, the (presumed) voter’s qualification to vote is not being questioned, the explicit validity of the specific ballot is suspect. It is no longer certain whether this ballot was the unique one provided to the voter, or one that may have been (illegally) substituted in the return envelope after leaving the custody of the voter. With tens of thousands of absentee ballots widely distributed to the public and never returned by the specific assignee, ‘substituted’ ballots can simply be genuine ballots originally distributed ‘legally’, but later intercepted and returned unlawfully.

In this case, accepting the ballot is akin to inviting voter fraud, and explicitly violating the law. The statutory requirements are clear even for in-precinct voting in which a voter’s qualifications are more positively confirmed with a photo ID. In this case, it is arguably almost impossible for a voter to try and submit a ballot that was not given to them. However, if current law is to be respected, when such a voter submits a ballot with a stub number that was not issued to that voter, that ballot is to be rejected, and they are not allowed access to another ballot.

### LARGE NUMBERS OF AB WITH INCORRECT STUBS INDICATES SERIOUS ISSUES

Although it is possible that the presence of an incorrect (or missing) stub on an absentee ballot is the result of clerical errors, it is at least equally likely the result of fraud. The mere fact that thousands of such instances are openly acknowledged by both Republican election challenger affidavits, and in senior Democratic election official’s sworn testimony for just the Detroit TCF Center operations, should be immediate cause for concern.

Even if every single instance is the result of clerical error, how could the presence of so many of them be considered normal and acceptable? The scale of the problem is worthy of detailed review and scrutiny (i.e., auditing). Even if every last instance turns out to be an ‘innocent’ mistake – when all are combined, such a large number is an admission of a fatally flawed process, or gross incompetence and misfeasance.

### THERE WERE OTHER SERIOUS ISSUES RELATED TO AB PROCESSING

Additionally, if this many clerical errors are present for just one step in the process, how many thousands of others clerical errors or poor adherence to election manuals (and laws) go unrecognized and unaddressed? This concern is compounded with the knowledge that nearly 1/3 of all absentee ballots processed at the TCF Center required ‘digital adjudication’ per public statements by Daniel Baxter at: <https://www.crainsdetroit.com/elections/detroit-election-update-clerk-expects-turnout-match-or-surpass-2008>:

*“...Detroit expects to see 175,000 total absentee ballots received and counted total, Baxter said, and recorded another more than 75,000 resident votes at the polls Tuesday...”*

*“...As of Baxter's comments Tuesday evening, 129,000 absentee ballots had been tabulated or counted so far by election workers at TCF Center. However, 48,000 of those still needed to go through an adjudication process because they were flagged for having various issues such as overvoting or undervoting...”*

*“...With the clerk's office expecting to count 175,000 absentee ballots out of the 190,000 total it issued to voters...”*

This means that close to 1/3 of all absentee ballots in Detroit contained ‘anomalies’ that had to be resolved by election inspectors. Although this is not proof of fraud, it is indicative of mechanical, procedural, or instructional shortcoming that requires oversight and correction. As a side note, absentee ballots with ‘undervotes’ are not supposed to be subject to ‘adjudication,’ they are to be accepted without alterations.

Recommendation...

#### **CORRECT THE ERRORS IN ELECTION MANUALS**

The election manuals should be immediately corrected to provide only lawful instructions.

If rejection of ballots submitted with incorrect stubs seems harsh (although it is the law), there are immediate measures the secretary of state has the authority to implement, or better yet the Legislature could mandate, to eliminate the potential rejection of ballots due to clerical errors. In keeping with the ‘easy to vote’ part of PIME’s mission to make it “Easy to vote, and hard to cheat”, we offer the following remedy.

#### **ADD VOTER INSTRUCTIONS TO VERIFY AND PRESERVE BALLOT STUBS**

Clearly and prominently mark on each ballot and each stub the following statements: “Do Not Remove Stub. If Stub Is Removed Accidentally, Contact Clerk For A Replacement Ballot. Ballot Will Not Be Accepted If Stub Is Removed.”

As a supporting measure, clearly and prominently mark on each ballot the following additional statements: Verify The Number Of The Stub Attached To This Ballot Matches The Number On The Return Envelope (Or Ballot Application). Ballot Will Not Be Accepted If Stub Number Is Incorrect. If Stub Numbers Do Not Match, Contact Clerk For A Replacement Ballot.

Additionally, provide voters with like instructions, and make the electorate more aware of how numbered ballot stubs play an important role in securing the will of each individual voter. Finally, to give absentee voters 100% confidence that their ballot has not been altered or ‘substituted’ since leaving their control, implement envelope security measures including commercially available tamper proof or tamper evident seals that provide clear evidence when an absentee ballot may have been compromised.

Serialized ballot stubs are the sole available ballot security mechanism by which election officials can verify that the specific ballot, as supplied to a voter is the same exact legal document that was returned by the voter. Until all reasonable ballot security measures are evaluated, the ones already implemented must be properly utilized, or they become false assurances of voting system integrity. They are the last line of defense to protect the will of a single qualified voter from being hijacked via ballot ‘substitution’. Plus, they are the last line of defense to protect the collective will of all qualified voters from being diluted by invalid ballots.

#### **CONSIDER ADDITIONAL BALLOT AND ENVELOPE SECURITY MEASURES**

To prevent the fraud mechanisms documented in this article, PIME recommends the Legislature considers enhanced ballot security measures (i.e. ballot watermarks), and return envelope security measures (i.e. tamper resistant/evident seals). It is likely well within the authority of the secretary of state to introduce simple and inexpensive tamper resistant secondary seals that would effectively eliminate the possibility for an absentee ballot to be accessed or altered without obvious tampering to the return envelope. The image below is from a vendor offering such a device at a cost of less than \$0.04

per 'sticker', as listed at the following site: [https://www.amazon.com/Transfer-Evident-Security-Stickers-Products/dp/B092R49K4C/ref=sr\\_1\\_54?keywords=tamper+proof+envelopes&qid=1636681074&sr=8-54](https://www.amazon.com/Transfer-Evident-Security-Stickers-Products/dp/B092R49K4C/ref=sr_1_54?keywords=tamper+proof+envelopes&qid=1636681074&sr=8-54)



### 3. OMISSION OF KEY REQUIREMENTS FOR ASSIGNING ELECTION INSPECTORS

Background...

#### PARTISAN ELECTION INSPECTORS ARE BETTER THAN NEUTRAL ONES

Election inspectors are the essential front line workers needed to keep the elections free and fair. It is natural to expect that an election worker's preferred election outcome might unconsciously be expressed when not in-check. Election law recognizes this reality, and provides the perfect mechanism to keep polling places neutral when it require equal numbers of partisan election inspectors to self-police one another. It is important to remember that election inspectors need not live in the precinct in order to work in the precinct. Therefore, the wording in this statute may need to be reinforced—**or legally enforced**—to more explicitly require equal numbers of partisan election inspectors.

#### SECRETARY BENSON MINIMIZES IMPORTANCE OF EQUAL PARTISAN INSPECTORS

Instead of taking the issue seriously, Secretary Benson mocks those who rightfully expose clerks who fail to properly appoint election inspectors with equal representation from both major political parties. In a flimsy justification of the practice, Secretary Benson asserts the following at the state website [https://www.michigan.gov/sos/0,4670,7-127-1633\\_100423\\_102534\\_102535---,00.html](https://www.michigan.gov/sos/0,4670,7-127-1633_100423_102534_102535---,00.html)

*“Although it can be difficult to recruit Republican challengers in Detroit – just as it is difficult to recruit Democratic challengers elsewhere in the state – there were always challengers from both parties in Detroit’s absentee ballot counting board.”*

Her mockery amounts to an attempt to parse words and mislead on several fronts. First she uses the word ‘challengers,’ probably because she knows that election challengers are exclusively voluntary positions, and not required for an election to be valid. She fails to use the more accurate term, ‘election inspectors’, perhaps because they are required participants in an election, and the law stipulates they are to be appointed with equal numbers of representatives from both major political parties.

Additionally, Secretary Benson seems to mislead by using the qualifier “in Detroit.” The suggestion here is that Democrat dominated Detroit has so few Republicans that it is impossible to find roughly one thousand of this endangered species to work as election inspectors. She knows, or should know, that election inspectors that serve in Detroit can come from any other community in the county or state. She makes excuses for violations of law from senior election officials, instead of investigating credible claims (that she acknowledges), and fails to provide evidence of wrongdoing to law enforcement and prosecutors.

#### DO CLERKS REPORT INSPECTOR ASSIGNMENTS TO PARTY LEADERS?

Clerks are required to provide lists of election inspector assignments to the county chairs of each major political party. Although this does not relieve the clerk from adherence to other provisions of law, it gives the political parties the option to assist the clerk. It is unclear if the Detroit clerk (or others) fulfilled this reporting requirement. This information was subpoenaed by the Legislature following the 03Nov2020 election, but was not specifically mentioned in the related Senate Oversight Committee Report.

#### Election Manual Citations...

##### ELECTION MANUALS USE AMBIGUOUS LANGUAGE, INSTEAD OF STATUTE LANGUAGE

The statutory requirements are incompletely stated in the election manual guidelines for in-person precinct election inspector assignments. The statute language is softened from the requirement of “*an equal number, as near as possible*” to the much more ambiguous “*politically balance each precinct board*”. For instance, one might mistakenly interpret “political balance” to be satisfied by having an equal number of Democrat and non-Democrat election inspectors. By this measure, the election inspector appointments at the Detroit TCF Center might reasonably be considered ‘politically balanced.’ The net result is that those who understand and wish to dutifully follow the intent and letter of the law will do so. In contrast, those who seek to bend the rules and abuse loose verbiage in the election manual for nefarious purposes will do so too. The screenshot below comes from the Election Official’s Manual, Michigan Bureau of Elections, Chapter 13, Update February 2019, (XIII\_Appointing\_and\_Training\_Election\_Inspectors\_266018\_7.pdf), Page 1:

- The election commission is required to appoint “at least 1 election inspector from each major political party.” In addition, the election commission is required to **politically balance each precinct board “as nearly as possible.”** A “major political party” is defined as “each of the 2 political parties whose candidates for the office of secretary of state received the highest and second highest number of votes at the immediately preceding general election in which a secretary of state was elected.” (Current “major political parties” are the Republican Party and the Democratic Party.) The election

Chapter 13, Page 1 of 5

##### ELECTION MANUAL LANGUAGE IS EVEN WORSE FOR COUNTING BOARDS

However, the election manuals specific to absent voter counting boards only make arbitrary and passing reference to statutory requirements for equal representation of the major political parties. The references are not appropriately quoted to clearly outline the statutory requirements – or the companion election manual chapters that might contain the appropriate details. The only emphasized tangible requirement from statute text is that which states one election inspector from each major political party must always remain present. This is an additional requirement, not a substitute for the requirement that appointments be made in “*an equal number, as nearly as possible*”. From Election Official’s Manual, Michigan Bureau of Elections, Chapter 8, Update October 2020, (VIII\_Absent\_Voter\_County\_Boards\_265998\_7.pdf), Page 9:

- Subsection 2 addresses the appointment of election inspectors. It states that: “the board of election commissioners shall appoint the election inspectors to those absent voter counting boards not less than 21 days or more than 40 days before the election at which they are to be used. **Sections 673a and 674 apply to the appointment of election inspectors to absent voter counting boards under this section.**” MCL 168.765a(2).

For jurisdictions using high-speed scanners, BOE strongly recommends that staff assigned to high-speed scanners and pollbooks work until closing, if possible. If it is necessary to replace staff assigned to scanners and pollbooks, jurisdictions should consider longer overlap periods to allow more continuity of operations. **Each shift should have the statutorily required balance of election inspectors** from both parties.

Page 11:

**Election Inspectors and Challengers:** Election inspectors must be appointed to pre-processing locations under the same procedures used to appoint election inspectors to absent voter counting boards, including the requirement that at all times, **at least 1 election inspector from each major political party be present** at the location. Additionally, challengers must be allowed in pre-processing locations in the same manner as absent voter counting boards.

#### AMBIGUOUS ELECTION MANUAL LANGUAGE LEADS TO UNLAWFUL BEHAVIOR

The ambiguity in the election manual guidelines leads to disparity in political party representation that thwarts the ‘self-policing’ mechanism required by election law. The election inspector appointment manifest for the TCF Center at the 03Nov2020 election indicated there were 1,641 assigned election inspectors. Of these, only 48 were identified as Republicans (i.e. ~3%), and 863 were identified as Democrats (i.e., ~53%). Put another way, there was only 1 Republican for every 18 Democrats. There is no way to justify this disparity as anything close to “*an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party*”.

Election Law Citations...

**STATUTE LANGUAGE SUFFICIENTLY STATES INSPECTOR ASSIGNMENT REQUIREMENT**  
Statutes specify that equal numbers of election inspectors are required to participate in the conduct of election, while still allowing other political affiliations and non-affiliated individuals to participate. The clause “*as nearly as possible*” in the critical phrase “*shall appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party*” does not give license to ignore the “*equal number*” requirement. The clause “*as nearly as possible*” is required in acknowledgment that some precincts will have odd numbers of election inspectors, for which it is physically impossible to have equal whole number participants. There is no acceptable excuse for any experienced clerk to violate these mandatory instructions.

MCL 168.674(2):

“...*The board of election commissioners shall appoint at least 1 election inspector from each major political party and shall appoint an equal number, as nearly as possible, of election inspectors in each election precinct from each major political party...*”

“...*Not later than 2 business days following the appointment of election inspectors under subsection (1) for elections in which a federal or state office appears, the board of election commissioners shall notify by certified mail, personal service, or electronic transmission capable of determining date of receipt the county chair of each major political party of the names and political party affiliations of appointed election inspectors and the precincts to which those inspectors were appointed...*”

#### STATUTES EXTEND THE SAME REQUIREMENTS TO COUNTING BOARDS

This additional statute applies to counting board pre-processing requirements. It states that at any ballot processing locations, one election inspector from each major political party must always be present. This is an additional requirement, not a replacement for the equal number of representation from political parties in the assignment of election inspectors.

MCL 168.675(6):

“...*Election inspectors may be appointed by the board of election commissioners under this subsection before written notice is provided to the secretary of state under this subsection. Sections 673a and 674 apply to the appointment of election inspectors under this subsection. All requirements for election inspectors appointed to*

an absent voter counting board under section 765a apply to election inspectors appointed under this subsection. **At all times, at least 1 election inspector from each major political party must be present at the location...**"

NOT ALL CLERKS EMPHASIZE PARTISAN INSPECTOR ASSIGNMENT REQUIREMENTS  
Some clerks transparently reference the statutory requirements in their applications for election inspectors, and others do not. The screenshots below are available at the following websites for Northville City and Detroit City:

[https://p1cdn4static.civiclive.com/UserFiles/Servers/Server\\_11895878/File/Services/CityClerk/Elections/Election%20Inspector%20Information%20Sheet%20-%20website%20version.pdf](https://p1cdn4static.civiclive.com/UserFiles/Servers/Server_11895878/File/Services/CityClerk/Elections/Election%20Inspector%20Information%20Sheet%20-%20website%20version.pdf)

<https://detroitmi.gov/sites/detroitmi.localhost/files/forms/2020-09/%281%29%20POLL%20WORKER%20APPLICATION-2020.pdf>

#### ELECTION INSPECTOR INFORMATION SHEET

The City of Northville is always accepting applications for Election Inspectors!

Election inspectors (poll workers) conduct assigned duties at the polling site on Election Day. Duties may include issuing ballots to registered voters, monitoring the voting equipment, and explaining how to mark the ballot.

#### **Necessary Qualifications and Completing Your Application**

- ❖ You must be a United States citizen and registered to vote in the State of Michigan.
- ❖ Inspectors must be able to retain and utilize the information provided during training sessions, work under the direct supervision of the Precinct Chairperson, and be proficient with computers.
- ❖ Complete and return your application to the City Clerk's Office, City of Northville, 215 W. Main Street, Northville, Michigan, 48167 or email to [dmassa@ci.northville.mi.us](mailto:dmassa@ci.northville.mi.us).
- ❖ Michigan Election Law requires that you indicate your political party affiliation on the Election Inspector Application. **An equal number of election inspectors from each major political party, as closely as possible, must be appointed to each precinct. If you declare "independent" or "no party affiliation" your application will be disqualified.**



#### FREQUENTLY ASKED QUESTIONS

##### DO I HAVE TO LIVE IN DETROIT?

You do not have to be a resident of Detroit. If you are 18 years of age or older, you must be registered to vote in Michigan. 16 or 17 year olds may also work as a poll worker.

##### WHERE WILL I BE ASSIGNED TO WORK?

You will be assigned to one of our 503 polling precincts located throughout the City of Detroit. Our goal is to assign you to the closest available polling precinct to your home.

##### WHAT IS MY RATE OF PAY?

You will be paid base on classification.

##### HOW LONG IS THE TRAINING SESSION?

Each training session will last approximately two and a half hours.

##### WHEN WILL I RECEIVE MY PAY?

All Poll workers checks are mailed within three to six weeks after each election.

#### INADEQUATE EMPHASIS OF REQUIREMENTS LEADS TO BAD OUTCOMES

When the number of appointed election inspectors from each major political party are grossly unequal, as they were in Detroit, one has to be at least a little curious that some part of elections results might have been tainted. The law seems to provides flexibility to avoid prosecution of clerks for misfeasance or malfeasance due to common circumstances (i.e., slightly unequal party representation due to sicknesses – especially in a pandemic).

However, gross disregard for statutory safeguards should not be shrugged off – especially when common arguments include: *it has been that way for years*, or when senior election officials repeatedly and confidently assert that all legal requirements were observed. As previously explained, of the 1641 election inspectors at the Detroit TCF Center, only 48 appointees were Republican, and 863 appointees were Democrat affiliated. To make matters worse, there were 298 additional staff positions (i.e. team leaders, supervisors, coordinators, medical personnel), of which only 1 was listed as a Republican. Statistics calculated from the Detroit TCF Center election worker manifest reportedly obtained by a FOIA request at: [https://letsfixstufforg-my.sharepoint.com/personal/patrick\\_letsfixstuff\\_org/\\_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fpatrick%5Fletsfixstuff%5Forg%2FDocuments%2FFiles%2F2020%20Election%2FEvidence%2FE%2D3%20Detroit%20Poll%20Worker%20Party%20Affiliations%2Epdf&parent=%2Fpersonal%2Fpatrick%5Fletsfixstuff%5Forg%2FDocuments%2FFiles%2F2020%20Election%2FEvidence](https://letsfixstufforg-my.sharepoint.com/personal/patrick_letsfixstuff_org/_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fpatrick%5Fletsfixstuff%5Forg%2FDocuments%2FFiles%2F2020%20Election%2FEvidence%2FE%2D3%20Detroit%20Poll%20Worker%20Party%20Affiliations%2Epdf&parent=%2Fpersonal%2Fpatrick%5Fletsfixstuff%5Forg%2FDocuments%2FFiles%2F2020%20Election%2FEvidence).

## WHAT HAPPENS IN SPORTS WHEN TEAM SIZE IS UNEQUAL?

Election inspectors are the front line of defense against election fraud. How can one reasonably expect adherence to all laws, when nearly every ‘guard’ is on the same political ‘team’, and a small fraction are enticed to ‘bend the rules’ due to lax statute language, inaccurate training materials, blatant bias, and near-absent enforcement? In this environment, if there are never any consequences, more rules will be bent or completely ignored with each passing year. There is a reason why a game for a team sport is considered fair and proper only when there are equal numbers from each team on the field and when impartial referees enforce the rules under the close scrutiny of fans.

### Recommendations...

#### CORRECT THE CRITICAL OMISSIONS IN ELECTION MANUALS

The election manuals should be immediately amended to include all critical statutory instructions and language.

#### AMEND STATUTES TO MANDATE PARTISAN INITIATED PARTICIPATION

PIME has suggestions strengthening statutes so that they are less likely to be diluted or misconstrued. We recommend passing a simple, self-standing bill, with minor changes to MICHIGAN ELECTION LAW (EXCERPT), Act 116 of 1954, 168.674. Precinct election inspector; appointment; chairperson; political party membership; challenge; vacancies.

#### MCL 168.764(1) (suggested)

*“Notwithstanding any other provision of law to the contrary and subject to this section, the city and township board of election commissioners, at least 21 days but not more than 40 days before each election, but in no case less than 5 days before the date set for holding schools of instruction, shall appoint for each election precinct at least 3 election inspectors and as many more as in its opinion is required for the efficient, speedy, and proper conduct of the election. The board of election commissioners ~~may~~ shall preferentially appoint as election inspector an individual on the list submitted by a major political party under section 673a who is qualified to serve under section 677. An appointment of an election inspector under this section is void if a properly completed application for that election inspector is not on file in the clerk’s office as prescribed in section 677.”*

## 4. OMISSION OF KEY ELECTION INSPECTOR RESPONSIBILITIES

### Background...

#### THIS IS NOT AN EXHAUSTIVE LIST OF ELECTION MANUAL ERRORS

There are numerous other examples in which instructions in election manuals can be shown to be incorrect, ambiguous, or incomplete when compared to statute language. The cases outlined above represent, perhaps the most egregious discrepancies to written statute that could have, and probably did, affect election outcomes. The law, as written, must be faithfully observed and enforced.

One additional example bears note as it sheds light on the importance of a net ‘neutral’ political presence at all ballot polling and processing locations.

#### CRITICAL INSPECTOR OBLIGATIONS ARE MISSING FROM ELECTION MANUALS

Election manuals outline several crimes that may be committed in the conduct of elections. These are related to infractions that are specifically outlined across many statutes. Some are felonies, many others are misdemeanors. Related to these crimes, the statutory responsibilities of law enforcement and prosecutors are (correctly) referenced, but the equally important obligation of election inspectors is inexplicably omitted. The following is an excerpt from the election manual “Election Law Crimes” dated October 19, 2020 (Actionable\_Election\_Day\_Offenses\_472371\_7.pdf) at

[https://www.michigan.gov/documents/sos/Actionable\\_Election\\_Day\\_Offenses\\_472371\\_7.pdf](https://www.michigan.gov/documents/sos/Actionable_Election_Day_Offenses_472371_7.pdf), Page 1-2:

**Violations of Michigan and Federal Elections Law Relevant to Election Day**

Questions may be directed to the Michigan Bureau of Elections. (517) 335-3234.

**Responsibility of County Prosecutors and Law Enforcement Agencies**

Under MCL 168.940 and 168.941, county prosecuting attorneys and law enforcement agencies have a duty to investigate alleged criminal violations of Michigan election law, and in appropriate cases, pursue appropriate enforcement action. These statutes read as follows:

- "It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted." (MCL 168.940)
- "It is hereby made the duty of any police, sheriff or peace officer, present and having knowledge of any violation of any of the provisions of this act, to forthwith institute criminal proceedings for the punishment of such offender." (MCL 168.941)

**Michigan election law Criminal Penalties**

- Persons are not permitted to solicit votes or engage in any type of campaigning within 100 feet of any doorway used by voters to enter the building in which a polling place is located. Persons shall not post, display or distribute in a polling place or within 100 feet of the entrance to the building in which a polling place is located any material that makes reference to an election, candidate or ballot question. (MCL 168.744; 931(1)(k)).
- Persons must not falsely impersonate another person or vote or attempt to vote under the name of another person. (MCL 168.932a(a))
- Persons must not assume a false or fictitious name to vote or offer to vote. (MCL 168.932a(b))
- Persons who are not qualified to vote must not willfully offer to vote. (MCL 168.932a(c))

- Persons must not offer to vote or attempt to vote more than once at the same election. (MCL 168.932a(e))
- Persons shall not intentionally misrepresent themselves as an election official if they are not an election official. (MCL 168.932e)
- A challenger "who challenges a qualified and registered elector for the purpose of annoying or delaying voters is guilty of a misdemeanor." (MCL 168.727(3))
- "Any officer or election board who shall prevent the presence of any such challenger or shall refuse to provide a challenger with conveniences for the performance of the duties expected of him or her shall, upon conviction, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the state prison not exceeding 2 years, or both." (MCL 168.734)
- Names of elected or appointed public officials "shall not appear on any material that is temporarily posted, displayed, or distributed in a polling place or polling room on election day." (MCL 168.744a)
- Persons must not attempt by means of bribery, menace, or other corrupt means to influence a voter in giving his or her vote or to deter the voter from giving his or her vote. (MCL 168.932(a))
- Persons present while an absent voter is voting an absent voter ballot must not attempt to influence the absent voter on how he or she should vote. (MCL 168.932(g), (h))
- Persons may not accept payment for voting or refraining from voting. (MCL 168.931(1)(b))
- Persons may not pay or promise to pay another person for voting, for refraining from voting or to influence how the person votes. (MCL 168.931(1)(a))
- Persons may not be in possession of another person's absent voter ballot unless the person 1) is a member of the voter's immediate family and has been asked by the voter to return the ballot 2) resides in the voter's household and has been asked by the voter to return the ballot 3) is responsible for handling mail (but only during the course of his or her employment) or 4) is an authorized election official. (MCL 168.932(f)).

**Other Conduct that is Prohibited in a Polling Place on Election Day**

The following section includes offenses that do not constitute criminal violations of Michigan election law but are conduct standards that may be enforced by election inspectors pursuant to their authority under MCL 168.678: "Each board of election inspectors shall possess full authority to maintain peace, regularity and order at its polling place, and to enforce obedience to their lawful commands during any election." Election inspectors may enlist the assistance of the clerk or law enforcement, as appropriate, to ensure there is no disruption in voting.

More infractions are listed on additional pages of that document, including (some) violations of relevant federal election law statutes.

**STATUTES OUTLINING INSPECTORS AND OTHER OFFICIALS RESPONSIBILITIES**

Below is the oath taken by all election inspectors, followed by critical statutes outlining the scope of their responsibilities, and those of other state officials:

MCL 168.680 outlines the oath taken by election inspectors:

*"...Each precinct election inspector shall, before entering upon the discharge of his duties, take and subscribe the following constitutional oath of office, which oath any of the inspectors may administer: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of inspector of elections according to the best of my ability."..."*

MCL 168.939 instructs election inspectors to report 'punishable' offenses of the election laws:

*"...It shall be the duty of every inspector of election, knowing, or having reason to believe, that an offense punishable under the provisions of this act has been committed, to give information thereof to the prosecuting attorney without delay, and such prosecuting attorney shall adopt effective measures for the prosecution of all persons believed to be guilty of such offense..."*

MCL 168.940 instructs prosecuting attorneys to pursue offenses suggested by credible information:

*"...It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted..."*

MCL 168.941 instructs law enforcement aware of any election law violations to pursue criminal proceedings:

*“...It is hereby made the duty of any police, sheriff or other peace officer, present and having knowledge of any violation of any of the provisions of this act, to forthwith institute criminal proceedings for the punishment of such offender...”*

MCL 168.942 outlines that violation of election laws may be prosecuted for 3 years after the offense(s):  
*“...An offense under this act shall not be prosecuted unless the prosecution is commenced within 3 years after the time the offense is discovered. The complaining witness or any other person who is called to testify in behalf of the people in a proceeding under this section shall not be liable to criminal prosecution under this act for an offense in respect to which he or she is examined or to which his or her testimony relates, except to prosecution for perjury committed in the testimony...”*

#### INSPECTORS (UNKNOWINGLY) SWEAR TO REPORT (ALL) ELECTION VIOLATIONS

The key point is that election inspectors have the responsibility to report any violations of election law they have “*reason to believe*” occurred. The statute does not stipulate that the election inspector must directly witness a violation, but it must be a “*punishable*” offense of election laws. For a while, my ignorance led me to believe that ‘punishable’ implied ‘felony’, or at the very least required a specific mention in statute. However, further review of the election laws revealed there is a much more broad definition, per statute:

MCL 168.931(2) states all violations of election laws with unspecified penalties are in fact misdemeanors:

*“A person who violates a provision of this act for which a penalty is not otherwise specifically provided in this act, is guilty of a misdemeanor....”*

MCL 168.934 establishes misdemeanor election law violations as punishable offenses:

*“Any person who shall be found guilty of a misdemeanor under the provisions of this act shall, unless herein otherwise provided, be punished by a fine of not exceeding \$500.00, or by imprisonment in the county jail for a term not exceeding 90 days, or both such fine and imprisonment in the discretion of the court....”*

Election inspectors take an oath, and this oath obligates them to report all election law violations that they have “*reason to believe*” were committed. Of course, if one is not aware of this obligation, or of the full set of possible election law violations, there is no abrogation of duty due to reporting failures.

Furthermore, it is a violation of election law to provide election conduct and training materials that are contrary to statutory requirements.

#### STATUTES REQUIRE ELECTION MANUALS PROVIDE LAWFUL GUIDANCE

MCL 168.31(1) outlines authorities and responsibilities of the secretary of state, including the requirement that all rules and instructions remain consistent with election laws:

*“The secretary of state shall do all of the following:*

*(a) Subject to subsection (2), issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state.”*

*(b) Advise and direct local election officials as to the proper methods of conducting elections.*

*(c) Publish and furnish for the use in each election precinct before each state primary and election a manual of instructions that includes specific instructions on assisting voters in casting their ballots, directions on the location of voting stations in polling places, procedures and forms for processing challenges, and procedures on prohibiting campaigning in the polling places as prescribed in this act....”*

*“(h) Investigate, or cause to be investigated by local authorities, the administration of election laws, and report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution....”*

MCL 168.765a(13) specifies that instructions for counting boards must be lawful:

*“The secretary of state shall develop instructions consistent with this act for the conduct of absent voter counting boards or combined absent voter counting boards. The secretary of state shall distribute the instructions developed under this subsection to county, city, and township clerks....”*

MCL 168.931(1) makes it clear willful violation of election law by an election official is a misdemeanor: *“A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor: ... (h) A person shall not willfully fail to perform a duty imposed upon that person by this act, or disobey a lawful instruction or order of the secretary of state as chief state election officer or of a board of county election commissioners, board of city election commissioners, or board of inspectors of election. ...”*

INSPECTORS MAY NEED TO REPORT SENATE ANALYSIS DETAILS, WHEN DISCLOSED  
It is unfortunate that Senator McBroom was not an ‘oathed’ election inspector for the 03Nov2020 election. The report covering his committee’s investigation into the election fully acknowledges that election law infractions were committed. If he were an election inspector, coupled with his familiarity with election law, his oath would require his action to detail such instances to prosecutors. Below is a quote from “Report on the November 2020 Election in Michigan”(SMPO\_2020ElectionReport\_2.pdf) at [https://misenategopcdn.s3.us-east-1.amazonaws.com/99/documents/20210623/SMPO\\_2020ElectionReport\\_2.pdf](https://misenategopcdn.s3.us-east-1.amazonaws.com/99/documents/20210623/SMPO_2020ElectionReport_2.pdf) Page 35:

## REPORT ON THE NOVEMBER 2020 ELECTION IN MICHIGAN

### Conclusion

The Committee can confidently assert that it has been thorough in examination of numerous allegations of unlawful actions, improper procedures, fraud, vote theft, or any other description which would cause citizens to doubt the integrity of Michigan’s 2020 election results. Our clear finding is that citizens should be confident the results represent the true results of the ballots cast by the people of Michigan. The Committee strongly recommends citizens use a critical eye and ear toward those who have pushed demonstrably false theories for their own personal gain. We also conclude citizens should demand reasonable updates and reforms to close real vulnerabilities and unlawful activities that caused much of the doubt and questionability to flourish and could, if unchecked, be responsible for serious and disastrous fraud or confusion in the future.

Further, we commend the innumerable clerks, canvassers, staff, workers, and volunteers across Michigan that make the enormous complexity of elections operate so smoothly, so often. The complexity of the work and the dedication we discovered are astounding and worthy of our sincerest appreciation. We also commend the diligent citizens that took time to report problems and concerns they saw because they want and value fair and free elections above party or personal gain. If all citizens remain vigilant and involved, we will emerge stronger after any challenging time.

### Recommendations..

#### INCLUDE ALL CRITICAL OBLIGATIONS IN ELECTION TRAINING MATERIALS

The full extent of election inspector obligations should be emphasized as part of their training. Had more election inspectors been aware of their duty to recognize and report all election law infractions, the unlawful election manual instructions may have been resolved long ago.

Even if the unlawful guidance and related adherence have been common practice for many years, and if these errors are perceived in general as harmless, each violation must be reported and resolved. It is dangerous to perpetuate inappropriate instructions as they are prone to continuous growth. Plus, unlawful guidance encourages diligent election officials to unknowingly commit punishable violations of election law.

#### COMPREHENSIVE AUDITING NEEDED TO ASSESS INVALID BALLOT EXPOSURE

Earlier this year, much of this information was provided to several legislators, including Senator McBroom, in perhaps less developed arguments. It is possible the information never made it to the addressees’ eyes.

Had the reported alerts been received and acted upon, perhaps a preventative and comprehensive audit of election materials might have averted what is now perceived as pressing need for reform and a 2020 forensic audit.

Given the deeply concerning inclusion of invalid ballots from several possible mechanisms, one cannot conclude with certainty that the 2020 election results truly represent the legitimate will of legitimate voters. PIME recommends a 2020 forensic audit and independent forensic audits after each future election. If the Legislature were to conduct a properly targeted audit, and find the number of potentially fraudulent ballots were inconsequential for all impacted races, then we could simply move forward with a good account of how many ballots were tainted by unlawful means. This would conclusively put a number on how important it is to observe and enforce election laws. If, however, the numbers indicate error margins material in one or more races, next steps might be considerably more consequential.

#### CLOSING THOUGHTS

Directing my concerns to elected representatives only satisfies my (Article 1 Section 3) constitutional duty as a citizen to "*instruct their representatives*". I have more recently come to realize that as an 'oathed' election inspector, I am further obligated to formally report this (and additional) information to prosecutors. I am preparing documents to fulfill this oath. With my current understanding of the election laws, I realize it is somewhat hypocritical to complain about others violating their oath of office, while I may not be in full compliance with my own – even if I was not fully aware of all obligation at the time I affirmed the oath. I accept that as I am not trained in election law, it is possible that my present understanding is flawed. However, I have spent considerable time on my research, and I am presently unaware of how to fulfill my oath without expressing my concern to both law making and law enforcement officials.

Respectfully,

Louis Avallone  
Milford, Michigan