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

No. 26-1574

# In The Supreme Court of Ohio

ORIGINAL ACTION IN MANDAMUS

THE STATE OF OHIO EX REL. EDWARD L. SCHIMMEL,
Relator,

v.

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

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## ANSWER OF RESPONDENTS TO RELATOR'S COMPLAINT IN MANDAMUS

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Now come 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* 12.08 of the *Ohio Supreme Court Rules of Practice,* submit their Answer to Relators' Complaint in Mandamus as follows:

1. Respondents admit the allegations contained in paragraph 1 of the Complaint.

2. Paragraphs 2, 3, 4, and 5 of Relator's Complaint set forth legal conclusions and questions of law to be determined solely by the Ohio Supreme Court to which no answer should be required. If these paragraphs are later deemed to contain allegations that Respondents need to answer, Respondents deny all such all allegations.

3. Respondents admit that Relator seeks a writ of mandamus but deny that he is entitled to one based upon the applicable Ohio election laws and further based upon the affirmative defenses of mootness and laches—the actions Relator asks the Court to stop, the opening of certain provisional ballot envelopes and the counting of the provisional ballots contained in those envelopes, has already occurred. Respondents otherwise deny the remaining allegations contained in paragraphs 6 and 7 of the Complaint.

4. Respondents admit the allegations contained in paragraphs 8 and 9 of the Complaint.

5. Respondents admit Relator is a candidate for election to the Ohio House of Representatives for House District 44 but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Complaint and therefore, deny same.

7. Respondents admit the allegations contained in paragraph 11 of the Complaint.

8. Paragraphs 12, 13, 14, 15, 16, 17, 18, 19A, and 19B of Relator's Complaint set forth legal conclusions and questions of law to be determined solely by the Ohio Supreme Court to which no answer should be required. If these paragraphs are later deemed to contain

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allegations that Respondents need to answer, Respondents deny all such all allegations.

9. Respondents admit the allegations contained in paragraphs 20, 21, and 22 of the Complaint.

10. Respondents deny the allegations contained in paragraph 23 of the Complaint—Respondents determined the validity of provisional ballots at its November 16, 2026 special meeting, the provisional ballot envelopes have been opened, and the provisional ballots contained in those envelopes have been counted.

11. Respondents incorporate the admissions, denials, and averments set forth in paragraphs 1-10 above in response to paragraph 24 of the Complaint.

12. Paragraphs 25, 26, 27, 28, and 29 of Relator's Complaint set forth legal conclusions and questions of law to be determined solely by the Ohio Supreme Court to which no answer should be required. If these paragraphs are later deemed to contain allegations that Respondents need to answer, Respondents deny all such all allegations.

13. Respondents deny the allegations contained in paragraphs 30, 31, and 32 of the Complaint.

14. Paragraphs 33, 34, and 35 of Relator's Complaint set forth legal conclusions and questions of law to be determined solely by the Ohio Supreme Court to which no answer should be required. If these paragraphs are later deemed to contain allegations that Respondents need to answer, Respondents deny all such all allegations.

15. Respondents deny the allegations contained in paragraph 36 of the Complaint in that the 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

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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.

16. Respondents deny each and every allegation of the Complaint not expressly admitted to be true herein.

**FIRST DEFENSE**

17. The Complaint fails to state a claim upon which relief can be granted against the individual board members of the Lucas County Board of Elections.

**SECOND DEFENSE**

18. Relator's claims are barred by the doctrine of laches which required Relator to exercise the "utmost diligence" in pursuing his election law claims. *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections,* 137 Ohio St.3d 62, 66 (2013), quoting *State ex rel. Fuller v. Medina Cty. Bd. of Elections,* 97 Ohio St.3d 221, 222 (2002)("relators requesting extraordinary relief in an election-related matter are required to act with the required promptness, and if they fail to do so, laches may bar the action"). Relator knew of his potential claim as early as November 4, 2026 (when Respondents posted the unofficial results of the November 3, 2026 general election) yet Relator did not file his Complaint until twelve days later and *after* Respondents had voted, at their November 16, 2026 special meeting, to approve certain provisional ballots cast in that general election and have those approved provisional ballots counted by their employees.

**THIRD DEFENSE**

19. Relator's claims are barred by *R.C.* §3503.16 and §3505.181.

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**FOURTH DEFENSE**

20. Relator's claims are moot pursuant to *State ex rel. Grendell v. Geauga Cnty. Bd. of Comm'rs,* 168 Ohio St. 3d 154, 155 (2022)("it is the function of this court "'to decide actual controversies' and withhold advice upon moot questions") and *State ex rel. Jerninghan v. Cuyahoga Cty. Court of Common Pleas,* 74 Ohio St.3d 278, 279 (1996) ("a writ of mandamus will not issue to compel an act already performed") where the action Relator seeks to stop—the opening of certain provisional ballot envelopes and the counting of the provisional ballots contained therein has already occurred and, as Relator concedes (Complaint ¶32), once the provisional ballots are opened and "mingled with otherwise valid ballots," Relator has no remedy in this case.

**FIFTH DEFENSE**

21. Relator does not possess a clear legal right to the relief he seeks.

WHEREFORE, Respondents pray that Relator's Complaint be dismissed and that they recover their costs incurred herein.

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Respectfully submitted,

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LUCAS COUNTY PROSECUTING ATTORNEY

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Kevin A. Pituch (counsel of record)
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CERTIFICATE OF SERVICE

A copy of the foregoing Answer was sent by email on the 18th day of November, 2026 to Counsel for Relators: 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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