



**RULE SET 2025 – 14 ST**  
**Use of Electronic Pollbook**  
**Comprehensive Legal Analysis**



**Pure Integrity Michigan Elections**  
**December 2025**

# FORMAL OPPOSITION TO MICHIGAN SECRETARY OF STATE RULE SET 2025-14 ST

**Submitted to:** Joint Committee on Administrative Rules (JCAR)

**Date:** September 17, 2025

**Regarding:** Rule Set 2025-14 ST (R 168.41-48, Electronic Pollbook Use)

**JCAR No.:** 25-49, **MOAHR No.:** 2025-014 ST

**RFR Transaction:**

<https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1587>

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## EXECUTIVE SUMMARY: JCAR MUST REJECT RULE SET 2025-14 ST

The Michigan Secretary of State has exceeded her constitutional and statutory authority by attempting to create law rather than administer existing law. These proposed rules systematically violate federal and state statutes while undermining fundamental election integrity protections that safeguard Michigan's democratic processes.

**This represents a clear case of administrative overreach that JCAR must reject.**

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## CRITICAL CONSTITUTIONAL VIOLATION: SEPARATION OF POWERS

### The Secretary of State Is Making Law, Not Administering Law

Under Michigan's Constitution Article III, Section 2, the legislative branch makes law, and the executive branch administers law. The Secretary of State has egregiously violated this fundamental principle by:

#### Creating Substantive Legal Requirements Without Legislative Authorization:

- Mandating 7-day deletion of critical election records
- Establishing new FOIA exemptions beyond statutory authority
- Imposing data management requirements that conflict with existing law
- Unilaterally changing record retention standards set by the Legislature

**Exceeding Statutory Authority Under [MCL 168.31\(1\)\(a\)](#):** The Secretary's authority is limited to adopting "rules to implement and clarify" existing election law provisions. These rules don't implement existing law—they contradict and override it, creating entirely new legal requirements that only the Legislature has the power to establish.

**Legal Precedent:** In [Clonlara, Inc. v. State Bd. of Educ. \(442 Mich. 230, 1993\)](#), Michigan's Supreme Court clearly established that administrative agencies cannot exceed their statutory delegation of authority. The Secretary of State has done exactly that with these rules.

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## SYSTEMATIC VIOLATIONS OF FEDERAL LAW

### Rule 8 (R 168.48) - The Most Egregious Violation

#### Federal Record Retention Act ([52 USC 20701](#)) Violation:

- Federal law MANDATES 22-month retention of ALL election records
- The Secretary's rule MANDATES deletion after only 7 days
- This direct conflict subjects Michigan to criminal penalties under [52 USC 20702](#)

**National Voter Registration Act (NVRA) Violations:** Premature data destruction undermines list maintenance requirements under [52 USC 20507](#), preventing proper verification of voter eligibility and inactive voter identification.

**Help America Vote Act (HAVA) Violations:** The 7-day deletion prevents the auditable record-keeping required under [52 USC 21081](#) and eliminates the database accuracy verification mandated by [52 USC 21083](#).

#### Michigan Faces Immediate Federal Legal Jeopardy:

- Criminal penalties for willful record retention violations
  - Loss of HAVA funding for non-compliance
  - Department of Justice enforcement actions
  - Federal court intervention to preserve election records
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## VIOLATIONS OF MICHIGAN STATE LAW

### Direct Conflicts with Existing Statutes:

**[MCL 168.811](#):** Requires 6-year retention of voter records—the Secretary's 7-day deletion rule directly violates this legislative mandate.

**MCL 168.31(1)(a):** Limits Secretary's authority to procedural implementation—these substantive changes to record retention and FOIA exemptions require legislative approval.

**MCL 168.509aa:** Conflicts with voter roll maintenance requirements by eliminating necessary verification data.

### **Unauthorized FOIA Exemptions (Rule 2 - R 168.42):**

The Secretary lacks authority to create new exemptions beyond those specified in [MCL 15.243](#). Only the Legislature can expand FOIA exemptions, yet the Secretary has unilaterally done so through administrative rulemaking.

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## **DEVASTATING IMPACT ON LOCAL CLERKS AND ELECTION ADMINISTRATION**

### **Elimination of Essential Clerk Functions**

**Preventing Clerks from Performing Statutory Duties:** Rule Set 2025-14 ST directly undermines local election clerks' ability to fulfill their legal responsibilities under Michigan election law. By mandating deletion of electronic pollbook data within 7 days, these rules eliminate the digital records that clerks rely on to:

- Conduct post-election audits and reconciliations as required by law
- Investigate voting discrepancies and maintain accurate voter rolls
- Respond to citizen inquiries about election procedures and voting records
- Perform required list maintenance under federal NVRA requirements
- Maintain historical voting data for statutory compliance periods

**Forcing Clerks into "Archaeological" Election Administration:** Without electronic records, clerks are forced to become "archaeologists," attempting to reconstruct election events from incomplete paper records. This fundamentally changes their role from professional election administrators using modern tools to investigators trying to piece together fragmented evidence.

### **Forcing Clerks to Break Federal record retention laws**

### **Crippling Public Transparency and FOIA Compliance**

**Making Public Records Requests Prohibitively Expensive and Slow:** The combination of data deletion requirements and unauthorized FOIA exemptions transforms Michigan's election transparency from an electronic, accessible system to a paper-based bureaucratic nightmare:

- **Elimination of Electronic Analysis:** Citizens and researchers can no longer perform statistical analysis of voting patterns, registration data, or election administration efficiency
- **Massive Cost Increases:** FOIA requests that could be fulfilled electronically for minimal cost now require extensive manual paper searches costing thousands of dollars
- **Deliberate Delays:** Paper-based responses can take months instead of days, effectively ending timely oversight of election processes
- **Data Analysis Impossible:** Electronic datasets that enable demographic analysis, trend identification, and oversight become unavailable

### Civil Rights Violations Under Federal Law

**Title VI of the Civil Rights Act of 1964 (42 USC 2000d):** Michigan's election administration receives federal HAVA funding, making Title VI applicable to all election processes. Title VI prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance.

**Disparate Impact on Protected Classes:** These rules create discriminatory barriers that disproportionately harm communities of color:

- **Elimination of Oversight Mechanisms:** The 7-day data deletion removes audit trails needed to detect voting irregularities that historically affect minority communities at higher rates
- **Economic Barriers to Transparency:** Making FOIA requests prohibitively expensive creates the same type of discriminatory access barriers as poll taxes outlawed by the Voting Rights Act of 1965
- **Clerk Capacity Reduction:** Eliminating clerks' ability to perform electronic analysis disproportionately impacts jurisdictions with large minority populations that require enhanced oversight

**Federal Compliance Jeopardy:** As the Department of Justice Civil Rights Division states: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination." Michigan faces potential federal enforcement actions including fund termination proceedings or DOJ legal action.

### Elimination of Critical Fraud Detection Capabilities

**Real-World Consequence:** Electronic keystroke records enabled Attorney General Nessel's successful prosecution of election fraud in St. Clair Shores, showing exactly how clerks manipulated voting transactions. **Rule 168.48 would eliminate this exact type of evidence.**



**Professional Auditing Standards Violated:** As testified by CPA experts, electronic records provide crucial transaction streams that enable proper audits. These rules would force auditors to become "archaeologists" interpreting static paper records instead of conducting proper electronic audits with complete transaction histories.

**Exacerbation of Existing Problems:**

- Michigan has documented ballot-voter discrepancies (104,137 excess ballots in 2020, 70,713 in 2022)
- Electronic audit trails are essential for identifying and investigating these discrepancies
- Premature deletion eliminates the evidence needed to ensure election accuracy

**False Economy Argument:**

Electronic storage costs significantly less than paper storage, making the cost justification for data deletion a baseless excuse for eliminating transparency. Thumb drives cost \$5 to \$15 and occupy the space of a thumb.

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## ADMINISTRATIVE PROCEDURES ACT VIOLATIONS

**Inadequate Public Process:**

- The July 15, 2025, public hearing had zero attendees
- Notice was limited to niche outlets, suggesting inadequate public notification
- The agency report fails to synopsis public comments as required by [MCL 24.245\(2\)](#)
- This violates the APA's intent for meaningful public participation

**Unauthorized Substantive Rulemaking:**

Creating FOIA exemptions and changing record retention standards exceeds the statutory delegation, violating [MCL 24.239\(1\)](#) governing the scope of administrative rulemaking authority.

**Insufficient Regulatory Impact Statement:**

The 7-day deletion rule lacks empirical justification required under [MCL 24.245\(3\)](#), making the rule "not supported by the rulemaking record" under MCL 24.245a(c).

## THE PATTERN OF SYSTEMATIC OVERREACH

This rule set represents a coordinated attempt to:

1. **Eliminate Transparency:** Through unauthorized FOIA exemptions and data deletion requirements
  2. **Centralize Control:** By removing local clerk discretion and imposing bureau-controlled systems
  3. **Destroy Evidence:** By mandating deletion of records that have proven essential for fraud detection
  4. **Circumvent Legislature:** By creating substantive legal changes through administrative rulemaking
  5. **Violate Federal Law:** By ignoring mandatory 22-month retention requirements
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## JCAR'S CONSTITUTIONAL DUTY

JCAR has both the authority and obligation to reject administrative rules that:

- **Violate Federal Law** with criminal penalty exposure for the state
- **Exceed Administrative Authority** in violation of separation of powers
- **Eliminate Accountability Mechanisms** essential for election integrity
- **Lack Legislative Authorization** for substantive legal changes
- **Inadequate Public Process** violating Administrative Procedures Act requirements

**This is exactly why JCAR exists—to prevent administrative agencies from exceeding their constitutional and statutory authority.**

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## RECOMMENDED ACTIONS

1. **REJECT Rule Set 2025-14 ST in its entirety** due to systematic federal and state law violations
2. **Refer the matter to the Legislature** for proper consideration of any changes to election record retention requirements

3. **Require federal compliance analysis** before any future election-related rulemaking
  4. **Preserve existing transparency protections** by rejecting unauthorized FOIA exemptions
  5. **Protect constitutional separation of powers** by preventing administrative lawmaking
  6. **Demand adequate public process** for any future proposals affecting election administration
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## CONCLUSION

**The Secretary of State has forgotten that she administers law. She is not authorized to make law.**

Rule Set 2025-14 ST represents a fundamental breach of constitutional governance, systematically violating federal statutes, state laws, and administrative procedures while undermining the very election integrity protections that ensure public confidence in Michigan's democratic processes.

JCAR must act decisively to preserve both the rule of law and election integrity by rejecting these unauthorized rules. The separation of powers exists precisely to prevent this type of administrative overreach, and JCAR serves as the crucial check on agencies that exceed their statutory authority.

**Michigan's election integrity and constitutional governance depend on JCAR's rejection of Rule Set 2025-14 ST.**

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**Respectfully submitted,**

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**Supporting Documentation Available:**

- [MIME Report - September 2025](#) (83-page comprehensive election integrity analysis)
- [MFEI Voter Roll Analysis - September 2025](#) (Statistical analysis of maintenance failures)
- Complete legal analysis of federal and state statute conflicts
- Constitutional analysis under separation of powers doctrine
- Administrative Procedures Act violation documentation
- Election integrity impact assessment
- Federal compliance risk analysis

**Federal Resources:**

- [2024 EAC Election Administration and Voting Survey](#)
- [Federal Election Records Framework \(52 USC Chapter 207\)](#)
- EAC OIG Michigan Audit Report No. G23MI0031-24-13 (demonstrating federal oversight failures)

All documentation available at request or at [pureintegritymichiganelections.org](https://pureintegritymichiganelections.org)

## APPENDIX: RULE SET 2025-14

### DEPARTMENT OF STATE

### BUREAU OF ELECTIONS

### USE OF ELECTRONIC POLLBOOK

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 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48 are added to the Michigan Administrative Code, as follows:

#### R 168.41 Definitions.

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

(a) “Act” means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(b) “Approved form of transmission” means an encrypted or password protected, or both, flash drive or other electronic media used to store election files and transfer files between the electronic pollbook and qualified voter file, or another form of secure storage and transmission if approved by the bureau of elections.

(c) “Department” means the department of state.

(d) “Electronic pollbook” means computer software that receives information from the qualified voter file and is used during elections to process voters and generate reports. Electronic pollbook includes, but is not limited to, the early voting electronic pollbook, the election day vote center electronic pollbook, and the election day electronic pollbook, or any combination of those electronic pollbooks.

(e) “Secretary of state’s duly authorized agent” includes bureau of elections staff, other necessary department staff, county, city, and township clerks or their designees, election inspectors, and relevant department of technology, management, and budget staff as determined by the director of elections.

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

#### R 168.42 Access to electronic pollbook data and software.

Rule 2. (1) The voter data contained in the electronic pollbook are public records subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Voter data that is exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, must not be released.

(2) Records regarding electronic pollbook software programming are confidential and must not be released if disclosure of the records may compromise the confidentiality, integrity, or availability of cybersecurity of election information systems.

(3) The secretary of state's duly authorized agents shall have access to the electronic pollbook software and complete the security verification required by the department to access the electronic pollbook software.

#### R 168.43 Download and backup.

Rule 3. (1) For the early voting period, if a jurisdiction conducts early voting, the clerk designated in the early voting agreement shall access the early voting electronic pollbook software as instructed by the department.

(2) For election day, the clerk conducting the election shall download the electronic pollbook software as instructed by the department.

(3) If the electronic pollbook software as described in section 668b(1) of the act, MCL 168.668b, has a secure live connection to the qualified voter file software at a polling place or early voting site, the electronic pollbook software with the secure live connection must be used to process voters and to generate election precinct reports, and the downloaded electronic pollbook software, or a paper copy of the downloaded electronic pollbook software, serves as a backup.

#### R 168.44 Electronic pollbook during the early voting period.

Rule 4. (1) If an early voting site has internet access, the electronic pollbook software used during the early voting period must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

(2) At the conclusion of each day of early voting, election inspectors at an early voting site shall print from the electronic pollbook a list of voters who voted that day at the early voting site and include the list in the physical pollbook.

#### R 168.45 Electronic pollbook on election day.

Rule 5. If a polling place has internet access and the bureau of elections has established live connectivity functionality with the qualified voter file, the electronic pollbook software used on election day must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

#### R 168.46 Production of reports.

Rule 6. (1) If the polling place produces required reports after the close of polls on election day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

#### R 168.47 Upload of electronic pollbook files to the qualified voter file.

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

R 168.48 Data retention.

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.