



October 16, 2024

Clerk Lynette Findley
Superior Township Board of Trustees
3040 North Prospect Road
Superior Charter Township, Michigan 48198

Sent via U.S. Mail and Electronic Mail (lynettefindley@superior-twp.org; kenschwartz@superior-twp.org; llewis@superior-twp.org; education@superior-twp.org; blindke@superior-twp.org; bsecrest@superior-twp.org; rmcgill@superior-twp.org)

Dear Clerk Findley:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, is concerned about an unlawful directive you issued to your staff during the 2024 Michigan primary election banning campaign literature in polling locations. Consistent with the First Amendment, Michigan law permits voters to have campaign literature inside polling locations provided it is for personal use only, concealed from public display, and not shared with others. We urge you to correct or clarify your directive for future elections to comply with the First Amendment and Michigan law.

Our concerns arise from your post-election report published in the Superior Township Regular Board's August 19 agenda.¹ In the report, you stated you witnessed electioneering outside a polling location and had to issue your directive as a result:

At Precinct 5 where my office is located, I noticed a candidate giving out their campaign literature with picture [sic] on it. I had to say to this person, this is illegal and that voters cannot enter the precincts with this literature. . . . I informed [the Chair in Precinct 5] to station a staff member at the door so that campaign literature was not allowed in the precinct²

This directive is unlawful pursuant to the First Amendment and Michigan law. As a preliminary matter, Michigan election law bars posting, displaying, or distributing campaign materials only

¹ CHARTER TOWNSHIP OF SUPERIOR, REGULAR BOARD MEETING, AGENDA – AUGUST 19, 2024, <https://superiortownship.org/wp-content/uploads/2024/08/August-19-2024-Board-Book.pdf>.

² *Id.* at 124.

in or around a polling place—it does not ban mere possession of literature inside a polling location but rather pertains solely to public displays of it. Specifically, Section 168.744 states:

On election day, a person shall not post, display, or distribute in a polling place, in any hallway used by voters to enter or exit a polling place, or within 100 feet of an entrance to a building in which a polling place is located any material that directly or indirectly makes reference to an election, a candidate, or a ballot question.³

Accordingly, Michigan’s Secretary of State has published a more detailed directive for election inspectors which states, in relevant part:

Election inspectors must direct voters entering the polls to remove or cover up campaign buttons, hats, or clothing that refers to a candidate, campaign slogan, or political party or interest group on this election’s ballot. *Instruct voters to conceal campaign literature or other campaign materials brought into the polling room. A voter may discreetly refer to their own personal notes, campaign literature or “slate cards” when voting, but the materials must not be left behind in the voting station.* Election inspectors must periodically check each voting station for campaign literature or materials left by voters and discard any that is found.⁴

The directive makes clear that Michigan law allows voters to bring campaign literature into polling locations for their own private use.

This is as it should be, because the First Amendment requires restrictions on polling place activity to remain “reasonable in light of the purpose served by the forum: voting.”⁵ While the government may “reasonably take steps to ensure that partisan discord not follow the voter up to the voting booth, and distract from a sense of shared civic obligation at the moment it counts the most,” it “must draw a reasonable line.”⁶

To pass constitutional muster, any regulation of campaign literature by Superior Township at polling locations must be reasonable in light of its purpose. Preventing “distraction and disruption”⁷ at the polling place is a permissible regulatory objective, but it can hardly be said denying voters the ability to refer to campaign literature discreetly inside a voting booth is reasonable. Voting booths are a place for voters to “deliberate and make a decision in privacy.”⁸ Even assuming it is reasonable to bar *public displays* of campaign literature inside a polling

³ MICH. COMP. LAWS § 168.744 (2023).

⁴ *MANAGING YOUR ELECTION DAY POLLING PLACE: ELECTION INSPECTORS’ PROCEDURE MANUAL*, MICHIGAN BUREAU OF ELECTIONS (APRIL 2024), at 22 (emphasis added), <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Election-Administrators/Managing-Your-Precinct-on-Election-Day.pdf>.

⁵ *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1, 12, 13 (2018) (quoting *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985) (internal quotation marks omitted)).

⁶ *Id.* at 15–16.

⁷ *Id.* at 22.

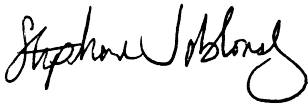
⁸ *Id.* at 7 (cleaned up).

precinct, the ban at issue goes a step further and thwarts a voter's ability to privately deliberate at the voting booth, defying the entire purpose of the forum. Any outright ban on campaign literature inside a polling location unconstitutionally infringes upon expressive rights, because the simple step of concealment can mitigate any concerns about distraction and disruption at the polling place while preserving the right to make an informed vote.

Michigan law and the Secretary of State's directive are careful to reflect the constitutionally required distinction between electioneering in polling precincts and a voter's private use of campaign literature or notes inside a voting booth. FIRE accordingly urges you to correct your own directive to comply with the First Amendment and Michigan law, or to clarify the directive in the event your report contained imprecise language.

We respectfully request a substantive response to this letter no later than October 30, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Jablonsky". The signature is fluid and cursive, with the first name being the most prominent.

Stephanie Jablonsky, Esq.
Senior Program Officer, Public Advocacy

Cc: Kenneth Schwartz, Supervisor
Lisa Lewis, Treasurer
Nancy Caviston, Trustee
Bernice Lindke, Trustee
Bill Secrest, Trustee
Rhonda McGill, Trustee