

Office of the Secretary of State
Attn: Jocelyn Benson
430 W. Allegan St.
Richard H. Austin Building- 4th Floor
Lansing, MI 48918
888-767-6424
Michigan.gov/ContactSOS

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To the Secretary of State, Jocelyn Benson:

A citizen inquiry to address concerns for August 2nd Primary and Subsequent Elections in Michigan:

Over the past few weeks, poll worker selection and training has been rolled out across our state. Our observations regarding this rollout have generated concerns that the 2022 Election Manual conflicts with Michigan Election Law under MCL 168.733. With the Michigan Primary being less than two weeks away, we respectfully request an expedite response to the queries enclosed within this letter within 24 hours in a manner that would assure us and other citizens that our election laws will be adhered to in the upcoming elections.

For your reference, the provisions of MCL 168.733 state:

168.733 Challengers; space in polling place; rights; space at counting board; expulsion for cause; protection; threat or intimidation.

(1) The board of election inspectors shall provide space for the challengers within the polling place that enables the challengers to observe the election procedure and each person applying to vote. A challenger may do 1 or more of the following:

(a) Under the scrutiny of an election inspector, inspect without handling the poll books as ballots are issued to electors and the electors' names being entered in the poll book.

(b) Observe the manner in which the duties of the election inspectors are being performed.

(c) Challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector.

(d) Challenge an election procedure that is not being properly performed.

(e) Bring to an election inspector's attention any of the following:

(i) Improper handling of a ballot by an elector or election inspector.

(ii) A violation of a regulation made by the board of election inspectors pursuant to section 742.

(iii) Campaigning being performed by an election inspector or other person in violation of section 744.

(iv) A violation of election law or other prescribed election procedure.

(f) Remain during the canvass of votes and until the statement of returns is duly signed and made.

(g) Examine without handling each ballot as it is being counted.

(h) Keep records of votes cast and other election procedures as the challenger desires.

(i) Observe the recording of absent voter ballots on voting machines.

(2) The board of election inspectors shall provide space for each challenger, if any, at each counting board that enables the challengers to observe the counting of the ballots. A challenger at the counting board may do 1 or more of the activities allowed in subsection (1), as applicable.

(3) Any evidence of drinking of alcoholic beverages or disorderly conduct is sufficient cause for the expulsion of a challenger from the polling place or the counting board. The election inspectors and other election officials on duty shall protect a challenger in the discharge of his or her duties.

(4) A person shall not threaten or intimidate a challenger while performing an activity allowed under subsection (1). A challenger shall not threaten or intimidate an elector while the elector is entering the polling place, applying to vote, entering the voting compartment, voting, or leaving the polling place.

The May 2022 edition of the SOS manual, “The Appointment, Rights and Duties of Poll Challengers,” contains brand NEW language and directives not based on Michigan law. The new manual says:

Challengers present at a polling place or absent voter ballot processing facility must follow the directions of the election inspectors operating the polling place or absent voter ballot processing facility. The directions election inspectors may give to challengers include, but are not limited to:

- Directing challengers on where to stand and how to conduct themselves in accordance with these instructions...
- Directing a challenger who violates these instructions to leave the polling place or absent voter ballot processing facility, or requesting that the local clerk or local law enforcement remove the challenger from the polling place or absent voter ballot processing facility.”

The manual and Michigan Election Law are in direct conflict. Specifically, we believe that the Michigan Election Manual conflicts with the provisions of subsection (e).

We are concerned that this could open up many possibilities for abuse of power by precinct captains and poll inspectors. According to the language in the manual, Poll Challengers are subject to the direction of Poll Inspectors. According to our election law, Poll Challengers have been delegated with specific authority that is not subservient to the direction of Poll Inspectors. As currently stated in the election manual, poll Challengers will have their statutory authority subject to the arbitrary directives of poll inspector. The use of the phrase "...include but are not limited to..." seems to open the door to an abuse of authority by poll inspectors and seems to be in direct conflict with established election law.

The language is vague enough in the manual that Poll Challengers could be told to leave or stand where told for any reason. Based on the manual (not Michigan Election law) the poll Challengers would be subject to unlawful directives by Poll Inspectors.

We desire to know what course of action you would like us to pursue in the case that poll challengers are directed by the precinct captain and/or poll/election inspector to take actions that preclude our ability to execute our statutory oversight authority?

Please advise as to how you believe challengers will be able to report violations of election law if they are not able to access all areas where "prescribed election procedure" is being executed.

What actions are being taken by your office to ensure that the Michigan Election Manual is updated to ensure that it does not conflict with current Michigan election law?

We look forward to a resolution on the above matters. For the essence of time, kindly respond within 24 hours. Your attention to our concerns is much appreciated.

Kind Regards,

Melissa Williams
Michigan Citizen and Election Poll Worker/Poll Challenger/AB Inspector
248-234-2175
Melissagal220@gmail.com
And
Philip O'Halloran
Vice President, Michigan Citizens for Election Integrity
248-760-0522
philipohalloran@gmail.com

References

1. “The Appointment, Rights and Duties of Election Challengers and Poll Watchers” May, 2022 https://www.michigan.gov/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=96200bf95184c9b91d5b1779d08cb1b
2. “The Appointment, Rights and Duties of Election Challengers and Poll Watchers” September, 2020 <https://jxngop.org/wp-content/uploads/2021/10/SOS-poll-challenger-watcher-2020.pdf>
3. MICHIGAN ELECTION LAW (EXCERPT) Act 116 of 1954 Section 168.733: [http://www.legislature.mi.gov/\(S\(fqy05sa51lvk5qg33slg4uvh\)\)/mileg.aspx?page=getObject&objectName=mcl-168-733](http://www.legislature.mi.gov/(S(fqy05sa51lvk5qg33slg4uvh))/mileg.aspx?page=getObject&objectName=mcl-168-733)