

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

REPUBLICAN NATIONAL COMMITTEE,  
MICHIGAN REPUBLICAN PARTY, and CINDY  
BERRY,

Plaintiffs,

v

Case No. 24-000148-MZ

JOCELYN BENSON, in her official capacity as  
Secretary of State, and JONATHAN BRATER, in  
his official capacity as Director of Elections,

Hon. Brock A. Swartzle

Defendants.

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**OPINION AND ORDER ON PARTIES’  
CROSS MOTIONS FOR SUMMARY DISPOSITION**

A citizen’s vote is one of the fundamental pillars on which this country governs itself. Partisans and pundits will sometimes place election integrity in tension with the right to vote. This is a fallacy, as an election without integrity is as much a danger to a citizen’s vote as would be simply taking away the franchise.

Our Legislature understands the need for election integrity, as the Michigan Election Code contains a multitude of checks to ensure full and fair elections. One of those checks is central to this dispute: the requirement added to MCL 168.768 in 2024 that the unique-identifying number on the stub affixed to an absent-voter ballot be identical to the unique-identifying number found on the absent-voter ballot return envelope. This requirement that the two unique-identifying numbers “match” before a vote can be counted ensures that the ballot issued to an absent voter is

the one that was actually returned by (or at the direction of) that absent voter. Without this matching requirement, there can be no assurance that the person who was issued the ballot was the one who actually voted that ballot.

This dispute centers on the question of what to do when there is not a match. Specifically, plaintiffs—the Republican National Committee, the Michigan Republican Party, and Chesterfield Township Clerk Cindy Barry—maintain that our Legislature was silent as to the proper treatment of an absent-voter ballot when the unique-identifying number printed on the envelope does not match the number printed on a corresponding ballot stub. In that case, plaintiffs argue, the ballot must be rejected, but with an opportunity to cure the defect. Defendants—Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater—reject this argument, and instead argue that the guidance that has been in place (in one form or another) for decades should be followed; namely, tabulate the ballot as a “challenged ballot.”

Our Legislature was clear when it amended the law in 2024: A board of election inspectors is authorized to tabulate an absent-voter ballot only when the unique-identifying number on the ballot stub matches the unique-identifying number on the face of the envelope in which that ballot and stub were delivered. If there is not a match, then the board of election inspectors has no statutory authority to which the Secretary can point to tabulate that ballot, whether as a regular absent-voter ballot, a challenged ballot, or some other thing. As such, the ballot cannot, by law, be tabulated. As for defendants’ decades-long administrative guidance, such administrative guidance no longer accords with the statutory text of MCL 168.768, as amended in 2024. Accordingly, as explained here, plaintiffs are entitled to relief.

## I. BACKGROUND

### A. MICHIGAN ELECTION LAW REGARDING ABSENT VOTERS

The Michigan Election Law, MCL 168.1 *et seq.*, sets forth rights, duties, and procedures with respect to three forms of voting: (1) early voting; (2) in-person voting; and (3) absent voting. This dispute solely involves the latter form of voting.

Except for ballots used at early-voting sites, ballots are prepared with a detachable stub at the top that includes a unique-identifying number. MCL 168.795b(2).<sup>1</sup> For an absent voter, the local clerk will record the number on the stub of the ballot assigned to the absent voter in the qualified voter file (“QVF”). The unique-identifying number on the stub corresponds to the same unique-identifying number printed on the outside of the return envelope for that absent-voter ballot.

When the absent-voter ballot return envelope is eventually delivered with the ballot inside, there are five possible circumstances involving the stub: (1) the stub is affixed to the ballot and the number on the stub matches the number printed on the envelope; (2) the stub is not affixed to the ballot but is in the envelope, and the number on the stub matches the number printed on the envelope; (3) the stub is affixed to the ballot but the number on the stub does not match the number printed on the envelope; (4) the stub is not affixed to the ballot but is in the envelope, and the number on the stub does not match the number printed on the envelope; and (5) the stub has been

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<sup>1</sup> Military and overseas ballots that are transmitted electronically to voters do not have stubs, but after those ballots are returned, they are duplicated onto regular ballots for tabulation. MCL 168.759a.

detached from the ballot and is not located in the envelope at all. This case involves (3) – (5), i.e., the case does not involve instances when the stub (affixed or not) matches the envelope.

Absent-voter ballots are issued to voters with a secrecy sleeve included for returning the ballot inside of the absent-voter ballot return envelope. MCL 168.736c; MCL 168.764a(2). Specific instructions are provided to voters for returning their absent-voter ballot to their local clerk. MCL 168.764; MCL 168.764a(1). The instructions direct the voter to “[p]lace the ballot in the secrecy sleeve so that votes cannot be seen and, if there is a numbered stub, the numbered stub is visible.” See MCL 168.736b (primary election); MCL 168.736c (general election); MCL 168.736d (nonpartisan election); MCL 168.736e (special election).

*Inspection of Return Envelope.* After an absent-voter ballot is completed and returned to the local clerk’s office by one of the provided methods, see MCL 168.764a, the local clerk inspects the voter’s absent-voter ballot return envelope to ensure the voter is registered in the jurisdiction and that the signature on the envelope sufficiently agrees with the voter’s signature on file. MCL 168.766(1)(a) and (b). If the clerk verifies the information in subsection (1)(a) and (b), then the clerk approves the absent-voter ballot for tabulation and records in the QVF that the absent-voter ballot has been approved for tabulation. MCL 168.766(3). The clerk writes or stamps on each absent-voter ballot return envelope the date, and the time and date if received on election day, that the clerk received the absent-voter ballot return envelope. MCL 168.765(2). The local clerk “shall not open that sealed absent voter ballot return envelope and shall safely keep the sealed absent voter ballot return envelopes in the clerk’s office until delivering the absent voter ballot return envelopes” to designated absent-voter ballot processors. MCL 168.765(1).

Absent-voter ballot return envelopes can be processed by a precinct board of inspectors, an absent-voter counting board (AVCB) on election day, or by an AVCB during a period of preprocessing before election day. An AVCB is a special precinct established solely to process absent-voter ballots. AVCBs are precincts separate from in-person polling places operating on election day. In a jurisdiction where a precinct election inspector processes absent-voter ballots at a precinct on election day, the local clerk is required to deliver the absent-voter ballots that have been approved for tabulating, along with the local clerk's list or record that is kept relative to those absent voters, to the board of election inspectors of the election-day precinct. MCL 168.765(4).

If the local clerk rejects an absent-voter ballot return envelope because the signature on the absent-voter ballot return envelope is missing or does not agree sufficiently with the elector's signature on file, then the elector must be given notice and the opportunity to cure the deficiency as provided under MCL 168.766a until 5:00 p.m. on the third day following the election in order for the absent-voter ballot, if otherwise valid, to be accepted for tabulation. 168.766(3). "If an absent-voter ballot return envelope that is eligible to be cured is not cured by the close of polls on election day, that absent voter ballot return envelope must be retained at the clerk's office, and must not be turned over to the board of election inspectors or to an absent voter counting board. An absent-voter ballot return envelope that is cured after the close of the polls on election day, but before 5 p.m. on the third day following the election, must be accepted and the ballot tabulated if the elector has not voted in person in that election. An absent-voter ballot return envelope that is not cured by 5 p.m. on the third day following the election remains rejected." MCL 168.766(4). "On receipt of a cure form, as provided under section 766a, that resolves the signature deficiency on an elector's absent voter ballot return envelope, the clerk shall approve the ballot for tabulation." MCL 168.766(5). "Not later than the sixth day after election day, each city or

township clerk shall deliver the absent-voter ballot return envelopes that have been cured under subsection (4) to the county clerk in a ballot container. The absent-voter ballots in these cured absent voter ballot return envelopes shall be tabulated by the county clerk in a meeting of the board of county canvassers.” MCL 168.766(6).

*Tabulation of Absent-Voter Ballots.* After the absent-voter ballot return envelope has been inspected and approved, the envelope is forwarded to the appropriate board of election inspectors for further inspection and processing pursuant to MCL 168.768. Prior to February 13, 2024, that section provided:

If upon such examination of the envelope containing an absent voter’s ballot or ballots, the board of inspectors shall determine that such vote is legal, the member of the board receiving ballots at such election shall, without unfolding such ballot or ballots, detach from each such ballot the perforated numbered corner, and shall deposit such ballot in the proper ballot box. One of the inspectors of election should note upon the poll book and list the fact that such voter voted at such election by means of an absent voter ballot.

Our Legislature amended this section as part of 2023 PA 81, effective February 13, 2024.

As amended, MCL 168.768 now provides in relevant part:

the board of election inspectors shall open the absent voter ballot return envelope, take out the ballot, and, without unfolding the ballot, compare the ballot number on the ballot stub with the ballot number on the face of the absent voter ballot return envelope. *If the ballot numbers match, the board of election inspectors shall detach the perforated numbered stub and prepare the ballot for tabulation*, as directed by the secretary of state. Each ballot must be inserted into the tabulator. One of the election inspectors shall enter the elector in the poll book as having cast an absent voter ballot. [Emphasis added.]

In a jurisdiction that uses an AVCB, see MCL 168.764d; MCL 168.765a, the clerk is required to deliver absent-voter ballots approved for tabulation to the AVCB “by the time the election inspectors of the AVCB report for duty on election day.” MCL 168.765(5). AVCBs must

process the ballots and returns in as nearly as possible the same manner as ballots are processed in election day precincts. The poll book may be combined with the

absent voter list or record required by section 760,<sup>[2]</sup> and the applications for absent voter ballots may be used as the poll list. Subject to [MCL 168.765a(11)], the processing and tabulating of absent voter ballots must commence at the time set by the board of election commissioners, but no earlier than 7 a.m. on the day of the election. [MCL 168.765a(6).]

In a jurisdiction that processes absent-voter ballots prior to election day using an AVCB, see MCL 168.765a(11), “[t]he instructions and procedures adopted by the secretary of state regarding the processing and tabulating of absent voter ballots before election day must be followed. Absent voter ballots must be processed and tabulated in the same manner and under the same requirements as absent voter ballots are processed on election day.” MCL 168.765a(13).

#### B. SECRETARY OF STATE GUIDANCE REGARDING THE PROCESSING OF ABSENT-VOTER BALLOTS

Under the Michigan Election Law, the Secretary of State is authorized to issue instructions/guidance and promulgate rules under the Administrative Procedures Act, MCL 24.201 *et seq.*, for the conduct of elections, and advise and direct local election officials as to the proper methods of conducting elections. MCL 168.31(1)(a)-(b); 168.765a(17). The Michigan Election Law specifically requires that the Secretary promulgate rules pursuant to the APA governing, among other things, the tabulation of ballots. MCL 168.797b. Without dispute, the guidance at issue here was not promulgated as a rule under the APA. While the Secretary can issue instructions and guidance, those must be fully consistent with the laws of this state. MCL 168.31(1)(a).

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<sup>2</sup> MCL 168.760 provides that upon receipt of a properly executed application for an absent-voter ballot, the clerk “shall file the same in his office and shall enter the name of the applicant and the address to which the ballot or ballots are to be sent upon a list or record to be kept for such purpose, together with the date of receiving the application, the date of mailing or delivering the ballot or ballots to such voter, the date of receiving the ballot from such voter, and such other information as may seem necessary or advisable.”

The Secretary issued instructional guidance to election officials regarding absent-voter ballot processing in Chapter 8, Section III, of the “Election Officials Manual,” as well as a document entitled “Managing Your Precinct on Election Day: Election Inspectors’ Procedure Manual,” commonly referred to as the “Flipchart.” The Manual, as amended in October 2024,<sup>3</sup> provides instructions for processing absent-voter ballots. The Manual explains that the processing of absent-voter ballots is “divided into two steps explained below.” The Manual states that “[w]hile jurisdictions may deviate from the process described here, jurisdictions must take care that whatever process they settle on does not compromise ballot secrecy.” Manual, p 6. The Manual instructs that, after the absent-voter ballot envelope has been verified, the election inspector “should open the absent voter ballot envelope” and “must verify that the number on the ballot stub agrees with the ballot number on the face of the absent voter return envelope.” Manual, p 7. The Manual then instructs:

If the number on the ballot does not agree with the ballot number recorded for the voter on the absent voter return envelope, and no explanation for the discrepancy can be found, the ballot must be processed as a challenged ballot. Possible explanations for a discrepancy that do not require the ballot to be processed as a challenged ballot include that the voter lives in the same household as a second voter and that the voters accidentally switched absent ballot return envelopes.

If the ballot is missing its stub, the election inspector should check to see if the detached stub is included inside the absent voter ballot envelope. If the stub is inside the envelope, the stub should be treated as if it were attached to the ballot. If the stub is not inside the envelope, the ballot should be processed as a challenged ballot. [*Id.*]

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<sup>3</sup> The Manual was amended as ordered by this Court in its October 3, 2024 Opinion and Order.

The Flipchart was also amended in October 2024.<sup>4</sup> The October 2024 version of the flipchart instructs election inspectors processing absentee ballots at the polling place on election day to open the absent-voter return envelope and “verify that the number on the ballot stub agrees with the ballot number recorded on the *Absent Voter Ballot Return Envelope*. . . . If the ballot numbers agree, proceed to Step 3: Remove ballot stub and tabulate multiple ballots.” It further instructs, “If the ballot numbers do not agree or the ballot stub is missing and no explanation for the discrepancy can be found (i.e., voters residing in the same household switched their ballots), the ballot must be prepared as a challenged ballot.” Flipchart, p 47.

### C. THE PRESENT DISPUTE

In two counts, plaintiffs ask this Court to declare unlawful the Secretary’s guidance instructing election workers to treat as challenged ballots those absent-voter ballots that are mismatched or missing the stub. Plaintiffs assert, first, that such absent-voter ballots should be rejected in the same way that the ballot of an in-person voter is rejected when there is a mismatched ballot or a missing ballot stub, and, second, that the absent voter whose ballot is rejected should be given the same opportunity to cure as an absent voter whose ballot is rejected when the clerk is unable to verify the absent-voter’s signature on the return envelope. Plaintiffs ask this Court to order the Secretary to revise her guidance or issue new guidance consistent with their reading of the Michigan Election Law.

Both parties have moved for summary disposition. Defendants’ motion under MCR 2.116(C)(10) addresses the merits of plaintiffs’ arguments and contends that Secretary Benson’s

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<sup>4</sup> The Flipchart was similarly amended as ordered by this Court in its October 3, 2024 Opinion and Order.

guidance is not contrary to law and that she has statutory authority to fill in gaps in the Michigan Election Law. Plaintiffs' motion seeks summary disposition under MCR 2.116(I)(1) and a declaratory judgment under MCR 2.605. The Court held a hearing on the competing motions, and they are now ripe for decision.

## II. ANALYSIS

Summary disposition is appropriate under MCR 2.116(C)(10) when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). With respect to declaratory relief, “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.” MCR 2.605(A)(1).

This dispute turns on statutory construction. Under our constitutional separation of powers, our Legislature is supposed to enact statewide policy, and our Judiciary is supposed to interpret and apply that policy. To remain faithful to our Constitution, the Court must give effect to our Legislature's enactments. *Holliday v Secretary of State*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2024); slip op at 7. If the statute's language is unambiguous, then the Court must apply the plain meaning as written. *Id.* If the statute is ambiguous, then the Court must resort to various substantive canons of construction to make sense of the statute, and this construction may even involve questions of fact. See, e.g., *Bodnar v St John Providence, Inc*, 327 Mich App 203, 220; 933 NW2d 363 (2019).

The underlying basis of plaintiffs' request for relief is that the Michigan Election Law—specifically MCL 168.768—only permits tabulation of an absent voter's ballot if the ballot's numbered stub is returned and matches the number on the return envelope. The broad import of plaintiffs' claims is that the Michigan Election Law requires that all mismatched ballots or ballots with missing stubs, whether voted in-person or absentee, must be processed as rejected ballots, with an opportunity to cure. They maintain that the Legislature's express direction to tabulate an absent-voter ballot when the numbers match necessarily implies that, when the numbers do not match, there is no statutory authority for an election inspector to tabulate that ballot. In essence, statutory silence means something, according to plaintiffs. They contend that interpreting MCL 168.768 as defendants do—to allow the Secretary discretion to instruct that absent-voter ballots with missing or mismatched stubs be tabulated as challenged ballots—would require the tabulation of a ballot regardless of whether the ballot has a stub, is missing a stub, has a matching stub, or has a mismatched stub, and would render meaningless the express condition that an absent-voter ballot be tabulated when the ballot numbers match.

Plaintiffs argue that their reading is further confirmed by looking elsewhere in the act. MCL 168.765a(6) requires that election inspectors at AVCBs “process the ballots and returns in as nearly as possible the same manner as ballots that are processed in election day precincts,” and MCL 168.797a generally governs in-person voting at a polling place. According to plaintiffs, MCL 168.797a should be applied to absent-voter ballots. Subsection (2) of that statute requires a comparison of the voter's ballot stub number with the poll list, and it specifically addresses a mismatch between the two:

If the electronic voting system provides for the use of a ballot that is processed through electronic tabulating equipment after the elector votes, the elector shall transport the ballot to the ballot box, or other approved ballot container, without exposing any votes. Except as otherwise provided in this subsection, an

election inspector shall ascertain, by comparing the number appearing on the ballot stub with the number recorded on the poll list, that the ballot delivered by the voter is the same ballot that was issued to the elector. *Except as otherwise provided in this subsection, if the numbers do not agree, the ballot must be marked as “rejected”, and the elector must not be allowed to vote.* Except as otherwise provided in this subsection, if the numbers agree, an election inspector shall remove and discard the stub. [MCL 168.797a(2) (emphasis added).]

Subsection (3) addresses a detached stub and provides that “[a] ballot from which the stub is detached must not be accepted by the election inspector in charge of the ballot box or other approved ballot container. An elector who spoils the elector’s ballot may return and secure another ballot.” MCL 168.797a(3).

Defendants counter that the requirement in MCL 168.765a(6) that AVCBs process ballots in “as nearly as possible the same manner” as ballots that are processed at precincts refers to the procedure for processing *absent-voter* ballots at election-day precincts—i.e., polling places—not the processing of *in-person* ballots at precincts. They also contend that the plain text of MCL 168.797a applies only to voters voting in person at election-day precincts, and not to the processing of absent-voter ballots at precincts or AVCBs.

Defendants argue instead that the sole relevant statute is the one found in the absent-voter section of the Michigan Election Law—MCL 168.768. They contend that if our Legislature intended that an absent-voter’s ballot be rejected when there was a mismatched ballot or a missing stub, it would have included language similar to that found in MCL 168.797a, i.e., the process for “rejecting” a ballot. Because the Legislature did not do so in MCL 168.768, and because the statute does not otherwise address what steps to take in the event an absent-voter ballot is returned with a mismatched ballot or missing ballot stub, defendants maintain that the Secretary had the legislatively granted authority to issue the challenged guidance.

Without adopting plaintiffs' arguments in full, they have the sounder position overall. The plain and unambiguous language of MCL 168.768 requires the board of election inspectors to "compare the ballot number on the ballot stub with the ballot number on the face of the absent voter return envelope" and tabulate the ballot *if* those two numbers match. MCL 168.768. Our Legislature could not have been clearer: if the condition is met—i.e., if the numbers match—then the ballot is to be tabulated. The obverse is equally plain and unambiguous: when the numbers do not match, or when no match can be made because there is a missing stub, the board of election inspectors has no statutory authority to tabulate the ballot. MCL 168.768 is silent as to what affirmatively should be done with the ballot when there is a mismatch or missing stub, but the one thing that is clear about that ballot is that there is no lawful authority to tabulate it under that section. Nor is there any other provision of the Michigan Election Law that provides the board with the authority to tabulate this problematic ballot, at least according to the parties and this Court's own review of the relevant law. Without a positive grant of authority to tabulate the problematic ballot, the board of election inspectors cannot tabulate it. And, for similar reasons, this Court cannot read into the Michigan Election Law something that is not there. "To supply omissions transcends the judicial function." *Iselin v United States*, 270 US 245, 251; 46 S Ct 248; 70 L Ed 566 (1926).

The absence of legislative authority to tabulate these ballots makes sense from a policy perspective. When there is a mismatch between the absent-voter ballot stub and the envelope in which the ballot was delivered, one thing is known with certainty: an absent voter returned a

ballot/envelope set that was not, in full or in part, issued to that voter.<sup>5</sup> Whether done nefariously or innocently, to count that vote would undermine the integrity of an election, as some mistake in the process was undoubtedly made. Thus, our Legislature’s choice to write the statute the way it did—by not granting any authority to tabulate these problematic ballots—cannot be attributed to mere drafting oversight.

Defendants counter by insisting that our Legislature did, through inadvertent omission, create a statutory “gap” that needs to be filled administratively. But there are several problems with this position. First, this Court is not aware of any express statutory authority that would permit the Secretary to order, through mere guidance or instruction, an absent voter ballot that is mismatched or missing a stub be tabulated, even as a “challenged ballot.” In fact, the Michigan Election Law is directly to the contrary. Specifically, MCL 168.797b directs that the Secretary “shall promulgate rules” under the APA that, among other things, “govern[] the tabulations of ballots.” It is undisputed that the Secretary has not engaged in notice-and-comment rulemaking to promulgate a rule dealing with this situation. Given this specific statutory direction to the Secretary with respect to promulgating rules governing the tabulation of ballots, and the absence of any similar statutory direction with respect to instructions or guidance,<sup>6</sup> the Secretary’s general authority to issue instructions and guidance cannot be stretched so far as to cover this situation.

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<sup>5</sup> It is also theoretically possible that an election official issued to an absent voter a ballot and envelope with mismatched numbers in the first place. There is nothing in the record to suggest that this has happened in a Michigan election, and the parties have not raised this as a realistic possibility.

<sup>6</sup> MCL 168.765a(13) does grant the Secretary the authority to issue “instructions and guidance . . . regarding the processing and tabulating of absent voter ballots,” but it is clear from the context of the section as a whole that this authority is focused on ensuring uniformity between the treatment of absent-voter ballots before election day and on election day.

Moreover, with respect to challenged ballots more generally, the Court observes that when our Legislature intended to apply the challenged-ballot mechanism to absent-voter ballots, it did so explicitly. For example, an absent-voter ballot is not to be invalidated when its delivery does not satisfy MCL 168.764a and b, but instead the ballot must be treated as a challenged ballot. Our Legislature did not make a similar provision in MCL 168.768.

Defendants also assert that not tabulating these problematic ballots might very well disenfranchise absent voters. The problem with this assertion is that it is made without any context. The same could be said about mismatched in-person ballots that are rejected by law under MCL 168.797a(2), and yet there seem to be good reasons for our Legislature's policy choice in that instance. As already explained, the mere existence of a mismatched ballot—either one sought to be cast in-person or delivered as an absent-voter ballot—necessarily calls into question the identity of the person who tried to cast the ballot. One could just as plausibly flip defendants' argument on its head and contend that tabulation of mismatched ballots might very well disenfranchise legitimate voters by diluting the impact of their votes validly cast.

Defendants further point out that there may be innocent and mundane explanations for why an absent-voter envelope is returned with a mismatched ballot, e.g., family members in the same household who mix up envelopes. But there may just as well be more nefarious explanations, e.g., an in-home caregiver knows that her patient plans to vote for a candidate the caregiver does not support and, rather than have their two ballots cancel each other out, the caregiver puts her ballot in the patient's envelope, throws the patient's ballot in the trash, and the patient signs the envelope and places it in the mailbox. See October 3, 2024 Opinion and Order, pp 10-12 . At the end of the day, defendants posit an empirical question, one that defendants have scant actual data with which to answer, and frankly one best left to the policymaking branch of our government.

The Secretary is correct that the guidance issued in the current Manual and Flipchart is consistent with guidance issued by past Secretaries. What this misses, however, is the fact that the statute was substantively amended in 2024. The prior version of MCL 168.768 did not have an explicit matching requirement, nor did it tie the authority to tabulate to such a matching requirement. Whether the Secretary's guidance was consistent with the pre-amendment version of MCL 168.768 is not at issue here, and as already explained, the guidance is no longer consistent with the current version of that statute.

The Secretary has pointed to no legislative authority to tabulate an absent-voter ballot when the stub number does not match the envelope number, or the stub is missing. The Court concludes that this positive grant of authority is necessary in this instance, and such authority cannot be supplied by mere administrative instruction or guidance. To the extent that the Secretary's guidance instructs that this type of problematic ballot can be processed as a challenged ballot and tabulated, it is contrary to the Michigan Election Law.

Thus, consistent with this Opinion and Order, the Court will GRANT IN PART plaintiffs' motion for summary disposition under MCR 2116(I)(1) with respect to absent-voter ballots with mismatched or missing stubs, GRANT IN PART plaintiffs' request for a declaratory judgment with respect to absent-voter ballots with mismatched or missing stubs, and DENY defendant's motion for summary disposition under MCR 2.116(C)(10) with respect to absent-voter ballots with mismatched or missing stubs.

The partial grant of summary disposition to plaintiffs, as opposed to a full grant, reflects the matter of relief. Although the Michigan Election Law is clear that there is no statutory authority to tabulate absent-voter ballots with mismatched or missing stubs, the question remains what to do

with these ballots and envelopes and whether the affected electors—the elector whose name is associated with the unique-identifying number on the face of the envelope and, if there is a mismatched stub, the elector whose name is associated with the unique-identifying number on the face of that stub—are entitled to an opportunity to cure.

Based on the Court’s review of the Michigan Election Law, one approach could be to “spoil” the ballot and provide an opportunity to cure, similar to the process set forth in MCL 168.765b for spoiling an absent-voter ballot. It is possible, however, that the board of election inspectors will not identify the type of problematic ballot at issue here until right before or on election day, and so the time restrictions of MCL 168.765b might not be viable. See MCL 168.766a (setting post-election time periods for curing bad signature on envelope); see also Const 1963, art 2, § 4(1)(i) (providing for the right to be informed via electronic means about any deficiency with regard to an absent voter’s ballot and instructions on curing the deficiency). Accordingly, the Court will order the parties to submit supplemental briefs focused solely on the following two questions: (1) Because the board of election inspectors cannot tabulate an absent-voter ballot that has a mismatched or missing stub (as more fully described in the Court’s Opinion and Order), what specifically should be done with that ballot and envelope; and (2) What specific procedures (if any) should election officials follow to permit an affected elector an opportunity to cure?

### III. CONCLUSION

Accordingly, for the reasons stated in this Opinion and Order:

IT IS ORDERED that defendants’ motion for summary disposition under MCR 2.116(C)(10) is DENIED.

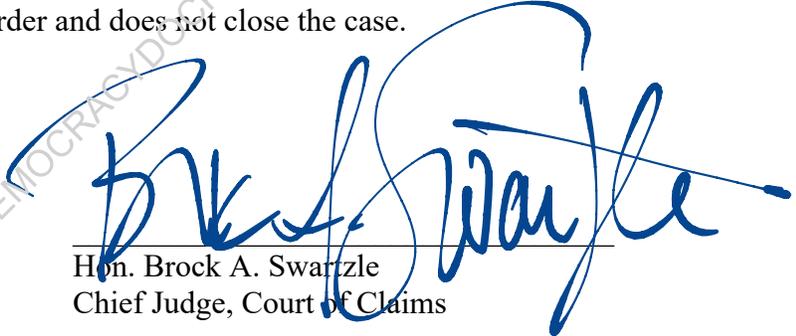
IT IS FURTHER ORDERED that plaintiffs' motion for summary disposition under MCR 2.116(I)(1) and for declaratory relief under MCR 2.605 is GRANTED IN PART.

IT IS FURTHER ORDERED that the parties shall file supplemental briefs focused solely on the two questions presented in this Opinion and Order no later than 4 p.m. on December 17, 2025. The briefs shall be limited to fifteen (15) pages in length, not including cover page, table of contents, and table of authorities.

IT IS FURTHER ORDERED that plaintiffs' uncontested motion for a status conference is DENIED.

IT IS SO ORDERED. This is not a final order and does not close the case.

Date: December 3, 2025

  
Hon. Brock A. Swartzle  
Chief Judge, Court of Claims

