

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

MICHELLE McQUEER, individually and in
her official capacity as Clerk of the Township
of Bridgewater,

Plaintiff,

REPUBLICAN NATIONAL COMMITTEE,
and MICHIGAN REPUBLICAN PARTY,

Intervening Plaintiffs,

v

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State,
and JONATHAN BRATER, in his
official capacity as Director of Elections,
and the MICHIGAN DEPARTMENT
OF STATE,

Defendants.

Case No. 26-000172-MZ

Hon. Michael J. Riordan

**REPUBLICAN NATIONAL COMMITTEE AND MICHIGAN REPUBLICAN
PARTY'S 10/8/2026 NOTICE OF JOINDER AND SUPPLEMENTAL BRIEF**

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TABLE OF CONTENTS

NOTICE OF JOINDER 1

SUPPLEMENTAL BRIEF 2

1. Timing & User Account Records (Rows 3 and 4 of Plaintiff McQueer’s
Table 1). 3

2. Missing/Mismatched Ballot-stub Records. 7

NOTICE OF JOINDER

On October 5, 2026, this Court granted the Republican National Committee and Michigan Republican Party’s (collectively, the “GOP”) motion to intervene as plaintiffs. *See* Order Granting Leave to Intervene and Denying Statewide TRO at 1 (Mich Ct Cl, Oct 5, 2026) (Riordan, J.). In the same Order, the Court directed: “[the GOP] may file a supplemental brief by Thursday, October 8, 2026.” *Id.* The GOP interprets this Court’s invitation to file “a supplemental brief” in light of its September 27, 2026, Opinion and Order, which directed Plaintiff McQueer and Defendants to “[w]ithin one week of the issuance of the [Bureau of Elections’] declaratory rulings . . . file supplemental briefs and/or renewed summary disposition motions.” *See* Opinion and Order Denying Defendants’ 8/20/26 And Plaintiff’s 8/24/2026 Motions for Summary Disposition at 23 (Mich Ct Cl, Sept 27, 2026) (Riordan, J.).

The GOP intervened in this action because of its “unique electoral and representational interests in the availability of local election records across Michigan.” *See* GOP Expedited Motion to Intervene at ¶ 8. As explained in its Motion to Intervene, “[t]hose specific interests are tied directly to the records and elections governed by the Rule—well beyond Plaintiff’s responsibilities in a single township[.]” *Id.* Thus, whereas Plaintiff McQueer seeks declaratory and injunctive relief in Bridgewater Township only, Plaintiff GOP seeks declaratory and injunctive relief statewide. Although different in scope, the merits of Plaintiff McQueer and Plaintiff GOP’s claims are, however, the same—each brings identical claims. *Compare* McQueer Compl *with* GOP Compl.

On October 7, 2026, Plaintiff McQueer timely filed a renewed motion for summary disposition. *See* Plaintiff Michelle McQueer 10/7/2026 Motion for Summary Disposition. The GOP agrees with the reasoning and request for relief set forth in Plaintiff McQueer’s renewed motion for summary disposition—with the caveat that the GOP seeks the statewide relief requested in its Complaint. *See* GOP Compl. at 16-17 (Prayer for Relief). Therefore, the GOP submits this

Notice of Joinder in support of that Motion and incorporates that Motion’s reasoning and request for relief herein, as well as the statewide relief sought in its Complaint.

For the foregoing reasons, as well as those further described below in its Supplemental Brief, the GOP respectfully requests that this Court grant Plaintiff McQueer’s motion for summary disposition, enter summary disposition in favor of both Plaintiff McQueer and the GOP, and enter the declaratory and injunctive relief sought in both Plaintiff McQueer and the GOP’s complaints.

SUPPLEMENTAL BRIEF

On September 30, 2026, the Department of State issued a declaratory ruling that sought to answer whether Rule 168.48 is consistent with 52 USC 20701. That is, of course, the same question presented by Plaintiffs McQueer and the GOP in this lawsuit. The Department of State concluded: “Rule 168.48 is consistent with 52 USC 20701.” *See* Exhibit 1 to Plaintiff’s 09/30/26 Notice of Issuance of Declaratory Ruling at 8 (“Notice”).

The logic of the Department of State’s declaratory ruling has three components. First, the Department acknowledges that under Rule 168.48, “‘must’ ‘indicates mandatory action’” and “‘yes, a clerk must delete the EPB software and its associated files from devices within 7 days of the final canvass and certification[.]’” Notice at 3. Second, the Department recognizes that 52 USC 20701 requires election officials to “retain and preserve” all records and papers which come into their possession for a period of 22 months. *Id.* at 4-5. Third, the Department concludes that because it “is not aware of any [unretained or unpreserved] information or data on the EPB that could be said to comprise records or papers relating to applications or other acts requisite to voting,” then, according to the Department’s interpretation of the law, “all records required to be retained under 52 USC 20701 are preserved.” *Id.* at 8-9.

The Department’s declaratory ruling is wrong—and Plaintiffs are thus entitled to summary disposition—because there are “records and papers which come into [the] possession [of election

officers] relating to any application, registration, payment of poll tax, or other act requisite to voting” that are not retained or preserved by the record-retention steps outlined in the Department’s Notice. 52 USC 20701; *see also* Notice at 5-6 (describing six categories of information that are retained and preserved). Indeed, the Department’s ruling rests on its assertion that all “records and papers which come into [the] possession [of election officers] relating to any application, registration, payment of poll tax, or other act requisite to voting” are retained and preserved by the Secretary’s rules. Thus, and by the Department’s own logic, if any “records and papers which come into [the] possession [of election officers] relating to any application, registration, payment of poll tax, or other act requisite to voting” are not retained and preserved by the Secretary’s rules, then Rule 168.48’s 7-day deletion requirement conflicts with 52 USC § 20701’s 22-month retention and preservation requirement, and the Rule is preempted.

As Plaintiff McQueer points out in their Motion for Summary Disposition, there are at least five categories of records and papers that are not retained and preserved under the Secretary’s Rules. *See* Plaintiff McQueer 10/7/2026 Motion for Summary Disposition Table 1 at 8 (summarizing data contained in the local pollbooks that is not contained in the three required reports or the QVF upload). Of those five distinct categories of unpreserved records and papers—any one of which puts Rule 168.48 and Section 20701 on collision course—one bears further explanation from the GOP, while a sixth category of unpreserved records and papers is likewise discussed below.

1. Timing & User Account Records (Rows 3 and 4 of Plaintiff McQueer’s Table 1).

Each election official’s work on election day is closely monitored. To start, each election official “logs in under a separate user name, and the screen shows which inspector is logged in.” *See* McQueer Affidavit at ¶ 4. Then, “[o]n election day, when an inspector processes a voter, the

[EPB] software records the voter's name, the ballot number and ballot style issued, and the type of ballot issued[.]” *Id.* The EPB software further contains an “Activity Log Report that can be viewed at any time and printed.” *Id.* And the Activity Log Report records “every action taken in the software” down “to the second.” *Id.*; *see also* Attachment 3 to McQueer Affidavit (screenshot of the Activity Log Report showing the timing of each action down to the second). The result is a seamless record in which every election official's action is traced, recorded, and reviewable.

The Secretary's rules create cracks in the otherwise traceable, reviewable system. The above-described election records regarding (a) the timing of each election-day action and (b) the identity of the election official who performed each action are not preserved in the printed documents described at page 6 of the Notice. *See* Notice at 6 (“the precinct inspectors or a receiving board will print out these three reports on paper: Ballot summary report, List of voters report, Remarks report.”). To be sure, while the Activity Log Report tracks the actions of every voter and every election official down to the second, the printed List of Voters report does not preserve the exact timing of each voters' and election officials' actions. *Compare* McQueer Affidavit at ¶ 4 (stating the Activity Log Report records “every action taken in the software” down “to the second.”) *with* McQueer Affidavit at ¶ 8 (“The List of Voters . . . does not print the time of any entry[.]”). Likewise, while the Activity Log Report tracks the identity of each election official who takes any action on election day, the List of Voters report does not report which specific election official takes what action. *Compare* McQueer Affidavit at ¶ 4 (“Each inspector logs in under a separate user name, and the screen shows which inspector is logged in.”) *with* McQueer Affidavit at ¶ 8 (“The List of Voters . . . does not print the time of any entry *or the inspector who made it.*”) (emphasis added). Each one of those items is a “record[] and paper[]” that come into the election official's possession “relating to any...act requisite to voting in such election.” *See* 52 USC 20701.

And those records are not “delivered to another officer of election.” *Id.* The above-described election records regarding the timing of election-day actions and the identity of the election official who performed the action are not preserved in the electronically uploaded documents described in the Notice. See Notice at 6 (“The following information is uploaded to QVF[:] List of voters[,], Provision ballot information[,], A log of activity on the EPB.”). Indeed, whereas the Activity Log Report tracks the actions of every voter and every election official down to the second, the Activity Log Summary that is uploaded to the QVF “does not show the time of day of any action or the inspector who performed it.” *Compare* McQueer Affidavit at ¶ 4 *with* McQueer Affidavit at ¶ 11; Attachment 5 to McQueer Affidavit (showing a printout of the EPB Activity Log Summary that lists the “Date” but no timestamp and omitting the name or any identifying information of the Election Official who performed the action).

The GOP has a particular interest in preservation of statewide timing and user account records in accordance with federal law. Michigan has more than 3,000 precincts. If election data from across Michigan needs to be collated, the degree of specificity in the record matters a great deal. It would be important to know, for example, whether votes in one precinct were checked in at 6:00am, before polls opened, noon, 7:00pm, or after close of polls. Under the Secretary’s current record-destruction scheme imposed by Rule 168.48, that granular detail—which, again, is an election record relating to the act of voting—is lost. Similarly, whereas the records reflect which election official takes which action—*i.e.*, each election official is accountable for his or her own actions—the Secretary’s deletion mandate pulls a curtain over the administration of the election. For the GOP, which wants to see federal law applied statewide, the details matter the most.

Despite the importance of the details, it cannot be disputed that the timing of each action and the identity of the election official performing each action that is contained in the local EPB

only—nowhere else—is subject to 52 USC 20701’s retention and preservation requirement. Section 20701 requires retention and preservation of “records and papers which come into [an election official’s] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.” The data on the timing of polling-place actions and the identity of the election official performing the action is a vital record that comes into the election official’s possession. *Merriam-Webster’s Collegiate Dictionary* (14th ed. 2020) (defining “come into” as “to acquire as a possession or achievement” and “possession” as “the act of having or taking into control.”); *Towers Watson & Co. v. Nat’l. Union Fire Ins. Co. of Pittsburgh, PA*, 67 F.4th 648 (4th Cir. 2023) (citations omitted) (“The word ‘acquire,’ in turn, means ‘to come into possession [or] control . . . of often by some uncertain or unspecified means.’”).

Moreover, the timing is plainly a record of an “act requisite to voting.” To vote in person on election day, a voter must appear at a polling place and, among other things, fill out an application to vote. Filling out the application to vote is thus an “act requisite to voting,” and the timing of that act is a “record” of the act. Likewise, the record of which election official oversaw the voter’s completion of an “act requisite to voting” is plainly a record “relating” to an act requisite to voting. *See Morales v Trans World Airlines, Inc.*, 504 US 374, 383 (1992) (“The ordinary meaning of [the words] “relating to” is a broad one—“to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.”).

Because the timing and user account data is stored in the local EPB only, is not stored by anyone else, and is an election record relating to an act requisite to voting, the data must be preserved under 52 USC § 20701. That means Rule 168.48’s mandate that the timing and user account data be destroyed within 7 days of certification of the election contradicts 52 USC § 20701

and must yield to federal law. The records being destroyed are preserved nowhere else, so this Court should permanently enjoin the application of Rule 168.48's 7-day record-destruction rule.

2. Missing/Mismatched Ballot-stub Records.

Besides, and independent from, the five categories of records and papers that are stored in the local EPB only that Plaintiff McQueer succinctly analyzes in their Motion—*see* Plaintiff McQueer's 10/7/2026 Motion for Summary Disposition Table 1 at 8—there is still other data stored only in local pollbooks that, if not transferred¹ anywhere else, will be deleted under Rule 168.48 in violation of 52 USC § 20701.

Except for ballots produced “by an on-demand ballot printing system,” “ballots that are processed through electronic tabulating equipment after the elector has voted must have an attached, numbered, perforated stub.” MCL 168.795b(2). A numbered ballot stub's function is to link the ballot *cast* by the voter to the ballot *issued* to voter—put differently, if the numbered stub of the ballot a voter tries to cast does not match the numbered stub of the ballot a voter was issued, the ballot cannot be tabulated and the voter may not even cast a vote. *See* MCL 168.797a(2) (“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

¹ As Plaintiff McQueer aptly points out in their Motion, Defendants' insistence that election records may be uploaded, copied, or printed out needlessly complicates retention of the election records while potentially also failing to satisfy federal law. *See* Plaintiff McQueer's 10/7/2026 Motion for Summary Disposition at 12-13. Federal law requires retention of the “*records and papers*” *not* the information stored on the records and papers. *See* 52 USC 20701. By insisting each record and paper (although not every record and paper, as argued above) be copied, uploaded, or printed—and the original then be destroyed—the Secretary introduces two needless problems: first, the potential for scrivener's errors (a problem that does not exist if the original records are simply, as federal law requires, retained and preserved); and second, the Secretary creates a logical problem of whether a copy of a record—even if perfectly made without scrivener's errors—is in fact the record itself such that federal law is satisfied or if it remains merely a copy (i.e., the Ship of Theseus thought experiment, *see* https://en.wikipedia.org/wiki/Ship_of_Theseus). This second issue is particularly pointed in modern times where metadata, such as timestamps and user history, are recorded in electronic originals of documents but not in paper printouts of the same documents.

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.”).

When an absent-voter ballot arrives, “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.” MCL 168.768. “If the ballot numbers match, the board of election inspectors shall detach the perforated numbered stub and prepare the ballot for tabulation[.]” *Id.* Sometimes, however, absent-voter ballots arrive either missing their ballot stubs or with mismatched ballot stubs (a ballot stub is “mismatched” if its number does not match the number recorded on the face of the ballot envelope). In the case of missing or mismatched ballot stubs, local clerks must note the fact that the ballot stub was missing or mismatched in the local pollbook and tabulate the absent voter ballot as “challenged.” *See* Election Officials Manual, Chapter 8: Absent Voter Ballot processing (October 2024) at 7-8, [Election Officials’ Manual, Chapter 8: Absent Voter Ballot Processing](#) (last accessed October 6, 2026).

Despite the importance of ballot stubs, Defendants have represented in their Brief on Appeal in another election case, *RNC v Benson* (COA Dkt No. 379136), that the Bureau of Elections neither receives information about missing or mismatched stubs nor maintains it in the QVF, *and that local clerks instead record that information in their pollbooks*. *See* Exhibit A at 10 (highlighted portions). In that same suit, Director Brater likewise attested that the statewide totals of missing or mismatched ballot stubs are not recorded in the QVF and that the information is instead recorded in each individual jurisdiction—often in a pollbook. *See* Exhibit B (Brater Affidavit ¶ 20).

Defendants’ position that *all* information survives in paper or QVF form does not identify if—or where—the missing-or mismatched-stub information described in its earlier representations is retained. Barring an about-face in Defendants’ policy of not recording the missing-or mismatched-stub information in the QVF, that information will be forever lost if local copies of the information are not retained and preserved.

For this reason, Rule 168.48 conflicts with—and is preempted by—52 USC § 20701. Section 20701 requires that records of an “act requisite to voting”—like submitting a ballot with a missing or mismatched stub—be retained and preserved. The local records of ballots submitted with missing or mismatched ballot stubs plainly relates to an “act requisite to voting. Therefore, for this separate and independent reason, which is in addition to all the reasons stated in Plaintiff McQueer’s brief, Plaintiff GOP respectfully requests that the Court grant Plaintiff McQueer’s Motion for Summary Disposition, which the GOP has joined.

Dated: October 8, 2026

Respectfully submitted,

/s/ Daniel C. Ziegler

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

MICHELLE McQUEER, individually and in
her official capacity as Clerk of the Township
of Bridgewater,

Plaintiff,

REPUBLICAN NATIONAL COMMITTEE,
and MICHIGAN REPUBLICAN PARTY,

Intervening Plaintiffs,

v

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State,
and JONATHAN BRATER, in his
official capacity as Director of Elections,
and the MICHIGAN DEPARTMENT
OF STATE,

Defendants.

Case No. 26-000172-MZ

Hon. Michael J. Riordan

**EXHIBITS TO REPUBLICAN NATIONAL COMMITTEE
AND MICHIGAN REPUBLICAN PARTY'S
10/8/2026 NOTICE OF JOINDER AND SUPPLEMENTAL BRIEF**

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TABLE OF CONTENTS

Exhibit A	<i>Republican National Committee, et al, v Jocelyn Benson and Jonathan Brater</i> , Case No 379136, (Mich Ct App), Brief of Appellants Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater (Feb 24, 2026)
Exhibit B	Affidivit of Director of Elections Jonathan Brater

Exhibit A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

REPUBLICAN NATIONAL COMMITTEE,
MICHIGAN REPUBLICAN PARTY and
CINDY BERRY,

Court of Appeals No. 379136

Court of Claims No. 24-000148-MZ

Plaintiffs-Appellees,

v

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

Defendants-Appellants.

**The appeal involves a ruling
that a provision of the
Constitution, a statute, rule or
regulation, or other state
governmental action is invalid.**

**BRIEF OF APPELLANTS SECRETARY OF STATE JOCELYN BENSON
AND DIRECTOR OF ELECTIONS JONATHAN BRATER**

ORAL ARGUMENT REQUESTED

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Dated: February 24, 2026

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TABLE OF CONTENTS

	<u>Page</u>
Index of Authorities	iii
Statement of Jurisdiction	vii
Statement of Questions Presented.....	viii
Statutes Involved.....	ix
Introduction	1
Statement of Facts and Proceedings.....	2
A. Constitutional provisions	2
B. Statutory provisions	3
C. AV ballot processing instructions	6
D. Proceedings	9
1. The 2024 proceedings.	9
2. The 2025 Proceedings.....	10
3. Post-Judgment proceedings	14
Argument	15
I. This Court should reverse where the lower court clearly erred in holding that Defendants’ instructions for processing absent voter ballots with missing or mismatched stubs conflicted with the plain language of MCL 168.768.	15
A. Issue Preservation.....	15
B. Standard of Review	15
C. Analysis	15
1. MCL 168.768 does not prohibit the tabulation of absent voter ballots with missing or mismatched stubs.....	15

2.	The Secretary has the authority to issue the instructions because they are consistent with the Michigan Election Law.....	25
II.	This Court should vacate the final order and judgment to the extent it compels Defendants to implement the court’s ten-step remedial process where the court failed to analyze any of the requisite factors necessary for granting permanent mandatory injunctive relief.	28
A.	Issue Preservation.....	28
B.	Standard of Review	29
C.	Analysis	29
1.	Legal principles applicable to injunctions	29
a.	Permanent injunctions	30
b.	Mandatory injunctions.....	31
2.	The court failed to apply these principles in granting permanent, mandatory injunctive relief.....	32
	Conclusion and Relief Requested.....	48
	Word Count Statement.....	48

INDEX OF AUTHORITIES

	<u>Page</u>
 Cases	
<i>Bennink v City of Coopersville</i> , 2006 WL 1547279 (WD Mich, June 5, 2006)	46
<i>Carson City Hosp v Dep’t of Community Health</i> , 253 Mich App 444 (2002)	24
<i>Danhoff v Fahim</i> , 513 Mich 427 (2024)	29
<i>Gates v Detroit & M R Co</i> , 151 Mich 548 (1908).....	32
<i>Gracey v Grosse Pointe Farms</i> , 182 Mich App 193 (1989).....	46
<i>Hare v Berrien Co Bd of Election Commr’s</i> , 373 Mich 526 (1964)	26
<i>In re Cehaich</i> , 2013 WL 5450287 (Mich Ct App Oct 1, 2013)	25
<i>In re Complaint of Rovas</i> , 482 Mich 90 (2008)	17
<i>In re Petition of Attorney General for Investigative Subpoenas</i> , 274 Mich App 696 (2007)	23
<i>In re Reliability Plans of Elec Utilities for 2017-2021</i> , unpublished opinion by the Michigan Court of Appeals, Docket Nos. 340600, 340607, dec’d December 3, 2020; 2020 WL 7089873	26
<i>Johnson v Mich Minority Purchasing Council</i> , 341 Mich App 1 (2022)	30
<i>Kernen v Homestead Dev Co</i> , 232 Mich App 503 (1998).....	30, 31, 35
<i>L & L Concession Co v Goldhar-Zimmer Theatre Enters</i> , 332 Mich 382 (1952) ..	32, 34
<i>McPherson v Mich High Sch Athletic Ass’n, Inc</i> , 119 F3d 453 (CA 6, 1997)	30
<i>McQueer v Perfect Fence Co</i> , 502 Mich 276 (2018)	16
<i>Michigan AFSCME Council 25 v Woodhaven-Brownstown Sch Dist</i> , 293 Mich App 143 (2011)	37
<i>O’Halloran, et al v Secretary of State</i> , ___ Mich ___; ___ NW3d ___; 2024 WL 3976495 (Mich, August 28, 2024)	25
<i>Peninsula Sanitation, Inc v City of Manistique</i> , 208 Mich App 34 (1994)	34
<i>Pontiac Fire Fighters Union Local 376 v Pontiac</i> , 482 Mich 1 (2008)	30, 36

<i>Richey v Bd of Ed of Monroe Co</i> , 346 Mich 156 (1956).....	20
<i>Royal Oak Sch Dist v State Tenure Comm</i> , 367 Mich 689 (1962).....	36
<i>S Dearborn Env't Improvement Ass'n, Inc v Dep't of Env't Quality</i> , 502 Mich 349 (2018)	24, 37, 44
<i>Slis v Michigan</i> , 332 Mich App 312 (2020)	30, 35
<i>Stamos v Genesee Co Bd of Canvassers</i> , 46 Mich App 636 (1973)	20
<i>Straus v Governor</i> , 459 Mich 526 (1999).....	34, 43
<i>True Care Physical Therapy, PLLC v Auto Club Group Ins Co</i> , 347 Mich App 168 (2023)	15
<i>Van Buren Pub Sch Dist v Wayne Co Cir Judge</i> , 61 Mich App 6 (1975)	32
<i>Youmans v Charter Twp of Bloomfield</i> , 336 Mich App 161 (2021).....	36, 44, 48

Statutes

MCL 168.18a.....	38
MCL 168.21	25, 44
MCL 168.31(1)	<i>passim</i>
MCL 168.31(1)(a)	6, 25
MCL 168.31(1)(b)	19
MCL 168.32(1)	44
MCL 168.523a	47
MCL 168.523a(4)-(7)	13
MCL 168.636c	4
MCL 168.674.....	3
MCL 168.736c	3
MCL 168.738(1)	23
MCL 168.745.....	8, 27

MCL 168.746.....	8
MCL 168.759a.....	3
MCL 168.759a(13).....	38
MCL 168.764a.....	3, 4
MCL 168.764a(1).....	3
MCL 168.764d.....	5
MCL 168.765.....	4, 5, 6
MCL 168.765(1)	4
MCL 168.765(13).....	6
MCL 168.765(2)	4
MCL 168.765(4)	5
MCL 168.765(5)	5
MCL 168.765a(17).....	6, 25
MCL 168.765a(6).....	16
MCL 168.766.....	4, 45
MCL 168.766a.....	4
MCL 168.768.....	5
MCL 168.795b.....	3, 16
MCL 168.795b(2).....	3, 39
MCL 168.797a.....	16, 22, 23
MCL 168.797a(2).....	23, 39
MCL 168.797a(3).....	23
MCL 168.813.....	47
MCL 168.813(1)	13

MCL 168.823.....	47
MCL 168.931(h)	26
MCL 691.1031	41

Other Authorities

10A Mich Pl & Pr § 76:1 (2d ed.)	31
42 Am Jur 2d, Injunctions § 11	30

Rules

MCR 3.310(C).....	32, 33
MCR 7.203(A)(1)	vii

Constitutional Provisions

Const 1963, art 2, § 4(1).....	<i>passim</i>
Const 1963, art 2, § 4(1)(a)	3
Const 1963, art 2, § 4(1)(b)	45
Const 1963, art 2, § 4(1)(h)	2, 21, 22
Const 1963, art 2, § 4(2).....	3, 9
Const 1963, art 3, § 2.....	9

STATEMENT OF JURISDICTION

On December 3, 2025, the Court of Claims issued an opinion and order denying Defendants-Appellants Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater's motion for summary disposition and granting in part and denying in part, Plaintiffs-Appellees Republican National Committee, Michigan Republican Party, and Cindy Berry's motion for summary disposition. (Defs' Appx Vol 1, pp 1-18.)

After requesting briefing from the parties on a remedy, the court issued an order on December 19, 2025, adopting Plaintiffs' proposed remedy and ordered Plaintiffs to submit a proposed final order and judgment. Plaintiffs did so, and on December 29, 2025, the Court of Claims issued a final order and judgment. (Defs' Appx Vol 1, pp 19-27.)

On February 13, 2026, the Court of Claims granted Plaintiffs' motion to modify the final order and judgment to make clear it did not apply to the May 5, 2026, election. (Defs' Appx Vol 1, pp 28-29.) This Court has jurisdiction over Defendants appeal as of right under MCR 7.203(A)(1).

STATEMENT OF QUESTIONS PRESENTED

1. Courts must interpret statutory language in context and should not read terms into a statute that the Legislature otherwise omitted. Where the lower court failed to construe MCL 168.768 as a whole and read exclusive language into the statute, did the court clearly err in holding that § 768 prohibits tabulating absent voter ballots with missing or mismatched stubs?

Appellants' answer: Yes.

Appellees' answer: No.

Trial court's answer: No.

2. A permanent injunction imposing mandatory relief is both extraordinary and disfavored. Before granting such relief, a court must weigh the requisite factors. Where the court failed to do so here, did the court abuse its discretion in granting injunctive relief against Defendants?

Appellants' answer: Yes.

Appellees' answer: No.

Trial court's answer: Did not answer.

STATUTES INVOLVED

MCL 168.768, as amended by 2023 PA 81, provides:

The board of election inspectors shall verify that there is an elector's signature on the absent voter ballot return envelope and that the statement on the absent voter ballot return envelope that the ballot is approved for tabulation is complete. If the elector's signature is missing or the statement that the absent voter ballot is approved for tabulation is incomplete, the board of election inspectors must immediately contact the city or township clerk. If the elector's signature is present and the statement that the absent voter ballot is approved for tabulation is complete, 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.

MCL 168.745, provides:

Whenever at any election the ballot of any person who has been challenged as an unqualified voter and who has taken the oath provided by law in such case to be taken shall be received by the inspectors of election, said inspectors shall cause to be plainly endorsed on said ballot, with pencil, before depositing the same in the ballot box, the number corresponding to the number placed after such voter's name on the poll lists without opening the same: Provided, That in case a ballot shall be so folded, defaced, printed or prepared that such number cannot be legibly and permanently written on the back thereof, said inspectors shall refuse to accept such ballot.

INTRODUCTION

Michigan election officials have long processed absent voter ballots with missing or mismatched stubs as “challenged ballots”—a straightforward, well-established procedure that tabulates the vote while preserving a record for any subsequent review. In its final order and judgment, the Court of Claims upended that longstanding practice, declaring Defendants’ instructions invalid on the theory that MCL 168.768 implicitly prohibits tabulation of ballots with nonmatching stubs. The court then imposed a permanent injunction requiring Defendants “to adopt and implement” a new 10-step “remedy” for processing these ballots that was proposed by Plaintiffs and adopted by the court without input from Defendants—the State officers charged with supervising and administering elections statewide. The injunction is to remain in place until Defendants promulgate a rule providing an alternative “remedy.”

The court was wrong on both counts. Section 768, properly construed, does not prohibit tabulation of these ballots. Defendants’ simple instruction to process these ballots as challenged ballots preserves both the fundamental right to vote and election integrity. The court’s contrary reading of § 768 reads exclusivity into statutory language that contains no such limitation, and it overlooks the statute’s own directive that “each ballot must be inserted into the tabulator.”

Compounding its error, the Court of Claims abused its discretion by ordering Defendants to implement its remedy. Unlike Defendants’ instructions, the court’s injunction conflicts with the Michigan Election Law in significant ways, including by requiring use of ballot-on-demand printers and the Bureau of Elections

Electronic Delivery and Return Portal, which is restricted to military voters. The remedy is also impracticable for both clerks and voters and will likely result in the disenfranchisement of voters for their own honest mistakes, or, worse yet, the mistakes of local elections officials.

This Court should thus reverse and vacate the final order and judgment, and order that summary disposition be granted in Defendants favor instead.

Alternatively, if the Court agrees with the Court of Claims interpretation of § 768 and Defendants' instructions, the Court should still vacate the injunctive terms of the final order and judgment.

STATEMENT OF FACTS AND PROCEEDINGS

As explained below, the process for reviewing absent voter (AV) ballots is governed by the Michigan Constitution, statutes, and instructions issued by the Secretary of State.

A. Constitutional provisions

Since 2018, the Michigan Constitution has expressly included the right to vote by AV ballot. Article 2, § 4 provides that every citizen has:

The right, once registered, to vote an absent voter ballot without giving a reason, during the forty (40) days before an election, and the right to choose whether the absent voter ballot is applied for, received and submitted in person or by mail. . . . [Const 1963, art 2, §4(1)(h).]

In November of 2022, voters again amended article 2 to secure additional voting rights, and to protect against the interference with those rights:

Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:

(a) The fundamental right to vote, including but not limited to the right, once registered, to vote a secret ballot in all elections. No person shall: (1) enact or use any law, rule, regulation, qualification, prerequisite, standard, practice, or procedure; (2) engage in any harassing, threatening, or intimidating conduct; or (3) use any means whatsoever, *any of which has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.* [Const 1963, art 2, § 4(1)(a) (emphasis added).]

Subsection 4(2) of article 2 continues to authorize the Legislature to “[e]xcept as otherwise provided in this constitution” enact “laws to . . . preserve the purity of elections, . . . to guard against abuses of the elective franchise, and to provide for a system of . . . absentee voting.” Const 1963, art 2, § 4(2).

B. Statutory provisions

In Michigan, except for ballots produced by an on-demand printing system, ballots are prepared with a detachable “stub” at the top that includes a number. MCL 168.795b(2).¹ When an absent voter is issued a ballot, the local clerk will record the number on the stub in the qualified voter file (QVF) as the ballot assigned to that absent voter. Absent voter ballots are issued to voters with a secrecy sleeve included for returning the ballot inside of the AV ballot return envelope. MCL 168.736c, MCL 168.764a. Specific instructions are also provided to voters for returning their absent voter ballot to their local clerk. MCL 168.764, 168.764a(1). The instructions used for a general election provide that “if there is a numbered stub the numbered stub” should be placed in the secrecy sleeve so that

¹ 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.

the “numbered stub is visible.” MCL 168.736c. The instructions do not expressly tell voters not to remove the stub, although that is an obvious inference.

After an AV ballot is completed and returned to the local clerk’s office by one of the specified methods, see MCL 168.764a, the clerk “who receives an absent voter ballot return envelope containing the marked ballot of an absent voter 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 a precinct board of election inspectors, an absent voter counting board, or a team of election inspectors[.]” MCL 168.765(1).

But first, the city or township clerk reviews the voter’s AV 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 168.765(2), 168.766, 168.766a. If the clerk confirms both elements, the clerk enters the ballot as received from the voter in the QVF and must indicate in the designated area the date the AV ballot was received (and the time if on election day) and designate that the ballot “is approved for tabulation.” MCL 168.765(2). This check – not the ballot stub number – is the method by which the clerks verify the identity of the voter and that the voter has returned only one ballot.

After an AV ballot return envelope has been reviewed and approved for tabulation, it is securely stored until one of three options occurs.

First, in a jurisdiction that does not use an absent voter counting board (AVCB) or is not using an AVCB to pre-process AV ballots, the clerk will deliver the

AV ballot return envelopes to a precinct board of election inspectors along with the clerk's list of the absent voters for tabulation on election day. MCL 168.765(4). On election day, if the board of election inspectors verifies that the statement on the AV ballot return envelope that the ballot is approved for tabulation is complete:

. . . . [T]he 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. [MCL 168.768.]

Second, in a jurisdiction that is utilizing an AVCB, see MCL 168.764d, 168.765a, "the clerk must deliver absent voter ballots approved for tabulation as provided under section 766 to the absent voter counting board by the time the election inspectors of the absent voter counting board report for duty on election day." MCL 168.765(5). AVCBs must:

[P]rocess 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, and the applications for absent voter ballots may be used as the poll list. Subject to subsection (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 168.765(6).]

And *third*, in a jurisdiction that is using an AVCB to pre-process ballots before election day, the following occurs. Under subsection 765(11):

The board of election commissioners of a city or township with a population of at least 5,000, or a board of county election commissioners as provided under section 764d, may authorize that absent voter counting boards be established under subsection (1) to

process and tabulate absent voter ballots between the hours of 7 a.m. and 8 p.m. on any of the 8 days before election day, beginning on the second Monday before election day and ending on the Monday immediately before election day. The board of election commissioners of any city or township, regardless of population size, may authorize and establish an absent voter counting board to process and tabulate absent voter ballots between the hours of 7 a.m. and 8 p.m. on the Monday immediately before election day. [MCL 168.765(11) (emphasis added).]

Subsection 765(13) provides that “[f]or each day of processing and tabulation of absent voter ballots before election day, a participating city or township clerk shall deliver the absent voter ballots approved for tabulation to an absent voter counting board. The 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 and tabulated on election day.” MCL 168.765(13).

C. AV ballot processing instructions

The Secretary of State is expressly authorized to issue instructions and provide directions and advice to election officials for the conduct of elections. MCL 168.31(1)(a)-(b). She is also required to issue binding instructions for the conduct of AVCBs. MCL 168.765a(17). Consistent with these statutes, the Secretary has issued comprehensive instructional guidance to local elections officials regarding

AV ballot processing in Chapter 8 of the Election Officials Manual. (Defs' Appx Vol 1, pp 67-97, Chapter 8, October 2024, Absent Voter Ballot Processing.)²

The Secretary's instructions explain that there are two steps to AV ballot processing at polling places or AVCBs—ballot envelope verification and ballot verification. (*Id.*, pp 75-77.) With respect to AV ballot envelope verification, at both AVCBs and polling places, the election officials must review the AV ballot envelope to ensure that the clerk's record area of the return envelope is completed, and at polling places, the inspectors must confirm that the voter has not voted in person and compare the voter signature on the envelope to the voter's application for an AV ballot. (*Id.*) At both places, appropriate notations are made in the electronic pollbook or QVF absent voter list. (*Id.*)

After the AV ballot envelope has been verified, an election inspector should open the envelope and carefully remove the ballot without exposing any votes. (*Id.*) "Without exposing any votes, the election inspector must verify that the number on the ballot stub agrees with the ballot number on the face of the absent voter return envelope." (*Id.*, p 76.)³ "If the number on the ballot does not agree with the ballot number recorded for the voter in the absent voter return envelope, and no explanation for the discrepancy can be found, the ballot must be processed as a challenged ballot." (*Id.*) This instruction recognizes that a mismatch may occur for

² See also Election Officials Manual, July 2024, Chapter 6, Michigan's Absent Voter Process, July 2024, available at [Election Officials Manual Chapter 6: Michigan's Absent Voter Process](#).

³ This is the current language, which reflects the change the Court of Claims ordered in its October 3, 2024, opinion and order.

readily explainable reasons, such as voters in the same household mixing up envelopes or an election official issuing the wrong ballot. (*Id.*, p 76; p 102, Brater Aff, ¶ 12.) Similarly, the instruction accounts for a missing ballot stub:

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.*]

As with mismatched ballots and envelopes, this instruction accounts for the fact that voters may have mistakenly removed their stub. (*Id.*, p 76; p 102, Brater Aff, ¶ 13.) After these steps, the election inspector should remove the ballot from the envelope and remove the stub from the ballot (assuming there is one) without removing the ballot from the secrecy sleeve and send it on for tabulation. (*Id.*, pp 76-77.) Stubs may be discarded but AV ballot envelopes must be returned to the clerk for retention. (*Id.*) If the ballot is processed as a challenged ballot,⁴ which can be retrieved post-election as necessary, an inspector will record a remark in the poll book that the voter's ballot was processed as challenged and include why, i.e., mismatch or missing stub. (*Id.*, p 76; p 104-105, Brater Aff, ¶ 20.) This information is not presently uploaded from the poll books to the QVF, but it is retained by clerks and is subject to public disclosure. (*Id.*, p 104-105, Brater Aff, ¶ 20.)

These instructions have been in place for many years, pre-existing the election of Secretary Benson. The instruction directing ballots with non-matching

⁴ The process for marking a challenged ballot is generally set forth in MCL 168.745 and 168.746.

envelopes and stubs be processed as challenged ballots has been in place consistently since 2009. (*Id.*, p 107, Brater Aff, ¶ 28, Attachments B-F.) The instruction directing ballots with missing stubs be processed as challenged ballots has been in place consistently since 2017. (*Id.*, p 107, Brater Aff, ¶ 29, Attachments C-F.) But both instructions can be found in guidance for election inspectors dating back to at least 1996. (*Id.*, p 107-108, ¶ 30, Attachment H.) The 2024 updates to both the manual and the election inspector guidance did not add anything new of relevance. (*Id.*, p 108, Brater Aff, ¶ 31.)

D. Proceedings

1. The 2024 proceedings.

Plaintiffs Republican National Committee, Michigan Republican Party, and Cindy Berry, filed a two-count complaint on September 18, 2024. In Count I, Plaintiffs alleged the Secretary's instructions regarding AV ballots with mismatched ballot and stub numbers and ballots with missing stubs violated the Michigan Constitution, citing the purity of elections clause in article 2, § 4(2) and the separation of powers clause in article 3, § 2. (Defs' Appx Vol 1, p 399-400, Compl, ¶¶ 55-63.) In Count II, they alleged the instructions conflicted with various provisions in the Michigan Election Law. (*Id.*, pp 401-402, ¶¶ 64-71.) For relief, Plaintiffs sought a declaration that the instructions were invalid and unenforceable and an order requiring Defendants to amend the instructions or issue new instructions directing elections officials to reject AV ballots where the stub is missing, or the ballot number and stub do not match. (*Id.*, pp 402-403, ¶¶ A-B.)

Defendants moved to dismiss Plaintiffs' complaint arguing that the challenged instructions did not violate the constitution or the Michigan Election Law. The Court held a hearing on September 26, 2024. (Defs' Appx Vol 2, pp 266-334, 9/26/24 Trans.) On October 3, 2024, the Court partially granted Defendants' motion on the grounds of laches, concluding that Plaintiffs were not entitled to any relief for the November 5, 2024, general election. (Defs' Appx Vol 2, pp 408-433, 10/3/24 Opn & Ord.) The Court further ordered Defendants to make minor word changes to the instructions. (*Id.*)

2. The 2025 Proceedings

After Defendants answered the complaint, the Court issued a scheduling order setting dates for summary disposition briefing. During the scheduling conference, the Court indicated it intended to bifurcate the case into a liability and remedy phase.

The Court also expressed interest in having Defendants produce information regarding the number of instances in which ballots with mismatched numbers or missing stubs are received. The Bureau of Elections does not directly receive information regarding mismatched ballots or stubs with missing ballots, nor is it maintained in the state's QVF. (Defs' Appx Vol 1, pp 104-105, ¶ 20.) Rather, local clerks record information related to challenged ballots in the precinct poll book. (*Id.*) In order to provide some responsive information to the court, Defendants asked several large counties in which precincts were randomly selected for customary post-election audits, see MCL 168.31a, to report to the Bureau the

numbers of challenged ballots based on mismatches or missing stubs received in the November 2024 general election to the Bureau. (*Id.*, p 104, ¶ 19.) The responses revealed the following:

County	Number of Pollbooks reviewed	Number of Ballots
Genesee	41	22 missing stubs, 5 mismatches
Ingham	14	1 mismatch
Livingston	7	3 missing stubs
Macomb	19	4 missing stubs
Oakland	23	1 missing stub
Saginaw	22	6 mismatches
Wayne	18	1 mismatch

(*Id.*, Attachment A.) The information reveals that out of the 144 pollbooks reviewed, which reflects thousands of absent voters, there were 30 ballots with missing stubs and 13 instances in which the number on the AV return envelope did not match the number on the ballot stub. With respect to the mismatches, it is known that one set of ballots (so two mismatches) came from the same addresses but had swapped envelopes, i.e., a household switch, and in another case two ballots issued to persons at the same address were returned in one envelope, resulting in one mismatch. (*Id.*, p 104, ¶ 19.)

On March 14, 2025, the parties filed cross-motions for summary disposition, (Defs' Appx Vol 1, pp 30-250 & Vol 2, pp 251-380, Defs' MSD Brf), responses, (Defs' Appx Vol 2, pp 434-457, Defs' Resp), and reply briefs, (Defs' Appx Vol 2, pp 458-465, Defs' Reply.) The Court held a hearing on the parties' cross-motions on June 12, 2025. (Defs' Appx Vol 2, pp 466-490, 6/12/25 Trans.)

Nothing further happened until Plaintiffs filed a motion for a status conference on November 25, 2025. A little over a week later, on December 3, 2025, the Court issued an opinion and order denying Defendants' motion for summary disposition and granting in part and denying in part Plaintiffs' motion for summary disposition. (Defs' Appx Vol 1, pp 1-18.) The Court held that MCL 168.768 prohibited the tabulation of AV ballots with missing or mismatched stubs, and that the Secretary's instructions permitting tabulation conflicted with § 768 and were unenforceable. (*Id.*) The Court further ordered the parties to file supplemental remedy briefs addressing what procedures election officials should follow to permit affected voters an opportunity to cure their ballots. The parties were ordered to file briefs simultaneously on December 17, 2025. (*Id.*)

Defendants timely filed their supplemental brief with their proposed remedial process. (Defs' Appx Vol 2, pp 491-498, Defs' 12/17/25 Remedy Brf.) Plaintiffs did so as well. (Defs' Appx Vol 2, pp 499-517, Plfs' Supp Brf.) Defendants proposed that ballots with mismatched or missing stubs be processed as provisional

envelope ballots⁵ and tabulated by the county board of canvassers. (Defs’ Appx Vol 2, p 496.) Under Defendants’ proposal, the county board of canvassers would tabulate the ballot if satisfactory explanations for the mismatch or missing stub were provided by the municipal clerk or the voter, and if not, the board would ultimately have discretion to tabulate the ballot, and could consider “any indications of suspicious activity.” (*Id.*)

On December 19, 2025, the Court issued an amended order directing Plaintiffs to submit a proposed order of judgment adopting Plaintiffs’ proposed remedy as a final order and judgment by December 23, 2025. (Defs’ Appx Vol 2, pp 518-519, 12/19/25 Order.)⁶ Plaintiffs timely submitted the proposed order, (Defs’ Appx Vol 2, pp 564-574), and the Court entered its final order and judgment, which included permanent mandatory injunctive relief, on December 29, 2025. (Defs’ Appx Vol 1, pp 19-27.)

In brief, the injunction orders Defendants to implement Plaintiffs’ proposed 10-step process that requires notification to voters who submit ballots with missing or mismatched stubs that their ballots have been rejected by 5 p.m. on the day after the election, and that they have until 5 p.m. on the third day following the election to “cure” their rejected ballot by voting a *new* ballot, and if not, their earlier ballot will stand as rejected. (*Id.*, pp 22-24, Steps 1-6.)

⁵ A provisional ballot is voted by the voter on or before Election Day but, depending on the circumstances, may or may not be tabulated without further verification by the voter within 6 days after an election. See MCL 168.523a(4)-(7), MCL 168.813(1).

⁶ The amended order corrected an order issued on December 18 that included an incorrect date.

Voters who are able to may appear in person before a clerk and be issued a new absent voter ballot or vote in person to cure the deficiency before election day. Voters who seek to cure the deficiency after election day must be offered an opportunity to vote an “on-demand ballot.” Voters who are unable to appear in person must be offered an opportunity to receive and return that ballot electronically. (*Id.*, p 25, Steps 7-7(b).) Steps 8 through 10 describe further processing of the rejected or newly-voted ballots, including that any newly voted ballot be delivered to the board of county canvassers by the sixth day after the election. (*Id.*, pp 25-26, Steps 8-10.)

3. Post-Judgment proceedings

Defendants timely filed their claim of appeal on January 21, 2026. On January 27, 2026, Defendants filed a motion for stay pending appeal of the final order and judgment in the Court of Claims. (Defs’ Appx Vol 2, pp 520-560, Stay Brf.)⁷ On January 30, 2026, Plaintiffs filed an unopposed motion to modify the final order and judgment to provide that the remedy imposed by the court would not apply to the May 5, 2026, election. On February 13, 2026, the Court of Claims denied Defendants’ motion for stay pending appeal. (Defs’ Appx Vol 2, pp 561-563, 2/13/26 Order.) The same day, the Court granted Plaintiffs’ motion to modify the final order and judgment. (Defs’ Appx Vol 1, pp 28-29.)

⁷ The case was reassigned to Judge Gadola, as Judge Swartzle’s term on the Court of Claims had concluded.

ARGUMENT

I. This Court should reverse where the lower court clearly erred in holding that Defendants' instructions for processing absent voter ballots with missing or mismatched stubs conflicted with the plain language of MCL 168.768.

A. Issue Preservation

Defendants preserved this argument in their motion and brief in support of summary disposition, (Defs' Appx Vol 1, pp 30-250; Vol 2, pp 251-380), their response to Plaintiffs' motion, (Defs' Appx, Vol 2, pp 434-457), and in their reply in support of their motion for summary disposition, (*id.*, pp 458-465.)

B. Standard of Review

"This Court reviews de novo a trial court's decision on a motion for summary disposition, as well as questions of statutory interpretation[.]" *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 175 (2023) (quotation marks and citation omitted).

C. Analysis

1. MCL 168.768 does not prohibit the tabulation of absent voter ballots with missing or mismatched stubs.

With respect to statutory interpretation, the starting point is the text of the statute itself:

All matters of statutory interpretation begin with an examination of the language of the statute. "The primary rule of statutory construction is that, where the statutory language is clear and unambiguous, the statute must be applied as written." "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." A

statutory term or phrase “cannot be viewed in isolation, but must be construed in accordance with the surrounding text and the statutory scheme.” [*McQueer v Perfect Fence Co*, 502 Mich 276, 286 (2018) (footnotes and citations omitted).]

The crux of this appeal is whether § 768 must be read to require the rejection of, or to at least preclude the immediate tabulation of, absent voter ballots with mismatched stub and envelope numbers or with missing stubs, where the statute is silent if a ballot stub on an AV ballot is missing or mismatched. Plaintiffs allege that the Secretary’s instructions violated the Michigan Election Law. (Defs’ Appx Vol 2, pp 381-407.) Specifically, they argue that “nothing in the Michigan Election Law authorizes election inspectors to accept a ballot or even process a ballot as challenged—where the ballot number does not match the poll list or the ballot return envelope or the ballot stub is missing. Rather, the Michigan Election Law requires that such ballots be rejected.” (*Id.*, pp 392-393, ¶ 35.) Plaintiff contend that the instructions conflict with various statutes—MCL 168.795b, 168.765a(6), 168.768, 168.797a. (*Id.*, pp 393-395, ¶ 36-42.)

Plaintiffs, wielding various canons of construction and misreading various statutes, argued below that such ballots cannot be tabulated. But § 768 is silent on this precise point and it does not expressly address how to process ballots with missing or mismatched stubs (although—as discussed below—it generally requires “each ballot” to be tabulated). Section 768 thus does not foreclose the Secretary’s instructions—especially where those instructions attempt to treat voters equally and consistent with the constitutional directive that no law may unduly burden the right to vote. Const 1963, art 2, § 4(1).

The Court of Claims granted summary disposition to the Plaintiffs after it determined that 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.” (Defs’ Appx Vol 1, p 13) (emphasis in original). But the “plain and unambiguous” language of the statute says no such thing, and the lower court’s construction is erroneous for several reasons. See *In re Complaint of Rovas*, 482 Mich 90, 102, 103 (2008) (agency’s interpretation of a statute it administers is entitled to “respectful consideration.”) (cleaned up).

Again, § 768, as amended by 2023 PA 81,⁸ provides:

The board of election inspectors shall verify that there is an elector’s signature on the absent voter ballot return envelope and that the statement on the absent voter ballot return envelope that the ballot is approved for tabulation is complete. If the elector’s signature is missing or the statement that the absent voter ballot is approved for tabulation is incomplete, the board of election inspectors must immediately contact the city or township clerk. If the elector’s signature is present and the statement that the absent voter ballot is approved for tabulation is complete, 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

⁸ The lower court made much of the 2023 amendment, which added the stub comparison language. But the Secretary’s instructions have provided for a comparison of the ballot stub number to the number in the poll book or AV list since at least 2009. (Defs’ Appx Vol 1, p 107, ¶ 28, pp 118-119, Attachment B, pp 126-127, Attachment C, pp 134-135, Attachment D.) Defendants viewed the amendment as simply codifying that part of the Secretary’s instructions.

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.

First, the court italicizes and places emphasis on the “if” in the part of § 768 that says, “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.” Although ballots with stubs that match their envelopes may certainly be prepared for tabulation as provided under this provision, the language is not exclusive. By emphasizing the “if,” the lower court interpreted § 768 to require that a ballot may be tabulated *only if* the ballot numbers match. But the word “only” does not appear anywhere in § 768, let alone in that sentence. So, the Court of Claims’ interpretation of § 768 erroneously adds words and meanings that are not present in the statute.

Second, interpreting § 768 in this manner ignores or even negates other parts of the same section. The first sentence of § 768 requires—before the numbers are matched—that the board of election inspectors verify that the ballot return envelope is signed by the voter and that there is a completed statement that the ballot is “approved for tabulation.” So, the matching of the numbers is not a precondition for the ballot to be approved for tabulation—rather, the ballot has *already* been approved for tabulation by the time the envelope is opened.

Also, even were it to be assumed that “if” in § 768 meant “only if,” the only acts in § 768 that might be conditioned on the ballot number matching the ballot stub are 1) detaching the perforated ballot stub and 2) “preparing the ballot for tabulation, as directed by the Secretary of State.” The first part serves to ensure

that the ballot is not traceable to a particular voter (preserving the secrecy of their ballot), and the second is an obvious reference to the Secretary's authority under MCL 168.31(1)(b) to "advise and direct local election officials as to the proper methods of conducting elections." Neither part of this sentence in § 768 requires or authorizes the rejection of a ballot with a mismatched or missing stub—particularly where the Secretary has exercised her legal authority to direct otherwise.

Third, the Court of Claims' inference that only ballots that match the number on the return envelope may be tabulated runs contrary to the very next sentence in § 768, which states unequivocally that, "Each ballot must be inserted into the tabulator." It does not say that only matching ballots must be tabulated, and instead broadly provides that "each ballot" must be tabulated. In its opinion below, the lower court concluded that there was "no lawful authority to tabulate it under [§ 768]," but the court failed to reconcile that conclusion either with the ballots having already been approved for tabulation or the requirement that "each ballot must be inserted into the tabulator."

Again, § 768 begins by establishing that the ballots have *already been approved for tabulation* by the city or township clerk. If they are not approved for tabulation, § 768 requires the election inspectors to "immediately contact the city or township clerk." That is the only place in § 768 that provides for the tabulation of the ballot to be halted. So, the tabulation of "each ballot" is entirely consistent with the statute because the statute earlier ensures that the ballot has been approved for tabulation.

Moreover, the absence of any express legislative prohibition in § 768 against tabulating a ballot with a missing or mismatched stub is consequential to how the statute should be construed. The Michigan Supreme Court has held that election statutes giving direction as to the manner of conducting elections should generally be interpreted as directory, “unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result.” *Richey v Bd of Ed of Monroe Co*, 346 Mich 156, 166-167 (1956), quoting 20 CJ, pp. 181, 182, Elections, § 223; see also *Stamos v Genesee Co Bd of Canvassers*, 46 Mich App 636, 641-642 (1973), quoting *In Re Chairman in Town of Worcester*, 29 Wis 2d 674, 681, 139 NW2d 557, 561 (1966)(stating that deviations with directory provisions of election statutes are usually termed “irregularities” and do not vitiate an election).

There is no legislative expression in § 768 stating either that a matching stub is essential or that its omission would render the ballot void. The lack of any such expression from the Legislature should be considered deliberate, and so a missing or mismatched ballot stub is merely an irregularity—which is entirely consistent with the Secretary’s instructions to tabulate the ballot but to also identify it in a manner similar to challenged ballots to allow—if necessary—for further inquiry.

Lastly, the Court of Claims’ interpretation also raises constitutional concerns. In its opinion and order, it concluded that, “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.” (Defs’ Appx Vol 1, p 15) (emphasis added). The Court of Claims thus

construes matching ballot stubs under § 768 as a means of proving the voters' identity. But article 2, § 4 of the Constitution provides, in pertinent part, the right of voters to prove their identity when voting an absent ballot, and it does not mention or refer to the ballot stub number:

Voters shall have the right to prove their identity when applying for or voting an absent voter ballot other than in person by providing their signature to the election official authorized to issue absent voter ballots. Those election officials shall: (1) verify the identity of a voter who applies for an absent voter ballot other than in person by comparing the voter's signature on the absent voter ballot application to the voter's signature in their registration record; and (2) verify the identity of a voter who votes an absent voter ballot other than in person by comparing the signature on the absent voter ballot envelope to the signature on the voter's absent voter ballot application or the signature in the voter's registration record. If those election officials determine from either of the comparisons in (1) or (2) of this part (h) of subsection (4)(1) that the signatures do not sufficiently agree, or if the voter's signature on the absent voter ballot application or absent voter ballot envelope is missing, the voter has a right to be notified immediately and afforded due process, including an equitable opportunity to correct the issue with the signature. [Const 1963, art 2, § 4(1)(h).]

The Constitution expressly provides voters the right to prove their identity by providing their signature and requires election officials to verify that identity by comparing the signature on the ballot return envelope to the voter's AV ballot application or registration record. This is the method the people of Michigan have chosen to verify absent voters' identity—not by a matching stub number. In point of fact, the methodology of verifying voters by their signatures is explicitly referenced in the first two sentences of § 768.

To be sure, the ballot stubs serve a useful administrative purpose and may aid in detecting fraud. And, where a ballot stub number is present and matches, that may be considered a basis to proceed with tabulation without any additional

steps or reservations. But the ballot stubs cannot be used as an absolute precondition for the acceptance and tabulation of a ballot where that voter's identity has already been verified according to the constitutionally provided method. That is especially true in jurisdictions that do not pre-process ballots, where the absent ballot envelopes are not opened—and a missing or mismatched stub would not be discovered—until Election Day, leaving little time to cast a “corrected” ballot by mail. See Const 1963, art 2, §4(1)(h) (providing “the right to choose whether the absent voter ballot is applied for, received and submitted *in person or by mail*.”) (emphasis added).

Regardless, whatever benefits the ballot stubs provide, they cannot override or limit rights reserved by the people in the Constitution. Indeed, article 2, § 4(1) explicitly states that the rights provided therein, including the “fundamental” right to vote “shall be liberally construed *in favor of voters’ rights* in order to effectuate its purposes.” (Emphasis added.) And while this subsection provides that, “[n]othing contained in this subsection shall prevent the legislature from *expanding* voters’ rights beyond what is provided herein,” there is no authorization for the Legislature to further restrict or restrain voters’ rights to vote an AV ballot and to prove their identity using their signature. *Id.* (emphasis added). As a result, § 768 cannot function as a “precondition” in the manner suggested by either the Plaintiffs or the lower court.

The lower court’s opinion discussed—without expressly deciding—whether MCL 168.797a, as amended by 2024 PA 221, should be applied to absent voter

ballots under § 768. (Defs' Appx Vol 1, p 15.) Subsection 797a(2) generally governs electors voting in person at a polling place, and requires a comparison of the voter's ballot stub number with the poll list, and 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. . . . If electronic tabulating equipment that deposits the voted ballot into the ballot box or other approved ballot container is used at the precinct, the election inspector shall return the ballot to the elector, and the elector shall deposit the ballot into the electronic tabulating equipment. . . . [MCL 168.797a(2) (emphasis added); see also MCL 168.738(1).]

Subsection 797a(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.*" MCL 168.797a(3) (emphasis added).

But § 768 contains no similar language requiring that an AV ballot with a number mismatch be "rejected," nor does it provide that an AV ballot from which the stub has been detached "must . . . not be accepted." Any attempt to import § 797a's rejection requirement into § 768 would impermissibly add language into the statute. *In re Petition of Attorney General for Investigative Subpoenas*, 274 Mich App 696, 705 (2007) (it is a violation of "a cardinal canon of statutory

interpretation” to read language into statutory provisions). “When the Legislature enacts laws, it is presumed to know the rules of statutory construction and therefore its use or *omission* of language is generally presumed to be intentional.” *Carson City Hosp v Dep’t of Community Health*, 253 Mich App 444, 447–448 (2002) (emphasis added); *S Dearborn Env’t Improvement Ass’n, Inc v Dep’t of Env’t Quality*, 502 Mich 349, 369 (2018) (“It is [] a fundamental principle of statutory construction that “[w]hen the Legislature uses different words, the words are generally intended to connote different meanings.’”) (citation omitted).

Here, it must be presumed that the Legislature intended to omit from § 768 language requiring the rejection of AV ballots with number mismatches or missing stubs. The Legislature knows how to require ballots to be rejected, and it simply did not do so in § 768 with respect to missing or mismatched ballot stubs. As a result, the plain text of § 768 cannot be interpreted to require the rejection of these ballots.

Because the Court of Claims erred in its construction of § 768, the Secretary of State’s instructions to tabulate ballots with missing or mismatched ballot stubs as “challenged” ballots do not conflict with that statute. And as discussed below, the instructions are otherwise consistent with the Michigan Election Law and are within her authority to advise and direct local elections officials.

2. The Secretary has the authority to issue the instructions because they are consistent with the Michigan Election Law.

As discussed above, § 768 requires—or at least does not expressly preclude—tabulating ballots with missing or mismatched stubs. As a result, the Secretary of State has the authority to issue instructions providing for tabulating those ballots.

Secretaries of State, as the State’s chief elections officer, MCL 168.21, have long been empowered to issue instructions and provide direction and advice to election officials for the conduct of elections. MCL 168.31(1)(a)-(b). See also MCL 168.765a(17) (“The secretary of state shall develop instructions consistent with this act for the conduct of absent voter counting boards or combined absent voter counting boards.”) While instructions must be “in accordance with the laws of this state,” MCL 168.31(1)(a), this does not preclude the Secretary from issuing instructions or directions where the legislature has not legislated. See *O’Halloran v Secretary of State*, 515 Mich 606, 631 (2024) (affirming the Secretary’s authority to provide for a form and issue other instructions where the statutes were silent). Indeed, “[a]gency policy and rules need not reiterate or mirror the statute” to be a valid interpretation of a statute. *In re Cehaich*, 2013 WL 5450287, at *3 (Mich Ct App Oct 1, 2013), citing *Chrisdiana*, 278 Mich App at 688-689. As the Michigan Supreme Court has observed “‘rules fill in the interstices’ ” of a statute. *Clonlara*, 442 Mich at 240, quoting Bienenfeld, Michigan Administrative Law (2d ed), ch 4, p 18.

It is plain the Legislature contemplated that the Secretary exercise her discretion as the chief elections officer with the authority to supervise all elections

officials, to provide direction as to the proper methods of preparing ballots for tabulation and to fill in any gaps in the procedures by issuing instructions and other guidance to ensure a fair and orderly process. See, e.g., *In re Reliability Plans of Elec Utilities for 2017-2021*, unpublished opinion by the Michigan Court of Appeals, Docket Nos. 340600, 340607, dec'd December 3, 2020; 2020 WL 7089873, at *5 (“where the Legislature did not specify how to proceed, it expected the MPSC to do so within its own discretion[.]”) And officials are expected to follow the Secretary’s instructions. See *Hare v Berrien Co Bd of Election Commr’s*, 373 Mich 526, 531 (1964) (local election board had “duty to follow” the Secretary of State’s “instructions” under MCL 168.31). See also MCL 168.931(h) (“A person shall not . . . disobey a lawful instruction or order of the secretary of state as chief state election officer[.]”).

Again, the challenge to the instructions was based on their alleged conflict with § 768. But for the reasons discussed earlier, Plaintiffs’ and the court’s interpretation runs contrary to the language of the statute. In contrast, the Secretary of State and Director of Elections interpret § 768 as mandating that AV ballots with matching envelope and stub numbers be tabulated and recorded, but as being essentially silent on how mismatched ballots or ballots with missing stubs should be processed. The lower court even observed § 768’s silence in an earlier opinion. (Defs’ Appx, pp 424-425.)

The instructions provide for “each ballot” to be tabulated while preserving a record of any mismatches to assist any subsequent review or investigation. These

instructions borrow the well-established and proven method of processing “challenged” ballots under MCL 168.745: “If the number on the ballot does not agree with the ballot number recorded for the voter in the absent voter return envelope, and no explanation for the discrepancy can be found, the ballot must be processed as a challenged ballot.” This is easily squared with the statute. If the ballot number matches, election inspectors prepare for tabulation. If it does not, election inspectors do not prepare the ballot for tabulation but instead utilize the challenged ballot procedure; only after this can the ballot be tabulated, as it must.

The lower court concluded that the Legislature has not authorized application of the challenged ballot process to ballots with missing or mismatched stubs. (Defs Appx, pp 14-15.) But this misapprehends the operation of the instructions. Obviously, while ballots with missing or mismatched stubs have not been “challenged” in the manner described under MCL 168.745, these instructions simply incorporate that process as a model for processing irregular ballots. Under this model, the election inspectors will write on the ballot, with pencil, before tabulating it, the number corresponding to the number placed after such voter's name on the poll lists. See MCL 168.745. Inspectors are already familiar with this process, and it is readily understood and implemented relatively easily. These ballots are not actually “challenged” ballots, and the instructions are simply using an established process as an additional safeguard. It recognizes the missing or mismatched ballot stub as an “irregularity” and allows the ballot to be identified if there is a subsequent investigation of fraud or error, while also preserving the

voter's constitutional rights and comporting with § 768's directive to tabulate "each ballot."

Because the Secretary's instructions do not conflict with any provision of the Michigan Election Law and were issued consistent with her statutory and constitutional authority, the lower court's opinion and order enjoining those instructions must be reversed.

II. This Court should vacate the final order and judgment to the extent it compels Defendants to implement the court's ten-step remedial process where the court failed to analyze any of the requisite factors necessary for granting permanent mandatory injunctive relief.

Defendants firmly believe the court erred in its interpretation of MCL 168.768, and consequentially Defendants' instructions are valid and enforceable. But if this Court disagrees, Defendants are still entitled to relief where the Court of Claims abused its discretion in granting permanent mandatory injunctive relief. The court failed to properly weigh the factors necessary for granting injunctive relief. And where none of those factors support the unprecedented relief ordered here, the injunction should be vacated.

A. Issue Preservation

Because the lower court ordered simultaneous briefing by the parties on a remedy, Defendants did not have an opportunity to object to Plaintiffs' proposal before the Court adopted it in its final order and judgment. Defendants did, however, raise the arguments set forth below in their motion for stay pending appeal in the Court of Claims. (Defs' Appx Vol 2, pp 520-560.)

B. Standard of Review

This Court reviews an order granting permanent injunctive relief for an abuse of discretion. See *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 32-33 (2016) (reviewing for abuse of discretion mandatory permanent injunction). A court abuses its discretion when its decision “falls outside the range of principled and reasonable outcomes.” *Danhoff v Fahim*, 513 Mich 427, 442 (2024).

C. Analysis

Courts have significant discretion in granting equitable relief like injunctions. Even still there are factors that must be met before relief may be granted. Here, the court either completely failed to consider the requisite factors or misapplied the factors it did. Critically, the court made no determination that Plaintiffs will suffer irreparable harm without an injunction. This requirement is indispensable. Further, the scope of the injunction is unprecedented in its intrusion into the election duties of Defendants. It is also impractical and unenforceable where it compels the use of unavailable procedures. And the injunction will most certainly result in the disenfranchisement of eligible voters. Where neither the law nor the facts supported injunctive relief, the Court of Claims abused its discretion. This Court should vacate the final order and judgment.

1. Legal principles applicable to injunctions

Injunctive relief, in any form, “is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real

and imminent danger of irreparable injury.” *Kernen v Homestead Dev Co*, 232 Mich App 503, 509 (1998). Generally, to obtain an injunction the court analyzes the following factors:

(1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued. [*Slis v Michigan*, 332 Mich App 312, 337 (2020).]

“[T]he four factors governing consideration of injunctive relief are meant to ‘simply guide the discretion of the court; they are not meant to be rigid and unbending requirements.’” *Johnson v Mich Minority Purchasing Council*, 341 Mich App 1, 25 (2022), quoting *McPherson v Mich High Sch Athletic Ass’n, Inc*, 119 F3d 453, 459 (CA 6, 1997) (en banc) (citation omitted.) Nevertheless, a “particularized showing of irreparable harm is an indispensable requirement to obtain” an injunction.” *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9 (2008) (quotation marks, citation, and ellipses omitted).

The party seeking injunctive relief has the burden of demonstrating that the requested injunction is appropriate and necessary. *Pontiac Fire Fighters Union Local 376*, 482 Mich at 3.

a. Permanent injunctions

“A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action against a defendant and that equitable relief is appropriate.” 42 Am Jur 2d, Injunctions § 11. “For a permanent injunction to

issue, the plaintiff must prevail on the merits of his or her claim *and establish that equitable relief is appropriate in all other respects.*” *Id.* (emphasis added). A permanent injunction is an “extraordinary . . . equitable remedy,” and “should be granted sparingly, only in clear cases, *and the decree should be framed to afford relief to which the complainant is entitled and not to interfere with legitimate and proper action by those against whom it is directed.*” *Id.* (emphasis added). See also *Kernen*, 232 Mich App at 509 (describing request for permanent injunction as “‘an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.’”) (internal citation omitted).

Consistent with the preceding principles, a court considers the following in determining whether a permanent injunction was lawfully entered:

(a) the nature of the interest to be protected, (b) the relative adequacy to the plaintiff of injunction and of other remedies, (c) any unreasonable delay by the plaintiff in bringing suit, (d) any related misconduct on the part of the plaintiff, (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied, (f) the interests of third persons and of the public, and (g) the practicability of framing and enforcing the order or judgment. [*Dep’t Of Environmental Quality*, 318 Mich App at 34 (quotation marks and citation omitted).]

Factors (b), (e), (f), and (g) are relevant here.

b. Mandatory injunctions

“A mandatory injunction, as opposed to a prohibitory one, does not maintain the status quo but rather compels the performance of an affirmative act.” 10A Mich Pl & Pr § 76:1 (2d ed.) “Courts look with disfavor upon mandatory injunctions and will only grant them when it is necessary to preserve the status quo. Usually an

order restraining action will accomplish this result, but the status quo is not always ‘a condition of rest, but of action’.” *Van Buren Pub Sch Dist v Wayne Co Cir Judge*, 61 Mich App 6, 20 (1975), quoting *Gates v Detroit & M R Co*, 151 Mich 548 (1908). “The general rule is that whenever courts have found a mandatory injunction essential to the preservation of the status quo and a serious inconvenience and loss would result to plaintiff and there would be no great loss to defendant, they will grant it.” *L & L Concession Co v Goldhar-Zimner Theatre Enters*, 332 Mich 382, 388 (1952), citing *Gates*, 151 Mich 548.

2. The court failed to apply these principles in granting permanent, mandatory injunctive relief.

Plaintiffs never sought injunctive relief in this proceeding. So, the parties never briefed the injunctive factors for the court, and the court never held a hearing at which these factors were addressed. Rather, the court first mentioned injunctive relief in its December 19 order adopting Plaintiffs’ proposed remedy and ordering Plaintiffs to submit a proposed final order. (Defs’ Appx Vol 2, pp 518-519.) In their proposed final order and judgment, Plaintiffs referenced MCR 3.310(C) and included the following heading and statements:

**FOR THE PURPOSE OF GRANTING PERMANENT INJUNCTIVE
RELIEF, THE COURT HEREBY MAKES THE FOLLOWING
FINDING OF FACTS 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.

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 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[.]

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 [10] steps [Defs' Appx Vol 2, pp 567-569 (emphasis added).]

The court simply adopted this language, making no additional findings in its final order and judgment. (Defs' Appx Vol 1, pp 20-22.) In doing so, the court abused its discretion by failing to properly analyze the factors necessary for granting permanent, mandatory injunctive relief.

Plaintiffs had other adequate remedies

Here, the Plaintiffs had other adequate remedies rendering an injunction unnecessary. *Dep't of Environmental Quality*, 318 Mich App at 34; *Peninsula Sanitation, Inc v City of Manistique*, 208 Mich App 34, 43 (1994) (one prerequisite to injunctive relief is lack of an adequate remedy at law). The court found “the issuance of injunctive relief [] necessary to effectuate the Court’s December 3, 2025 Opinion and Order[.]” (Defs’ Appx Vol 1, p 21.) But Plaintiffs sought only declaratory relief here, and a simple declaration that Defendants instructions conflicted with MCL 168.768 and were thus unenforceable is all the relief Plaintiffs required. See, e.g, *Straus v Governor*, 459 Mich 526, 532 (1999) (“declaratory relief normally will suffice to induce the legislative and executive branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, . . . to conform their actions to constitutional requirements or confine them within constitutional limits”).

Even as to a “remedy,” the court could simply have declared that any future instructions or rules ensure that the requirements of § 768 be met. A mandatory injunction was not essential to maintaining the status quo between the parties. *L & L Concession Co*, 332 Mich at 388. After the court’s December 3 opinion, the status quo between the parties was that Defendants’ instructions were unlawful and thus unenforceable. No injunction was necessary to preserve this status, or at best, a simple prohibitory injunction enjoining the instructions would have sufficed.

Moreover, in the big picture, the status quo was that voters were not disenfranchised for returning absent voter ballots without their stub or in the wrong envelope. The injunction imposes a new process that disenfranchises the voter unless the voter can take corrective action by voting a new ballot. Where the default is now disenfranchisement, the injunction significantly altered the status quo for these absent voters. This is true even without discussing the new administrative burdens imposed on Defendants and election officials by the injunction vis-à-vis the previous challenged ballot process. Entering a permanent mandatory injunction—extraordinary and disfavored relief—was unnecessary and unsupported by the law.

Plaintiffs demonstrated no irreparable harm

The court did not assess whether Plaintiffs would suffer imminent, irreparable or serious harm absent an injunction. *Kernen v Homestead Dev Co*, 232 Mich App at 509. The only assessment the court made was that an injunction was necessary to protect future absent voters from disenfranchisement. (Defs’ Appx Vol 1, p 21, ¶¶ 2, 4.) To be sure, Defendants are worried about voters too. But in the injunction context, the harm to nonparties is generally assessed under the “public interest” factor. See *Slis*, 332 Mich App at 337 (identifying “interests of third persons and of the public” as one of the four injunction factors). That factor cannot supplant the burden of the parties seeking injunctive relief—including permanent, mandatory injunctive relief—to show they will suffer irreparable harm absent an injunction. The court made no finding that Plaintiffs—the RNC, MRP, and Clerk

Berry—would suffer any imminent injury or harm absent an injunction. This failure alone warrants reversal. See *Youmans v Charter Twp of Bloomfield*, 336 Mich App 161, 221 (2021) (finding court abused its discretion in granting permanent injunction where plaintiff “failed to demonstrate that the injunctive relief ordered by the trial court was necessary to avert irreparable harm.”) See also *Royal Oak Sch Dist v State Tenure Comm*, 367 Mich 689, 693 (1962) (“Equity should not be used to obtain injunctive relief where there is no proof that complainant would suffer irreparable injury.”).

Regardless, the record does not support finding irreparable harm. In their complaint, Plaintiffs RNC and MRP generally alleged the instructions threatened their and their members and candidates’ interests in “free, fair, and transparent” elections. (Defs’ Appx Vol 2, pp 384-385, ¶¶ 7-8.) Clerk Berry complained of being subject to instructions she believed unlawful and having her vote “diluted.” (*Id.*, p 386, ¶ 9.) Plaintiffs produced no evidence that the instances in which voters return their absent voter ballots without their stubs or in mismatched envelopes are widespread or occur in such numbers that could affect the outcome of any election. Nor did Plaintiffs produce evidence of even one instance in which an absent voter ballot that was returned missing its stub or in a mismatched envelope was not, in fact, lawfully voted. So, other than speculative fears about fraudulent voting and being generally aggrieved by an unlawful instruction, Plaintiffs were not facing any threat of imminent irreparable harm absent the injunction. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9, (2008) (“a particularized showing of

irreparable harm is an indispensable requirement”) (cleaned up); *Michigan AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 149 (2011) (speculative future harm insufficient to support injunctive relief).

The harm to Defendants outweighed any harm to Plaintiffs

The court did not weigh or balance the relative hardship to Defendants if an injunction was granted and to Plaintiffs if it was denied. *Dep’t of Environmental Quality*, 318 Mich App at 34. The court could not have done so anyway because it declined to hear from Defendants. As noted above, the court heard the parties’ summary disposition motions in June 2025 and did not render its decision until six months later, on December 3. The court then imposed a tight two-week deadline by which the parties were to propose a new process that would permit voters to “cure” their ballots. The court also imposed contemporaneous filing of the parties’ proposals—meaning that neither party had an opportunity to review or comment on the other’s proposal.

In their supplemental filing, Defendants expressly noted that “it would make sense for the parties and the Court to generally agree on a ‘cure’ or remedy, and Defendants [could] then develop the surrounding procedures.” (Defs’ Appx Vol 2, p 493.) Similarly, Defendants suggested that:

Given the variables in the proposed remedies, Defendants believe it would be beneficial to hold a status conference at which the parties and the Court can discuss the options. If acceptable to Plaintiffs and the Court, Defendants would produce a representative at the conference to assist in working through the proposals and answer questions the Court or Plaintiffs may have regarding either remedy. [*Id.*, p 498.]

The court, however, rejected these suggestions and simply adopted Plaintiffs' proposal. But, on balance, the injunction imposes a much greater hardship on Defendants than its absence would on Plaintiffs.

The injunction directly burdens Defendants in several ways. As detailed in the Director of Elections' Affidavit, the injunction imposes a new, multi-step notice-and-cure process for voters that would require the Bureau of Elections to generate new precinct closing documents and training materials in a condensed timeline to ensure that local clerks can implement the new process in an orderly manner. (Defs' Appx Vol 2, pp 546-548, 556-567, ¶¶ 15-17, 35.) This will require significant additional effort by Bureau staff, especially where training materials and training for the August 2026 primary election have already been released and are scheduled to begin in February 2026. (*Id.*, pp 556-557, ¶¶ 35-36.) Moreover, the injunction lacks the level of detail necessary to guide clerks, so the Bureau will need to spend substantial time developing additional details to create a workable framework (to the extent possible). (*Id.*, p 557, ¶ 37.)

Further, the injunction requires that voters be allowed to return a newly voted ballot via the Electronic Delivery and Return Portal (EDARP), which the Bureau developed *only* for active military and merchant marine voters pursuant to statutory mandate in MCL 168.759a(13), (17), limiting use of EDARP to these voters. (*Id.*, pp 552, ¶ 26.) Use of the EDARP requires the voter possess a Department of Defense certified signature. (*Id.*, pp 552-554, ¶¶ 26-29.) See also MCL 168.18a. Because the EDARP is not presently programmed for use by any

voter lacking such a signature, the injunction cannot be implemented to the extent it requires use of the EDARP. (*Id.*) Even assuming EDARP can be reprogrammed, it would likely take many months to do so and require significant testing and security review, along with updating existing training material related to EDARP. (*Id.*, pp 557-558, ¶ 38.)

In a similar vein, the injunction requires clerks to offer ballot-on-demand (BOD) printing of a new ballot for an affected voter. (*Id.*, pp 550-552, ¶¶ 23-25.) But BOD printing is reserved by statute for early voting sites, election day vote centers, combined same-day registration and voting sites, and translated ballots. See MCL 168.795b(2), MCL 168.797a(2).

Additionally, the injunction unduly restricts Defendants' authority and ability to implement a different process. The final order states that "the injunctive remedy set forth" in the order "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" mismatches and missing stubs. (Defs' Appx Vol 1, p 26) (emphasis added). While Defendants previously indicated that their preference would be to pursue rulemaking in lieu of a court-ordered remedy, the proposal was to codify the existing instructions or Defendants' proposed remedy. (Defs' Appx Vol 2, pp 494-495.) The injunction precludes the use of any other vehicle, like issuing new instructions or guidance, which Defendants otherwise have the express authority to issue instead of rulemaking, MCL 168.31(1). The injunction also precludes Defendants from implementing a remedy

that does not provide a “notice-and-cure” process. This is inconsistent with the court’s December 19 order which stated that the final order “shall provide that the Court’s injunctive remedy remains in place unless and until defendants *promulgate a rule that provides an alternative remedy covering both (a) mismatched ballot stub/envelope and (b) missing ballot stubs.*” (Defs’ Appx, p 519, ¶ 2.)⁹

In addition to that error, it is not immediately clear to Defendants that an adequate remedy must include forcing affected voters to “cure” their rejected ballot by casting a new ballot.¹⁰ Further, the injunction’s requirement that Defendants’ remedy be “consistent with Michigan law” is ambiguous where the court’s remedy is inconsistent with the Michigan Election Law in several ways, e.g. mandating use of the EDARP for any voter that needs to cure a ballot stub when statute expressly limits its user to military voters. Any remedy Defendants propose is also likely to be inconsistent with the election law in that it will propose processes not otherwise provided for by law and thus will be contrary to the injunction’s directive.

The injunction also provides the court’s remedy will govern “except that if Defendants promulgate [] a rule within *30 days* of an election,” then the injunction will control for that election. (Defs’ Appx Vol 1, p 27) (emphasis added). The import of the language is Defendants are expected to implement a new process beginning the thirty-first day before an election. But depending on the circumstances, that

⁹ Notably, Plaintiffs did not provide Defendants an opportunity to review their proposed final order and judgment before Plaintiffs filed it with the court.

¹⁰ Again, Defendants proposed processing the mismatched ballots as provisional envelope ballots. (Defs’ Appx Vol 2, pp 491-498.)

may be impossible to do in an orderly manner. Michigan law has codified a disfavor against last-minute changes to election procedures through a rebuttable presumption of laches for lawsuits challenging election procedures less than 45 days before an election. MCL 691.1031.¹¹ This reflects a public policy favoring the preservation of the status quo for election procedures in the period leading up to elections. The injunction contravenes this policy and does not appear to permit Defendants any discretion.

The harm to nonparties and the public weighed against an injunction

The court also failed to weigh the harm to third parties and the public before granting the injunction. The injunction binds not only Defendants, but the 1,521 city and township clerks who will be principally responsible for implementing the court's remedy. (Defs' Appx Vol 1, p 26.)¹² As explained in the Director of Elections' affidavit, the injunction imposes new administrative burdens on local clerks during already busy pre- and post-election periods. (Defs' Appx Vol 1, pp 548-550, ¶¶ 18-21.) And the imposed process is time and labor-intensive in that it requires clerks to both notify impacted voters of their deficient ballots and offer the opportunity to vote new ballots in a matter of days. (*Id.*, pp 549-550, ¶ 21.) The injunction thus imposes new and significant administrative burdens that Defendants challenged

¹¹ Notably, absent voting for military and overseas voters begins on the forty-fifth day before an election and for non UOCAVA voters on the fortieth day before an election. Const 1963, art 2, § 4(1)(b), (h).

¹² To the extent Plaintiff Clerk Berry supports the injunction, she is just one clerk; she neither speaks for the other 1,520 municipal clerks nor for Defendants.

ballot process did not. Further as discussed above, the injunction requires the use of BOD printers. But most clerks do not have BOD printers in their offices. (*Id.*, pp 550-552, ¶¶ 23-25.) So, complying with this part of the injunction would impose financial burdens on clerk offices to purchase BOD printers, which range in price from \$6,100 to \$7,785. (*Id.*)

Further, the very people the court was trying to protect—voters—stand to suffer the greatest harm from the injunction. The Court’s remedy will almost certainly result in the disenfranchisement of qualified voters who cast legitimate ballots. As explained in the Director’s Affidavit, a clerk’s ability to notify a voter of their rejected ballot will depend on what information is stored in the QVF—not every voter has a telephone number or email address listed in the QVF. (*Id.*, pp 548-549, ¶¶ 18-19.) Those who do not receive notice by mail, which is unlikely to arrive during the three-day notice and cure period—meaning the voter will only get notice that their ballot was not counted. (*Id.*, p 550, ¶ 22.)

Moreover, impacted voters must either appear in person to vote a new ballot or navigate the receipt and return of a ballot using EDARP. But there is no guarantee that the voter will be available or able to do so. For example, the voter may be absent from their jurisdiction, lack transportation, or suffer from a disability that limits travel. (*Id.*, pp 549-550, ¶ 21.) In those cases, the voters will not be able to “cure” their rejected ballot by voting a new one in person. And with respect to using EDARP, assuming a nonmilitary voter could do so, it is a multistep process that clerks and military voters generally navigate over the 45 days

preceding Election Day. Here, the process would have to be accomplished in a compressed period—3 days at the most—leaving little time for troubleshooting by the clerk and voter.

Additionally, some voters will likely be forced to use the new procedures or be disenfranchised due to inadvertent error by the clerk in issuing or processing their absent voter ballot, such as issuing the voter the wrong ballot by mistake. (*Id.*, pp 550-551, 555, ¶¶ 22, 32; Defs' Appx Vol 1, pp 102-103, ¶¶ 12, 16-17.) And in many instances the voter's mistake will be readily apparent to their local clerk, such as household swaps. (Defs Appx Vol 1, p 104, ¶ 19, pp 111-113, Attachment A; Defs Appx Vol 2, p 555, ¶ 33.)¹³ But the injunction does not permit clerks to reconcile their own error or obvious voter error. See *Stamos*, 46 Mich App at 641-643 (mistake or error by election official generally does not void vote).

Last, the public interest also weighed against granting injunctive relief. While the public certainly has an interest in secure elections, so too does it have an interest in ensuring the full and fair participation of all eligible voters in exercising the franchise. Plaintiffs provided no evidence of fraud or abuse occurring in relation to the casting and tabulation of absent voter ballots returned with missing or

¹³ The Director of Elections specifically described in his affidavit an example of a clerk error in issuing absent voter ballots. (Defs' Appx Vol 1, pp 102-103, ¶¶ 12, 16-17.) Fortunately, that error was discovered before Election Day. (*Id.*) And in collecting data from jurisdictions for the lower court, local clerks confirmed a number of household or same-residence swaps. (Defs Appx Vol 1, p 104, ¶ 19, pp 111-113, Attachment A.)

mismatched stubs, and where the injunction will likely result in disenfranchising eligible voters, it runs contrary to the public's interest.

The court overstepped the proper bounds of its injunctive authority

Finally, the injunction reflects an unprecedented encroachment of Defendants' duties to supervise and provide for the proper conducting of elections in Michigan. See, e.g., *Youmans*, 336 Mich App at 221 (reversing "permanent injunction requiring [] Township to document its ratemaking efforts in a specified fashion"). The Secretary is the chief elections officer in Michigan, MCL 168.21, and the Director of Elections is vested with the powers of the Secretary to carry out the supervision and administration of the election laws, MCL 168.32(1). The Defendants are charged with advising and directing all election officials in the performance of their duties, and with preparing instructions and training materials for use in conducting elections. MCL 168.31(1)(a)-(b), (j)-(m). They are experts in Michigan elections, which are uniquely decentralized.

On review, this Court must consider "the practicability of framing and enforcing" the injunction. *Dep't of Environmental Quality*, 318 Mich App at 34. Here, the lower court imposed its remedy without conferring with Defendants. And as demonstrated above, it was impractical for the court to attempt to frame a process in its order. Again, in addition to the administrative burdens, the injunction requires use of the EDARP—an impossibility without reprogramming, which will take months and require extensive testing. It also requires clerks to offer BOD printing, which most clerks will not have the capacity to provide.

Moreover, the Michigan Election Law constrains the use of these services to specific instances.

The injunction is also unprecedented in that it requires voters to cast a new ballot after the polls have closed on Election Day and for three days thereafter. (Defs' Appx Vol 2, p 558, ¶¶ 39-40; Defs' Appx Vol 1, p 25.) But by that time unofficial results will likely have been posted. Voting after Election Day is not contemplated by the Michigan Constitution or the Michigan Election Law and runs contrary to all existing grace periods and cure procedures that allow an already voted ballot *received* after Election Day to be counted.¹⁴

By way of comparison, military and overseas voters' ballots are deemed timely and counted "if postmarked on or before election day and received by the appropriate election official within six (6) days after such election." Const 1963, art 2, §4(1)(b). And in the case of an absent voter envelope signature cure, a voter may cure a missing or mismatched signature on the voter's return envelope until 5 p.m. on the third day after the election. MCL 168.766. However, that procedure provides for an *already submitted* ballot to be tabulated, not the issuance of a new ballot. This expansion of issuing ballots after Election Day would require additional

¹⁴ It is difficult to square the RNC's support of the injunction with its position in *Watson v Republican Nat'l Comm*, 120 F4th 200 (CA 5, 2024), petition for certiorari granted, 146 S Ct 355 (2025), in which it argues that absent voter ballots postmarked (and thus voted) by Election Day, but received after Election Day cannot be counted under the U.S. Constitution. Indeed, the injunction would seem to invite a challenge.

programming and training, as the QVF is not designed to allow new ballots to be issued after Election Day. (Defs' Appx Vol 2, p 558, ¶ 40.)

Permitting a voter to vote a new ballot after Election Day is highly unusual. In *Gracey v Grosse Pointe Farms*, 182 Mich App 193 (1989), *all* voters who cast absent voter ballots in a race for judge were permitted to recast their votes after Election Day where irregularities were alleged in the handling of absent voter ballots, which revote changed the Election Day result. In reviewing a motion to stay, this Court did not express any opinion on the propriety of lower court's order to recast ballots. See also *Bennink v City of Coopersville*, 2006 WL 1547279 at *1 (WD Mich, June 5, 2006) (denying request for injunctive relief to cast and count ballots post-election). *Gracey* does not support allowing a handful of voters to recast votes after Election Day, and the change in results demonstrates the concern in permitting voting after an election. While the number of voters in a jurisdiction who would be permitted to recast ballots under the injunction is likely to be low, it is certainly possible that voters recasting their ballots could change their votes based on the election results, thereby affecting close races.

The court chided Defendants for what the court determined was their misuse of the challenged ballot process absent express statutory command to use the process in this instance. But the court's injunction does significantly more violence to the Michigan Election Law than any remedy used or proposed by Defendants.

Again, Defendants proposed processing ballots with mismatched or missing stubs as provisional envelope ballots—an existing, established process—that does

not require voting a new ballot after Election Day. (Defs Appx Vol 2, p 496.) See also MCL 168.523a, MCL 168.813. Defendants' proposal also accounted for human error, by the voter or the clerk. (Defs Appx Vol 2, p 496.) And ultimately, the county board of canvassers, consistent with their authority to resolve or correct errors during the canvass, MCL 168.823, would have had discretion to tabulate the ballot. (Defs Appx Vol 2, p 496.) But even this proposal creates significant administrative hurdles. (*Id.*, p 497.) The simplicity and efficiency of the challenged ballot process is thus apparent and explains why Secretaries of State have utilized it for years. That process balances a voter's fundamental right to vote and to do so by absent ballot, Const 1963, art 2, § 4(1)(h), with election security, art 2, § 4(2).

To the extent Defendants' proposal and the enjoined challenged ballot process tip in favor of the voter, it is because the Constitution impels such a result. *Id.*, art 2, § 4(1) ("All rights set forth in [art 2, § 4(1)] shall be self-executing," and "shall be liberally construed in favor of voters' rights in order to effectuate its purposes.") The court's injunction does the opposite by automatically disenfranchising voters based on a presupposition that the ballot was not lawfully voted by a qualified voter. But Michigan's Constitution does not support such an unreasonable denial or burdening of the right to vote in the name of election security. Const 1963, art 2, § 4(1)(a) ("No person shall . . . use any . . . practice, or procedure . . . or . . . use any means whatsoever, any of which has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.")

For all these reasons, the Court of Claims “abused its discretion, overstepping the proper bounds of [] its injunctive powers[.]” *Youmans*, 336 Mich App at 221. The injunction should be vacated.

CONCLUSION AND RELIEF REQUESTED

Defendants-Appellants Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater respectfully request that this Court reverse and vacate the final order and judgment entered against Defendants and further order that summary disposition be granted in Defendants’ favor instead. Alternatively, this Court should reverse and vacate the final order and judgment to the extent it granted permanent mandatory injunctive relief against Defendants.

Respectfully submitted,

s/Heather S. Meingast

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Dated: February 24, 2026

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.212(B)(1), (3) because, excluding the part of the document exempted, this **merits brief** contains no more than 16,000 words. This document contains 13,202 words.

s/Heather S. Meingast

Heather S. Meingast (P55439)

Assistant Attorney General

Attorney for Defendants-Appellants

Exhibit B

STATE OF MICHIGAN
COURT OF CLAIMS

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

Plaintiffs,

Case No. 24-000148-MZ

HON. BROCK A. SWARTZLE

v

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

Defendants.

AFFIDAVIT OF JONATHAN BRATER

I, Jonathan Brater, being duly sworn, voluntarily state as follows:

1. I am the Director of Elections with the Michigan Department of State, Bureau of Elections. See MCL 168.32. I have served in this capacity since January 2, 2020.
2. I bring this affidavit in support of defendants' motion for summary disposition. If called as a witness, I could testify truthfully and accurately as to the information contained within this affidavit.
3. Under the Michigan Election Law, the Secretary of State is authorized to issue "instructions" and "advise and direct local election officials in the proper methods of conducting elections." MCL 168.31(1)(a)-(b). The Secretary is also required to issue instructions for the operation of absent voter counting boards. MCL 168.765a(17).
4. The Secretary of State must also establish a curriculum for comprehensive training and accreditation of county and local election officials, as well as a continuing election education program for those officials. See MCL 168.31(1)(j)-(k).
5. In my capacity as Director of Elections, I am "vested with the powers and shall perform the duties of the Secretary of State under his or her supervision, with respect to the supervision and administration of election laws." MCL 168.32.
6. In that capacity, I supervise the creation and dissemination of written materials that advise and direct local election officials in the performance of their election duties, including the Election Officials Manual, also known as the Clerk Accreditation Manual, which comprises nineteen chapters and an addendum and which serves as a comprehensive guide to the conduct of Michigan's elections.

7. Also in that capacity, I supervise the creation and provision of all trainings offered to clerks in all 83 counties before each November general election, as well as training provided to clerks who will conduct training of election inspectors. See MCL 168.33.

8. These materials and training programs instruct clerks on the proper conduct of elections and the handling of different types of ballots, including absent voter ballots, early voting ballots, and Election Day ballots.

9. Under the Michigan Election Law, when an elector votes in-person, the voter is “offered instruction in the proper method of voting on the electronic voting system” and, after the ballot is voted, the election inspectors “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.” If the numbers do not agree, “the ballot must be marked as ‘rejected’, and the elector must not be allowed to vote.” MCL 168.797a(2).

10. The procedure for comparing ballot stub numbers for absent voter ballots is different from that used when a voter casts a ballot in-person *at the polling place*. With absentee ballots, after election inspectors verify that the elector’s signature is present on the absent voter ballot return envelope and that the clerk has indicated that the absent voter ballot is approved for tabulation, the election inspectors compare the ballot number on the ballot stub with the ballot number on the face of the absent voter ballot return envelope. If the numbers match, the election inspectors detach the ballot stub, insert the ballot into the tabulator, and enter the elector in the pollbook as having cast an absent voter ballot. MCL 168.768.

11. Separate procedures are used for military/overseas and disability-accessible ballots

that are sent out electronically and then printed and returned by voters; the returned ballots do not have ballot stubs and are duplicated onto paper ballots by election inspectors before tabulation.

12. However, there are several reasons the stub number on an absent voter ballot may be different from the number on the return envelope. This could include, for example, two voters in the same household accidentally switching ballots (which, if confirmed, means the ballot is not processed as challenged) or the clerk's office making an administrative error, such as placing the wrong ballot in a voter's envelope or incorrectly entering ballot numbers into the Qualified Voter File, which generates the numbers that appear on the electronic pollbook, absent voter ballot list, and the label on the return envelope.

13. A stub number may be missing from a ballot if, for example, a voter mistakenly detaches the numbered ballot stub before placing the voted ballot back in the envelope. Statutorily required instructions instruct voters to ensure the numbered stub is visible but do not expressly warn them not to detach the stub, so voters may mistakenly believe they should retain the stub.

14. Specifically, the secrecy sleeve included with a ballot states, "WHEN YOU HAVE COMPLETED VOTING: Place the ballot in the secrecy sleeve so that votes cannot be seen and, *if there is a numbered stub, the numbered stub is visible.*" MCL 168.736b, 168.736c, 168.736d, 168.736e (emphasis added). The instructions relevant to the specific election are provided to absent voters along with the instructions that apply to absent voters in MCL 168.764a. MCL 168.764.

15. Unlike at the polling place, where a voter who accidentally has the wrong ballot stub number can be issued a new ballot, it is likely impossible for an absent voter in this situation

to be issued a new ballot. Rejecting the ballot, including for what could be a clerk's administrative error, would disenfranchise the absent voter even though the voter returned a single ballot in a signed, sealed envelope, and the voter's signature was already verified. Accordingly, a ballot with non-matching numbers is not rejected but instead processed as a challenged ballot. Challenged ballots are marked and can be retrieved after Election Day in the event of a legal challenge. MCL 168.745, MCL 168.746.

16. An example of a clerk's administrative error leading to mismatched ballot numbers occurred in the November 2024 election. Shortly before the election, Denver Township (Isabella County) alerted the Bureau of Elections to an issue with mismatched absent voter ballot numbers that the Township could not explain. All of the returned ballots were coming back with numbers different than the number indicated as assigned to each voter in the Qualified Voter File (which also generates the numbers used on the AV list or pollbook and the label on the return envelope).

17. The Bureau of Elections was able to determine the cause of the issue. After sending out ballots, the clerk had accidentally updated in the Qualified Voter File the ballot number range associated with all of the absent voter ballots that were sent out to a different range of numbers. That is, when the ballots were sent out, the ballot numbers assigned were in the number range 001-100, and these were the numbers on the ballots themselves (number range used for illustration; not the actual ballot numbers). But later, the clerk accidentally executed a batch number change in the Qualified Voter File, changing the range assigned to those voters to 101-200 (number range used for illustration; not the actual ballot numbers). So, even though the voters actually received and returned ballot numbers 001-100, the Qualified Voter File (and the absent voter list and pollbook) were now incorrectly showing ballot numbers 101-200 as associated with those voters.

18. Fortunately, in this instance the clerk's error was made after ballot envelope labels were printed, so the envelope labels matched the ballot number, but this error could have just as easily been made before labels were printed. Also in this instance, the Bureau was able to identify the cause of the issue, but the cause of administrative errors such as this may not always be identified by Election Day. Clerks sometimes make honest mistakes when they are administering complex and numerous election processes in a short timeline. Under the current instructions, the ballots could be marked as challenged and tabulated, allowing the ballots to count but also be retrieved and reviewed if needed. If the ballots had to be rejected because of mismatched ballot numbers, all of these voters would have been disenfranchised unless the clerk could somehow contact all of them and get them to cure their ballots in a very short timeline. The Bureau's instructions ensure that these types of mistakes do not cause voters, who have done nothing wrong, to be disenfranchised.

19. In general, mismatched or missing ballot numbers are an unusual occurrence. In response to the Court's request, the Bureau of Elections asked large counties that were conducting post-election audits to report to the Bureau instances of missing stubs or mismatched ballot numbers in addition to their other audit findings. The Bureau received data from 130 precincts and 14 additional pollbooks in Genesee, Ingham, Livingston, Macomb, Oakland, Saginaw, and Wayne Counties. Out of all the absentee ballots in these 130 precincts and 14 additional pollbooks, the counties reported 30 missing and 13 mismatched stubs. The reasons received for the mismatched stubs included two ballots from a household returned in one envelope and ballots that appeared to be from two members of the same household but with each ballot returned in the other household member's envelope. (Attachment A, Excel sheet.)

20. Although the total number of ballots with missing or mismatched ballots statewide

is not recorded in the Qualified Voter File, this data is recorded in each individual jurisdiction. In each absent voter ballot processing facility, instances of missing or mismatched ballot numbers are recorded in the absent voter ballot list or pollbook, which can be reviewed during a legal challenge, post-election process, or public records request. And, as noted, the ballots themselves are also retained.

21. In its Opinion, the Court hypothesized another potential reason for nonmatching ballot numbers: voter fraud. The Court presented the hypothetical case of Jane—who embarks on an elaborate scheme to commit voter fraud by surreptitiously substituting her ballot for that of Sally—as an example of why rejecting mismatched ballot stubs could prevent fraud. However, there are numerous other obstacles in the process to Jane’s scheme, and in any case, Jane could attempt to perpetrate the same fraud whether or not a mismatched ballot number resulted in rejection of the ballot.

22. First, Jane’s fraud scheme requires her to keep Sally’s ballot envelope in a place separate from Sally’s ballot to enable Jane’s unfettered access to Sally’s voted ballot. But there is no reason to separate the ballot from the envelope, since Sally needs access to both the ballot (to vote it) and the envelope (to sign it, as required by MCL 168.764a(1)). Sally would be confused indeed, and likely more than a little suspicious, when Jane announced that she would remove Sally’s ballot from the envelope, leave the envelope in a different room, bring the ballot to Sally, take Sally’s ballot back to the envelope in the other room, and then return with the ballot placed inside the envelope for Sally to sign. Why the unnecessary trips back and forth, Sally might wonder.

23. Sally’s suspicions might also be aroused when she sees that the ballot number printed on the ballot envelope differs from the number she saw on the ballot stub when she completed her

ballot. Sally might or might not notice this, but Jane would have to assume that risk while she was committing a felony in Sally's presence.

24. Furthermore, the Election Law requires Jane, as a person assisting Sally with her absentee ballot, to so attest and sign on the envelope. MCL 168.764a. Jane would have to either sign the envelope, identifying herself as the fraudster when the scheme comes to light, or refuse to sign it (committing another crime in front of Sally), and hope Sally did not notice that either.

25. Even if she managed to evade Sally's suspicions thus far, Jane would be taking the further risk that her actions would come to light should the challenged ballot be retrieved and reviewed after the election. If it were, Sally would surely know that Jane, who had unfettered access to her ballot, was the one who committed the crime. Although it is unusual for challenged ballots to be reviewed, the most likely scenario in which this would occur would be if it decided a close election, which is precisely Jane's motivation in committing the fraud. The very outcome that might make Jane's crime worthwhile to her would also be the one most likely to get her caught. In this event, a court could also utilize its authority to order that Sally be able to vote and have her vote counted as she wished.

26. Finally, someone as determined to commit fraud as Jane could do so just as easily without need for a "ballot switch." If she had unfettered access to Sally's ballot, Jane could simply fill in the bubble for Jane's preferred candidate and circle that selection while crossing out Sally's selection. Under Michigan's ballot adjudication standards, this would result in the vote for Jane's candidate being counted. (Defs' Ex 1, Chapter 8, October 2024, Absent Voter Ballot Processing, at 12-17). Of course, Jane could be caught and convicted of a felony for doing this as well, but in either case, it would not be rejecting a ballot with a mismatched stub that thwarted her.

27. I am not aware of any allegations of fraud such as Jane's scheme actually occurring nor have similar instances been reported by the clerks from whom the Bureau received information in November 2024. When allegations of fraud do occur (rarely), the Bureau hears about them. For example, the Bureau receives reports of alleged signature forgery, which are also referred to law enforcement.

28. The instruction that a ballot with non-matching numbers is not rejected has been provided to clerks in Chapter 8 of the Election Officials Manual since at least 2009. (Attachment B). The 2009 manual states, "If the ballot numbers do *not* agree, and no explanation for the discrepancy can be found (e.g. voters residing in the same household have switched their ballots), the ballot must be processed as a 'challenged ballot.' If the ballot numbers agree, continue processing." (Attachment B, Election Officials' Manual, Chapter 8: Absent Voter Counting Boards, pg. 5.) (emphasis added). Identical language is present in at least the 2013 version of Chapter 8. (Attachment C).

29. Beginning in 2017, the instruction was expressly extended to ballots with a missing ballot stub. The 2017 manual states, "If the ballot numbers do *not* agree or the ballot stub is missing, and no explanation for the discrepancy can be found (e.g., voters residing in the same household have switched their ballots), the ballot must be processed as a *Challenged* ballot. If the ballot numbers agree, continue processing." (Attachment D). Identical language is present in at the 2019, 2020, and 2022 versions of Chapter 8. (Attachments E through G).

30. Similar instructions were also provided to clerks and election inspectors in the document Managing Your Precinct on Election Day: Election Inspectors' Procedure Manual, also known as ED-124 or "The flipchart," since at least 1996. (Attachment H). The 1996

manual stated, “If the stub is missing or the ballot number does not match, enter a notation on the remarks page of the Poll Book and prepare the ballot as a ‘challenged’ ballot.”

(Attachment H, Managing Your Precinct on Election Day: Election Inspectors' Procedure Manual, Processing Absentee Ballots tab, pg. 1.) The 2016 and November 2020 versions of that document (Attachments I and J) use similar language for the same instruction, stating, “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 switching their ballots, the ballot must be prepared as a challenged ballot.” (Attachments I and J, Managing Your Precinct on Election Day: Election Inspectors’ Procedure Manual, Processing Absent Voter Ballots in the Precinct tab, pg. 1; pg. 44.)

31. The July 2024 version of the instructions challenged in the instant complaint was issued consistent with this previous, longstanding guidance, and did not deviate in any meaningful way.

32. All clerks in the state are required to complete accreditation training each election cycle. This includes reviewing the election accreditation manual and taking accreditation and election cycle training courses. Additionally, the Bureau provides train-the-trainer courses for county clerks and municipal clerks in large municipalities, who in turn train election inspectors in their jurisdictions.

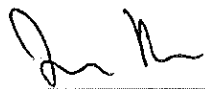
33. These trainings include instruction on how to process absent voter ballots, including ballots with missing stubs and ballots for which the number on the return envelope and the number on the stub do not match, as well as the process for marking a ballot as challenged and recording information in the poll book.

34. There presently is no process, statutory or otherwise, for “curing” a nonmatching

ballot number or missing stub. Unlike the signature cure process for absent voter ballots, which may be accomplished almost instantaneously via an emailed signature image, see MCL 168.766, 168.766a, a ballot number cure process would likely require issuing and placing a new ballot in an outgoing absent voter ballot envelope and mailing it to the voter, and then for the voter to return the ballot in a signed return envelope. Or to somehow secure the voter's presence at a voting location to issue a new ballot.

35. This would be practically impossible for most voters on Election Day and completely impossible for voters who are out of their community or those with limited mobility or transportation to their polling place (main reasons many voters choose to vote with absentee ballots).

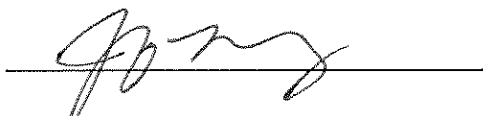
Further affiant sayeth not.



Jonathan Brater, Director of Elections

Dated: March 14, 2025

Subscribed and sworn to before me
March 14, 2025.



Print name exactly as it appears on application for commission as a notary public

Notary Public, State of Michigan, County of _____
My Commission Expires _____
Acting in the County of _____

Jennifer L. McInerney
Notary Public - STATE OF MICHIGAN
County of Ingham
My Commission Expires April 30, 2029
Acting in the County of Ingham