

Issue: Ballot / MI Voter Issues

Michigan's Ballot Struggles

Update: Michigan Ballot Struggles – Progress and Chaos

Progress is being made in efforts to assist voters and election clerks in the use and counting of mailed in ballots in Michigan, but Republican-sponsored chaos may soon result.

A Michigan Court of Claims issued a preliminary injunction on September 18, 2020 ordering that absentee ballots postmarked no later than November 2 and received by clerks' offices within 14 days after the election must be accepted. The previous rule required ballots to be received by 8 pm on election day. The Court also ruled that voters may use anyone to deliver their absentee ballot to the polling place, instead of being limited to family, friends or mail carriers. This ruling applies only to the November 3 election. The Michigan Attorney General and Secretary of State, the defendants in the case, have said they will not appeal the ruling.¹ Unless overturned on appeal, this decision effectively supersedes pending House Bill 5987.

Not surprisingly, Michigan Republicans have reacted with outrage at the Court of Claims decision. On October 1, 2020 the Republican dominated State Legislature was granted the right to intervene in the Court of Claims case, giving them the right to seek an appeal of the September 18 ruling. Such an appeal could be heard and decided in the weeks leading up to the election. On September 24, the Michigan Republican Party and the Republican National Committee ("RNC") filed suit in the Court of Claims seeking to supersede the decision. That case has been assigned to the same judge who rendered the September 18 decision.² Given the intensity of Republican opposition to this case and to any easing of voting restrictions generally, the rules on voting mailed in ballots in Michigan on which voters and clerks alike must rely may not be known until just before election day.

The principal terms of three pending bills dealing with mail-in voting, Senate Bill 756, Senate Bill 757 and House Bill 5991, have been combined into one bill, Senate Bill 757, and passed by both the Michigan House and Senate and sent to Governor Whitmer for signature. This legislation makes the following changes, among others:

- In communities of 25,000 or more people, clerks may begin preparing ballots for counting the day before the election if they provide notice to the Secretary of State at least 20 days before the election.
- Clerks are required to contact voters if their ballot was not signed or if the signature does not match the one on the voter's registration.
- A second shift of workers for absentee counting boards will be allowed on election day so long as no one leaves before the polls close.
- The addition of additional security measures for ballot drop boxes, including video monitoring in a well-lit area.³

A Tidal Wave of Mailed Ballots is Looming

Convenience, an aversion to waiting in long lines, and COVID-19 have combined to generate an expected surge in Michigan voters, as well as voters in all other states, who wish to vote by mail rather than in person on election day. In 2018, Michigan voters passed a ballot measure that, among other things, provided a universal right to vote by mail, and in every succeeding election the number of

voters exercising the right to vote by mail has grown:³ nearly one million people voted by mail in the March 10, 2020 Presidential primary just before the COVID-19 pandemic struck in full, and in the August 4 Michigan state primary 1.6 million voters out of a total of 2.5 million voted by mail.^{4,5} This fall, Michigan’s Secretary of State expects to mail absentee ballot request postcards to 4.4 million registered voters in the state who are not already signed up to receive an absentee ballot or who did not request an absentee ballot earlier in the Spring.⁶ Expectations are that more than 3 million voters will mail in their ballots for the November 3 general election.⁷

Simple changes to improve timely and accurate counting of mailed ballots stalled by Michigan Republicans

Several bills pending in the Michigan Legislature would assist local clerks in meeting the expected increase in mailed ballots. In February, 2020, Republican Senator Ruth Johnson, who previously served as Michigan Secretary of State from 2011 to 2018, introduced SB 756, which would allow clerks in jurisdictions with at least 10,000 active registered voters to have a second shift of workers in an absentee voter counting board, subject to certain safeguards, and SB 757, which would allow clerks in such jurisdictions to perform some preprocessing of absentee ballots on the Monday before the election, again subject to certain safeguards.⁸ SB 756 was passed by the Senate on June 4, 2020 and awaits House action, and SB 757 was passed out of committee on May 27, 2020, and awaits Senate action.^{9, 10}

Reasons for Mail Ballot Rejections in the Michigan State Primary Election

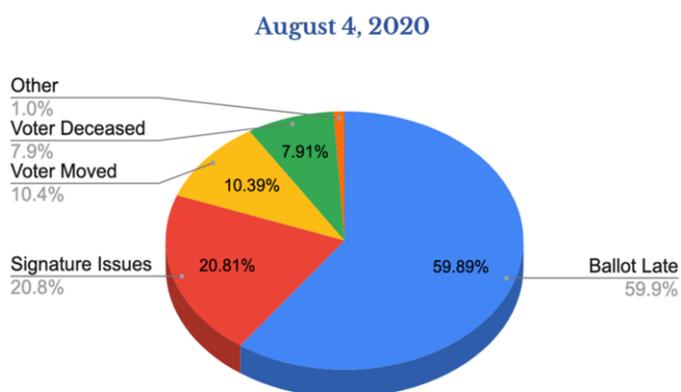


Figure 1. Michigan Primary Election, August 4, 2020 included 10,600 absentee ballots (mail-in) rejected out of a total of 1.6M absentee ballots submitted. Of these 10,600 rejected ballots, 80% were rejected due to late arrival (blue) or signature verification issues (red).

Two bills have been introduced in the Michigan House to address the problems with mailed ballots (See Figure 1) that led to the rejection of over 8,600 ballots (more than 80% of the total rejected) in the August 4 state primary.¹¹

HB 5987, introduced by Vanessa Geurra (a Democrat representing District 95) on July 23, 2020, would permit

mailed ballots to be counted if postmarked by election day and received within the two days after the election.¹²

HB 5991, introduced by Yousef Rabhi (a Democrat representing District 53) on July 23, 2020, would require clerks to contact voters if a signature is missing or if the signature on a ballot application or on an absentee ballot does not match the signature on the voter registration.¹³

Republicans in charge of the House and Senate have not taken any further action on these rather modest measures. The election is fast approaching. Time is running out.

Democrats propose universal, vote-by-mail system to address election day problems, reduce costs and improve turnout

On May 6, 2020, Jeff Irwin, a Democrat representing Ann Arbor in the Michigan Senate, introduced SB 0909, a bill to establish a universal mail-in voting system and eliminate in-person voting.¹⁴ Under the bill, all voters would mail in their ballots or return them to designated collection sites. This bill would eliminate the costs of polling places; voters would no longer be inconvenienced by long lines at polling places or need to interrupt their day to get to a polling place; and voter turnout would likely increase. The bill has been assigned to committee and no further action has been taken.¹⁵

Mr. Irwin has recognized the difficulties faced by the bill given Republican opposition to measures to make voting easier and increase turnout. The Republican-controlled Senate in Michigan will likely prove him correct.

Bills	Issue or Title	Lead Sponsor	Most Recent Action
SB 756	Allows some jurisdictions for a second shift of absentee vote counters	Ruth Johnson (R, SD14)	Referred to Senate Committee on Ways and Means, 6/24/2020
SB 757	Allows some jurisdictions to pre-process ballots the Monday before Election Day	Ruth Johnson (R, SD14)	Placed on Order of the 3 rd Reading, 5/27/2020
HB 5987	Ballots may be counted if post-marked by election day, even if they arrive up to two days after election day	Guerra (D, HD95)	Referred to Comm. on Elections and Ethics, 8/6/2020
HB 5991	Town clerks to follow-up with voter if signature is missing from ballot	Yousef Rabhi (D, HD53)	Referred to Comm. on Elections and Ethics, 8/6/2020
SB 0909	Universal vote by mail system	Irwin (D, SD18)	Referred to Comm. on Elections and Ethics, 5/6/2020

¹ <https://www.detroitnews.com/story/news/politics/2020/09/25/michigan-national-republican-parties-sue-stop-late-ballot-ruling/3531322001/>

² https://www.detroitnews.com/story/news/local/michigan/2020/09/18/michigan-clerks-must-accept-late-ballots-if-mailed-nov-2-judge-rules/3492245001/?for-guid=6acec7d2-52a2-11ea-aa40-121d6c06421b&utm_source=detroitnews-Daily%20Briefing&utm_medium=email&utm_campaign=daily_briefing&utm_term=list_article_thumb

³ <https://www.brookings.edu/blog/fixgov/2020/06/19/vote-by-mail-worked-in-michigan-heres-what-we-need-to-succeed-in-the-fall/>

⁴ See Note 1.

⁵ <https://www.freep.com/story/news/politics/elections/2020/08/09/michigan-november-election-absentee-ballots-clerks/3294006001/>

⁶ <https://www.clickondetroit.com/news/michigan/2020/08/14/michigan-to-mail-cards-telling-44m-they-canvote-from-home-in-november/>

⁷ See Note 3.

⁸ <https://www.misenategop.com/senate-panel-approves-johnson-absentee-ballot-processing-bills/>

⁹ <http://legislature.mi.gov/doc.aspx?2020-SB-0756>

¹⁰ <http://legislature.mi.gov/doc.aspx?2020-SB-0757>

¹¹ <https://www.michigan.gov/sos/0,4670,7-127--536848--rss,00.html>

¹² <http://legislature.mi.gov/doc.aspx?2020-HB-5987>

¹³ <http://legislature.mi.gov/doc.aspx?2020-HB-5991>

¹⁴ <http://legislature.mi.gov/doc.aspx?2020-SB-0909>

¹⁵ <https://www.michiganradio.org/post/senate-bill-would-establish-universal-vote-mail-system>