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**

PROPOSED INTERVENOR-RESPONDENT DAVID J. FOURNIER'S PROPOSED MOTION TO DISMISS RELATOR'S VERIFIED COMPLAINT FOR A WRIT OF MANDAMUS, ALTERNATIVE WRIT, AND IMMEDIATE RELIEF

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Proposed Intervenor-Respondent David J. Fournier submits this proposed motion to dismiss Relator Edward L. Schimmel's Verified Complaint for a Writ of Mandamus, Alternative Writ, and Immediate Relief, in accordance with this Court's November 17, 2026 Order directing a response to the complaint to be filed no later than 4:00 p.m. on Wednesday, November 18, 2026. A memorandum in support follows.

MEMORANDUM IN SUPPORT

Nearly two weeks after the November 3, 2026 general election, Relator Edward Schimmel seeks an order from this Court prohibiting the Lucas County Board of Elections (the "Board") from accepting and counting provisional ballots cast in reliance on a directive from the Ohio Secretary of State issued over two months before the election. The election is over. Voters have cast their ballots, and all that remains is for election officials to complete their tabulations based on the rules established before the election on which voters and election officials relied. This post-hoc attempt to discard lawfully cast ballots is procedurally improper, equitably barred, and would produce multiple federal constitutional violations. The Court should dismiss the Complaint, for multiple independently sufficient reasons.

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First, no amount of careful wordsmithing can obscure that what Schimmel ultimately seeks is an order preventing the counting of a particular category of ballots. This Court lacks original jurisdiction to issue such a prohibitory injunction, regardless of what formulaic labels Schimmel puts on his complaint. The very statutes that he invokes confirm the prohibitory nature of the relief he seeks. *See* Compl. ¶ 26 ("R.C. 3505.183(B)(4)(a)(ii) and (B)(4)(b) provide that where the voter is not eligible, or the board cannot determine eligibility, the envelope 'shall not be opened, and the ballot shall not be counted.'"). A request for a prohibitory injunction that must be sought in a

different forum cannot be transformed into a mandamus action initiated before this Court merely through artful drafting.

Second, Schimmel's request comes far too late. The statutory interpretation that Schimmel challenges and on which the Board relied was announced by the Secretary of State in a published directive in August of this year. Election officials and voters alike have relied on that directive. Schimmel had *months* to challenge that interpretation before voters started casting ballots and election officials started counting them. But he waited until nearly two weeks *after* election day to bring this action attempting to disrupt the otherwise orderly process of counting and canvassing provisional ballots, and only after he apparently believed he was in peril of losing the election. Simply put, Schimmel seeks to change the rules of the game after it has already been played. Equity does not permit a candidate to lie in wait while voters cast ballots in reliance on official guidance and to bring suit to disenfranchise voters only once it is too late for them (or proposed Intervenor) to react. Schimmel's unreasonable delay and the resulting prejudice to voters, election officials, and candidates like proposed Intervenor therefore compel dismissal under the equitable doctrine of laches.

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Third, the relief Schimmel seeks would produce multiple violations of the United States Constitution. Schimmel is a candidate in House District 44, which comprises portions of Wood, Ottawa, and Lucas Counties. He seeks an order requiring officials in Lucas County to reject the ballots of voters who are similarly situated to counterparts elsewhere in Ohio, including in the other counties in House District 44. The Fourteenth Amendment's Equal Protection Clause prohibits such disparate treatment. And to change the rules after voters already cast ballots in reliance on guidance from Ohio election officials would be fundamentally unfair in violation of the Due Process Clause, and would unlawfully infringe the fundamental right to vote.

Fourth, Schimmel cannot identify the sort of "clear legal duty" that mandamus requires. He seeks an order disenfranchising voters who *are* registered, *do* reside in the voting precinct at issue, and as to whom the *only* reason they must vote provisionally is so the county must confirm their updated address. There is no substantive reason such Ohioans cannot vote, and the Secretary's published directive compels counting provisional ballots cast at a polling place by registered voters who recently moved from one Ohio county to another. Schimmel's interpretation of the relevant statutes would place two provisions at war with each other, while the Secretary of State's interpretation, followed by the Board, allows the election code to be read as a harmonious whole.

And finally, Schimmel is not entitled to mandamus relief because he has an adequate remedy in the ordinary course of law: he can bring an action for a declaratory judgment and injunction in the appropriate trial court. Indeed, that is the only procedurally appropriate avenue for seeking a prohibitory injunction such as this.

For any and all of these reasons, the Court should dismiss this action.

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BACKGROUND

The Ohio election code permits any registered Ohio voter who "moves from one county to another within the state" and has not yet updated their voter registration to reflect their new county of residence to "cast a provisional ballot." R.C. 3505.181(A), (A)(6). To cast a provisional ballot, a voter "shall complete and execute a written affirmation before an election official at the polling place" stating that the voter satisfies the required qualifications. R.C. 3505.181(B)(2). Another statute, R.C. 3503.16, provides that voters who have moved from another county within Ohio that have not registered in their new county "*may* vote" by provisional ballot by going to the office of the board of elections for that county or another designated location. *See* R.C. 3503.16(C) (emphasis added). R.C. 3503.16 does not, however, purport to supersede the otherwise applicable

provisions of R.C. 3505.181, which, again, *expressly* allow voters who move between counties to cast a provisional ballot at their new polling place where necessary. Nor does it provide that the method outlined in R.C. 3503.16(C) is the exclusive method for such voters to cast provisional ballots.

On August 4, 2026, Ohio Secretary of State Frank LaRose issued the updated Ohio Election Official Manual.[1] In Secretary LaRose's letter to all county boards of elections, members, directors, and deputy directors informing them of the new Manual's release, he noted that the new Manual constituted "*replacement permanent directives* for all chapters[,] . . . including updated guidance reflecting clarifications and changes to the law."[2] The now-operative version of the Ohio Election Official Manual includes a chapter on provisional voting, Directive 2026-35, which states that Ohio voters "can cast a provisional ballot . . . at their polling place on Election Day" if they "have moved outside out of their county (but still in Ohio) and didn't update their address by the deadline."[3] Ohio law requires that county boards of elections perform duties as laid out by "the rules, directives, or advisories of the secretary of state." R.C. 3501.11(P).

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[1] *See* Ohio Sec'y of State, Directives 2026-28 to 2026-43, *available at* https://www.ohiosos.gov/elections/elections-administration/directives (last visited Nov. 18, 2026). Courts may "take judicial notice of appropriate matters in considering a motion to dismiss," *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 16 (1996), including "government publications and website materials," *Olentangy Commons Owner LLC v. Fawley*, 2023-Ohio-4039, ¶ 30 (quoting *Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co.*, 309 F. Supp. 3d 1216, 1220, fn. 4 (2018)).

[2] Ohio Sec'y of State, Directive 2026-27 (Aug. 4, 2026), https://www.ohiosos.gov/assets/dir2026-27-updated-election-official-manual.pdf (emphasis added).

[3] Ohio Sec'y of State, Directive 2026-35, ch. 8, at 8-301 to 8-302 (Aug. 5, 2026), https://www.ohiosos.gov/assets/dir2026-35-eom-chapter-8.pdf. The prior version of the Manual's chapter on provisional voting stated that both voters who moved from one precinct within a county and voters who moved outside their county could cast a provisional ballot "at the board of elections office or at another site designated for early in-person absentee voting." Compl., Ex. D, at 242-43. The prior version of the chapter did not mention whether either type of voter could cast a provisional ballot at a polling location.

Two months later, on November 3, 2026, Ohio held its general election. By statute, county canvassing started between November 8 and November 18. R.C. 3505.32(A). This canvass must be completed by November 24, *id.*, and some counties have already completed their canvass and posted official election results.[4] On November 15, Mr. Schimmel, through counsel, sent an objection letter to the Lucas County Board of Elections. *See* Compl. ¶ 21. The letter objected to the counting of a "Category" of provisional ballots cast by Ohio voters that voted at their Lucas County precinct but were registered in another Ohio county (the "Contested Ballots"). Schimmel requested that the Board reject these ballots. Specifically, he "requested that the Board, before opening any affected envelope: (1) identify and report, by precinct, the number of provisional ballots in the Category 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 Lucas County Board voted to open and count the relevant provisional ballots on November 16. *Id.* ¶ 22.

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Schimmel filed a Verified Complaint for a Writ of Mandamus, Alternative Writ, and Immediate Relief on the same day, seeking much the same relief requested in his letter to the Board: an order prohibiting the Lucas County Board from opening the provisional envelopes and counting the ballots at issue. Although Schimmel styled his Complaint as an expedited election matter pursuant to Rule 12.08, on November 17, this Court converted the case to a standard original action to proceed under Rule 12.04. *See* Dkt. No. 3. The Court further ordered that the Board file

[4] *See, e.g.*, Defiance Cnty. Bd. of Elections, November 3, 2026, General Election, Official Certification of Results (Nov. 10, 2026), https://www.boe.ohio.gov/defiance/c/elecres/20261103results.pdf.

a response to the Complaint and motion for expedited briefing and immediate relief by 4:00 p.m. on November 18, 2026. *Id.*

As the Democratic nominee for Ohio House District 44, Proposed Intervenor-Respondent David J. Fournier is Schimmel's opponent. Fournier submits this proposed motion to dismiss contemporaneously with a Motion to Intervene in this action.

LEGAL STANDARD

To obtain a writ of mandamus, Relator must prove by clear and convincing evidence that he has a clear legal right to the requested relief, that the Board has a clear legal duty to provide it, and that he lacks an adequate remedy in the ordinary course of the law. *See State ex rel. Mobley v. Noble*, 2024-Ohio-1291, ¶¶ 10-11. Before even reaching that analysis, Relator's claim fails because the Court lacks original jurisdiction to grant the relief Relator seeks, and his action is untimely and barred by laches. In any event, Relator fails each step of the mandamus analysis.

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ARGUMENT

I. The Complaint should be dismissed for lack of jurisdiction because Schimmel seeks a prohibitory injunction, rather than mandamus.

At the threshold, the Complaint should be dismissed for lack of jurisdiction because it seeks a prohibitory injunction, rather than to compel a mandatory act. "[A] relator does not properly invoke this court's mandamus jurisdiction if the allegations establish that the relator instead seeks relief in the nature of a declaratory judgment and prohibitory injunction." *State ex rel. Florio v. Sandusky Cnty. Bd. of Elections*, 2026-Ohio-4090, ¶ 11. "If the relator seeks to prevent official action, the relief sought is injunctive in nature and is beyond this court's original jurisdiction to grant in mandamus." *Id.*

Absent an order from this Court, the Lucas County Board will count the ballots in question on November 24. Schimmel seeks an order prohibiting that outcome. He styles his requested order

as one directing the Board to, among other things "determine, under R.C. 3505.183(B)(4)(a)(ii), that [the contested] ballots are not eligible to be counted and *to leave the envelopes unopen and the ballots uncounted*." Compl., Prayer for Relief ¶ (C)(2) (emphasis added). He asks the Court to "require the Board to determine that a [contested ballot] . . . is rejected and to record the reason." *Id.* ¶ 34. That is just another way of prohibiting Respondents from opening the envelopes and counting the ballots. Schimmel's "careful wordsmithing of [his] complaint does not obscure what [he] truly seeks in this action: an order *prohibiting* the board of elections from counting [the contested ballots]." *Florio* at ¶ 12; *see also id.* (collecting cases); *State ex rel. Kay v. Brown*, 24 Ohio St.2d 105, 106 (1970) (mandamus action seeking to prevent secretary of state from counting votes cast for a United States Senate candidate was really an action seeking a prohibitory injunction).

Even Schimmel must acknowledge that "part of the relief . . . has a preventive effect." Compl. ¶ 35. Indeed, the statutes he relies on to establish that the Board has a "clear legal duty" are phrased as negative prohibitions. *See id.* ¶ 26 ("R.C. 3505.183(B)(4)(a)(ii) and (B)(4)(b) provide that where the voter is not eligible, or the board cannot determine eligibility, the envelope 'shall not be opened, and the ballot shall not be counted.' The use of 'shall' leaves the Board no discretion."). Schimmel dismisses this as merely "the statutory consequence of the determination." *Id.* ¶ 35. But that is because the statute he is invoking is itself a prohibition, not a mandate.

Schimmel's argument that *Florio* is distinguishable because he "does not ask the Court to adjudicate any candidate's qualification or to limit the votes counted for any candidate," *id.*, is a distinction without a difference. *Florio*'s reasoning turned on the prohibitory nature of the relief requested—an injunction preventing the counting of particular votes—not the *reason* why those votes allegedly should not be counted. The Court observed that the "real object of Florio's action

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is not to compel performance of an official action required by statute; rather, it is to obtain a declaratory judgment that Ickes is ineligible for office if elected and a prohibitory injunction ordering the board not to count votes cast for him when it performs its statutory duty to count, tally, and record votes after the election." *Florio*, 2026-Ohio-4090, at ¶ 13. Here, the "real object" of Schimmel's action is to obtain a declaratory judgment that the contested ballots are not eligible to be counted, and a prohibitory injunction ordering Respondents not to count those ballots.

Nor can Schimmel transmute his request for a prohibitory injunction into a mandamus action by seeking to compel Respondents to "lawfully" make the required determination "in accordance with R.C. 3503.16(C)." Compl. ¶ 34. Mandamus lies to compel an official to perform a mandatory act, not to compel an official to perform that act in a particular way. "A writ of mandamus will not issue to compel the observance of law generally, but will be confined to commanding the performance of specific *acts* specially enjoined by law to be performed." *State ex rel. Kay v. Fuerst*, 156 Ohio St. 188, 188-89 (1951) (emphasis added). Were it otherwise, any disputed legal question could be transformed into a mandamus action by requesting that a required determination be made "in accordance with" the relator's view of the law. Here, there is no suggestion that Respondents will not "make the determination the statute requires," Compl. ¶ 34, when they meet to canvass provisional ballots. Schimmel does not challenge the Board's inaction—he challenges the substance of the "determination" he expects the Board to make.

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II. The Complaint is barred by laches.

Schimmel's action is also barred by the doctrine of laches. "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, and (4) prejudice to the opposing party." *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4953, ¶ 22 (quoting *State ex rel. Clark v Twinsburg*, 2022-Ohio-3089, ¶ 11). Directive 2026-35, which clearly explains

that county-to-county movers should be permitted to vote a provisional ballot at a polling place, was issued in August 2026. The Lucas County Board must follow that directive. R.C. 3501.11(P). Schimmel had months to raise any issues with the Directive's interpretation of the relevant statutes before the general election, during which Ohioans cast their ballots and the Lucas County Board administered the election in accordance with the Directive. But he waited until *two weeks after* the election to bring his challenge, after voters and election officials have cast and counted ballots in reliance on the Directive.

Schimmel's delay is unreasonable and inexcusable by any measure. Certainly, it does not reflect the "[e]xtreme diligence and promptness" that is "required in elections-related matters." *LaRose* at ¶ 22 (quoting *Twinsburg* at ¶ 11). This Court has held that a September 27 challenge to a directive issued on August 31 before a general election was unreasonably delayed. *Id.* at ¶ 23. Here, Schimmel waited more than three times that amount of time; over 100 days. And Schimmel does not even attempt to offer any reason why he could not have brought his challenge earlier. He argues that he filed suit "the same day that the Board indicated that it would count ballots in the Category." Compl. ¶ 36. But his own allegations challenge the Board's reliance on the Secretary's Directive, which was issued months ago. *See id.* ¶ 33. As noted in *LaRose*, this Court has repeatedly found shorter "delays in election cases to be unreasonable." *LaRose* at ¶ 23 (collecting cases barring relief where relators delayed by 17 or 22 days).

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Schimmel's delay also inflicts significant material prejudice to proposed Intervenor, Respondents, and Ohio voters. Had he timely brought his challenge *before* election day, voters and election officials could have reacted accordingly to ensure that their votes would be counted. But at this late date, there can be no recourse for Lucas County voters who cast provisional ballots at their polling place in reliance on instructions from Ohio election officials. *See, e.g.*, *Trump v. Biden*,

2020 WI 91, ¶ 25 ("To strike ballots cast in reliance on the guidance now, and to do so only in two counties, would violate every notion of equity that undergirds our electoral system."). That, indeed, is the point of this action; to throw out ballots, with no voter recourse, to alter the final ballot count. As this Court has recognized, "[i]ntrusions into elections that would lead to disparate enforcement of election procedures and confusion among voters should be avoided." *LaRose* at ¶ 30. That is precisely the kind of relief that Relator seeks here.

This Court previously applied laches to deny relief that "would change the procedures of an election that has already begun," citing prejudice to election officials. *Id.* ¶ 32. Schimmel seeks relief for an election that has *already concluded*. Laches bars this action.

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III. The Complaint should be dismissed on the merits because Schimmel does not meet the requirements for mandamus.

A writ of mandamus can be granted only if Schimmel can demonstrate by clear and convincing evidence that he has a clear legal right to the Board's performance of a clear legal duty. *See Mobley*, 2024-Ohio-1291, ¶¶ 10-11. For much the same reason that this Court lacks jurisdiction over this action for prohibitive injunction, Schimmel cannot make this showing. As described above, the Board has a duty to *act*—that is, to make the required determination—but not a clear legal duty to make that determination in accordance with Schimmel's view of the law. And in any event, for the reasons described below, his view of the law is incorrect.

A. Schimmel does not have a clear legal right to the performance of a corresponding clear legal duty.

Schimmel cannot establish a clear legal right to his requested relief, nor can he establish that the Board has a clear legal duty to provide that relief, because a writ of mandamus compelling Lucas County to segregate and reject the challenged ballots would violate federal law and has no basis in Ohio law.

i. Schimmel's requested relief would violate the United States Constitution.

Mandamus cannot compel an action that the law prohibits. *Cf. Ohio & I.R. Co. v. Wyandot Cnty. Comm'rs*, 7 Ohio St. 278, 280 (1857) (explaining that the Court will not "place a party between two fires" by entering a writ of mandamus compelling it to perform an unlawful act). Yet Schimmel seeks a writ of mandamus that, if issued, would violate the federal Constitution's guarantees of equal protection, due process, and the right to vote. As a consequence, Schimmel cannot establish by clear and convincing evidence that he has a clear legal right to the requested relief and that the Board has a clear legal duty to provide it.

Equal Protection. Schimmel's requested relief would violate the Fourteenth Amendment to the United States Constitution, which prohibits using arbitrary and inconsistent standards to count votes. The Equal Protection Clause "prohibit[s] 'governmental decisionmakers from treating differently persons who are in all relevant respects alike.'" *Griffin v. N.C. State Bd. of Elections*, 781 F.Supp.3d 411, 429 (E.D.N.C. 2025) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)); *see also Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). In the election context, that means "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Election officials violate the Equal Protection Clause when they "use[] varying standards to determine what [i]s a legal vote" and thereby engage in "unequal evaluation of ballots." *Bush*, 531 U.S. at 106-07.

Schimmel's requested relief would subject Lucas County voters to different ballot-processing standards than those applied to voters in any other Ohio county. The county boards of elections are statutorily required to comply with the Secretary's Directive 2026-35, which provides

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that "voters can cast a provisional ballot . . . at their polling place on Election Day" if they "moved outside of their county (but still in Ohio) and didn't update their address by the deadline" to do so. Directive 2026-35 at 8-301 to 8-302; R.C. 3501.11(P). Schimmel asks this Court compel Lucas County—and Lucas County *alone*—to segregate and reject the Challenged Ballots in defiance of this directive. *See* Compl., Prayer for Relief.

The Equal Protection Clause does not permit such "disparate treatment between similarly situated voters, based solely on their casting of ballots in 'different counties.'" *Griffin*, 781 F.Supp.3d at 430-31 (quoting *Bush*, 531 U.S. at 107) (invalidating photo identification requirement that would have applied only to overseas voters from six counties). Indeed, the United States Court of Appeals for the Sixth Circuit has held, in examining Ohio's then-existent provisional ballot rules, that "different treatment of similarly situated provisional ballots likely violates equal protection." *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (per curiam). And this Court has held that a post-election, bespoke one-county change to provisional ballot rules made at a candidate's request is "fundamentally unfair" and runs afoul of Equal Protection guarantees. *State ex rel. Skaggs v. Brunner*, 2008-Ohio-6333, ¶ 57 (per curiam). Schimmel's attempt to alter provisional ballot-processing rules Lucas County is similarly impermissible.

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Due Process. Schimmel's requested relief would also violate the Due Process Clause by compelling the Board to depart, in the middle of the canvassing process, from procedures on which voters relied in casting their ballots. *See Ne. Ohio Coal. for Homeless*, 696 F.3d at 597; *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978). A change in rules that invalidates ballots already cast in "reli[ance] on state directives allowing such ballots" violates due process. *Ne. Ohio Coal. for Homeless*, 696 F.3d at 597 (citing *Griffin*, 570 F.2d at 1078-79); *cf. Briscoe v. Kusper*, 435 F.2d

1046, 1055 (7th Cir. 1970) (holding that "the application of [a] new [nomination petition rule] to nullify previously acceptable signatures without prior notice was unfair and violated due process").

Every voter who cast a general election ballot did so in reliance on the Directive. Schimmel's demand that Lucas County alter its ballot-processing procedures after voters have already cast their ballots is on all fours with the First Circuit's seminal decision in *Griffin*, 570 F.2d 1065. There, the State of Rhode Island induced voters to use a voting procedure that the Rhode Island Supreme Court later found invalid, leading to the disqualification of those voters' ballots. *Id.* at 1068. In reviewing the case, the First Circuit held that the state officials' actions were fundamentally unfair and violated due process, in part because the disenfranchised voters had done nothing other than follow the instructions of state election officials. *Id.* at 1078-79. Similarly, here, the voters that Schimmel seeks to disenfranchise have merely followed the Secretary's instructions as set forth in Directive 2026-35. "To disenfranchise citizens whose only error was relying on [the Secretary's instructions]" is "fundamentally unfair" under the Due Process Clause. *Hunter v. Hamilton Cnty. Bd. of Elec.*, 635 F.3d 219, 243-44 (6th Cir. 2011; *see also Hoblock v. Albany Cnty. Bd. of Elections*, 487 F.Supp.2d 90, 97 (N.D.N.Y. 2006) (holding that invalidation of absentee ballots erroneously issued to voters, after voters had already cast the ballots, would violate due process).

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Right to Vote. Finally, Schimmel's demand that the Board segregate and reject the challenged ballots would severely burden the right to vote as guaranteed by the First and Fourteenth Amendments. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Schimmel's requested relief would result in the "'systemic' disqualification" of the challenged ballots in Lucas County, thereby imposing a "substantial burden on provisional voters." *Ne. Ohio Coal. for Homeless*, 696 F.3d at 593. Schimmel has no legitimate justification for demanding this change partway through

the county canvass period. Any supposed interest in advancing a particular interpretation of Ohio's provisional ballot statutes could have been achieved by means far less burdensome on the right to vote, such as by filing a complaint for declaratory and injunctive relief prior to election day. *See supra* Argument § II (describing prejudice to Ohio voters caused by Schimmel's delay).

ii. Schimmel's cannot establish a clear legal right

Even if the Court could ignore the constitutional issues that Schimmel's requested relief would produce, he still is not entitled to mandamus relief because Ohio law does not impose the duty he asks the Court to enforce. Read as a whole, the statutes governing change-of-residence voting and provisional ballots permit county-to-county movers to vote provisionally at their polling sites, and the statute governing counting of provisional ballots contains no location requirement. At minimum, Schimmel has failed to establish by clear and convincing evidence that the Board has a legal duty to act as he requests—much less a clear duty.

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Schimmel focuses his analysis on R.C. 3503.16(C), which is the Voter Registration section of the Ohio Revised Code. But R.C. 3505.181, which governs the casting of provisional ballots, makes no distinction between voters moving within the county and those moving from outside the county. Subsection (A) of that statute provides that "[a]ll of the following individuals shall be permitted to cast a provisional ballot at an election," and includes in that list: "[a]n individual who . . . moves from one county to another within the state, and completes and signs the required forms and statements under division (B) or (C) of section 3503.16 of the Revised Code." R.C. 3505.181(A)(6).

Subsection (B) then provides detailed instructions for the casting of a provisional ballot, the very first of which is that "[a]n election official *at the polling place* shall notify the individual that the individual may cast a provisional ballot in that election." R.C. 3505.181(B)(1) (emphasis added). The voter must then "complete and execute a written affirmation before an election official

at the polling place" attesting to the required information. R.C. 3505.181(B)(2) (emphasis added). There is no alternative procedure specified for voters who are eligible to cast a provisional ballot under R.C. 3505.181(A)(6) because they have moved from one county to another.[5] If the relevant election official then "determines that the individual is eligible to vote, the individual's provisional ballot shall be counted as a vote in that election." R.C. 3505.181(B)(4).

That statute that governs the counting of provisional ballots confirms that the location of voting is not a condition of a county-to-county mover's right to have their provisional ballot counted. Section 3505.183 provides that a provisional ballot is not rejected because the voter's current address differs from the address in the statewide voter registration database if the voter indicated that he or she "has moved and has not submitted a notice of change of address," as described in Section 3505.181(A)(6). R.C. 3505.183(B)(3)(f), (B)(4)(a)(xi). Division (A)(6), in turn, expressly covers a voter who "moves from one county to another within the state." R.C. 3505.181(A)(6). The General Assembly thus considered county-to-county movers when it wrote the provisional ballot counting rules, gave them a specific accommodation, and imposed no requirement that their provisional ballots be cast only at the board office in order to be counted. The Court should not create by implication a location-based ground for rejection that the General Assembly omitted from its detailed list of the reasons a provisional ballot "shall not be counted." R.C. 3505.183(B)(4)(a); *cf. State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 35 (per curiam) (declining to "add an exception that is not contained in the express language" of the provisional-ballot statutes).

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[5] R.C. 3505.183, which governs the counting of provisional ballots, does not even reference R.C. 3503.16, let alone provide any additional requirements or instructions for processing those ballots.

Section 3503.16 is consistent with this interpretation. Division (A) of that section applies expressly to every registered elector who changes residence "from one county to another." R.C. 3503.16(A). It provides that such an elector "also may update the registration" by filing a change-of-residence form on Election Day "at the *polling place* in the precinct in which that registered elector resides," as well as at the board office or another designated site. *Id.* (emphasis added); *see also* R.C. 3503.16(F) (requiring change-of-residence forms to be available at every polling place and filed with the election officials there). The General Assembly thus specifically contemplated that county-to-county movers would appear at their new precinct polling place on Election Day and update their registrations there—which is what the voters at issue did when they completed the provisional-ballot affirmation that serves as their notice of change of residence. *See* R.C. 3503.16(C)(2); Compl., Ex. C (Directive 2026-35 at 8-317).

Schimmel suggests that the steps outlined in Section 3503.16(C)(1)-(4) limit whether a voter's provisional ballot may be counted. *See* Compl. ¶ 12. But those steps describe how a county-to-county mover completes the board-office route that Division (C) makes available; they do not convert that route into a freestanding condition of eligibility for every county-to-county mover. When the General Assembly wanted to specify what a provisional voter must provide for the ballot to count, it did so in the counting statute itself, listing the information that must appear in the affirmation "in order for the provisional ballot to be eligible to be counted," R.C. 3505.183(B)(1), and enumerating the grounds on which a provisional ballot "shall not be counted," R.C. 3505.183(B)(4)(a). Neither list makes the location at which a ballot was cast a ground for rejection.

The plain text of Section 3505.181 is thus in harmony with Section 3503.16. Section 3503.16(C) does not state that it provides the *only* way for an out-of-county voter to cast a provisional ballot. Section 3503.16(C) provides that such a voter "*may* vote in that election" by

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following the procedure it outlines. *Id.* (emphasis added). "May" is permissive, *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102 (1971), and the General Assembly knew how to impose exclusivity when it wished to: in the same section, it provided that mailed registration and change-of-address forms "may be sent *only* to the secretary of state or the board of elections." R.C. 3503.16(A) (emphasis added). The provision thus is best understood to provide an *additional* means for out-of-county voters to cast a provisional ballot, other than the polling place: by appearing at the office of the board of elections. Providing out-of-county voters this additional method of casting a provisional ballot makes sense. Other categories of provisional voters, such as those who forgot their photo identification or whose signature does not match the poll book, *see* R.C. 3505.181(A)(2), (7), will not know that they need to cast a provisional ballot until they arrive at the polling place and attempt to vote. It would make little sense to provide these voters with the additional option to vote provisionally at the office of the board of elections. Voters who have moved and need to update their registration, however, can anticipate that need and cast a provisional ballot at the board of elections office "at any time during regular business hours on or after the twenty-eighth day prior to the election." R.C. 3503.16(C)(1).

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Directive 2026-35 correctly harmonizes these statutes by making clear that voters that moved from outside the county may vote provisionally at their polling location. To adopt Schimmel's reading would place two provisions of the Ohio Code at war with each other, subjecting voters to contradictory instructions on how to cast provisional ballots. The Court should avoid such a result. *See Snodgrass v. Harris*, 2024-Ohio-3130, ¶ 17 ("[S]tatutes relating to the same subject matter should, if possible, be construed harmoniously.").[6]

[6] R.C. 3505.183, which governs the counting of provisional ballots, does not even reference R.C. 3503.16, let alone provide any additional requirements or instructions for processing those ballots.

In any event, to obtain mandamus relief, Schimmel must meet his burden of demonstrating that he has a clear legal right to the performance of a corresponding clear legal duty. Here, on an exceedingly expedited timeframe, his claim rests on the premise that the Secretary of State has issued a directive that incorrectly interprets Ohio law, that the Lucas County Board should have disregarded that directive, and that this Court should parse a series of pertinent statutes to divine the proper statutory interpretation, and issue an order instructing the Lucas County Board that this interpretation was clear all along. But when a governing statute "is not clear," that means "the duty is unclear, [and] mandamus relief is unavailable." *State ex rel. Baughman Twp. v. Underwood*, 2024-Ohio-771, ¶ 23 (per curiam) (citing *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18). At best, Schimmel has a disputed legal right, not a clear legal right. Mandamus is inappropriate in such circumstances.

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B. Schimmel has an adequate remedy in the ordinary course of the law.

Schimmel misleadingly claims he lacks an adequate remedy in the ordinary course of the law because "the Board's imminent counting of provisional ballots" means that accepted provisional ballots will soon be comingled. Compl. ¶ 32. This does not mean that Schimmel lacked an adequate remedy, it highlights his inexplicable and unjustifiable delay: in essence, his action challenges the Board's reliance on the Secretary's Directive 2026-35, which was issued in August 2026. *See supra* Argument § II. Schimmel easily could have brought a complaint for declaratory or injunctive relief to challenge that directive months ago, but he chose to delay until weeks after the election, when the Board's canvass was already underway. A litigant's "failure to avail himself

[6] The Directive's interpretation also makes good practical sense. There is no rational reason to permit voters who moved *within* Lucas County to vote provisionally at their polling place, while requiring voters who moved from another Ohio county to vote provisionally at the Board of Elections office.

of his . . . remedy" within a timely manner "does not confer upon the [litigant] the right to the extraordinary remedy of mandamus." *State v. Zangerle*, 126 Ohio St. 118, 121 (1933); *see also In re Est. of Davis*, 1996-Ohio-347 (per curiam) ("The fact that appeal is no longer available because of appellant's failure to file a timely appeal does not render the remedy inadequate."). Because Schimmel had "an adequate equitable remedy, mandamus will not lie." *State ex rel. Doe v. Gallia Cnty. Common Pleas Ct.*, 2018-Ohio-2168, ¶ 12 (per curiam) (citation omitted).

CONCLUSION

This Court should dismiss Schimmel's Complaint for a Writ of Mandamus, Alternative Writ, and Immediate Relief.

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Respectfully submitted,

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***Motion for admission Pro Hac Vice forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via email this 18th day of November, 2026 to the following:

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