

In legal victory for Republicans, court order invalidates Benson election challenger rules



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With the midterm election just weeks away, a [Michigan judge issued an order Thursday invalidating new instructions](#) for election challengers created by the Bureau of Elections.

The order from Michigan Court of Claims Judge Brock Swartzle marks a legal victory for the Michigan GOP and Republican National Committee which brought the lawsuit challenging the legality of the election challenger manual issued by the Bureau of Elections this year.

Swartzle's order bars election officials from using the manual and requires Secretary of State Jocelyn Benson and Michigan elections director Jonathan Brater to rescind the manual or revise it to comply with Michigan election law.

Swartzle found that some of the provisions in the manual such as a ban on the use of electronic devices at absentee counting boards were at odds with the law or failed to undergo the proper rule-making procedure with input from the public and state lawmakers.



Benson and Brater "exceeded their authority with respect to certain provisions" in the challenger manual, Swartzle wrote. His order deems invalid instructions issued in the manual that required challengers to present credentials issued using a form from the Secretary of State's Office and restricted election challengers' communication to only those designated as challenger liaisons.

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Swartzle also took issue with prohibiting challengers' possession of cellphones, tablets and computers in counting rooms where absentee ballots are processed. Michigan election law

prohibits challengers from communicating information from absentee counting boards related "to the processing or tallying of votes" before the polls close.

"Prohibiting electronic devices in the AVCB facility might be a good idea, but before a good idea can become law or have legal force and effect, that idea must be embodied within an enacted statute or promulgated rule," Swartzle wrote.



In their filings in the case, Benson and Brater argued that Republicans had waited too long to bring their lawsuit seeking a last-minute court order nixing the challenger instructions. In less than three weeks, challengers will fan out across the state to observe polling locations and absentee ballot counting boards during the Nov. 8 election.

"This is an incredible victory for election integrity and the rule of law in Michigan," said Michigan GOP Chairman Ron Weiser. He said Swartzle's order "will help deliver the transparency needed in our elections."

Benson's office plans to appeal the ruling.

"Michigan elections require tens of thousands of officials, employees and volunteers to all work in concert in service of the millions of citizens casting ballots and in its role overseeing this complex and decentralized system statewide, the Michigan Bureau of Elections has always provided clear and detailed instruction for interaction among all participants to ensure legal compliance, transparency, and equal treatment of all voters," said Jake Rollow, a spokesperson for the Secretary of State's Office.

Election challengers credentialed by political parties and organizations have the ability to contest a voter's eligibility to cast a ballot and challenge election procedures at polling locations and counting boards that process absentee ballots. Poll watchers do not have the authority to make challenges but can observe Election Day activities.

Election officials say that challengers can play an important role in observing elections if they understand how the process works. In 2020, challengers aligned with former President Donald Trump mistook basic processes for fraud and filed hundreds of affidavits in support of lawsuits seeking to overturn the election.

Disputes over the 2020 election prompted the Bureau of Elections to issue new instructions outlining the rights and duties of election challengers and poll watchers, according to a legal brief from the bureau.

Absentee voting is already underway. Voters can request an absentee ballot online, by mail or in person at their local clerk's office or a satellite voting center. Polling locations will be open from 7 a.m. to 8 p.m. on Election Day, Nov. 8.

Clara Hendrickson fact-checks Michigan issues and politics as a corps member with Report for America, an initiative of The GroundTruth Project. Make a tax-deductible contribution to support her work at bit.ly/freepRFA. Contact her at chendrickson@freepress.com or 313-296-5743. Follow her on Twitter [@clarajanehen](https://twitter.com/clarajanehen).

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