

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

BRIAN BARKEY, DORIS BARKEY,  
QUINCY MURPHY, MARYUM RASOOL,  
NAYYIRAH SHARIFF, and AMERICAN  
CIVIL LIBERTIES UNION OF MICHIGAN,

Case No. 20-\_\_\_\_\_ -CZ

Plaintiffs,

Hon.

v

INEZ M. BROWN, in her official capacity as  
City Clerk for the City of Flint, and  
CITY OF FLINT,

Defendants.

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**PLAINTIFFS' MOTION FOR *EX PARTE*  
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

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NOW COME Plaintiffs, by and through their attorneys, and respectfully move this Court, pursuant to MCR 3.310, for an *ex parte* temporary restraining order and/or preliminary injunction requiring Defendants to comply with legal mandates regarding the issuance and receipt of absentee ballots, and to remedy their past and present non-compliance with such mandates, in order to protect Plaintiffs' constitutional absentee voting rights, for the reasons set forth in the attached Brief. Attached hereto is a proposed form of order.

Respectfully submitted,

/s/ Daniel S. Korobkin

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Dated: July 16, 2020

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\_\_\_\_\_ /

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR *EX PARTE* TEMPORARY  
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

## INTRODUCTION

Plaintiffs seek an emergency order barring Inez M. Brown in her official capacity as City Clerk for the City of Flint, Michigan (“City Clerk Brown” or “Flint City Clerk”) and the City of Flint (collectively, “Defendants”) from continuing to deny voters in Flint their constitutional right to cast an absentee ballot in person or by mail for the fast-approaching August 4 primary election. The relief Plaintiffs seek is straightforward and follows directly from unambiguous provisions of the Michigan Constitution and statutory election law that require Defendants to (1) allow voters to apply for, receive, and cast absentee ballots in person in the 40 days preceding an election, and (2) deliver absentee ballots to voters immediately upon receiving a completed absentee ballot application. Defendants have failed to comply with these basic legal duties, necessitating the filing of this action and, given the immediacy of the election, issuance of an *ex parte* temporary restraining order (“TRO”) and/or a preliminary injunction by July 17, 2020. Absent such relief, Plaintiffs will have no other remedy at law to protect them from being denied their constitutional absentee voting rights and from potential disenfranchisement.

Plaintiffs have also moved for an order to show cause and expedited consideration of their request for mandamus relief so that the Court may issue a writ of mandamus as early as July 21, but given the limited time before the August 4 election, seek entry of an *ex parte* TRO and/or preliminary injunction by July 17 to compel Defendants to comply with the law in the meantime.<sup>1</sup>

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<sup>1</sup> Even if the Court denies this Motion, Plaintiffs are entitled to be heard separately on their request for a writ of mandamus because such a request is governed by a different standard than the one that applies to requests for an *ex parte* TRO or preliminary injunction.

## **FACTUAL BACKGROUND**

Plaintiffs incorporate by reference the facts as set forth in their Complaint, including the affidavits and exhibits submitted in support thereof. Plaintiffs briefly recite certain relevant facts below.

In November 2018, the people of Michigan passed Proposal 3, which amended the Michigan Constitution to provide, *inter alia*, the unqualified and unconditional constitutional right to vote by absentee ballot—by mail or in person, at the voter’s choosing—at any point in the 40 days preceding an election. See Const 1963, art 2, § 4(1)(g). As a result, elected officials authorized to issue absentee ballots, such as City Clerk Brown for the City of Flint, are constitutionally required to be available in at least one location to issue and receive absent voter ballots during the election officials’ regularly scheduled business hours. See Const 1963, art 2, § 4(1)(g).<sup>2</sup> Additionally, Michigan election laws mandate that the City Clerk shall mail or personally deliver absentee ballots to voters *immediately* upon receipt of an absentee ballot application. See MCL 168.761(1). Yet Defendants have failed to comply with either of these legal duties in advance of the state primary election set for August 4, 2020. As a result, Plaintiffs Quincy Murphy and Maryum Rasool have attempted, but been prevented, from casting their absentee ballot in person. And Plaintiffs Brian Barkey, Doris Barkey, and Narriyah Shariff have not received absentee ballots for which they submitted their applications in May and June.

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<sup>2</sup> The Flint City Clerk is also the election official authorized to issue absent voter ballots to voters in the City of Flint. See MCL 168.759; MCL 168.761; MCL 168.761b.

## ARGUMENT

This Court has power under MCR 3.310 to enter a TRO and/or preliminary injunction. A restraining order should issue where, as here, “it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant.” MCR 3.310. Moreover, in determining whether to grant injunctive relief, a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits; (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued; (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and (4) the harm to the public interest if the injunction is issued. *Alliance for Mentally Ill v Dep’t of Community Health*, 231 Mich App 647, 660–61; 588 NW2d 133, 140 (1998). All four of these factors, especially when considered together, weigh heavily in favor of granting Plaintiffs’ request for emergency relief by July 17.

### **A. Plaintiffs Are Likely to Prevail on the Merits.**

Plaintiffs have a state constitutional right to vote by absentee ballot, in person or by mail. See 1963 Const, art 2, § 4(1)(g) (providing that once registered, electors have the right “to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail.”). The Michigan Constitution and statutory election laws obligate Defendants to take certain specific actions to effectuate this right. Defendants have failed to comply with two of these unambiguous legal mandates.

*First*, as the chief election officer for the City of Flint, the City Clerk is required by the state constitution to open her office during regularly scheduled business hours—or to make

available an alternative location—to issue and receive absentee ballots in person from June 25, 2020 (the 40th day prior to the election) until August 4, 2020, the day of the primary election:

Election officials authorized to issue absentee voter ballots ***shall be available in at least one (1) location to issue and receive absent voter ballots during the election officials’ regularly scheduled business hours*** and for at least eight (8) hours during the Saturday and/or Sunday immediately prior to the election.

*Id.*, art 2, § 4(1)(g) (emphasis added). Michigan statute further provides that “a person may apply in person at the clerk’s office before 8 p.m. on election day to vote as an absent voter.” MCL 168.761(3).

Defendants have not opened the Flint City Clerk’s office to the public since at least June 25, 2020, in clear violation of these constitutional and statutory mandates. As a result, Plaintiffs Quincy Murphy, Maryum Rasool, and Nayyirah Shariff have been unable to apply for or submit absentee ballots in person. Complaint ¶¶ 15, 43, 72. Specifically, Plaintiff Murphy attempted to visit the Clerk’s office on Tuesday, July 14, 2020 at 11:00 a.m. EST—which would fall under the City Clerk’s published business hours of Monday through Friday, 8 a.m. to 5 p.m.—to apply for, obtain, and submit his absentee ballot. Complaint ¶ 14. See also Complaint ¶ 37. The City Clerk’s office was closed and did not provide any information or alternative options for voters to pick up or drop off an absentee ballot. Complaint ¶ 14. Similarly, Plaintiff Rasool was unable to apply for, obtain, or submit an absentee ballot in person due to Defendants’ closure of the Clerk’s office. *Id.* Accordingly, Plaintiffs have demonstrated that Defendants are in clear violation of their legal duties to make available at least one location to issue and receive absentee ballots *in person*.

*Second*, Defendants are statutorily required to deliver absentee ballots to voters *immediately* upon receipt of a completed absentee ballot application. Specifically, MCL 168.761(1) provides that the clerk of a city or township receiving an absentee voter application

from a person registered to vote shall “*immediately* . . . forward by mail, postage prepaid, or shall deliver personally 1 of the ballots or set of ballots if there is more than 1 kind of ballot to be voted to the applicant.” (emphasis added). Consistent with MCL 168.761(1), the Michigan Secretary of State has directed local clerks to issue absentee ballots within 24 hours of receiving a completed application. See *League of Women Voters v Secretary of State*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 353654); slip op. at 15.

Defendants have failed to fulfill this clear legal duty. On July 1, 2020, the FlintBeat reported that the Flint City Clerk’s office had received close to 10,000 applications for absentee ballots. Complaint ¶ 45. Yet, as of early July 2020, fewer than 100 absentee ballots had been issued by the Flint City Clerk to Flint voters. Complaint ¶ 47. As of July 14, 2020, however, the Flint City Clerk reported to the Michigan Secretary of State that approximately 4,000 absentee ballots had been issued, despite the closure of the Clerk’s office during that same period. Complaint ¶ 49. But even crediting that fact, of the approximately 10,000 absentee ballot applications that had been submitted by July 1—more than two weeks ago—Defendants have failed to process 6,000 of them.<sup>3</sup> Complaint ¶ 50. That includes applications submitted by several of the individual Plaintiffs in this action. Complaint ¶¶ 13–17. This backlog of unprocessed applications threatens to deprive Plaintiffs of their constitutional right to vote by absentee ballot. See Complaint ¶¶ 53, 55 & n 2, 59–60.

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<sup>3</sup> Although the City Clerk records indicate that 4,000 absentee ballots have been issued, Complaint ¶ 49, that does not mean that those absentee ballot applications were processed *immediately*. For example, Plaintiff Shariff submitted her application for absentee ballot in May 2020 but as of July 15, 2020 has yet to receive her absentee ballot. See Complaint ¶ 16.



**B. Plaintiffs Will Suffer Irreparable Harm If the Injunction Is Not Issued.**

The irreparable harm that Plaintiffs will suffer absent a TRO or preliminary injunction is clear. As a threshold matter, “temporary loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.” *Garner v Mich State Univ*, 185 Mich App 750, 764; 462 NW2d 832, 838 (1990). Here, Plaintiffs face deprivation of their constitutional voting rights in several respects.

*First* and most directly, Defendants have *already* denied Plaintiffs their constitutional right to receive and cast their absentee ballot in person in the 40 days preceding an election. For example, Plaintiff Murphy attempted to exercise this right by visiting the Flint City Clerk’s office, only to find it closed to the voting public. Complaint ¶ 14. Likewise, when Plaintiff Rasool called the Clerk’s office to inquire about applying for absentee ballots in person, she was told that this was not possible and was given no indication as to when the Clerk’s office would reopen. Complaint ¶ 15. Without the relief requested herein, all Plaintiffs will continue to be deprived of their ability to cast an absentee ballot in person.

*Second*, Defendants’ non-compliance with the law risks depriving Plaintiffs of their constitutional right to vote absentee by mail. Without the ability to cast their absentee ballot in person, Plaintiffs must cast their absentee ballots by mail. But Defendants’ failure to timely issue absentee ballots for thousands of voters whose applications were received by the beginning of July places Flint’s voters, including Plaintiffs, at serious risk of being unable to cast a timely absentee ballot by mail. Michigan statute requires that completed absentee ballots be *received* by 8 p.m. on election day. See MCL 168.759(1) and (2); MCL 168.761(3). Because of uncertain mail delivery timelines that have been exacerbated by the COVID-19 pandemic, Complaint ¶¶ 58–59, every day that Defendants delay issuing absentee voter ballots substantially heightens the risk that voters will be unable to submit their mail-in ballots by the impending

August 4 election day deadline. Indeed, despite having submitted their applications for absentee ballots in May and June, respectively, Plaintiff Shariff and Plaintiffs Brian and Doris Barkey had yet to receive an absentee ballot as of July 15. Complaint ¶¶ 12, 13, 16. And because Plaintiffs Murphy and Rasool expected to be able to apply for and cast their absentee ballot in person, see Complaint ¶¶ 14–15, they have not even been able to begin the application process, putting them at even greater risk of being unable to receive and cast a timely absentee ballot.

This is far from a hypothetical risk. Already, thousands of voters in other states seeking to cast absentee mail ballots in light of the COVID-19 pandemic have had their ballots rejected as untimely. Complaint ¶ 59 & n.3. In Ohio, for example, some voters' ballots took as many as 9 days to be delivered, resulting in their being rejected as untimely. Complaint ¶ 59.

*Third*, taken together, Defendants' violations not only infringe on Plaintiffs' rights to choose whether to vote absentee in person or by mail, but they threaten Plaintiffs' ability to vote absentee *at all*. The ongoing COVID-19 pandemic underscores the seriousness of this denial of Plaintiffs' constitutional voting rights. Allowing voters to cast an absentee ballot by mail or in person at any time over a period of 40 days reduces the personal and public health risks posed by having large crowds congregate at polling places on election day. By infringing on Plaintiffs' absentee voting rights, Defendants have placed them in the impossible position of having to choose between subjecting themselves to a greater risk of infection or losing their right to vote at all.<sup>4</sup> See Complaint ¶ 88.

Put simply, if the Court does not issue immediate injunctive relief as requested, Plaintiffs will be precluded from exercising their unqualified, constitutional right to vote absentee in

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<sup>4</sup> The irreparable harm set forth here applies not only to the individual Plaintiffs but to the nearly 200 members of Plaintiff ACLU of Michigan who reside and vote in Flint. Complaint ¶ 17.

person or by mail. And there is no adequate remedy of law for Plaintiffs' claims: either they may vindicate their constitutional right to vote by absentee ballot *immediately* (either in person or by regular postal mail) in time for their ballots to be counted by August 4, 2020, or else they forfeit the ability to exercise that right forever.

**C. Irreparable Harm Absent Relief Outweighs Any Potential Harm Caused by an Injunction.**

The equities when weighing prospective harms clearly favor Plaintiffs. They face deprivation of their constitutional right to vote absentee and potential disenfranchisement entirely. Defendants, on the other hand, face only the task of complying with their legal duties as set forth in the Michigan Constitution and statutory election law. It is especially difficult for Defendants to claim any unique harm given that these new rights were enshrined in the Michigan Constitution more than a year and a half ago, and Defendants have administered one or more elections with these new rights. Additionally, the Michigan Department of State's Bureau of Election has offered at least six different programs to provide financial support to local clerks. See TRO Exhibit 1, Mich. Bd. of Elections, *News Update: Funding and Reimbursement Programs, AV Ballot Application Mailing and List Maintenance, Accessible AV Options* (June 23, 2020). Nor can Defendants plausibly argue that the COVID-19 pandemic tilts the equities against compliance with their legal duty to allow for in-person absentee voting. As discussed above, the pandemic heightens the need for absentee voting options that are as broad and varied as possible—and, at a minimum, comport with constitutional and statutory guarantees. By providing a wide range of in-person absentee voting locations and hours, Defendants can better ensure that voters are able to adhere to social distancing guidelines while exercising the franchise. The alternative is long lines and massive crowds on election day—neither of which justifies any purported harm that Defendants may claim.

**D. The Public Interest Supports the Issuance of Emergency Relief.**

There is arguably no clearer public interest than the right to vote. Voting is a fundamental right because it is preservative of all other rights. *Yick Wo v. Hopkins*, 118 U.S. 356, 370; 6 S Ct 1064, 1071; 430 L Ed 22 (1886). In recognition of that bedrock principle, the people of Michigan have enshrined the constitutional right to vote by *absentee ballot* through Proposal 3 by overwhelming majority. Thus, requiring Defendants to comply with their legal duties to effectuate that fundamental right, is of the most public import.

Moreover, in light of the COVID-19 pandemic, there is a public interest, as recognized by the Michigan Secretary of State, as well as other states that face similar dilemmas, in providing broad absentee voting options.

The public interest factor therefore clearly weighs in favor of Plaintiffs.

**CONCLUSION & RELIEF REQUESTED**

For the aforementioned reasons, Plaintiffs have demonstrated through the allegations, exhibits, and affidavits in the Complaint and incorporated herein, that all four factors (success on the merits, irreparable harm, balance of harms, and public interest) weigh in favor of granting Plaintiffs' request for immediate relief.

WHEREFORE, Plaintiffs respectfully request this Court grant the following immediate injunctive relief to provide an equitable remedy for the harm already caused by Defendants' conduct and to prevent the infliction of irreparable harm on Plaintiffs:

- a. Ordering Defendants to make available at least one location to issue and receive absentee ballots in person (1) during published, regularly scheduled business hours during the 40 days prior to the August 4 primary election, as required by the Michigan Constitution; and (2) for at least 8 hours each on Saturday, July 25 and Sunday, July 26; and Saturday, August 1 and Sunday, August 2.

- b. Ordering Defendants (1) to process all pending absentee ballot applications submitted *before* this Court's Order within 24 hours; and (2) to process all absentee ballot applications received *after* this Court's Order within 24 hours of their receipt.
- c. Ordering Defendants to make available *secured* ballot drop boxes at all polling locations in Flint on the day of the August 4 primary election for the purposes of accepting and receiving completed absentee ballots.
- d. Granting Plaintiffs any such further relief as the Court deems equitable and just under the circumstances.

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Dated: July 16, 2020

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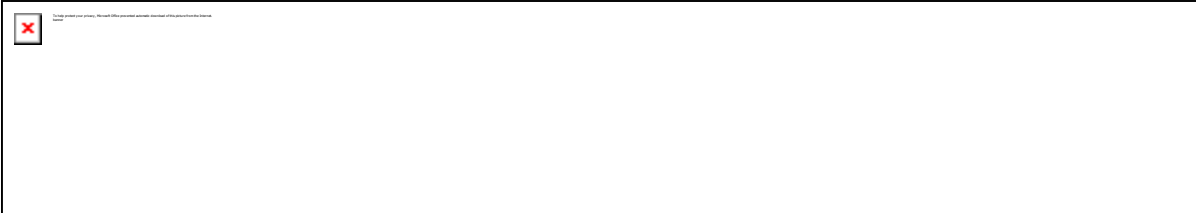
*Counsel for Plaintiffs*

# **Exhibit 1**

## Sharon Dolente

**From:** Michigan Bureau of Elections <MISOS@public.govdelivery.com>  
**Sent:** Tuesday, June 23, 2020 6:46 PM  
**To:** Sharon Dolente  
**Subject:** 6/23/2020 News Update - Funding and Reimbursement Programs, AV Ballot Application Mailing and List Maintenance, Accessible AV Options and more

Having trouble viewing this email? [View it as a Web page.](#)



June 23, 2020



## Funding and Reimbursement Programs

There are now several funding and reimbursement programs available to clerks. Below is a rundown of the programs available and what clerks need to do to take advantage of these opportunities.

### (1) Reimbursement of qualifying expenses for jurisdictions that held (or canceled) May 5 elections.

The reimbursement program for canceled elections was explained in the May 8 news update. Contact Lori Bourbonais at [BourbonaisL@Michigan.gov](mailto:BourbonaisL@Michigan.gov) with any questions. The reimbursement claim forms for [counties](#) and [local jurisdictions](#) are available in eLearning. The deadline to submit your request is July 1, 2020. The form to request reimbursement for postage was mailed on May 18. The deadline to submit the form is July 31, 2020. Contact Charamy Cleary at [Clearyc@Michigan.gov](mailto:Clearyc@Michigan.gov) with any questions.

**(2) August absent voter ballot envelopes.** This purchase and reimbursement program for custom-printed absent voter ballot envelopes was explained in the May 4 and May 13 news updates. For jurisdictions that ordered absent voter ballot envelopes sufficient to cover 40 percent of their registered voters after the May 4 news update, the Bureau of Elections will pay the vendor. Those jurisdictions don't need to take further action. Information will be coming soon for jurisdictions that had already purchased qualifying custom-printed absent voter ballot envelopes, or ordered envelopes for more than 40 percent of registered voters and are seeking reimbursement for qualifying

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## Absentee Ballot Processing

As you begin issuing absentee ballots for the August election, it is important to review [Chapter 6 - Michigan's Absentee Voting Process](#) of the Election Officials' Manual.

### Important reminders:

- Ballot-marking instructions specific to the August election should be



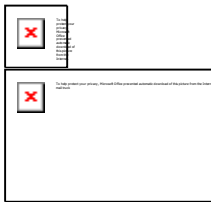
expenses. Please contact Charamy Cleary at [Clearyc@Michigan.gov](mailto:Clearyc@Michigan.gov) with any questions.

**(3) Reimbursement for August AV application mailings.** Information regarding this reimbursement program will be coming soon.

**(4) State-provided personal protective equipment (PPE).** The state is providing all jurisdictions with PPE including masks, gloves, hand sanitizer, and cleaning supplies. The state will ship supplies to the counties for distribution to local officials. Local jurisdictions don't have to do anything to receive supplies other than contact their county. Additional details on supplies and local distribution will be provided soon.

**(5) Tabulator and software cost share.** This program was explained in the June 10 newsletter. Local jurisdictions interested in a cost share with tabulators and software should fill out [the application](#) as soon as possible.

**(6) Ballot drop boxes and (7) election supply form.** These programs were explained in the June 17 and June 19 news updates. Clerks interested in a free ballot drop box should fill out [this form](#) as soon as possible. Clerks interested in purchasing supplies at no cost (using federal CARES funding) should fill out the [supply order form](#) by June 30. Clerks can choose additional funding rather than a free ballot drop box subject to some restrictions as explained on the ballot supply form.



## Absent Voter Ballot Application Mailing and List Maintenance

The state mailing of absent voter ballot applications was completed last week. All registered voters who have not yet received an application should be receiving theirs by the end of the week. In some instances, voters have returned completed absent voter ballot applications to the state. The Bureau of Elections is forwarding these applications to local clerks.

When absent voter ballot applications are returned undeliverable, the Bureau of Elections will forward them to local clerks. Clerks should review the returned mail and process voter registration records using procedures for maintaining voter records on the Qualified Voter File. Clerks who receive undeliverable mail should use the following procedures for identifying individuals on the Qualified Voter File who have become ineligible to vote.

included with AV ballots.

- QVF must be used timely to track AV ballot processing for all voters.
- Picture ID must be requested from voters who request their ballot in person. Voters without picture ID in their possession may sign the Affidavit of Picture ID and receive a ballot. Picture ID isn't requested if the person applies for the AV ballot by mail.
- AV voters that need an AV ballot reissued, either because they spoiled their ballot or it wasn't received, must make a signed request (by mail, email, or in person) to the clerk for a new ballot to be issued.



## Testing Voting Equipment – a Vital Piece of Security



Preliminary equipment testing should begin soon. Local election commissions are responsible for conducting accuracy tests in accordance with the procedures established by the Secretary of State. (MCL 168.794a(3), 798). The Bureau advises clerks to conduct testing before the bulk of ballots are issued, but it is not necessary to conduct testing before any ballots are issued. For example, if a voter makes a request for an in-person absent voter

Election mail may be sent to registered voters who are inactive or who are on a “verify” or “challenge” status because a clerk has received information indicating that the voter may not be eligible. Voters on an inactive, verify, or challenge status are eligible to vote. However, voters with a verify or challenge status must confirm their eligibility in writing before being able to vote. Returning a complete, signed absent voter ballot application is sufficient to remove a verify or challenge status, but the clerk must, as always, review the application and signature before processing the application.

Consistent with United States Postal Service guidelines, the Bureau of Elections instructs residents who have received any election mail, including an absent voter ballot application, for an individual who no longer lives at that address to mark the envelope appropriately and put it back in the mail. Residents should write “no longer at this address” if the mail recipient no longer lives at the address, or “deceased” if the recipient is deceased. This will result in mail being returned as undeliverable. When undeliverable mail comes back to the Bureau of Elections, the Bureau will forward it to each local election jurisdiction as noted above.

Undeliverable mail is reliable third-hand initial evidence that a registered voter no longer lives at an address. Voter registration records cannot be canceled immediately based only on returned mail. However, you should begin voter list maintenance procedures based on this information.

## Residency

If you receive mail returned undeliverable that is marked “no longer at this address,” or another similar message such as “no longer lives here” or “return to sender – bad address,” first look up the voter in QVF. If the voter is already marked as “verify” or “challenge,” based on residency, no further action is needed. The voter will be canceled after the appropriate number of federal elections has passed.

If the voter does not have a “verify” or “challenge” status, send the voter an NVRA confirmation notice. If the NVRA notice is also returned undeliverable, mark the record as “challenge.” If the NVRA confirmation notice is not returned, the voter is placed on “verify” status. If the voter returns the confirmation notice and confirms in writing that the voter has moved, mark the record as canceled.

## Deceased

If you receive mail returned undeliverable that is marked “deceased” or something similar such as “died 2018,” you should first seek additional information to confirm that the individual has died. If you can confirm the individual has died based on county or state death records, a death

ballot, the clerk should issue the ballot even if testing has not been completed.

Ensure you are following proper testing procedures by reviewing the [Test Procedures Manual](#). In addition, courses are available in the eLearning Center. [This course](#) walks you through creating a test deck for a special election. Another helpful course is [Preparing for and Conducting the Preliminary and Public Accuracy Tests](#).

**Other Tasks:** During the testing process, BOE also recommends:

- Verifying the date and time - [time adjustment instructions](#) are available
- Verifying all equipment tamper-evident seal numbers with the seal numbers on file

**Test Decks Marked by a Printer:** If a test deck includes ballots marked by a printer and those ballots did not come from the stock that will be used on Election Day, at least three should be replaced and hand-marked with Election Day ballots. This ensures testing of both the program and Election Day ballots.

**Documenting the Process:** Remember, testing materials must be kept under seal and the seal numbers must be recorded. Use the [Tabulator Program & Security Certification](#) form and the [VAT Testing & Security Certification](#) form to aid in properly documenting this process. We have discovered at post-election audits that these forms are sometimes misplaced. A Promulgated Rule requires this form to be sealed into the testing

notice printed in a newspaper, or personal firsthand knowledge, mark the voter as canceled – deceased. You should not cancel a voter based solely on the envelope being marked deceased – you must have additional evidence or firsthand knowledge as indicated above.

If you are unable to confirm whether the individual is deceased, follow the procedures for residency above.

### Written confirmation from voter

You can also cancel a voter registration immediately upon a signed written request from a voter requesting cancellation. For example, if you have received reliable third-hand information that a voter has changed residency, and a family member also informs you that a registered voter has moved from the state, you can inform them that the voter is in (or will be placed in) the cancellation process and will be removed after the appropriate number of federal elections have passed. However, if the voter wants to be canceled immediately, he or she can send you a signed, written request to cancel the registration.

### Instructions to residents who receive mailings

If a voter contacts you and says he or she has received election mail for another individual, instruct the resident on the proper procedure for marking the envelope and placing it back in the mail. [This document](#) is also available on eLearning:

If you receive election mail – such as an absent voter ballot application or a notice of a change in polling place – for a resident who no longer lives at the address to which the mail was sent, take the steps below to inform your local election clerk. Voters can receive absent voter ballots only after they have submitted a signed application and the clerk has reviewed the application, including the signature. An application being mailed to an out-of-date record does not mean that person will get an actual ballot. However, by informing your local clerk that a registered voter no longer lives at the address, you can help election officials maintain the voter registration list and keep it up to date.

(1) If the voter has moved, write “no longer at this address” on the envelope and place it back in the mail. Your election clerk will then send a confirmation notice to the voter, as required by law. If the voter does not respond to this notice and does not have other voter activity for a period of two consecutive federal elections, your clerk will cancel the voter registration. The clerk will also place the voter on a “verify” status, which requires the voter to fill out a form confirming eligibility before voting. If a voter wishes to have his or her registration canceled immediately, the voter can make a signed, written request to cancel the registration to the local clerk.

container and BOE recommends keeping an additional copy on file in the office.

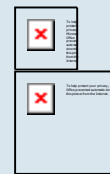
The Public Accuracy test must be conducted by a quorum of the election commission no later than Thursday, July 30. The meeting must be posted at least 48 hours before the test (MCL 168.798) and held in accordance with the Open Meetings Act.

### Important Notice to Jurisdictions Using 3rd Party Vendors for Testing:

If you are using the same vendor that programmed the county’s memory devices to prepare the test deck and/or conduct the preliminary testing, the election commission must also complete the Election Commission Certification form at the public test.

Designating a single vendor to create and then test the performance of memory cards they programmed removes critical checks and balances from the logic and accuracy testing process. The integrity of the testing process may come into question if one party is responsible for both developing and testing the accuracy of the program.

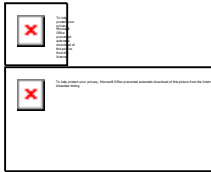
Note: A vendor isn’t an authorized assistant within the meaning of the election law or corresponding administrative rules.



### August MOVE Compliance Report Reminder

You must log in to QVF and complete the survey pop-up that appears.

(2) If the voter has died, write “deceased” on the envelope and place it back in the mail. Your election clerk will review the record as required by law and will cancel the voter registration record upon confirming that the voter is deceased. If you have information confirming the voter is deceased such as a county health office record or an obituary, you may provide that information to your local clerk if you choose to do so. If you choose to do this, provide a copy – not the original document.



## Accessible Absent Voter Ballot Options

Voters who have requested absent voter ballots prior to June 25, the 40<sup>th</sup> day before the August 4 election, should be issued absent voter ballots on June 25. Additionally, starting on June 25, voters may request absent voter ballots in person and be issued absent voter ballots in person. Whether requesting an absent voter ballot in person or by mail, clerks should be prepared to ensure voters with disabilities have accessible options for marking these ballots.

During hours in which absent voter ballots are issued in person, clerks should have Voter Assist Terminals available in the event that a voter would like to use the VAT to mark in in-person absent voter ballot. VAT's should be available when in-person AV ballots are issued whenever possible.

Additionally, as discussed in last week's news update, voters will have an additional option for an accessible absent voter ballot starting in August. Under a federal court settlement, the Bureau of Elections has developed an electronic absent voter ballot that voters with disabilities may mark remotely using assistive technology. The voter can then print the ballot and mail or deliver the ballot to the clerk. These ballots should be processed in the same manner as printed ballots sent by military and overseas (MOVE) voters.

Voters with disabilities will be able to apply for an accessible electronic absent voter ballot by completing a specific accessible AV application that will be available on the Bureau of Elections website. Voters may submit applications on paper or electronically. When a voter submits an accessible AV application to the local clerk, the clerk will issue an accessible AV ballot to the voter electronically.

The accessible ballot is available in the Qualified Voter File (QVF) AV Details screen. Clerks can fulfill the accessible ballot request by downloading the ballot and returning it as an attachment to the email request, similar to the MOVE

To make the reporting process more efficient, the ballot sent dates recorded in QVF will be used to report ballots sent on time and ballots sent after the 45-day deadline. Once you confirm the total military and overseas voters count in the QVF, we will report the required information to the appropriate entity.

If you haven't submitted this report, please log in to the QVF and complete it now.

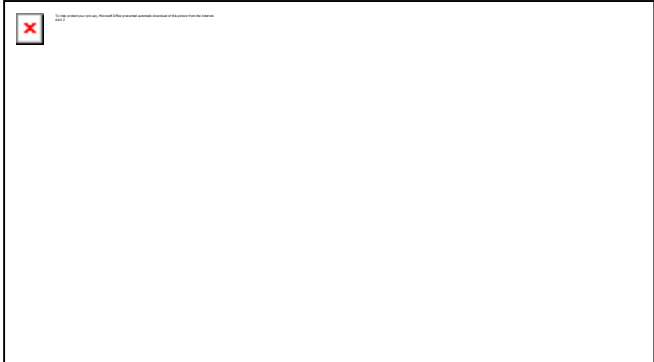
Ballot process. The ballot is laid out in a linear fashion to ensure that it reads well with the accessible software used by voters with disabilities.

The process is outlined below:



Below are the details:

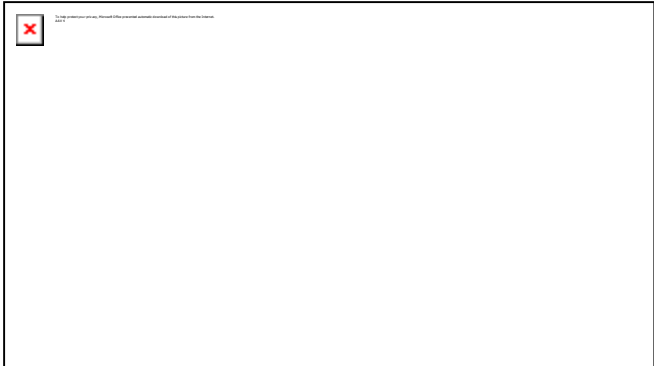
- 1. Within AV Details, check the ACCESSIBLE box



- 2. Click the ACCESSIBLE BALLOT button



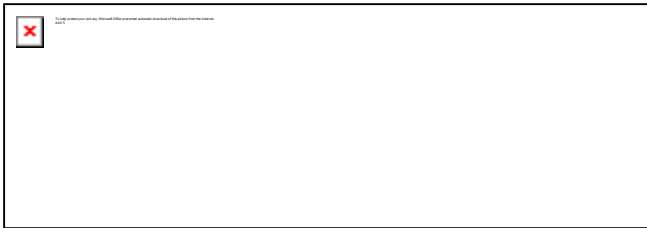
- 3. When the ballot is ready, click OK



Click to edit this placeholder text.

4. A PDF file of the accessible ballot will open. Save this file to your computer temporarily so that you may attach it to the email to be sent to the voter.

a. As an alternative, if you have a default email program like Outlook, you can click the SHARE button and it will create an email with the file attached for you.

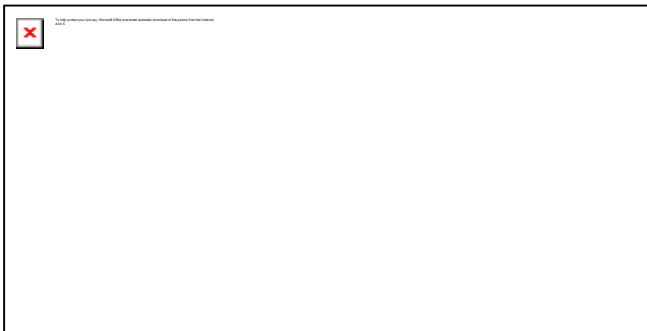


5. Don't forget to record the ballot in AV Details

a. Ballot Number: Use the letter "A" as a prefix to a ballot number, like when you record a MOVE ballot.

b. Delivery Method: Email

c. Email Address



We expect the accessible AV application and accessible AV ballot to be available as soon as Friday, June 26. Under the court settlement, this is an interim process that will be replaced by a permanent accessible remote ballot-marking solution starting in November, which will be implemented following a public bidding process.



Questions? Please contact the Bureau of Elections at 1-800-292-5973 or [elections@michigan.gov](mailto:elections@michigan.gov).

The Bureau of Elections News Update will always be sent to the Clerk and Deputy Clerk email accounts. If other election administrators would like to receive this newsletter as well use the Subscribe link below to have it sent directly to another email account.

It is recommended that you add [misos@govsubscriptions.michigan.gov](mailto:misos@govsubscriptions.michigan.gov) and [MISOS@public.govdelivery.com](mailto:MISOS@public.govdelivery.com) to your safe senders list.



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