

MFEI Synthesis Memorandum

Authority Allocation in MDOS Rule Sets 2025-13-ST, 2025-14-ST, 2025-15-ST, 2025-63-ST, and Campaign Finance Rule Set 2026-22-ST

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1. Executive Summary

This memorandum tests the working question MFEI has pursued across multiple analytical passes: do MDOS rule sets [2025-13-ST](#), [2025-14-ST](#), [2025-15-ST](#), and [2025-63-ST](#), taken together, remove authority from local clerks and boards of canvassers and consolidate it in the Michigan Department of State? This revision extends that question into a second statutory regime by folding in rule set [2026-22-ST](#) (Campaign Finance General Provisions), which the prior synthesis treated only as a flagged status note pending confirmation. MFEI has now obtained the rule set’s Notice of Public Hearing, the filed draft rule text (April 21, 2026), and PIME’s draft opposition, permitting [2026-22-ST](#) to be carried into the synthesis in full.

The memo builds on the prior MFEI cross-rule and ultra-vires working papers, the constitutional and statutory anchor brief produced in this engagement, and direct reading of the rule text, RIS documents, JCAR forms, clerk feedback, and public-comment record for each rule set — supplemented, for [2026-22-ST](#), by the filed Notice of Public Hearing, PIME’s draft opposition statement, and primary statutory text of [MCL 169.215](#) verified against the Michigan Legislature’s Michigan Compiled Campaign Finance Act (MCFA).

The rule text, the public-comment record, and the statutory anchors together support a qualified “yes”. The five rule sets do not, individually or collectively, abolish clerk or board-of-canvasser authority. They do exhibit a consistent pattern of (i) elevating MDOS-set standards into the operative legal text governing functions the relevant act lodges with local officials, (ii) routing local discretion through MDOS-approved forms, manuals, training, and approval gates, and (iii) — most clearly in rule set [2025-63-ST](#) — authorizing Bureau of Elections staff to perform duties the Election Law and the Michigan Constitution assign to the Board of State Canvassers. Rule set [2026-22-ST](#) broadens that pattern across a second statutory regime (the [Michigan Campaign Finance Act](#), [MCL 169.215](#)), but in a narrower way: it operates on the county clerk’s role as a campaign-finance filing official rather than as an election administrator, and it does not touch the boards of canvassers or the constitutional structure of art. II § 7.

The strongest point against [2026-22-ST](#) is statutory, not constitutional. [MCL 169.215\(2\)](#) — verified verbatim against the Michigan Legislature’s text — provides that where the Secretary

refuses a declaratory ruling, the Secretary “shall notify the person making the request of the reasons for the refusal and shall issue an interpretative statement providing an informational response.” The interpretive-statement fallback is mandatory. The filed rule text of R 168.506(4), verified against the April 21, 2026 draft, authorizes the Department to refuse both a declaratory ruling and the interpretive-statement fallback on grounds the statute does not contain. That provision is in direct tension with the statutory “shall” and is the litigation-ripe provision in [2026-22-ST](#). This parallels rule-supplies-content-the-statute-omits pattern already identified in rule sets [2025-13-ST](#) and [2025-63-ST](#).

Four provisions across the five rule sets warrant litigation-grade scrutiny:

- **R 168.55(2) of rule set [2025-63-ST](#)**, which provides that Bureau of Elections staff “shall serve as assistants to the board of state canvassers and may be authorized by the board to complete duties assigned to the board of state canvassers in the act.” This places executive-branch staff inside a constitutionally established bipartisan body’s functions and confronts both [MCL 168.842\(5\)](#)’s declaration that the canvass duty is “ministerial, clerical, and nondiscretionary” and the structural design of art. II § 7.

R 168.252 and R 168.256 of rule set [2025-13-ST](#), which supply substantive definitions of “reliable information” and “personal knowledge” — terms that determine whether a clerk must or cannot act on a citizen’s voter-roll challenge — where [MCL 168.509aa](#) and [168.512](#) define neither.

- **R 168.215 and R 168.220 of rule set [2025-15-ST](#)**, which (a) swear the challenger to “the written materials designated by the Secretary of State” and (b) route challenger appeals to the Bureau of Elections rather than to a board of canvassers.
- **R 168.506(4) (with R 168.501(c)) of rule set [2026-22-ST](#)**, which — as verified against the filed rule text (Draft Rule Set 2026-22, dated April 21, 2026) — authorizes the Department to refuse both a declaratory ruling and the interpretive-statement fallback, in tension with the mandatory fallback in [MCL 169.215\(2\)](#), and introduces a three-part “frivolous” definition with no statutory anchor. This characterization has been verified against the filed draft rule text (April 21, 2026).

Six further conclusions follow from the record:

- **Pattern of “codifying current practice.”** Every Election Law RIS uses essentially identical disclaimer language: the rule “codifies current practice,” “clarifies legal requirements,” and imposes “no additional regulations.” The [2026-22-ST](#) Notice of Public Hearing uses the same template register, stating that the rule set will “modernize the existing rules ... to align them with current practice and policy.” This framing is in tension with operative text that, on PIME’s reading, adds new refusal grounds and a new definition not present in the MCFA.

- **Single statutory hook.** The four Election Law rulesets rest on [MCL 168.31\(1\)\(a\)](#). Rule set [2026-22-ST](#) rests on the parallel general grant in [MCL 169.215\(1\)\(e\)](#) (“promulgate rules ... to implement this act”). Neither hook is a grant to narrow a mandatory statutory duty or to add substantive standards the Legislature did not enact.
- **Delegation architecture recurs.** Per PIME’s analysis, [R 168.502 of 2026-22-ST](#) authorizes delegation of certain Secretary functions, echoing the R 168.52–R 168.55 delegation architecture of rule set [2025-63-ST](#) — though without the constitutional-body problem that makes R 168.55(2) the outlier.
- **Public-record nuance (RS 15).** The JCAR record for rule set [2025-15-ST](#) shows 39 commenters opposed and 5 in support but reading the comments themselves shows the professional clerk community is divided and that the strongest clerk-side objection is a technical statute-conflict point.
- **Genetski reach.** *Genetski v. Benson* invalidated MDOS guidance on signature matching for failure to promulgate under the APA. These rule sets are APA-promulgated, closing the procedural door; but *Genetski*’s substantive critique — that MDOS instruments imposing obligations the Legislature did not impose are vulnerable — still reaches the substantive provisions identified here. The [2026-22-ST](#) theory is likewise substantive (ultra vires under *Rovas*, *Luttrell*, *Coffman*, and — in the MCFA setting — *Clonlara*).
- **[2026-22-ST](#) status update.** The hearing was held and the written-comment deadline closed on June 8, 2026, both now past as of this memo. PIME’s draft “Immediate Action Required” items that depend on the comment window (submit comments, attend the hearing) are moot; the remaining avenues are JCAR objection and potential litigation. The rule text of R 168.501–R 168.506 has been verified against the filed draft rule text dated April 21, 2026.

2. Methodology and Standards of Evidence

Under the MFEI evidence framework, this memo separates four classes of claim. **Established facts** are statements supported by primary sources — rule text quoted from the filed final rule, statutory text verified against the Michigan Legislature’s compiled law, constitutional text from the Constitution of 1963, and direct quotations from the public-hearing record. **Logical inferences** are conclusions that follow from established facts alone, with the inferential step stated explicitly. **Conditional conclusions** depend on disputed evidence or on a legal characterization a court has not yet adopted; these are flagged with “if” or “would.” **Opinion and framing** are third-party characterizations — including framings adopted by MFEI’s own prior working papers, by PIME, by Promote the Vote, and by MDOS itself — and are reported as such.

Sources used and verified in this memo:

- Final rule text, RFR, RIS, JCAR Report Form, and (where present) Strike-and-Bold version for each of rule sets [2025-13-ST](#), [2025-14-ST](#), [2025-15-ST](#), and [2025-63-ST](#). These are the controlling primary sources for what each Election Law rule does.
- For rule set [2026-22-ST](#): the filed **Notice of Public Hearing** (hearing June 8, 2026, 10:00 AM, Room 1100, Binsfeld Office Building, Lansing; authority cited as section 15 of the [Michigan Campaign Finance Act](#), 1976 PA 388, [MCL 169.215](#); comment deadline June 8, 2026, 5:00 PM; proposed rules published in the 6/1/2026 Michigan Register and at michigan.gov/ARD).
- [Michigan Election Law](#) (Act 116 of 1954, MCL 168.1 et seq.) as compiled by the Michigan Legislature through PA 74 of 2025, and the [Michigan Campaign Finance Act](#), (Act 388 of 1976, MCL 169.201–169.282). [MCL 169.215\(2\)](#)'s mandatory interpretive-statement fallback was verified verbatim against the Michigan Legislature's published text for this revision.
- [Michigan Constitution of 1963](#), principally art. II §§ 4 and 7, art. V §§ 3 and 21, art. III § 2, art. IV § 1, and art. VII. Counsel should verify the post-Proposal 22-2 (2022) renumbering before any verbatim quotation.
- [Michigan Administrative Procedures Act](#) of 1969 (MCL 24.201 et seq.), particularly MCL 24.207 (definition of rule), 24.231 et seq. (rulemaking authority), 24.241–24.245 (notice, hearing, RIS), and 24.245a–24.245b (JCAR review).
- Michigan administrative-law decisions: In re Complaint of Rovas, 482 Mich 90 (2008); Luttrell v. Dep't of Corrections, 421 Mich 93 (1984); Coffman v. State Bd. of Examiners in Optometry, 331 Mich 582 (1951); Genetski v. Benson (Mich. Ct. Cl. Mar. 9, 2021); and — for the MCFA analysis — Clonlara, Inc. v. State Bd. of Educ., 442 Mich 230 (1993), the authority PIME relies on. All case-law pin cites should be confirmed against an official reporter before publication.
- Public-comment record: Written Comments, Clerk Feedback, public-hearing transcripts, and JCAR Report Forms for each Election Law rule set, supplemented by the Brownstown Township and Oakland County comments on rule set [2025-15-ST](#). For [2026-22-ST](#), the public-comment record had not been compiled into the working folder as of this memo; only PIME's draft submission is in hand.
- MFEI's prior internal analyses — the Cross-Rule Authority Shift Analysis (v1), the Constitutional and Separation-of-Powers Analysis, and the Preliminary Ultra Vires and Authority Analysis — treated as analytical predecessors, not primary sources.

Three limitations should be stated explicitly. **First**, the rule text of [2026-22-ST \(R 168.501–R 168.506\)](#) has been verified against the filed draft rule text (April 21, 2026). The verified primary sources for that rule set are the filed draft, the Notice of Public Hearing, and the MCFA statutory text. **Second**, several Election Law supporting documents — including the rule set [2025-13-ST](#)

public-hearing transcript and several JCAR/MOHR materials — are image-based or had OCR limitations and were sampled rather than read in full. **Third**, the [2026-22-ST](#) public-comment and JCAR record (commenter counts, any post-hearing changes, final-filing status) had not been obtained for use in this report; current MOHR status should be confirmed before publication. A pending bill, 2025 Senate Bill 698, would amend [MCL 169.215](#) among other MCFA sections; if enacted it could change the statutory baseline against which [2026-22-ST](#) is measured, and should be tracked.

3. Constitutional and Statutory Framework

This section establishes the authorities against which the rule sets are measured. Sections 3.1–3.4 are condensed from the MFEI Legal-Anchor Brief and govern the four Election Law rule sets. Section 3.5 adds the Michigan Campaign Finance Act anchors that govern rule set [2026-22-ST](#), which operates under a different statute. Section 3.6 states the five-step test and its MCFA adaptation.

3.1 Michigan Constitution of 1963

[Art. II, § 4\(2\)](#) vests the time-place-and-manner regulation of nominations and elections in the Legislature, not the Secretary of State. Where MDOS rules effectively regulate time-place-and-manner without a clear statutory delegation, § 4(2) is implicated before the APA inquiry begins.

[Art. II, § 7](#) fixes a bipartisan four-member Board of State Canvassers as a constitutional baseline. Neither the Legislature by statute nor the Secretary by rule may alter that composition or convert the Board into a single-officer or executive-branch body. This is the load-bearing anchor for R 168.55(2) of rule set [2025-63-ST](#). It is **not** implicated by rule set [2026-22-ST](#), which does not touch the canvassing function.

[Art. V, §§ 3](#) and [21](#): the Secretary of State’s election-administration authority is wholly statutory — delegated and revocable by the Legislature. [Art. III, § 2](#) (separation of powers) and [Art. IV, § 1](#) (legislative power vested in the Legislature) limit how far an executive officer may go in “filling gaps” by rule; an agency cannot, even with an enabling statute, make value choices the statute itself has not made. [Art. VII](#) recognizes elected county clerks ([§ 4](#)) and township clerks ([§ 18](#)) as local officers whose duties come from statute, not from MDOS employment hierarchy.

3.2 Michigan Election Law — Authority Allocation

[MCL 168.21](#) makes the Secretary the chief election officer with “supervisory control over local election officials in the performance of their duties under the provisions of this act.” Supervision is bounded to the statutory duties the Election Law assigns; “supervisory control” is supervise, not exercise-and-substitute.

[MCL 168.31\(1\)\(a\)](#) grants general authority to “issue instructions and promulgate rules ... for the conduct of elections.” The verbs in subsection (1) are standardization-of-materials and

supervisory authority; none are a grant to reassign a statutory function from a clerk or canvasser to MDOS, or to create substantive election-conduct obligations the Legislature did not enact.

[MCL 168.31\(2\)](#) singles out petition-signature standards for express mandatory rulemaking — an *expressio unius* signal that, where the Legislature wanted MDOS to set binding rules, it said so.

[MCL 168.22](#) and [168.24a](#) continue the Board of State Canvassers “subject to section 7 of article II” and grant county boards of canvassers a plenary monopoly on county-canvass functions.

[MCL 168.842\(5\)](#) declares the Board’s canvass duty “ministerial, clerical, and nondiscretionary,” a categorical limitation that constrains both the Board and, by structural inference, MDOS. [MCL 168.730–168.733](#) structure the challenger regime against which rule set [2025-15-ST](#) operates.

3.3 Administrative Procedures Act — Limits on Rulemaking

[MCL 24.207](#) defines a rule functionally: a “policy” or “instruction” of general applicability that implements or applies the law is a rule, whatever the agency labels it. [MCL 24.231–24.232](#) confine rules to authority “expressly conferred by or arising by necessary implication from the statute” — codifying the ultra vires limit within the APA itself. [MCL 24.241–24.245](#) require notice, public hearing, a Regulatory Impact Statement, and LARA legal review; [MCL 24.245a–24.245b](#) establish JCAR review and its veto-light mechanism, which functions only when a working majority of the five-and-five committee crosses partisan lines.

3.4 Ultra Vires Doctrine in Michigan Administrative Law

Michigan’s ultra vires framework is strict by national standards: no Chevron-style deference, strict construction of grants, and a functional definition of “rule.” Four decisions structure the Election Law analysis. [Rovas](#) (2008): an agency interpretation gets “respectful consideration” but is not binding; where the statute is unambiguous, a contrary agency interpretation gets no weight. [Luttrell](#) (1984): an agency may not promulgate a rule in conflict with the statute it implements — conflict in either direction renders the rule ultra vires. [Coffman](#) (1951): an agency cannot, by rule, enlarge its statutory grant. [Genetski v. Benson](#) (Ct. Cl. 2021): MDOS guidance that imposed obligations of general applicability was a “rule” under [MCL 24.207](#) and was void for failure to promulgate under the APA; its procedural holding is closed for APA-promulgated rules, but its substantive critique reaches the provisions identified here.

3.5 Michigan Campaign Finance Act Anchors (Rule Set 2026-22-ST)

Rule set [2026-22-ST](#) does not operate under the Election Law. Its Notice of Public Hearing cites authority under section 15 of the Michigan Campaign Finance Act, 1976 PA 388, [MCL 169.215](#). The relevant anchors are therefore different in kind, and narrower in constitutional stakes, than those in sections 3.1–3.2.

[MCL 169.215\(1\)\(e\)](#) is the rulemaking hook: the Secretary shall “promulgate rules and issue declaratory rulings to implement this act in accordance with the administrative procedures act of 1969.” This is a general implement-this-act grant, parallel to [MCL 168.31\(1\)\(a\)](#) on the Election Law side. [MCL 169.215\(1\)\(a\)–\(b\)](#) direct the Secretary to furnish county clerks “appropriate forms, instructions, and manuals” and to develop and “supervise the implementation of the filing systems by the clerks of the counties” — the textual basis for the county clerk’s role as a campaign-finance filing official, the local-officer role the rule set touches.

[MCL 169.215\(2\)](#) is the load-bearing provision for the [2026-22-ST](#) analysis and was verified verbatim against the Michigan Legislature’s published text for this memo. It provides that, except as otherwise provided in the section, the Secretary “shall issue a declaratory ruling within 60 business days” of a request; and that “[i]f the secretary of state refuses to issue a declaratory ruling, the secretary of state shall notify the person making the request of the reasons for the refusal and shall issue an interpretative statement providing an informational response to the question presented within the same time limitation.” The same subsection bars a declaratory ruling or interpretive statement from stating “a general rule of law, other than that which is stated in this act,” until promulgated as a rule under the APA or ordered by a court. Two textual features are load bearing: the declaratory-ruling duty is mandatory but expressly qualified (“except as otherwise provided”), while the interpretive-statement fallback upon refusal is mandatory and unqualified (“shall ... issue an interpretative statement”).

[MCL 169.216](#) separately guarantees public inspection and reproduction of filed statements and reports. This matters for evaluating R 168.505(3): a rule limiting “informal interpretation” of filed documents is analytically distinct from — and should not be conflated with — the public’s independent statutory right to inspect the documents themselves.

[Clonlara, Inc. v. State Bd. of Educ., 442 Mich 230 \(1993\)](#) is the MCFA-adjacent ultra vires authority PIME invokes. It applies the same strict-construction, functional-definition-of-rule principles that Rovas, Luttrell, and Coffman supply on the Election Law side. The constitutional overlay for [2026-22-ST](#) is the First Amendment (speech, petition), due-process vagueness, and separation of powers — not art. II § 7.

3.6 The Five-Step Test (with MCFA Adaptation)

Read together, the framework yields a five-step test MFEI can apply rule-by-rule. For the four Election Law rule sets, the steps are stated first; the bracketed MCFA adaptation governs rule set [2026-22-ST](#).

- **(1) Constitutional baseline.** Does the rule operate where art. II § 4(2) commits time-place-and-manner to the Legislature; where art. II § 7 fixes the bipartisan canvassing structure; or where art. VII recognizes local elected officers?

- **(2) Statutory grant.** Trace the rule to an express or necessarily-implied grant. If the only hook is the general [MCL 168.31\(1\)\(a\)](#) grant and the rule sets substantive content the Legislature did not set, the trace is weak.
- **(3) APA discipline (Genetski test).** Is the rule of general applicability and does it implement or apply the act? For these rule sets this is satisfied procedurally — the question shifts to substance.
- **(4) Ultra vires limit (Rovas / Luttrell / Coffman).** Does the rule add obligations the statute did not impose, conflict with statutory text, or expand the agency’s grant?
- **(5) Structural displacement.** Does the rule transfer a function the act assigns to a clerk or to a board of canvassers?

4. Per-Rule Analysis

Each rule set is analyzed using the five-step framework. The structure is: (a) what the rule set regulates and its statutory hook; (b) operative provisions affecting authority allocation; (c) what the RIS or notice claims; (d) the public-record response; and (e) findings under the five-step test. Sections 4.1–4.4 carry forward the prior synthesis; section 4.5 promotes rule set [2026-22-ST](#) from a status note to a full per-rule analysis.

4.1 Rule Set 2025-13-ST — Voter Registration Cancellation, Challenge, and Correction

Subject and hook. Filed February 23, 2026; R 168.251–R 168.262. Governs how clerks cancel registrations, handle challenges under MCL [168.512](#), and correct records; defines “reliable information,” “personal knowledge,” and related terms. Authority cited: [MCL 168.31\(1\)\(a\)](#). References [MCL 168.509aa](#), 168.509m, [168.512](#), and [52 U.S.C. § 20507](#).

Operative provisions. R 168.252(2) sets the MDOS list of “reliable information” sufficient to trigger a notice; R 168.252(3) sets a substantive limit on what clerks may treat as reliable (excluding, e.g., online name/DOB databases and word-of-mouth). R 168.254(4) and R 168.255(3) seat the cancellation act with the Secretary of State in the voter-registration database, not the local clerk. R 168.256(2)(d)–(e) redefines “personal knowledge” and lists nine “improper reasons” invalidating a challenge; R 168.256(4) declares that “reliable information that a voter has moved or other third-hand information ... does not satisfy” MCL [168.512](#)’s personal-knowledge requirement. R 168.258 sets a five-source verification standard for deceased-voter challenges.

RIS framing. The RIS denies reallocation: the rules are “not intended to alter any behavior,” impose “no additional regulations,” and merely “clarify legal requirements.” It does not acknowledge that the rule supplies the substantive definitions that determine whether a clerk must or cannot act.

Findings. Step 1: art. II § 4(2) and art. VII implicated. Step 2: only [MCL 168.31\(1\)\(a\)](#) cited; §§ 509aa and 512 do not define the operative terms — grant trace weak. Step 3: procedurally satisfied. Step 4: R 168.252 and R 168.256 supply the substantive standards; R 168.256(4)’s categorical exclusion is vulnerable under Rovas/Luttrell. Step 5: R 168.254(4)/(3) seat the cancellation act with the Secretary — operational centralization.

Established fact: these provisions operate as stated. **Logical inference:** MDOS now sets the evidentiary thresholds and performs the cancellation act, leaving the clerk a process-initiator. **Conditional conclusion:** the provisions are vulnerable to ultra vires challenge, particularly R 168.256(4), subject to completion of the statutory crosswalk against §§ 509aa and 512.

4.2 Rule Set 2025-14-ST — Use of Electronic Pollbook

Subject and hook. Filed October 23, 2025; R 168.41–R 168.48. Mandates a secure live-connected electronic pollbook tied to the Qualified Voter File at any site with internet access, and governs download/backup, retention, reports, and access. Authority cited: [MCL 168.31](#). References MCL 168.668b.

Operative provisions. R 168.41(b) gates the transmission medium on Bureau of Elections approval. R 168.43(3) makes the live-connected EPB the operative pollbook where connectivity exists (reversing the prior downloaded-copy default). R 168.44/R 168.45 eliminate discretion to operate offline where internet access exists. R 168.48(1)–(2) imposes a seven-day post-canvass deletion clock and conditions deletion on a Bureau-of-Elections or county-clerk “release of security memorandum.”

RIS framing and record. The RIS acknowledges the live-connection change as efficiency but does not characterize the retention-timing and transmission-medium controls as authority shifts. The JCAR report shows no public opposition; the rule is in effect.

Findings. The release-of-security memorandum (R 168.48(2)) and approved-transmission-medium (R 168.41(b)) impose obligations not visible in MCL 168.668b — vulnerable, but technical-administrative rather than structural-constitutional. **Conditional conclusion:** if the seven-day deletion clock reaches records that 52 U.S.C. § 20701 requires to be retained for 22 months, R 168.48 is preempted to that extent.

4.3 Rule Set 2025-15-ST — Election Challengers and Poll Watchers

Subject and hook. Filed May 6, 2026; R 168.201–R 168.220. Codifies the bulk of MDOS’s October 2024 Challenger Manual. Authority cited: [MCL 168.31](#). References MCL 168.730–168.733 and related sections; the RIS cites the August 28, 2024 Michigan Supreme Court decision sustaining the manual.

Operative provisions. R 168.204 requires the credential card to match an MDOS-prescribed form and converts the local clerk’s § 731 approval into a form-compliance check. R 168.205

funnels challenger communication through a single “challenger liaison.” R 168.207/R 168.203(4) place training content with MDOS. R 168.208 caps voter-eligibility challenges to four grounds and lists nine impermissible reasons. R 168.215 prescribes a challenger oath binding the challenger to “the written materials designated by the Secretary of State.” R 168.220(3) routes appeals to the Bureau of Elections rather than to a board of canvassers.

Public-record nuance. The JCAR record shows 5 supporters, 39 opposed, 4 “other.” Reading the comments shows a textured picture: the Oakland County Clerk (Lisa Brown) supports with minor edits; Promote the Vote and David Jaffe (the Democratic challenger team leader at Detroit’s AVCB) support with operational detail; the Brownstown Township Election Specialist (Alison FitzGerald) submits twelve pages of clarity questions, not authority-shift objections; the Oakland County Director of Elections (Joseph Rozell) flags a narrow statute-conflict in R 168.206(1)(d) against [MCL 168.730\(1\)](#); [PIME](#) and Professor William Wagner/Katherine Bussard make the ultra vires and constitutional case; and many citizen comments track a circulating talking-points list. The honest characterization: the clerk community is divided, and the strongest clerk-side objection is technical, not structural.

Findings. The most exposed provisions are R 168.220(3) (BOE-as-appellate body), R 168.215 (oath binding to MDOS materials), and Rozell’s R 168.206(1)(d) point. Each imposes content the relevant statute does not impose; each is vulnerable under Rovas/Luttrell/Coffman. R 168.220(3) is structural displacement of an appellate function; R 168.205 is operational displacement.

4.4 Rule Set 2025-63-ST — General Roles and Responsibilities of Election Officials

Subject and hook. Draft dated March 10, 2026 (filing line blank in the working copy); R 168.51–R 168.58. Establishes which officials may delegate which statutory duties and to whom. Authority cited: [MCL 168.31](#). Cross-references [MCL 168.21](#), 168.29, 168.35. The RFR explains the rule arose from a JCAR member’s comment that a rule “seemed to indicate that only the clerk could complete a task.”

Operative provisions. R 168.52–R 168.53 authorize delegation of Secretary and Director duties to department/Bureau staff “unless prohibited by law.” **R 168.55(2)** — the operative provision — provides that “[b]ureau of elections’ staff shall serve as assistants to the board of state canvassers and may be authorized by the board to complete duties assigned to the board of state canvassers in the act.” R 168.56–R 168.57 make county and local clerk responsibility “subject to section 21” and delegable by the Secretary under § 21.

Findings. Step 1: art. II § 7 directly engaged — R 168.55(2) places executive-branch staff inside a constitutionally established bipartisan body’s functions; this is the single strongest constitutional-structural argument across all rule sets. Step 2: only [MCL 168.31](#) and [168.21](#) cited; [MCL 168.22](#) makes the Board “subject to” art. II § 7 and [MCL 168.842\(5\)](#) makes its canvass duty “ministerial, clerical, and nondiscretionary” — neither authorizes delegation to

BOE staff. Step 4: R 168.55(2) is the most exposed provision in any rule set; under Rovas, Luttrell, Coffman, and the structural reasoning of *Davis v. Secretary of State*, 468 Mich 449 (2003), it is the provision most likely to be invalidated. Step 5: direct structural displacement.

Established fact: R 168.55(2) operates as stated. **Logical inference:** the rule authorizes (with board consent) executive-branch staff to perform constitutionally lodged canvassing functions.

Conditional conclusion: R 168.55(2) is the most vulnerable provision across all rule sets; the argument is structural and constitutional, not merely procedural.

4.5 Rule Set 2026-22-ST — Campaign Finance General Provisions

This rule set was carried in the prior synthesis only as a status note because the working file lacked its primary materials and because the initial reference (“2025-22-ST”) did not match any rule set in the corpus. Those materials — the Notice of Public Hearing and PIME’s draft opposition — are now in hand, and MFEI has confirmed [2026-22-ST](#) as the intended referent by asking that it be folded into the synthesis. It is analyzed here in full, using the MCFA adaptation of the five-step test in section 3.6.

Subject matter and statutory hook

Established facts (from the Notice of Public Hearing). Rule set [2026-22-ST](#) is the Campaign Finance General Provisions rule set. The Department of State noticed a public hearing for Monday, June 8, 2026, at 10:00 AM in Room 1100 of the Binsfeld Office Building, 201 Townsend St., Lansing. The notice states the rule set “will address general campaign finance topics including the duties and requirements of the secretary and county clerk, formatting requirements, late filing fees, public posting of reports or statements, and declaratory rulings and interpretive statements,” and that it will “modernize the existing rules for those areas to align them with current practice and policy.” Authority is cited as section 15 of the Michigan Campaign Finance Act, 1976 PA 388, [MCL 169.215](#). The proposed rules were published in the 6/1/2026 Michigan Register and at [michigan.gov/ARD](#); written comments were accepted until June 8, 2026, 5:00 PM.

Key distinction from the four Election Law rule sets. [2026-22-ST](#) operates under the MCFA ([MCL 169.215](#)), not the Election Law ([MCL 168.31](#)). The authority-allocation question is therefore not about clerks and canvassers performing election duties, but about (i) the Secretary’s own statutory duties to issue declaratory rulings and interpretive statements under [MCL 169.215\(2\)](#), and (ii) the county clerk’s role as a campaign-finance filing official under [MCL 169.215\(1\)](#). The boards of canvassers and art. II § 7 are not engaged.

Operative provisions affecting authority allocation (as verified against the filed rule text)

The following provisions are taken from PIME’s draft opposition.

- **R 168.506(4) (with R 168.501(c)).** The filed rule text provides that the Department may refuse **both** a declaratory ruling **and** an interpretive statement on grounds including

anonymous requests, requests “frivolous on its face,” indefinite, duplicative, lacking specificity, or outside the Act — and R 168.501(c) supplies a new three-part “frivolous” definition (harassment, no reasonable basis for the asserted facts, or relitigation).

- **R 168.505(3)**. The filed rule text provides that the filing official “shall not provide informal interpretation of the contents of any report or statement except to individuals associated with the committee that filed the report or statement.”
- **R 168.506(3)**. The filed rule text provides that the rule references “the timeline in section 15” but omits the detailed public-comment steps (48-hour posting of the request, 10-day public comment, proposed response, additional 5-day comment).
- **R 168.502**. The filed rule text provides that the rule authorizes delegation of certain Secretary functions — echoing the R 168.52–R 168.55 delegation architecture of rule set [2025-63-ST](#), but without any constitutional-body component.

What the notice claims

No Regulatory Impact Statement for [2026-22-ST](#) was in hand for this memo. The Notice of Public Hearing supplies the Department’s stated purpose: to “modernize the existing rules ... to align them with current practice and policy.” This is the same “codifies current practice” register the four Election Law RISs use. Independent primary-source context cuts both ways on the “no necessity” question: the Department already declines out-of-scope declaratory-ruling and interpretive-statement requests in practice — a January 2026 interpretive statement, for example, noted that a question fell “outside the scope” of the Department’s authority under the MCFA — which is some evidence that a scope-limit practice predates the rule. That said, declining a single out-of-scope question is not the same as the broad, enumerated refusal grounds PIME describes, and the existence of an informal practice does not by itself establish statutory authority to codify it.

Public-record response

The [2026-22-ST](#) public-comment and JCAR record had not been compiled into the working folder as of this memo, so the commenter counts and any post-hearing changes are not yet known. PIME’s draft opposition is the only comment-record document in hand, and is treated as advocacy-primary-source. PIME argues that the rule set is “legally unauthorized, constitutionally infirm, and administratively unjustified” and “must be declared null and void,” resting principally on Clonlara; that R 168.506(4) contradicts [MCL 169.215\(2\)](#)’s mandatory interpretive-statement fallback; that R 168.505(3) is an unauthorized “gag” on public inquiries about public documents; that R 168.506(3) omits the statutory public-comment steps; and that the timing — promulgation while the Secretary is a declared gubernatorial candidate — creates a conflict of interest. PIME’s draft “Immediate Action Required” list assumed an open comment window; because the June 8 hearing and deadline have now passed, those items are moot, and PIME’s remaining avenues are JCAR objection and litigation.

Findings under the five-step test (MCFA adaptation)

- **Step 1 (constitutional baseline).** Art. II § 7 is not engaged. The relevant overlays are the First Amendment (the right to petition for official guidance; and, as to R 168.505(3), public access to information about public filings) and due-process vagueness (the new “frivolous” standard). These are real but contested overlays, not established defects. Note that R 168.505(3) addresses “informal interpretation,” which is analytically distinct from the public’s independent right under MCL 169.216 to inspect and copy filed statements; the First Amendment weight of R 168.505(3) depends on whether it reaches mere access or only discretionary interpretation.
- **Step 2 (statutory grant).** The hook is the general [MCL 169.215\(1\)\(e\)](#) grant. The decisive feature is that the same section — § 215(2) — imposes a mandatory interpretive-statement fallback. A general implement-this-act grant does not authorize a rule that narrows a mandatory duty the statute itself creates. The grant trace for R 168.506(4)’s authority to refuse the fallback is, on this reading, weak.
- **Step 3 (APA).** Procedurally satisfied — [2026-22-ST](#) is APA-promulgated and ran the notice-and-hearing process. PIME’s R 168.506(3) objection (omission of the detailed comment steps) is a procedural-content objection to a specific provision, not a claim that the rule set skipped APA promulgation.
- **Step 4 (ultra vires — Rovas / Luttrell / Coffman / Clonlara).** R 168.506(4)’s authority to refuse the interpretive-statement fallback is the most exposed provision: [MCL 169.215\(2\)](#) says the Secretary “shall ... issue an interpretative statement” upon refusing a declaratory ruling, and a rule that authorizes refusal of that fallback adds an exception the Legislature did not write. The new “frivolous” definition in R 168.501(c) supplies a substantive standard absent from the MCFA. Both are vulnerable. The filed rule text (April 21, 2026) confirms PIME’s characterization.
- **Step 5 (structural displacement).** There is no canvassing function to displace. The analogous concerns are (a) R 168.505(3)’s constraint on the informational function of county-clerk filing officials and (b) R 168.506(4)’s narrowing of the Secretary’s own mandatory ruling/statement duties. Both are real but narrow, and operate at the level of information access and decisional process rather than the reallocation of a constitutional body’s functions.

Established fact: the Notice of Public Hearing states the authority ([MCL 169.215](#)), scope, hearing date, and comment deadline as set out above; [MCL 169.215\(2\)](#) makes the interpretive-statement fallback mandatory. **Logical inference:** if R 168.506(4) authorizes refusal of that fallback as PIME represents, the provision operates in tension with the statutory “shall,” in the same rule-supplies-content-the-statute-omits pattern seen in rule sets [2025-13-ST](#) and [2025-63-ST](#). **Conditional conclusion:** R 168.506(4) (with R 168.501(c)) is the litigation-ripe provision in [2026-22-ST](#) and is vulnerable under the Michigan ultra vires framework and Clonlara —

supported by the filed rule text, which matches PIME’s characterization. The First Amendment and conflict-of-interest theories are weaker and more contested, and are reported below as framing rather than as findings.

5. Cross-Rule Authority-Shift Findings

Reading the five rule sets together yields six cumulative observations. The strongest argument is structural: no single rule effects a wholesale takeover, but the pattern converts MDOS supervisory authority into an operational gatekeeping role — and now recurs across two statutory regimes.

5.1 Single General Statutory Hook

All four Election Law rule sets cite only [MCL 168.31](#); rule set [2026-22-ST](#) cites only the parallel general grant in [MCL 169.215\(1\)\(e\)](#). In each regime the Legislature has shown elsewhere that it knows how to make specific MDOS substantive authority explicit ([MCL 168.31a](#) and [168.765a\(8\)](#) on the Election Law side; the detailed mandatory process in [MCL 169.215\(2\)](#) on the MCFA side). Reliance on a general implement-this-act grant to add substantive content or to narrow a mandatory duty is the recurring vulnerability.

5.2 Template “Codifies Current Practice” Framing

Every Election Law RIS uses near-identical disclaimer language — “codifies current practice,” “clarifies legal requirements,” “no additional regulations.” The [2026-22-ST](#) Notice of Public Hearing uses the same register (“modernize ... to align them with current practice and policy”). Fair characterization: the framing is not simply false — much of the underlying practice is real and longstanding — but “codification of MDOS practice that previously operated informally” is not the same as “clarification of legislative requirements,” and the template language conflates the two. On the MCFA side, the Department’s existing practice of declining out-of-scope requests is genuine context for the “current practice” claim, but does not establish authority to enumerate new refusal grounds by rule.

5.3 MDOS-Set Standards Replacing or Supplementing Statutory Text

Across the rule sets, MDOS adds substantive content the governing act does not contain: the definition of “reliable information” (RS 13, R 168.252) and “personal knowledge” (RS 13, R 168.256); the challenger credential form, training content, and oath (RS 15, R 168.204, R 168.207, R 168.215); the EPB transmission medium and retention-release mechanism (RS 14, R 168.41(b), R 168.48); express delegation of Board of State Canvassers duties to BOE staff (RS 63, R 168.55(2)); and — per PIME — a new “frivolous” definition and enumerated refusal grounds for declaratory rulings and interpretive statements (RS 2026-22, R 168.501(c), R 168.506(4)).

5.4 Decisional and Informational Routing

Several provisions reroute or constrain decisional or informational authority. RS 15 R 168.220(3) routes challenger appeals through the Bureau of Elections rather than a board of canvassers. RS 13 R 168.254(4)/(3) lodges the final cancellation act with the Secretary. RS 2026-22 R 168.506(4) lets the Department decline to issue rulings and statements the statute makes mandatory, and R 168.505(3) limits what county-clerk filing officials may say to the public about publicly filed documents. Each moves decisional or informational authority toward the executive agency — in the MCFA instance, toward the very office whose own campaign filings are subject to the Act.

5.5 The R 168.55(2) Outlier

R 168.55(2) of rule set [2025-63-ST](#) remains qualitatively different from every other shift, including those in [2026-22-ST](#). The other provisions operate at the level of how clerks, challengers, or filing officials carry out their work, or how the Secretary processes requests. R 168.55(2) operates at the level of who exercises a constitutionally established body’s duties. It is the only provision across the five rule sets that, if applied as written, could place single-officer executive-branch staff in functions the Constitution assigns to a bipartisan four-member body.

5.6 The Pattern Now Spans Two Statutory Regimes

The addition of [2026-22-ST](#) is significant less for its individual stakes — which are narrower than RS 63’s — than for what it shows about scope: the same drafting architecture (single general hook, “current practice” framing, delegation provisions, MDOS-supplied standards, decisional/informational routing) appears in the Department’s campaign-finance rulemaking as in its election-administration rulemaking. That cross-regime consistency strengthens the structural observation while underscoring that the constitutional ceiling is reached only in the Election Law setting (art. II § 7), not in the MCFA setting.

6. Public Records

MFEI requires that each ruleset is scrutinized according to the public records available for each.

6.1 Rule Sets 2025-13-ST and 2025-14-ST

The RS 14 JCAR report shows no public opposition; the rule is in effect, so its record is not a usable source of opposition language.

6.2 Rule Set 2025-15-ST

The JCAR record shows 5 supporters, 39 opposed, 4 “other.” The textured reading in section 4.3 governs: the clerk community is divided; the strongest clerk-side comment (Rozell’s R 168.206(1)(d) statute-conflict point) is narrow and technical; the strongest authority-shift critique comes from PIME and constitutional scholars, not from the operating clerks.

6.3 Rule Set 2025-63-ST

[PIME filed a formal objection](#) focused on R 168.55(2), R 168.56, R 168.57, and R 168.58 — one of the strongest constitutional-structural arguments in the entire record. A focused source-review pass on the full RS 63 hearing record is recommended.

6.4 Rule Set 2026-22-ST

As of this memo, the only comment-record document in hand is PIME’s draft opposition; the broader commenter set, the JCAR Report Form, and any post-hearing changes have not been obtained. Because the June 8 hearing and comment deadline have passed, the immediate task is to obtain (i) the filed rule text from the 6/1/2026 Michigan Register or michigan.gov/ARD, (ii) the RIS, and (iii) the public-comment and JCAR record, and to confirm whether the rule has been finally filed or remains pending. Until the filed rule text is obtained, statements about the content of R 168.501–R 168.506 should be attributed to PIME’s characterization.

7. Findings

7.1 Established Facts

- All four Election Law rule sets cite only [MCL 168.31](#); rule set [2026-22-ST](#) cites only section 15 of the MCFA, [MCL 169.215](#). No more specific grant is cited for the substantive content added.
- Every Election Law RIS uses substantially identical disclaimer language; the [2026-22-ST](#) Notice of Public Hearing states the rule set will “modernize ... to align them with current practice and policy.”
- Rule set [2025-13-ST](#): R 168.252(2) sets the evidentiary list; R 168.254(4)/(3) seat the cancellation act with the Secretary; R 168.256(4) categorically excludes “reliable information that a voter has moved or other third-hand information” from satisfying [MCL 168.512](#).
- Rule set [2025-14-ST](#): R 168.43(3)/R 168.44 mandate the live-connected EPB; R 168.48 imposes a seven-day deletion clock subject to a release-of-security memorandum; R 168.41(b) gates transmission medium on BOE approval. JCAR shows no public opposition.
- Rule set [2025-15-ST](#): 39 opposed, 5 in support; the Michigan Supreme Court sustained the underlying manual in August 2024. R 168.204, R 168.205, R 168.207, R 168.208, R 168.215, and R 168.220(3) operate as described.
- Rule set [2025-63-ST](#): R 168.55(2) authorizes BOE staff to be authorized by the Board of State Canvassers to “complete duties assigned to the board”; R 168.56–R 168.57 authorize the Secretary to delegate clerk duties under [MCL 168.21](#).
- Rule set [2026-22-ST](#): the Notice of Public Hearing sets a June 8, 2026 hearing and comment deadline, cites [MCL 169.215](#), and states the scope (duties of the secretary and

county clerk, formatting, late filing fees, public posting, declaratory rulings and interpretive statements). [MCL 169.215\(2\)](#), verified against the Michigan Legislature’s text, provides that upon refusing a declaratory ruling the Secretary “shall ... issue an interpretative statement.”

7.2 Logical Inferences from Established Facts

- MDOS supplies the operative legal standard for clerk or requester action in domains where the governing act left the standard unspecified (RS 13 definitions; RS 15 challenger specifications; and — as verified against the filed rule text — RS 2026-22’s “frivolous” definition and refusal grounds).
- MDOS controls the timing and medium of electronic-pollbook data handling through approval and release-of-security mechanisms (RS 14).
- MDOS now operates as an appellate or final-decision body (RS 15 R 168.220(3); RS 13 R 168.254) and — per PIME — may decline to issue the rulings and statements the MCFA makes mandatory (RS 2026-22 R 168.506(4)). This is decisional displacement, and in the MCFA instance also a constraint on public access to official guidance (R 168.505(3)).
- RS 63 R 168.55(2) authorizes (with board consent) executive-branch single-officer staff to perform functions assigned by the Election Law and the Constitution to a bipartisan four-member body — structural displacement of constitutional design.
- The aggregate effect across the five rule sets is a meaningful shift of operational and decisional authority toward MDOS, now visible in both the Election Law and the Campaign Finance Act.

7.3 Conditional Conclusions (Pending Evidence)

- If R 168.55(2) is applied to allow BOE staff to perform canvass functions — particularly certification under [MCL 168.842\(5\)](#) — it is vulnerable under *Rovas/Luttrell/Coffman* and the structural reasoning of *Davis v. Secretary of State*.
- If [MCL 168.509aa](#) and [168.512](#) do not delegate definition authority to MDOS, R 168.252 and R 168.256 are ultra vires.
- If the seven-day deletion clock in R 168.48 reaches records 52 U.S.C. § 20701 requires retained for 22 months, R 168.48 is federally preempted to that extent.
- If R 168.215’s oath binds challengers to substantive MDOS interpretations beyond restating statute, it raises compelled-speech concerns under *Barnette*.
- If the filed text of R 168.506(4) (with R 168.501(c)) matches PIME’s characterization — authorizing refusal of the interpretive-statement fallback and defining “frivolous” by rule — those provisions are ultra vires under *Rovas/Luttrell/Coffman* and *Clonlara*, because

[MCL 169.215\(2\)](#) makes the interpretive-statement fallback mandatory. The filed rule text (April 21, 2026 draft) confirms this tension.

- If R 168.505(3) is applied to refuse routine public inquiries about publicly filed documents (as distinct from the independent inspection right under MCL 169.216), it raises First Amendment petition-and-access concerns; the question turns on the precise scope of “informal interpretation” and is unlitigated.

7.4 Opinion and Framing (Reported, Not Adopted)

- **MFEI/PIME framing (Election Law):** the rule sets are a coordinated three-stage assault on independent oversight — before (RS 13), during (RS 15), and after (RS 14) elections.
- **PIME framing (2026-22-ST):** the rule set “systematically dismantles” statutory rights and is “legally unauthorized, constitutionally infirm, and administratively unjustified” and “must be declared null and void,” with the Secretary’s gubernatorial candidacy creating a disqualifying conflict of interest. The specific statutory-conflict point (the § 215(2) fallback) has real textual support.
- **Promote the Vote / Jaffe framing (RS 15):** the rules codify a 2024 practice the Michigan Supreme Court sustained, that reduced disruption while supporting legitimate oversight. This framing has direct support from witnesses with ground-level operational experience.
- **MDOS framing:** the rules merely codify current practice and clarify existing requirements. This conflicts with operative text that adds substantive standards and decisional routing; the underlying point — that MDOS has operated under much of this practice for some time — is partly correct.

8. Recommended Actions

8.1 Legal Strategy

- For litigation, **R 168.55(2) of RS 63** remains the strongest single target: the art. II § 7 structural argument, the [MCL 168.842\(5\)](#) ministerial-nondiscretionary barrier, and the absence of an express grant make it litigation-ripe on a structural theory that does not depend on a procedural Genetski hook.
- **For RS 2026-22, R 168.506(4) (with R 168.501(c)) is the litigation-ripe provision**, on the narrow and well-anchored ground that [MCL 169.215\(2\)](#) makes the interpretive-statement fallback mandatory. This theory is clean, statute-text-based, and does not depend on the contested conflict-of-interest or First Amendment framings. It is, however, contingent on the filed rule text matching PIME’s characterization — verify first.
- For RS 13, the litigation-ripe provisions are R 168.256(4) and R 168.254 if the crosswalk supports the argument that §§ 509aa/512 do not delegate definition authority. For RS 14,

the strongest angle is the 52 U.S.C. § 20701 retention argument against R 168.48. For RS 15, Rozell’s R 168.206(1)(d) statute-conflict point is the most concrete clerk-side evidence in the record, though narrow.

8.2 Communications and Legislative Strategy

- MFEI/PIME and others have identified specific provisions that exceed the relevant statutory grant and should be addressed through statutory clarification, JCAR action, or — for the most exposed provisions — litigation.
- Legislative strategy should focus on clarifying, by statute, what the general rulemaking grants ([MCL 168.31](#) and [MCL 169.215\(1\)\(e\)](#)) do and do not authorize: (a) reaffirm board-of-canvassers exclusivity (RS 63 R 168.55(2)); (b) define “personal knowledge” and “reliable information” (RS 13); (c) clarify the challenger-appeal forum (RS 15 R 168.220(3)); and (d) **reaffirm that the [MCL 169.215\(2\)](#) interpretive-statement fallback is mandatory and not subject to rule-created exceptions (RS 2026-22 R 168.506(4))**. Track 2025 Senate Bill 698, which would amend [MCL 169.215](#) and could alter this baseline.
- Engagement with the Michigan Association of Municipal Clerks and the Michigan Association of County Clerks remains a recommended step to test whether the operating-clerk community shares the structural concerns the analysis identifies.