

The Impact of the COVID-19 Pandemic on Voting Rights and Access in Michigan



A Briefing Report of the
Michigan Advisory Committee to the
U.S. Commission on Civil Rights

May 2021

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Michigan Advisory Committee (Committee) thanks each of the speakers who presented to the Committee during their public meetings on the critically important and timely topic of the impact of the COVID-19 pandemic on voting rights and access.

**Michigan Advisory Committee to the
U.S. Commission on Civil Rights**

The Michigan Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding the impact of the COVID-19 pandemic on voting rights and access in Michigan. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via video conference on February 8, 2021 and February 17, 2021.

This report begins with a brief background of the issues to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. This report is intended to focus on civil rights concerns regarding the impact of the COVID-19 pandemic on voting rights and access in Michigan. Specifically, the Committee sought to examine the impact of the pandemic on voting rights and access for federally protected classes, including race, color, religion, sex, age, disability, or national origin. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

Michigan Advisory Committee to the U.S. Commission on Civil Rights

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Briefing Report

To: The U.S. Commission on Civil Rights

From: The Michigan Advisory Committee to the U.S. Commission on Civil Rights

Date: May 14, 2021

Subject: The Impact of the COVID-19 Pandemic on Voting Rights and Access

In April 2020, the Michigan Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) published a report¹ concerning voting rights in the state. The Committee elected to supplement this study in July and August 2020 to specifically address voting rights and access in the context of the COVID-19 pandemic.² The Committee heard initial testimony regarding pandemic-related challenges prior to the November general election via video conference on September 21, 2020.³ Upon the completion of this hearing, the Committee published a pre-election memorandum detailing their concerns and recommendations.⁴

The Committee heard additional testimony as part of this inquiry via video conference on February 8, 2021 and February 17, 2021.⁵ The following report results from a review of the testimony provided at these hearings, combined with information from the pre-election memorandum. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on the impact of the COVID-19 pandemic on voting rights and access in Michigan. While other important topics may have surfaced throughout the Committee's inquiry, matters outside the scope of this specific civil rights mandate were left for another discussion. This report and the recommendations included within it were adopted by a majority of the Committee on May 14, 2021.

¹ Voting Rights and Access in Michigan, Michigan Advisory Committee to the U.S. Commission on Civil Rights, April 2020, <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>.

² Project proposal and meeting records available at:

<https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gziPAAQ>

³ Meeting records and transcripts are available in the Appendix.

Briefing before the Michigan Advisory Committee to the U.S. Commission on Civil Rights, September 21, 2020 (web-based), Transcript (hereinafter cited as "Transcript I").

⁴ Voting Rights in Michigan in the Context of the COVID-19 Pandemic, Michigan Advisory Committee to the U.S. Commission on Civil Rights, October 2020, <https://www.usccr.gov/files/2020-11-10-preelection-memo-COVID19-voting-rights.pdf>

⁵ Meeting records and transcripts are available at: <https://bit.ly/3g7B08v>

Briefing before the Michigan Advisory Committee to the U.S. Commission on Civil Rights, February 8, 2021 (web-based), Transcript (hereinafter cited as "Transcript II").

Briefing before the Michigan Advisory Committee to the U.S. Commission on Civil Rights, February 17, 2021 (web-based), Transcript (hereinafter cited as "Transcript III").

Background

Quintessential to American democracy, voting reflects the determination of generations of Americans in the fight for justice and equality. As outlined in the Committee’s April 2020 report,⁶ the U.S. Voting Rights Act of 1965 and the National Voter Registration Act of 1993 sought to protect the right to vote. The Voting Rights Act of 1965 outlawed discriminatory voting practices and aimed to increase the number of people registered to vote.⁷ The National Voter Registration Act ensured all eligible Americans had the opportunity to register to vote and maintain their registration.⁸

In the State of Michigan, voters must be 18 years of age by Election Day,⁹ as well as a U.S. citizen and resident of the state for at least 30 days prior to Election Day.¹⁰ In 2018, Michigan voters expanded access to the ballot by approving Proposal 3, which added eight voting policies¹¹ to the Michigan Constitution, including straight-ticket voting,¹² automatic voter registration,¹³ same-day voter registration,¹⁴ and no-reason absentee voting.¹⁵

The confluence of the above policies increased voter turnout for the November 2020 general election,¹⁶ but this election cycle proved exceptional given its occurrence during the COVID-19 pandemic. On March 10, 2020, the Michigan Department of Health and Human Services identified the first two cases of COVID-19 in the state,¹⁷ and as a result, Governor Whitmer declared a state of emergency.¹⁸ On the same day, voters in Michigan participated in the 2020

⁶ Voting Rights and Access in Michigan, Michigan Advisory Committee to the U.S. Commission on Civil Rights, April 2020, <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>.

⁷ Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (codified as 52 U.S.C. § 10301).

⁸ National Voter Registration Act of 1993, Pub. L. 103-31, 107 Stat. 77 (1993) (codified as 52 U.S.C. 20501-20511); see also U.S. Department of Justice, Civil Rights Division, “About the National Voter Registration Act,” <https://www.justice.gov/crt/about-national-voter-registration-act> (accessed March 31, 2021).

⁹ MICH. COMP. LAWS § 168.495; Michigan Bureau of Elections, Election Officials’ Manual, Chapter 2: Voter Registration https://www.michigan.gov/documents/sos/II_Voter_Registration_265983_7.pdf (updated November 2019).

¹⁰ MICH. COMP. LAWS § 168.495 (Michigan voter registration application; contents).

¹¹ Michigan Proposal 3, Voting Policies in State Constitution Initiative (2018), *Ballotpedia*, 2018, [https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_(2018)) (accessed March 31, 2021).

¹² MICH. CONST. OF 1963, art. II, § 4 (1)(c) (2018).

¹³ MICH. CONST. OF 1963, art. II, § 4 (1)(d) (2018).

¹⁴ MICH. CONST. OF 1963, art. II, § 4 (1)(f) (2018).

¹⁵ MICH. CONST. OF 1963, art. II, § 4 (1)(g) (2018).

¹⁶ Drew Desilver, “Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president,” *Pew Research Center*, January 28, 2021, <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/> (accessed March 31, 2021).

¹⁷ Exec. Order 2020-04: Declaration of State Emergency (Mar. 10, 2020) at: https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521576--,00.html

¹⁸ *Id.*

presidential primary. Many waited in long lines to cast their ballot,¹⁹ and officials claimed that same-day registration substantially contributed to the extended delays.²⁰ Due to the influence of the pandemic on the March primaries, the Committee sought to understand the impact of the COVID-19 pandemic on voting rights and access in the November 2020 general election.

The Committee submits this report to the Commission at a moment when members of the Michigan Legislature have proposed a 39-bill package that would restrict or eliminate many of the exact voting procedures that were put in place during the pandemic to protect access to the ballot.²¹ Among other rules, the package would “tighten photo identification requirements for in-person voting, create new identification rules for absentee ballots, and limit the use of absentee ballot drop boxes.”²² Two of the bills would expand voter access, such as requiring clerks to open for early voting²³ and allowing 16-year-olds to pre-register to vote when they obtain their driver’s license.²⁴ However, the remaining 37 bills would inhibit voting, including preventing local officials from providing free return postage on absentee ballots²⁵ and prohibiting “election officials from using private grants to purchase new voting equipment or improve administration.”²⁶ Legislators are preparing to pass these restrictive measures through a rare maneuver which will allow them to bypass both gubernatorial and electoral approval.²⁷ It is in this context the Committee submits this report to the Commission.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,²⁸ the Michigan Advisory Committee submits the following findings to the Commission regarding the impact of the

¹⁹ Chelsea Stahl, “March 10 primaries live updates: Biden bests Sanders in 4 states,” *NBC News*, March 17, 2020, <https://www.nbcnews.com/politics/2020-election/live-blog/march-10-primaries-live-updates-democratic-presidential-candidates-face-6-n1153296/ncrd1155051#liveBlogHeader> (accessed March 31, 2021).

²⁰ *Ibid.*

²¹ Dept. of State, *Summary of Bills that restrict Voting Rights and Harm Elections*, 2021,

https://www.michigan.gov/documents/sos/Summary_of_Bills_to_Restrict_Voting_Rights_722845_7.pdf

²² S.B. 285, 101st Leg., Reg. Sess. (Mich. 2021)(bill tightening photo ID requirements for in-person voting and absentee voting) and S.B. 273, 101st Leg., Reg. Sess. (Mich. 2021)(requiring approval for new absentee voter ballot drop boxes as well as previously used absentee voter ballot drop boxes); S.B. 286, 101st Leg., Reg. Sess. (Mich. 2021)(adds new restrictions regarding when voters may use absentee voter ballot drop boxes); Jonathan Oosting, “How Republicans Plan to Tighten Michigan Voting Laws, Evade Whitmer Veto,” *Bridge Michigan*, April 01, 2021, <https://www.bridgemi.com/michigan-government/how-republicans-plan-tighten-michigan-voting-laws-evade-whitmer-veto> (accessed May 07, 2021).

²³ S.B. 300, 101st Leg., Reg. Sess. (Mich. 2021); S.B. 301, 101st Leg., Reg. Sess. (Mich. 2021).

²⁴ S.B. 274, 101st Leg., Reg. Sess. (Mich. 2021).

²⁵ S.B. 287, 101st Leg., Reg. Sess. (Mich. 2021)(prohibits using funds for prepaid postage on return envelopes).

²⁶ S.B. 284, 101st Leg., Reg. Sess. (Mich. 2021)(prohibits the use of gift or any other funding to purchase voting equipment); Oosting, “How Republicans Plan to Tighten Michigan Voting Laws, Evade Whitmer Veto.”

²⁷ Oosting, “How Republicans Plan to Tighten Michigan Voting Laws, Evade Whitmer Veto.”

²⁸ 45 C.F.R. § 703.2 (2018).

COVID-19 pandemic on voting rights and access in the state. This report seeks to highlight the most salient civil rights themes as they emerged from the Committee’s inquiry. The Committee offers a general outline of themes, along with appropriate additional resources, as topics of reference for the Commission’s consideration. The complete meeting transcripts are included in Appendix A for further reference.

The following findings result directly from the testimony.

Finding I: The COVID-19 pandemic, as well as outstanding barriers to the ballot, created a series of challenges for voters in Michigan during the November 2020 general election.

Prior to the COVID-19 pandemic, voters in Michigan confronted several barriers to the ballot, including:

- Issues with signature mismatches²⁹ and improper forms of identification;³⁰
- Limited access to election materials in multiple languages.³¹
- Limited access to voter assist terminals and ballot-marking machines for people with disabilities;³²
- Lack of privacy for blind and visually impaired voters, particularly as it pertains to absentee ballots;³³ and
- Confusion as to who can pick up and drop off absentee ballots for people with disabilities or people with serious illness.³⁴

The pandemic exacerbated some of these challenges, given that organizations could not hold in-person events to address concerns³⁵ or keep voters aware of the changing election rules, some of which occurred late in the process.³⁶ The technology gap also inhibited historically disadvantaged communities, such as communities of color and communities with less technology access, from accessing vital resources like MichiganVoting.org or the application to request an absentee ballot.³⁷ The pandemic seemingly intensified the chronic issue of misinformation, too, in that people did not have access to one another to debunk myths.³⁸ Misinformation about how and where to vote proved particularly problematic, as social media, robocalls, and robotexts

²⁹ Goldenberg Testimony, Transcript II, p. 3, lines 27-32; Cosma Testimony, Transcript III, p. 16, lines 30-38.

³⁰ Spencer Testimony, Transcript II, p. 16, lines 38-40; ³⁰ Spencer Testimony, Transcript II, p. 17, lines 4-12.

³¹ Spencer Testimony, Transcript II, p. 16, lines 24-32.

³² Dolente Testimony, Transcript II, p. 25, lines 33-36.

³³ Cosma Testimony, Transcript III, p. 15, lines 19-21.

³⁴ Cosma Testimony, Transcript III, p. 16, lines 9-12.

³⁵ Goldenberg Testimony, Transcript II, p. 4, lines 19-22.

³⁶ Goldenberg Testimony, Transcript II, p. 5, lines 5-9; Goldenberg Testimony, Transcript II, p. 5, lines 21-26.

³⁷ Spencer Testimony, Transcript II, p. 15, lines 9-23.

³⁸ Spencer Testimony, Transcript II, p. 15-16, lines 38-40, 1-2.

created confusion in a system where people generally received their news and information online.³⁹

While Michigan implemented no-reason absentee voting in 2018 with Proposal 3, residents had to apply for an absentee ballot before receiving it.⁴⁰ There were concerns over the availability of accessible and comprehensive information regarding rule changes with respect to Proposal 3 and COVID-19 precautions, particularly for people with disabilities⁴¹ and people in rural communities.⁴² Disability rights advocates worried about safety precautions, such as COVID-safe modes of transportation to the polls,⁴³ as many people with disabilities are more susceptible to getting and dying from the disease.⁴⁴ Furthermore, some clerks' offices, particularly in more rural areas of the state, were open only one or two days a week⁴⁵ and smaller offices did not have the capacity to extend their hours to process absentee ballots.⁴⁶

During the election, some clerks' offices were able to solve many of the problems that arose, instituting innovations like extended hours, curbside voting, drop boxes, satellite offices, and pre-paid postage for absentee ballots.⁴⁷ Additionally, the Office of the Secretary of State collaborated with community partners to develop election materials in multiple languages, including Arabic, Bengali, Burmese, Hindi, Korean, Mandarin, Spanish, Tagalog, and Urdu.⁴⁸ Some clerks' offices successfully implemented COVID-19 precautions, too, such as social distancing, universal use of personal protective equipment, access for voters under quarantine, and the like.⁴⁹ Others were less successful in these regards.⁵⁰ For example, some clerks' offices remained closed contrary to Michigan law, leaving voters without the opportunity to request absentee ballots in person.⁵¹

Stakeholders and clerks' offices now have the benefit of having gotten through their first pandemic election and have acquired knowledge and learning from that experience.⁵²

³⁹ Spencer Testimony, Transcript II, p. 15, lines 26-25.

⁴⁰ McElroy Testimony, Transcript III, p. 8, lines 35-37.

⁴¹ Cosma Testimony, Transcript III, p. 13, lines 15-18.

⁴² McElroy Testimony, Transcript III, p. 10, lines 1-3.

⁴³ Cosma Testimony, Transcript III, p. 13, lines 11-12.

⁴⁴ Cosma Testimony, Transcript III, p. 13, lines 9-11.

⁴⁵ McElroy Testimony, Transcript III, p. 10, lines 1-3.

⁴⁶ McElroy Testimony, Transcript III, p. 10, lines 9-10.

⁴⁷ McElroy Testimony, Transcript III, p. 11, lines 9-10; McElroy Testimony, Transcript III, p. 7, lines 40-42; McElroy Testimony, Transcript III, p. 11, lines 9-10; Goldenberg Testimony, Transcript II, p. 7, lines 3-4; Goldenberg Testimony, Transcript II, p. 6, lines 35-40; Dolente Testimony, Transcript II, p. 11, lines 10-16.

⁴⁸ Craine Testimony, Transcript III, p. 20, lines 7-10.

⁴⁹ Craine Testimony, Transcript III, p. 18, lines 25-26; Craine Testimony, Transcript III, p. 19, lines 31-37; Goldenberg Testimony, Transcript II, p. 6, lines 1-11.

⁵⁰ Goldenberg Testimony, Transcript II, p. 7, lines 1-3; Spencer Testimony, Transcript II, p. 14, lines 37-39; Spencer Testimony, Transcript II, p. 15, lines 4-15.

⁵¹ Spencer Testimony, Transcript II, p. 20, lines 20-26.

⁵² Craine Testimony, Transcript III, p. 22, lines 1-4.

Finding II: Despite complications associated with voting during the COVID-19 pandemic, voters in the State of Michigan turned out at high rates.

5.5 million people voted in the 2020 general election in Michigan,⁵³ the highest citizen participation in the history of elections in the state.⁵⁴ Due to advanced preparation by the state⁵⁵ and efforts by community organizations,⁵⁶ such as providing PPE,⁵⁷ pivoting to online outreach,⁵⁸ creating election materials,⁵⁹ and hosting “Know Your Rights” and public education virtual events,⁶⁰ 2.2 million people voted in-person at their polling location on election day,⁶¹ and 3.3 million people voted by absentee ballot.⁶² Persons under 25 years old had a turnout rate of 62 percent across the state, and five counties had 70 percent or more persons under 25 turnout.⁶³ 28,000 people registered to vote on election day and almost 54,000 registered to vote in the 14 days leading up to the election.⁶⁴ In Detroit, 21,000 people registered to vote in the two weeks before the election.⁶⁵ While the state saw a 15.7 percent increase in turnout overall, Detroit had only a 3.7 percent increase in turnout.⁶⁶ In Detroit, voter turnout for the 2020 general election slightly surpassed the number of voters for the 2016 general election, but Detroit’s turnout reflects the trends experts saw at both the state and federal level.⁶⁷

As previously noted, Michigan voters adopted Proposal 3 in 2018,⁶⁸ enacting no-reason absentee voting, same-day voter registration, post-election audits, and straight-ticket voting.⁶⁹ Proposal 3 opened access to the ballot, particularly with no-reason absentee voting.⁷⁰ For example, people who are deaf or hard of hearing benefitted from no-reason absentee voting, as masks often create

⁵³ Craine Testimony, Transcript III, p. 21, lines 11-12; Dolente Testimony, Transcript II, p. 8, lines 32-24; Thomas Testimony, Transcript III, p. 3, lines 37-40.

⁵⁴ Dolente Testimony, Transcript II, p. 8, lines 32-24; Thomas Testimony, Transcript III, p. 3, lines 29-33; see also https://www.michigan.gov/sos/0,4670,7-127-1633_8722-29616--,00.html.

⁵⁵ Thomas Testimony, Transcript III, p. 6, lines 32-34; McElroy Testimony, Transcript III, p. 8, lines 31-33; Craine Testimony, Transcript III, p. 18-19, lines 41, 1-2; Craine Testimony, Transcript III, p. 19, lines 8-12; Craine Testimony, Transcript III, p. 20, lines 24-26.

⁵⁶ McElroy Testimony, Transcript III, p. 10, lines 28-33; Cosma Testimony, Transcript III, p. 14, lines 4-8; Dolente Testimony, Transcript II, p. 12, lines 35-38.

⁵⁷ Craine Testimony, Transcript III, p. 18, lines 25-26.

⁵⁸ Goldenberg Testimony, Transcript II, p. 5, lines 20-21.

⁵⁹ McElroy Testimony, Transcript III, p. 8, lines 17-22; Craine Testimony, Transcript III, p. 20, lines 6-10.

⁶⁰ Cosma Testimony, Transcript III, p. 14, lines 39-40.

⁶¹ Dolente Testimony, Transcript II, p. 9, lines 5-6.

⁶² Dolente Testimony, Transcript II, p. 8-9, lines 39-40, 1-4.

⁶³ Craine Testimony, Transcript III, p. 20, lines 34-37.

⁶⁴ Dolente Testimony, Transcript II, p. 12, lines 12-14.

⁶⁵ Dolente, Testimony, Transcript II, p. 12, line 25.

⁶⁶ Thomas Testimony, Transcript III, p. 3, lines 37-40.

⁶⁷ <https://detourdetroiter.com/how-metro-detroit-votes-shifted-in-the-2020-election/>.

⁶⁸ Dolente Testimony, Transcript II, p. 9, lines 16-20.

⁶⁹ Ibid; see also

[https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_3,_Voting_Policies_in_State_Constitution_Initiative_(2018)).

⁷⁰ Thomas Testimony, Transcript III, p. 4, lines 22-24.

a barrier for individuals who rely on lip reading for communication.⁷¹ Because of extensive public education efforts concerning Proposal 3, the state rejected just 3,300 absentee ballots in total, far below the predicted rejection of 20,000 absentee ballots.⁷² Proposal 3 led to the increase in absentee ballots, up from 25 percent to more than 70 percent,⁷³ though the state was ill-prepared for this volume.⁷⁴

Moreover, though numerous state officials and community stakeholders worried about long lines, given the events of the March primary there were fewer rather than more long lines than usual, due to the implementation of Proposal 3 and additional reforms.⁷⁵ The State of Michigan took a large number of crucial accessibility steps, which were highly successful in allowing so many eligible voters to cast ballots notwithstanding the pandemic's challenge:

- Expanding accessibility of the polls, by opening satellite locations, expanding clerks' office hours, and establishing plentiful drop boxes.⁷⁶
- Recruiting poll workers which was particularly challenging because so many veteran poll workers were health compromised and could no longer serve.⁷⁷ These recruitment efforts were so successful that many clerks closed their application portals early due to the large influx of applicants.⁷⁸
- Mailing applications for absentee ballots to all voters, and also allowing online requests for absentee ballots.⁷⁹
- Curbside voting.⁸⁰

Finding III: The COVID-19 pandemic, as well as misinformation, created a series of opportunities for bad-faith, racially disparate criticisms of the integrity of Michigan's elections during the November 2020 general election.

As previously noted, 3.3 million people in Michigan voted by absentee ballot in the 2020 general election.⁸¹ While no-reason absentee voting contributed to the increase in absentee ballots, people also voted by mail as a precautionary measure due to the COVID-19 pandemic. This unprecedented resort to absentee voting directly contributed to the increased pressure on the post-election counting process, which should be taken into consideration in case of future pandemics or continuing pandemic due to COVID-19.

⁷¹ Cosma Testimony, Transcript III, p. 16, lines 19-23.

⁷² Dolente Testimony, Transcript II, p. 13, lines 23-25; Thomas Testimony, Transcript III, p. 6, 3-4.

⁷³ Thomas Testimony, Transcript III, p. 4, lines 29-31; Dolente Testimony, Transcript II, p. 12, lines 6-9.

⁷⁴ Thomas Testimony, Transcript III, p. 4, lines 29-31.

⁷⁵ Dolente Testimony, Transcript II, p. 9, lines 10-14.

⁷⁶ McElroy Testimony, Transcript III, p. 11, lines 9-10; McElroy Testimony, Transcript III, p. 8, lines 4-7; ⁷⁶ Dolente Testimony, Transcript II, p. 11, lines 12-16; Dolente Testimony, Transcript II, p. 8, lines 18-23.

⁷⁷ Dolente Testimony, Transcript II, p. 11, lines 17-19; McElroy Testimony, Transcript III, p. 9, lines 15-18.

⁷⁸ McElroy Testimony, Transcript III, p. 9, lines 20-21.

⁷⁹ Thomas Testimony, Transcript III, p. 5, lines 4-8; Thomas Testimony, Transcript III, p. 5, lines 25-35; Thomas Testimony, Transcript III, p. 7, lines 33-37; Cosma Testimony, Transcript III, p. 19, lines 23-26.

⁸⁰ Cosma Testimony, Transcript III, p. 17, lines 7-8.

⁸¹ Dolente Testimony, Transcript II, p. 8-9, lines 39-40, 1-4.

Exacerbating this process, Republican poll-challengers interfered with and disrupted the vote counting process at the TCF Center.⁸² The disruptions and interference were then used as justification to fuel conspiracy theories and allegations of mismanagement.⁸³ According to panelist Sharon Dolente from the American Civil Liberties Union of Michigan, there was no comparable presence or coordinated protest at any other location in the state.⁸⁴ Challengers gathered in one place – the largest, majority-Black city in the country.⁸⁵

While some may argue the protests at the TCF Center or future ballot counting locations could be used as a justification to limit absentee voting, that argument is not supported by this Committee’s findings. This Committee contends absentee voting only served to drastically increase access to the franchise. The right to vote, including by mail, outweighs the disproven conspiracy theories and illegal actions of those who seek to suppress the vote.

Misinformation is an attack on the integrity of the voting system, and the events at the TCF Center were an example of misinformation and weaponized partisan challenging. Khyla Craine, Deputy Legal Director for the Michigan Department of State, said, “Our office tried to launch a considerable campaign to dispel miscommunication and inaccuracies from across the state and around the country that elections were something other than free, fair, and accurate. Members of our legal staff visited the Detroit County board on the Wednesday after the election day, as they continue their job in County absentee ballots from around the city.”⁸⁶

The above evidence of staging protests at the TCF Center for the purpose of disrupting vote counting⁸⁷ had a racially discriminatory effect on the citizens of Michigan, and of Detroit in particular.

As Michigan looks to future elections, the Committee recommends below that the state take active steps to prevent, thwart or manage coordinated campaigns designed to suppress the vote in majority minority or any other locations. Based on the asymmetrical partisan nature of efforts to limit voting access and disrupt previously established bipartisan election administration practices, changes should be considered carefully. Christopher Thomas, former Elections Director for the State of Michigan, noted how some efforts such as videoing the counting process in Wisconsin ultimately lead to undue harassment of the election administration workers engaging in normal review.⁸⁸ Ultimately, Dolente concluded, “Voting rights are going to be much greater protected in the state of Michigan if we do not leave it to elected officials to explain the voting system, to defend it, to understand it, to analyze it and to educate the public on

⁸² Dolente Testimony, Transcript II, p. 22-23, line 39.

⁸³ Melanie McElroy, Transcript III, p. 9, lines 1-4.

⁸⁴ Ibid.

⁸⁵ Ibid; see also [https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn185.html#:~:text=Among%20places%20with%20populations%20of,\(74%20percent\)](https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn185.html#:~:text=Among%20places%20with%20populations%20of,(74%20percent).).

⁸⁶ Khyla Craine, Transcript III, p. 21, lines 13-19.

⁸⁷ Tresa Baldas, Kristen Jordan Shamus, Niraj Warikoo, and Evan Petzold, “Chaos Erupts at TCF Center as Republican Vote Challengers Cry Foul in Detroit,” *Detroit Free Press*, November 04, 2020, <https://www.freep.com/story/news/politics/elections/2020/11/04/tcf-center-challengers-detroit-michigan/6164715002/> (accessed May 14, 2021).

⁸⁸ Christopher Thomas, Transcript III, p. 26-27, lines 35-42, 1-5.

it.”⁸⁹ In short, the confluence of the pandemic, wide availability of absentee ballots, and coordinated attempts at disruption to the voting process must be anticipated and prevented in future election cycles to avoid racially discriminatory effects.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁹⁰ In keeping with these responsibilities, and given the testimony heard on this topic, the Michigan Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should review and update its 2018 statutory report on voting rights⁹¹ to better understand the impact of disaster preparedness on voting rights and access.
2. The U.S. Commission on Civil Rights should issue the following recommendations to the Michigan Secretary of State:
 - a. Survey clerks’ offices and stakeholders with respect to the issues listed below, to ascertain challenges, steps taken to meet those challenges, and the success or failures of those steps. Then compile the results into a best practices document that can be shared going forward. The survey should include, but not be limited to, topics such as:
 - i. Quarantined voter access, including from the perspective of young voters;
 - ii. Social distancing while voting;
 - iii. Availability of PPE for poll workers and those voting; and
 - iv. Pandemic issues related to disability, including reviewing for any impacts to accessibility caused by location changes due to social distancing requirements.
 - b. Require all clerks’ offices to routinize the various steps that increased voting access in the 2020 election, including:
 - i. Extended hours;

⁸⁹ Dolente Testimony, Transcript II, p. 14, lines 11-15.

⁹⁰ 45 C.F.R. § 703.2.

⁹¹ U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States*, , Sept. 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

- ii. Curbside voting;
 - iii. Drop boxes;
 - iv. Satellite offices; and
 - v. Pre-paid postage on absentee ballot materials.
 - c. Routinize and continue the practice of mailing absentee ballot applications/notification postcards to all voters, and the availability of online absentee ballot requests.
3. The U.S. Commission on Civil Rights should issue the following recommendations to the Michigan Legislature and Governor:
- a. Instead of putting up deliberate barriers to voting, our elected officials should be working to ensure every Michigander, regardless of race, gender, religion, or zip code, has the freedom to have a voice in the future of our state;
 - b. Properly fund election administration and ensure voting locations are ADA compliant;
 - c. Prohibit deceptive election practices that deter or mislead voters;
 - d. Election officials, including the Secretary of State, should be able to take practical steps to informing and allowing voters to access their Michigan Constitutional right to vote, including sending unsolicited absentee ballot applications, making online links available and promoted through digital and physical media to request absentee ballots, using their office and likeness on nonpartisan election information, and accepting non-government grants and funding to improve election access;
 - e. The Secretary of State, clerks and other local election administrators should be able to utilize best practices and practices developed during the COVID-19 pandemic to improve voter access, such as keeping drop boxes open through the close of polls and free from unrealistic and unfunded requirements, allowing for prepaid postage on absentee ballot return envelopes, ensuring those serving in the military overseas along with their spouses and dependents are able to return ballots electronically, increasing the amount of time allowed for pre-processing of absentee ballots to expedite ballot counting, and allowing for true early voting;
 - f. Avoid adopting new laws or requirements that restrict current best practices and jeopardize the right to vote. This would include but not be limited to creating burdensome, unequitable, and privacy-jeopardizing requirements to submit photo identification photocopies with absentee ballots, hourly matches of tabulators and

voter counts which would create longer lines and delays for voters, videoing of counting boards where individual ballots can be seen while still connected with information identifying the ballot to an individual voter, broad voter registration cancellation without clear matching criteria and protections against wrongful removal, mandating the use of voter registration forms with legally inaccurate information, adopting overly specific and subjective signature verification rules, removing the sworn affidavit option when voting, removing secure access to the Qualified Voter File by the Department of Technology, Management and Budget or local clerks, and placing artificial time constraints on the ending of vote counting and reporting of results;

- g. Encourage, not prohibit, non-partisan poll challengers. All poll challengers should be properly trained and checked for compliance. When changes to allowable numbers of challengers present based on population, allow for changes based on pandemic health orders. If additional access for video capture of election administration procedures are considered, legislation should be similar to requirements of current photography, film, or video capture for election polling locations, have explicit protections and consequences for violating ballot privacy, and include strong protections from online harassment and doxing of election administrators and workers. Protections given to poll challengers should be balanced against the impact on voters subjected to longer lines, disenfranchising potentially eligible voters. Poll challengers should be accountable for their statements and actions, including potential civil or criminal penalties similar to other election administration officials; and
 - h. Do not adopt practices that allow one political party to jeopardize access to a free and fair election by refusing to participate, such as enlarging canvassing boards and requiring supermajorities to certify, requiring canvassers from each party to be present for canvassing without requiring those canvass to show up and enabling canvassers to stop or veto a canvass by not attending, allowing partisan canvassers to override decisions on municipal clerk staffing for elections, requiring clerks to find partisan election inspectors or risk not allowing any election inspector.
4. The U.S. Commission on Civil Rights should issue the following recommendations to the Michigan Department of Health and Human Services:
- a. Review pandemic response plans to ensure protecting voter access is incorporated; and

- b. Work with local clerks to ensure ADA compliant voting locations and utilize the state funded Centers for Independent Living to verify and improve the accessibility.

Appendix

A. September 21, 2020 Web Briefing⁹²

- a. Minutes
- b. Panelist Presentations (PPT)
- c. Recording
- d. Transcript I

B. Pre-Election Memorandum⁹³

C. February 8, 2021 Web Briefing⁹⁴

- a. Minutes
- b. Panelist Presentations (PPT)
- c. Recording
- d. Transcript II

D. February 17, 2021 Web Briefing⁹⁵

- a. Minutes
- b. Panelist Presentations (PPT)
- c. Recording
- d. Transcript III

⁹² September 21, 2020 Documents available at: <https://bit.ly/2QfPOHE>.

⁹³ Voting Rights in Michigan in the Context of the COVID-19 Pandemic, Michigan Advisory Committee to the U.S. Commission on Civil Rights, October 2020, <https://www.usccr.gov/files/2020-11-10-preelection-memo-COVID19-voting-rights.pdf>.

⁹⁴ February 8, 2021 Documents available at: <https://bit.ly/3uJh6Vx>.

⁹⁵ February 17, 2021 Documents available at: <https://bit.ly/3d98zoU>.

**Michigan Advisory Committee to the
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