

# Ballot Proposal 3 of 2018



## “PROMOTE THE VOTE” PETITION

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Proposed Constitutional Initiative**  
**November 6, 2018 General Election**  
**Placed on the ballot by petition**  
**Complete to 10-12-18**

Analysis available at  
<http://www.legislature.mi.gov>

## BRIEF SUMMARY OF THE BALLOT PROPOSAL:

If approved by a majority of voters, Proposal 18-3 would amend Section 4 (Place and manner of elections) of Article II of the Michigan Constitution of 1963. Currently, Section 4 generally authorizes the legislature to enact laws related to elections and voting protections. The proposed amendment would retain that language, but it would also enumerate the following eight specific rights related to voting:

- A secret ballot.
- Timely distribution of absentee ballots to military personnel or those living overseas.
- Straight-party voting.
- Automatic registration.
- Registration by mail up to 15 days before an election.
- In-person registration extended to Election Day with proof of residency.
- No-reason absentee voting.
- Statewide audit of election results.

The following is the official language as it will appear on the November 2018 general election ballot:

<p>Proposal 18-3</p> <p><b>A proposal to authorize automatic and Election Day voter registration, no-reason absentee voting, and straight ticket voting; and add current legal requirements for military and overseas voting and postelection audits to the Michigan Constitution</b></p> <p>This proposed constitutional amendment would allow a United States citizen who is qualified to vote in Michigan to:</p> <ul style="list-style-type: none"><li>• Become automatically registered to vote when applying for, updating or renewing a driver's license or state-issued personal identification card, unless the person declines.</li><li>• Simultaneously register to vote with proof of residency and obtain a ballot during the 2-week period prior to an election, up to and including Election Day.</li><li>• Obtain an absent voter ballot without providing a reason.</li><li>• Cast a straight-ticket vote for all candidates of a particular political party when voting in a partisan general election.</li></ul> <p style="text-align: center;">Should this proposal be adopted?</p> <p style="text-align: center;">[ ] YES</p> <p style="text-align: center;">[ ] NO</p>
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The full text of the proposal as it appeared on the circulated petition can be found here:  
[https://www.michigan.gov/documents/sos/Petition\\_Promote\\_the\\_Vote\\_614273\\_7.pdf](https://www.michigan.gov/documents/sos/Petition_Promote_the_Vote_614273_7.pdf)

## DETAILED SUMMARY:

Currently, Section 4 of Article II of the Michigan Constitution reads as follows:

The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

If amended, Section 4 would retain that language, with the order of clauses slightly adjusted, and add eight specific voting rights, described below.

**A. The right, once registered, to vote a secret ballot in all elections**

Section 4 currently requires the legislature to *enact laws* to preserve the secrecy of the ballot. The amendment would codify the right to a secret ballot in the Michigan Constitution.

**B. The right of voters serving in the military or living overseas to have an absentee ballot sent to them at least 45 days before an election upon request**

The Michigan Election Code currently requires<sup>1</sup> that a county, city, township, or village clerk electronically transmit an absentee ballot to members of those groups who applied for one at least 45 days before the election as long as applied for by that date.

Likewise, the federal Uniformed and Overseas Citizens Absentee Voting Act<sup>2</sup> requires states to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter at least 45 days before a federal election as long as the request is received by that date (unless the state requests a hardship exemption for a qualifying reason).

The amendment would codify this timeline in the Constitution.

**C. The right, once registered, to a “straight party” vote option on partisan general election ballots. The voter could vote a split or mixed ticket.**

The amendment would reinstate straight-ticket voting, which will be unavailable for the first time in the November 2018 general election.

Michigan general election ballots are composed of three sections: the partisan section, which includes candidates representing political parties, such as those running for the U.S. presidency, Congress, the State Legislature, or a university board; the nonpartisan section, which includes candidates for judgeships, municipal offices, and school boards, who are not identified as representing a political party; and the proposal section, which includes state and local ballot issues.

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<sup>1</sup> MCL 168.759a, <http://legislature.mi.gov/doc.aspx?mcl-168-759a>

<sup>2</sup> 42 U.S. Code § 1973ff-1, <https://www.law.cornell.edu/uscode/text/42/1973ff-1>

Prior to the November 2018 general election, voters chose from three options when voting the partisan section of the ticket, with the following instructions provided with their ballot:

- *Straight Ticket: Vote the party of your choice. Nothing further need be done in the partisan section.*
- *Split Ticket: You may vote a straight ticket AND vote for individual candidates of your choice.*
- *Mixed Ticket: Vote for the individual candidates of your choice in each office.*

In December 2015, the legislature passed and the governor signed Public Act 268 (Senate Bill 13),<sup>3</sup> removing the straight-ticket option from the ballot. In March 2016, several voters and a civil rights organization brought suit in federal court, arguing that the Act violated the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The federal district court found in favor of the plaintiffs, first by issuing a preliminary injunction that stayed the Act for the 2016 general election (thereby allowing straight-ticket voting), and then by issuing an opinion on August 1, 2018, that the Act disproportionately affected the voting rights of African-Americans.

However, on appeal, the federal Sixth Circuit Court of Appeals decided 2-1 that the policy decisions informing the Act were choices the state (in the form of the legislature) could legitimately make.

**D. The right to be automatically registered to vote when registering for a driver’s license or personal ID card**

Now, a person wishing to register to vote must obtain an application from a Secretary of State office, a local clerk’s office, a voter registration drive, or online at [www.michigan.gov/sos](http://www.michigan.gov/sos), among other sources. The person must fill out the application and either return it in person or by mail to the local city or township clerk’s office. If returning the application by mail, the person must provide additional identifying information, such as a driver’s license number.

Under the proposal, a person would be automatically registered to vote when registering for a driver’s license or personal ID card at the SOS office, unless the person opted out of registering.

**E. The right to register to vote by mail up to 15 days before an election**

Currently, a person must be registered to vote at least 30 days before an election. The amendment would allow a person to register by mail up to and including 15 days before an election.

**F. The right to same-day registration**

The amendment would also allow a person to register in person up to and including Election Day with proof of residency “to an election official responsible for maintaining custody of the registration file where the person resides, or their deputies.” Without proof of residency, the person could register in person up to and including 15 days before Election Day.

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<sup>3</sup> House Fiscal Agency analysis of PA 268 (SB 13) of 2015: <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-0013-F0C8C059.pdf>

Fifteen states and the District of Columbia currently allow in-person voter registration up to and including Election Day.<sup>4</sup> Two states—North Carolina and Maryland—make same-day registration possible for a portion of their early voting periods, but not on Election Day. Washington has enacted same day registration, to be implemented in 2019. North Dakota does not have voter registration, instead requiring that valid proof of ID and residency be brought to the polls on Election Day.

#### **G. The right to no-reason absentee voting for registered voters**

Under current law, a voter can request an absentee ballot in Michigan for meeting any one of the following six criteria for being an “absent voter” (according to MCL 168.758):

- 60 years old or older.
- Unable to vote without assistance at the polls.
- Expecting to be out of town on Election Day.
- In jail awaiting arraignment or trial.
- Unable to attend the polls due to religious reasons.
- Appointed to work as an election inspector in a precinct outside of the voter’s precinct of residence.

In recent years, there has been interest in expanding the opportunities for obtaining an absentee ballot. For instance, in 2015, House Bill 4724<sup>5</sup> proposed “secured” no-reason absentee voting, which would have allowed a voter to obtain an absentee ballot without giving a reason, but would have required the voter to apply for the absentee ballot in person with the local clerk by providing a driver’s license, an official state ID card, or another generally recognized picture identification card.

The amendment would allow a voter to obtain an absentee ballot, without giving a reason, during the 40 days before an election. It would also allow the voter to choose whether the absentee ballot is applied for, received, and submitted in person or by mail. During those 40 days, election officials would have to be available to issue and receive absentee ballots during the regular business hours and for at least eight hours during the Saturday and/or Sunday immediately before the election. Election officials could make absentee ballots available at other times and places, as well.

#### **H. The right to a statewide audit of election results**

MCL 168.31a currently provides that Michigan’s Secretary of State (SOS) “may” audit election precincts. Public Act 271 of 2012 required the SOS to develop an election audit program that detailed the documents to be inspected and procedures to be used during an election audit. The SOS announced in May 2018 that, following the November 2018 general election, the SOS and county clerks would audit 300 of Michigan’s 4,800 precincts.<sup>6</sup> The SOS’s post-election audit manual may be found here:

[https://www.michigan.gov/documents/sos/Post\\_Election\\_Audit\\_Manual\\_418482\\_7.pdf](https://www.michigan.gov/documents/sos/Post_Election_Audit_Manual_418482_7.pdf)

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<sup>4</sup> California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maine, Minnesota, Montana, New Hampshire, Utah, Vermont, Wisconsin, and Wyoming. <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

<sup>5</sup> House Fiscal Agency analysis: <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4724-A00D70E6.pdf>

<sup>6</sup> <https://www.freep.com/story/news/local/michigan/2018/03/18/audit-michigan-election-2018/436865002/>

Instead of an optional audit at the discretion of the SOS, the bill would set forth the right for voters to have the results of statewide elections audited.

Thirty-three states and Washington D.C. currently conduct a post-election audit. Typically, only a sample of the paper records (voter-marked ballots, voter-verified paper audit trails produced by direct-recording electronic voting machines, or paper ballot records produced by ballot-marking devices) are examined as, effectively, a partial recount of election results to verify that the system is accurately recording and counting votes.<sup>7</sup>

## **BACKGROUND INFORMATION:**

According to the Michigan Constitution of 1963, a proposed amendment to the Constitution must be accompanied by the signatures of 10% or more of the number of votes cast for all candidates in the last gubernatorial election in order to go before the electorate.<sup>8</sup> 3,156,531 votes<sup>9</sup> were cast in the gubernatorial race in 2014, meaning that a constitutional amendment initiative requires 315,654 signatures. Those signatures must be collected within 180 days, submitted to the Secretary of State at least 120 days prior to the election, and verified as valid by the Board of State Canvassers.

In July 2018, Promote the Vote (PTV) submitted more than 430,000 signatures to the Michigan Bureau of Elections (BOE). The BOE's initial audit of 500 randomly selected signatures submitted by PTV was inconclusive, triggering review of a larger sample. Following a secondary review of an additional 3,799 signatures, the BOE estimated that PTV has 321,755 valid signatures, thus meeting the threshold for inclusion on the ballot.

## **FISCAL IMPACT:**

The various rights proposed in the amendment would have separate indeterminate costs, but they will likely entail marginal increased costs for local units of government and overall decreased expenditures from the state, with some marginal cost increases for the Department of State (DOS). Descriptions and details of these potential costs are given below.

### **State**

The provision of the right to straight-party voting in subdivision (C) would reverse Public Act 268 of 2015, which banned straight-party voting and appropriated \$5.0 million to the DOS to “purchase voting equipment to implement the elimination of straight party ticket voting.” Throughout the litigation period following the passage of the Act, the authorized funding had not been available for expenditure until the most recent decision from the Sixth Circuit Court of Appeals, which reauthorized the Act as well as the \$5.0 million appropriation. If the proposal passes, straight-party voting would again be allowed and there would no longer be a legal basis for expenditure of the \$5.0 million. The majority of the appropriated amount would then lapse to the general fund at the end of FY 2018-19. If the proposal does not pass, the funds would be spent on new voting machines in accordance with Public Act 268 of 2015.

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<sup>7</sup> “Post-Election Audits,” National Conference of State Legislatures. <http://www.ncsl.org/research/elections-and-campaigns/post-election-audits635926066.aspx>

<sup>8</sup> Michigan Constitution of 1963, Article XII, Section 2. <http://legislature.mi.gov/doc.aspx?mcl-Article-XII-2>

<sup>9</sup> 2014 November General Election results. <https://miboecfr.nictusa.com/election/results/14GEN/>

The proposal would result in marginal increased administrative costs for the DOS by likely requiring it to modify paper forms used by the Secretary of State to implement subdivision (G) (no-reason absentee voting) and possibly subdivision (D) (automatic registration). Modifications of paper forms entail the cost of printing new forms. It is estimated that the cost of printing new forms may range from \$10,000 to \$50,000. These costs would be supported through existing appropriations to the DOS.

Subdivision (H) (statewide election audits) may indirectly increase costs to the DOS and local governments if subsequent legislation is passed to expand the scope of post-election audit procedures beyond current procedures. Funding for an expanded post-election audit procedure would either come from the existing General Fund/General Purpose appropriation for election administration and services, or from an additional legislative appropriation to the DOS, depending on the size of the potential scope increase. If there is no subsequent change to current law as a result of the proposal, it would require no additional costs.

### **Local Governments**

Local governments responsible for the various election jurisdictions may incur increased costs related to additional worker hours to accommodate the revised timelines and responsibilities under subdivisions (E) (15-day mail registration) and (G) (no-reason absentee voting). Depending on the volume of customer interactions, extending the registration period to 15 days prior to an election and permitting no-reason absentee voting may require additional staff hours to ensure the timely processing of requests and the entry of eligible voters in the poll book. Additionally, the requirement to have an election official available during normal business hours 40 days before an election and for 8 hours during the weekend prior to an election may result in increased staff hours in rural areas, depending on whether a clerk or election official is currently available there as described in the amendment.

Assuming that it leads to a substantial increase in absentee voting, permitting no-reason absentee voting would also increase costs for absentee voter materials and postage for local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.