



COMPROMISED CHECKPOINTS:

Restoring Independence in Michigan’s Election Oversight

Michigan Fair Elections Institute (MFEI) | March 25, 2026 | 501(c)(3) Educational Research | mifairelections.org

THE PROBLEM

Three rule sets containing 40 provisions appear to violate federal, state, and constitutional law, yet two rule sets are already in effect with the force of law and the third is advancing toward implementation in 2026. Rule Sets 2025-13, -14, and -15 will govern Michigan’s November 3, 2026, general election, a contest set to determine 13 U.S. representatives, a U.S. senator, the Governor, Secretary of State, Attorney General, all 110 State Representatives, all 38 State Senators, and two Michigan Supreme Court Justices. **How did this situation happen? MFEI’s 195-page investigative report, *Compromised Checkpoints*, explains.**

These rules advanced through a compromised dual-checkpoint oversight system. One checkpoint, the Michigan Office of Administrative Hearings and Rules (MOAHR), operates as a legally unauthorized gatekeeper under the executive branch. It has no statutory basis, none of the five standard independence protections, and is an outlier among the other 23 central-panel states. The other checkpoint, the Joint Committee of Administrative Rules, JCAR, was legally established through legislated law but is structurally designed to fail.

THE STRUCTURAL CAUSE: A 30-YEAR DESIGN FLAW

Michigan operates a dual-checkpoint rulemaking oversight system. The first checkpoint MOAHR is the primary gatekeeper for all agency rules, including election rules. The second checkpoint, JCAR, provides legislative review. Both failed.

Governor John Engler (R) ordered the creation of MOAHR’s first version in 1995. Then each successive governor over the past 30 years recreated the central-panel office without ever receiving legislative authorization. MOAHR is the only central-panel oversight body in the nation that: (1) was created without statutory foundation via executive order; (2) combines mandatory rulemaking gatekeeping (pre-promulgation) with binding adjudication (judging) of the rules it approves; and (3) operates with zero of five standard independence protections.

DELIBERATE CHOICE: Governor Whitmer created MOAHR with zero independence protections in February 2019. Four months later, she ordered the creation of two other oversight commissions, equipping them with independence protections (Senate confirmation, fixed terms, qualification requirements, and budgetary/structural independence). This contrast proves the omission of independence protections for MOAHR was not inadvertent. (See *Compromised Checkpoints*, Figure 26.)

MICHIGAN AS A NATIONAL OUTLIER: 24-STATE COMPARISON

Protection	Michigan	23 Other Central Panel States
Statutory Foundation (allocated by law)	✗ None	23/23 (100%)
Qualification Requirements	✗ None	21/23 (91%)
Structural / Budgetary Independence	✗ None	20/23 (87%)
Senate Confirmation	✗ None	10/23 (43%)
Fixed / Independent Term	✗ None	10/23 (43%)
TOTAL SCORE	0 / 5 (0%)	Avg: 3.65 / 5 (73%)

Tier 1 — Statutory / Full Independence (4–5/5): 12 states. Tier 2 — Structural / Civil Service Independence (2–3/5): 11 states. Tier 3 — Executive Capture (0/5): Michigan only.

THIRTY YEARS: Every other state built its administrative review system on a foundation of statute, constructed through public hearings, legislative debate, and a recorded vote. But Michigan’s MOAHR rests on executive orders alone. It was manufactured without legislative authorization, carries no fixed terms, and its employees are subject to removal the moment a new governor takes office.

MICHIGAN’S CONSTITUTIONAL FRAMEWORK — PRIMARY BASIS

Michigan’s own Constitution independently establishes that MOAHR’s structure is constitutionally infirm:

- [Art. V, § 2](#) requires all executive offices to be “allocated by law” through legislative enactment, with public hearings, debate, and a recorded vote. MOAHR was not.
- [Art. III, § 2](#) prohibits any branch from exercising powers belonging to another except as *expressly provided* in the constitution. No such provision authorizes executive gatekeeping over legislature-delegated rulemaking.
- [Art. IV, § 1](#) vests legislative power, including rulemaking authority delegated through the Michigan Administrative Procedures Act (MAPA), in the legislature, not in an executive gatekeeper.

- [Art. IV, § 37](#) reflects the framers’ 1963 understanding that even legislative-committee action on rules requires bicameralism and presentment, the requirement that legislation pass both legislative chambers and be presented to the governor. MOAHR exercises powers beyond what this provision permits of the legislature’s own committee.
- [Art. I, § 17](#) guarantees fair and just treatment in executive hearings, structurally denied when the same office that approves a rule later adjudicates disputes arising under it.
- [Art. VI, § 28](#) requires judicial review of agencies existing under the constitution or by law. MOAHR was created by executive order — it qualifies under neither, and its decisions therefore fail the threshold requirement of being authorized by law.

CONTROLLING AND PERSUASIVE PRECEDENTS

- [Blank v. Department of Corrections, 462 Mich. 103 \(2000\)](#) — *Binding Michigan authority*: Michigan’s Supreme Court struck down JCAR’s statutory veto as violating the constitutional doctrine of separation of powers. The legislature removed that authority without creating a substitute. Michigan governors then inserted MOAHR via executive order, and without authorization. An executive-created office cannot constitutionally occupy a space allocated to the legislature and even it was not allowed to hold.
- [INS v. Chadha, 462 U.S. 919 \(1983\)](#) — *Binding federal authority*: The U.S. Supreme Court held that any action altering the legal rights and duties of persons outside the legislative branch must proceed through bicameralism and presentment. MOAHR’s gatekeeping and adjudicative functions both alter legal rights. Neither proceeds through bicameralism and presentment. Michigan’s own [Art. IV, § 37](#) embedded this principle in 1963.
- [Whiley v. Scott, 79 So.3d 702 \(Fla. 2011\)](#) — *Persuasive authority*: The Florida Supreme Court struck down an executive-order-created mandatory rulemaking gatekeeper as an unconstitutional separation-of-powers violation. Michigan’s MOAHR was created by the same mechanism, exercises the same gatekeeping authority, and has never been judicially tested. Whiley construes Florida’s constitution and APA; its structural reasoning applies with persuasive force to Michigan’s parallel constitutional framework.
- [Evers v. Marklein, 2025 WI 36 \(Wis. 2025\)](#) — *Persuasive authority applying binding Chadha*: The Wisconsin Supreme Court adopted the reasoning of *INS v. Chadha* to strike down legislative committee gatekeeping authority. If even a legislatively created committee cannot exercise a unilateral rulemaking veto without satisfying *Chadha*’s requirements, an executive-order-created body exercising the same power is more constitutionally vulnerable, not less.

THE THREE ELECTION RULE SETS: APPARENT VIOLATIONS

Rule Set 2025-13 (effective Feb. 23, 2026): Creates a two-tiered voter registration system that exempts overseas civilians from standard eligibility verification while imposing economic barriers on domestic challengers (\$1,500+ per 100 challenges). Contradicts [AG Opinion #7322](#) and [MCL 168.512](#). Also contradicts [MCL 168.497](#) — making it harder to challenge a registration than to create one in the first place. Raises federal civil rights and materiality concerns under [52 USC § 10101](#).

Rule Set 2025-14 (effective Oct. 23, 2025): Mandates destruction of electronic poll book data seven days after each election’s certification — a 98.9% reduction from the 22-month federal retention requirement under [52 U.S.C. § 20701](#). Compliance with both the state rule and federal law is simultaneously impossible. Michigan clerks are currently destroying records that federal law requires to be preserved.

Rule Set 2025-15 (projected 2026): Mandates government-provided poll challenger training materials whose content has been withheld from the legislature under subpoena, raising First Amendment compelled-speech concerns. Contradicts four specific provisions of [MCL 168.733](#). Active litigation: [House of Representatives v. Benson](#), No. 25-000096-MZ (court preservation order in effect; case pending on merits).

AVAILABLE REMEDIES

- Federal DOJ enforcement under [52 USC § 10101\(c\)](#) and [§ 20701](#)
- Private litigation under [42 U.S.C. § 1983](#), First Amendment, and Equal Protection Clause
- Michigan APA challenge under [MCL 24.306](#) allows direct declaratory judgment without exhaustion of administrative remedies ([MCL 24.264](#))
- Legislative enactment to provide MOAHR with statutory foundation, Senate confirmation, fixed terms, qualification requirements, and separation of adjudicative from rulemaking functions