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2022
BALLOT PROPOSAL
22-2

An Overview

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On November 8, 2022, Michigan voters will decide whether to adopt a constitutional amendment granting Michigan voters certain rights related to voting in-person and by absentee ballot and requiring certain duties of election officials. Proposal 22-2 will appear on the ballot as follows:

Proposal 22-2

A proposal to amend the state constitution to add provisions regarding elections

This proposed constitutional amendment would:

- Recognize fundamental right to vote without harassing conduct;
- Require military or overseas ballots be counted if postmarked by election day;
- Provide voter right to verify identity with photo ID or signed statement;
- Provide voter right to single application to vote absentee in all elections;
- Require state-funded absentee-ballot drop boxes, and postage for absentee applications and ballots;
- Provide that only election officials may conduct post-election audits;
- Require nine days of early in-person voting;
- Allow donations to fund elections, which must be disclosed;
- Require canvass boards certify election results based only on the official records of votes cast.

Should this proposal be adopted?

YES

NO

If a majority of the electors vote "yes" on Proposal 22-2, the following articles and sections of the State Constitution will be amended to include the proposed language: Article II, Sections 4, 6, and 7; Article IV, Sections 1 and 16; Article V, Sections 1 and 13; Article VI, Sections 1, 2, 8, 23, and 26; Article VII, Sections 3, 10, 18, 22, and 28; Article VIII, Sections 3 and 5; and Article IX, Section 6.

BACKGROUND

In 2018, Promote the Vote, a coalition of organizations and individuals in Michigan, wrote (and acquired sufficient signatures for) a ballot initiative that became Proposal 18-3. That proposal, which 66.91% of Michigan voters approved in the November 2018 general election, amended the State Constitution to allow qualified voters in Michigan to do the following: 1) register to vote automatically during the process for renewing or updating their licenses or identification cards; 2) register to vote and obtain a ballot during the two-week period before an election, up to and including Election Day; 3) obtain an absentee ballot without providing a reason; and 4) cast a straight-ticket vote for all candidates of a particular political party.¹

Promote the Vote acquired sufficient signatures during the 2022 election cycle for the ballot initiative that became Proposal 22-2. The Board originally refused to certify the petition after Promote the Vote acquired sufficient signatures because of a challenge to the initiative claiming that the petition failed to include all constitutional provisions that would be abrogated (nullified) by the petition's proposed amendments. Promote the Vote appealed to the Michigan

¹ "2018 Michigan Election Results", www.mielections.us/election/results/2018GEN_CENR.html. Retrieved 9-20-22.

Supreme Court requesting that the Court order the certification of the petition for placement on the November 2022 general election ballot. In its order, the Court disagreed with the claim that the petition failed to include all the constitutional provisions that would be abrogated and specified that the Board had a "clear legal duty to certify the petition".²

Impact on Election Funding

Under Proposal 22-2, a county, city, or township could accept and use publicly disclosed charitable donations and in-kind contributions to conduct and administer elections. The local government could accept or refuse any donations or contributions offered, except for offers from foreign funds or from foreign source, which Proposal 22-2 would prohibit.

Impact on Military and Overseas Ballots

In 2018, Proposal 18-2 amended Article II, Section 4 of the State Constitution to establish the right of military or overseas voters to have an absentee ballot sent to them at least 45 days before an election. Michigan Election Law specifies that a clerk must receive an absentee ballot by the close of polls (8 PM) on election day for the absentee ballot to count; however, Michigan Election Law provides an exception to this requirement for military and overseas ballots if a county, city, township, or village clerk does not meet the requirement to send out absentee ballots no later than 45 days before an election. In this case, the deadline for these ballots is extended by the number of days that the clerk fails to send out the ballots after the 45-day deadline.

Regardless of the circumstance described above, Proposal 22-2 would require a clerk to count a military or overseas ballot if the clerk received it within six days of the election and it was postmarked on or before election day. "Postmark" would mean any type of mark applied by the United States Postal Service or any delivery service to the return envelope, including a bar code or any tracking marks, which indicates when a ballot was mailed.

Impact on General Absentee Voting

Absentee Ballot Application

Under Michigan Election Law, a registered voter must apply for an absentee ballot for each election, but for an exception that allows an absentee ballot application received for a primary election either to be for that primary only or for the primary and the election that follows. Under Proposal 22-2, a registered voter would have the right to have an absentee ballot sent to him or her before each election after submitting one absentee ballot application that would cover all future elections. The proposal specifies that this right would be rescinded only if any of the following applied: 1) the voter requested the rescindment; 2) the voter was no longer qualified to vote; 3) the Secretary of State (SOS) or the applicable election official received reliable information that the voter had moved; or 4) the voter did not vote for six consecutive years. The right would remain if the voter moved within the State and updated his or her registration address.

Voter's Signature Verification

Michigan Election Law requires a city or township clerk that receives a registered Michigan voter's application for an absentee ballot to send out the ballot after the clerk determines the

² *Promote the Vote 2022 v. Board of State Canvassers*, order of the Michigan Supreme Court, Docket No. 164755 (2022).

genuineness of the signature on the application by comparing it to the signature maintained in the SOS's qualified voter file or on the master card. Proposal 22-2 would establish a voter's right to prove his or her identity when applying for or voting an absentee ballot by providing his or her signature and having an election official verify the signature's authenticity by comparing it to the signature maintained in the voter's registration record. The proposal also would establish the right of a voter to be informed immediately and afforded due process if his or her signature did not sufficiently agree or if the absentee ballot application or ballot were missing a signature.

Postage & Tracking

Proposal 22-2 would establish a voter's right to State-funded prepaid postage to return an absentee voter application and ballot.

Michigan Election Law currently requires a city or township, if it has access, to use the State's ballot tracker program that provides the following information: 1) whether the voter's absentee ballot application was received; 2) whether the clerk sent the voter's ballot out; and 3) whether the clerk received the voter's absentee ballot. Under Proposal 22-2, a voter would have the right to a State-funded system for tracking submitted absentee voter applications and ballots that he or she could opt into and receive electronic notifications concerning the status of his or her application or ballot and any deficiency in the submission.

Drop-Boxes

In 2020, the Michigan Legislature amended the Michigan Election Law to establish certain requirements for the accessibility, uniformity, and security of absentee ballot drop-boxes in the State. However, there is no requirement in the Law concerning the number of drop boxes that must be made available in a city or township. Under Proposal 22-2, every Michigan qualified elector would have the right to at least one State-funded drop box for every municipality. In larger municipalities, an elector would have the right to at least one drop box per every 15,000 registered voters. The proposal would require the drop boxes to be distributed equitably throughout the municipality and to be accessible 24 hours a day during the 40 days before an election, until 8 PM on election day.

Impact on Voter ID Laws

Before receiving a ballot at a polling location, Michigan Election Law requires each registered Michigan voter to identify himself or herself by presenting identification, including a State driver license or a State identification card or either of those issued from another state, a United States passport or Federal identification, a military photo identification, a tribal photo identification, or a current student photo identification from any State educational institution. If a registered voter does not have identification, the Law requires the voter to sign an affidavit as a substitute.

Proposal 22-2 would establish the right of a registered voter to prove his or her identity when voting or applying for an absentee ballot in person by presenting his or her photo identification issued by a Federal, State, local, or tribal government or an educational institution, and the right to execute an affidavit verifying his or her identity if he or she did not have photo identification at the polling location. The proposal also specifies that a voter would not have to vote a provisional ballot solely because he or she executed an affidavit.

Impact on Early Voting

Currently, casting an absentee ballot is the only method by which a registered voter in Michigan can vote early. Proposal 22-2 would establish a registered voter's right to vote in statewide and Federal elections in-person at an early voting site. The site would have to be open for at least nine consecutive days for at least eight hours a day, beginning on the second Saturday before the election and ending on the Sunday before the election. The proposal specifies that early voting sites would be governed in the same manner as election-day polling places, except that an early voting site could serve voters from more than six precincts and from more than one municipality within a county. The proposal also would prohibit early voting results from being generated or reported until after 8 PM on election day.

Impact on Post-Election Audits and Certification

Election Audits

The Michigan Constitution provides every qualified elector in Michigan the right to have the results of statewide elections audited to ensure the accuracy and integrity of elections. The Michigan Election Law requires the SOS to prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election, and to supervise county clerks in the performance of election audits. Proposal 22-2 would establish these requirements as rights of qualified electors in Michigan. The proposal also would prohibit an officer or member of the governing board of a national, State, or local political party, and a political party precinct delegate, from having any role in an election audit.

Election Certifications

The Constitution establishes the Board of State Canvassers, and the Michigan Election Law requires it to canvass the returns and determine the result of all elections for Federal and State elected officers, proposed amendments to the Constitution, or any other ballot question submitted to Michigan voters. Proposal 22-2 specifies that the "ministerial, clerical, nondiscretionary duty of the Board...would be to certify election results based solely on the certified statements of votes from counties or, in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns". The proposal also would grant the Board the sole authority in the State to certify the results of an election for statewide or Federal office and specifies the certification would be final subject only to a post-certification recount of the votes supervised by the Board or a post-certification court order.

Michigan Election Law also establishes a county board of canvassers in each county of the State and prescribes these boards with similar duties to the Board. Proposal 22-2 would grant the Legislature the power to establish boards of county canvassers.

In addition, Proposal 22-2 would require certified results for any office that showed a tie among two or more persons to be resolved by the drawing of lots under rules promulgated by the Board.

DISCUSSION

According to the SOS's Audit of the November 3, 2020, General Election, of the 5.5 million ballots cast in the November 2020, 3.3 million (60%) of those were absentee ballots. The total turnout and the number of absentee ballots cast set new State records. Proponents of Proposal 22-2 believe that the unprecedented number of absentee ballots cast demonstrates

that Michigan voters appreciate more flexibility within the voting system. They suggest that the one-time absentee ballot application, required return postage for absentee ballots, and the establishment of absentee ballot drop-boxes would offer further flexibility and continue to increase the total number of voters.

Proponents also contend that recent initiatives from other entities in the State to require identification at the polls without an affidavit option and to prohibit absentee ballot application mass mailings would make voting less accessible for voters. They believe that the identification requirements and absentee requirements in current law should remain, if not expand. Therefore, proponents see the inclusion of these rights in the Constitution, which is more difficult to amend than State statute, as a means to ensure this accessibility for future elections.

Opponents believe that many of the proposal's provisions would burden the voting system. For example, they contend that the introduction of a minimum nine-day early voting period would prove very costly for local governments that would have to bear the staffing and additional voting site costs associated with facilitating it. These costs likely would come out of local governments' general funds.

In addition, opponents believe that the proposal would harm election security and integrity in the State. They see the expansion of access to absentee ballots as a potential for more voter fraud, as the State does not require any proof of identification during the absentee ballot application process, only a clerk's comparison of the signatures on the application and in a voter's registration file. They also contend that allowing local governments to accept charitable donations to conduct and administer elections could invite outside political influence.

FISCAL IMPACT

The adoption of Proposal 22-2 would have cost implications for the State, specifically for the Department of State and local units of government. The exact amount of these costs is indeterminate and would depend on factors such as the number of absentee ballot applications requested, the number of polling places made available for early voting, the number of absentee-ballot drop boxes installed, and the amount of donations counties, cities, or townships received.

The largest cost for the Department of State likely would result from postage costs that the proposal would require the State to pay. Based on mailing costs for the Department of Technology, Management and Budget, the average cost for a 1 oz to 3.5 oz parcel is \$0.66, including a return envelope. The cost for prepaid return postage averages \$0.70. There are approximately 8.2 million registered voters in Michigan.³ Assuming a cost of \$0.66 per mailing, the estimated cost of sending an initial application to all 8.2 million registered voters with return prepaid postage would be an estimated \$11.2 million. There also would be costs to mail ballots with return postage for each subsequent election. That cost would depend on the number of voters who applied for an absentee ballot. Based on 2020 election data, an estimated 3.3 million absentee ballots were cast in that general election. Assuming another 3.3 million voters use absentee ballots, the estimated cost for a general election would be \$4.5 million for mailing the ballots and their return.

³ Number is based on Department of State data and represents 95% of all eligible voters, leaving an estimated 432,000 eligible voters who are not registered. The number of those who would become registered voters going forward is unknown.
<https://mvlc.sos.state.mi.us/VoterCount/Index>

Additionally, the Department could incur costs to provide a State-funded tracking system for absentee ballots. Although a ballot tracking system is currently available on the Department's website, additional programming costs could be incurred to update the system to comply with the proposal's requirements. Those costs would depend on the level of programming required.

The Department also would incur costs for the installation, security, and maintenance of absentee ballot drop-boxes. Currently, the Michigan Election Law does not prescribe how many drop-boxes must be made available in a city or township. The proposal would require a minimum of one drop-box per municipality with one per 15,000 registered voters in larger municipalities. The cost would depend on the number of drop-boxes to be installed at an average cost of \$900 per drop-box, excluding installation, security, and maintenance. Based on population data, approximately 2,000 drop-boxes could need to be disbursed throughout the State.⁴ The Department has indicated that it installed 666 drop-boxes across municipalities around the State for the 2020 general election; thus, the total estimate of 2,000 may be reduced by 666 if those boxes meet the proposal's criteria.

Local units of government could incur costs to make in-person early voting sites available. Current costs for local units of government to hold an election average \$2,100 per voting precinct, and there are an estimated 5,200 precincts in Michigan. The cost to provide an early voting site for nine consecutive days could exceed the current estimated cost of \$2,100 per precinct but would vary across municipalities. Costs would depend on how many sites would be provided in a municipality.

Lastly, any costs for local units of government could be reduced or eliminated by charitable donations, which would be allowed by the adoption of the proposal. Publicly disclosed charitable donations and in-kind contributions could be used to conduct and administer elections, reducing the estimated \$2,100 per precinct cost.

⁴ US Bureau of Labor Statistics, Summer 2022.