

May 5, 2021

*Submitted electronically*

Senate Committee on Elections  
Michigan Senate  
Harry T. Gast Appropriations Room  
3rd Floor, Capitol Building  
100 S. Capitol Avenue, Lansing, MI 48933

**Re: Opposition to S.B. 273, S.B. 286, and S.B. 308**

Dear Chair Johnson, Minority Vice Chair Wojno, and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes in opposition to Senate Bill (“S.B.”) 273, S.B. 286, and S.B. 308.<sup>1</sup> As a nonprofit, nonpartisan civil rights organization, our aim is to ensure that all voters, particularly Black voters and other voters of color, have full, meaningful, and unburdened access to the fundamental right that is preservative of all other rights: the right of citizens to access the ballot, and enjoy an equal, unburdened opportunity to participate in the electoral process and elect candidates of their choice.<sup>2</sup> Equitable voting opportunities are critical to ensuring that all voters can safely, securely, and freely participate in our democracy. Accordingly, the Michigan Senate should be considering measures to preserve and expand voting rights and voting access—not measures that would erode these fundamental guarantees.

S.B. 273, S.B. 286, and S.B. 308 would undermine significant progress to expand voting rights and ballot access in Michigan. Each of the bills’ restrictions would make it more difficult for qualified voters to cast absent voter ballots. If enacted, S.B. 273 and S.B. 286 would significantly—and needlessly—reduce the availability of absent voter drop boxes, to the detriment of all Michigan voters, and especially Black voters and low-income voters. S.B. 308 would require the Michigan Secretary of State to implement a signature-verification process for absent voter ballot applications and envelopes that could not presume voter signatures are valid. Removing this presumption would likely cause absent voter ballots to be wrongfully rejected, increasing the risk of unjustified disenfranchisement for all Michiganders, but especially for elderly voters, voters with disabilities, and voters whose first language is not English.

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<sup>1</sup> Senate Bill No. 273, 101st Leg. (Mich. Mar. 24, 2021) (hereinafter “S.B. 273”); Senate Bill No. 286, 101st Leg. (Mich. Mar. 24, 2021) (hereinafter “S.B. 286”); Senate Bill No. 308, 101st Leg. (Mich. Mar. 24, 2021) (hereinafter “S.B. 308”).

<sup>2</sup> See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (describing the right to vote as “a fundamental political right, because preservative of all rights”).

## I. This Committee Should Reject S.B. 273 and S.B. 286's Unnecessary Restrictions on Absent Voter Drop Boxes.

Both S.B. 273 and S.B. 286 would reduce the availability of absent voter drop boxes. S.B. 273 would achieve this result indirectly by imposing unrealistic and costly surveillance requirements on counties operating drop boxes, and by mandating that every drop box must be individually approved by both the Secretary of State and the applicable board of county canvassers. Concerningly, S.B. 273 also makes its approval mandate retroactive, requiring each of the nearly 1,000 drop boxes used in 2020 either to be individually evaluated and approved by October 1, 2021 or to be removed. This provision gives any two members of a county canvassing board an inappropriate and unchecked veto that will empower them to abolish existing drop boxes in their county or refuse to approve new drop boxes—and could be used to severely curtail the amount of drop boxes available in certain communities. S.B. 286 also reduces the availability for utilization of absent voter drop boxes, as it prohibits voters from returning absent voter ballots to drop boxes after 5 p.m. on the day before Election Day, or at any time on Election Day itself.

Thus, S.B. 286 would directly reduce drop-box availability, and S.B. 273's restrictions would likely result in such a reduction. Both bills would curtail the flexibility current law provides for counties to allocate drop-box hours and locations based on voter needs. This flexibility can be a lifeline for voters seeking to return their ballots to drop boxes in the final days before an election, including after a clerk's office closes for the evening on the day before Election Day, as some voters do not receive their absent voter ballots until the final days before the election and may not have enough time to return their ballot by mail.<sup>3</sup>

The significant restrictions proposed in these two bills are deeply concerning. Drop boxes have become a frequently-used best practice nationwide—the Department of Homeland Security has endorsed drop boxes as a “secure and convenient means for voters to return their mail ballot” and recommends that states provide one drop box for every 15,000 to 20,000 voters.<sup>4</sup> Michiganders across the state have come to rely on drop boxes as a safe and important option

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<sup>3</sup> See, e.g., *NEWS RELEASE: Benson: Too late to rely on United States Postal Service for absentee ballots*, Mich. Sec'y of State's Office (Oct. 27, 2020), <https://content.govdelivery.com/accounts/MISOS/bulletins/2a8035c> (“We are too close to Election Day, and the right to vote is too important, to rely on the Postal Service to deliver absentee ballots on time . . . . Citizens who already have an absentee ballot should sign the back of the envelope and hand-deliver it to their city or township clerk's office or ballot drop box as soon as possible.”).

<sup>4</sup> See U.S. Dep't of Homeland Security, Cybersecurity and Infrastructure Security Agency, *Ballot Drop Box 1* (2020), [https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot\\_Drop\\_Box.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf).

for casting their absent voter ballots.<sup>5</sup> For many voters, especially voters with personal or professional commitments that limit their availability during work-hours, elderly voters, and voters with disabilities or other medical conditions, casting an absent voter ballot in-person at a clerk's office during business hours, or voting on Election Day, may not be feasible options. Broadly available drop boxes are an essential alternative for such voters. In addition, based on service issues with the United States Postal Service, which will likely persist,<sup>6</sup> some voters are not confident about returning absent voter ballots by mail.

These restrictions are especially troubling because they are likely to disproportionately burden historically marginalized groups. For example, Black voters are less likely to be able to take time off work<sup>7</sup> and are therefore more likely to return their absent voter ballot to a drop box in the evening or early morning—options that would no longer be available after 5 p.m. on the day before Election Day, or on the morning of Election Day, under S.B. 286. Flexible options for returning absent voter ballots are particularly important in the final days of an election. Under Michigan law, voters may request absent voter ballots as late as Election Day, and clerks may continue sending absent voter ballots by first-class mail until “5 p.m. on the Friday immediately before the election.”<sup>8</sup> Curtailing the availability of this important option for vulnerable voters serves no legitimate purpose but will impose a severe burden on the right to vote.

## **II. This Committee Should Oppose S.B. 308's Ban on Signature-Matching Standards that Presume a Signature is Valid.**

S.B. 308 would require the Secretary of State to implement signature-verification training for local elections officials and to promulgate rules for an “objective signature verification process” for absent voter ballot applications and envelopes. S.B. 308 also requires that this “objective” process must not include any presumption regarding a signature's validity. This Committee should oppose efforts to remove the common-sense presumption of validity for voter signatures. Removing it would likely make signature-verification less accurate and

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<sup>5</sup> Bob Campbell, *Absentee ballot drop boxes boom in Michigan, despite controversy elsewhere*, *Bridge Michigan* (Oct. 5, 2020), <https://www.bridgemi.com/michigan-government/absentee-ballot-drop-boxes-boom-michigan-despite-controversy-elsewhere>.

<sup>6</sup> Quinn Klinefelter, *There's No End in Sight: Mail Delivery Delays Continue Across the Country*, NPR (Jan. 22, 2021), <https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-maildelivery-delays-continue-across-the-country>.

<sup>7</sup> Black Michiganders have a median income of \$36,833, far less than that of non-Hispanic white Michiganders (\$63,704), making it more difficult for Black voters to take time off work to vote. See *S1903, Median Income in the Past 12 Months (In 2019 Inflation-Adjusted Dollars)*, 2019 American Community Survey 1-Year Estimates, United States Census Bureau; see also *Operation PUSH v. Allain*, 674 F. Supp.1245, 1256 (N.D. Miss. 1987), *aff'd sub. nom. Operation PUSH v. Mabus*, 932 F.2d 400 (5th Cir. 1991) (explaining that lower-income Black workers “are likely to be working for an hourly wage and are less likely to be able to take off from work” to vote during business hours than workers in higher-paying, salaried jobs).

<sup>8</sup> Mich. Comp. Laws § 168.759(2).

more burdensome, with the ultimate result of more valid signatures being rejected and qualified voters being disenfranchised. As the Eleventh Circuit has explained, even when election officials apply uniform standards and expert judgment to the task of deciding whether two signatures come from the same person, “the inherent nature of signatures” can result in wrongful ballot rejection.<sup>9</sup>

The Election Assistance Commission reports that “non-matching signature” is a leading reason for absentee-ballot rejection.<sup>10</sup> But, as courts and election administrators recognize, superficial differences between signatures do not necessarily indicate that they were signed by different people. Indeed, “no one signs his or her name exactly the same way twice.”<sup>11</sup> A person’s signature can vary from one signing to the next due to factors over which they have no control, including “age, physical and mental condition, disability, medication, stress, accidents, and inherent differences in a person’s neuromuscular coordination and stance.”<sup>12</sup> Even the type of pen and writing surface a voter uses “can alter a person’s signature and produce mismatches.”<sup>13</sup>

These realities underscore the importance of an approach to signature verification that “begins with the presumption that the voter’s . . . application or envelope signature is his or her genuine signature.”<sup>14</sup> Michigan law appropriately provides that the signature on an absent voter ballot application can be rejected only if it “does not agree sufficiently with the signature on the master card or the digitized signature contained in the qualified voter file so as to identify the elector.”<sup>15</sup> Thus, an exact match is not required as long as the signatures “agree sufficiently.”<sup>16</sup> Michigan’s signature-matching guidance as of the 2020 general election adopted this common-sense approach, providing that “[a] voter’s signature should be considered questionable only if it differs in multiple, significant and obvious respects from the signature on file,” and that “[s]light dissimilarities should be resolved in favor of the voter whenever possible.”<sup>17</sup> Elections

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<sup>9</sup> *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019).

<sup>10</sup> U.S. Elec. Assist. Comm’n, *2018 Comprehensive Report* 14 (June 2019), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/2018\\_EAVS\\_Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf).

<sup>11</sup> Colo. Sec’y of State, *Signature Verification Guide* 3, State of Colo., Dep’t of State (Sept. 13, 2018), <https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf>.

<sup>12</sup> *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 205 (D.N.H. 2018).

<sup>13</sup> *Lee*, 915 F.3d at 1320.

<sup>14</sup> Mich. Sec’y of State, *Absent Voter Ballot Application and Ballot Processing: Signature Verification and Voter Notification* 1 (2020), [https://mielections.csod.com/clientimg/mielelections/MaterialSource/97316e2f-5358-4d07-9e2a-f802b96e38d0\\_AV\\_Application\\_and\\_Ballot\\_Signature\\_Verification\\_and\\_Notification\\_Pre\\_March\\_10\\_Final\\_\\_1\\_.pdf](https://mielections.csod.com/clientimg/mielelections/MaterialSource/97316e2f-5358-4d07-9e2a-f802b96e38d0_AV_Application_and_Ballot_Signature_Verification_and_Notification_Pre_March_10_Final__1_.pdf).

<sup>15</sup> Mich. Comp. Laws § 168.761(2).

<sup>16</sup> *Id.*

<sup>17</sup> Mich. Sec’y of State, *supra* note 14 (emphasis in original). These standards have been immobilized by a decision of the Michigan Court of Claims ruling that their promulgation was subject to but did not comply with the Administrative Procedure Act. *See* Op. and Order Granting Summ. Disp. in Part to Pls. and Granting Summ. Disp. in Part to Dfs, *Genetski v. Benson*, No. 20-000216-MM, 2021 WL 1624452 (Mich. Ct. Cl. Mar. 9, 2021). However, there

officials in several other states also resolve minor ambiguities that may arise in comparing signatures to the benefit of the voter, applying a de facto or de jure presumption in favor of approving the signature and counting the vote.<sup>18</sup>

Moreover, the high stakes of a rejected signature—including disenfranchisement—counsel strongly in favor of maintaining a presumption that an absent voter’s signature is valid. Voting is a fundamental right, and any burden on that right must be balanced against a legitimate and countervailing state interest.<sup>19</sup> Burdening voters by subjecting their signatures to an unrealistic matching standard is also unnecessary, because making a false statement on an absent voter application is already a crime.<sup>20</sup> Further, signature variations that can lead to rejections “are more prevalent in people who are elderly, disabled, or who speak English as a second language.”<sup>21</sup> Thus, S.B. 308’s passage would likely lead to the disproportionate disenfranchisement of voters of color, voters with disabilities, and elderly voters, raising concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution, Section 2 of the Voting Rights Act, and Title II of the Americans with Disabilities Act.<sup>22</sup>

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was no allegation in that case that a presumption in favor of signature validity had caused any election official “to accept a signature that he believed was invalid.” *Id.* at \*2.

<sup>18</sup> See, e.g., Cal. Code Regs. tit. 2, § 20960(b) (“The comparison of a signature shall begin with the basic presumption that the signature on the petition or ballot envelope is the voter’s signature.”); Maya Lau & Laura J. Nelson, *‘Ripe for error’: Ballot signature verification is flawed — and a big factor in the election*, L.A. Times (Oct. 28, 2020), <https://www.latimes.com/california/story/2020-10-28/2020-election-voter-signature-verification> (a spokesperson for the Miami-Dade County Elections Department stating, “We always err on the side of the voter”); Susie Armitage, *Handwriting Disputes Cause Headaches for Some Absentee Voters*, ProPublica (Nov. 5, 2018), <https://www.propublica.org/article/handwriting-disputes-cause-headaches-for-some-absentee-voters> (the elections director for Franklin County, Ohio, explaining that his office gives voters the benefit of the doubt because, “[t]o decline a signature, that’s not something that is taken lightly”).

<sup>19</sup> See *Burdick v. Takushi*, 504 U.S. 428 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)); see also *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at \*6 (N.D. Fla. Oct. 16, 2016) (“If disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does.”).

<sup>20</sup> Mich. Comp. Laws § 168.761(5) (“An absent voter who knowingly makes a false statement on the absent voter ballot return envelope is guilty of a misdemeanor. A person who assists an absent voter and who knowingly makes a false statement on the absent voter ballot return envelope is guilty of a felony.”).

<sup>21</sup> *Saucedo*, 335 F. Supp. at 205–206.

<sup>22</sup> See U.S. const. amends. XIV, XV; 52 U.S.C. 10301; 42 U.S.C. § 12131.

For the foregoing reasons, we respectfully urge this Committee to oppose S.B. 273, S.B. 286, and S.B. 308. Please feel free to contact Steven Lance at (347) 947-0522 or by email at [slance@naacpldf.org](mailto:slance@naacpldf.org) with any questions or to discuss these concerns in more detail.

Sincerely,

*/s/ Steven Lance*

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.