Supreme Court of Ohio Clerk of Court - Filed November 18, 2026 - Case No. 2026-1574

2026-1574

IN THE OHIO SUPREME COURT

ORIGINAL ACTION IN MANDAMUS

STATE OF OHIO ex rel. EDWARD L. SCHIMMEL,
Relator,

v.

LUCAS COUNTY BOARD OF ELECTIONS, et al.,
Respondents.

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RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS

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Now comes Respondents, the Lucas County Board of Elections and its members Richard F. (Fritz) Schoen, Kurt M. Young, Dawn Christen, and Donald Miller, pursuant to *Rule* 12.04(B)(1) of the *Ohio Supreme Court Rules of Practice* and *Rule* 12(C), *Ohio Rules of Civil Procedure,* and hereby submit their motion asking the Court to dismiss, with prejudice, Relator Edward L. Schimmel's *Verified Complaint for Writ of Mandamus*. With the facts deemed to be true now before the Court, it may find that Relator Schimmel's election law claims are barred by the doctrine of laches and/or are moot. Thus, Respondents move the Court to dismiss the *Mandamus Complaint* on the ground that there is no genuine issue as to any material fact and Relator Schimmel can prove no set of facts which would entitle him to mandamus relief. Respondents' motion is supported by the factual allegations of the *Mandamus Complaint*, certain matters of public record, and their memorandum of law, with an attached exhibit, below.

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Respectfully submitted,

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LUCAS COUNTY PROSECUTING ATTORNEY

By: /s/ Kevin A. Pituch
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Counsel for Respondents

MEMORANDUM

I. STATEMENT OF THE CASE AND FACTS

Relator Edward L. Schimmel filed a *Mandamus Complaint* against Respondents Lucas County Board of Elections and its members Richard F. (Fritz) Schoen, Kurt M. Young, Dawn Christen, and Donald Miller. *Verified Mandamus Complaint,* Case No. 2026-1574 (Nov. 16, 2026). Relator Schimmel is a candidate (and Wood County, Ohio elector) in the

November 3, 2026 general election for the Ohio House of Representatives in House District 44, which comprises parts of Lucas, Ottawa, and Wood Counties. *Complaint supra* ¶10. Respondents are the Board of Elections, as an entity and its individual members (sued in their official capacities); the Board of Elections administers primary, special, and general elections in Lucas County. *Id.,* ¶11. In the unofficial count of votes from the November 3, 2026 general election, Relator Schimmel had a 56-vote lead in his race with several thousand provisional ballots left to be examined for their validity and then, if the Board of Elections found them valid, added to those already cast. *Id.,* ¶¶10-11. Relator Schimmel, although captioning his action as mandamus complaint, actually has asserted a prohibition claim; he seeks to stop--or prohibit--the Board of Elections from finding certain provisional ballots cast in Lucas County are valid and then adding those ballots to the votes already cast in his race, insisting those ballots were cast in an improper location--the individual voter's polling place, rather than at the Board of Elections office or other central location. *Id.,* ¶¶6-7, 20-22, 28-35.

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This Court has previously explained the provisional ballot process:

> "Under *R.C.* 3505.181, certain individuals shall be permitted to cast a provisional ballot at an election, including an eligible voter whose name does not appear on the official list of eligible voters for the polling place, an individual who is unable to provide the specified forms of identification, and an individual who previously requested an absentee ballot for that election. See *R.C.* 3505.181(A).
>
> If an individual desires to cast a provisional ballot, the board of elections provides a provisional ballot form that it prepared and a ballot. The board's form, which is designated an 'application,' specifically requires the voter to print the voter's name and to sign an affirmation. The provisional ballot form is printed on an envelope, which the voter seals after inserting the ballot.

> Upon receipt of the provisional ballots, the board of elections uses the information provided by the voters to determine whether they are eligible to vote and to have their votes counted. *R.C.* 3505.183(B)(1) and 3505.181(B)(4). Under *R.C.* 3505.183(D), "[n]o provisional ballots shall be counted in a particular county until the board determines the eligibility to be counted of all provisional ballots cast in that county * * * for that election." The board of elections thus cannot open and count any provisional ballot until the eligibility of each ballot has been determined. Once a provisional ballot is separated from its envelope, the ballots are then commingled to protect voter secrecy, and it becomes impossible to track the votes of any provisional voter."

State ex rel. Skaggs v. Bruner, 120 Ohio St. 3d 506, 507 (2008). This, once the provisional ballot envelopes are opened and the votes inside are added to those already cast, "it becomes impossible to track the votes of any provisional voter." That has already happened here. On November 16, 2026, Respondents determined the validity of the provisional ballots cast in the November 3, 2026 general election and Respondents' employees have already opened those provisional ballot envelopes and commingled the provisional ballots with those already cast. *Complaint*, ¶¶21-22, 32-36.

The Ohio Secretary of State, the Chief Election Officer in the State of Ohio (*R.C.* 3501.04), has issued a Directive (No. 2026-35), which is contained in Chapter 8 of the Secretary of State's 2026 Ohio Election Manual, regarding provisional ballots which states, among other things: "Certain voters can cast a provisional ballot at the board office or early voting site during the established early voting period, or *at their polling place* on Election Day, including: . . . Voters who have moved outside of their county (but still in Ohio) and didn't update their address by the deadline. *R.C.* 3503.16 and *R.C.* 3505.181." Consistent with Secretary of State's Directive 2026-35, as well as *R.C.* 3503.16 and *R.C.* 3505.181, and because the Respondents do not allow election day voting at the Board Office, Respondents

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have directed provisional ballot voters to cast their ballots at their respective polling places on election day. *Complaint,* ¶¶20-22, 36. As noted above, Relator Schimmel believes that the Ohio Secretary of State got it wrong with Directive 2026-35, that provisional ballots cast at the voter's polling place (rather than the Board's Office) are improperly cast, should not be counted as legitimate votes in the 2026 general election, and as a result, he asks this Court to do something about it. Id., ¶¶18-22, 32-36. While Respondents believe that the Ohio Secretary of State is correct and that *R.C.* 3503.16 and *R.C.* 3505.181 (when construed together) easily permit provisional voters to cast their ballots at their respective polling places, that determination may require evidence (an affidavit or two from Respondents) so that determination is outside the scope of that permitted by *Civil Rule* 12(C) and is unnecessary here given that Relator Schimmel's election law claims are barred by the doctrine of laches and/or are moot.

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The timeline of this case is as follows—the general election was held on November 3, 2026 with the Lucas County Board of Elections issuing its unofficial election results (which showed Relator Schimmel with a 56-vote lead in his race) in the early morning hours of November 4, 2026. *Complaint,* ¶¶10-11. Respondents set a special meeting date of November 16, 2026, at 8:00 a.m., to determine the validity of the provisional ballots cast in the general election. *Complaint* ¶¶21-22. In the evening of Sunday, November 15, 2026, counsel for Relator Schimmel sent an e-mail to the Respondents asking them to set aside certain provisional ballots in the same manner as that set forth in his *Mandamus Complaint. Id*. At their special meeting held on November 16, 2026, Respondents examined the aforementioned provisional ballots, found approximately 2,400 of the provisionals to be

valid (while rejecting approximately 660 as invalid); those provisional envelopes have been opened and the provisional ballots inside of those envelopes have been counted. See, https://www.toledoblade.com/local/politics/2026/11/16/elections-board-approves-2400-provisional-ballots-rejects-600/stories/20261116086; see also Exhibit No. 1 attached hereto (November 18, 2026 Agenda for Respondents' special meeting to re-make provisional ballots counted November16-17, if necessary).

Respondents now submit their *Civil Rule* 12(C) motion. They ask the Court to dismiss with prejudice Relator Schimmel's election law claims because, as will be described below, they are barred by the doctrine of laches and/or are moot.

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II. LAW AND ARGUMENT

A. Introduction

1. Standard for granting a motion to dismiss pursuant to *Civ. R.* 12(C).

A *Civil Rule* 12 motion to dismiss is a procedural device for testing the sufficiency of a Complaint filed in an original action. *Volbers—Klarich v. Middletown Mgt., Inc.*, 125 Ohio St. 3d 494, 497 (2010); *State ex rel. Hanson v. Guernsey County Board of Commissioners*, 65 Ohio St.3d 545, 548 (1992). 324, 324 (1989). As this Court stated:

> "When considering a *Civ. R.* 12(C) motion for judgment on the pleadings, a court must construe as true the material allegations made in the complaint, along with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party. *Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act*, 147 Ohio St.3d 42, 2016-Ohio-3038, ¶10, 59 N.E.3d 1274. Judgment is proper only if it appears beyond doubt that the nonmoving party can prove no set of facts entitling it to relief. Id. 'Thus, Civ. R. 12(C) requires a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law.'" *Rayess v. Educ. Comm'n for Foreign Med. Graduates,* 134 Ohio St. 3d 509, 2012-Ohio-5676, ¶18, 983 N.E.2d 1267, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 1996- Ohio 459, 664 N.E.2d 931 (1996).

State ex rel. Leneghan v. Husted, 154 Ohio St. 3d 60, 63-64 (2018); see also, *State ex rel. Duncan v. American Transm. Systems, Inc.,* 166 Ohio St. 3d 416, 418 (2022)("unsupported legal conclusions, even when cast as factual assertions, are not presumed true for purposes of a motion to dismiss").

In addition, matters of public record and documents "incorporated in a complaint may be considered part of the complaint for purposes of determining a *Civil Rule* 12(B)(6) motion to dismiss." *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 197 (2007)(Ohio Courts may take judicial notice of judicial opinions and public records accessible from the internet); *State ex rel. Crabtree v. Franklin Cty. Bd. of Health,* 77 Ohio St. 3d 247, 249 n. 1 (1997)(in assessing a motion to dismiss, the Court may also consider, as evidence, documents attached to the pleadings and matters of public record); *State ex rel. Neff v. Corrigan,* 75 Ohio St. 3d 12, 16 (1996)(courts may take judicial notice of appropriate matters in considering a motion to dismiss for failure to state a claim). So, in analyzing Respondents' *Civil Rule* 12(C) motion, the Court may consider the factual allegations of the *Mandamus Complaint* and certain matters of public record (such as Respondents approving approximately 2,400 provisional ballots at their November 16, 2026 special meeting and having their Respondents' employees open the provisional ballot envelopes and count the ballots inside).

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2. Writ of Mandamus.

This Court has original jurisdiction to consider a petition seeking a writ of mandamus under *R.C.* §2731.04 and *Ohio Const. Art.* IV §2(B)(1)(b). To be entitled to a writ of mandamus, Relator Schimmel must establish that: (1) he has a clear legal right to the

relief requested; (2) the respondents have a clear legal duty to perform the requested act, and (3) he has no adequate remedy in the ordinary course of the law." *State ex rel. Davis v. Janas,* 160 Ohio St.3d 187 (2020); see also, *R.C.* §2731.05; *State ex rel. Boler v. McCarthy,* 170 Ohio St. 3d 392, 393 (2023). This Court follows *R.C.* §2731.05: "Neither prohibition nor mandamus will lie where relator possesses an adequate remedy in the ordinary course of law." *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393 (1997); see also, *State ex rel. Hunter v. Certain Judges of the Akron Mun. Court,* 71 Ohio St. 3d 45, 46 (1994). The relator's failure to show that he has no adequate remedy at law is, by itself, sufficient to deny mandamus relief. *Id.*; see also, *State ex rel. Peoples v. Schimmel,* 152 Ohio St.3d 418, 420 (2017)("the fact that a prior appeal was unsuccessful or even wrongly decided does not mean that it was not an adequate remedy").

Mandamus is an extraordinary remedy "to be issued with great caution and discretion and only when the way is clear." *State ex rel. Manley v. Walsh,* 142 Ohio St.3d 384, 387 (2014); *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166 (1977). As Relator, Schimmel must prove his entitlement to mandamus relief by clear and convincing evidence. *State ex rel. Cleveland Right to Life v. State Controlling Bd.,* 138 Ohio St.3d 57, 58 (2013); *State ex rel. Waters,* 131 Ohio St.3d 55, 56 (2012).

B. Relator's Mandamus claims are barred by laches.

As stated by this Court regarding the doctrine of laches and the necessity of acting with a sense of urgency in election law litigation:

> "Extreme diligence and promptness are required in elections-related matters." (Cleaned up.) *State ex rel. Miller v. Union Cnty. Bd. of Elections*, 173 Ohio St. 3d 581, 2023-Ohio-3664, ¶ 18, 232 N.E.3d 775. "'Laches will bar an action when there is (1) an unreasonable delay or lapse of time in asserting a right, (2) the absence of an excuse for the delay, (3) actual or constructive knowledge of the injury or wrong,

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> and (4) prejudice to the opposing party.' " Id., quoting *State ex rel. Clark v. Twinsburg,* 169 Ohio St. 3d 380, 2022-Ohio-3089, ¶ 11, 205 N.E.3d 454."

See*, State ex rel. Koebel v. Erie Cty. Bd. of Elections*, 2026-Ohio-3999 ¶22; see also, *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 137 Ohio St.3d 62, (2013) quoting *State ex rel. Fuller v. Medina Cty. Bd. of Elections*, 97 Ohio St.3d 221, (2002)("laches may bar relief in an election-related matter if the party seeking relief has failed to act with the "'utmost diligence.'")

In this case, it is undisputed that all four elements, as set forth in *State ex rel. Koebel, supra,* for laches to bar Relator Schimmel's election law claims are present. Relator did not act with the "utmost diligence" that this Court requires for pursuing election law claims because: (a) the general election was held on November 3, 2026; (b) Respondents posted the unofficial election results on November 4, 2026; (c) Respondents held their special meeting to approve or reject provisional ballots starting at 8:00 a.m. on November 16, 2026; (d) at approximately 1:00 p.m. that same day, Respondents voted to approve approximately 2,400 provisional ballots and Respondents' employees began the process of removing the provisional ballots from the envelopes and counting them; (e) Relator filed his *Complaint* after the conclusion of the Board's November 16, 2026 special meeting: and (f) Respondents finished counting the provisional ballots on November 17, 2026. Thus, it is undisputed that Relator Schimmel knew of a possible election law claim as early as November 4, 2026, but waited twelve days, until November 16, 2026 to file his *Complaint.* Further, the prejudice necessary for laches to bar his claims exists because the provisional ballots he seeks to challenge have already been counted. Therefore, that twelve-day delay in filing his lawsuit, with no explanation for that delay, and the resulting prejudice permit the Court to find that

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laches requires dismissal of the *Mandamus Complaint.*

C. Relator's Mandamus claims are also moot.

In addition to laches, Relator Schimmel's election law claims are moot. This Court has stated that its function is "to decide actual controversies and withhold advice upon moot questions." *State ex rel. Grenell v. Geauga Cnty. Bd. of Comm'rs*, 168 Ohio St. 3d 154, (2022), quoting *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970). This Court has also stated that: "When an actual controversy ceases to exist, 'this court must dismiss the case as moot.'" *Id.,* quoting *M.R. v. Niesen,* 167 Ohio St. 3d 404, 2022-Ohio-1130, ¶ 7, 193 N.E.3d 548. Finally, when a respondent in a mandamus case performs the requested act, the case is moot. *State ex rel. Carlton v. Heekin*, 165 Ohio St. 3d 248, (2021).

The Court may find that Relator Schimmel's election law claims, which seek to bar Respondents from opening certain provisional ballot envelopes and then counting the provisional ballots contained therein, cannot bring him the relief he seeks because, as noted above, all of that has already occurred--the provisional ballot envelopes have been opened and the ballots contained therein have been counted. As Relator Schimmel concedes (*Complaint* ¶32), once the provisional ballots are opened and "mingled with otherwise valid ballots," he has no remedy in this case. As a result, his election law claims are moot and subject to a summary dismissal. In the same manner, the Court may now find that Relator Schimmel's *Motion for Expedited Briefing and Immediate Relief* (filed November 16, 2026—after Respondents had already determined the validity of the provisional ballots in question) is also moot and should be summarily dismissed.

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III. CONCLUSION

Based on the foregoing, Respondents' motion for judgment on the pleadings is well-taken and should be granted. Relator Schimmel's election law claims are barred by the doctrine of laches and/or are moot. Therefore, Respondents, pursuant to *Supreme Court Rule* 12.04(B)(1) and *Civil Rule* 12(C) move the Court to dismiss, with prejudice, Relator Schimmel's *Mandamus Complaint* on the ground that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.

Respectfully submitted,

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

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CERTIFICATE OF SERVICE

A copy of the foregoing motion was sent by electronic mail on the 18th day of November, 2026 to counsel for Relator: W. Stuart Dornette E-mail: dornette@taftlaw.com; Philip D. Williamson E-mail: dwilliamson@taftlaw.com; and Dominic Bayer E-mail: dbayer@taftlaw.com.

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