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

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. EDWARD L. SCHIMMEL, **Relator,** **v.** **LUCAS COUNTY BOARD OF ELECTIONS, et al.,** **Respondents.**	**CASE NO: 2026-1574** **ORIGINAL ACTION IN MANDAMUS**

MOTION TO INTERVENE OF DAVID J. FOURNIER

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***Motion for admission Pro Hac Vice*
forthcoming

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MOTION TO INTERVENE

David J. Fournier hereby moves to intervene as Respondent in this action as a matter of right under Civ.R. 24(A), or, in the alternative, by permission under Civ.R. 24(B). The grounds for intervention are set forth in the attached Memorandum in Support.

Proposed Intervenor-Respondent Fournier has attached a proposed Answer to Relator's Complaint pursuant to Civ.R. 24(C). *See* Exhibit A.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

David J. Fournier seeks to join the above-captioned original mandamus action, which concerns the counting of provisional ballots in Lucas County, as an intervenor-respondent. Fournier is the Democratic nominee for House District 44, running against Relator, Edward Schimmel, who is the Republican candidate. He therefore has a direct, significant, and legally protectable interest in the outcome of this litigation for the inverse reasons that Relator does: the Complaint seeks an order prohibiting the Lucas County Board of Elections (the "Board") from counting provisional ballots that could well make up the narrow margin between the two candidates. And, even setting the current margin aside, Fournier has an interest as a candidate for office in the rules that govern his election.

The motion is timely, filed just two days after the Complaint and in line with the briefing schedule entered by the Court yesterday. Fournier is filing herewith a proposed Motion to Dismiss, in accordance with that schedule. No party will therefore be prejudiced by Fournier's intervention.

No existing party adequately represents Fournier's interest as a candidate. The Board is a government entity charged with conducting elections and canvassing ballots. By definition, it cannot represent a candidate's more narrow, partisan interest in protecting his electoral prospects.

Finally, even if the requirements of Rule 24(A) were not satisfied, the Court should grant permissive intervention under Rule 24(B). As set forth in the accompanying Proposed Motion to Dismiss, Fournier raises a number of defenses that share common issues of law and fact with the claims in this case. And as already explained, the motion is timely and intervention will not prejudice any party.

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BACKGROUND

November 3, 2026, marked the general election in Ohio. Schimmel is the Republican

candidate in House District 44, which encompasses parts of Lucas, Wood, and Ottawa Counties. Fournier is the Democratic candidate.

On November 15, 2026, Schimmel, through counsel, sent a letter to the Lucas County Board of Elections. Compl. ¶ 21. Schimmel "requested that the Board, before opening any affected envelope: (1) identify and report, by precinct, the number of provisional ballots in the Category [of challenged ballots] by November 16, 2026; (2) segregate and preserve those envelopes, together with the related poll-book entries and precinct-official logs; (3) vote on the record to reject those ballots under R.C. 3503.16(C) and R.C. 3505.183(B)(4)(a)(ii); and (4) give advance written notice of the Board meeting at which the ballots would be considered and permit Relator and his counsel to attend and be heard." *Id.*

The Board voted to open and count the relevant provisional ballots on November 16. Compl. ¶ 22. Schimmel filed his Verified Complaint for a Writ of Mandamus, Alternative Writ, and Immediate Relief the same day. Under Ohio law, each county election board must complete its canvass of results by November 24, 2026. *See* R.C. 3505.32(A).

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LEGAL STANDARD

This Court construes Civil Rule 24 "liberally to permit intervention." *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 2011-Ohio-4612, ¶ 41. A proposed intervenor is entitled to intervene under Civ.R. 24(A)(2) if: (1) the motion to intervene is timely; (2) the applicant has an interest relating to the property or transaction that is the subject of the action; (3) the applicant's ability to protect its interest will be impaired without intervention; and (4) the existing parties may not adequately represent the applicant's interest. *See* Civ.R. 24(A)(2). When interpreting Civil Rule 24, Ohio courts often refer to federal case law interpreting the "analogous" Federal Rule 24.

See Indiana Ins. Co. v. Murphy, 2006-Ohio-1264, ¶ 8.[1]

ARGUMENT

Fournier satisfies all four requirements for intervention as of right. His motion to intervene is timely, coming two days after the filing of the operative Complaint. The disposition of this case directly threatens to impair his ability to protect his interests as a candidate. And the Board's institutional interests differ in significant ways from Fournier's interests as a candidate in the election at issue, making the Board's representation of his interests inadequate. Fournier has a right to intervention in this case for the same reason that Schimmel has the right to bring it. For these reasons, Fournier should be granted intervention as of right, or, in the alternative, permissively.

A. Fournier's motion is timely.

Fournier's motion is timely. Schimmel filed his Complaint on November 16, 2026. This motion was filed two days later, on November 18, 2026. In compliance with the expedited briefing schedule ordered by this Court, Fournier's proposed Motion to Dismiss is being filed concurrently with this Motion. Given that these proceedings have just commenced and that intervention will not delay the proceedings or prejudice Schimmel or Respondents, Fournier easily satisfies the timeliness requirement. *See State ex rel. First New Shiloh Baptist Church v. Meagher*, 1998-Ohio-192, 82 Ohio St.3d 501, 503 (listing factors).

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B. The disposition of this case threatens to impair Fournier's ability to protect his substantial legal interest in the action.

As a candidate opposite Schimmel for House District 44, Fournier has a significant interest in this case, and the action threatens to impair his ability to protect that interest. Civ.R. 24(A)(2)

[1] Rule 24(C) requires intervention motions to be "accompanied by a pleading." Civ.R. 24(C). Fournier wishes to seek dismissal of the complaint in lieu of answering, and therefore attaches a proposed motion to dismiss to be docketed if his intervention is granted. Fournier also attaches a proposed Answer to ensure compliance with Rule 24(C).

permits intervention when "the disposition of the action may as a practical matter impair or impede the applicant's ability to protect" his interest. This interest does not need to be a "pecuniary or property interest," *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59, 62 (5th Cir. 1987) (per curiam); instead, a would-be intervenor need only show their "stake in the matter [] goes beyond a generalized preference that the case come out a certain way." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015).

The outcome of this case will decide the rule that governs the counting of votes, impacting whether ballots properly cast are counted and potentially deciding the winner of the election in House District 44. As alleged by the Complaint, Schimmel held a 56-vote lead over Fournier as of election night. Compl. ¶ 10. Approximately 80% of the votes cast in the race as of election night were cast in Lucas County. *Id.* The provisional ballots at issue may very well make up that margin. But in any event, Fournier has an interest in a fair and consistent process, regardless of "whether these decisions help, hurt, or have no effect on [his] electoral prospects." *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026). Candidates have a "personal stake in the rules that govern the counting of votes" in their elections. *Id.* at 76. Especially given the closeness of the race, the "discarding of lawful [votes]" may "erode[] public confidence that the election results reflect the people's will," and that diminished confidence in the electoral process causes "a concrete harm" to a candidate. *Id.* at 78. For these reasons, this Court has often granted intervention for candidates that sought to intervene in cases that would impair their ability to protect their interest in the elections at issue. *See, e.g.*, *State ex rel. Derrig v. LaRose*, 2026-Ohio-3703; *see also State ex rel. Schreiner v. Erie Cty. Bd. of Elections*, 2024-Ohio-156.

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C. No other party adequately represents Fournier's interests.

Fournier, as a candidate for the election at issue in this action, has interests that are not

adequately represented by Respondents. Demonstrating inadequate representation generally "present[s] proposed intervenors with only a minimal challenge." *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 195–96 (2022). Fournier satisfies Civ.R. 24(A)(2) by showing "that representation of his interest 'may be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538, n.10 (1972) (describing this burden as a "minimal" one); *see also State ex rel. Smith v. Frost*, 74 Ohio St.3d 107, 108 (1995). And Civ.R. 24(A)(2) focuses on whether existing parties adequately represent a would-be intervenor's interest—not whether existing parties may seek the same ultimate outcome. "[A] prospective intervenor must intervene on one side of the 'v.' or the other and will have the same general goal as the party on that side. If that's all it takes to defeat intervention, then intervention as of right will almost always fail." *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020).

The Board and its members have institutional interests that differ from Fournier's candidate-specific interest in the rules by which ballots are counted and the outcome of this election, among other things. The Board has no stake in which candidate wins and may have other interests, such as election administration considerations, that Fournier does not share. Fournier, as the candidate for House District 44, has an interest in every lawful vote for him counting. The Board has an interest in meeting its statutory deadline to finish its canvass, *see* R.C. 3505.32(A), and may decide it has no stake in what rules govern provisional ballot counting so long as they are consistent. And the Board does not have the same interest Fournier has, as a candidate "seeking to claim the right to voice the will of the people … in knowing what that will is." *Bost*, 607 U.S. at 78.

In short, Fournier's interests differ from the Board's in material respects, and the Board's representation of his interests is likely inadequate. Fournier thus seeks to protect his candidate-

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specific interests from being impaired. *See, e.g.*, *Craig v. Simon*, 493 F. Supp. 3d 773, 781 (D. Minn. 2020) (holding that a proposed candidate intervenor had "interests [] not adequately represented by the existing [governmental] defendant").

D. In the alternative, the Court should grant Fournier permissive intervention under Civ.R. 24(B).

Alternatively, Fournier satisfies the requirements for permissive intervention under Civ.R. 24(B). Rule 24(B) permits intervention where the "claim or defense and the main action have a question of law or fact in common," and where intervention would not "unduly delay or prejudice the adjudication of the rights of the original parties." Fournier's defenses overlap entirely with the questions of law raised by Schimmel in the Complaint. And as discussed above, this motion comes just two days after Schimmel filed his Complaint. Given that this case is in its earliest stages and Fournier is ready to participate on any schedule this Court sets, whether expedited or otherwise, there is no likelihood of undue delay or prejudice to the original parties.

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CONCLUSION

For the foregoing reasons, David J. Fournier respectfully requests that his Motion to Intervene be granted and that his proposed Answer and proposed Motion to Dismiss, attached, be accepted into the record.

Dated: November 18, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Proposed Intervenor's Motion to Intervene and attached Answer were sent via email this 18th day of November, 2026 to the following attorneys listed as counsel of record to the parties:

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