



# Secretary of State Jocelyn Benson

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**TESTIMONY OF SECRETARY OF STATE JOCELYN BENSON  
HOUSE COMMITTEE ON ELECTIONS AND ETHICS  
MARCH 6, 2019**

Thank you for the opportunity to be here today. It is a great honor to serve as Michigan's 43<sup>rd</sup> Secretary of State and I am grateful for the invitation to share with you my perspective and goals for our administration.

Madame chair, vice chair, committee members, a healthy democracy requires an informed and engaged citizenry. In my role as our state's chief elections officer, my top priority is to do everything I can to enable our citizens to be informed and engaged in our state, and in the months and years ahead I am eager to work in collaboration with all of you, as well as your colleagues in the State Senate, to advance that goal. Today I want to talk about how we can promote an informed and engaged electorate through making it easier to vote and harder to cheat in Michigan and passing legislation that will take us from worst to first in transparency and ethics laws.

## **Easier to Vote, Harder to Cheat**

Last November, Michigan voters spoke loud and clear: they also want to make it easier to vote and harder to cheat in our state. When voters enacted the Promote the Vote initiative, they enshrined in our state constitution several new rights and voting protections, including a right to vote absentee without a reason, to register to vote at any point up to and including on election day, the right to be automatically registered to vote when they conduct business with our office, and the right to have the results of statewide elections audited to ensure the accuracy and integrity of the vote.

Now, it is up to all of us to implement those reforms efficiently and effectively, with an eye towards, again, making it easier to vote and harder to cheat.

To that end, I am convening a pair of task forces to ensure our elections are fair, accessible, and secure. These advisory groups are composed of local election officials, in-state organizations that represent Michigan's diverse communities, and national experts. The first, an election modernization advisory committee, will focus on implementing the Promote the Vote initiative and other election reforms. It met for the first time this week and has already provided constructive suggestions. I will announce the members of the second group, which will focus on election security, in the near future. Both will provide important advice on best practices and local perspectives. But no matter what they recommend, legislative efforts to improve our elections will be critical.

Those efforts I believe should follow two tracks: supporting legislation to ensure our statutory requirements are in sync and not in conflict with our citizens' state constitutional rights, and enacting new policies that will ensure we are comprehensively improving our elections.

On the first track, the reforms enacted in the Promote the Vote Initiative are wide ranging and will go a long way to improving the convenience of voting in our state. But there are a number of changes to our current election law that we must consider this year in order to ensure our clerks and poll workers are fully prepared and able to administer these new policies – and that all citizens can take advantage of their expanded voting rights.

For example, all citizens now, once registered, have a right to vote an absent vote ballot without giving a reason in the forty days prior to an election. However, I recommend you consider a number of changes to ensure that this right is implemented effectively and securely:

1. **Counting absentee ballots prior to election day.** Currently clerks may not begin counting ballots until election day. As the number of absentee ballots is expected to increase significantly under the new requirements, we recommend providing clerks the ability to begin counting ballots on the Friday prior to election day. This will help ensure they are able to provide accurate election results as soon as possible following the close of the polls on election day itself, while reducing the possibility of counting errors.
2. **Counting ballots postmarked on or before election day.** Under current Michigan law, all ballots must be received by 8:00pm on the date of the election in order to count. With more ballots transmitted through the mail now than ever before, Michigan should join many other states in allowing ballots received within a certain window following election day to still count so long as they are postmarked on or before election day. This change is particularly critical for ensuring our military voters have an opportunity to have their ballots counted.
3. **Improved signature verification training for clerks and opportunity for voters to correct mismatched signatures.** A voter's signature is the primary and most reliable way of protecting against the possibility of fraud. I recommend increasing support for signature verification to ensure our clerks and their staff are armed with the most advanced and accurate techniques for signature matching. Similarly, Michigan should follow suit with other states to require election officials to try to notify voters who send in ballot envelopes with missing signatures – or to any voter whose signature on a ballot envelope doesn't match the signature on file with the county – to give them an opportunity to correct any errors and ensure their vote is counted.

On the second track, there are a number of reforms that were not in the Promote the Vote initiative that we should also consider if we are to continue on the course of modernizing our elections.

We should give young people more ability to engage in their Democracy. You can vote at 18, but the current statute requires attesting to being 17 ½ years of age to sign up with a traditional registration form. We should follow the lead of other states and allow 16 and 17-year-olds to use these forms to pre-register, so that they will be added to the list at 18.

We should also eliminate out-of-date requirements that create unnecessary and inefficient mandates for election officials. For example, the law requires all local clerks to keep and maintain duplicative paper copies of registration records, even though jurisdictions have electronic versions of these records and most never even touch the paper records. This means many clerks waste time and resources keeping and maintaining records that they do not need or use. The law also contains out-of-date, overly specific instructions and technical requirements for absentee and in-person ballots. This makes it difficult to design clear, user-friendly absentee ballot envelopes and other materials. We should consider revising the Election Law to eliminate these and other antiquated rules, which confuse voters and waste resources.

We should expand on weekend hours for voting and registration, particularly for high-turnout elections. Promote the Vote created an 8-hour window offered in some combination of Saturday and Sunday hours. This is helpful, but for high-turnout, even-year elections we should guarantee a minimum of 8 hours of voting on both Saturday and Sunday. This will standardize the hours for these elections, so voters don't have to try to find out when they can vote. It will also make it easier for busy Michiganders to find time to cast a ballot, and will ease long lines on election day itself.

At a time when our elections are increasingly under attack, including through foreign interference seeking to undermine our democracy, we should create penalties for deceptive election practices. It should be illegal to knowingly deceive voters about their rights or election information, such as by telling them the wrong day to vote, giving them false information about the consequences of registering to vote, or lying about the contents of a petition they are signing.

There are many other bold reforms we can consider to help modernize our elections, such as making election day a holiday. I hope that we can work collaboratively to explore these reforms together and position Michigan as a national model for secure and accessible elections.

### **Worst to First in Transparency, Ethics, and Campaign Finance**

But an engaged citizenry is only one step of improving our democracy. Voters must also be informed if they are able to fully participate in our republic. And as my mentor, Judge Damon J. Keith, once famously wrote: "Democracies Die Behind Closed Doors." This mantra, which hangs over the entrance at the law school where I once served as Dean, is and will be a central tenet of my administration. I take this issue seriously in particular because Michigan has consistently been ranked last among all states or received an "F" rating among for its transparency and ethics requirements.

Next week is Sunshine Week, that one week of the year when we collectively recognize the importance of shining a light on government. This can help us move closer to becoming a state where citizens are fully informed and able to hold their elected officials accountable. Yet we need to now move beyond words and into action. Michigan residents have a right to know who is funding the campaigns of politicians and ballot initiatives, what conflicts of interest their public leaders may have, and who is lobbying their public officials.

To that end, I hope to work with you to ensure greater disclosure of the sources of money in our political arena. That includes subjecting 527 committees and administrative accounts engaged in political activity to disclosure requirements.

We also need to clearly define electioneering communications to match the definition used in federal elections and in 30 other states – namely, any paid communication that refers to a candidate within a defined period close to an election where they are named on the ballot should be considered political communication subject to disclosure laws.

We must strengthen our campaign finance rules and the enforcement of those rules. We need clearer standards that are less open to interpretation and create less potential for the exploitation of loopholes or ambiguity. A clear definition of electioneering communications and a schedule for fines, penalties, and other enforcement procedures will ensure our laws are enforced.

An example is the Build a Better Michigan case. The lack of clarity in the law and past precedent led the professional staff in the Bureau of Elections to recommend dismissal of the complaint with no penalty at all. I was concerned that in doing so, we would by default be issuing an interpretation of the law that would reduce transparency. Because the law was not clear, we needed to reach a settlement to avoid an appeal of our expanded interpretation of the law. With an appeal to the courts there was a risk that the law would be narrowly interpreted to reduce transparency or that there would be no penalty or fine assessed at all.

As a result we had an imperfect outcome that could have been avoided if the law was clear to begin with, and all parties had notice of that clear definition and potential penalties when engaging in the express advocacy.

Next, we must ensure we are able to collect the fines we assess to anyone in violation of campaign finance law. To date nearly \$1.5 million in campaign fees and fines have not been paid, and our department has little ability, beyond assessing the late fees and penalties, to force the collection of these fines. I encourage you to consider legislation that will enable tough enforcement and collection of campaign finance penalties.

We also need to pull back the curtain and promote greater transparency so that we are a government for the people, not hidden from the people. This includes expanding the Freedom of Information Act (FOIA) to apply to the executive and legislative branch equally, with a goal of helping citizens get access to information about who or what is influencing their policy making decisions. And we also need to eliminate the potential for quid pro quo corruption and "Pay to Play" by banning companies (and associated individuals with a controlling interest) that receive state grants or contracts from making political contributions to state candidates.

We need to require personal financial disclosure for legislators and executive leaders to ensure citizens are aware of potential conflicts of interest that may impact their elected leaders, and promote ethics in leadership by enforcing the Conflict of Interest Act in a way that provides a process to identify members with a legislative conflict of interest.

And finally, we need to slow the fast-track recruitment between term-limited elected officials and the lobbying corps by instituting a mandatory 2-year "cooling off" period between leaving office as a legislator and working as a lobbyist. Similarly, we should require former legislators who define their work as "legislative consulting" to register and report as lobbyists.

In addition to these goals for legislative collaboration, next week I will be announcing a series of actions that the Department of State will take proactively to implement improvements in the areas of disclosure, ethics and transparency. For example, where we are not required to disclose our personal finances, we will do so voluntarily and encourage or incentivize others to follow that lead.

### **Conclusion**

A healthy democracy requires an informed and engaged electorate: no more and no less. We have an opportunity, together, to work on behalf of our citizens to help them be more informed, and more engaged. The reforms I spoke of today help us get there, so that Michigan can resume its rightful place as a national leader in election administration. I believe that is not a partisan effort but simply the right thing to do for all of our citizens, and I hope we can work together in getting us there.



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## Restoring the Public Trust

Michigan residents have a right to know who is funding the campaigns of politicians and ballot initiatives, what conflicts of interest their public leaders may have, and who is lobbying their public officials.

Our state has been on the wrong track on government transparency. According to the Center for Public Integrity, we have the weakest transparency and ethics laws in the nation. Working together, we can make Michigan a leader in transparent government and go from worst to first. To that end, Secretary of State Jocelyn Benson is sharing ideas to restore the public's trust in state government.

### Legislative Collaboration

Secretary Benson has several ideas to achieve these goals that will require legislative collaboration. She looks forward to meeting with legislators on these and other issues to ensure that the people of Michigan have the transparent and accountable government they deserve.

### **Show us the money: Full disclosure of all money in politics**

- Ensure that all 527 committees are reporting. While they are created primarily to influence elections, some of these tax-exempt organizations are not regulated under state campaign finance laws because they do not “expressly advocate” for the election or defeat of a candidate or party.
- Close the administrative account loophole by applying reporting requirements for all receipts and disbursements. This loophole was originally allowed so political parties could purchase paper clips and pens without the hassle of reporting. Now, it is used for large, undisclosed contributions from corporations and unions and spent on so-called “issue advocacy” or contributions to issue-advocacy entities.
- End the “Express Advocacy” reporting exception by creating a threshold definition for electioneering in the Michigan Campaign Finance Act.
  - Clarify the definition for electioneering communication in the Michigan Campaign Finance Act to match the language used for federal elections and in 30 states. Specifically, this would mean that any paid communication that refers to a candidate and is publicly distributed close to an election in which that candidate appears on the ballot is subject to disclosure laws.
  - Under the electioneering definition, it doesn't matter what the ad says, or how it says it. If it features or refers to a candidate at all during a statutory time period, then it is an “electioneering communication.”



- Tighten LLC reporting requirements to ensure secret and foreign money do not corrupt our elections. If an LLC gives money, that amount should be assessed equally to each officer's individual campaign limit, and full names should be disclosed.

### **Pull back the curtain: A government for the people, not hidden from the people**

- Expand the Freedom of Information Act (FOIA) so it applies to the Governor and the Legislature.
- Eliminate the potential for quid pro quo corruption and "Pay to Play" by banning companies (and associated individuals with a controlling interest) that receive state grants or contracts from making political contributions.

### **Let the light in: Ethics and transparency bring influence out of the shadows**

- Require personal financial disclosures from elected officials.
- Promote ethics in leadership by enforcement of the Conflict of Interest Act (Act 318 of 1968). This Act provides a process to identify members with a legislative conflict of interest.
- Slow the fast-track recruitment between the Legislature and the lobbying corps by instituting a mandatory 2-year "cooling off" period between leaving office as a legislator and working as a lobbyist.
- Require former legislators who are defining their work as "legislative consulting" to register and report as lobbyists.

### **Secretary of State Actions**

In addition to these goals for legislative collaboration, during Sunshine Week (March 10-16), Secretary Benson will announce a series of actions that she and the Department of State will take to implement improvements in the areas of disclosure, ethics and transparency. She intends to lead by example and to encourage others to follow that lead.

### **Public Engagement**

As part of her next steps to accomplish her transparency agenda, Secretary Benson plans to have conversations with residents at town hall meetings across the state, where she will welcome their feedback. Efforts to improve disclosure and other changes are meaningful only if they help members of the public become more informed and enable them to hold elected officials accountable.

