Order

Michigan Supreme Court
Lansing, Michigan

October 29, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 170494
COA: 379136
Ct of Claims: 24-000148-MZ

REPUBLICAN NATIONAL COMMITTEE, MICHIGAN REPUBLICAN PARTY, and CINDY BERRY,
Plaintiffs-Appellants,

v

SECRETARY OF STATE and DIRECTOR OF ELECTIONS,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the June 26, 2026 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

ZAHRA, J. (*dissenting*).

The present case concerns the interpretation of a provision of the Michigan Election Law,[1] MCL 168.768, and the treatment of absentee ballots when they are missing their ballot numbers or when the ballot numbers are mismatched with the return envelope provided to the voter. The statute in question provides, in relevant part:

> [T]he board of election inspectors shall . . . 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. [MCL 168.768 (emphasis added).]

Notwithstanding this statutory language, the Secretary of State instructed election inspectors to process absentee ballots that have missing or mismatched ballot stubs as

[1] MCL 168.1 *et seq*.

challenged ballots, tabulating each and noting the discrepancy in a logbook.[2] The Court of Claims held that MCL 168.768 prohibited the tabulation of these ballots. The Court of Appeals reversed, holding that the Secretary of State has discretion to develop a process to count the disputed ballots, given that the statute does not expressly compel rejection of them.

Michigan is a nationally prominent swing state with highly competitive local and statewide elections. For this reason alone, this Court owes Michigan residents a careful and thoughtful review and interpretation of this important provision of Michigan election law. The Court's failure to more fully consider and interpret this statute could have national ramifications and will undoubtedly affect voters throughout Michigan.

Moreover, as Michigan's court of last resort we owe it to the people of Michigan to explain why ballots with mismatched or missing ballot numbers are tabulated when our Legislature has plainly stated that "[*i*]*f the ballot numbers match, the board of election inspectors shall . . . prepare the ballot for tabulation*."[3] As noted by the Court of Appeals, "Integral to the creation of the United States and the democracy upon which it stands is the right and duty to engage in public discourse by casting one's vote."[4] It is the duty of this

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[2] See Michigan Department of State, Bureau of Elections, *Election Officials Manual* (October 2024), ch 8, pp 7, 21, available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/Absent-Voter-Ballot-Processing.pdf?rev=a17e3a62f893401ba30a13bea8ac2ed6&hash=4510AF9ECAA436B62681EFD9E03CEDC9> (accessed October 29, 2026) [https://perma.cc/9NE8-X8UJ].

[3] The Court of Appeals, in reversing the judgment of the Court of Claims, held that the Secretary has discretion to develop a workable administrative process given that the statute does not expressly compel rejection of the ballots, and in the absence of a statutory directive, these processes are squarely within the authority of the Secretary. But this holding raises more questions than it answers, given recent amendments to this provision of our election code. The prior version of MCL 168.768 permitted tabulation of absentee ballots without verifying that the ballot numbers match. See MCL 168.768, as amended by 1955 PA 271. But, as stated above, the current version of MCL 168.768 mandates verification of matching ballot numbers before the ballots are to be tabulated. See MCL 168.768, as amended by 2023 PA 81. In short, the Court of Appeals' interpretation of the pertinent provisions of our election code is far from perfect. Given the high stakes of election integrity, it is the duty of this Court to provide the voters of this state with an in-depth and substantive interpretation of the relevant provisions of our election law, rendered with the benefit of additional briefing and oral argument. It is difficult to understand why the Court's majority is reluctant to fulfill this duty.

[4] *Republican Nat'l Comm v Secretary of State*, ___ Mich App ___, ___ (June 26, 2026) (Docket No. 379136); slip op at 1.

Court to maintain the integrity and security of that right through the review and consideration of statutes such as this one. Anything less cheapens the role of this Court and fails to recognize the importance of the right to vote in our state. This is particularly true where questions of statutory interpretation are close, and the issues have a significant impact on the people of Michigan.

For these reasons, I would grant the application and consider additional briefing and arguments before resolving this jurisprudentially significant case.

BERNSTEIN, J., would grant leave to appeal.

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 29, 2026

Clerk