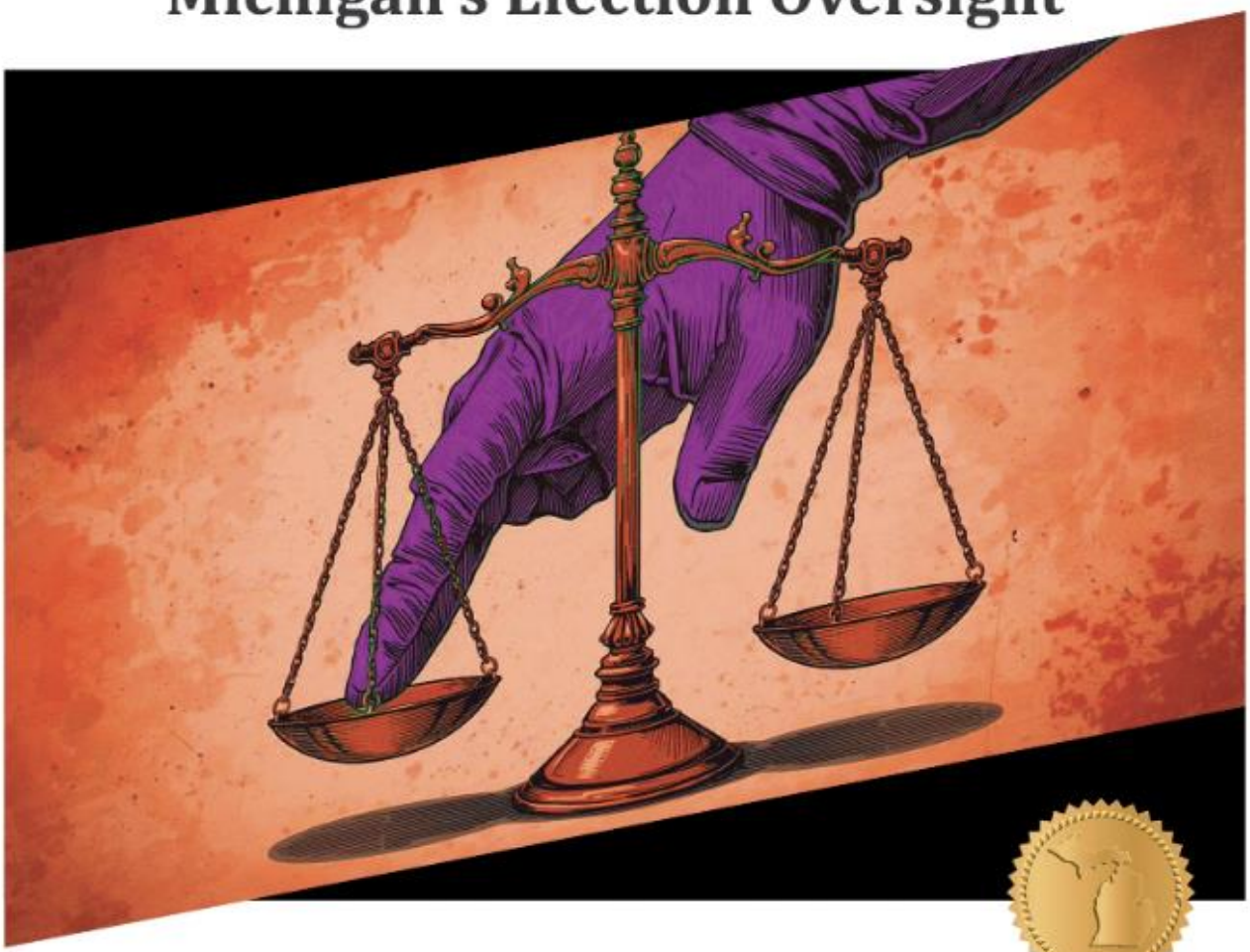
COMPROMISED CHECKPOINTS:

Restoring Independence in Michigan's Election Oversight



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COMPROMISED CHECKPOINTS:

Restoring Independence to Michigan's Election Oversight

An Educational Investigative Report

on Administrative Law and Federal-State Compliance

by

Michigan Fair Elections Institute (MFEI)

Election Integrity Oversight Team

Lead author: Patrice Johnson

This report presents educational investigative research on election administration, administrative law, and federal civil rights compliance. Michigan Fair Elections Institute is a 501(c)(3) educational organization that does not support or oppose candidates for public office.

April 2026

FOREWORD

William Wagner,

Distinguished Professor Emeritus of Law

Administrative law exists where democratic accountability meets governmental efficiency. The quality of oversight mechanisms determines whether administrative agencies operate within statutory and constitutional bounds or exercise unchecked power beyond effective constraint.

Compromised Checkpoints examines Michigan's administrative oversight system through rigorous comparative analysis. The research methodology is sound, the documentation is comprehensive, and the findings are significant.

The report documents that Michigan's executive-branch review office operates without statutory foundation and lacks independence protections present in comparable states. Across thirty years and four governors from both parties — Engler, Granholm, Snyder, Whitmer — the office has consistently operated without Senate confirmation, term limits, qualification requirements, or budget independence. The 24-state comparison demonstrates Michigan's outlier status systematically.

The 2025 case study examining three rule sets reveals how structural design affects practical outcomes. When oversight checkpoints lack independence and enforcement capacity, rules with apparent legal conflicts can advance without effective review.

Whether Michigan's current system optimally serves the state's interests and whether specific reforms would strengthen accountability are questions for policymakers and voters. This research provides the evidentiary foundation necessary for those determinations: comprehensive documentation meeting high standards of rigor, transparency, and objectivity.

--William Wagner
Distinguished Professor Emeritus of Law

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ABOUT MFEI

The Michigan Fair Elections Institute, founded in 2022, emerged from citizens' concerns about election integrity and transparency. What began as a grassroots effort has grown into Michigan's leading nonprofit organization dedicated to election oversight and voter education.

Our approach combines rigorous research with practical action. We don't just identify problems — we work directly with local clerks, train volunteers, and implement solutions. From cleaning voter rolls to educating underserved communities, MFEI operates where policy meets practice.

MFEI is strictly nonpartisan, focusing on processes rather than politics. Our 2,000+ volunteers span diverse backgrounds, united in a commitment to transparent, accountable elections. We believe informed citizens are the foundation of our constitutional republic.

MFEI, as a 501(c)(3) educational organization, relies entirely on volunteer efforts and donor support. Every contribution directly funds election oversight, voter education, and the tools local communities need to strengthen the integrity of their elections' processes.

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No one can do everything. But everyone can do something.

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This research would not have been possible without the support of Michigan Fair Elections Institute's Board of Directors, volunteers, and donors who believe in evidence-based policy analysis and the importance of administrative accountability in the constitutional republic's governance.

EXECUTIVE SUMMARY

Compromised Checkpoints: Restoring Independence in Michigan's Election Oversight.

Three administrative rule sets contain 40 provisions that substantially change Michigan's election rules. Many provisions appear to violate federal, state, and constitutional law, yet two rule packages are already codified with the force of law and the third is advancing toward implementation in 2026. Together, Rule Sets 2025-13, -14, and -15 will govern every phase of Michigan's November 3, 2026, general election — a contest that will determine 13 U.S. House seats, a U.S. Senator, Governor, Secretary of State, Attorney General, all 110 state House seats, all 38 state Senate seats, and two Michigan Supreme Court positions.

Compromised Checkpoints investigates how three legally unauthorized rule packages from the executive branch advanced without correction and identifies remedies. It examines Michigan's dual-checkpoint oversight system and documents apparent violations in the rule sets.

A. Michigan as a National Outlier

Twenty-four states operate centralized rulemaking oversight systems. Of these, 23 employ an average of 3.65 (73%) of five standard independence protections: statutory foundation, Senate confirmation for leadership, statutory qualification requirements, term limits or fixed terms, and structural/budgetary independence. Twelve achieve Tier 1 status, applying at least four protections via legislative enactment. Eleven are rated at Tier 2, as they provide meaningful but partial protections.

Only Michigan operates at Tier 3, with zero protections and allowing executive capture. The Michigan Office of Administrative Hearings and Rules (MOAHR) was created solely after successive governors issued executive orders creating a rules oversight office that lacks statutory foundation, Senate confirmation, qualification requirements, fixed terms, and structural/budgetary separation. It scores 0 of 5 (0%).

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MICHIGAN'S INDEPENDENCE PROTECTIONS COMPARED TO 23 OTHER STATES WITH CENTRALIZED ADMINISTRATIVE OVERSIGHT SYSTEMS

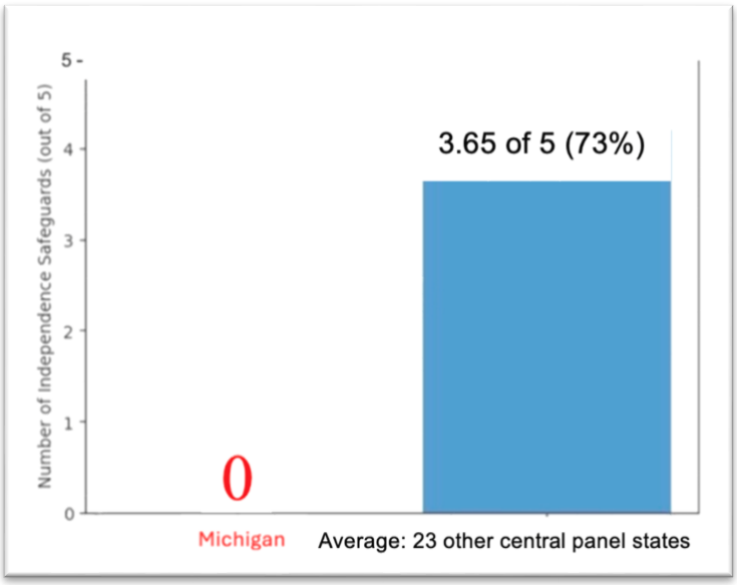

Figure 1: Among 24 states using centralized administrative review systems, only Michigan's MOAHR (Michigan Office of Administrative Hearings and Rules) employs zero independence protections. The remaining 23 states adopt, on average, 73 percent (3.65) of the five standard protections. Source MFEI research.

Every other state built its administrative review system on a foundation of statute, created through public hearings, legislative debate, and a recorded vote. Michigan's MOAHR rests on executive orders alone, poured without legislative authorization, carrying no fixed terms, and subject to removal the moment a new governor takes office. A constitutional republic cannot sustain a lasting institution erected on an unsound foundation.

Michigan's own Constitution independently establishes that MOAHR's structure is constitutionally infirm. Article III, § 2 prohibits any branch from exercising powers belonging to another except as expressly provided in the constitution. No such provision authorizes executive gatekeeping over legislature-delegated rulemaking. Article IV, § 1 vests legislative power, including the authority delegated to it through the Michigan Administrative Procedures Act of 1969. Article IV, § 37 reflects the framers' 1963 understanding that even legislative-committee action on rules requires bicameralism and presentment, the requirement that legislation pass both legislative chambers and be presented to the governor. Article I, § 17 guarantees fair and just treatment in executive hearings, structurally denied when the same office that approves a rule later adjudicates disputes under it. Article VI, § 28 requires judicial review of agencies existing under the constitution

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or by law. MOAHR was created by executive order, not according to the constitution or by statute. It satisfies none of these requirements. (See Figure 5, p. 16)

The constitutional problem is not theoretical. In *Whiley v. Scott*, 79 So.3d 702 (Fla. 2011), the Florida Supreme Court struck down an executive-order-created rulemaking gatekeeper (OFARR) that functioned similarly to MOAHR. The high court held that a governor cannot create such an office by executive order alone. Legislative authorization is required.

In *Evers v. Marklein*, 2025 WI 36 (Wis. 2025), the Wisconsin Supreme Court struck down statutory provisions granting a legislative committee (JCRAR) authority to pause, object to, or suspend rules. The court adopted the reasoning of INS v. Chadha, 462 U.S. 919 (1983), binding federal authority and establishing that any body altering legal rights outside the legislative branch must comply with bicameralism and presentment.

Whiley and Evers provide persuasive confirmation from two state supreme courts that have applied identical structural reasoning to comparable arrangements. Whiley construes Florida's constitution and Administrative Procedures Act. Its reasoning applies with persuasive force to Michigan's parallel constitutional framework. Michigan's own Constitution, however, establishes the same limits independently. MOAHR was created by executive order without legislative authorization and satisfies neither the Whiley standard nor the Chadha/Evers standard.

Structural analogs further highlight the anomaly. New Jersey's Office of Administrative Law (OAL) is advisory-only on substantive policy, limited to procedural compliance. Rhode Island's Office of Regulatory Reform (ORR), although executive-order-created, exercises no adjudication authority. Minnesota's Office of Administrative Hearings has statutory creation and multiple safeguards absent in Michigan.

No other state among the 24 examined combines adjudication with substantive rulemaking gatekeeping via executive order without statutory authorization or protections. Every court that has examined similar structures has found them constitutionally infirm.

B. Michigan's Outlier Status Reflects Deliberate Structural Choices

The Michigan Constitution requires that all executive offices "shall be allocated by law among and within not more than 20 principal departments." Const 1963, Art V, § 2. This mandate requires legislative enactment — not executive action alone. Yet four consecutive governors relied on executive orders to insert review offices, characterizing each creation as a "Type I" transfer, a mechanism the statute defines as transferring an existing entity, not creating a new one.

Governors understood independence protections. Shortly after creating MOAHR, Governor Whitmer granted Senate confirmation, fixed terms, qualifications, and independence to other

executive-order-created commissions. However, she deliberately omitted them for MOAHR. (See Figure 26).

C. Results of the Compromised Dual-Checkpoint System

This unauthorized executive oversight compromised the system: MOAHR acts as primary gatekeeper for election rulemaking, while the legislatively established JCAR (under the 1969 APA) lacks enforcement power and is prone to paralysis.

MOAHR's and JCAR's compromised dual-body structure enabled the Michigan Department of State to promulgate Rule Sets 2025-13 (effective February 23, 2026), Rule Set 2025-14 (effective October 23, 2025), and Rule Set 2025-15 (advancing for 2026) with many of their 40 subrules appearing to violate law. Examples:

- Rule Set 2025-14 requires deleting e-pollbook data seven days post-certification, conflicting with federal 22-month preservation (52 U.S.C. § 20701).
- Rule Set 2025-13 creates discriminatory two-tier voter registration (exempting overseas/UOCAVA voters from challenges) and limits challenges to clerks' "reliable information."
- Rule Set 2025-15 mandates government-controlled poll challenger training materials violating free speech and compelling speech. Also, these materials are currently withheld from legislative subpoena (*House of Representatives v. Benson)*, pending in Michigan Court of Claims).

The system performed as designed over thirty years of bipartisan structural choices.

D. Key Findings

- Michigan's rulemaking oversight lacks statutory foundation and standard independence protections.
- Michigan's own Constitution (Art. III § 2, Art. IV §§ 1 and 37, Art. V § 2, Art. I § 17, and Art. VI § 28) independently establishes that MOAHR's structure is constitutionally infirm.
- *Whiley v. Scott* provides persuasive authority. The Florida Supreme Court struck down an executive-order-created mandatory rulemaking gatekeeper on identical structural grounds.
- INS v. Chadha, 462 U.S. 919 (1983), binding federal authority applied in Evers v. Marklein, establishes that any body altering legal rights outside the legislative branch must comply with bicameralism and presentment — a principle Michigan's own Art. IV, § 37 embedded in 1963.

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- MDOS bypassed required (though not legally binding) advance disclosure.
- Both checkpoints, MOAHR and JCAR, failed to halt apparent conflicts with federal, state, and constitutional law.
- The bipartisan pattern reflects systemic design.
- The rule packages impose unauthorized limits on election phases and citizen/clerk rights.
- Apparent violations span overseas voting, domestic administration, compelled speech, civil rights, and FOIA.

Appendices provide statutory text, timelines, rule documentation, and resources.

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INTRODUCTION

Three administrative rule packages appear to conflict with federal, state, and constitutional Election Law, yet the rule sets and their 40 subrules proceeded through Michigan's dual rulemaking oversight system without substantive review or correction. Now, they are on track to govern each phase of Michigan's November 3, 2026, general election, which will determine 13 U.S. House Representatives, one U.S. Senator, the Governor, Secretary of State, Attorney General, all 38 state Senator, all 110 state House Representatives, and two Michigan Supreme Court judges.

This report situates Michigan's Office of Administrative Hearings and Rules (MOAHR) within a comparative framework among 24 states with centralized review systems. While preparing this analysis, the Michigan Fair Elections Institute conducted a comprehensive review of administrative rulemaking oversight and adjudicatory (judging) structures across states. That research, summarized in Section IV and with supportive documentation in the Appendices, establishes a clear pattern: States that created pre-promulgation rulemaking review bodies did so through statute. States that created centralized adjudicatory bodies did so through statute and kept those bodies entirely separate from rulemaking functions.

No state other than Michigan created by executive order a body combining both functions without legislature authorization. Michigan's MOAHR departs from every one of these norms simultaneously.

How could this happen?

This report addresses that question. Six months of investigation revealed multiple, long-term points of failure. As importantly, *Compromised Checkpoints* analyzes potential remedies and preventive measures to avoid recurrence.

A. The Structural Cause

Michigan's oversight system carries a thirty-year design flaw. Of 24 states with centralized review systems, only Michigan's Office of Administrative Hearings and Rules (MOAHR) has zero of five standard independence protections. But the state did not become an outlier overnight.

The structural cause traces to a prevailing constitutional requirement that four consecutive governors from both parties chose to bypass. Michigan's Constitution divides governmental authority among three branches. Article III, Section 2 prohibits any branch from exercising powers "properly belonging to another branch except as expressly provided in this constitution."

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Article V, Section 2 builds on that foundation with a clear mandate: all executive offices "shall be allocated by law among and within not more than 20 principal departments." In other words, all executive branch departments and functions must be established through the legislative process, by statute, with public hearings, floor debate, and affirmative vote.

Instead, each Michigan governor for the past three decades has relied on executive orders to bypass that requirement. Four consecutive governors (two from each political party) have inserted an executive branch oversight body into the top of the rulemaking oversight process and characterized it as a "Type I" transfer. The designation is both significant and problematic.

Under the Executive Organization Act of 1965, a Type I transfer is defined as "the transferring intact of an existing department, board, commission or agency to a principal department established by this act." *MCL 16.103(a); Act 380 of 1965.*

The operative phrase is "established by this act" — meaning the transfer mechanism presupposes a legislatively created entity. Using a Type I designation to install a newly created executive oversight office without legislative authorization inverts the statute's plain meaning and circumvents the constitutional allocation requirement entirely.

Governor Engler's E.R.O. 1995-5 did not transfer an existing body. It stated plainly: "The Office of Regulatory Reform is hereby **created**." Governor Snyder's E.R.O. 2011-5 was equally direct: "The Office of Regulatory Reinvention is **created** within the Department of Licensing and Regulatory Affairs." [Emphasis added.] The language of creation, not transfer, appears in the foundational orders themselves.

The result is an oversight body that serves as the primary gatekeeper for election rulemaking yet lacks statutory authority, Senate confirmation, fixed terms, qualification requirements, or budgetary independence from the executive branch it is supposed to check.

Courts have already adjudicated this precise structural arrangement. In Whiley v. Scott, 79 So.3d 702 (Fla. 2011), the Florida Supreme Court struck down Governor Rick Scott's Office of Fiscal Accountability and Regulatory Reform (OFARR). The court held that absent legislative authorization, a governor may not insert an executive-branch office as a mandatory gatekeeper over legislature-delegated rulemaking authority.

Michigan's MOAHR was created by the same mechanism and exercises the same function. Unlike OFARR, MOAHR has never faced judicial review of its constitutional legitimacy. The absence of a ruling does not indicate constitutionality. It merely reflects the absence of a lawsuit.

The second checkpoint, the legislature-established and statutorily approved Joint Committee on Administrative Rules (JCAR) lacks enforcement power and is structurally

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prone to partisan gridlock. Between MOAHR and JCAR, the two checkpoints create the appearance of independent oversight without its substance.

B. How the 2025 Rules Advanced

Michigan's Administrative Procedures Act requires rulemaking agencies to disclose anticipated rule changes in their annual regulatory plans, filed each July 1 per MCL 24.253. MDOS filed its *Annual Regulatory Plan 2024-2025* on time but identified no need for the three rule sets' changes and disclosed none of these election-related rules. On January 22, 2025, Secretary of State Jocelyn Benson announced her 2026 gubernatorial candidacy. Six weeks later, on March 5–6, 2025 — more than eight months past the July 1, 2024, deadline — MDOS submitted (promulgated) three major rule packages containing 40 new provisions.

MOAHR reviewed and approved all three rule sets without flagging MDOS's failure to pre-disclose the need for rule changes or their planned promulgation in the *Annual Regulatory Plan*. MOAHR then submitted the packages to JCAR. Under MCL 24.245a, JCAR had fifteen legislative session days to act. Its options were limited to 1) file a Notice of Objection per MCL 24.245, which requires concurrent majorities in both the Senate and House delegations and provides only a temporary delay; 2) request rule modifications, a non-binding recommendation the agency may ignore; or 3) introduce legislation to override the rules, requiring both senate and house chambers to pass. If JCAR takes no action within fifteen session days, rules automatically advance and take effect (MCL 24.245a).

MDOS's failure to pre-disclose the need for or the planned rule sets deprived both checkpoints of the advance notice MCL 24.253 was designed to provide — the early-warning mechanism that enables identification of legal conflicts before rules enter formal promulgation. Neither checkpoint was positioned to catch what the other missed.

C. The Three Rule Sets

In 2025, MDOS promulgated the following three rule sets:

Rule Set 2025-13 (in effect as of February 23, 2026): Exceeds the law due to adding notarization and affidavit requirements for voter registration challenges, and raising cost barriers that appear to violate federal law. The rule set also restricts verification notices for overseas civilian voters and creates a two-tiered voter verification system in apparent conflict with civil rights laws, state statutes MCL 168.509aa and 168.512. In addition, Attorney General Nessel's May 5, 2023, Opinion #7322 applied the constitutional framework to recognize military and overseas civilian voters as legally distinguishable. In other words, civilians may be treated differently from military personnel due to their different situations.

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Overseas civilians do not warrant "protected class" status, which—if extended to overseas civilians—would exempt their voter registrations from challenge.

Rule Set 2025-14 (in effect as of October 23, 2025) mandates the destruction of electronic poll book data seven days after certification. This violates 22-month federal record-retention laws and represents a 98.9% reduction from the federal requirement under 52 U.S.C. § 20701. This rule also places Michigan in apparent violation of federal civil rights laws and the Freedom of Information Act (FOIA) due to impairing citizen and clerk rights to access public information.

Rule Set 2025-15 (projected to take effect 2026) mandates state-provided training for poll challengers. The law does not authorize a requirement for training, let alone that challengers would have to be trained using state-provided materials. The rule set raises First Amendment, compelled-speech concerns. It limits poll challenger communications and restricts challenges to four grounds in direct conflict with state law MCL 168.733.

In addition, the training materials at the center of this mandatory certification requirement are subject to active litigation. In June 2025, the Republican-led Michigan House filed suit after Secretary Benson refused to comply with a legislative subpoena for training manuals. As of the date of this report, a court preservation order prevents modification of the contested materials. The case, House of Representatives v. Benson (Case No. 25-000096-MZ), remains unresolved on the merits in the Michigan Court of Claims.

Together, the three rule sets impose restrictions on every phase of the election process.

D. Table: Three Phases, Three Rule Sets: Systematic Oversight Restriction

Phase	The Three 2025 Election Rule Sets	Subject Matter
Voter Registration (Phase 1)	Rule Set 2025-13 (See Appendix G) Contains 12 Rules: R 168.251, R 168.252, R 168.253, R 168.254, R 168.255, R 168.256, R 168.257, R 168.258, R 168.259, R 168.260, R 168.261, and R 168.262	Registration challenges
Voting Operations (Phase 2)	Rule Set 2025-15 (See Appendix G) Contains 20 Rules: R 168.201, R 168.202, R 168.203, 168.204, R 168.205, R 168.206, R 168.207, R 168.208, R 168.209, R 168.210, R 168.211, R 168.212, R 168.213, R	Poll challenger rules

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Phase	The Three 2025 Election Rule Sets	Subject Matter
	168.214, R 168.215, R 168.216 R 168.217, R 168.218, R 168.219, and R 168.220	
Record Preservation (Phase 3)	Rule Set 2025-14 (See Appendix G) 8 Rules: R 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48.	Election record retention

Figure 2: The 2025 rule sets strategically restrict clerk and citizen oversight at every phase of the election process, from registration to election day operations to post-election record preservation.

Despite public testimony citing conflicts, the rules advanced. In the case of Rule Set 2025-15, the oversight failure produced a direct institutional confrontation. The Michigan House filed suit to obtain the training materials MOAHR had certified without examining, and a court was forced to intervene, freezing those and other materials to preserve the status quo — all while the rule set advances toward a 2026 effective date.

E. Scope and Methods

Compromised Checkpoints examines Michigan's oversight system through verifiable, objective methods. It conducts a statutory and historical analysis of the state's oversight system and its evolution; comparative review of administrative structures across central-panel states; a detailed focus on the 24 central-panel states; textual comparison of the rule sets against federal statutes, state laws, and constitutional provisions; and assessment of available legal remedies.

The analysis applies consistent criteria without partisan bias. The documented structural pattern spans four governors from both parties and persists across administrations. This report recognizes that definitive determinations of legality require judicial or other authoritative resolution.

F. Organization

This report proceeds through ten sections:

Section I establishes Michigan as a national outlier among the other 23 central-panel peer states.

Section II documents Michigan's pattern of behavior and analyzes the 40 rules within the three election rules packages, Rule Sets 2025-13, -14, and 15.

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Section III examines the administrative review structure — its organization, origins, evolution, and defects.

Section IV compares Michigan's rulemaking oversight structure to the other 23 central-panel states. It documents MOAHR's constitutional infirmity based on precedents courts have applied, including Whiley v. Scott, 79 So.3d 702 (Fla. 2011) and Evers v. Marklein, 2025 WI 36 (Wis. 2025). This section examines the two structural analogs among the 24 central-panel states examined. The state legislatures of both analog states deliberately designed their central panels to avoid combining rulemaking and adjudication functions. Governor Whitmer took the opposite path and combined both functions in MOAHR, which has no legislative authorization.

Section V presents evidence of intentional design.

Section VI examines JCAR's structural paralysis.

Section VII explores legal mechanisms for addressing federal-state conflicts.

Section VIII features legal, legislative and expert endorsements of this report.

Section IX provides a model complaint under the Michigan Administrative Procedures Act.

Section X synthesizes findings, policy implications, and recommendations.

Appendices provide statutory text, detailed timelines, rule set documentation, and additional resources as follows:

- Appendix A: Statutory Text
- Appendix B: Timelines and Turning Points (1946-2026)
- Appendix C: Four Governors, Four Reorganizations
- Appendix D: Federal and State Judicial Recognition of Legislative Standing
- Appendix E: The Five Structural Defects
- Appendix F: Michigan Executive Branch Departments Allocated by Law
- Appendix G: Rule Sets 2025-13, -14, and -15, plus Analysis

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RESEARCH METHODOLOGY

This report represents educational investigative research conducted by Michigan Fair Elections Institute (MFEI), a 501(c)(3) nonprofit organization. MFEI neither supports nor opposes candidates for public office or political parties.

A. Research Methods

The analysis draws on the following sources and approaches:

- **Statutory and Regulatory Analysis**
  - Review of Michigan Compiled Laws, United States Code, and Code of Federal Regulations
  - Examination of administrative rules, supporting documentation, and executive orders (1995–2025)
  - Study of legislative records, committee reports, and public hearing transcripts
- **Comparative Institutional Analysis**
  - Systematic examination of administrative structures across central-panel states, with detailed focus on the 24 states using central-panel review systems
  - Development of objective, uniform criteria for assessing structural independence
  - Documentation of specific protections in comparison states, with hyperlinked primary sources
- **Legal Research**
  - Analysis of federal and state case law
  - Review of administrative law scholarship, legal treatises, and U.S. Department of Justice enforcement precedents
  - Examination of preemption doctrine and federal-state conflicts
- **Primary Source Documentation**
  - Administrative rulemaking records
  - Budget appropriations and financial documents
  - Official government websites and databases

B. Objective Criteria

Michigan's system is evaluated against the following verifiable standards:

- **Structural Protections**: Presence or absence of five safeguards (statutory foundation, Senate confirmation, fixed terms, qualification requirements, and budget

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independence/structural separation). MFEI confirmed its information through searching other states' statutes, executive orders, and official records.

- **Legal Conflicts**: Apparent inconsistencies between rule language and statutory/federal requirements, verified through direct textual comparison.
- **Comparative Data**: Uniform application of the same criteria across all 24 central-panel states, enabling independent verification of Michigan's outlier status.

C. Scope and Limitations

This report examines structural and legal questions through documentary analysis and comparative research. It does not:

- Determine motives or intentions of individual decision-makers
- Predict judicial outcomes
- Advocate for or against specific electoral outcomes, candidates, or parties
- Provide legal advice or substitute for formal legal opinions

The report identifies apparent conflicts with federal and state law, but final determinations of legality require judicial resolution through proper proceedings.

D. Nonpartisan Analysis

All findings are based on objective criteria applied without regard to partisan affiliation or political advantage. The documented structural evolution spans four governors from both major parties and persists regardless of which party controls the governorship. The identified legal conflicts exist independently of electoral implications. This report neither advocates for nor opposes any candidate, party, or pending legislation. It exists solely to inform public understanding and policy discussion through factual, evidence-based analysis.

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SECTION I: MICHIGAN AS A NATIONAL OUTLIER

A. Central-Panel States Compared

MFEI's research identified 24 states that employ centralized administrative review systems — offices that provide hearing officers or administrative law judges to multiple agencies rather than each agency maintaining its own. A systematic comparison of those 24 states yields unambiguous findings: Michigan stands alone in not employing standard independence safeguards. It is also unique in combining both rulemaking review and adjudication of contested cases within the same office.

All 23 states other than Michigan incorporate multiple independence protections to ensure impartial oversight of agency rulemaking. Michigan's Office of Administrative Hearings and Rules (MOAHR), in contrast, exists solely through gubernatorial executive orders, without statutory foundation or mandated safeguards. No other central-panel state relies entirely on executive discretion in this way. No other central-panel state also combines that office's rulemaking review function with its adjudication function — creating a single body that both advances rules from the executive branch and later adjudicates disputes arising under those same rules.

Other central-panel states may lack one or two safeguards, but they compensate with others, e.g., statutory foundation (allocated by law), senate confirmation, fixed or independent term limits, qualification requirements, and structural independence outside direct executive-branch control. Michigan's MOAHR lacks all five standard independence protections— its score is zero. The other 23 states average 3.65 of the five protections, a 73% adoption rate.

No other state combines all the following defects: creation by executive order alone; no Senate confirmation; no qualification requirements; no term limits; placement as a Type I transfer agency under executive supervision; and use of the same office to advance rules from the supervising executive branch.

This pattern reflects deliberate structural choices, not administrative drift. Michigan's thirty-year record of zero protections is a policy outcome. Other states chose differently. This section documents the differences.

Table: Independence Protections for Administrative Review Offices

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All 24 Central-Panel States—Michigan v. All Others

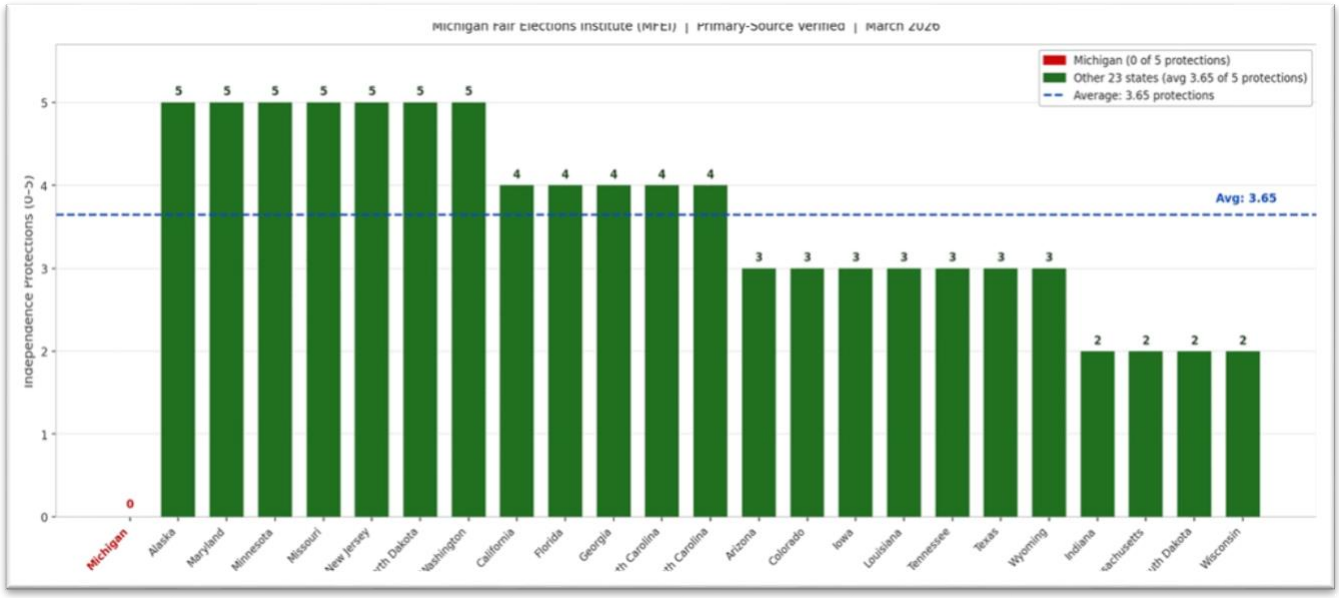

Figure 3: Independence Protections for Administrative Review Offices. Scale: 5 Standard Protections

B. Summary Statistics

- Total central-panel states identified with verified statutory links: 24 (**Michigan + 23 non-Michigan comparator states**)
- States with Statutory Foundation: **23 of 23 non-Michigan states (100%)**
- Michigan (Executive Order only — no statutory foundation): **1 (MI is the sole outlier)**
- States with Senate Confirmation: **10 of 23 non-Michigan states (43%)**
- States with Fixed or Independent Term: **10 of 23 non-Michigan states (43%)**
- States with Qualification Requirements: **21 of 23 non-Michigan states (91%)**
- States with Structural Independence: **20 of 23 non-Michigan states (87%)**
- Non-Michigan average independence score: **3.65 of 5 standard protections (73%)**
- Michigan MOAHR score: **0 of 5 (0%)**
- Total Verified Statutory Links: **110+**

C. Research Methodology

This research examined administrative hearings offices across all states, with detailed analysis of the 24 states using central-panel systems. In a central-panel system, a centralized

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office provides administrative law judges or reviewers to multiple state agencies, rather than each agency maintaining its own.

Central-panel states include Alaska, Arizona, California, Colorado, Florida, Georgia, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming.

New York was excluded due to its operating a decentralized system in which individual agencies conduct their own hearings rather than routing them through a centralized statewide review office. New York therefore does not have a directly comparable structure for purposes of this analysis. See table below, "Independence Protections among Central-Panel states."

MFEI's research compares the following five key independence measurements in 24 states:

1. Statutory foundation (rather than executive order)
2. Senate confirmation for leadership positions
3. Statutory qualification requirements for leadership
4. Term limits or fixed terms for leadership
5. Structural and budgetary independence

Strong central-panel states typically possess four to six of these protections. Michigan's Executive Branch created the Michigan Office of Administrative Hearings and Rules (MOAHR) with none.

MOAHR maintains its own Administrative Law Judges (ALJs), who report to the executive branch rather than the judiciary. This structure provides no independence safeguard. MOAHR ALJs retain one protection. They have civil service status, which shields them from arbitrary dismissal. That single protection fails to compensate for the absence of the standard five.

Statistical summary: As the table below shows, MFEI research identified 24 central-panels with bodies equivalent to Michigan Office of Administrative Hearings and Rules (MOAHR). Of the 23 non-Michigan central-panels: 23 of 23 (100%) established statutory foundation for their MOAHR-equivalent body; 21 of 23 (91%) put qualification requirements in place, and 20 of 23 (87%) designed the bodies with structural independence. Without Michigan, the average independence score was 3.65 of 5 (73%). Michigan's score is 0 of 5 (0%).

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The Illinois Bureau of Administrative Hearings (BAH) somewhat resembles MOAHR, but Illinois was excluded from the central-panel pool due to BAH's executive-order creation with zero adjudication finality and zero rulemaking gatekeeping.

D. Table: Michigan's MOAHR Compared to 23 Other Central-panel States

Independence Protection	Michigan	Other 23 Central-panels
Statutory Foundation (allocated by law)	**No**	**Yes** 23/23 = 100%
Senate Confirmation	**No**	**Yes** 10/23 = 43%
Fixed/Independent Term Limits	**No**	**Yes** 10/23 = 43%
Qualification Requirements	**No**	**Yes** 21/23 = 91%
Structural Independence	**No**	**Yes** 20/23 = 87%
Total Score	**0 of 5**	**Non-Michigan Avg: 3.65 of 5 73%**

Figure 4: Michigan adopts 0 of 5 standard independence protections for its central-panel review office (MOAHR). In contrast, the other 23 central-panel states (non-Michigan) have a 73% average adoption rate. Total states in dataset: 24 (Michigan + 23 non-Michigan).

For the 24-state details and links, see Figure 5 below, "24-State Central Panel Independence Comparison."

With the exception of Michigan, the other States with central administrative review offices create them through legislative statute, satisfying their own constitutional requirements that executive offices be "allocated by law." These other states recognize the importance of independence in rulemaking oversight, and they build multiple safeguards to prevent government-official or political bias. Michigan has built none, and this failure creates unique vulnerabilities.

The table below compares central-panel states and assesses their status in terms of five standard independence protections: statutory foundation, Senate confirmation, fixed or independent term, qualification requirements, and structural independence. Each protection is scored as present or absent, producing a verified score of 0 to 5 for each state. Hyperlinks and footnotes are provided for verification.

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Of the 23 non-Michigan states in the dataset, 12 achieve Tier 1: Statutory / Full Independence, meaning they possess four or five of the standard protections through legislative enactment. Eleven states operate at Tier 2: Structural / Civil Service Independence, meaning they have a statutory foundation but lack one or more of the remaining protections.

Michigan alone operates at Tier 3: Executive Capture with zero of five protections. The non-Michigan average is 3.65 of 5 standard protections (73%). Michigan's score is 0 of 5 (0%).

Tier 1 **Statutory /** **Full Independence**	**Tier 2** **Structural /** **Civil Service Independence**	**Tier 3** **Executive Capture**
Alaska	Arizona	
California	Colorado	
Florida	Indiana	
Georgia	Iowa	
Maryland	Louisiana	
Minnesota	Massachusetts	**Michigan ★**
Missouri	South Dakota	
New Jersey	Tennessee	
North Carolina	Texas	
North Dakota	Wisconsin	
South Carolina	Wyoming	
Washington		
12 states	**11 states**	**1 state**

E. Table: 24-State Central Panel Independence Comparison

State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
Alaska	✓ **Yes** Alaska Stat. § 44.64.010 (2005)	Tier 1 — Statutory / Full Independence	Administrative Regulation Review Committee (ARRC) Alaska Stat. § 24.20.400 et seq.	✓ **Yes**	✓ **Yes**	Alaska Stat. § 44.64.010 Alaska Stat. § 24.20.400
Arizona[7]	✓ **Yes**	Tier 2 — Structural /	Governor's Regulatory	✓ **Yes**	✓ **Yes**	A.R.S. § 41-1092

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State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
	A.R.S. § 41-1092 (1992)	Partial Independence	Review Council (GRRC) A.R.S. § 41-1052			A.R.S. § 41-1052
California[8]	✓ **Yes** Cal. Gov. Code § 11370 (1945; reformed 1995)	Tier 1 — Statutory / Full Independence	Office of Administrative Law (OAL) Cal. Gov. Code § 11340 et seq.	✓ **Yes**	✓ **Yes**	Cal. Gov. Code § 11370 Cal. Gov. Code § 11340.5
Colorado	✓ **Yes** C.R.S. § 24-4-105 (1959)	Tier 2 — Structural / Civil Service Independence	Office of Legislative Legal Services (OLLS) C.R.S. § 2-5-201 et seq.	✓ **Yes**	✓ **Yes**	C.R.S. § 24-4-103 Est. 1959, 24-4-105 C.R.S. § 2-5-201 et seq. (Legal Services); Legislative review of administrative rules and regulations.
Florida	✓ **Yes** Fla. Stat. § 120.65 (1974)	Tier 1 — Statutory / Full Independence	Joint Administrative Procedures Committee (JAPC) FLA. STAT. § 120.545 (APA CH. 120) 11.60 Admin. Proc. Cmte.	✓ **Yes**	✓ **Yes**	Fla. Stat. § 120.65 & 120.65, Fla. Stat. § 120.545, 11.60 Admin. Proc. Cmte
Georgia	✓ **Yes** O.C.G.A. § 50-13-40 (1994)	Tier 1 — Statutory / Full Independence	Standing Committees (Rules Committee) O.C.G.A. § 50-13-4	✓ **Yes**	✓ **Yes**	O.C.G.A. § 50-13-40

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State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
Indiana	✓ **Yes** IC 4-15-10.5 (H.E.A. 1223, 2019; op. July 1, 2020)	Tier 2 — Structural / Civil Service Independence	Indiana General Assembly (standing committees) IC 4-22-2 et seq.	✓ **Yes**	✓ **Yes**	4-15-10.5 IC 4-21.5-3-7 4-22
Iowa	✓ **Yes** Iowa Code § 10A.801 (1998; op. Jan. 1, 1999)	Tier 2 — Structural / Civil Service Independence	Administrative Rules Review Committee (ARRC) Iowa Code § 17A.8	✓ **Yes**	✓ **Yes**	Iowa Code § 10A.801 Iowa Code § 17A.8 & 17A.8
Louisiana	✓ **Yes** La. R.S. § 49:991 (Acts 1995, No. 739; op. Oct. 1, 1996)	Tier 2 — Structural / Civil Service Independence	Senate & House Standing Committees La. R.S. § 49:968	✓ **Yes**	✓ **Yes**	La. R.S. § 49:991, La. R.S. § 49:968, 49:992 49:994 49:968
Maryland	✓ **Yes** Md. Code Ann., State Gov't §§ 9-1601–9-1610 (Ch. 788, Acts 1989; op. Jan. 1, 1990)	Tier 1 — Statutory / Full Independence	Joint Committee on Administrative, Executive & Legislative Review (AELR) Md. Code Ann., State Gov't § 10-111	✓ **Yes**	✓ **Yes**	Md. Code Ann., State Gov't § 9-1601 & 9-1601 Md. Code Ann., State Gov't § 10-111 & 10-110
Massa-chusetts	✓ **Yes** M.G.L. c. 7, § 4h (est. 1974; renamed DALA 1983)	Tier 2 — Structural / Civil Service Independence	Joint Committee on Administrative Law / Secretary of State M.G.L. c. 30A	✓ **Yes**	✓ **Yes**	M.G.L. c. 30A; Reg. Manual M.G.L. c. 7, § 4H
Michigan [1]	✗ **No** Exec. Reorg. Order 2019-06 — NO statutory foundation	Tier 3 — Executive Capture (OUTLIER: 0/5 protections)	Joint Committee on Administrative Rules (JCAR) MCL § 24.235 et seq.	✗ **No** MOAHR (E.R.O. 2019-06) combines adjudicative and rulemaking gatekeeping functions in a	✗ **No** Sole State [1]	E.R.O. 2019.06 MCL § 24.201 et seq. House of Representatives v. Benson,

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State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
				single EO-created body. No other state central panel holds this dual function. [1]		No. 25-000096-MZ
Minnesota [2]	✓ **Yes** Minn. Stat. § 14.48 (1975); renamed Court of Administrative Hearings, Laws 2025, ch. 39, art. 2	Tier 1 — Statutory / Full Independence	Legislative Coordinating Commission / Standing Committees Minn. Stat. § 14.03 et seq.	✓ **Yes**	✓ **Yes** [2]	Minn. Stat. §§ 14.48 Minn. Stat. §§ 14.50 Minn. Stat. §§ 14.15 Laws 2025, ch. 39, art. 2
Missouri	✓ **Yes** Mo. Rev. Stat. § 621.015 (L. 1965, p. 277, § 1)	Tier 1 — Statutory / Full Independence	Joint Committee on Administrative Rules (JCAR) Mo. Rev. Stat. § 536.175	✓ **Yes**	✓ **Yes**	Mo. Rev. Stat. § 621.015 Mo. Rev. Stat. § 536.175 536.037
New Jersey [4]	✓ **Yes** N.J.S.A. 52:14F-1 (P.L. 1978, c. 67; op. 1979)	Tier 1 — Statutory / Full Independence	Administrative Law Committee / Office of Legislative Services N.J.S.A. 52:14B-4	✓ **Yes**	✓ **Yes** [2]	N.J.S.A. 52:14F-1; & N.J.S.A. 52:14F-1 through 14F-5 N.J.S.A. 52:14B-4.3 N.J.S.A. 52:14B-4
North Carolina [5]	✓ **Yes** G.S. § 7A-750 et seq. (OAH est. 1985, c. 746)	Tier 1 — Statutory / Full Independence	Joint Legislative Admin. Procedure Oversight Committee; Rules Review Commission (RRC) G.S. §§ 143B-30.1 et seq., 150B	✓ **Yes**	✓ **Yes**	G.S. § 7A-750; G.S. ch. 150B 7A-750 7A-752 7A-754 143b-301 ch 150B

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State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
North Dakota[6]	✓ **Yes** N.D.C.C. ch. 54-57 (est. 1991) [6]	Tier 1 — Statutory / Full Independence	Administrative Rules Committee N.D.C.C. ch. 28-32	✓ **Yes**	✓ **Yes**	N.D.C.C. ch. 54-57 (PDF) & 54-57-01, 54-57-03 N.D.C.C. ch. 28-32
South Carolina	✓ **Yes** S.C. Code Ann. § 1-23-500 (Act No. 181, 1993; renamed ALC by Act No. 202, 2004)	Tier 1 — Statutory / Full Independence	General Assembly Standing Committees S.C. Code Ann. § 1-23-120 et seq.	✓ **Yes**	✓ **Yes**	S.C. Code Ann. § 1-23-500 1-23-500 1-23-510 1-23-520 1-23-120
South Dakota	✓ **Yes** SDCL ch. 1-26D (SL 1995, ch. 8)	Tier 2 — Structural / Civil Service Independence	Legislature (Standing Committees) SDCL ch. 1-26	✓ **Yes**	✓ **Yes**	SDCL ch. 1-26D; SDCL ch. 1-26 1-26D-1 1-26D-2 1-26D-3 1-26D-6
Tenne-ssee	✓ **Yes** T.C.A. § 4-5-321 et seq. (APD formalized 1986; UAPA est. 1974)	Tier 2 — Structural / Civil Service Independence	Secretary of State (Legislative Branch) / Standing Committees T.C.A. §§ 4-5-101 et seq., 4-5-206	✓ **Yes**	✓ **Yes**	T.C.A. § 4-5-101 et seq.; T.C.A. § 4-5-321
Texas [9]	✓ **Yes** Tex. Gov't Code ch. 2003 (SOAH est. 1991, 72nd Leg.)	Tier 2 — Structural Independence	House/Senate Standing Committees; Texas Register (SOS) Tex. Gov't Code ch. 2001 (APA)	✓ **Yes**	✓ **Yes**	Tex. Gov't Code ch. 2003; Tex. Gov't Code ch. 2001
Washing-ton	✓ **Yes** RCW 34.12.010 (ESHB 101, 1981 c 67;	Tier 1 — Statutory / Full Independence	Joint Administrative Rules Review Committee (JARRC)	✓ **Yes**	✓ **Yes**	RCW 34.12.010; RCW 34.05.610 34.12.030

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State	Statutory Foundation	Independence Tier	Legislative Oversight Body	Central Panel Adjudication Kept Structurally Separate from Rulemaking & allowing no dual function	CP Free of Exec. Branch Rule-making	Links to Key Sources & Case Law
	op. July 1, 1982)		RCW ch. 34.05			
Wisconsin [3] [10]	✓ **Yes** Wis. Stat. § 227.43 & 227.26 (JCRAR est. 1966; ALJ central panel statutory)	Tier 2 — Structural / Civil Service Independence	Joint Committee for Review of Administrative Rules (JCRAR) Wis. Stat. § 227.19 et seq. [3]	✓ **Yes**	✓ **Yes**	Wis. Stat. § 227.43; Wis. Stat. § 227.19; Wis. Leg. 227.16; Evers v. Marklein, 2025 WI 36 (July 8, 2025)
Wyoming [11]	✓ **Yes** W.S. §§ 9-2-2201–9-2-2203 (created 1987; reorg. 1992)	Tier 2 — Structural Independence (Senate confirmation confirmed; at-pleasure removal)	Legislature (Select Committee / APA Oversight) W.S. § 16-3-103	✓ **Yes**	✓ **Yes**	W.S. §§ 9-2-2201– W.S. § 16-3-103, 9-2-2202 9-2-2203 27-14-602

Figure 5: Independence comparison of the 24 central-panel states. Source: Michigan Fair Elections Institute (MFEI), Primary-Sources Verified, March 2026

[1] **Michigan MOAHR Michigan** — Dual-Function Anomaly (Unique in Dataset): Several states in this comparison maintain executive branch rulemaking oversight bodies that are structurally separate from their adjudicative central panels — notably Arizona (GRRC, A.R.S. § 41-1052, statutory, Governor-appointed), California (OAL, Gov. Code § 11340 et seq., Governor-appointed, Senate-confirmed), and North Carolina (OSBM, G.S. § 150B-21.4, impact analysis review). In each case, the rulemaking oversight body and the adjudicative panel are structurally separate entities. Michigan is the sole state where a single EO-created body — MOAHR — simultaneously serves as the central adjudicative panel and exercises rulemaking gatekeeping authority. This dual-function structure, combined with MOAHR's absence of any independence protections (no statutory foundation, no Senate confirmation, no qualifications requirement, no cause-based removal, non-default finality: 0/5 protections), is the structural anomaly at the center of House of Representatives v. Benson, Case No. 25-000096-MZ (Ingham County Circuit Court).

[2] **Minnesota / New Jersey** — Rulemaking Hearing Function Distinguished: Minn. Stat. § 14.50 and N.J.S.A. 52:14F: OAH/OAL conducts rulemaking hearings as a procedural/neutral forum. Approval/disapproval authority remains with the Legislature and agency — not the central panel. Scored 'No' for gatekeeping.

[3] **Wisconsin Post-Evers v. Marklein**, 2025 WI 36 (July 8, 2025): Five JCRAR statutes struck as facially unconstitutional — Wis. Stat. §§ 227.19(5)(c),(d),(dm); 227.26(2)(d),(im). JCRAR retains

advisory powers only. Constitutional status of § 227.19(2)-(4) standing committee review remains unsettled as of March 2026.

[4] **New Jersey ALJ Senate Confirmation**: Only state where individual ALJs — not merely the director — are subject to Gov. appointment with Senate confirmation. N.J.S.A. 52:14F-5. The most thoroughly judicialized central panel in dataset.

[5] **North Carolina Appointment**: Chief ALJ appointed by Chief Justice of the NC Supreme Court — the only state where central panel leadership is selected by the judicial branch.

[6] **North Dakota Senate Confirmation Confirmed**: N.D.C.C. § 54-57-01(2) expressly requires Governor appointment with Senate confirmation; 6-year term; cause-based removal only.

[7] **Arizona:** Tier 2 due to Structural / Partial Independence. A.R.S. § 41-1092.01 provides statutory nomination (§ 38-211) but not full Senate confirmation; finality is non-default. GRRC (§ 41-1052) is a separate executive body.

[8] **California Tier Correction:** Prior versions listed California as Tier 2. Corrected to Tier 1 — Statutory / Full Independence. Cal. Gov. Code § 11370.2(b) requires Governor appointment with Senate confirmation and attorney + 5 years' experience. OAH and OAL are structurally separate.

[9] **Texas Tier Correction:** Structural Independence. Tex. Gov't Code § 2003.022(a) provides a 2-year term with no Senate confirmation; finality is non-default (§ 2003.042(a)(6)). SOAH has the strongest express independence purpose statement in the dataset (§ 2003.021(a)), but structural protections are partial.

[10] **Wisconsin Tier Correction:** Prior versions listed Wisconsin as Tier 1. Corrected to Tier 2 — Structural / Civil Service Independence post-Evers v. Marklein, 2025 WI 36 (July 8, 2025). DHA (§ 227.43) retains civil service protections for ALJ staff; JCRAR oversight powers are now advisory only.

[11] **Wyoming Confirmation Correction:** W.S. § 9-2-2201(b) expressly requires appointment 'with the advice and consent of the senate.' Wyoming remains Tier 2 because the director serves at the governor's pleasure and hearing examiners are removable 'at any time without cause' (§ 9-2-2201(c)). Wyoming therefore satisfies the Senate confirmation criterion but not the cause-based removal criterion.

F. Michigan's Unique Dual-Function Consolidation

Michigan appears to be the only central-panel state in which the same office (MOAHR) both conducts administrative hearings and advances administrative rules from the executive branch, creating inherent conflicts.

California separates the two functions entirely. The Office of Administrative Law reviews rules while the Office of Administrative Hearings conducts contested cases with different leadership and no structural overlap. Minnesota achieves the same separation differently, placing rulemaking review in the Office of the Revisor of Statutes, a legislative-branch office, while the Office of Administrative Hearings handles contested cases.

In contrast, Michigan consolidates both functions in MOAHR, so the same office that certifies rules as legally compliant later adjudicates disputes arising about those rules. This creates institutional pressure to defend its own work and support prior determinations.

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Michigan's MOAHR consolidation, combined with zero independence protections, creates inherent vulnerabilities to conflicts of interest.

G. Consequences

Michigan's outlier actions had concrete consequences. Without central-panel safeguards, Michigan's rulemaking oversight system appears vulnerable to executive influence. An independent-functioning office would be more likely to scrutinize rulemaking on its merits. The 24-state comparison demonstrates that proven models exist. Michigan has chosen not to adopt any of them.

H. Summary: Section I

This section documented that Michigan stands alone among the 24 central-panel states in its systematic absence of independence protections for administrative review. Key findings include:

- MFEI researchers identified 24 central-panel states, and an examination found that all but one — Michigan — employ multiple independence protections.
- The Michigan governors' creation of an administrative review office solely through executive orders is an outlier process, raising unresolved questions under Michigan's constitutional Separation of Powers Doctrine and the U.S. Constitution's Elections Clause.
- Michigan's executive branch administrative review office is unique among all central-panel states in that it lacks all independence protections, including statutory foundation, Senate confirmation, qualification requirements, term limits, and structural/budgetary separation.
- Michigan is the only central-panel state to consolidate administrative hearings and rule promulgation in one executive branch office under executive branch control.
- Other states recognize the need for institutional independence and build multiple safeguards.
- Michigan's decades-long pattern of zero protections reflects deliberate choice.
- Michigan's deliberate outlier behavior has had profound consequences on the rulemaking creation and review process.

The comparative analysis demonstrates that Michigan's oversight failures are not inevitable features of administrative review. They are the result of specific structural choices that other states avoided, and only Michigan made. Supporting evidence for each finding is presented in the figures and tables throughout this report. Key reference figures for the

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structural analysis are Figures 1–5 and 20–25; key reference figures for the rule set violations are Figures 2, 6–15.

Section II examines the specific content of Rule Sets 2025-13, 2025-14, and 2025-15. It documents the federal and state law conflicts that the compromised oversight system allowed to advance uncorrected. For a summary of the 40 subrules within the three rule sets and their likely legal violations, see Section III.

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SECTION II: PATTERN OF BEHAVIOR AND LEGAL CONFLICTS WITHIN EACH RULE SET

The structural failures documented in Section I produced concrete legal consequences. The absence of statutory foundation and independence safeguards in MOAHR, combined with JCAR's enforcement constraints, enabled three election-related rule sets containing over 40 provisions that appear to conflict with federal, state, and constitutional law to advance without meaningful correction.

This pattern did not begin with the recent rule sets. On numerous occasions before submitting these rules for review and promulgation, the Michigan Department of State issued administrative guidance, implementing several significant changes without statutory authorization and, in some instances, contrary to court orders. This pattern of behavior is evident in several court cases in which courts ruled against Secretary Benson as noted below:

Pattern of Behavior

Eight cases in which courts ruled against Secretary Benson are documented below. See also MFEI's Michigan court rules against SOS Benson for guiding clerks contrary to law, October 9, 2024:

1. RNC v Benson, Case No. 24-000148-MZ, re: mail ballots;
2. RNC v Benson, Case No. 24-000143-MX, re: signature matching;
3. RNC v Benson, Case No.24-000041 Court of Claims, re: presumption of signature validity;
4. Genetski v Benson, Case No. 20-000216-MM, re: signature matching standards;
5. Davis v Benson, Case No. 20-000207-MZ October 27, 2020, re: open carry of firearms in polling places;
6. Carra v Benson, Case No. 20-000211-MZ; re: legally unauthorized poll challenger directives;
7. Johnson v Benson, re: time and manner of election processes, and 7) O'Halloran v Benson, Case No. 22-000162-MZ, re: poll challenger guidelines.

Rule Sets 2025-13, 2025-14, and 2025-15 represent an attempt to codify through formal rulemaking what the Secretary has already been directing clerks to do through her arguably legally unauthorized guidance. In the case of poll challenger restrictions, courts have twice ordered her to stop.

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The Secretary of State submitted all three rule sets to MOAHR, which advanced them as compliant and forwarded them to JCAR. This section examines the specific violations and procedural defects that resulted from the legally unauthorized rulemaking structure.[1]

The summary below examines the apparent legal conflicts within each rule set:

A. Rule Set 2025-13: Economic Barriers, Materiality Violations, and UOCAVA Carve-Out

Effective Date: Took effect February 23, 2026
Subject Matter: Procedures for challenging voter registrations
Official Title: Election Challenge and Removal Procedures for Qualified Voter File

Rule Set 2025-13, containing 12 subrules, imposes requirements not present in statute, erects economic barriers to citizen participation, and creates a permanent unverifiable protected class of overseas voters exempt from standard domestic-voter verification procedures. The rule raises materiality concerns and discrimination concerns under federal civil rights law, conflicts with state statutes, and contradicts Michigan Attorney General Opinion #7322.

Before promulgating Rule Set 2025-13, MDOS issued administrative instructions without legislative or JCAR approval. MDOS directed clerks to treat Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA) civilians as a protected class exempt from verification procedures. Rule Set 2025-13 codifies those unauthorized instructions into binding administrative rules, which carry the force of law.

As an example, one sentence in Subrule 3 (R 168.253(1)(a)) raises substantial conflicts when it states:

"After a clerk receives **reliable information** that an individual has moved, the clerk shall take the following steps: (a) **Verify that the voter is not entitled to protections under the military and overseas voter empowerment** (MOVE) act, Public Law 111-84, **or under the uniformed and overseas citizens absentee voting act** (UOCAVA), Public Law

[1] Pure Integrity Michigan Elections (PIME), a sister organization of Michigan Fair Elections Institute, submitted written opposition analyzing each rule set. These analyses are available for free download in Michigan Fair Elections Institute's library: Rule Set 2025-13 Analysis, Rule Set 2025-14 Analysis, and Rule Set 2025-15 Analysis. The status of each rule set may be tracked on the ARS – Administrative Rulemaking System website, along with APA-required reports, comments, transcripts, and affidavits.

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99-410. If the voter is entitled to protections under the MOVE act or UOCAVA, the clerk **shall not send a notice**....” [Emphasis added.]

Some of the most significant legal conflicts arise in these areas:

- **Federal NVRA Requirements:** The National Voter Registration Act (52 U.S.C. § 20507) requires verification notice and a waiting period before cancellation, but Subrule 3 prevents clerks from initiating the verification process for overseas civilians.
- **Michigan Attorney General Opinion:** AG Opinion #7322 (May 5, 2023), issued by AG Dana Nessel to Secretary Benson, confirms that Michigan law does not treat active military and overseas civilian voters as an identical class. Upholding differential treatment of the two groups under the rational basis standard, the Attorney General recognized military voters as possessing Department of Defense-verified identity credentials that overseas civilians lack, and this distinction provides sufficient legal justification for treating the groups differently. Rule Set 2025-13 collapses precisely this distinction by exempting overseas civilians from the same verification procedures applied to domestic voters, without statutory authority to do so.
- **Notice Requirement, MCL 168.509aa**: State law requires clerks to send notices upon receiving reliable information of a change of residence or death. Subrule 3 creates a blanket exemption for overseas civilians, preventing compliance with this statutory requirement.
- **Constitutional Vote Dilution:** Reynolds v. Sims, 377 U.S. 533 (1964), prohibits vote dilution. Subrule 3 creates a two-tiered verification system enabling vote dilution by exempting one class of voters from verification requirements that are applied to all other voters.
- **UOCAVA Scope Exceeded:** UOCAVA provides ballot access protections for military and overseas voters. Subrule 3 extends verification exemptions beyond federal and state authorization and maintains the exemption even after a voter’s UOCAVA status has ended.

Rule Set 2025-13 raises five categories of legal concerns, examined as numbered below:

1. Economic barriers and materiality violations
2. Conflicts with state law
3. The fundamental inversion: Harder to challenge than to register
4. Conflicts with federal law
5. The UOCAVA clerk restriction and vote dilution

1. Economic Barriers and Materiality Violations

The rule imposes five categories of requirements that exceed statutory authority as follows:

Reliable Source Restrictions

A provision in Rule Set 13 restricts clerks to verifying names on the voter rolls unless they first obtain "reliable sources of information sufficient to trigger sending either a confirmation or cancellation notice to a registered individual." Reliable information, the rule states, does not include "Information pulled from online databases," or "claims…that are not based on personal knowledge."

Finally, Subrule R 168.252, states "(4) A clerk is not obligated to begin an investigation of an individual's registration status after receiving information from the sources identified in subrule (3) of this rule."

As a result, clerks will feel they will have to defend any action they take to clean the voter rolls unless they can first show they have reliable information—which includes only firsthand personal knowledge—before they may send a registered individual a confirmation notice.

Notarization Requirement (Rule 5(b)(2))

The rule requires challenges to be notarized. At $10 to $15 per signature in Michigan, notarization alone would cost an estimated $1,000 to $1,500 for 100 challenges.

Individual Sworn Affidavit Requirement (Rule 5(b)(3))

The rule requires a separate affidavit for each challenged voter, multiplying notarization and preparation costs.

Personal Knowledge Standard

The rule imposes a "personal knowledge" standard requiring physical investigation of each challenged voter's circumstances. This personal knowledge standard is *ultra vires*. It does not appear in statutory provisions.

Timing Restrictions (Rule 5(c))

The rule imposes narrower windows for challenges than statutory provisions allow.

Combined Economic Impact

For 100 challenges, these additions create estimated costs exceeding $1,500, including notarization ($1,000 to $1,500), investigation time and travel, affidavit preparation, and timing constraints requiring expedited work. No statute authorizes these barriers.

2. Conflicts with State Law

The authorizing statute, MCL 168.512, allows any registered elector to challenge voter registrations by identifying the registrants and stating grounds for the challenge:

"**Any elector of the municipality may challenge the registration of any registered elector by submitting to the clerk** of that municipality a written affidavit that such elector is not qualified to vote, which affidavit shall specify the grounds upon which the challenged elector is disqualified..." [Emphasis added.]

The statute imposes only three requirements on challengers: (1) They must identify the challenged voters, (2) state the grounds for the challenge, and (3) submit an affidavit to the clerk. Rule Set 2025-13 adds layers of cost and procedural complexity that the statute does not authorize.

Rule Set 2025-13, in imposing restrictions beyond the law, is exceeding the law. It is *ultra vires*.

3. The Fundamental Inversion: Harder to Challenge Than to Register

Michigan's own voter registration statute exposes the unreasonableness of Rule Set 2025-13's economic barriers. MCL 168.497(4) allows individuals **without any identification** to register to vote by signing a simple affidavit and providing a single document showing their name and address — no notarization required, no personal knowledge investigation, no cost. Yet Rule Set 2025-13 requires citizens who challenge potentially ineligible registrations to obtain notarizations and demonstrate personal knowledge through firsthand observation, and then submit individual notarized affidavits for each challenged voter. These are all requirements that exceed what Michigan law demands for initial registration.

This inversion makes it harder to challenge a questionable registration than to create one in the first place. If Michigan trusts a free, unnotarized affidavit as sufficient proof to add someone to the voter rolls under MCL 168.497(4), how can it simultaneously require expensive, notarized, individually investigated affidavits to question whether that registration should remain? The state cannot rationally impose greater procedural and financial burdens on citizens seeking to maintain voter roll accuracy than it imposes on applicants seeking to join the voter rolls. This contradiction undermines the integrity protections Michigan's own statutes establish.

4. Conflicts with Federal Law

The Civil Rights Act Materiality Provision

52 U.S.C. § 10101(a)(2)(B) provides:

"No person acting under color of law shall...deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

The materiality provision protects not only the right to vote but also related rights necessary to meaningful electoral participation, including the right to challenge potentially ineligible registrations. A requirement is "material" only if it relates directly to determining voter qualification under state law, including age, citizenship, residency, or felony status.

Requirements unrelated to actual qualification — including notarization fees, personal knowledge limitations, individual affidavits, and economic and FOIA barriers — may violate the materiality provision if they burden voting rights or related electoral participation rights. See Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003); Martin v. Crittenden 347 F. Supp. 3d 1302 (N.D. Ga. 2018).

First Amendment Concerns

The rule may violate citizens' First Amendment right to petition the government for redress of grievances by imposing prohibitively expensive and discriminatory requirements. Requesting government review of voter roll accuracy constitutes protected petitioning activity.

Equal Protection Conflict

Rule Set 2025-13's blanket exemption of overseas civilian registrations from eligibility challenge violates the equal protection guarantee that once a state grants the right to vote on equal terms, it "may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104 (2000), cited in Attorney General Opinion #7322 (May 5, 2023).

The constitutional injury here runs not to overseas civilians, who lose nothing they are constitutionally entitled to, but to domestic voters, whose registrations remain subject to a challenge process that Rule Set 2025-13 selectively suspends for a similarly situated class.

AG Opinion #7322 supplies the analytical framework that exposes this violation. Upholding differential treatment of military and overseas civilian voters under rational basis review, AG Nessel recognized that military voters possess Department of Defense-verified identity credentials that overseas civilians lack, and that this security-based distinction provides sufficient constitutional justification for treating the groups differently.

The Sixth Circuit's reasoning in *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012), which the AG cited approvingly, confirms the boundary: special accommodations for a distinct voter class are constitutionally permissible only where the class's specific circumstances — in the military context, involuntary absence from jurisdiction due to service orders — create an identifiable problem the accommodation addresses.

Overseas civilians chose their absence. They are not subject to deployment orders. No analogous circumstance justifies exempting their registrations from the same accuracy review applied to domestic voters.

Rule Set 2025-13 collapses the military/civilian distinction that Opinion 7322 and the state legislature (MCL 168.759a) found legally essential, and the rule set does so without statutory authority.

This is not an extension of UOCAVA. It is an expansion of UOCAVA beyond what Congress authorized and beyond what the AG's own constitutional analysis permits. The equal protection violation is the asymmetry itself: a domestic voter's registration is subject to accuracy review; an overseas civilian's is not, based solely on a voluntary choice of residence.

Under the *Anderson-Burdick* balancing framework, the state would need to identify a precise, evidence-supported interest that *necessitates* this asymmetry. No such interest exists, and none is stated in the rule.

5. Two-Tiered Discrimination for UOCAVA Overseas v. Domestic Voters. Discriminatory Civil Rights Issues. Clerk Restrictions. Vote Dilution.

Rule Set 13's Rule 168.253(1)(a) discriminates in favor of overseas civilians versus domestic civilians. It falsely tells clerks that overseas civilian registrants are exempt from eligibility challenge. This discriminates against domestic voters who are subject to lawful eligibility verification.

The Sixth Circuit held that equal protection applies not only to the initial allocation of the franchise but to "the manner of its exercise." *Obama for America v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012), quoting *League of Women Voters v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008). A voter registration challenge process is precisely such a manner-of-exercise mechanism. It maintains the accuracy of the rolls that determine whose votes are counted. A two-tiered system in which one class of voters is categorically exempt from that process, while an identically situated class is not, constitutes the "arbitrary and disparate treatment" the Sixth Circuit identified as an equal protection violation in *Obama for America*. 697 F.3d at 428, quoting *Bush v. Gore*, 531 U.S. 98, 104 (2000).

Domestic voters and overseas civilian voters are similarly situated in every legally relevant respect. Neither is subject to military service orders, both chose their place of residence, and both are bound by the same voter eligibility requirements under Michigan law. The Sixth Circuit's own reasoning in *Obama v Husted* establishes that where no service-based distinction applies, the two groups are similarly situated and the state cannot justify disparate treatment without evidence that the distinction is necessary. 697 F.3d at 435. Rule Set 2025-13 offers no such evidence and identifies no such necessity.

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The United States has several laws protecting citizens from discrimination and ensuring equal treatment under the law. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution is pre-eminent. It and other laws are designed to prevent unfair treatment based on various characteristics.

Table: Key Legal Protections

LAW/CLAUSE	DESCRIPTION
Equal Protection Clause	Part of the Fourteenth Amendment, it mandates that no state shall deny any person equal protection under the law. This clause is crucial for civil rights.
Civil Rights Act of 1964	Prohibits discrimination based on race, color, religion, sex, or national origin in various areas, including employment and public accommodations.
Americans with Disabilities Act (ADA)	Protects individuals with disabilities from discrimination in employment, public services, and accommodations.
Fair Housing Act	Prohibits discrimination in housing based on race, color, national origin, religion, sex, familial status, or disability.
Voting Rights Act	Aims to eliminate barriers to voting for all citizens, particularly for racial minorities.

Figure 6: Key legal protections against two-tiered, dual voter registration systems for overseas civilians versus domestic civilians.

Rule Set 2025-13, subrule 168.253, makes no distinction between military personnel and overseas civilians. The rule prohibits clerks from sending notices to any registrant listed under Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA) and thereby creates a legally unauthorized protected class. This rule extends verification exemptions to overseas civilians in a manner AG Opinion #7322 does not authorize. Attorney General Dana Nessel recognized that military and overseas civilian voters are legally distinguishable groups, a distinction Rule Set 2025-13 eliminates without statutory basis.

The Supreme Court established in Reynolds v. Sims, 377 U.S. 533 (1964), that vote dilution is as unlawful as denying an eligible registrant the right to vote: “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”

R 168.253(1)(a) establishes a two-tiered verification system, precisely this form of vote dilution:

Two-Tiered Verification System

TABLE: APPARENT DISCRIMINATION WOULD VIOLATE FEDERAL CIVIL RIGHTS PROTECTIONS

Description	Tier 1: UOCAVA Voters (including 86.9% non-military civilians)	Tier 2: Domestic Voters
Move-within-jurisdiction notice	Exempt — clerk "shall not send" confirmation notice	Subject to confirmation notice under MCL 168.509aa
Move-outside-jurisdiction notice	Exempt — clerk shall not send cancellation notice	Subject to cancellation notice under MCL 168.509aa
NVRA verification process	Exempt — clerk prohibited from initiating	Subject to waiting period and verification requirements
Registration challenges on residency grounds	Exempt — clerk cannot initiate notice procedure	Subject to challenge under MCL 168.512
Removal for non-response	Exempt — cancellation countdown never starts	Subject to cancellation after waiting period and non-response

Figure 7: Rule Set 2025-13 creates a two-tiered, dual voter registration system, discriminating against domestic voters in favor of overseas UOCAVA voters. It makes overseas civilians exempt from eligibility challenges and thereby creates potential civil rights violations.

Military voters compose 13% of total overseas UOCAVA voter applicants

UOCAVA Table 2: Federal Post Card Applications (FPCA)

State	FPCAs Received						
	Total	Uniformed Services Members		Overseas Citizens		Not Categorized by Voter Type	
		Total	%	Total	%	Total	%
Michigan	20,174	2,640	13.1%	17,534	86.9%	0	0.0%

Figure 8 Source: U.S. Election Assistance Commission (EAC), Election Administration and Voting Survey 2024, p. 213. (See also https://www.eac.gov)

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UOCAVA Table 3: UOCAVA Ballots Transmitted, Returned, Counted, and Rejected

State	UOCAVA Ballots Transmitted	UOCAVA Ballots Returned	UOCAVA Ballots Counted		UOCAVA Ballots Rejected	
			Total	% of Returned	Total	% of Returned
Michigan	23,946	22,029	21,116	95.9%	913	4.1%

Figure 9: Source: U.S. Election Assistance Commission (EAC), Election Administration and Voting Survey 2024, p. 218.

Contrary to public perception, non-military civilian UOCAVA voter far surpass the number of military UOCAVA voters. For the 2024 general election, overseas civilians submitted 86.9% of Michigan's UOCAVA registration applications (which expire after twelve months). Military applications comprised a mere 13.1% (Election Administration and Voting Survey 2024, p. 213). Only one application was rejected, per page 215 of the same report, but 913 returned ballots were rejected. (See https://www.eac.gov for subsequent reports.)

Under the law, UOCAVA Federal Post Card Applications (FPCA) are transmitted to the county clerks who then verify the identity, residency, and citizenship of the applicants. However, Rule Set 13 prevents clerks from verifying eligibility. Its Rule 168.253(1)(a) requires clerks to treat these applications as a protected class, exempt from verification and challenge. They are prohibited from contacting these applicants to verify their eligibility, even after receiving firsthand and reliable information showing non-citizenship, death, or permanent relocation to another state.

"If the voter is entitled to protections under the MOVE act or UOCAVA, the clerk **shall not send a notice**...." Rule Set 2025-13, Appendix G.

The Federal Post Card Application used for UOCAVA registration requires no identity verification, no citizenship documentation, and no proof of U.S. residency. It requests self-attestation. Once these registrations enter Michigan's Qualified Voter File, Rule R 168.253(1)(a) now prevents clerks from initiating any verification process.

This rule runs directly counter to Michigan Attorney General Opinion #7322 that determined military voters are distinct from civilian voters. Military voters possess DoD-verified electronic credentials that civilian registrants do not. Applied to the 17,534 overseas civilian registrations currently shielded from verification, that distinction runs in the opposite direction. These are the registrations for which no equivalent identity verification exists, yet they are the ones Rule Set 2025-13 places beyond the reach of the standard accuracy review process.

6. **Post-UOCAVA Risk: Permanent Unverifiable Registrations**

Even after UOCAVA status expires, R 168.253(1)(a) permanently prevents clerks from sending move-related notices to former UOCAVA voters. The rule contains no time limit, expiration trigger, or re-evaluation mechanism to resume normal verification procedures once UOCAVA status ends. Federal UOCAVA (52 U.S.C. §§ 20301–20311) provides certain safeguards only while the registrant remains overseas or uniformed-service affiliated. Michigan's rule continues the prohibition indefinitely — creating a state-imposed shield that exceeds and outlasts federal law. The result is a permanent unverifiable protected class: voters whose registrations cannot be challenged or canceled through standard move-notice procedures, regardless of actual residency or eligibility.

Federal UOCAVA's protections are explicitly status-contingent. They attach to voters who are currently overseas or uniformed-service affiliated. See 52 U.S.C. §§ 20301–20311. Michigan's rule severs that connection and makes the exemption permanent. This is not statutory interpretation; it is statutory inversion. AG Opinion #7322 never analyzed or authorized a permanent verification exemption; it analyzed a current-status accommodation of 12-month UOCAVA applications grounded in an identifiable, ongoing security rationale.

A rule that permanently shields former UOCAVA registrants from verification has no constitutional anchor in Opinion 7322's reasoning and no statutory anchor in UOCAVA's text.

7. Rule-by-Rule Summary and Legal Analysis of Twelve Rules in Rule Set 2025-13

The table below provides a systematic rule-by-rule legal analysis of all 12 subrules comprising Rule Set 2025-13. For each subrule, the table identifies the rule's subject matter, summarizes its operative effect, and assesses apparent conflicts with federal statutes, state law, constitutional provisions, or administrative procedure requirements. Where no conflict is apparent, the rule is marked "OK." Where a provision falls outside the rule set's scope or is not applicable to a particular analytical category, it is marked "N/A."

This table is intended as a rapid-access legal reference and should be read in conjunction with the detailed substantive analysis above, the model complaint framework in Section IX, and the primary rule text in Appendix G.

The analysis applies consistent criteria across all three rule sets without regard to partisan affiliation. Provisions are assessed against their authorizing statutes, applicable federal law, and constitutional requirements. The inclusion of provisions marked "OK" reflects the report's commitment to targeted, evidence-based analysis rather than wholesale opposition to the rulemaking process.

The legal assessments presented here identify apparent conflicts requiring judicial resolution. They do not constitute legal advice or substitute for formal legal opinions. Final determinations of legality require adjudication through appropriate proceedings

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Table: Summary & Legal Issues. Rule Set 2025-13 and its 12 Rules, R 168.251–R 168.262.

Official Title: Election Challenge and Removal Procedures for Qualified Voter File

Rule Set 2025-13	Subject	Summary	Legal Issues
R 168.251	Definitions	Defines "personal knowledge," "reliable information," "challenge," "waiting period," etc.	"Personal knowledge" definition is *ultra vires* — not in MCL 168.512
R 168.252	Reliable information	Lists acceptable and unacceptable sources for triggering notice	Restricts clerks to enumerated sources; excludes citizen-sourced data including QVF — conflicts with FOIA rights
R 168.253	Notice procedure after reliable information	Requires clerk to verify UOCAVA/MOVE status before sending any notice; prohibits notices to covered voters	**MAJOR:** Creates two-tiered dual voter registration system favoring overseas civilians over domestic citizens. Civil Rights violations Contradicts MCL 168.509aa; exceeds UOCAVA scope; creates unauthorized protected class; vote dilution under Reynolds v. Sims, 377 U.S. 533 (1964); conflicts with AG Opinion #7322.
R 168.254	Actions following confirmation notice	Sets procedures for clerk response when voter returns or ignores confirmation notice	OK
R 168.255	Actions following cancellation notice	Sets procedures for clerk response when voter returns or ignores cancellation notice	OK
R 168.256	Requirements for valid challenge	Requires notarization, personal knowledge, individual affidavit per challenged voter; lists impermissible challenge grounds	**MAJOR:** Notarization requirement (~$10–15/challenge) not in MCL 168.512; personal knowledge standard *ultra vires*; individual affidavit per voter not in statute; economic barriers raise materiality concerns under 52 U.S.C. § 10101(a)(2)(B); *Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003); *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018)
R 168.257	Independent verification; notice procedure applicability	Clerk may (not must) investigate invalid challenges; if reliable information found, must use notice procedure instead of challenge timeline	Partial tension: substitutes notice procedure for challenge timeline without statutory authority
R 168.258	Challenges asserting voter is deceased	Clerk may use independent verification sources; if verified, cancels directly	OK

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R 168.259	Procedure after receiving valid challenge	Sets 30-day response window; requires certified/registered mail notice	OK — tracks MCL 168.512
R 168.260	Cancellation without notice or waiting period	Lists narrow circumstances where immediate cancellation is permitted	OK
R 168.261	Duplicate registrations	Requires merge request through QVF	OK
R 168.262	Correcting voter registration records	Clerk corrects administrative errors	OK

Figure 10: Rule Set 2025-13's twelve (12) subrules and their alleged violations of their controlling statutes.

B. Rule Set 2025-14: Direct Conflict with Federal Record Retention Requirements and Civil Rights Protections

Effective Date: Current. Took effect October 23, 2025 (currently in effect)
Subject Matter: Retention and destruction of electronic poll book data
Official Title: Use of Electronic Pollbook

Rule Set 2025-14 mandates destruction of electronic poll book data seven days after an election's certification, a 98.9% reduction from the 22-month federal record-retention requirement under 52 U.S.C. § 20701. The rule places Michigan clerks in active violation of federal law and impairs citizen and clerk access to public records in violation of FOIA. Compliance with both the federal requirement and the state rule is impossible. This presents a textbook direct conflict preemption question under the Supremacy Clause: where compliance with both a state rule and a federal statute is simultaneously impossible, federal law prevails. It also puts clerks in a lose-lose situation.

This rule did not originate with the formal rulemaking process. Prior to Rule Set 2025-14, the Michigan Department of State (MDOS) had already instructed clerks to delete electronic poll book data after 30 days. This instruction, in itself, was legally unauthorized. Rule Set 2025-14 reduces the retention period to seven days after an election is certified and now codifies that unauthorized directive.

(For PIME's analysis go to RULE SET 2025 – 14 ST: Use of Electronic Pollbook Comprehensive Legal Analysis.)

1. The Federal Statutory Requirement

52 U.S.C. § 20701, enacted as part of the Civil Rights Act of 1960, provides:

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"Every officer of election **shall retain and preserve, for a period of twenty-two months** from the date of any general, special, or primary election... **all records** and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election..." [Emphasis added.]

52 U.S.C. § 20702 establishes criminal penalties: "…whoever willfully steals, destroys, conceals, mutilates, or alters any record... required by section 20701... shall be fined not more than $1,000 or imprisoned not more than one year, or both."

2. Civil Rights and FOIA Implications

Mandatory destruction of these records inhibits citizens' FOIA rights and undermines clerks' duty to maintain records for audits and investigations. The clerk, before erasing the election information, will print pre-formatted reports. This will limit, delay, and obstruct FOIA fulfillment, along with making the data unusable for public analysis.

3. The State Upload Argument Does Not Resolve the Conflict

The Michigan Department of State (MDOS) argues that centralized state uploads satisfy the federal preservation requirement. That argument fails for four reasons:

- Uploads may lose metadata, including audit trails, timestamps, keystrokes, and logs.
- The statute requires preservation of records "which come into [the officer's] possession," meaning the original local records.
- Centralized systems create single points of failure and reduce redundancy.
- Only federal courts or the U.S. Department of Justice can resolve whether uploads satisfy the federal mandate.

4. Legislative History and Purpose

Congress passed and the U.S. enacted 52 U.S.C. § 20701 in 1960 after southern states destroyed voter records to prevent federal investigation of voting rights violations. The 22-month period ensures records remain available for the inauguration of federal officials, the filing and investigation of complaints, the resolution of contested elections, and pattern-and-practice enforcement. This purpose applies fully to electronic records. Rule Set 2025-14 defies the intent of 20701.

5. Electronic Poll Books Are Election "Records"

E-poll books document voter check-in, provisional voting, absentee indicators, and signatures. They comprise records "relating to any act requisite to voting." Rule Set 2025-14 requires their destruction seven days after an election's certification, eliminating evidence that

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federal law requires to be preserved for 22 months. Michigan clerks will destroy electronic poll book data seven days after certifying an election, beginning with the upcoming November 2026 federal election.

6. Rule-by-Rule Summary and Legal Issue Analysis of Eight Rules in Rule Set 2025-14

The table below provides a rule-by-rule legal analysis of all eight (8) rules comprising Rule Set 2025-14. This rule set's summary and legal analysis follow the same format as Rule Set 2025-13's analysis above.

Table. Subrule by Subrule Summary and Legal Analysis of Eight (8) Rules, R 168.41 through R 168.48, in Rule Set 2025-14

Rule Set 14 Official Title: Use of Electronic Pollbook

Rule Set 2025-14	Subject	Summary	Legal Issues
R 168.41	Definitions	Defines "electronic pollbook," "approved form of transmission," "secretary of state's duly authorized agent"	OK
R 168.42	Access to electronic pollbook data and software	Voter data is public record subject to FOIA; software programming records confidential if cybersecurity risk	Confidentiality carve-out for software records raises transparency concerns but not a clear statutory conflict
R 168.43	Download and backup	Sets procedures for downloading pollbook software for early voting and election day; backup requirements	OK
R 168.44	Electronic pollbook during early voting	Requires live connection if internet available; requires daily printed voter list	OK
R 168.45	Electronic pollbook on election day	Requires live connection if internet available	OK

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Rule Set 2025-14	Subject	Summary	Legal Issues
R 168.46	Production of reports	Sets procedures for printing or downloading required reports after close of polls	OK
R 168.47	Upload of pollbook files to QVF	Requires upload of voting history within 7 days after election if not live-connected	OK as an upload requirement; the seven-day window here is distinct from the destruction mandate in R 168.48
R 168.48	Data retention	**Requires deletion of all electronic pollbook software and files by the 7th day following final canvass and certification**	**MAJOR:** Direct conflict with 52 U.S.C. § 20701 (22-month/660-day federal retention mandate); compliance with both is impossible; potential criminal liability under 52 U.S.C. § 20702; impairs FOIA access; defeats congressional purpose of Civil Rights Act of 1960

Figure 11: Rule Set 2025-14's eight (8) subrules and their alleged violations of their controlling statutes.

C. Rule Set 2025-15: Compelled Speech and Statutory Contradictions

Effective Date: Projected early 2026
Subject Matter: Poll challenger appointment, training, and authority
Official Title: Election Challengers and Poll Workers

Rule Set 2025-15 contradicts MCL 168.733 in four specific areas, mandates government-controlled training that raises First Amendment compelled speech concerns, and exceeds the rulemaking authority granted in the authorizing statute.

This rule set codifies unauthorized administrative practices that courts have twice ordered corrected. In O'Halloran v. Secretary of State (Case No. 22-000162-MZ affirmed on appeal October 19, 2023), the Michigan Court of Appeals affirmed that "an executive branch department cannot do by instructional guidance what it must do by promulgated rule."

The court found specifically that the Secretary's May 2022 manual — which restricted challenger-inspector communication to a designated liaison, created mandatory credential forms, permitted non-recording of challenges, and banned electronic devices in absent voter counting board facilities — violated MCL 168.733 and the Administrative Procedures Act. Rule Set 2025-15 now attempts to accomplish through formal rulemaking what the Secretary had been implementing through unauthorized guidance. The liaison restriction predates even the 2022 manual; the Secretary's office has been instructing clerks to restrict challenger communications

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to a single designated inspector since at least 2020, when Carra v. Benson (Case No. 20-000211-MZ) produced a preliminary injunction against legally unauthorized poll challenger directives.

The mandatory training materials at the center of Rule Set 2025-15 became the subject of active inter-branch litigation that was unresolved as this report went to press. On April 15, 2025, the Michigan House Oversight Committee voted to authorize subpoenas directing Secretary Benson and the Department of State to produce those materials after months of resistance.

After MDOS failed to comply by deadline, the Michigan House adopted House Resolution 117 on May 22, 2025, formally holding Secretary Benson and the Department of State in civil contempt for "deliberate failure to comply" and directing the House Office of Legal Counsel to initiate legal action. The House filed suit on June 5, 2025, in House of Representatives v. Benson (Case No. 25-000096-MZ, Michigan Court of Claims, Hon. Sima G. Patel).

On June 11, 2025, the court entered a preservation order freezing all subpoenaed materials in their current form. On November 3, 2025, Judge Patel denied both parties' motions for summary disposition, finding a genuine factual conflict between the Oversight Committee's meeting minutes — which framed the subpoena in punitive terms — and the House's legal pleadings characterizing the purpose as determining whether new legislation was needed. The case proceeded to the pre-trial stage and remained pending on the merits as this report went to press.

The Secretary of State sought to make these same government-controlled training materials mandatory for every poll challenger in Michigan through Rule Set 2025-15, while simultaneously refusing to produce them to the legislative branch under lawful subpoena. MOAHR certified the rule as legally compliant without examining the materials' content. The result was an inter-branch constitutional confrontation that a court is now asked to resolve with the 2026 election approaching — a function that a structurally independent rulemaking review office should have performed before the rule ever left the administrative process.

1. Statutory Foundation

MCL 168.733 establishes poll challenger rights:

"A challenger...may challenge a person applying for a ballot who the challenger has good reason to believe is not a registered elector or otherwise not entitled to vote." MCL 168.733(1)(c)

The statute authorizes poll challengers to challenge any person applying for a ballot, witness the conduct of the election, and call attention to any violation of election law. Rule Set 2025-15 conflicts with state law as to a challenger's authority to challenge registrant eligibility and election processes. It imposes *ultra vires* limitations on challenger communications and

observation rights. It creates training requirements that do not exist in law, and it imposes government-compelled speech. This rule set contradicts the statute in four specific areas:

2. TABLE: STATUTORY CONTRADICTIONS IN RULE SET 2025-15

Issue	Statute (MCL 168.733)	Rule Set 2025-15	Conflict
Challenger authority to challenge registrant eligibility	"Challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector." (§ 1(c))	R 168.208: Lists only four permissible reasons; lists nine impermissible reasons; impermissible challenges rejected or noted.	Statute grants broad "good reason to believe" standard. Rule narrows by enumerating permissible and impermissible grounds, potentially rejecting challenges that fit the statute but fall outside the enumerated list.
Challenger authority to challenge election processes	"Challenge an election procedure that is not being properly performed." (§ 1(d))	R 168.209: Allows challenges but requires specific element identification and explanation; impermissible if vague; ejection possible for repeated impermissible challenges.	Statute is broad. Specificity requirements and ejection risk for vague challenges create a chilling effect on the statutory right.

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Issue	Statute (MCL 168.733)	Rule Set 2025-15	Conflict
Communication with inspectors	"Bring to an election inspector's attention any of the following..." (§ 1(e)) (implies direct communication)	R 168.205: Challengers shall not communicate with election inspectors other than the challenger liaison or designee unless instructed; all communications channeled through liaison.	Direct statutory conflict. Statute authorizes bringing issues to inspectors' attention directly. Rule requires an intermediary, eliminating the right O'Halloran confirmed. The Secretary has enforced this restriction through unauthorized guidance since at least 2020.
Observation rights	"Observe the manner in which the duties of the election inspectors are being performed." (§ 1(b)); "A challenger...may witness the conduct of the election and the processing of the ballots."	R 168.214(3)(n): Allows intermittent standing behind processing table; requires reasonable distance to avoid interference or intimidation; ejection authorized under R 168.217.	Statute grants broad witnessing and observation rights. Proximity limits and ejection risk functionally restrict effective observation.
Training requirements	Silent on training requirements. Implies credentialing organizations may appoint challengers using their own standards.	R 168.207: Mandates state-provided or state-approved training materials; credentialing organizations must train challengers using them; challengers must certify completion.	Statute imposes no training mandate. Rule creates a comprehensive state-controlled training regime that exceeds statutory authority under MCL 24.232.

Figure 12: Statutory Contradictions in Rule Set 2025-15

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**This apparent conflict with law predates the promulgation of Rule Set 2025-15, as the Secretary of State's office has been instructing clerks to allow challengers to speak only with one election official since at least 2022.*

3. First Amendment: Compelled Speech

Rule Set 2025-15 compels poll challengers and credentialing organization trainers to undergo mandatory training using government-provided materials, raising First Amendment compelled speech questions under West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). The Supreme Court held in Barnette that the government cannot "prescribe what shall be orthodox" in matters of opinion or force citizens to express beliefs they do not hold.

The rule compels poll challenger organizations and trainers to use government-provided materials exclusively, preventing them from using their own educational content. The concern is particularly significant because poll challenger credentialing organizations may represent the opposing political party to the sitting Secretary of State or governor, creating the potential for the rule to silence political opposition.

4. *Ultra Vires*: Beyond Statutory Authority

MCL 24.232 prohibits agencies from promulgating rules that exceed the rulemaking authority granted by statute, conflict with another rule or statute, or are arbitrary or capricious. Rule Set 2025-15 appears to violate all three prohibitions.

The training mandate exceeds the authority granted by MCL 168.733, which contains no training provision and no requirement specifying who provides training content. The rule contradicts four specific provisions of MCL 168.733 as documented in the table above. As the Court of Appeals found in O'Halloran, "regulations targeting election challengers or poll watchers reach beyond defendants' general supervisory scope and must be promulgated as APA rules." Rule Set 2025-15 is promulgated as an APA rule — but its substance still conflicts directly with the statute the court interpreted. The rule is also arbitrary: MDOS documented no need for it, conducted no cost-benefit analysis, and sought no stakeholder input during the planning stage when MCL 24.253 called for disclosure.

The training materials Rule Set 2025-15 would mandate remain subject to the court preservation order entered in House of Representatives v. Benson and have not been produced to the legislature, as documented in the opening of this section. MOAHR certified the rule as legally compliant without examining those materials. The House Resolution declared that "reviewing election training materials is a valid legislative purpose," yet the materials remain frozen by court order and undisclosed to the public as the rule advances toward its 2026 effective date.

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This raises a question the report does not resolve but presents to policymakers: if the training materials are appropriate to mandate for private citizens as a precondition to exercising statutory rights, on what basis can they be withheld from the legislature exercising its constitutional oversight function?

5. Rule-by-Rule Summary and Legal Analysis of 20 Rules in Rule Set 2025-15

The table below provides a systematic rule-by-rule legal analysis of all 20 subrules comprising Rule Set 2025-15. For each subrule, the table identifies the rule's subject matter, summarizes its operative effect, and assesses apparent conflicts with federal statutes, state law, constitutional provisions, or administrative procedure requirements. Where no conflict is apparent, the rule is marked "OK." Where a provision falls outside the rule set's scope or is not applicable to a particular analytical category, it is marked "N/A."

This table is intended as a rapid-access legal reference and should be read in conjunction with the detailed substantive analysis above, the model complaint framework in Section IX, and the primary rule text in Appendix G.

The analysis applies consistent criteria across all three rule sets without regard to partisan affiliation. Provisions are assessed against their authorizing statutes, applicable federal law, and constitutional requirements. The inclusion of provisions marked "OK" reflects the report's commitment to targeted, evidence-based analysis rather than wholesale opposition to the rulemaking process.

The legal assessments presented here identify apparent conflicts requiring judicial resolution. They do not constitute legal advice or substitute for formal legal opinions. Final determinations of legality require adjudication through appropriate proceedings.

Here is the full breakdown across Rule Set 2025-15:

6. Table. Rule by Rule Analysis of Rule Set 15's 20 Rules. Rules: R 168.201–R 168.220

Official Title: Election Challengers and Poll Workers

Rule Set 2025-15	Subject	Summary	Legal Issues
R 168.201	Definitions	Defines "challenger," "credentialing organization," "credential card," "poll watcher," "challenger liaison," etc.	OK

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Rule Set 2025-15	Subject	Summary	Legal Issues
R 168.202	Pollbook records	Clerk directs whether challenge records go in physical or electronic pollbook	OK
R 168.203	Record of challengers; organizational training	Requires credentialing organizations to keep challenger records; designate point of contact; issuing individuals must complete SOS-created training	Training mandate for credential issuers not in MCL 168.733; exceeds statutory authority under MCL 24.232
R 168.204	Credential card	Prescribes SOS-mandated credential card form; digital credentials permitted if they mirror SOS template exactly	OK — tracks MCL 168.732
R 168.205	Challenger liaison	Requires challengers to communicate only through designated liaison; prohibits direct communication with other inspectors	**MAJOR:** Direct conflict with MCL 168.733(1)(e), which authorizes bringing issues to inspectors' attention directly; previously struck down in *O'Halloran v. Secretary of State*(2023)
R 168.206	Total number of challengers	Sets maximum challengers per location by type; replacement procedures	OK — tracks MCL 168.730
R 168.207	Challenger training	Requires credentialing organizations to train challengers using SOS-created materials; challengers must certify completion; 2-year recertification; SOS may require supplemental training	**MAJOR:** Training mandate not in MCL 168.733; compelled use of government materials raises First Amendment concerns under *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); materials subject to court preservation order in *House of Representatives v. Benson*, Case No. 25-000096-MZ; *ultra vires* under MCL 24.232
R 168.208	Challenge to voter eligibility	Limits permissible challenges to 4 grounds (not registered, under 18, non-citizen, not resided 30+ days); lists 9 impermissible grounds	**MAJOR:** Conflicts with MCL 168.733(1)(c)'s broad "good reason to believe" standard; narrows statutory authority by enumeration

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Rule Set 2025-15	Subject	Summary	Legal Issues
R 168.209	Challenges to election process	Permits process challenges but requires specific element identification and explanation; vague challenges impermissible	Specificity requirements and ejection risk create potential chilling effect on MCL 168.733(1)(d) rights
R 168.210	Impermissible challenges	Defines impermissible challenges; repeated impermissible challenges may result in ejection	Ejection standard for "repeated" impermissible challenges is vague; potential chilling effect
R 168.211	Rejected challenges	Sets recording requirements for permissible but rejected challenges	OK
R 168.212	Accepted challenges	Sets recording requirements for accepted challenges	OK
R 168.213	Recording of challenges	Requires SOS-prescribed challenge recording form; challenger must complete and return to liaison	OK as administrative procedure
R 168.214	Rights and duties of challengers	Lists 14 enumerated rights and 14 enumerated prohibitions	Proximity/distance restrictions and ejection risks may functionally restrict MCL 168.733(1)(b) observation rights; conflicts with MCL 168.733(1)(e) on inspector communication
R 168.215	Challenger oath	Prescribes mandatory oath referencing SOS training materials	Oath compels acknowledgment of government materials whose content has not been disclosed publicly; First Amendment compelled speech concern under *Barnette*
R 168.216	Challenger conduct; multi-precinct service	Allows challengers to serve multiple precincts if organization has fewer challengers than boards	OK
R 168.217	Prohibited conduct; ejection	Sets warning-then-ejection procedure; requires recording of warnings and ejections	Ejection standard tied to liaison's "reasonable belief" — subjective standard creates potential for selective enforcement
R 168.218	Challengers in clerk offices	Limits challenger presence to public areas; prohibits	OK within scope of clerk office operations

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Rule Set 2025-15	Subject	Summary	Legal Issues
		viewing QVF; prohibits observing voter ballot completion	
R 168.219	Poll watchers	Grants limited rights; subjects poll watchers to same restrictions as challengers	Prohibition on speaking with election inspectors other than liaison applies to poll watchers as well — extends statutory conflict beyond credentialed challengers
R 168.220	Challenger appeal procedure	Allows appeals to local clerk, then Bureau of Elections; eligibility challenges appealable only through post-election judicial process	OK

Figure 13: Rule Set 2025-15's twenty (20) subrules and their alleged violations of their controlling statutes.

D. Procedural Violations in the Rulemaking Process

Beyond the substantive conflicts documented above, all three rule sets share a common procedural concern: omission from MDOS's Annual Regulatory Plan 2024-2025, contrary to MCL 24.253's advance-planning framework. Plans are advisory under MCL 24.253(3).

Section III examines the structural design failures that made this outcome predictable. Section II has documented specific legal conflicts in each of the three rule sets. As required under MCL 24.253, agencies must identify rules they "reasonably expect to process in the next year." MDOS's plan omitted all three rule sets entirely. MOAHR approved the plan without flagging the omission.

JCAR received incomplete information, preventing the advance oversight the statute was designed to enable. MCL 24.306 authorizes courts to invalidate rules that violate "any provision of this act," and MCL 24.253 is part of that act. The planning stage violation provides independent grounds for invalidation of all three rule sets.

1. Table: Conflicts with Administrative Procedures Act across Three Rule Sets

Rule Set	Substantive (MCL 24.306)	Procedural/Transparency
2025-14	Federal conflict (§ 20701); arbitrary/capricious (cost justification)	Defective process automatically advances rules to take effect; executive branch overreach in violation of Separation of Powers; no regulatory plan filed notice of issues or justification of proposed rule changes
2025-13	Excess of authority (MCL 24.232); federal materiality	Inadequate impact assessment; accelerated timeline
2025-15	Four contradictions with MCL 168.733; error of law	Disregard of public testimony; no advance disclosure

Figure 14: Conflicts with the Administrative Procedures Act across the three rule sets

E. Summary: Section II

The procedural violations described above and summarized below are not isolated errors. They are the predictable product of the structural design failures that Section IV examines in depth.

Section III has documented specific legal conflicts in each of the three rule sets:

Rule Set 2025-13:

- **Substantive:** Excess of authority (MCL 24.232); federal materiality concerns.
- **Procedural:** Inadequate impact assessment; accelerated timeline.

Rule Set 2025-14:

- **Substantive:** Federal conflict (52 U.S.C. § 20701); arbitrary and capricious (no cost justification).
- **Procedural:** No regulatory plan filed the requisite notice of issues or identified upcoming new rules. Thies was a failure to disclose issues and proposed rule changes.

Rule Set 2025-15:

- **Substantive:** Four contradictions with MCL 168.733; error of law; First Amendment compelled-speech concerns.

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- **Procedural:** Disregard of public testimony; no advance disclosure.
- **Active litigation:** *House of Representatives v. Benson*, Case No. 25-000096-MZ (Michigan Court of Claims), filed June 5, 2025; court preservation order in effect; summary disposition denied both parties November 3, 2025; case pending.

Table: Major Legal Violations Across the Three Rule Sets

Rule Set	Provision	Violation	Controlling Authority
2025-13, R 168.253	UOCAVA blanket exemption	Creates unauthorized protected class; prevents clerk notice	MCL 168.509aa; AG Opinion #7322; Reynolds v. Sims
2025-13, R 168.256	Notarization + personal knowledge + individual affidavit	Economic barriers; *ultra vires*; materiality violation	MCL 168.512; MCL 24.232; 52 U.S.C. § 10101(a)(2)(B)
2025-14, R 168.48	Seven-day destruction mandate	Direct conflict with 22-month federal retention requirement; impossible dual compliance	52 U.S.C. § 20701; 52 U.S.C. § 20702
2025-15, R 168.205	Liaison-only communication	Eliminates direct inspector access	MCL 168.733(1)(e); *O'Halloran*(2023)
2025-15, R 168.207	Mandatory SOS training	Exceeds statutory authority; compelled speech	MCL 168.733; MCL 24.232; First Amendment; *Barnette*
2025-15, R 168.208	Four-ground eligibility limit	Narrows broad statutory standard	MCL 168.733(1)(c)
2025-15, R 168.215	Mandatory oath to undisclosed materials	Compelled speech; materials under court order	First Amendment; *Barnette*; *House of Representatives v. Benson*

Figure 15: Rule Set 2025-15's eight (8) subrules and their alleged violations of their controlling statutes.

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SECTION III: ADMINISTRATIVE REVIEW STRUCTURE — CONSTITUTIONAL FOUNDATIONS, ORIGINS, EVOLUTION, AND STRUCTURAL DEFECTS

The Framers of the U.S. Constitution, having endured tyranny under the monarchy of King George, harbored a deep fear of unchecked power. The Framers designed a three-branch system of government fortified with a framework of checks and balances and grounded in the Separation of Powers.

The systemic failures documented in Sections I and II did not arise in a vacuum. They evolved, in large part, from a breakdown of precisely these principles at the state level — a collapse in Michigan's own Separation of Powers and a failure of the dual-checkpoint system designed to provide checks and balances over government agency rulemaking.

Michigan's first checkpoint, the Joint Committee on Administrative Rules (JCAR), came into existence in 1969 with the passage of Michigan's Administrative Procedures Act (MAPA), Act 306 of 1969. MAPA created JCAR as the legislative rulemaking oversight committee and designed it as a two-chambered joint committee composed of five state senators and five state representatives.

MCL 24.235 specifies the details of JCAR's creation and the appointment of its members for two-year terms. The chairperson alternates each year between Senator and Representative. The law specifies the handling of "expenses; meetings; hearings; action by committee; report; hiring and supervision of staff and related functions." JCAR operates with budget independence, and the "supervision of staff, budgeting, procurement, and related functions of the committee shall be performed by the council administrator under section 104a of the legislative council act, 1986 PA 268, MCL 4.1104a."

The second rulemaking oversight office came to existence via Governor John Engler's executive order in 1995, E.R.O. 1995-5. He inserted the Michigan Office of Administrative Hearings and Rules (MOAHR) into the beginning of the rulemaking review process.

This dual structure evolved over three decades through decisions that either neutered the oversight body or bypassed the constitutional and statutory requirements governing how Michigan may create executive offices.

The result is a system in which one checkpoint responsible for catching and correcting legal violations operates under the control of the same branch that promulgates the rules. The other

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checkpoint, lawfully created to provide legislative oversight, suffers from gridlock and lacks the authority to stop a rule from taking effect.

This section examines the constitutional and statutory foundations that were bypassed. It traces the three-decade evolution that produced the current structure. Five main structural defects led to checkpoint failure when the 2025 election rule sets arrived.

Michigan's dual-checkpoint system did not emerge from a single legislative design. It evolved over three decades through successive gubernatorial actions. The legislature created JCAR in 1969 through the Michigan Administrative Procedures Act. The executive-branch checkpoint, in contrast, has been created, abolished, and recreated four times — each time by executive order alone and each time by an incoming governor replacing the prior administration's structure.

Governor Engler ordered the creation of the first executive review office in 1995. Governor Granholm abolished it in 2005 and created a successor to it. Governor Snyder abolished that office in 2011 and created two replacement offices. Governor Whitmer abolished those in 2019 and created the current MOAHR, combining adjudication and oversight. No legislature voted to create any of these creations.

A. Table: Organization Chart. Where JCAR and MOAHR Fit

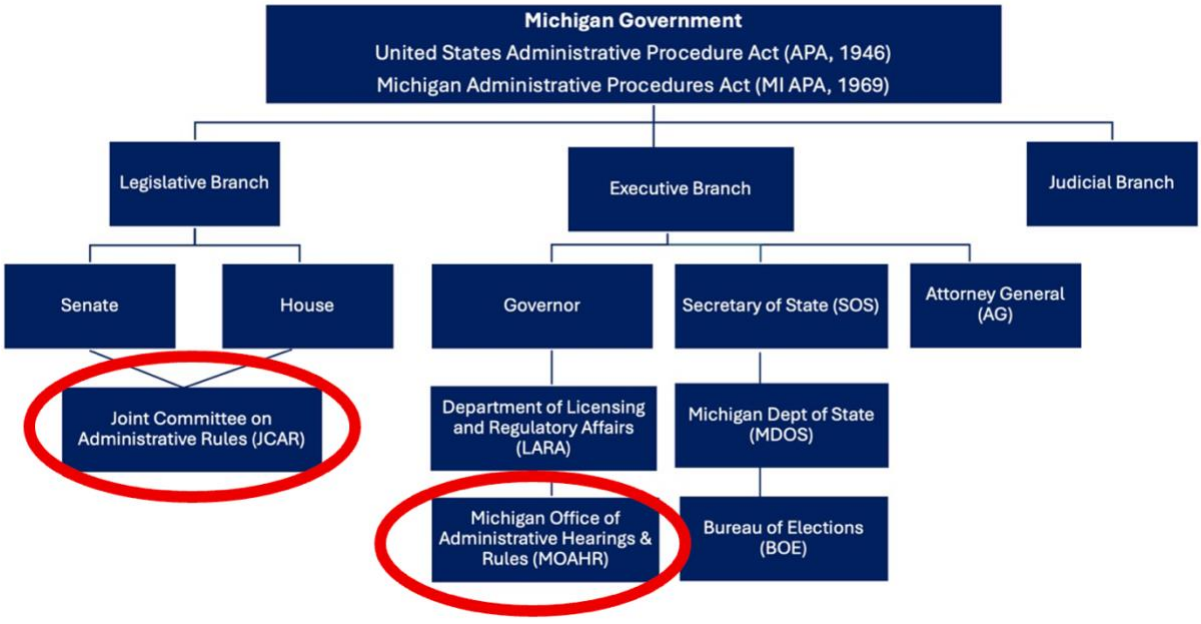

Figure 16: Michigan's dual-checkpoint oversight system, showing the placement of JCAR within the legislative branch and MOAHR within the executive branch's Department of Licensing and Regulatory Affairs (LARA). Source: https://www.legislature.mi.gov/documents/publications/citizensguide.pdf

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B. U.S. Constitutional Foundation

1. Separation of Powers Doctrine

James Madison, a Framer of the U.S.. Constitution, warned in Federalist No. 48 that combining legislative, executive, and judicial powers "may justly be pronounced the very definition of tyranny." The Framers, in writing the Constitution of the U.S.A., divided the federal government into three branches and assigned each branch distinct and limited powers.

This structure, known as the Separation of Powers Doctrine, permeates the entire constitutional design. The principle is more than organizational. It is protective. In confining each branch to its distinct and limited sphere, the Founders sought to prevent any one branch from accumulating excessive power. While they deliberately distributed governmental authority, they viewed a measure of institutional friction as essential to preserving the people's liberty.

2. The Elections Clause

The Elections Clause assigns to state legislatures the primary authority to regulate federal elections, subject to congressional override. Article I, Section 4, Clause 1 of the U.S. Constitution provides:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

By placing the Elections Clause in Article I, the Framers of the Constitution prioritized its importance. They assigned primary authority over elections to duly elected state legislators, not to executive officials. The executive branch possesses veto power over legislative enactments; the judicial branch holds adjudicative authority. Neither supplants the legislature's primary role. The Supreme Court enforced this principle and invalidated executive actions that usurp legislative authority in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Additional relevant precedents are collected in Appendix D.

3. The Supremacy Clause

The Supremacy Clause establishes the mechanism for resolving conflicts between federal and state law. When Michigan's executive branch adopts rules that affect federal elections and those rules conflict with federal law, the Supremacy Clause requires federal law to prevail. Article VI, Clause 2 provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

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Any violations of the Separation of Powers Doctrine or the Elections Clause are subject to federal challenge on this basis.

C. U.S. Statutory Foundation

1. Federal Administrative Procedure Act of 1946

The Administrative Procedure Act of 1946 (5 U.S.C. §§ 551–559) establishes baseline procedural requirements for federal rulemaking: public notice, opportunity for comment, publication of draft and final rules, and judicial review. The federal APA does not create or authorize centralized executive-branch pre-review of agency rules.

That executive-branch function emerged later through Executive Order 12866 (1993), when President Clinton created the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget. OIRA's authority derives from the President's constitutional duty under Article II, Section 3 to "take Care that the Laws be faithfully executed." Michigan's Constitution contains no equivalent provision. It focuses instead on strict separation of powers. This distinction matters, as D explains below.

D. Michigan Constitutional Framework

1. Michigan Separation of Powers

Michigan's 1963 Constitution establishes separation of powers more strictly than the federal model:

"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 except as expressly provided in this constitution." (Mich. Const. art. III, § 2)

The phrase "except as expressly provided in this constitution" is distinct and significant. It means any cross-branch exercise of authority requires a specific constitutional grant, not merely executive convenience or legislative acquiescence.

STATE STATUTES THAT EXPRESSLY PROHIBIT COMBINING ADJUDICATION WITH POLICY FUNCTIONS

Alaska (AS 44.64): Office created 'to increase the separation between the adjudicatory functions of executive branch agencies and the agencies' investigatory, prosecutory, and policy-making functions.'

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Georgia (O.C.G.A. § 50-13-40(f)(2)**):** OSAH ALJs prohibited from rendering 'legal advice or assistance to any state board, bureau, commission, department, agency, or officer' except in contested case duties.

Texas (Tex. Gov't Code § 2003**):** SOAH created 'to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions in the executive branch.'

Michigan's MOAHR consolidates precisely the functions these three state statutes declare must be separated — and does so by executive order, without legislative authorization. (EO 2019-06)

2. Allocation of Principal Departments

Article V, Section 2 contains a specific structural requirement:

"All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, **shall be allocated by law among and within not more than 20 principal departments**." [Emphasis added.]

The Constitution limits the executive branch to 20 principal departments and requires each to be "allocated by law," meaning through legislative statute, which involves public hearings, debate, and an affirmative vote of both chambers. The Executive Organization Act of 1965 (Act 380 of 1965, MCL 16.101 et seq.) provides the initial statutory framework. Michigan currently operates with 19 departments. Subsequent executive reorganization orders may rename or restructure departments, subject to legislative disapproval within 60 days.

The phrase "allocated by law" refers to legislative enactment, not executive order. Governors may reorganize following the legislature's initial allocation. They may rename and restructure only after the initial statutory allocation. They shall not substitute executive action for the required legislative enactment.

3. Michigan Elections Clause

Article II, Section 4(2) of the Michigan Constitution reinforces legislative primacy over elections:

"Except as otherwise provided...the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise...."

Any executive-branch intrusion into the legislature's authority to regulate elections and restrict the functions of the executive branch to 20 pre-approved offices is *ultra vires*, beyond the

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lawful authority of executive branch. Executive orders that exceed the governor's constitutional powers nullify the legislature's federally protected role to serve as the primary body regulating federal elections under the Elections Clause.

4. Legislative Power and the Delegation Principle

Article IV, Section 1 of the Michigan Constitution vests the legislative power of the state in the senate and house of representatives. Administrative rulemaking is delegated legislative power. The legislature grants agencies the authority to make binding rules implementing statutes. That delegation flows from the legislature to agencies, not through the executive branch or its governor. Michigan's Administrative Procedures Act (MAPA, MCL 24.201 et seq.) is the legislature's exercise of that delegated power, and it creates exactly one oversight body: JCAR.

When a governor inserts an executive-branch office as a mandatory gatekeeper between agencies and their MAPA-delegated rulemaking authority without amending MAPA or receiving legislative delegation, the governor is not supervising the execution of law. The governor is interposing executive authority over the exercise of delegated legislative power, without constitutional authorization to do so. Florida's Supreme Court addressed this identical arrangement in *Whiley v. Scott* and held it constitutionally infirm. Michigan's Art. IV, § 1 provides the same structural basis for the same conclusion under Michigan's own constitution.

5. Fair Treatment in Executive Hearings

Article I, Section 17 of the Michigan Constitution guarantees that "the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed."

MOAHR conducts executive hearings on election-related contested cases. When the same office that certified a rule as legally compliant during pre-promulgation gatekeeping later adjudicates disputes arising under that rule, the conditions for fair and just treatment are structurally absent. A party challenging a rule before MOAHR is challenging a decision that MOAHR itself made. Michigan's Constitution forbids this structural arrangement in hearings as a matter of individual right, independently of any federal due process analysis under the Fourteenth Amendment.

6. Judicial Review Requires Authorization by Law

Article VI, Section 28 guarantees judicial review of "all final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law." This review must include, at minimum, "the determination whether such final decisions, findings, rulings and orders are authorized by law."

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MOAHR was created by executive order, not by the constitution and not by statute. It does not satisfy the threshold condition of an agency "existing under the constitution or by law." Every certification MOAHR issues and every adjudicative ruling it makes carries this foundational defect: an office lacking authorization by law cannot produce decisions authorized by law. This is not an argument about the merits of any individual MOAHR ruling. It is a structural argument that travels from the office to every decision the office makes.

E. Michigan State Law Framework

1. Michigan Administrative Procedures Act of 1969 (MAPA)

The Michigan Administrative Procedures Act (1969 PA 306, MCL 24.201 et seq.) requires rulemaking to stay within its statutory authority (MCL 24.232), mandates public notice and comment, and provides for judicial review (MCL 24.306). MAPA creates exactly one, and only one, statutory oversight body: the Joint Committee on Administrative Rules (JCAR). MCL 24.235 states:

"The joint committee on administrative rules is created and consists of 5 members of the senate and 5 members of the house of representatives...."

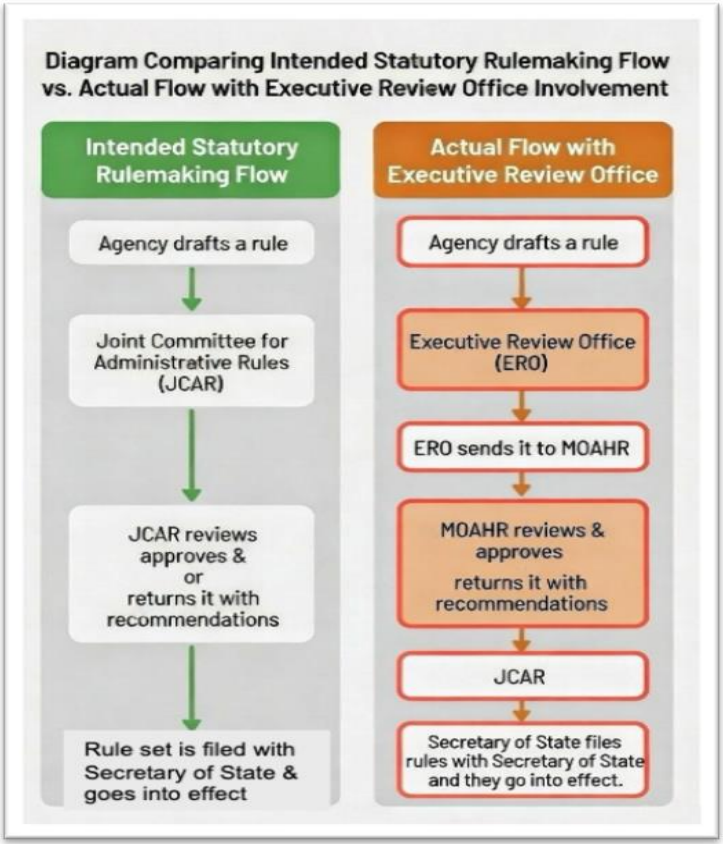

Figure 17: Executive Branch MOAHR inserts itself into the top of the rule review funnel, preempting JCAR and bypassing Legislative Branch authority.

The Federalist Society has observed that joint legislative committees for rule oversight represent "a fairly common state practice" and a legitimate mechanism for legislative accountability. (Alec Rogers, "REINING in the Agencies: Oversight of Executive Branch Rulemaking in the 21st Century," Federalist Society Review, 2015.) MFEI concurs: the legislature's creation of JCAR is consistent with Michigan's constitutional design.

MAPA contains no provision authorizing the creation of an executive-branch review office. MCL 24.234, added by Public Act 262 of 1999, references the Office of Regulatory

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Reform (ORR) and the public act assigns it duties. But that statute was merely acknowledging an office that Governor Engler had created four years earlier through executive reorganization order, it was not granting ORR legislative authorization.

The statutory language itself makes clear that ORR's powers derive from E.R.O. 1995-5, not from legislative allocation. MCL 24.234 assigns ORR powers and duties "as set forth in executive reorganization order no. 1995-5, MCL 10.151."

Statutory acknowledgment of an executive-created office is not the same and does not qualify as constitutional "allocation by law." Article V, Section 2 requires affirmative legislative enactment (allocation) before the executive branch may create an office, not after it has done so via E.R.O.

2. Compiler's Notes and MCL Listings Tell the Same Story

The compiler's notes confirm that across thirty years and four governors, the offices responsible for rulemaking review were created, transferred, renamed, and abolished exclusively through executive orders, never through legislative action. The statute's own annotations record each step.

Governor Engler created the Office of Regulatory Reform through E.R.O. No. 1995-5, compiled at MCL 10.151. The annotations trace the subsequent transfers:

- MCL 10.151: "History: 1995, E.R.O. No. 1995-5, Eff. June 1, 1995. Compiler's Notes: For transfer of powers and duties of the office of regulatory reform from the department of management and budget to the office of regulatory reform, see E.R.O. No. 2000-1, compiled at MCL 10.152 of the Michigan compiled laws. For transfer of powers and duties of office of regulatory reform from the executive office of the governor to the department of management and budget, see E.R.O. 2002-7, compiled at MCL 10.153 of the Michigan Compiled Laws."
- MCL 10.152: "History: 2000, E.R.O. No. 2000-1, Eff. Apr. 1, 2000. Compiler's Notes: For transfer of powers and duties of office of regulatory reform from the executive office of the governor to the department of management and budget, see E.R.O. No. 2002-7, compiled at MCL 10.153 of the Michigan Compiled Laws."
- MCL 10.153: "History: 2002, E.R.O. No. 2002-7, Eff. Sept. 1, 2002."

Governor Granholm abolished ORR in 2005 and created its successor — the State Office of Administrative Hearings and Rules (SOAHR) — through E.R.O. 2005-1, amended by E.R.O. 2005-26, compiled at MCL 445.2021. E.R.O. 2005-1 expressly acknowledged that ORR was created by executive order and transferred all its authority, powers, duties, functions, and responsibilities by Type III transfer to the new SOAHR, again without legislative action. The compiler's notes at MCL 445.2021 confirm: "For transfer of powers and duties of state office of

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administrative hearings and rules to Michigan administrative hearing system, and abolishment of state office of administrative hearings and rules, see E.R.O. No. 2011-4, compiled at MCL 445.2030."

Governor Snyder abolished SOAHR in 2011 through two simultaneous executive orders. E.R.O. 2011-4 created the Michigan Administrative Hearing System (MAHS) within the Department of Licensing and Regulatory Affairs and transferred SOAHR's adjudicative functions to it. E.R.O. 2011-5 simultaneously created the Office of Regulatory Reinvention (ORR) within LARA, transferring to it all rulemaking review authority that SOAHR had inherited from Engler's original ORR through Granholm's E.R.O. 2005-1. The compiler's notes at MCL 445.2031 confirm the chain and its continuation: "For transfer of powers and duties of office of regulatory reinvention to the office of performance and transformation, and abolishment of the office of regulatory reinvention, see E.R.O. No. 2016-2, compiled at MCL 18.446."

Governor Whitmer completed the most recent reorganization through E.R.O. 2019-1 and E.R.O. 2019-06, abolishing MAHS, the Office of Regulatory Reinvention, and the Office of Performance and Transformation. Then she **created** MOAHR to consolidate all of their functions. The compiler's notes in MCL 24.205 confirm: "For the transfer of powers and duties of the office of performance and transformation under the administrative procedures act of 1969, 1969 PA 306, to the Michigan office of administrative hearings and rules, and abolishment of the Michigan administrative hearings system, office of regulatory reinvention, and office of performance and transformation, see **E.R.O. 2019-1,** compiled at 324.99923." [Emphasis added.]

In every instance across every administration — Republican and Democratic alike — the statute's own annotations confirm that the executive branch rulemaking review offices originated from, and were restructured by, executive orders. No Public Act created any of them.

The inclusion of certain executive reorganization orders in the Michigan Compiled Laws has created confusion about their legal status, but that inclusion does not resolve the constitutional question — it reinforces it. MCL 10.151, 10.152, and 10.153 correspond to E.R.O. 1995-5 and its successors. MCL 445.2021 corresponds to E.R.O. 2005-1. MCL 445.2030 and MCL 445.2031 correspond to E.R.O. 2011-4 and E.R.O. 2011-5. In every case, the entries carry headers clearly identifying them as executive reorganization orders, not legislative statutes. The Michigan Compiled Laws incorporate executive reorganization orders for practical convenience when those orders have continuing legal effect; that placement is administrative, not legislative. E.R.O. 2019-06, which created MOAHR, does not even appear as a numbered MCL section — it is referenced in the legislature.mi.gov index under executive reorganization orders, an inconsistency that further confirms the distinction.

Retroactive statutory acknowledgment cannot cure this constitutional defect. Article V, Section 2 requires allocation "by law" — a process that mandates public hearings, legislative

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debate, and an affirmative vote before the office exists. When the legislature enacted MCL 24.234 in 1999, ORR had already been operating for four years. No hearings were held on its creation, no debate occurred on its authority, and no vote was taken on its structure. The constitutional requirement is prospective and procedural, not merely textual.

A legislature cannot satisfy these defects by referencing in statute what the executive branch has already built, and it cannot satisfy them by incorporating executive reorganization orders into the MCL for administrative convenience.

No Public Act has ever created any of these offices or provided them with a statutory foundation. No legislative language defines MOAHR's authority to review administrative rules, approve regulatory plans under MCL 24.253, or conduct administrative hearings that determine Michigan residents' rights and obligations. MOAHR exercises significant quasi-judicial powers without the statutory basis the Michigan Constitution requires — and it does so as the latest in an unbroken thirty-year line of executive-created offices, spanning four governors and both major political parties, that the legislature has never authorized by law.

3. The Executive Organization Act of 1965 Provides No Statutory Basis

When the Executive Organization Act of 1965 (Act 380) created Michigan's 19 principal executive departments, it listed no administrative rulemaking review offices. The Department of Commerce, which did have a statutory function, was later renamed as LARA through a governor's executive reorganization order and given legally unauthorized functions. Renaming is not the same as creating a new function.

The compiler's notes to MCL 16.325 confirm that the name change from the Department of Consumer and Industry Services to the Department of Labor and Economic Growth occurred through E.R.O. No. 2003-1. LARA's foundation as a principal department thus rests on an executive order without statutory authorization. MOAHR, as a department within LARA, not only inherits that defect, but it also originated via executive order.

Ballotpedia's State Executive Officials Project reached the same conclusion. After extensive research, Ballotpedia reported it was "unable to identify any relevant information on state official websites" showing "constitutional or statutory text that authorizes the creation of LARA [the parent department of MOAHR] or the LARA Director position."

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Figure 18: Source: Ballotpedia, Feb. 5, 2026.

Ballotpedia reached similar conclusions regarding LARA's employee qualification requirements, the process for filling vacancies, employee duties, and divisions of the office.

F. Origins and Evolution: Thirty Years of Executive-Branch Control

Michigan adopted the concept of centralized executive rule review two years after the federal OIRA model, but without equivalent constitutional grounding. The federal OIRA derives its authority from the President's Take Care Clause duty. Michigan's Constitution contains no equivalent provision. Rather, Michigan's Constitution emphasizes the Separation of Powers. It explicitly prohibits one branch from exercising powers properly belonging to another, absent express constitutional authorization.

Despite that prohibition, governors from both parties created executive checkpoints through orders alone.

1995 — Governor Engler (R): E.R.O. 1995-5 creates the Office of Regulatory Reform (ORR) within the Executive Office of the Governor. No statutory foundation. No independence protections. Orders centralized review of all agency rules, including election rules from the Department of State.

2005 — Governor Granholm (D): E.R.O. 2005-1 and E.R.O. 2005-26 abolish ORR and create the State Office of Administrative Hearings and Rules (SOAHR) as a Type I and Type III agency in the Department of Labor and Economic Growth. The order explicitly excludes contested election-law cases from SOAHR jurisdiction but contains no exclusion for election-related rulemaking review.

2011 — Governor Snyder (R): E.R.O.s 2011-4 and 2011-5 abolish SOAHR and create the Michigan Administrative Hearing System (MAHS) and Office of Regulatory Reinvention (ORRI) within the new Department of Licensing and Regulatory Affairs (LARA). From 2011 to

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2016, the LARA Director serves as Chief Regulatory Officer, reviewing rules from LARA's own agencies — complete executive self-review with no separation whatsoever.

2019 — Governor Whitmer (D): E.R.O. 2019.06 abolishes prior structures and creates MOAHR as a Type I agency within LARA. Consolidates rulemaking review and hearings. Removes the prior election-hearing exclusion, bringing election disputes and election rulemaking under a single executive-branch office. Designates MOAHR's executive director as chief regulatory officer. Zero independence protections.

G. TABLE: Evolution of Michigan's Four Administrative Review Offices (1995-2025)

Office	Created By	MCL Reference	Claimed Basis	Actual Action	Duration	Abolished By
Gov. Engler (R): Office of Regulatory Reform (ORR)	E.R.O. 1995-5	Referenced in MCL 10.151, 10.152, 10.153 but was not enacted into law	Type I Transfer	Creation	1995-2005 (10 years)	E.R.O. 2005-1
Gov. Granholm (D): State Office of Administrative Hearings and Rules (SOAHR)	E.R.O. 2005-1	Referenced in MCL 445.2021 but was not enacted into law	Type I Transfer	Creation	2005-2011 (6 years)	E.R.O. 2011-4 & 2011-5
Gov. Snyder (R): Michigan Administrative Hearing System (MAHS) & Office of Regulatory Reinvention (ORRI)	E.R.O. 2011-4 & 2011-5	Referenced in various MCLs but was not enacted into law	Type I Transfer	Creation	2011-2019 (8 years)	E.R.O. 2019-06
Gov. Whitmer (D): Michigan Office of Administrative Hearings and Rules (MOAHR)	E.R.O. 2019-06	Not in MCL. Was not enacted into law.	Type I Transfer	Creation	2019-Present (6 years)	N/A

Figure 19: In every instance, the executive order's own language used the word 'created,' not 'transferred.' See Section J. Source: MFEI research.

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H. The Constitutional Violation: Thirty Years Without Legislative Allocation

Article V, Section 2 of the Michigan Constitution establishes a two-step process. First, executive offices must be allocated by law through legislative statute, with public hearings, floor debate, and an affirmative vote. Next, the governor may reorganize through executive order, subject to legislative disapproval within 60 days.

Governors Engler, Granholm, Snyder, and Whitmer skipped Step 1. Instead, they issued executive orders and created new oversight offices, characterizing each creation as a Type I transfer and each termination of the prior governor's creation as a Type III, per MCL 16.103 (a) and (c), respectively. These transfers occurred despite having no preexisting statutory functions to transfer. In doing so, they:

- Usurped the legislature's oversight authority granted in Article IV, Section 37
- Created an executive-branch regulatory review apparatus in violation of Michigan Constitution Article III
- Violated the Separation of Powers Doctrine by arrogating to the executive branch functions that belong to the legislature
- Established a dual-checkpoint system not contemplated or authorized by the constitutional design
- Undermined JCAR, the legislature's duly created oversight mechanism

Controlling Legal Framework

The Michigan Supreme Court established the controlling framework for evaluating these actions in Soap & Detergent Assn. v. Natural Resources Commission, 415 Mich. 728, 330 N.W.2d 346 (1982). The Court held that the Governor's reorganization power under Article V, Section 2 is characterized as a limited legislative power delegated to the executive, subject to three inherent constraints: (1) the area of executive exercise of legislative power is "very limited and specific"; (2) the Legislature retains concurrent power to transfer functions; and (3) the Legislature is specifically granted the power to veto reorganization orders.

MOAHR's rulemaking gatekeeping function fails each constraint. Creating a new mandatory pre-promulgation approval power over all executive agency rulemaking is not "limited and specific," it is a wholesale expansion of executive authority over a domain the Legislature comprehensively regulated through MAPA.

MOAHR's gatekeeping displaces JCAR's statutory role without legislative concurrent action, and the legislature's theoretical 60-day disapproval window does not adequately constrain

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the ongoing exercise of legislative-type power by an executive office operating without standards.

I. Governors Unlawfully Created New Offices with New Functions and Called Them Type I Transfers

Michigan governors described the establishment of centralized administrative review offices as "Type I" transfers under the Executive Organization Act of 1965 (Act 380). The Act defines a Type I transfer as "the transferring intact of an existing department, board, commission or agency to a principal department." MCL 16.103(a) under Act 380.

The Type I designation is significant — and problematic. Under the Executive Organization Act of 1965, a Type I transfer is defined as "the transferring intact of an existing department, board, commission or agency to a principal department established by this act." MCL 16.103(a); Act 380 of 1965.

The operative phrase is "established by this act." In other words, the transfer mechanism presupposes a legislatively created entity. Using a Type I designation to install a newly created executive oversight office — a new function — without legislative authorization, inverts the statute's plain meaning and circumvents the constitutional allocation requirement.

The offices in question were not preexisting statutory entities. No prior public act had created an independent office performing centralized rulemaking review. Instead, executive orders established new entities while claiming to "transfer" responsibilities from non-statutory gubernatorial staff offices. That does not satisfy the statutory definition of a Type I transfer.

The governors created the appearance of routine reorganization while avoiding the constitutional requirement that new executive offices must be "allocated by law."

J. The Governor's Own Language Proves the Point

The most direct evidence that these were creations, not transfers, appears in the executive orders themselves:

- Governor Engler's E.R.O. 1995-5 states, "The Office of Regulatory Reform is hereby **created** within the Executive Office of the Governor." The E.O. says, "**Created**," not transferred. [Emphasis added.]
- Governor Snyder's E.R.O. 2011-5 states, "I. **CREATION** A. The Office of Regulatory Reinvention is created within the Department of Licensing and Regulatory Affairs." The E.O. says, "**Created**," not transferred. [Emphasis added.]

In both foundational instances, and throughout the thirty-year sequence, the executive orders used the language of creation, not transfer. That language defeats any argument that these actions constituted legitimate Type I transfers of existing statutory entities.

K. Failure to "Allocate by Law" and Passive Acquiescence

Twenty three of 24 central-panel states create their rulemaking oversight offices through legislative allocation. Just as Michigan alone employs no independence protections, it is alone in this respect as well. Michigan's ORR, SOAHR, MAHS/ORRI, and MOAHR were never "allocated by law." Each was decreed through executive order.

Under Article V, Section 2, the legislature has 60 calendar days during a regular session to disapprove an executive reorganization order. If the legislature takes no action, the order takes effect by default. The legislature's failure to disapprove does not satisfy the constitutional requirement of initial legislative allocation.

All four offices took effect over thirty years through this passive-acquiescence mechanism. But the passive-acquiescence mechanism cannot satisfy Article V, Section 2's requirement of initial legislative allocation. The Constitution's demand that executive offices be "allocated by law" is an affirmative, prospective requirement. It mandates that the legislature act before the office exists, through public hearings, floor debate, and a recorded vote. The 60-day disapproval window is a check on subsequent reorganization of offices that have already been properly allocated by statute. It was never designed to substitute for that initial allocation, and it cannot do so. Silence is not enactment. The absence of a disapproval vote is not the constitutional equivalent of a public act.

The practical realities of the disapproval mechanism reinforce why the Constitution cannot be read to permit this substitution. Disapproval requires hearings, debate, and majority votes in both chambers within a 60-day window — a threshold realistically achievable only when the opposing party controls both chambers simultaneously. Under partisan alignment between the governor and either chamber, disapproval is structurally improbable. A constitutional allocation requirement that can be permanently satisfied by exploiting legislative inaction is no requirement at all.

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Table: Central-Panel State Hearing Offices

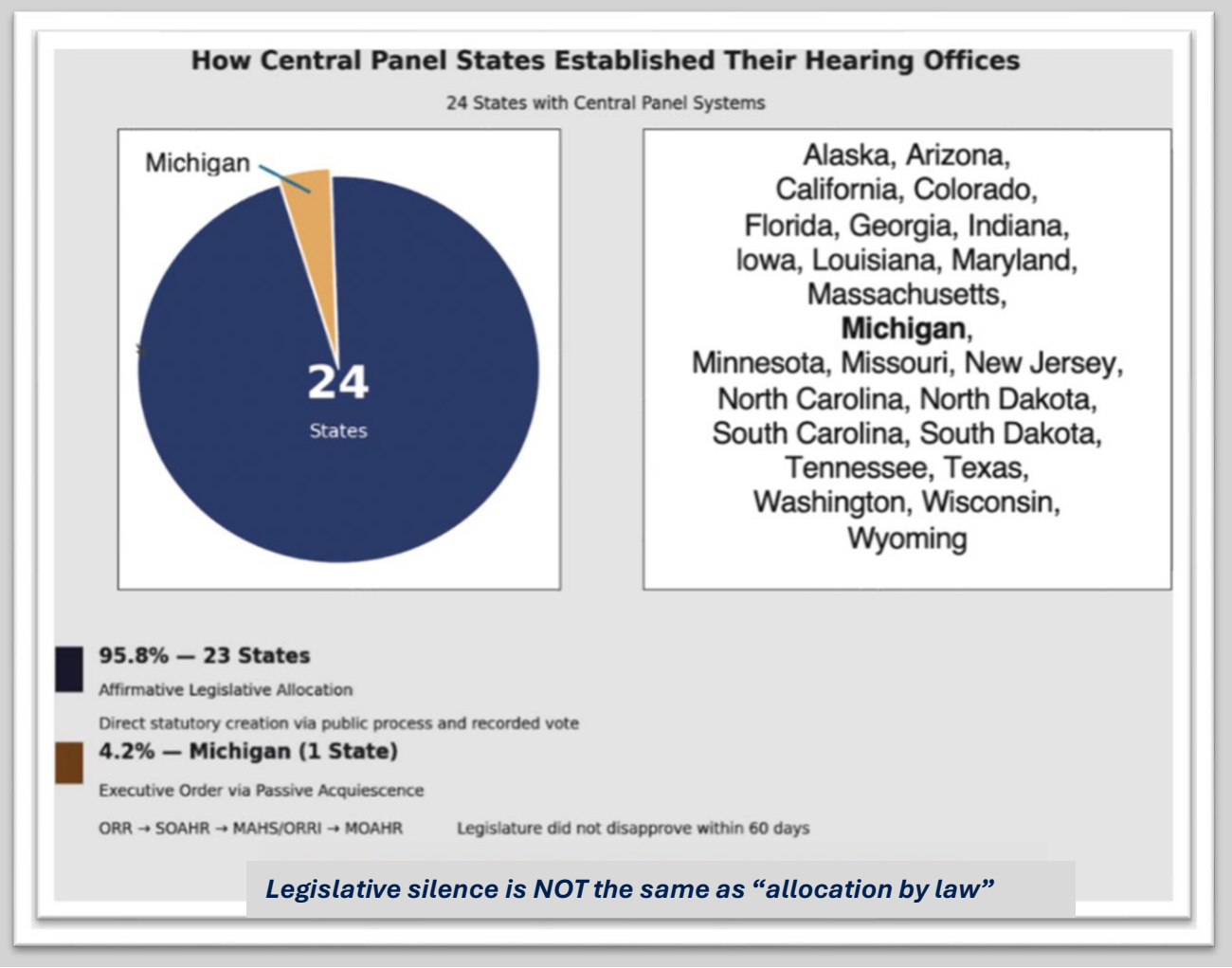

Figure 20: Michigan is the sole outlier among all 24 central-panel states. Every other state used proactive, affirmative legislative action to establish its oversight review/hearing office—providing stronger structural independence and clearer constitutional grounding. Michigan's method relies on legislative inaction, which fails Michigan's constitutional requirement for initial "allocation by law" under Article V, section 2.

L. Comparison with Other States

Michigan's position among comparable states is documented in full in Section IV. No other state has used an executive order to create a single office that both decides contested cases and controls which agency rules move forward — without a law authorizing it and without independence safeguards. Twenty-three of 24 central-panel states establish their rulemaking review offices through legislative statute. Michigan alone relies entirely on executive order.

M. Five Structural Defects

MOAHR suffers from five primary structural defects, and Defect 1 is foundational. MOAHR's absence of statutory foundation enables the additional structural defects. Each compounds the effect of the others. For more information of each defect, see Appendix E.

Foundational Defect 1: No Statutory Foundation. Had the legislature created the review office through statute, it could have mandated the independence protections below. Without statute, there is no legislative mechanism to require any of them. MOAHR, without statutory foundation, operates entirely within the executive branch that it reviews.

Defect 2: No Senate Confirmation. Without statutory foundation, no legislative mechanism requires Senate confirmation. Governors select and install leadership without input from the elected legislature.

The absence of formal appointment and independence protections for MOAHR's administrative law judges creates a parallel federal constitutional concern. In Lucia v. Securities and Exchange Commission, 585 U.S. 237, 138 S. Ct. 2044 (2018), the United States Supreme Court held that administrative law judges who exercise significant authority (as in conducting hearings, ruling on evidence, making findings of fact and law, and issuing decisions with legal effect) are Officers of the United States subject to the Appointments Clause of Article II, Section 2. MOAHR ALJs conduct contested case hearings under the Michigan APA (MAPA, MCL 24.271–24.287) and issue binding determinations on election-related cases.

The structural principle Lucia establishes (that adjudicators exercising significant legal authority must hold their offices through constitutionally adequate appointments) applies to state administrative officers when federal constitutional protections are implicated.

In Free Enterprise Fund v. Public Company Accounting Oversight Board, 561 U.S. 477 (2010), the Court further held that executive officers exercising significant authority must be subject to meaningful accountability chains running to elected officials — a requirement MOAHR's structure, which places adjudicative officers entirely within an executive-order office, does not satisfy."

Defect 3: No Term Limits. Without statutory foundation, officials serve at the pleasure of the governor or a gubernatorial appointee, with no fixed terms providing tenure security.

Defect 4: No Qualification Requirements. Without statutory foundation, no mandatory qualifications exist for leadership. No requirements exist for legal training, administrative law expertise, or relevant professional experience.

Defect 5: No Budget Independence or Structural Separation. Without statutory foundation, the budget remains at the discretion of the executive branch. MOAHR's heavy

reliance, 77.2%, on interdepartmental grant revenues ($28.6 million of its $37 million budget) ties its funding to the satisfaction of the executive-branch departments whose rules it reviews.

See "Appendix F" for a detailed examination of each defect.

N. Regulatory Planning Failure: MCL 24.253

MAPA requires agencies to submit annual regulatory plans by July 1 identifying rules they "reasonably expect to process in the next year." (MCL 24.253(1)-(2)) This advance-planning requirement enables public preparation, legislative oversight, and early identification of potential legal conflicts before rules are formally promulgated. The Michigan Department of State filed its 2024-2025 Annual Regulatory Plan pursuant to MCL 24.253 but disclosed none of the three rule sets that were to emerge seven months later.

1. Timeline

The sequence of events creates a logical problem that points to one of two conclusions.

July 1, 2024: MDOS filed its Annual Regulatory Plan 2024-2025 and disclosed three minor Bureau of Elections items. But the plan omitted the issues or rules relevant to Rule Sets 2025-13, 2025-14, and 2025-15. The rules that were filed seven months past deadline will now govern 8.4 million registered voters, citizen participation in voter roll maintenance, and all poll challenger authorities and training programs.

January 22, 2025: Secretary Benson announced her 2026 gubernatorial candidacy.

March 5-6, 2025: MDOS submitted the three rule sets containing 40 provisions — nearly seven months past the July 1, 2024, disclosure deadline and six weeks after the MDOS chief SOS Benson, announced her candidacy for governor.

July 1, 2025: MDOS filed its MDOS (LARA) Annual Regulatory Plan 2025-2026 disclosing no additional election-related rulemaking, despite having submitted three major rule sets four months earlier.

2. Two Scenarios. Both Problematic

The rules were either developed in the six weeks between the candidacy announcement and submission, or they were under development when MDOS filed its July 2024 plan.

> *Scenario A* — **Rushed Development**: If, over a six-week period, MDOS developed 40 provisions governing 8.4 million voters, the compressed timeline would have precluded stakeholder consultation, adequate federal law compliance review, constitutional analysis, and meaningful public engagement—all of which are required by administrative law.

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Scenario B — **Concealed Development**: If the rules were under development when MDOS filed its July 2024 plan, MDOS deliberately withheld its rulemaking plans from the advance-planning disclosure MCL 24.253 requires. The 2025-2026 plan's continued zero-disclosure, filed four months after submitting three major rule sets, suggests this was systemic rather than an isolated oversight.

In either scenario, both checkpoints were deprived of the advance transparency the legislature built into MCL 24.253. MOAHR approved MDOS's 2024-2025 plan without questioning the absence of any election-related rules. JCAR, receiving no advance notice, could not distribute notice to relevant committees, prepare for substantive review, or identify potential conflicts at the stage when resolution is most feasible.

Because MCL 24.253(3) states that plans are "advisory only," this omission does not independently invalidate the rules but remains probative evidence of the systemic disclosure failures documented throughout this report.

O. Summary: Section III

Michigan's dual-checkpoint rulemaking oversight system, composed of JCAR and MOAHR, did not emerge from deliberate constitutional design. The system evolved over thirty years through successive executive orders issued without the legislative foundation Michigan's Constitution requires.

The U.S. and Michigan Constitutions both reflect the Framers' core conviction that separated and balanced governmental powers protect liberty. Michigan's Constitution is stricter than the federal model: Article III, Section 2 prohibits cross-branch exercise of authority absent express constitutional authorization, and Article V, Section 2 requires all executive offices to be "allocated by law," meaning through affirmative legislative enactment with public hearings, floor debate, and a recorded vote — before they may exist.

Governors Engler, Granholm, Snyder, and Whitmer each bypassed this requirement. Each governor, spanning both major parties across three decades, created, abolished, and recreated the executive rulemaking review office through executive order alone, characterizing these creations as "Type I" transfers under the Executive Organization Act of 1965.

That characterization was legally untenable: the orders' own language used the word "created," and no preexisting statutory entities existed to transfer. The legislature's passive failure to disapprove within the 60-day window does not satisfy the Constitution's affirmative, prospective allocation requirement. Silence is not enactment.

The result is MOAHR, an office with none of the five independence protections the law requires (see Section III). It reviews rules promulgated by the same executive branch that

controls it. Twenty-three of twenty-four comparable states establish their central review offices through legislative statute. Michigan stands alone.

JCAR, the one lawfully created oversight body, operates under structural constraints that limit its ability to stop a rule from taking effect. When MDOS filed Rule Sets 2025-13, 2025-14, and 2025-15 in March 2025 — omitting all three from its *Annual Regulatory Plan 2024-2025* as required under MCL 24.253 — both checkpoints were deprived of the advance notice and contemplative review the legislature designed into the oversight system. MOAHR approved the rules. JCAR could not stop them.

The structural failures documented in this section are not incidental. They are the predictable consequence of a thirty-year pattern of constitutional circumvention that left Michigan's election rulemaking oversight without the independence, statutory grounding, or legislative accountability the law requires.

SECTION IV: CONSTITUTIONAL PRECEDENTS AND STRUCTURAL ANALOGS

Michigan's own constitutional text independently establishes that MOAHR's structure is constitutionally infirm, as documented in Section III. Two additional lines of authority reinforce that conclusion. First, courts in Florida and Wisconsin have applied identical structural reasoning in comparable cases, providing persuasive authority that Michigan courts would find well-reasoned. Second, the two closest structural analogs to MOAHR found among the 24 central-panel states examined — New Jersey's OAL and Rhode Island's ORR — were each designed specifically to avoid the combination of functions MOAHR exercises.

Second, the two closest structural analogs to MOAHR found among the 24 central-panel states examined — New Jersey's OAL and Rhode Island's ORR — were each designed specifically to avoid the combination of functions MOAHR exercises. Minnesota's Office of Administrative Hearings is among the 24 central-panel states examined that combines adjudication with rulemaking review, and it does so only because the legislature built in four structural safeguards that Michigan never adopted. Together, these precedents and analogs establish that MOAHR's design is not merely anomalous — it is constitutionally infirm under principles courts have already applied.

No other state has used an executive order to create a single office that both decides contested cases and controls which agency rules move forward without a law authorizing it and without independence safeguards. Only in Michigan has a governor ordered the insertion of a rulemaking oversight office to operate as both a gatekeeper and adjudicator with no statutory approval.

A. Two Closest Analogs Confirm Why MOAHR Is Problematic

Among the 24 central-panel state examinations, two bodies come closest to MOAHR's structural arrangement. Both are instructive precisely because their differences from MOAHR expose what makes MOAHR constitutionally problematic.

1. New Jersey Office of Administrative Law (OAL) — N.J.S.A. 52:14F-1 (1979)

New Jersey's OAL is the only body among the 24 central-panel states examined that combines adjudication with rulemaking involvement in a single office. It was established by statute in 1979 and validated by the New Jersey Supreme Court in 1982. However:

a. The adjudication is advisory only. Agency heads retain final adjudicatory authority. OAL ALJs issue recommended decisions — they do not issue final binding orders.

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b. The rulemaking role is APA procedural compliance review and publication — not substantive gatekeeping. OAL cannot block a rule on policy grounds.

c. It was created by the Legislature, not by executive order.

d. The NJ Supreme Court upheld it specifically and only because of these structural limitations.

Michigan's MOAHR fails on every one of these dimensions: its adjudication is binding, not advisory; its rulemaking review is substantive gatekeeping that can block rules on policy grounds; and it was created by executive order, not statute.

2. Rhode Island Office of Regulatory Reform (ORR) — EO 15-07 (2015)

Rhode Island's ORR is the only executive-order-operationalized rulemaking review office found in the survey that exercises mandatory pre-promulgation clearance authority comparable to MOAHR's gatekeeping. However:

a. ORR exercises zero adjudication authority. The RI APA Regulatory Manual explicitly notes ORR "does not address adjudicative actions." Rhode Island's adjudications are handled in entirely separate bodies.

b. ORR has no statutory authorization in RIGL § 42-35-5, which authorizes ORR's coordination function. Michigan's MOAHR has no statutory backing whatsoever.

c. ORR's review focuses on regulatory cost-benefit analysis and burden reduction — bounded substantive criteria. MOAHR's review criteria are unbounded.

Rhode Island deliberately built its closest-to-MOAHR analog while keeping rulemaking and adjudication entirely separate. The combination MOAHR embodies is the one structural arrangement no state has been willing to create.

B. Case Law Precedents, Florida and Wisconsin

Two state supreme court decisions directly validate the constitutional concerns raised in this report:

1. Whiley v. Scott, 79 So.3d 702 (Fla. 2011) — Executive Rulemaking Gatekeeper Struck Down

In 2011, Florida Governor Rick Scott created OFARR by executive order and required all agencies to obtain its permission before filing any notice of proposed rulemaking. The Florida Supreme Court struck this down. The Court held that absent an amendment to the Administrative Procedure Act or an explicit legislative delegation, the Governor could not insert an executive-branch office as a mandatory gatekeeper between agencies and their legislature-delegated rulemaking authority.

The court drew a precise distinction: executive review of existing rules for cost and efficiency does not violate separation of powers. What is unconstitutional is requiring prior executive approval before an agency may even file notice of proposed rulemaking — the gatekeeping function. Michigan's MOAHR exercises both functions simultaneously. It reviews proposed rules for substantive compliance and cannot be bypassed.

MOAHR was created by the same executive-order mechanism and has operated unchallenged in precisely this manner without legislative authorization for thirty years. Florida's OFARR was struck down for the gatekeeping function alone, and MOAHR exercises the same type of mandatory gatekeeping authority. But unlike Florida's OFARR, MOAHR also holds adjudication authority.

MOAHR has never faced judicial review of its constitutional legitimacy.

⚠ PERSUASIVE PRECEDENT — FLORIDA SUPREME COURT

A governor may not create an executive-branch rulemaking gatekeeper by executive order and require agencies to obtain its permission before engaging in legislature-delegated rulemaking.

Whiley v. Scott, 79 So.3d 702 (Fla. 2011)

What the Florida Court Held

In 2011, Florida Governor Rick Scott issued Executive Order 11-01, creating the Office of Fiscal Accountability and Regulatory Reform (OFARR) within his executive office and directing that no state agency could file a notice of proposed rulemaking without first obtaining OFARR's permission. The Florida Supreme Court struck this down in Whiley v. Scott, holding that the Governor had impermissibly suspended the legislature-delegated rulemaking authority of executive agencies. The Court ruled that absent an amendment to the Administrative Procedure Act itself, or an explicit legislative delegation of such authority to the Governor's office, the executive cannot insert itself as a mandatory gatekeeper between agencies and the public rulemaking process.

The Court's ruling was specifically directed at the pre-permission gatekeeping requirement. OFARR's broader coordination and review functions were not addressed. Michigan's MOAHR exercises the same pre-permission gatekeeping function that the Florida court invalidated, and adds the adjudication function OFARR never held.

The Michigan Parallel

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Michigan's MOAHR was created not by statute but through a series of executive orders, none of which received affirmative legislative authorization under Article V, § 2 of the Michigan Constitution. Like Florida's OFARR, MOAHR functions as a mandatory pre-promulgation gatekeeper. No MDOS rule set may proceed without MOAHR review and approval. The Florida Supreme Court's ruling establishes that this structural arrangement — executive-created, without legislative sanction, yet exercising gatekeeper authority over legislature-delegated rulemaking — is constitutionally infirm.

Table: Structural Comparison: Florida OFARR vs. Michigan MOAHR

Element	Florida OFARR (struck down)	Michigan MOAHR (unchallenged)
Created by	Executive Order 11-01 (2011) Scott (R) administration	Exec. Reorg. Order 2019-06 (2019) Whitmer (D) administration
Legislative authorization	None	None
Function	Mandatory pre-promulgation gatekeeper (Agencies required to obtain OFARR permission before submitting notice of proposed rulemaking)	Mandatory pre-promulgation gatekeeper (agencies required to obtain MOAHR review and approval before filing notice of proposed rulemaking with JCAR and the Secretary of State)
APA amendment	No	No
Legislative delegation	No	No
Combines adjudication + rulemaking review	No	Yes
Independence protections	None	None
Result	Struck down. Florida Supreme Court ruled OFARR is unconstitutional in Whiley v. Scott,	Never judicially tested

Figure 21: The Florida Supreme Court struck down Governor Rick Scott's executive-order-created mandatory pre-promulgation gatekeeper, OFARR, as constitutionally infirm. The state's high court ruling in Whiley v. Scott, 79 So.3d 702 (Fla. 2011) establishes that this structural arrangement — executive-created, without legislative sanction, yet exercising gatekeeper authority over legislature-delegated rulemaking — is constitutionally infirm.

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C. Strategic Significance

1. *Whiley v. Scott* — Legislative Committee Veto Struck Down

The Florida precedent in *Whiley v. Scott,* 79 So.3d 702 (Fla. 2011), strengthens the constitutional argument against MOAHR in two dimensions. First, it demonstrates that another state's highest court has already adjudicated and rejected the precise structural arrangement Michigan has created in MOAHR — executive-created, legislature-unauthorized, mandatory gatekeeper. Second, it illustrates that Michigan's failure to codify MOAHR legislatively leaves it constitutionally vulnerable under the same separation-of-powers theory the Florida Supreme Court applied. The absence of a comparable Michigan judicial ruling does not indicate constitutionality. It merely reflects the absence of a lawsuit that has yet to be brought.

The structural reasoning in Whiley maps directly onto Michigan's own constitutional framework. Florida's APA (Chapter 120) delegated rulemaking authority to agencies, and Michigan's MAPA (MCL 24.201 et seq.) does the same. Florida's constitution prohibits one branch from exercising powers properly belonging to another, and Michigan's Art. III, § 2 imposes the same prohibition with the additional requirement that cross-branch exercises of power must be 'expressly provided' in the constitution.

Florida had no express provision authorizing executive gatekeeping over legislative-delegated rulemaking, and neither does Michigan.

A Michigan court applying its own constitutional text would reach the same conclusion the Florida Supreme Court reached in Whiley and would do so on independent Michigan constitutional grounds without needing to rely on the Florida decision at all.

THE MICHIGAN PARALLEL TO *WHILEY*

Whiley v. Scott construes Florida law, but its structural reasoning maps directly onto Michigan's own constitutional framework. Both states delegate rulemaking authority to agencies through their APAs. Both constitutions prohibit one branch from exercising powers belonging to another. Michigan's prohibition goes further: Art. III, § 2 requires that any cross-branch exercise of power be *expressly provided* in the constitution, a standard the federal model does not impose.

Neither Florida nor Michigan has any such express provision authorizing executive gatekeeping over legislature-delegated rulemaking. A Michigan court applying

Michigan's own constitutional text would reach the same conclusion the Florida Supreme Court reached — independently, without needing to rely on *Whiley* at all.

2. *Evers v. Marklein*, 2025 WI 36 (Wis. 2025) — Legislative Committee Veto Struck Down

In July 2025, the Wisconsin Supreme Court struck down five statutory provisions giving JCRAR (a legislatively created committee) the power to pause, object to, and suspend agency rules. The Wisconsin Supreme Court adopted the reasoning of *INS v. Chadha*, 462 U.S. 919 (1983) — binding federal authority — which holds that when a body takes action that alters legal rights, duties, and relations of persons outside the legislative branch, it must proceed through bicameralism and presentment.

Chadha applies directly to Michigan. Michigan's Art. IV, § 37 reflects the same principle. The framers deliberately limited legislative committee action on rules to suspension only, between sessions only, for no longer than the end of the next regular session — reflecting their 1963 understanding, confirmed by the drafting history, that stronger interference requires bicameralism and presentment (the requirement that laws pass both chambers and receive gubernatorial signature).

MOAHR's mandatory gatekeeping exceeds even what Art. IV, § 37 authorizes for the legislature's own committee. An executive-order-created body exercising this power is more constitutionally vulnerable, not less.

The Michigan dimension of this analysis runs through Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530 (2000). In Blank, the Michigan Supreme Court held that JCAR's statutory authority to approve or disapprove agency rules was unconstitutional. The legislature's reservation of that oversight power did not comply with the enactment and presentment requirements of the Michigan Constitution.

The Legislature's response was to strip JCAR of its veto authority. But it did not replace JCAR's voided power with a statutory executive substitute. MOAHR's claimed authority to function as the primary rulemaking gatekeeper has no statutory basis and occupies a constitutional void the Legislature deliberately left empty.

Blank thus establishes that oversight of agency rulemaking is subject to strict constitutional constraints regardless of which branch exercises it, and that an executive-created office filling the gap left by an invalidated legislative mechanism does not cure the constitutional problem. It compounds it.

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> ⚠ **CONTROLLING PRECEDENT — MICHIGAN SUPREME COURT**
> A legislative committee's authority to approve or disapprove agency rules violates separation of powers. The legislature may not reserve that gatekeeping authority without bicameralism and presentment.
>
> Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530 (2000)
>
> **The Michigan Constitutional Void:** The legislature created JCAR with veto authority. The Michigan Supreme Court struck that veto down. The legislature removed the power but created no statutory substitute. MOAHR was then inserted by executive order to fill that gap — without authorization. An executive-order-created office cannot constitutionally occupy a space that the legislature itself could not hold.

3. Whiley and Evers show that legislative authorization restricts executive branch authority, subject to meaningful standards and guardrails

Whiley and Evers together define the constitutional boundaries on both sides. Whiley establishes that an executive-created rulemaking gatekeeper without legislative authorization violates separation of powers. Evers applies the binding federal authority from INS v. Chadha to establish that legislative committee gatekeeping without bicameralism and presentment (the requirement that legislation pass both chambers and be presented to the governor for signature or veto) also violates separation of powers.

Michigan's MOAHR satisfies neither requirement. It lacks the legislative authorization Whiley demands, a defect that Michigan's own Art. III, § 2 and Art. IV, § 1 independently identify as fatal. And it lacks the bicameralism and presentment accountability Chadha and Evers require, a principle Michigan's own Art. IV, § 37 embedded in the state's constitutional framework sixty years ago.

The Michigan Supreme Court's own jurisprudence confirms the structural principle. In Soap & Detergent Ass'n v. Natural Resources Commission, 415 Mich. 728 (1982), the Court held that Art. V, § 2 reorganization authority is a limited and specific legislative power delegated to the executive — not a general grant to create new governmental functions. The Court identified three controlling constraints (see Section III). MOAHR's rulemaking gatekeeping was created without satisfying any of them.

The principle was reinforced in In re Certified Questions from the United States District Court, 506 Mich. 332, 958 N.W.2d 1 (2020) (the Whitmer/EPGA case), in which the Michigan Supreme Court held that executive authority — even authority derived from a validly enacted statute — must be bounded by legislative authorization and subject to meaningful standards and

guardrails. MOAHR's rulemaking gatekeeping authority rests on executive orders alone and is constrained by no legislative standards at all.

C. Minnesota — The Exception That Proves the Rule

Minnesota's OAH (Minn. Stat. § 14.48, established 1975) is the only body among the 24 central-panel states examined that combines adjudication with rulemaking review into a single office. It is the structural exception that illuminates Michigan's problem most clearly because the differences are precisely those that make MOAHR constitutionally vulnerable.

Table: Michigan Compared to the Lone State that Combines Adjudication with Rulemaking Review into a Single Office

Feature	Minnesota OAH (Constitutional)	Michigan MOAHR (Challenged)
Created by	Statute (Legislature, 1975)	Executive Order only — no statute
Independence protections	Explicit statutory mandate: Administrative Law Judges (ALJs) must be "free of any political pressure"	None — director serves at pleasure of Governor. ALJs report to MOAHR, not the judiciary branch.
Rulemaking review scope	Legal/procedural compliance only — cannot block on policy grounds	Substantive policy gatekeeping — can block on grounds not defined by law
Transparency	Disapproval findings go simultaneously to Governor, Legislature, AG, and Revisor	No multi-branch transparency requirement
Adjudication finality	Agencies retain final adjudicatory authority over most decisions[2]	MOAHR ALJs issue binding determinations on election-related cases
Legislative oversight	Separate legislative committee receives notice of all rulemaking (Minn. Stat. § 14.126)	Michigan's JCAR is bypassed by MOAHR's gatekeeping
Court validation	Not directly challenged. Its statutory and structural features preempt challenge	Never judicially tested. No court has validated its structure

Figure 22: Michigan's MOAHR deviates significantly from the one other state that combines adjudication with rulemaking review into a single office.

Minnesota shows that even a state legislature that wanted to combine adjudication with rulemaking review into a single body recognized the need to build in statutory independence, limited review scope, and multi-branch transparency to justify that combination constitutionally. Minnesota renamed its OAH as the Court of Administrative Hearings in 2025, further emphasizing its independence.

[2] Minnesota's finality rules vary by agency and statutory context; the characterization reflects the default rule under Minn. Stat. § 14.62, under which agencies retain final authority. The Michigan contrast refers specifically to election-related adjudications under MOAHR's jurisdiction

Michigan's MOAHR was created without any one of these safeguards.

D. Michigan's Constitutional Framework Independently Compels the Same Conclusion

The persuasive authority from Florida and Wisconsin reinforces what Michigan's own constitutional text already establishes. Six provisions of the Michigan Constitution of 1963 independently support that conclusion, so no Michigan court would need to rely on Whiley or Evers to find MOAHR's structure constitutionally infirm:

Article III, § 2 prohibits cross-branch exercises of power except as expressly provided in the constitution. No express provision authorizes executive gatekeeping over legislature-delegated rulemaking.

Article IV, § 1 vests legislative power, including the power delegated to agencies through MAPA in the legislature. A governor may not interpose an executive gatekeeper over that delegation without legislative authorization.

Article IV, § 37 limits legislative committee action on rules to suspension only, between sessions only, for no longer than the next regular session — reflecting the framers' 1963 understanding that stronger interference requires bicameralism and presentment. The drafting history confirms that a 1958 Attorney General opinion had already concluded a legislative veto of rules was unconstitutional. MOAHR exercises powers that exceed even what Art. IV, § 37 permits the legislature's own committee to exercise.

Article V, § 2 requires all executive offices to be "allocated by law." MOAHR was not.

Article I, § 17 guarantees "fair and just treatment in the course of legislative and executive investigations and hearings." MOAHR's combination of gatekeeping and adjudicative functions over the same rules denies this guarantee to parties appearing before it.

Article VI, § 28 guarantees judicial review of agencies "existing under the constitution or by law" and requires that review to include whether decisions are "authorized by law." MOAHR exists under neither, and its decisions therefore fail the threshold authorization requirement — structurally, before the merits of any individual ruling are reached.

Whiley and Evers provide persuasive confirmation that other courts have applied identical reasoning to comparable structures. But Michigan does not need them. The case is made in Michigan's own Constitution

E. ALJ Independence: A Federal Constitutional Dimension

Section IV has analyzed MOAHR's structural infirmities under state constitutional law. A separate and independent constitutional concern arises under federal law when MOAHR conducts binding adjudications.

In Lucia v. Securities and Exchange Commission, 585 U.S. 237, 138 S. Ct. 2044 (2018), the United States Supreme Court held (7-2) that SEC administrative law judges who exercise significant authority (as in holding hearings, taking testimony, ruling on evidence, making findings of fact and conclusions of law, and issuing decisions that carry legal effect) are Officers of the United States subject to the Appointments Clause. Because they were not appointed by the President, a court of law, or a department head, their appointments were unconstitutional, and any proceedings before them were subject to rehearing before a properly appointed officer.

MOAHR ALJs exercise equivalent or greater authority under the Michigan Administrative Procedures Act (MAPA, MCL 24.271–24.287). They conduct contested case hearings, make binding factual and legal determinations, and issue final orders on election-related cases. When those adjudications implicate federal constitutional rights, as election administration cases routinely do, the Lucia framework is directly relevant. An office created by executive order, whose officers are appointed without statutory process and serve without independence protections, does not satisfy the constitutional baseline Lucia requires.

In Free Enterprise Fund v. Public Company Accounting Oversight Board, 561 U.S. 477, 130 S. Ct. 3138 (2010), the Court held (5-4) that executive officers exercising significant authority must be subject to meaningful accountability chains running to elected officials. MOAHR's structure creates the inverse problem: rather than improperly insulating officers from accountability, it places officers with adjudicative functions entirely within an executive office that simultaneously controls rulemaking approval. This flaw creates the structural appearance of bias that due process exists to prevent.

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SECTION V: EVIDENCE OF INTENTIONAL DESIGN

"These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other," James Madison wrote in Federalist No. 48.

The U.S. Constitution's Elections Clause (Article I, Section 4, Clause 1) prescribes the authority to regulate the "times, places, and manner of holding elections" to state legislatures. The Michigan Constitution protects the Separation of Powers in Article III, Section 2. Its Article V, Section 2 restricts the state executive branch to 20 principal departments "allocated by law." Then, Article IV, Section 37 empowers "a joint committee of the legislature, acting between sessions, to suspend any rule or regulation promulgated by an administrative agency." Then the Michigan Administrative Procedures Act, Public Act 306 of 1969, (MAPA) created detailed and specific rulemaking oversight procedures. MAPA designed JCAR as the sole statutory oversight body, and MAPA made no provision for executive-branch pre-review.

Despite this framework, Michigan's executive review office has functioned without statutory foundation since 1995. The Michigan Office of Administrative Hearings and Rules (MOAHR) and its predecessors were created and reorganized through executive orders that bypassed legislative allocation. The thirty-year bipartisan consistency of this pattern indicates deliberate structural choices, not oversight or accident. The system operates precisely as constructed: without independence, without statutory foundation, and without the stability that legislative enactment would provide.

A. Michigan's executive review office operates without statutory foundation since 1995.

Table: Lack of Independence Protections

Protection	1995 – 2005 Gov. Engler (Republican) 10 Years ORR	2005 - 2011 Gov. Granholm (Democrat) 6 Years SOAHR	2011 - 2019 Gov. Snyder (Republican) 8 Years MAHS & ORRI	2019 - Present Gov. Whitmer (Democrat) 6 Years MOAHR
Statutory Foundation	No	No	No	No
Senate Confirmation	No	No	No	No
Term Limits	No	No	No	No
Qualifications	No	No	No	No

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Protection	1995 – 2005 Gov. Engler (Republican) 10 Years ORR	2005 - 2011 Gov. Granholm (Democrat) 6 Years SOAHR	2011 - 2019 Gov. Snyder (Republican) 8 Years MAHS & ORRI	2019 - Present Gov. Whitmer (Democrat) 6 Years MOAHR
Budget Independence / Structural Separation	No	No	No	No

Figure 23: Lack of structural protections

Note: From 2011 to 2016, the LARA Director personally reviewed LARA's own rules, eliminating even nominal separation. From 2016 to 2019, review transferred to the Department of Technology, Management and Budget, restoring nominal but not structural separation. In both periods, independence protections remained entirely absent.

The pattern was bipartisan. The result was consistent. Two decades. Four governors. Both parties. Zero independence protections.

B. Critical Turning Points (1946–2026)

Date	Event	Significance
1946	Congress enacts federal APA.	Sets baseline for rulemaking oversight policies and procedures
1969	Michigan enacts state MAPA and creates JCAR.	Establishes statutorily authorized bicameral (joint Senate and House) oversight committee
1993	Presidential E.O. sets Federal OIRA model under the Take Care Clause	Does not apply to Michigan model. MI Constitution emphasizes Separation of Powers Doctrine
1995	ORR Creation	Establishes executive-branch gatekeeping on rulemaking oversight.
1999-2000	MI Public Act 262 Reforms JCAR; MI Supreme Court Blank v. Dept. of Corrections decision	Veto power removed from JCAR
2011	ORRI Dual Role	Allows self-review (Figure 7).
2019	MOAHR Consolidation	Removes election protections and solidifies defects (Figure 10).

Figure 24: Critical Turning Points (1946-2026)

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For detailed chronology with source citations, executive order provisions, and extended historical context, see Appendix B.

C. Causal Chain: From Structure to Outcome

Year	Gov. Branch	Structural Choice	Consequence	Cumulative Effect
1995	Exec.	MI governor orders creation of executive-branch rulemaking oversight office without independence protections	No structural capacity to resist pressure	Vulnerable checkpoint established
1999	Leg.	State legislature and SCOTUS eliminate JCAR power to veto	Legislative oversight becomes advisory	Lawfully created checkpoint lacks authority to take action
2011-2016	Exec	LARA Director reviews LARA rules	Complete executive self-review	Nominal separation eliminated
2019	Exec	Election authority consolidated without protections	Election rules/hearings under non-independent office	Maximum vulnerability in elections
2019	Exec	Two appeals commissions granted full protections	Proves protections were available but withheld	Demonstrates deliberate choice
2025	Exec	Rules with federal conflicts submitted	Non-independent office advances rule changes despite potential legal conflicts	Rules advance to take effect
2025	Leg.	JCAR unable to act	Concurrent majority prevents objection	Predictable paralysis
2025-2026	Both	Rules take effect	Federal elections governed by conflicting rules	System functions as designed

Figure 25: Structure creates outcome

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D. Consequences

The consequence of these actions became evident in 2025. MOAHR, operating without independence within the executive branch that promulgated the rule changes, advanced Rule Sets 2025-13, 2025-14, and 2025-15 as legally compliant despite documented conflicts of interest and conflicts with federal law (52 U.S.C. §§ 20701, 10101), state law (MCL 168.733), and the First Amendment. MDOS's noncompliance with MCL 24.253 meant that JCAR received no advance notice and confronted complex rule packages without an opportunity to remediate them sooner in the process. When both checkpoints failed, they did so as their deliberate structural design had prepared them to fail.

The pattern of resistance to legislative oversight is not confined to structural design choices made years ago. It extended into active conduct during the 2025 rulemaking cycle. When the Michigan House sought to examine the training materials that Rule Set 2025-15 would make mandatory for every poll challenger in the state, the Secretary of State refused to produce the materials under subpoena. These were the same materials MOAHR had certified as legally compliant without public disclosure of their content.

The resulting litigation, *House of Representatives v. Benson* (Case No. 25-000096-MZ), produced a court preservation order and, as of November 2025, remains unresolved on the merits. A rulemaking oversight system designed for independence would have required disclosure and examination of these materials before certification. Michigan's system did not, and the consequence was an inter-branch constitutional confrontation that a court is now asked to resolve with the 2026 election approaching.

Three decades of deliberate structural design had more than allowed failure — the timespan facilitated the engineering of it.

E. Evidence of Deliberate Choices

Governor Gretchen Whitmer's actions in 2019 provide the most compelling single-document evidence that the absence of independence protections for Michigan's administrative review office was a deliberate choice rather than an unavoidable constraint.

On February 20, 2019, a mere six weeks after taking office, Governor Whitmer issued Executive Reorganization Order 2019-06 to create the Michigan Office of Administrative Hearings and Rules (MOAHR) as a Type I agency within the Department of Licensing and Regulatory Affairs. The order made three significant changes: (1) It removed the fourteen-year exclusion of election law matters from consolidated executive review that Governor Granholm's E.R.O. 2005-1 and E.R.O. 2005-26 had maintained; (2) it consolidated election rulemaking certification and election dispute adjudication under a single executive-branch office for the first

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time; and (3) it expanded MOAHR's authority over election administration while providing zero independence protections.

The order's own language captures the structural contradiction, as independence is claimed in one sentence and then withdrawn in the next:

"3a. The Office shall exercise its prescribed powers, duties, responsibilities, functions ...independently of the director of the Department of Licensing and Regulatory Affairs. The budgeting, procurement, and related management functions of the Office shall be performed under the direction and supervision of the director of the Department of Licensing and Regulatory Affairs."

F. Tale of Two Executive Orders

On June 6, 2019 — just four months after Governor Whitmer issued Executive Reorganization Order 2019-06, she issued Executive Order 2019-13. The new E.O. created the Unemployment Insurance Appeals Commission (UIAC) and the Workers' Disability Compensation Appeals Commission (WDCAC), also as Type I agencies, also using the executive order mechanism. But E.O. 2019-13 granted these two new offices five explicit independence protections that the Governor's E.R.O. 2019.06 had withheld from MOAHR. E.O. 2019-13 explicitly protected the new offices with all of the following:

1. **Senate Confirmation:** Members of both commissions are "appointed by the governor with the advice and consent of the senate."
    - **Whereas,** MOAHR's executive director is appointed by the LARA Director, a gubernatorial appointee, with no legislative role.
2. **Fixed Four-Year Terms:** "After the initial appointments, members must be appointed for a term of four years." Members may continue serving until a successor is appointed.
    - **Whereas,** MOAHR leadership serves at the pleasure of the governor's appointee with no fixed terms.
3. **Qualification Requirements:** Commission members must be members in good standing of the State Bar of Michigan, licensed to practice in Michigan courts for five or more years. Workers' Disability Compensation Appeals Commission members must additionally demonstrate five or more years of workers' compensation law experience or equivalent proficiency.
    - **Whereas,** MOAHR has no statutory qualification requirements.

4. **Nonpartisan Conduct Obligation:** Members must "discharge his or her duties in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent public officer would exercise under similar circumstances in a like position."

   - **Whereas,** no equivalent obligation appears in MOAHR's governing order.

5. **Structural Independence Language:** The commissions "will exercise [their] prescribed statutory powers, duties, and functions...independently of the Director of [relevant agency]...and the director of the Department" for core adjudicative and rulemaking functions.

   - **Whereas,** MOAHR uses similar language and then immediately—in the next sentence—negates it, stating, "The budgeting, procurement, and related management functions of the Office shall be performed under the direction and supervision of the director of the Department of Licensing and Regulatory Affairs." (See in 3a above).

The executive order that created MOAHR (E.R.O. 2019.06) and the Unemployment Insurance and Disability Compensation Appeals commissions (E.O. 2019-13) do share one common defect. None have statutory foundation. All appear to have no legislative enactment and no statutory foundation "allocated by law."

However, the difference in independence protections between MOAHR and the E.O. 2019-13 commissions is stark. The E.O. 2019-13 commissions received three of five independence protections: Senate confirmation, term limits, and qualifications. Plus, they were endowed with additional safeguards: nonpartisan conduct obligations and explicit structural independence language. MOAHR received zero independence protections.

The pattern is clear: Governor Whitmer knew how to grant independence protections, possessed the authority to grant them, and chose to grant them selectively. MOAHR — the office reviewing all executive-branch rules including election rules — received none.

The table below depicts the gap of independence protections that same governor ordered four months apart, using the identical Type I transfer and executive order mechanism that the prior three governors had used.

Table: Independence Protections Compared

E.O. 2019-13 Appeals Commissions vs. MOAHR

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Protection	Two Appeals Commissions (E.O. 2019-13, June 2019)	MOAHR – ELECTION OVERSIGHT (E.R.O. 2019.06, Feb. 2019)
Statutory Foundation	No. Created via Executive Order as a Type I transfer	No. Created via Executive Order as a Type I transfer
Senate Confirmation	Yes — required	No
Term Limits	Yes — four years	No — at-will
Statutory Qualification Requirements	Yes — Bar membership + 5 years' experience	No
Structural and Budgetary Independence	No — tied to department	No. Nominal independence. — Separation is stated but negated in the next sentence with a "budgeting, procurement, and related management functions" supervision clause. — Budget under LARA supervision — Non-transparent interdepartmental appropriations
Additional: Nonpartisan Conduct Obligation	Yes — explicit	No
Total Protections	**3 of 5 (60%) standard + 1 Nonpartisan Conduct Obligation**	**0 of 5 standard protections 0 Nonpartisan Conduct Obligation**

Figure 26: Standards and Protections ordered for the Unemployment Insurance Appeals Commission and the Workers' Disability Compensation Appeals Commission vs. the Michigan Office of Administrative Hearings and Rules (MOAHR).

Governor Whitmer clearly understood what structural independence requires. The detailed safeguards she embedded in Executive Order 2019-13 for commissions adjudicating unemployment and workers' compensation disputes demonstrate both her knowledge and her authority to build independence into executive-order-created bodies.

Governor Whitmer chose not to apply those protections to MOAHR, the office she created four months earlier.

Whether the governor's choice reflects a deliberate policy judgment as to which administrative functions warrant independence safeguards is a question this report presents to policymakers, legal counselors, and citizens. The documentary record establishes that the absence of protections was not a legal constraint, a structural impossibility, or an inadvertent omission. The tools were available. They were used — selectively.

G. Summary: Section V

Michigan's executive-branch rulemaking oversight offices (current MOAHR and predecessors) has operated without statutory foundation or independence protections since 1995, across four governors from both parties (Engler R, Granholm D, Snyder R, Whitmer D). This consistent pattern—using executive orders for creation/reorganization without legislative allocation, Senate confirmation, fixed terms, qualifications, budget independence, or structural separation—reflects deliberate structural choices rather than accident or oversight.

The most compelling evidence of selectivity appears in Governor Whitmer's 2019 actions:

- **Executive Reorganization Order 2019-06** (February 20, 2019) created MOAHR as a Type I agency within LARA, consolidating election rulemaking certification and dispute adjudication under one executive office for the first time (removing a prior 14-year exclusion for election matters) while providing **zero** independence protections. It claimed nominal independence but immediately negated it by subjecting budgeting, procurement, and management to LARA director supervision.
- **Executive Order 2019-13** (June 6, 2019), using the identical Type I mechanism just four months later, created the Unemployment Insurance Appeals Commission (UIAC) and Workers' Disability Compensation Appeals Commission (WDCAC) with explicit safeguards: Senate confirmation, four-year fixed terms, State Bar membership plus 5+ years' relevant experience, nonpartisan conduct obligations, and stronger structural independence language for core functions.

This stark contrast of the same governor using the same mechanism to create comparable adjudicative roles demonstrates that independence protections were known, available, and selectively applied. MOAHR (overseeing all rules, including election-related ones) received none, while other commissions were endowed with multiple.

The structural vulnerabilities enabled predictable outcomes in 2025: MOAHR certified Rule Sets 2025-13 (Voter Registration Cancellation, Challenge, and Correction), 2025-14 (Use of Electronic Pollbook), and 2025-15 as compliant despite alleged conflicts with federal law (e.g., 52 U.S.C. §§ 20701, 10101), state law (MCL 168.733), and the First Amendment.

JCAR received no advance notice due to MDOS's noncompliance with MCL 24.253, leading to failed checkpoints. When the Michigan House sought to examine undisclosed training materials mandated in Rule Set 2025-15, Secretary Benson refused production under subpoena, resulting in civil contempt findings, litigation (*House of Representatives v. Benson*, Case No. 25-000096-MZ, with a court preservation order as of November 2025, unresolved on merits near the 2026 election).

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This is not isolated failure. This is the system operating as deliberately designed without statutory independence, legislative oversight weakened (post-1999-2000 JCAR veto removal), and executive self-review vulnerabilities unaddressed—despite proven capacity to grant protections elsewhere.

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SECTION VI: THE SECOND CHECKPOINT FAILURE — JCAR PARALYSIS

This section examines Michigan's second oversight checkpoint: the Joint Committee on Administrative Rules (JCAR). It explores JCAR's history and intended roles, plus the evolution of its authority. Items *B* through *E* identify specific JCAR points of failure. *F* and *G* show why both JCAR and MOAHR failed and the consequences of JCAR paralysis.

Between JCAR's ineffectiveness and MOAHR's structural defects, Rule Sets 2025-13, 2025-14, and 2025-15 advanced toward implementation despite apparent conflicts with federal and state law.

A. Origins and Intended Role

The legislature's elimination of JCAR's veto authority in 1999, followed by the Michigan Supreme Court's Blank decision in 2000, transformed JCAR from a decision-making body to advisory committee. Concurrent majority requirements create mathematical gridlock when partisan division produces 5-5 splits, and automatic advancement provisions ensure rules proceed when JCAR cannot act.

Michigan's automatic advancement design, in which rules proceed if JCAR fails to act, is the functional inverse of best-practice state models. Maryland's AELR committee can hold rules pending review, and Colorado's rules expire automatically each May 15 unless the legislature affirmatively acts to continue them. Michigan places the burden on the legislature to stop a rule. Those states place the burden on the agency to justify one.

Michigan's Constitution of 1963 (Art. IV, § 37) authorized a joint legislative committee to act on administrative rules between sessions. The Michigan legislature implemented this authority through the 1969 Michigan Administrative Procedures Act (PA 306 of 1969, MCL 24.235), which created JCAR and structured its composition and powers, including the authority to veto rules.

Original JCAR Authority (1969–2000)

Legislators envisioned JCAR as a bipartisan safeguard against agency overreach. The 1969 Michigan Administrative Procedures Act (MAPA) established comprehensive oversight authority across three dimensions.

Composition: JCAR's ten-member composition consists of five Senators and five House members. All ten are appointed with a required bipartisan composition with the

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majority party of the Senate and House each receiving three committee members and the minority party of each chamber having two members (MCL 24.235).

Procedural Authority: MAPA authorized JCAR to prescribe procedures for the drafting, processing, publication, and distribution of rules. Agencies proposing rules were required to notify JCAR, and JCAR was permitted to hold hearings on proposed rules.

Substantive Authority: Most significantly, under the original 1969 framework, JCAR was empowered to approve or disapprove agency rules before they took effect. This created a genuine checkpoint. The legislature, through JCAR, retained control over whether agency interpretations of statutes became binding law.

This structure reflected the legislature's recognition that administrative rulemaking, while necessary for implementing statutes, involves quasi-legislative activity requiring legislative oversight. JCAR served as the institutional mechanism ensuring agencies remained within their statutory authority.

B. 1999–2000: JCAR Loses Its Veto

Regulations have come to exert growing influence over Michigan elections, largely weakening legislative oversight mechanisms. The U.S. Supreme Court's 1983 decision in INS v. Chadha struck down one of the most effective congressional oversight tools, the legislative veto, on separation-of-powers grounds, signaling the constitutional vulnerability of similar state mechanisms. (Alec D. Rogers, "Reining in the Agencies: Oversight of Executive Branch Rulemaking in the 21st Century," Federalist Society Review, Dec. 9, 2015.)

That vulnerability materialized in Michigan at the turn of the century. In Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530 (2000), the Michigan Supreme Court addressed a challenge to prison visitation rules that the Department of Corrections had promulgated. The core question was whether JCAR's statutory veto authority violated Michigan's separation-of-powers doctrine.

The Court held that the relevant provisions of the Administrative Procedures Act of 1969, which provided for legislative approval or disapproval of executive-branch rules, "did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional."

Rather than defend JCAR's veto power in court or await a ruling on the merits, the legislature passed and Governor Engler signed Public Act 262 of 1999 into law before the Blank v Dept. of Corrections decision became final. This legislation amended the

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Administrative Procedures Act (MCL 24.245, adding MCL 24.245a) to eliminate JCAR's authority to disapprove or block rules outright.

After 1999, JCAR's role contracted to three limited, largely non-binding options. First, JCAR may file a Notice of Objection (MCL 24.245), which requires concurrent majorities in both the Senate and House delegations and temporarily halts rule filings with the Secretary of State. This option provides a brief delay, not a permanent veto. Second, JCAR may request rule modifications, a non-binding recommendation the promulgating agency may ignore without consequence. Third, JCAR may introduce legislation (MCL 24.245a) to override or amend the rule, a path requiring passage by both chambers.

Most critically, if JCAR takes no action, rules automatically advance and take effect after fifteen legislative session days (MCL 24.245a). The burden effectively shifted after 1999. Agencies no longer needed to prove their rules deserved approval. JCAR had to overcome significant procedural, partisan, and timing hurdles simply to delay implementation temporarily. These reforms transformed JCAR from a meaningful checkpoint with binding disapproval power into what it remains today, an advisory body capable of observation and objection but lacking enforcement authority to prevent rules from taking effect.

C. Concurrent Majority Requirements and Partisan Gridlock

MCL 24.235 requires concurrent majorities (simultaneous majorities from both Senate and House delegations) for any JCAR action. This requirement, combined with Michigan's current partisan composition, creates mathematically implausible actions due to partisan issues.

JCAR's ten-member composition splits along majority-versus-minority party lines. Currently, after the 2024 election, Democrats hold a Senate majority while Republicans hold a House majority, producing a 5-5 divided committee of three Democrat senators and two Republican senators, and three Republican House members and two Democratic House members.

A typical majority vote would require six of ten overall votes, but JCAR's concurrent majority requirements set a higher bar. Three of five senators and three of five House members must vote approval. On any issue that divides along party lines, that threshold cannot be reached. At least one member must vote against their party's position for any action to succeed, thereby creating structural incentive for JCAR inaction rather than consensus.

Quorum requirements compound the problem. With tight partisan margins, absences or strategic boycotts can — and have — made the committee is unable to convene. Without a

quorum, JCAR cannot conduct business, file objections, or introduce legislation. This paralysis leaves rules to advance automatically and go into effect.

Meanwhile, the combination of concurrent majority requirements, 50-50 partisan composition, and automatic advancement creates a foundational structural weakness such that JCAR must achieve bipartisan consensus merely to delay a rule temporarily. If it cannot act, the rule proceeds to the secretary of state for implementation.

D. The Planning Stage Failure: MCL 24.253

As documented in Section II, MDOS violated MCL 24.253's advance planning requirements when it neglected to lay the groundwork for Rule Sets 2025-13, 2025-14, and 2025-15 in its Annual Regulatory Plan 2024-2025. MOAHR approved the plan without flagging the omission, and JCAR was deprived of the advance planning disclosure the MCL 24.253 framework provides.

When Rule Sets 2025-13, 2025-14, and 2025-15 materialized seven months later on March 5-6, 2025, JCAR confronted complex, controversial rule packages with no preparation and no prior opportunity to engage MDOS informally — the stage when resolution is typically most feasible.

MDOS's failure to disclose Rule Sets 2025-13, 2025-14, and 2025-15 in its annual regulatory plan compounded JCAR's existing disadvantage. MOAHR received the promulgated rules first and submitted them to JCAR, so the rules had already cleared executive review before JCAR saw them. JCAR entered the review without early coordination, facing both the structural constraints on its authority and partisan gridlock preventing concurrent majorities.

The planning failure did not merely inconvenience JCAR, it foreclosed the one stage at which effective intervention was structurally possible.

E. JCAR's Inaction on Rule Sets 2025-13, 2025-14, and 2025-15

MDOS formally filed Rule Sets 2025-13, 2025-14, and 2025-15 on March 5-6, 2025. MOAHR assessed all three as legally compliant and submitted them to JCAR for legislative review under MCL 24.245. JCAR conducted its own hearings, even though it often could not convene a quorum to vote. Public testimony documented apparent violations of 52 U.S.C. § 20701 (seven-day state destruction requirement versus 22-month federal retention mandate in Rule Set 2025-14), 52 U.S.C. § 10101 (economic barriers raising materiality concerns in Rule Set 2025-13), and MCL 168.733 (four direct statutory contradictions in Rule Set 2025-15). Section II of this report documents the legal conflicts in detail, and Section IX provides a model for litigation.

F. Why Both Checkpoints Failed

Michigan's dual-checkpoint system failed at every stage of the 2025 rulemaking process, and the failures were sequential and compounding. MDOS omitted the planned rules from the 2024 regulatory agenda, violating MCL 24.253 and eliminating the planning-stage opportunity for early engagement.

MOAHR received the submitted rules and certified all three as compliant despite apparent conflicts with federal civil rights statutes, state election law, and constitutional law, including Civil Rights laws like the right to free speech through the First Amendment and the right to equal treatment under the Equal Protection Clause. MOAHR advanced the rule packages to JCAR without the independent legal analysis the certification function requires.

JCAR, stripped of its veto authority, deadlocked by concurrent majority requirements, denied advance notice due to the planning disclosure failure, and facing automatic advancement after fifteen session days, could not intervene despite documented testimony as to alleged violations of law.

This is not a story of one checkpoint failing while the other succeeds. It is a story of systematic failure at every stage by every actor in a system in which the executive review office lacks independence (Section III), the legislative committee lacks enforcement authority, statutory planning requirements go unenforced, and rules with apparent legal violations advance automatically to implementation.

G. The Consequence of a Paralyzed Legislative Checkpoint

Even a functioning JCAR faced long odds. Even if the committee had convened a quorum and filed a notice of objection, the rules would have proceeded absent legislation, which would have required three of the five Senate members and three of five House members to attend and vote to object. An objection would have no teeth.

In the political reality of 2025, the legislative pathway to blocking the rules was effectively closed.

The result is that three rule sets passed through both checkpoints without meaningful review. The legislature that created JCAR as a bipartisan safeguard against agency and executive overreach had no structural mechanism to stop legally unauthorized rule changes whose legal conflicts its own members, the public, and NGOs like Pure Integrity Michigan Elections had voiced in written submissions and oral testimony to JCAR.

This was not the intent of the Michigan Administrative Procedures Act (MAPA). It is the predictable consequence of a system in which the department that writes rules also

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certifies their compliance and adjudicates issues related to them. And when the secondary oversight committee, JCAR, which was legislatively allocated by law as the only oversight body, can do nothing to stop the advancement of those rules.

Structural choices have evolved to ensure that neither checkpoint possesses the required independent functionality.

H. Summary: Section VI

Section VI documented Michigan's second oversight checkpoint: a legislative committee that, despite statutory creation and bipartisan composition, operates under structural constraints that make effective action essentially impossible on contested political questions.

The 1999 reforms eliminated JCAR's veto authority, transforming it from a decision-making body to an advisory committee whose strongest tool is a temporary delay that a determined executive branch can simply outlast. The concurrent majority requirement creates mathematical gridlock whenever partisan composition produces a 5-5 split, which is the current situation.

MDOS's failure to disclose the rule sets compounded these structural constraints by denying JCAR the advance notice that could have enabled intervention before the rules entered formal review. The automatic advancement provision ensured that, due to JCAR's inaction and structural constraints, the rule changes were sure to proceed.

The consequence is substantial: Three rule sets with documented conflicts with federal, state, and constitutional law, including apparent civil rights and First Amendment violations, passed through the two oversight checkpoints without remediation.

In order to examine the training materials at the center of Rule Set 2025-15, the House of Representatives attempted to use the only remaining mechanism available: the legislative subpoena. The result was a civil contempt finding, active litigation, and a court preservation order that remains unresolved as the 2026 election cycle advances.

Section I examined how Michigan's dual-checkpoint system compares to oversight structures in other states. That comparative analysis established that Michigan's combination of characteristics, including executive review without independence and legislative review without enforcement capacity, places Michigan in a uniquely vulnerable position, in contrast to its 23 peer states that employ central-panel administrative systems.

This Section documented the operational consequence of Michigan as an outlier state with a system that functions precisely as its structural design ensures it will function.

SECTION VII: LEGAL MECHANISMS FOR ADDRESSING FEDERAL-STATE CONFLICTS

When state administrative rules appear to conflict with federal statutes, multiple legal mechanisms exist to achieve resolution. This section examines the constitutional framework governing such conflicts, available remedies under federal civil rights laws, procedural mechanisms for judicial review, and the active litigation that has already resulted from the oversight failures documented in this report. The analysis is provided for educational purposes to inform policymakers, legal practitioners, and citizens about the relationship between federal and state authority in election administration.

A. Federal Authority and Preemption Doctrine

1. Constitutional Framework

The U.S. Constitution establishes a dual sovereignty system in which both federal and state governments exercise authority over elections. The U.S. Constitution's Article I, Section 4 (the Elections Clause) grants state legislatures the primary authority to regulate the "Times, Places and Manner" of federal elections, while reserving to Congress the power to "make or alter such Regulations."

Congress exercises its authority to enact statutes that set minimum standards for federal election administration. The Department of Justice may investigate suspected violations of federal election laws. Some factors to consider are described below.

2. The Supremacy Clause

When state law (or election rules) run contrary to federal statutes, federal law prevails. The Constitution's Article VI, Clause 2 makes that clear. Supremacy Clause, as it is called, provides that federal law "shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Courts apply this preemption doctrine to resolve federal-state conflicts.

In election administration, preemption analysis asks whether state rules conflict with federal requirements such that compliance with both is impossible, or whether state rules stand as an obstacle to accomplishing federal statutory purposes. Rule Set 2025-14's mandate to destroy e-pollbook data seven days after an election's certification presents a direct conflict with the federal mandate to preserve election records for twenty-two months. This preservation of records conflict raises the preemption question and Supremacy Clause question. It puts clerks and

elections officials in the middle. They cannot simultaneously comply with both state rules and federal law, so clerks face an irreconcilable conflict.

4. Separation of Powers and the Nondelegation Doctrine

Michigan's structural failures implicate separation of powers principles at the state level. As documented in Section III, Michigan's Constitution (Article III, Section 2) prohibits one branch from exercising powers properly belonging to another except as expressly provided. The creation of MOAHR through executive orders — to review rules exercising delegated legislative authority — raises unresolved questions about whether this arrangement comports with Michigan's strict separation of powers framework. The legislature created JCAR as the statutory oversight mechanism. Whether an executive-branch office may effectively supersede that mechanism without legislative authorization is a constitutional question this report identifies but does not resolve.

At the federal level, ongoing legislative efforts to strengthen congressional oversight of agency rulemaking — including proposals requiring legislative approval for major regulations — reflect recognition that separation of powers principles require meaningful legislative checks on administrative action. These federal discussions provide relevant context for Michigan's structural reform.

B. Federal Enforcement Mechanisms

1. Department of Justice Authority

The U.S. Department of Justice possesses statutory authority to enforce federal civil rights laws, including election administration statutes. The DOJ may initiate civil enforcement actions, seek preliminary injunctions to prevent state rule and law implementation, request declaratory judgments on federal-state conflicts, and pursue remedies including permanent injunctions and compliance orders.

As an example, 52 U.S.C. § 10101(c) provides: "Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by [this section], the Attorney General may institute...a civil action or other proper proceeding for preventive relief, including an application for a preliminary injunction."

2. Three-Judge Panel Expedited Review

52 U.S.C. § 10101(g) provides for expedited three-judge district court panels in cases involving denial of voting rights. This mechanism enables faster resolution of time-sensitive election disputes, a particularly significant procedural tool given the 2026 election timeline.

3. Precedent for DOJ Action

The Department of Justice has historically intervened in state election administration when federal law conflicts appear, including enforcement actions under the National Voter Registration Act, challenges to state voter ID requirements under § 10101, and investigations of record retention violations under § 20701. Rule Set 2025-14, which took effect October 23, 2025, appears to be in active conflict with § 20701 and falls within the category of violations the DOJ has historically pursued. The same holds true for Rule Set 13, in effect February 23, 2025, which defies the state's AG Nessel opinion #7322 and establishes dual and two-tiered voter eligibility requirements and discriminates against domestic citizen voters in favor of overseas citizen voters.

C. Private Civil Litigation

1. Standing and Causes of Action

Private parties possess multiple avenues for challenging rules that appear to violate federal or state law.

2. **Federal Civil Rights Claims (42 U.S.C. § 1983):** Private citizens may bring § 1983 actions alleging state actors violated federal rights under color of state law. Plaintiffs must establish standing (e.g., injury in fact, causation, redressability), identify the specific federal right violated, and demonstrate state action.

3. **First Amendment Claims:** Poll challenger organizations and credentialing entities can challenge the compelled speech requirements in Rule Set 2025-15 under West Virginia State Board of Education v. Barnette 319 U.S. 624 (1943). The First Amendment prohibits the government from conditioning the exercise of statutory rights on submission to government-prescribed ideological training. These claims are complicated by the fact that the mandatory training materials at the center of Rule Set 2025-15 remain subject to a court preservation order in House of Representatives v. Benson (Case No. 25-000096-MZ) and have not been publicly disclosed. Courts evaluating First Amendment challenges should be aware that the content of the compelled training has not been available for public examination.

4. **Equal Protection Claims:** Voters may challenge unequal treatment between voter categories under the Fourteenth Amendment.

5. **Materiality Provision Claims:** Citizens may challenge the economic barriers in Rule Set 2025-13 under 52 U.S.C. § 10101(a)(2)(B). Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003), and Martin v. Crittenden, 347 F. Supp. 3d 1302 (N.D. Ga. 2018), demonstrate that courts will invalidate requirements unrelated to actual voter

qualification — citizenship, age, and residency — regardless of their procedural framing.

D. Remedies Available

Courts may grant preliminary injunctions preventing rule implementation pending resolution, declaratory judgments establishing whether rules conflict with federal law, permanent injunctions prohibiting enforcement of invalid provisions, and attorneys' fees under 42 U.S.C. § 1988 for prevailing parties in civil rights actions.

E. State Administrative Procedures Act Challenges

1. Grounds for Challenge

Michigan's Administrative Procedures Act (MCL 24.201 et seq.) provides mechanisms for challenging rules that exceed statutory authority or violate procedural requirements. Under MCL 24.306, courts may invalidate rules that exceed rulemaking authority granted by statute, conflict with another rule or statute, are arbitrary and capricious, or violate any provision of the APA including MCL 24.253's mandatory advance planning requirement.

2. Venue and Procedure

APA challenges are filed in the Michigan Court of Claims, which has exclusive jurisdiction over claims against the state. MCL 24.306 establishes standards for judicial review. Courts may stay rule implementation pending resolution.

F. Active Litigation — House of Representatives v. Benson

The structural failures documented in Sections III through VI did not remain abstract. They produced active inter-branch litigation that was unresolved as this report went to press.

In April 2025, the House Oversight Committee authorized subpoenas directing Secretary Benson and MDOS to produce the eLearning Portal training materials that Rule Set 2025-15 would make mandatory for all poll challengers — the same materials MOAHR had certified as compliant without public disclosure of their content. MDOS produced approximately 3,300 pages in partial compliance but withheld the Portal materials. The House voted on May 22, 2025, to hold Secretary Benson in civil contempt (House Resolution 117) and filed suit on June 5, 2025, in House of Representatives v. Benson, Case No. 25-000096-MZ (Mich. Ct. Cl., Hon. Sima G. Patel).

The Michigan Court of Claims entered a preservation order on June 11, 2025, freezing all subpoenaed materials in their current form pending resolution of the litigation. On

November 3, 2025, Judge Patel denied both parties' motions for summary disposition, finding a genuine factual dispute about the legislative purpose of the subpoena. The court applied the standard from Trump v. Mazars USA, LLP, 591 U.S. 848 (2020), that legislative subpoenas must serve a "legitimate legislative purpose." The court found a factual conflict between the Oversight Committee's own meeting minutes, which framed the subpoena in terms suggesting a punitive purpose, and the House's legal pleadings characterizing the purpose as determining whether new legislation was needed. That contradiction prevented summary disposition for either party. The case proceeded to the pre-trial stage.

The structural significance is precise. The training materials Rule Set 2025-15 would make mandatory for every poll challenger in Michigan remain frozen by court order, unexamined by the legislature, and undisclosed to the public — all while the rule itself continues to advance toward 2026 implementation.

An independent rulemaking oversight system would likely have flagged compelled speech violations. It would have required disclosure and examination of the legally unauthorized materials before certification. Michigan's system did not. As the consequence of this inter-branch constitutional confrontation, a court is now asked to resolve the impasse with three major elections fast approaching in 2026: a special state senatorial election on May 5, a primary election on August 4, and the November 3 general election.

G. Legislative Mechanisms

1. JCAR Authority

As documented in Section VI, JCAR's authority is limited to filing notices of objection (temporary delay only), requesting modifications (non-binding), and introducing legislation (requiring gubernatorial signature or two-thirds supermajority override). The structural constraints documented in this report rendered JCAR unable to act on Rule Sets 2025-13, 2025-14, or 2025-15. Some of those constraints can be attributed to concurrent majority requirements, 50-50 partisan composition, automatic advancement, and failures of checkpoints during planning stages.

2. Legislative Action

The Michigan legislature could enact legislation to prohibit specific rule provisions, establish different requirements, or codify federal compliance standards. This approach requires passage through both chambers.

H. Temporal Considerations

1. Urgency and Election Timing

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Rule Set 2025-14 has been in effect since October 23, 2025. Michigan clerks are already destroying electronic poll book data seven days after certifying each federal election rather than preserving it for the federally required 22 months. Rule Set 2025-13 went into effect February 23, 2026. Rule Set 2025-15 is projected to take effect in 2026. These rule changes will govern the August 2026 primary and the November 2026 general election, which will determine 13 U.S. House seats, a U.S. Senate seat, Governor, Secretary of State, Attorney General, all 110 state House seats, all 38 state Senate seats, and two Michigan Supreme Court positions.

2. The Purcell Principle

Federal courts recognize the Purcell principle (Purcell v. Gonzalez, 549 U.S. 1 (2006)), which counsels against court intervention close to elections due to risks of voter confusion and administrative disruption. Courts distinguish, however, between changes to existing procedures (generally disfavored close to elections) and enforcement of established federal requirements (which may justify intervention even close to elections).

Whether the Purcell principle applies to challenges of these rule sets could depend on whether courts characterize relief as changing election procedures or as enforcing pre-existing federal statutory requirements, a distinction that favors early court filings to maximize the window for judicial resolution before constraints arise on election-administration timing.

3. Structural Absence of Temporal Safeguards

Michigan's system lacks mechanisms for addressing the particular circumstances that arise when election officials promulgate rules governing elections in which they are candidates. The timeline was as follows: MDOS filed its Annual Regulatory Plan on July 1, 2024, disclosing no planned election rules. Secretary Benson announced her gubernatorial candidacy on January 22, 2025. MDOS filed Rule Sets 2025-13, 2025-14, and 2025-15 six weeks later, March 5-6, 2025. Rule Set 2025-14 took effect October 23, 2025, and Rule Set 2025-13 became effective February 23, 2026. Rule Set 2025-15 is projected to go into effect in 2026. The rules will govern the November 2026 general election in which Secretary Benson may appear on the ballot as a gubernatorial candidate.

Final determinations as to individual conduct exceed this report's scope and require adjudication through appropriate legal proceedings. However, the apparent conflicts of interest raise questions as to whether additional safeguards merit consideration. Some states have addressed comparable concerns through automatic review requirements when rules affect elections involving rule-making officials, legislative pre-clearance for election rule changes within specified periods before elections, independent commission oversight for election administration changes, and enhanced transparency and public comment periods.

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Whether Michigan would benefit from comparable mechanisms is a policy question for legislators and citizens to address through the republic's lawful processes.

I. Summary: Section VII

Multiple legal mechanisms exist to address apparent conflicts between Michigan's Rule Sets 2025-13, 2025-14, and 2025-15 and federal and state law.

1. **Federal mechanisms** include Department of Justice enforcement authority under 52 U.S.C. § 10101(c) to seek injunctive relief and expedited three-judge panel review under § 10101(g) for time-sensitive election disputes. The Preemption Doctrine under the Supremacy Clause establishes federal law supremacy when state rules directly conflict with federal statutes. Rule Set 2025-14's seven-day destruction mandate presents a direct conflict with § 20701's 22-month preservation requirement.

2. **Private litigation mechanisms** allow citizens to challenge rules through 42 U.S.C. § 1983 actions for federal rights violations, First Amendment compelled speech claims under Barnette, Equal Protection claims, and materiality provision challenges under § 10101(a)(2)(B). Courts may grant preliminary injunctions, declaratory judgments, permanent injunctions, and attorneys' fees under 42 U.S.C. § 1988.

3. **State mechanisms** provide for challenge under MCL 24.306 for rules that exceed statutory authority, conflict with other statutes, are arbitrary and capricious, or disregarded procedural requirements including the advance-planning disclosure framework of MCL 24.253 (Note: MCL 24.253(3) provides plans are "advisory only," such that omission from the plan is evidence of process failure rather than an independent ground for invalidation).

Michigan Court of Claims has jurisdiction with authority to stay rule implementation.

One such mechanism has already been invoked via the legislature, producing active litigation that was unresolved as this report went to press. The House of Representatives v. Benson (Case No. 25-000096-MZ) illustrates the consequence of checkpoint failure. When both MOAHR and JCAR failed to examine the mandatory training materials at the center of Rule Set 2025-15, the legislature's only remaining recourse was subpoena. When Secretary Benson refused to comply, the legislature filed civil contempt lawsuit. A court preservation order and litigation remain unresolved on the merits as the 2026 election cycle advances.

Rule Set 2025-15 is about to require every poll challenger in Michigan to complete state-provided training, but those training materials remain frozen under court order and undisclosed to the public.

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4. **Legislative mechanisms** include JCAR objections, which provide only temporary delay, modification requests, which are non-binding, and legislation — all subject to the structural constraints, and concurrent-majority requirements, and political obstacles documented in Section VI.

5. **Temporal considerations** create urgency at two levels. Rule Set 2025-14 and Rule Set 2025-13 are already in effect. Rule Set 2025-15 will soon go into effect, and their combined 40 new rules will govern elections in 2026. The Purcell Principle counsels early filing to maximize the window for judicial resolution. Michigan's structural absence of temporal safeguards — no recusal requirements, no independent review when officials promulgate rules governing elections in which they are candidates — is a policy gap that other states appear to have addressed through a range of mechanisms.

This analysis is provided for educational purposes to inform policymakers, legal practitioners, and citizens. Final determinations about specific legal violations and individual conduct require adjudication through appropriate legal proceedings.

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SECTION VIII: EXPERT AND LEGISLATIVE PERSPECTIVES

The structural defects and legal conflicts documented in this report have drawn attention from legal experts, election integrity professionals, and Michigan legislators from both parties. This section presents perspectives from attorneys, policy experts, election administration specialists, and elected officials who have reviewed Michigan's oversight system and the three rule sets examined herein.

These perspectives reinforce the report's central findings: Michigan's administrative oversight structure lacks independence protections present in other states, both MOAHR and JCAR failed to prevent rules with apparent federal law violations, and the system's design produced predictable outcomes.

A. Legal and Constitutional Analysis

Hon. William Wagner (Ret.), Distinguished Professor Emeritus of Law.

"I hold the team at the Michigan Fair Elections Institute in high regard. They bring together serious intellectual rigor with a steadfast, principled commitment to election integrity. That kind of disciplined thinking, anchored in conviction, is both rare and deeply needed."

Joshua Findlay, Director, Election Protection Project, Texas Public Policy Foundation

"Having worked on election integrity across 17 battleground states, I can say with confidence that state administrative rules must comply with federal statutory requirements — not contradict them. A 98.9% reduction from the federal record retention mandates isn't a minor technical discrepancy. It's a fundamental conflict that undermines the federal protections Congress enacted through the Civil Rights Act of 1960. Michigan's dual-checkpoint failure allowed rules with apparent federal violations to advance without effective review. That's precisely the scenario strong oversight structures are designed to prevent. The question isn't whether Michigan should reform this system — it's why it hasn't already."

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Cleta Mitchell, Esq., Senior Legal Fellow, Conservative Partnership Institute.

When a gubernatorial candidate can promulgate election rules governing her own election six weeks after announcing her candidacy, with no independent review to prevent conflicts of interest, or to ensure the accuracy and honesty of the election, the system has failed. MFEI's 24-state comparison proves Michigan needs structural safeguards other states use routinely to keep candidates from writing rules that favor their own candidacy. The question is whether policymakers in Michigan will act before the 2026 elections to restore neutrality in the process or if the 2026 elections will proceed under these compromised rules."

Erick G. Kaardal, Partner, Mohrman, Kaardal & Erickson, P.A.

"Conservative election integrity efforts are making real progress against long-standing administrative overreach, from successful challenges to signature verification practices by Secretaries of State to bans on private funding of election infrastructure in dozens of states. The dominance of the administrative state has made fair elections harder to secure, but through strategic litigation, we are reclaiming legislative authority and ensuring transparency, so no branch or official can operate without meaningful checks."

John Eastman, Founding Director, Claremont Institute's Center for Constitutional Jurisprudence

"As an attorney who has long advocated for transparent and accountable government processes, I commend the Michigan Fair Elections Institute for the rigorous, nonpartisan analysis in *Compromised Checkpoints*. This report exposes critical structural flaws in Michigan's administrative oversight system with compelling evidence and a clear 24-state comparison, providing an essential foundation for meaningful reforms to protect election integrity and restore public trust.

"I am particularly troubled by Secretary Benson's Rule Set 2025-14, which the report exposes. That rule set forces the destruction of all electronic poll book data seven days after an election's certification. The rule package is in clear violation of federal law, which, at 52 U.S.C. 20701, mandates retention of all "records and papers … relating to any … act requisite to voting" for 22 months following the election."

Elizabeth Nielsen, Associate Attorney, Mohrman, Kaardal & Erickson

"At Mohrman, Kaardal & Erickson, we are committed to defending against government overreach in election law, whether it's contested results, voter registration issues, or failures to uphold statutory requirements for transparency and bipartisanship. Protecting the integrity of our democratic process means empowering citizens and ensuring that election administration remains neutral, compliant with the law, and free from unauthorized external influences that erode public trust."

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B. Legislative Perspectives

State Representative Ann Bollin, Chairperson, Appropriations Committee. Co-Author of a Contempt Resolution against the Secretary of State for Refusing Legislative Oversight.

"The rulemaking process needs a complete overhaul. There are no checks and balances on the process itself, and rulemaking often carries the weight of law. This is the legislature's job – not a bureaucrat's job."

State Representative Stephen Carra, Chairman, Michigan Freedom Caucus

"The Michigan Fair Elections Institute deserves recognition for shining a light on the dangers of concentrated power in election rulemaking within the executive branch, which can limit accountability and erode confidence. As a consistent champion for election transparency and security, including accurate voter rolls and proper safeguards, I wholeheartedly back their important work to protect the foundational principles of fair elections in our state."

State Representative Gina Johnsen, 78th District; Member of JCAR

"This isn't a partisan matter — it's fundamentally about good governance. Michigan's elections and institutions thrive only when legislative oversight is meaningful and enforceable, and government operates with proper checks and balances."

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Paul Opsommer, Former Michigan State Representative (2007-2012); Former Mayor, City of DeWitt, Michigan

"MFEI's *Compromised Checkpoints* provides rigorous documentation of structural defects that have persisted across multiple administrations from both parties. As someone who served in the Michigan legislature, I appreciate the report's careful distinction between systemic failures and partisan politics. The 24-state comparison demonstrates clearly that Michigan's oversight system lacks basic independence protections that other states have implemented successfully. This research provides a solid foundation for understanding how administrative oversight failures can affect election administration regardless of which party is in power."

State Representative Rachelle Smit, Michigan House Speaker Pro Tempore; Chairperson, House Election Integrity Committee

"In *Compromised Checkpoints*: *Restoring Independence in Michigan's Election Oversight*, MFEI aptly reveals the problematic and dangerous situation that our state's election process is in. MFEI's comprehensive knowledge on the unaccountable JCAR committee and MOAHR office is a message that needs to be shared with every citizen in our state.

"We need the strength of the people and the federal government to stop this administrative overreach. Under our constitution, it is the legislature that determines the 'times, places, and manner' of our elections, but the very nature of this rule-making process violates that principle. The legislature, which is the representative of the American people, should be the only law-making body."

State Representative Jennifer Wortz, Member of JCAR

"I commend *Compromised Checkpoints* for their excellent summary of the conflict when one branch of government unilaterally promulgates election rules without oversight. That's precisely the issue in Michigan today. I support their mission fully and advocate for a comprehensive audit by an independent agency or the Department of Justice to ensure the integrity of our voter rolls."

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C. Election Integrity and Administrative Oversight

Sharon Bemis, President, Election Integrity Network

"Michigan has destroyed federal election records since October 2025 — a 98.9% reduction from the 22-month Civil Rights Act requirement — yet both oversight checkpoints advanced these rules as compliant. MFEI documents how thirty years of structural choices created a system that predictably fails when presented with rules containing apparent federal violations."

Capt. Seth Keshel, Special Advisor to Michigan Fair Elections Institute

"Michigan Fair Elections Institute does the rigorous work few understand or are willing to undertake. In this investigation, the shocking administrative vulnerabilities in Michigan's election system are fully exposed, lending credence to those who believe some states have violated the spirit of the Elections Clause, thereby creating unfair systems capable of disenfranchising not only voters in Michigan, but in other states."

Andy Mangione, Senior Vice President, AMAC Action

"The facts are damning. Six weeks after announcing gubernatorial candidacy, Michigan's Secretary of State submitted rules creating expensive barriers to voter challenges, destroying federal election records 98.9% faster than federal law allows, and restricting poll challenger authority — all advanced by a compromised oversight system lacking independence. This isn't about one person or party. It's about structural failure enabling officials to change rules governing elections in which they're candidates, with both oversight checkpoints (MOAHR and JCAR) unable to prevent apparent federal law violations documented in public testimony."

Ambassador Carla Sands, Chair, Foreign Policy Initiative; Distinguished Senior Fellow, Energy Policy, America First Policy Institute; U.S. Ambassador to the Kingdom of Denmark (Ret.)

"As a former public servant committed to transparent governance, I commend MFEI's *Compromised Checkpoints* for its objective examination of Michigan's bipartisan structural failures in rulemaking oversight. The report's 24-state comparison clearly demonstrates Michigan's outlier status and offers practical reforms to restore independence and comply with federal law."

Rebecca Weber, Chief Executive Officer, Association of Mature American Citizens (AMAC)

"Michigan Fair Elections Institute's *Compromised Checkpoints* exposes a structural failure that should alarm every American: a gubernatorial candidate promulgated election rule changes governing her own election just six weeks after announcing her candidacy, with no independent oversight to prevent conflicts of interest. MFEI's comparative research reveals Michigan stands alone in lacking basic safeguards — no Senate confirmation, no independent review, no structural separation — that other states routinely implement to ensure administrative integrity."

D. Common Themes Across Perspectives

Several consistent themes emerge from these expert and legislative perspectives:

1. **Structural Failure**: Multiple commentators emphasize that Michigan's system failure results from long-term structural design choices. The bipartisan pattern across four gubernatorial administrations demonstrates systemic rather than partisan problems.

2. **Federal Law Violations**: Legal experts and election integrity professionals alike highlight the apparent conflicts with federal civil rights statutes, particularly the 98.9% reduction from the federal record retention requirements (52 U.S.C. § 20701)

and economic barriers raising materiality concerns (52 U.S.C. § 10101). Civil rights issues become a concern when a rule set imposes dual, tiered voter eligibility requirements on American citizens. Rule Set 13 treats overseas civilians as a protected class of voters. It exempts them from standard eligibility checks and challenges in contrast to domestic citizens.

3. **National Outlier Status**: The 24-state comparative analysis provides objective evidence of Michigan's combination of structural defects. Executive review without independence and legislative review without enforcement capacity place Michigan as an outlier among 24 states with central-panel administrative systems in terms of their non-statutorily based executive-branch review offices.

4. **Temporal Conflict of Interest**: Multiple perspectives note the problematic timeline. MDOS submitted major election rules changes six weeks after its leader announced her gubernatorial candidacy. These rule changes will govern the election in which the head promulgating official will likely appear as a candidate. No independent review mechanism exists to address this temporal consideration.

5. **Legislative Authority**: Current and former legislators emphasize that administrative rulemaking has bypassed the legislature and circumvented legislative authority. They stress that rulemaking agencies should not be subject to unilateral executive action but to meaningful legislative oversight by a statutorily created legislative body with enforcement capacity.

E. Summary: Significance for Policy Discussion

These perspectives from individuals with diverse professional backgrounds and political viewpoints validate the report's core findings. Their convergence on key themes reinforces that Michigan's administrative oversight challenges merit serious policy attention. Areas of particular concern include structural design flaws; federal, state and constitutional law conflicts; absence of independence protections; and the need for impartial and effective rulemaking oversight.

The expert and legislative perspectives provide context for the Model Complaint Framework in Section IX and the policy recommendations presented in the report's synthesis in Section X. They demonstrate that this report's findings resonate with legal practitioners, election administration professionals, constitutional scholars, and elected officials who have examined Michigan's system from different vantage points.

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SECTION IX: MODEL COMPLAINT FRAMEWORK

Framework for a Constitutional Complaint under Michigan's Administrative Procedures Act

This section provides a framework for challenging Rule Sets 2025-13, 2025-14, and 2025-15 under Michigan's Administrative Procedures Act. It is a working document that identifies claims, parties, legal theories, and relief — organized for review and development by attorneys. It is not a filed complaint. The constitutional violations documented throughout this report — including MOAHR's absence of statutory foundation, its combination of adjudication with substantive rulemaking gatekeeping, and Michigan's status as a national outlier among all central-panel states — form the evidentiary foundation for each count identified here.

Michigan's APA (MCL 24.201 et seq.) parallels the federal Administrative Procedure Act (5 U.S.C. §§ 551–559) in requiring notice-and-comment rulemaking for substantive rules and prohibiting arbitrary, capricious, or unlawful agency action. Michigan's APA provides for judicial review of rules that violate constitutional or statutory requirements or exceed agency authority.

A. LEGAL FRAMEWORK

1. Substantive Review Standard (MCL 24.306)

Michigan courts shall hold unlawful and set aside agency rules that are (MCL 24.306):

a) In violation of the constitution or a statute;

b) In excess of the statutory authority or jurisdiction of the agency;

c) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or

d) Affected by other substantial and material errors of law.

2. Procedural Review Standard (MCL 24.243, 24.245)

Rules must comply with (MCL 24.243, MCL 24.245):

- Public notice requirements
- Opportunity for public hearing
- Regulatory impact assessment
- Comparison to federal law
- Proper processing through the administrative rulemaking system

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3. Declaratory Judgment Authority

MCL 24.264: Courts may declare rules invalid without requiring exhaustion of administrative remedies — a strategic advantage given the 2026 election timeline.

4. Constitutional Validity of the Reviewing Body (Threshold Issue)

THRESHOLD: Before any count on the merits, any complaint challenging these rule sets should raise the threshold constitutional question: MOAHR itself lacks the foundation Michigan's Constitution requires. If MOAHR lacks constitutional authority to certify rules, its certification of Rule Sets 2025-13, 2025-14, and 2025-15 is void regardless of the rules' substantive content.

Michigan's own Constitution provides six independent grounds for this threshold argument — none of which require reliance on out-of-state authority:

- Art. III, § 2 — Separation of Powers: Prohibits any branch from exercising powers belonging to another *except as expressly provided in the constitution.* No such provision authorizes executive gatekeeping over legislature-delegated rulemaking. MOAHR's thirty-year history as a mandatory pre-promulgation gatekeeper has no express constitutional basis.
- Art. IV, § 1 — Legislative Power: Vests legislative power — including the rulemaking authority delegated to agencies through MAPA (MCL 24.201 et seq.) — in the legislature. A governor may not interpose an executive gatekeeper over that delegation without legislative authorization MOAHR has never received.
- Art. IV, § 37 — Administrative Rules: Limits even the legislature's own joint committee to suspension of rules only, between sessions only, for no longer than the end of the next regular session. The 1961–1963 Constitutional Convention drafting history confirms the framers understood that stronger interference with agency rulemaking requires bicameralism and presentment — the requirement that legislation pass both chambers and be presented to the governor. MOAHR exercises mandatory pre-promulgation approval authority that exceeds even what Art. IV, § 37 permits the legislature's own committee.
- Art. I, § 17 — Fair Treatment in Executive Hearings: Guarantees that "the right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed." When the same office that certified a rule as legally compliant later adjudicates disputes arising under that rule, a party challenging the rule appears before the office that already ruled in its favor. This structural arrangement violates the fair-treatment guarantee Art. I, § 17 protects.
- Art. V, § 2 — Allocation by Law: Requires all executive offices to be "allocated by law" — through affirmative legislative enactment, with public hearings, floor debate, and a recorded vote. MOAHR was created by executive order alone (E.R.O. 2019-06). No Public Act has ever created MOAHR, defined its authority, or authorized its combination of adjudication with pre-promulgation rulemaking gatekeeping. This is not a technical deficiency. It is the foundational

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constitutional violation that makes MOAHR's approval of the three rule sets legally suspect at the source.

- Art. VI, § 28 — Judicial Review: Guarantees judicial review of "all final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law." That review must include, at minimum, "the determination whether such final decisions, findings, rulings and orders are authorized by law." MOAHR was created by executive order — not by the constitution and not by statute. Its decisions therefore fail the foundational authorization requirement before the merits of any individual ruling are reached.

5. Controlling and Persuasive Precedents on the Threshold Question

Three cases bear directly on the threshold constitutional question, in order of authority:

- Blank v. Department of Corrections, 462 Mich. 103 (2000) — **Binding Michigan authority:** Michigan's own Supreme Court struck down JCAR's statutory veto over agency rules as violating separation of powers. The legislature removed that authority but created no statutory substitute. MOAHR was then inserted by executive order to fill that void — without authorization. An executive-created office cannot constitutionally occupy a space the legislature itself could not hold.
- INS v. Chadha, 462 U.S. 919 (1983) — **Binding federal authority:** The U.S. Supreme Court held that any action altering the legal rights and duties of persons outside the legislative branch must proceed through bicameralism and presentment. MOAHR's gatekeeping and adjudicative functions both alter legal rights. Neither proceeds through bicameralism and presentment. Michigan's Art. IV, § 37 embedded this same principle in 1963.
- Whiley v. Scott, 79 So.3d 702 (Fla. 2011) — **Persuasive authority:** The Florida Supreme Court struck down an executive-order-created mandatory rulemaking gatekeeper as an unconstitutional separation-of-powers violation. Whiley construes Florida's constitution and APA; its structural reasoning applies with persuasive force to Michigan's parallel constitutional framework. Michigan's Art. III, § 2 and Art. IV, § 1 provide the same independent basis under Michigan's own Constitution.
- Evers v. Marklein, 2025 WI 36 (Wis. 2025) — **Persuasive authority applying binding Chadha:** The Wisconsin Supreme Court adopted the reasoning of INS v. Chadha to strike down legislative committee gatekeeping authority. If even a legislatively created committee cannot exercise a unilateral rulemaking veto without satisfying Chadha's requirements, an executive-order-created body exercising the same power is more constitutionally vulnerable, not less.

No other state has used an executive order to create a single office that both decides contested cases and controls which agency rules move forward without a law authorizing it and without independence safeguards. The two closest structural analogs — New Jersey's OAL and

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Rhode Island's ORR — were both designed specifically to avoid MOAHR's combination of functions. The New Jersey Supreme Court validated OAL in 1982 precisely because its adjudication is advisory-only and its rulemaking role is limited to procedural compliance. MOAHR fails both conditions.

Attorneys should evaluate whether to raise the threshold constitutional argument as a standalone count or as a threshold challenge embedded in Count I.

B. COUNT 1: Violation of Michigan Administrative Procedures Act and Federal, State, and Constitutional Law (Substantive)

1. Nature of Claim

Rules violate federal and state constitutions and statutes, exceed statutory authority, are arbitrary and capricious, and are affected by substantial errors of law, in violation of MCL 24.306.

2. Parties

- Plaintiffs: Michigan registered voters, poll challengers, election integrity organizations, citizens affected by rule enforcement
- Defendants: Michigan Secretary of State, LARA, Michigan Office of Administrative Hearings and Rules, State of Michigan

3. Jurisdictional Basis

- Michigan Court of Claims (exclusive jurisdiction over claims against state)
- MCL 24.264 — Declaratory judgment as to rule validity, without exhaustion of administrative remedies
- Standing: Plaintiffs suffer injury from rule enforcement (economic barriers, civil and statutory rights deprivation, record destruction)

4. Factual Allegations

- The Michigan Secretary of State constitutes an "agency" under MCL 24.203(2).
- Rule Sets 2025-13, 2025-14, and 2025-15 constitute "rules" under MCL 24.207 as agency statements of general applicability implementing or applying law enforced by the agency.
- MCL 24.306 authorizes courts to hold unlawful and set aside agency rules that violate constitutions or statutes, exceed statutory authority, are arbitrary and capricious, or are affected by substantial errors of law.

- In promulgating Rule Sets 2025-13, 2025-14, and 2025-15, the Secretary of State and MOAHR have taken action that is unconstitutional, exceeds statutory authority, is arbitrary and capricious, and is otherwise not in accordance with law.

5. Violations of Federal Statutes (MCL 24.306(a))

Rule Set 2025-13

- 52 U.S.C. § 10101(a)(2)(B) prohibits denying rights based on requirements "not material" to voter qualification.
- Rule imposes economic barriers (~$1,500+ for 100 challenges) unrelated to voter qualification determination.
- Notarization, personal knowledge, and individual affidavit requirements are not material to citizenship, age, or residency.
- Parallel to Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003) (signature match immaterial to voter qualification).
- Parallel to Martin v. Crittenden, 347 F. Supp. 3d 1302 (N.D. Ga. 2018) (birth dates immaterial to voter qualification).
- Rule Set 2025-13 took effect February 23, 2026.

Rule Set 2025-14

- 52 U.S.C. § 20701 requires 22-month (660-day) preservation of all election records.
- Rule Set 2025-14 requires seven-day destruction of electronic poll book data after certification — a 98.9% reduction from the federal requirement.
- Direct conflict: compliance with both is simultaneously impossible.
- Rule took effect October 23, 2025. The May 5 state senate special election, the August 4 primary, and the November 3, 2026, general election will all be affected.
- Willful destruction potentially violates criminal provisions of 52 U.S.C. § 20702.

Rule Set 2025-15

- 52 U.S.C. § 10101(a)(2)(A) prohibits applying different voting standards or procedures to different individuals in the same election. Rule Set 2025-15 creates a two-tiered system in which certified challengers operate under mandatory training, scripted communication protocols, and ejection authority not applied to other election participants.
- 52 U.S.C. § 20511 (criminal penalties) and the Help America Vote Act (52 U.S.C. § 21112) require uniform, nondiscriminatory election administration. Mandatory

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certification conditioning the exercise of a statutory right on completion of undisclosed government training is inconsistent with uniform administration requirements.

- Rule conditions exercise of statutory rights under MCL 168.733 on submission to state-prescribed training whose content has not been disclosed to the public or the legislature, raising federal due process concerns under Board of Regents v. Roth, 408 U.S. 564 (1972).
- Compelled submission to government-scripted training implicates First Amendment compelled speech doctrine. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943); Wooley v. Maynard, 430 U.S. 705 (1977).
- As of this date, the training materials mandated as a precondition have not been produced despite House Resolution 117 (May 22, 2025) holding Secretary Benson in civil contempt. See House of Representatives v. Benson, Case No. 25-000096-MZ. A rule whose precondition materials remain judicially contested cannot be enforced as valid.

6. Violations of State Statutes (MCL 24.306(a))

Rule Set 2025-15 contradicts MCL 168.733 in four specific areas:

- The statute requires direct communication with inspectors. The rule prohibits direct communication and requires all challenger communications to be routed through a liaison.
- The statute provides training is voluntary ("may attend"). The rule imposes mandatory state-controlled certification.
- The statute requires inspectors to "assist" challengers. The rule authorizes ejection for "disruptive" behavior, creating a chilling effect on statutory observation rights.
- The rule limits permissible challenges to four specific categories, narrowing the broad "good reason to believe" standard MCL 168.733(1)(c) establishes.

The Michigan House Oversight Committee authorized subpoenas on April 15, 2025. MDOS failed to comply. House Resolution 117 (May 22, 2025) formally held Secretary Benson and MDOS in civil contempt and directed legal action to compel production. See House of Representatives v. Benson, Case No. 25-000096-MZ. As of this date, the contempt action remains unresolved. Plaintiffs are unable to evaluate the full scope of compelled-speech and statutory contradiction claims without access to the training materials the executive branch has refused to disclose even to the legislature.

7. Excess of Statutory Authority (MCL 24.306(b))

MCL 24.232 prohibits rules from imposing requirements "not specifically authorized by the statute being implemented." The authorizing statute — MCL 168.512 — imposes only three

requirements on challengers: identify challenged voters, state grounds for the challenge, and submit an affidavit to the clerk. Rule Set 2025-13 adds:

- A "personal knowledge" requirement not in statute
- "Reliable source" limitations not in statute
- Timing restrictions narrower than statute allows
- Individual notarized affidavits per challenged voter — not in statute

These additions are *ultra vires*. They exceed delegated authority.

8. Violation of Constitutional Protections (MCL 24.306(a))

Rule Set 2025-15 raises First Amendment compelled speech violations. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943): The government cannot compel citizens to undergo government-prescribed ideological instruction as a precondition to exercising a statutory right.

The constitutional vulnerability of the reviewing body compounds the constitutional vulnerability of the rule sets. MOAHR certified all three rule sets as legally compliant. But as documented in Sections III and IV of this report, MOAHR itself was created without satisfying any of the six Michigan constitutional requirements that independently establish its structural infirmity: Art. III § 2 (separation of powers), Art. IV §§ 1 and 37 (legislative power and limits on committee action), Art. V § 2 (allocation by law), Art. I § 17 (fair treatment in executive hearings), and Art. VI § 28 (judicial review of agencies existing under the constitution or by law). An office operating outside its constitutional authority cannot cure the legal defects in rules it approves. The certification of legally conflicted rules by a constitutionally unauthorized body is a compounded error that any complaint should address directly.

Minnesota, the only state among the 24 central-panel states examined with a similarly structured office, built its Office of Administrative Hearings on four statutory safeguards: legislative creation, an explicit independence mandate, limited procedural review scope, and simultaneous multi-branch reporting (Minn. Stat. § 14.48). Michigan's MOAHR was created without a single one of these safeguards.

9. Arbitrary and Capricious (MCL 24.306(c))

Rule Set 2025-14:

- Stated justification: Storage costs for local printed copies.
- Reality: A 32GB flash drive (~$12) stores data for hundreds of precincts. The cost justification does not withstand rational basis scrutiny.

- No rational basis exists for a 98.9% reduction in the federal civil rights record preservation floor.
- The rule fails rational basis review and is arbitrary and capricious under MCL 24.306(c).

10. Substantial Error of Law (MCL 24.306(d))

- MCL 24.245 requires comparison of proposed rules to parallel federal laws and standards.
- MOAHR reviewed and submitted all three rule sets to JCAR despite documented conflicts with 52 U.S.C. § 20701 and 52 U.S.C. § 10101.
- Multiple witnesses testified at public hearings about federal law violations.
- MOAHR provided no substantive response explaining how rules with evident federal conflicts satisfy the comparison requirement. Acceptance of those rules as compliant renders the review procedurally defective.

11. Harm to Plaintiffs

The Secretary of State and MOAHR's actions cause ongoing, irreparable harm to Plaintiffs:

- Economic harm: Estimated $1,500+ costs to exercise statutory rights under MCL 168.512
- Statutory rights deprivation: Restrictions on poll challenger authority contrary to MCL 168.733
- Constitutional injury: Compelled speech requirements violating the First Amendment
- Record destruction: Federal election records destroyed in violation of 52 U.S.C. § 20701, eliminating evidence needed for investigation
- Election administration integrity: Rules with apparent federal violations will govern the August 4, 2026, primary and the November 3, 2026, general election

12. Relief Requested — Count 1

- Declaratory relief: Declaration that Rule Sets 2025-13, 2025-14, and 2025-15 violate 52 U.S.C. § 20701, 52 U.S.C. § 10101, MCL 168.733, the First Amendment, and MCL 24.306
- Preliminary injunctive relief: Immediate order preventing enforcement of rules pending full adjudication
- Permanent injunctive relief: Order permanently enjoining enforcement of rules found invalid
- Attorney's fees and costs under applicable provisions

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C. COUNT 2: Violation of Michigan Administrative Procedures Act (Procedural)

1. Nature of Claim

Rules promulgated without compliance with required procedures, rendering them invalid under MCL 24.243 and MCL 24.245.

2. Incorporation

Plaintiffs incorporate by reference all allegations from Count I as if fully restated herein.

3. Required Procedures

Michigan's APA requires agencies to process rules in substantial compliance with the following before rules become valid:

- Public notice (MCL 24.242)
- Public hearing (MCL 24.242)
- Regulatory impact statement (MCL 24.240)
- Comparison to federal law (MCL 24.245)
- Response to public comments

D. Specific Procedural Defects

Defective Federal Law Comparison (MCL 24.245)

MCL 24.245(3)(a) requires agencies to include in their regulatory impact statement "a comparison of the proposed rule to parallel federal rules or standards." MOAHR's review was defective because:

- Rule Set 2025-14 directly conflicts with 52 U.S.C. § 20701 (7 days vs. 660 days — irreconcilable)
- Rule Set 2025-13 raises materiality questions under 52 U.S.C. § 10101(a)(2)(B)
- Multiple witnesses documented these conflicts in written comments and public testimony
- MOAHR provided no substantive response explaining how rules with evident federal conflicts satisfy the comparison requirement

E. Inadequate Regulatory Impact Assessment (MCL 24.240)

MCL 24.240 requires regulatory impact statements assessing economic effects. The statement for Rule Set 2025-13 failed to account for:

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- Estimated $1,500+ in notarization costs for 100 challenges
- Investigation time and travel costs for the "personal knowledge" requirement
- Cumulative burden on citizens exercising statutory rights under MCL 168.512

F. Denial of Meaningful Public Participation

Pure Integrity Michigan Elections submitted detailed written opposition to all three rule sets documenting the 98.9% federal retention reduction, economic barriers, four statutory contradictions with MCL 168.733, and First Amendment compelled speech concerns. Multiple witnesses testified at public hearings. MOAHR proceeded without modification or substantive response. When an agency disregards all documented legal violations and provides no reasoned explanation, the public participation process becomes a meaningless formality — not the genuine opportunity the Michigan APA requires.

G. Prejudice to Plaintiffs

- Lacked meaningful opportunity to challenge defective legal comparisons before rules took effect
- Lacked accurate regulatory impact information showing the true economic burden
- Provided extensive documentation of legal violations that was disregarded without explanation
- Unable to prevent rules with apparent federal conflicts from taking effect despite timely, detailed opposition

Relief Requested — Count 2

• Declaratory relief: Declaration that the rules are procedurally invalid under MCL 24.243 and MCL 24.245

• Injunctive relief: Order preventing enforcement of invalidly promulgated rules

H. Failure to Comply with Regulatory Planning Requirements (MCL 24.253)

MCL 24.253 requires agencies to submit annual regulatory plans identifying rules they reasonably expect to process in the next year. This advance-planning requirement:

• Enables public preparation and engagement before formal rulemaking begins

• Facilitates legislative oversight planning

• Prevents surprise rulemaking on significant policy matters

• Promotes transparency in administrative action

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Rule Sets 2025-13, 2025-14, and 2025-15 substantially alter election administration through 40 provisions affecting voter registration challenges, poll challenger conduct, and federal record retention. The Secretary of State submitted these rule sets in March 2025 — six weeks after announcing her 2026 gubernatorial candidacy in January 2025. MDOS's Annual Regulatory Plan 2024-2025 disclosed none of them.

Either MDOS failed to include these rule changes in its regulatory agenda (depriving the public and legislature of advance notice), or it accelerated rulemaking outside normal planning timelines after announcing candidacy. Either scenario raises questions about compliance with MCL 24.253.

The timing is particularly significant: 40 provisions substantially alter election administration, rules contain apparent conflicts with federal law documented by multiple witnesses, and rules will govern elections in which the promulgating official is a candidate. Although MCL 24.253(3) provides that annual regulatory plans are "advisory only," the omission deprived both MOAHR and JCAR of the early-warning mechanism that would have enabled identification of federal law conflicts before rules entered formal promulgation — rendering the subsequent review process procedurally defective.

I. MOAHR's Structural Conflict of Interest as an Independent Ground for Relief

Apart from the specific violations in Counts I and II, MOAHR's structural design creates an independent basis for challenging any rule it approves. MOAHR reviews rules promulgated by the executive branch while operating entirely within the executive branch — without statutory independence, without Senate confirmation of its leadership, without fixed terms insulating it from gubernatorial pressure, and without budget independence. As documented in Section III, MOAHR derives $28.6 million of its $37 million budget from interdepartmental grants paid by the very agencies whose rules it reviews.

This structural arrangement does not satisfy the baseline conditions for valid administrative adjudication. In Lucia v. SEC, 585 U.S. 237 (2018), the U.S. Supreme Court held that ALJs exercising significant authority are Officers subject to constitutional appointment requirements — a framework directly relevant when MOAHR ALJs conduct binding adjudications implicating federal constitutional rights. In Free Enterprise Fund v. PCAOB, 561 U.S. 477 (2010), the Court held that executive officers exercising significant authority must be subject to meaningful accountability chains. MOAHR's structure creates the inverse problem: officers with adjudicative functions placed entirely within an executive office that simultaneously controls rulemaking approval.

Rule Sets 2025-13, 2025-14, and 2025-15 were submitted six weeks after the Secretary of State — MOAHR's functional counterpart in the rulemaking process — announced a 2026

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gubernatorial candidacy. MOAHR approved them. The structural incapacity to resist executive pressure and the timing of that approval are facts a court should be permitted to weigh.

Relief sought: Declaration that MOAHR's structural design renders its certification of Rule Sets 2025-13, 2025-14, and 2025-15 constitutionally defective, and that the rules should be remanded for review by a constitutionally grounded body or directly invalidated under MCL 24.306.

J. NOTES ON LEGAL STRATEGY

Michigan's Constitutional Framework — Primary Litigation Foundation

Michigan's own Constitution provides the primary litigation foundation. The six constitutional provisions documented in Section III — Art. III § 2, Art. IV §§ 1 and 37, Art. V § 2, Art. I § 17, and Art. VI § 28 — independently establish that MOAHR's structure is constitutionally infirm without relying on any out-of-state authority. This is significant strategically: a Michigan court applying Michigan's own constitutional text can reach the same conclusion the Florida Supreme Court reached in Whiley v. Scott and the Wisconsin Supreme Court reached in Evers v. Marklein — on fully independent state grounds, without the limitations that attach to persuasive-only authority.

Advantages of Michigan APA Framework

MCL 24.264 permits direct declaratory judgment actions without requiring exhaustion of administrative remedies — a significant advantage given the 2026 election timeline. MCL 24.306 covers constitutional, statutory, ultra vires, and arbitrary and capricious claims within a single statutory standard, allowing all theories to be presented in one action. Michigan courts are familiar with APA challenges, and the specific rule sets at issue have received extensive public testimony about the federal law conflicts documented in this framework.

The constitutional threshold argument — that MOAHR lacks statutory authority — is appropriately raised in Michigan state court, where Michigan constitutional questions are most naturally adjudicated. Federal courts presented with Supremacy Clause or § 1983 claims may decline to reach the state constitutional question, leaving the foundational MOAHR challenge unaddressed. A Michigan APA action allows both the structural constitutional argument and the specific rule violations to be presented to a single tribunal.

The national comparative record documented in Section IV provides additional litigation support that few administrative law challenges can claim: affirmative proof, verified across all 24 central-panel states, that no comparable body exists anywhere. This is not background context. It is evidence directly relevant to whether MOAHR's design reflects a reasonable administrative practice or an unprecedented structural departure. Blank v. Department of Corrections, 462 Mich. 103 (2000), provides binding Michigan authority. Whiley v. Scott and Evers v. Marklein

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provide persuasive confirmation that courts applying parallel constitutional frameworks have reached the same conclusion.

Integration with Federal Claims

Michigan APA claims can be combined with:

- Federal civil rights claims under 42 U.S.C. § 1983
- Direct enforcement under 52 U.S.C. § 10101(c)
- Federal preemption claims under the Supremacy Clause

Timing Considerations

With Rule Sets 2025-13 and 2025-14 currently in effect and 2025-15 advancing toward implementation in 2026, a preliminary injunction appears essential if legally unauthorized rules are to be reversed before they govern the August and November 2026 elections. Early filing maximizes the window for judicial resolution before the Purcell principle — which counsels against court intervention close to elections — constrains available remedies.

A Note on Section II: Rule-by-Rule Legal Analysis

The model complaint identifies the principal legal violations supporting each cause of action. Attorneys structuring challenges to Rule Sets 2025-13, 2025-14, and 2025-15 should consult Section II for the complete citation record underlying these counts. Section II provides a systematic assessment of all 40 subrules, including the controlling federal and state authority for each apparent violation, and is designed to function as a working legal reference alongside this complaint framework. The primary text of all three rule sets appears in Appendix G.

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SECTION X: SYNTHESIS, POLICY IMPLICATIONS, AND RECOMMENDATIONS

Michigan's administrative oversight system evolved over three decades as officials from both political parties made consequential structural choices. When Rule Sets 2025-13, 2025-14, and 2025-15 advanced through this system despite apparent conflicts with federal, state, and constitutional law, both oversight checkpoints functioned precisely as thirty years of structural design determined they would function. This was not system failure. This was the system functioning as designed. This report's key findings are summarized below.

A. Dual-Checkpoint System Failure

Each of the past four governors used executive orders to create a rulemaking oversight office, making Michigan an outlier among all central-panel states. Each governor-created office lacked independence protections, statutory authorization, structural and budgetary independence, fixed terms, senate confirmation, and job qualification requirements. Each office served as a gatekeeper, advancing rules from the executive branch that appointed its leadership and controlled its budget.

Today, one rulemaking body, MOAHR, serves as an executive branch gatekeeper over rulemaking while simultaneously exercising authority to adjudicate appeals of the very rules it screens. This combination of prosecutorial and judicial functions has been tested and rejected in both federal and state courts.

In Whiley v. Scott, 79 So.3d 702 (Fla. 2011), the Florida Supreme Court struck down an executive-order-created rulemaking gatekeeper on precisely this theory — holding that a governor may not insert an executive-branch office as a mandatory gatekeeper between agencies and their legislature-delegated rulemaking authority without legislative authorization. Michigan's MOAHR exercises the same function and has never faced judicial review of its constitutional legitimacy. The absence of a ruling does not indicate constitutionality. It reflects the absence of a lawsuit yet to be brought.

The other body, the duly authorized JCAR legislative committee, lacks enforcement capacity and cannot prevent rules from advancing, even when it formally documents its objections.

The Michigan Office of Administrative Hearings and Rules (MOAHR), the first checkpoint, operates as a pre-screening agency at the top of the rulemaking oversight process.

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Yet four governors across both parties created MOAHR and its predecessors solely through executive orders. MOAHR lacks all standard independence protections: no statutory foundation, no senate confirmation, no fixed terms or term limits, no qualification requirements, and no structural or budgetary independence. Its administrative law judges (ALJs) report not to the judiciary but to the executive branch that appointed them.

Executive Order 2019-13, issued just four months after Governor Whitmer created MOAHR through E.R.O. 2019.06, demonstrates that Michigan governors may establish independence protections through their executive orders when they wish to do so. Whitmer's later order (EO 2019-13) granted appeals commissions a range of independence protections, including senate confirmation, fixed three-year terms, qualification requirements, removal protections, and explicit structural independence. The governor extended no such protections to MOAHR.

The Second Checkpoint: The Joint Committee on Administrative Rules (JCAR)

Public Act 262 of 1999 and Blank v. Department of Corrections (2000) together eliminated JCAR's veto authority, reducing it to an advisory body. Concurrent majority requirements frequently produce a 5–5 partisan deadlock. If JCAR takes no action within fifteen session days, rules automatically advance and take effect, regardless of the concerns JCAR may have placed on record.

B. Michigan as National Outlier

Among 24 states with central-panel review systems, Michigan is unique in its absence of structural protections. Strong central-panel states typically possess five or six independence protections. California scores 4/5, Minnesota scores 5/5, North Carolina scores 4/5. Michigan has zero.

Michigan is the only state to create its administrative rulemaking review office by executive order without statutory foundation, without Senate confirmation, qualification requirements, term limits, or structural and budgetary independence. It appears to be one of the rare states that combine rulemaking review and adjudicative hearings into one office. Opaque interdepartmental grant (IDG) revenues also cloud MOAHR and expose it to ethical and legal vulnerabilities. As an example, in 2025 undisclosed IDGs account for 77.2% ($28,594,000) of MOAHR's total $37,034,900 budget.

C. Three Rule Sets with Apparent Legal Conflicts

Rule Set 2025-13 imposes requirements that do not exist in statute. It erects economic barriers to citizen participation and creates a permanent unverifiable protected class of overseas civilian voters, treating them as exempt from standard voter verification procedures. The rule

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raises federal civil rights concerns. It conflicts with state statutes and contradicts Michigan Attorney General Opinion #7322, (May 5, 2023), which recognized military and overseas civilian voters as legally distinguishable.

Rule Set 2025-14 mandates destruction of electronic poll book data seven days after certification — a 98.9% reduction from the federal 22-month requirement under 52 U.S.C. § 20701. This presents the first documented instance since HAVA's 2002 enactment of a state directly contravening the federal records retention mandate.

Rule Set 2025-15 contradicts four specific provisions of MCL 168.733. It mandates government-provided training materials, raising First Amendment (compelled speech) concerns and exceeds executive-branch rulemaking authority under MCL 24.232.

All three rule sets were omitted from the MDOS (LARA) Annual Regulatory Plan 2024-2025, depriving both checkpoints of the advance planning disclosure mechanism MCL 24.253 provides. Though plans are advisory under MCL 24.253(3), the omission eliminated the early-warning system for identifying and remedying legal conflicts before rules entered formal promulgation.

D. Predictable Dual Checkpoint Failure

When MDOS submitted the three rule sets in March 2025, both checkpoints functioned as designed. MOAHR, lacking independence and operating within the executive branch that promulgated the rules, advanced all three despite apparent federal and state law conflicts. Its Administrative Law Judges report to the executive branch, not the judiciary. JCAR, unable to achieve consensus under concurrent majority requirements, took no action. Rule Set 2025-14 went into effect October 23, 2025, and Rule Set 2025-13 took effect February 23, 2026. Rule Set 2025-15 is projected to take effect shortly.

This outcome was not failure. It was the inevitable result of three decades of structural design choices and a failure to challenge MOAHR's constitutional vulnerabilities.

E. Policy Implications for Administrative Law and Election Administration

1. Structural Design Determines Outcomes

Michigan's experience demonstrates how structural design determines oversight outcomes. The absence of independence protections creates institutions vulnerable to influence and error. The elimination of enforcement capacity transforms statutory oversight mechanisms into advisory bodies.

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These structural deficiencies interact and compound one another. A sound statutory foundation would provide institutional permanence and prevent unilateral executive modification. Independence protections would create the capacity to resist pressure on sensitive matters. A statutorily grounded oversight body with enforcement authority would function as a genuine decision-making body rather than a procedural formality. Plus, an oversight office structured in conformance with the Separation of Powers Doctrine would avoid the conflicts that arise when the same office that advances rules also adjudicates disputes arising from them.

2. Bipartisan Nature of Structural Defects

The evolution across four governors from both parties demonstrates that structural vulnerabilities transcend partisan politics. Governors Engler, Granholm, Snyder, and Whitmer made consistent choices about organizational structure despite different political affiliations.

This bipartisan pattern suggests that structural reforms require institutional rather than partisan solutions. They require legislative enactment rather than executive orders, bipartisan consensus on independence protections, and structural mechanisms that function regardless of which political party has majority control of state government.

3. Federal-State Tensions in Election Administration

Opinion #7322 recognized that military and overseas civilian voters are legally distinguishable (separate) categories under applicable law, a distinction that provides the constitutional justification for treating them differently. Rule Set 13 collapses that distinction entirely by characterizing overseas civilians as a protected class exempt from eligibility challenge, without the security-based rationale the AG identified as constitutionally necessary. This creates two distinct legal issues: First, whether such a blanket exemption from challenge constitutes impermissible voter discrimination against non-protected voters; and second, whether overseas civilian voters, who are legally distinct from military voters, are nonetheless being improperly shielded from eligibility challenges through this expansive interpretation of protected status.

Rule Set 2025-14's 98.9% reduction from the federal retention requirements illustrates practical consequences when state administrative rules conflict with federal statutory mandates. The conflict raises fundamental questions: What mechanisms ensure state compliance with federal election administration requirements? Are they working? How should courts balance state autonomy against federal statutory mandates? What role should the U.S. Department of Justice play in preventing apparent violations before they affect federal elections?

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Rule Set 2025-13's treatment of overseas civilian voter registrations presents the clearest illustration of how administrative rulemaking can create constitutional violations that the legislative process never authorized. AG Opinion #7322 established that Michigan law recognizes military and overseas civilian voters as legally distinguishable groups, a distinction grounded in the Sixth Circuit's equal protection jurisprudence and the rational basis framework of *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969), *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012), and *Mays v. LaRose*, 951 F.3d 775 (6th Cir. 2020).

Rule Set 2025-13 eliminates that distinction administratively, without legislative authorization, creating a two-tiered voter registration system in which domestic voters' registrations are subject to accuracy review and overseas civilians' are not. The constitutional injury flows to domestic voters. Their registrations are valued less and subject to challenge, cancellation notice, and verification — all while an identically situated class enjoys categorical immunity. Under Bush v. Gore, 531 U.S. 98, 104 (2000), this is precisely the arbitrary and disparate treatment equal protection prohibits. No administrative rule, absent affirmative legislative action, may create that asymmetry.

These questions and conflicts extend beyond Michigan. As states increasingly use administrative rulemaking to modify election procedures, tensions with state rulemaking agencies will likely increase.

4. Constitutional Questions about Executive Orders

The U.S. Constitution's Elections Clause provided specific attention and separate structure to protect the integrity of the People's elections. The Supremacy Clause established Federal preemption powers over state statutes, in particular election rulemaking. Michigan's creation of its administrative review office solely through executive orders raises unresolved constitutional questions under Michigan's strict Separation of Powers Doctrine.

Article III, Section 2 of the Michigan Constitution prohibits one branch from exercising powers "properly belonging to another branch except as expressly provided in this constitution." The legislature created JCAR as the statutory oversight mechanism for administrative rules — rules that exercise delegated legislative authority.

By what constitutional authority does the governor order the injection of a parallel oversight office to operate as the primary checkpoint, effectively superseding the legislature's chosen mechanism? Does executive-branch review of administrative rules constitute the executive branch exercising powers "properly belonging to another branch"? Does Michigan's Constitution contain an "express provision" authorizing this structural arrangement?

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These questions and conflicts exceed this report's scope but need resolution by constitutional scholars, policymakers, and the courts.

5. Temporal Considerations in Administrative Decision-Making

Michigan's structural framework lacks mechanisms for addressing temporal considerations when officials change the rules governing elections in which they are candidates. Michigan election law provides no statutory requirement that officials recuse themselves, nor is there an independent review mechanism outside the official's department. No enhanced transparency or procedural safeguards are in place, and no temporal separation requirements exist. More general laws like those regulating conflicts of interest may apply.

The 2025-2026 timeline provides a case study: Rules were submitted seven months past deadline and six weeks after the candidacy announcement regarding processes that will govern the election in which the promulgating official may appear as a candidate, with no independent review to address this temporal consideration.

Whether additional safeguards merit consideration is a policy question for legislators and citizens to address through the constitutional republic's processes. Administrative law best practices in other states include recusal requirements or independent review, enhanced transparency and public participation requirements, temporal separation prohibiting rule changes within specified periods before elections, and automatic legislative or judicial review of rules promulgated under such circumstances.

F. Areas for Further Research

This report has documented structural characteristics and identified apparent legal conflicts. It examined available resolution mechanisms and crafted a hypothetical legal filing. Several areas warrant additional research:

1. Detailed Legal Analysis

Comprehensive legal memoranda examining:

- Rule Set 2025-14's seven-days-post-certification destruction requirement versus the 22-month federal mandate
- Rule Set 2025-13's different treatment of overseas civilian registrants compared to domestic registrants
- Civil Rights violations due to discriminatory actions from creating a dual, two-tiered registration system of domestic civilians versus overseas civilians. Materiality provision analysis of Rule Set 2025-13's economic barriers under 52 U.S.C. § 10101(a)(2)(B).

- First Amendment compelled speech doctrine application to Rule Set 2025-15's mandatory training requirements
- *Ultra vires* questions under MCL 24.232 for all three rule sets

2. Comparative State Research

How other states prevent conflicts between administrative rules and federal election requirements through:

- Pre-clearance mechanisms
- Independent review structures
- Legislative oversight with enforcement capacity and/or procedural checks
- Expedited judicial review

3. Impact Assessment

After the 2026 elections, conduct empirical research examining:

- Registration challenge participation rates
- Actual costs incurred by challengers
- Data preservation versus destruction patterns
- Poll challenger activity under new rules

4. Constitutional Scholarship

Analysis of Michigan Constitution Article V § 2 regarding:

- Executive reorganization authority limits
- Historical understanding and Constitutional Convention debates
- Comparative state constitutional provisions

5. Public Confidence Research

Whether absence of independence protections affects public confidence in administrative oversight and whether structural reforms would strengthen trust in election administration.

G. Recommendations for Policymakers

This report is educational and does not advocate for or oppose specific legislation. The findings suggest questions policymakers may wish to consider:

The 24-state comparison provides a clear reference point. Every state that built a centralized administrative review system did so the way sound institutions are built — through law, with defined qualifications, fixed terms, and separation of functions. Fourteen states met the full Tier 1 standard. Ten more met a partial standard. Michigan alone constructed its system entirely by executive decree, without a statutory foundation, and left it removable at will. The national record shows this was not a structural constraint — it was a choice. Every proven model identified in this report is available to Michigan lawmakers today.

1. Statutory Foundation

If Michigan's administrative review system is operating a legally unauthorized rulemaking review office in violation of MAPA's requirements for legislative enactment rather than executive orders, what should be done? Enforcing the law for statutory creation would provide institutional permanence, legislative participation in structural design, transparency through public legislative debate, and constitutional clarity regarding separation of powers.

Proposals like the federal REINS Act illustrate ongoing efforts to require legislative approval for significant rules, highlighting the value of restoring meaningful legislative checks in administrative processes. State lawmaking would likely follow in federal law footsteps due to the Supremacy Clause.

PROVEN STATUTORY MODELS FOR REFORM — FROM THE 24-STATE CENTRAL PANEL ANALYSIS

MODEL 1 — Structural Separation: Create adjudication by statute, expressly separate from rulemaking. (Alaska AS § 44.64.010, Georgia O.C.G.A. § 50-13-40, Maryland Md. Code Ann., State Gov't § 9-1601)

MODEL 2 — Independent Regulatory Review: Create rulemaking review by statute with multi-branch appointments, explicit independence mandate, and simultaneous multi-branch reporting. (Pennsylvania IRRC 71 P.S. § 745.1; Minnesota OAH Minn. Stat. § 14.48)

MODEL 3 — Legislative Post-Filing Review with Enforcement Mechanism: Create statutory legislative oversight of agency rules with objection authority and burden-shifting. (South Dakota SDCL § 1-26-1.1; Vermont LCAR 3 V.S.A. § 842 [LCAR objection shifts burden of proof to agency in any judicial challenge]

Arizona GRRC note: Created by executive order in 1981, legislatively codified by 1986 (A.R.S. § 41-1092). All current authority is statutory. Zero adjudication. Fully transparent. GRRC's rulemaking oversight is executive branch (Governor-appointed), not legislative — a structurally distinct model from Michigan's MOAHR. Shows the constitutional path: an

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executive review office can exist but requires legislative codification and must be kept entirely separate from adjudication. Arizona OAH (A.R.S. § 41-1092.01) handles adjudication; GRRC handles rulemaking review. The two functions are separated by statute. [Tier 2 — Structural / Partial Independence: no full Senate confirmation; non-default finality.]

Basis: *Arizona's Tier 2 rating occurs because the OAH appointment uses a statutory nomination process but not a full Senate confirmation vote (A.R.S. § 38-211), and finality is non-default. The GRRC note needed to clarify the executive-branch nature of the rulemaking oversight to distinguish it from legislative JCAR models.*

2. Independence Protections

Should Michigan's administrative review office possess independence protections comparable to those in other central-panel states? Protections include Senate confirmation for leadership positions, fixed terms providing tenure security, statutory qualification requirements ensuring expertise, budget independence eliminating leverage for influence, and structural separation from agencies whose rules are reviewed.

Executive Order 2019-13 demonstrates that Michigan governors possess authority to establish such protections through executive action. Legislative enactment would provide greater permanence.

3. Separation of Functions

Should Michigan separate rulemaking review from administrative hearings? California and Minnesota maintain distinct offices for these functions, preventing conflicts when the same office both advances rules and adjudicates disputes under those rules. California's Office of Administrative Hearings (OAH) — a Tier 1 body with Governor appointment, Senate confirmation, and attorney qualification requirements — handles adjudication; the Office of Administrative Law (OAL), separately established, handles rulemaking review. Neither office performs both functions.

Separation is particularly important for election administration. In Michigan the same office currently advances election rules for legal compliance, conducts hearings on election challenges, and adjudicates disputes arising under the rules it advanced.

4. JCAR Reform

Should Michigan strengthen JCAR's oversight capacity and address the quorum issues resulting from unfeasible concurrent majority requirements? Options include:

- Restoring modified veto authority with appropriate constitutional safeguards
- Modify or abolish concurrent majority vote requirements

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- Require attendance of all committee members at every public JCAR meeting or have them excused via an impartial judge.
- Extending review periods for rules affecting fundamental rights
- Providing independent legal counsel for JCAR separate from the executive branch
- Prohibit automatic advancement of rules if JCAR does not act on them or create alternate/intermediate review processes under legislative direction.

5. Federal Compliance Verification

Should Michigan establish mechanisms ensuring state rules comply with federal election requirements before implementation? Options include:

- Mandatory independent federal law compliance review for election rules
- Independent legal analysis before MOAHR or JCAR may advance
- Legislative pre-clearance rule changes for rules affecting federal elections
- Sunset provisions requiring periodic reauthorization

H. Educational Purpose and Nonpartisan Methodology

Michigan Fair Elections Institute is a 501(c)(3) nonprofit educational organization that neither supports nor opposes candidates for public office or political parties. This report presents objective research on administrative law, election administration, and federal-state compliance.

This report does not support or oppose any candidate for public office, advocate for or against any political party, make recommendations about electoral outcomes, attribute improper motives to individual decision-makers, or substitute for legal advice or formal legal opinions.

This report does document the structural characteristics of Michigan's administrative oversight system, provide comparative analysis with other states using objective criteria, identify apparent conflicts between state rules and federal and state law requiring judicial resolution, explain available legal mechanisms for addressing such conflicts, and present factual analysis to inform public understanding and policy discussion.

1. Verification and Sources

The findings are based on verifiable sources: statutory and constitutional text, executive orders, comparative state analysis with hyperlinked sources, administrative

records publicly available on Michigan's Administrative Rulemaking System, court decisions, and budget data from enacted legislation. Independent researchers are invited to verify every factual assertion through primary source examination.

2. Appropriate Legal Framing

This report identifies apparent conflicts with federal and state law, but final determinations require judicial resolution through proper legal proceedings. The use of phrases like "apparent conflicts," "raises questions," and "courts would need to resolve" reflects appropriate recognition that legal questions require adjudication in courts with jurisdiction.

I. Summary Section X

Whether Michigan's current system serves the state's interests, whether reforms would strengthen accountability, and whether structural changes would better protect legal requirements are questions for policymakers, legal practitioners, and citizens to address through democratic processes.

The evidence demonstrates that Michigan possesses both the constitutional authority and practical models from other states to design administrative oversight structures that combine efficiency with accountability, executive coordination with independent review, and state autonomy with federal statutory compliance.

The choices Michigan makes about administrative oversight structure will affect not only the November 2026 elections but also the long-term integrity of the state's administrative law system and its compliance with federal constitutional and statutory requirements.

This investigation began with three rule sets containing 40 provisions that substantially alter Michigan election administration. It revealed a three-decade structural evolution creating a dual-checkpoint oversight system in which checkpoints lack independence protections or capacity for effective review, yet become codified with the force of law.

The findings are documented and have been reviewed. The comparative analysis is verifiable. The legal questions are substantial. The implications extend beyond the 2026 elections to fundamental questions about administrative law, separation of powers, federal-state relations, and the structural mechanisms that ensure governmental accountability to law.

Michigan Fair Elections Institute presents this research to inform citizens, policymakers, legal practitioners, and scholars about Michigan's administrative oversight system, how it compares to other states, the legal framework governing federal-state

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conflicts in election administration, and the mechanisms available for addressing apparent weaknesses and violations of federal, state, and constitutional law.

How Michigan addresses identified issues will shape both the immediate administration of the 2026 elections and the long-term structure of administrative oversight for decades to come.

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APPENDICES

Appendix A: Statutory Text. Michigan Compiled Laws

A. Key Provisions of Election Law

1. **Chapter MCL 168** Election Law

2. **MCL 24.201 - 24.328 - Michigan Administrative Procedures Act of 1969 (MAPA)**

(Act 306 of 1969) establishes Michigan's framework for administrative rulemaking.

Document	Type	Description
306-1969-1	Division	CHAPTER 1 GENERAL PROVISIONS (24.201...24.211)
306-1969-2	Division	CHAPTER 2 GUIDELINES (24.221...24.228)
306-1969-3	Division	CHAPTER 3 PROCEDURES FOR PROCESSING AND PUBLISHING RULES (24.231...24.266)
306-1969-4	Division	CHAPTER 4 PROCEDURES IN CONTESTED CASES (24.271...24.288)
306-1969-5	Division	CHAPTER 5 LICENSES (24.291...24.292)
306-1969-6	Division	CHAPTER 6 JUDICIAL REVIEW (24.301...24.306)
306-1969-7	Division	CHAPTER 7 MISCELLANEOUS PROVISIONS (24.311...24.315)
306-1969-8	Division	CHAPTER 8 (24.321...24.328)

3. Relevant Provisions:

a. MCL 24.235 - Joint Committee on Administrative Rules

"The joint committee on administrative rules is created and consists of 5 members of the senate and 5 members of the house of representatives...."

JCAR is the only oversight body explicitly created by statute in Michigan's Administrative Procedures Act. MAPA contains no provision creating, authorizing, or establishing an executive-branch review office.

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a. MCL 24.232 - Rules Cannot Exceed Statutory Authority

"A rule shall not...impose a requirement that is not specifically authorized by the statute being implemented."

This provision prohibits administrative rules from adding requirements that are not present in statute.

b. MCL 24.245(3)(a) - Regulatory Impact Statement Requirements

"A comparison of the proposed rule to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist."

This provision requires agencies to include a comparison in their regulatory impact statement. Notably, this applies only "if any exist" and provides no authority for any executive branch rulemaking oversight office to enforce federal compliance. These legally unauthorized offices include ORR, SOAHR, MAHS, ORRI, and MOAHR.

"The rulemaking agency's regulatory impact statement must contain all the following information:

(3)(a) A comparison of the proposed rule to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

(b) If requested by the office or the committee, a comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

(c) An identification of the behavior and frequency of behavior that the rule is designed to alter.

(d) An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.

(e) An estimate of the change in the frequency of the targeted behavior expected from the rule.

(f) An identification of the businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule.

…

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(k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals….z(bb).” [Emphasis added.]

c. MCL 24.253. Annual regulatory plan

The Michigan Administrative Procedures Act (MCL 24.253) requires rulemaking agencies to disclose anticipated rule changes in their annual regulatory plans, due July 1 of the year prior.

“(1) Each agency shall prepare an annual regulatory plan that reviews the agency’s rules.

(2) In completing the annual regulatory plan required by this section, the agency shall identify the rules the agency expects to review under subsection (4) in the next year, the rules it reasonably expects to process in the next year, the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year.

(3) The annual regulatory plans completed under this section are advisory only and do not otherwise bind the agency or in any way prevent additional action.

(4) …first priority shall be given to those rules that directly affect the greatest number of businesses, groups, and individuals and those rules that have the greatest actual statewide compliance costs for businesses, groups, and individuals. A review of rules under this subsection shall state the following:

(a) Whether there is a continued need for the rules.

(b) A summary of any complaints or comments received from the public concerning the rules.

(c) The complexity of complying with the rules.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules….”

d. MCL 24.264 - Declaratory Judgment Actions

“The court may, in any action...declare rules or a part of the rules invalid if it finds that the rules or a part of the rules violates the constitution or laws of this state or of the United States.”

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This provision authorizes Michigan courts to invalidate administrative rules that conflict with federal or state law.

Michigan Election Law - Poll Challenger Statutes

e. MCL 168.509aa: Address Change Notices and Clerk Obligations

This statute requires clerks to send forwardable mail notices when they receive reliable information that a registered elector has moved, and to challenge electors whose notices are returned as undeliverable. Rule Set 2025-13's blanket exemption for overseas civilian voters conflicts with this provision by prohibiting clerks from sending the notices this statute requires upon receipt of reliable information of a move.

f. MCL 168.512 - Challenge Procedures

Provides the authorizing statute for voter registration challenges. Rule Set 2025-13 imposes requirements — notarization, personal knowledge, individual affidavits, timing and overseas voter registrant restrictions that do not appear in this statute and are not present elsewhere, making the rule *ultra vires* under MCL 24.232.

g. MCL 168.733 - Poll Challenger Authority

Establishes comprehensive poll challenger procedures. Rule Set 2025-15 contradicts each of these four statutory provisions:

- Authority to challenge any suspected violation witnessed
- Right to "direct" communication with election inspectors
- Voluntary training ("may attend")
- Requirement that inspectors "assist" challengers

h. MCL 168.727-168.734 - Complete Poll Challenger Framework

The legislature approved a comprehensive statutory framework for poll challengers. Administrative rules must operate within this framework, not contradict or exceed it. MCL 168.727, 168.728, 168.729, 168.730, 168.731, 168.732, 168.733, 168.734

B. Federal Statutes - Civil Rights and Election Administration

1. 52 U.S.C. § 20701 - Federal Record Retention Act (Civil Rights Act of 1960)

"Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential electors, Member of the Senate, Member

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of the House of Representatives...are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election..."

Legislative History: Congress approved this provision after southern states destroyed election records to prevent federal investigation of voting rights violations. The 22-month period ensures records remain available through federal official inaugurations and for sufficient time for Department of Justice investigation.

Application to Electronic Records: Courts have held that electronic records fall within "all records and papers" when they document applications, registrations, or other acts requisite to voting. Electronic poll books document voter check-in, provisional voting designations, absentee ballot indicators, and constitute election records subject to 22-month retention.

Rule Set 2025-14 Conflict: The rule requires destruction of electronic poll book data seven days after election certification — a 98.9% reduction from the federal 22-month (660-day) requirement.

2. 52 U.S.C. § 20702 - Criminal Penalties for Record Destruction

"Whoever willfully steals, destroys, conceals, mutilates, or alters any record, document, or paper required by section 20701...to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both."

Mens Rea Requirement: The statute requires "willful" conduct. Whether destruction pursuant to state administrative rules constitutes "willful" violation is a legal question requiring judicial resolution.

3. 52 U.S.C. § 10101 - Civil Rights Act of 1964, Title I - Voting Rights

Section 10101(a)(2)(A) - Prohibition on Different Standards:

"No person acting under color of law shall...apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals..."

Section 10101(a)(2)(B) - Materiality Provision:

"No person acting under color of law shall...deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

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Legislative History: Congress passed the materiality provision in response to discriminatory tactics including poll taxes, literacy tests, "understanding" clauses, and procedural barriers unrelated to voter qualification. The provision protects not only the right to vote but also rights necessary to meaningful electoral participation.

Section 10101(c) - Attorney General Enforcement Authority:

"Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order."

This provision authorizes Department of Justice enforcement including preventive relief before violations cause irreparable harm.

C. U.S. Constitution

1. Article I, Section 4 - Elections Clause

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by Law make or alter such Regulations..."

Grants to Congress the authority to regulate federal elections and to establish minimum standards that states must satisfy.

2. Article VI, Clause 2 - Supremacy Clause

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Establishes federal law supremacy when state rules conflict with valid federal statutes.

3. Amendment I - First Amendment

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Protects freedom of speech including freedom from compelled speech. The government cannot compel citizens to undergo ideological training or express beliefs they do not hold. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

Rule Set 2025-15 implicates compelled speech doctrine because it requires mandatory government training using government-provided materials as a precondition for poll challengers and poll credential organization to exercise their lawful rights.

D. Michigan Constitution of 1963

Article III, Section 2 - 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 except as expressly provided in this constitution."

Establishes strict separation of powers distinct from the federal framework. Michigan's Constitution contains no equivalent to the federal Take Care Clause that provides the constitutional foundation for federal OIRA.

E. Constitutional questions

By what authority does the Governor create an executive-branch review office — through executive orders without statutory authorization — to review elections rules delegated by the U.S. and state constitutions to the legislature?

By what authority is the governor effectively operating a primary checkpoint superseding the legislatively allocated oversight mechanism, JCAR?

Appendix B: Timelines and Turning Points (1946-2026)

1787 — U. S. Constitution: Elections Clause (U.S. Constitution, Article I, Section 4, Clause 1), Separation of Powers Doctrine (embedded in the overall structure of Articles I, II, and III), and the Supremacy Clause (U.S. Const. art. VI, cl. 2).

1946 — Federal Administrative Procedure Act (5 U.S.C. §§ 551-559): Congress enacts baseline rulemaking procedures: public notice, comment periods, judicial review. Does not create or authorize executive-branch review offices.

- Date: June 11, 1946

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- Event: Congress enacts Administrative Procedure Act (5 U.S.C. §§ 551-559)

Key Provisions:

- Public notice of proposed rulemaking (5 U.S.C. § 553)
- Opportunity for public comment (5 U.S.C. § 553)
- Publication of final rules in Federal Register (5 U.S.C. § 552)
- Judicial review standards (5 U.S.C. § 706)
- **What the U.S. APA Does NOT Create**: The federal APA establishes procedural requirements but does not create or authorize centralized executive-branch review of administrative rules. The Office of Information and Regulatory Affairs (OIRA), which performs this function at the federal level, was created decades later through presidential executive order (Executive Order 12866, 1993), not through congressional legislation.
- **Significance**: Establishes baseline administrative procedure standards that influence state administrative law development, including Michigan's 1969 Administrative Procedures Act. However, the federal model does not include executive-branch gatekeeping for administrative rules — that function emerged later through executive action, not legislative design.
- **Historical Context**: Congress approved the U.S. APA in response to concerns about New Deal agency expansion and lack of standardized procedures. The U.S. APA balanced administrative efficiency with procedural safeguards but notably (and deliberately) did not create centralized executive oversight of rulemaking.

1960 — Federal Record Retention Act (Civil Rights Act of 1960, 52 U.S.C. § 20701): Congress requires 22-month preservation of federal election records after states destroyed records to prevent investigation of voting rights violations. Installs criminal penalties for willful destruction (52 U.S.C. § 20702).

- Date: May 6, 1960
- **Event:** Congress enacts record retention requirements as part of Civil Rights Act (52 U.S.C. § 20701)
- **Statutory Text**: "Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential electors, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that —

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such records and papers need not be retained and preserved when — the period of litigation has terminated and applicable time periods for filing suit have run; and the Attorney General has certified that such records and papers are no longer required to carry out this chapter; and such officers of election shall make such records and papers available for public inspection."

- **Criminal Penalties** (52 U.S.C. § 20702): "Whoever willfully steals, destroys, conceals, mutilates, or alters any record, document, or paper required by section 20701 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both."
- **Legislative History and Purpose**: Congress passed this provision in response to systematic destruction of voter registration records and poll books by Southern states to prevent federal investigation of voting rights violations. The pattern was clear: states would destroy records immediately after elections, eliminating evidence needed for Department of Justice enforcement actions under the Civil Rights Act of 1957.
- **Why 22 Months?** The 22-month period was calculated to ensure records remain available:
    - Through inauguration of federal officials (January following November elections)
    - For sufficient time for complaints to be filed and investigated
    - For federal enforcement actions under voting rights statutes
    - To enable pattern and practice investigations requiring multi-year data
- **Application to Electronic Records**: While the statute was enacted in 1960 (before electronic voting systems), courts and the Department of Justice have consistently interpreted "all records and papers" to include electronic records when they document "application, registration, payment of poll tax, or other act requisite to voting."
    - Electronic poll books document:
    - Voter check-in (application to vote)
    - Provisional voting designations (act requisite to voting)
    - Absentee ballot indicators (act requisite to voting)
    - Voter signatures (verification requisite to voting)
    - Real-time updates and audit trails
    - These records fall within statutory coverage.

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Relevance to Rule Set 2025-14:

Rule Set 2025-14 requires destruction of electronic poll book data seven days after certification — a 98.9% reduction from the 22-month federal requirement. This creates direct conflict: election officials cannot simultaneously comply with federal preservation mandate (660 days) and state destruction mandate (7 days).

Source Documentation:

- Legislative History: H.R. Rep. No. 86-956 (1960)
- Senate Debate: 106 Cong. Rec. 7555-7565 (1960)
- DOJ Guidance: Civil Rights Division Election Manual

1964 (July 2) — Civil Rights Act Materiality Provision (52 U.S.C. § 10101): Congress enacts voting rights protections including materiality provision; prohibits denying voting rights based on errors or requirements "not material" to voter qualification. Response to discriminatory tactics including poll taxes, literacy tests, and procedural barriers.

Full Text of Materiality Provision (§ 10101(a)(2)(B)):

"No person acting under color of law shall —

"(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election..."

Legislative History:

The materiality provision was enacted in response to discriminatory tactics states used to prevent African Americans from voting or challenging registrations:

- Poll taxes: Economic barriers unrelated to qualification
- Literacy tests: Requirements not material to determining citizenship, age, residency

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- "Understanding" clauses: Subjective standards applied discriminatorily
- Technical procedural barriers: Minor errors used to disqualify otherwise eligible voters

The provision establishes that requirements unrelated to actual voter qualification — citizenship, age, residency, felony status — cannot be used to deny voting rights or rights necessary to electoral participation.

Key Judicial Interpretations:

Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003):
Held that Georgia's exact signature match requirement for absentee ballots violated materiality provision. Signature consistency is not "material" to determining voter qualification — eligibility depends on citizenship, age, residency.

Martin v. Crittenden, 347 F. Supp. 3d 1302 (N.D. Ga. 2018):
Held that rejecting absentee ballots for missing or incorrect birth dates violated materiality provision. Birth dates, while useful for identification, are not material to whether voters meet qualification requirements.

Relevance to Rule Set 2025-13:

- The rule imposes requirements unrelated to determining actual voter qualification:
- Personal knowledge requirement: Whether challenger has "personal knowledge" of ineligibility is unrelated to whether registrant is qualified. Qualification depends on citizenship, age, residency — facts that exist independently of challenger's knowledge.
- Notarization requirement: Notarization adds $10-15 per challenge but does not affect whether challenged voter meets qualification requirements.
- Individual affidavits: Procedural complexity unrelated to underlying question of voter eligibility.
- Economic barriers: Combined costs exceeding an estimated $1,500 for 100 challenges create wealth-based barriers unrelated to qualification determination.
- Whether these requirements violate 52 U.S.C. § 10101(a)(2)(B) requires judicial resolution, but the provision clearly prohibits requirements "not material" to determining qualification.

Relevance to Rule Set 2025-15:

The rule narrows statutory authority from challenges to any suspected violation to four specific categories. Whether this constitutes applying "different" standards than statute provides (violating § 10101(a)(2)(A)) is a legal question requiring adjudication.

Source Documentation:

- Legislative History: H.R. Rep. No. 88-914 (1963)
- Senate Debate: 110 Cong. Rec. 7055-7214 (1964)
- DOJ Guidance: Voting Section

December 18, 1969 (effective July 1, 1970) — Michigan Administrative Procedures Act (MCL 24.201 et seq.): Michigan legislature creates Joint Committee on Administrative Rules (JCAR) with veto authority over agency rules. No provision creates or authorizes an executive-branch review office. Legislative oversight through elected representatives is the statutory mechanism. Michigan legislature enacts Administrative Procedures Act (Act 306 of 1969, MCL 24.201 et seq.)

Key Statutory Provisions:

MCL 24.235- Creation of JCAR:

"The joint committee on administrative rules is created and consists of 5 members of the senate and 5 members of the house of representatives appointed in the manner prescribed by the respective houses...."

This is the ONLY oversight body created by statute. MAPA contains no provision creating an executive-branch review office.

Original JCAR Authority (1969-1999):

Under the original 1969 framework, JCAR possessed genuine veto authority. Rules required JCAR approval before taking effect. This created a real checkpoint, and the legislature retained control over whether agency interpretations became binding law.

The original version of MCL 24.245 provided for agencies to file proposed rules with JCAR. Then JCAR could approve or disapprove them. Disapproval prevented rules from taking effect.

The Michigan APA establishes:

- Procedural requirements for rulemaking

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- Public notice and comment requirements
- JCAR as legislative oversight mechanism
- Standards for judicial review

MAPA does NOT establish:

- An Office of Regulatory Reform
- A State Office of Administrative Hearings and Rules
- An Office of Regulatory Reinvention
- A Michigan Office of Administrative Hearings and Rules
- Any equivalent executive-branch review office

Significance:

1969 the Michigan Administrative Procedures Act of 1969 (MAPA) The Michigan Administrative Procedures Act of 1969 (MAPA) followed the federal APA model: establishing procedures and legislative oversight (JCAR), but NOT creating executive-branch gatekeeping. The legislature determined that legislative oversight, through elected representatives on a bipartisan committee, was the appropriate mechanism.

Over subsequent decades, namely 1995-2019, governors would create executive-branch review through executive orders without seeking legislative authorization, effectively superseding the legislature's chosen structure.

Historical Context:

1969 — Michigan's Administrative Procedures Act of 1969 (MAPA) emerged during a period of administrative law reform across states. Most states enacted administrative procedure acts between 1946-1980, following the federal APA model. Michigan's MAPA reflected a mainstream approach and contained comprehensive procedures, legislative oversight, and judicial review. No executive-branch pre-screening was enacted.

1993 — Federal Executive Order 12866: President Clinton creates the Office of Information and Regulatory Affairs (OIRA) for centralized regulatory review. Constitutional basis: Take Care Clause (U.S. Const. Art. II, § 3). Establishes precedent: executive-branch review via executive order, not congressional legislation. Applies to the federal government only. Key Provisions were as follows:

"Section I: Statement of Regulatory Philosophy and Principles:

"Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need... Each agency shall identify the problem that it intends to address...and assess whether existing regulations...may be modified or eliminated instead of a new regulation being promulgated."

"Section VI: Centralized Review of Regulations:

"The Office of Information and Regulatory Affairs...shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order..."

Constitutional Basis

OIRA's authority derives from Article II, Section 3 of the U.S. Constitution — the Take Care Clause:

"He shall take Care that the Laws be faithfully executed..."

This provision establishes presidential duty to ensure federal laws are enforced by executive agencies. The clause authorizes the President to coordinate executive-branch action to ensure faithful execution of congressional statutes.

Significance for State Administrative Law

Executive Order 12866 established a model that states (including Michigan) followed: centralized executive-branch review of administrative rules created through executive action rather than legislative enactment.

However, there was a critical distinction: The federal model rests on an explicit constitutional foundation under the Take Care Clause. Michigan's Constitution contains no equivalent provision. Michigan Constitution Article III, Section 2 establishes strict separation of powers, prohibiting one branch from exercising powers "properly belonging to another branch except as expressly provided in this constitution."

Michigan's Adoption Without Constitutional Foundation:

Two years after the federal OIRA creation, Michigan followed an organizational model but without a comparable constitutional foundation. Governor Engler's 1995 creation of ORR through executive order established executive-branch review of administrative rules, rules exercising delegated legislative authority, without clear constitutional authorization in Michigan's strict separation-of-powers framework.

Source Documentation:

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- Executive Order: Federal Register Vol. 58, No. 190 (October 4, 1993)
- OIRA Website: www.reginfo.gov
- Constitutional Commentary: Take Care Clause Analysis

1995 — Governor Engler (R) Creates ORR: E.R.O. 1995-5 creates first executive-branch review office without statutory authorization. Reviews all executive-branch rules including Secretary of State. Zero independence protections.

1999 — JCAR Veto Authority Eliminated: Public Act 262 of 1999 strips JCAR of veto power in response to anticipated separation of powers litigation. JCAR is reduced to advisory role. Rules proceed automatically if JCAR takes no action within fifteen legislative session days.

2000 — Michigan Supreme Court in Blank v. Department of Corrections, 462 Mich. 103, 611 N.W.2d 530, holds that JCAR has no statutory authority to veto administrative rules.

2005 — Governor Granholm (D) Creates SOAHR: E.R.O. 2005-1 and E.R.O. 2005-26 create State Office of Administrative Hearings and Rules, consolidating administrative hearings and rules review. Explicitly excludes election law hearings from SOAHR jurisdiction, maintains separation between executive review and election administration.

2011 — Governor Snyder (R) Creates ORR: E.R.O. 2011-4 and 2011-5 create Office of Regulatory Reinvention. LARA Director serves as Chief Regulatory Officer. From 2011-2016, governor-appointed LARA Director personally reviews and approves rules from LARA agencies in complete executive self-review, elimination of even nominal separation.

2019 — Governor Whitmer (D) creates the Michigan Office of Administrative Hearings and Rules (MOAHR) by issuing E.R.O. 2019.06 (signed Feb. 20, effective April 22). The governor's executive order contains three significant changes:

(1) Transfers adjudicatory authority to MOAHR;

(2) Consolidates dual functions — same office approves rules and adjudicates disputes;

(3) Expands authority to include hearings without standard independence protections — claims independence but budgeting falls "under direction and supervision" of LARA, whose director is appointed by the governor. As a current demonstration of MOAHR's dependency on the executive branch, its budget as of 2025 was $37 million with 77% of those funds coming from interdepartmental transfers. Source: Michigan FY 2025-2026 Budget, PA 22 of 2025

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2019 (June) — Executive Order 2019-13, issued four months after Governor Whitmer created MOAHR, demonstrates that Michigan governors possess authority to establish independence protections through executive orders. That order created the Unemployment Insurance Appeals Commission and the Workers' Disability Compensation Appeals Commission with Senate confirmation, fixed four-year terms, mandatory Bar membership and practice experience requirements, nonpartisan conduct obligations, and explicit structural independence language. MOAHR received none of these protections.

January 22, 2025 — Secretary Benson Announces Gubernatorial Candidacy: Secretary of State Jocelyn Benson, chief administrator of Michigan elections and the head of the Michigan Department of State (MDOS), announces candidacy for governor.

March 5-6, 2025 — Rule Sets Filed: Six weeks after Secretary Benson's candidacy announcement, MDOS promulgates Rule Sets 2025-13, 2025-14, 2025-15 with 40 provisions total and submits the rule packages to MOAHR.

Spring-Summer 2025 — MOAHR Reviews and Submits rule sets to JCAR: MOAHR approves all three as compliant despite apparent conflicts with federal record retention (52 U.S.C. § 20701), materiality provision (52 U.S.C. § 10101), and state election law (MCL 168.733). Near unanimous public opposition during the mandatory public hearings provides documentation of the rule changes' apparent conflicts with federal and state law. MOAHR tweaks the drafts (e.g. removes the designation of specific people as "unreliable") and forwards to JCAR.

April 15, 2025 — Michigan House Oversight Committee Authorizes Subpoenas: After months of resistance by the Michigan Secretary of State, the House Oversight Committee votes to authorize subpoenas directing Secretary Benson and the Department of State to produce election training materials for legislative review.

April 22, 2025 — Subpoenas Served: Subpoenas served on Department of State with deadline of May 13, 2025, 4:00 PM for document production.

May 7, 2025 — Attorney General Objects: Heather Meingast, Division Chief of the Michigan Department of Attorney General Civil Rights and Elections Division, objects to the subpoenas on behalf of Secretary Benson and MDOS.

May 16, 2025 — House Extends Deadline: House offers to meet and confer with MDOS representatives and extends compliance deadline to May 22, 2025, 11:00 AM.

May 22, 2025, 11:00 AM — Secretary Fails to Comply: Secretary Benson and MDOS do not fully comply with subpoenas by extended deadline. AG reiterates objections on behalf of SOS.

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May 22, 2025 — House Adopts Resolution 117. Holds Secretary in Civil Contempt: Michigan House of Representatives adopts House Resolution 117, formally holding Secretary Benson and the Department of State in civil contempt for "deliberate failure to comply" with House subpoenas. Resolution declares that "reviewing election training materials is a valid legislative purpose" and directs House Office of Legal Counsel to initiate legal action to compel compliance. The training materials subject to this contempt finding are the same materials Rule Set 2025-15 would mandate for poll challengers.

Fall 2025 — JCAR Takes No Action: Multiple witnesses documented federal law violations in public testimony. Under JCAR's concurrent majority requirement, disapproval of a rule requires an affirmative vote of at least 3 Senators and 3 House members. However, no quorum was established at any of JCAR's election Rule Set hearings held during 2025, meaning no vote was ever taken. Because the procedural threshold for a concurrent majority was never reached, the rules proceeded to take automatic effect after fifteen legislative days — the result not of partisan gridlock, but of structural inaction.

October 23, 2025 — Rule Set 2025-14 takes effect: Michigan begins destroying electronic poll book data in 7 days rather than preserving it for 22 months. Active violation of 52 U.S.C. § 20701.

February 23, 2026 — Rule Set 2025-13 takes effect, codifying that Michigan will officially 1) destroy poll book data 7 days after the November 3, 2026, election rather than preserving it, 2) initiate discriminatory practices favoring overseas civilians against domestic civilians in its voter eligibility challenges in violation of 14th Amendment protections for equal treatment under the law.

Early 2026 (projected) Rule Set 2025-15 expected to take effect: Economic barriers to registration challenges (~$1,500+ per 100 challenges). Poll challenger restrictions contradicting MCL 168.733. Compelled speech requirements raise First Amendment concerns.

November 3, 2026 — General Election: Federal races (13 U.S. House, 1 U.S. Senate, 2 MI Supreme Court) and state offices (governor, secretary of state, attorney general, House and Senate chambers of the legislature) to be administered under rules with apparent federal and state law conflicts.

Appendix C: Four Governors; Four Reorganizations

From 1995 to 2025, four governors from both political parties created, abolished, and restructured an executive-branch review office through executive orders. Despite differing

parties and organizational names, all four governors retained the core function. They created an administrative rulemaking oversight agency under direct executive control without independence protections.

A. Phase One: Governor Engler (1995-2005)

Executive Reorganization Order 1995-5 (March 28, 1995)

Governor John Engler issued Executive Reorganization Order 1995-5 and created the Office of Regulatory Reform within the Executive Office of the Governor. The order transferred rule review functions from the Department of Management and Budget to the newly created ORR.

ORR centralized review of all executive-branch agency rules, including rules from the Department of State. The Secretary of State serves as an elected constitutional officer and leads Michigan's Department of State. MDOS handles elections, vehicle registrations and driver licensing, notary regulation, and other administrative functions.

Agencies submitted proposed rules to ORR, and ORR then evaluated the rules for legal compliance. ORR promoted regulatory reform and deregulation initiatives, and it approved rules before forwarding them to JCAR. This change positioned ORR as a gubernatorial gatekeeper. All rules required ORR approval before reaching legislative review.

No Statutory Foundation for Executive Branch Gatekeeping

E.R.O. 1995-5 appears in Michigan Compiled Laws as MCL 10.151. However, examination of the statute reveals it is not legislative codification but the executive order itself. The header reads: "EXECUTIVE REORGANIZATION ORDER (EXCERPT) E.R.O. No. 1995-5."

The legislature did not pass a Public Act creating the Office of Regulatory Reform. Neither did the legislature draft statutory language, hold committee hearings, debate provisions, vote affirmatively to enact, or send legislation to the Governor for signature. Instead, Governor Engler issued an executive reorganization order, submitted it to the legislature, and the legislature did not disapprove within the 60-day period that Article V § 2 allows.

Structure of ORR (1995-2005):

- Location: Within Executive Office of the Governor
- Leadership: Director appointed by governor
- Senate confirmation: None

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- Term limits: None
- Qualification requirements: None
- Budget independence: None
- Structural separation: Minimal
- Statutory foundation: None

Significance: ORR skipped the lawfully required Step 1, legislative allocation, and jumped directly to Step 2, executive reorganization. The office appears in MCL, but only because Michigan Compiled Laws sometimes include executive reorganization orders for reference when they have continuing legal effect, not because the legislature passed and the governor signed legislation into law. Engler's E.R.O. established the pattern that bypassed the legislature and persisted for the next three decades.

B. Phase Two: Governor Granholm (2005-2011)

Executive Reorganization Order 2005-1 (March 1, 2005; effective October 1, 2005)

Governor Jennifer Granholm issued Executive Reorganization Order 2005-1. The E.R.O. abolished ORR and created the State Office of Administrative Hearings and Rules (SOAHR) as a Type I transfer agency within the Department of Labor and Economic Growth. The order transferred ORR's rule review function to SOAHR.

E.R.O. 2005-1 and E.R.O. 2005-26 appear in Michigan Compiled Laws as MCL 445.2021. Like MCL 10.151, this is not legislative codification but rather the executive order itself appearing in MCL for reference. The history note reads: "History: 2005, E.R.O. No. 2005-1, Eff. Oct. 1, 2005."

The legislature did not pass a Public Act creating SOAHR. No committee hearings examined structural independence issues. No floor debates addressed whether the office should have Senate confirmation, term limits, qualification requirements, budget independence, or statutory foundation. No affirmative legislative vote created SOAHR through statutory enactment.

Critical Feature: Election Law Exclusion

E.R.O. 2005-1 Section 5 explicitly excluded election law from SOAHR's jurisdiction:

"Notwithstanding the provisions of this order, contested cases arising under the Michigan Election Law...shall be conducted as provided by law and **shall not be assigned to or conducted by the State Office of Administrative Hearings and Rules**." [Emphasis added.]

This exclusion recognized the sensitivity of election disputes and kept them separate from consolidated executive review for fourteen years. Governor Whitmer removed this protection.

Structure of SOAHR (2005-2011):

Location: Type I agency within Department of Labor and Economic Growth (DLEG)

Leadership: Director appointed by the Director of the Department of Labor and Economic Growth, a gubernatorial appointee.

Senate confirmation: None

Term limits: None

Qualification requirements: None

Budget independence: None

Structural separation: Nominal (Type I agency operational autonomy)

Statutory foundation: None

Significance: Governor Granholm added a dedicated Executive Director position, a modest organizational step, but she preserved the core pattern of executive control without independence protections. However, the explicit exclusion of election law hearings maintained a fourteen-year separation between executive review and election administration.

C. Phase Three: Governor Snyder (2011-2019)

Executive Reorganization Order 2011-5 (Feb. 23, 2011, effective after 60 days)

Executive Reorganization Order 2011-4 (March 1, 2011; effective March 24, 2011)

Governor Rick Snyder issued Executive Reorganization Orders 2011-4 and 2011-5 to abolish Governor Granholm's SOAHR. Instead, he created two new entities within a newly consolidated Department of Licensing and Regulatory Affairs (LARA): the Michigan Administrative Hearing System (MAHS) and the Office of Regulatory Reinvention (ORRI), focused on rulemaking oversight and removal of regulatory barriers to business growth.

Creation of MAHS. E.R.O. 2011-4 explicitly abolished SOAHR and transferred its adjudicative functions into MAHS, a centralized system for conducting administrative hearings, contested cases, and quasi-judicial proceedings across state agencies (e.g., licensing disputes, benefit denials, enforcement actions). The order declared the governor's

direct authority to appoint MAHS leadership. "The appointing authority for the Executive Director of the Michigan Administrative Hearing System shall be the Governor." (Section IX, A.3)

Snyder's E.R.O. further acknowledged the purely executive-order foundation of the prior office: "The SOAHR, established under Executive Orders 2005-1 and 2005-26, MCL 445.2021, is abolished."

To enhance executive control over adjudication, which is mediation and judging, the order granted the MAHS Executive Director sweeping authority to set performance standards, and it dramatically expanded the power of the governor to oversee the performance of MAHS officers, judges, magistrates, board members, and commissioners:

"To increase efficiency and to assure effective delivery of adjudicative services, the Executive Director of the Michigan Administrative Hearing System shall establish and continuously reassess assignment, scheduling, productivity, or other performance standards for **hearing officers, administrative law judges, magistrates, board members, and commissioners** assigned to the Michigan Administrative Hearing System." (Section IX, A.6) [Emphasis added.]

Governor Engler's Executive Reorganization Order No. 1995-5 explicitly indicates that the Office of Regulatory Reform (ORR) was a new creation, not a Type I transfer of an existing statutory entity.

Creation of ORRI. Executive Reorganization Order 2011-5 created the Office of Regulatory Reinvention (ORRI) within LARA, expanding Engler's original ORR role into a more aggressive regulatory reform and rulemaking oversight function. The order admitted this was a creation and no mundane Title I transfer when it stated, "I. **CREATION** A. The Office of Regulatory Reinvention **is created** within the Department of Licensing and Regulatory Affairs." [Emphasis added.]

ORRI's stated mission was to foster "a regulatory environment and regulatory processes that are fair, efficient, and conducive to business growth and job creation through **its oversight and review of current rules and regulations and proposed rulemaking [sic] and regulatory activities by all departments and agencies**." (Section I.C) [Emphasis added.]

The order placed ORRI under direct gubernatorial influence, designating the LARA Director, a gubernatorial appointee, as its director. "B. The Director of the Department of Licensing and Regulatory Affairs shall also serve as the Director of the Office of Regulatory Reinvention and Chief Regulatory Officer of the state of Michigan, unless otherwise designated by the Governor." (Section I.B) [Emphasis added.]

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This arrangement created a significant structural defect. From 2011 to 2016, the same gubernatorial appointee, the LARA Director and Chief Regulatory Officer, personally reviewed and approved rules that LARA agencies proposed. This change resulted in complete executive self-review with zero structural independence. No other state with a central-panel administrative review system permits such direct self-approval.

Distinctions between MAHS and ORRI.

MAHS and ORRI served related but fundamentally separate roles within LARA:

MAHS (E.R.O. 2011-4): Focused on adjudication, including centralized administrative hearings, contested cases, and quasi-judicial proceedings. It consolidated hearing officers and administrative law judges to resolve disputes arising under existing rules or agency actions.

ORRI (E.R.O. 2011-5): Focused on rulemaking oversight and regulatory reform. ORRI pre-reviewed proposed rules for legal compliance, conducted cost-benefit analysis, assessed business burden reduction, and aligned rules with gubernatorial priorities. It acted as a gatekeeper before rules reached the Joint Committee on Administrative Rules (JCAR).

Both entities operated under the newly created LARA (consolidated via E.R.O. 2011-4). MAHS handled post-rule enforcement hearings while ORRI handled pre-promulgation rule review. The dual structure under one gubernatorial appointee amplified executive control over both rulemaking and adjudication.

Absence of Legislative Foundation

The legislature did not enact any Public Act to allow the executive branch to create MAHS, ORRI, or LARA. Governor Snyder relied solely on his reorganization authority under Article V, Section 2 of the Michigan Constitution to abolish an executive-order-created office (SOAHR) and establish successor offices through executive orders alone. The governor bypassed the required initial legislative allocation ("by law") of executive offices.

This phase exemplifies the ongoing pattern: Step 2, the executive reorganization occurred without Step 1, legislative enactment.

Most Egregious Structural Defects: Self-Review and Impinging on Election Law

Later changes under ORR/ORRI focused on general regulatory oversight, and they extended no specific exclusion to election administration rulemaking.

The 2011–2016 self-review arrangement under ORRI, in which the LARA director approved rules from his or her own department, represented complete executive-branch dominance over rulemaking with no independent checks and balances.

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This lack of separation persisted until 2016, when Snyder transferred rulemaking review functions to the Office of Performance and Transformation within the Department of Technology, Management and Budget, restoring only nominal separation. Independence protections remained absent throughout, and the rulemaking continued to creep into election administrative rulemaking.

Significance. E.R.O.s 2011-4 and 2011-5 created a bifurcated but governor-controlled administrative framework with MAHS as the administrative courtroom and ORRI as the regulatory gatekeeper or reformer. Both were established by circumventing legislative authorization through the misuse of Title I transfers. Both E.R.O.s reinforced what became a thirty-year pattern of executive-branch rulemaking oversight lacking statutory foundation or standard independence safeguards. The self-review issue in ORRI demonstrates that, no matter how well intentioned, the absence of structural protections enables unchecked executive influence over the regulatory processes. It serves as the executive branch creep that the Framers of the Constitution tried to prevent when they specified separation of the branches, defined the role of the legislature, and singled out election law and election administration.

Structure of MAHS and ORRI (2011-2019):

Aspect	MAHS (2011-4)	ORR/ORRI (2011-5 / Earlier ORR)
Main Role	Administrative hearings / contested cases	Rulemaking review, regulatory reform/burden reduction
Focus	Adjudication / quasi-judicial	Pre-approval of rules, deregulation
Created By	EO 2011-4 (abolished SOAHR)	EO 2011-5 (expanded from prior ORR)
Department	LARA (newly created)	LARA
Leadership Overlap	Hearing officers under LARA	LARA Director as Chief Regulatory Officer (2011–2016 self-review issue)
Election Law	Prior SOAHR excluded election cases; MAHS continued similar separation until later changes	No specific election exclusion; focused on general regulatory oversight

Figure 27: Structural differences between MAHS and ORRI. Both were created via Governor Engler's Executive Order.

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Location: Within Department of Licensing and Regulatory Affairs

Leadership: Initially LARA Director (gubernatorial appointee) serving as Chief Regulatory Officer

Senate confirmation: None

Term limits: None

Qualification requirements: None

Budget independence: None

Structural separation: None (2011-2016); Nominal (2016-2019)

Statutory foundation: None

D. Phase Four: Governor Whitmer (2019–Present)

Executive Reorganization Order 2019-06 (February 20, 2019; effective April 22, 2019)

Governor Gretchen Whitmer issued Executive Reorganization Order 2019-06, abolishing MAHS and ORRI. In their stead, she created the Michigan Office of Administrative Hearings and Rules (MOAHR). As with her predecessors, Whitmer called the creation a Type I transfer agency.

1. Three Significant Changes:

a. Removed Election Law Exclusion

Unlike Governor Granholm's Executive Order 2005-1, which explicitly excluded election law hearings from the executive review office, Executive Reorganization Order 2019-06 contains no such exclusion. This omission transferred adjudicatory authority over election disputes to MOAHR for the first time in fourteen years, consolidating both election rulemaking review (reviewing election rules for compliance) and election dispute adjudication (conducting hearings on election challenges).

b. Consolidated Dual Functions

MOAHR exercises rulemaking review for both compliance with federal and state law and for adjudicative authority. It conducts administrative hearings and issues decisions in contested cases.

When an office under gubernatorial control determines executive-branch rules to be legally compliant, and when that same office later serves as the adjudicator of disputes

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about contested rules, conflicts will inevitably arise. The office and its employees may face institutional pressure to defend their decisions rather than evaluate issues objectively.

c. Expanded MOAHR Authority without Protections (2019–Present)

Location: Type I transfer agency within Department of Licensing and Regulatory Affairs

Leadership: Executive Director appointed by LARA Director (gubernatorial appointee)

Senate confirmation: None

Term limits: None

Qualification requirements: None

Budget independence: None (budgeting and procurement under LARA supervision)

Structural separation: Nominal. Type I transfer agency claims independence but remains under LARA.

Statutory foundation: None

Dependence. The reality of MOAHR's Budget Reality (FY 2025-2026):

MOAHR operates within LARA's $626.0 million budget with gross appropriation: $37,034,900. However, interdepartmental grant revenues (IDG) amount to $28,594,000, so approximately 77% of MOAHR's $37 million budget came from other undisclosed executive branch departments during 2025.

Staff: 172.0 full time equivalent (FTE) positions

Source: Michigan's Fiscal Year Budget, Public Act 22 of 2025 (Enrolled House Bill No. 4706), Sec. 107, p. 248.

The heavy reliance on interdepartmental grant revenues ties MOAHR's funding to services provided to other executive-branch departments. This financial dependence, when combined with LARA's budgetary control over the MOAHR department and the governor's control over LARA, indicates MOAHR would experience pressure to align with executive priorities.

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Appendix D: Federal and State Judicial Recognition of Legislative Standing

In September 2023, MFEI sponsored a federal lawsuit in which eleven Michigan state legislators filed Lindsey v. Whitmer, challenging this sort of constitutional usurpation. The case asserted that individual state legislators possess federal rights under the Elections Clause — rights that were violated when ballot initiatives circumvented legislative approval to regulate federal elections. The same holds even more true when the executive branch overreaches.

The legal theory rests on established precedent. U.S. Supreme Court cases recognize legislators' standing when their votes are excluded:

Coleman v. Miller, 307 U.S. 433 (1939). The U.S. Supreme Court recognized standing for twenty Kansas state senators whose votes "would have been sufficient to defeat [a] resolution ratifying [a] proposed [federal] constitutional amendment." The Court held legislators have standing when their votes are "completely nullified."

Raines v. Byrd, 521 U.S. 811 (1997), held that individual legislators generally lack standing to challenge institutional injuries absent a showing of concrete, particularized harm, such as vote nullification recognized in Coleman.

Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, 576 U.S. 787 (2015). The Supreme Court acknowledged that Coleman "stood 'for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.'"

Moore v. Harper, 600 U.S. 1 (2023): The Supreme Court clarified that state legislatures exercise dual authority under the Elections Clause: "The legislature acts both as a lawmaking body created and bound by its state constitution, and as the entity assigned particular authority by the Federal Constitution."

While the U.S. Supreme Court's majority opinion in Bost v. Illinois State Board of Elections (2026) established a broader, status-based standing rule for candidates challenging vote-counting rules — reflecting arguments from an amicus brief by MFEI and others — it does not directly apply to legislator standing for Elections Clause claims, which remain governed by Coleman and Raines.

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Michigan precedent supports standing when legislators' voting rights are usurped (Dodak v. State Admin. Bd. 495 N.W.2d 539, 545 (Mich. 1993)). The Michigan Supreme Court has long recognized standing for state legislators when their individual rights to vote are sidestepped:

"Although this Court is not bound to follow federal cases regarding standing, we agree that Pierce lends support at least for the standing claim... As in Pierce, plaintiff... has been denied a specific statutory right sufficient to confer standing." Pierce v. Society of Sisters (1925), 268 U.S. 510 (1925). Pierce v. Society of Sisters is a "substantive due process" case. Substantive due process stands for the proposition that some rights are so fundamental that the state cannot regulate them without exceptional justification, even if there is no written constitutional prohibition on the government's power.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). The President cannot take possession of private property without authorization from Congress or the Constitution.

Appendix E: The Five Structural Defects

I. Defect 1: No Statutory Foundation Compounds the Other Structural Defects

The lack of statutory foundation is not merely one defect among five. It is THE foundational defect that enables the other five defects. Had the legislature created Michigan's administrative rule review office through statute, the authorizing legislation could have included Senate confirmation, term limits, qualification requirements, budget protections, and structural separation. Instead, executive-order-only creation produced an office with zero independence protections.

The absence of statutory foundation is hardly an abstract constitutional defect. It led to the structural failure that enabled MOAHR to pre-qualify rules that reduced federal election record retention by 99.7% (52 U.S.C. § 20701). Another result is the imposition of discriminatory economic barriers and materiality concerns (52 U.S.C. § 10101). The rules contradict four state statutory provisions in MCL 168.733, all while operating without the independence, institutional stability, or legislative oversight. A statutory foundation would likely have prevented these violations.

J. **Defect 2**: No Senate Confirmation

Leadership positions require no legislative confirmation. Governors or their appointees select and install leadership without input from the elected legislature's upper chamber.

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Senate confirmation creates accountability, ensures legislative branch input into appointments, and provides public vetting of qualifications and potential conflicts. Without it, governors exercise unilateral control over the office that reviews all executive-branch rules.

All four phases operated without Senate confirmation. The current MOAHR Executive Director is appointed by the LARA Director, a gubernatorial appointee, with no legislative role in selection or approval.

K. **Defect 3**: No Term Limits or Fixed Terms

Leadership serves at the pleasure of the governor or gubernatorial appointees, with no fixed terms providing tenure security.

Fixed terms create independence and help prevent arbitrary removal. Officials with job security can make decisions based on legal compliance rather than political expedience. At-will employment creates dependence. Leaders know their positions depend on satisfying superiors rather than applying objective legal standards.

All four phases operated with at-will leadership. The MOAHR Executive Director serves at the pleasure of the LARA Director, who serves at the pleasure of the governor. This creates a direct chain of dependence from the office reviewing rules to the executive branch promulgating them.

L. **Defect 4**: No Statutory Qualification Requirements

The law imposes no mandatory qualifications for leadership. No requirements exist for legal training, administrative law expertise, or relevant professional experience.

Qualification requirements ensure that officials reviewing complex legal compliance issues possess necessary expertise. Without statutory qualifications, appointments may prioritize political loyalty over professional competence. The absence of qualification requirements enables selection of officials who lack capacity and objectivity for independent legal analysis.

None of Michigan's four organizational iterations imposed statutory qualification requirements. Governors enjoy complete discretion in selecting officials to lead the review office, regardless of their training or expertise in administrative law, election law, or legal compliance.

M. **Defect 5**: No Budget Independence or Structural Separation

The office lacks independent appropriations or transparent standalone budgets. Funding comes through supervising departments that control budgeting and procurement.

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Budget dependence creates leverage for influence. An office that depends on other departments for funding may face pressure, explicit or implicit, to approve that department's rules. Transparent, independent appropriations eliminate this leverage and enable public accountability.

MOAHR's current budget structure particularly reinforces dependence. With $28.6M of its $37M budget coming from services to other executive-branch departments, financial incentives align with satisfying those departments rather than conducting rigorous independent review. MOAHR's budget is embedded within LARA's $626M appropriation.

Governor Whitmer's Executive Reorganization Order 2019-06 states in 3(b):

"(b) As a Type I agency, the Office shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing, and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication, including those transferred to the Office under this order, independently of the director of the Department of Licensing and Regulatory Affairs. The budgeting, procurement, and related management functions of the Office shall be performed under the direction and supervision of the director of the Department of Licensing and Regulatory Affairs." [Emphasis added.]

Structural Separation

The office operates within the executive branch, reviewing rules from the same branch. Officials reviewing rules report through chains of command to the same governor whose agencies promulgated the rules.

Structural separation prevents inherent conflicts when the reviewer and the reviewed exist within the same organizational hierarchy. When executive-branch officials review executive-branch rules, institutional pressures favor approval rather than rejection, particularly for politically sensitive rules. Separation, such as legislative-branch or judicial-branch placement, eliminates these pressures.

The 2011-2016 period under Governor Snyder exemplifies the problem. Then, the LARA Director personally approved rules from LARA agencies with not even nominal separation. This represented complete executive self-review.

Appendix F. Michigan Executive Branch Departments Allocated by Law

The Michigan Constitution of 1963 (Article V, Section 2) states: "All executive and administrative offices, agencies and instrumentalities of the executive branch of state

government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, shall be allocated by law among and within not more than 20 principal departments."

The Constitution itself does not list the specific departments — it requires them to be "allocated by law," meaning through statutes passed by the legislature. The primary law that does this is the Executive Organization Act of 1965 (Act 380 of 1965, MCL 16.101 et seq.), which establishes the framework and originally allocated the departments. Subsequent executive reorganization orders (E.R.O.s) can shuffle or rename them (subject to legislative disapproval), but the initial allocation and limit of 20 remain statutory.

Michigan currently has 19 principal departments (not 20 — the act allows up to 20, but one slot remains unused). Here's the full list as allocated and updated through the act and reorganizations (sourced directly from MCL 16.104 and related sections):

(1) Department of State
(2) Department of Attorney General
(3) Department of Treasury
(4) Department of Management and Budget
(5) Department of State Police
(6) Department of Military Affairs
(7) Department of Agriculture
(8) Department of Civil Service
(9) Department of Commerce
(10) Department of Natural Resources
(11) Department of Corrections
(12) Department of Education
(13) Department of Licensing and Regulation
(14) If section 28 of article 5 of the state constitution of 1963 is amended to provide for changing the name of the state highway department to the department of transportation. However, until section 28 of article 5 is amended in the manner described in this section, the name of the department shall be the Department of State Highways and Transportation.
(15) Department of Labor
(16) Department of Mental Health
(17) Department of Public Health
(18) Department of Social Services
(19) Department of Civil Rights

Notes on the List:

The original 1965 act listed 19 departments, and Michigan has operated with 19 ever since (e.g., through mergers like Mental Health and Public Health into Health and Human Services via E.R.O.s). The Constitution caps at 20 to allow flexibility, but no 20th has been added in Michigan.

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Names have evolved via E.R.O.s (e.g., Department of Commerce became LARA under Snyder's E.R.O. 2011-4), but the core allocation remains statutory under Act 380.

These departments report to the governor, who appoints their directors (subject to Senate confirmation in most cases).

The Michigan Constitution requires "allocation by law" (statute) first, with E.R.O.s only for subsequent shuffling. New functions require legislative approval and statutory foundation.

Appendix G: Rule Sets 2025-13, -14, and -15, plus Analysis

Rule Set 2025-13:

Administrative Rulemaking System. Michigan.gov.
https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1586.

DEPARTMENT OF STATE

ELECTIONS & CAMPAIGN FINANCE

VOTER REGISTRATION CANCELLATION, CHALLENGE, AND CORRECTION

Filed with the secretary of state on [February 23, 2026]

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by section 31(1)(a) of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.251, R 168.252, R 168.253, R 168.254, R 168.255, R 168.256, R 168.257, R 168.258, R 168.259, R 168.260, R 168.261, and R 168.262 are added to the Michigan Administrative Code, as follows:

R 168.251 Definitions.
Rule 1. (1) As used in these rules:
(a) "Act" means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.
(b) "Cancellation notice" means the notice that is sent to a voter when the clerk receives reliable information that the voter has moved to a new jurisdiction or reliable information that the voter

has moved to an unknown address, as described in section 509aa(3) and (5) of the act, MCL 168.509aa. Sending this notice begins the cancellation countdown.

(c) "Challenge" means the process by which a registered voter may challenge the validity of another registered voter's registration status.

(d) "Confirmation notice" means the notice that is sent to a voter when the clerk receives reliable information that the voter has moved within the clerk's jurisdiction, as described in section 509aa(2) of the act, MCL 168.509aa.

(e) "Election activity" means any voter transaction, including, but not limited to, requesting an absentee voter ballot, returning a voted absentee ballot, voting in person during early voting or on election day, confirmation in the voter registration database of the individual signing a petition, or other voter-initiated transaction, such as notice of a move.

(f) "Personal knowledge" means information that an individual knows to be true based on direct, firsthand observance. In the case of a voter's residency, to constitute personal knowledge an individual shall know the voter is not a resident for voting purposes. Observing reliable information indicating a voter has moved does not constitute personal knowledge that a voter is not a resident for voting purposes.

(g) "Reliable information" means information indicating that an individual has moved, which election officials can trust confidently, is specific to a voter, and is objectively verifiable. Reliable information that a voter has moved requires notice, waiting period, and confirmation as described in this rule set and the act before a voter's registration can be cancelled on the basis that the voter is no longer a resident for voting purposes.

(h) "Returned election mail" means mail, such as voter information cards, notices, absentee ballot applications, and absentee ballots, that is returned by the post office either as undeliverable or with an updated address.

(i) "Voter registration database" means the qualified voter file as defined in section 509m of the act, MCL 168.509m, or its successor.

(j) "Waiting period" means the requirement in section 8 of the national voter registration act of 1993, 52 USC 20507, that an individual's registration must not be cancelled until that individual has failed to respond to a notice and has not voted or engaged in any election activity in 2 successive federal November general election cycles. The waiting period is also referred to as the cancellation countdown.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.252 Reliable information.

Rule 2. (1) Whether information is reliable information that a voter has moved is considered on an individual, case-by-case basis.

(2) The following sources of information are examples of reliable information:

(a) A voter's failure to vote for 20 years or more, or for a timeframe as provided in the act.

(b) United States Postal Service returned election mail.

(c) A voter appears on a United States Postal Service national change of address list and the entry on the list is checked against the voter record and they match.

(d) During a house-to-house canvass, the clerk speaks to an individual who lives at the voter's registration address, and the individual informs the clerk that a voter has permanently moved.

(e) The voter surrendered their driver license from this state to a different state.

(f) Utility bills with an address or name that is different than the voter's registration name and address, if accompanied by additional information that shows that the voter has moved.

(g) City income tax records with an address that is different than the voter's registration address.

(h) A statement or communication indicating a permanent change of address made by a voter that does not include the voter's signature.

(3) The following sources of information are not on their own reliable sources of information sufficient to trigger sending either a confirmation or cancellation notice to a registered individual, but can be considered in combination with other information:

(a) Information pulled from online databases that list individual names and dates of birth.

(b) Word-of-mouth claims about a registered individual that are not based on personal knowledge of the individual making the claim, including attempted challenges to voter registration that fail to meet the requirement of personal knowledge.

(4) A clerk is not obligated to begin an investigation of an individual's registration status after receiving information from the sources identified in subrule (3) of this rule.

(5) If a clerk chooses to investigate an individual's registration status based on information from the sources identified in subrule (3) of this rule, the clerk shall independently verify the information from a source listed in subrule (3) of this rule with reliable information before sending a confirmation or cancellation notice to a registered individual.

R 168.253 Required notice procedure after receiving reliable information.

Rule 3. (1) After a clerk receives reliable information that an individual has moved, the clerk shall take the following steps:

(a) Verify that the voter is not entitled to protections under the military and overseas voter empowerment (MOVE) act, Public Law 111-84, or under the uniformed and overseas citizens absentee voting act (UOCAVA), Public Law 99-410. If the voter is entitled to protections under the MOVE act or UOCAVA, the clerk shall not send a notice. If the voter is not subject to protections under the MOVE act or UOCAVA, proceed to subrule (1)(b) of this rule.

(b) Update the individual's status in the voter registration database, but not cancel the voter's registration.

(c) Send the individual either a cancellation or confirmation notice using the following criteria:

(i) When a clerk receives reliable information that the voter has moved within the clerk's jurisdiction, the clerk shall send the individual a confirmation notice.

(ii) When a clerk receives reliable information that a voter has moved outside of the clerk's jurisdiction or if election mail is returned by the post office as undeliverable with no new address information, the clerk shall send the individual a cancellation notice.

(2) The cancellation or confirmation notice must be sent by forwardable mail. The notice must comply with the following:

(a) Include a postage prepaid and preaddressed return card for the individual to verify or correct the address information or verify their registration status.

(b) Be sent to all addresses that the clerk is aware of for the individual.

(c) Contain the information required by section 509aa of the act, MCL 168.509aa, and section 8 of the national voter registration act of 1993, 52 USC 20507.

R 168.254 Actions following confirmation notice.

Rule 4. (1) If the voter returns the notice, depending on the response, the clerk shall take 1 of the following actions:

(a) If the individual confirms they reside at their registration address, the clerk shall indicate the individual confirmed their residency in the voter registration database. The individual is returned to active status.

(b) If the individual confirms a new address that is still within the same jurisdiction, the clerk shall update the individual's address in the voter registration database, update the individual's master card as required by the act, and send the individual a new voter information card. The individual is returned to active status.

(c) If the individual confirms a new address that is outside of the jurisdiction, the clerk shall cancel the individual's registration and update the individual's master card as required by the act.

(2) If the voter fails to return the notice but engages in election activity, the individual is returned to active status in the voter registration database.

(3) If a voter fails to return the notice and does not engage in election activity, the individual remains registered to vote but maintains a verify status.

(4) If the notice is returned by the post office as undeliverable, the clerk shall update the voter's status in the voter registration database but take no registration cancellation action. If after the expiration of the waiting period the individual has not engaged in any election activity, the individual's registration shall be cancelled by the secretary of state in the voter registration database. The clerk shall update the voter's master card as required by the act.

R 168.255 Actions following cancellation notice.

Rule 5. (1) If the voter returns the notice, depending on the response, the clerk shall take 1 of the following actions:

(a) If the individual confirms they reside at their registration address, the clerk shall indicate the individual confirmed their residency in the voter registration database. The individual is returned to active status.

(b) If the individual confirms a new address that is still within the jurisdiction, the clerk shall update the individual's address in the voter registration database, update the individual's master card as required by the act, and send the individual a new voter information card. The individual is returned to active status.

(c) If the individual confirms a new address that is outside of the jurisdiction, the clerk shall cancel the individual's registration and update the individual's master card as required by the act.

(2) If the voter fails to return the notice but engages in election activity, the individual is returned to active status in the voter registration database.

(3) If there is no response to the cancellation notice or the notice is returned by the post office as undeliverable, the clerk shall take no registration cancellation action. If after the expiration of the waiting period the individual has not engaged in any election activity, the individual's registration shall be cancelled by the secretary of state in the voter registration database. The clerk shall update the voter's master card as required by the act.

R 168.256 Challenges to voter registration; requirements for a valid challenge.

Rule 6. (1) A challenge to an individual's registration is a specific process that is distinct from the notice process that follows the receipt of reliable information.

(2) A challenge to an individual's registration must comply with the requirements of section 512 of the act, MCL 168.512, and is valid only if it meets all the following requirements:

(a) The challenge must be submitted by a registered voter in the same municipality as the challenged voter.

(b) The challenge must be submitted to the city or township clerk for the relevant municipality. Submission may be in person, by mail, or by electronic mail.

(c) The challenge must be made through a written and notarized affidavit. A separate written and notarized affidavit is required for each individual voter whose registration is being challenged. Submission of a copy of the written and notarized affidavit is acceptable.

(d) The challenger must swear that they have personal knowledge that the challenged voter is ineligible and must specify the grounds for ineligibility.

(e) The challenge cannot be made indiscriminately and without good cause, or for the purpose of harassment. A challenge is made indiscriminately and without good cause if the challenger does not know or have a reasonable belief that the challenged individual is ineligible. Improper reasons for making a challenge to a voter's eligibility include, but are not limited to, the following:

(i) The voter's race or ethnic background.

(ii) The voter's sexual orientation or gender identity.

(iii) The voter's physical or mental disability.

(iv) The voter's inability to read, write, or speak English.

(v) The voter's need for assistance in the voting process.

(vi) The voter's manner of dress.

(vii) The voter's support for or opposition to a candidate, political party, or ballot question.

(viii) The appearance or the challenger's impression of any of the traits listed in paragraphs (i) to (vii) of this subdivision.

(ix) Other characteristics or appearance of characteristics that are not relevant to an individual's qualification to cast a ballot.

(3) An individual's voter registration may be cancelled pursuant to section 512 of the act, MCL 168.512, only for the following reasons:

(a) The individual is not old enough to register to vote. An individual may preregister to vote when they are 16 years of age, and is qualified to be registered to vote when they are 17.5 years of age or older.

(b) The individual is not a United States citizen.

(c) The individual does not reside within the jurisdiction where they are registered.

(d) The individual is deceased.

(4) The requirement that the challenger have personal knowledge that the challenged voter is ineligible is not satisfied when the challenger's basis for their claim is reliable information that a voter has moved or other third-hand information indicating that a voter is not eligible, including an online database, United States Postal Service information, or other information from a third-party such as another resident contacted during a house-to-house canvass.

R 168.257 Independent verification; applicability of notice and waiting period procedure.

Rule 7. (1) If the challenger fails to properly assert personal knowledge of a voter's ineligibility as required by R 168.256(2)(d), the clerk may attempt to independently verify the information but is not required to conduct an independent investigation before rejecting the challenge for failure to meet the statutory requirements for a valid challenge.

(2) If a clerk exercises their discretion to independently verify a challenge that failed to satisfy the statutory challenge requirements under section 512 of the act, MCL 168.512, and their investigation reveals reliable information to support the conclusion that the challenged voter may have moved, that reliable information must be used to initiate the sending of a confirmation or cancellation notice in accordance with section 509aa of the act, MCL 168.509aa.

(3) The challenge cancellation timeline of 30 days that applies after receiving a valid challenge under section 512 of the act, MCL 168.512, does not apply when a clerk investigates in response to an invalid challenge and independently finds reliable information. Instead, the sending of a confirmation or cancellation notice in accordance with section 509aa of the act, MCL 168.509aa, is required.

R 168.258 Challenges asserting individual voter is deceased.

Rule 8. (1) If the clerk receives a challenge on the basis that the challenged individual is deceased, and the clerk independently verifies that the challenged individual is deceased, the clerk shall immediately process a cancellation based on the individual's death instead of following the challenge procedure. If the clerk does not independently verify that the challenged individual is deceased, but the challenge properly asserts personal knowledge of a voter's ineligibility as required by R 168.256(2)(d), the clerk shall process the challenge under R 168.259.

(2) A clerk may use the following sources to independently verify an individual is deceased:

(a) Confirmation from next of kin.

(b) Death certificate.

(c) An obituary.

(d) Notification from the county clerk under section 510 of the act, MCL 168.510.

(e) Other information that verifies the death of the voter.

(3) In verifying that a voter is deceased, the clerk shall verify that the deceased individual is the same individual as the voter, including by matching personal identifying information such as address, date of birth, or other information that confirms the identity of the individual.

R 168.259 Procedure after receiving a challenge to voter registration.

Rule 9. (1) If a challenge to an individual voter's registration does not satisfy any 1 of the requirements in R 168.256 and section 512 of the act, MCL 168.512, the challenge must be rejected.

(2) If a challenge to an individual voter's registration does satisfy the requirements in R 168.256 and section 512 of the act, MCL 168.512, the clerk shall do the following:

(a) Update the individual's status in the voter registration database.

(b) Send notice of the challenge to the challenged individual.

(3) The notice required under subrule (2)(b) of this rule must comply with the following:

(a) Be sent by registered or certified mail to the last registered or known address for the challenged individual.

(b) Include the grounds for the challenge.

(c) Inform the challenged individual that they have 30 days after the day immediately following the date of mailing the notice to respond to the challenge.

(d) Inform the challenged individual that failure to respond within 30 days results in the informed individual's registration being cancelled.

(4) To respond to a challenge, a challenged individual may do any 1 of the following:

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(a) Appear in person before the clerk to take an oath and answer questions confirming that the challenged individual is qualified to be a registered voter where they are currently registered.

(b) Submit a notarized affidavit to the clerk confirming that the challenged voter is qualified to be a registered voter where they are currently registered.

(c) Respond to the notice and confirm that the challenged individual is not qualified to vote and that their voter registration must be cancelled.

(5) If a challenged individual fails to respond to the challenge as explained in subrule (4) of this rule within 30 days after the day immediately following the date of mailing the notice, the clerk shall cancel the individual's registration.

(6) If a challenged individual responds to the challenge to confirm that their voter registration must be cancelled, the clerk shall cancel the individual's registration.

(7) If the challenged voter appears in person as specified under subrule (4)(a) of this rule or submits a notarized affidavit as specified under subrule (4)(b) of this rule and indicates that they are qualified to be a registered voter, the challenge process is complete, the challenge flag in the voter registration database is removed, and the individual remains registered.

R 168.260 Registration cancellation not requiring notice and waiting period.

Rule 10. A voter's registration must be cancelled immediately without sending a confirmation or cancellation notice only when any of the following occur:

(a) The individual voter requests cancellation. An individual's request to cancel their registration to vote must be in writing and signed by the individual.

(b) The individual voter confirms they are no longer a resident of the jurisdiction. This confirmation could be in the form of a signed letter from the voter or a signed response to a confirmation notice.

(c) An election official from a jurisdiction outside of this state informs the clerk that the individual voter has registered to vote in another state, and the election official forwards the clerk a copy of a registration application signed by the individual that includes the individual's previous address in this state.

(d) An individual voter is challenged and questions directed to that individual voter by an election inspector at the polls on election day or during early voting reveal that the individual voter is not qualified to vote in the jurisdiction.

(e) The clerk verifies that the individual voter has died.

R 168.261 Duplicate voter registrations.

Rule 11. When an individual's registration is identified as duplicate, the clerk shall submit a merge request through the voter registration database to merge the voter registrations. This merge combines the records into 1 record and maintains the individual voter's registration to vote.

R 168.262 Correcting voter registration records.

Rule 12. (1) A clerk shall take steps to notify a registered individual if the clerk becomes aware of a deficiency in their voter registration record.

(2) If a deficiency is the result of an administrative error, such as a registration that is submitted with both a mailing address and a residential address, but the mailing address is erroneously entered into the voter registration database as the residential address, the clerk shall correct the individual's voter registration record.

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Rule Set 2025-14:

Electronic Poll Book Data Retention and Destruction." Administrative Rulemaking System. Michigan.gov. https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1587.

Rule Set 2025-14

DEPARTMENT OF STATE

BUREAU OF ELECTIONS

USE OF ELECTRONIC POLLBOOK

Filed with the secretary of state on October 23, 2025

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.41, R 168.42, R 168.43, R 168.44, R 168.45, R 168.46, R 168.47, and R 168.48 are added to the Michigan Administrative Code, as follows:

R 168.41 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(b) "Approved form of transmission" means an encrypted or password protected, or both, flash drive or other electronic media used to store election files and transfer files between the electronic pollbook and qualified voter file, or another form of secure storage and transmission if approved by the bureau of elections.

(c) "Department" means the department of state.

(d) "Electronic pollbook" means computer software that receives information from the qualified voter file and is used during elections to process voters and generate reports. Electronic pollbook includes, but is not limited to, the early voting electronic pollbook, the election day vote center electronic pollbook, and the election day electronic pollbook, or any combination of those electronic pollbooks.

(e) "Secretary of state's duly authorized agent" includes bureau of elections staff, other necessary department staff, county, city, and township clerks or their designees, election inspectors, and relevant department of technology, management, and budget staff as determined by the director of elections.

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(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.42 Access to electronic pollbook data and software.

Rule 2. (1) The voter data contained in the electronic pollbook are public records subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Voter data that is exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, must not be released.

(2) Records regarding electronic pollbook software programming are confidential and must not be released if disclosure of the records may compromise the confidentiality, integrity, or availability of cybersecurity of election information systems.

(3) The secretary of state's duly authorized agents shall have access to the electronic pollbook software and complete the security verification required by the department to access the electronic pollbook software.

R 168.43 Download and backup.

Rule 3. (1) For the early voting period, if a jurisdiction conducts early voting, the clerk designated in the early voting agreement shall access the early voting electronic pollbook software as instructed by the department.

(2) For election day, the clerk conducting the election shall download the electronic pollbook software as instructed by the department.

(3) If the electronic pollbook software as described in section 668b(1) of the act, MCL 168.668b, has a secure live connection to the qualified voter file software at a polling place or early voting site, the electronic pollbook software with the secure live connection must be used to process voters and to generate election precinct reports, and the downloaded electronic pollbook software, or a paper copy of the downloaded electronic pollbook software, serves as a backup.

R 168.44 Electronic pollbook during the early voting period.

Rule 4. (1) If an early voting site has internet access, the electronic pollbook software used during the early voting period must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

(2) At the conclusion of each day of early voting, election inspectors at an early voting site shall print from the electronic pollbook a list of voters who voted that day at the early voting site and include the list in the physical pollbook.

R 168.45 Electronic pollbook on election day.

Rule 5. If a polling place has internet access and the bureau of elections has established live connectivity functionality with the qualified voter file, the electronic pollbook software used on election day must have a secure live connection to the qualified voter file software to allow real-time updates to voter history and ballot issuance.

R 168.46 Production of reports.

Rule 6. (1) If the polling place produces required reports after the close of polls on election

day, election inspectors at the polling place shall print from the electronic pollbook the required reports and include the reports in the physical pollbook.

(2) If the receiving board produces reports after the close of polls on election day, election inspectors shall download the required reports to the approved form of transmission, seal it in a transfer case, and 2 election inspectors representing each of the major political parties shall deliver it to the receiving board. The receiving board shall print from the approved form of transmission the required reports for the election day polling place, early voting site, or vote center and include the list in the physical pollbook.

R 168.47 Upload of electronic pollbook files to the qualified voter file.

Rule 7. If the electronic pollbook is not connected via secure live connection to the qualified voter file while voting takes place, within 7 days after an election, the clerk responsible for administering the election shall upload the voting history and other required files from the electronic pollbook to the qualified voter file using the approved form of transmission.

R 168.48 Data retention.

Rule 8. (1) Subject to subrule (2) of this rule, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following the final canvass and certification of the election, unless a petition for recount has been filed and the recount has not been completed, a post-election audit has been scheduled, or the deletion of the data has been stayed by an order of the court or the secretary of state. If a precinct is selected for an audit, the electronic pollbook software and associated files must be deleted from all devices by the seventh day following completion of the audit.

(2) The electronic pollbook software and associated files must not be deleted from devices until the bureau of elections or county clerk, as applicable, issues the release of security memorandum pertaining to that election.

Rule Set 2025-15:

Conduct of Challengers in Polling Places and Absent Voter Counting Boards." Administrative Rulemaking System. Michigan.gov. https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1588.

Rule Set 2025-15
DEPARTMENT OF STATE

BUREAU OF ELECTIONS

ELECTION CHALLENGERS AND POLL WATCHERS

Filed with the secretary of state on [space left blank on this file]

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These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the secretary of state by section 31 of the Michigan election law, 1954 PA 116, MCL 168.31)

R 168.201, R 168.202, R 168.203, R 168.204, R 168.205, R 168.206, R 168.207, R 168.208, R 168.209, R 168.210, R 168.211, R 168.212, R 168.213, R 168.214, R 168.215, R 168.216, R 168.217, R 168.218, R 168.219, and R 168.220 are added to the Michigan Administrative Code, as follows:

R 168.201 Definitions.

Rule 1. (1) As used in these rules:

(a) "Absent voter ballot processing facility" means the location where a single absent voter counting board, multiple absent voter counting boards, a single combined absent voter counting board, or multiple combined absent voter counting boards are conducted. Absent voter ballot processing facilities do not include a clerk's office or other locations where absent voter ballots are stored, signatures appearing on absent voter ballot envelopes are checked, or other election-related activities are conducted before absent voter ballots being removed from absent voter ballot envelopes and prepared for tabulation.

(b) "Act" means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(c) "Challenge" means a challenge made by a challenger credentialed by a credentialing organization. For the purposes of these rules, a challenged ballot issued to a voter for a reason other than a challenge made by a challenger is not a challenge and does not require any of the reporting or other requirements created by a challenge made by a credentialed challenger.

(d) "Challenger" means an individual credentialed as the representative of a credentialing organization to observe election-related activities at an early voting site, a polling place on Election Day, an absent voter ballot processing facility, or a clerk's office at any time the applicable location is open to the public. An individual shall not serve as a challenger if the individual is serving as an election inspector or individual is running for nomination or election at the same election, except that candidates for precinct delegate can serve as challengers so long as the candidates do not serve at the precinct where the candidates are running for office.

(e) "Clerk's office" means any location where a clerk or an employee of the clerk is issuing absent voter ballots to voters who appear in person and accepting completed absent voter ballots from voters who appear in person. This definition includes satellite offices or other locations established on a temporary or permanent basis to issue absent voter ballots to voters appearing in person or receive absent voter ballots from voters appearing in person.

(f) "Combined absent voter counting board" is an absent voter counting board established under section 764d(1) of the act, MCL 168.764d, or an absent voter counting board established to process each ballot form containing identical offices and names in a jurisdiction with more than 250 precincts under section 569a(2) of the act, MCL 168.569a.

(g) "Credential card" is the card required to be included in an application to become a credentialing organization under section 731(1) of the act, MCL 168.731, and the authority

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required to be signed by the individual identified under section 732 of the act, MCL 168.732. The authority must be in a form prescribed by the secretary of state and be known as the Michigan challenger credential card.

(h) "Credentialing organization" means an organization that is eligible to appoint and credential challengers in this state. A credentialing organization is an entity described in section 730 of the act, MCL 168.730. A credentialing organization other than a political party committee shall have satisfied the requirements of section 731 of the act, MCL 168.731.

(i) "Election staff" includes the clerk of a jurisdiction, employees and authorized assistants of that clerk, the secretary of state, any member of the secretary of state staff, the director of elections, and any member of the bureau of elections staff.

(j) "Pollbook" refers to either a physical or electronic pollbook.

(k) "Poll watcher" is a member of the public who is observing election processes and is not credentialed as a challenger. A candidate shall not serve as a poll watcher at a location where the candidate appears on the ballot.

(l) "Team of election inspectors" refers to the set of election inspectors assigned to process ballots at an individual absent voter count board or a combined absent voter count board.

(2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

R 168.202 Pollbook records.

Rule 2. (1) If both a physical and an electronic pollbook are utilized at an Election Day polling place, early voting site, or absent voter ballot counting facility, the clerk of the jurisdiction shall direct the records required by these rules to be recorded in the physical pollbook, the electronic pollbook, or both.

(2) Regardless of the form of pollbook used at an Election Day polling place, early voting site, or absent voter ballot counting facility, any challenge forms completed under R 168.213(2) must be stored by the local clerk in the same manner as the physical pollbook is stored.

R 168.203 Record of individuals serving as challengers; organizational training.

Rule 3. (1) For each challenger to whom a credentialing organization provides credentials, the credentialing organization shall keep the following records:

(a) The challenger's name.

(b) The challenger's mobile phone number, if the challenger has a mobile phone.

(c) Other contact information that may be used to contact the challenger during the performance of the challenger's duties.

(d) The city or township where the challenger is registered to vote.

(e) Each Election Day polling place, early voting site, and absent voter ballot processing facility where the challenger is designated to serve.

(2) Before the beginning of service by any challenger, the credentialing organization shall designate a member of the credentialing organization to be a point of contact between the credentialing organization and election officials. Except for political parties appointing challengers, the credentialing organization shall make the point of contact known to the secretary of state and the clerk of each jurisdiction where the credentialing organization is appointing challengers, using a form prescribed by the secretary of state. Political parties appointing challengers shall make the point of contact known to the secretary of state, using a form

prescribed by the secretary of state. The individual serving as a point of contact shall be available to be contacted by election officials at any time when a challenger credentialed by the credentialing organization is serving as a challenger. The point of contact shall have the records described in subrule (1) of this rule readily available for reference if contacted by an election official.

(3) The records described in subrule (1) of this rule must be retained by the credentialing organization for 1 year after the date of the challenger's service.

(4) Before issuing credentials to any challengers, each individual issuing credentials on behalf of the credentialing organization shall complete training created by the secretary of state for credentialing organizations. This training must include information about permissible and impermissible challenges, and the rights and duties of challengers. The training may include certification that the individual has reviewed written materials designated by the secretary of state or may include virtual or in-person training.

R 168.204 Credential card.

Rule 4. (1) The authority required under section 732 of the act, MCL 168.732, shall be in a form prescribed by the secretary of state, and be known as the Michigan challenger credential card.

(2) A credential card may be digital and presented on a phone or other electronic device. If a challenger uses a digital credential, the credential must mirror the physical template credential form promulgated by the secretary of state and must not include any information or graphics that are not included or requested on the physical template credential form.

(3) No county, city, or township clerk shall approve an organization's application to credential challengers under section 731(1) of the act, MCL 168.731, unless the facsimile of the credential card submitted by the organization is in a form prescribed by the secretary of state.

(4) If any field required on the credential card is blank, the credential is invalid and the individual presenting the form cannot serve as a challenger.

(5) The credential card shall not be displayed or shown to voters.

(6) Clerks may allow or require challengers serving at a polling place on Election Day, at an early voting site during the early voting period, or at a clerk's office at any time that voters are present, to wear a reasonably sized nametag or badge. The nametag or badge cannot include any text or graphics aside from the challenger's name and the words "election challenger". The nametag must be printed on white paper, and the words "election challenger" must be printed in black ink.

(7) Clerks may allow or require challengers present at absent voter ballot processing facilities to display the challenger's credential card or wear nametags or badges that identify challengers and the organization represented by the challenger.

R 168.205 Challenger liaison.

Rule 5. (1) Each clerk shall designate 1 or more election inspectors per Election Day polling place, early voting site, or absent voter ballot processing facility as a challenger liaison. Unless otherwise specified, the challenger liaison at election related sites is the following:

(a) At an Election Day polling place, the precinct chairperson.

(b) At an early voting site, the early voting site chairperson.

(c) At the clerk's office, the most senior member of the clerk's election staff present.

(2) Challengers shall not communicate with election inspectors other than the challenger liaison or the challenger liaison's designee unless otherwise instructed by the challenger liaison or a member of the clerk's staff.

(3) The challenger liaison is responsible for answering challenger questions and addressing challenger concerns. The challenger liaison is made known to challengers on the challenger's arrival at the Election Day polling place, early voting site, absent voter ballot processing facility, or clerk's office.

(4) If multiple precincts or absent voter counting boards are included in a single location, a single election inspector may serve as the challenger liaison for multiple precincts or absent voter counting boards.

(5) Challenger liaisons are responsible for maintaining an orderly election process in the location where the challenger liaisons serve. Challenger liaisons may issue directions to challengers to ensure compliance with the act; with the election inspector's duty to maintain the peace, regularity**,** and order at the location where the challenger liaisons are serving under section 678 of the act, MCL 168.678; with these rules; or with the requirement of maintaining an orderly election process.

(6) Challengers are required to follow the directions of the challenger liaison. If the challenger objects to the direction, the objection shall be treated as a challenge to an election process described in R 168.209. The challenger may contact the clerk responsible for the jurisdiction to appeal directions that the challenger believes are prohibited by the act or these rules.

(7) A challenger liaison may delegate any of their duties under these rules to another election inspector serving in the same location.

R 168.206 Total number of challengers; challengers at Election Day polling places, early voting sites, or absent voter ballot processing facilities.

Rule 6. (1) The maximum number of challengers that a credentialing organization may field at a location is determined as follows:

(a) If the challengers are serving at an Election Day polling place, the total number of challengers allowed to each credentialing organization at a precinct must not exceed the total number allowed under section 730(1) of the act, MCL 168.730.

(b) If the challengers are serving at an early voting site, the total number of challengers allowed to each credentialing organization at a site is the total number allowed under section 730(1) of the act, MCL 168.730, as an early voting site is subject to the same requirements as an Election Day precinct pursuant to section 4(1)(m) of article II of the state constitution of 1963.

(c) If the challengers are serving at a single absent voter counting board, 1 challenger, as provided in section 730(1) of the act, MCL 168.730.

(d) If the challengers are serving at an absent voter ballot processing facility where more than 1 absent voter counting board is located, 1 challenger for each board, as provided in section 730(1) of the act, MCL 168.730.

(e) During processing and tabulation of absent voter ballots before Election Day, the total number of challengers allowed to each credentialing organization at the location must not exceed the total number allowed under section 765a(14) of the act, MCL 168.765a.

(f) If the challengers are serving at a local clerk's office or a satellite location maintained by a clerk, each credentialing organization is limited to 1 challenger at that office.

(g) If the challengers are serving at an Election Day vote center, the total number of challengers allowed to each credentialing organization at the location must not exceed the total number allowed under section 523b(2) of the act, MCL 168.523b.

(2) At no point shall more than 1 challenger from any single credentialing organization observe the activities of any single team of election inspectors processing ballots at an absent voter ballot processing facility.

(3) Clerks shall make reasonable efforts to accommodate the number of challengers equal to the number of credentialing organizations approved to credential challengers in the clerk's jurisdiction multiplied by the maximum number of challengers allowed in the location as calculated under subrule (1) of this rule.

(4) If an Election Day polling place, early voting site, or absent voter ballot processing facility cannot accommodate the total number of challengers contemplated in subrule (1) of this rule, the maximum number of challengers each credentialing organization is allowed to have present in that location as calculated in subrule (1) of this rule is decreased by an equal number for all credentialing organizations.

(5) If the absent voter ballot processing facility cannot accommodate 1 challenger for each credentialing organization, the clerk's notice under section 765a(12) of the act, MCL 168.765a, shall provide notice of the number of challengers that can be accommodated, and 1 challenger per organization is admitted until that number is met.

(6) If a challenger leaves a location where the challenger is credentialed to serve, the organization that credentialed that challenger is allowed to replace that challenger with a new challenger credentialed by that organization so long as the replacement process does not disrupt the work of election inspectors or clerk staff present at the location. A replacement challenger shall comply with the provisions of these rules.

R 168.207 Challenger training.

Rule 7. (1) Each credentialing organization shall provide each challenger credentialed by that organization with the manual created by the secretary of state governing challengers and poll watchers and other materials designated by the secretary of state.

(2) A credentialing organization is responsible for training each challenger credentialed by that organization regarding all of the following:

(a) Election Day polling place operation, if the challenger is designated to serve at an Election Day polling place.

(b) Early voting site operation, if the challenger is designated to serve at an early voting site.

(c) Absent voter counting board operation, if the challenger is designated to serve at an absent voter ballot processing facility.

(d) Voter registration and the issuance and acceptance of absent voter ballots at a clerk's office, if the challenger is designated to serve at a clerk's office.

(3) If the challenger is designated to serve at multiple categories of locations described in subrule (2) of this rule, the credentialing organization shall train the challenger on operations of all of the categories applicable at the location where the challenger is credentialed to serve.

(4) The challenger training must include, but is not limited to, an explanation of the processes and procedures during the category of location where the challenger is credentialed and the powers, rights, and duties of election challengers.

(5) Each challenger shall sign or electronically sign a written statement certifying that the challenger completed the required training and has a working knowledge of the material presented at training. The credentialing organization shall retain this statement for 2 years after the last date that the challenger served.

(6) An individual must not serve as a challenger unless the individual has completed challenger training as required under this rule within the last 2 calendar years. If a change in the election law, a change in election regulations, a court order, or another event substantially alters or abrogates information contained in the training, the secretary of state may require individuals wishing to serve as challengers to complete a supplemental training before serving as a challenger, even if that individual has completed the required challenger training within the 2 calendar years before the date the individual serves as a challenger.

R 168.208 Challenge to a voter's eligibility; challenge to an elector's ability to cast a ballot at an Election Day polling place or early voting site after receiving an absent voter ballot.

Rule 8. (1) A challenger may make a challenge to a voter's eligibility at an Election Day polling place or early voting site if the challenger has a good reason to believe that the individual is not a registered elector.

(2) The following are the only permissible reasons that a challenger may challenge a voter's eligibility:

(a) The individual is not registered to vote.

(b) The individual is less than 18 years of age on Election Day.

(c) The individual is not a United States citizen.

(d) The individual has not resided in the city or township where the individual is attempting to vote for 30 or more days before the election.

(3) The following are impermissible challenges to a voter's eligibility because they are improper reasons for challenge:

(a) The individual's race or ethnic background.

(b) The individual's sexual orientation or gender identity.

(c) The individual's physical or mental disability.

(d) The individual's inability to read, write, or speak English.

(e) The individual's need for assistance in the voting process.

(f) The individual's manner of dress.

(g) The individual's support for or opposition to a candidate, political party, or ballot question.

(h) The appearance or the challenger's impression of any of the preceding traits.

(i) Another characteristic or appearance of a characteristic that is not relevant to an individual's qualification to cast a ballot.

(4) A permissible challenge to a voter's eligibility triggers the process laid out in section 729 of the act, MCL 168.729.

(5) A challenge to a voter's eligibility must be made to the challenger liaison or to an election inspector designated by the challenger liaison.

(6) If a challenge to a voter's eligibility is properly made under subrule (2) of this rule, the challenger liaison or election inspector to whom the challenge is made shall ask the challenger to state with specificity which of the voter eligibility criteria the challenger believes the individual whose eligibility is challenged does not meet, and why the challenger believes the individual whose eligibility is challenged does not meet that criteria.

(7) A challenge determined to be made for reasons other than the reasons allowed under subrule (2) of this rule must be rejected as an impermissible challenge.

(8) Voter eligibility challenges are not permissible at an absent voter ballot processing facility.

R 168.209 Challenges to an election process.

Rule 9. (1) A challenger may challenge an election process, including the way that election inspectors are operating a polling place or early voting site or processing absent voter ballots at an absent voter ballot processing facility. The challenge must state the specific element or elements of the process that the challenger believes are being improperly performed.

(2) An explanation for a challenge to an election process must include an explanation of the proper performance of the element or elements in question but need not take the form of a direct citation to statute or election administration materials.

(3) A challenge to an election process is impermissible and must not be recorded by the election inspectors in either or both of the following circumstances:

(a) If the challenger cannot identify a specific element or multiple elements of the process that the challenger believes are improper if performed.

(b) If the challenger cannot adequately explain why the process is being performed in a manner prohibited by state law.

(4) A permissible challenge to an election process is rejected if the challenger liaison determines that the specific element or elements of the election process are being carried out in accordance with state law.

(5) If a challenger wishes to challenge recurring elements of an election process under subrule (1) of this rule, the challenger shall make a blanket challenge. A blanket challenge is recorded in the same manner as other challenges made under subrule (1) of this rule. The challenger shall not challenge subsequent repetitions of the process.

(6) A challenge to an election process must be made to the challenger liaison.

R 168.210 Impermissible challenges.

Rule 10. (1) Impermissible challenges are challenges that are made on improper grounds.

(2) Subject to R 168.209(3), a challenge determined to be impermissible is not accepted or rejected but is noted in the pollbook as impermissible if it is possible to do so without slowing the voting or absent voter ballot tabulation process.

(3) Repeated impermissible challenges may result in a challenger's removal from the polling place, early voting site, or absent voter ballot processing facility.

(4) Impermissible challenges include the following:

(a) Challenges made to something other than a voter's eligibility or an election process.

(b) Challenges made with no explanation for the challenge.

(c) Challenges made alleging lack of photo identification against a voter who signs an Affidavit of Voter Not in Possession of Picture ID.

(d) Challenges made for an improper reason as described in R 168.208(3).

(5) A challenger shall not make a challenge indiscriminately or without good cause. A challenge is made indiscriminately and without good cause if the challenger does not know or has a reasonable belief that the challenged individual is ineligible or that the election process is being improperly performed.

(6) A challenger shall not make challenges for the purpose of harassing an elector, an election inspector, or another individual, or interfering with election processes.

R 168.211 Rejected challenges.

Rule 11. (1) Rejected challenges are challenges that are permissible that the challenger liaison does not accept. Whether a challenge is permissible but rejected is a context-specific determination that depends on the type of challenge being made.

(2) If a challenge is permissible but rejected, the following information must be recorded in the pollbook:

(a) The challenger's name.

(b) The name of the credentialing organization that credentialed the challenger.

(c) The time of the challenge.

(d) The substance of the challenge.

(e) The reason why the challenge was rejected.

R 168.212 Accepted challenges.

Rule 12. (1) Accepted challenges are challenges that are permissible and the challenger liaison determines are correct.

(2) If a challenge is accepted, the following information must be recorded in the pollbook:

(a) The challenger's name.

(b) The time of the challenge.

(c) The substance of the challenge.

(d) The actions taken by the challenger liaison in response to the challenge.

R 168.213 Recording of challenges.

Rule 13. (1) If a challenger makes a challenge known to a challenger liaison without identifying the election process challenged as required by these rules, or otherwise fails to provide information required to support a challenge under the act or these rules, the challenger liaison shall ask the challenger to state the missing information necessary to support the challenge. If the challenger cannot state the information supporting the challenge, the challenge does not have a sufficient basis and is impermissible.

(2) A challenger making a challenge determined to have sufficient basis under subrule (1) of this rule shall be provided with a challenge recording form prescribed by the secretary of state. The challenger shall complete the form and return the form to the challenger liaison or election inspector designated by the challenger liaison in order for the challenge to be recorded. The challenge recording form must include fields specifying the time that the challenge is made, the name of the challenger making the challenge, the organization the challenger represents, the type of challenge being made, and other information determined necessary or appropriate by the secretary of state.

(3) Permissible challenges to a voter's eligibility properly made under these rules must be recorded in the physical pollbook and, if it is being used at that location, in the electronic pollbook. The record included in the pollbook must contain a short description of the challenge and the resolution of the challenge.

(4) If a challenge is properly made but ultimately rejected, the record of the challenge in the pollbook must note in the pollbook the reason that the challenge was rejected.

(5) After the close of polls or after ballot processing is completed, challenge recording forms must be maintained with the physical pollbook.

R 168.214 Rights and duties of challengers.

Rule 14. (1) When entering an Election Day polling place, early voting site, or absent voter ballot processing facility, a challenger shall make the challenger's presence known to the challenger liaison and complete the oath set out in R 168.215 before making any challenges or enjoying any of the rights accorded to a challenger. The challenger's name, credentialing organization, and time of arrival must be recorded in a pollbook. If the challenger is credentialed in more than 1 precinct or counting board at a location, the challenger liaison may allow the challenger to complete the oath only once and be recorded in only one pollbook.

(2) If the challenger leaves an Election Day polling place, early voting site, or absent voter ballot processing facility before the end of tabulation, the challenger shall notify the challenger liaison. On notification, the time that the challenger leaves must be recorded in the pollbook.

(3) Properly credentialed challengers who made the challenger's presence known to the challenger liaison and have signed the oath set out in R 168.215 have the right to the following:

(a) Be present in the polling place, early voting site, absent voter ballot processing facility, or Election Day vote center.

(b) Make challenges to the challenger liaison or the challenger liaison's designee as provided in R 168.208 and R 168.209.

(c) Be treated with respect by election inspectors.

(d) Be provided with reasonable assistance in performing the duties of a challenger.

(e) Inspect applications to vote, registration lists, and other printed materials used to conduct elections that are available at the location, so long as the challenger does not touch or handle any of those materials and so long as the inspection does not interfere with the voting process.

(f) Observe election inspectors' preparation of voting equipment at the polling place or early voting site before the opening of the polls during the early voting period and on Election Day, and observe election inspectors' handling of voting equipment after the close of polls on Election Day, so long as the challenger does not touch or handle any of that equipment and so long as that observation does not interfere with the election inspectors in completion of the election inspectors' duties.

(g) Observe the election process from a reasonable distance, so long as election inspectors have sufficient room to perform the election inspectors' duties and voters are not impeded in any way.

(h) If serving in a polling place or early voting site during the early voting period or on Election Day, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to photograph or make video or audio recordings of the polling place or early voting site except for posted election results.

(i) If serving in an absent voter ballot processing facility, to use electronic devices, so long as the device is not disruptive and so long as the device is not used to photograph or make video or audio recordings except for posted election results.

(j) Observe election-related activities at an early voting site or at a polling place on Election Day at any time the early voting site or polling place is open to the public, including before the opening of polls or after the closing of polls.

(k) Take notes about the election process.

(l) Notify the challenger liaison of perceived violations of election laws by third-parties, including electioneering within 100 feet of an entrance to the building where a polling place or early voting site is located, improper handling of a ballot by a voter, or other issues.

(m) Remain in the Election Day polling place, early voting site, or absent voter ballot processing facility after the close of polls or the end of tabulation and until the election inspectors complete the election inspectors' duties.

(n) If serving in an early voting site or polling place where ballots are being issued, stand behind the processing table and intermittently move close enough to view the pollbook as ballots are issued to voters and the voters' names are entered into the pollbook, so long as the challenger does not touch or handle the pollbook or otherwise interfere with the work of the election inspectors.

(o) If serving at an absent voter ballot processing facility, stand in a location where the tabulation of absent voter ballots can be observed, or stand in a location where the challenger can intermittently move close enough to view the entry of the names of voters whose ballots are being processed into the pollbook, so long as the challenger does not touch or handle any election-related materials.

(4) Challengers shall not:

(a) Speak with or interact in any way with voters.

(b) Threaten or intimidate voters, other challengers, or election inspectors, or attempt to threaten or intimidate voters, other challengers, or election inspectors at any stage of the voting process.

(c) Continuously stand in close proximity to election inspectors in a way a reasonable individual could find intimidating.

(d) Speak with or interact with election inspectors who are not the challenger liaison or the challenger liaison's designee, unless given explicit permission by the challenger liaison or a member of the clerk's staff.

(e) Make repeated impermissible challenges.

(f) Make a challenge indiscriminately or without good cause, or for the purpose of harassing, delaying, or annoying voters, election inspectors, or another individual.

(g) Physically touch or interact with ballots, absent voter ballot envelopes, electronic pollbooks, physical pollbooks, or other election materials.

(h) Stand so close to the pollbook or other materials that the challenger's proximity to those materials interferes with the election inspectors' ability to perform the election inspectors' duties.

(i) Use a device to photograph or make video or audio recordings in a polling place, early voting site, clerk's office, or at an absent voter ballot processing facility, other than the recording of election results.

(j) Provide or offer to provide assistance to voters.

(k) Wear any clothing or other apparel relating to any party, candidate, or proposition on the ballot or that disrupts the peace or order of the early voting site or polling place, unless the challenger is serving at an absent voter ballot processing facility and is given permission or instructed to wear an identifier by an election official.

(l) Wear clothing or other apparel expressly advocating for or against the election of a candidate or advocating the passage or defeat of a ballot measure.

(m) Set up a table or other furniture in the early voting site or polling place.

(n) Take any actions to disrupt or interfere with voting, ballot tabulation, or other election processes.

(5) A challenger may request and be provided with a chair to use when conducting challenger activities, so long as the provision of the chair does not interfere with the orderly conduct of elections. The placement of the chair is at the discretion of the challenger liaison or clerk.

R 168.215 Challenger oath.

Rule 15. (1) After making the challenger's presence known to the challenger liaison, a challenger who is not completing the oath in section 765a of the act, MCL 168.765a, shall complete the following oath:

"I (name of individual taking oath) do solemnly swear (or affirm) that I have reviewed the written materials designated by the Secretary of State for my training and will comply with the provisions in those materials. I will follow the directions of the election inspectors operating the (description of applicable location). Further, I shall not photograph, or audio or video record, within the (description of applicable location), except for posted election results."

(2) The oaths administered under subrule (1) of this rule must be placed in an envelope provided for this purpose and sealed with the red state seal. Following the election, the oaths must be delivered to the city or township clerk.

R 168.216 Challenger conduct; challenger liaison management of election locations.

Rule 16. (1) If a challenger is serving at a location with multiple precincts or absent voter counting boards, and if the credentialing organization whom the challenger represents has fewer challengers present than the number of precincts or absent voter counting boards in the location, the credentialing organization may designate a challenger to serve at multiple precincts or absent voter counting boards within the location, subject to reasonable limits by the clerk.

(2) Challengers enjoy the rights enumerated in R 168.214(3) only at the Election Day polling places, early voting sites, or absent voter ballot processing facilities where the challengers are designated to serve.

R 168.217 Prohibited challenger conduct; ejection of challengers.

Rule 17. (1) The right of a challenger to be present is conditional on the challenger's compliance with election inspectors' lawful commands under section 678 of the act, MCL 168.678. Any failure to comply with the lawful command of an election inspector may result in expulsion from the Election Day polling place, early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office.

(2) If a challenger liaison has a reasonable belief that a challenger is making challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is making impermissible challenges as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4), the challenger liaison shall warn the challenger of the challenger's noncompliant challenges or impermissible behavior.

(3) If a challenger liaison has a reasonable belief that a challenger who was warned under subrule (2) of this rule is continuing to make challenges that do not comply with the requirements of R 168.208 or R 168.209, that the challenger is making impermissible challenges as described in R 168.210, or that the challenger is violating any of the prohibitions in R 168.214(4), the challenger liaison may eject the challenger from the Election Day polling place,

early voting site, absent voter ballot processing facility, Election Day vote center, or clerk's office.

(4) If a challenger photographs, or audio or video records, within an Election Day polling place, early voting site, or absent voter ballot processing facility other than as allowed by the act, the election inspector shall eject the individual from the location.

(5) Any warning or ejection, and the reason for that warning or ejection, must be recorded in the physical pollbook and, if it is being used at that location, in the electronic pollbook.

(6) A challenger who is ejected may appeal that ejection by contacting the clerk of the jurisdiction where the challenger is serving, after the challenger has left the polling place, early voting site, or absent voter ballot processing facility.

R 168.218 Challengers serving in clerk offices.

Rule 18. (1) Challengers may be present at a clerk's office only if the clerk's office is open for business and during the period before an election when voters may request or return an absent voter ballot at the office.

(2) A challenger serving at a clerk's office shall make the challenger's presence known to the clerk as provided in R 168.214(1).

(3) A challenger serving at a clerk's office may be present only in areas of the clerk's office where an absent voter ballot may be requested. Nothing in these rules allows a challenger to be present in areas of the clerk's office reserved for the clerk or employees of the clerk.

(4) A challenger present at a clerk's office shall not view the qualified voter file.

(5) A challenger serving at a clerk's office shall follow directions given to the challenger by election staff.

(6) A challenger serving at a clerk's office shall not observe the selections a voter makes on the voter's absent voter ballot if that voter chooses to complete the absent voter ballot in the clerk's office.

(7) A challenger serving at a clerk's office is bound by the same duties as a challenger serving at an Election Day polling place, early voting site, or absent voter ballot processing facility.

(8) If a challenger photographs, or audio or video records at a clerk's office other than as allowed by the act, the election inspector shall eject the individual from the location.

R 168.219 Poll watcher.

Rule 19. (1) Poll watchers have the right to do the following:

(a) Be present at an Election Day polling place, early voting site, or absent voter ballot processing facility, if there is sufficient space.

(b) Observe the electoral process from a public viewing area designated by the clerk, which must be placed in a location that does not interfere in any way with the work of election inspectors present in the location, or with participation in the voting process if voters are present. If the public viewing area for a particular election location is full and cannot accommodate more poll watchers, and if the public viewing area cannot be enlarged without disrupting election processes, the clerk or challenger liaison must deny entry to additional poll watchers.

(c) Request to view the pollbook without handling it, but the challenger liaison may decline that request. A poll watcher shall never handle the pollbook or other election equipment or materials.

(2) Poll watchers are subject to all of the same restrictions as credentialed challengers, including the prohibitions against speaking with voters and against speaking with election inspectors other than the challenger liaison without the challenger liaison's permission.

(3) In addition to the restrictions in subrule (2) of this rule, poll watchers shall not do the following:

(a) Issue challenges.

(b) Sit or stand behind the processing table at an Election Day polling place or early voting site.

(c) Be present in any part of the polling place, early voting site, clerk's office, or absent voter ballot processing facility, except the designated public viewing area.

(4) If an election inspector has a reasonable belief that a poll watcher is in violation of subrule (2) or (3) of this rule, the election inspector shall warn the individual of the poll watcher's nonallowed behavior.

(5) If an election inspector reasonably believes that a poll watcher who was warned under subrule (4) of this rule is continuing to violate this rule, the election inspector must eject that poll watcher from the Election Day polling place, early voting site, or absent voter ballot processing facility. If the poll watcher refuses to leave after being informed of the ejection by an election inspector, the election inspector may request law enforcement remove the poll watcher from the polling place, early voting site, or absent voter ballot processing facility.

(6) If a poll watcher photographs, or audio or video records, within an Election Day polling place, early voting site, or absent voter ballot processing facility, the election inspector shall expel the individual from the location.

R 168.220 Challenger appeal of challenger liaison or election inspector determinations.

Rule 20. (1) A challenger may appeal to the city or township clerk of the jurisdiction where the challenger is serving a decision by the challenger liaison or other election inspectors relating to any of the following:

(a) The validity of a challenge.

(b) A challenger's conduct.

(c) A challenger's ejection.

(2) The following apply to a challenger appeal:

(a) The appeal must be made outside the hearing of voters.

(b) If the challenger is appealing the ejection, the appeal must be made after the challenger has left the polling place, early voting site, or absent voter ballot processing facility. If the city or township clerk rejects the challenger's ejection as improper, the clerk shall inform the challenger liaison and the challenger shall be allowed to reenter the polling place, early voting site, or absent voter ballot processing facility.

(c) At the request of a challenger, the challenger liaison shall provide the contact information of the city or township clerk.

(3) The challenger may appeal the decision of the local clerk to the bureau of elections.

(4) A challenger shall not appeal to the city or township clerk an election inspector's resolution of a challenge to a voter's eligibility to vote. Appeals of an election inspector's resolution of an eligibility challenge can only be adjudicated through the judicial process after Election Day.

PIME Analyses

Pure Integrity Michigan Elections (PIME) submitted comprehensive written opposition to all three rule sets. These analyses are available for download at no charge in Michigan Fair Elections Institute's library:

Pure Integrity Michigan Elections. "Comprehensive Legal Analysis of Rule Set 2025-13ST: Voter Registration Cancellation. Challenge. and Correction." Michigan Fair Elections Institute Library. https://b6d83fed-d9cb-4cb1-9e2f-60cfa1575f8d.filesusr.com/ugd/aa3979_c64ea3d9d617440db04a3e4237cecd7b.pdf.

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