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

From: Aghogho Edevbie, Michigan State Director, All Voting is Local

Date: September 21, 2020

Re: Voting Rights During the COVID-19 Pandemic in Michigan

Dear Committee Members:

Thank you for giving me the opportunity to submit a written statement along with my oral testimony.

All Voting is Local[1] works across the nation to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for us all. It is a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law.

This statement will highlight some of the potential issues voters might face in the upcoming November general election.

<u>Delivery of Vote By Mail Ballots</u>

In 2018, through Proposal 3, Michigan voters overwhelming approved an amendment to the state constitution to allow for no-reason absentee ballot voting.[2][3] With this expansion Michigan voters were always expected to increase their usage of absentee ballots this election cycle; however, the COVID-19 pandemic has led to record-breaking requests. As of September 15th, more than 2.2 million absentee ballot requests have been received.[4][5] The process to translate requests into mailed absentee ballots will be a time intensive endeavor.

Under Michigan law, county clerks have until forty-five days – September 19th – before Election Day to deliver absentee ballots to local clerks.[6] And under the Proposal 3 Constitutional Amendment, local clerks must make absentee ballots available to the public by the fortieth day – September 24th – before Election Day.[7] In these five days, local clerks must program their

tabulators to read the ballots, host a public tabulator accuracy test, assign individual ballots to voters, and prepare these ballots to be mailed to voters.[8]

Local clerks have struggled to meet the increased demand. In this year's March 10th Presidential Primary, before the consequences of the pandemic took hold, local clerks around the state were late in sending out absentee ballots, including one who was two weeks late.[9][10] In the August 4th State Primary, complaints about late arriving absentee ballots continued, including from 459 Detroiters who applied for their absentee ballots online and never had them delivered by the Detroit clerk's office.[11][12] The prompt and timely mailing of absentee ballots is critical given the delays with the U.S. Postal Service ("USPS"). In the Detroit area, the USPS reported that 35.3% of single-piece first-class mail was delivered late this past quarter – an 87.8% increase from the previous quarter.[13] The sorting capacity of the Pontiac Metroplex facility has been reduced by 394,000 pieces per hour.[14]

In order to ensure that voters receive their ballots on time in future elections, county clerks should provide absentee ballots to local clerks well ahead of the forty-five day deadline. However, before November, local clerks must hire more workers, and promptly mail absentee ballots as requests are received.

In-Person Absentee Voting/Same Day Voter Registration

The Proposal 3 Constitutional Amendment also gave voters the right to request and vote an absentee ballot in-person during the forty days before Election Day.[15] This is a critical tool that must be used effectively this year because many voters do not want to vote by mail, and the extra time will be needed to maintain socially distant polling locations. Among those who are reluctant to vote by mail are Black voters. In 2018, only eleven percent of Black voters nationwide voted by mail.[16] This is being borne out in Michigan for the upcoming November general election. Currently, in Detroit, a city that is 78.6% Black, only twenty-one percent of registered voters have requested to vote by mail.[17][18] Meanwhile, in Livonia, a nearby city that is 90.6% White, thirty-six percent of registered voters have requested to vote by mail.[19][20]

The hours for in-person absentee ballot voting locations need to be consistent and include evening and weekend hours. Evening and weekend hours should be available, at least, in the final two weeks before Election Day. However, due to the COVID-19 pandemic, some local clerks either did not have consistent hours of operation or were not open at all during the August 4th State Primary. The City of Warren, with a voting age population of over 104,000 people, did not publicly announce the opening of its offices until after the August 4th State Primary, and opened by appointment only.[21][22] The City of Flint, with a voting age population of over 71,000 people, did not open its doors until it was sued by the American Civil Liberties Union.[23][24][25]

These in-person absentee ballot voting locations also double as voter registration centers.[26] Right after a mandatory stay-at-home order was issued, voter registration rates plummeted in

Michigan. In March, 75,311 people registered to vote, and in April that number was only 17,035.[27] While those numbers have rebounded in recent months, the sharp drop highlights the necessity of Same Day voter registration.[28] A number of clerks across Michigan struggled with Same Day voter registration during the March 10th Presidential Primary, with some voters waiting as long as two hours to register and vote.[29] To avoid these problems in November, local clerks should open additional in-person absentee ballot voting locations. It will be critical that elections officials properly staff and publicize this voting option and any additional locations, especially to Black Michiganians.

Signature Matching

Under Michigan law, voters have until 8:00pm on Election Day to cure any signature issues with their absentee ballots. This is a particularly unfair burden on voters who are temporarily away from their homes, lack reliable transportation, or have disabilities making travel difficult. And during the COVID-19 health crisis, for many voters, traveling is an unacceptable risk. 2,225 absentee ballots were rejected during the August 4th State Primary due to signature issues.[30][31] With overall turnout predicted to be as high as 6 million voters, a similar rejection rate in November could lead to about 5,300 ballots being rejected for signature issues.[32][33] This represents almost half the number of voters - 10,704 Michiganians - who decided the outcome of the 2016 presidential election in our state.[34] The Michigan legislature should follow the Ohio model and pass legislation to allow voters the opportunity to cure their signature issues up to seven days after Election Day.[35]

Staffing

The average age of a Michigan poll worker is seventy-four years old, and given the health risks of the COVID-19 pandemic, many of these usual poll workers are unavailable.[36] Poll workers are even more valuable this year, as many of them will be needed to process and count absentee ballots. Many municipalities in Michigan form absentee counting boards for the exclusive purpose of counting absentee ballots on Election Day. The Michigan Association of Municipal Clerks recommends that each counting board be staffed with five workers.[37]

In Detroit, there are 134 absentee ballot counting boards, meaning that ideally at least 670 people will staff these boards.[38][39] However, during the August 4th State Primary, Detroit only had 350 people staffing those boards. After the sequester period ended at 8:00pm on Election Day, about 300 workers left the counting boards.[40][41] Seventy-two percent of the absentee ballot precincts in Detroit had vote totals that did not match the totals reflected in the poll book.[42] Low staffing levels, the lack of proper training for poll workers, the lack of clear expectations for poll workers, and insufficient communication between the Detroit clerk and poll workers caused these issues.[43] Secretary of State Benson will take a more direct role in election administration in Detroit this November.[44] Under Michigan law, precincts without matching totals cannot be recounted.[45]

Some of these staffing issues will be alleviated before November if S.B. 757 passes the Michigan House of Representatives and is signed by the Governor. S.B. 757 would give local clerks, with populations of at least 25,000, time to process absentee ballots before Election Day.[46] However, the bill would only give local clerks ten hours of pre-processing time, which falls short of the seven days recommended by the Bipartisan Policy Center.[47]

After this election, local clerks need to make poll worker positions more desirable by increasing pay for workers. Additionally, local clerks need to create new recruitment strategies, and the legislature should expand the number of days absentee ballots can be pre-processed.

Communication

Given the amount of uncertainty caused by the COVID-19 pandemic, local clerks need to communicate more regularly with their voters. In the August 4th State Primary, thirty-one polling locations changed in Detroit because of concerns with the pandemic.[48] However, these changes were only communicated in a letter that did not reach many voters until after Election Day.[49]

While Michigan voters are making record absentee ballot requests, it is important to remember that only twenty-six percent of voters in the November 2016 election voted absentee.[50][51] The vast majority of Michigan voters are voting absentee for the first time and might be unfamiliar with the process.

Local clerks have a responsibility to clearly educate voters on all of the options they have to vote. Local clerks should communicate through all avenues available including by mail, phone, e-mail, text, and digital advertisements.

Conclusion

Every election gives our collective society the chance to express its voice. For that voice to be heard, a well-run election is essential. The COVID-19 pandemic has made this harder, but not impossible. Thank you once again for inviting me to testify and submit this written statement.

---

[1] More information is available at www.allvotingislocal.org.

[2] MI November 2018 Election Results,
https://mielections.us/election/results/2018GEN_CENR.html

[3] Proposal 3 Constitutional Amendment Language,
https://www.michigan.gov/documents/sos/Petition_Promote_the_Vote_614273_7.pdf

[4] https://www.michigan.gov/sos/0,4670,7-127--539855--,00.html

[5] The previous record of 2 million requests was set in the August 4, 2020 State Primary, https://www.michigan.gov/sos/0,4670,7-127-1640_61055-539250--,00.html

[6] MCL 168.714

[7] MI Const., Art. II, §4(1)(g)

[8] Michigan Election Officials' Manual, https://www.michigan.gov/documents/sos/X_Preparation_of_Voting_Equipment_266000_7.pdf

[9] https://www.detroitnews.com/story/news/politics/2020/02/05/voting-advocates-michigan-clerks-not-sending-ballots-quickly-enough/4668922002/

[10] https://www.lansingstatejournal.com/story/news/2020/02/20/meridian-township-absentee-ballots-delays-presidential-primary/4794772002/

[11] https://www.washingtonpost.com/politics/michigan-ballots-tangled-in-mail-delays-in-advance-of-tuesday-primary/2020/08/03/95c2039e-d5a8-11ea-9c3b-dfc394c03988_story.html

[12] https://www.freep.com/story/opinion/columnists/nancy-kaffer/2020/08/14/primary-absentee-ballot/3359124001/

[13] https://about.usps.com/what/performance/service-performance/historical_trends/index.html

[14] https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html

[15] MI Const., Art. II, §4(1)(g)

[16] Method of Voting by Selected Characteristics: November 2018, https://www2.census.gov/programs-surveys/cps/tables/p20/583/table14.xlsx

[17] https://www.census.gov/quickfacts/detroitcitymichigan

[18] https://www.michigan.gov/sos/0,4670,7-127--539855--,00.html

[19] *Id*.

[20] https://www.census.gov/quickfacts/livoniacitymichigan

[21] https://www.census.gov/quickfacts/warrencitymichigan

[22] https://www.cityofwarren.org/warren-city-hall-will-be-opening-by-appointment-only-on-monday-august-31-2020/

[23] https://www.census.gov/quickfacts/flintcitymichigan

[24] https://www.mlive.com/news/flint/2020/07/aclu-voters-sue-flint-city-clerk-say-she-violated-their-absentee-voting-rights.html

[25] https://www.mlive.com/news/flint/2020/07/judge-orders-flint-clerk-to-comply-with-absentee-voting-law-in-aclu-case.html

[26] MI Const., Art. II, §4(1)(f)

[27]https://insights.targetsmart.com/Analysis/new_reg_comparison_20200624/State_By_State_New_Registration_Report_w_Nat.pdf

[28] 100,515 people registered to vote in August, https://insights.targetsmart.com/september-15-2020-democrats-voter-registration-advantage-increases-in-midwestern-states-home-to-protests.html

[29] https://www.detroitnews.com/story/news/politics/2020/03/10/michigan-localities-juggling-rise-same-day-voter-registration/5004002002/

[30] https://www.michigan.gov/sos/0,4670,7-127-1640_9150-536848--,00.html

[31] 0.136% of absentee ballots cast.

[32] https://www.freep.com/story/news/politics/2020/01/14/michigan-voter-turnout-2020-election-results-delayed/4460065002/

[33] 65% of turnout in the August Primary was by absentee ballot. 65% of 6,000,000 is 3,900,000 and a 0.136% rejection rate results in 5,304 ballots being rejected.

[34] MI November 2016 Election Results, https://mielections.us/election/results/2016GEN_CENR.html

[35] Ohio Revised Code §3509.06

[36] https://www.usnews.com/news/best-states/michigan/articles/2020-07-12/voting-changes-covid-19-change-michigan-election-for-clerks

[37] https://www.michiganclerks.org/Portals/0/Conference/2016/MAMC%20AVCB%20Training.pdf

[38] https://detroit.cbslocal.com/2020/09/02/michigan-sos-detroit-city-clerk-announce-partnership-to-ensure-votes-are-counted-properly-in-november-election/

[39] These 134 counting boards process the votes from 503 absentee ballot precincts.

[40] People working at an absentee ballot counting board are sequestered while polls are open, https://www.michiganclerks.org/Portals/0/Conference/2016/MAMC%20AVCB%20Training.pdf

[41] https://www.facebook.com/district7detroit/videos/854467544959307/

[42] https://www.detroitnews.com/story/news/politics/2020/08/24/mich-board-wants-benson-use-oversight-powers-detroit-election/3429360001/

[43] https://www.facebook.com/district7detroit/videos/854467544959307/

[44] https://www.michigan.gov/sos/0,4670,7-127-1640_9150-538528--,00.html

[45] MCL 168.871(1)(b)

[46]MI SB 757

[47] https://bipartisanpolicy.org/report/counting-the-vote-during-the-2020-election/

[48] https://detourdetroiter.com/detroit-primary-voting-issues-polling-places-changed/

[49] *Id.*

[50] https://www.detroitnews.com/story/news/politics/2020/08/05/after-record-absentee-ballots-michigan-looks-higher-november-load/3300045001/

[51] https://wwmt.com/news/state/data-absentee-voter-numbers-from-2019-election-and-where-to-improve-ahead-of-2020