

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Michigan Advisory Committee to the U.S. Commission on Civil Rights

Date: October 14, 2020

Subject: Voting Rights in Michigan in the Context of the COVID-19 Pandemic

In April 2020, the Michigan Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) published a report¹ about voting rights concerns in the state. In July & August 2020, the Committee elected to follow up this study to specifically address evolving voting rights concerns in the context of the COVID-19 pandemic.² The Committee heard initial testimony regarding pandemic-related challenges to preparations for the 2020 general election during a web conference on September 21, 2020. The Committee will hear additional testimony following the general election in November 2020 before issuing its final report to the Commission on this topic.

In the interim, the Committee notes the central role voting rights has historically held and continues to hold for the Commission's work. The COVID-19 pandemic is presenting unparalleled challenges just months before a highly consequential election. In keeping with the Committee's duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,³ the Michigan Advisory Committee met on October 13, 2020 and voted to submit the following memorandum to the Commission based on the testimony heard during the Committee's initial public meeting in September.

Informed by the initial testimony, which is summarized below, the Committee offers preliminary thoughts on concerns and recommendations. In particular, the Committee is concerned about several risks increased by the combination of what is likely to be a high-turnout election, the pandemic, and the rule changes caused by Michigan's Proposal 3.

Concerns

1. The high potential for delay—or for fears about delay—to disrupt voter access to mail-in absentee voting.
2. The continuing problem of “signature mismatches,” where absentee ballots without a signature or ballots deemed to have a “signature mismatch” are not counted.

¹ Voting Rights and Access in Michigan, Michigan Advisory Committee to the U.S. Commission on Civil Rights, April 2020, <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>.

² Project proposal and meeting records available at:

<https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gziPAAQ>

³ 45 C.F.R. § 703.2 (2018).

3. Very long lines for same-day voter registration, which both disenfranchise voters and may increase the risk of COVID contagion (especially those waiting inside).
4. The high potential for understaffing at the polls.
5. The lack of clarity for student voting requirements and locations, amplified by college campus closings.
6. The inaccessibility of polling places and communication at polling places to people with disabilities.
7. The high likelihood of changing circumstances and new rules related to the pandemic.

Recommendations

1. Increase the presence of drop-off locations and voter education about them.
2. Allow voters a chance to cure all signature omissions/mismatches.
3. Conduct and implement process analyses to improve voter/registrant “through-put” at all high-volume clerks’ offices.
4. Recruit abundant staff for polling places and for evening vote counting.
5. Post and publicize clear rules for students, particularly those affected by college campus closings.
6. Audit polling places for accessibility and provide clear facemasks as standard PPE for poll workers. Use community partners to amplify education to voters who communicate with sign language about communication options.
7. Election administrators must be prepared to respond to changes in circumstances and to implement any rule changes.
8. The SOS office should release the list of community organizations they are working with to help voters in marginalized communities know where to reach out for assistance.

The Committee recommends that the U.S. Commission on Civil Rights consider these areas of concern and corresponding recommendations as part of its attention to voting rights nationally. The Committee will issue a formal report with additional recommendations at the conclusion of its study following the November 2020 general election.

Assertions and themes from the September 21, 2020 Web Conference:

1. The Michigan Governor declared a state of emergency due to the COVID-19 pandemic the day after the March 2020 primary election. At the time of this writing, Michigan has

reported 137,702 coronavirus cases, and 6,928 deaths.⁴ The Secretary of State has been working closely with the Governor to “ensure that elections will continue on time, safely, and securely.”⁵ The State of Michigan has not delayed any election that was scheduled for 2020, as has been done for primary elections in several other states.⁶

2. The State of Michigan has allocated additional funding to support a safe election in the context of the COVID-19 pandemic, supporting things like prepaid postage for the return of mail-in ballots; allocated drop boxes; automatic letter openers; high-speed tabulators; and personal protective equipment for election workers such as masks, gloves, disinfectant wipes, and hand sanitizers.⁷ The Bureau of Elections is providing guidance to clerks’ offices across the state regarding safety requirements, use of PPE, and obligations to safely assist any voter who requires assistance.⁸
3. With the passage of Proposal 3⁹ in November of 2018, the State of Michigan expanded mail-in (absentee) voting to every registered voter and provided a number of options for voters to both request and return their ballots.¹⁰
 - a. With the increase in absentee voters, increased education is necessary to ensure that voters properly complete and return their ballots.¹¹
 - b. Local clerks have 5 days to review and prepare ballots for mailing after receipt from the county clerk’s office. During the March primary election there were widespread complaints that ballots were not mailed out on time.¹²
 - c. Recent changes in postal service operations and challenges such as late or missing deliveries prevented more than 10,000 mail-in ballots from being counted in Michigan’s primary election in March 2020.¹³
 - d. Absentee ballots without a signature or those deemed to have a “signature mismatch” are not counted. Unlike other states such as Ohio, Michigan does not allow a ballot with a signature problem to be “cured” after election day. Clerks are required to attempt to resolve problems with signatures before election day;

⁴ <https://www.michigan.gov/coronavirus/> {as posted on October 13, 2020}

⁵ Craine Testimony, Transcript, p. 2 line 34 – p. 3 line 10.

⁶ Craine Testimony, Transcript, p. 2 line 34 – p. 3 line 10.

⁷ Craine Testimony, Transcript, p. 3 lines 12-22; p. 4 lines 11-19.

⁸ Craine Testimony, Transcript, p. 13 lines 8-16.

⁹ [https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_(2018))

¹⁰ Craine Testimony, Transcript, p. 3 lines 30-41; *see also* Edevbie Testimony, Transcript, p. 5 lines 27-29.

¹¹ Citchen-Spruce Testimony, Transcript, p. 9 lines 22-39; p. 10 lines 15-22.

¹² Edevbie Testimony, Transcript, p. 5 line 27 – p. 6 line 5.

¹³ Craine Testimony, Transcript, p. 4 lines 1-9; *see also* Dave Boucher, Detroit Free Press, Michigan SOS: More than 10,000 primary election ballots invalid, many due to late arrival, August 14, 2020, <https://www.freep.com/story/news/politics/elections/2020/08/14/michigan-sos-primary-ballots-invalid-absentee-voting-election/5584465002/>.

however, because of the large number of absentee ballots, some clerks may not identify signature issues until after election day, causing such ballots to be discarded.¹⁴

- e. Voters wishing to vote absentee who are concerned about mailing their ballot may request, complete, and return their absentee ballot at their clerk's office in person.¹⁵ Black voters have been disproportionately reluctant to vote by mail, so it is especially important to communicate this option to voters in Black communities.¹⁶
4. Proposal 3 also enacted same-day voter registration.¹⁷ During the March 2020 primary, some jurisdictions saw very long lines for voter registration, reportedly up to four hours long.¹⁸ The Secretary of State's office has been working with local clerks, particularly in college towns, to address such crowds moving forward.¹⁹
 - a. Advocates and organizers are encouraging voters (students particularly) to check their registration early and vote early or absentee so that they don't have to wait in long lines on election day.²⁰
 - b. Michigan Institute of Technology has developed an online tool allowing clerks to input the number of anticipated voters, the number of poll workers, and project the wait time accordingly; the tool also includes recommendations on corresponding steps to minimize wait time.²¹
 5. In addition to no-excuse absentee voting, voters have the option to participate in early voting or to visit their polling place on election day.²² The Michigan Secretary of State has pledged to encourage clerks not to close or consolidate polling locations to ensure access to in-person voting as needed.²³
 6. In order to effectively utilize absentee and early voting, clerks' offices must have consistent hours, including evenings and weekends, that are well publicized. The

¹⁴ Edevbie Testimony, Transcript, p. 6 line 33 – p. 7 line 6.

¹⁵ Edevbie Testimony, Transcript, p. 6 lines 7-11; p. 16 lines 20-27; Craine Testimony, Transcript, p. 3 lines 30-41

¹⁶ Edevbie Testimony, Transcript, p. 6 lines 13-17.

¹⁷ [https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_(2018))

¹⁸ Craine Testimony, Transcript p. 15 lines 15-29 (see committee member question presented on p. 14 line 17 – p. 15 line 4).

¹⁹ Ibid.

²⁰ Ansari Testimony, Transcript, p. 16 lines 1-8.

²¹ Edevbie Testimony, Transcript, p. 16 lines 10-17.

²² Craine Testimony, Transcript, p. 3 lines 34-43.

²³ Craine Testimony, Transcript, p. 4 lines 34-48.

Committee heard concern that some clerks' offices are understaffed, do not have enough locations throughout each community, and/or have inconsistent hours.²⁴

7. The pandemic will preclude many older and more experienced poll workers from staffing this election; with collaboration from community groups the state has increased its recruitment efforts for other poll workers and volunteers to serve in November.²⁵ Still, recruitment and training of sufficient numbers of poll workers remains a challenge.²⁶ Recruitment may be a particular challenge in jurisdictions seeking bilingual poll workers.²⁷
8. College campuses closed due to the COVID-19 pandemic have left students unsure of where they can vote—or if they can still plan to be in their residence halls on election day.²⁸
 - a. Michigan's voter identification laws exclude some student IDs, and students are not well informed of voting requirements.²⁹
 - b. Election outreach and education efforts that typically take place on college campuses for many first-time voters are now being held online, and have been less successful at informing and motivating new voters.³⁰
 - c. Food and housing instability has overshadowed "get out the vote" efforts for many students.³¹
9. Despite advocacy and collaboration with community groups, many polling locations remain inaccessible to voters with disabilities.³² Voters with disabilities have faced voting machines that are broken, poll workers untrained in operating accessible machines,³³ and poll workers unaware of accommodations for curbside voting.³⁴ Panelists presented concern that such long-standing challenges would be exacerbated by the COVID-19 pandemic.³⁵

²⁴ Edevbie Testimony, Transcript, p. 6 lines 19-31.

²⁵ Craine Testimony, Transcript, p. 3 lines 24-30, Edevbie Testimony, Transcript, p. 5 lines 19-21.

²⁶ Edevbie Testimony, Transcript, p. 7 lines 8-23; p. 13 line 31 – p. 14 line 2; Craine Testimony, Transcript, p. 14 lines 4-9.

²⁷ Edevbie Testimony, Transcript, p. 20 lines 1-11.

²⁸ Ansari Testimony, Transcript, p. 11 lines 6-15; p. 12 lines 13-20.

²⁹ Ansari Testimony, Transcript, p. 11 lines 17-19

³⁰ Ansari Testimony, Transcript, p. 11 lines 21-29.

³¹ Ansari Testimony, Transcript, p. 11 lines 31-36.

³² Citchen-Spruce Testimony, Transcript, p. 8 lines 11-19; p. 9 lines 7-12.

³³ Citchen-Spruce Testimony, Transcript, p. 9 lines 1-5.

³⁴ Edevbie Testimony, Transcript, p. 13 lines 23-29; Citchen-Spruce Testimony, Transcript p. 14 lines 11-13.

³⁵ Edevbie Testimony, Transcript, p. 13 lines 20-21

- a. The State has developed an accessible online absentee ballot that individuals with disabilities can complete and print at home. The State has also assigned an ombudsperson on accessible voting to review and address accessibility concerns.³⁶
 - b. While in 2018 record numbers of people with disabilities voted in Michigan, voters with disabilities remain underrepresented in voter turnout rates.³⁷
 - c. Voters with disabilities voting with absentee ballots can have a caregiver or designated person who lives in their home drop off their ballot at their clerk’s office on their behalf.³⁸
 - d. Facemasks create additional barriers to communication for individuals who are deaf or hard of hearing. Clear facemasks were recommended as standard PPE for poll workers to minimize this barrier.³⁹
10. Increased education and public information campaigns are necessary to inform the public about voting options and safety during the pandemic.⁴⁰
- a. The Michigan Secretary of State has established a reporting line and has pledged to work with the Attorney General to investigate and prosecute, as appropriate, any attempts to interfere with the election by deliberately misleading the public about election related matters.⁴¹
 - b. Outreach is particularly important in traditionally marginalized communities of color that already had lower voter participation rates before the pandemic. The Secretary of State’s Office is targeting engagement efforts in those precincts.⁴²
 - c. Establishing appropriate, consistent procedures and ensuring accurate public information is challenged by ongoing litigation with the potential to change requirements amidst the current election cycle.⁴³

It is important to note that these areas of inquiry are preliminary in nature and may not be inclusive of all testimony received to date. The Committee intends to submit a more comprehensive report to the Commission, including formal findings and recommendations, at the conclusion of this initiative in the spring of 2021.

³⁶ Craine Testimony, Transcript, p. 4 lines 21-32; Citchen-Spruce Testimony, Transcript, p. 9 lines 14-20.

³⁷ Citchen-Spruce Testimony, Transcript, p. 8, lines 24-36.

³⁸ Citchen-Spruce Testimony, Transcript, p. 10 lines 1-13.

³⁹ Citchen-Spruce Testimony, Transcript, p. 17 line 34 – p. 18 line 9; Craine Testimony, Transcript p. 19 lines 28-31.

⁴⁰ Edevbie Testimony, Transcript, p. 7 lines 25-32; Ansari, p. 11 line 37 – p. 12 line 20.

⁴¹ Craine Testimony, Transcript. p. 4 line 38 – p. 5 line 10; p. 18 line 34 – p. 19 line 6.

⁴² Craine Testimony, Transcript. p. 20 lines 20-31.

⁴³ Craine Testimony, Transcript, p. 21 lines 15-20.

The transcript of the web-briefing and other relevant Committee documents are available at:
<https://www.facadatabase.gov/FACA/apex/FACAPublicCommitteeDetail?id=a0zt0000002InB0AAK>. For more information, please contact the Regional Programs Unit.

**Michigan Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 230 S. Dearborn, Suite 2120 Chicago IL, 60604 (312) 353-8311
---------------	---

This advisory memorandum is the work of the Michigan Advisory Committee to the U.S. Commission on Civil Rights. The memorandum, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this memorandum and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.