



House Elections and Ethics Committee

September 21, 2021

Promote the Vote (“PTV”) submits the below written testimony in opposition to HBs 5252, 5288, and 5268.

Promote the Vote Opposes HB 5252 Because It Imposes an Impossible Deadline on the Secretary of State.

PTV opposes HB 5252 because it imposes an impossible deadline on the Secretary of State. Thus, it appears to have been drafted with the sole purpose of creating a requirement that cannot be fulfilled. PTV further opposes HB 5252 because requiring the Secretary to produce a summary of a petition - without providing any specific legal requirements for that summary - conflicts with existing legal requirements imposed on the Director of Elections, who is tasked with producing summaries that are true and impartial, among other specifications. Finally, PTV opposes HB 5252 because it would require the Secretary to produce a report that has already been produced and is currently available on the Department’s website, and thus is a solution in search of a problem.

HB 5252 amends the Michigan Election Code in numerous ways that are either unnecessary or impossible to satisfy. When a petition is filed with the Secretary of State, in her role serving the State Board of Canvassers, HB 5252 requires her to “immediately post” a summary of the amendment or question proposed and the date the petition was filed. Practically speaking, staff in the Bureau of Elections, who are responsible for receiving such a petition, cannot “immediately” publish a summary, since producing an accurate summary requires reviewing the often extensive petition language. Indeed, summarizing a petition can be difficult due to length, scope, or subject - or because the petition language is poorly drafted and contains contradictory and confusing language, as in the recent case of Secure MI Vote.

Moreover, the bill requires a “summary,” with no legal parameters or requirements for what that means, nor any requirement that the summary be accurate, impartial or even true. Without such requirements, there is no guarantee that a posted summary will inform - rather than misinform - the public.

HB 5252 also creates a serious conflict between whatever “summary” it seeks to implement and the established legal responsibility of the Director of Elections. The Director of Elections is tasked with preparing a summary, within specific legal requirements, to go on a petition to be circulated (pursuant to MCL 168.482b) and to go on the ballot (pursuant to MI Const., Article XII §2 and MCL 168.32). The Director’s summary must, among other things, be “true and impartial” and must not create “prejudice for or against” the petition or question. Furthermore, the process

of developing the summary for the petition or the ballot is robust and transparent. It includes a public hearing, solicitation of public comments, release of a proposed summary, and consideration and deliberation by the State Board of Canvassers. This process is currently underway with the Secure MI Vote petition. In contrast, HB 5252 contains no parameters for the creation or content of its “summary.”

PTV supports the Board of State Canvassers informing the public, in a timely manner, about petitions that have been filed. The Board has a website on which it posts information about recently-filed petitions and other petition-related activity.¹ In fact, the website includes a document entitled “Statewide Petition Status, 2021-2022 Election Cycle” which details the petitions that have been filed and their statuses.²

HB 5252 is a solution in search of a problem. To meet an impossible deadline, it could lead to the publication of vague, sloppy, prejudicial, and misleading petition summaries. Therefore, PTV opposes the bill.

Promote the Vote Opposes HB 5288, Because It Will Make It More Difficult, and in Some Cases Impossible, For Voters to Exercise Their Constitutional Right to Vote By Absentee Ballot.

All registered voters in Michigan have a full and equal constitutional right to vote by absentee ballot, either in person or by mail. Michigan voters enjoy the convenience of voting absentee by mail. They also support making it more accessible for all registered voters, as evidenced by their overwhelming support for Proposition 3 of 2018. However, rather than heeding this directive, HB 5288 does just the opposite. By prohibiting registered voters from using a digital or electronic signature to sign an absentee ballot application, the bill removes a critical option countless voters have utilized to exercise their constitutional right to vote by absentee ballot.

In 2021, many important tasks are completed electronically: paying taxes, applying for mortgages, renewing license plates, and even signing legal documents. By offering an online portal through which voters can apply for their absentee ballots, Michigan is in good company. According to the National Conference of State Legislatures, Michigan is among 14 states with an online or web-based portal through which a voter may request an absentee ballot.³ (A number of other states mail every registered voter a ballot without the voter having to fill out an

¹ Board of State Canvassers Website
(https://www.michigan.gov/sos/0,4670,7-127-1633_41221---,00.html).

² Board of State Canvassers, Statewide Petition Status, 2021-2022 Election Cycle
(https://www.michigan.gov/documents/sos/Statewide_Petition_Status_2021-22_723566_7.pdf).

³ National Conference of State Legislatures, States With Web-Based and Online Absentee Ballot Applications
(<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-6-states-with-web-based-and-online-absentee-ballot-applications.aspx>).

application⁴ and still others allow registered voters to sign up to receive a ballot in every election without an application.⁵) Nevertheless, HB 5288 would move Michigan backwards and remove the option of applying for an absentee ballot online. By removing the online option, HB 5288 would make it more difficult, and in some cases impossible, for voters to exercise their constitutional right to vote by absentee ballot. It has already been established that Michigan's elections are secure,⁶ and there hasn't even been an argument that removing the online application is necessary to make the system more secure. In Michigan, when a registered voter applies for an absentee ballot online, they do so using the same system that voters use to register to vote online, which was enacted by a Republican legislature and Republican governor in late 2018. There has been no contention, let alone evidence, that the system is insecure.

Finally - and most importantly - by requiring a registered voter to "physically" sign an application, HB 5288 will make it impossible for certain voters to exercise their constitutional right to vote by absentee ballot. Removing the online application would eliminate an option utilized by many voters who cannot "physically" sign an application due to disability, illness, or injury. The bill's express language that a voter must "physically sign" an application indicates a shocking disregard for these voters. Thus, HB 5288 would be subject to valid legal challenges under the Persons with Disabilities Civil Rights Act and the Americans with Disabilities Act.

Because HB 5288 will make it more difficult for many, and impossible for some, to exercise their constitutional right to vote by absentee ballot, PTV opposes the bill.

Promote the Vote Opposes HB 5268 Because It Would Prohibit Any Election Official in the State from Sending an Absent Voter Application to Millions of Voters.

First, Promote the Vote opposes HB 5268 because it is so poorly drafted that it is absurd. HB 5268 prohibits sending a voter an application for an absent voter ballot until that voter has already applied for an absent voter ballot.

HB 5268 would amend MCL 168.759 to add a subsection prohibiting clerks from sending an application to a voter, "unless the [voter] applies for an absent voter ballot." To be clear, a voter who has *already* applied for an absent voter ballot doesn't need an application. Ridiculously, voters who need an application, and who request one from their clerk, would be barred by the

⁴ National Conference of State Legislatures, VOPP: Table 18: States With All-Mail Elections (<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-18-states-with-all-mail-elections.aspx>)

⁵ National Conference of State Legislatures, VOPP: Table 3: State With Permanent Absentee Voting for All Voters, Voters with Permanent Disabilities and/or Senior Voters (<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-3-states-with-permanent-absentee-voting-for-all-voters-voters-with-permanent-disabilities-and-or-senior-voters.aspx>).

⁶ Michigan Senate Oversight Committee, Report on the November 2020 Election in Michigan (<https://www.misenategop.com/oversightcommittee/report/>) ("Our clear finding is that citizens should be confident the [Michigan 2020 election] results represent the true results of the ballots cast by the people of Michigan.").

bill from being sent one by their clerk, as those voters would not have already applied for an absent voter ballot.

The bill provides no exception allowing clerks to send an application to a voter who requests one, whether in person, by mail or by phone. The proposed language wholly and fully conflicts with existing (and unamended) subsection (5), which expressly requires clerks to have applications available “at all times” and to furnish a form to “anyone ... upon verbal or written request.” MCL 168.759. The only exception in HB 5268 is for registered voters already on the permanent absentee voter list.

By prohibiting all clerks and the Secretary of State from sending an application to any voter not on the permanent absentee voter list and who hasn't already applied for an absentee ballot, HB 5268 would make it impossible for millions of registered voters in Michigan - voters with a constitutional right to vote by absentee ballot - to obtain an application from any election official in the state.

Promote the Vote further opposes HB 5268 because of its blanket prohibition against the Secretary of State “sending” an application to a voter. In *Davis v. Secretary of State*, the Michigan Court of Appeals noted that the Secretary's decision to send unsolicited applications to voters “further[s] the purposes of informing qualified registered voters of their right to vote by absentee ballot and facilitate[s] their first step of applying for an absentee ballot to enable them to exercise their constitutional rights if they so choose.”⁷ PTV opposes HB 5268, because it would prohibit the Secretary from facilitating voters' exercise of their constitutional right to vote by absentee ballot.

HB 5268 would make it more difficult to vote absentee in direct defiance of the will of Michigan's voters. Making it more difficult for registered voters to obtain an absentee ballot application will not make the absentee voting process more secure. The process is already secure, thanks to a robust signature verification process. If the signature on the application does not match the signature on file, the applicant does not receive a ballot.

Each and every effort by the Michigan legislature to limit access to applications is an undue burden on the constitutional right to vote by absentee ballot, a right guaranteed to every registered voter in Michigan through Proposal 3 of 2018. Making it harder - or impossible - for registered voters in Michigan to obtain an application for an absentee ballot is analogous to locking the polling place door on Election Day. It is intended to disenfranchise voters, and it will disenfranchise voters. For all of these reasons, Promote the Vote opposes HB 5268.

⁷ *Davis v. Secretary of State*, No. 354622, Michigan Court of Appeals, Sept. 16, 2020 (https://www.brennancenter.org/sites/default/files/2020-09/20200916_Court%20of%20Appeals%20Order%20Affirming%20Summary%20Disposition.pdf).