Supreme Court of Ohio Clerk of Court - Filed January 16, 2024 - Case No. 2024-0052

In The
# Supreme Court of Ohio

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| **STATE *ex rel.* DENNIS W. SCHREINER**,<br><br>*Relator*,<br><br>*v*.<br><br>**ERIE COUNTY BOARD OF ELECTIONS, *et al*.**,<br><br>*Respondents*. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | **Case No. 2024-0052**<br><br>**Original Action in Prohibition**<br><br>**Expedited Election Case Pursuant to S.Ct. Prac.R. 12.08** |

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## RELATOR'S MERIT BRIEF

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## PRELIMINARY STATEMENT

Someone convicted of a "disqualifying offense," including felony theft, is deemed "incompetent" to hold public office under state law. R.C. 2961.02(B). This case is about whether a board of elections may disregard that law and certify a candidate convicted of a "disqualifying offense"—felony theft against an elderly woman—to the ballot for an office he is "incompetent" to hold. Respondents, the Erie County Board of Elections ("Board") and its members, denied Relator's protest against the candidacy of Steven Kraus ("Kraus"), thereby allowing Kraus on the ballot despite being "incompetent" to hold the office he seeks. Because the Board abused its discretion and clearly disregarded applicable law in doing so, the Court should issue a writ of prohibition preventing the Board from allowing Kraus to appear on the ballot in the March 19, 2024, Republican primary election for House District 89.

It is true that R.C. 2961.02 provides certain circumstances under which candidates convicted of a "disqualifying offense"—like Kraus's conviction for felony theft from an elderly woman—may have their competency to hold public office restored. Those circumstances include if the conviction is "reversed, *expunged*, or annulled," or if the person receives a "full pardon." R.C. 2961.02(C) (emphasis added).

None of those things happened in Kraus's case. Before the Board, Kraus stipulated that he was convicted of a fifth-degree felony theft offense in 2015, and that this felony was a disqualifying offense under R.C. 2961.02. (*See* REL. 38.)[1] Kraus also presented court orders from January 2023 that sealed his case record. (*See* REL. 41-45.) Kraus's only argument, which the Board apparently accepted, was that the sealing of his criminal record meant that his conviction

[1] Relator's evidence has been filed contemporaneously herewith in one consecutively paginated volume. References to "REL." are to that volume.

was therefore "expunged" within the meaning of R.C. 2961.02(C). But "seal" and "expunge" do not have the same meaning, and treating those words as interchangeable is completely inconsistent with the plain meaning of R.C. 2961.02 and the entire statutory scheme—in both the form in effect at the time of Kraus's 2015 conviction and the form in effect today—governing the "sealing" and "expungement" of criminal case records. Those two things are different; they have different requirements, are available under different circumstances, and *are not interchangeable*. To illustrate this point, in November 2022, the General Assembly passed Senate Bill 288, which significantly increased the availability of expungement under Ohio law. If "sealing" and "expunging" a conviction meant the same thing, why would the General Assembly bother expanding "expungement" in Senate Bill 288? To ask the question is to answer it.

The Board's decision rests on clear legal error and represents a significant abuse of the Board's discretion that is harmful to Ohio voters, who are entitled to know that the candidates they are voting on are actually eligible to hold office. Because of this abuse of discretion by the Board, and because of the proximity of the primary election, issuance of the writ is the only adequate remedy. Accordingly, this Court should issue the requested writ of prohibition.

## STATEMENT OF FACTS[2]

The Board and its members are responsible for the conduct of elections in Erie County. Among other duties, the Board reviews declarations of candidacy and candidate petitions, certifies candidates for inclusion on the ballot, and holds hearings on protests directed at primary election candidates under R.C. 3513.05. This case arises from one such proceeding.

[2] The relevant facts in this case are established by the evidence (*see* REL. 1–107) and the admissions in Respondents' Answer, making this dispute principally a legal one.

In July 2015, Kraus was found guilty of one count of theft from an elderly person, a felony of the fifth degree, in violation of R.C. 2901.13. *(See* REL. 17, 38.) At the time, Kraus was a member of the Ohio House of Representatives. Kraus's conviction was upheld on appeal, and this Court denied review. Kraus's community control was terminated on November 10, 2018. (*See* REL. 43.) In January 2023, the Ottawa County Court of Common Pleas granted Kraus's application to have his criminal case sealed over the objection of the State. (*See* REL. 43-45.) The State had argued it was "important to maintain the records to protect the public." (REL. 44.) The court responded to that concern by noting that, while Kraus's "underlying theft conviction was in conjunction with his former position as an appraiser and auctioneer, if the Defendant seeks to get his professional license reinstated, . . . the State could still oppose the reinstatement of any of the Defendant's licenses (even if sealed)" by law. (*Id.*)

Kraus subsequently sought to return to public office. On or about December 19, 2023, he filed a declaration of candidacy to run as a Republican in the March 19, 2024, primary election for the office of Representative for House District 89. On his declaration of candidacy, and pursuant to R.C. 3517.07, Kraus declared that "if elected to said office or position, *I will qualify therefor*. . . ." (*See* Compl., ¶¶ 9, 37 (emphasis added); Resp. Answer ¶¶ 9, 37.)

Relator is a resident of House District 89 who is registered to vote in Erie County as a Republican. On December 27, 2023, Relator submitted a written protest ("Protest") to the Board. (*See* REL. 14–35.) The Protest argued that the plain meaning of R.C. 2961.02 requires that a disqualifying offense be "reversed, expunged, or annulled," or be the subject of a full pardon, before an offender can resume public office. Because Kraus's criminal case record was sealed, but not expunged, Relator argued to the Board that Kraus was not eligible to hold public office,

and therefore should not be permitted to appear on the ballot in the March 19, 2024, primary election.

On January 3, 2023, the Board gave notice of a hearing on the Protest. (*See* REL. 46.) On January 5, 2023, that hearing was held beginning at 2:00 PM. (*See* Transcript of Proceedings, REL. 48–107 ("Hr'g Tr.").) It was not disputed at the hearing that Relator was a qualified elector or that his Protest was timely filed. (Hr'g Tr. 5:18–6:16; Resp. Answer, ¶ 17.) At the hearing, counsel for the Board stated that the Board was sitting in a quasi-judicial posture. (Hr'g Tr. 8:13-14; Resp. Answer, ¶¶ 18, 42.)

Kraus did not dispute that he was (1) convicted of a felony-theft offense, (2) this felony-theft offense is a "disqualifying offense" under R.C. 2961.02(A)(1)(a), and (3) a person convicted of a "disqualifying offense" is incompetent to hold public office in Ohio. (*See* REL. 38; Hr'g Tr. 7:15–8:4; Resp. Answer, ¶ 19.)

The sole question before the Board during the hearing on the Protest was whether the verdict finding Kraus guilty of a "disqualifying offense" had been "expunged" as required by R.C. 2961.02. (*See* Resp. Answer, ¶ 22.) Counsel for Relator presented a variety of legal arguments explaining why the January 2023 sealing order was just that—an order to seal, not expunge. (*See* Hr'g Tr. 20:7–40:2.) And because Kraus's record was only sealed, not expunged, Relator's counsel submitted that Kraus remained unable to qualify for the office he is currently seeking. (Hr'g Tr. 27:2-9.)

At the conclusion of the hearing, without explaining its reasoning, the Board voted four to zero to deny Relator's protest and to place Kraus on the ballot. (Hr'g Tr. 40:23–41:9.)

On January 10, 2024, five days after the hearing, and the day that Relator's counsel was able to obtain the hearing transcript, Relator commenced this original action.

## LAW AND ARGUMENT

Relator is entitled to a writ of prohibition directing the Board not to permit Kraus to appear on the March 2024 primary election ballot. The relevant facts here are undisputed. (*See* Hr'g Tr. 20:4–21:6.) And as a matter of law, Relator can demonstrate that the Board acted in a quasi-judicial capacity, that the Board's exercise of that power was unauthorized by law because it was at odds with the plain meaning of R.C. 2961.02, and that denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law, given the proximity of the March 19, 2024 primary election. Thus, the Court should issue the writ.

### A. Prohibition Is The Appropriate Remedy In This Case.

"Mandamus is not the appropriate method for challenging a decision of the secretary of state or a board of elections to place a candidate on the ballot. . . . Rather, prohibition is the appropriate remedy for these circumstances." *State ex rel. Emhoff v. Medina Cnty. Bd. of Elections*, 153 Ohio St.3d 313, 2018-Ohio-1660, 106 N.E.3d 21, ¶ 13. The writ of prohibition will issue where, as here, Relator can "establish that (1) the board of elections and its members are about to exercise quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no adequate remedy exists in the ordinary course of law." *State ex rel. Finkbeiner v. Lucas Cty. Bd. of Elections*, 122 Ohio St.3d 462, 2009-Ohio-3657, 912 N.E.2d 573, ¶ 14. "[R]elief in prohibition is still available to prevent the placement of names or issues on a ballot, as long as the election has not yet been held." *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St.3d 425, 2004-Ohio-3701, 811 N.E.2d 1130, ¶ 14. And the Court has recognized "that the proper respondent in a prohibition case to prevent the placement of names or issues on the ballot is the board of elections." *Campaign to Elect Larry Carver Sheriff v. Campaign to Elect Anthony Stankiewicz Sheriff*, 101 Ohio St.3d 256, 2004-Ohio-812, 804 N.E.2d 419, ¶ 11.

Relator's action is timely. Relator moved has exercised the utmost diligence in filing his Protest, and now in commencing and prosecuting this action. The Complaint in this case was filed five days after the Board's issuance of its decision, which is line with this Court's past rulings. *See, e.g.*, *State ex rel. Craig v. Scioto Cty. Bd. of Elections*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, ¶ 8 (granting writ when, "[n]ine days after the board's vote, on February 1, Craig filed this expedited election action for a writ of prohibition to prevent respondents, the board of elections and its members, from certifying Reed's candidacy for Scioto County Sheriff."). *Compare Mason City School Dist. v. Warren Cty. Bd. of Elections*, 107 Ohio St.3d 373, 2005-Ohio-5363, 840 N.E.2d 147, ¶ 14 (finding laches after a 90-day delay in submitting a protest). In any event, this Court generally requires "a showing of prejudice before [applying] laches to bar a consideration of the merits of an election case." *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 115 Ohio St.3d 299, 2007-Ohio-5228, 874 N.E.2d 1205, ¶ 11. Respondents cannot argue that they have been prejudiced here, where Relator proceeded within a few days of an adverse ruling by the Board.

### B. The Board Admits That It Acted In A Quasi-Judicial Capacity.

The first requirement for a writ of prohibition is that Respondents need to have acted in a judicial or quasi-judicial capacity. *See State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 106 Ohio St.3d 346, 2005-Ohio-4758, 835 N.E.2d 336, ¶ 27.

There is no dispute that Relator has established this first prong. *See, e.g.*, *Wellington v. Mahoning Cty. Bd. of Elections*, 117 Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420, ¶ 36 ("Sheriff Wellington established the first requirement for the writ because the board of elections exercised quasi-judicial authority by denying his protest after conducting a hearing that included sworn testimony."). Here, Respondents' counsel stated on the record during the protest hearing

that the Board was acting in a quasi-judicial capacity, (*see* Hr'g Tr. 8:13-14,) and Respondents admitted as much in their Answer. (*See* Resp. Answer, ¶¶ 18, 42.)

### C. <u>The Board's Exercise of Quasi-Judicial Power In Denying Relator's Protest Is Unauthorized By Law, Is An Abuse Of The Board's Discretion, And Is An Act In Disregard Of Clearly Applicable Law.</u>

The second requirement for issuance of the writ is that the Board's exercise of quasi-judicial power was unauthorized by law. This Court has held that requirement to be met where a board of elections placed a candidate on the ballot who was statutorily ineligible to hold the office he was seeking. *See Craig*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, ¶¶ 18, 22 (granting writ of prohibition preventing board of elections from placing candidate on ballot where candidate was statutorily ineligible). That requirement is met here: because Kraus's disqualifying felony-theft conviction was not "expunged," he cannot hold public office, including the office of State Representative. The Board's denial of Relator's Protest was, therefore, unauthorized by law and constitutes an abuse of the Board's discretion and an action in disregard of clearly applicable law.

The Board may seek to rely on a "axiom of liberal construction of statutory limitations on the right to be an eligible candidate" to argue that it properly placed an ineligible candidate on the ballot, but the Board may not rely on that principle where, as here, the "plain language" of a statute has an "unequivocal and definite meaning" preventing the proposed candidacy. *See Craig*, 2008-Ohio-706, at ¶ 23; *see also Wellington*, 117 Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420, ¶ 48; *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St.3d 182, 186, 724 N.E.2d 771 (2000); *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St.3d 239, 241–242, 725 N.E.2d 255 (2000).

The underlying facts are uncontested. Mr. Kraus was found guilty by an Ottawa County jury in July 2015 of theft from an elderly person, a felony of the fifth degree, in violation of R.C.

2901.13. (See REL. 17, 38.) That conviction was affirmed on appeal in the Sixth District Court of Appeals, and this Court declined review. *See State v. Kraus*, 150 Ohio St.3d 1431, 2017-Ohio-2567, 81 N.E.3d 1271 (Table). While the record of the conviction appears to have been sealed, the question is whether the sealing of the conviction means it has been expunged, so as to restore Kraus's competence to hold public office.

That legal question is governed by R.C. 2961.02. In any "matter of statutory interpretation, we begin with the text of the enactment." *Rockies Express Pipeline. LLC v. McClain,* 159 Ohio St.3d 302, 2020-Ohio-410, 150 N.E.3d 895, ¶ 11. In R.C. 2961.02(A), the General Assembly defined certain crimes as "disqualifying offenses," including but not limited to "a theft offense that is a felony." R.C. 2961.02(A)(1)(a)(i). R.C. 2961.02(B) then provides that a person convicted of a "disqualifying offense" is "incompetent to hold a public office . . ." in the state. Finally, R.C. 2961.02(C) provides that division (B) "does not apply if a plea, verdict, or finding of the type described in that division regarding a disqualifying offense is reversed, expunged, or annulled." *Id.* A "full pardon" of a person convicted of a disqualifying office also, by statute, "restores the privileges forfeited under division (B) of this section. . . ." *Id.*

Where the General Assembly has chosen specific words with clear meanings, the Board was duty-bound to apply those definitions. *See Jones v. Action Coupling & Equip., Inc.,* 89 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12 ("When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said"). And the General Assembly indisputably set a high bar for one who committed a felony-theft offense and wishes to hold public office. Under R.C. 2961.02(C), one who is convicted of a "disqualifying offense" must have the "verdict" of that offense "reversed, expunged, or annulled," or receive a "full pardon." Before the Board, Kraus did not assert that his

record was reversed, annulled, or pardoned. He simply asserted that because his criminal case's record was "sealed," it was "expunged" within the meaning of R.C. 2961.02.

But that is not Ohio law. Kraus's conviction has not been "expunged" as required by R.C. 2961.02. The plain text of R.C. 2953.32 shows that the General Assembly has created two different processes for sealing and for expungement. Under R.C. 2953.32(B)(1)(a)(ii), someone with a fifth-degree felony conviction can apply to *seal* his record one year after his final discharge. But under R.C. 2953.32(B)(1)(b)(iii), that same defendant can only apply for *expungement* ten years after the time at which he can move to seal. Thus, as the Board was informed at the hearing, Kraus is not yet even eligible to have his criminal verdict expunged, and by law, if Kraus applied for such expungement today, it would be denied as a matter of law. (*See* Hr'g Tr. 34:9–35:5.)

The reality is that sealing and expungement, while sometimes referred to interchangeably, are *not* the same thing. The juvenile sealing and expungement laws are helpful in illustrating this point. R.C. 2151.355 defines "[e]xpunge" in exactly the same way as the definition's section of the current adult sealing and expungement statute, R.C. 2953.31: "[t]o destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable." R.C. 2151.355(A). At the same time, the juvenile statute defines "seal a record" as "to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court." R.C. 2151.355(B). Other statutes related to R.C. 2953.31 and 2953.32 reinforce this point—they provide that expungement results in destruction of the relevant records, while sealing does not. *See, e.g.,* R.C. 2953.35(C)(2)(a) (providing for expungement for certain firearms offenses), 2953.36(F)(2) (relating to expungement for certain convictions of victims of human trafficking),

2953.39(G) (relating to expungement of low-level drug offenses), 2953.521(G) (relating to expungement of proceedings where human-trafficking victims are found not guilty).

Simply put, nowhere in Title 29 of the Revised Code has the General Assembly defined "sealing" to mean "expungement." Respondents' own counsel's statements on the record during the protest hearing corroborate this point. During the hearing, the Board's counsel's gave descriptions of "sealing" versus "expungement" that were consistent with Relator's argument—sealing meant limiting access to a filing, while expungement meant destruction of such filing. (*See* Hr'g Tr. 28:3-21.)

The sealing orders issued by the Ottawa County Court of Common Pleas in January 2023 confirm this reading. Judge Cosgrove, sitting by designation for that court, made clear in her order that the State could use Kraus's conviction against him in any future licensing proceeding. (*See* REL. 44 ("[I]f the Defendant seeks to get his professional license reinstated, the State's interests are still protected since the State could still oppose the reinstatement of any of the Defendant's professional licenses (even if sealed) pursuant to R.C. 2953.33(B)(1).").) It would be a very strange result if the law was more protective of an auctioneer's license than a seat in the Ohio House of Representatives.

Furthermore, at the Protest hearing, the Board heard about testimony to the General Assembly regarding sealing and expungement under Ohio law *before* Kraus's record was sealed. (*See* Hr'g Tr. 24:23–26:16.) In their respective statements before the General Assembly, the Office of the Ohio Public Defender and the Ohio Association of Chiefs of Police agreed that sealing and expungement were *not* the same—*prior* to the sealing order's issuance. (*See id.*)

Finally, the case law identified by Kraus's counsel in support of his reading of R.C. 2961.02 does not support the Board's decision. (*See* REL. 37.) In *State v. Boykin*, the Court did state in

passing "[t]he sealing of a criminal record, [is] also known as expungement[.]" 138 Ohio St.3d 97, 2013-Ohio-4582, 4 N.E.3d 980, ¶ 11 (citing *State v. Pariag,* 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401, ¶ 11). But in *Boykin*, the Court's holding was not that sealing and expungement are the same. Rather, the Court held that a pardon from the Governor did not entitle a criminal defendant to having his record sealed. *See id.* at ¶ 35. Thus, if anything, *Boykin* reinforces the conclusion that "sealing" is a lesser and distinct concept relative to a pardon or an expungement.

Similarly, *Pariag*, which was cited by *Boykin*, confirms that the Board and Kraus's interpretation of R.C. 2961.02 is incorrect. In *Pariag*, the Court stated that "expungement" was a "*common colloquialism* used to describe the process" of "sealing." 137 Ohio St.3d 81, 2013-Ohio-4010, 998 N.E.2d 401, ¶ 11 (emphasis added). But in explaining this "colloquialism," the Court noted—in contrast to Kraus's reading—that "[t]he term 'expungement' continues to appear . . . relating to juveniles, and, *in contrast to* 'sealing' means that *no record exists*." *Id.* n.1 (emphases added). Thus, the case law that gave rise to Kraus's arguments actually confirms that sealing and expungement are not the same thing. Sealing means that a record has been hidden away—expungement means it has been destroyed. And Respondents agree on this. (*See* Hr'g Tr. 28:3-21.)

In any event, a "common colloquialism" cannot overturn the General Assembly's clear intent in using two different statutory terms. Common colloquialisms are simply not an appropriate basis for overturning the General Assembly's statutory definition of expungement. The General Assembly has set a high bar for those who seek to hold public office after committing felony-theft offenses. The Board failed to respect that bar, and that decision is clear legal error.

Here, the plain language of R.C. 2961.02, read in conjunction with R.C. 2953.31-32 and related statutes, confirms that Kraus is not eligible to hold public office. This, in turn, renders incorrect the declaration Kraus made on his declaration of candidacy pursuant to R.C. 3517.07 that "if elected to [the Ohio House of Representatives], *I will qualify therefor. . .* ," (*See* Compl., ¶¶ 9, 37 (emphasis added); Resp. Answer ¶¶ 9, 37,) As Kraus stipulated that he was convicted of a disqualifying offense. The Board erred in interpreting this provision, because this disqualifying offense was not expunged, and Kraus is therefore *not* competent or eligible to hold the office he is seeking.

For all of these reasons, the Court should hold that the Board exercise of quasi-judicial power is not authorized by law, amounted to an abuse of its discretion and an error as to clearly applicable law in denying Relator's Protest.

**D. <u>There Is No Adequate Remedy In The Ordinary Course Of Law.</u>**

The third requirement for a writ of prohibition is that there is no adequate remedy in the ordinary course of law. Relator satisfies this requirement, too: "Given the closeness of the election date in this expedited election case, [Relator] lacks an adequate remedy in the ordinary course of law." *Craig*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, ¶ 25 (granting writ on February 21, 2008, with respect to March 4, 2008, primary election) (citing *State ex rel. Brown v. Butler Cty. Bd. of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, 846 N.E.2d 8, ¶ 22; *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections*, 72 Ohio St.3d 289, 291–292, 649 N.E.2d 1205 (1995))). Put simply, with roughly two months to go until the primary election, any process before any other court would not constitute an adequate remedy because that process would last well past the impending election. *See State ex rel. Smart v. McKinley*, 64 Ohio St.2d 5, 6, 412 N.E.2d 393 (1980).

Cases where the Court denied the writ because an adequate remedy existed are not applicable here. For instance, in *Tatman*, the Court held that an action for a prohibitory injunction in common pleas court provided an adequate remedy in the ordinary course of law that prevented a prohibition action because the pertinent election was "*almost seven months away*" when the elections board denied a protest to a sheriff's candidate's qualifications. *Tatman*, 102 Ohio St.3d 425, 2004-Ohio-3701, 811 N.E.2d 1130, ¶ 18 (emphasis in original). As this Court observed in *Craig*, "*Tatman* . . . is inapplicable here because the pertinent election—the March 4, 2008 primary election—was only about a month and a half away when the board of elections denied Craig's protest challenging Reed's qualifications to be a candidate for county sheriff." *Craig*, 117 Ohio St.3d 158, 2008-Ohio-706, 882 N.E.2d 435, ¶ 27.

Here, the March 2024 primary election is going to come less than two months after this Court's likely resolution of this case. Thus, this case is much more like *Craig* than *Tatman*. Consistent with this Court's past practice in expedited election-related cases, no adequate remedy exists in the ordinary course of law. The only way to resolve this dispute before the election is for this Court to issue the writ.

## CONCLUSION

By its own admission, the Board exercised quasi-judicial power in denying Relator's Protest. Relator has shown that the Board's exercise of that power was unauthorized by law because it was at odds with the plain meaning of R.C. 2961.02. And denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law, given the proximity of the March 19, 2024 primary election.

For these reasons, the Court should grant the writ of prohibition.

Date: January 15, 2024

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

The undersigned counsel served a copy of the foregoing filing by email on Gerhard Gross (ggross@eriecounty.oh.gov), Jason Hinners (jhinners@eriecounty.oh.gov), Andrew R. Mayle (amayle@maylelaw.com), Benjamin G. Padanilam (bpadanilam@maylelaw.com), and Nichole Kanios Papageorgiou (npapageorgiou@maylelaw.com).

Date: January 15, 2024

Respectfully Submitted,

*/s/ Taylor M. Thompson*
Taylor M. Thompson (0098113)
*Counsel for Relator, Dennis W. Schreiner*

# APPENDIX

**R.C. 2151.355. Sealing of juvenile court records - definitions.**

As used in sections 2151.356 to 2151.358 of the Revised Code:

(A) "Expunge" means to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(B) "Seal a record" means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court.

**R.C. 2953.31. Sealing or expungement of record of conviction or bail forfeiture – definitions.**

(A) As used in sections 2953.31 to 2953.521 of the Revised Code:

(1) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(2) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in Traffic Rule 2, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

(3) "Official records" means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all DNA specimens, DNA records, and DNA profiles; all records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and shall not be considered to be official records when they are in the possession of that officer or agency; all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case; and all records that are possessed by any public office or agency that relate to an application for, or the issuance or denial of, a certificate of qualification for employment under section 2953.25 of the Revised Code.

"Official records" does not include any of the following:

(a) Records or reports maintained pursuant to section 2151.421 of the Revised Code by a public children services agency or the department of job and family services;

(b) Any report of an investigation maintained by the inspector general pursuant to section 121.42 of the Revised Code, to the extent that the report contains information that pertains to an individual who was convicted of or pleaded guilty to an offense discovered in or related to the investigation and whose conviction or guilty plea was not overturned on appeal;

(c) Records, reports, or audits maintained by the auditor of state pursuant to Chapter 117. of the Revised Code.

(4) "Official proceeding" has the same meaning as in section 2921.01 of the Revised Code.

(5) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(6) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

(7) "DNA database," "DNA record," and "law enforcement agency" have the same meanings as in section 109.573 of the Revised Code.

(8) "Fingerprints filed for record" means any fingerprints obtained by the superintendent of the bureau of criminal identification and investigation pursuant to sections 109.57 and 109.571 of the Revised Code.

(9) "Investigatory work product" means any records or reports of a law enforcement officer or agency that are excepted from the definition of "official records" and that pertain to a conviction or bail forfeiture, the records of which have been ordered sealed or expunged pursuant to division (D)(2) of section 2953.32 or division (F)(1) of section 2953.39 of the Revised Code, or that pertain to a conviction or delinquent child adjudication, the records of which have been ordered expunged pursuant to division (E) of section 2151.358, division (C)(2) of section 2953.35, or division (F) of section 2953.36 of the Revised Code.

(10) "Law enforcement or justice system matter" means an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision.

(11) "Record of conviction" means the record related to a conviction of or plea of guilty to an offense.

(12) "Victim of human trafficking" means a person who is or was a victim of a violation of section 2905.32 of the Revised Code, regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person.

(13) "No bill" means a report by the foreperson or deputy foreperson of a grand jury that an indictment is not found by the grand jury against a person who has been held to answer before the grand jury for the commission of an offense.

(14) "Court" means the court in which a case is pending at the time a finding of not guilty in the case or a dismissal of the complaint, indictment, or information in the case is entered on the minutes or journal of the court, or the court to which the foreperson or deputy foreperson of a grand jury reports, pursuant to section 2939.23 of the Revised Code, that the grand jury has returned a no bill.

(B)(1) As used in section 2953.32 of the Revised Code, "expunge" means the expungement process described in section 2953.32 of the Revised Code, including the authority described in division (D)(5) of that section.

(2) As used in sections 2953.33 to 2953.521 of the Revised Code, "expunge" means both of the following:

(a) The expungement process described in sections 2953.35, 2953.36, 2953.39, and 2953.521 of the Revised Code;

(b) To destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

**R.C. 2953.32. Sealing or expungement of record of conviction record or bail forfeiture; exceptions.**

(A)(1) Sections 2953.32 to 2953.34 of the Revised Code do not apply to any of the following:
(a) Convictions under Chapter 4506., 4507., 4510., 4511., or 4549. of the Revised Code, or a conviction for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;

(b) Convictions of a felony offense of violence that is not a sexually oriented offense;

(c) Convictions of a sexually oriented offense when the offender is subject to the requirements of Chapter 2950. of the Revised Code or Chapter 2950. of the Revised Code as it existed prior to January 1, 2008;

(d) Convictions of an offense in circumstances in which the victim of the offense was less than thirteen years of age, except for convictions under section 2919.21 of the Revised Code;
(e) Convictions of a felony of the first or second degree;

(f) Except as provided in division (A)(2) of this section, convictions for a violation of section 2919.25 or 2919.27 of the Revised Code or a conviction for a violation of a municipal ordinance that is substantially similar to either section;

(g) Convictions of a felony of the third degree if the offender has more than one other conviction of any felony or, if the person has exactly two convictions of a felony of the third degree, has more convictions in total than those two third degree felony convictions and two misdemeanor convictions.

(2) Sections 2953.32 to 2953.34 of the Revised Code apply to a conviction for a violation of section 2919.25 of the Revised Code that is a misdemeanor of the fourth degree for purposes of sealing, but not for purposes of expungement of the record of the case.

(B)(1) Except as provided in section 2953.61 of the Revised Code or as otherwise provided in division (B)(1)(a)(iii) of this section, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing or expungement of the record of the case that pertains to the conviction, except for convictions listed in division (A)(1) of this section. Application may be made at whichever of the following times is applicable regarding the offense:
(a) An application for sealing under this section may be made at whichever of the following times is applicable regarding the offense:

(i) Except as otherwise provided in division (B)(1)(a)(iv) of this section, at the expiration of three years after the offender's final discharge if convicted of one or two felonies of the third degree, so long as none of the offenses is a violation of section 2921.43 of the Revised Code;

(ii) Except as otherwise provided in division (B)(1)(a)(iv) of this section, at the expiration of one year after the offender's final discharge if convicted of one or more felonies of the fourth or fifth

degree or one or more misdemeanors, so long as none of the offenses is a violation of section 2921.43 of the Revised Code or a felony offense of violence;
(iii) At the expiration of seven years after the offender's final discharge if the record includes one or more convictions of soliciting improper compensation in violation of section 2921.43 of the Revised Code;

(iv) If the offender was subject to the requirements of Chapter 2950. of the Revised Code or Chapter 2950. of the Revised Code as it existed prior to January 1, 2008, at the expiration of five years after the requirements have ended under section 2950.07 of the Revised Code or section 2950.07 of the Revised Code as it existed prior to January 1, 2008, or are terminated under section 2950.15 or 2950.151 of the Revised Code;

(v) At the expiration of six months after the offender's final discharge if convicted of a minor misdemeanor.

(b) An application for expungement under this section may be made at whichever of the following times is applicable regarding the offense:

(i) Except as otherwise provided in division (B)(1)(b)(ii) of this section, if the offense is a misdemeanor, at the expiration of one year after the offender's final discharge;

(ii) If the offense is a minor misdemeanor, at the expiration of six months after the offender's final discharge;

(iii) If the offense is a felony, at the expiration of ten years after the time specified in division (B)(1)(a) of this section at which the person may file an application for sealing with respect to that felony offense.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing or expungement of the record of the case that pertains to the charge. Except as provided in section 2953.61 of the Revised Code, the application may be filed at whichever of the following times is applicable regarding the offense:
(a) An application for sealing under this section may be made at any time after the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

(b) An application for expungement under this section may be made at whichever of the following times is applicable regarding the offense:

(i) Except as provided in division (B)(2)(b)(ii) of this section, at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first;

(ii) If the offense is a minor misdemeanor, at any time after the expiration of six months from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

(C) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application not less than sixty days prior to the hearing. Pursuant to the Ohio Constitution, the prosecutor shall provide timely notice of the application and the date and time of the hearing to a victim and victim's representative, if applicable, if the victim or victim's representative requested notice of the proceedings in the underlying case. The court shall hold the hearing not less than forty-five days and not more than ninety days from the date of the filing of the application. The prosecutor may object to the granting of the application by filing a written objection with the court not later than thirty days prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The victim, victim's representative, and victim's attorney, if applicable, may be present and heard orally, in writing, or both at any hearing under this section. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The probation officer or county department of probation that the court directs to make inquiries and written reports as the court requires concerning the applicant shall determine whether or not the applicant was fingerprinted at the time of arrest or under section 109.60 of the Revised Code. If the applicant was so fingerprinted, the probation officer or county department of probation shall include with the written report a record of the applicant's fingerprints. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

(D)(1) At the hearing held under division (C) of this section, the court shall do each of the following:

(a) Determine whether the applicant is pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case, and determine whether the application was made at the time specified in division (B)(1)(a) or (b) or division (B)(2)(a) or (b) of this section that is applicable with respect to the application and the subject offense;

(b) Determine whether criminal proceedings are pending against the applicant;

(c) Determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (C) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;

(f) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed or expunged against the legitimate needs, if any, of the government to maintain those records;

(g) Consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable;

(h) If the applicant was an eligible offender of the type described in division (A)(3) of section 2953.36 of the Revised Code as it existed prior to the effective date of this amendment, determine whether the offender has been rehabilitated to a satisfactory degree. In making the determination, the court may consider all of the following:
(i) The age of the offender;

(ii) The facts and circumstances of the offense;

(iii) The cessation or continuation of criminal behavior;

(iv) The education and employment of the offender;

(v) Any other circumstances that may relate to the offender's rehabilitation.

(2) If the court determines, after complying with division (D)(1) of this section, that the offender is not pursuing sealing or expunging a conviction of an offense that is prohibited under division (A) of this section or that the forfeiture of bail was agreed to by the applicant and the prosecutor in the case, that the application was made at the time specified in division (B)(1)(a) or (b) or division (B)(2)(a) or (b) of this section that is applicable with respect to the application and the subject offense, that no criminal proceeding is pending against the applicant, that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed or expunged are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, both of the following apply:

(a) The court, except as provided in division (D)(4) or (5) of this section or division (D), (F), or (G) of section 2953.34 of the Revised Code, shall order all official records of the case that pertain to the conviction or bail forfeiture sealed if the application was for sealing or expunged if the application was for expungement and, except as provided in division (C) of section 2953.34 of the Revised Code, all index references to the case that pertain to the conviction or bail forfeiture deleted and, in the case of bail forfeitures, shall dismiss the charges in the case.

(b) The proceedings in the case that pertain to the conviction or bail forfeiture shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed if the application was for sealing or expunged if the

application was for expungement, except that upon conviction of a subsequent offense, a sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31, 2953.32, and 2953.34 of the Revised Code.

(3) An applicant may request the sealing or expungement of the records of more than one case in a single application under this section. Upon the filing of an application under this section, the applicant, unless the applicant presents a poverty affidavit showing that the applicant is indigent, shall pay an application fee of fifty dollars and may pay a local court fee of not more than fifty dollars, regardless of the number of records the application requests to have sealed or expunged. If the applicant pays a fee, the court shall pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the attorney general reimbursement fund created by section 109.11 of the Revised Code. If the applicant pays a fee, the court shall pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed or expunged conviction or bail forfeiture was pursuant to a municipal ordinance.

(4) If the court orders the official records pertaining to the case sealed or expunged, the court shall do one of the following:

(a) If the applicant was fingerprinted at the time of arrest or under section 109.60 of the Revised Code and the record of the applicant's fingerprints was provided to the court under division (C) of this section, forward a copy of the sealing or expungement order and the record of the applicant's fingerprints to the bureau of criminal identification and investigation.

(b) If the applicant was not fingerprinted at the time of arrest or under section 109.60 of the Revised Code, or the record of the applicant's fingerprints was not provided to the court under division (C) of this section, but fingerprinting was required for the offense, order the applicant to appear before a sheriff to have the applicant's fingerprints taken according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation. The sheriff shall forward the applicant's fingerprints to the court. The court shall forward the applicant's fingerprints and a copy of the sealing or expungement order to the bureau of criminal identification and investigation.
Failure of the court to order fingerprints at the time of sealing or expungement does not constitute a reversible error.

(5) Notwithstanding any other provision of the Revised Code to the contrary, when the bureau of criminal identification and investigation receives notice from a court that the record of a conviction or bail forfeiture has been expunged under this section, the bureau of criminal identification and investigation shall maintain a record of the expunged conviction record for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement. The bureau of criminal identification and investigation shall not be compelled by the court to destroy, delete, or erase those records so that the records are permanently irretrievable. These records may only be disclosed or provided to law enforcement

for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement.

When any other entity other than the bureau of criminal identification and investigation receives notice from a court that the record of a conviction or bail forfeiture has been expunged under this section, the entity shall destroy, delete, and erase the record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

**R.C. 2953.35. Expungement of certain convictions relating to firearms.**

(A) Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, or a violation of division (E)(1) or (2) of section 2923.16 of the Revised Code as the division existed prior to June 13, 2022, and who is authorized by division (H)(2)(a) of that section to file an application under this section for the expungement of the conviction record may apply to the sentencing court for the expungement of the record of conviction. Any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B)(1) of section 2923.12 of the Revised Code as it existed prior to June 13, 2022, and who is authorized by division (E)(2) of that section may apply to the sentencing court for the expungement of the record of conviction. The person may file the application at any time on or after September 30, 2011, with respect to violations of division (B), (C), or (E) of section 2923.16 of the Revised Code as they existed prior to that date, or at any time on or after June 13, 2022, with respect to a violation of division (B)(1) of section 2923.12 of the Revised Code or of division (E)(1) or (2) of section 2923.16 of the Revised Code as the particular division existed prior to June 13, 2022. The application shall do all of the following:
(1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;

(2) Include evidence that the offense was a violation of division (B), (C), or (E) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, or was a violation of division (B)(1) of section 2923.12 of the Revised Code or of division (E)(1) or (2) of section 2923.16 of the Revised Code as the particular division existed prior to June 13, 2022, and that the applicant is authorized by division (H)(2)(a) of section 2923.16 or division (E)(2) of section 2923.12 of the Revised Code, whichever is applicable, to file an application under this section;
(3) Include a request for expungement of the record of conviction of that offense under this section.

(B) Upon the filing of an application under division (A) of this section and the payment of the fee described in division (C)(3) of this section if applicable, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. The court shall hold the hearing scheduled under this division.

(C)(1) At the hearing held under division (B) of this section, the court shall do each of the following:

(a) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as the division existed prior to September

30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011;

(b) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and whether the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011;

(c) Determine whether the applicant has been convicted of or pleaded guilty to a violation of division (B)(1) of section 2923.12 of the Revised Code or of division (E)(1) or (2) of section 2923.16 of the Revised Code as the particular division existed prior to June 13, 2022;

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged against the legitimate needs, if any, of the government to maintain those records.

(2)(a) The court may order the expungement of all official records pertaining to the case and the deletion of all index references to the case and, if it does order the expungement, shall send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (C)(1) of this section, determines both of the following:

(i) That the applicant has been convicted of or pleaded guilty to a violation of division (E) of section 2923.16 of the Revised Code as it existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011; that the applicant has been convicted of or pleaded guilty to a violation of division (B) or (C) of section 2923.16 of the Revised Code as the division existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of that division on or after September 30, 2011, due to the application of division (F)(5) of that section as it exists on and after September 30, 2011; or that the applicant has been convicted of or pleaded guilty to a violation of division (B)(1) of section 2923.12 of the Revised Code or of division (E)(1) or (2) of section 2923.16 of the Revised Code as the particular division existed prior to June 13, 2022;

(ii) That the interests of the applicant in having the records pertaining to the applicant's conviction or guilty plea expunged are not outweighed by any legitimate needs of the government to maintain those records.

(b) The proceedings in the case that is the subject of an order issued under division (C)(2)(a) of this section shall be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under

section 109.572 of the Revised Code or a determination under section 2923.125 or 2923.1213 of the Revised Code of eligibility for a concealed handgun license. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

**R.C. 2953.36. Expungement of certain convictions for victims of human trafficking.**

(A) Any person who is or was convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code may apply to the sentencing court for the expungement of the record of conviction of any offense, other than a record of conviction of a violation of section 2903.01, 2903.02, or 2907.02 of the Revised Code, the person's participation in which was a result of the person having been a victim of human trafficking. The person may file the application at any time. The application may request an order to expunge the record of conviction for more than one offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense and all references in divisions (A) to (G) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application. The application shall do all of the following:
(1) Identify the applicant, the offense for which the expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;

(2) Describe the evidence and provide copies of any documentation showing that the person is entitled to relief under this section;

(3) Include a request for expungement of the record of conviction of that offense under this section.

(B) The court may deny an application made under division (A) of this section if it finds that the application fails to assert grounds on which relief may be granted.

(C) If the court does not deny an application under division (B) of this section, it shall set a date for a hearing and shall notify the prosecutor for the case from which the record of conviction resulted of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

(D)(1) At the hearing held under division (C) of this section, the court shall do both of the following:

(a) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;

(b) Determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking.

(2) If the court at the hearing held under division (C) of this section determines that the applicant's participation in the offense that is the subject of the application was a result of the applicant having been a victim of human trafficking and if that subject offense is a felony of the

first or second degree, the court at the hearing also shall consider all of the following factors and, upon consideration of the factors, shall determine whether the interests of the applicant in having the record of the conviction of that offense expunged are outweighed by any legitimate needs of the government to maintain that record of conviction:

(a) The degree of duress under which the applicant acted in committing the subject offense, including, but not limited to, the history of the use of force or threatened use of force against the applicant or another person, whether the applicant's judgment or control was impaired by the administration to the applicant of any intoxicant, drug, or controlled substance, and the threat of withholding from the applicant food, water, or any drug;

(b) The seriousness of the subject offense;

(c) The relative degree of physical harm done to any person in the commission of the subject offense;

(d) The length of time that has expired since the commission of the subject offense;

(e) Whether the prosecutor represents to the court that criminal proceedings are likely to still be initiated against the applicant for a felony offense for which the period of limitations has not expired;

(f) Whether the applicant at the time of the hearing is subject to supervision as a result of the subject offense.

(E) If after a hearing held under division (C) of this section the court finds that the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, and, if the offense that is the subject of the application is a felony of the first or second degree, after consideration of the factors required under division (D)(2) of this section, it finds that the interests of the applicant in having the record of the conviction of that offense expunged are not outweighed by any legitimate needs of the government to maintain that record of conviction, the court shall grant the application and order that the record of conviction be expunged.

(F)(1) The court shall send notice of the order of expungement issued under division (E) of this section to each public office or agency that the court has reason to believe may have an official record pertaining to the case if the court, after complying with division (D) of this section, determines both of the following:

(a) That the applicant has been convicted of a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code;

(b) That the interests of the applicant in having the records pertaining to the applicant's conviction expunged are not outweighed by any legitimate needs of the government to maintain those records.

(2) The proceedings in the case that is the subject of an order of expungement issued under division (E) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged. The record of the conviction shall not be used for any purpose, including, but not limited to, a criminal records check under section 109.572 of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

(G) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury and shall pay twenty dollars of the fee into the county general revenue fund.

**R.C. 2953.39. Low-level controlled substance offense conviction record sealing or expungement, on prosecutor's motion.**

(A) As used in this section:

(1) "Applicant prosecutor" means the prosecutor who applies under division (B)(1) of this section for the sealing or expungement of the record of a case that pertains to a conviction of a person of a low-level controlled substance offense.

(2) "Low-level controlled substance offense" means a violation of any provision of Chapter 2925. of the Revised Code that is a misdemeanor of the fourth degree or a minor misdemeanor or a violation of an ordinance of a municipal corporation that is substantially equivalent to a violation of any provision of Chapter 2925. of the Revised Code and that, if the violation were to be charged under the provision of Chapter 2925. of the Revised Code, would be a misdemeanor of the fourth degree or a minor misdemeanor.

(3) "Subject offender" means, regarding an application filed under division (B)(1) of this section requesting the sealing or expungement of the record of a case that pertains to a conviction of a low-level controlled substance offense, the person who was convicted of the low-level controlled substance offense for which the application requests the sealing or expungement.

(B)(1) If a person is or was convicted of a low-level controlled substance offense, the prosecutor in the case may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction. The prosecutor may file the application with respect to the offense that is the subject of the application at any time after the expiration, with respect to that offense and the subject offender, of the corresponding period of time specified in division (B)(1) of section 2953.32 of the Revised Code for sealing or expungement applications filed by an offender under that section.

(2) An application under division (B)(1) of this section may request an order to seal or expunge the record of conviction for more than one low-level controlled substance offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense and all references in divisions (B) to (F) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application.

(3) Upon the filing of an application under division (B)(1) of this section, except as otherwise provided in this division, the applicant prosecutor shall pay a fee of not more than fifty dollars, including court fees, regardless of the number of records the application requests to have sealed or expunged. The court may direct the clerk of the court to waive some or all of the fee that otherwise would be charged. If the applicant pays a fee, the court shall pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the attorney general reimbursement fund created under section 109.11 of the Revised Code. If the applicant pays a fee, the court shall pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed or expunged conviction was pursuant to a municipal ordinance.

(C) An application filed under division (B)(1) of this section shall do all of the following:

(1) Identify the subject offender and the applicant prosecutor, the offense for which the sealing or expungement is sought, the date of the conviction of that offense, and the court in which the conviction occurred;

(2) Describe the evidence and provide copies of any documentation showing that the subject offender is entitled to relief under this section;

(3) Include a request for sealing or expungement under this section of the record of the case that pertains to the conviction of that offense.

(D)(1) Upon the filing of an application under division (B)(1) of this section, the court shall set a date for a hearing and shall notify the applicant prosecutor of the date, time, and location of the hearing not later than sixty days prior to the hearing. Upon receipt of the notice, the prosecutor shall do both of the following:

(a) Notify the subject offender of the application, the date, time, and location of the hearing on the application, and the offender's right to object to the granting of the application. The notice shall be provided at the offender's last known address or through another means of contact.

(b) Provide timely notice to the victim of the offense, if such a victim exists, or the victim's representative, of the application, the date, time, and location of the hearing on the application, and the victim's or representative's right to object to the granting of the application. The victim, victim's representative, and victim's attorney, if applicable, may be present and heard orally, in writing, or both at any hearing under this section. The notice shall be provided by any reasonable means reasonably calculated to provide prompt actual notice, including regular mail, telephone, and electronic mail. If the prosecutor attempts to provide notice to a victim under this division but the attempt is unsuccessful because the prosecutor is unable to locate the victim, is unable to provide the notice by the chosen method because the mailing address, telephone number, or electronic mail address at which to provide the notice cannot be determined, or the notice is sent by mail and it is returned, the prosecutor shall make another attempt to provide the notice to the victim. If the second attempt is unsuccessful, the prosecutor shall make at least one more attempt to provide the notice.

(2) The court shall hold the hearing set under division (D)(1) of this section not less than forty-five days and not more than ninety days from the date of the filing of the application.

The subject offender may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The victim of the offense may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The subject offender or victim shall specify in the objection the reasons for believing that the application should be denied.

(E)(1) At the hearing held under division (D) of this section, the court shall determine whether the offense that is the subject of the application is a low-level controlled substance offense and whether the amount of time specified in division (B)(1) of this section for the filing of the application has expired.

(2) If the court at the hearing held under division (D) of this section determines that the offense that is the subject of the application is a low-level controlled substance offense and that the amount of time specified in division (B)(1) of this section for the filing of the application has expired, the court at the hearing also shall do all of the following:

(a) Determine whether criminal proceedings are pending against the subject offender;

(b) Determine whether the subject offender has been rehabilitated to the satisfaction of the court;

(c) If the subject offender objected, consider the reasons against granting the application specified by the offender in the objection;

(d) If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection;

(e) Weigh the interests of the subject offender in having the records pertaining to the offender's conviction sealed or expunged against the legitimate needs, if any, of the government to maintain those records;

(f) Consider the oral or written statement of the victim, victim's representative, and victim's attorney, if applicable.

(F)(1) If the court determines, after complying with divisions (E)(1) and (2) of this section, that no criminal proceeding is pending against the subject offender, that the interests of the offender in having the records pertaining to the offender's conviction sealed or expunged are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the offender has been attained to the satisfaction of the court, all of the following apply:

(a) The court shall issue orders of the type specified in division (D)(2) of section 2953.32 of the Revised Code, subject to the exceptions specified in that division.

(b) The proceedings in the case that pertain to the conviction shall be considered not to have occurred and the conviction of the subject offender shall be sealed or expunged, subject to the exceptions specified in division (D)(2) of section 2953.32 of the Revised Code.

(c) The court shall notify the subject offender, at the offender's last known address or through another means of contact, that the court has issued the order requiring the sealing or expungement of the official records pertaining to the case and shall specifically identify the offense and case with respect to which the order applies.

(2) If the court orders the official records pertaining to the case sealed or expunged under division (F)(1) of this section, the court shall comply with division (D)(4)(a) or (b) of section 2953.32 of the Revised Code, whichever is applicable.

(3) All provisions of section 2953.34 of the Revised Code that apply with respect to an order to seal or expunge official records that is issued under section 2953.32 of the Revised Code, or that apply with respect to the official records to be sealed or expunged under such an order, apply with respect to an order to seal or expunge official records that is issued under division (F)(1) of this section and to the official records to be sealed or expunged under such an order.

(G) A record that is expunged pursuant to an order issued under division (F)(1) of this section shall be destroyed, deleted, and erased, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.

(H) The provisions of this section are separate from, and independent of, the provisions of sections 2953.35 and 2953.36 and, except as otherwise specified in this section, the provisions of sections 2953.32 and 2953.34 of the Revised Code.

**R.C. 2953.521. Expungement of record of not guilty finding or dismissed charges when defendant victim of human trafficking.**

(A) Any person who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to expunge the person's official records in the case if the complaint, indictment, information, or finding of not guilty that is the subject of the application was the result of the applicant having been a victim of human trafficking. The application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first. The application may request an order to expunge official records for more than one offense, but if it does, the court shall consider the request for each offense separately as if a separate application had been made for each offense and all references in divisions (A) to (G) of this section to "the offense" or "that offense" mean each of those offenses that are the subject of the application.

(B) The court may deny an application made under division (A) of this section if it finds that the application fails to assert grounds on which relief may be granted.

(C) If the court does not deny an application under division (B) of this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified.

(D) At the hearing held under division (C) of this section, the court shall do all of the following:

(1) If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;

(2) Determine whether the applicant has demonstrated by a preponderance of the evidence that the complaint, indictment, information, or finding of not guilty that is the subject of the application was the result of the applicant having been a victim of human trafficking;

(3) If the application pertains to a dismissed complaint, indictment, or information, determine whether the dismissal was with prejudice or without prejudice and, if the dismissal was without prejudice, whether the period of limitations applicable to the offense that was the subject of that complaint, indictment, or information has expired;

(4) Determine whether any criminal proceedings are pending against the applicant.

(E)(1) Subject to division (E)(2) of this section, if the court finds that the applicant has demonstrated by a preponderance of the evidence that the complaint, indictment, information, or finding of not guilty that is the subject of the application was the result of the applicant having been a victim of human trafficking, the court shall grant the application and order that the official records be expunged.

(2) The court shall not grant the application and order that the official records be expunged unless the court determines that the interests of the applicant in having the official records pertaining to the complaint, indictment, or information or finding of not guilty that is the subject of the application expunged are not outweighed by any legitimate needs of the government to maintain those records.

(F) If an expungement is ordered under division (E) of this section, the court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have an official record pertaining to the case.

(G) The proceedings in the case that is the subject of an order issued under division (E) of this section shall be considered not to have occurred and the official records shall be expunged. The official records shall not be used for any purpose, including a criminal records check under section 109.572 of the Revised Code. The applicant may, and the court shall, reply that no record exists with respect to the applicant upon any inquiry into the matter.

**R.C. 3513.05. Deadline for filing declaration of candidacy.**

Each person desiring to become a candidate for a party nomination at a primary election or for election to an office or position to be voted for at a primary election, except persons desiring to become joint candidates for the offices of governor and lieutenant governor and except as otherwise provided in section 3513.051 of the Revised Code, shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of section 3513.10 of the Revised Code. The declaration of candidacy and all separate petition papers shall be filed at the same time as one instrument. When the offices are to be voted for at a primary election, persons desiring to become joint candidates for the offices of governor and lieutenant governor shall, not later than four p.m. of the ninetieth day before the day of the primary election, comply with section 3513.04 of the Revised Code. The prospective joint candidates' declaration of candidacy and all separate petition papers of candidacies shall be filed at the same time as one instrument. The secretary of state or a board of elections shall not accept for filing a declaration of candidacy and petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy or a declaration of intent to be a write-in candidate, or has become a candidate by the filling of a vacancy under section 3513.30 of the Revised Code for any federal, state, or county office, if the declaration of candidacy is for a state or county office, or for any municipal or township office, if the declaration of candidacy is for a municipal or township office.

If the declaration of candidacy declares a candidacy which is to be submitted to electors throughout the entire state, the petition, including a petition for joint candidates for the offices of governor and lieutenant governor, shall be signed by at least one thousand qualified electors who are members of the same political party as the candidate or joint candidates, and the declaration of candidacy and petition shall be filed with the secretary of state; provided that the secretary of state shall not accept or file any such petition appearing on its face to contain signatures of more than three thousand electors.

Except as otherwise provided in this paragraph, if the declaration of candidacy is of one that is to be submitted only to electors within a district, political subdivision, or portion thereof, the petition shall be signed by not less than fifty qualified electors who are members of the same political party as the political party of which the candidate is a member. If the declaration of candidacy is for party nomination as a candidate for member of the legislative authority of a municipal corporation elected by ward, the petition shall be signed by not less than twenty-five qualified electors who are members of the political party of which the candidate is a member.

No such petition, except the petition for a candidacy that is to be submitted to electors throughout the entire state, shall be accepted for filing if it appears to contain on its face signatures of more than three times the minimum number of signatures. When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of elections may discontinue verifying signatures on petitions when the number of verified signatures equals the minimum required number of qualified signatures.

If the declaration of candidacy declares a candidacy for party nomination or for election as a candidate of a minor party, the minimum number of signatures on such petition is one-half the minimum number provided in this section, except that, when the candidacy is one for election as a member of the state central committee or the county central committee of a political party, the minimum number shall be the same for a minor party as for a major party.

If a declaration of candidacy is one for election as a member of the state central committee or the county central committee of a political party, the petition shall be signed by five qualified electors of the district, county, ward, township, or precinct within which electors may vote for such candidate. The electors signing such petition shall be members of the same political party as the political party of which the candidate is a member.

For purposes of signing or circulating a petition of candidacy for party nomination or election, an elector is considered to be a member of a political party if the elector voted in that party's primary election within the preceding two calendar years, or if the elector did not vote in any other party's primary election within the preceding two calendar years.
If the declaration of candidacy is of one that is to be submitted only to electors within a county, or within a district or subdivision or part thereof smaller than a county, the petition shall be filed with the board of elections of the county. If the declaration of candidacy is of one that is to be submitted only to electors of a district or subdivision or part thereof that is situated in more than one county, the petition shall be filed with the board of elections of the county within which the major portion of the population thereof, as ascertained by the next preceding federal census, is located.

A petition shall consist of separate petition papers, each of which shall contain signatures of electors of only one county. Petitions or separate petition papers containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions or separate petition papers containing signatures of electors of more than one county are filed, the board shall determine the county from which the majority of signatures came, and only signatures from such county shall be counted. Signatures from any other county shall be invalid.

Each separate petition paper shall be circulated by one person only, who shall be the candidate or a joint candidate or a member of the same political party as the candidate or joint candidates, and each separate petition paper shall be governed by the rules set forth in section 3501.38 of the Revised Code.

The secretary of state shall promptly transmit to each board such separate petition papers of each petition accompanying a declaration of candidacy filed with the secretary of state as purport to contain signatures of electors of the county of such board. The board of the most populous county of a district shall promptly transmit to each board within such district such separate petition papers of each petition accompanying a declaration of candidacy filed with it as purport to contain signatures of electors of the county of each such board. The board of a county within which the major portion of the population of a subdivision, situated in more than one county, is located, shall promptly transmit to the board of each other county within which a portion of such subdivision is located such separate petition papers of each petition accompanying a declaration

of candidacy filed with it as purport to contain signatures of electors of the portion of such subdivision in the county of each such board.

All petition papers so transmitted to a board and all petitions accompanying declarations of candidacy filed with a board shall, under proper regulations, be open to public inspection until four p.m. of the eightieth day before the day of the next primary election. Each board shall, not later than the seventy-eighth day before the day of that primary election, examine and determine the validity or invalidity of the signatures on the petition papers so transmitted to or filed with it and shall return to the secretary of state all petition papers transmitted to it by the secretary of state, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such board, together with its certification of its determination as to the validity or invalidity of the signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party. The protest shall be in writing, and shall be filed not later than four p.m. of the seventy-fourth day before the day of the primary election. The protest shall be filed with the election officials with whom the declaration of candidacy and petition was filed. Upon the filing of the protest, the election officials with whom it is filed shall promptly fix the time for hearing it, and shall forthwith mail notice of the filing of the protest and the time fixed for hearing to the person whose candidacy is so protested. They shall also forthwith mail notice of the time fixed for such hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or has not fully complied with this chapter, the candidate's declaration of candidacy and petition shall be determined to be invalid and shall be rejected; otherwise, it shall be determined to be valid. That determination shall be final.

A protest against the candidacy of any persons filing a declaration of candidacy for joint party nomination to the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the candidacy of any person filing a declaration of candidacy singly.

The secretary of state shall, on the seventieth day before the day of a primary election, certify to each board in the state the forms of the official ballots to be used at the primary election, together with the names of the candidates to be printed on the ballots whose nomination or election is to be determined by electors throughout the entire state and who filed valid declarations of candidacy and petitions.

The board of the most populous county in a district comprised of more than one county but less than all of the counties of the state shall, on the seventieth day before the day of a primary election, certify to the board of each county in the district the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within the district and who filed valid declarations of candidacy and petitions.

The board of a county within which the major portion of the population of a subdivision smaller than the county and situated in more than one county is located shall, on the seventieth day before the day of a primary election, certify to the board of each county in which a portion of that subdivision is located the names of the candidates to be printed on the official ballots to be used at the primary election, whose nomination or election is to be determined only by electors within that subdivision and who filed valid declarations of candidacy and petitions.