

CHAPTER 5: MICHIGAN'S ELECTION ECOSYSTEM

STATEWIDE STABILITY, BUT LOCAL VULNERABILITIES

ALTHOUGH MICHIGAN has generally experienced fewer election administration problems than Ohio or Illinois, Detroit has been the scene of some serious voting problems in recent years. Detroit's problems include an inability to recount its absentee ballots in its 2005 municipal primary election, followed by misconduct in collecting absentee ballots in the 2005 municipal general election. Among other misconduct in that election, publicly financed "ambassadors" assisting certain absentee voters were observed advising absentee voters about which candidates the voters should pick, and the city clerk disobeyed a court order concerning the distribution of absentee ballot applications, for which she was held in criminal contempt.¹ Meanwhile, elsewhere in the state political parties have occasionally traded allegations of voter intimidation or other improper conduct as well.² Nevertheless, most parts of Michigan's election ecosystem have been functioning relatively smoothly of late. At the same time, aspects of the state's ecosystem remain vulnerable, and some potential problems could be compounded by the role that today's deeply divided state supreme court would play in election litigation.

In this chapter, we describe the following essential characteristics of Michigan's current election ecosystem: the predominant role that municipal officials (mostly elected), rather than county officials, play in administering Michigan elections; the healthy working relationship that exists between state and local election officials; the state's decade-old "Qualified Voter

File," which now serves as Michigan's HAVA-compliant statewide voter database and which has been a model for other states; and a uniform system of optical-scan balloting now in use throughout the state. We also offer a summary of the state's most serious recent voting problems, primarily in Detroit. Notably, Detroit's mishandling of absentee ballots in that city's 2005 municipal election was only the culmination of years of concern about the city's election administration, and public attention to its problems that year precipitated the downfall of Detroit's three-term city clerk. Although Detroit appears to be in better shape today, with its elections under the administration of a new city clerk, it retains some of the preconditions that may have contributed to its earlier problems.

Accordingly, in this chapter we also look ahead to some changes and challenges on the horizon for Michigan elections. First, the Michigan Secretary of State has introduced her own election reform agenda, which merits a brief overview. In addition, Michigan is now implementing a nascent voter ID requirement that had been on hold for a decade until the state supreme court, divided on party lines, approved it earlier this year. Its implementation is providing a new opportunity for Michigan citizens to debate whether the main effect of an identification requirement is to protect the integrity of the vote, or instead is to discourage some citizens from voting. The partisan split in the state judiciary over this issue also highlights a concern over whether Michigan is prepared

to handle potential election litigation in a manner that will inspire public confidence. Meanwhile, the state's decentralized approach to election administration may help elections to run smoothly on Election Day, but it also may continue to leave some localities vulnerable to corruption akin to the problems that recently plagued Detroit. And Michigan, like other states, must confront the increasing difficulty of grooming and training an adequate number of poll workers.

SOME BACKGROUND

While still more of a national bellwether than Illinois, Michigan today is less typical of the nation than is Ohio. Both before and after it became a state in 1837, Michigan developed with stronger ties to New England and the northeast United States, and weaker ties to the south. As part of its New England heritage, Michigan's political institutions developed with a tradition of local self-government built around a township structure (as did all the other states of the Northwest Territory, including Ohio, Illinois, and Wisconsin).³ But in Michigan more than in many other states, townships remain the dominant political structure today,⁴ which helps to explain why Michigan elections are administered primarily at the township (or municipal) level, rather than at the county level.

Detroit, with over 800,000 residents, is by far the state's largest municipality, dwarfing the second largest city, Grand Rapids, which has a population of under 200,000.⁵ A number of smaller cities and towns then combine with many townships to encompass the state's ten million residents. However, Detroit is no longer the thriving industrial center that it

once was. Instead, Detroit has been steadily losing population for several decades, and has recently become the country's poorest city,⁶ as Michigan has found itself squarely among the rest of the economically struggling "rust belt" states.

Michigan's early growth was heavily influenced by its natural resources, particularly its forests, furs, and ores, as well as its position on the Great Lakes. Eventually its resources and geographic position gave rise to transportation routes that helped to spur the state's manufacturing economy, including most predominantly the Detroit auto industry.⁷ In turn, this economic engine prompted waves of dramatic immigration to the state, including a substantial wave of African-Americans, as well as Southern whites, to the Detroit area in the early and mid twentieth century;⁸ the development of interest groups and a thriving union movement;⁹ and a number of accompanying voter mobilization efforts.¹⁰ In recent presidential elections, voting turnout has hovered at around sixty percent of the state's voting age population (some five percentage points above the national average), although in 2004 the turnout was sixty-five percent (also more than five percent above that year's national average). Table 4 contains voter turnout data for the past four federal elections in all five of our studied states.

As an example of one type of voter mobilization effort, in 1975 Michigan was the first state to implement a "motor-voter" program. This program permitted residents to complete an application to register to vote at the same time that they were obtaining a state driver's license at any of the secretary of state's branch offices around the state. Then-Secretary of State Richard Austin became known as the father of

the motor-voter concept for championing this approach as a means of facilitating the registration of the state’s eligible voters. Many other states followed, and Congress then expanded upon this concept in the 1993 National Voter Registration Act, which requires all states to permit eligible voters to register to vote at any of a variety of public agencies and offices around each state.¹¹

In a more recent Michigan reform, in 2003 state and local elections officials worked with state legislators to pass a package of bills that consolidated a variety of local and school district elections into only four potential election dates each year (not including certain special elections).¹² The consolidation measures, which became effective at the beginning of 2005, also standardized the location of a voter’s polling place for all elections. Local election officials have welcomed this reform for bringing increased efficiency, predictability, and uniformity to all Michigan elections.

Also shaping Michigan’s election ecosystem is that its political culture, in the rubric of politi-

cal scientist Daniel Elazar, is usually described as primarily a “moralistic” one (along with Wisconsin and Minnesota), with secondary elements of an “individualistic” culture (the political culture that predominates in Ohio and Illinois).¹³ In Elazar’s typology, a moralistic political culture is one in which government is viewed as a commonwealth, bureaucracy is viewed favorably as capable of advancing the common good, and everyone is expected to participate in the community’s political affairs. Political competition occurs over issues and principles, more than over parties or ideologies, and it is appropriate for the government to play a role in any area in which it can enhance community well-being. By contrast, in an individualist political culture, government is valued for its ability to promote efficient private transactions, politics is characteristically a dirty business for professionals, and strong political parties compete to advance the interests of their members.¹⁴ Michigan’s moralist political traditions, among other influences, may help account for the professionalism with which its many local officials efficiently conduct elections, while its individualist political

TABLE 4
VOTER TURNOUT PERCENTAGES BY ELECTION YEAR
 (expressed as a percentage of a state’s voting-eligible population)

	2006	2004	2002	2000
ILLINOIS	40.6	59.86	41.43	56.2
MICHIGAN	52.2	66.36	44.45	59.9
MINNESOTA	60.8	76.82	64.09	69.9
OHIO	47.5	66.44	38.8	56.7
WISCONSIN	53.3	76.24	45.43	67.6
TOTAL U.S.	40.4	60.32	39.51	54.2

Source: United States Election Project, http://elections.gmu.edu/Voter_Turnout.htm.

traditions may partially explain much of the lingering finger-pointing and suspicion that surrounds some aspects of the state's election ecosystem, and perhaps also the current partisanship in the state judiciary.

PREDOMINANT ROLE OF MUNICIPAL OFFICIALS

Michigan's system of election administration depends most heavily on municipal officials, assisted by both state and county officials. Both in geography and population, Michigan is the largest of the eight U.S. states that today place responsibility for conducting elections primarily at the municipal level.¹⁵ Specifically, this means that some 274 city clerks and 1,242 township clerks, rather than officials in Michigan's eighty-three counties, are primarily responsible for the actual administration of Michigan elections, as well as for maintaining the voter registration records for voters registered in their individual jurisdictions. Their particular responsibilities include preparing and maintaining the voting equipment; recruiting and supervising a cadre of precinct "election inspectors," or poll workers, for each election; and processing voter registration applications, as well as purging outdated registrations from the roster of voters. Township clerks are all elected in partisan contests,¹⁶ while city clerks may be either appointed or elected, typically in nonpartisan races, depending on the nature of the city's charter.¹⁷

In addition to the city and township clerks, each municipality also maintains a three-member city or township board of election commissioners. A city board of election commissioners consists of the city clerk, the city attorney, and the city assessor, while an un-

chartered township board consists of the township clerk, the township supervisor, and the township treasurer.¹⁸ These election commissions are responsible for dividing their jurisdiction into precincts, assessing the need for election materials, including voting machines and ballots, and formally appointing precinct election inspectors. Communities with more than five voting precincts also are to have a city or township board of canvassers, composed of two Republicans and two Democrats, to canvass elections conducted by the local jurisdictions, although the current practice in most municipalities is to take advantage of a statutory provision that instead allows them to contract with their county board of canvassers, described more below, to canvass their election results.¹⁹

These municipal officials conduct their duties under the supervision – but not control – of the Michigan Secretary of State, who is elected on a partisan ticket for a four-year term. As the state's chief election officer, the secretary of state supervises all election-related issues in the state, but has no authority to terminate the local officials. As a matter of law, however, local officials are expected to comply with the secretary's directives concerning election administration. Indeed, more than four decades ago, the secretary of state sought an injunction to force a county board of election commissioners to follow the secretary's orders, and the state supreme court held that the county board had a legal duty to follow these orders.²⁰

Also supervising elections at the state level is the Michigan Bureau of Elections, a division of the secretary of state's office. The bureau is headed by the state elections director, who is appointed by the secretary of state as a civil

service appointee.²¹ A four-member board of state canvassers, appointed equally from both major political parties by the governor, with the advice and consent of the state senate, is responsible for canvassing returns for statewide offices, as well as for preparing ballot language on initiative measures. Partisan conflict in how this board has handled several recent ballot initiatives has prompted the secretary of state to propose “professionalizing” the board by requiring that at least one board member of each party have prior election administration experience.

In between these state officials and the municipal officials, all eighty-three Michigan counties also have their own election administrators.²² Specifically, each county has an evenly bipartisan four-member board of county canvassers, responsible for certifying elections held in the county; a board of county election commissioners, responsible for printing ballots and distributing voting materials to each municipality; and county clerks, responsible for receiving from the local precincts all of the canvass petitions for elected offices within the borders of their respective counties, and for running the formal training program for poll workers.²³ But it is the municipal officials, rather than these county officials, who conduct voting operations at the polling places and are responsible for precinct-level vote counting.

RELATIONSHIP OF MICHIGAN’S VARIOUS LEVELS OF ELECTION ADMINISTRATORS

Michigan’s municipal clerks report a high level of satisfaction in their relationships with the state bureau of elections, and in particular with the current elections director, Christopher

Thomas. The bureau is seen as responsive and professional, and ready to provide advice in a timely manner. Local elections officials report with approval that Thomas himself sometimes answers many inquiries directly, typically within days and often even the same day that local officials seek his input.

This healthy relationship is partly the result of a conscious effort by the municipal clerks to develop a constructive dialogue, primarily through the Michigan Association of Municipal Clerks (“MAMC”).²⁴ MAMC is an active organization of approximately 900 clerks and deputy clerks from cities and townships throughout Michigan. To help it address matters of election administration, MAMC and its counterpart the Michigan Association of County Clerks have a Council of Elections Officials, consisting of approximately a dozen members drawn equally from both counties and municipalities, which meets regularly (typically once a month). MAMC also has both a legislative committee and its own lobbyist, which together give the association a meaningful voice in the state capital. In the ten years since the MAMC’s creation, its members have developed a number of credible relationships with state legislators and have worked together on a number of election administration reforms, including the election consolidation measures adopted in 2003, described above, and a measure adopted in 2006 advancing the deadline for filing as a write-in candidate from the Friday before an election to the second Friday before an election, to give local administrators more time to prepare for Election Day.²⁵ In addition, the MAMC has worked deliberately and successfully to build a strong partnership with the state bureau of elections, including Thomas, and to develop a unified re-

sponse to current Secretary of State Terri Lynn Land's election reform agenda (discussed further below).

The healthy relationship among the various levels of Michigan election administrators is also a product of the relative stability of the leadership at the bureau of elections. Director Thomas has been the head of this bureau for over twenty-five years, providing professional service to three Michigan secretaries of state (of both major political parties) and ensuring continuity in the state's election processes. In doing so, he was able to build upon the continuity and local relationships established by his predecessor, Bernie Apol, who had served as the state's elections director for the previous fifteen years. Today, Thomas has a national reputation as an effective elections administrator and is frequently consulted by Congress and other states. He also serves on the U.S. Election Assistance Commission Board of Advisors, and has previously served as the President of the National Association of State Elections Directors. Meanwhile, the bureau of elections has a history of providing effective training materials and helpful interpretive memoranda to local officials, and since 2004 has issued a series of concise, informative newsletters concerning election administration issues in the run-up to each election.²⁶

QUALIFIED VOTER FILE

One of Michigan's most notable election administration features is its Qualified Voter File ("QVF"). The QVF, which Michigan implemented in 1998, is a statewide database containing the name, address, date of birth, driver's license or state ID number, voting history, elec-

tronic signature, and voting district information for every registered voter in the state.²⁷ Given Michigan's leadership in establishing a "motor voter" program, it was perhaps natural for Michigan also to be at the forefront in establishing a statewide voter list, although in part it was the passage of the National Voter Registration Act of 1993 that spurred Michigan to create the QVF.

The QVF is accessible to election officials by secure Internet connection in every county office in the state, as well as in most cities and townships that have secure Internet capabilities. At the outset, the state supplied QVF hardware and software to all municipalities with a voting-age population of at least 5,000 people, while a number of smaller municipalities also initially acquired QVF access at their own expense. From the beginning, municipalities without adequate technological capabilities to access the QVF instead have been able to use their county's QVF hardware, and since 2006 the secretary of state's office has offered a streamlined system called "QVF Lite" that any municipality with a desktop computer and Internet connection can access.

When a municipal or county clerk receives a completed voter registration application, the clerk enters the application information into the QVF, where it is compared with information from the Michigan Driver's License database. If the information from both files matches, the voter is registered. If information about a voter's residence in a voter registration application conflicts with information from the department of motor vehicle's records, then the most recent information takes precedence.²⁸ If other information does not match, the record is sent to an error processing file and the voter may need to correct the inconsis-

tencies in the information before being allowed to vote.

At least eighty percent of Michigan voters register and update their voter registration as part of a driver's license transaction. The QVF automatically updates according to changes made in such a transaction.²⁹ If the transaction provides information that the voter moved out of the particular jurisdiction where the voter was registered to another jurisdiction in the state, the voter's registration is transferred to the new jurisdiction.

Michigan's QVF system was a model for HAVA's statewide database requirement. The Carter-Ford Commission, in recommending in 2001 that all states implement a statewide voter database, described Michigan's QVF as one of two "outstanding" examples of such a system, and the one deserving careful consideration because "any state can copy it" and it was relatively inexpensive.³⁰ However, the Brennan Center has opined that despite the QVF's position as a HAVA model, its entirely mechanical algorithm for determining whether similar names in fact represent the same individual is less flexible than some alternatives, and therefore may produce more database errors.³¹ In particular, typographical or other data entry errors in some fields, which could be caught through more flexible algorithms, may instead result in flagging a voter registration application as not matching the state's driver's license records. In response, Michigan officials report that after the mechanical algorithm identifies mismatches, election officials make every effort to resolve the discrepancies manually.

Other aspects of the organization of the QVF also merit brief description. The QVF system can correlate voter registrations with the zon-

ing laws, allowing it to know when someone tries to register with an address that is zoned for business. The QVF also is coordinated with Michigan's "Master Death File," a database keeping track of the deceased in the state. If someone's name is added to this database, the QVF will automatically remove them from the QVF database.³² According to the Secretary of State's office, names of some 296,000 deceased voters have been removed from the QVF since 2004.³³

At the same time, Michigan's list, like most statewide lists, remains burdened by a number of "deadwood" entries, most of them lingering from the time the QVF was created, representing voters who likely had died, moved, or changed their names without the state receiving any confirmation of it. The result is that as new registrants are added, the list swells and sometimes the number of registered voters in the database approaches or exceeds the number of voting-eligible residents. Indeed, the large-scale purge that Michigan accomplished in 2004 was partly the result of pressure from the U.S. Department of Justice over the fact that in certain portions of the state the number of voters in the state's database exceeded the voting age population. In response to this federal pressure to clean up the list, the state defrayed the costs for municipalities to mail new voter identification cards to all registered voters, and then used the cards that the Post Office returned as undeliverable to help identify some of this deadwood. Nonetheless, state officials estimate that the QVF may still contain roughly one million excess entries. (While this is an astounding number by some measures, for purposes of comparison it is worth noting that in 2006, Ohio and Illinois had over 800,000 and

900,000 “inactive” registrations, respectively, in their statewide databases.³⁴ Michigan does not separately report its “inactive” registrations, but if it did the vast majority of its estimated one million excess entries would likely be in this category.)

One reflection of the positive role that the QVF plays in Michigan elections is the fact that Michigan issued only 5,610 provisional ballots in the 2004 election (3,227 of which were counted), and only 2,426 provisional ballots in 2006 (952 of which were counted), as shown in Table 1 (in Chapter 3). The low number of provisional ballots is undoubtedly a combination of several factors, including not only the state’s well-established and relatively accurate registered voter database, but also the fact that Michigan does not permit voters who have moved within the state to use a provisional ballot as a method of changing their registration status. Instead, in a practice not widely employed in other states,³⁵ a voter who has moved within a city or township and who appears at what would be the voter’s correct polling place had the voter properly completed the change of address process, but who has failed to complete that process, will instead be told to return to the precinct of the voter’s previous address to cast a ballot. There, the voter will also be asked to complete a change of address notice before voting. As for voters who have moved to a different city or township within Michigan, they also will be allowed to vote one last time in the precinct where they remain registered, provided they moved within sixty days of the election. Otherwise, they are ineligible to vote.

Another step that Michigan takes to reduce the amount of provisional voting is to help voters know their correct precinct. Since 2002, the

secretary of state’s office has maintained a “Voter Information Center,” a publicly accessible website that permits voters to access their QVF records and determine their correct precincts and polling locations. Finally, Michigan issues “receipts” to voters at the time that they register to vote, and a voter who presents this receipt at the polls is entitled to vote a regular ballot even if the voter’s name is not found on the rolls.³⁶ (The voter also completes a new registration form before voting.)

On a related note, the state permits a voter who claims to have registered but whose name is not found in the statewide database and who lacks the receipt just described also to vote a regular ballot, provided the voter signs an affidavit affirming that the voter did register before the registration deadline.³⁷ The voter must also complete a new registration application, and must provide photo identification that also confirms that the voter resides in that voting precinct. The voter then is allowed to cast a regular ballot, although in this case the ballot is marked as a “challenged ballot,” meaning that the poll worker writes an identifying number on the back of the ballot (which is also recorded in the poll book), and then conceals the number with tape, before giving the voter the ballot.³⁸ Because these ballots could in theory be removed from vote totals in the event that a voter’s ineligibility is established after the fact, the state formally classifies them as “provisional” ballots and includes them in its count of provisional ballots. In the 2004 and 2006 general elections, these ballots constituted approximately forty percent and twenty-five percent of Michigan’s total provisional ballots, respectively.³⁹

Michigan’s QVF took some time to mature,

however. In its early years, it experienced its share of technical glitches and substantive errors, as well as resistance from some local election officials. For instance, when the state began to implement the QVF, most local jurisdictions already had their own registration lists and systems, many of which had been specially designed for local needs. One early challenge therefore was finding a way to preserve some of these localities' custom features, such as municipalities that already maintained electronic files of all of their voters' signatures, which they did not want to abandon. Local administrators report that the state worked with them to address these concerns. The state also had to deal with the fact that the local registration lists were in some 800 different formats, varying in their degree of accuracy, which could be merged only through a painstaking conversion process. Another challenge was to develop out of whole cloth a statewide street index that could map every residential address onto its assigned precinct.

Additionally, when the state first established the QVF by combining existing local lists into a state master, the state list initially contained hundreds of thousands of duplicate entries, resulting from the presence of identical voters' names on the lists of multiple jurisdictions. Although part of the purpose of a statewide list was to find and cull these duplicate entries, that process did not occur overnight or without difficulties. In the early stages of implementing the QVF, local clerks often took a variety of different approaches to such matters as the standards for determining what constituted duplicate entries, and it took some time and dedicated effort to develop uniform procedures. But by 1998, some 800,000 duplicate entries

had been removed. And by 2005, when a leader of the MAMC asked local officials for their views about the QVF, no one expressed an interest in doing away with it. Here again, one key to overcoming the early implementation issues likely was the healthy working relationship between the local officials operating many aspects of the system and the state administrators overseeing it.

PRECINCT-COUNT OPTICAL SCAN VOTING NOW UNIVERSAL THROUGHOUT MICHIGAN

In addition to its statewide database, Michigan also has now moved to a uniform statewide voting system. In 2002, somewhere in Michigan each of five types of voting systems were in use: optical scan ballots, direct recording electronic ("DRE") voting machines, punch card ballots, lever machines, and paper ballots.⁴⁰ That year, the Michigan legislature enacted a provision of the state election code mandating that the secretary of state select a uniform voting system to be used throughout the state, provided that federal funding became available to defray the substantial transition costs involved.⁴¹ HAVA then provided the necessary funding.

The previous Michigan secretary of state had recommended moving to a uniform statewide voting system in the mid 1990s, but encountered resistance both because the state lacked the funding to do so and because at the time some feared that such a move would require all jurisdictions to use a particular vendor's equipment, not just a uniform type of voting system. The 2000 election, coupled with Congress' interest in providing federal funds for states to upgrade their voting equipment, caused Michigan to take up the challenge anew. Moving to a uniform statewide voting

system was expected to ease administrative burdens on county and state election officials, reduce errors associated with the preparation and printing of a variety of ballot materials, eliminate a “technology gap” that existed in voting systems around the state, decrease the ongoing costs of running elections, and help voters and poll workers who moved within the state and otherwise might need to adjust to a different voting technology.⁴²

Relying on the guidance of the state’s Help America Vote Act advisory committee, in August of 2003 Secretary of State Terri Lynn Land chose as Michigan’s uniform voting technology an optical scan voting system using precinct-based counting equipment.⁴³ One factor influencing the choice of this system was that sixty-five percent of the state’s precincts were already using precinct-count optical scanning equipment. But also influencing Michigan’s choice were a number of other perceived advantages, including the ease with which voting on optical scan ballots can be scaled up for elections with large turnouts simply by printing extra ballots (in contrast to DRE voting, which can accommodate larger turnout only through deploying additional DRE machines), and the fact that optical scan ballots are themselves a physical paper trail that both reassures voters that their selections will be properly counted and provides a reliable means of hand recounting disputed results. A primary disadvantage of optical scan ballots that Michigan recognized it would need to overcome was the system’s comparative difficulty in accommodating the needs of some disabled voters. But other minor disadvantages, discussed below, also have subsequently materialized.

The state then certified three private vendors – ES&S, Diebold, and Sequoia – from whom each county could purchase precinct-count optical scan voting systems for the county’s polling places.⁴⁴ Although jurisdictions that had already purchased new equipment within the past eight years were given ten years from the date when they acquired their previous system to comply with the uniform system, in fact by the August 2006 primary election all precincts in the state were using the uniform precinct-count optical scan system.⁴⁵ In May of 2006, the state also chose to accommodate disabled voters by using federal funds to acquire an AutoMARK™ machine for each of Michigan’s roughly 4,000 polling places.⁴⁶ AutoMARK™ machines are ballot-marking devices that prepare a regular optical scan ballot by allowing a disabled voter to interact with the machine through a combination of touch screen, Braille keypad, headphones, or the voter’s own sip/puff device or foot pump. Once the AutoMARK™ machine prints the completed ballot, the ballot then is cast by inserting it into the regular scanning device for the voter’s precinct. The state had mixed success with the AutoMARK™ machines in their inaugural election, as some of the equipment did not perform as smoothly as expected.⁴⁷ The state believes that the vendor has now addressed the problems that arose in 2006, although the upgraded devices themselves must still be retested when fully configured to operate with each polling place’s entire optical scan system. Meanwhile, some legal issues remain (and are being litigated in California⁴⁸) about whether AutoMARK™ equipment provides a sufficient accommodation for all disabled voters, given that even using the AutoMARK™ machine, some disabled voters may continue to require assistance to vote.

Today, state election officials appreciate having a statewide voting technology, which streamlines their ability to oversee and assist local election administrators. Meanwhile, Michigan's local election administrators also seem generally satisfied with the state's move to uniform equipment, although they note that the state's choice of optical scan ballots means that last-minute changes to the ballot are now much harder to accommodate than under either punch card or DRE systems (in which case only the voting machines need adjustments, rather than the ballots themselves, which must all be reprinted prior to the election). Local officials also murmur about the burdens associated with optical scan ballots, noting that they are expensive to print, heavy to transport, expensive to mail to absentee voters, and sensitive to humidity and moisture.⁴⁹ Finally, they note that the precinct-count feature of optical scan ballots does nothing to reduce the residual voting rates for absentee voters (although DRE technology similarly provides no residual voting rate improvements for absentee voters). Augmenting the absentee voting process with an early voting option at clerks' offices might partially ameliorate this disadvantage, although local Michigan election officials express greater interest in adopting some form of no-reason absentee voting. While no-reason absentee voting, simply by increasing the amount of absentee balloting, would reduce Election Day crowds at the polls, it also would increase the potential for undetected residual voting.

But at least for the short term, Michigan appears to have achieved a relative degree of stability in its voting technology. In contrast to states using DRE technology (for which lingering concerns about software tampering, or the

viability of voter verifiable paper audit trails, render it currently vulnerable to legislative or administrative demands for replacement or upgrades), Michigan faces a comparatively low risk that it will need to scrap its entire system, provided that its AutoMARK™ equipment is able to accommodate disabled voters effectively.

MICHIGAN'S RECENT ELECTION ADMINISTRATION PROBLEMS

In the 2004 election, a record high turnout resulted in long lines at some polls, although nothing like the lines in Ohio.⁵⁰ Meanwhile, in Detroit, political parties skirmished over the activities of poll watchers, and in a prelude to the 2005 election described more fully below, the city clerk's office fended off allegations of manipulating and improperly handling absentee ballots.⁵¹ Problems of voter intimidation and disruption, primarily associated with the activities of polling place challengers and monitors, occurred in many precincts. Scattered reports of deceptive practices came in from other locations as well, including allegations that some absentee voters received phone calls giving them a false address for the return of their absentee ballots.⁵² And litigation, akin to that in Ohio, arose over whether HAVA required provisional ballots cast in the wrong precinct nonetheless to be counted.⁵³ (In an appeal of a case from Ohio, the U.S. Court of Appeals for the Sixth Circuit ultimately answered "no" to this question, in a ruling that also applies to Michigan.⁵⁴) But overall the election was relatively smooth.

In the 2006 election, with the entire state now uniformly employing precinct count optical scan ballots, Michigan again experienced a few

isolated problems. For instance, notwithstanding the hypothetical ease with which optical scan voting can be scaled up to accommodate heavy turnout, some precincts in Thomas Township (in Saginaw County) still ran short on ballots, and had to supplement them with photocopied ballots that then had to be hand-counted (which is still a more practical solution to unusually high turnout than trying to deploy additional DRE equipment, in a state using touch-screen voting).⁵⁵ In neighboring Saginaw Charter Township (also in Saginaw County), moisture caused some ballots to expand, leading some of the scanning machines to jam.⁵⁶ In other places, poll workers also committed occasional errors, such as distributing a school district ballot to voters who did not live in the school district.⁵⁷ And in response to allegations that Democratic poll challengers wearing vests that said “Don’t Leave Without Voting. I Can Help You,” were misleading voters into thinking that the challengers were election officials, one court issued an injunction prohibiting poll challengers from initiating contact with voters.⁵⁸ Meanwhile, election administrators described generally heavy burdens involved in complying with key HAVA requirements on a relatively short time line, particularly in preparing new voting equipment for use and subjecting it to thorough pre-election calibration and testing. But with the exception of one precinct that reportedly opened a few minutes late,⁵⁹ none of the 2006 problems prevented voters from voting, or called into question the outcomes of any races.⁶⁰

Instead, Michigan’s most serious election administration problem in recent history occurred in the 2005 Detroit municipal election. There, although some allegations surfaced that election workers made clerical mistakes at the

polls on Election Day, as well as in recording voter information to the QVF,⁶¹ by far the most serious problems concerned the city’s handling of its absentee voting. Detroit, which has a record of absentee voting in local elections at a rate of over thirty percent, or more than twice the national average (and also well above Michigan’s statewide average of about twenty percent),⁶² had been dogged by claims of improprieties in its absentee voting for a number of elections before 2005. That year, a variety of irregularities in how the city clerk’s office handled absentee balloting came to light after two city council candidates sought a recount of the August 2005 primary election’s absentee ballots.

As a prelude to problems with the recount, Detroit had some difficulty completing the canvass of its primary election.⁶³ The official results then contained irregularities in many poll districts, primarily in the form of discrepancies between the number of ballots cast and the number of voters who applied to vote. In addition, many absentee ballot boxes no longer had intact seals, as required to comply with the critical chain-of-custody procedures necessary to protect the integrity of the voting process. When the Detroit city clerk, Jackie Currie, was unable to explain these discrepancies, county canvassers concluded that almost forty percent of the precincts subject to the recount could not be recounted.⁶⁴ One city council candidate then commenced a lawsuit in state court, and an FBI investigation also ensued.⁶⁵

As the November 2005 general election approached, the state court hearing the lawsuit cited Currie for criminal contempt of court when she defied the court’s order that she not send out absentee ballot applications for the

general election except to voters who had requested them. Despite the order (which the Michigan Court of Appeals affirmed in late 2007⁶⁶), she continued her practice of using an internally generated “permanent absentee voter” list to send out 150,000 such applications. She also continued to conduct an “ambassador” program, in which she sent paid assistants to nursing homes to help residents cast their absentee ballots.

Currie, who had been charged with absentee ballot fraud in 1964 along with her husband (who ultimately pleaded guilty to a reduced charge),⁶⁷ sought to defend both the sending of applications to the permanent absentee voter list, and the dispatching of ambassadors to help certain voters, as efforts to increase voter turnout and to provide assistance where it was needed. But in response to allegations that Currie’s ambassadors sometimes returned absentee ballots by hand or advised voters for whom to vote, and allegations that absentee ballots sometimes were addressed to vacant or abandoned buildings, were cast in the name of dead voters, or were filled out by poll workers after polls closed, the court appointed monitors from Wayne County and the secretary of state’s office to oversee Detroit’s absentee balloting at the general election. Several days before the election, the monitors testified that they had witnessed ambassadors encouraging absentee voters to vote for Currie, who was in her own bid for a fourth term as city clerk. The court then ordered Currie removed from the absentee voting process and tasked the Wayne County Election Commission with overseeing it instead.⁶⁸ In a dramatic repudiation of her conduct by the electorate itself, Currie thereafter was defeated at the polls by Janice Winfrey, by a margin of fifty-three percent to forty-seven percent.⁶⁹

State election officials generally regard the Winfrey administration as the dawning of a whole new day. At the same time, many other circumstances that surround Detroit’s elections have not changed. The city continues to serve a large population of absentee voters, many in group homes, a circumstance ripe for both nefarious and inadvertent vote manipulation. The fact that the city’s population is the poorest in the country may only compound these risks, to the extent that absentee voters, as well as volunteer election workers, can be induced to commit election fraud in exchange for some personal financial benefit. Meanwhile, Detroit’s portion of the Qualified Voter File remains in need of correction, although the clerk’s office is now making this more of a priority than did the previous administration, and has implemented an active file maintenance program.

UPCOMING CHANGES AND CHALLENGES

While some aspects of Michigan’s election ecosystem, including its “motor voter” approach to voter registration and its early implementation of a statewide database, are functioning smoothly enough to have served as models for other states, the state’s ecosystem continues to evolve. To her credit, Secretary of State Terri Lynn Land has noted that “keeping Michigan elections contemporary requires constant attention and vigilance,” and to that end she put forward a twenty-point election reform agenda as part of her 2006 re-election campaign.⁷⁰ In addition, the state is now working to implement a controversial voter identification statute that had been dormant since it was passed in 1996, at the same time that the U.S. Supreme Court is considering the constitutionality of Indiana’s analogous but more

stringent voter identification requirement. Meanwhile, other challenges to Michigan's election ecosystem are on the horizon.

Secretary Land's Reform Agenda. Secretary Land's twenty-point plan includes several measures related to absentee voting, several measures related to the state's roster of registered voters, several measures involving polling place operations, several measures addressing post-election canvassing and recounts, and several miscellaneous measures. With respect to absentee voting, Secretary Land proposes: allowing first-time voters who register by mail to vote by absentee ballot, rather than being required to vote in person, provided they make some personal appearance elsewhere to verify their identity; instituting early in-person voting; clarifying the kinds of help that election assistants can provide to absentee voters; eliminating the notarization requirement for overseas absentee ballot applications (recently enacted); and establishing permanent absentee voter lists, limited to only those voters who request to be included on the list. Her proposals related to the state's registration list include: regulating third-party registration drives; saving administrative expense by creating a roster of "inactive" voters, consisting of voters whose confirmation notices are returned as undeliverable but who cannot yet legally be purged from the registration list under the National Voter Registration Act (which requires two federal elections to pass without voter activity before a voter can be purged); and pre-registering voters at age 16, as part of the state's program for young drivers, and then automatically adding them to the QVF on their 18th birthday.⁷¹

Secretary Land's proposals concerning polling place operations include: creating an electronic

poll book to expedite voter check-in; experimenting with "voting centers" or "super precincts" that would reduce the number of polling places and allow voters to vote more conveniently; clarifying permissible Election Day activities near polling locations; and implementing a photo identification requirement, discussed further below. Her post-election reform proposals include: revising the qualifications for serving on the Board of State Canvassers; giving increased authority to the county boards of canvassers; conducting random audits of individual precincts; and creating uniform statewide rules for conducting local recounts.⁷² A number of Secretary Land's proposals have found sponsors in the state legislature, but in most cases their future prospects are unclear, with the most important exception being the implementation of a voter identification requirement.

Michigan's "New" Voter Identification Requirement. Secretary Land's interest in implementing a voter identification requirement received a dramatic boost in July 2007, when the Michigan Supreme Court upheld the constitutionality of the state's decade-old voter ID law. The law, enacted by the Republican-controlled legislature in 1996, had never been implemented because the state's Democratic Attorney General at that time deemed it unconstitutional and suspended the law before it became effective. In 2005, the Michigan legislature re-enacted a revised version of the photo identification requirement, slightly altered to permit the use of digitized signatures in the state's Qualified Voter File, and in February 2006 the Michigan House of Representatives requested an advisory opinion from the state court concerning the constitutionality of the new law. The court directed the state At-

torney General to file briefs both in favor and against the law. The Michigan Association of County Clerks filed a brief opposing the law.

In July 2007, the state supreme court issued a divided opinion upholding the law.⁷³ The five Republican justices found that the law did not constitute an impermissible poll tax or otherwise unduly impair the right to vote, because the law permits people without acceptable forms of identification to vote after signing an affidavit that they lack identification, and because the \$10 fee to obtain a state identification card can be waived for the elderly, disabled, and poor. The two Democratic justices on the court dissented, arguing that the law imposes a severe and unjustifiable burden on Michigan voters, a burden that disproportionately impacts the state's racial and ethnic populations, as well as the poor, elderly, and disabled.⁷⁴ They argued that voters who do not have identification and instead sign an affidavit of identity may be subject to a polling place "challenge" concerning their identity, a potential that may intimidate some voters from appearing at the polls.⁷⁵ One dissenter also argued that even those who were entitled to have the fee waived would face additional financial (and logistical) costs in obtaining the identification card, particularly in the form of procuring the underlying documents necessary to apply for the card, and that these burdens would disproportionately impact the poor, the elderly, and immigrants.⁷⁶

In response to the advisory opinion, Secretary Land issued instructions to implement the voter identification law. As required by the federal Voting Rights Act (because two townships in Michigan are subject to the preclearance requirement of section 5 of the Act),

Secretary Land sought preclearance from the U.S. Department of Justice of her implementing instructions. Her instructions concisely explain the identification requirement and the option of signing an affidavit in lieu of presenting photo identification. They also make clear that voters are not more vulnerable to challenge by signing an affidavit to meet the identification requirement than by presenting a photo identification. Instead, any challenge must be based on a specific reason to believe that a particular voter is not eligible to vote.⁷⁷

Although the association of county clerks had opposed the voter identification requirement, some local administrators have been eager to be able to ask voters for identification, in order to confirm that voters are who they say they are. Unlike in some other states, Michigan poll workers do not match voters' signatures when they appear at the polling place with signatures on file in the poll books obtained from the voters' applications to vote. Instead, prior to the identification requirement, most Michigan poll workers compared the address and birth date that the voters provided on their application to vote (which voters complete at the polls) with data found on the registration list. Accordingly, the new photo identification requirement will for the first time give poll workers this additional means of verifying each voter's personal identity. Other local election officials, however, are worried about the identification requirement adding to the time that it takes to process each voter, creating lines and potential delays at the polls. Only experience will tell whether the requirement complicates or eases the voting process, although Michigan is now developing an electronic poll book that would allow poll workers to swipe a voter's driver's license, potentially speeding the process. Also

unclear until the requirement is implemented is its impact on the number of provisional ballots that are cast, as well as counted, in a major election.

Meanwhile, the U.S. Supreme Court's consideration of the challenge to Indiana's much more stringent photo identification law is a wild card in predicting the impact of Michigan's identification requirement. The Indiana law is more stringent in that it lacks both Michigan's mechanism for helping indigent individuals to acquire an acceptable form of identification, and Michigan's option that allows individuals without identification to vote after signing an affidavit. Thus, if the Supreme Court upholds the Indiana law, the Michigan law presumably would have an easier time surviving a legal challenge. But if the Supreme Court invalidates the Indiana law, it will invite litigation over whether the less stringent Michigan requirement is also unconstitutional.⁷⁸

Foreseeable Challenges. In addition to the challenge of implementing the new voter identification requirement smoothly and sensibly, Michigan may need to address several other election administration issues in the near future. Two key issues are preventing a recurrence of the kinds of misconduct that have occurred in Detroit, and finding and training an adequate number of poll workers. Meanwhile, the state's currently politicized judiciary leaves the entire election ecosystem vulnerable in the event that any critical matter of election administration, including an election contest, were to end up in court.

Reliably preventing a recurrence of Detroit's recent problems is a complicated task. The problems likely reflect a combination of fac-

tors, at least including insufficient training of election workers, inaccurate voter registration lists, and sloppy practices. They may also be a reflection of a culture of corruption, and of the power that an elected city clerk can have, especially in an impoverished community heavily dependent on government services and government jobs, where otherwise law-abiding citizens may more easily succumb to temptations to engage in bribery and graft. Under the new city clerk, Detroit has abolished its "ambassador" program for absentee voters; is improving the accuracy of its voter lists; and is working to develop better practices to protect the chain of custody (and therefore the recountability) of its ballots. It also has enhanced its election inspector training programs, to insure that its election workers understand what they can and cannot do, particularly in handling absentee ballots. But none of these cultural shifts can be accomplished overnight. Nor is Detroit the only municipality with similar potential weaknesses. Coupled with the fact that a number of Michigan cities elect their clerks, and that these election administrators are not subject to dismissal for poor election administration, some risk remains that a municipal clerk will take advantage of the circumstances often present in a large urban voting area to administer elections in a way that reinforces the clerk's own political base, or advances the clerk's own political ambitions, rather than serving the voters. Aggressive state and county oversight may help reduce this risk.

A related issue involves providing adequate staff to run the polls. In this regard, not just Detroit but Michigan as a whole finds itself confronting the same difficulty today that many other states do. Each of Michigan's over 5,000 precincts must have at least three "elec-

tion inspectors,” or poll workers,⁷⁹ although most precincts in fact need five or six workers. They must be drawn as evenly as possible from both major political parties, including at least one representative from each party. But the ranks of Michigan’s election inspectors are aging, and each year fewer experienced workers return, whether through death, disability, or disinterest (particularly as poll operations become increasingly complex, technical, and stressful, turning off some long-time election inspectors). Meanwhile, younger replacements are not always volunteering in sufficient numbers to replace the shortfall.

Furthermore, even when sufficient new workers volunteer, they are often not well-trained. New Michigan poll workers are required to attend a training course in the weeks before the election (and then to repeat the training at least once every two years). But even the best training programs may leave poll workers only crudely familiar with the increasing number of details of administering an election – even if they can remember everything taught in the training course. Yet it would be difficult to compel them to attend more training, given that they are volunteers, paid only a pittance for devoting an entire day to the electoral process. Election inspectors work from before the polls open at 7:00 a.m. until after they close at 8:00 p.m., and for their service they typically receive only a modest stipend, set by each local municipality, usually less than \$10 per hour (sometimes as little as \$7 per hour, although in a few localities it may be as much as \$15 per hour).⁸⁰

To deal with this, local officials describe the need to spend more time and become more innovative in recruiting poll workers. As a partial solution, since 1997 Michigan law has

allowed 16- and 17-year-olds, though not yet voters, to serve as election inspectors, provided that the primary election inspectors in each precinct are at least eighteen.⁸¹ The response to this initiative has been nothing but positive, and with creativity local officials may be able to take greater advantage of it. Meanwhile, the secretary of state continues to look for new ways to improve poll worker training, including developing on-line training and refining the two-day “school” that the bureau of elections runs to train the trainers, who themselves must be certified in order to conduct training programs for election inspectors.⁸² And Detroit reported “overwhelming” response to its media appeals for volunteers to work the November 2007 election,⁸³ even as some other Michigan localities continued to struggle to find enough poll workers.

Finally, Michigan’s election ecosystem may be at risk given the obvious partisan tension in the state supreme court. As described above, this divide was evident in the court’s recent decision regarding the state’s voter identification statute. But it has not been limited to just this case. Indeed, the ideological feud within the court has boiled over into public view in a number of cases and an embarrassing series of recent events. In an article in *The New York Times* in early 2007, the feuding was described as a “soap opera,” the court’s justices were admonished to “start acting like grown ups,” and the justices themselves accused each other of pitching “tantrums.”⁸⁴

Fortunately, election contests have been rare in Michigan. In part this is because the state has an effective administrative recount process that can handle most issues, including claims of fraud. A seldom invoked provision of state

law also permits a judicial contest of an election in which the outcome depends on whether to count specific ballots that were formally challenged on Election Day.⁵⁵ Such a challenge may occur when either an election inspector or an elector present at the polling place has good reason to suspect that an applicant to vote is not a qualified voter. When a challenge occurs, the ballot is coded so that it can be specifically identified in a subsequent contest action, allowing the court hearing such an action to make a specific adjustment to the official results based on the outcome of the contest.⁵⁶

Michigan law also leaves room for other types of litigation over the validity of an election outcome, primarily through a “*quo warranto*” proceeding. These proceedings provide a mechanism for courts to consider claims that material fraud or error has affected the outcome of an election, resulting in a “usurpation of office” by the wrong individual.⁵⁷ The few applications of this statutory provision suggest that a Michigan court would be willing to vacate or even reverse an election outcome if a candidate could show that such fraud or error had occurred.⁵⁸

Although Michigan has no recent history of litigating the outcome of an election, it is not hard to imagine any number of election problems or allegations of election misconduct ending up in court. Furthermore, the increasing complexity of administering today’s elections only provides more potential ways for problems to arise that candidates could claim have tainted an election outcome. It therefore is important to consider the place in Michigan’s election ecosystem of its state courts.

To give an extreme example, the Chief Justice of the Michigan Supreme Court is up for re-

election in 2008 and is likely to face an aggressive challenge. If an election contest or *quo warranto* action arose concerning his re-election, it obviously would put the rest of the Michigan judiciary in an awkward position (assuming that he and his colleagues recused themselves and let lower court judges resolve it). Even discounting the likelihood of this remote (though plausible) example, it is not difficult to imagine the public cynicism that could attend the current supreme court’s resolution of any post-election contest, or other disputed matter of election administration that might determine a specific election outcome.

Once again, this demonstrates the critical importance of resolving as many matters of election administration as possible in advance of any particular election. But preparation also should include planning for the possibility of a difficult issue that must be resolved after an election. Until Michigan either develops an alternative process for adjudicating those election disputes that some day will arise over a specific election, or its state supreme court re-establishes to the public its professionalism and neutrality, Michigan will have a weaker system for resolving a statewide or high-profile election contest than it should.

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Michigan: NINE AREAS

INSTITUTIONAL ARRANGEMENTS

The Michigan Secretary of State is the state's chief election officer, assisted by the state elections director, who is appointed by the secretary of state and who heads the state bureau of elections. M.C.L.A. (Michigan Compiled Laws Annotated) §§ 168.21; 168.32. The bureau of elections oversees Michigan's statewide voter database, publishes newsletters, and assists local officials with the administration of elections. At the local level, primary authority for conducting elections is assigned to municipal clerks, most of them elected, although county officials also play a role. M.C.L.A. §§ 168.30a, 168.23, 168.24a. City, village, and township clerks maintain registration records for their individual jurisdictions and oversee Election Day operations at the polls. M.C.L.A. §§ 168.502, 168.678. Each municipality also maintains a three-member city or township election commission, responsible for dividing their jurisdiction into precincts, assessing the need for voting machines, ballots, and other materials, and appointing precinct "election inspectors," or poll workers. M.C.L.A. §§ 168.30 et seq. County clerks are responsible for training poll workers, M.C.L.A. § 168.33, and also receive and compile unofficial returns from all precincts in their county immediately following an election, M.C.L.A. § 168.809. Boards of county canvassers determine the results of races for offices within the borders of their respective counties, M.C.L.A. § 168.826, and transmit tallies in multi-county and statewide races to the Board of State Canvassers. M.C.L.A. §§ 168.828, 168.841.

VOTER REGISTRATION/STATEWIDE DATABASE

Michigan's Qualified Voter File ("QVF"), its statewide voter registration database, is now a decade old. It receives information and updates directly from the state's Driver's License database, and also is coordinated with Michigan's "Master Death File," a database tracking the state's deceased. M.C.L.A. §§ 168.509q; 168.510. Voters are removed from the QVF if the United States Postal Service sends a letter to the election board notifying them that the voter has moved outside of the jurisdiction. M.C.L.A. § 168.509aa.

Voters can register to vote by mail or in person, either by appearing at the clerk's office or while obtaining a driver's license. M.C.L.A. §§ 168.500a; 168.509v. Registration applications must be received on or prior to the thirtieth day before an election. M.C.L.A. § 168.497. The application will be rejected if the voter fails to sign the application, M.C.L.A. §§ 168.500a, 168.509r(3), 168.509o(3), and also may be rejected if the voter provides an address that is zoned for business. Voters will receive notification if their application is rejected, and will have an opportunity to correct the deficiency as long as it is prior to the thirtieth day before an election. M.C.L.A. § 168.500d.

CHALLENGES TO VOTER ELIGIBILITY

Before Election Day, a voter's eligibility can be challenged either by a municipal clerk or by another voter. M.C.L.A. § 168.512. Voters who fail to respond to a clerk challenge will be removed from the QVF after two November general elections. M.C.L.A. § 168.509cc. Voters challenged by another voter must appear before the clerk within thirty days of the challenge to defend themselves or they will be removed from the QVF. M.C.L.A. § 168.512. A voter who challenges another voter without good cause can be charged with a misdemeanor. M.C.L.A. § 168.512. On Election Day, election inspectors and any registered voter of the precinct may challenge another person's eligibility to vote, but only on the basis of a reasonable belief that the voter is ineligible. M.C.L.A. §168.727 subd.(1). Polling place challengers also may be appointed by candidates, political committees, and citizen groups. M.C.L.A. § 168.730(1). Challenged voters are asked questions about their eligibility under oath, and those who affirm their eligibility are allowed to vote using ballots marked as "challenged" with an identifying number so that they may subsequently be excluded from the official tallies if a challenged voter is determined to have been ineligible. M.C.L.A. §§ 168.729, 168.745-749.

PROVISIONAL VOTING

Only 5,000 provisional ballots were cast statewide in Michigan in 2004, and only 3,000 in 2006. The state has a very low rate of provisional voting in part because it does not allow voters who have moved within the state to use a provisional ballot as a means of changing their voter registration address. M.C.L.A. § 168.523a. Instead, if they have moved either within sixty days before the election, or only within the same municipality, such voters may return to the precinct of their former address to vote one last time. M.C.L.A. § 168.507a(2).

Michigan uses two different types of provisional ballots. Voters who sign an affidavit attesting to having registered but whose names are not found in the QVF may vote a standard ballot, provided they can show proper identification. M.C.L.A. § 168.523a. The ballot is marked as a "challenged" ballot, and counted as an ordinary ballot. M.C.L.A. § 168.523a(4). Voters who cannot produce proper identification or proof of residence at the polls may vote the second type of provisional ballot, termed an "envelope" ballot. M.C.L.A. § 168.523a. This type of ballot is only counted if election officials can verify the voter's eligibility after the election. M.C.L.A. § 168.523a(5). Voters using an envelope ballot have six days after the election to provide proper identification. M.C.L.A. § 168.523a(7).

EARLY AND ABSENTEE VOTING

Michigan does not presently provide for either early voting or no-excuse absentee voting. Absentee ballots are available for voters who are: physically unable to come to the polls; unable to come to the polls for religious reasons; working as a poll worker in another precinct; at least 60

years old; expecting to be absent during the poll operation hours; or confined waiting trial on felony charges. M.C.L.A. § 168.758. A request to vote absentee must arrive between the seventy-fifth day prior to the election and the Saturday prior to the election. M.C.L.A. § 168.759. A completed absentee ballot must arrive by 8:00 p.m. on Election Day, whether by mail or in person, except on extenuating circumstances. M.C.L.A. §§ 168.764a, 168.759b.

VOTING TECHNOLOGY

Optical scan ballots with in-precinct electronic tabulating equipment are now used throughout the state. For November elections and their primaries, precincts with more than 1,000 registered voters must have at least one tabulating machine for every 500 voters. Precincts with 1,000-3,000 registered voters must have one machine for every 600 voters. In other elections, the local election commission determines the number of machines. M.C.L.A. § 168.661. If the voting machines fail during the election, officials can use special paper ballots. M.C.L.A. § 168.782b. Each precinct must also have available at least 125% of the number of provisional ballots that were cast in the election held four years earlier. M.C.L.A. § 168.689.

POLLING PLACE OPERATIONS

On Election Day, at least three “election inspectors” (poll workers) must be present at each precinct (although more are typically required in most precincts), including at least one from each major political party. M.C.L.A. §§ 168.672, 168.674. Municipal clerks must train election inspectors within twenty days prior to each election. M.C.L.A. § 168.683. Each inspector must either have attended at least one training session or passed an examination in the past two years. M.C.L.A. § 168.683. In turn, municipal clerks must complete a State Board of Elections training program on how to train precinct election inspectors. M.C.L.A. § 168.33. Visually impaired voters can receive assistance from a person of their choosing, and disabled voters who cannot physically mark the ballot can receive assistance from election inspectors. M.C.L.A. § 168.751. If election inspectors deem it necessary, a language interpreter also may accompany a voter into the voting booth. M.C.L.A. § 168.736.

BALLOT SECURITY

Michigan statutes have detailed chain-of-custody provisions for both physical ballots and voting equipment. M.C.L.A. §§ 168.714-716, 168.724, 168.726, 168.735, 168.765-767, 168.805. If the chain of custody is not followed, the votes affected may be “unrecountable” should a dispute arise (in which case the original tallies must stand). M.C.L.A. § 168.871(1)(c). Prior to the election the municipal clerk will arrange, test, and lock the voting machines at the polling places. The machines then must be under the supervision of an election inspector at all times. M.C.L.A. § 168.778. On Election Day, the elections inspectors must periodically examine machines to

make sure no tampering has occurred. M.C.L.A. § 168.790. When the polls close, the inspectors seal the machines and display the counters and any person in the polling place may compare the returns with the counters on the machines. M.C.L.A. § 168.791. After counting the ballots at the precinct, poll workers tie the ballots together, place both the ballots and the memory cartridges from the optical scan tabulators in ballot bags, and seal the bags. M.C.L.A. § 168.735. The sealed bags are then placed in ballot containers with metal seals. M.C.L.A. § 168.805. The poll workers record the identification number for each seal, sign the poll books, and deliver the containers to the municipal clerk. M.C.L.A. § 168.805.

Michigan has just implemented a photo identification requirement for all voters who vote at the polls. Voters without acceptable identification may vote a regular ballot if they sign an affidavit concerning their lack of identification. M.C.L.A. § 168.523.

POST-ELECTION PROCESSES

At the end of Election Day, election inspectors read the results from the tabulating machines and enter them into the statement of returns. M.C.L.A. § § 168.801 et seq. If the totals exceed the number of voters who submitted ballot applications in that precinct, election inspectors will randomly select ballots and deduct them until the numbers match. M.C.L.A. § 168.802.

A recount is automatic if a statewide election has a margin of 2,000 votes or fewer. M.C.L.A. § 168.880a. In addition, any candidate or voter who believes fraud or mistake has occurred in the vote counting can petition for a recount. A petitioner must pay \$10 per precinct to be recounted, which will be refunded if the recount changes the outcome of the election. For national or statewide offices, the petition must be filed within 48 hours of the completion of the official canvass. For other elections, the deadline is within six days. M.C.L.A. §§ 168.865-868, 168.879-882. In recounts for federal offices, statewide offices or ballot issues, Michigan circuit judges, and state legislative seats, the board of state canvassers conducts the recount; in all other cases, the appropriate board of county canvassers conducts the recount. M.C.L.A. §§ 168.879, 168.841.

Recounts should be completed within thirty days following the last day on which the recount petition could have been filed, except in primary elections, when the time is twenty days. M.C.L.A. § 168.875. At the discretion of the board of canvassers, recounts of machine tabulations may themselves involve machine retabulations, rather than manual tallying. M.C.L.A. § 168.871(6).

Michigan's post-election judicial contest statute applies to elections in which the eligibility of "challenged" ballots is in question. M.C.L.A. § 168.747-749. For many other issues, such as absentee ballot fraud or voting machine malfunctions, the state's *quo warranto* statute also can be used to litigate the legitimacy of an election outcome. M.C.L.A. § 168.861.