

Penny M. Venetis

Testimony Opposing Michigan HB 4210, May 9 2023

Michigan House Committee on Elections

Thank you for allowing me to testify. My name is Penny Venetis. I am a Distinguished Clinical Prof of Law, and the Dickinson R. Debevoise Scholar and Director of the International Human Rights Clinic at Rutgers University Law School, in New Jersey. Among other things, I am an expert in legal issues relating to voting machine security, and the legal implications of using voting machines that are vulnerable to attack.

I have the greatest respect for Secretary of State Benson and many of her policies. With all due respect, however, on the issue of Internet-based voting, she is simply incorrect. There is no such thing as secure Internet-based voting.

You heard from University of Michigan Professor Halderman about the insecurity, from a scientific perspective, of Internet-based voting systems. Professor Halderman has hacked into several online ballot-return voting systems, including in the District of Columbia and the University of Michigan. Professor Halderman has been recognized as an expert in computer security by Secretary of State Benson herself, who appointed him to serve as Co-Chair of her own Commission on Voting Machines Security. That group of election and voting security experts concluded that Internet-based voting systems, including Internet-based ballot returns, are too insecure to use in Michigan elections. The Committee warned the state that votes cast on the Internet could easily be changed or erased without a trace.

The Michigan Committee's findings are consistent with every other finding by this country's top computer security experts, as well as findings by the U.S. Department of Homeland Security and the FBI. Because of these clear warnings against Internet-based voting, there are significant legal ramifications of enacting HB 4210, or expanding Internet voting in other ways suggested by Secretary Benson during her testimony before the Committee (to voters with "print disabilities").

If Michigan enacts HB 4210 and continues to expand its use of Internet based voting, it opens itself up to legal attack under the Equal Protection Clauses of the US and Michigan constitutions, the "purity of elections clause" of the MI constitution, the Americans With Disabilities Act, and other federal and state statutes. That is because, the state of Michigan has been told clearly by its very own Commission on Voting Machines Security that votes cast on Internet-based systems can be manipulated, altered and erased without a trace. If HB 4210 is enacted, Michigan will be knowingly ignoring its State Commission's advice (and

the uncontested science on which it is based), and will knowingly be placing the votes of only certain members of the electorate in clear jeopardy of erasure. So, if Michigan enacts HB 4210 it will be telling military family members that their votes do not matter enough to be protected. As such, HB 4210 achieves the opposite of what it purports to do. Rather than guaranteeing that votes will be counted, it places votes at risk.

I want to close by telling you about a lawsuit I brought in New Jersey challenging certain electronic voting machines. The litigation lasted roughly ten years. In 2010, the judge issued a 100-page opinion, and a 20-page order after two multi-month trials.

We did not win every aspect of our challenge. But, we did secure a victory in what the judge thought was so clear-cut that even our adversary's expert agreed. A court order was issued in 2010 that said unequivocally that the Internet should NEVER be used in voting. It should not be used for ballot return, or in any context. That is because votes sent via the Internet can be manipulated without a trace.

Ten years later, in the spring of 2020, that order was renewed multiple times by a different judge. During the Presidential Primary season, the state of NJ tried to implement Internet voting for persons with disabilities, during the height of the Covid-19 Pandemic, before we had vaccines. After I filed a lawsuit, a judge invoked the 2010 order and prohibited the State from using Internet voting in any fashion because we know, with scientific certainty, that votes cast on the Internet can be erased without a trace.

A few months later, in 2020 two other times, judges also banned attempts by the ACLU and disability rights groups to try to implement Internet voting. Those groups tried to implement Internet-based voting in very limited circumstances, and only for very limited periods of time, on Election Day. For the reasons discussed above, they too lost. Judges reiterated that Internet-based voting is too insecure, and places votes in jeopardy rather than protecting them.

Allowing Internet voting in any capacity violates Michigan and federal law. It opens ballots up to attack, as the United States Department of Homeland Security and the FBI have warned. Secretary of State Benson should tell this to military spouses. I am certain that they will understand, and thank her for protecting their votes.

For the reasons discussed above, I urge this Committee not to pass HB 4210, and to oppose all efforts to expand Internet-based voting in Michigan.