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Election Transparency Rules for Michigan
Current as of October 28, 2020

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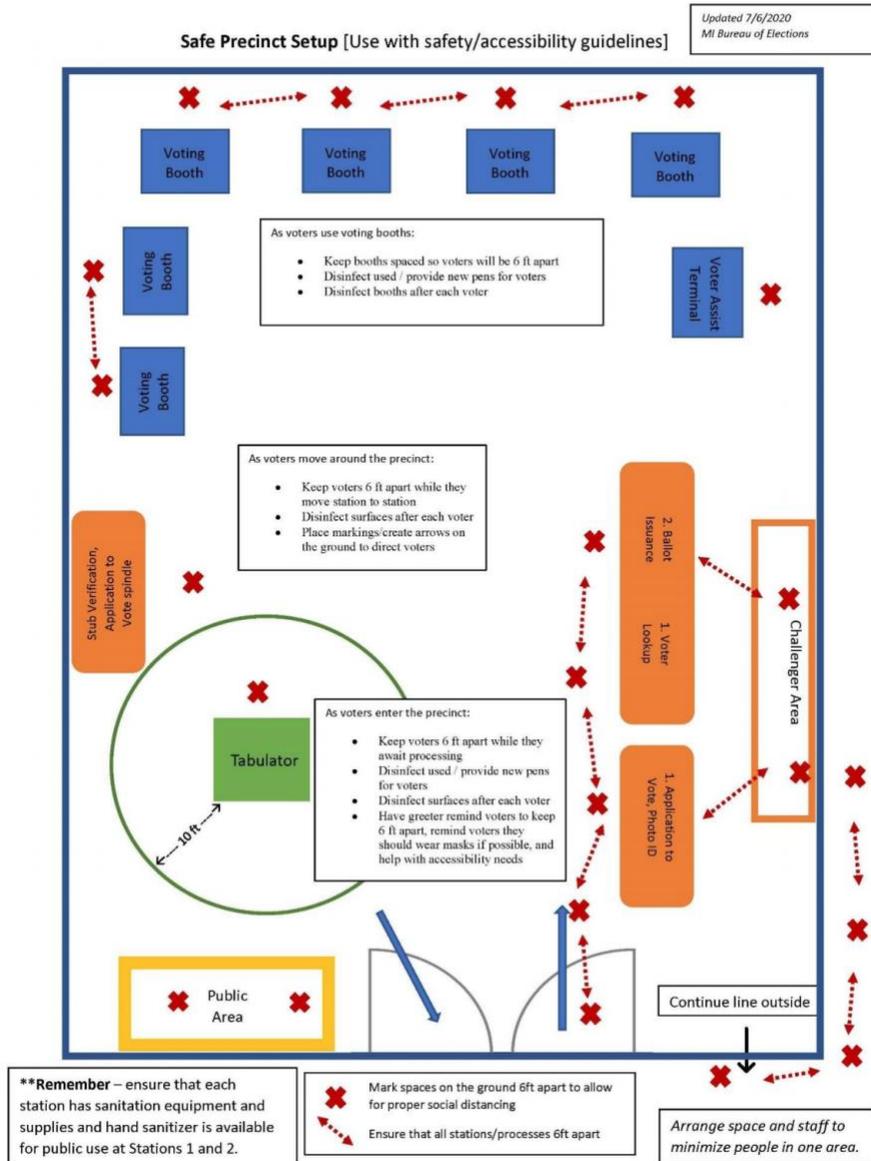
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OVERVIEW

In Michigan, polling places and absent voter counting boards are operated by bipartisan teams, who work in pairs to assist voters, seal ballot containers, and report results. The public is allowed into the ‘public area’ of a voting place – which should be the room where voting happens – and into absentee vote counting rooms and into the clerk’s office where votes are aggregated. Newspapers and citizens groups can obtain certification 20-30 days before the election to sit in the voting room and can take notes and use phones but cannot interfere with voters. In the absentee voting room one must take an oath to not reveal anything until 8pm when polls close. Poll watchers who are not certified may be in a public area in the polling room.

The rules refer to the ‘public area’ of a voting place. This diagram from [November 3, 2020 Election – Polling Place Safety and Accessibility](#) indicates what the polling place might look like with social distancing in place.

See the diagrams below for recommended Precinct and Absentee Counting Board set-up orientations:



Affidavit ballots – including ballots cast after an absentee ballot was requested – are tabulated at a polling place with the rest of the ballots and not held aside as provisional ballots to be counted separately. Absentee votes are counted throughout the day in the precinct.

The Michigan Election Code is located at MCL §[168.1](#) — [168.992](#).

1. Note on Authority

Under MCL § [168.31](#) local election officials must follow the Secretary of State's instructions regarding the conduct of elections. See [Davis v Secretary of State, ___ NW2d ___; 2020 Mich. App. LEXIS 6128](#), at 8-9 (Ct App, Sep. 16, 2020); [Hare v Berrien Co Bd of Election Comm'rs, 373 Mich 526, 531; 129 NW2d 864 \(1964\)](#). Many key terms like 'poll watcher' or reference to a public viewing place are found only in the Secretary of State guidance and not found in a statute. The legally

binding nature of the guidelines comes from MCL § [168.21](#) (SOS is chief election officer) and MCL § [168.31](#) (SOS's instructions are binding). MCL § [168.765\(a\)\(13\)](#) authorizes the SOS to develop instructions governing absentee ballots and makes those instructions binding.

ELECTION DAY ACCESS TO POLLING LOCATIONS

1. Rules concerning access to polling places generally

General rules

All polls are open from 7 am until 8 pm. MCL § [168.720](#). Since Michigan spans two time zones, a small number of polls will not close until 9 pm EST as a result.

The polls are transparent and are “open to any interested person”. [Managing Your Precinct on Election Day](#), 20. The canvass of the vote after polling places close is open to the public as well. MCL § [168.801](#).

Poll watchers

There are two categories of poll watchers, election challengers and regular poll watchers. The function of a challenge is laid out in MCL § [168.727](#) and MCL § [168.733](#). The law concerning poll watching and election challenging is outlined in detail in the official guidance [The Appointment, Rights and Duties of Election Challengers and Poll Watchers](#).

Any interested person can be a poll watcher and may decide to do so the day of the election. Poll watchers can stand in the public area of a voting place and watch the election. They can also watch an absent voting board - although then they must stay in the room until the polls close at 8, and also may not divulge any information about the vote count until that time. Election challengers may be appointed by any organized group interested in vote transparency or any incorporated organization between 20 and 30 days before election day. Challengers are guaranteed a closer look at what’s happening and may view the pollbook and the voting machines (election officials may allow poll watchers to view these documents, but it is not required). Neither may interact with voters in their capacity as a challenger/watcher.

Rules for poll watchers

- Poll watchers do not have to be registered to vote.
- They must follow the same conduct standards as challengers (see below).
- They cannot challenge a person’s right to vote or the actions of the precinct board.
- Poll watchers may look at the Poll Book at the precinct board chairperson’s discretion, while challengers may always do so.
- Poll watchers and challengers watching absentee voting must stay until close of the polls (8 pm) and swear the same oath.
- Poll watchers may not sit behind the processing table; they must sit or stand in the public area of the polling place where they will not interfere with the process.
- Poll watchers can not record in the polling place but can take notes and use cell phones. ([The Appointment, Rights and Duties of Election Challengers and Poll Watches](#))

Election challengers may directly examine voting machines, applications to vote, poll books, registration lists, and any other materials used to process voters.

COVID

- Challengers and poll watchers must, to the extent possible, follow social distancing. They must wear face coverings in enclosed spaces unless exempt due to health reasons. [November 3, 2020 Election – Polling Place Safety and Accessibility](#), 8.

2. Rules concerning exit polling or newsgathering at polling places

The act of exit polling constitutes protected expressive speech, under the First Amendment. See *PG Publ'g Co. v. Aichele*, 705 F.3d 91, 100 (3d Cir. 2013) (citing *Daily Herald Co. v. Munro*, 838 F.2d 380, 382 (9th Cir. 1988)).

“While Michigan law does not specifically regulate exit polling, the Bureau of Elections recommends that exit pollsters:

1. Remain at least 20 feet away from the exterior building entrance or exit in which the polling place is located,
2. Refrain from entering the building in which the polling place is located, and
3. Refrain from questioning any person entering the building in which the polling place is located.

All exit polling must be conducted discreetly to ensure that voters who have not yet entered the polling place to vote are not influenced by what they hear during another voter’s exit polling interview.” [Managing Your Precinct on Election Day](#), 19.

3. Rules concerning the taking of photographs and videos at or near polling places

- In [Managing Your Precinct on Election Day](#) (8-9), guidelines for the press are outlined as follows
 - Broadcast stations and news reporters are permitted to briefly take photos or record from the public area of the polling room only, not the voting area.
 - If the public area of the polling room is too small to allow recording without disrupting the voting process, the camera must be put in the entryway to the polling room. Ensure that recording does not obstruct voters entering or exiting the polling room.
 - Reporters must not interview voters inside the polling place.
 - The precinct chairperson must supervise the recording process to ensure that ballot secrecy is fully protected, and no voters are inconvenienced by recording.

Ballot “Selfies”

- Non-journalists cannot take a photo of the area where people are voting unless it is a photo of their own ballot – and they may not be included in such a photo. [Michigan secretary of state settles 'ballot selfie' case. Managing Your Precinct on Election Day](#), 7.

4. Rules concerning privacy/ identification of voters and voting officials at polling places

The Election Code does not expressly prohibit journalists from identifying voters and voting officials at polling places or, more generally, implicating voters’ privacy. Broadcast television can record inside the voting area but there are privacy barriers surrounding the voting place. [Managing Your Precinct on Election Day](#), 8.

5. Content restrictions on speech at or near polling places

No electioneering within 100 feet of a polling place. MCL § [168.744](#). Exit polling should not be audible to people entering to vote. [Managing Your Precinct on Election Day](#), 19.

6. Who controls physical access to a polling place?

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 primary or election and during the canvass of the votes after the poll is closed. MCL § [168.678](#). As a result, local law enforcement may not staff the polling place, but may only come when called. [November 3, 2020 Election – Polling Place Safety and Accessibility](#), 16.

Election inspectors have the authority to eject anyone who is disruptive or refusing to obey standards of conduct. If the person refuses to leave election inspectors may contact the clerk and, if necessary, local law enforcement. [Managing Your Precinct on Election Day](#), 8.

The city and township board of election commissioners assign the election inspectors; there are always at least 3, at least 1 from each major political party and to the extent possible the same number from each major political party. The board tells the parties who from their party they choose. As a result, state Democrats have approved the Democratic election inspectors and so on. MCL § [168.674](#).

7. What state official is responsible for correcting improper denials of access or applications of laws at polling places?

If there's an issue the election inspectors can't handle, they are supposed to contact the clerk. (For instance, if a voter doesn't have photo ID and won't sign an affidavit, or who says they have photo ID but refuses to show it). Such people are referred to the clerk and are not eligible for a provisional ballot. [Managing Your Precinct on Election Day](#), 13. It is a misdemeanor to challenge "for the purpose of annoying or delaying voters" (MCL § [168.727\(d\)\(3\)](#)), or to prevent challengers from challenging. MCL § [168.734](#). All police are responsible to 'forthwith institute criminal proceedings for the punishment' of people breaking this law. MCL § [168.941](#).

If a challenger has reason to believe that the precinct board is not following election law, the actions of the precinct board may be challenged by consulting with the board chairperson. If the chairperson rejects the challenge, the challenger has the right to contact the election official in charge of the election on the matter at issue. The election inspectors must enter a complete record of the challenge in the Poll Book. [The Appointment, Rights and Duties of Election Challengers and Poll Watchers](#) 8, 10.

ACCESS TO VOTE COUNT & TABULATION/VOTE COUNT PROCESS

1. Rules concerning access/transparency at locations where votes are counted or vote counts aggregated

- Vote counts aggregated
 - For mail-in ballots counted at a separate counting facility, the counting proceedings are conducted under observation by the public, but only authorized people may touch a ballot or return. [168.798a](#).
 - “Immediately on closing the polls, the board of inspectors of election in each precinct shall proceed to canvass the vote... Such canvass shall be public and the doors to the polling places and at least 1 door in the building housing the polling places and giving ready access to them shall not be locked during such canvass.” MCL § [168.801](#)

2. Rules concerning observation of the vote count for news reporting purposes

Poll watchers, challengers, and the public may remain inside the precinct until the board completes its work. [Managing Your Precinct on Election Day](#), 8. After the closing process is complete and precinct inspectors have obtained the vote totals, the results must be made available to any interested person who may be present in the polling place by posting one copy of the totals tape. *Id.* at 8.

Before the official count, the clerk may conduct an unofficial count in order to provide early unofficial returns. When the count is done the official returns are open to the public. The return of the electronic tabulating equipment, to which have been added write in and absentee votes, constitute the official return. MCL § [168.798b](#)

3. Rules concerning the taking of photographs and videos of the vote counting process

No code provisions discuss the taking of photographs or videos of the vote counting process per se. However, “Challengers and poll watchers may not be in possession of or have access to cell phones or other communication devices in an AVCB during the sequestration period.” [Election Officials’ Manual, Chapter 8: Absent Voter Election Day Processing](#), at 3. The sequestration period ends when the polls close at 8 pm. Anyone who reveals information about the activities in the AVCB before then is guilty of a felony. *Id.*

4. Rules concerning access to ballots during or after the vote count

A challenged ballot cannot be retrieved for examination after the election without an appropriate court order. [The Appointment, Rights and Duties of Election Challengers and Poll Watchers](#), 8. Ballots are available for inspection or copy through FOIA but not until 30 days after the certification of the election. [Office of the Mich. Att’y Gen., Op. No. 7247](#).

ELECTION TRANSPARENCY INFORMATION

1. Voting day basics

When do the polls open, when do they close?

All polls are open from 7 am until 8 pm. MCL § [168.720](#). Since Michigan spans two time zones, a small number of polls will not close until 9 pm EST as a result.

Must voters in line when polls close be allowed to vote?

Yes. Every qualified elector present and in line at the polls at the hour prescribed for the closing thereof shall be allowed to vote. MCL § [168.720](#).

Who do you call when something goes wrong at a polling location?

- The person in charge at each polling place is the election clerk.
- Questions concerning Michigan Election Laws may be directed to the Michigan Department of State's Bureau of Elections. Phone: (517) 335-3234.
- Additional help is available via the Reporter's Committee for Freedom of the Press hotline.

What kind of voting machines are being used?

Michigan's government website provides a [portal](#) to access country-specific information about voting systems.

What documents and training/procedure manuals will poll workers have access to?

There is extensive documentation for poll workers. Perhaps the most important are the day-of handbook, [Managing Your Precinct on Election Day](#), and the COVID handbook, [November 3, 2020 Election – Polling Place Safety and Accessibility](#). There is a full complement of resources, including videos, [available online](#).

What happens with challenged ballots?

Unchallenged ballots get entered directly into the voting machine; challenged ballots are recorded on numbered paper optical scan ballots. The number on the ballot is recorded next to the voters name in the poll book. [Managing Your Precinct on Election Day](#), 23.

2. Vote counting rules and procedures

What are the rules and procedures for the vote count? Where are they located?

- When the precincts open, some absentee ballots may be delivered there; others may be counted in a special room set aside for that purpose – the previously described Absent Voter Counting Board. MCL § [168.764d](#). Any ballots received after 4 pm the day before the election are processed at the voter's voting precinct.

- As voters come in to the precinct to vote they are ID'd. If they don't have ID, they can sign an affidavit saying as much – their vote is not provisional. If they are recorded as having requested an absentee ballot, they can sign an affidavit saying it was destroyed/lost/they never received it. MCL § [168.523a](#).
- Such people may have their ballots marked as challenged, but these ballots are still tabulated with the rest. People who registered to vote in the past two weeks, or who have no ID whatsoever or who are doing same-day registration have to cast provisional ballots. These provisional ballots are not initially tabulated, but are instead counted if the voter provides proof to the county clerk within six days of voting. MCL § [168.523a](#).
- The initial returns at the precinct level are generated by the poll workers. For absentee ballots, they are generated by the absentee voter counting board. The returns from each machine at each precinct are released when the polling place closes, and the absentee ballot counting board is open to the public after 8 pm on Election Day. The Board of Election Inspectors (at the precinct level) sends their returns to the Board of County Canvassers and to the county clerk. Upon receipt, the county clerk shall open the envelope and make the returns available to the public. The office shall be open on election day and shall remain open until the last returns have been received and the clerk completes an unofficial tabulation. MCL § [168.809](#).

Who controls the vote count process?

The county clerk tabulates the returns for each county. MCL § [168.809](#).

What level of access to voter registration is there?

A list of registered voters with some information excised is available for order from the clerk; it is generally public information. MCL § [168.522](#). The clerk also maintains a list of who voted in each election. MCL § [168.523](#)

3. Vote counting timing

What rules govern when information about the vote count can and should be made public?

On or before 8 a.m. on election day, the clerk shall post the number of absentee voter ballots distributed to absentee voters and the number of absentee voter ballot return envelopes received. On or before 9 p.m. they shall post the number of absentee voter ballot return envelopes containing the marked ballots of absentee voters received by the clerk on election day and delivered to the board of election inspectors, along with the total number of absentee voter ballot return envelopes containing the marked ballots of absentee voters received by the clerk both before and on election day and delivered to the board of election inspectors or the absentee voter counting boards. **As soon as possible** after all precincts in the city or township are processed, the clerk shall post in the clerk's office or otherwise make public the number of absentee voter ballot return envelopes containing the marked ballots of absentee voters received by the election inspectors at the precincts on election day, along with the total number of absentee voter ballot return envelopes containing the marked ballots of absentee voters received in the city or township for that election. MCL § [168.765](#).

What deadlines exist for the vote count?

The unofficial returns are all due as soon as possible, and there is a great deal of language compelling poll workers and clerks to post results. However, provisional ballot results are not due to the county clerk for 7 days after the election. MCL § [168.821](#). The Board of County Canvassers must complete their canvass, which is a summation of precinct returns, by at the latest the 14th day after the election. MCL § [168.822](#). If they cannot complete their canvass, they deliver what they have done to the Board of State Canvassers, who then have 10 days to complete the canvass. The Board of State Canvassers, who actually certify the election, meet on or before the 20th day after the election. They must complete their canvass no later than the 40th day after the election. However, if the gap between the first and second place for President is less than 25,000 votes according to unofficial returns, the canvassing is on an expedited schedule and must happen no more than 20 days after the election. MCL § [168.842](#). If there are any ties, the legislature decides. MCL § [168.846](#).

4. Mail-in ballots and absentee ballots

How are mail-in ballots cast?

Absentee ballots are collected and stored up until election day. They are received by the town clerk, an assistant clerk, at the town clerk's office, or at ballot drop boxes. A clerk may also send someone to pick up a ballot. MCL § [168.764b](#). There will be 900 ballot drop boxes, with their locations available on the Michigan Secretary of State [website](#).

Where are mail-in and absentee ballots stored?

In the clerk's office. MCL § [168.765](#).

When are they counted?

When polls open on election day. In 2020 only, clerks can start to pre-process (but not to count) ballots up to 10 hours before the polls open. MCL § [168.765](#). Any absentee ballot not received by 8pm on Election Day is not counted. MCL § [168.769b](#).

Where are they counted?

Clerks may combine forces with other cities or townships to create a combined absent voter counting board. MCL § [168.764d](#). By statute, these locations must be “The places must be designated as absent voter counting places.” It is likely most absent voter ballots received in 2020 will be counted by these boards.

Absent voter ballots may be processed in the precinct instead of at a counting board. Ballots received after 4pm the day before the election are counted in the precinct. They may be processed throughout the day as time permits.

In the precinct, an election inspector compares the signature on the absentee ballot, and if it’s missing, gives it to the clerk to try to obtain the signature by contacting the voter. The Election Inspectors sometimes re-encode the votes if the absentee voter’s votes could not be read by the machine.

Who releases mail-in results?

The clerk releases the returns from the mail in ballots along with other returns as soon as they receive it; they cannot close their office until they have released unofficial returns. The absentee voter counting boards are meant to be run as nearly as possible to a regular precinct. MCL § [168.765a](#). In regular precincts, when they close they must post their returns publicly.

When are the mail-in results released?

The mail-in results are released when the count is completed, as for a normal precinct. However, the count must happen continuously, and the office must be continuously staffed until the count is complete. [Election Officials’ Manual, Chapter 8: Absent Voter Election Day Processing](#), at 9.

Who confirms the authenticity of the mail-in ballots and how?

The clerk confirms that the signatures match and that the statement has been properly executed. If a ballot is rejected, the clerk must attempt to alert the voter. MCL § [168.765a](#).

There is a serial number on each absentee ballot. People submitting them in person will have their name and serial number in the Poll Book and those will be matched. If the ballot is mailed in, the signatures are matched by the county clerk or by the board of election inspectors to the signature in the ‘qualified voter file’. If the signatures are deemed to not match, the majority of the board of election inspectors must agree to not count the vote. MCL § [168.768](#).

What data is generated on mail-in ballots and by whom?

The clerk files the application in their office and adds the name, address, date of receipt of the application, date the ballot was sent and other information, to a list. The applications and lists are open to public inspection at 'all reasonable hours'. MCL § [168.760](#)

Whoever requests an absentee ballot has their name annotated in the poll book, and if they claim they never received it, lost it, or destroyed it they must to sign an affidavit to that effect. If it is challenged by a poll challenger then the ballot they submit is a 'challenged ballot' and the person is recorded on the 'challenged voters' page. [The Appointment, Rights and Duties of Election Challengers and Poll Watchers](#), 7.

PUBLIC ACCESS TO INFORMATION

1. How can reporters access information about who voted?

All election returns, including poll lists, statements, tally sheets, absent voters' return envelopes bearing the statement required by section 761, absent voters' records required by section 760, and other returns made by the inspectors of election of the several precincts must be carefully preserved. MCL § [168.811](#). A person may obtain the election results - that is, the total voted outcome for each office and ballot measure - from the secretary of state upon payment of the reproduction costs. MCL § [168.812](#).

2. Are individual ballots accessible through FOIA or court order?

Yes. Voted ballots are available 30 days after the election. [Attorney General Opinion No. 7247](#).

3. Privacy of individual voters

Once a request for voted ballots is granted via court order, those ballots must not be traceable to an individual voter. [Attorney General Opinion No. 7247](#). Voting records must be censored to remove ID numbers, birthdays, phone numbers, etc. under *FOIA*, but they are also public documents and so must be *available for in-person inspection*.

4. Is it possible to FOIA governmental communication regarding election security and systems breakdowns.

Threat assessments are generally exempt from FOIA under MCL § 15.243(1)(y) unless the public interest in disclosure outweighs the public interest in nondisclosure. Email is subject to FOIA if it is sent or received as part of governmental duties. Emails are considered public property.

The government has 5 days to respond to record requests.

The exceptions are listed under MCL § [15.243](#) and several of them seem applicable

U: Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

Y: Records or information of measures designed to protect the . . . confidentiality, integrity, or availability of information systems, . . . including, . . . emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and cybersecurity plans, assessments, or vulnerabilities, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

Z: Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.

However, public interest balancing might result in access being granted.

ACTIVE/RECENT LITIGATION

Open carry at election sites is currently hotly contested. As of the evening of October 28, a judge struck down the Secretary of State's guidance that open carry would not be allowed at polling sites. The ruling, which will likely be appealed, is available [here](#).

A city clerk in a Detroit [suburb faced 6 felony charges](#) for vote tampering with absentee ballots in 2019. "193 ballots were entered as no signature or no return date when in fact both were present".

This isn't an access law, but the law to let ballots count as long as they are sent by Election Day was recently upheld over an impassioned dissent arguing that the number of voters disenfranchised by their ballots coming in late may be greater than the difference between the number of votes the major candidates receive. *League of Women Voters of Mich v Secretary of State*, ___NW2d___; 2020 Mich. App. LEXIS 4454 (Ct App, July 14, 2020). The Michigan Supreme Court denied a motion to reconsider on September 11 on the grounds that both the plaintiff and the defendant agree the law is unconstitutional so there's no live controversy, which seems a bit Kafkaesque.

[A bill was just passed](#) allowing election clerks to work in shifts and start sorting absentee ballots up to ten hours before the election - [every precinct in Detroit was off by a couple votes last year due to human error from working 20 hour shifts](#).

ADDITIONAL RESOURCES

- These charging documents do a great job of documenting the steps of counting [absentee ballots](#).
- [Here's a firsthand account by a pollworker](#) during the 2020 primaries of what that was like - notably, she had to stop a voter without ID from being turned away by pointing out the provisional ballot protocol.
- The documents noted repeatedly in this resource that election workers will have access to:
 - [The Appointment, Rights and Duties of Election Challengers and Poll Watchers](#)
 - [Election Officials' Manual, Chapter 8: Absent Voter Election Day Processing](#)
 - [Managing Your Precinct on Election Day](#)

COVID-19 RELATED INFORMATION

- [November 3, 2020 Election – Polling Place Safety and Accessibility](#)