



STATE OF MICHIGAN
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DEPARTMENT OF STATE
LANSING

Testimony of Secretary of State Jocelyn Benson

Michigan House of Representatives Elections and Ethics Committee

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Good morning and thank you for the opportunity to address your committee on this important subject.

I am grateful to the committee for taking up the issue of electronic return for overseas military voting. It is an issue I have long advocated for and I support the bills you are considering.

We estimate that an average of 5,000 ballots are sent to Michigan voters deployed overseas on orders from the United States Military in November Elections. In November 2016 more than 7,500 ballots were sent to uniformed services voters; in 2018 it was more than 2,200. In both elections more than a quarter were not returned.

In 2012, one of those voters was my husband, Sergeant Ryan Friedrichs, who was then deployed to Afghanistan as a soldier in the 173rd Airborne Brigade. As many of you know, his attempt to vote in the August 2012 primary was stymied after he mailed in his ballot, far ahead of Election Day, only to have it returned as undeliverable for no apparent reason by the United States Postal Service. Receiving his ballot, returned and marked undeliverable, a week after the election while he was still deployed in Afghanistan was a moment I won't ever forget, and it was an experience I know so many of our military families experience in any given election.

I consider it a tragic failure that our laws do not provide modern and secure options for our voters stationed overseas on military orders to have their ballots returned and counted. We should be making it a priority to do everything we can to ensure that they are able to effectively transmit their ballots and we can effectively count their votes. This bill helps us ensure that, and I am proud to support it.

One of the top priorities of my administration is ensuring our elections are secure and that voters can trust the outcome of the vote. To that end, I am aware that there are risks associated with the electronic return of ballots. My office is committed to working with the nation's top cybersecurity experts, as we've done throughout my administration, to mitigate that risk. I do not take that risk lightly, and that is why we have asked the committee to allow the Bureau of Elections the flexibility to consult with security experts and other states to determine the most secure way forward before a system is implemented. We appreciate the committee giving the Bureau that discretion.

I do, however, want to raise a significant flaw in this legislation that, left unaddressed, puts the policy at risk of offending the very military service members we are seeking to accommodate and opens up the possibility of constitutional infirmities.

What the legislation, as it currently stands, does not recognize is that, when an individual service member is stationed overseas on military orders, the spouses who accompany them are also included on those orders. This is in recognition of their service, sacrifice, and the unique role they are playing as part of our military community. Spouses who are stationed on orders overseas also face the exact same challenges as any other military service member when it comes to returning their ballots on time.

Therefore, I urge you to adopt an amendment to this legislation that will fully embrace and accommodate all members of our military community serving overseas and enable the electronic return of ballots for military spouses serving on orders as well.

I could share with you my own personal experience of being stationed on a military base in Vicenza, Italy, while my husband was with the 173rd Airborne Brigade, which is based there in Caserma Ederle. But this issue is much larger than me and my story. It impacts the stories of thousands of spouses who are also overseas on military orders and would be unnecessarily excluded from this legislation as it is currently written.

According to one military spouse: “I remember casting my vote soon after I moved to join my spouse. The deadline for mailing back my ballot was so early, I almost missed it! As I ran around trying to find the right stamps before it was too late, I kept thinking to myself: ‘Is it even worth all this effort for just my one little vote?’ If I weren't someone who was already motivated to vote on principle, I could easily imagine just letting it all pass by. What a shame it would be if every spouse faced the same discouraging obstacles and gave up. Our voices would entirely vanish.”

Without an amendment to this legislation to enable military spouses also stationed overseas to return their ballots via a secure electronic portal, Michigan will be even more of an outlier on this issue. Currently, the majority of states allow overseas voters to return their ballots via electronic means. A total of 31 states and Washington D.C. allow some form of electronic return of ballots, and none of them exclude military spouses from the system.

Any claim that the system we build to enable the secure electronic transmission of ballots would somehow only be secure when accessed by military service members and not their spouses is unfounded and without merit. That argument is based on the erroneous assumption that possession of a Common Access Card, or a “CAC,” is necessary to the secure electronic transmission of ballots. While a CAC card does provide access to a secure government portal overseas, they do not protect the electronic transmission of ballots across intermediary countries and across the United States. Other states have created secure portals for electronic ballot return that are not tied to a CAC card, and the use of a CAC card does not mitigate the security risks I referenced earlier. Further, we have no indication or permission from the United States Department of Defense that we would be allowed to integrate the use of a CAC card to the ballot transmission portals. To this end, any system we implement in Michigan that is

independent of the use of a CAC card will be able to support the secure electronic return of ballots for military spouses stationed overseas, just as it will for all military service members.

Finally, there is no compelling interest or even a rational basis for excluding military spouses from this legislation. As such, because such exclusion will disproportionately impact female voters – as the vast majority of military spouses stationed overseas are women – their exclusion from exercising their fundamental right with the same ease as their husbands exposes the state of Michigan to a potential gender discrimination claim under the Equal Protection Clause of the United States Constitution.

In closing, let me reiterate my gratitude for the committee's consideration of this important legislation. It is clearly a move in the right direction and my office stands ready to ensure its secure implementation. We hope you, in turn, will stand ready to ensure the proposal is on firm constitutional ground and does not irrationally exclude members of our military community who serve overseas every day alongside their spouses.