THE LEGISLATURE
LANSING, MICHIGAN
JOINT COMMITTEE ON ADMINISTRATIVE RULES
P.O. BOX 30036 • LANSING, MICHIGAN 48909-7536
(517) 373-0545 • TELEPHONE • (517) 373-5924 • FAX

NOTICE OF PROPOSAL THAT A RULE BE CHANGED

TO: Adam Fracassi, Regulatory Manager
Michigan Office of Administrative Hearings and Rules (MOAHR)
Secretary of the Senate
Clerk of the House

FROM: Senator Jon Bumstead, Chair
Representative Luke Meerman, Alternate Chair

DATE: February 23, 2022

As provided in MCL 24.245a(1)(b), the Joint Committee on Administrative Rules is, by a concurrent majority vote, proposing that the following rule set be changed:

JCAR No. 21-73
MOAHR No. 2021-61ST
Department of State,
Bureau of Elections & Campaign Finance

Specifically, the Committee respectfully proposes that the Secretary of State consider changing **R 168.2** and **R 168.3** in the following ways and for the following reasons:

1. **R 168.21(1)(d)** expands the definition of "signature on file" to include an absent-voter-application signature that agrees sufficiently with the QVF or the mastercard. The Secretary should change this rule. MCL 168.766 requires a board of election inspectors to search the QVF for a digital signature. Only if the QVF lacks a digital signature may the board then use the mastercard signature. This rule contradicts MCL 168.766 by treating the QVF signature and mastercard signature as interchangeable. The Secretary should change this definition to say that a signature on file is limited to the QVF digital signature and that a mastercard signature be considered a signature on file only when a QVF digital signature is missing.

2. **R 168.22(1)** creates a presumption that a signature is valid. The Secretary should strike this presumption. Michigan election law (e.g., MCL 168.766) nowhere creates a presumption of validity or invalidity. Rather, MCL 168.761 and 168.766 require the clerks to use available information to determine the validity of every signature. The rule

should not put a thumb on the scale but should mirror the statute and allow a clerk and board of election inspectors to weigh each signature on its own merits.

3. **R 168.22(3)** says that when an election official has "genuine concerns" about a signature's validity, they "may contact the voter to address those concerns." The Secretary should amend this provision. First, the phrase "genuine concerns" is vague and confusing in this context. Second, an election official should be *required* to contact an individual if they have concerns about a signature. By using *may*, this provision appears to say that even if an election official has genuine concerns about a signature, they need not contact a voter. Finally, the second to last sentence says that voter contact made under this provision does not count as notification for purposes of R 168.25. This seems inefficient and inexplicable and should be changed.

4. **R 168.23(2)** provides several "redeeming qualities" election officials must consider when determining a signature's validity. The Secretary should amend this provision. First, this list is overly broad. Second, many of the listed "redeeming qualities" are vague and confusing. For example, it is not clear at all what the "redeeming quality" "more matching features than nonmatching features" means. Third, that this list is noncomprehensive means an election official could create and apply a much more expansive list of redeeming qualities. Given that the rule allows such customization, it seems likely that it will be disparately applied. Election officials should instead be given a list of objective signature features to compare—e.g., whether capital letters match; similarity in drop-down letters (e.g., *g* or *p*); how the letter *i* is dotted and how *t* is crossed; how open round letters like *o* are, etc.

5. **R 168.24(1)** requires election officials to consider five possibilities as explanations of signature differences. The Secretary should amend this rule. First, like R 168.23(2), these five factors are vague and ambiguous. Second, some seem unlikely—e.g., the idea that a voter would rearrange their first and last name. Third, they require elections officials to speculate about the circumstances of the signature and mind of the voter (e.g., the voter was old or in a hurry). Finally, subsection (2) says that the elections official may consider "any other plausible reason given by the voter" to explain why the signatures do not match. This ultra-flexible standard could be easily abused. It would be simpler and far more secure to require an elections official to obtain a new signature from the voter whenever possible and allow consideration of explanations only when a clean signature is not available.

6. **R 168.25(1)** requires the clerk to notify a voter of a signature problem by the end of the calendar day following the receipt of the application or ballot envelope; and R 168.25(2) says that starting five days before the election, the clerk must notify the voter that same calendar day. The Secretary should amend these requirements. They appear to conflict with MCL 168.761(2), which requires a clerk to notify a voter of a signature problem either within 48 hours after receiving the application or by 8:00 p.m. on election night—whichever comes first.

7. **R 168.25(8)** (emphasis added) requires a clerk to contact a voter whose application or ballot is rejected by "phone *and* email, *and*, in the absence of the voter's email address,

by United States mail." The Secretary should either amend or strike this language. It contradicts MCL 168.761(2) (emphasis added), which says a clerk must notify a voter of his application or ballot envelope "rejection by mail, telephone, *or* electronic mail." The statute gives a clerk discretion to contact a voter in whichever of three ways she chooses. But the rule demands that the clerk contact the voter in at least two ways. The rule should mirror the statute or be deleted.

8. **R 168.26(1)(b)** allows the curing of a signature deficiency by using a "cure form." The Secretary should amend this provision. Michigan election law mentions no "cure form," nor do the rules describe what this form would or should look like. At the very least, the Secretary should provide an example so clerks know what information should be included.

9. **R 168.26(3)** allows an election official to provide an application or ballot envelope to the voter so the voter can fix the signature. The Secretary should clarify that this rule does *not* allow a clerk to place a received ballot envelope back into the mail system. The rule should make it clear that signature curing must take place in the clerk's presence—either at the clerk's office or at the voter's residence.

Under MCL 24.245c, if the Committee suggests that a proposed rule be changed, the agency shall, within 30 days, do one of the following:

(a) Decide to change the rule and, within the 30 days, resubmit the changed rule to the committee. If the agency decides to change the rule, the agency shall withdraw the rule, which is treated as a withdrawal with permission under MCL 24.245a(10), and follow the procedures in MCL 24.245c(2)–(5).

(b) Decide to not change the rule. If the agency decides to not change the rule, the agency shall within the 30-day period notify the Committee of the decision and the reasons for the decision and file the notice with the Michigan Office of Administrative Hearings and Rules. After the notice is filed, the Committee has 15 session days in which to consider the agency's decision and take 1 of the actions listed in MCL 24.245a(1).

These proposed changes are offered to facilitate substantive dialogue between the Secretary and the Legislature and should not be construed as waiving any of JCAR's other statutory rights or powers.

Sincerely,

Senator Bumstead
Chair

Representative Meerman
Alternate Chair