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MICHIGAN HOUSE OF REPRESENTATIVES

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September 18, 2025

Attn: Assistant Attorney General Harmeet K. Dhillon
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

RE: URGENT REQUEST FOR FEDERAL INTERVENTION - Michigan SOS Creating Law Through Unauthorized Rulemaking

Dear Ms. Dhillon,

As Speaker Pro Tempore and Chair of Michigan's Election Integrity Committee, I respectfully request immediate Department of Justice intervention to stop Michigan Secretary of State Jocelyn Benson from creating law through unauthorized rulemaking in violation of federal statutes, the Michigan Constitution, and the separation of powers doctrine. Secretary Benson is using Rule Sets 2025-13 ST and 2025-14 ST to make new law rather than implement existing legislative mandates, usurping the Michigan Legislature's constitutional authority while violating federal election laws and civil rights protections. Despite JCAR's statutory oversight role, the SOS continues a pattern of rulemaking that exceeds agency authority, creating a constitutional crisis requiring federal intervention.

Secretary Benson is making law, not implementing law. Under both federal and Michigan constitutional principles, agencies exist to implement legislative intent, not to create substantive policy from whole cloth. Michigan Constitution Article III, Section 2 establishes the separation of powers: *"The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch."* The SOS's Role: MCL 168.31(1)(a) grants the Secretary of State authority to "promulgate rules to implement this act" — not to create new legal requirements that contradict existing statutes.

Examples of Unauthorized Lawmaking:

Rule Set 2025-13 ST - Creating New Challenge Standards

What the Law Says: MCL 168.512 requires only a "written and sworn complaint" for voter challenges.

What Benson's Rule Creates: Rule 168.256(2)(b) adds an unauthorized "personal knowledge" requirement not found in statute, creating new law that exceeds legislative intent.

Impact: This transforms the statutory challenge process into something the Legislature never authorized, effectively rewriting election law through administrative fiat.

Rule Set 2025-14 ST - Creating FOIA Exemptions

What the Law Says: MCL 15.243 establishes specific FOIA exemptions through legislative process.

What Benson's Rule Creates: Rule 168.42(2) creates new cybersecurity-based FOIA exemptions without legislative authorization, making law rather than implementing existing exemptions.

Impact: This creates new categories of government secrecy that the Legislature never approved, violating transparency laws.

Despite JCAR's authority under MCL 24.245a to disapprove rules, Secretary Benson has demonstrated a pattern of ignoring legislative oversight and continuing unauthorized rulemaking. *Clonlara Inc. v. State Bd. of Educ.* (442 Mich. 230, 1993) established that Michigan agencies have repeatedly exceeded rulemaking authority, requiring judicial intervention to restore legislative supremacy. Secretary Benson's office has systematically ignored Administrative Procedures Act requirements, including: missing agency reports under MCL 24.245(2), inadequate regulatory impact statements under MCL 24.245(3), and insufficient public engagement and notice.

MCL 24.245a gives JCAR only 15 session days to act, but complex rule analysis requires extensive legal review. Once rules are filed with the Secretary of State, they gain presumption of validity, making post-implementation challenges more difficult and costly. State legislative oversight lacks the investigative resources and enforcement mechanisms available to federal agencies.

Federal Law Violations Requiring DOJ Intervention

Direct Federal Statutory Conflicts

National Voter Registration Act Violations

Rule Set 2025-13 ST violates 52 USC 20507 by:

- Allowing 20-year voter inactivity periods vs. federal 4-year maximum
- Centralizing authority that federal law delegates to local clerks
- Creating barriers to "reasonable effort" list maintenance

Federal Record Retention Violations

Rule Set 2025-14 ST violates 52 USC 20701 by:

- Mandating 7-day deletion vs. 22-month federal retention requirement
- Creating criminal liability under 52 USC 20702 for premature record destruction

Help America Vote Act Violations

Both rule sets violate HAVA requirements for:

- Database accuracy and auditable records
- Transparent election administration
- Federal funding compliance

Civil Rights Violations Under Title VI

Federal Funding Nexus: Michigan receives federal HAVA funds, making Title VI of the Civil Rights Act applicable to election administration.

Discriminatory Impact:

- Economic barriers (\$1,500+ for voter challenges) create disparate impact on communities of color
- Audit trail elimination disproportionately harms minority communities that rely on oversight for voting rights protection

Historical Parallel: These barriers mirror discriminatory voting practices outlawed by the Voting Rights Act of 1965.

Secretary Benson has repeatedly demonstrated a willingness to exceed statutory authority despite legislative oversight efforts. State agencies lack the investigative power and enforcement mechanisms that federal agencies possess for

complex election law violations. When state agencies violate federal election laws, only federal enforcement can ensure compliance and protect constitutional rights.

Federal Authority and Remedies Available

DOJ Civil Rights Division Authority

Under Title VI enforcement provisions, DOJ can:

- Initiate compliance reviews of federally funded election programs
- Issue enforcement letters requiring corrective action
- Begin fund termination proceedings for discriminatory practices
- File federal lawsuits to enjoin violations

Criminal Division Authority

Under 52 USC 20702, DOJ can prosecute knowing and willful destruction of federal election records, which Rule Set 2025-14 ST mandates.

Election Crimes Coordination

DOJ can coordinate with the Election Assistance Commission to address HAVA compliance failures and funding violations.

Immediate Federal Action Requested

1. Civil Rights Enforcement

- Issue Title VI compliance letter to Michigan Secretary of State
- Initiate formal compliance review of election administration practices
- Coordinate with EAC regarding HAVA funding compliance

2. Criminal Investigation

- Review potential violations of federal record retention laws
- Assess knowing and willful destruction of election records
- Coordinate with FBI Election Crimes Unit

3. Federal Court Action

- File federal lawsuit to enjoin implementation of unauthorized rule sets
- Seek declaratory judgment that rules violate federal election laws
- Request preliminary and permanent injunctive relief

4. Legislative Coordination

- Brief congressional leadership on state agency overreach
- Coordinate with federal election oversight committees
- Provide technical assistance on federal election law compliance

When agencies make law rather than implement law, the fundamental structure of democratic government breaks down. Citizens lose the ability to hold lawmakers accountable because unelected bureaucrats are setting policy through administrative fiat. If state agencies can ignore federal election laws through unauthorized rulemaking, the integrity of federal elections is compromised. These rule sets will: leave 800,000+ ineligible registrations unresolved, block citizen participation in election oversight, eliminate audit trails needed for transparency, and create discriminatory barriers to voting rights. Without federal intervention, other states may follow Michigan's example of ignoring federal election laws through unauthorized agency rulemaking.

Michigan Secretary of State Jocelyn Benson is creating law from whole cloth, violating federal statutes, constitutional principles, and civil rights protections. State oversight mechanisms have proven inadequate to stop this pattern of

unauthorized rulemaking. Only federal intervention can: restore the rule of law in Michigan election administration, protect federal election law supremacy, preserve civil rights and voting access, prevent the dangerous precedent of agencies making law.

I respectfully urge immediate DOJ action to investigate these violations and to take all necessary enforcement measures to ensure compliance with federal law and constitutional principles. The integrity of our democratic system depends on agencies implementing law, not making it. When that principle breaks down, only federal intervention can restore the proper balance of constitutional government.

With Liberty,

A handwritten signature in black ink, appearing to read "Rachelle Smit". The signature is fluid and cursive, with the first name "Rachelle" written in a larger, more prominent script than the last name "Smit".

Speaker Pro Tempore Rachelle Smit
Michigan's 43rd House District

Attachments:

- Comprehensive Analysis of Violations in Michigan SOS Rule Sets 2025-13 ST and 2025-14 ST
- Michigan SOS Rule Set Documentation
- JCAR Authority Analysis