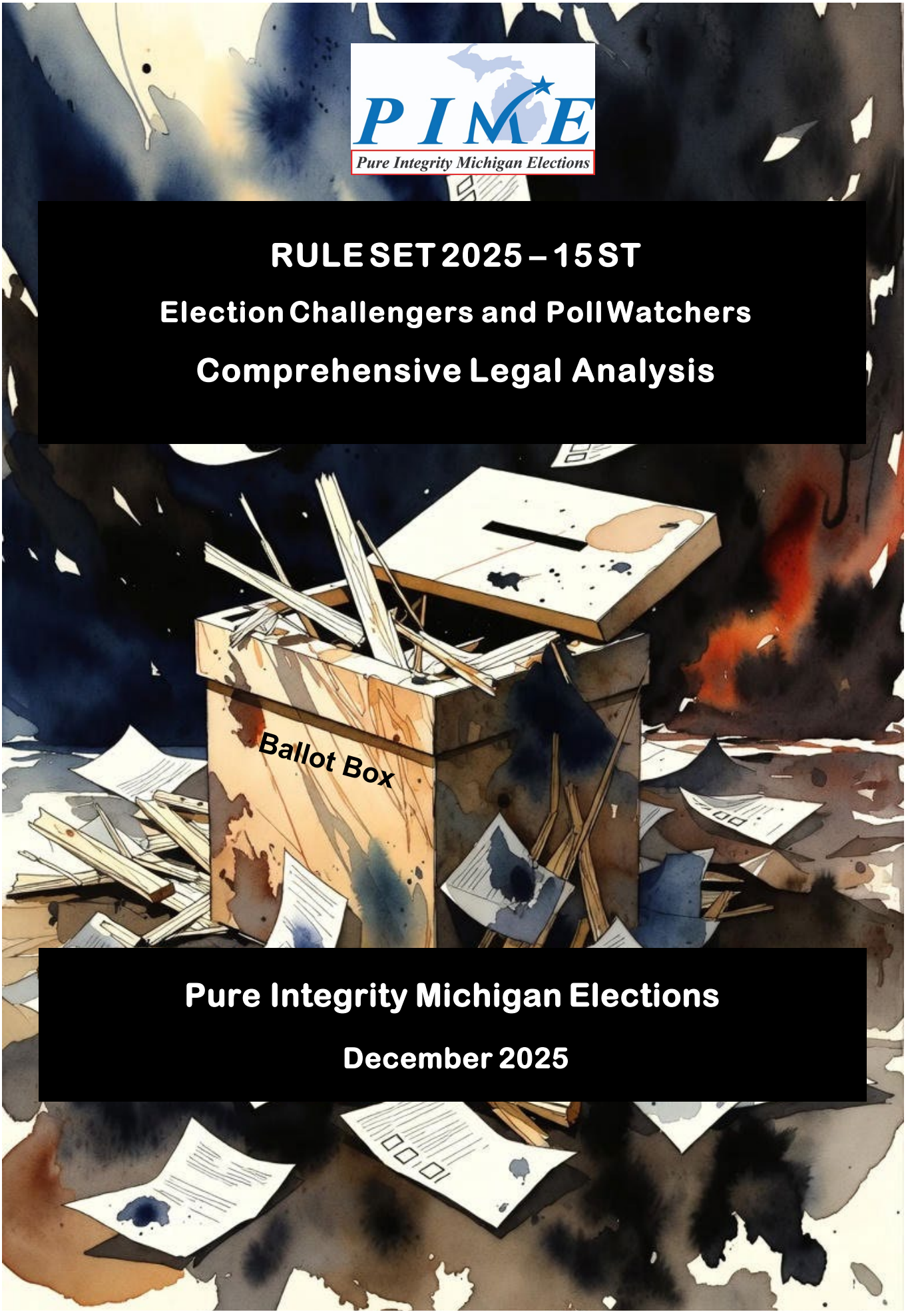
# RULE SET 2025 – 15 ST

## Election Challengers and Poll Watchers

## Comprehensive Legal Analysis




**Pure Integrity Michigan Elections**

**December 2025**

# RULE SET 2025 – 15 ST

# Election Challengers and Poll Watchers

## Comprehensive Legal Analysis

**Rule Set 15: Rules R 168.201 - R 168.220**
Link:
https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1588

Submitted by:

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December 3, 2025

**Status:** Rule Set 2025-15 ST - Pending Implementation
**Related Rule Sets:**

- Rule Set 2025-13 ST (Voter Registration Challenges) - Pending
- Rule Set 2024-14 ST (Electronic Pollbook Records) - Effective Oct. 23, 2024

## EXECUTIVE SUMMARY

Poll challengers are unpaid volunteers who contribute their time and talents to help ensure honest and fair elections. They observe election administration and challenge violations of Michigan election law, regulations, and procedures—all to preserve the integrity of the state's elections. Michigan Compiled Law 168.727-734 establishes comprehensive challenger rights, protecting their wide-ranging rights to observe ballot counting, monitor procedures, examine voter registrations, and raise concerns about any potential violations. Credentialing organizations—consisting of political parties, incorporated organizations, or organized committees of citizens—usually provide training, though no law requires it. Rule Set 2025-15 not only mandates training but also breaches the First Amendment, putting the government in charge of creating the training materials and providing the training, clear violations of free speech and associational rights.

Rule Set 2025-15 ST (Appendix), a package of 20 rules, systematically dismantles these statutory rights through restrictions that exceed the secretary of state's administrative authority, contradict legislative text, and violate constitutional protections.

Secretary Jocelyn Benson promulgated Rule Set 15 shortly after announcing her candidacy for governor on January 22, 2024. These rules impose severe restrictions on oversight of the very election she will administer while running for Governor.

This analysis shows how Rule Set 15, together with Rule Sets 13 and 14, will eliminate meaningful election oversight at every phase of the electoral process. Due to its integral role in a coordinated three-stage assault on election oversight, Rule Set 15 must not be viewed in isolation.

Michigan's broken rule-making system allows these unauthorized rules to take effect through legislative inaction. The Joint Committee of Administrative Rules (JCAR)—the sole oversight committee—operates at 50-50 party impasse and cannot achieve the majority needed to disapprove or change the rules. Without JCAR action, the rules take effect 15 days after the secretary of state's office submits them to itself. Per Rule Set 15, "These rules become effective 7 days after filing with the secretary of state." (See Appendix, Exhibit B)

With legislative oversight rendered powerless, Rule Set 15 is systematically eliminating citizen oversight in apparent violation of state and federal law. Federal intervention has become necessary, and federal and state courts represent the most viable forum for invalidating these legally unauthorized rules.

The most problematic provisions lack statutory authorization and contradict explicit legislative text:

*State-created and controlled training materials* (R 168.207 and R 168.203(4); See Appendix) force organizations to distribute government-generated materials to their members, violating



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First Amendment free speech protections, protections against compelled speech, the freedom to associate. These rules give the incumbent secretary of state control over education, materials, and training of election challengers during her campaign.

*The mandatory liaison system (R 168.205) contradicts MCL 168.733's direct procedure* in which inspectors have the right to address challenges immediately. The statute creates no intermediary role.

*The rules impose challenge ground restrictions* (R 168.208), limiting challenges to four enumerated grounds and dramatically narrowing MCL 168.733's comprehensive right-to-challenge language that the Legislature deliberately chose over restrictive lists.

*Vague and subjective ejection standards* (R 168.217 and R 168.214 (Appendix below)) run counter to Michigan law (MCL 168.733), which emphasizes the duty of election inspectors to protect the challengers, and they fail constitutional tests. Minnesota Voters Alliance v. Mansky struck down similarly vague political speech restrictions at polling places.

Rule Set 15 and its 20 subrules create three unlawful categories of barriers:

1. *Entry barriers* require mandatory state training materials and state training for credential-issuers—bureaucratic hurdles organizations have never cleared.

2. *Operational barriers* impose liaison gatekeeping that blocks direct communication with election inspectors, restrict challenges to four grounds (excluding deceased voters, duplicate registrations, ballot harvesting, and other legitimate concerns), and impose arbitrary numerical limits.

3. *Ejection threats* run counter to Michigan election law (MCL 168.733) and use vague standards like "reasonable belief," "disrupts or interferes," and clothing that "disrupts peace or order"—subjective criteria enabling viewpoint discrimination.

The October 2024 Election Officials Manual proves these restrictions are unnecessary. The system functioned effectively without training mandates, liaison gatekeeping, or challenge ground restrictions. Between October 2024 and January 2025, nothing appeared to change about election administration. No new problems emerged. No clerks requested new barriers. No incidents occurred. **The ONLY significant change is that Secretary Benson announced her gubernatorial candidacy.**

The state's own Regulatory Impact Statement states, "The rules have not been coordinated with other federal, state, or local laws as there are none applicable to the same activity or subject matter." This statement that none are applicable is untrue.

Further the RIS states, "the rules will not alter the behavior" and "it is not necessary to promulgate the instructions as rules." So, the state admits rules are unnecessary. Therefore, no administrative justification exists for burdening constitutional rights.



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Rule Set 15 must be invalidated because it **(**1) exceeds statutory authority (no authorization in MCL 168.730-735), (2) contradicts express legislative language (eliminates MCL 168.733's direct procedures and comprehensive challenge grounds), (3) imposes restrictions without administrative necessity (October 2024 system worked), and (4) violates constitutional protections (compelled speech, associational rights, vague standards enabling viewpoint discrimination).

The timing—promulgation shortly after candidacy announcement—strongly suggests political motivation rather than administrative need.

Immediate action is required. Written comments must be submitted by 5:00 PM on December 12, 2025. Public hearing testimony may be presented at 10:00 AM on December 12, 2025. JCAR review and state court challenges provide additional avenues for opposition. The integrity of Michigan's elections depends on meaningful, independent oversight. Rule Set 15 systematically eliminates that oversight—not because the system failed, but because an incumbent candidate and those wishing to undermine the integrity of our elections seek to restrict oversight of the secretary of state's election administration.



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# Table of Contents





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## SECTION I: COORDINATED ASSAULT. RULE SET 15's ROLE

Rule Set 15 must not be viewed in isolation, due to the integral role it plays in a coordinated three-stage attack on election oversight. Rule Set 15, together with Rule Sets 13 and 14, will eliminate meaningful election oversight at every phase of the electoral process.

Rather than good-faith election administration in response to documented problems, this coordinated pattern suggests weaponization of administrative power implemented while the Secretary campaigns for Governor. The systematic nature across all three stages (before, during, after) suggests a deliberate strategy to eliminate accountability mechanisms at every phase of the electoral process:

| Stage | Rule Set | How Oversight Is Eliminated | Status |
|---|---|---|---|
| **Before Election** | Rule 13: Voter Registration Cancellation, Challenge, and Correction | Cannot challenge ineligible voter registrations. $2,300 fees per challenge. Impossible "personal knowledge" standards. Illegal protected class for overseas voters. | Pending |
| **During Election** | Rule 15: Election Challengers and Poll Watchers | Cannot effectively observe or challenge voting. Mandatory state training barriers. Liaison gatekeeping. Restricted challenge grounds. Vague and legally unauthorized ejection/expulsion standards. | Pending |
| **After Election** | Rule 14: Use of Electronic Pollbook | Cannot investigate or audit. Critical records destroyed after 7 days, violating 52 USC 20701's 22-month requirement. | Effective Oct 23, 2025 |

### A. Legal failures - Invalid on all grounds

Rule Set 15 (See Appendix) fails every test for valid administrative rulemaking under Clonlara, Inc. v. State Bd. of Educ, 442 Mich. 230, 239 (1993), which requires rules be: (1) within the matter covered by enabling statute, (2) compliant with and carrying out the intent of the enabling act, and (3) reasonable and not arbitrary.

MCL 168.31(1)(a) authorizes Secretary to "issue instructions and promulgate rules... for the conduct of elections." This authorizes procedural implementation of existing statutory rights, not creation of substantive restrictions on who may serve, mandatory training content, communication barriers, or narrowing of statutory challenge authority. Training requirements, liaison systems, and challenge ground restriction. Plus, legally unauthorized and vague ejection standards impose substantive restrictions and exceed procedural authority for conduct of elections.



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**Test 1 - Statutory authority: FAIL**

MCL 168.31(1)(a) authorizes Secretary to "issue instructions and promulgate rules... for the conduct of elections." This authorizes procedural implementation of existing statutory rights, not creation of substantive restrictions on who may serve, mandatory training content, communication barriers, or narrowing of statutory challenge authority. Training requirements, liaison systems, challenge ground restrictions, and vague ejection/expulsion standards impose substantive restrictions and exceed procedural authority for conduct of elections.

**Test 2 - Statutory compliance: FAIL**

The SOS Rules directly contradict statutory text. MCL 168.733 establishes direct procedures in which challengers shall "[b]ring to an election inspector's attention."

In contrast, R 168.205(2) in the Appendix below requires a liaison intermediary, "Challengers shall not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee."

MCL 168.733 uses comprehensive right-to-challenge language; whereas R 168.208(2)(7) in the Appendix below restricts the right to challenge to four exclusive grounds.

MCL 168.730 grants organizational credentialing without a training requirement; whereas R 168.207 and R 168.203(4) (Appendix) impose training mandates that the Legislature deliberately excluded over 70 years.

**Test 3 - Reasonable and not arbitrary: FAIL**

The SOS's Rules are arbitrary, lacking factual foundation and responding to no documented needs. RIS admits rules "not necessary" and won't change behavior. Zero evidence exists of problems under October 2024 Election Officials Manual. No documented issues from organizational training, direct communication, broader challenge authority, or specific conduct standards. Timing immediately following Secretary's gubernatorial announcement suggests political rather than administrative motivation.

### 1. Unconstitutionally Vague Ejection Standards (R 168.217, R 168.214)

**State law,** MCL 168.733, mandates that "[t]he election inspectors and other election officials on duty shall protect a challenger in the discharge of his or her duties." The statute establishes narrow, objective ejection standards: "drinking of alcoholic beverages," "disorderly conduct," and "threaten or intimidate" behavior. These standards are specific, observable, and provide fair notice. Rule Set 15 inverts this framework by replacing statutory protection with vague, subjective ejection standards that enable arbitrary enforcement and viewpoint discrimination.

**Rule 168.217** authorizes ejection when a liaison has "reasonable belief" that a challenger violates R 168.214(4) prohibitions, including wearing clothing "relating to any party, candidate,



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or proposition on the ballot or that disrupts the peace or order" and conduct that "disrupt[s] or interfere[s] with the orderly conduct of the election." These standards are entirely subjective: "reasonable belief" provides no objective criteria; "disrupts peace or order" is purely reaction-based; "relating to any party" is impossibly broad (does red clothing "relate to" Republicans? blue to Democrats?). Without objective criteria, enforcement depends entirely on the liaison's political preferences.

In *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018), the Supreme Court struck down Minnesota's ban on "political" apparel at polling places as unconstitutionally vague, holding that restrictions on political speech "must be clear and reasonable" and "if the line between permissible and impermissible is not clear, citizens are left guessing" and enforcement becomes "haphazard and discriminatory." Michigan's standards are substantially vaguer than Minnesota's struck-down standard. At least "political" had objective content. Michigan's "reasonable belief" and "disrupts peace" standards provide zero objective criteria, enabling partisan liaisons to eject opposition party challengers based solely on subjective judgment.

These vague standards chill legitimate activity because challengers cannot know what conduct triggers ejection. Challengers will decline to make multiple challenges (fear of "repeated impermissible challenges"), avoid necessary questions (fear of being "disruptive"), and refrain from political identification (fear clothing "relates to" a party). The Mansky Court warned that vague standards "make[] it easier to discriminate against unpopular speech" and "favor those in power." Here, partisan liaisons can eject Party B challengers for wearing MAGA hats while tolerating Party A observers wearing "Reproductive Freedom" buttons—or vice versa depending on the liaison's party affiliation.

Michigan Compiled Law provides no authorization for ejection based on "reasonable belief," "disrupts peace or order," or clothing that "relates to any party." On the contrary, the Legislature directed election officials to protect challengers, and the law's language established narrow ejection grounds. *MCL 168.733* is explicit regarding election challenger expulsion/ejection:

> *(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.* (Emphasis added)

In contrast, Rule Set 15's R 168.217 contradicts this mandate by empowering liaisons to eject challengers based on subjective criteria that fail constitutional vagueness tests, chill protected political activity and enable viewpoint-based suppression of election oversight.

> *Rule 17. (1) The right of a challenger to be present is* ***conditional on the challenger's compliance with election inspectors' lawful commands*** *under section 678 of the act, MCL 168.678.* ***Any failure to comply with the lawful command of an election inspector may***



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> ***result in expulsion*** *from the Election Day polling place, early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office.*
>
> *(2) If a challenger liaison has a reasonable belief that a challenger is making challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is making impermissible challenges as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4), the challenger liaison shall warn the challenger of the challenger's noncompliant challenges or impermissible behavior.*
>
> *(3) If a challenger liaison has a reasonable belief that a challenger who was warned under subrule (2) of this rule is continuing to make challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is* ***making impermissible challenges*** *as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4),* ***the challenger liaison may eject the challenger*** *from the Election Day polling place, early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office. (Emphasis added)*

**Due Process:** "Reasonable belief" and "disrupts or interferes" are unconstitutionally vague under Mansky, enabling arbitrary enforcement without fair notice.

**Separation of powers:** Executive controlling opposition education on legislative law usurps both legislative function and citizens' freedom to associate with whom they please (associational doctrine).

## B. Immediate action required due to JCAR paralysis

**Written comments must be submitted by December 12, 2025, 5:00 PM**—Public hearing occurs same day at 10:00 AM. After comment deadline, multiple avenues remain:

**JCAR objection:** Likely futile given 50-50 impasse, but formal objection creates legislative record and preserves political accountability even if rules take effect through gridlock.

**Legislative disapproval:** Requires concurrent resolutions in both chambers, subject to gubernatorial veto. Given partisan dynamics and the secretary of state's political alignment with the governor, disapproval unlikely to succeed but creates public record.

**State court challenge:** Most viable forum given JCAR's structural paralysis. Challenge rules as ultra vires (exceeding MCL 168.31 authority), void for vagueness under state and federal constitutional standards, violative of First Amendment protections for political association and speech, contradicting MCL 168.733 procedures, and implemented without administrative necessity while Secretary campaigns for office she will administer.

**Federal DOJ review:** Rule Set 15 provides a pattern of evidence of systematic weaponization. Combined with Rule 13 (blocking pre-election challenges) and Rule 14 (destroying post-election evidence in violation of 52 USC § 20701), the three-stage coordinated assault suggests a



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knowledge element for criminal prosecution and intent to eliminate opposition oversight during the Secretary's gubernatorial campaign.

## C. Conclusion: When oversight fails, courts must act

When election administrators implement rules restricting oversight of their own administration while seeking higher office—and when structural defects in legislative oversight prevent meaningful review—courts become the final safeguard protecting statutory rights the Legislature established and constitutional protections the people retain.

Rule Set 2025-15 ST systematically dismantles citizen observer rights that Michigan's Legislature deliberately created in MCL 168.727-734 and has maintained for seven decades. The rules exceed statutory authority, contradict direct legislative procedures, violate multiple constitutional protections, and respond to no documented administrative necessity. These suggest they serve political purposes—restricting opposition oversight during Secretary's gubernatorial campaign—not administrative improvement.

JCAR's 50-50 paralysis guarantees these unauthorized rules will take effect through legislative inaction rather than legislative approval. This structural failure transforms administrative rulemaking from a process requiring affirmative legislative consent into one requiring only that the Legislature fail to disapprove—a failure guaranteed by partisan gridlock. When the oversight mechanism designed to check executive overreach becomes paralyzed by that very gridlock, judicial intervention becomes constitutionally necessary to preserve the separation of powers and protect statutory rights from administrative usurpation.

These rules must be invalidated before they eliminate the independent citizen oversight that remains the ultimate safeguard of electoral integrity in a democratic republic. The timing—implemented during the Secretary's gubernatorial campaign—the pattern—systematic elimination of oversight before, during, and after elections—and the absence of any administrative necessity all demonstrate these rules serve not the public interest in fair elections but the systematic dismantling of our election safeguards.

**Bottom line**: Poll challengers are unpaid volunteers serving as the public's eyes and ears to ensure government officials conduct elections according to law. Rule Set 2025-15 ST transforms this civic service into a state-controlled privilege subject to arbitrary enforcement by the very officials being observed—and no effective legislative oversight exists to stop it. Courts must act where the Legislature cannot.



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## SECTION II: MAJOR VIOLATIONS - DETAILED ANALYSIS

State law limits the secretary of state to providing 'instructions,' not imposing substantive restrictions. Michigan Compiled Law states:

> *(1) The secretary of state shall…*
> *(a) (2), issue instructions and promulgate rules* ***pursuant to the administrative procedures act*** *of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations* ***in accordance with the laws of this state****.* (Emphasis added)
> -- MCL 168.31(1)(a)

Unfortunately, many of the 20 binding rules in Rule Set 2025-15 exceed statutory authority and manufacture binding rules where no statutory authority exists. They contradict express statutory language and impose restrictions without administrative necessity and while ignoring required procedures. This section analyzes the major violations.

### A. First Amendment Violations: Mandatory State-Controlled Training for Election Challengers

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.*
>
> --First Amendment

**The Mandatory State-controlled Training Regime**

Rule Set 15's mandatory training requirement via Rule 168.203 and 168.207 (See Appendix) is not impose a neutral administrative prerequisite. It represents state control over free speech and the right to associate and assemble with whom a person pleases (the associational doctrine). Rules 203 and 207 exert prior restraint on First Amendment-protected activity.

Organizations seeking to credential challengers must submit to training created and delivered by the secretary of state, accept certification that expires every two years (requiring re-training), and provide annual organizational information to maintain certification.

These rules give the secretary of state—a partisan elected official currently running for governor—veto power over which political organizations may participate in oversight of the very election in which the secretary of state will appear as a candidate. The requirement that challengers certify "working knowledge" of state training materials is unconstitutionally vague and creates a chilling effect, as the rule provides no standards for what constitutes sufficient "working knowledge" or who determines adequacy, leaving organizations and individuals to guess what level of comprehension the state demands.



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The Legislature specifically made clerk-offered training voluntary in MCL 168.733, recognizing that mandatory training would violate constitutional rights. But the Secretary's rule directly contradicts this legislative choice by making Secretary-controlled training mandatory, transforming a voluntary educational opportunity into a compulsory licensing system.

The constitutional problem arises from three interlocking violations. First, the training requirement operates as a prior restraint on political association. Under Near v. Minnesota, 283 U.S. 697 (1931), prior restraints are presumptively unconstitutional, and the government cannot require citizens to obtain a license or permit before engaging in First Amendment-protected activity.

Here, the secretary of state requires organizations to obtain state approval—through mandatory state-created training and certification—before they can exercise their statutory right to credential observers, which is the definition of a prior restraint.

The Supreme Court has long recognized that freedom to associate for the advancement of political beliefs includes the right to organize election oversight activities without government interference.

"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause" (*NAACP v. Alabama*, 357 U.S. 449, 460 (1958))

Requiring organizations to submit to state-controlled training as a condition of exercising their associational right to monitor elections is analogous to requiring a newspaper to obtain a government license before publishing political commentary—a practice the Supreme Court unanimously condemned in Near v. Minnesota, 283 U.S. 697 (1931), as a prior restraint on press freedom. This rule grants the Secretary the power to exclude political opponents from monitoring the very election in which the secretary of state will appear as a candidate on the ballot.

**Second, the requirement compels speech and ideological conformity.**

The First Amendment prohibits government from compelling individuals or organizations to express beliefs or endorse messages. Under the compelled speech doctrine, government cannot force citizens to speak or support specific expressions against their will—including through mandatory attendance at government-designed training sessions.

Rule 168.207, Rule 7:

> *(1) Each credentialing organization shall provide each challenger credentialed by that organization with the manual **created by the secretary of state** governing challengers and poll watchers **and other materials** designated by the secretary of state.*
>
> ...



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> *(5) Each challenger* ***shall sign a written statement certifying that the challenger completed the required training and has a working knowledge of the material presented at training****. The credentialing organization shall retain this statement for 2 years after the last date that the challenger served.*
> *(6) An individual* ***must not serve as a challenger unless the individual has completed challenger training as required under this rule within the last 2 calendar years****. If a change in the election law, a change in election regulations, a court order, or another event substantially alters or abrogates information contained in the training,* ***the secretary of state may require individuals wishing to serve as challengers to complete a supplemental training*** *before serving as a challenger, even if that individual has completed the required challenger training within the 2 calendar years before the date the individual serves as a challenger.* (See Appendix for full rule. Emphasis added)

Rule 168.203, Rule 3:

> *(4) Before issuing credentials to any challengers,* ***each individual issuing credentials on behalf of the credentialing organization shall complete training created by the secretary of state for credentialing organizations****. This training must include information about permissible and impermissible challenges, and the rights and duties of challengers. The training may include certification that the individual has reviewed written materials designated by the secretary of state or may include virtual or in-person training. (See Appendix below.* (Emphasis added)

The credentialing organization or committee has no control over the content, no ability to decline participation in portions of the training they find objectionable, and no alternative path to certification.

The Secretary might argue that the training is merely educational, but compelled attendance at government-designed training is itself a form of compelled speech, regardless of whether participants must vocally agree with the content. The organization is forced to receive the Secretary's preferred framing of challenger rights and responsibilities.

The training requirement creates unconstitutional viewpoint discrimination, as the Secretary controls training content and determines what constitutes "successful completion," giving her the power to emphasize certain interpretations of election law while minimizing others, to characterize certain challenges as "permissible" and others as "impermissible" based on her own policy preferences, and to refuse recertification to organizations that teach interpretations contrary to her views.

Under *Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819, 829–30 (1995), government cannot discriminate based on viewpoint in regulating speech and association.

Rule 168.207 and 168.203 provide no alternative compliance mechanism: An organization cannot demonstrate competence through alternative means, provide supplemental training



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alongside state training, challenge training content through administrative process, appeal certification denials, or obtain judicial review before credentials are denied.

The rule operates as an absolute bar: Submit to state training or the individual must forfeit his or her statutory right to credential challengers.

The First Amendment does not permit such all-or-nothing conditioning of constitutional rights. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

## Key U.S. Supreme Court cases/precedents:

• *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943): The government cannot compel individuals to express beliefs, particularly when it conflicts with their personal or religious convictions.

• *Wooley v. Maynard*, 433 U.S. 705 (1977): The right to refrain from speaking is as important as the right to speak.

• *Janus v. AFSCME*, 138 S. Ct. 2448 (2018): The compelled speech doctrine extends to compelled attendance at ideological training and financial contributions, emphasizing individual choice in supporting speech.

• *NAACP v. Alabama*, 357 U.S. 449, 460 (1958): Freedom to associate for the advancement of political beliefs is protected from government interference.

• *Near v. Minnesota*, 283 U.S. 697, 713–16 (1931): Prior restraints on First Amendment activity are presumptively unconstitutional.

• *Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819, 829–30 (1995): Viewpoint-based regulation of political speech is presumptively unconstitutional.

• *Riley v. National Federation of the Blind*, 487 U.S. 781, 797-98 (1988) *"Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech....We therefore consider mandated-speech provisions to be content-based regulations of speech."*

**Third, the conflict of interest aggravates the constitutional violations**.

The constitutional violation is aggravated by the secretary of state's conflict of interest. As a gubernatorial candidate, Secretary Benson will administer the 2026 election while campaigning, so she now controls which organizations may train challengers for that election.



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Organizations that criticize her administration or support her opponent must submit to training designed by her office, receive certification from her office, and maintain approval from her office—or be excluded from oversight entirely. This gives an election administrator who is also a candidate the power to exclude political opponents from monitoring the very election in which she appears on the ballot.

**The mandatory training requirement is one of four First Amendment violations in Rule Set 15**.

The rules also unconstitutionally restrict challenge grounds (see section on Challenge Restrictions), impose vague ejection standards that enable viewpoint discrimination (see Section on Ejection Standards), and require challengers to communicate through state-appointed liaisons rather than directly with inspectors (see Section on Liaison System). Taken together, these provisions transform election observation from a First Amendment-protected right into a state-licensed privilege subject to content-based regulation and viewpoint discrimination. Rule Set 15 compels ideological conformity as a condition of political participation.

## B. False SOS statements in the Regulatory Impact Statement, denying the existence of current state and federal laws regarding election challengers.

The state's Regulatory Impact Statement requires state agencies to answer this question:

> *A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.*

In response, the secretary of state's office stated, "The rules have not been coordinated with other federal, state, or local laws **as there are none applicable to the same activity or subject matter**." (Emphasis added)

The claim that no laws are applicable is false. The suggestion that the SOS office could be unaware of the laws strains the bounds of credibility. A simple Google search reveals the laws that exert controlling authority over election challengers. Plus, two current secretary of state election officials' manuals cite rules and laws that apply to election challengers:



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1. **A simple Google search of "MI compiled law election challengers" revealed this listing of state laws:**

| | | |
|---|---|---|
| Section 168.727 | Section | Challenge; duty of election inspector; indiscriminate challenge; penalty. |
| Section 168.728 | Section | Challenges; disposition. |
| Section 168.729 | Section | Challenges; oath, questions as to qualifications; false statements, penalty. |
| Section 168.730 | Section | Designation, qualifications, and number of challengers. |
| Section 168.731 | Section | Challengers; statement of appointment by organization; contents; authorization; appointment without authorization; penalty. |
| Section 168.732 | Section | Presence of challenger in room containing ballot box; evidence of right to be present. |
| Section 168.733 | Section | Challengers; space in polling place; rights; space at counting board; expulsion for cause; protection; threat or intimidation. |
| Section 168.734 | Section | Challengers; preventing presence, penalty. |

Results of Google search: MI compiled law election challengers, Nov. 29, 2025

2. **The secretary of state's own elections manuals cite the state laws that exert controlling legal authority over election challenges and election law overall:**

The "Table of Contents" of the October 2024 Election Officials Manual shows:



**Table of Contents, Secretary of State, Election Officials Manual, October 2024.** https://www.michigan.gov/-/media/Project/Websites/sos/01mcalpine/Absent-Voter-Ballot-Processing.pdf?rev=5cb968c3a88b477da0ce871c83b8a5ab



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**3. The secretary of state's July 2024 Election Officials Manual cites the following controlling legal authorities:**


Secretary of State's Office, "Chapter 1: The Structure of Michigan's Election System," *Election Officials Manual*, July 2024, pp. 2-5.

"Michigan's elections are governed by several legal authorities, including:

- Michigan Constitution:….
- Michigan Election Law:… cited as Michigan Compiled Law (MCL) 168.1 to 168.992.
- National Voter Registration Act (NVRA)
- Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)
- Military and Overseas Voter Empowerment Act (MOVE)
- Help America Vote Act (HAVA)
- Americans with Disabilities Act (ADA)
- The Voting Rights Act (VRA)
- Administrative rules
- Michigan Attorney General opinions
- Federal and state court rulings:
- This manual: The *Election Officials Manual*, July 2024, of which this is the first chapter, provides instructions from the secretary of state under MCL 168.31(1)((b) and MCL 168.31(1)(c) describing the proper conduct of elections. July 2024 Election Officials Manual, Chapter 1: The Structure of Michigan's Election System | 4 Michigan Bureau of Elections
- Other documents published by the Bureau of Elections:
  [T]hese materials include *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*"



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## Election Challengers and Poll Watchers:
## Summary of Rights and Duties

| | Challengers | Poll Watchers |
|---|---|---|
| Must carry credentials issued by appointing authority. | Yes | No |
| Must be registered to vote in Michigan. | Yes | No |
| Has the right to challenge a person's eligibility to vote. | Yes, except at an absent voter counting board | No |
| Has the right to challenge the actions of election inspectors | Yes | No |
| May stand or sit behind processing table. | Yes | No. Must remain in public area. |
| Has the right to look at the Poll Book and other election materials. | Yes | Maybe, if permitted by challenger liaison. |
| May handle the Poll Book and other election materials. | No | No |
| May use a video camera or recording device in polling place. | No | No |
| May use a cell phone in polling place. | Yes. If not disruptive. | Yes. If not disruptive. |
| May wear clothing, button, arm band, vest, etc. that identifies organization he or she represents. | No | No |
| May place tables in the polls. | No | No |
| Has the right to approach and question voters. | No | No |
| Can offer assistance to voters. | No | No |
| May remain in the polling place until the election inspectors complete their work. | Yes | Yes |
| May obtain the voter results generated in the precinct after the polls close. | Yes | Yes |

For personalized voter info visit: Michigan.gov/VOTE

State of Michigan, Secretary of State, ***The Appointment, Rights, and Duties of Election Challengers and Poll Watchers*** in the *Election Officials Manual*, July 2024, Chapter 1: The Structure of Michigan's Election System. (https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Clerk-toolkit/Educational/MDOS_ChallengersVWatchers_Summary.pdf?rev=8f1c16fffd9f42d69c430d0e7e3e54b7&hash=E3745D988A6D9254CF69CD580E6B44A7)



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## C. Administrative Procedures Act (APA) violations

The secretary of state office systematically violated Michigan's Administrative Procedures Act in promulgating Rule Set 15, bypassing procedural safeguards designed to prevent arbitrary and politically motivated rulemaking. These violations span the entire rulemaking process—from failure to provide advance notice in the required annual regulatory plan, to admission in the Regulatory Impact Statement that the rules are "not necessary," to reliance on partisan legislative deadlock to circumvent disapproval. Each violation independently requires invalidation of the rules under MCL 24.287. Collectively, they demonstrate that Rule Set 15 resulted from a rushed, politically expedient process rather than reasoned administrative judgment.

### 1. Michigan's Administrative Procedures Act framework

The federal Administrative Procedure Act (APA) is a federal law that governs how federal agencies propose and establish regulations. Each U.S. state has its own version of the APA to regulate state agencies. The Michigan Administrative Procedures Act, codified in MCL 24.201 through MCL 24.326, establishes mandatory procedures for state agencies promulgating rules.

These requirements serve several critical functions. They ensure legislative and public oversight, prevent arbitrary rulemaking, require demonstrations of factual necessity for regulations, coordinate state rules with federal law, and keep agencies within their statutory authority.

Rule Set 15 violates each of the APA's five basic requirements for agencies to meet before changing rules. The APA requires agencies to:

1. Identify expected rules in annual regulatory plans transmitted to the Legislature by July 1 (MCL 24.253)
2. Demonstrate necessity for rule changes through regulatory impact statements that analyze costs, benefits, and alternatives (MCL 24.245a)
3. Coordinate proposed rules with applicable federal requirements (MCL 24.245a(8))
4. Provide meaningful public participation opportunities (MCL 24.241-242)
5. Stay within the statutory authority granted by the Legislature (Clonlara, Inc. v. State Bd. of Educ., *442 Mich. 230 (1993)*)

Rule Set 15 suggests systematic disregard for administrative law principles.

### 2. The State makes the fatal admission that the rules are "not necessary." (MCL 24.245a - Regulatory Impact Statement)

MCL 24.245, one of Michigan's APA statutes, requires agencies preparing proposed rules to complete a regulatory impact statement, and this RIS must demonstrate that the rule changes are "reasonably necessary." But the Regulatory Impact Statement for Rule Set 15 contains the state's remarkable—and fatal—admission that Rule Set 15 is NOT necessary.



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*"However, while **it is not necessary to promulgate the instructions as rules**, the Department seeks to alleviate any remaining confusion regarding the rules."*
--RISForm_2025-15_ST.pdf.

The state's own admission proves lack of necessity. It shows that the existing challenger and poll watcher instructions could continue to operate through the Election Officials Manual (as they had successfully operated in October/November 2024). The state's confession shows that promulgating these rules will not materially alter behavior of election challengers or election officials.

MCL 24.245a specifically requires agencies to:

> *"(1) Determine whether the proposed rule is reasonably necessary to meet the intent of the statute or statutes pursuant to which the rule was promulgated and not arbitrary and capricious...*
>
> *(3) Identify each statute under which the rule is promulgated, identify the specific provision that authorizes the proposed action, and explain the need for the proposed rule and its impact...*
>
> *(4) Estimate the actual statewide compliance costs of the rule based upon reports from state agencies, local units of government, and organizations and interested persons who are expected to comply with the rule. The estimate shall include both initial capital costs and annual operating costs disaggregated by the classifications specified in subdivision (b)."*
>
> --MCL 24.245a

The requirement to "determine whether the proposed rule is reasonably necessary" and "explain the need for the proposed rule" is more than a mere formality. It requires affirmative demonstration that rule changes serve legitimate administrative purposes rather than political objectives, that less restrictive alternatives are inadequate, and that the benefits justify the costs.

Under basic principles of administrative law, an agency cannot promulgate rules it admits are unnecessary. Also, courts may invalidate rules that "violate constitutional provisions." MCL 24.287(1)(a).

Moreover, the RIS provides no explanation for WHY the secretary of state chose to promulgate unnecessary rules. If rules won't change behavior and statutory authority already exists, what purpose do they serve? The logical explanation appears political: The secretary appears to seek to lock restrictive interpretations into binding rules before a potential new administration could revise the manual.



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**3. RIS's false denial of federal coordination (MCL 24.245a(8))**

The Regulatory Impact Statement falsely claims, "The rules have not been coordinated with other federal, state, or local laws as there are none applicable to the same activity or subject matter." This statement directly violates MCL 24.245a(8)'s coordination requirement and is demonstrably false.

MCL 24.245a(8) requires agencies to "coordinate the proposed rule with applicable federal requirements" to prevent conflicts with federal mandates, ensure statutory compliance, and identify preemption issues before rules take effect. The RIS for Rule Set 15 completely fails this requirement by ignoring multiple federal law conflicts:

***a. Federal record retention act (52 U.S.C. § 20701):***

Rule Set 14 mandates 7-day deletion of electronic pollbook data, directly violating the 22-month federal retention requirement. The RIS contains no analysis of this conflict or explanation of how Michigan will comply with federal law.

***b. National Voter Registration Act (52 U.S.C. § 20507):***

Rule Sets 13 and 14 (coordinated with Rule Set 15) undermine NVRA list maintenance requirements by making investigations optional, restricting challenge tools, and allowing 20 years of inactivity before cancellation. The RIS contains no analysis of NVRA requirements, no explanation of how restricted challenger access affects list maintenance obligations, and no coordination with federal mandates.

***c. Help America Vote Act (52 U.S.C. §§ 21081, 21083):***

Rule Sets 14 and 15 eliminate auditable pollbook records and restrict systematic observation, violating HAVA's database accuracy verification and auditable system requirements. The RIS contains no HAVA compliance analysis or explanation of how record deletion satisfies federal audit requirements.

***d. First Amendment (U.S. Const. Amend. I):***

Rule Set 15 operates as prior restraint on political association, compels speech through mandatory training, and enables viewpoint discrimination through vague ejection standards. (See Section C for detailed constitutional analysis.) The RIS contains no First Amendment analysis, no constitutional doctrine discussion, and no consideration of less restrictive alternatives.

The complete absence of federal coordination violates MCL 24.245a(8) and suggests arbitrary rulemaking designed to evade scrutiny. When rules directly conflict with three federal statutes and implicate fundamental constitutional rights, an RIS claiming no applicable federal laws is evidence of bad-faith rulemaking.



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**4. Failure to file annual regulatory plan (MCL 24.253)**

MCL 24.253 requires each state agency to prepare an annual regulatory plan that identifies "the rules the agency expects to review... in the next year" and "the rules it reasonably expects to process in the next year." This plan must be electronically transmitted to the office of regulatory reinvention by July 1 of each year and then provided to the Joint Committee on Administrative Rules (JCAR) and the relevant legislative committees.

The statute provides that by July 1 of each year:

> *"Each agency shall prepare an annual regulatory plan that reviews the agency's rules. The annual regulatory plan shall be electronically transmitted to the office of regulatory reinvention... In completing the annual regulatory plan* ***required*** *by this section, the agency shall identify the* ***rules the agency expects to review*** *under subsection (4)* ***in the next year, the rules it reasonably expects to process in the next year,*** *the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year... Annual regulatory plans completed under subsection (1) shall be electronically filed with the office of regulatory reinvention by July 1 of each year." MCL 24.253(1), (2), (5)* (Emphasis added)

This requirement serves multiple critical functions:

- Provides advance notice to stakeholders who may be affected by proposed rules
- Allows interested parties to begin preparing comments, analysis, and potential opposition
- Enables legislative committees to monitor agency activities and prepare for oversight
- Prevents surprise implementation of controversial rules without warning
- Ensures agencies engage in deliberate planning rather than reactive rulemaking:

The secretary of state's July 1, 2024, annual regulatory plan did not include Rule Set 15 or any indication that the SOS expected to impose:

- Mandatory organizational credentialing requirements
- State-controlled training mandates for all trainers and challengers
- Numerical limits on the number of challengers per precinct
- Restrictions limiting challenges to only four grounds for challenging potentially ineligible registrants
- Liaison systems blocking direct communication with election inspectors
- Vague and intimidating ejection/expulsion standards beyond those in MCL 168.733

Despite this complete absence from the annual plan, the Secretary filed Rule Set 15 in March 2025—nine months after the annual plan was due and immediately after her January 22, 2025, announcement of her candidacy for governor.

None of the rule changes for Rule Sets 2025-13, -14, or -15 or reasons to justify them were referenced in the SOS's 2024-2025 Annual Regulatory Plan (ARP). No secretary of state 2025-



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2026 ARP appears available at this time. However, the Licensing and Regulations Affairs (LARA) 2025-2026 ARP appears to contain no references to elections or the need for election rule changes.

**5. Timeline of procedural violations**

The timeline of events reveals the violations' significance:

- July 1, 2024: Annual regulatory plan due; Rule Set 15 not included
- September/October 2024: Election Officials Manual published; no indication of new rules needed
- October/November 2024: Elections conducted successfully under manual; no incidents justifying rule changes
- January 1, 2025: JCAR 50-50 partisan deadlock prevents disapproval of rule sets
- January 22, 2025: Secretary announces gubernatorial candidacy
- March 2025: Rule Set 15 filed without prior notice
- Rules published Dec. 1, 2025
- Hearing Dec 12, 2025
- Ongoing: Rules take effect 15 days after submission to JCAR through JCAR inaction

The secretary of state's office bypassed the annual planning requirement entirely, depriving stakeholders of the opportunity to prepare detailed constitutional and statutory analysis, recruit expert witnesses and legal counsel, coordinate opposition responses across multiple organizations, engage legislative champions to question the necessity of the promulgated rules, and mobilize public comment campaigns with adequate preparation time.

The omission, unlikely an oversight, suggests it was strategic. Including these controversial rules in the July 2024 annual plan would have alerted election integrity organizations, political parties, and legislators to analyze and prepare a response. By omitting the rules from the plan and then filing them suddenly in March 2025, the SOS minimized scrutiny and expedited implementation before a response could be effectively mobilized.

This violation alone provides grounds for invalidation under MCL 24.287(1)(c), which permits courts to declare rules invalid if "adopted without compliance with statutory rulemaking procedures."

**6. Potential inadequacy of public notice**

Public hearing notice (Dec 12, 2025, Binsfeld Office Building, Lansing) was published only on www.michigan.gov/ARD and in the Dec. 1, 2025 Michigan Register, with a circulation of approximately 1,000 subscribers, primarily government and legal entities. No newspaper publications were cited in Rule Set 15's Notice of Public Hearing Form (NoPHForm_2025-15_ST.pdf).



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This short notice and limited reach potentially violates MCL 24.241's meaningful public participation requirement and constitutes arbitrary rulemaking.

**7. The RIS fails to analyze October 2024 baseline.**

The RIS's inadequacy is compounded by its failure to address the October 2024 Election Officials Manual —the immediate baseline against which Rule Set 15 must be evaluated. That manual provided comprehensive guidance for election challengers and poll watchers without any of Rule Set 15's restrictions:

- No mandatory organizational credentialing
- No state-controlled training requirement for challengers or trainers
- No numerical limits on challengers
- No liaison system blocking inspector communication
- No four-ground restriction on challenge types
- No vague ejection standards beyond MCL 168.733's narrow grounds

Elections in October and November 2024 proceeded successfully under this manual. There were no widespread incidents of challenger misconduct, no documented need for additional restrictions, no complaints from election administrators justifying new rules. The manual's success demonstrates that the rules lack factual predicate.

The secretary of state provides no explanation in the RIS for why guidance that worked successfully in October/November 2024 suddenly became inadequate in March 2025. No incidents of misconduct are identified, no administrative failures, no complaints from clerks, no evidence of any problems that would justify the comprehensive restrictions in Rule Set 15. The only intervening event was Secretary Benson's January 22, 2025, gubernatorial candidacy announcement.

This timing suggests political motivation rather than administrative necessity. Rules implemented immediately after an election administrator announces her candidacy—rules that restrict oversight of the very election in which she will appear on the ballot—cannot survive scrutiny as rational administrative policy. An RIS that ignores the immediately preceding successful baseline and fails to identify any factual predicate for regulatory intervention violates MCL 24.245a's requirement to "explain the need" for rules. The requirement means more than asserting the Secretary has general authority—it means demonstrating why this particular intervention is necessary now based on facts and evidence. The RIS provides neither facts nor evidence, only the state's admission that rules are "not necessary."

**8. RIS fails to estimate compliance costs**

MCL 24.245a(4) requires agencies to "estimate the actual statewide compliance costs" including "initial capital costs and annual operating costs." The RIS for Rule Set 15 provides only cursory, generic statements about costs without meaningful analysis of:

- Cost to organizations of implementing credentialing systems



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- Cost of conducting or obtaining state-approved training
- Cost of annual recertification and record-keeping
- Cost to political parties of operating under numerical limits
- Cost to local clerks of implementing liaison systems
- Cost to challengers of legal compliance with vague standards

These costs are substantial but unquantified. Organizations must now establish credentialing infrastructure, ensure trainers and challengers complete state-provided training, maintain records for two years, and monitor recertification deadlines. The RIS's failure to provide meaningful cost estimates violates MCL 24.245a(4) and deprives the public and Legislature of information necessary to evaluate whether the benefits justify the burdens.

**9. Arbitrary and capricious rulemaking**

Even if the Secretary had complied with procedural requirements, Rule Set 15 would still violate the APA0s federal and state prohibition on arbitrary and capricious rulemaking. Federal law views "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S. Code § 706 - Scope of review

Under Michigan administrative law, rules are arbitrary and capricious when they lack rational basis in fact, contradict the agency's prior positions without explanation, or serve political rather than administrative purposes.

**10. No explanation for reversal of voluntary training policy**

The arbitrary nature of the rulemaking is further demonstrated by the reversal of prior policy without explanation. MCL 168.733 contains no provisions requiring election challengers to participate in an instruction session. Neither do they contain provisions requiring the trainers to undergo state training with state-provided materials. The Legislature explicitly made training voluntary, recognizing constitutional concerns with mandatory training.

The October 2024 manual respected this legislative choice by providing training opportunities without mandating participation. Rule Set 15 reverses this policy by requiring all challengers to complete state-controlled training and certify "working knowledge" of state materials as a condition of credentialing.

When an agency reverses prior policy, administrative law requires explanation of why the old policy was wrong or why circumstances changed. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983) (agency changing position must provide reasoned explanation). The Secretary provides no such explanation. The RIS does not acknowledge the reversal, does not explain why voluntary training was inadequate, does not identify problems with the October 2024 approach, and does not justify mandatory training's burden on constitutional rights.



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This unexplained reversal is arbitrary and capricious, particularly given the constitutional implications of mandatory state-controlled training (see Section [C]).

## D. Remedies for APA violations

MCL 24.287 provides that a court may declare a rule invalid if the rule:

> *(a) Violates constitutional provisions.*
> *(b) Exceeds the statutory authority of the agency.*
> *(c) Was adopted without compliance with statutory rulemaking procedures*.
> --MCL 24.287(1)(a)-(c).

Rule Set 15 violates all three grounds:

(a) CONSTITUTIONAL VIOLATIONS: First Amendment (prior restraint, compelled speech, viewpoint discrimination), Equal Protection (two-tiered system for overseas voters), Due Process (vague standards), Separation of Powers (legislative usurpation) - see Sections [C], [D], [E]

(b) EXCEEDS STATUTORY AUTHORITY: MCL 168.31(1)(a) grants only procedural authority; Rule Set 15 creates substantive requirements, restricts statutory rights, imposes penalties, and reverses legislative choices - ultra vires under Clonlara

(c) PROCEDURAL VIOLATIONS: Failed to include in annual plan (MCL 24.253), admitted rules unnecessary (MCL 24.245a), failed to coordinate with federal law (MCL 24.245a(8)), arbitrary/capricious (October 2024 baseline), inadequate cost analysis (MCL 24.245a(4))

When rules violate the APA on multiple grounds, courts must declare them void. See Clonlara, 442 Mich. at 244-45 (ultra vires rules are "null and void"). The Secretary cannot cure procedural defects through post-hoc justification. Motor Vehicle Mfrs. Ass'n, 463 U.S. at 43 (agency cannot supply reasoned basis after the fact). The rulemaking process must start over with proper compliance with APA requirements—if the Secretary can demonstrate necessity, coordinate with federal law, stay within statutory authority, and survive constitutional scrutiny.

Moreover, because these rules will take effect through JCAR's partisan deadlock rather than legislative approval, federal courts should be particularly skeptical of their validity. The APA's safeguards failed not because the rules passed scrutiny, but because political circumstances prevented scrutiny. When state oversight mechanisms malfunction due to partisan impasse, federal intervention is necessary to protect both administrative law principles and federal constitutional and statutory rights.

**Conclusion**

Secretary Benson's apparent systematic violation of the Administrative Procedures Act suggests that Rule Set 15 resulted from a rushed, politically expedient process rather than reasoned administrative judgment. She:

• Bypassed the July 1, 2024, annual planning requirement to avoid advance notice



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• Admitted in the RIS that rules are "not necessary"

• Failed to coordinate with three federal statutes and the First Amendment

• Provided no factual basis despite October 2024's successful baseline

• Exceeded her procedural authority by creating substantive requirements

• Relied on JCAR deadlock to circumvent legislative disapproval

Each violation independently requires invalidation under MCL 24.287. Collectively, they demonstrate that when an election administrator announces candidacy and then immediately implements restrictions on oversight of the election that candidate will administer while appearing on the ballot—using procedural shortcuts to minimize scrutiny—federal courts must intervene.

The APA exists to prevent exactly this scenario: politically motivated rules, rushed through administrative process, bypassing legislative oversight, serving the administrator's electoral interests rather than the public interest. Rule Set 15 violates the APA's letter, spirit, and purpose. Federal intervention is essential to restore administrative law integrity and prevent these procedurally and substantively defective rules from governing Michigan's 2026 gubernatorial election.

## E. No compelling interest exists

Even if Rule Set 15 complied with APA requirements (which it does not), even if organizational training requirements were authorized by statute (which they are not), and even if they did not burden First Amendment rights (which they do), the requirements would still be invalid unless they serve a compelling state interest (which they do not) and are narrowly tailored to achieve that interest (which they are not). Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015).

The Regulatory Impact Statement does not explain what problem the training requirement solves. There is no documented evidence that challenger organizations were fielding unqualified challengers, that challengers were disrupting elections due to lack of training, or that any problem existed under the prior system that would justify mandatory organizational training.

The October 2024 Election Officials Manual contained no organizational training requirement. AVCBs operated successfully under that guidance during the 2024 general election. When the system worked without mandatory training, the state cannot claim a compelling interest in imposing such training.

## F. Not narrowly tailored

*First,* the requirement applies to organizations, not individual challengers. If the concern is that individual challengers lack knowledge of proper procedures, the least restrictive means would be to require training for individuals—not to condition organizational credentials on organizational compliance with state-controlled training.



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*Second,* the two-year certification period is arbitrary. If training is necessary to ensure challenger competence, there is no reason to believe that knowledge acquired during training becomes obsolete after exactly two years. The two-year cycle appears designed to create ongoing compliance burdens rather than to serve any legitimate interest.

*Third,* the requirement that organizations provide annual information to maintain certification serves no articulable purpose related to challenger training or competence. This appears to be data collection for the sake of data collection—or worse, surveillance of opposition political organizations.

*Fourth,* there is no provision for alternative certification. Organizations that wish to provide their own training, or that have institutional knowledge and experience monitoring elections, cannot obtain certification except by submitting to the secretary of state's training program. This one-size-fits-all approach is the opposite of narrow tailoring.

## G. Competitive advantage for incumbent candidate

The organizational training requirement creates an acute conflict of interest. The secretary of state—who designs the training, delivers the training, and controls certification—is currently running for Governor. The very election that challenger organizations will monitor in 2026 is the election in which Secretary of State Jocelyn Benson is a candidate.

This gives the incumbent candidate control over who may monitor the election in which she is running. The Secretary can:

1. Design training content that discourages vigorous oversight
2. Emphasize "working cooperatively with election officials" over challenging violations
3. Frame statutory rights in the narrowest possible terms
4. Refuse to recertify organizations that aggressively challenged violations in prior elections
5. Use the annual information requirement to monitor opposition organizations' activities

**This is not a hypothetical concern.**

The timing of Rule Set 15's promulgation—immediately after the Secretary announced her candidacy—creates the appearance that these Rules are designed and could be used to advantage the incumbent candidate by suppressing oversight of the election she will administer while running for higher office.

**This is not election administration. This is election manipulation.**

## H. Separation of powers violation

The organizational training requirement raises separation of powers concerns. The Michigan Constitution vests legislative power in the Legislature. Const 1963, art 4, § 1. The Legislature



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established qualifications for challengers in MCL 168.730(2): the challenger must be a qualified and registered elector.

The secretary of state cannot use rulemaking authority to impose additional qualifications that the Legislature declined to impose. When the Legislature established a single qualification (qualified and registered elector) and did not include training or certification requirements, that legislative choice is binding on the executive branch. The Secretary's addition of organizational training requirements is an unconstitutional usurpation of legislative authority.

The Michigan Supreme Court has held that "an administrative agency can adopt only those regulations authorized by the legislature and cannot exceed its statutory authority." Clonlara, Inc. v State Bd of Ed, 442 Mich 230, 239 (1993).

The organizational training requirement exceeds the Secretary's statutory authority and invades the Legislature's constitutional domain.

## I. No evidence of administrative necessity

The Regulatory Impact Statement provides no evidence that organizational training is administratively necessary. There is no documentation of:

- Problems caused by untrained challenger organizations
- Disruptions attributable to lack of organizational training
- Election officials' complaints about challenger organizations' lack of preparation
- Any issue that would justify mandatory state-controlled training

The Election Officials Manual, October 2024, contained no organizational training requirement. Absentee Voter Counting Boards (AVCBs) operated successfully during the 2024 general election. The new requirements cannot be justified as administratively necessary when the prior system worked.

The absence of any documented problem proves that Rule 168.203(4) and Rule 168.1 (See Appendix) are solutions in search of problems. The real purpose of these Rules is not to improve election administration—it is to create barriers that discourage challenger organizations from participating in election oversight.

## J. Liaison communication restrictions contradict statutory procedures (R 168.205)

SOS Rule 168.205 requires that "[a] challenger shall communicate with election inspectors only through a challenger liaison designated [under MCL 168.730(5)]." This mandatory intermediary system directly contradicts MCL 168.733, which establishes the procedure for challengers to raise concerns about election processes. The law makes no mention of challengers having to work through an intermediary. The statute does not authorize—and cannot be read to permit—a blanket prohibition on direct communication enforced through a mandatory intermediary system.



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Rule 168.205's liaison requirement eliminates the statutory right of challengers (under MCL 168.733) to "challenge an election procedure" by requiring all communication to flow through an intermediary. This creates a filter and restrictions that can delay, distort, or entirely prevent a challenger's statutory right to address election inspectors about violations the challengers are witnessing in real time.

## Summary of Potential Legal Violations: xx

## Table 1: State Law Violations

| RULE, TITLE & SUBJECT | STATUTORY VIOLATIONS |
|---|---|
| ***R 168.203***<br>Record of Individuals Serving as Challengers; Organizational Training • Credentialing orgs must keep records on challengers<br>• 1-year retention required<br>• Training requirement for trainers & challengers | EXCEEDS AUTHORITY:<br>• No authorization in MCL 168.730-735 for credentialing org record requirements<br>• No authorization for state-content-controlled training<br>• Exceeds MCL 168.31(1)(a) procedural authority<br><br>CONTRADICTS STATUTE:<br>• MCL 168.733: No mention of or requirement of training or instruction<br>• SOS Rule makes state-provided training mandatory<br><br>RAISES CONSTITUTIONAL CONCERNS:<br>How will the state enforce this rule? Will it require the credentialling organizations to prove they are retaining their poll challenger records? Will the state demand the credentialling organizations provide the private, personal information of the challengers? Will the state sue the credentialling organizations claiming this PPI information is subject to FOIA? |
| ***R 168.205***<br>Challenger Liaison<br>• Challengers must communicate only through liaison (no direct communication with inspectors) | CONTRADICTS STATUTE:<br>• MCL 168.733: Challengers may "challenge an election procedure" DIRECTLY with inspectors.<br>• Statute creates NO intermediary role<br><br>EXCEEDS AUTHORITY:<br>• No authorization for mandatory intermediary system<br>• Exceeds MCL 168.31(1)(a) procedural authority |
| ***R 168.207***<br>Organizational Training Requirements<br>• Mandatory state-provided manual and materials<br>• Challengers must certify "working knowledge"<br>• 2-year recertification required | CONTRADICTS STATUTE:<br>• MCL 168.733: An election challenger is not required to participate in instruction session; credentialling organizations are not required to have trainers.<br>• Explicit voluntary policy<br><br>EXCEEDS AUTHORITY:<br>• No authorization for mandatory state training |



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| RULE, TITLE & SUBJECT | STATUTORY VIOLATIONS |
|---|---|
| | • No authorization for "working knowledge" standard • Exceeds MCL 168.31(1)(a) procedural authority |
| ***R 168.208***<br>Challenge Grounds (Four Enumerated Restrictions)<br>• Limits challenges to only 4 grounds: Voter eligibility, Voter identity, Elector ability to cast ballot, Election processes<br>• EXCLUDES: Deceased voters, duplicate registrations, ballot harvesting, UOCAVA ineligibility, address fraud, signature mismatches, many others | CONTRADICTS STATUTE:<br>• MCL 168.733: Grants challengers comprehensive authority to act on suspected "violations of Michigan Election Law," "regulations," "procedures."<br>• Deliberately broad statutory language to encompass full range of violations<br><br>SOS RULE EXCLUDES LEGITIMATE CHALLENGES:<br>• Deceased voters<br>• Duplicate registrations<br>• Ballot harvesting<br>• UOCAVA civilian ineligibility<br>• Registration address fraud<br>• Signature mismatches<br>• Many other statutory violations<br><br>SOS RULE EXCEEDS AUTHORITY:<br>• No authorization to narrow statutory language<br>• Contradicts Legislature's deliberate comprehensive choice |
| ***R 168.214***<br>Rights and Duties of Challengers (Prohibited Conduct & Vague Standards) • Prohibits wearing clothing "relating to any party" or "disrupts peace or order" • "Disrupts or interferes" standard | CONTRADICTS STATUTE:<br>• MCL 168.733: Narrow, objective ejection standards limited to "drinking alcohol" or "disorderly conduct."<br>• MCL 168.733: "Election inspectors… shall PROTECT challenger in discharge of duties"<br>• Rule INVERTS protection to threat<br><br>EXCEEDS AUTHORITY:<br>• No authorization for vague standards beyond statute<br>• Exceeds MCL 168.31(1)(a) procedural authority<br>• Imposes substantive restrictions, not procedural |
| ***R 168.217***<br>Warnings and Ejections • Ejection based on "reasonable belief" of violation • "Refusing to follow instruction" • Clothing that "disrupts peace or order" • "Disrupts or interferes" | CONTRADICTS STATUTE:<br>• MCL 168.733: Narrow ejection grounds (alcohol, disorderly, threaten/intimidate)<br>• MCL 168.733: Inspectors "shall protect challenger"<br>• Rule creates vague, subjective standards<br><br>EXCEEDS AUTHORITY:<br>• No authorization for ejection beyond statutory grounds<br>• Adds "refusing instruction" not in statute<br>• Exceeds MCL 168.31(1)(a) procedural authority |
| ***R 168.219*** | CONTRADICTS STATUTE:<br>• MCL 168.674(7): Poll watchers may observe "at a distance" |



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| RULE, TITLE & SUBJECT | STATUTORY VIOLATIONS |
|---|---|
| Poll Watcher Restrictions • Allows clerks to determine observation space (potentially eliminating observation) | • Statute guarantees meaningful observation<br>• Rule permits arbitrary elimination of observation<br><br>EXCEEDS AUTHORITY:<br>• No authorization to eliminate statutory observation right<br>• Exceeds MCL 168.31(1)(a) procedural authority<br>EXCEEDS MCL 168.31(1)(a):<br>• Limited to "procedural implementation"<br>• Creates substantive restrictions, not procedures |
| ***OVERALL RULE SET***<br><br>Entire Rule Set 15 Three-stage coordinated assault on oversight: • Rule 13: Blocks pre-election challenges • Rule 14: Deletes during-election records • Rule 15: Restricts post-election observation | CONTRADICTS MULTIPLE STATUTES:<br>• MCL 168.733 (direct procedure, comprehensive challenges, voluntary and independent training, and protection mandate)<br>• MCL 168.674(7) (observation)<br>• MCL 168.730(2) (qualifications)<br><br>NO STATUTORY AUTHORIZATION FOR:<br>• Mandatory state training<br>• Organizational requirements<br>• Liaison system<br>• Challenge ground restrictions<br>• Vague ejection standards<br>• Working knowledge certification<br>• 2-year recertification<br><br>CLONLARA STANDARD:<br>• When a rule contradicts a statute, the rule is invalid<br>• 442 Mich. 230, 239 (1993) |

**Table 2: Constitutional and Federal Law Violations**

| RULE, TITLE & SUBJECT | CONSTITUTIONAL VIOLATIONS | FEDERAL LAW VIOLATIONS |
|---|---|---|
| ***R 168.203***<br>Record of Individuals Serving as Challengers; Organizational Training<br>• Credentialing orgs must keep records on challengers<br>• 1-year retention required | FIRST AMENDMENT:<br>• Prior restraint on political association<br>• Compelled speech through mandatory training<br>• Viewpoint discrimination (state controls content)<br><br>SEPARATION OF POWERS:<br>• Executive usurps legislative authority | 52 U.S.C. § 20701:<br>• 1-year retention violates 22-month federal requirement for election records |



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| RULE, TITLE & SUBJECT | CONSTITUTIONAL VIOLATIONS | FEDERAL LAW VIOLATIONS |
|---|---|---|
| • Training requirement for credential-issuers | • Adds qualifications Legislature declined to impose (MCL 168.730(2) requires only a qualified/registered elector) | |
| ***R 168.205***<br>Challenger Liaison<br>• Challengers must communicate only through liaison (no direct communication with inspectors) | FIRST AMENDMENT:<br>• Restricts political speech (limits direct statutory right to address violations)<br><br>DUE PROCESS:<br>• Creates filter enabling arbitrary enforcement<br>• Delays/distorts time-sensitive challenges | None direct, but enables evasion of HAVA § 21081 audit requirements through delayed oversight |
| ***R 168.207***<br>Organizational Training Requirements<br>• Mandatory state-provided manual and materials<br>• Challengers must certify "working knowledge"<br>• 2-year recertification required | FIRST AMENDMENT:<br>• Prior restraint (conditioning rights on state approval)<br>• Compelled speech (must certify "working knowledge")<br>• Viewpoint discrimination (limits challenges opposition may raise)<br><br>SEPARATION OF POWERS:<br>• Executive controls opposition education on legislative law<br>• Incumbent controls oversight of own election DUE PROCESS:<br>• "Working knowledge" unconstitutionally vague<br>• No standards, no criteria | FIRST AMENDMENT (U.S. Const. Amend. I):<br>• Operates as prior restraint on association; compels speech through mandatory training; enables viewpoint discrimination through vague ejection standards |
| ***R 168.208***<br>Challenge Grounds (Four Enumerated Restrictions)<br>• Limits challenges to only 4 grounds: Voter eligibility, Voter identity, Elector ability to cast ballot, Election processes<br><br>• EXCLUDES: Deceased voters, duplicate registrations, ballot harvesting, UOCAVA ineligibility, address fraud, signature | FIRST AMENDMENT:<br>• Restricts political activity (limits challenges opposition may raise) | 52 U.S.C. § 20507 (NVRA):<br>• Undermines list maintenance by limiting challenges to ineligible voters |



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| RULE, TITLE & SUBJECT | CONSTITUTIONAL VIOLATIONS | FEDERAL LAW VIOLATIONS |
|---|---|---|
| mismatches, many others | | |
| ***R 168.214***<br>Rights and Duties of Challengers (Prohibited Conduct & Vague Standards)<br>• Prohibits wearing clothing "relating to any party" or "disrupts peace or order"<br>• "Disrupts or interferes" standard | FIRST AMENDMENT:<br>• Vague restrictions chill political speech<br>• *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1 (2018): Vague political speech restrictions unconstitutional<br>• "Relating to any party" impossibly vague (red = Republican? blue = Democrat?)<br><br>DUE PROCESS:<br>• Fails fair notice requirement • "Reasonable belief" no objective criteria<br>• "Disrupts peace" purely reaction-based<br>• Enables viewpoint discrimination (red = Republican? blue = Democrat?)<br>• Chills legitimate activity | 52 U.S.C. §§ 21081, 21083 (HAVA):<br>• Eliminates auditable systems through restricted observation |
| ***R 168.217***<br>Warnings and Ejections<br>• Ejection based on "reasonable belief" of violation<br>• "Refusing to follow instruction"<br>• Clothing that "disrupts peace or order"<br>• "Disrupts or interferes" | FIRST AMENDMENT:<br>• *Minnesota Voters Alliance v. Mansky*: Struck down vague political speech restrictions; Michigan standards vaguer than Minnesota's struck-down standard<br><br>DUE PROCESS:<br>• "Reasonable belief" provides no objective standard<br>• Arbitrary enforcement<br>• Chills protected activity<br>• No fair notice | None direct, but enables evasion of HAVA § 21081 audit requirements through arbitrary removals |
| ***R 168.219***<br>Poll Watcher Restrictions<br>• Allows clerks to determine observation space (potentially eliminating observation) | FIRST AMENDMENT:<br>• Restricts right to observe government proceedings<br>• Arbitrary space determinations enable viewpoint discrimination | None direct, but restricts public access violating FOIA (MCL 15.231 et seq., though state law) |
| ***OVERALL RULE SET***<br><br>Entire Rule Set 15 is a 3-stage coordinated assault on oversight:<br>• Rule 13: Blocks pre-election challenges | FIRST AMENDMENT:<br>• Prior restraint on association<br>• Compelled speech<br>• Viewpoint discrimination<br>• Vague speech restrictions (*Mansky*)<br>SEPARATION OF POWERS:<br>• Executive usurps legislative authority | 52 U.S.C. § 20701:<br>• Record retention violation (cross-rule coordination)<br>52 U.S.C. § 20507 (NVRA):<br>• Undermines list maintenance 52 U.S.C. §§ 21081/21083 (HAVA): |



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| RULE, TITLE & SUBJECT | CONSTITUTIONAL VIOLATIONS | FEDERAL LAW VIOLATIONS |
|---|---|---|
| • Rule 14: Deletes during-election records<br>• Rule 15: Restricts post-election observation | • Incumbent controls opposition oversight of own election DUE PROCESS:<br>• Vague standards throughout<br>• No fair notice<br>• Arbitrary enforcement | • Eliminates auditable systems FIRST AMENDMENT (U.S. Const. Amend. I):<br>• Prior restraint, compelled speech, viewpoint discrimination |

**Table 3: Administrative Procedure Act (APA) violations**

| RULE, TITLE & SUBJECT | APA VIOLATIONS |
|---|---|
| ***R 168.203***<br>Record of Individuals Serving as Challengers; Organizational Training<br>• Credentialing orgs must keep records on challengers<br>• 1-year retention required<br>• Training requirement for credential-issuers | FAILED FEDERAL COORDINATION:<br>• MCL 24.245a(8): RIS falsely claims no applicable federal laws; ignores 52 U.S.C. § 20701 coordination<br><br>INADEQUATE COST ANALYSIS:<br>• MCL 24.245a(4): Failed to estimate credentialing infrastructure costs<br><br>NO NECESSITY:<br>• MCL 24.245a(1): RIS admits "not necessary"; October 2024 worked without this requirement |
| ***R 168.205***<br>Challenger Liaison<br>• Challengers must communicate only through liaison (no direct communication with inspectors) | NO NECESSITY:<br>• MCL 24.245a(1): October 2024 Election Officials Manual: Direct communication worked successfully; no documented problems requiring liaison system<br><br>ARBITRARY/CAPRICIOUS:<br>• MCL 24.245a: Unexplained reversal of prior policy allowing direct communication; *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29 (1983): Must explain policy reversals |
| ***R 168.207***<br>Organizational Training Requirements<br>• Mandatory state-provided manual and materials<br>• Challengers must certify "working knowledge"<br>• 2-year recertification required | NO NECESSITY:<br>• MCL 24.245a(1): RIS admits "not necessary"; October 2024 worked with voluntary training<br><br>INADEQUATE COST ANALYSIS:<br>• MCL 24.245a(4): Failed to estimate training compliance costs<br><br>ARBITRARY/CAPRICIOUS:<br>• MCL 24.245a: No explanation for reversal of voluntary training policy; *Motor Vehicle Mfrs. Ass'n*: Agency must explain policy changes |



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| RULE, TITLE & SUBJECT | APA VIOLATIONS |
|---|---|
| ***R 168.214***<br>Rights and Duties of Challengers (Prohibited Conduct & Vague Standards)<br>• Prohibits wearing clothing "relating to any party" or "disrupts peace or order"<br>• "Disrupts or interferes" standard | NO NECESSITY:<br>• October 2024: Objective statutory standards worked; no documented problems requiring vague standards<br><br>FAILED FEDERAL COORDINATION:<br>• No First Amendment vagueness analysis; no Mansky consideration<br><br>ARBITRARY/CAPRICIOUS:<br>• Unexplained reversal from narrow statutory standards to vague subjective standards |
| ***R 168.217***<br>Warnings and Ejections<br>• Ejection based on "reasonable belief" of violation<br>• "Refusing to follow instruction"<br>• Clothing that "disrupts peace or order"<br>• "Disrupts or interferes" | NO NECESSITY:<br>• October 2024: No documented ejection problems under statutory standards<br><br>ARBITRARY/CAPRICIOUS:<br>• No explanation for expanding ejection grounds beyond statute |
| ***R 168.219***<br>Poll Watcher Restrictions<br>• Allows clerks to determine observation space (potentially eliminating observation) | NO NECESSITY:<br>• October 2024: Poll watchers observed effectively "at a distance" as statute provides; no documented problems with statutory observation rights<br><br>ARBITRARY/CAPRICIOUS:<br>• No explanation for authorizing elimination of statutory observation right<br>FAILED ANNUAL PLAN:<br>• MCL 24.253: Not included in July 1, 2024, annual regulatory plan - deprived stakeholders of advance notice |
| ***OVERALL RULE SET***<br>Entire Rule Set 15 Three-stage coordinated assault on oversight:<br>• Rule 13: Blocks pre-election challenges<br>• Rule 14: Deletes during-election records<br>• Rule 15: Restricts post-election observation | ADMITTED NOT NECESSARY:<br>• MCL 24.245a(1): RIS: "not necessary to promulgate"<br>• Violates "reasonably necessary" requirement<br><br>FAILED FEDERAL COORDINATION:<br>• MCL 24.245a(8): RIS falsely claims "none applicable"; ignores 52 U.S.C. § 20701, NVRA, HAVA, First Amendment<br><br>INADEQUATE PUBLIC NOTICE:<br>• MCL 24.241: Limited to Michigan Register (~1,000 subscribers); no newspaper publication; short notice violates meaningful participation<br><br>RIS FAILS BASELINE ANALYSIS: |



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| RULE, TITLE & SUBJECT | APA VIOLATIONS |
|---|---|
| | • MCL 24.245a(3): Ignores October 2024 successful manual; no explanation for change<br><br>INADEQUATE COST ANALYSIS:<br>• MCL 24.245a(4): Cursory statements; no estimates for credentialing, training, compliance<br><br>ARBITRARY/CAPRICIOUS:<br>• October 2024 baseline ignored; no documented problems; unexplained reversals (*Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29 (1983))<br><br>PROCEDURAL VIOLATIONS TIMELINE:<br>• July 2024: Plan due, omitted • Oct/Nov 2024: Successful under old system<br>• Jan 2025: JCAR deadlock, candidacy announcement<br>• March 2025: Sudden filing • Relied on impasse to bypass scrutiny |

## Key Findings:

Rule Set 15 is legally unauthorized, constitutionally infirm, procedurally defective, and administratively unjustified.

Michigan's Administrative Procedures Act provides three independent grounds for courts to invalidate administrative rules. Under MCL 24.287, courts may declare rules invalid if they: violate constitutional provisions, exceed statutory authority, or were adopted without compliance with statutory rulemaking procedures. Rule Set 15 violates all three grounds. Each violation independently requires invalidation. Collectively, they demonstrate a rushed, politically expedient process serving electoral interests rather than the public interest.

### Constitutional Violations

Rule Set 15 burdens First Amendment rights through prior restraint on political association, compelled speech via mandatory state training, and viewpoint discrimination enabling partisan enforcement. The Supreme Court struck down substantially similar restrictions in *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018), holding that vague political speech restrictions fail constitutional scrutiny. Rule Set 15's ejection standards are even vaguer than Minnesota's invalidated provisions. The rules also violate Due Process through unconstitutionally vague standards that provide no fair notice of prohibited conduct. Finally, they violate separation of powers principles by allowing the executive branch to usurp legislative authority, imposing qualifications and restrictions the Legislature deliberately declined to enact.



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**Exceeds Statutory Authority**

The rules contradict express statutory language and exceed the Secretary's delegated authority. MCL 168.733 establishes direct procedures allowing challengers to call attention to violations, comprehensive challenge grounds covering any violation of Michigan election law, voluntary training that challengers are not required to attend, and a protection mandate requiring election inspectors to protect challengers in discharge of their duties. Rule Set 15 eliminates each of these statutory protections. The rules also contradict MCL 168.674(7)'s guarantee of poll watcher observation rights and MCL 168.730(2)'s exclusive qualification requirements for challengers. The Secretary's rulemaking authority under MCL 168.31(1)(a) extends only to procedural implementation of existing statutes, not substantive restrictions that contradict or narrow legislative choices. These violations render the rules ultra vires under Clonlara, Inc. v. State Bd. of Educ., 442 Mich. 230, 239 (1993), which holds that administrative agencies cannot exceed statutory authority or contradict legislative enactments.

**Procedural Violations**

The rulemaking process violated multiple Administrative Procedures Act requirements. The Secretary failed to include Rule Set 15 in the July 1, 2024, annual regulatory plan required by MCL 24.253, depriving stakeholders of advance notice and preparation time. The Regulatory Impact Statement admits the rules are "not necessary to promulgate," directly contradicting MCL 24.245a(1)'s requirement that agencies demonstrate rules are reasonably necessary. The RIS failed to coordinate with applicable federal requirements as mandated by MCL 24.245a(8), ignoring conflicts with federal record retention, NVRA, HAVA, and First Amendment protections. The cost analysis required by MCL 24.245a(4) was entirely inadequate, failing to quantify compliance burdens on organizations and challengers. Finally, the rules constitute arbitrary and capricious rulemaking by reversing prior policies without explanation, violating the standard established in Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983), which requires agencies changing positions to provide reasoned explanations.

**Lacks Administrative Necessity**

The state's own Regulatory Impact Statement contains a fatal admission: "it is not necessary to promulgate the instructions as rules." This confession demolishes any claim of administrative necessity. The October 2024 Election Officials Manual proves the system worked successfully without mandatory training, liaison gatekeeping, challenge ground restrictions, or vague ejection standards. Elections proceeded smoothly under that guidance. No documented problems emerged between October 2024 and March 2025 that would justify these comprehensive restrictions. The only significant intervening event was Secretary Benson's January 22, 2025, announcement of her candidacy for governor. This timing—implementing restrictions on oversight of the very election the Secretary will administer while running for higher office—indicates political motivation rather than administrative necessity.



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**Federal Law Violations**

Rule Set 15 violates multiple federal statutes. Combined with Rule Set 13 and 14, it violates the Federal Record Retention Act's requirement under 52 U.S.C. § 20701 to maintain all election records for 22 months. The credentialing organization records required by Rule 15 must be retained for only one year, and electronic pollbook records are deleted after seven days. The rules undermine the National Voter Registration Act (52 U.S.C. § 20507) by restricting the systematic list maintenance that federal law requires. They violate the Help America Vote Act (52 U.S.C. §§ 21081, 21083) by eliminating auditable records and restricting observation rights necessary for database accuracy verification. And they burden First Amendment rights without serving any compelling governmental interest or employing narrowly tailored means.

**No Post-Hoc Cure Available**

The Secretary cannot cure these fundamental defects through after-the-fact justification. The Supreme Court established in Motor Vehicle Mfrs. Ass'n, 463 U.S. at 43, that agencies cannot supply a reasoned basis for their actions after the fact. The rulemaking process itself must demonstrate necessity, comply with procedural requirements, and stay within statutory authority. Rule Set 15's defects are structural and incurable without starting the entire rulemaking process over—this time with proper APA compliance, federal coordination, demonstration of necessity, and adherence to statutory limits.

**Federal and State Courts Must Intervene**

Michigan's legislative oversight mechanism has failed due to the Joint Committee on Administrative Rules' 50-50 partisan deadlock. Without JCAR action, these unauthorized rules take effect through legislative inaction rather than legislative approval. When state oversight mechanisms malfunction and an election administrator implements restrictions on oversight of her own election while running for higher office, judicial intervention becomes constitutionally necessary. Federal and state courts must invalidate Rule Set 15 to preserve statutory rights the Legislature deliberately created, constitutional protections the people retain, and administrative law integrity that prevents politically motivated abuse of rulemaking authority.



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## SECTION III. OCTOBER 2024 MANUAL ALREADY PROVIDED FOR LIAISON COORDINATION—BUT REMAINED FLEXIBLE

While Section VII documents that the October 2024 restrictions themselves lacked administrative justification, this section suggests that Rule Set 15 goes even further than October 2024 in eliminating statutory rights. Even if one were to accept October 2024's liaison guidance as permissible—which it is not—Rule Set 15 transforms flexible coordination into absolute prohibition.

The October 2024 Election Officials Manual already contained guidance for challenger liaison coordination at AVCB facilities. Page 19 of Chapter 8 stated:

> *To ensure accuracy and consistency, challengers must not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee* ***unless otherwise instructed by the challenger liaison or a member of the clerk's staff.*** [Emphasis added]

This guidance represented best practices for efficient AVCB operations, but it preserved the statutory framework in three critical ways:

First, the liaison system was voluntary coordination, not mandatory restriction. The phrase "unless otherwise instructed" gave election inspectors the flexibility to allow direct communication when appropriate—precisely as MCL 168.733 contemplates when it requires challengers to "bring the attention to" violations.

Second, the October 2024 guidance aligned with the statutory framework. MCL 168.733 gives challengers the right to address election inspectors directly, subject only to the limitation that such communication not "interfere with the orderly conduct" of the election. The October 2024 Manual encouraged efficiency through liaisons while preserving the statutory right to direct communication.

Third, AVCBs operated successfully under this flexible system during the 2024 general election. The fact that no problems necessitating mandatory liaison restrictions have been documented proves there was no administrative need for Rule 168.205's rigid requirements.

Rule 168.205 transforms this voluntary coordination into mandatory restriction by requiring that challengers "**shall** communicate with election inspectors only through a challenger liaison." This eliminates the statutory right to direct communication entirely, even when such communication would not interfere with orderly conduct. (Emphasis added)



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## A. The October 2024 baseline proves Rule 168.205 exceeds administrative necessity.

If liaison coordination were merely encouraged—not mandated—and AVCBs functioned properly, there is no justification for eliminating the statutory right to direct communication. Rule 168.205 restricts beyond what is necessary for orderly operations and beyond what the statute authorizes.

**Time-sensitive challenges defeated by intermediary delay**

The direct procedure in MCL 168.733 exists because election processes happen in real time, and many violations must be addressed immediately to be meaningful. Consider these scenarios:

**Scenario 1: Signature verification**

A challenger observes an election inspector approving a ballot envelope where the signature clearly does not match the signature on file. Under MCL 168.733, the challenger can immediately call attention to this violation, and the election inspector can reconsider before the ballot is removed from its envelope and anonymized. Under Rule 168.205 the challenger must find the challenger liaison, explain the issue, wait for the liaison to approach the election inspector, and hope the liaison accurately conveys the concern—all while the ballot processing continues. By the time the liaison communicates the challenge, the ballot may already be separated from its identifying envelope, making it impossible to remedy the violation.\

**Scenario 2: Ballot duplication error**

A challenger observes election inspectors duplicating a damaged ballot but transcribing the voter's selections incorrectly marking a vote for Candidate B when the original ballot clearly showed a vote for Candidate A. The duplication is happening at a table across the room. Under MCL 168.733, the challenger can immediately call attention to the error before the duplicated ballot is fed into the tabulator. Under Rule 168.205 the challenger must locate the challenger liaison (who may be handling another matter), explain the situation, wait for the liaison to walk across the room and verify the issue, and hope the liaison successfully persuades the election inspectors to review their work. Meanwhile, the incorrect duplicate ballot may already be tabulated, and the original ballot may be bundled with other duplicated originals, making correction difficult or impossible.

**Scenario 3: Systematic process violation**

A challenger notices that election inspectors are consistently failing to check whether ballot numbers on ballot stubs match the ballot numbers recorded on ballot envelopes—a critical security procedure required by statute. This is not a single-ballot issue but a systematic failure affecting dozens or hundreds of ballots. Under MCL 168.733, the challenger can immediately address the election inspectors and ensure the procedure is corrected going forward.



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However, under Rule 168.205 the challenger must find the liaison, explain the systematic problem, wait for the liaison to verify the issue and communicate it to supervisory staff, and hope that the liaison's communication results in corrective action—all while more ballots are processed without the required security check.

**Scenario 4: Ballot secrecy compromise**

A challenger observes that an election inspector is not adequately separating ballot processing from ballot tabulation, such that inspectors handling ballot envelopes can see how voters marked their ballots. This compromises ballot secrecy and violates MCL 168.738. Under MCL 168.733, the challenger can immediately call attention to this ongoing violation and ensure ballot secrecy is restored. Under Rule 168.205 the challenger must go through the liaison, creating delay during which more voters' ballot secrecy is compromised.

In each scenario, the mandatory intermediary system transforms a timely statutory remedy into a delayed, filtered communication that may arrive too late to prevent or correct the violation. This is not a minor procedural adjustment—it is the functional elimination of the challenger's statutory role.

## B. No statutory authorization

### 1. To mandate an intermediary

MCL 168.730(5) authorizes election officials to "designate a challenger liaison to assist with challenger questions regarding election processes or procedures." The authority to "designate" a liaison to "assist with questions" does not include the authority to prohibit direct communication between challengers and election inspectors.

The distinction between "assistance" and "prohibition" is critical. A liaison who assists with questions helps make the process more efficient by providing a resource for general inquiries. A mandatory intermediary who must be used for all communication transforms the statutory right to "call attention" into a privilege that can be filtered, delayed, or denied by the intermediary.

Nothing in MCL 168.730(5) authorizes this transformation. The statute authorizes an **optional** resource**;** Rule 168.205 creates a mandatory gatekeeper**.**

The contrast with the October 2024 guidance is stark. That guidance suggested liaison coordination as best practice while preserving statutory rights. Rule 168.205 eliminates those rights entirely. The secretary of state cannot defend this escalation by claiming to "codify existing practices"—the existing practice was permissive, while the Rule is restrictive.

### 2. To mandate a training requirement

The secretary of state cannot use rulemaking authority to impose additional qualifications that the Legislature declined to impose. The Michigan Supreme Court has held that "an



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administrative agency can adopt only those regulations authorized by the legislature and cannot exceed its statutory authority." Clonlara, Inc. v State Bd of Ed, 442 Mich 230, 239 (1993).

The Legislature established a single qualification to serve as a challenger. The statute imposes only one qualification: the challenger must be a qualified and registered elector.

MCL 168.730(2) establishes who may serve as a challenger:

> *A person **who is a qualified and registered elector** may serve as a challenger if appointed in writing by [...] a recognized political party [...] an incorporated organization or organized committee of citizens.* (Emphasis added)

The statute does not authorize the secretary of state to impose additional qualifications on organizations or committees that wish to appoint challengers or on the challengers.

The organizational training requirement exceeds the Secretary's statutory authority.

The Secretary may argue that the training requirement is authorized by the general rulemaking authority in MCL 168.31 (supervisory authority over election administration). But general supervisory authority does not include the power to impose qualifications that the Legislature did not impose.

When the Legislature established who may serve as challengers in MCL 168.730(2), it made a deliberate choice about the balance between election oversight and operational efficiency. The secretary of state cannot use rulemaking authority to upset that legislative balance by adding barriers the Legislature declined to impose.

## 1. Political conflict of interest

The mandatory liaison system creates a structural conflict of interest that is particularly acute given the political context in which these Rules were promulgated.
Challenger liaisons are typically senior election inspectors or members of the clerk's staff—individuals whose appointment, training, and supervision are controlled by the very officials whose conduct the challengers are monitoring. When those officials have a political interest in the outcome of the election (Secretary Benson demonstrably does, having announced her candidacy for governor), the liaison becomes a gatekeeper who can filter challenges to protect the appointing official's political interests.

This conflict is not theoretical. Consider the following scenarios:

**Scenario 1: Liaison filters politically damaging challenge**

A challenger from Party A observes election inspectors systematically applying signature verification standards more strictly to ballot envelopes from precincts that historically favor Party A, while applying more lenient standards to envelopes from precincts that favor Party B. This represents a serious equal protection violation that could affect hundreds or thousands of



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ballots. The challenger attempts to raise this issue through the challenger liaison, who was appointed by the clerk (a member of Party B). The liaison—recognizing that this challenge, if successful, could change the outcome of the election in a way that harms their party—delays communicating the challenge, mischaracterizes it to the supervising election official as a "general complaint about signature verification," or simply declines to pass it along at all, stating that it does not raise a legitimate concern.

Under MCL 168.733, the challenger could have addressed the election inspectors directly and forced immediate consideration of the equal protection issue. Under Rule 168.205 the challenger's concern is filtered through a politically interested intermediary who has every incentive to suppress it.

**Scenario 2: Liaison slow-walks time-sensitive challenge**

A challenger observes that ballot duplication is being performed incorrectly, with election inspectors routinely failing to have the required two-inspector verification before duplicating ballots. The challenger informs the liaison of this systematic violation. The liaison—who is loyal to the clerk and aware that acknowledging this violation could lead to questions about the validity of dozens or hundreds of duplicated ballots—"investigates" the claim by slowly walking around the facility, asking election inspectors (in a tone that signals doubt about the challenger's motives), and eventually reporting back to the challenger 45 minutes later that "the process is being followed correctly." Meanwhile, the improper duplication continues, and dozens more ballots are duplicated without proper verification.

**Scenario 3: Liaison threatens challenger for politically inconvenient challenge**

A challenger observes an election inspector wearing a button supporting a candidate on the ballot—a clear violation of MCL 168.744 (prohibiting electioneering in polling places). The challenger reports this to the liaison. The liaison responds: "That's not disruptive. If you keep making frivolous complaints like this, I'm going to have to ask the chair to remove you for interfering with the process." The challenger—intimidated by the threat of ejection—stops reporting violations.

Under MCL 168.733, the challenger could have addressed the election inspectors directly, forcing the issue to be resolved on the merits. Under Rule 168.205 the challenger's statutory right is mediated by a gatekeeper who can weaponize the threat of ejection to silence inconvenient challenges.

The mandatory liaison system transforms election monitoring from a statutory right into a privilege granted by politically interested officials. This is precisely the type of structural bias that statutory oversight is designed to prevent.



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## 2. "Unless otherwise instructed" provides insufficient protection

Rule 168.205 states that a challenger "shall communicate with election inspectors only through a challenger liaison **unless otherwise instructed by an election official**." (Emphasis added) This exception does not cure the rule's contradiction of statute.

First, the exception is entirely discretionary. An election official may choose never to give such instruction, and the challenger has no recourse. The statutory right to "call attention" under MCL 168.733 is not discretionary—it exists unless the challenger's exercise of the right actually interferes with orderly conduct.

Second, the exception inverts the statutory framework. Under MCL 168.733, challengers have the right to direct communication unless they interfere with orderly conduct. Under Rule 168.205 challengers have no right to direct communication unless an election official grants permission. This transforms a statutory right into an administrative privilege.

Third, the exception does not address time-sensitive challenges. Even if an election official might theoretically grant permission for direct communication, the challenger must first attempt communication through the liaison, recognize that the liaison system is failing to address the time-sensitive issue, locate an election official with authority to override the liaison requirement, persuade that official to grant an exception, and only then exercise what should have been a direct statutory right. By the time this process is complete, the violation may be irreparable.

Fourth, the exception creates a chilling effect. Challengers who must ask permission to exercise a statutory right will self-censor, particularly when they fear that requesting permission will be characterized as "disruption" justifying ejection under Rule 168.217 (See Appendix).

**The "unless otherwise instructed" exception is illusory. It does not cure Rule 168.205's contradiction of MCL 168.733.**

## 3. No evidence of need

The secretary of state has provided no evidence that direct communication between challengers and election inspectors caused disruption during the 2024 general election or any prior election. The October 2024 Election Officials Manual encouraged liaison coordination but did not prohibit direct communication—and AVCBs operated successfully under that guidance.
The absence of any documented problem undermines any claim that Rule 168.205 necessary for orderly AVCB operations. When AVCBs functioned properly without a mandatory intermediary system, imposing such a system cannot be justified as administratively necessary.

Rule 168.205 is a solution in search of a problem, and the problem does not exist.



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## 4. No statutory authorization to restrict challenge grounds (R 168.208)

The Legislature deliberately granted challengers comprehensive rights to "observe," "inspect," "challenge," "examine," "keep records," and bring attention to the "violation" of a regulation" or "election law or other prescribed election procedure."

Michigan law is deliberately comprehensive, encompassing the full range of problems that can occur during ballot processing from procedural errors to security lapses, from statutory violations to fraudulent conduct—and anything else that constitutes a violation of Michigan Election Law:

> MCL 168.733 - ***Challengers; space in polling place; rights; space at counting board; expulsion for cause; protection; threat or intimidation.***
> *Sec. 733.*
>
> *(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.*



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In contrast and without statutory authorization, the secretary of state's Rule 168.208 dramatically narrows the law's comprehensive language to four enumerated grounds:

> *(2) The following are the only permissible reasons that a challenger may challenge a voter's eligibility:*
>
> *(a) The individual is not registered to vote.*
>
> *(b) The individual is less than 18 years of age on Election Day.*
>
> *(c) The individual is not a United States citizen.*
>
> *(d) The individual has not resided in the city or township where the individual is attempting to vote for 30 or more days before the election.*



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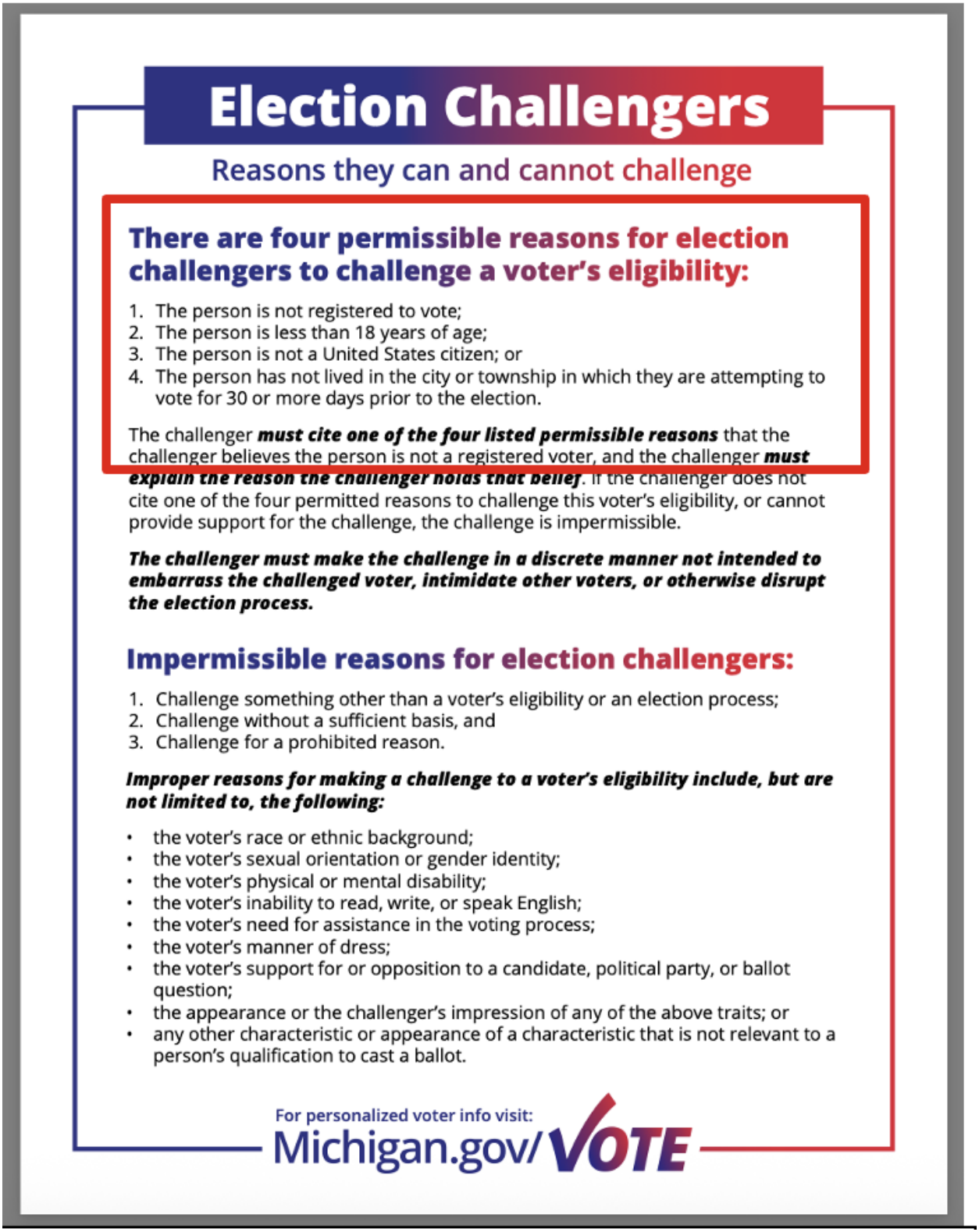

# Election Challengers

## Reasons they can and cannot challenge

### There are four permissible reasons for election challengers to challenge a voter's eligibility:

1. The person is not registered to vote;
2. The person is less than 18 years of age;
3. The person is not a United States citizen; or
4. The person has not lived in the city or township in which they are attempting to vote for 30 or more days prior to the election.

The challenger ***must cite one of the four listed permissible reasons*** that the challenger believes the person is not a registered voter, and the challenger ***must explain the reason the challenger holds that belief***. If the challenger does not cite one of the four permitted reasons to challenge this voter's eligibility, or cannot provide support for the challenge, the challenge is impermissible.

***The challenger must make the challenge in a discrete manner not intended to embarrass the challenged voter, intimidate other voters, or otherwise disrupt the election process.***

### Impermissible reasons for election challengers:

1. Challenge something other than a voter's eligibility or an election process;
2. Challenge without a sufficient basis, and
3. Challenge for a prohibited reason.

***Improper reasons for making a challenge to a voter's eligibility include, but are not limited to, the following:***

- the voter's race or ethnic background;
- the voter's sexual orientation or gender identity;
- the voter's physical or mental disability;
- the voter's inability to read, write, or speak English;
- the voter's need for assistance in the voting process;
- the voter's manner of dress;
- the voter's support for or opposition to a candidate, political party, or ballot question;
- the appearance or the challenger's impression of any of the above traits; or
- any other characteristic or appearance of a characteristic that is not relevant to a person's qualification to cast a ballot.

For personalized voter info visit:
Michigan.gov/VOTE

Source: "Election Challengers: Reasons why they cannot challenge," Michigan Department of State, Voter education resources, Voter Education Fact Sheets, fourth item down, as of Nov. 30, 2025. Link here: https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Clerk-



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toolkit/Educational/MDOS_ElectionChallengers-PermissibleImpermissible.pdf?rev=a9113caec91b4092920c183ea1b290bb&hash=CA4D0AE4FA708CEB2615AF16625CE059

This legally unauthorized four-ground restriction excludes numerous legitimate eligibility challenges that fall within MCL 168.733's comprehensive right-to-challenge language:

- Deceased registrants whose identities may be stolen for fraudulent voting
- Duplicate registrations enabling voters to cast ballots in multiple jurisdictions
- Felons who are ineligible to vote due to incarceration
- Non-residents who moved but remain on registration rolls
- Inactive registrants who should confirm eligibility before voting
- Voters who already voted by absentee ballot attempting to vote in person

## 5. Prohibits challengers from challenging ineligible registrations (Rule 168.208)

When the Legislature wishes to create enumerated lists, it is explicit in doing so—as it was for acceptable voter IDs in MCL 168.523. The Legislature's choice to use MCL 168.733's comprehensive language demonstrates the lawmakers' deliberate intent to grant broad authority for challengers to challenge "violations of Michigan Election Law," "regulations" or "procedures."

No where does Michigan law suggest a restrictive, enumerated list, but that is what the Secretary promulgated in Rule 168.208. As a result, the SOS's rules have no legal authority to override the lawfully adopted legislative parameters.

The Secretary's legally unauthorized restriction contradicts the comprehensive statutory language in MCL 168.733 and excludes numerous legitimate challenges from the scope of permissible challenger activity.



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# SECTION IV: ADDITIONAL ANALYSIS: MAJOR VIOLATIONS THAT MAKE RULE SET 15 INVALID

## A. Table: Major violations that render Rule Set 15 invalid under Michigan law:

| Rules (See Appendix) | Statutory Authority Claimed | Actual Violation | Effect |
|---|---|---|---|
| **R 168.203(4), R 168.207 (Organizational Training Requirements)** | MCL 168.730(1) (general rulemaking authority) | 1. No specific statutory authorization for training requirements<br>2. State control over training content burdens First Amendment associational rights<br>3. Compelled speech violation<br>4. No compelling interest<br>5. Not narrowly tailored<br>6. Competitive advantage for incumbent candidate<br>7. Two-year certification creates ongoing barrier<br>8. Separation of powers violation | Entry barrier preventing challenger organizations from fielding challengers; incumbent candidate, Secretary of state usurps control of access to ballot oversight |
| **R 168.205 (Challenger Liaison)** | MCL 168.730(5) (authority to "designate" liaison to "assist") | 1. Contradicts MCL 168.733 direct procedure for challengers to "call attention" to violations<br>2. Transforms optional assistance into mandatory prohibition<br>3. Creates intermediary delay defeating time-sensitive challenges<br>4. No statutory authorization to prohibit direct communication<br>5. Political conflict of interest<br>6. "Unless otherwise instructed" exception is illusory | Operational barrier preventing challengers from exercising statutory oversight function; converts statutory right into administrative privilege subject to political filter |
| **R 168.205 (Challenger Liaison) - October 2024 Comparison** | Voluntary coordination: "unless otherwise instructed" by election | Mandatory: "shall communicate only through a challenger liaison" | 1. Exceeds statutory authority by eliminating MCL 168.733 right to "call attention" |



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| Rules (See Appendix) | Statutory Authority Claimed | Actual Violation | Effect |
|---|---|---|---|
| | official (October 2024 Manual p. 19) | | 2. Not administratively necessary—October 2024 system worked<br>3. Contradicts direct statutory procedure<br>4. Transforms permissive best practice into restrictive prohibition |
| **R 168.208 (Four-Ground Restriction)** | None cited (purports to "clarify" MCL 168.733) | 1. MCL 168.733 provides comprehensive right-to-challenge language.<br>2. Rule 208's four grounds are narrower than statutory language<br>3. Real-world examples of excluded challenges (deceased voter identity theft, duplicate registration, ballot harvesting, inactive voter without confirmation, felon voting rights)<br>4. No statutory authorization to narrow comprehensive language<br>5. RIS admission undermines justification<br>6. Distinguishing "prohibited grounds" (valid) from "exclusive grounds" (invalid) | Operational barrier preventing challengers from raising legitimate statutory challenges; excludes numerous violations from challenger oversight |
| **R 168.217, R 168.214 (Vague Ejection Standards)** ejection for interference with "orderly conduct" | MCL 168.733 allows expulsion for "drinking," and "disorderly conduct." "The election inspectors and other election officials on duty shall protect a challenger in the discharge of his or her duties."<br>(4) A person shall not threaten or intimidate a challenger while performing an activity allowed under subsection (1). A challenger shall not | 1. "Refuses to follow instruction of an election official" - void for vagueness<br>2. Vaguer than Minnesota standard struck down in *Minnesota Voters Alliance*<br>3. "Disrupts the peace or order" - no limiting guidance<br>4. Real-world scenarios show arbitrary | Ejection threat silencing legitimate oversight; standardless discretion enabling viewpoint-based enforcement |



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| Rules (See Appendix) | Statutory Authority Claimed | Actual Violation | Effect |
|---|---|---|---|
| | threaten or intimidate an elector." | application potential<br>5. Chilling effect on statutory activity | |
| **R 168.214(4)(k)-(l) (Clothing Restrictions)** | MCL 168.744 (prohibiting electioneering) | 1. "Relating to any party" exceeds *Minnesota Voters Alliance* struck-down standard<br>2. "Disrupts the peace or order" provides zero guidance<br>3. Two subsections create contradictory standards<br>4. Enables viewpoint discrimination<br>5. Exception for AVCB creates arbitrary distinction<br>6. No evidence of problems from challenger clothing | Ejection threat based on vague, content-based restrictions exceeding *Minnesota Voters Alliance*; viewpoint discrimination potential |
| **R 168.219 (Poll Watcher Restrictions)** | MCL 168.674(7) (poll watchers may observe "at a distance") | 1. "At a distance" defined by arbitrary clerk determination of space<br>2. Eliminates meaningful observation<br>3. No statutory authorization for severe restrictions<br>4. Contradicts public proceedings transparency | Capacity limit eliminating meaningful public observation; arbitrary clerk discretion |
| **R 168.206 (Numerical Limits)** | MCL 168.730(2)(d) (one challenger per organization per 75 absent voter ballots) | 1. Incorporates statutory limits but adds no value<br>2. Creates restrictions not in statute<br>3. Discretionary space reductions without standards<br>4. No evidence of overcrowding problems | Capacity limit with arbitrary clerk discretion to reduce without standards |
| **R 168.213 (Challenge Recording)** | MCL 168.733 (election inspectors decide challenges) | 1. Multi-step bureaucratic process not in statute<br>2. Recording "impermissible" challenges wastes resources<br>3. No statutory | Administrative burden discouraging challenges; creates paper trail for targeting challengers |



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| Rules (See Appendix) | Statutory Authority Claimed | Actual Violation | Effect |
|---|---|---|---|
| | | requirement for challenge forms or dual recording | |

## B. Three-part legal test: Rule Set 15 fails on all grounds

Michigan courts apply a three-part test to determine whether administrative rules are valid:

1. Did the agency have statutory authority to promulgate the rule?
2. Does the rule comply with the enabling statute?
3. Is the rule reasonable and not arbitrary?

Rule Set 15 (See Appendix) fails all three parts of this test.

**Test 1: Statutory authorization? (FAIL)**

Rule Set 15 relies primarily on MCL 168.31, which describes the secretary of state's general supervisory authority) and MCL 168.730(1), which grants the SOS authority to promulgate rules "consistent with" MCL 168.730-168.735).

Neither statute authorizes Rule Set 15's restrictions:

- *No authorization for organizational training requirements* (R 168.203(4) and R 168.207; See Appendix): MCL 168.730 through MCL 168.735 contain no language authorizing the secretary of state to require training, control or produce training content, or condition challenger credentials on organizational compliance with training requirements.

  The Secretary may argue that the training requirement is authorized by the general rulemaking authority in MCL 168.31 (supervisory authority over election administration). But general supervisory authority does not include the power to impose qualifications that the Legislature did not impose. When the Legislature established who may serve as challengers in MCL 168.730(2), it made a deliberate choice about the balance between election oversight and operational efficiency. The secretary of state cannot use rulemaking authority to upset that legislative balance by adding barriers the Legislature declined to impose.

- *No authorization to prohibit direct communication* (R 168.205): MCL 168.730(5) authorizes designation of a liaison to "assist with questions"—not to serve as a mandatory intermediary prohibiting direct communication.

- *No authorization to narrow statutory language* (R 168.208; See Appendix): MCL 168.733 provides comprehensive right-to-challenge grounds for challenges ("violations of Michigan Election Law" or lawful "regulations" or "procedures" as articulated in



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MCL 168.733). The statute does not authorize the secretary of state to limit challenges to four enumerated grounds.

- *No authorization for vague and legally unauthorized ejection/expulsion standards* (R 168.217 and R 168.214 (Appendix): MCL 168.733 authorizes ejection only when challengers only for "drinking alcohol" or if they interfere with "orderly conduct." The statute does not authorize ejection for "refusing to follow instruction" or wearing clothing that "disrupts peace or order" The standards are far vaguer and more subjective than the statutory standard. Instead, the statute emphasizes that "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."

- *No authorization for severe poll watcher restrictions* (R 168.219, See Appendix): MCL 168.674(7) permits observation "at a distance"—not elimination of meaningful observation through arbitrary clerk determinations of available space.

The fundamental problem is this: The law, MCL 168.730(1), authorizes rules "consistent with" MCL 168.730-168.735, but Rule Set 15 contradicts those statutes rather than implementing them.

**Test 2: Statutory compliance? (FAIL)**

Even if Rule Set 15 had adequate statutory authorization, which it does not, the Rules would still be invalid because they contradict express statutory provisions:

- *R 168.205 contradicts MCL 168.733*: The statute gives challengers the right to "call attention" to violations directly. The Rule prohibits direct communication. These cannot be reconciled.

- *R 168.208* (See Appendix below) *contradicts MCL 168.733*: The statute authorizes challenges to "violations of Michigan Election Law," "regulations" or "procedures" as articulated in MCL 168.733. The SOS's Rule restricts challenges to four enumerated grounds. The Rule's restriction contradicts the statute's comprehensive language. Worse, it eliminates challengers right to challenge numerous of categories of unlawful registrations.

- *R 168.217 and R 168.214* (See Appendix below), *contradict MCL 168.733*: The statute authorizes ejection when challengers interfere with "orderly conduct"—a standard that requires actual disruption. The Rules authorize ejection for "refusing to follow instruction" or wearing "disruptive" clothing—standards that permit ejection without any showing of actual interference.

- *R 168.219* (See Appendix) *contradicts MCL 168.674(7)*: The statute authorizes poll watchers to observe "at a distance." The Rule permits clerks to eliminate meaningful observation entirely through arbitrary space determinations.



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**When a rule contradicts a statute, the rule is invalid.** Clonlara, Inc. v State Bd of Ed, 442 Mich 230, 239 (1993).

**Test 3: Reasonable and not arbitrary? (FAIL)**

Even if Rule Set 15 had adequate authorization (which it does not) and did not contradict statute (which it does), the Rules' unreasonable and arbitrary nature render them invalid.

*First, no administrative need exists*. The October 2024 Election Officials Manual provided guidance for AVCB operations, including voluntary challenger liaison coordination. AVCBs operated successfully under this guidance during the 2024 general election. There is no documented evidence of problems requiring Rule Set 15's restrictions:

a. No evidence challengers disrupted operations by refusing to use liaisons
b. No evidence challengers made improper challenges beyond the four grounds now enumerated in R 168.208 (See Appendix below)
c. No evidence challenger clothing caused disruption requiring restrictions beyond Minnesota Voters Alliance
d. No evidence poll watchers interfered with operations at distances that would now be prohibited
e. No evidence that election challengers behaved in prohibited ways that warranted their expulsion.

When the less restrictive system worked, the more restrictive system cannot be justified as administratively necessary.

*Second, the changes appear politically motivated.* The secretary of state promulgated Rule Set 15 immediately after Secretary Benson announced her candidacy for governor on January 22, 2024. The rules impose severe restrictions on oversight of the very election process the Secretary will oversee while running for higher office. This timing suggests political motivation rather than administrative necessity.

*Third, the Rules create numerous arbitrary distinctions*:

- The rules require organizational training for poll challengers but for not poll watchers (R 168.203(4) See Appendix)
- Clothing restrictions apply to challengers but not to AVCB election inspectors (R 168.214, Appendix)
- Two-year certification for challenger organizations but no similar requirement for any other participant (R 168.207, Appendix)
- Numerical limits based on statutory ratios but with arbitrary clerk discretion to reduce (R 168.206, Appendix)

These arbitrary distinctions demonstrate that Rule Set 15 is designed to burden disfavored participants (challengers) while protecting favored participants (election officials).



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*Fourth, the rules violate numerous federal laws.* (See Section II)

## C. Summary: Why the rules fail legal scrutiny

Rule Set 15 is invalid because:

1. **No statutory gap to fill**: The statutes (MCL 168.730-168.735) are comprehensive and specific. They establish who may serve as challengers, how many challengers may be present, what challengers may observe, what grounds justify challenges, and what standard governs ejection.

   There is no gap for the secretary of state to fill.

2. **Contradicts express statutory language**: Where statutes establish direct procedures (MCL 168.733), comprehensive language (MCL 168.733), clear standards (MCL 168.733), and meaningful observation (MCL 168.674(7)), Rule Set 15 contradicts those provisions.

   Rules cannot override statutes.

3. **No evidence of administrative necessity**: The October 2024 Election Officials Manual provided guidance that enabled successful AVCB operations without the restrictions imposed by Rule Set 15. The secretary of state has provided no evidence of problems under the October 2024 system that would justify Rule Set 15's elimination of statutory rights.

   When the less restrictive baseline worked, the more restrictive rules are unjustified.

4. **Timing suggests political motivation**: Rule Set 15 was promulgated after Secretary Benson announced her candidacy for governor. The rules impose severe restrictions on oversight of the election the secretary will administer while running for higher office.

   This timing suggests political self-interest rather than administrative necessity.

5. **Federal constitutional protections violated**: Rule Set 15 violates the First Amendment (political association, compelled speech, vague restrictions on political speech, right to observe government proceedings) and Due Process Clause (vague standards, arbitrary restrictions).

   State administrative rules cannot violate federal laws or constitutional rights.

**The Core legal problem: Statutory rights vs. administrative program**

The Michigan Legislature established a statutory framework for election oversight through challengers and poll watchers. This framework includes:



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- **WHO** may serve as challengers (MCL 168.730(2))
- **HOW MANY** challengers may be present (MCL 168.730(2)(d))
- **WHAT** challengers may observe (MCL 168.733)
- **HOW** challengers raise concerns (MCL 168.733 - "call attention")
- **WHAT GROUNDS** justify challenges? (MCL 168.733: "violations of Michigan Election Law", "regulations" or "procedures")
- **WHEN** challengers may be ejected (MCL 168.733 - interference with "orderly conduct")

This is not an administrative program subject to agency discretion. This is a statutory framework of oversight rights.

The secretary of state's authority under MCL 168.730(1) is limited to promulgating rules "consistent with" this statutory framework. The Secretary cannot use rulemaking authority to:

- Add barriers not in statute (organizational training requirements)
- Contradict direct statutory procedures (mandatory liaison system)
- Narrow comprehensive statutory language (four-ground restriction)
- Impose vaguer standards than statute (ejection for "refusing to follow instruction")
- Eliminate statutory rights (poll challenger exercise of meaningful duties)

Rule Set 15 attempts to do all these things. That is why it is invalid.



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# SECTION V: LEGAL AND PROCEDURAL CONTEXT

*Educational note: This section provides information about legal and procedural mechanisms that exist under Michigan and federal law. As a 501(c)(4) organization, Pure Integrity Michigan Elections (PIME) does not advocate for or against any specific legislative or administrative action.*

## 1. Administrative Rulemaking Process

Michigan's Administrative Procedures Act (MCL 24.201 et seq.) provides for public comment on proposed rules. The comment period for Rule Set 15 closes on December 12, 2025.

## 2. Joint Committee on Administrative Rules (JCAR)

### What is JCAR?

The Joint Committee on Administrative Rules (JCAR) is a legislative committee with authority to review and disapprove administrative rules. JCAR consists of five members from the Michigan Senate and five members from the Michigan House of Representatives.

### JCAR's Review Authority:

JCAR may disapprove rules that:

1. Exceed statutory authority
2. Contradict statute
3. Are arbitrary or unreasonable
4. Violate constitutional rights

### Limitations on JCAR Authority:

Even if JCAR disapproves rules:

1. Disapproval is not self-executing—agencies may choose to ignore JCAR's disapproval
2. Legislative override requires a two-thirds vote in each chamber
3. The Governor can veto legislative disapproval, requiring another two-thirds vote to override
4. Current political alignment makes disapproval unlikely to result in rule withdrawal



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**Value of JCAR Review:**

JCAR proceedings create a formal legislative record of rule defects that can be used in subsequent litigation and policy analysis.

## 3. Legislative Options Under Michigan Law

*Educational note: This section describes legislative mechanisms that exist under Michigan law. PIME takes no position on whether the Legislature should exercise these options.*

The Michigan Legislature has several statutory options for addressing administrative rules:

**Option 1: Concurrent Resolution of Disapproval (MCL 24.245)**

The Legislature may pass a concurrent resolution of disapproval if JCAR disapproves rules and an agency ignores the disapproval. This requires two-thirds votes in both chambers and is subject to gubernatorial veto.

**Option 2: Statutory Amendment**

The Legislature could amend MCL 168.730-168.735 to clarify or modify the statutory framework governing election challengers and poll watchers.

**Option 3: Modification of Rulemaking Authority**

The Legislature could amend MCL 168.31 to clarify or limit the secretary of state's rulemaking authority.

## 4. State Court Challenge

**Potential Legal Claims:**

1. *Rules Exceed Statutory Authority* (MCL 24.248): Rule Set 15 imposes restrictions not authorized by MCL 168.730-168.735.
2. *Rules Contradict Statute*: Rule Set 15 contradicts express statutory provisions in MCL 168.733 and MCL 168.674(7). Clonlara, Inc. v. State Bd. of Ed., 442 Mich. 230 (1993).
3. *Rules Are Arbitrary and Unreasonable*: The October 2024 Election Officials Manual provided guidance that enabled successful AVCB operations during the 2024 general election. Rule Set 15 imposes significantly more restrictive requirements without documented administrative necessity.
4. *Rules Violate First Amendment*: Organizational training requirements burden political association; mandatory liaison system restricts political speech; vague ejection standards chill protected activity.
5. *Rules Violate Due Process*: Vague ejection standards permit arbitrary enforcement.



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**Potential Plaintiffs with Standing:**

1. Challenger organizations affected by training requirements
2. Individual challengers whose statutory rights are affected
3. Political party organizations
4. Poll watchers whose observation rights are affected
5. Voters with statutory interest in election transparency

**Timeline Considerations:**

Challenges are typically most effective when filed:

1. After rules are officially adopted
2. Before the election they would govern
3. Within 60 days of adoption to demonstrate urgency

## 5. Federal Constitutional Context

**Coordinated Pattern Across Three Rule Sets:**

Rule Set 15 is the third in a series of administrative actions affecting election oversight:

- Rule Set 13 (Election Day Polling Place restrictions)
- Rule Set 14 (Criminalization of challenger activity)
- Rule Set 15 (Challenger and AVCB restrictions)

**Federal Constitutional Issues:**

The First Amendment and Due Process concerns in Rule Set 15, when viewed alongside similar issues in Rule Sets 13 and 14, present potential federal constitutional questions under 42 U.S.C. § 1983.

**Potential Federal Claims:**

1. First Amendment retaliation
2. Viewpoint discrimination
3. Prior restraint on political speech
4. Void for vagueness

**Relevance to Rule 14 Criminal Prosecutions:**

MCL 168.932 requires "intentional" disruption. When rules themselves are legally invalid, the knowledge element required for criminal intent cannot be established. A person exercising statutory rights under MCL 168.733 cannot form criminal intent to violate an invalid administrative rule.



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## SECTION VI: DOCUMENTARY EVIDENCE SUMMARY

As Section III demonstrates, Rule Set 15 goes beyond even the October 2024 manual in restricting statutory rights. This section documents that the October 2024 restrictions themselves lacked administrative justification.

Between July 2024 and October 2024, Michigan Secretary of State Benson transformed election challenger procedures without any documented administrative justification and in noncompliance with multiple requirements in the Administrative Procedures Act (APA) (See Section II C). The APA requires the SOS prepare an "annual regulatory plan" that reviews the agency's rules and electronically transmit its plan to the office of regulatory reinvention. The plan is required to "identify the rules the agency **expects to review** under subsection (4) in the next year, the rules it reasonably expects to process **in the next year**." MCL 24.253 (Emphasis added)

The APA also requires that the SOS state:

> *(a)* ***Whether there is a continued need for the rules,*** *(b) A summary of any complaints or comments received from the public concerning the rules. (c) The complexity of complying with the rules. (d)* ***Whether the rules conflict*** *with or duplicate similar rules or regulations adopted by the federal government or local units of government. (e)* ***The date of the last evaluation of the rules*** *and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.* (Emphasis added) MCL 24.253

The secretary of state appears to have complied with none of these legal requirements. In addition, every major restriction in Rule Set 2025-15 ST appears to have first materialized in the Election Officials Manual, October 2024—about three months before Secretary Benson announced her gubernatorial candidacy on January 22, 2024.

**Key timeline**:

- July 2024: Election Officials Manual contained flexible challenger procedures
- July-October 2024: Zero documented problems requiring new restrictions
- October 2024: All Rule Set 15 restrictions appeared in revised manual
- January 22, 2024: Secretary Benson announced candidacy for Governor
- March 2025: Rule Set 15 filed to codify October restrictions into binding law

**State's own admissions**:

The Regulatory Impact Statement for Rule Set 15 admits:
- "The rules will not alter the behavior of frequency or behavior for election officials, election inspectors, or challengers and poll watchers."
- "It is not necessary to promulgate the instructions as rules."



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When the state admits rules are unnecessary and will not change behavior, no administrative justification exists for restricting constitutional rights.

**Five side-by-side comparisons**:

PIME's complete documentary analysis compares the July 2024 and October 2024 manuals. This comparison suggests that each Rule Set 15 restriction appeared in October 2024 without documented cause:

1. Mandatory Liaison Communication System: Did not exist in July 2024
2. Prohibited Eligibility Challenges at AVCBs: Not prohibited in July 2024
3. Blanket Challenge Mandate: Did not exist in July 2024
4. Vague Ejection Standards: Objective standards in July 2024
5. "Impermissible Challenge" Classification: Did not exist in July 2024

For complete Regulatory Impact Statement , see Appendix.

**Summary**:

The documentary evidence proves Rule Set 15's restrictions are unnecessary (state's admission), unauthorized (no statutory basis), and politically motivated (timing with candidacy announcement). The only significant event between July and October 2024 was Secretary Benson's preparation to announce her campaign for the office whose elections she administers.



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## SECTION VII: CONCLUSION

Rule Set 2025-15 ST represents an unprecedented attempt to eliminate statutory election oversight through administrative fiat. The evidence presented in this analysis suggests that:

- These restrictions lack statutory authorization (Section II)
- They contradict express legislative language (Sections II, III)
- They appeared without administrative justification (Section VI)
- They were imposed with political timing (Section VI)
- They violate constitutional protections (Section II)

Most troubling is the political context. Secretary Benson imposed these restrictions weeks before announcing her gubernatorial candidacy, and filed Rule Set 15 to codify them into law while preparing to run for the office whose elections she administers. Her own Regulatory Impact Statement admits the rules are "not necessary."

When statutory rights are eliminated, constitutional protections violated, and political self-interest drives rulemaking, intervention is essential.

### Key Dates:

*Written Comments*: Submit opposition or support by December 12, 2025, 5:00 PM
*Public Hearing*: Testify in opposition or support on December 12, 2025, 10:00 AM
*JCAR Review*: Demand committee disapproval or approval when rules reach oversight
*Legal Challenge*: Support or oppose judicial invalidation if rules take effect



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# APPENDIX

## Exhibit A: Applicable Michigan Compiled Laws

### Michigan Compiled Laws Regarding Poll Challengers
### MCL 168.727 – 168.734

November 22, 2025

MCL 168.727 **Challenge; duty of election inspector; indiscriminate challenge; penalty.**
Sec. 727.

(1) An election inspector shall challenge an applicant applying for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant's name in the registration book. A registered elector of the precinct present in the polling place may challenge the right of anyone attempting to vote if the elector knows or has good reason to suspect that individual is not a registered elector in that precinct. An election inspector or other qualified challenger may challenge the right of an individual attempting to vote who has previously applied for an absent voter ballot and who on election day is claiming to have never received the absent voter ballot or to have lost or destroyed the absent voter ballot.

(2) Upon a challenge being made under subsection (1), an election inspector shall immediately do all of the following:

(a) Identify as provided in sections 745 and 746 a ballot voted by the challenged individual, if any.

(b) Make a written report including all of the following information:

(i) All election disparities or infractions complained of or believed to have occurred.

(ii) The name of the individual making the challenge.

(iii) The time of the challenge.

(iv) The name, telephone number, and address of the challenged individual.

(v) Other information considered appropriate by the election inspector.

(c) Retain the written report created under subdivision (b) and make it a part of the election record.

(d) Inform a challenged elector of his or her rights under section 729.

(3) A challenger shall not make a challenge indiscriminately and without good cause. A challenger shall not handle the poll books while observing election procedures or the ballots during the counting of the ballots. A challenger shall not interfere with or unduly delay the work of the election inspectors. An individual who challenges a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters is guilty of a misdemeanor.

MCL 168.728 **Challenges; disposition.**



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Sec. 728.

If at the time a person proposing to vote is challenged, there are several persons awaiting their turn to vote, said challenged person shall stand to one side until after unchallenged voters have had an opportunity to vote, when his case shall be taken up and disposed of.

**History:** 1954, Act 116, Eff. June 1, 1955
**Popular Name:** Election Code

MCL 168.729 **Challenges; oath, questions as to qualifications; false statements, penalty.**
Sec. 729.

If any person attempting to vote shall be challenged as unqualified, he shall be sworn by 1 of the inspectors of election to truthfully answer all questions asked him concerning his qualifications as an elector and any inspector or qualified elector at the poll may question said personas to such qualifications. If the answer to such questions show that said person is a qualified elector in that precinct, he shall be entitled to receive a ballot and vote. Should the answers show that said person is not a qualified elector at that poll, he shall not be entitled to receive a ballot and vote. If any one of his answers concerning a material matter shall not be true, he shall, upon conviction, be deemed guilty of perjury.

MCL 168.730: **Designation, qualifications, and number of challengers.**
Sec. 730.

(1) At an election, a political party or an incorporated organization or organized committee of citizens interested in the adoption or defeat of a ballot question being voted for or upon at the election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, may designate challengers as provided in this act. Except as otherwise provided in this act, a political party, incorporated organization, or organized committee of interested citizens may designate not more than 2 challengers to serve in a precinct at any 1 time. A political party, incorporated organization, or organized committee of interested citizens may designate not more than 1 challenger to serve at each counting board.

(2) A challenger shall be a registered elector of this state. Except as otherwise provided in this section, a candidate for nomination or election to an office shall not serve as a challenger at the election in which he or she is a candidate. A candidate for the office of delegate to a county convention may serve as a challenger in a precinct other than the 1 in which he or she is a candidate. A person who is appointed as an election inspector at an election shall not act as a challenger at any time during the election day.

(3) A challenger may be designated to serve in more than 1 precinct. The political party, incorporated organization, or organized committee of interested citizens shall indicate which precincts the challenger will serve when designating challengers under subsection (1). If more than 1 challenger of a political party, incorporated organization, or organized committee of interested citizens is serving in a precinct at any 1 time, only 1 of the challengers has the authority to initiate a challenge at any given time. The challengers shall indicate to the board of election inspectors which of the 2 will have this authority. The challengers may change this authority and shall indicate the change to the board of election inspectors.



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**History:** 1954, Act 116, Eff. June 1, 1955 ;-- Am. 1955, Act 271, Imd. Eff. June 30, 1955 ;-- Am. 1957, Act 248, Eff. Sept. 27, 1957 ;-- Am. 1966, Act 42, Imd. Eff. May 26, 1966 ;-- Am. 1972, Act 30, Imd. Eff. Feb. 19, 1972 ;-- Am. 1995, Act 261, Eff. Mar. 28, 1996
**Popular Name:** Election Code

MCL 168.731 **Challengers; statement of appointment by organization; contents; authorization; appointment without authorization; penalty.**
Sec. 731.

(1) Not less than 20 and not more than 30 days before an election, an incorporated organization or organized committee of interested citizens other than political party committees authorized by this act intending to appoint challengers at the election shall file with the clerk of the county, city, village or township in which the election is to be held, a statement setting forth the intention of the organization or committee to appoint challengers. The statement shall set forth the reason why the organization or committee claims the right to appoint challengers, with a facsimile of the card to be used, and shall be signed and sworn to by the chief presiding officer, the secretary, or some other officer of the organization or committee. The clerk or secretary of state, as applicable under subsection (2), may deny an organization or committee the authorization to appoint challengers if that organization or committee fails to furnish evidence satisfactory to the clerk or secretary of state that the organization or committee is devoted to the purposes enumerated in section 730.

(2) Not later than 2 business days after receipt of a statement of intent to appoint challengers under subsection (1), a clerk shall approve or deny the organization's or committee's authorization to appoint challengers and notify the organization or committee of that approval or denial. If authorization is denied under this subsection, an organization or committee may appeal the denial with the secretary of state not later than 2 business days after receipt of the denial. Not later than 2 business days after receipt of an appeal of a denial under this subsection, the secretary of state shall review the clerk's denial and approve or deny the organization's or committee's authorization to appoint challengers and notify the organization or committee and the clerk of that decision.

(3) Before the opening of the polls, the clerk shall certify in writing to the board of election inspectors in a county, city, village, or township in which the election will be conducted the names of organizations and committees that are authorized under this section to appoint and keep challengers at the polling places in the county, city, village, or township.

(4) A person who files a statement under this section on behalf of an organization or committee that is not authorized by this act to appoint challengers or a clerk who knowingly fails to perform the duties required by this section is guilty of a felony, punishable by a fine of not more than $1,000.00, or by imprisonment for not more than 2 years, or both.

**History:** 1954, Act 116, Eff. June 1, 1955 ;-- Am. 1995, Act 261, Eff. Mar. 28, 1996
**Popular Name:** Election Code

MCL 168.732 **Presence of challenger in room containing ballot box; evidence of right to be present.**
Sec. 732.



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Authority signed by the recognized chairman or presiding officer of the chief managing committee of any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, or of any political party in such county, township, city, ward or village, shall be sufficient evidence of the right of such challengers to be present inside the room where the ballot box is kept, provided the provisions of the preceding sections have been complied with. The authority shall have written or printed thereon the name of the challenger to whom it is issued and the number of the precinct to which the challenger has been assigned.

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

Sec. 733.

(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



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entering the polling place, applying to vote, entering the voting compartment, voting, or leaving the polling place.

**History:** 1954, Act 116, Eff. June 1, 1955 ;-- Am. 1955, Act 271, Imd. Eff. June 30, 1955 ;-- Am. 1995, Act 261, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 583, Eff. Mar. 31, 1997
**Popular Name:** Election Code

**MCL 168.734: Challengers; preventing presence, penalty.**
Sec. 734.

Any officer or election board who shall prevent the presence of any such challenger as above provided, or shall refuse or fail to provide such challenger with conveniences for the performance of the duties expected of him, shall, upon conviction, be punished by a fine not exceeding $1,000.00, or by imprisonment in the state prison not exceeding 2 years, or by both such fine and imprisonment in the discretion of the court.

**History:** 1954, Act 116, Eff. June 1, 1955
**Popular Name:** Election Code



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## Exhibit B: Rule Set 2025-15:

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

ELECTION CHALLENGERS AND POLL WATCHERS

Filed with the secretary of state on

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.201, R 169.202, R 168.203, 168.204, R 169.205, R 168.206, R 168.207, R 169.208, R 168.209, R 168.210, R 169.211, R 168.212, R 169.213, R 169.214, R 169.215, R 169.216 R 168.217, R 168.218, R 168.219, and R 168.220 are added to the Michigan Administrative Code, as follows:

R 168.201 Definitions.

Rule 1. (1) As used in these rules:

(a) "Absent voter ballot processing facility" means the location where a single absent voter counting board, multiple absent voter counting boards, a single combined absent voter counting board, or multiple combined absent voter counting boards are conducted. Absent voter ballot processing facilities do not include a clerk's office or other locations where absent voter ballots are stored, signatures appearing on absent voter ballot envelopes are checked, or other election-related activities are conducted before absent voter ballots being removed from absent voter ballot envelopes and prepared for tabulation.

(b) "Act" means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(c) "Challenge" means a challenge made by a challenger credentialed by a credentialing organization. For the purposes of these rules, a challenged ballot issued to a voter for a reason other than a challenge made by a challenger is not a challenge and does not require any of the reporting or other requirements created by a challenge made by a credentialed challenger.

(d) "Challenger" means an individual credentialed as the representative of a credentialing organization to observe election-related activities at an early voting site, a polling place on Election Day, or an absent voter ballot processing facility at any time the applicable location is open to the public. A candidate shall not serve as a challenger if the individual is serving as an election inspector or individual is running for nomination or election at the same election, except that candidates for precinct delegate can serve as challengers so long as the candidates do not serve at the precinct where the candidates are running for office.



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(e) "Clerk's office" means any location where a clerk or an employee of the clerk is issuing absent voter ballots to voters who appear in person and accepting completed absent voter ballots from voters who appear in person. This definition includes satellite offices or other locations established on a temporary or permanent basis to issue absent voter ballots to voters appearing in person or receive absent voter ballots from voters appearing in person.

(f) "Combined absent voter counting board" is an absent voter counting board established under section 764d(1) of the act, MCL 168.764d, or an absent voter counting board established to process each ballot form containing identical offices and names in a jurisdiction with more than 250 precincts under section 569a(2) of the act, MCL 168.569a.

(g) "Credential card" is the card required to be included in an application to become a credentialing organization under section 731(1) of the act, MCL 168.731, and the authority required to be signed by the individual identified under section 732 of the act, MCL 168.732. The authority must be in a form prescribed by the secretary of state and be known as the Michigan challenger credential card.

(h) "Credentialing organization" means an organization that is eligible to appoint and credential challengers in this state. A credentialing organization is an entity described in section 730 of the act, MCL 168.730. A credentialing organization other than a political party committee shall have satisfied the requirements of section 731 of the act, MCL 168.731.

(i) "Election staff" includes the clerk of a jurisdiction, employees and authorized assistants of that clerk, the secretary of state, any member of the secretary of state staff, the director of elections, and any member of the bureau of elections staff.

(j) "Pollbook" refers to either a physical or electronic pollbook.

(k) "Poll watcher" is a member of the public who is observing election processes and is not credentialed as a challenger. A candidate shall not serve as a poll watcher at a location where the candidate appears on the ballot.

(l) "Team of election inspectors" refers to the set of election inspectors assigned to process ballots at an individual absent voter count board or a combined absent voter count board. The team of election inspectors typically consists of an electronic pollbook inspector, a precinct chairperson, and additional election inspectors.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.202 Pollbook records.

Rule 2. (1) If both a physical and an electronic pollbook are utilized at an Election Day polling place, early voting site, or absent voter ballot counting facility, the clerk of the jurisdiction shall direct the records required by these rules to be recorded in the physical pollbook, the electronic pollbook, or both.

(2) Regardless of the form of pollbook used at an Election Day polling place, early voting site, or absent voter ballot counting facility, any challenge forms completed under R 168.213(2) must be stored by the local clerk in the same manner as the physical pollbook is stored.

R 168.203 Record of individuals serving as challengers; organizational training.

Rule 3. (1) For each challenger to whom a credentialing organization provides credentials, the credentialing organization shall keep the following records:

(a) The challenger's name.



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(b) The challenger's mobile phone number, if the challenger has a mobile phone.

(c) Other contact information that may be used to contact the challenger during the performance of the challenger's duties.

(d) The city or township where the challenger is registered to vote.

(e) Each Election Day polling place, early voting site, and absent voter ballot processing facility where the challenger is designated to serve.

(2) Before the beginning of service by any challenger, the credentialing organization shall designate a member of the credentialing organization to be a point of contact between the credentialing organization and election officials. Except for political parties appointing challengers, the credentialing organization shall make the point of contact known to the secretary of state and the clerk of each jurisdiction where the credentialing organization is appointing challengers, using a form prescribed by the secretary of state. Political parties appointing challengers shall make the point of contact known to the secretary of state, using a form prescribed by the secretary of state. The individual or individuals serving as a point of contact shall be available to be contacted by election officials at any time when a challenger credentialed by the credentialing organization is serving as a challenger. The point of contact shall have the records described in subrule (1) of this rule readily available for reference if contacted by an election official.

(3) The records described in subrule (1) of this rule must be retained by the credentialing organization for 1 year after the date of the challenger's service.

(4) Before issuing credentials to any challengers, each individual issuing credentials on behalf of the credentialing organization shall complete training created by the secretary of state for credentialing organizations. This training must include information about permissible and impermissible challenges, and the rights and duties of challengers. The training may include certification that the individual has reviewed written materials designated by the secretary of state or may include virtual or in-person training.

R 168.204 Credential card.

Rule 4. (1) The authority required under section 732 of the act, MCL 168.732, must be in a form prescribed by the secretary of state, and be known as the Michigan challenger credential card.

(2) A credential card may be digital and presented on a phone or other electronic device. If a challenger uses a digital credential, the credential must mirror the physical template credential form promulgated by the secretary of state and must not include any information or graphics that are not included or requested on the physical template credential form.

(3) No county, city, or township clerk shall approve an organization's application to credential challengers under section 731(1) of the act, MCL 168.731, unless the facsimile of the credential card submitted by the organization is in a form prescribed by the secretary of state.

(4) If any field required on the credential card is blank, the credential is invalid and the individual presenting the form cannot serve as a challenger.

(5) The credential card shall not be displayed or shown to voters.

(6) Clerks may allow or require challengers serving at a polling place on Election Day, at an early voting site during the early voting period, or at a clerk's office at any time that voters are present, to wear a reasonably sized nametag or badge. The nametag or badge cannot include any text or graphics aside from the challenger's name and the words "election challenger". The



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nametag must be printed on white paper, and the words "election challenger" must be printed in black ink.

(7) Clerks may allow or require challengers present at absent voter ballot processing facilities to display the challenger's credential card or wear nametags or badges that identify challengers and the organization represented by the challenger.

R 168.205 Challenger liaison.

Rule 5. (1) Each clerk shall designate 1 election inspector per Election Day polling place, early voting site, or absent voter ballot processing facility as the challenger liaison. Unless otherwise specified, the challenger liaison at election related sites is the following:

(a) At an Election Day polling place, the precinct chairperson.

(b) At an early voting site, the early voting site chairperson.

(c) At the clerk's office, the most senior member of the clerk's staff present.

(2) Challengers shall not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee unless otherwise instructed by the challenger liaison or a member of the clerk's staff.

(3) The challenger liaison is responsible for answering challenger questions and addressing challenger concerns. The challenger liaison is made known to challengers on the challenger's arrival at the Election Day polling place, early voting site, absent voter ballot processing facility, or clerk's office.

(4) If multiple precincts or absent voter counting boards are included in a single location, a single election inspector may serve as the challenger liaison for multiple precincts or absent voter counting boards.

(5) Challenger liaisons are responsible for maintaining an orderly election process in the location where the challenger liaisons serve. Challenger liaisons may issue directions to challengers to ensure compliance with the act; with the election inspector's duty to maintain the peace, regularity**,** and order at the location where the challenger liaisons are serving under section 678 of the act, MCL 168.678; with these rules; or with the requirement of maintaining an orderly election process.

(6) Challengers are required to follow the directions of the challenger liaison. If the challenger objects to the direction, the objection shall be treated as a challenge to an election process described in R 168.209. The challenger may contact the clerk responsible for the jurisdiction to appeal directions that the challenger believes are prohibited by the act or these rules.

(7) A challenger liaison may delegate any of the challenger liaison's duties under these rules to another election inspector serving in the same location.

R 168.206 Total number of challengers; challengers at Election Day polling places, early voting sites, or absent voter ballot processing facilities.

Rule 6. (1) The maximum number of challengers that a credentialing organization may field at a location is determined as follows:

(a) If the challengers are serving at an Election Day polling place, the total number of challengers allowed to each credentialing organization at a precinct must not exceed the total number allowed under section 730(1) of the act, MCL 168.730.



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(b) If the challengers are serving at an early voting site, the total number of challengers allowed to each credentialing organization at a site is the total number allowed under section 730(1) of the act, MCL 168.730, as an early voting site is subject to the same requirements as an Election Day precinct pursuant to section 4(1)(m) of article II of the state constitution of 1963.

(c) If the challengers are serving at a single absent voter counting board, 1 challenger, as provided in section 730(1) of the act, MCL 168.730.

(d) If the challengers are serving at an absent voter ballot processing facility where more than 1 absent voter counting board is located, the total number of challengers allowed to each credentialing organization at the location must not exceed the total number allowed under section 765a(14) of the act, MCL 168.765a.

(e) During processing and tabulation of absent voter ballots before Election Day, the total number of challengers allowed to each credentialing organization at the location must not exceed the total number allowed under section 765a(14) of the act, MCL 168.765a.

(f) If the challengers are serving at a local clerk's office or a satellite location maintained by a clerk, each credentialing organization is limited to 1 challenger at that office.

(g) If the challengers are serving at an Election Day vote center, the total number of challengers allowed to each credentialing organization at the location must not exceed the total number allowed under section 523b(2) of the act, MCL 168.523b.

(2) At no point shall more than 1 challenger from any single credentialing organization observe the activities of any single team of election inspectors processing ballots at an absent voter ballot processing facility.

(3) Clerks shall make reasonable efforts to accommodate the number of challengers equal to the number of credentialing organizations approved to credential challengers in the clerk's jurisdiction multiplied by the maximum number of challengers allowed in the location as calculated under subrule (1) of this rule.

(4) If an Election Day polling place, early voting site, or absent voter ballot processing facility cannot accommodate the total number of challengers contemplated in subrule (1) of this rule, the maximum number of challengers each credentialing organization is allowed to have present in that location as calculated in subrule (1) of this rule is decreased by an equal number for all credentialing organizations.

(5) If the absent voter ballot processing facility cannot accommodate 1 challenger for each credentialing organization, the clerk's notice under section 765a(12) of the act, MCL 168.765a, shall provide notice of the number of challengers that can be accommodated, and 1 challenger per organization is admitted until that number is met.

(6) If a challenger leaves a location where the challenger is credentialed to serve, the organization that credentialed that challenger is allowed to replace that challenger with a new challenger credentialed by that organization so long as the replacement process does not disrupt the work of election inspectors or clerk staff present at the location.

R 168.207 Challenger training.

Rule 7. (1) Each credentialing organization shall provide each challenger credentialed by that organization with the manual created by the secretary of state governing challengers and poll watchers and other materials designated by the secretary of state.

(2) A credentialing organization is responsible for training each challenger credentialed by that organization regarding all of the following:



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(a) Election Day polling place operation, if the challenger is designated to serve at an Election Day polling place.

(b) Early voting site operation, if the challenger is designated to serve at an early voting site.

(c) Absent voter counting board operation, if the challenger is designated to serve at an absent voter ballot processing facility.

(d) Voter registration and the issuance and acceptance of absent voter ballots at a clerk's office, if the challenger is designated to serve at a clerk's office.

(3) If the challenger is designated to serve at multiple categories of locations described in subrule (2) of this rule, the credentialing organization shall train the challenger on operations of all of the categories applicable at the location where the challenger is credentialed to serve.

(4) The challenger training must include, but is not limited to, an explanation of the processes and procedures during the category of location where the challenger is credentialed and the powers, rights, and duties of election challengers.

(5) Each challenger shall sign a written statement certifying that the challenger completed the required training and has a working knowledge of the material presented at training. The credentialing organization shall retain this statement for 2 years after the last date that the challenger served.

(6) An individual must not serve as a challenger unless the individual has completed challenger training as required under this rule within the last 2 calendar years. If a change in the election law, a change in election regulations, a court order, or another event substantially alters or abrogates information contained in the training, the secretary of state may require individuals wishing to serve as challengers to complete a supplemental training before serving as a challenger, even if that individual has completed the required challenger training within the 2 calendar years before the date the individual serves as a challenger.

R 168.208 Challenge to a voter's eligibility; challenge to an elector's ability to cast a ballot after receiving an absent voter ballot.

Rule 8. (1) A challenger may make a challenge to a voter's eligibility if the challenger has a good reason to believe that the individual is not a registered elector.

(2) The following are the only permissible reasons that a challenger may challenge a voter's eligibility:

(a) The individual is not registered to vote.

(b) The individual is less than 18 years of age on Election Day.

(c) The individual is not a United States citizen.

(d) The individual has not resided in the city or township where the individual is attempting to vote for 30 or more days before the election.

(3) The following are impermissible challenges to a voter's eligibility because they are improper reasons for challenge:

(a) The individual's race or ethnic background.

(b) The individual's sexual orientation or gender identity.

(c) The individual's physical or mental disability.

(d) The individual's inability to read, write, or speak English.

(e) The individual's need for assistance in the voting process.

(f) The individual's manner of dress.

(g) The individual's support for or opposition to a candidate, political party, or ballot question.



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(h) The appearance or the challenger's impression of any of the preceding traits.

(i) Another characteristic or appearance of a characteristic that is not relevant to an individual's qualification to cast a ballot.

(4) A permissible challenge to a voter's eligibility triggers the process laid out in section 729 of the act, MCL 168.729.

(5) A challenge to a voter's eligibility must be made to the challenger liaison or to an election inspector designated by the challenger liaison.

(6) If a challenge to a voter's eligibility is properly made under subrule (2) of this rule, the challenger liaison or election inspector to whom the challenge is made shall ask the challenger which of the voter eligibility criteria the challenger believes the individual whose eligibility is challenged does not meet, and why the challenger believes the individual whose eligibility is challenged does not meet that criteria.

(7) A challenge determined to be made for reasons other than the reasons allowed under subrule (2) of this rule must be rejected as an impermissible challenge.

R 168.209 Challenges to an election process.

Rule 9. (1) A challenger may challenge an election process, including the way that election inspectors are operating a polling place or early voting site or processing absent voter ballots at an absent voter ballot processing facility. The challenge must state the specific element or elements of the process that the challenger believes are being improperly performed.

(2) An explanation for a challenge to an election process must include an explanation of the proper performance of the element or elements in question but need not take the form of a direct citation to statute or election administration materials.

(3) A challenge to an election process is impermissible and must not be recorded by the election inspectors in either or both of the following circumstances:

(a) If the challenger cannot identify a specific element or multiple elements of the process that the challenger believes are improper if performed.

(b) If the challenger cannot adequately explain why the process is being performed in a manner prohibited by state law.

(4) A permissible challenge to an election process is rejected if the challenger liaison determines that the specific element or elements of the election process are being carried out in accordance with state law.

(5) If a challenger wishes to challenge recurring elements of an election process under subrule (1) of this rule, the challenger shall make a blanket challenge. A blanket challenge is recorded in the same manner as other challenges made under subrule (1) of this rule. The challenger shall not challenge each repetition of the process.

(6) A challenge to an election process must be made to the challenger liaison.

R 168.210 Impermissible challenges.

Rule 10. (1) Impermissible challenges are challenges that are made on improper grounds.

(2) Subject to R 168.209(3), a challenge determined to be impermissible is not accepted or rejected but is noted in the pollbook as impermissible if it is possible to do so without slowing the voting or absent voter ballot tabulation process.

(3) Repeated impermissible challenges may result in a challenger's removal from the polling place, early voting site, or absent voter ballot processing facility.



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(4) Impermissible challenges include the following:
(a) Challenges made to something other than a voter's eligibility or an election process.
(b) Challenges made with no explanation for the challenge.
(c) Challenges made alleging lack of photo identification against a voter who signs an Affidavit of Voter Not in Possession of Picture ID.
(d) Challenges made for an improper reason as described in R 168.203(3).
(5) A challenger shall not make a challenge indiscriminately or without good cause. A challenge is made indiscriminately and without good cause if the challenger does not know or has a reasonable belief that the challenged individual is ineligible or that the election process is being improperly performed.
(6) A challenger shall not make challenges for the purpose of harassing an elector, an election inspector, or another individual, or interfering with election processes.

R 168.211 Rejected challenges.
Rule 11. (1) Rejected challenges are challenges that are permissible that the challenger liaison does not accept. Whether a challenge is permissible but rejected is a context-specific determination that depends on the type of challenge being made.
(2) If a challenge is permissible but rejected, the following information must be recorded in the pollbook:
(a) The challenger's name.
(b) The time of the challenge.
(c) The substance of the challenge.
(d) The reason why the challenge was rejected.

R 168.212 Accepted challenges.
Rule 12. (1) Accepted challenges are challenges that are permissible and the challenger liaison determines are correct.
(2) If a challenge is accepted, the following information must be recorded in the pollbook:
(a) The challenger's name.
(b) The time of the challenge.
(c) The substance of the challenge.
(d) The actions taken by the challenger liaison in response to the challenge.

R 168.213 Recording of challenges.
Rule 13. (1) If a challenger makes a challenge known to a challenger liaison without identifying the election process challenged as required by these rules, or otherwise fails to provide information required to support a challenge under the act or these rules, the challenger liaison shall ask the challenger to state the missing information necessary to support the challenge. If the challenger cannot state the information supporting the challenge, the challenge does not have a sufficient basis and is impermissible.
(2) A challenger making a challenge determined to have sufficient basis under subrule (1) of this rule shall be provided with a challenge recording form prescribed by the secretary of state. The challenger shall complete the form and return the form to the challenger liaison or election inspector designated by the challenger liaison in order for the challenge to be recorded. The challenge recording form includes fields specifying the time that the challenge is made, the name


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of the challenger making the challenge, the organization the challenger represents, the type of challenge being made, and other information determined necessary by the secretary of state.

(3) Permissible challenges to a voter's eligibility properly made under these rules must be recorded in both the electronic pollbook and the physical pollbook. The record included in the pollbook must contain a short description of the challenge and the resolution of the challenge.

(4) If a challenge is properly made but ultimately rejected, the record of the challenge in the pollbook must note in the pollbook the reason that the challenge was rejected.

(5) After the close of polls or after ballot processing is completed, challenge recording forms must be maintained with the physical pollbook.

R 168.214 Rights and duties of challengers.

Rule 14. (1) When entering an Election Day polling place, early voting site, or absent voter ballot processing facility, a challenger shall make the challenger's presence known to the challenger liaison and complete the oath set out in R 168.216 before making any challenges or enjoying any of the rights accorded to a challenger. The challenger's name, credentialing organization, and time of arrival must be recorded in the pollbook.

(2) If the challenger leaves an Election Day polling place, early voting site, or absent voter ballot processing facility before the end of tabulation, the challenger shall notify the challenger liaison. On notification, the time that the challenger leaves must be recorded in the pollbook.

(3) Properly credentialed challengers who made the challenger's presence known to the challenger liaison and have signed the oath set out in R 168.216 have the right to the following:

(a) Be present in the polling place, early voting site, absent voter ballot processing facility, or Election Day vote center.

(b) Make challenges to the challenger liaison or the challenger liaison's designee as provided in R 168.208 and R 168.209.

(c) Be treated with respect by election inspectors.

(d) Be provided with reasonable assistance in performing the duties of a challenger.

(e) Inspect applications to vote, registration lists, and other printed materials used to conduct elections that are available at the location, so long as the challenger does not touch or handle any of those materials and so long as the inspection does not interfere with the voting process.

(f) Observe election inspectors' preparation of voting equipment at the polling place or early voting site before the opening of the polls during the early voting period and on Election Day, and observe election inspectors' handling of voting equipment after the close of polls on Election Day, so long as the challenger does not touch or handle any of that equipment and so long as that observation does not interfere with the election inspectors in completion of the election inspectors' duties.

(g) Observe the election process from a reasonable distance, so long as election inspectors have sufficient room to perform the election inspectors' duties and voters are not impeded in any way.

(h) If serving in a polling place or early voting site during the early voting period or on Election Day, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to photograph or make video or audio recordings of the polling place or early voting site except for posted election results.

(i) If serving in an absent voter ballot processing facility, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to photograph or make video or audio recordings except for posted election results.



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(j) Observe election-related activities at an early voting site or at a polling place on Election Day at any time the early voting site or polling place is open to the public, including before the opening of polls or after the closing of polls.

(k) Take notes about the election process.

(l) Notify the challenger liaison of perceived violations of election laws by third parties, including electioneering within 100 feet of an entrance to the building where a polling place or early voting site is located, improper handling of a ballot by a voter, or other issues.

(m) Remain in the Election Day polling place, early voting site, or absent voter ballot processing facility after the close of polls or the end of tabulation and until the election inspectors complete the election inspectors' duties.

(n) If serving in an early voting site or polling place where ballots are being issued, stand behind the processing table and intermittently move close enough to view the pollbook as ballots are issued to voters and the voters' names are entered into the pollbook, so long as the challenger does not touch or handle the pollbook or otherwise interfere with the work of the election inspectors.

(o) If serving at an absent voter ballot processing facility, stand in a location where the tabulation of absent voter ballots can be observed, or stand in a location where the challenger can intermittently move close enough to view the entry of the names of voters whose ballots are being processed into the pollbook, so long as the challenger does not touch or handle any election-related materials.

(4) Challengers shall not:

(a) Speak with or interact in any way with voters.

(b) Threaten or intimidate voters or election inspectors, or attempt to threaten or intimidate voters or election inspectors at any stage of the voting process.

(c) Continuously stand in close proximity to election inspectors in a way a reasonable individual could find intimidating.

(d) Speak with or interact with election inspectors who are not the challenger liaison or the challenger liaison's designee, unless given explicit permission by the challenger liaison or a member of the clerk's staff.

(e) Make repeated impermissible challenges.

(f) Make a challenge indiscriminately or without good cause, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or another individual.

(g) Physically touch or interact with ballots, absent voter ballot envelopes, electronic pollbooks, physical pollbooks, or other election materials.

(h) Stand so close to the pollbook or other materials that the challenger's proximity to those materials interferes with the election inspectors' ability to perform the election inspectors' duties.

(i) Use a device to photograph or make video or audio recordings in a polling place, early voting site, clerk's office, or at an absent voter ballot processing facility, other than the recording of election results.

(j) Provide or offer to provide assistance to voters.

(k) Wear any clothing or other apparel relating to any party, candidate, or proposition on the ballot or that disrupts the peace or order of the early voting site or polling place, unless the challenger is serving at an absent voter ballot processing facility and is given permission or instructed to wear an identifier by an election official.



P.O. Box 35, Stockbridge, MI 49285
Website: https://www.pureintegritymichiganelections.org
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(l) Wear clothing or other apparel expressly advocating for or against the election of a candidate or advocating the passage or defeat of a ballot measure.

(m) Set up a table or other furniture in the early voting site or polling place.

(n) Take any actions to disrupt or interfere with voting, ballot tabulation, or other election processes.

R 168.215 Challenger oath.

Rule 15. (1) After making the challenger's presence known to the challenger liaison, a challenger who is not completing the oath in section 765a of the act, MCL 168.765a, shall complete the following oath:

"I (name of individual taking oath) do solemnly swear (or affirm) that I have reviewed the written materials designated by the Secretary of State for my training and will comply with the provisions in those materials. I will follow the directions of the election inspectors operating the (description of applicable location). Further, I shall not photograph, or audio or video record, within the counting place, except for posted election results."

(2) The oaths administered under subrule (1) of this rule must be placed in an envelope provided for this purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk.

R 168.216 Challenger conduct; challenger liaison management of election locations.

Rule 16. (1) If a challenger is serving at a location with multiple precincts or absent voter ballot processing facilities, and if the credentialing organization whom the challenger represents has fewer challengers present than the number of precincts or absent voter ballot processing facilities in the location, the credentialing organization may designate a challenger to serve at multiple precincts or absent voter ballot processing facilities within the location.

(2) Challengers enjoy the rights enumerated in R 168.214(3) only at the Election Day polling places, early voting sites, or absent voter ballot processing facilities where the challengers are designated to serve.

R 168.217 Prohibited challenger conduct; ejection of challengers.

Rule 17. (1) The right of a challenger to be present is conditional on the challenger's compliance with election inspectors' lawful commands under section 678 of the act, MCL 168.678. Any failure to comply with the lawful command of an election inspector may result in expulsion from the Election Day polling place, early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office.

(2) If a challenger liaison has a reasonable belief that a challenger is making challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is making impermissible challenges as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4), the challenger liaison shall warn the challenger of the challenger's noncompliant challenges or impermissible behavior.

(3) If a challenger liaison has a reasonable belief that a challenger who was warned under subrule (2) of this rule is continuing to make challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is making impermissible challenges as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4), the challenger liaison may eject the challenger from the Election Day polling place,



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early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office.

(4) If a challenger photographs, or audio or video records, within an Election Day polling place, early voting site, or absent voter ballot processing facility other than as allowed by the act, the election inspector shall eject the individual from the location.

(5) Any warning or ejection, and the reason for that warning or ejection, must be recorded in the pollbook.

(6) A challenger who is ejected may appeal that ejection by contacting the clerk of the jurisdiction where the challenger is serving.

R 168.218 Challengers serving in clerk offices.

Rule 18. (1) Challengers may be present at a clerk's office only if the clerk's office is open for business and during the period before an election when voters may request or return an absent voter ballot at the office.

(2) A challenger serving at a clerk's office may be present only in areas of the clerk's office where an absent voter ballot may be requested. Nothing in these rules allows a challenger to be present in areas of the clerk's office reserved for the clerk or employees of the clerk.

(3) A challenger present at a clerk's office shall not view the qualified voter file.

(4) A challenger serving at a clerk's office shall follow directions given to the challenger by election staff.

(5) A challenger serving at a clerk's office shall not observe the selections a voter makes on the voter's absent voter ballot if that voter chooses to complete the absent voter ballot in the clerk's office.

(6) A challenger serving at a clerk's office is bound by the same duties as a challenger serving at an Election Day polling place, early voting site, or absent voter ballot processing facility.

(7) If a challenger photographs, or audio or video records at a clerk's office other than as allowed by the act, the election inspector shall eject the individual from the location.

R 168.219 Poll watcher.

Rule 19. (1) Poll watchers have the right to do the following:

(a) Be present at an Election Day polling place, early voting site, or absent voter ballot processing facility, if there is sufficient space.

(b) Observe the electoral process from a public viewing area designated by the clerk, which must be placed in a location that does not interfere in any way with the work of election inspectors present in the location, or with participation in the voting process if voters are present. If the public viewing area for a particular election location is full and cannot accommodate more poll watchers, and if the public viewing area cannot be enlarged without disrupting election processes, the clerk or challenger liaison must deny entry to additional poll watchers.

(c) Request to view the pollbook without handling it, but the challenger liaison may decline that request. A poll watcher shall never handle the pollbook or other election equipment or materials.

(2) Poll watchers are subject to all of the same restrictions as credentialed challengers, including the prohibitions against speaking with voters and against speaking with election inspectors other than the challenger liaison without the challenger liaison's permission.



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(3) In addition to the restrictions in subrule (2) of this rule, poll watchers shall not do the following:

(a) Issue challenges.

(b) Sit or stand behind the processing table at an Election Day polling place or early voting site.

(c) Be present in any part of the polling place, early voting site, clerk's office, or absent voter ballot processing facility, except the designated public viewing area.

(4) If an election inspector has a reasonable belief that a poll watcher is in violation of subrule (2) or (3) of this rule, the election inspector shall warn the individual of the poll watcher's nonallowed behavior.

(5) If an election inspector reasonably believes that a poll watcher who was warned under subrule (4) of this rule is continuing to violate this rule, the election inspector must eject that poll watcher from the Election Day polling place, early voting site, or absent voter ballot processing facility. If the poll watcher refuses to leave after being informed of the ejection by an election inspector, the election inspector may request law enforcement remove the poll watcher from the polling place, early voting site, or absent voter ballot processing facility.

(6) If a poll watcher photographs, or audio or video records, within an Election Day polling place, early voting site, or absent voter ballot processing facility, the election inspector shall expel the individual from the location.

R 168.220 Challenger appeal of challenger liaison or election inspector determinations.

Rule 20. (1) A challenger may appeal to the city or township clerk of the jurisdiction where the challenger is serving a decision by the challenger liaison or other election inspectors relating to any of the following:

(a) The validity of a challenge.

(b) A challenger's conduct.

(c) A challenger's ejection.

(2) The following apply to a challenger appeal:

(a) The appeal must be made outside the hearing of voters.

(b) If the challenger is appealing the ejection, the appeal must be made after the challenger has left the polling place, early voting site, or absent voter ballot processing facility. If the city or township clerk rejects the challenger's ejection as improper, the clerk shall inform the challenger liaison and the challenger shall be allowed to reenter the polling place, early voting site, or absent voter ballot processing facility.

(c) At the request of a challenger, the challenger liaison shall provide the contact information of the city or township clerk.

(3) The challenger may appeal the decision of the local clerk to the bureau of elections.

(4) A challenger shall not appeal to the city or township clerk an election inspector's resolution of a challenge to a voter's eligibility to vote. Appeals of an election inspector's resolution of an eligibility challenge can only be adjudicated through the judicial process after Election Day.



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## Exhibit C. Regulatory Impact Statement (RIS)

Excerpts:

"A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

**"The rules have not been coordinated with other federal, state, or local laws as there are none applicable to the same activity or subject matter**.

"Purpose and Objectives of the Rule(s)

"4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

**"The rules will not alter the behavior of frequency or behavior for election officials, election inspectors, or challengers and poll watchers."**

## Exhibit D: SOS Elections Officials Manuals and Publications

SOS's 2024-2025 Annual Regulatory Plan (ARP).

Election Officials Manual, October 2024.

Election Officials Manual, Chapter 1: The Structure of Michigan's Election System, July 2024. https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/Structure-of-MI-Elections-System.pdf?rev=a9812c630b744d219fd159da1d030ac9&hash=9DB75C92A7B406E4CF5EEFC5D2FDAD50

> "III. Other "Controlling legal authority" as cited in the July 2024 *Election Officials Manual*,
> Michigan's elections are governed by several legal authorities, including:
> - Michigan Constitution: ….
> - Michigan Election Law:… cited as Michigan Compiled Law (MCL) 168.1 to 168.992.
> - National Voter Registration Act (NVRA)
> - Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)
> - Military and Overseas Voter Empowerment Act (MOVE)
> - Help America Vote Act (HAVA)
> - Americans with Disabilities Act (ADA)



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- The Voting Rights Act (VRA)
- Administrative rules
- Michigan Attorney General opinions
- Federal and state court rulings:
- This manual: The *Election Officials Manual*, July 2024, of which this is the first chapter, provides instructions from the secretary of state under MCL 168.31(1)((b) and MCL 168.31(1)(c) describing the proper conduct of elections. July 2024 Election Officials Manual, Chapter 1: The Structure of Michigan's Election System | 4 Michigan Bureau of Elections•
- Other documents published by the Bureau of Elections: [T]hese materials include *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* [Emphasis added] (https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Clerk-toolkit/Educational/MDOS_ChallengersVWatchers_Summary.pdf?rev=8f1c16fffd9f42d69c430d0e7e3e54b7&hash=E3745D988A6D9254CF69CD580E6B44A7

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