

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

REPUBLICAN NATIONAL COMMITTEE,
MICHIGAN REPUBLICAN PARTY, and
CINDY BERRY

Case No. 24-000148-MZ

Hon. Brock A. Swartzle

Plaintiffs,

v

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

Defendants.

At a session of said Court held this 29 day of Dec,
2025, in the City of Lansing, County of Ingham,
State of Michigan

PRESENT: 

Hon. Brock A. Swartzle
Judge, Court of Claims

FINAL ORDER & JUDGMENT

This matter, having been brought before the Court as result of the Court's December 3, 2025, Opinion and Order on Parties' Cross Motions for Summary Disposition, which, in addition to granting in part Plaintiffs' 04/22/2024 Motion for Summary Disposition under MCR 2.116(I)(1) and Declaratory Judgment under MCR 2.605 and denying Defendants' 03/14/25 Motion for Summary Disposition, ordered the parties to file supplemental briefs addressing the following questions: "(1) [b]ecause 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) [w]hat specific procedures (if any) should election officials follow to permit an affected elector an opportunity to cure?"; and

the Court, having considered Plaintiffs' 12/17/2025 Supplemental Brief Regarding Relief and Defendants' 12/17/2025 Remedy Brief, and being otherwise fully advised in the premises;

IT IS HEREBY DECLARED under MCR 2.605 that, consistent with this Court's December 3, 2025 Opinion and Order On Parties' Cross Motions for Summary Disposition, (a) 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; (b) under MCL 168.768, "[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 on the envelope in which that ballot and stub were delivered"; (c) when the unique-identifying number on the ballot stub does not match the unique-identifying number on the face of the absent voter return envelope, or when no match can be made because there is a missing stub, a board of election inspectors has no statutory authority to tabulate the ballot and "the ballot cannot, by law, be tabulated"; (d) without a positive grant of statutory authority to tabulate an absent voter ballot with a missing or mismatched stub, the board of election inspectors cannot tabulate it (as challenged or otherwise); and (e) to the extent that guidance issued by Defendant Secretary of State Jocelyn Benson instructs that an absent voter ballot with a missing or mismatched stub should be processed as a "challenged ballot" and tabulated, that guidance is contrary to the Michigan Election Law;

FOR THE PURPOSE OF GRANTING PERMANENT INJUNCTIVE RELIEF, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND LAW:

1. Pursuant to MCR 3.310(C), the Court finds that the issuance of injunctive relief is necessary to effectuate the Court's December 3, 2025 Opinion and Order on Parties' Cross Motions for Summary Disposition.

2. The Court also finds that, pursuant to MCR 3.310(C), injunctive relief is necessary to ensure that a voter whose absent voter ballot cannot be tabulated under MCL 168.768, because the ballot number on the ballot stub does not match the ballot number on the face of the absent voter return envelope or because the ballot stub is missing, is not disenfranchised.

3. Under MCL 168.768, an absent voter ballot can only be tabulated if the ballot number on the ballot stub matches the ballot number on the face of the absent voter return envelope. If those numbers do not match, the absent voter ballot cannot be tabulated and must be rejected.

4. Without a meaningful opportunity to cure that defect, voters whose absent voter ballot is rejected due to a mismatched or missing stub may be disenfranchised.

5. Article II, § 4 of the Constitution of Michigan of 1963, provides that voters have the right to a state-funded system by which a voter can be informed “of any deficiency with the voter’s...absent voter ballot” and “provided instructions for addressing any such deficiency.” A mismatch between the ballot number on the ballot stub and the ballot number on the face of the absent voter return envelope, or a missing ballot stub, are both “deficienc[ies]” with an “absent voter ballot.”

6. A meaningful notice-and-cure procedure provides a mechanism by which a voter whose absent voter ballot was rejected because of a mismatch between the ballot number on the ballot stub and the ballot number on the face of the absent voter return envelope or missing ballot stub can address that deficiency. As a result, implementing a notice-and-cure procedure is consistent with Article II, § 4 of the Constitution of Michigan of 1963.

7. Currently, Defendants do not have in place any procedures for allowing a voter whose absent voter ballot was rejected because of a mismatch between the ballot number on the

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ballot stub and the ballot number on the face of the absent voter return envelope or because of a missing stub to cure that deficiency.

8. Accordingly, and pursuant to MCR 3.310(C), the Court finds it is necessary to award permanent injunctive relief requiring Defendants to adopt the multi-step cure procedure proposed by Plaintiffs pending the promulgation of a rule creating an alternative cure procedure; and

IT IS ORDERED that, as final injunctive relief, the Court hereby **ORDERS** Defendants to adopt and implement the remedy for an absent voter ballot that cannot be tabulated because it was returned with a mismatched or missing stub as proposed on pages 4 through 15 of Plaintiffs' December 17, 2025 Supplemental Brief. The cure procedure shall consist of the following steps:

Step No. 1: When an absent voter ("AV") ballot is rejected because the unique-identifying number on the ballot stub on a returned absent voter ballot does not match the unique-identifying number on the face on the envelope in which that ballot and stub were delivered, or because no match can be made because there is a missing stub, an election inspector must memorialize the rejection by recording the ballot and return envelope as "rejected" in the pollbook and noting the reason for rejection.

Step No. 2: Upon discovering an AV ballot with a missing or mismatched stub, the election inspector must immediately notify the city or township clerk's office or the clerk's office representative.

Step No. 3: When an AV ballot has a missing or mismatched stub, the election inspectors must return the ballot (still in its secrecy sleeve) to its return envelope and then immediately place the AV ballot and return envelope (together) into a separate ballot storage envelope labeled "Absentee Ballots Rejected for Missing or Mismatched Ballot Stubs." After the

precinct canvass is completed (for Election Day precincts), after the closing documents are completed (for absent voter counting boards (“AVCB”)), or at the end of each day of early tabulation under MCL 168.765a(11) (if applicable), the election inspectors shall place the storage envelope labeled “Absentee Ballots Rejected for Missing or Mismatched Ballot Stubs,” containing the rejected ballots into a ballot container, which must then be sealed.

Step No. 4: The election inspectors must memorialize the number of ballots rejected for missing or mismatched stubs during the precinct canvass (for Election Day precincts) or in the closing documents (for AVCBs), and provide the local clerk with a final list of such ballots. First, the precinct canvass or AVCB closing documents shall include a statement of the number of AV ballots rejected because of missing or mismatched stubs. Second, upon completion of the precinct canvass (for Election Day precincts) or completion of the closing documents (for AVCBs), election inspectors shall provide the city or township clerk with a separate, written notice listing each absentee ballot that was rejected for a missing or mismatched ballot stub number. Specifically:

- At Election Day precincts, election inspectors conducting the precinct canvass must record the number of AV ballots rejected for a missing or mismatched in the statement of returns, tally sheets, or both.
- At AVCBs, election inspectors completing the closing documents must record a tally reflecting the number of ballots rejected for missing or mismatched ballot stub numbers.

To the extent there is a discrepancy in the balance of votes because of the number of ballots rejected for missing or mismatched stubs, to balance the precinct, the election inspectors shall explain the discrepancy in the Remarks page of the pollbook. To facilitate this step, the Secretary shall create additional fields within the statement of returns and the tally sheets in the ePollbook to record tallies of ballots rejected for missing or mismatched ballot stub numbers (for Election Day

precincts) and create a tally reflecting the number of ballots rejected for missing or mismatched ballot stubs in the closing documents (for an AVCB).

Step No. 5: AV ballots rejected because of a mismatch between the ballot number on the ballot stub and the ballot number on the face of the absent voter return envelope or a missing stub and all accompanying documentation must be delivered from the election-day precinct or AVCB to the local clerk's office in sealed ballot containers for preservation as part of the election record.

Step No. 6: Once election inspectors notify the clerk that a ballot was rejected for a missing or mismatched stub number pursuant to Step No. 2, *supra*, the clerk must attempt to immediately notify the voter of the defect and their opportunity to cure. This notice must occur no later than 5 p.m. on the day after Election Day. If the voter opted in to the AV ballot electronic tracking system, the voter shall be notified through that system via email, text message, or both. If the voter has not opted in to the electronic tracking system, the clerk shall attempt to notify the voter by any other available methods of contact, including telephone, email, or text message, or by United States mail if telephone, email, or text message are unavailable, or by any other available means of contact if the aforementioned means are not available. The notice provided to the voter must inform the voter that: (1) the voter's AV ballot was rejected for a missing or mismatched ballot stub number; (2) the voter is entitled to cure the deficient ballot by voting a new ballot in the manner identified herein; (3) the voter's deadline to cure the deficient ballot is 5 p.m. on the third day following Election Day; and (4) if the voter does not cure the deficient ballot by 5 p.m. on the third day following Election Day, the ballot will remain rejected.

Step No. 7: Once a voter has been notified that their AV ballot was rejected because of a missing or mismatched stub, the next step is for the voter to cure the defect by casting a new ballot by 5 p.m. on the third day following the election.

Step No. 7(a): Voters who are present within the community when they are notified that their AV ballot was rejected for a missing or mismatched ballot stub number may cure their ballot by appearing in person at the clerk's office to vote a new ballot if they are able to do so. For voters who are notified of the deficiency and appear in person before the clerk *before* Election Day, the voter can cure the deficiency by: (1) voting a new AV ballot if such a ballot can be issued in compliance with the Michigan Election Law before 4 p.m. on the day before Election Day; (2) voting in-person on Election Day; or (3) voting in person at an early voting location. For voters who appear in person before the clerk to cure the deficiency *after* Election Day, the clerk shall provide the affected voter with an "on-demand ballot" printed using an early voting ballot printer.

Step No. 7(b): Voters who attest that they cannot cure their ballot in person because they are either absent from the community in which they are registered to vote or otherwise unable to appear in the clerk's office to cast a new ballot in person shall be issued—and permitted to return—a ballot electronically in the same fashion as military and overseas voters under existing Michigan law. After the ballot is electronically returned to the clerk, the ballot must be duplicated onto a regular ballot by the clerk in the presence of, at minimum, one election inspector from each of the two major political parties.

Step No. 8: If the voter does not cure the defect and cast a new ballot by 5 p.m. on the third day following Election Day, the ballot remains rejected. For a voter who timely cures their ballot after Election Day pursuant to Step No. 7(a), the clerk shall store those ballots—which themselves would be contained in a secrecy sleeve—in a specially marked storage envelope that

is stored in a sealed ballot container. For a voter who timely cures their ballot pursuant to Step No. 7(b), supra, the electronically returned ballot must be duplicated by the clerk in the presence of, at minimum, one election inspector from each of the two major political parties, after which the ballots shall be stored by the clerk in a specially marked storage envelope that is stored in a sealed ballot container.

Step No. 9: No later than the sixth day after Election Day, the city or township clerk must deliver any ballots cured under this process to the county clerk in a sealed ballot container. Thereafter, the board of county canvassers shall tabulate the cured AV ballots as part of the county canvass.

Step No. 10: After tabulating the cured ballots, the board of county canvassers must record in their closing canvass documents the number of ballots that were cured and tabulated for missing or mismatched ballot stubs consistent with all applicable recording and election record retention requirements; and

IT IS FURTHER ORDERED that the injunctive remedy provided herein “is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise”; and

IT IS FURTHER ORDERED that the injunctive remedy set forth in this Final Order and Judgment shall remain in place unless and until Defendants promulgate a rule that is consistent with Michigan law and provides an alternative remedy covering a notice-and-cure process for both (a) mismatches between the ballot number on the ballot stub and the ballot number on the face of the absent voter return envelope; and (b) missing ballot stubs; and

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IT IS FURTHER ORDERED that if Defendants promulgate a rule that provides an alternative remedy, then that promulgated rule will govern and the Court's injunction will end, except that if Defendants promulgate such a rule within 30 days of an election, then this Court's injunction shall remain in place for that election only; and

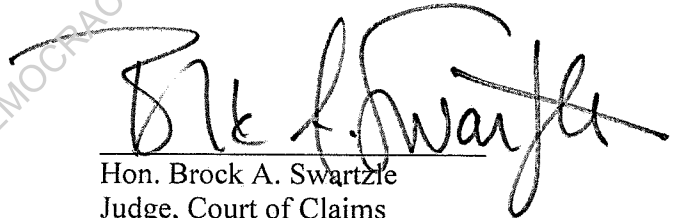
IT IS FURTHER ORDERED that, to the extent Defendants promulgate such a rule, any party seeking to challenge Defendants' promulgated rule may do so by filing a separate lawsuit; and

IT IS FURTHER ORDERED that, by agreement of the parties, the Court's injunction will not apply to the special primary election that will be held on February 3, 2026.

IT IS SO ORDERED.

Entry of this Final Order and Judgment resolves the last pending claim and closes this case.

12/29/2025


Hon. Brock A. Swartzle
Judge, Court of Claims

