



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

September 20, 2024

The Honorable Dana Nessel
Department of Attorney General
G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48933

Re: Request for an Attorney General Opinion

Dear Attorney General Nessel:

I am writing to request an opinion from your office regarding the six-day grace period the Michigan Constitution allows for the absent voter ballots of individuals serving in the military or living overseas.

Proposal 2022-2 incorporated several voting-related rights into the Constitution, including the right of an individual serving in the military or living overseas “to have their absent voter ballot deemed timely received if postmarked on or before election day and received by the appropriate election official within six (6) days after such election.” Mich Const Art II, §4(1)(b). The Michigan Election Law (MEL) contains virtually identical language: “If the absent voter ballot return envelope containing a marked absent voter ballot for an absent uniformed services voter or overseas voter is postmarked on or before election day and the absent voter ballot is received by mail by the city or township clerk within 6 days after the election, the city or township clerk shall consider that absent voter ballot timely received.” MCL 168.759a(18).

Generally, the date by which ballots must be received in order to be counted would be clear. However, for the November General Election, the sixth day following the election is November 11—Veteran’s Day, which is a state holiday. Not only would no mail be delivered on that day—thereby effectively negating one of the six days guaranteed by the Constitution—but it would also raise the question of whether the deadline should extend to the day following the holiday.

The MEL provides an extension of one secular day when “anything required by this act to be done by a day certain” falls on a Saturday, Sunday, or legal holiday. MCL 168.13. While the Constitution does not contain a similar provision, Proposal 2022-2 added the following language at the end of the list of rights: “Nothing contained in this subsection shall prevent the legislature from expanding voters’ rights beyond what is provided herein.” Mich Const Art II, §4(1). In other words, the voters’ rights enumerated in the Constitution provide a floor, not a ceiling, and the legislature is authorized to expand those rights in statute. Indeed, the legislature has done so in legislation implementing Proposal 2022-2, including the expansion of allowable days of early voting from the 9 days provided in the Constitution to a maximum of 29 days allowed in statute. Mich Const Art II, §4(1)(m); MCL 168.720e, 720f, 720g.

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Given the direction that the legislature may expand on rights enumerated in subsection 4(1), it is the Department's understanding that the deadline of the sixth day following the election should be extended by one secular day, and that absent voter ballots submitted by those serving in the military or living overseas and postmarked on or by Election Day, should be deemed timely received if received on or by November 12, 2024.¹

I respectfully request your formal opinion as to whether this reading is correct, or whether the deadline is the sixth day following the election, regardless of whether that day falls on a Saturday, Sunday, or legal holiday. If you or your staff would like any additional information regarding these questions, please contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Jocelyn Benson". The signature is written in a cursive style with a large initial "J".

Jocelyn Benson
Secretary of State, State of Michigan

¹ Because these ballots would be delivered in the daily mail delivery to the city or township clerk, it would not be a timing concern for those clerks to fulfill the subsequent requirement that the ballots then be delivered to the applicable county clerk no later than the seventh day after the election (a deadline that would not be extended because it would not fall on a weekend or holiday). MCL 168.759a(18).