



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

February 12, 2024

Dear Clerks and Election Directors:

The Bureau of Elections is aware that clerks have received documents from individuals seeking to challenge the registrations of Michigan voters under Section 512 of the Michigan Election Law, MCL 168.512. This letter describes the formal elements required for a valid voter registration challenge and the requirements that must be followed before certain voter registrations can be cancelled because a voter may have changed residence. In summary:

- All voter registration challenges under MCL 168.512 must meet formal requirements for the challenge to be processed:
 - Submitted by registered voter in the municipality of the voter challenged;
 - Submitted to the municipal clerk;
 - A written, notarized affidavit for each voter challenged;
 - Grounds of ineligibility stated for each voter challenged;
 - Not made indiscriminately and without good cause, or for the purpose of harassment.

- For challenges made to a voter's residency under MCL 168.512, on grounds of reliable information that an individual *may* have changed residency:
 - Clerk must review the information and determine if the information is reliable;
 - Clerk must send notice that complies with the notice requirements of MCL 168.509aa and the National Voter Registration Act (NVRA);
 - Voter must not be cancelled unless either the voter confirms the voter has changed residency or the voter does not respond to the notice and does not vote during the period of two federal general elections following the notice.

Formal requirements for a voter registration challenge

In order for a clerk to consider a voter registration challenge, the challenge must be formally valid, which includes jurisdictional limitations. First, a challenge to a voter registration in a municipality must be submitted "to the clerk of that municipality." MCL 168.512. Only city and township clerks can consider voter registration challenges and only to voters within their jurisdiction. Second, the challenger must be an "elector of the municipality"; i.e., an individual who is registered to vote in the same municipal jurisdiction as the challenged voter. MCL 168.512.

A voter registration challenge must be in the form of a "written affidavit" corresponding to each individual voter challenge. MCL 168.512. An affidavit is a written statement of fact that is

verified by oath or affirmation.¹ An affidavit must be notarized.² Additionally, as further explained in my prior letter from July 2022,³ an individual may not submit a single challenge to multiple registered voters within a single affidavit. Specifically, an “elector may challenge the registration of any registered elector by submitting to the clerk ... a written affidavit that such elector is not qualified to vote, which affidavit shall specify the grounds upon which the challenged elector is disqualified.” MCL 168.512 (emphases added).

In the emphasized language, this section uses the singular, rather than the plural. A challenger can make an individual challenge against an “elector,” and made with regard to “such elector”; that is, an individualized challenge to a single voter, not a mass challenge to multiple voters. If an individual wishes to challenge multiple voters’ registrations, the individual must provide a separate notarized affidavit corresponding to each voter challenged.

The written affidavit must also “specify the grounds upon which the challenged elector is disqualified.” MCL 168.512 (emphases added). A challenger must specify the grounds for the challenge because challenges cannot be made “indiscriminately and without good cause[.]” MCL 168.512. Therefore, a challenger must swear in an affidavit that the individual does not meet one of the qualifications for registration in Michigan and the jurisdiction (age, citizenship, residency). This will be discussed in greater detail below.

Upon receipt of a formally sufficient challenge, the clerk must send the challenged voter the challenge by registered or certified mail and the challenged voter has 30 days to indicate eligibility by appearing before the clerk and taking an oath or by submitting a notarized affidavit.

Attempted challenges citing reliable information of a possible change of residency

Even if it comes in the form of a sworn affidavit, an MCL 168.512 challenge that cites reliable information indicating that a voter *may* have changed voting residence outside of the jurisdiction cannot result in an immediate cancellation if the voter does not respond within the 30 days after a notice is sent under MCL 168.512. Rather, reliable information that a voter may have changed residence triggers more recently enacted statutory requirements under the Michigan Election Law, including action by the clerk to determine that the information is reliable, formal notice under the National Voter Registration Act (NVRA), and a two-federal election waiting period before cancelling a voter’s registration unless a voter personally confirms the move.

Both state and federal law have separate provisions governing the method by which systematic, large scale voter list maintenance activities, as well as removals based on third-hand information indicating a voter may have moved, are conducted. Specifically, MCL 168.509aa provides: “a clerk may use change of address information supplied by the United States Postal Service or other reliable information received by the clerk that identifies registered electors whose addresses *may* have changed as provided in this section.” (Emphasis added). The section further provides that if the clerk receives such information, the clerk first provides an NVRA confirmation notice to the voter. If the voter confirms the move, the voter’s registration may be cancelled immediately. Otherwise, the voter can be cancelled only after failing to respond to

¹ See *Wood v Bediako*, 272 Mich App 558, 562-563 (2006). See also Michigan Judicial Institute, Handbook of Legal Terms, <https://www.courts.michigan.gov/4a838f/siteassets/offices/mji/resources-for-trial-court-staff/holt.pdf>.

² See *Detroit Leasing Co v City of Detroit*, 269 Mich App 233, 236 (2005).

³ Attached for reference.

the notice and failing to engage in voting activity for a period of two federal elections following the notice.

This section of the Michigan Election Law mirrors the NVRA. 52 USC 20507. Thus, both state and federal law specifically require this notice, confirmation, and waiting period process prior to cancelling voters based on the receipt of reliable, but third-hand, information indicating that the voter *may* have changed their voting residence. Only after the residency change is determined following the required legal process – confirmation from the voter or the elapsing of the required two-federal election waiting period – can the clerk cancel the voter registration based on a change of residency.

For this reason, if a clerk receives a challenge under Section 512 based on third-hand information, such as mail returned as undeliverable or a claim that a voter’s name appears on a United States Postal Service list, the clerk must not bypass the requirements of Section 509aa and the NVRA. In this situation, the clerk can independently verify that the voter’s name appears on a list – for example, the clerk can conduct their own review of United States Postal Service data or election mail returned undeliverable – and then begin the notice and two-federal election waiting period process. However, this process must be followed before cancellation to comply with state and federal law.

The same is true if a challenge is based on the claim that the challenger conducted a house-to-house “canvass” or purports to have been told by a resident of a household that the voter is a former resident who no longer lives in the house. This is third-hand information indicating that an individual may have changed their voting residency. As with presence on a United States Postal Service list, voter list maintenance based on a house-to-house canvass requires the notice and two-federal election waiting period be followed before a cancellation can occur. See MCL 168.509dd(3)(a).

State and federal law require these protections when someone *may* have changed residency because of the possibility that a voter, despite some initial reliable evidence indicating a move, may still maintain voting jurisdiction in Michigan. For example, an individual may have changed their mailing address because they are temporarily out of state for work, school, or military service, but still maintain their voting residence in Michigan. Additionally, military and overseas voters maintain the right to vote in Michigan at their residence listed in the Qualified Voter File, even if they no longer physically reside at that address. MCL 168.769a(4). For this reason, even if a current resident of a house believes that the “former” resident no longer lives there, that individual may still be qualified to vote. Following state and federal legal requirements ensure that these voters’ registrations are not improperly cancelled without sufficient notice and opportunity to demonstrate voting residency.

The Michigan Election Law provides for this election waiting period even in the event that the voter is challenged. MCL 158.509cc provides:

If a clerk does not independently determine that a challenged voter is qualified to vote or if the challenged voter does not respond to the challenge or fails to prove in his or her response to the challenge that he or she is qualified to vote during the period beginning on the date of the notice of challenge under this act and ending on the first business day immediately *following the second November general election that is held after the date of the notice*, the clerk shall cancel the registration of the voter and remove his or her name from the registration record of the city or township. [MCL 168.509cc(2) (emphasis added).]

This notice and waiting period mirrors the process for voters who may have changed address outside of the jurisdiction based on reliable information.

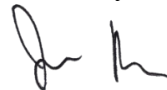
Thus, challenges to voters based on the claim that they are no longer residents of a jurisdiction do not trigger the immediate cancellation provision under MCL 168.512. Rather clerks may review the information and, following the clerk's own independent determination that reliable information exists that the voter *may* have changed residence, initiate the notice and two-federal election waiting period requirements of federal law. Residency-based challenges would result in immediate cancellation after 30 days only when a formally valid, sworn, and notarized affidavit asserts that the challenger has first-hand knowledge that a registered voter is no longer a resident of the jurisdiction. Such a situation would only occur when a challenger is in regular contact with the challenged voter and can credibly assert that the challenged voter is no longer a resident for voting purposes. Again, if the challenger merely can assert that they are aware of reliable information that a voter may have changed residency, the two-federal election waiting period must be observed.

Finally, please note that many voters challenged on the basis of residency may already have a “verify” or “challenged” inactive status if the municipality or state has received initial reliable evidence of a move outside the jurisdiction (which could include United States Postal Service data, returned mail, a surrendered driver's license, registering in another state, or other information). When the registrations are restored to their prior status, they will remain on inactive status, and will be cancelled following the second federal election after notice was sent to the voter unless they demonstrate residency by responding to the notice or engaging in voting activity.⁴ There are currently more than 500,000 registered voters slated for potential future cancellation under these procedures.⁵

If your jurisdiction is aware of any voters who have been improperly cancelled based on a voter registration challenge under MCL 168.512, please restore their voter registration to its prior status (active, verify, or challenge, as appropriate) in the Qualified Voter File. If a voter has personally confirmed to your office that the voter has changed their residence outside of the jurisdiction, the registration can remain cancelled. If you sent the voter mail that was returned as undeliverable, and the voter is not already on “verify” or “challenge” status, you should send the voter a NVRA notice as provided above.

Thank you very much for your attention to this matter. Please contact the Bureau of Elections if you have any questions.

Sincerely,



Jonathan Brater
Director of Elections

Attachment

⁴ For more information, see <https://www.michigan.gov/sos/elections/voting/voters/voter-registration-cancellation-procedures>.

⁵ <https://mVIC.sos.state.mi.us/VoterCount/Index>.



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
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July 29, 2022

Dear Clerks and Election Directors:

Clerks have contacted the Bureau of Elections regarding emails sent by a third-party group attempting to “challenge” voters who received absent voter ballots for the upcoming election. As you know, clerks verify the registration of voters prior to issuing absent voter ballots. These emails do not constitute permissible challenges and clerks should not reject or challenge ballots on the basis of these emails.

Challenges – whether to a voter’s registration or to a voter attempting to cast a ballot – cannot be submitted in this format. Challenges to a voter’s eligibility at the polling place must be made at the time the voter is applying to vote, and a pre-election challenge to a voter’s registration must be made at the individual voter level, not in batches of names on a spreadsheet (MCL 168.512).

Even if they were not formally invalid, the specific reasons for the “challenges” listed in the emails sent to clerks are impermissible bases for challenges. The presence of a voter’s address on the National Change of Address (NCOA) database does not eliminate voting residency. A voter may temporarily receive mail at an address other than the address at which they are registered to vote. Voters may move to another address for a limited duration – for example for college, military service, or employment – and request that their mail be sent to that that address. Although a clerk’s *independent* verification (not a third-party’s claim) that a voter is on the NCOA list may be used as initial reliable evidence that a voter *might* have changed voting residency, the registration is not cancelled until the voter has failed to respond to a confirmation notice and has failed to vote for two federal elections.

Challenging on the basis of a voter’s inactive status is also impermissible. Voters may be inactive for a variety of reasons, including having not voted in the past 6 years. The inactive voter designation alone does not cancel a voter’s registration, and inactive voters are eligible to vote. (MCL 168.509r).

The fact that the Qualified Voter File includes a placeholder date (for example 01/01/1900) for a voter’s effective registration date, because the actual date predates the modern Qualified Voter File or is unknown, does not affect that voter’s eligibility and is not a valid basis for a challenge.

Challenges made in the polling place must be based on one of four permissible bases: the person is not registered to vote; the person is less than 18 years of age; the person is not a United States citizen; the person is not a 30-day resident of city or township in which they are attempting to vote as of election day.

Challenges made to voter registrations must be submitted in the form of a written affidavit. (MCL 168.512). Upon receipt of that affidavit, the clerk notifies the challenged voter of the challenge and the challenged voter has 30 days to indicate eligibility by oath or affidavit.

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An emailed spreadsheet of names of voters does not comply with either of those statutory requirements. These “challenges” are thus impermissible and should not be accepted. Please do not hesitate to contact the Bureau with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Brater', with a stylized flourish at the end.

Jonathan Brater, Director
Bureau of Elections