



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

May 16, 2024

Delta County Board of Canvassers
by e-mail to County Clerk Nancy Przewrocki

Dear Delta County Board of Canvassers Members:

The Bureau of Elections is aware that as of this date, two members of the Delta County Board of Canvassers have stated that they either will not or might not certify the results of the election held in Delta County on May 7, 2024. I write to ensure you are aware of your duties under the Michigan Constitution and Michigan Election Law; to advise you of the consequences to Delta County if you fail to certify the election; and to explain elements of the election processes in place to verify and confirm the accuracy and integrity of election results.

Legal Obligations of County Boards of Canvassers

County Boards of Canvassers have specific duties under the Michigan Constitution and the Michigan Election Law. The Michigan Constitution provides:

It shall be the ministerial, clerical, nondiscretionary duty of a board of canvassers, and of each individual member thereof, to certify election results based solely on ... 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.

Const. 1963, Art. II, s. 7(3).

The Michigan Election Law includes the same requirement:

It is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns.

MCL 168.822(3).

Under both the Michigan Constitution and Michigan Election Law, county canvassers have a clear and nondiscretionary duty to certify election results based solely on election returns. The Constitution and Michigan Election Law do not authorize boards of county canvassers to refuse to certify election results based on claims made by third parties of alleged election irregularities, or a general desire to conduct election investigations.

In the ongoing Delta County Canvass, my understanding is that the election returns have been reviewed, the tabulator tapes match the reported results (or any corrections have been made, as needed) to the satisfaction of the County Board of Canvassers.¹ Under these circumstances, there are no statutory or constitutional grounds to fail to perform the duties of the Board.

MCL 168.931(h) provides, “A person shall not willfully fail to perform a duty imposed upon that person by this act.” A person who fails to perform a responsibility required by the Michigan Election Law may be guilty of a misdemeanor. MCL 169.931(2).

Consequences of Failure to Certify

In addition to any other consequences that may flow from county canvassers failing to fulfill their constitutional or statutory duties, it will have immediate consequences for the county.

(1) Delivery of Election Records to the Bureau of Elections

Under Section 822(2) of the Michigan Election Law, if the Board of County Canvassers fails to certify the election, the Board of County Canvassers must deliver to the Secretary of the Board of State Canvassers all records and other information pertaining to the election.

Board Members will be required to personally deliver all designated records and other information to the Secretary of the Board of State Canvassers in Lansing, Michigan or at another location to be designated. Please be advised that delivery may be required any time between Tuesday, May 21 and Monday, May 27.

If your results are not certified, you will receive a follow up communication advising you on the specific records that must be delivered and the exact time and location of delivery and additional security requirements. Again, Board members may not delegate this responsibility to other individuals. The Michigan Election Law requires the Board to perform this function.

(2) Canvasser and Clerk Continuous Availability

If the Board of County Canvassers fails to certify election results, the Board of State Canvassers is required to complete canvassing of the county by the 20th day after the election (May 27). Up to and to including this date—which includes each day of the period, including holidays and weekends— and until certification is complete, all members of the Board of County Canvassers, the County Clerk, County Clerk election staff, all city and township clerks, and their staff must be available to assist with and deliver records for the state canvass upon request. This may require being present in person at offices in Lansing or the designated canvass location.

(3) Costs

All costs associated with the state canvass, including costs needed for transportation, lodging, meals, and all costs incurred by the Michigan Department of State, Michigan Department of

¹ County Boards of Canvassers must also attempt to balance all precincts, but out-of-balance precincts are not grounds to fail to certify. Instead, the Michigan Election Law expressly provides that County Boards of Canvassers must disclose the number of out-of-balance precincts that they could not reconcile when providing their certified results. MCL 168.824a.

Attorney General, Michigan State Police, or any other state agency, will be the responsibility of the county. You will receive an invoice for the costs of the canvass. The question of which individual or entity within the county would be responsible for those costs is a question for the county; however, I would encourage the County Board of Canvassers to review and discuss with its legal counsel the enclosed letter from the Department of Attorney General regarding the State Board of Canvassers and consequences that could flow from failing to perform a clear legal duty.

Although it is not possible to provide a cost estimate at this time, the county should expect costs associated with the state canvass to be substantial; the Bureau of Elections will expend as many staff hours as are needed to ensure the canvass is complete, and many overtime hours will be required as the Bureau is already at maximum capacity reviewing candidate filings for the August primary. In addition to the continuous participation of county canvassers, both county and municipal election staff will be required to produce records and perform tasks as required by the State Board of Canvassers throughout the canvass period. The requirement that these officials spend numerous hours participating in a duplicative canvass—after already spending weeks or months before, during, and after the May election, in addition to preparing for the August Election, to ensure the elections are conducted properly—would be regrettable. However, this will be a necessary consequence should the Board of County Canvassers fail to certify.

(4) Delay of Seating of Elected Officials

If the county canvass of the election is not completed, no officials may be seated until the state canvass is complete.

If the county canvass is not completed, you will receive a follow up communication with further details on the above items and your obligations under the Michigan Election Law. To the extent the delivery of election records or compliance with these instructions requires security personnel or law enforcement involvement, you may be contacted by and receive directions from law enforcement.

Election Security and Integrity

I understand that County Board members may be receiving information from individuals who are advancing some kind of statistical theory, which these individuals claim shows that fraud or misconduct must have occurred. It is unclear whether they are claiming fraud related to tabulators, electronic pollbooks, or something else. To be clear, both tabulators and electronic pollbooks have numerous security protections in place to prevent unauthorized access.

However, even putting aside the protections in place for election equipment, it is important that the Board understand that there are separate, independent records that can be reviewed after the election to verify both the names of the voters who cast ballots in the election and the contents of ballots cast in the election. All voters cast **paper ballots**, which are retained after the election. If aggrieved candidates believe that the ballots were not properly tabulated, they can request a recount. Additionally, any individual can file a public records request to inspect paper ballots after the election and verify that the contents of the ballots match the tabulated totals. If individuals review paper ballots after the election and believe fraud or other legal improprieties occurred, they can contact law enforcement or file a lawsuit in court.

Additionally, the **paper printout** of the electronic pollbook generated on election night is also preserved after elections. Individuals can make public record requests and review the paper printout of the electronic pollbook, which includes the names of voters who cast ballots in the election. If individuals review the electronic pollbook printout after the election and believe fraud or other legal improprieties occurred, they can contact law enforcement or file a lawsuit in court.

Finally, please note that every in-person voter completes a paper **application to vote** at the precinct, which is also preserved after the election. Absent voter ballot applications are also preserved after each election. Individuals can make public record requests and review the applications to vote. If individuals review applications to vote after the election and believe fraud or other legal improprieties occurred, they can contact law enforcement or file a lawsuit in court.

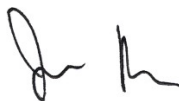
It is critical to understand that the applications to vote are separate from the pollbook and create a **separate, verifiable, and independent** record of every voter who cast a ballot in the election. Individuals advancing theories of fraud frequently claim that electronic pollbook printouts cannot be trusted, which is a false claim. However, even if one does not trust the electronic pollbook printout, the names of voters who cast ballots are also preserved separately on applications to vote.

Accordingly, there are multiple separate, independent ways for election records to be reviewed and investigations to be conducted, as necessary. However, that is not the purpose of the canvass, as explained above. The purpose of the canvass, as mandated in the Michigan Constitution and Michigan Election Law, is to review the election returns and certify the election solely based on the returns.

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Clerks, election staff, and poll workers in Delta County have worked extremely hard to conduct local elections with integrity on May 7. This work was done immediately following a statewide February presidential primary that necessitated extended hours of preparation and work. Clerks are now in the midst of preparing for the August primary, another substantial effort. Please consider the Board's legal requirements as well as the impacts of members' failure to do their legal duty on election officials in Delta County, prior to the Board's deadline to certify on May 20. Please contact me if you have any further questions.

Sincerely,



Jonathan Brater, Director of Elections
Secretary, Board of State Canvassers

[Enclosure]

[cc:]

Delta County Prosecutor Lauren Wickman
Michigan Department of Attorney General