



Written by [James Murphy](#) on March 17, 2021

## Michigan Judge: Secretary of State Broke Law With Absentee-ballot Directive in 2020 Election

A Michigan judge [ruled](#) last week that Michigan Secretary of State Jocelyn Benson (D) ran afoul of the state's Administrative Procedures Act (APA) by unilaterally issuing rules relating to how absentee ballots should be judged.

The lawsuit was brought by the state's Republican Party and Allegan County Clerk Robert Genetski. In the suit, the plaintiffs asserted that the signature standards for absentee ballots ordered by Benson would allow invalid ballots to be counted.

Michigan Court of Claims Judge Christopher Murray ruled that the loose standards of signature verification that Benson ordered be used on absentee ballots for the November 2020 election was a violation of state law and invalidated the rule for future elections.

Benson's office issued "guidance" on how absentee ballots should be handled in the election. Among that "guidance" was that ballots were to be handled with a presumption of validity and that even "slight similarities" between signatures on absentee ballots and those on file in voter-registration records should lead vote counters to decide "in favor of finding that the voter's signature was valid."

Murray detailed Benson's signature-verification instructions in his decision: "Under a heading entitled 'Procedures for Signature Verification,' the document stated that the signature review 'begins with the presumption that' the signature on an absent voter ballot or envelope is valid. Further, the form instructs clerks to, if there are '**Any** redeeming qualities in the [absentee voter] application or the return envelope signature as compared to the signature on file, treat the signature as valid.'" (Emphasis in original.)

Benson further explained how the benefit of the doubt was to be given to the signatures, describing those "redeeming qualities" as "similar distinctive flourishes" and "more matching features than non-matching features." Signatures could only be questioned if they differed "in multiple, significant **and** obvious respects from the signature on file." (Emphasis in original.)

It's almost as if Benson knew that some of the signatures wouldn't match exactly with those on file.

Murray noted that Benson's direction was that clerks "must perform" their signature-verification duties in this way. This suggests that Benson's guidelines constituted a rule and not a suggestion, which is not in her purview, as only the state's legislators can make election law.

Ultimately, Murray concluded, "nowhere in the state's election law has the Legislature indicated that



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signatures are to be presumed valid, nor did the Legislature require that signatures are to be accepted so long as there are any redeeming qualities in the application or the return envelope signature as compared with the signature on file. Policy determinations like the one at issue — which places a thumb on the scale in favor of a signature’s validity — should be made pursuant to properly promulgated rules under the APA or by the Legislature.”

In other words, Benson made a rule regarding signature verification that she had no right to make.

In a [statement](#), Michigan representative Matt Hall (R-Marshall) blasted Benson for effectively making election law without input from the state legislature.

“I’m glad the court sees Secretary of State Benson’s attempts at lawmaking for what they are — clear violations of her authority,” Hall wrote. “If she wants to make changes like these, she needs to work with the Legislature or properly promulgate them through the laws we have on our books — in this case the Administrative Procedures Act.”

Other Republicans lauded the decision, despite the fact that it comes too late to help cure the obvious problems with the 2020 election. “It was clear from the outset that the secretary of state had violated Election Law by unilaterally directing local clerks to ignore their statutory obligation to compare absentee ballot signatures,” said Ted Goodman, communications director for the Michigan GOP.

The other accusation in the lawsuit was that Benson would not allow an audit of the 2020 election, which specifically focused on the signatures for absentee ballots. Judge Murray found that the charge had no merit, as the state’s election law did not allow for such a specific audit — only an audit of election results, which was conducted.

So, going forward, Benson’s “guidelines” as written for the 2020 election do not have to be followed. That’s little comfort for Donald Trump and Republicans since the deed has already been done. Nothing will happen to Benson as a result of her actions. Eventually, she or her office will release a statement about how they disagree with the ruling, but nothing else will happen.

Benson got away with it.

In Michigan, 3.1 million absentee ballots were cast out of 7.7 million total votes cast. As a result of Benson’s instructions, fewer than one percent of those absentee ballots were rejected.

That evidence of widespread election irregularities in the 2020 election, which the mainstream media assured was not there, just keeps slowly coming out.



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