

February 1, 2022

Submitted electronically

Committee on Elections and Ethics
Michigan House of Representatives
Room 326, House Office Building
124 N. Capitol Avenue
Lansing, MI 48933

Re: Opposition to S.B. 273

Dear Chair Bollin, Majority Vice Chair Wendzel, Minority Vice Chair Koleszar, and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to reiterate our opposition to Senate Bill (“S.B.”) 273, a bill that we previously opposed last year before the Senate Elections Committee.¹ 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.² Equitable voting opportunities are critical to ensuring that all voters can safely, securely, and freely participate in our democracy. Accordingly, the Michigan Legislature should advance measures to preserve and expand voting rights and voting access—not measures that would erode these fundamental guarantees.

S.B. 273 would undermine significant progress to expand voting rights and ballot access in Michigan by making it more difficult for qualified voters to cast absent voter ballots. If enacted, S.B. 273 would likely result in a significant and needless reduction in availability of absent voter drop boxes—an outcome that would harm all Michigan voters, and especially Black voters and low-income voters.

¹ Senate Bill No. 273, 101st Leg. (Mich. Dec. 9, 2021) (hereinafter “S.B. 273”); see NAACP Legal Def. and Educ. Fund, Inc., Opposition to S.B. 273, S.B. 286, and S.B. 308 (Mar. 5, 2021), <https://www.naacpldf.org/wp-content/uploads/2021-05-05-NAACP-LDF-Opposition-to-SB-273-SB-286-and-SB-308.pdf>.

² 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’s Unnecessary Restrictions on Absent Voter Drop Boxes.

S.B. 273 would impose unrealistic, costly, and unnecessary surveillance requirements on counties operating drop boxes and mandate that every existing or proposed drop box must be individually approved by both the Secretary of State and the board of county canvassers. Concerningly, S.B. 273 makes this approval mandate retroactive, requiring each of the nearly 1,000 drop boxes already in use to be either individually evaluated and approved by June 1, 2022, or removed.

In practice, the bill’s approval mandate is likely to result in a significant decrease in the availability of drop boxes. As you know all canvassing boards must be composed of four members—two from each of the two largest political parties.³ And a board can only take action if at least three members concur.⁴ By requiring affirmative approval for each drop box from bodies whose membership is split evenly along partisan lines, S.B. 273 appears to invite an impasse, which could cause an inappropriate number of drop boxes to be removed. Indeed, this provision, in effect, gives any two members of a canvassing board an inappropriate and unchecked veto that would 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.

The imposition of an approval mandate that subjects each existing or proposed drop box to potential removal, S.B. 273 is unnecessary and fails to recognize that drop boxes have become a frequently-used best practice nationwide—the United States 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.⁵ Michiganders across the state have come to rely on drop boxes as a safe and important option for casting their absent voter ballots.⁶ For many voters, especially voters with personal or professional commitments that limit their availability during normal voting hours, elderly voters, and voters with disabilities or other medical conditions—casting an in-person absent voter ballot at a clerk’s office during business hours may be an untenable option. Broadly available drop boxes are an essential alternative. In addition, based on well documented service issues with the United States Postal Service, which may in fact

³ Mich. Comp. Laws § 168.24a.

⁴ Mich. Comp. Laws § 168.24e(1).

⁵ 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.

⁶ 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>.

persist,⁷ some voters are not confident about returning absent voter ballots by mail and prefer drop boxes as a secure alternative.

S.B. 273's restrictions are especially troubling because they are likely to disproportionately burden historically marginalized groups including people of color, and disabled or elderly voters. For example, Black voters are less likely to be able to take time off work⁸ and are therefore more likely to return their absent voter ballots at times when drop boxes may be the only option, such as the late evening, early morning, or weekends. 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."⁹ 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. Thus, S.B. 273's passage, and the voting restrictions it may facilitate at the county level, would raise 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.

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For the foregoing reasons, we urge this Committee to oppose S.B. 273. Please feel free to contact Steven Lance at slance@naacpldf.org with any questions or to discuss these concerns in more detail.

Sincerely,

/s/ Steven Lance

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⁷ 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>.

⁸ 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).

⁹ Mich. Comp. Laws § 168.759(2).

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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.