



May 14, 2024

Campaign Legal Center Testimony Before the
House Committee on Elections
In Support of SB 603

Dear Chair Tsernoglou and the Members of the House Elections Committee,

Introduction

Campaign Legal Center (“CLC”) respectfully submits this testimony to the Committee in support of Senate Bill 603, which provides significant and essential updates to the recount process in Michigan. Michigan’s statute governing recount procedures does not reflect how elections are run in 2024. This legislation provides much needed improvements to the current code and ensures that the timeline contemplated for recounts will comply with critical federal deadlines for presidential elections. We respectfully urge this committee to take action on SB 603 to ensure that current ambiguities and outdated procedures can be clarified and updated, leading to a smoother post-electoral process safe from potential manipulation.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Our work promotes every American’s right to participate in the democratic process. As such, CLC works to advance effective policy that will provide explicit and thoughtful procedures for election processes in the states. SB 603 is critical to ensure that Michigan’s election procedures are safeguarded and appropriately strengthened for elections to come.

Conforming Recount Law to Newly Passed ECRA Law

Last year, this legislative body passed SB 529¹, which took important steps to ensure that Michigan’s post-election processes align with the recently passed, bipartisan Electoral Count

¹ Michigan, Senate Bill 529 (2023), [https://www.legislature.mi.gov/\(S\(3hcwbzz5n1defzy1xx05lhom\)\)/mileg.aspx?page=getObject&objectName=2023-SB-0529](https://www.legislature.mi.gov/(S(3hcwbzz5n1defzy1xx05lhom))/mileg.aspx?page=getObject&objectName=2023-SB-0529).

Reform Act of 2022 (“ECRA”).² The ECRA updated the Electoral Count Act of 1887, which provides the primary legal framework for casting and counting Electoral College votes in presidential elections.

While the majority of the ECRA addresses the process by which Congress counts each state’s electoral votes, it also provides deadlines for each state’s executive to certify the state’s slate of electors. These deadlines have a cascading impact on the post-election processes within each state, including (but not limited to) certification, challenges, recounts, and contests.

This bill makes important changes to establish conformity across the election code. These changes are necessary to ensure that recounts will not delay the transmission of conclusive results to Congress within the timeframe set by the ECRA. The bill provides important deadlines to ensure that recounts are completed promptly, including by moving up the timeline for filing a recount petition or objections, and the deadline for completion of a recount by the board of canvassers.

Standardizing the Recount Request Process to Prevent Frivolous Recounts

SB 603 will make important clarifications and changes to the current recount process to help prevent potential abuses of the system, and to ensure that recounts are conducted only in situations where discrepancies could potentially change the outcome. This bill clarifies that only participants in a candidate race or ballot question are eligible to file a recount in the state of Michigan, preventing outside partisan organizations from delaying the proper and timely certification of election results by filing frivolous petitions. This bill further requires the requesting individual or committee to file a recount petition (1) in good faith; (2) based on a specific error; and (3) when a potential error relates to a large enough percentage of ballots to potentially change election results. Additionally, this legislation would define and standardize the recount process to ensure that it is operating as intended – as a purely administrative process limited to concerns surrounding an incorrect count, rather than deviating inappropriately into an investigation or audit. These changes, taken in combination, will help keep the recount process free of interference or manipulation by those seeking to undermine trust in elections.

Tying Recount Petition Costs to Inflation

Recounts are an incredibly costly part of the post-election process. This legislation helps to move costs into alignment with inflation and the reality of conducting large-scale recounts, which have been required in multiple recent election cycles. The deposit amounts for candidate-requested recounts have remained static since 2018,³ despite Bureau of Labor Consumer Price Index data showing a 22.82 percent inflation in costs since that time.⁴ In addition to inflation driving up costs, recent recounts have relied substantially on taxpayers to help foot the bill for expansive, sometimes frivolous, recount requests. In 2016, then-Green Party candidate Jill Stein requested a statewide recount and paid the requisite \$973,250 deposit required under statute.⁵ This payment, however, was unfortunately nowhere close to the estimated \$5 million that then-

² Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Div. P tit. I (2022).

³ Mich. Stat. § 168.867 was last amended by Mich. Public Act 130, S.B. 290 (2018) <https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0130.pdf>.

⁴ U.S. Bureau of Labor Statistics, Consumer Price Index, <https://www.bls.gov/cpi/>.

⁵ Chad Livengood, “Mich. Recount to start Friday barring Trump challenge,” Detroit News, Dec. 1, 2016, <https://www.detroitnews.com/story/news/politics/2016/11/30/recount/94667998/>.

Secretary Johnson and the Michigan Department of State estimated would be needed to conduct the full recount.⁶

This scenario is unfortunately not an outlier: in 2022, a recount requested by the organization Election Integrity Fund for Propositions 2 and 3 cost Michigan taxpayers approximately \$1 million total after the requestor deposit check cleared, according to an estimate from the Michigan Department of State.⁷ Much of these costs arise from hiring additional election workers and paying for use of spaces required for these large-scale operations. Ingham County hired 42 additional staff, Macomb County brought on 40 new election workers for the task, and the Washtenaw County clerk's office said that the county would be facing a bill of \$6-10,000 *after* the \$11,000 reimbursement from the filing for similar temporary workers to complete the recount.⁸ It is appropriate that candidates and ballot question committees should have to contribute a larger portion of the costs associated with recounts to ensure the burden is not falling on counties and taxpayers, especially in cases where a substantial vote margin exists. In all cases, the deposit paid by the candidate or committee is refunded if they prevail in the recount—incentivizing petitioners to only seek recounts that are likely to succeed.

Not only will this bill require candidates to cover a higher percentage of the costs borne by counties to complete recounts, it will also require the Secretary of State to adjust the deposit amount to account for inflation every four years beginning in 2027 to ensure that the deposit amount keeps pace with the cost of a recount.

Reforming the Process for Out of Balance Precincts to Allow for More Comprehensive Recounts

This legislation also helps to ameliorate the issue of precincts or counting boards being “out of balance” and under current statute, potentially having their results excluded from the recount. A balanced precinct is one where the number of ballots exactly matches the number of voters recorded as having voted at that precinct or returned absentee ballots for that counting board location. As the Michigan Board of Elections explains, an out of balance precinct is “typically the result of human error in making or retaining records on election day. They do not necessarily mean that ballots have been improperly counted or improperly tabulated.”⁹ Out of balance precincts and counting boards nonetheless pose a challenge for recounts – current law allows that precinct's results to still be recounted if the voting machine tabulator tape matches the number of ballots in a container. While some of Michigan's counties struggled to balance

⁶ Michigan Bureau of Elections, “Election Recount FAQs,” December, 2016, <https://www.michigan.gov/-/media/Project/Websites/sos/04holland/RecountFAQs.pdf?rev=c44d7d2006204ce3beecdec97b181cbc>.

⁷ Ben Orner, “Michigan proposal recount ends with few changed votes, many failed challenges,” MLive, Dec. 22, 2022, <https://www.mlive.com/politics/2022/12/michigan-proposal-recount-ends-with-few-changed-votes-many-failed-challenges.html>.

⁸ Oralander Brand-Williams, “Clerks tackle Michigan recount of Prop 2 and Prop 3 amid challengers looking for errors,” Votebeat Michigan, Dec. 9, 2022, <https://www.votebeat.org/michigan/2022/12/9/23502115/recount-costs-prop-3-prop-2-eif-challengers/>.

⁹ State of Michigan Department of State, “Audits of the November 3, 2020 General Election, Apr. 21, 2021, https://www.michigan.gov/-/media/Project/Websites/sos/30lawens/BOE_2020_Post_Election_Audit_Report_04_21_21.pdf?rev=a3c7ee8c06984864870c540a266177f2#:~:text=Precincts%20out%20of%20balance%2C%20whether,improperly%20counted%20or%20improperly%20tabulated.

their precincts and counting boards in 2020,¹⁰ major improvements have been made. In the aftermath of the November 2022 election, Wayne County boasted a 100% balanced rate for absentee counting boards,¹¹ a major feat in just two years. City of Detroit Clerk Janice Winfrey spoke out in support of counting every precinct, arguing that it is “the only way you’re going to show the purity of the process.”¹²

SB 603 would ensure that more “out of balance” precincts can still be part of the recount process by allowing those that are certified out of balance during the canvass process to be recounted, so long as they remain out of balance by identical or fewer ballots after review, or if a sworn affidavit is made to the board with a satisfactory explanation. Consequently, both those requesting recounts and Michigan voters alike will be provided with a higher degree of certainty that canvassed results were accurate, as more ballots will be able to be recounted. This will help increase trust in election results and ensure that ballots can be reviewed thoroughly and take full part in the critical post-election process.

Important Reforms to the Automatic Recount Process

Additionally, SB 603 makes changes to the automatic recount threshold in Michigan that will benefit both candidates and voters alike. Currently, Michigan automatically conducts and fully finances a recount in a statewide race if the margin of victory is less than 2,000 votes. This legislation changes this threshold and would require that a recount automatically occurs if the margin of victory is less than 0.1% of the votes cast. By increasing the recount threshold, candidates have a wider margin before they are responsible for funding a recount themselves. For example, in the 2022 gubernatorial election, there were approximately 4,462,000 votes cast for governor.¹³ Under current automatic recount law, an automatic recount would only occur if the margin of victory was within 2,000 votes. Under SB 603, a recount threshold of 0.1% would translate to a difference of approximately 4,462 votes, more than doubling the eligibility window for an automatic recount. This will help voters to feel assured that Michigan has confirmed the winning candidate in close, statewide contests, and assist candidates who may not have the financial capacity to fund a recount deposit on their own, thus increasing equity and transparency in elections.

Conclusion

Clear and comprehensive recounts are essential to ensuring public confidence in the legitimacy and transparency of elections. Passing SB 603 will update the current recount procedures to offer much-needed clarity and modernization such that the process is used for its intended purpose: to determine if the canvass and counting of results was accurate. This legislation was crafted after years of lessons learned by election officials and administrators to fill in gaps and standardize the steps that aggrieved candidates or committees can take to confirm

¹⁰ Clara Hendrickson, “Detroit reports ‘huge improvement’ in balancing election ballots counted, cast,” Detroit Free Press, Aug. 11, 2021, <https://www.freep.com/story/news/politics/elections/2021/08/11/detroit-election-primary-ballots-precincts/5567165001/>.

¹¹ Louis Aguilar, “Avoiding chaos, Wayne County board certifies Nov. 8 election results,” The Detroit News, Nov. 22, 2022, <https://www.detroitnews.com/story/news/local/wayne-county/2022/11/23/wayne-county-board-certifies-nov-8-2022-election-results/69669652007/>.

¹² Hendrickson, “Detroit reports ‘huge improvement’ in balancing election ballots counted, cast.”

¹³ 2022 Michigan Official General Election Results, Dec. 22, 2022, https://mielections.us/election/results/2022_GEN_CENR.html.

the results of an election. SB 603 will protect the recount process from being used for partisan purposes to cast doubt and distrust on the election results and is thus critical for passage. Campaign Legal Center respectfully requests your support on this legislation.