

Michigan and the Road to November

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Michigan has garnered a great deal of national attention due to the particularly contentious nature of COVID-19 related conflicts in the state. These battles have created the possibility for confusion regarding absentee voting and election law, significantly impacting Michigan's readiness for the 2020 presidential election. Understanding how the state has navigated 2020's unique challenges is critical to assessing the health of the state's electoral system.

Our memo analyzes the current status of Michigan's electoral system in three parts: First, it contextualizes the challenges that the state faces, namely, the coronavirus pandemic, the state's decentralized election system, and intense partisan conflict between branches of the state government. Next, it discusses how the state's mail-in and in-person voting systems fared during the March, May, and August 2020 elections. Finally, the memo examines litigation that challenges Michigan's current election law in order to determine whether these disputes will create clarity or confusion for the state's election officials as November approaches.

While Governor Whitmer's office has strong legal authority to pass measures aimed at making the state's election system more accessible for the Presidential Election, Michigan election officials face major practical challenges to implement these new legal and regulatory changes due to the decentralized nature of the state's election system, and the uncertain nature of the pandemic. Some of the biggest challenges that Michigan faces include ensuring that local clerks receive and count absentee ballots promptly, recruiting poll workers, implementing Michigan's Remote Accessible Vote-By-Mail (RAVBM) scheme, and avoiding confusion around the state's new ballot access requirements.

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I. Context Shaping Michigan’s Election Response

Since the 2016 presidential election, Michigan has expanded accessible voting options throughout the state. The state now offers same-day voter registration and allows all voters to vote absentee in any election without providing an excuse. However, in its effort to ramp up to the 2020 presidential election, Michigan has faced novel challenges stemming from the COVID-19 pandemic—challenges that have been exacerbated by partisan tensions in state government as well as the unique structure of Michigan’s election system.

A. The COVID-19 Pandemic

Although COVID-19 did not drastically alter Michigan’s March presidential primary, it propelled the state to significantly alter its election system immediately following the March election. Officials put emergency [policies](#) in place specifically to handle the May 5 municipal elections and introduced additional proposals for August and November. While some localities resolved to carry out municipal elections as scheduled, about half of jurisdictions with May 5 elections [postponed them to August](#). As was the case with most states, state-issued health and safety measures required Michigan to adapt its election system to prioritize voting by mail and ensure that in-person polling locations were safe and well-staffed. Heading into the November general election, Michigan continues to face challenges implementing these changes to its election system.

B. Michigan's Decentralized Election System

One of the greatest obstacles that Michigan must overcome is the structure of its own election system. Michigan is “[one of the most decentralized elections system\[s\] in the nation](#),” relying on 1,603 local election officials (composed of county, city, and township clerks) to administer all local, state, and federal elections each year. Importantly, [local level election officials retain primary responsibility](#) for administering and paying for Michigan elections. The Brennan Center estimates that Michigan’s costs for the upcoming November election will be [\\$81.4 to 86.2 million](#). Much of these [costs](#) will go toward absentee ballot education and outreach; processing and tabulating absentee ballots; building secure remote, offsite, or additional infrastructure; and ensuring healthy and secure in-person voting options.

The state’s Chief Election Officer is Secretary of State Jocelyn Benson, who has “[supervisory control](#) over local election officials in the performance of their election related duties.” The Board of State Canvassers plays a more [immediate role](#) in implementing local elections, “arrang[ing] the ballot wording of the proposals, approv[ing] voting equipment for use in the state” and certifying the results of statewide elections. Success therefore requires that the Governor’s office clearly communicate and coordinate its new initiatives, as well as ensure cooperation from countless local officials and the Board of Canvassers.

C. Extreme Partisanship in the State Government

Partisan division of Michigan’s state government makes it difficult to reach bipartisan consensus to address election challenges. Democrats control the executive branch and Republicans control the legislature. As a result, partisan politics have frequently stymied the government’s attempts to prepare for the election. For example, the Senate [recently took aim](#) at Governor Whitmer’s election reforms by arguing that the Secretary of State’s decision to automatically send absentee ballots to new voters invites fraud and security concerns. In such an environment, the Governor’s office is left to oversee the upcoming election and simultaneously defend its decisions and fend off attempts to reduce its executive power.

II. Assessing Michigan’s Election Readiness: Vote-by-Mail & In-Person Voting

Over the past six months, Michigan tested its election readiness during its presidential primary and two state elections. To assess how Michigan's election system has developed and adapted to the unique challenges of 2020 we examine how the state dealt with mail-in voting and in-person voting in the March, May, and August elections.

A. Mail-In Voting

Legal and Regulatory Landscape:

Of the Whitmer administration's election-related reforms, its efforts to facilitate voter access to absentee ballots have had the most visible impact. Following the onset of the coronavirus pandemic, the Governor's office transitioned all elections to a primarily vote-by-mail format. All Michigan voters are eligible to vote by mail due to a [2018 statewide ballot initiative](#) that enshrined no-excuse-required absentee voting into the state constitution.

On March 27, 2020, Governor Whitmer implemented [Executive Order No. 2020-27](#), instructing election officials to issue absentee ballots and allow for their submission without in-person interaction. Notably, the order required that officials and clerks consider all properly submitted voter registrations as requests for an absentee ballot for the May 5, 2020 election.¹ The order also instructed localities with May 5 elections to immediately begin preparations to conduct the election primarily by mail, including providing for postage-prepaid absentee ballot return envelopes. Finally, the order gave the Michigan Department of State the authority to assist clerks and election administrators with implementing and conducting this new vote-by-mail program.²

However, whether the Governor's office has the authority to authorize all these measures remains unclear. The court's recent denial of a preliminary injunction in litigation challenging the Secretary's decision to send absentee applications to all individuals registered to vote in Michigan prior to the August and November elections indicates that the [Secretary of State does have the power](#) to finance prepaid postage for ballot applications.³ But, plaintiffs in another ongoing suit in district court

¹ The order also encouraged individuals to register online or vote by mail, listing the resources available to register and request ballots online, and extended the deadline for in-person and online voter registration .

² [The Michigan Department of State](#) may assist local clerks, county clerks, and election administrators with: the mailing of absent voter ballot applications with a postage-prepaid, pre-addressed return envelope to each registered voter within any jurisdiction conducting a May 5, 2020 election; the preparation of postage-prepaid absent voter ballot return envelopes; the coordination of county and state assistance in processing ballots; changes to election dates; and other local clerk functions to the extent local jurisdictions are unable to perform them.

³ The court gestured to this conclusion in denying the plaintiffs' motion for a preliminary injunction. In doing so, Judge Stephens noted that the plaintiffs failed to cite statutes or case law

have argued that [Michigan law](#) requires voters to use their own postage to return the ballots themselves. Still, jurisdictions like Oakland County appear to interpret the law differently—[announcing](#) that they will provide prepaid postage for return absentee ballots for the November election.

Although Governor Whitmer’s office implemented the Executive Order No. 2020-27 to address immediate concerns with the May 5 election, the Governor also framed the order as a long-term solution for elections during the coronavirus pandemic. The Governor’s office explained that the order, which suspended certain typical election rules, was [necessary to ensure](#) that as many Michiganders as possible would be able to vote in elections during the pandemic, while also ensuring proper health and safety precautions.

Following the May 5 election, Secretary of State Jocelyn Benson announced that for the August and November elections, the state [would send Michigan’s 7.7 million registered voters an absentee ballot application](#). About 1.3 million of those were already on the list to receive applications for every election.⁴ Voters would be allowed to scan or photograph the completed application form and email or mail it to local clerks.⁵

Although Whitmer’s office gave Michiganders greater access to applications for absentee ballots, the state still faced real logistical hurdles in ensuring that applicants would receive and submit absentee ballots in time to be counted. [Under Michigan law](#), absentee ballots must arrive at the local clerk’s office on Election Day before 8:00 PM to be counted. Since the Governor’s executive order encouraged localities to reduce the number of available polling places, mail carrier services (private and public) had to carry the weight of election logistics. Given that most applicants used prepaid postage supplied by the state, they also had to rely on the United States Postal Service (USPS) to ensure that clerk’s offices would receive their applications and ballots in time.

governing the Secretary of State’s authority (or lack thereof) to send unsolicited absent voter ballot applications. The plaintiffs only presented law that covered local election official’s authority over absentee ballot applications, and Stephens posited that the Secretary of State has likely superior authority over these officials. (“Indeed, the Secretary of State’s authority was not at issue in Taylor, and there is some support for the notion that she possesses superior authority as compared to local election officials. See MCL 168.21 (declaring that “[t]he secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.”)”)

⁴ Although applications only covered ballots for the August primary, Benson has promised to preemptively send applications for absentee ballots for the November presidential election as well.

⁵ The plan was projected to cost \$4.5 million, which will be drawn from the state’s allocation of money from the federal CARES Act passed in March.

Rise of Vote By Mail in 2020:

Over the past three federal and state elections in March, May, and August 2020, Michigan has seen an increase in absentee voting. In the March presidential primary, absentee votes accounted for approximately 38% (876,845) of the 2.3 million votes cast in Michigan. However, officials rejected roughly [4,500 mail-in ballots](#) for arriving late. This was less than one percent of the total mail-in vote, but [some are concerned](#) that those votes “could prove crucial in a close election,” especially one in which the majority of voters will likely cast absentee and mail-in ballots to avoid going to the polls during the pandemic.

For the May municipal elections, the Secretary of State mailed absentee ballot request forms to [every registered voter](#) in Michigan, and even newly registered voters automatically received an absentee ballot. A total of 180,000 absentee ballots were cast, representing [99% of all ballots cast](#), and [only 1,775 individuals voted in-person](#). Although the number of total votes cast in the May municipal election paled in comparison to those cast in the March presidential primary, May voter turnout was [significantly higher than that of previous municipal elections](#). Many jurisdictions also took advantage of the Governor’s executive order to move their elections to August 2020.

In the August primary, [1.6 million Michiganders](#), constituting 65% of registered voters statewide, cast absentee ballots. The previous record for absentee ballots cast in a Michigan election was 1.3 million in the [2016 Presidential Election](#). Despite (or perhaps because of) the large number of absentee voters, voting rights advocates noted that [some residents who had requested absentee ballots did not receive them](#), although it is unclear exactly how many. The state Elections Department reported that it had received a “small number of complaints about delayed absentee ballots,” which it [attributed to delivery delays from the USPS](#). Election officials rejected [10,000 ballots](#) for arriving after 8 PM on Election Day, the deadline set by Michigan law.

Furthermore, election workers faced a [counting backlog](#) because many clerks’ offices follow a local policy that prohibits them from counting ballots until the day of the election. This occurred despite Secretary of State Benson’s [instructions](#) to local clerks to count ballots within 24 hours of their receipt. Moreover, [475,000 absentee ballots were never turned in](#). Some [news coverage has suggested](#) that many voters may have requested absentee ballots thinking they were for presidential and competitive statewide races and opted not to fill them out when they realized it was a municipal election.

Based on the trend in the primary elections it appears that Michigan is moving toward a largely vote-by-mail election in November, and may see a high voter turnout despite the pandemic. Absentee votes represented a significantly higher percentage of votes in August than they did in the March 2020

primary. Although voters didn't overwhelmingly vote absentee as they did in May (with 99% of votes cast absentee), significantly more voters cast absentee ballots in August than in the prior two elections. Moreover, Michigan's gradual reopening during the later phases of the pandemic may have encouraged more individuals to vote in person in August than during the May elections. Thus, while absentee ballots accounted for slightly more than half of the votes during the August primaries, the sheer number of absentee ballots cast attests to the growing strength of Michigan's vote-by-mail system.

Beyond ensuring that voters send and receive their ballots, Michigan election officials also face challenges ensuring that local precincts will be adequately equipped to support a vote-by-mail election. A surge in absentee voting could cost the state [\\$13.5 to \\$17.6 million](#). These [costs](#) include the printing and mailing of absentee ballot applications, prepaid postage for absentee ballot application returns, prepaid postage for return absentee ballots, and investments in state election infrastructure.

Finally, reflecting the [increased politicization of absentee voting](#), counties that largely supported incumbent President Trump appear less likely to vote by mail. While some counties saw more than 70% of voters voting absentee during the August election, conservative-leaning counties reported that fewer than 40% of voters cast absentee ballots. This discrepancy could mean that some counties in Michigan must be prepared to accommodate more in-person voters come November than others.

Looking Ahead:

Governor Whitmer's administration has taken many proactive measures to avoid potential pitfalls in implementing mail voting in November. But, given Michigan's decentralized system of election administration and the state's strict deadline for receiving mail-in ballots, the Governor's office will still face challenges ensuring the safe delivery and count of all votes.

To remedy these problems, Secretary of State Benson has suggested changing Michigan election law such that ballots postmarked by Election Day will count as valid, even if they are not received by Election Day. Benson also has advocated that clerks should begin counting votes well in advance of Election Day to alleviate the pressure caused by high absentee turnout. She also reiterated the need for more election volunteers, and has expressed concern about rumors that may reduce voter confidence in the state's election system, specifically those suggesting that mail voting facilitates election fraud.

The legislature also has stepped in to propose solutions for November. The Senate introduced a new [bill](#), [SB 909](#), calling for universal vote by mail in the November election. Under this bill, Michigan would conduct the entire presidential election by absentee ballot, and ballots could be

returned through mail or dropped off at designated collection sites. Same-day registration would still be available through local clerks' offices. A bipartisan majority of Michigan voters supports the bill. However, it is unclear whether the state would still provide in-person polling facilities under such a framework, and how the state would arrange to make those centers safe and accessible during the pandemic. Additionally, the bill's passage seems unlikely; after introduction on May 6, SB 909 [was referred to the Committee on Elections](#), which has yet to vote on the proposal.

B. In-Person Voting

Legal and Regulatory Landscape:

1. *Accessibility at In Person Polling Locations*

Beginning with the May 5 elections, Michigan has increasingly shifted from in-person voting to vote-by-mail. However, the state also has taken measures to ensure that polling locations are available for those who must vote in person. Although [Executive Order No. 2020-27](#) “strongly discouraged” voters from voting in person, the order required every jurisdiction to have at least one in-person voting location open during the day of the election, where any voter could appear in-person and cast a ballot or return an absentee ballot. Unregistered voters were able to register and receive an absentee ballot at these polling locations on Election Day. The Governor's office also required that available polling locations follow “best practices to mitigate the spread of COVID-19 and [...] comply with any applicable restrictions or requirements to that effect.”

2. *Poll Worker Recruitment and Safety*

The coronavirus pandemic forced Michigan to tackle many logistical challenges in staffing its in-person polling centers. Like many states, Michigan has faced a shortage of campaign volunteers and poll workers, since the state has traditionally relied on elderly volunteers to staff most polling centers. In response to this shortage, the Secretary of State has conducted an [expansive outreach campaign](#) to recruit younger poll workers. This campaign, titled Democracy MVP, focuses on recruiting young, healthy election workers to aid officials in processing absentee ballots and other poll-related tasks. Secretary Benson continues to call on Michiganders “[to be the MVPs in the team sport of Democracy](#).” The campaign allows any registered voter to apply, and ensures that workers will be compensated for their time.

The Governor's office did not provide detailed guidance for health and safety measures for Michigan's May 5 elections. However, anticipating a higher turnout for the August primary, the Michigan Bureau of Elections provided detailed protocols [on hygiene, sanitation, and social distancing](#)

[measures](#) to local clerks, and explicit guidance on processing absent-voter ballots and carrying out other election duties while observing strict health precautions.

Implementation in 2020 Elections:

1. Accessibility at In Person Polling Locations

Compared to Michigan's May municipal elections, a significantly higher number of voters cast their ballots in person at Michigan polling locations in August. In May, [only 1% of voters](#) voted in-person, whereas approximately [35% of voters](#) voted in-person for the August primary. The increased percentage of in-person voting between May and August is likely due to a combination of higher overall voter turnout in August, as well as the fact that the state had started to reopen after its stay-at-home orders.

Yet, despite the increase in in-person voting, polling places still struggled to make in-person voting accessible to all during the August primary. Several polling locations [did not open on time](#) on the morning of August 4 because they had too few election workers. In addition, officials closed and relocated some polling locations due to concerns about disease transmission. [For example, officials changed 25 of the 502 precincts in Detroit.](#) Twenty closures involved public schools that closed in person summer schooling, while five involved churches, where leaders had reservations about serving as a polling location during the pandemic. [Voters reported being notified of the change only the day before Election Day, or sometimes not at all,](#) increasing the possibility of lost votes.

While poll workers were not authorized to turn away in-person voters for refusing to wear a mask, [anecdotal reports](#) suggest that poll worker confusion and concern about election fraud potentially prevented several individuals from voting in-person. One polling location sent out multiple calls to local officials about potential fraud issues. At the same location, poll workers initially tried to send one voter to City Hall because the voter did not have a photo ID, even though Michigan [law allows individuals to sign an affidavit](#) in lieu of providing identification.

Despite these issues, many of those who did show up at the polls said they were willing to brave these inconveniences because they felt [most confident their vote would be counted](#) if they stuck the ballot into the box themselves. Overall, despite some speedbumps, election officials generally viewed August in-person voting as a success. Secretary of State Benson [reported that there were no lines or crowds](#) at polling precincts, allowing for a safe and efficient voting environment amid the pandemic. The [precincts themselves were mostly quiet throughout the day.](#)

2. Poll Worker Recruitment and Safety

Despite the state's efforts to ensure poll workers' attendance and safety, election officials faced some predictable difficulties in ensuring that polls were adequately staffed and kept safe during Michigan's May and August elections. Several jurisdictions [reduced available polling locations](#), although comprehensive data on how many locations were kept open is not readily available. During the May 5 election, all polling places that remained open during the election followed [strict guidelines to ensure social distancing and virus prevention](#). Along with social distancing, clerk's offices distributed hand sanitizer, disinfectant wipes, and latex gloves to all polling workers. Clerks additionally regularly sanitized all voting equipment such as pens, pencils, voting booths, voting equipment, and other surfaces. Employees also received additional breaks to regularly sanitize their hands. As of yet, comprehensive data does not appear available regarding poll worker turnout for May 5th.

Election officials struggled to staff many polling locations for the August primary as well. [Michigan law](#) requires a minimum of 3 poll workers at every location, while some cities, such as [Detroit](#), require well over a thousand poll workers to adequately staff their elections. Secretary Benson's MVP initiative reported in June that it had recruited [2,100 poll workers](#) for the August and November elections, but it is unclear whether poll worker recruitment met demand throughout the state on August 4. Many polling locations, particularly in Detroit, [did not open on time due to a shortage of poll workers](#). Secretary Benson ended up sending 50 extra workers to Detroit, and another 30 to Flint and other municipalities that needed help. Other polling stations reported having only a bare minimum number of election workers. Anecdotes attributed the "[abnormal](#)" number of no-show workers to concerns over coronavirus.

Meanwhile, Michigan [ramped up measures](#) to ensure health and safety at polling locations for the August primary. The state spent \$10 million for protection for election workers and voters, sending PPE and hygiene supplies to all local jurisdictions. However, some election workers reported [insufficient training over health protocols](#), including guidance about whether poll workers were allowed to ask voters to wear a mask before entering a polling location.

Looking Ahead:

Leading up to the November general election, election officials face the challenge of implementing effective communication methods to ensure that voters are given adequate notice about changes in polling place locations and hours.

Moreover, Michigan will need to recruit sufficient numbers of poll workers and ensure the health and safety of polling places. Secretary of State Benson said that the exact number of people

needed for the November election depends on whether the legislature takes action to allow clerks more time to process absentee ballots.

III. Litigation and Challenges to Election Law Landscape

As of August, litigation concerning Michigan election laws does not appear to threaten the changes that Governor Whitmer's administration has made to the state's election system. Although a high-profile dispute questioned the legality of the Secretary of State's decision to send registered voters applications for absentee ballots, the Court of Claims ultimately determined that the Secretary's actions fell under her authority as Chief Election Officer. Most other election litigation in the state involves challenges to legally required logistical measures that have created problems during the pandemic, including ballot access requirements, absentee ballot delivery requirements, and accessibility barriers. The recent results of ballot access litigation may create confusion for election officials, since the Governor's office has yet to issue new guidance conforming state ballot access provisions to the preliminary injunctions issued by the courts. Moreover, despite a recent consent decree stemming from accessibility litigation, it is unclear whether Michigan will manage to implement a Remote Accessible Vote-By-Mail (RAVBM) system by November. However, despite litigation challenging state requirements regarding the submission of absentee ballots, it appears that Michigan voters should expect to follow the same requirements regarding submission deadlines, use of postage, and assistance by third parties.

A. Automatic Absentee Ballot Applications

Michigan's most high-profile COVID-19-related election law cases involve challenges to Secretary of State Benson's authority to send absentee ballot applications to every registered voter in the state. Although some local and national politicians have castigated the Secretary for her actions, the Secretary ultimately prevailed in litigation that challenged her actions.

After Secretary Benson announced that Michigan would automatically send absentee ballots to every registered voter in May of this year, three individuals filed three pro-se suits in the Michigan Court of Claims ([Black v. Benson](#), [Cooper-Keel v. Benson](#), and [Davis v. Benson](#)) claiming that the Secretary's action was illegal. The plaintiffs claimed that while Michigan law stipulates that the clerks must give an absentee ballot to any voter who requests one (in accordance with the 2018 ballot initiative), [the law](#) makes no mention about the Secretary of State's authority to send out ballot applications, or her authority to encourage local clerks to do so. Meanwhile, Secretary of State Benson and amici curiae argued that [mailing did not violate state or constitutional law](#), and that [Michigan](#)

[Election Law](#) grants the Secretary of State broad authority over election administration and absentee ballot applications.

After the court consolidated these three cases, Michigan Court of Claims Judge Cynthia Stephens [denied the plaintiffs' motion for a preliminary injunction](#), stating that they had not established a likelihood of success on the merits.⁶ The Court ultimately dismissed the lawsuit on August 25, [determining that sending out absentee ballots fell within Secretary Benson's discretion](#) to provide information and instructions, “on assisting voters in casting their ballots,” as required by Michigan law. Meanwhile, Plaintiff [Davis filed for an emergency appeal](#) with the Michigan Court of Appeals on [August 28](#).

B. Ballot Access Requirements

Federal courts have forced the state to refrain from “strictly” enforcing two ballot access provisions, but neither the court nor the Governor’s office has articulated the details of a new, more relaxed standard. In two cases, [Esshaki v. Whitmer](#) and [SawariMedia LLC v. Whitmer](#), plaintiff’s challenged procedural requirements for ballot access: an in-person signature requirement and a stringent filing deadline. In both cases, the district court granted a preliminary injunction in favor of plaintiffs, granting leniency to the state’s ballot access requirements due to the limitations of the stay-at-home order.⁷ On appeal, the 6th Circuit likewise enjoined the government from strictly enforcing the two ballot access requirements, while refraining from specifying exactly how the state must reduce this burden.⁸

Although the Governor’s office has been given a wide berth to determine how best to adapt procedural ballot access requirements for the November election, until it produces new guidance as to how election officials must process applicants to access the November ballot, campaigns and ballot

⁶ Judge Stephens also found that none of the plaintiffs established irreparable harm. Even though irreparable harm alone was enough to deny the motion for the preliminary injunction, the judge chose to also make a finding on likelihood of success on the merits. Moreover, the statutes and case law on which the plaintiffs relied predated the 2018 amendment (which established the right to vote by absentee ballot), and appeared to infringe upon or unduly restrict the right established in art 2, § 4 of the 1963 constitution.

⁷ In *Esshaki*, the Eastern District granted a preliminary injunction prohibiting the State of Michigan from enforcing the ballot-access statute unless it provided reasonable accommodation to aggrieved candidates, along with specific compulsory provisions as to how the State should abide by this order. The lower court's required that the State must: (1) reduce the number of signatures required by 50%; (2) extend the deadline for filing the signatures to May 8; and (3) permit the collection of signatures through the use of electronic mail.

⁸ Similarly, in *SawariMedia*, the Eastern District granted a preliminary injunction against strict enforcement of the ballot-access signature requirement. Defendants again appealed to the 6th Circuit, which refused to grant this stay, leaving the lower court ruling to stand.

initiatives face an uncertain future. Delaying future guidance may cause confusion and delays, and result in unequal enforcement by election officials across the state.

C. Logistics of Absentee Ballot Submission

The Governor’s plan to conduct a predominantly mail general election in November, combined with the Secretary of State’s effort to automatically provide voters with an absentee ballot application, has spurred litigation seeking to overturn procedural requirements that may limit a voter’s ability to effectively vote by mail. The most common target of these lawsuits is Michigan’s [deadline](#) for receipt of absentee ballots—a law that Secretary Benson also seeks to change. Other plaintiffs have targeted Michigan’s lack of signature verification criteria, a state law [preventing third parties from assisting voters](#) in submitting sealed ballots, and the law that requires voters to [use their own stamps](#) to return ballots.

Priorities USA [voluntarily moved to dismiss](#) its lawsuit aiming to alter Michigan’s signature verification requirements after state officials adopted key reforms that the plaintiffs had outlined in their suit. [Under these new reforms](#), local clerks must inform voters within 24 hours if a signature is missing or does not match the signature on file. Clerks must presume signatures are valid unless they differ in “multiple, significant and obvious respects” from a previously filed signature. Voters also may cure mail applications by mail, email, fax, or in-person until the Friday before Election Day. The Secretary of State introduced a new training resource instructing clerks how to perform signature verification. However, the decentralized nature of Michigan’s election system may make it difficult to ensure that election officials uniformly interpret and comply with these reforms.

Despite the plaintiffs’ success in *Priorities USA*, most other election litigation has yet to lead to significant changes. In two cases, [League of Women Voters v. Benson](#) and [Michigan Alliance for Retired Americans v. Benson](#), plaintiffs argued that the current ballot receipt deadline (8:00 PM on Election Day) is unconstitutional when prompt processing and frequent delivery of mail is not possible. The League of Women Voters also argued that the state’s policy of not processing absentee ballots immediately upon receipt violates state law (Michigan law allows voters to submit absentee ballots starting 40 days before an election). The [Michigan State Court of Appeals](#) found that the ballot receipt deadline did not violate Michigan’s constitution. It also determined that it was [unable to order](#) the Secretary of State to advise clerks to “immediately” process absentee ballots upon receipt.⁹ The

⁹ The Secretary of State had previously advised clerks to process ballots within 24 hours of receipt. The plaintiffs pointed to anecdotal evidence that clerks in some districts had not processed ballots within that time period, yet the court determined that if a local election clerk has ignored or otherwise failed to comply with the Secretary’s directions and the law, it would require a mandamus action against those clerks to force their compliance.

League of Women Voters [has promised to appeal](#) that court's decision. Meanwhile, litigants in Michigan Alliance have begun to submit additional briefs addressing how the appellate court's decision affects their case.

[Michigan Alliance](#) also [challenged Michigan's voter assistance ban and postage requirement](#), arguing that these laws violate Michigan's constitutional guarantees to the right to vote, due process, and free speech. The plaintiffs also argue that the Voting Rights Act of 1965 preempted the voter assistance ban. As of now, the litigation is ongoing, and no legal rulings have been made on the merits of plaintiffs' claims.

Given the courts' treatment of these cases so far, it appears that Michigan's absentee ballot submission deadline will probably remain in effect through November 2020. Unless the Michigan legislature passes a new law to amend the deadline, November voters will likely have to ensure their absentee ballots are received (not postmarked) by 8 p.m. on Election Day. Moreover, voters will likely have to use their own postage to submit their absentee ballots, and will likely not be able to rely on third parties to submit their sealed ballots.

D. Accessible Voting

Disability rights advocates have also sued to make voting in Michigan more accessible to voters with disabilities. Importantly, a May 19 district court decision tasked Michigan's election officials with implementing a Remote Accessible Vote-By-Mail (RAVBM) scheme similar to that used in California. The state has until November 2020 to create a system that will allow disabled voters to access ballots electronically, use assistive devices to mark ballots, and return their votes by mail. As of now, it is unclear whether the state will succeed in implementing the RAVBM system by the Presidential Election.

Michigan agreed to implement a RAVBM scheme as part of a consent decree stemming from [Powell v. Benson](#), a disability rights and public accommodation lawsuit filed on April 25, 2020. The plaintiffs argued that Michigan's current system for administering absentee ballots violated Title II of the ADA because it provided insufficient support for blind people, denying them a right to privacy and independence. The plaintiffs also claimed that the scheme violated Michigan's public accommodation law, the Persons with Disabilities Civil Rights Act. This was especially important in light of Secretary of State Benson's decision to send absentee ballot applications to all registered voters during the COVID-19 pandemic. By May 15, 2020 the [parties agreed to a more comprehensive consent order](#), which required the state establish an RAVBM system by the August primary elections.

While Michigan failed to implement the RAVBM system by the August 4 primary, the state has [agreed](#) to fully implement the system by September 10, 2020, well ahead of the November general election. However, no public reports are available to determine whether Michigan will meet the schedule required by the consent decree.

E. Major Takeaways

The biggest practical challenges that Michigan election officials face leading up to November involve ensuring that election officials comply with the state's new signature verification requirements, implementing changes to the state's ballot access requirements, and creating an accessible voting program that is compliant with the RAVBM system agreed to in the Powell v. Benson consent decree. The decentralized nature of Michigan's election infrastructure makes it difficult to ensure that local clerks follow new signature verification procedures in a uniform way. Moreover, until the Governor's office issues guidance regarding how clerks and local election officials should process ballot access applications, there is a risk that advocates, candidates, and officials' experiences may vary by jurisdiction, since RAVBM system's implementation depends largely on how local officials interpret the court's decision in Cooper-Keel v. Benson.

IV. Conclusion

Michigan's response to challenges posed by the COVID-19 pandemic has been proactive and robust. Yet the state has much to do to implement the reforms and accommodations it has proposed for the November election. The decentralized nature of the state's election system makes it difficult for the Governor's office to ensure local compliance with election law and guidance from state leaders. The state faces challenges to ensure that clerks receive absentee ballots by the state's ballot receipt deadline, implement new signature verification procedures across the state, recruiting poll workers, implement its Remote Accessible Vote-By-Mail by November, and avoid confusion around the state's new ballot-access requirements. Tackling these challenges will require clear and consistent leadership and guidance from Governor Whitmer's office and robust infrastructure on the ground to ensure compliance of local election officials and clerks.