

FAIR ELECTION FUND 2024 REPORT

SECRETARY OF STATE BENSON'S ADMINISTRATION **OF MICHIGAN ELECTIONS**

The Fair Election Fund is a non-partisan public interest organization committed to promoting effective administration of elections in transparent ways that instill public confidence in electoral results. This is the first of multiple state reports evaluating the performance of Secretaries of State in administering elections.

In conducting its Report on Secretary Benson's election administration in the state of Michigan, The Fair Election Fund, in part, relied on the nonpartisan tenants proposed by the Carter-Baker Report. The Carter-Baker Report was released by a bipartisan commission in 2005 to address "Americans [] losing confidence in the fairness of elections" and to address other "problems of our electoral system." The Carter-Baker Report rightly proclaimed "[e]lections are the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable...If elections are defective, the entire democratic system is at risk."

The Carter-Baker Report included over 80 recommendations for improved election administration in the United States. These recommendations encompass the Carter-baker Reports five pillars of an effective electoral system:

To build confidence, the Commission recommends a modern electoral system built on five pillars:(1) a universal and up-to-date registration list, accessible to the public; (2) a uniform voter identification system that is implemented in a way that increases, not impedes, participation; (3) measures to enhance ballot integrity and voter access; (4) a voter-verifiable paper trail and improved security of voting systems; and (5) electoral institutions that are impartial, professional, and independent.

The Fair Election Fund evaluated these nonpartisan recommendations and created a modernized five-part analysis focused on the areas that have the greatest impact on the effective administration of elections, increasing transparency, and increasing voter confidence.

THE FAIR ELECTION FUND FIVE-PART ANALYSIS

- I. The Administration of Elections and Enforcement of Existing Laws**
- II. The Transparency of Electoral Process**
- III. The Quality of the Voter Registration List**
- IV. Impartial, Professional, and Independent Election Administration**
- V. Leadership to Instill Confidence in Election Results**

Using this Five-Part Analysis, this report evaluates and grades Michigan Secretary of State Jocelyn Benson's performance administering elections, and provides recommendations to improve the administration of elections, increase transparency, and increase voter confidence.

EXECUTIVE SUMMARY

The Fair Election Fund's analysis of Secretary Benson's election administration determined a failing grade for her performance due to multiple and continued failures that undermine the confidence of voters in Michigan. This includes frequently being struck down in court for issuing instructions inconsistent with Michigan law, being reprimanded by several Federal judges for her partisan interference in ballot access, creating the appearance of impropriety that has resulted in Michigan Bar review of her actions, and a voter registration list in Michigan that is way behind other states in maintenance to remove non-Michigan citizens.

I. The Administration of Elections and Enforcement of Existing Laws

Fair Election Fund’s analysis revealed numerous examples of Secretary Benson failing to enforce existing election laws. These actions resulted in lawsuits brought by election officials, concerned citizens, and a variety of organizations in the lead up to the 2024 election. These lawsuits are not merely the result of the differing priorities of the major political parties, with Republicans emphasizing encouraging confidence in elections through transparency and verification, and Democrats prioritizing ease of voting at all costs. Instead, these actions give the appearance of a complete disregard for the rule of law and contempt for statutorily mandated election integrity safeguards. The lawsuits challenging Secretary Benson’s actions routinely resulted in courts finding her actions were unlawful.

Secretary Benson’s most egregious action that was struck down by the courts was an attempt to eliminate a safeguard created by the legislature to ensure the person who cast a mail ballot is the actual voter. Secretary Benson instructed county clerks that they should presume a signature on a ballot envelope is valid unless proven otherwise. The legislature did not add a presumption of validity in the statute, and for good reason. A presumption of validity for signature verification waters down this election integrity safeguard to the point it is functionally useless. Likewise, adding a presumption of validity directly contradicts the statute’s requirements that clerks must determine the genuineness of signatures before they can be counted. This was particularly egregious because this is not the first time Secretary Benson had attempted to create a presumption of validity for signatures—it was at minimum her third attempt. In 2020, she attempted to create the presumption by including it in her guidance to clerks, which ultimately resulted in a court ruling her actions were unlawful and violated the Michigan’s administrative procedure act. The next year, Secretary Benson promulgated a proposed rule under the APA, with

the initial draft including the presumption of signature validity. But that proposed rule received so much bipartisan pushback that *she withdrew it*. Thus, in 2024 when she told county clerks to presume signatures were valid, she was doing what a court had already struck down, what bipartisan stakeholders had told her not to, and what she said she would not do.

Secretary Benson’s disregard for existing laws was further demonstrated by other actions that were struck down by the courts in 2024. In one case, the law required clerks to sign and date an absent voter ballot envelope. But Secretary Benson told them to only date it. When a lawsuit was filed challenging her, she immediately settled the case. In another case, Secretary Benson instructed clerks to not compare the ballot serial number to the ballot envelope serial number. Every ballot has a serial number on a perforated stub on top, and on the envelope on the outside. That serial number is used to make sure that the person who returned the ballot is the same person to whom it was sent—Republican lawyers described the serial number as the ballot envelope’s “signature” because it verifies the identity of the ballot and envelope. When Secretary Benson told clerks to not compare the ballot serial number to the ballot envelope serial number, Republicans sued. The court hearing the case explained—in detail—the danger of the Secretary’s instructions. The court identified and explained the risk that one person could cast their vote by mail; a second person, however, could intercept the ballot envelope, open it, throw away the valid ballot, and insert their own ballot. If clerks were comparing the number on the ballot against the number on the ballot envelope, they would catch the discrepancy. But if clerks did what Secretary Benson said to do, the discrepancy would never be caught. The judge thus ruled against Secretary Benson, requiring her to tell clerks to compare the ballot’s number to the ballot envelope’s number.

Each one of these unlawful actions created confusion among the election officials and damaged the trust voters have in Michigan’s election administration.

A. Presumption of Validity as to AV Ballot Signatures Lawsuit

Under the Constitution, “[e]very citizen of the United States who is an elector qualified to vote in Michigan” has “[t]he fundamental right to vote, including but not limited to the right, once registered, to vote a secret ballot in all elections.” Const 1963, art 2, § 4(1)(a). Balanced against that right, of course, is the constitutional command that “the legislature shall,” in addition to regulating the “time, place and manner” of elections, enact laws “to preserve the purity of elections . . . to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.” Const 1963, art 2, § 4(2). All Michigan voters—whether they are in-person voters or absent ballot voters—must verify their identity before casting a ballot. Not only is the mandate that an elector must “prove their identity” before receiving a ballot in a polling place constitutional, it is also overwhelmingly supported by public opinion.¹ For absent voter ballots, the Constitution mandates that election officials must “verify the identity of a voter who applies for an absent voter ballot . . . *by comparing the voter’s signature on the absent voter ballot application to the voter’s signature in their registration record.*” Const 1963, art 2, § 4(1)(h) (emphasis added). So, too, does Michigan law. See MCL 168.761(1) (“If the clerk of a city or township receives an application for an absent voter ballot, the clerk must immediately determine . . . if the signature on the application agrees sufficiently with the signature on file for the individual as required in subsection (2).”); MCL 168.761(2) (“The signature on file must be used to determine the genuineness of a signature on an application for an absent voter ballot . . . using the procedures required under [MCL 168.766a].”).

¹ See Detroit Regional Chamber, *Statewide Poll Reveals Opinions on Political Landscape* (June 7, 2021) <https://www.detroitchamber.com/statewide-poll-reveals-opinions-on-political-landscape-covid-19-and-vaccination-perceptions-ongoing-labor-shortage-and-voting-rights/> (last visited December 26, 2024) (finding that 79.7% of respondents in statewide poll support requiring “every voter coming to the polls present a government-issued identification to cast their ballot”).

Heading into the 2020 election, Secretary Benson circulated guidance to the county clerks, instructing them to *presume* a signature’s validity unless proven otherwise. Republicans sued Secretary Benson, alleging that her guidance violated Michigan Election Law because the law did not give absent voter signatures a presumption of validity, and her “rule” was not promulgated in accordance with the APA. See *Genetski v Benson*, No. 20-000216-MM (Mich Ct Cl, 2021). The trial judge ruled in the Republican’s favor because the challenged signature verification guidance—including Benson’s instruction that clerks should presume absent voter signatures are valid—was issued in violation of the APA. Secretary Benson did not appeal that holding.

After the Republicans won in court, Benson turned to the APA rule making process. She proposed a rule, number 2021-61 ST, entitled “Signature Matching for Absent Voter Ballot Applications and Absent Voter Ballot Envelopes.” Among a slew of proposed rules, the Secretary included language presuming the validity of absent voter signatures during the identity verification process. Specifically, draft R 168.22(2) / Rule 2(1) stated as follows:

(1) In determining for purposes of section 761(2) of the Michigan election law, 1954 PA 116, MCL 168.761, whether a voter’s absent voter ballot application signature or absent voter ballot envelope signature agrees sufficiently with the voter’s signature on file, **signatures must be reviewed beginning with the presumption that the voter’s signature is his or her genuine, valid signature.** [Pls’ Compl, Ex. C, at 1 (emphasis added).]

Benson’s proposed rule was met with significant opposition. For example, State Senator Ruth Johnson—former Oakland County Clerk, Michigan Secretary of State from 2011-2019, and then-Chair of the Senate Elections Committee—wrote that the presumption “is in direct conflict with the statutory language which instructs clerks to ‘determine’ the genuineness of signatures.”² And

² SenatorRuthJohnson.com, *Johnson Blasts Benson’s Proposed Rules* (October 7, 2021) <https://www.senatorruthjohnson.com/johnson-blasts-bensons-proposed-rules/> (last visited December 26, 2024)

State Representative Ann Bollin—former Brighton Township clerk from 2003-2018, and then-Chair of the House Elections and Ethics Committee—opposed the presumption, explaining that “[s]ignature verification is a hallmark standard that protects the voter.”³ In the face of stout opposition, Benson abandoned her proposed rule that county clerks must presume a signature’s validity.

But in 2024, it came out that Secretary Benson had covertly issued instructions directing election officials to apply a “presumption of validity” to absent voter signatures.⁴ On her public website, the Secretary maintains a guidance document entitled, “Election Officials’ Manual, Chapter 6: Michigan’s Absent Voter Process.” While the Secretary’s presumption of validity is not included in the publicly available Absent Voter Process Manual, that manual is not the only set of absent voter signature verification instructions issued by the Secretary. Indeed, the Absent Voter Process Manual incorporated by reference an entirely *separate* set of signature verification instructions issued by the Secretary. This separate set of signature verification instructions was not available to the public and instructed clerks that “[v]oter signatures are entitled to an initial presumption of validity.”

A group of election officials and the Michigan Republican Party sued Secretary Benson again, alleging that her guidance violated Michigan Election law and the Constitution by requiring county clerks to presume the validity of a signature on an absent voter ballot and that the Secretary’s guidance was fatally deficit because it failed to comply with APA rule making

³ GOPHouse.org, *Rep. Bollin: SOS withdraws attempt to water down signature verification standards after legislative push back* (March 8, 2022) <https://gophouse.org/posts/rep-bollin-sos-withdraws-attempt-to-water-down-signature-verification-standards-after-legislative-push-back> (last visited December 26, 2024)

⁴ *Republican National Committee v Benson*, No. 24-000041-MZ, at *5 (Mich Ct Cl, June 12, 2024) at 5 [https://www.courts.michigan.gov/49d0f2/siteassets/case-documents/opinions-orders/coc-opinions-\(manually-curated\)/2024/24-000041-mz.pdf](https://www.courts.michigan.gov/49d0f2/siteassets/case-documents/opinions-orders/coc-opinions-(manually-curated)/2024/24-000041-mz.pdf)

procedures. The Court of Claims ruled against Secretary Benson, holding that Michigan Election Law do[es] not prescribe or even suggest a presumption of validity.” The Court rebuffed the Secretary’s argument that her guidance merely “calls for a more modest ‘initial [presumption],” holding that “a presumption is a presumption is a presumption” and “[w]hether the guidance manual includes a gentle nudge instead of a hip check, it’s still a foul under Michigan law.”⁵ And the Court said more. It noted that the Secretary had proposed an APA rule that county clerks must afford signatures a presumption of validity, and that “the defendants’ decision to initially insert, but later withdraw, the presumption language in Rule 2 speaks volumes about their understanding of what Michigan law will—and will not—allow.”⁶

B. Envelope marking case (directed clerks they need not mark envelopes to indicate signatures had been verified despite requirement to do so under law)

After an absent voter casts their ballot, a county clerk must “[v]erify[] the signature on each absent voter ballot return envelope” and ensure that “[w]ritten or stamped on each absent voter ballot return envelope must be must be the date . . . that the absent voter ballot return envelope was received by the city or township clerk and a statement by the city or township clerk that the absent voter ballot is approved for tabulation.” MCL 168.765(2). Michigan law requires clerks to date and verify a ballot is ready for tabulation so that later on, when the ballot is being tabulated, election inspectors may be assured that the ballot is lawfully cast. If clerks don’t verify the signature and include a writing or stamp confirming that they verified the signature then election inspectors will have no way of knowing whether the ballot was cast. During the August 2024 primary, several election inspectors noticed that clerks were not attaching statements confirming that they had verified ballots’ signatures. This left election inspectors in a pinch because they aren’t

⁵ See *id.*

⁶ *Id.*

allowed to verify signatures, but nothing on the ballot or envelope confirmed that it was ready to be tabulated.

Secretary Benson's guidance for clerks increased confusion among election staff because it only mentioned that clerks must mark the date that the absent voter ballot return envelope was received. In other words, the Secretary's AV Ballot Processing Guidance failed to mention the clerk's statement of approval (*i.e.*, signature verification confirmation) as required under subsection 765(2).

The Michigan Republican Party, Republican National Committee, and Cindy Berry, a township clerk, sued Secretary Benson, arguing that her guidance was fatally deficient.⁷ But after Secretary Benson agreed to amend her guidance to add that clerks must affix a statement that an absent voter ballot is approved for tabulation to each absent voter ballot, the case was dismissed.

After amendment, Benson's new instructions state:

The clerk must verify that the signature on a returned absent voter ballot envelope matches the voter's signature on file. This comparison should be done immediately upon receipt of the absent voter ballot envelope to assist with accurate recordkeeping and provide timely information to the voter. Written or stamped on each absent voter ballot return envelope must be the date of receipt, the time and date of receipt if received on election day, and a written or stamped statement that the ballot is approved for tabulation. Approval can be expressed by completing and initialing the portion of the "clerk section" indicating that the signature was verified. Once the ballot is verified and deemed valid, the clerk should mark the "received" date in QVF with the date of receipt and make sure the date of receipt is included on the "clerk section" on the envelope.⁸

⁷ Detroit Free Press, *Republicans ask Michigan court to toss absentee ballots lacking clerks' written approval* (September 12, 2024)

<https://www.freep.com/story/news/politics/elections/2024/09/12/gop-michigan-court-absentee-ballots-toss-clerks-shortage/75193285007/> (last access December 26, 2024).

⁸ Election Officials Manual, Chapter 8: Absent Voter Ballot Processing (October 2024) <https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/Absent-Voter-Ballot-Processing.pdf?rev=23dc5cc9aa864b6195f26bc0d7277607&hash=3F769DC1BE31B9F3B9B3DB49D92F65AA> (Last visited December 26, 2024).

C. Tabulating ballots with mismatched numbers as challenged rather than rejecting them outright as required under law.

Michigan law requires that absent voter ballots have an attached, numbered, perforated stub, which is used to ensure accurate vote counts and confirm that an elector is casting the correct ballot. These stubs matter because they are essentially the signature of the ballot. They prove that the ballot is in the right envelope, which in turn shows that the ballot was cast by the right person (in Michigan, ballot *envelopes* are signed, but *ballots* are not signed. Thus, if the ballot envelope and ballot match, county clerks can show that the ballot was cast by the person without permanently marking it as the persons).

Benson issued guidance instructing local clerks and election inspectors to process and tabulate absent voter ballots where the stub is missing or mismatched, and she stated that clerks must compare the number—if it is available—against the number in the qualified voter file, rather than the ballot number on the face of the envelope. Republicans sued Benson, claiming that Michigan law required ballots with missing or mismatched stubs to be rejected, and that the number on the ballot had to be compared to the number on the envelope, not the number in the QVF file. The court sided with the Republicans because while some mismatched or missing ballot stubs might be a voter’s innocent mistake, “defendants acknowledged another, more sinister reason as to why a mismatched ballot might occur—namely, voter fraud.” The court gave an extended hypothetical:

To see how this [voter fraud] might occur, consider the following scenario involving two hypothetical persons, “Sally and Jane.” Sally is a patient, and Jane is her in-home caregiver. Sally is a vocal supporter of Candidate A for president, while Jane is an equally vocal supporter of Candidate B. They are friendly with each other, so they talk politics on occasion, and they even joke that their presidential votes will cancel each other out. But, unbeknownst to Sally, Jane hatches the following scheme—(a) Jane will vote for Candidate B on the absent-voter ballot issued to her; (b) Jane will watch Sally fill out the absent voter ballot issued to Sally, and then take that ballot to another room where the return envelopes

are kept; (c) Jane will place her own ballot (with Jane’s vote for Candidate B) in the return envelope issued to Sally; (d) Jane will then seal up Sally’s return envelope, tell Sally that she placed her (i.e., Sally’s) ballot in her return envelope, and have Sally sign her return envelope; and finally (e) Jane will help Sally to the mailbox to mail “Sally’s ballot” (but really Jane’s) so that Sally can tell her family and friends that “she voted” (but not really). To cover her tracks, Jane will destroy the unused return envelope issued to Jane as well as the absent-voter ballot issued to Sally. With this scheme, Jane will have voted for her preferred Candidate B and blocked a vote for Candidate A. If Jane’s fraud evades detection, then she will have altered the vote total for the election.⁹

The Court of Claims found that it could not grant all the relief the plaintiffs’ sought because of the impending election. Nevertheless, the Court directed the Secretary to amend her guidance so that “The following sentence found on page 7 of the Manual—‘Without exposing any votes, the election inspector should verify that the number on the ballot stub agrees with the ballot recorded for the voter in the QVF Absent Voter List.’—shall be revised to read as follows: ‘Without exposing any votes, the election inspector must verify that the number on the ballot stub agrees with the ballot number on the face of the absent voter return envelope.’”

D. Operational Concerns

Detroit, a city that was at one time unironically called the “Paris of the West,” is a city equally blessed with monumental successes and titanic problems.¹⁰ Detroit elections are no exception. When an election is close, Michigan Election Law outlines when and how precincts must conduct a recount.¹¹ “Having balanced precincts is particularly important in Michigan because precincts whose poll books don’t match with ballots can’t be recounted, according to state law.”¹² In 2016,

⁹ *Michigan Republican Party v Benson*, No. 24-000148-MZ (October 3, 2024), at *10-11 [https://www.courts.michigan.gov/4a7aa4/siteassets/case-documents/opinions-orders/coc-opinions-\(manually-curated\)/2024/24-000148-mz.pdf](https://www.courts.michigan.gov/4a7aa4/siteassets/case-documents/opinions-orders/coc-opinions-(manually-curated)/2024/24-000148-mz.pdf).

¹⁰ VisitDetroit, *How Detroit Earned Its Nickname “Paris of the Midwest”* <https://visitdetroit.com/inside-the-d/paris-midwest/> (Last Accessed January 2, 2024).

¹¹ See Michigan Compiled Law 168.861 *et seq.*

¹² The Detroit News, canvassers demand answers after 72% of Detroit’s absentee ballot counts were off (August 20, 2020) <https://www.detroitnews.com/story/news/politics/2020/08/20/benson->

the election stood on a razor’s edge, with Trump prevailing over Clinton 2,279,543 to 2,268,839— a margin of 10,704 votes.¹³ Of course, there was a recount. But “[i]n 2016, a recount of the presidential election was terminated because as many as half of Detroit’s precincts were ineligible for recount because of irregularities.”¹⁴ Indeed, “136 Detroit precincts couldn’t undergo a recount requested by 2016 Green Party presidential candidate Jill Stein because they were out of balance.”¹⁵ A post-mortem of the 2016 debacle “attributed the imbalances to ‘precinct worker mistakes.’”¹⁶ One year later, when “now Lt. Gov. Garlin Gilchrist narrowly lost to Winfrey in 2017, he requested a recount that similarly excluded 33 precincts that could not be recounted.”¹⁷ In that election, the difference was only 1,482 votes.¹⁸ While not as bad as 2016, still “one-fifth of the city’s precincts were ineligible for a recount.”¹⁹ The best that could be said was that Detroit was improving.

While hard to believe in light of the known problem with unbalanced precincts, in the August 2020 primary election Detroit actually took a step backward. During the primary election,

[asked-investigate-detroit-perfect-storm-voting-problems/5616629002/](https://www.freep.com/story/news/politics/2021/04/29/detroit-city-clerk-janice-winfrey-primary/7338495002/) (Last accessed January 2, 2024).

¹³ The New York Times, *2016 Michigan Results* (August 1, 2017) <https://www.nytimes.com/elections/2016/results/michigan> (Last accessed December 31, 2024).

¹⁴ BridgeMI, *Four worries about Michigan election security. And two reasons to rest easy.* (November 2, 2020) <https://www.bridgemi.com/michigan-government/four-worries-about-michigan-election-security-and-two-reasons-rest-easy> (Last Accessed January 2, 2024).

¹⁵ The Detroit Free Press, *Meet the candidates vying to unseat Detroit City Clerk Janice Winfrey in August Primary*, (April 29, 2021) <https://www.freep.com/story/news/politics/2021/04/29/detroit-city-clerk-janice-winfrey-primary/7338495002/> (Last accessed December 31, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ The Detroit News, *In Detroit, problems plague election vote-counting for more than 15 years*, (September 4, 2020) <https://www.detroitnews.com/story/news/politics/2020/09/04/detroit-vote-count-problems-persist-15-years/5694743002/> (Last accessed December 31, 2024).

¹⁹ BridgeMI, *Four worries about Michigan election security. And two reasons to rest easy.* (November 2, 2020) <https://www.bridgemi.com/michigan-government/four-worries-about-michigan-election-security-and-two-reasons-rest-easy> (Last Accessed January 2, 2024).

fully “72% of Detroit’s absentee voting precincts didn’t match the number of ballots cast.”²⁰ This meant that, once again, “almost half or 46% of precincts . . . couldn’t be recounted in a close election.”²¹ This time, “problems included ballots being put in the wrong tracking containers.”²² But the errors were so ubiquitous and grievous that Wayne County Board of Canvassers Chairwoman Monica Palmer said “[i]t is so inaccurate we can’t even attempt to make it right.”²³

Understandably, Detroit’s third ugly and public election administration failure led to a panic, and officials across the state demanded help for Detroit. Remember, “[h]aving balanced precincts is particularly important in Michigan because precincts whose poll books don’t match with ballots can’t be recounted, according to state law.”²⁴ Donald Trump had won Michigan by just over 10,000 votes four years earlier in 2016, and with Michigan set up to again be a pivotal state in a hotly contested presidential election, it was imperative that these recurring issues—and especially those that would preclude a recount in Detroit—be resolved well in advance of the general election.²⁵ Thus, “[t]he Wayne County Board of Canvassers, which includes two Democrats and two Republicans, voted unanimously . . . to request that Benson ‘appoint a monitor to supervise the training and administration’ of Detroit’s absentee voter count boards in the general

²⁰ The Detroit News, *In Detroit, problems plague election vote-counting for more than 15 years*, (September 4, 2020) <https://www.detroitnews.com/story/news/politics/2020/09/04/detroit-vote-count-problems-persist-15-years/5694743002/> (Last accessed January 2, 2024).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ The Detroit News, *canvassers demand answers after 72% of Detroit’s absentee ballot counts were off* (August 20, 2020) <https://www.detroitnews.com/story/news/politics/2020/08/20/benson-asked-investigate-detroit-perfect-storm-voting-problems/5616629002/> (Last accessed January 2, 2024).

²⁵ BridgeMI, *Detroit’s August election woes have many worried about November* (August 31, 2020) <https://www.bridgemi.com/michigan-government/detroits-august-election-woes-have-many-worried-about-november> (Last accessed January 2, 2024).

election.”²⁶ One member of the Wayne County board, Julie Matuzak—a Democrat—criticized Detroit’s inability to balance its precincts saying, “I find this whole thing appalling.”²⁷ Another member, Monica Palmer—a Republican—said “[i]f this investigation does not produce changes, if we can’t rectify the situation before November, it’s going to be atrocious.”²⁸ Detroit Mayor Mike Duggan also reached out to Benson, asking her “to make sure this gets fixed immediately.”²⁹ Duggan emphasized to Benson that “[w]e cannot have a recurrence of these problems in November.”³⁰

The Wayne County Board of Canvassers and Mayor Duggan reached out to Benson because by law “[t]he secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.”³¹ Simply, supervising elections in Michigan is one of Benson’s primary duties. But Benson explicitly and publicly declined to fulfill her duty and refused to provide the urgent assistance that was requested. While she paid lip service to supporting the City of Detroit’s efforts to administer the 2020 general election, she refused to appoint the requested monitor and take control over Detroit’s tabulation of its absent voter ballots. Benson’s office asserted that “[l]ogistically, practically, it’s not possible for the Bureau of Elections to run Detroit’s elections.”³² And the results reflected Benson’s refusal to exercise superintending control when asked to do

²⁶ *Id.*

²⁷ The Detroit News, *In Detroit, problems plague election vote-counting for more than 15 years*, (September 4, 2020) <https://www.detroitnews.com/story/news/politics/2020/09/04/detroit-vote-count-problems-persist-15-years/5694743002/> (Last accessed January 2, 2024).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ MCL 168.21.

³² BridgeMI, *Detroit’s August election woes have many worried about November* (August 31, 2020) <https://www.bridgemi.com/michigan-government/detroits-august-election-woes-have-many-worried-about-november> (Last accessed January 2, 2024).

so—“the general election showed little sign of progress because the canvass found unexplained imbalances between ballots and the poll book in 70% of absentee counting boards charged with processing and counting absentee ballots cast by the city’s voters, compared with about 72% of precincts in the August primary.”³³

History now makes clear that irregularities like those in Detroit during the 2020 general election cast a dark cloud over the integrity of our elections. Depending on the timing and exact questions asked in the poll, over 50% of Americans currently believe that the 2020 Presidential election was not transparent or fairly administered. Secretary Benson’s negligence and/or willful refusal to provide requested assistance for the administration of Detroit elections meant that 70 percent of precincts were disqualified from a potential recount because the absentee ballot count was out of balance—even though local and state officials not only knew it was probable and asked Benson to do something about it—and this situation unambiguously contributed to the questions surrounding the election. The Wayne County Board of Canvassers struggled with certifying the election in light of the unbalanced precincts, and the Michigan Board of Canvassers similarly had dissent regarding whether more time was needed to review those Detroit precincts. Benson has yet to explain why she declined to exercise her authority to take control over Detroit’s tabulation of absentee ballots in November 2020, as requested by the Wayne County Board of Canvassers and Detroit Mayor Mike Duggan—a puzzlingly decision given that she has taken control of other local elections during her time as Secretary of State.³⁴ What we now know is that when confronted

³³ The Detroit Free Press, *Meet the candidates vying to unseat Detroit City Clerk Janice Winfrey in August Primary*, (April 29, 2021) <https://www.freep.com/story/news/politics/2021/04/29/detroit-city-clerk-janice-winfrey-primary/7338495002/> (Last accessed December 31, 2024).

³⁴ WNLS.com, *Adams Township clerk removed from election responsibilities* (October 26, 2021) <https://www.wnls.com/news/michigan/adams-township-clerk-removed-from-election-responsibilities/> (Last accessed January 2, 2025) (“Benson said that the Adams Township clerk

with an opportunity to exercise superintending control for the sake of increasing transparency and integrity in our elections, Benson declined to do so...with disastrous consequences.

SECTION I: The Administration of Elections and Enforcement of Existing Laws
GRADE: D-

II. The Transparency of Electoral Process

Transparency is paramount to the public’s confidence in our elections. One of the most effective ways to make elections transparent is to allow observers to have meaningful aspects to all aspects of the voter process. The Carter-Baker report identified this as a critical issue.

In too many states, election laws and practices do not allow independent observers to be present during crucial parts of the process, such as the testing of voting equipment or the transmission of results. In others, only certified representatives of candidates or political parties may observe. This limits transparency and public confidence in the election process. Above all, elections take place for the American people, rather than for candidates and political parties. Interested citizens, including those not affiliated with any candidate or party, should be able to observe the entire election process, although limits might be needed depending on the size of the group.

didn’t allow ‘preventative maintenance on voting equipment, a necessary safeguard to ensure tabulators and voter assist terminals used by voters with disabilities are functioning properly on Election Day.’”); MLive, *Michigan removed U.P. clerks from election duties over planned hand count* (October 31, 2024) <https://www.mlive.com/politics/2024/10/michigan-removed-up-clerks-from-election-duties-over-planned-hand-count.html> (Last accessed January 2, 2025) (“Two township clerks in the Upper Peninsula of Michigan were removed from their election duties this week after they planned to hand count votes in Tuesday’s election, state officials said.”); AP News, *Michigan clerk stripped of election duties after being charged for acting as fake elector in 2020* (July 20, 2023) <https://apnews.com/article/fake-electors-michigan-clerk-elections-a4412db9d22d9293297e7b765ff7625f> (Last accessed January 2, 2025) (“A town clerk in Michigan will be barred from running any elections after being charged earlier this week by the state attorney general for acting as a fake elector in 2020 for then-President Donald Trump.”)

Michigan law provides two core mechanisms to provide transparency in the election process: (1) election observers; and (2) requirements for an equal number Republican and Democrat election workers.

A. Creating Barriers for Election Observation

There is bipartisan agreement that transparency is fundamental to a well administered election. Tommy Kubitschek, a spokesperson for the Michigan Democratic Party, has described election observers as “eyes and ears on the ground who help ensure swift resolution of any issues that affect voters or voting, including impermissible challenges or intimidation at the polls.”³⁵ Michigan Election Law enshrines this view of election challengers, providing that each “board of election inspectors shall provide space for the challengers within the polling place that enables the challengers to observe the election procedure and each person applying to vote.”³⁶ Every year, election challengers are appointed from both parties, allowing each major political party to challenge how the election is being carried out. It’s a balanced process, so that both sides are represented and heard on Election Day.

In May 2022, Benson issued a publication directing local election officials to enforce new rules regarding election challengers. The first rule changed election challenger’s credentials. Before Benson’s changes, election challengers were credentialed using cards provided by the political party that nominated them. After Benson’s changes, election challengers had to use credentials “on a form promulgated by the Secretary of State.” More significantly, Benson also created a new position at law called a “challenger liaison,” whose duty it was to mediate between

³⁵ Detroit Free Press, *Michigan election challengers: What they can, can't do* (October 30, 2024) <https://www.freep.com/story/news/politics/elections/2024/10/30/michigan-election-challengers-voting-november-rules/75672318007/> (Last accessed December 30, 2024)

³⁶ MCL 168.733(1).

election challengers and election officials. In short, she barred election challengers from directly questioning and challenging election officials' conduct, instead re-routing them through the newly created position of challenger liaison. Secretary Benson also banned communication and recording devices from absent voter county facilities, and authorized election inspectors to refuse to record a challenge by an election challenger if, in the inspector's opinion, the challenger was "impermissible." In short, Benson's rule change would not let a challenger challenge an action *unless the person being challenged agreed with them*. Benson made these rule changes outside of the APA process, so there was no public comment or review of the changes, and she never had to announce the changes. The changes were unilateral and unannounced. The Republican Party did not find out about the rule changes until the 2022 election was in progress.

When the Republican Party discovered the rule changes, they sued Benson in the Michigan Court of Claims, arguing that if Benson wanted to change the rules she had to go through the rule making process. The Michigan Court of Claims once again ruled against Benson, holding that "[a]n executive-branch department cannot do by instructional guidance what it must do by promulgated rule."³⁷ Specifically, the Court held that "the May 2022 Manual requiring the use of the uniform challenger-credential form violates the Michigan Election Law and APA" and ordered Benson to "clarify" her guidance on what date an election challenger must be appointed by. The Court further held that Benson's creation of a challenger liaison position "appears nowhere in statute" and Benson had "not presented this Court with any statute, common law, case law, or promulgated rule that gives [her] the authority to restrict with which election inspector a challenger can communicate." The Court thus held that Benson's challenger liaison guidance "goes well

³⁷ *O'Halloran, M.d v. Benson*, No. 22-000162, 2022 WL 22823114, at *8 (Mich.Ct.Cl. Oct. 20, 2022).

beyond what is provided in law and impermissibly restricts a challenger's ability to bring certain issues to any inspector's attention.”³⁸ Similarly the Court struck down Benson’s provision on the use of communication devices and her instruction that election inspectors may decline to record a challenge—the court noted that Benson’s argument was “directly contrary to our Legislature’s requirement in MCL 168.727(2) that a record of the challenge be made. Even if the challenge is determined to be without basis in law or fact, if the challenge is made, it must be recorded.” The Court of Claims thus ordered Benson to withdraw her manual and bring it to heel. Benson appealed, but the Court of Appeals affirmed the Court of Claims.

On November 30, 2023, Benson appealed again, asking the Michigan Supreme Court to reverse the Court of Appeals and Court of Claims. The Michigan Supreme Court did nothing with the appeal until May 29, 2024, when it ordered the parties to file briefs by June 10, 2024 and appear for oral argument on June 18, 2024. On August 28, 2024, in a narrow 4-3 decision, in which Justice Bolden cast the court’s tie-breaking vote and wrote the majority’s opinion, the Michigan Supreme Court ruled favorably to Benson. In doing so, the Supreme Court rejected well-settled authority that a Michigan Secretary of State may not do by unilateral instructions what the APA requires her to do by the democratic rule-making process. The Editorial staff at The Detroit News described the Supreme Court’s opinion as “nonsensical ruling, not based in legal precedent, that begs the question of court activism on its own.”³⁹ Many outsiders were thus left scratching their heads as to how the Michigan Supreme Court reached its conclusion.

Some weeks after the Supreme Court’s opinion narrowly upholding Benson’s rules came out, it was revealed that a PAC controlled by Benson contributed \$82,500 to Justice Bolden’s—

³⁸ *Id.*

³⁹ The Detroit News, *Editorial: Michigan justices should be impartial to the law* (October 26, 2024) <https://www.detroitnews.com/story/opinion/editorials/2024/10/26/editorial-michigan-justices-should-be-impartial-to-the-law/75837773007/> (last accessed December 30, 2024).

who, again, was the swing vote and author of the opinion—reelection campaign. At a minimum, suggested The Detroit News’ Editorial Board, “Bolden should have been transparent” about her interactions with Benson, or even avoided the conflict altogether by recusing herself. Instead, Justice Bolden cast the deciding vote in *O’Halloran*, which means Benson would not have prevailed had Bolden recused herself.⁴⁰ Objectively, the timeline is ugly:

- November 30, 2023 – Benson Applies for Leave to appeal to the Supreme Court;
- December 2023 – The Supreme Court does nothing;
- January 2024 – The Supreme Court does nothing;
- February 2024 – The Supreme Court does nothing;
- March 2024 – The Supreme Court does nothing;
- April 26, 2024 – Benson donates \$82,500 to Bolden’s campaign for reelection.
- May 29, 2024 – The Court accepts Benson’s appeal and sets a rocket-deadline of June 18 for oral argument.
- June 18, 2024 – Oral Argument
- August 28, 2024 – Bolden casts the swing vote and authors the decision overruling two lower courts and handing complete victory to Benson.

Benson’s decision to give Justice Bolden’s campaign the largest campaign donation allowable—\$82,500—while Justice Bolden was deliberating on a case in which Benson’s power was at issue, and Bolden’s decision to cast the tie-breaking vote in Benson’s favor after receiving

⁴⁰ Because the Court of Appeals ruled against Benson, she needed a *majority* of the Michigan Supreme Court to overturn that decision. If Justice Bolden had recused herself, the Michigan Supreme court would have been divided 3-3, and because neither side obtained a majority the Court of Appeals would have remained in place. See Michigan Court Rule 7.315(A) (“Except for affirmance of action by a lower court or tribunal by even division of the justices, a decision of the Court must be made by concurrence of a majority of the justices voting.”). Put another way, an “even division of the justices” counts as an “affirmance of action by a lower court.” *Id.*

the gift and Bolden’s decision to author the opinion giving Benson the victory, raised eyebrows.⁴¹ State Senator Jim Runestad, R-White Lake, sent a letter to Michigan Supreme Court Chief Justice Elizabeth Clement expressing concern over whether, in light of receiving that substantial campaign contribution from a PAC controlled by Benson, Justice Bolden should have recused herself. Senator Runestad concisely laid out the timeline of the case, saying:

On Nov. 30, 2023, Secretary of State Jocelyn Benson filed an appeal in the case of O’Halloran v. Benson to the Michigan Supreme Court. On April 26, 2024, a PAC controlled by Benson contributed \$82,500 to Justice Bolden’s reelection campaign. On Aug. 28, 2024, the Michigan Supreme Court ruled in favor of the defendant, Secretary Benson, with Justice Bolden siding with the slim 4-3 majority and then authoring the majority opinion.[⁴²]

Sen Runestad asked Chief Justice Clement “to investigate this exchange and weigh in on whether or not there was any impropriety in Justice Bolden accepting a large political campaign donation from a defendant with a case before the court.”⁴³ In addition, Benson’s behavior here caused a complaint to be filed with the Michigan Attorney Grievance Commission, the resolution of which is still pending as of the date of this report.

SECTION II: The Transparency of Electoral Process

GRADE: D

⁴¹ Since arriving on the Court nearly two years ago, Justice Bolden has authored eight majority opinions. One of those eight, the *O’Halloran* opinion, is under a cloud.

⁴² Senator Runestad, *Letter to Chief Justice Clement* (October 15, 2024) https://misenategopcdn.s3.amazonaws.com/23/documents/Sen_Runestad_Letter_to_Chief_Justice_Clement.pdf (Last accessed December 30, 2024)

⁴³ *Id.*

III. The Quality of the Voter Registration List

A. Benson's Failure to Address Dirty Voter Rolls

Michigan's voter rolls are maintained in a database that is run by the Bureau of Elections (a division under Secretary Benson's control). It contains the names and personal information of every person registered to vote in Michigan. The database is Michigan's primary tool in the fight for election security because it is a master document of who is—and therefore who is not—eligible to vote. If the voter rolls contain a person's name, they are eligible to vote. Thus, if the voter rolls contain the names of persons who have moved, died, registered twice accidentally, or asked to be de-registered, those people could still vote. Maintaining an accurate voter roll is thus a key part of running a secure, fair election. As the Brennan Center for Justice puts it: “[u]pdating the voter rolls is one of many steps election officials take to ensure all voters who cast ballots are eligible.”⁴⁴ Other states regularly update their voter rolls to ensure that every person who is no longer eligible to vote—for example, because they moved or died—is removed from the list.⁴⁵ But Benson has exercised taken a different tactic, one she fights to keep.

As one news source reports, “Benson was presented with evidence of Michigan's inflated voter rolls, including (horrors!) possible ‘dead people’” in February 2020.⁴⁶ But, reports the news source, “Benson's refusal to act prompted a lawsuit filed by Tony Daunt, head of the Freedom

⁴⁴ Brennancenter.org, *Voter Roll Accuracy* (September 3, 2024) <https://www.brennancenter.org/our-work/research-reports/voter-roll-accuracy> (Last accessed December 27, 2024).

⁴⁵ NPR, *Supreme Court allows Virginia to purge individuals from voter rolls* (October 30, 2024) <https://www.npr.org/2024/10/30/g-s1-30644/supreme-court-virginia-elections> (Last accessed December 27, 2024).

⁴⁶ The Ballenger Report, *JOCELYN BENSON BROUGHT TO HEEL IN FEDERAL LAWSUIT SETTLEMENT, BUT SHE BLAMES RUTH JOHNSON* (February 20, 2021) <https://www.theballengerreport.com/jocelyn-benson-brought-to-heel-in-federal-lawsuit-settlement-but-she-blames-ruth-johnson/> (Last accessed December 27, 2024).

Fund.”⁴⁷ The lawsuit claimed that the National Voter Registration Act, a federal statute, required Benson to clean up voter rolls. Benson refused to do so, maintaining throughout the life of the lawsuit that Daunt’s case rested on “debunked claims and bad statistics.”⁴⁸ Basically, she claimed that the voter rolls were clean, so there was no need to clean them up.

But Benson later admitted, however, that when she mailed unsolicited ballot applications to every registered voter in Michigan, at least 500,000 applications were undeliverable because the voter rolls were inaccurate.⁴⁹ Shortly thereafter, the federal district court rejected Benson’s attempt to dismiss Daunt’s case, and ordered the parties to proceed to the discovery phase of the lawsuit, in which both sides must produce evidence to support their case.

After seven months of fierce litigation, Benson announced plans to cancel 177,000 voter registrations, and admitted in a statement that Michigan lacked “sufficient comprehensive efforts” to maintain clean voter rolls prior to this lawsuit.⁵⁰ Benson claimed that the lawsuit prompted no action from her office and that she had planned to clean up the voter rolls all along, but her claims raises even the most neutral eyebrow. Her claim that she always planned to clean voter rolls up is difficult to square with her statement months prior that the *Daunt* lawsuit was based on “debunked claims and bad statistics.” Further, Michigan spent huge sums of money on attorney fees defending against the *Daunt* lawsuit—remember, Benson’s defense counsel are delegated lawyers from the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Thecentersquare.com, *Michigan voting roll lawsuit dismissed, 177,000 voter registrations to be canceled* (February 18, 2021) https://www.thecentersquare.com/michigan/article_3971700a-7226-11eb-879f-374a2f353514.html (Last accessed December 27, 2024); see also, The Ballenger Report, *JOCELYN BENSON BROUGHT TO HEEL IN FEDERAL LAWSUIT SETTLEMENT, BUT SHE BLAMES RUTH JOHNSON* (February 20, 2021) <https://www.theballengerreport.com/jocelyn-benson-brought-to-heel-in-federal-lawsuit-settlement-but-she-blames-ruth-johnson/> (Last accessed December 27, 2024).

Michigan Attorney General—during its seven month life. If Benson always planned to clean up voter rolls, couldn't she have just said that to save Michigan hundreds of thousands of dollars?

The *Daunt* lawsuit is not the only voter-roll related lawsuit that Benson has faced. In 2024, she faced another suit claiming that she had again allowed the voter rolls to become so disorganized as to violate the National Voter Registration Act.⁵¹ In that suit, the Republican National Committee claimed that 78 Michigan counties were not compliant with the National Voter Registration Act, and that Benson needed to clean-up their voter rolls. The RNC initiated its suit after, they explained, discovering that 53 of the state's 83 counties had more active registered voters than adult citizens and that 23 additional counties had unusually high registration rates exceeding 90%. The suit is premised on a discrepancy between two surveys of Michigan's population.⁵² The first survey is the number of registered voters in each county, and the second is the number of U.S. citizens over the age of 18 in each county (i.e., the number of persons eligible to vote). According to the RNC, the U.S. Census Bureau's 2022 American Community Survey reveals that "53 counties have active voter registration rates at or above 100 percent of their citizen voting-age populations."⁵³ Next, the RNC pointed out that an additional 23 counties had what they

⁵¹ *Republican Nat'l Comm. v. Benson*, No. 1:24-CV-262, 2024 WL 4539309 (W.D. Mich. Oct. 22, 2024).

⁵² *Republican Nat'l Comm., et al., v. Jocelyn Benson, et al.*, 2024 WL 1097608 (W.D. Mich.).

⁵³ The counties cited in the RNC's lawsuit are: Alcona (112%), Allegan (104%), Alpena (101%), Antrim (111%), Arenac (104%), Barry (102%), Benzie (108%), Berrien (102%), Calhoun (101%), Cass (101%), Charlevoix (105%), Cheboygan (104%), Crawford (110%), Delta (104%), Dickinson (100%), Emmet (104%), Genesee (104%), Gladwin (103%), Gogebic (101%), Grand Traverse (101%), Huron (100%), Iosco (104%), Iron (106%), Kalkaska (115%), Kent (100%), Keweenaw (114%), Lapeer (102%), Leelanau (108%), Livingston (102%), Mackinac (114%), Macomb (101%), Mason (104%), Menominee (101%), Missaukee (106%), Monroe (100%), Montmorency (110%), Muskegon (101%), Newaygo (103%), Oakland (101%), Oceana (105%), Ogemaw (106%), Ontonagon (101%), Osceola (101%), Oscoda (110%), Otsego (111%), Presque Isle (107%), Roscommon (110%), Schoolcraft (107%), Shiawassee (102%), St. Clair (102%), Van Buren (104%), Wayne (101%), and Wexford (105%).

characterized as “suspiciously high rates of active voter registration.”⁵⁴ The RNC also pointed to anecdotal evidence, showing that only “69.1% of the citizen voting-age population was registered nationwide in the November 2022 election” and “only 72.7% of the citizen voting-age population was registered nationwide in the November 2020 election.” Thus, argued the RNC, Benson cannot be doing her job of cleaning up the voter rolls.

While the RNC’s suit was dismissed on legal technicalities about whether they were “injured” by the out-of-balance voter rolls and whether their claim was properly formatted, a conclusion the RNC is appealing, any objective comparison of Michigan’s voter roll maintenance to that of other states shows that Michigan can—and should—be more diligent in managing its voter rolls. Benson admitted that in 2020 the Michigan voter rolls lacked “sufficient comprehensive efforts” to maintain clean voter rolls, but only after she vigorously denied and fought the allegation that voter rolls were bloated. The court in the RNC’s suit granted her a temporary reprieve, but it remains to be seen whether she will again change her tune, do an about-face, and announce that the voter rolls are bloated.

B. Failure to Stop Non-Citizen Voting

Nine days before Election Day 2024, Haoxiang Gao—a 19-year-old Chinese national studying at the University of Michigan—registered to vote using his student ID, signed a document attesting that he was a United States citizen, and cast a ballot at an early voting site in Ann Arbor, Michigan.⁵⁵ Importantly, Gao was caught because he turned himself in by contacting the local

⁵⁴ The counties cited in the RNC’s lawsuit are: Alger (98%), Baraga (95%), Bay (99%), Branch (96%), Clinton (98%), Eaton (98%), Hillsdale (95%), Jackson (94%), Kalamazoo (95%), Lake (98%), Lenawee (95%), Luce (99%), Manistee (99%), Marquette (93%), Mecosta (91%), Midland (100%), Montcalm (95%), Ottawa (98%), Saginaw (99%), Sanilac (97%), St. Joseph (99%), Tuscola (98%), and Washtenaw (93%).

⁵⁵ The Detroit News, *Chinese student to face criminal charges for voting in Michigan. Ballot will apparently count* (October 30, 2024)

clerk and asking for his ballot back—Benson’s voter-fraud defenses clearly failed.⁵⁶ And Benson’s voter-fraud defenses could not cull his illegal ballot—The Detroit News reports that Gao’s ballot counted in the 2024 general election because “there was no way for local election officials to prevent Gao’s ballot from being counted after it was entered into a tabulator.”⁵⁷

Gao was able to vote because Michigan’s electoral security relies on people’s honesty. To prove their ability to vote, a Michigander – or a person masquerading as a Michigander – need only sign a statement – as Gao did – claiming that they are eligible to vote. It is a system that works only so long as no one lies. Gao is an example of a *known* liar – and remember, *he is only known because he turned himself in* – who evaded all of Benson’s election security with the stroke of a pen. There may be more Gao’s who are *unknown* liars, having never turned themselves in. The Detroit News reported that Senator Ruth Johnson, Michigan’s former Secretary of State, wrote a letter to Benson after Gao voted and asked Benson to tighten security.⁵⁸ Senator Johnson’s letter noted that

Before the laws changed . . . the ballots cast by registrations who couldn’t be verified by the federal system were set aside as challenged and not counted until eligibility was determined. That’s still the case for those who register by mail or online, but not for in-person registrants. [And] This year, there were 34,535 non-matching transactions.[⁵⁹]

<https://www.detroitnews.com/story/news/politics/elections/2024/10/30/chinese-university-of-michigan-college-student-voted-presidential-election-michigan-china-benson/75936701007/>
(Last accessed December 31, 2024).

⁵⁶ *Id.*

⁵⁷ The Detroit News, *Chinese college student who voted in Michigan's election arraigned* (November 8, 2024) <https://www.detroitnews.com/story/news/politics/2024/11/08/chinese-university-of-michigan-student-who-voted-in-michigan-presidential-election-arraigned/76134433007/> (Last accessed December 31, 2024).

⁵⁸ The Detroit News, *Editorial: Election integrity loophole must be closed* (November 20, 2024) <https://www.detroitnews.com/story/opinion/editorials/2024/11/20/editorial-election-integrity-loophole-must-be-closed/76299661007/> (Last accessed December 31, 2024).

⁵⁹ *Id.*

According to Johnson, these “non-matching transactions” are all unknowns. Whether these unknowns’ ballots were cast by honest citizens or liars is known only to the unknowns. Thus, writes Johnson, “[w]e have to rely on the honest of people,” i.e., the unknowns, because Benson, for one, does not know.⁶⁰ And even if Benson did know, she could not remedy the harm the unknown liars have done.

While Benson’s in-person voting security was proven to have flaws, critics also questioned the security of Benson’s absent voter security, which they claimed would, for example, allow the child of an American and Russian national who had never lived in Michigan to vote in Michigan even long after their American parent had died or moved away.⁶¹ To this end, the Republican party filed a lawsuit questioning the constitutionality of Benson’s instructions that any person who is a United States citizen and who has at least one parent who lived in Michigan for any period of time may vote in Michigan *ad infinitum*. Republicans claimed that Benson’s instructions ignored nearly 100 years of United States Supreme Court precedent, the Michigan Constitution, and Michigan Election Law by allowing persons with no real connection to Michigan to vote in its elections and thereby participate in deciding who will represent Michigan across the spectrum of local, state, and federal government. Worse still, argued the Republican lawsuit, because these people with no real connection to Michigan are voting by mail, there is no way for Benson to track who they are, whether they are actually eligible to vote, and whether their vote is freely and fairly cast. When the lawsuit was being argued before a Michigan judge, Benson’s lawyers admitted that they had

⁶⁰ The Detroit News, *Voter ID laws get new spotlight after charges against Chinese student in Michigan* (October 30, 2024) <https://www.detroitnews.com/story/news/politics/elections/2024/10/30/voter-id-laws-spotlighted-after-charges-against-chinese-student-in-michigan/75947902007/> (Last accessed December 31, 2024).

⁶¹ *Michigan Republican Party et al., v Jocelyn Benson, et al.*, Case No. 24-000165-MZ (Michigan Court of Claims).

no idea how many people were voting from overseas. In short, argued the Republican lawsuit, if Benson cannot stop a 19 year old from illegally voting in downtown Ann Arbor, then she cannot stop a person in Moscow, 5,000 miles, from illegally voting; for that reason alone, Benson’s instructions violate the Constitution and Michigan Election Law by failing to defend the purity of Michigan elections.⁶² Regardless of whether the Republican lawsuit is right on its nitty gritty legal merits, it does raise tough factual questions that—especially when coupled with the ease with which Gao slipped Benson’s security measures—raise serious, objective concerns about whether Benson is truly protecting Michigan elections.

SECTION III: The Quality of the Voter Registration List

GRADE: C-

IV. IMPARTIAL, PROFESSIONAL, AND INDEPENDENT ELECTION ADMINISTRATION

There are multiple examples of Secretary Benson’s appearing to take actions for partisan reasons. The most glaring example is refusing to remove Robert F. Kennedy, Jr. from the ballot after he dropped out of the presidential race while at the same time fighting to keep Dr. Cornel West on the ballot.

A. Refusing to Remove RFK from Ballot and to put West on Ballot

While most voters viewed the 2024 election solely as a battle between former-President Donald Trump and Vice President Kamala Harris, other candidates also sought the Presidency. Two of these candidates—Dr. Cornel West and Mr. Robert F. Kennedy, Jr.—faced significant challenges from Secretary Benson. Interestingly, Secretary Benson’s reaction to Dr. West and Kennedy’s candidacies differed markedly. Secretary Benson didn’t want to let Dr. West, a left-

⁶² See Michigan Constitution Article II, § 4(2).

leaning politician who was perceived to draw support from voters who would otherwise swing for Harris onto the ballot. In contrast, Benson worked hard, and successfully, to keep on the ballot Robert Kennedy, a centrist politician who was perceived to draw support from voters who would otherwise have swung for Trump. Her treatment of Kennedy was markedly differed from her treatment of West and also from her treatment of President Biden. It is difficult to think of any reason – other than partisan bias – why Secretary Benson would allow President Biden to withdraw from the Presidential Race on July 21, 2024, but would resist Kennedy’s attempt to do the same on August 26, 2024. And it blinks commonsense why she would remove Kennedy from the ballot on September 6, 2024, *yet add him back onto the ballot* just three days later, arguably in violation of Michigan law. Left with exculpatory explanation for her actions, even an uninterested person is led to the inescapable conclusion that Secretary Benson acted as a partisan, pro-Democrat official during the 2024 election cycle.

Dr. Cornel West is a self-described non-Marxist socialist⁶³ and has been described as “a leftist academic [and] progressive activist.”⁶⁴ In 2024 in Michigan, Dr. West ran as an independent.⁶⁵ As a leftist, progressive activist, Dr. West’s supporters were primarily voters who were sympathetic to Democratic candidates, i.e., they would vote for Harris if Dr. West did not run. But when he sought ballot access, Secretary Benson denied it to him. Secretary Benson argued

⁶³ The New Yorker, *The Public Intellectual* (January 9, 1994) <https://www.newyorker.com/magazine/1994/01/17/cornel-west-the-public-intellectual> (Last accessed December 26, 2024).

⁶⁴ AP News, *Cornel West is back on Michigan’s presidential ballot, judge rules* (August 26, 2024) <https://apnews.com/article/cornel-west-michigan-ballot-ruling-4eecb8eddec7db7d17f6d82686286354> (Last accessed December 26, 2024).

⁶⁵ AP News, *Progressive activist Cornel West leaves the Green Party and will run for president as an independent* (October 5, 2023) <https://apnews.com/article/cornel-west-president-independent-green-party-2024-57dd7dbc0bccc10ea866005663398823> (Last accessed December 26, 2024).

that Dr. West’s campaign did not submit enough signatures and that he failed to file a properly notarized affidavit of identity.⁶⁶ The Detroit Free Press reports that “Attorney Mark Brewer, a former chair of the Michigan Democratic Party who had challenged West’s eligibility” agreed with Secretary Benson and was the one who challenged Dr. West’s right to ballot access to begin with.⁶⁷

But when Dr. West sued Secretary Benson, the Court sided with him.⁶⁸ The Court held that Dr. West had satisfied the signature requirements, and that the Secretary erred by applying the notice of identity requirements to Dr. West, a candidate for President. Secretary Benson appealed, but the Court of Appeals unanimously rebuffed her.⁶⁹ The Detroit Free Press reported that “The Michigan Democratic Party has been fighting to keep West off the ballot, as has voter Rosa Holliday, who is represented by attorney Mark Brewer, a former Michigan Democratic Party chair.”⁷⁰ The Detroit Free Press noted that while Dr. West did not have wide-spread support, Michigan was expected to be a close race, and Dr. West was expected to pull his support from voters who would otherwise support Harris, explaining why the Democratic Part wished to bar him access to the ballot.⁷¹ Secretary Benson and her Democratic co-defendants appealed to the

⁶⁶ Detroit Free Press, *Michigan disqualifies presidential candidate Cornel West from November ballot* (August 16, 2024) <https://www.freep.com/story/news/politics/elections/2024/08/16/michigan-disqualifies-cornel-west-november-election/74832390007/> (Last accessed December 26, 2024).

⁶⁷ Detroit Free Press, *Michigan judge reverses state ruling, says Cornel West eligible for presidential ballot* (August 26, 2024) <https://www.freep.com/story/news/politics/elections/2024/08/26/michigan-cornel-west-eligible-michigan-presidential-ballot/74950049007/> (Last accessed December 26, 2024).

⁶⁸ *Id.*

⁶⁹ Detroit Free Press, *Michigan Appeals Court agrees with lower judge: Cornel West belongs on presidential ballot* (August 30, 2024) <https://www.freep.com/story/news/politics/elections/2024/08/30/cornel-west-eligible-michigan-presidential-ballot/75017522007/> (Last accessed December 26, 2024).

⁷⁰ *Id.*

⁷¹ *Id.*

Michigan Supreme Court, but Michigan’s highest court affixed the lower courts “[i]n a terse order.”⁷²

At the same time that Dr. West battled Benson and Democratic co-Defendants to get *on* the ballot, Kennedy battled Benson to get *off* the ballot. Kennedy was a Presidential candidate for the Natural Law Party.⁷³ But On August 23, 2024, Kennedy suspended his campaign and asked Secretary Benson to allow him to withdraw from the election. Two days later, however, she denied his request. On August 27, 2024, he renewed his request to withdraw, but was again rebuffed after two days. Thus, on August 30, Kennedy sued Secretary Benson in the Michigan Court of Claims. That court ruled in favor of Secretary Benson, finding that she had no statutory duty to allow him to withdraw. The next day, September 4, Kennedy appealed that ruling to the Michigan Court of Appeals. The Court of Appeals reversed the lower court on September 6, holding that Secretary Benson has no authority to require Kennedy to remain on the ballot. The Court of Appeals ordered her to remove his name from the ballot.

After the Court of Appeals’ ruling in Kennedy’s favor, Secretary Benson took two actions. First, she appealed to the Michigan Supreme Court, asking for an immediate ruling in light of the September 6, 2024 statutory deadline to send the list of candidates—Michigan Election Law requires that the Secretary of State finalize the ballots no later than 60 days before the election, in 2024 that date was September 6. When the Michigan Supreme Court did not immediately act, Secretary Benson followed her statutory duty and sent the final list of ballots. Three days later, the

⁷² Detroit Free Press, *Independent candidate Cornel West ruled eligible for Michigan's Nov. 5 presidential ballot* (September 10, 2024) <https://www.freep.com/story/news/politics/elections/2024/09/09/cornel-west-ruled-eligible-michigan-presidential-ballot/75090430007/> (Last Accessed December 26, 2024).

⁷³ The Gongwer Blog, *Kennedy On Presidential Ballot As Natural Law Party Candidate* (May 3, 2024) <https://www.gongwer.com/blog/153801/Kennedy-On-Presidential-Ballot-As-Natural-Law-Party-Candidate> (Last Accessed December 26, 2024).

Michigan Supreme Court overturned the Court of Appeals, holding that the Secretary had no duty to allow Kennedy to withdraw. The Michigan Supreme Court did not order Secretary Benson to put Kennedy on the ballot, it merely held that the trial court was correct. Secretary Benson nevertheless sent a second notice of elections out on September 9, *after* her statutory deadline to do so. Secretary Benson's actions caused Republicans and Kennedy to howl, but it also raised the eyebrows of even objective, non-partisan actors. Secretary Benson did not explain why she was submitted a *second* call of the election *after* her deadline to do so. And Secretary Benson's actions smacked of partisan bias. After all, Kennedy was expected to pull candidates away from Trump, not Harris, so his inclusion on the ballot would only help Harris.

Some of the eyebrows that were raised were judicial. For example, during Kennedy's unsuccessful *federal*-court bid to get federal courts to force Secretary Benson to remove him from the ballot, something Michigan courts refused to do, Judge David McKeague—a senior judge from the 6th Circuit Court of Appeals—explained “[t]his case involves yet another attempt by a state election official to influence the upcoming presidential election by manipulating state election procedures.” Benson's office, as described by McKeague, “intentionally altered the ballot by inserting a ‘frivolous’ presidential candidate”—RFK, Jr. McKeague concluded in his judicial opinion that “in defiance of the U.S. Constitution and state election law, Michigan Secretary of State Jocelyn Benson manipulated the presidential ballot in Michigan.” “No matter how many justifications Secretary Benson can conjure up,” McKeague continued, “the outcome is the same: putting Kennedy's name on the ballot will mislead Michigan voters. It will trick them into thinking that Kennedy is still vying to be the President of the United States. Secretary Benson's actions violated Kennedy's First Amendment rights and defy basic common sense.” Concluding, McKeague lamented “I can only hope that the weight of one state election official's thumb does

not tip the scale of a national election.”⁷⁴ Courthouse News Service reported that “McKeague worried that Benson, by forcing a reluctant third party candidate to keep his name in the ring, had illegally tipped the scales in a key battleground state.”⁷⁵

Other federal judges echoed Judge McKeague’s sentiments. For example, Benson’s behavior toward former presidential candidate Robert F. Kennedy Jr. caused 6th Circuit Court of Appeals Judge Chad Readler to say that “without explanation, and in violation of state law,” Benson added Kennedy’s name to the 2024 general election ballot. In his judicial opinion, Judge Readler outlined Benson’s hypocrisy in administering Michigan’s 2024 presidential ballot: “One major party candidate [i.e., Joe Biden] dropped out of the race just weeks before his party’s late-August convention, and after winning every state primary, including Michigan. The week after that convention, Kennedy sought to do the same, in large part due to his rival’s departure from the race. The Secretary voiced no concern over the former ... yet she fights tooth and nail to oppose the latter.” Making matters worse, Readler noted that Benson “never explains why she tainted the state’s presidential ballot with the name of an individual who is not seeking office, after previously excluding him.” Given that Benson “unilaterally chang[ed] the rules of the game,” Judge Readler concluded that Benson’s actions had “cast doubt over the integrity of Michigan’s electoral process.”

Further, 6th Circuit Court of Appeals Judge Amul Thapar summed up that Benson’s “reinstatement of Kennedy on the ballot unconstitutionally compel[led] Kennedy’s speech and

⁷⁴ See Courthouse News Service, *Sixth Circuit splits over RFK Jr.’s spot on the Michigan ballot* (October 16, 2024) <https://www.courthousenews.com/sixth-circuit-splits-over-rfk-jr-s-spot-on-the-michigan-ballot/> (Last Accessed December 26, 2024); see also <https://www.courthousenews.com/wp-content/uploads/2024/10/rfk-sixth-circuit-en-banc-denial.pdf> (Sixth Circuit Court of Appeals opinion).

⁷⁵ *Id.*

violate[d] Michigan’s own deadlines. It also force[d] Kennedy to be on the ballot for an office that he no longer intend[ed] to hold if he were to win. And it ha[d] the unfortunate result of misleading Michigan voters.” Thapar noted that Benson’s lawless behavior “happens at a time when it is crucial for state governments to assure voters of the integrity of their elections.” After all, four of the past six losing presidential candidates have challenged the results of their election, making it imperative that voters have confidence in the integrity of the officials administering their elections.

In Kennedy’s appeal to the Supreme Court of the United States, Justice Gorsuch dissented from the order denying Kennedy’s application for an injunction pending appeal, “for substantially the reasons given by Judges Thapar, Readler, and McKeague.” Thus, at least one Supreme Court Justice joined his Court of Appeals colleagues emphatically stated concerns about Secretary Benson’s motivations behind forcing Kennedy to remain on the ballot.

SECTION IV: Impartial, Professional and Independent Election Administration
GRADE F

V. Leadership to Instill Confidence in Election Results

A. Public Statements Threatening People

As the 2024 General Election grew near, Secretary Benson called on Michigan residents to report “misleading or inaccurate information regarding voting or elections” to the Secretary’s office.⁷⁶ As the Secretary would have it, “[j]ust as election officials have a duty to detect election

⁷⁶ Michigan Department of State, *Election misinformation* https://www.michigan.gov/sos/-/media/Project/Websites/sos/Resources/Partners-in-Democracy/MDOS_ElectionMisinformation.pdf?rev=e0ecc10c5b9949e1a736126278966910&hash=1683AE83AFB902CA3C39EB6597ACF3CD

misinformation and quickly provide correct information based on the law, voters have a responsibility to proactively seek out reliable sources of information and encourage productive and honest dialogue.”⁷⁷ As a result, the Secretary requested that Michiganders report any “misleading or inaccurate information regarding voting or elections in Michigan” by emailing a report to the Secretary’s office.

While there might be circumstances where it is laudable to encourage citizens to report misinformation giving rise to illegal conduct, such as attempts to deter others from voting or possible fraud related to collecting signatures for a ballot initiative, Benson’s request – which did not define or describe “misinformation” – appears to have been intended to police other forms of otherwise protected speech. For one, Benson’s request cites Snopes, Factcheck.org, and Politifact as three trustworthy websites. Aside from the inherent danger in Benson naming a third-party that she does not control to be a good source of information, all three of those sites are profoundly left-leaning. As one commentator put it:

These three appointed fact-checker organizations are well known for their left-leaning bias. They routinely review subjective topics like political rhetoric and political satire, sometimes with the apparent intention of getting whole publications removed from internet platforms. As liberal journalist Ben Smith once wrote about these fact checkers, “At their worst, they’re doing opinion journalism under pseudo-scientific banners, something that’s really corrosive to actual journalism, which if it’s any good is about reported fact in the first place.”⁷⁸

The same article noted that none of the three fact-checking websites endorsed by Benson were based in Michigan or had any expertise in state election law (much less Michigan election law) and that all three organizations combined at a total of about 50 employees. In light of those facts,

⁷⁷ *Id.*

⁷⁸ Mackinac.org, *Michigan secretary of state flirts with censorship in new ‘honest dialogue’ plan* (August 20, 2024) <https://www.mackinac.org/blog/2024/michigan-secretary-of-state-flirts-with-censorship-in-new-honest-dialogue-plan> (last access December 27, 2024).

the article concluded that “[i]t is unclear why the Secretary of State believes such persons earned the official endorsement of the Michigan government to carry out this task.”⁷⁹

Besides, and more fundamentally, Benson’s reporting system went beyond what any state is supposed to be doing. It is not Michigan’s job to police the statements of private persons. As one commentator noted, “[a]ssessing the accuracy of ‘political speech, ads, debates, interviews and press releases’ is not the job of the State of Michigan.”⁸⁰ This truth is borne out in cases like *Whitney v People of State of California*, 274 U.S. 357 (1927) in which Justice Brandeis of the United States Supreme Court condemned a California act that criminalized teaching communist-party doctrine. Justice Brandeis said “If there be time to expose through discussion the falsehood and fallacies . . . the remedy to be applied is more speech, not enforced silence.” More famously and recently, the United States Supreme Court rejected a state’s power to criminal falsehood in *United States v Alvarez*, 567 U.S. 709 (2012), holding that a man who stole military valor could not be prosecuted for his lies. Justice Kennedy echoed Justice Brandeis, saying, “The remedy for speech that is false is speech that is true.” Today, Benson takes her cues not from Justices Kennedy and Brandeis, but from past state governments that sought to prosecute people for expressing disagreeable, false, ideas. Worse, Benson appears to be using Snopes at other fact checking websites—all out of state corporate entities—as her lodestone of truth. If Benson had her way, Michigan citizens could be prosecuted for expressing views contrary to those of Snopes, Factcheck.org, and Politifact.

⁷⁹ *Id.*

⁸⁰ *Id.*

B. Failure to Support and/or Enforce Michigan’s Partisan Parity Requirement

Michigan Law requires the hiring of as nearly as practicable an equal number of Democratic and Republican poll workers. The GOP (Michigan Republican Party and Republican National Committee) have twice sued seeking mandamus against the city of Flint in 2022 and Detroit in 2024 to enforce the statute requiring partisan balance amongst the poll workers who run Michigan’s elections. It is through those partisan-affiliated poll workers that each of the two major political parties in Michigan – the Michigan Republican Party and the Michigan Democratic Party – fulfill their statutory roles in administering elections. Partisan parity of workers instills public confidence in the administration of elections and even the American Civil Liberties Union has weighed in with an Amicus brief in support of the GOP’s ability to bring suit to force compliance with this fairness requirement. In contrast to the ACLU, Secretary Benson has not weighed in or taken any action to support enforcement of this partisan parity requirement.

C. Inconsistent Enforcement of Campaign Finance Laws

In 2018, Jocelyn Benson and Gretchen Whitmer campaigned together for the respective offices of Secretary of State and Governor.⁸¹ Benson and Whitmer plainly shared rapport, posing for twitter posts together and traveling Michigan by bus together.⁸² That rapport was tested, however, immediately after each took office. When Gretchen Whitmer successfully ran for governor in 2018, Build a Better Michigan—a Michigan non-profit corporation who’s president at the time was Mark Burton, the former chief of staff for Whitmer when she was Senate Minority

⁸¹ Detroit Free Press, *Celebrities join the campaign trail to boost Michigan candidates* (November 3, 2018) <https://www.freep.com/story/news/politics/elections/2018/11/03/alyssa-milano-gretchen-whitmer-election/1873517002/> (last accessed December 26, 2024).

⁸² *Id.*

Leader—spent more than 2.4 million dollars on pro-Whitmer television advertisements. After a finance complaint was filed against Build a Better Michigan, Benson determined that those ads violated the law by identifying Whitmer as a “candidate for governor” and because it was not an “independent expenditure” because Whitmer’s campaign coordinated with Build a Better Michigan in the advertisements. In fact, Benson found that the Build a Better Michigan advertisements had Whitmer “speaking directly to the camera from a predetermined script.” One news source called the matter an “early test of Benson’s independence from fellow Democrat Whitmer.”⁸³

But Benson did not show that she was independent of Whitmer. While Michigan law authorized Secretary Benson to levy a fine equal to the dollar amount of the ad buy—so a fine of as much as \$2,400,000, Benson instead settled the case against the pro-Whitmer Build a Better Michigan for \$37,500—a mere 2% of the illegal spend.⁸⁴ It was later revealed that Build a Better Michigan’s contributors included the Teamsters’ DRIVE committee, Emily’s List, UAW CAP, the Philip A. Hart Democratic Club, and the Progressive Advocacy Trust.⁸⁵

Benson justified what some critics called the “kid gloves” treatment of her Democrat ally by claiming that her ruling “set a precedent” such that the ad’s sponsor wouldn’t have had fair warning of the violation. But Benson’s critics countered that Benson’s ruling was not a new interpretation of the law. Benson’s critics argued that the United States Supreme Court listed the

⁸³ Bridge MI, *Pro-Whitmer group broke Michigan campaign finance laws, Benson finds*, (February 8, 2019) <https://www.bridgemi.com/michigan-government/pro-whitmer-group-broke-michigan-campaign-finance-laws-benson-finds> (last accessed December 20, 2024).

⁸⁴ The Detroit News, *Benson: Pro-Whitmer ads violated campaign finance law* (February 8, 2019) <https://www.detroitnews.com/story/news/local/michigan/2019/02/08/benson-pro-whitmer-group-broke-law/2812710002/> (last accessed December 20, 2024).

⁸⁵ Ballenger Report, *Benson Helps Gov. Whitmer Get Away With “Campaign Finance Murder”* (February 11, 2019) <https://www.theballengerreport.com/can-whitmer-get-away-with-campaign-finance-murder/> (last accessed December 23, 2024).

so-called magic words of “express advocacy” more than 40 years earlier in *Buckley v Valeo*, and the pertinent parts of that ruling codified into the Michigan Campaign Finance Law in 2013. See MCL 169.206 (2)(j). And Benson’s critics pointed out that Benson’s relatively modest fine against Build a Better Michigan broke from past-Department of State fines. For example, in 2014-2015 the Department of State levied a \$17,000 fine against the Michigan Jobs and Labor Foundation (MJLF), which amounted to 100% of the illegal expenditure made by MJLF for ads that, while intended to be issue advocacy, were mistakenly broadcast using words of express advocacy (Horn for State Senate and Zorn for State Senate), which made them illegal from Department of State’s perspective.⁸⁶ Benson’s critics thus concluded that Benson’s justifications for looking the other way don’t stack up—especially, they argue, when Benson is a career academic that not only specialized in and taught campaign finance law but also had campaigned on getting “dark money” out of politics *during the same election cycle for which this violation occurred!*⁸⁷ During her campaign, Benson’s website promised to “champion reforms that will shine a light on the secret money flowing into the state’s election process and requiring instant disclosure of all political and lobbying money. Benson’s goal is to make Michigan one of the best states in the nation when it comes to transparency and accountability.”⁸⁸

⁸⁶ Ballenger Report, *Benson Can’t Excuse Puny Campaign Finance Fine* (February 27, 2019) <https://www.theballengerreport.com/benson-cant-excuse-puny-campaign-finance-fine/> (last accessed December 23, 2024).

⁸⁷ Sludge, *Bill Criminalizing Dark Money Disclosure is Passed by Michigan House* (December 20, 2018) <https://readsludge.com/2018/12/20/michigan-dark-money-disclosure-crime-passed-house/> (last accessed December 27, 2024); see also, The Detroit News, *Secretary of State Benson: Close dark money ‘loophole’* (March 7, 2019) <https://www.detroitnews.com/story/news/politics/2019/03/07/michigan-sos-benson-end-dark-money-loophole/3093419002/> (last accessed December 27, 2024).

⁸⁸ Benson for Secretary of State, *Jocelyn Benson Calls for More Campaign Finance Disclosure, FOIA and Lobbying Reforms* (March 8, 2018) <https://web.archive.org/web/20180927034607/https://votebenson.com/1458-2/> (last accessed December 27, 2024).

Critics point out that Benson’s first clash with campaign finance violators was not nearly as meaningful or contentious as she had promised they would be. Indeed, during her campaign, the Detroit Free Press reported that “Liz Boyd, a spokeswoman for Benson, said she ‘will never shrink from her duty to enforce all applicable state laws, regardless of any political attempts to interfere with her use of the executive authority entrusted to her by Michigan voters.’”⁸⁹ And that Liz Boyd said Benson “will always fight for the voters of Michigan, and will aggressively go after campaign finance violators or evaders.”⁹⁰ Even an objective observer will see some daylight between Benson’s promise and her delivery.

Besides, Benson’s handling of a campaign finance complaint against Ambassador (and then Michigan GOP Chairman) Ron Weiser starkly differs from her treatment of Whitmer. After conducting an investigation (instigated by Weiser’s opponent for Michigan GOP Chair, Laura Cox) into Weiser’s alleged use of GOP party funds to push Stan Grot, a 2018 GOP candidate for Secretary of State, out of the race, Benson concluded that Weiser had paid Grot \$230,000 to serve as an advisor to the party, “contingent upon the execution of a letter from Grot withdrawing from the Secretary of State race.”⁹¹ Benson concluded, however, that Grot had only ever been paid \$200,000. Benson and Weiser settled the case and Weiser agreed to pay \$200,000 – 100% of the amount of improperly spent money – to the state. In fact, AG Nessel and Benson worked in concert against Weiser, threatening him with criminal liability unless 100% of the funds were paid back

⁸⁹ Detroit Free Press, *Benson 'pleased' that Michigan campaign finance shake-up appears dead* (December 19, 2018) <https://www.freep.com/story/news/local/michigan/2018/12/19/michigan-house-campaign-finance-jocelyn-benson/2360444002/> (last accessed December 27, 2024).

⁹⁰ *Id.*

⁹¹ Detroit Free Press, *Michigan GOP chair Laura Cox accuses proposed successor of 'secret deal' with party funds* (February 4, 2021) <https://www.freep.com/story/news/local/michigan/2021/02/04/laura-cox-ron-weiser-michigan-gop/4387193001/> (last accessed December 20, 2024).

in a fine. Bridge Michigan reports that “[t]he AG memo released Monday said because the \$200,000 fine was paid in accordance with the SOS agreement, the deal had been complied with, thus acting as “a complete bar to any criminal action that could be undertaken” by the Attorney General.”⁹²

Benson’s handling of a campaign finance complaint against Republican state senator Mike Shirkey also notably differs from her treatment of Democrat Governor Whitmer. After investigating two PACs, Michigan! My Michigan! And Michigan Citizens for Fiscal Responsibility for illegal fundraising, Benson conclude that they had raised \$2,609,854 dollars.⁹³ Based on the Governor-Whitmer/Build a Better Michigan fine structure, Benson ought to have settled the case for \$40,713 (1.56% x 2,609,854). Instead, Benson offered to settle the case for \$2.33 million.⁹⁴ Benson also referred the matter to AG Nessel for criminal prosecution.⁹⁵

⁹² Bridge MI, *Nessel won’t charge Michigan GOP chair Ron Weiser for secret deal*, (August 23, 2021) <https://www.bridgemi.com/michigan-government/nessel-wont-charge-michigan-gop-chair-ron-weiser-secret-deal> (last accessed December 20, 2024).

⁹³ Michigan Advance, *Michigan AG charges two in ‘dark money’ scheme connected to former Senate leader Shirkey* (February 21, 2024) <https://michiganadvance.com/2024/02/21/michigan-ag-charges-two-in-dark-money-scheme-connected-to-former-senate-leader-shirkey/> (last accessed December 20, 2024).

⁹⁴ Michigan Live, *Probe into Shirkey-tied nonprofits continues; \$2.33M conciliation agreement declined* (October 18, 2022) <https://www.mlive.com/public-interest/2022/10/probe-into-shirkey-tied-nonprofits-continues-233m-conciliation-agreement-declined.html> (last accessed December 20, 2024).

⁹⁵ Detroit Free Press, *Michigan wants AG Nessel to review 2 political nonprofits for possible crimes* (June 6, 2022) <https://www.freep.com/story/news/politics/2022/06/06/unlock-michigan-nessel-nonprofit/7528947001/> (last accessed December 20, 2024) (“The department, led by Secretary of State Jocelyn Benson, on Friday referred the details of a 2021 complaint against two political nonprofits — Michigan! My Michigan! and Michigan Citizens for Fiscal Responsibility — to Michigan Attorney General Dana Nessel for possible criminal investigation.”)

The take away? Murky. Benson promised to build a wall between campaign finance violations and elections—she promised to aggressively pursue campaign finance violators.⁹⁶ And to an extent Benson did aggressively enforce campaign finance law. But disturbingly, she appears to have only *vigorously* enforced campaign finance laws against Republicans—in other words she gave her campaign partner Governor Whitmer and the PAC that helped Governor Whitmer get elected a free pass (or perhaps just a 98.5% discount on the levied fine). Either way, critics complain that Benson enforces the law unequally, and the evidence seems to—in some way—give truth to their complaints.

D. Questionable Campaign Finance Contribution

Tommy Kubitschek, a spokesperson for the Michigan Democratic Party, described election challengers as “eyes and ears on the ground who help ensure swift resolution of any issues that affect voters or voting, including impermissible challenges or intimidation at the polls.”⁹⁷ Michigan Election Law enshrines this view of election challengers, providing that each “board of election inspectors shall provide space for the challengers within the polling place that enables the challengers to observe the election procedure and each person applying to vote.”⁹⁸ Every year, election challengers are appointed from both parties, allowing each major political party to challenge how the election is being carried out. It’s a balanced process, so that both sides are represented and heard on Election Day.

⁹⁶ Detroit Free Press, *Benson 'pleased' that Michigan campaign finance shake-up appears dead* (December 19, 2018) <https://www.freep.com/story/news/local/michigan/2018/12/19/michigan-house-campaign-finance-jocelyn-benson/2360444002/> (last accessed December 27, 2024).

⁹⁷ Detroit Free Press, *Michigan election challengers: What they can, can't do* (October 30, 2024) <https://www.freep.com/story/news/politics/elections/2024/10/30/michigan-election-challengers-voting-november-rules/75672318007/> (Last accessed December 30, 2024)

⁹⁸ MCL 168.733(1).

In May 2022, Benson issued a publication directing local election officials to enforce new rules regarding election challengers. The first rule changed election challenger’s credentials. Before Benson’s changes, election challengers were credentialed using cards provided by the political party that nominated them. After Benson’s changes, election challengers had to use credentials “on a form promulgated by the Secretary of State.” More significantly, Benson also created a new position at law called a “challenger liaison,” whose duty it was to mediate between election challengers and election officials. In short, she barred election challengers from . . . challenging election officials’ conduct, instead re-routing them through the newly created position of challenger liaison. Secretary Benson also banned communication and recording devices from absent voter county facilities, and authorized election inspectors to refuse to record a challenge by an election challenger if, in the inspector’s opinion, the challenger was “impermissible.” In short, Benson’s rule change would not let a challenger challenge an action *unless the person being challenged agreed with them*. Benson made these rule changes outside of the APA process, so there was no public comment or review of the changes, and she never had to announce the changes. The changes were unilateral and unannounced. The Republican Party did not find out about the rule changes until the 2022 election was in progress.

As soon as the Republican Party discovered the rule changes, they sued Benson in the Michigan Court of Claims, arguing that if Benson wanted to change the rules she had to go through the rule making process. The Michigan Court of Claims ruled against Benson, holding that “[a]n executive-branch department cannot do by instructional guidance what it must do by promulgated rule.”⁹⁹ Specifically, the Court held that “the May 2022 Manual requiring the use of the uniform

⁹⁹ *O’Halloran, M.d v. Benson*, No. 22-000162, 2022 WL 22823114, at *8 (Mich.Ct.Cl. Oct. 20, 2022).

challenger-credential form violates the Michigan Election Law and APA” and ordered Benson to “clarify” her guidance on what date an election challenger must be appointed by. The Court further held that Benson’s creation of a challenger liaison position “appears nowhere in statute” and Benson had “not presented this Court with any statute, common law, case law, or promulgated rule that gives [her] the authority to restrict with which election inspector a challenger can communicate.” The Court thus held that Benson’s challenger liaison guidance “goes well beyond what is provided in law and impermissibly restricts a challenger's ability to bring certain issues to any inspector's attention.”¹⁰⁰ Similarly the Court struck down Benson’s provision on the use of communication devices and her instruction that election inspectors may decline to record a challenge—the court noted that Benson’s argument was “directly contrary to our Legislature’s requirement in MCL 168.727(2) that a record of the challenge be made. Even if the challenge is determined to be without basis in law or fact, if the challenge is made, it must be recorded.” The Court of Claims thus ordered Benson to withdraw her manual and bring it to heel. Benson appealed, but the Court of Appeals affirmed the Court of Claims.

On November 30, 2023, Benson appealed again, asking the Michigan Supreme Court to reverse the Court of Appeals and Court of Claims. The Michigan Supreme Court did nothing with the appeal until May 29, 2024, when it ordered the parties to file briefs by June 10, 2024 and appear for oral argument on June 18, 2024. On August 28, 2024, in a narrow 4-3 decision, in which Justice Bolden cast the court’s tie-breaking vote and wrote the majority’s opinion, the Michigan Supreme Court ruled favorably to Benson. In doing so, the Supreme Court rejected well-settled authority that a Michigan Secretary of State may not do by unilateral instructions what the APA requires her to do by the democratic rule-making process. The Editorial staff at The Detroit News described

¹⁰⁰ *Id.*

the Supreme Court’s opinion as “nonsensical ruling, not based in legal precedent, that begs the question of court activism on its own.”¹⁰¹ Many outsiders were thus left scratching their heads as to how the Michigan Supreme Court reached its conclusion.

SECTION V: Leadership to Instill Confidence in Election Results

GRADE C

¹⁰¹ The Detroit News, *Editorial: Michigan justices should be impartial to the law* (October 26, 2024) <https://www.detroitnews.com/story/opinion/editorials/2024/10/26/editorial-michigan-justices-should-be-impartial-to-the-law/75837773007/> (last accessed December 30, 2024).

**MICHIGAN SOS BENSON PERFORMANCE SUMMARY AND
RECOMMENDATIONS**

SECTION I: The Administration of Elections and Enforcement
of Existing Laws

GRADE:D-

SECTION II: The Transparency of Electoral Process

GRADE:D

SECTION III: The Quality of the Voter Registration List

GRADE:C-

SECTION IV: Impartial, Professional and Independent Election
Administration

GRADE:F

SECTION V: Leadership to Instill Confidence in Election Results

GRADE:C-

OVERALL GRADE: D

MICHIGAN RECOMMENDATIONS

Independent Audit

Routine audits of election administration are good policy. At best, an independent audit can reveal an administration that hums along without hiccups or faults. At worst, the audit reveals an administration that can be improved. But Michigan’s so-called audit system is broken, resulting in a lack of any serious review.

The Michigan Constitution provides citizens with the “right to have the results of statewide elections audited . . . to ensure the accuracy and integrity of elections.” *See* Const 1963, art 2, § 4(1)(l); *see also* MCL 168.31a. But that right—which was added to the constitution as part of an omnibus election law reform during the 2018 general election—is limited to audits conducted by the Secretary of State and local clerks.

The Secretary auditing her own performance makes no sense. Why would the person who administers elections (the Secretary of State) be the right person to audit the administration of elections? That scheme obviously create strong incentives for the Secretary of State to find that her own administration of elections is flawless. After all, any other finding would be a self-indictment. And all neutral review of Secretary Benson’s actions during recent election cycles raises serious questions as to whether the Secretary of State – be that Secretary Benson or future Secretaries, whoever they may be – is appropriate office to conduct such an audit of their own performance. Viewed through the lens of recent history, an audit of election administration conducted by the party responsible for administering the election (*i.e.*, the Secretary of State) is akin to tasking a taxpayer to audit their own tax returns. By having the Secretary conduct an audit of her own work, the audit is, by its very nature, subject to the Secretary’s biases. Juvenal’s famous

question “*Quis custodiet ipsos custodes?*” cannot be answered with “*custodes*” because that misses the entire point of the question!¹⁰²

Making matters worse, Michigan’s Attorney General issued an opinion limiting the state’s Auditor General from reviewing the post-election audits in a meaningful way.¹⁰³ This means that uninterested third-parties cannot audit the audit to make sure it was properly conducted—a profound lack of transparency.

As a matter of good-government, then, Michigan would be well served to subject its administration of elections to a truly independent review. The recently completed review of Arizona’s election, which was conducted by an independent, bipartisan group was equally critical of Republicans and Democrats, would be a good place to start.¹⁰⁴ That review is unconcerned with politics or political careers; instead, it is focused on the administration of elections.

Ballot Initiative

As discussed above, the security of Michigan elections relies on the honesty of people. Objectively, that’s not a very secure system—it took a 19 year old one day to crack the system, and he was only caught because he turned himself in.¹⁰⁵ Michigan needs a constitutional

¹⁰² “*Quis custodiet ipsos custodes?*” translates to “Who will guard the guards themselves?” and is a comment on how difficult it is to set up a system of government in which no person with power (i.e., a “*custodes*” or guard) is left to guard against their *own* abuses of power.

¹⁰³ See 2021 Mich. Op. Att’y Gen. No. 7316 (Aug. 6, 2021) (opining that the Auditor General may not audit local clerks’ performance of their post-election procedural audits even if conducted directly or in connection with an audit of the Bureau of Elections, and also opining that the Secretary “may exercise supervisory authority” over local elections officials responding to requests for information and for access to voting equipment by the Auditor General such that access to those materials is either limited or not granted at all)

¹⁰⁴ See ABC 15 Arizona, *Gov. Hobbs appoints MVD audit leaders after data misled election officials* (October 18, 2024) <https://www.abc15.com/news/local-news/investigations/gov-hobbs-appoints-mvd-audit-leaders-after-data-misled-election-officials> (Last accessed December 31, 2024)

¹⁰⁵ See, The Detroit News, *Chinese student to face criminal charges for voting in Michigan. Ballot will apparently count* (October 30, 2024)

amendment that requires voters to show proof of U.S. citizenship to register to vote, and to show photo identification to cast a ballot—either in-person or absentee.

Requiring voter ID is immensely popular with Michiganders.¹⁰⁶ A statewide poll by the Detroit Regional Chamber found that 79.7% of respondents support requiring “every voter coming to the polls present a government-issued identification to cast their ballot.”¹⁰⁷

As for requiring proof of citizenship to register to vote, it would solve the Gao, noncitizen voting problem. Gao was able to slip Benson’s security because all he had to do was sign a document attesting that he was a United States citizen. If Gao had to show proof of citizenship before voting, he could not have voted. Indeed, the fact that Gao’s name is only known because he turned himself in cuts against those claiming this is not a problem. Benson acknowledges that only U.S. Citizens can vote.¹⁰⁸ But while Benson then claims that “[t]here is no evidence to support claims that large numbers of noncitizens have voted in past elections or are registering to vote in 2024,” that claim belies belief because of the Gao incident.¹⁰⁹ Again, Gao got through. And Gao would have gotten away but for turning himself in. The logical conclusion, then, is that Benson does have any idea how many non-citizens vote, and she cannot know unless they turn themselves in. Besides, even if only a small number of non-citizens are voting, that is still a

<https://www.detroitnews.com/story/news/politics/elections/2024/10/30/chinese-university-of-michigan-college-student-voted-presidential-election-michigan-china-benson/75936701007/> (Last accessed December 31, 2024).

¹⁰⁶ See Detroit Regional Chamber, Statewide Poll Reveals Opinions on Political Landscape (June 7, 2021) <https://www.detroitchamber.com/statewide-poll-reveals-opinions-on-political-landscape-covid-19-and-vaccination-perceptions-ongoing-labor-shortage-and-voting-rights/> (last visited December 31, 2024).

¹⁰⁷ *Id.*

¹⁰⁸ See Michigan Department of State, *Election Fact Center* <https://www.michigan.gov/sos/elections/election-fact-center> (Last accessed December 31, 2024) (“In Michigan, and in every state, only U.S. citizens are eligible to register to vote or cast a ballot in any state or federal election”)

¹⁰⁹ *Id.*

problem. Remember, while Gao was (voluntarily) caught, *his vote still counted*.¹¹⁰ Benson says there isn't a "large number" of noncitizens voting. But what is a "large number" in her mind? In 2016, Trump won Michigan 2,279,543 to 2,268,839.¹¹¹ In a state with 7.2 million active registered voters,¹¹² is 10,704 votes, Trump's margin of victory over Clinton, or .0014% of the population a large number? With elections this close, any noncitizen vote could be a large enough.

An additional wrinkle in Benson's election law security, pointed out in The Detroit News, is that there is pending legislation that would allow noncitizens to obtain state drivers' licenses.¹¹³ In Michigan, "[d]rivers' licenses are the primary identification source for those registering to vote" because "Michigan asks for proof of residency when registering new voters, but not proof of citizenship."¹¹⁴ And persons who obtain a Michigan driver's license are automatically registered to vote. The Detroit News also reported former Secretary of State Ruth Johnson's view that "[w]e have no real-time system to check if . . . individuals are eligible to vote or have already voted in another location," thus, with political parties' focus "on driving students to the polls and registering them on Election Day," there is no real security against double voting.¹¹⁵

¹¹⁰ The Detroit News, *Chinese student to face criminal charges for voting in Michigan. Ballot will apparently count* (October 30, 2024) <https://www.detroitnews.com/story/news/politics/elections/2024/10/30/chinese-university-of-michigan-college-student-voted-presidential-election-michigan-china-benson/75936701007/> (Last accessed December 31, 2024).

¹¹¹ The New York Times, *2016 Michigan Results* (August 1, 2017) <https://www.nytimes.com/elections/2016/results/michigan> (Last accessed December 31, 2024).

¹¹² See Michigan Department of State, *Election Fact Center* (Last accessed December 31, 2024) ("Michigan has approximately 7.2 million active registered voters.")

¹¹³ The Detroit News, *Editorial: Strengthen safeguards to prevent non-citizens from voting* (December 14, 2024) <https://www.detroitnews.com/story/opinion/editorials/2024/12/14/editorial-strengthen-safeguards-to-prevent-non-citizens-from-voting/76943978007/> (Last accessed December 31, 2024).

¹¹⁴ *Id.*

¹¹⁵ The Detroit News, *Editorial: Election integrity loophole must be closed* (November 20, 2024) <https://www.detroitnews.com/story/opinion/editorials/2024/11/20/editorial-election-integrity-loophole-must-be-closed/76299661007/> (Last accessed December 31, 2024).

Some lawmakers have stated their intent to introduce a constitutional amendment through the Legislature that would require proof of citizenship and identity—a tall order from a procedural standpoint.¹¹⁶ But given the popularity of a constitutional amendment to include voter ID laws, a citizen-led ballot proposals to add in election protections would likely be the swiftest, most effective way of closing the loophole in Benson’s election security.

¹¹⁶ Bridge Michigan, *Michigan Republicans to push constitutional amendment requiring ID to vote* (December 11, 2024) <https://www.bridgemi.com/michigan-government/michigan-republicans-push-constitutional-amendment-requiring-id-vote> (Last accessed December 31, 2024); Michigan Advance, *Posthumus to propose constitutional amendment requiring proof of citizenship from voters* (December 11, 2024) <https://michiganadvance.com/2024/12/11/posthumus-to-propose-constitutional-amendment-requiring-proof-of-citizenship-from-voters/> (Last accessed December 31, 2024).