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SLIP OPINION NO. 2026-OHIO-3999

THE STATE EX REL. KOEBEL *v.* ERIE COUNTY BOARD OF ELECTIONS ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Koebel v. Erie Cty. Bd. of Elections*, Slip Opinion No. 2026-Ohio-3999.]

Elections—Mandamus—Writ sought to compel board of elections and secretary of state to remove replacement candidate name from general-election ballot—Relator's claim barred by doctrine of laches—Writ denied.

(No. 2026-1225—Submitted September 30, 2026—Decided October 9, 2026.)

IN MANDAMUS.

The per curiam opinion below was joined by FISCHER and SHANAHAN, JJ. BRUNNER, J., concurs, with an opinion. KENNEDY, C.J., concurs in part and concurs in judgment only in part, with an opinion. DEWINE, J., concurs in judgment only, with an opinion joined by DETERS and HAWKINS, JJ.

Per Curiam.

{¶ 1} In this expedited election case, relator, Carl Koebel, seeks a writ of mandamus ordering respondents, the Erie County Board of Elections and Secretary of State Frank LaRose, to remove Caleb Stidham from the November 2026 general-election ballot for the office of state representative. The person nominated in the Republican Party primary withdrew his candidacy, and a Republican Party district committee selected Stidham as the replacement candidate under R.C. 3513.31(B). The board of elections' vote on whether to certify Stidham as the replacement candidate resulted in a tie. The secretary of state broke the tie in favor of certifying Stidham as the nominee and ordered that Stidham be certified to the general-election ballot.

{¶ 2} Koebel claims that the party district committee was required to comply with the requirements of Ohio's Open Meetings Act, R.C. 121.22 et seq., when choosing Stidham as the replacement candidate. He asserts that because the committee did not do so, the board of elections was required to reject Stidham's certification to the ballot. We do not reach this issue, however. Rather, we deny the writ based on the doctrine of laches. Koebel unreasonably delayed in bringing his complaint, and the board of elections and the secretary of state have been prejudiced by this delay.

I. BACKGROUND

{¶ 3} Ohio House of Representatives District 89 includes all of Erie County and Ottawa County and parts of Huron County. Erie County contains the greatest number of electors within the 89th House District.

{¶ 4} D.J. Swearingen won the Republican Party nomination for the office of state representative of the 89th House District in the May 2026 primary election. On August 4, 2026, Swearingen notified the Erie County Board of Elections that he was withdrawing his candidacy and requested that his name be removed from the ballot.

{¶ 5} Under R.C. 3513.31(B), a district committee made up of the chairpersons and secretaries of each Republican Party county central committee in the 89th House District was authorized to select a replacement candidate for Swearingen. This opinion refers to that committee as the "party district committee." R.C. 3513.31(B) requires that the party district committee select a replacement candidate at a meeting called for that purpose. On August 10, the party district committee met to select a replacement for Swearingen. That meeting was closed to the public. A member of the Erie County Board of Elections attempted to attend the party district committee's meeting and was denied entry.

{¶ 6} At the meeting, the party district committee selected Caleb Stidham as the replacement candidate. Stidham served as the chairman of the Erie County Republican Party and, as such, was a member of the party district committee. The party district committee provided to the Erie County Board of Elections a written certification naming Stidham as the replacement candidate.

{¶ 7} On August 14, the Erie County Board of Elections held a meeting at which it voted on a motion to certify Stidham to the ballot. At the meeting, the two Republican Party board members acknowledged that the party-district-committee meeting had been closed to the public. The board of elections voted two-to-two on the motion to certify Stidham as the nominee. The board members who voted against the certification indicated that they did so because the party-district-committee meeting should have been open to the public and that Stidham should not have voted on his own selection.[1] The matter was submitted to the secretary of state for his tie-breaking decision. *See* R.C. 3501.11(X). On August 20, the secretary of state issued a letter in which he broke the tie in favor of Stidham's candidacy.

1. Koebel does not argue as part of this writ action that the board was required to reject the certification due to Stidham's vote in the meeting.

{¶ 8} Koebel filed his verified complaint for a writ of mandamus on September 14 and an amended petition on September 16. Koebel is a qualified elector in the 89th House District. Koebel seeks a writ of mandamus ordering the board of elections and the secretary of state to deny Stidham's certification as the Republican nominee for state representative for the 89th House District and remove him from the ballot. Alternatively, Koebel asks this court to "remand the matter to the Erie County Board of Elections with instructions to investigate whether the requirements of R.C. 3513.31(B) were satisfied and whether the purported selection was lawfully made, and to deny certification unless those requirements are established." Koebel argues that the party district committee was required to comply with the Open Meetings Act, R.C. 121.22 et seq., and because it did not, Stidham's selection was invalid. He argues that the board of elections is required to reject certification of a replacement candidate whose selection was invalid.

{¶ 9} Stidham filed a motion to intervene as a respondent, which we granted. 2026-Ohio-3699. The case is an expedited election case under S.Ct.Prac.R. 12.08.

II. LEGAL ANALYSIS

{¶ 10} Before turning to whether Koebel has met the requirements for a writ of mandamus, respondents argue that the writ should be denied or dismissed for several preliminary reasons—laches, a noncompliant verification affidavit, and standing. We find that laches is dispositive.

A. Koebel's affidavit and motion for leave to submit a supplemental affidavit

{¶ 11} The secretary of state argues that Koebel's complaint should be dismissed because the amended complaint was not verified by an affidavit based on personal knowledge as required by S.Ct.Prac.R. 12.02(B). The secretary of state also argues that the affidavit Koebel attached to his *amended* complaint is faulty because it is the same affidavit that was attached to the original verified complaint and does not specifically aver that the factual allegations in the *amended* complaint

are true. Koebel has now moved for leave to file a supplemental verification affidavit. The secretary of state opposes the motion. We grant the motion for leave and do not dismiss the complaint for failure to comply with S.Ct.Prac.R. 12.02(B).

{¶ 12} A complaint for a writ of mandamus "must be . . . verified by affidavit." R.C. 2731.04. In addition, S.Ct.Prac.R. 12.02(B)(1) requires that a complaint instituting an original action in this court "shall be supported by an affidavit." The affidavit "shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit." S.Ct.Prac.R. 12.02(B)(2); *accord State ex rel. Henderson v. Clermont Cty. Bd. of Elections*, 2024-Ohio-333, ¶ 10.

{¶ 13} Koebel attached his own affidavit to both the complaint and the amended complaint. This affidavit, however, does not state that the factual allegations in it are based on personal knowledge. Instead, it states that "[t]he factual allegations in the Verified Complaint are true to the best of [Koebel's] knowledge, information, and belief." An affidavit that attests that the factual allegations are "true 'to the best of [the affiant's] knowledge, information, and belief' " does not comply with S.Ct.Prac.R. 12.02(B)(2). (Bracketed text in original.) *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 2015-Ohio-3761, ¶ 14. We have, however, "declined to dismiss mandamus petitions for noncompliance with S.Ct.Prac.R. 12.02(B)(2) when the relator sought leave to cure the defective personal-knowledge language in an amended affidavit and did, in fact, cure it." *Henderson* at ¶ 15. Here, Koebel timely moved to file a supplemental affidavit and attached the new affidavit to the motion.

{¶ 14} In the supplemental affidavit, Koebel avers that he is competent to testify to the facts in the affidavit. He does not aver that all the facts in the affidavit are based on personal knowledge, but rather he delineates which facts are based on personal knowledge and which facts are not. We find that the supplemental affidavit complies with S.Ct.Prac.R. 12.02(B)(2).

{¶ 15} "An affidavit that is made 'to the best of' an affiant's 'personal knowledge and information' does not satisfy S.Ct.Prac.R. 12.02(B)(2), because that type of statement does not make clear 'which allegations are based on personal knowledge and which allegations are based simply on information.' " *State ex rel. Simonetti v. Summit Cty. Bd. of Elections*, 2017-Ohio-8115, ¶ 11, quoting *State ex rel. Commt. for the Charter Amendment for an Elected Law Director v. Bay Village*, 2007-Ohio-5380, ¶ 12-13. Koebel's supplemental affidavit clarifies which allegations are based on personal knowledge and which are based on "information and belief." S.Ct.Prac.R. 12.02(B)(2) requires that the affidavit do three things: it must (1) be made on personal knowledge, (2) set forth facts admissible in evidence, and (3) show affirmatively that the affiant is competent to testify to all matters stated in the affidavit. Koebel's supplemental affidavit does all three.

{¶ 16} The secretary of state opposes the motion for leave, arguing that Koebel should have filed a motion to amend the complaint and included the supplemental affidavit as part of the motion to amend the complaint. We have not, however, required that a relator file a motion to amend the complaint in order to amend a verification affidavit; a motion for leave to file an amended affidavit is sufficient. *See State ex rel. Nelsonville v. Athens Cty. Bd. of Elections*, 2025-Ohio-4363, ¶ 13-14 (granting motion for leave to file an amended affidavit); *State ex rel. Ganoom v. Franklin Cty. Bd. of Elections*, 2016-Ohio-1241, ¶ 4-8 (granting motion for leave to amend affidavit). Therefore, we grant Koebel's motion to file the supplemental affidavit and do not dismiss the complaint for failure to comply with S.Ct.Prac.R. 12.02(B).

B. Standing

{¶ 17} The secretary of state argues that Koebel lacks standing to bring this action. We disagree.

{¶ 18} "Traditional standing principles require litigants to show, at a minimum, that they have suffered '(1) an injury that is (2) fairly traceable to the

defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.' " *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7, quoting *Moore v. Middletown*, 2012-Ohio-3897, ¶ 22. The "injury must be personal—that is, the plaintiff or relator must suffer a particular harm, not the general harm that may be suffered by the public at large." *State ex rel. Martens v. Findlay*, 2025-Ohio-5589, ¶ 16.

{¶ 19} The secretary of state argues that Koebel has not suffered an "injury different from every other registered voter in the 89th District." However, we have "long held in mandamus cases regarding election matters that an elector is a proper relator because he is beneficially interested in the case." *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 12, fn. 1, citing *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656, 662 (1892) and *State v. Brown*, 38 Ohio St. 344, 346-347 (1882). "The elector's beneficial interest arises from the particular injury to his vote that would occur if election officials disregarded their election duties." *Id.* "*Brown* and *Gregg* are part of a long line of cases establishing that mandamus is available to enforce public duties, that any duty related to an election is public, and that a citizen has the capacity to sue even if the duty only generally affects him." *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219, 221 (1992).

{¶ 20} The secretary of state, however, does not even mention these cases, much less argue that they were wrong or do not apply to this action. Absent any such argument, the secretary of state has not shown that Koebel lacks standing. Rather, Koebel has standing because his "beneficial interest arises from the particular injury to his vote that would occur if election officials disregarded their election duties," *Findlay Mun. Court* at ¶ 12, fn. 1.

C. Laches

{¶ 21} The board of elections, the secretary of state, and Stidham all argue that we should deny the writ based on the doctrine of laches. We agree.

{¶ 22} "Extreme diligence and promptness are required in elections-related matters." (Cleaned up.) *State ex rel. Miller v. Union Cty. Bd. of Elections*, 2023-Ohio-3664, ¶ 18. "'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.' " *Id.*, quoting *State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 11.

{¶ 23} The secretary of state broke the board of elections' tie vote on August 20. Koebel either knew or should have known about the secretary of state's decision shortly thereafter. For example, on August 21 and 22 respectively, two different Ohio newspapers published articles about the secretary of state's decision. *See* Hancock, *Frank LaRose breaks tie, certifies Caleb Stidham as GOP candidate for northern Ohio House race*, The Plain Dealer: Web Edition (August 21, 2026); Elbridge, *Stidham approved as GOP nominee; Could Serve 89th District*, Toledo Blade (August 22, 2026). Koebel filed his complaint on September 14—25 days after the secretary of state broke the tie vote. We have found shorter delays in election cases to be unreasonable, and we find Koebel's delay to be unreasonable here. *See, e.g.*, *State ex rel. Pinkston v. Delaware Cty. Bd. of Elections*, 2023-Ohio-1060, ¶ 16 (applying laches based on a 14-day delay); *State ex rel. Syx v. Stow City Council*, 2020-Ohio-4393, ¶ 11 (22-day delay); *State ex rel. Fuller v. Medina Cty. Bd. of Elections*, 2002-Ohio-5922, ¶ 11 (17-day delay); *State ex rel. Landis v. Morrow Cty. Bd. of Elections*, 2000-Ohio-295, ¶ 8-9 (22-day delay); *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 1995-Ohio-269, ¶ 11, 13 (17-day delay).

{¶ 24} "Laches also requires that the opposing party be prejudiced by the delay." *Miller* at ¶ 20. "Prejudice occurs in election cases involving requested changes to absentee ballots if a relator's delay in filing leads to the impossibility of relief before the ballots are printed and mailed." *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4953, ¶ 27; *see also State ex rel. Brinda v. Lorain Cty.*

Bd. of Elections, 2007-Ohio-5228, ¶ 13 ("the majority of the cases in which we have held that laches barred an election claim have involved the passage of the statutory absentee-ballot deadline"). The board of elections and the secretary of state argue that they were prejudiced by Koebel's delay in this case because on September 18, the board sent absentee ballots to overseas and absent uniformed services voters as required by law ("UOCAVA" ballots). *See* R.C. 3509.01(B)(1) and 3511.04(B). In Erie County, the board of elections sent out 33 UOCAVA ballots. In addition, beginning on October 6, boards of elections will start sending absentee ballots to other voters. *See* R.C. 3509.01(B)(2). On September 21, the board of elections ran its final test of the ballots and voting machines, and on September 23 the board submitted to its vendor the approved form of ballots for the printing of 36,450 ballots.

{¶ 25} Finally, "for laches to apply, the prejudice must have been avoidable if the relators in a case had filed their case promptly." *Ohio Democratic Party* at ¶ 31. When analyzing laches in similar expedited election cases, we have recognized that it takes several weeks from the filing of a case for it to be resolved. *See Pinkston* at ¶ 18; *Brinda* at ¶ 13. Here, the secretary of state issued his tie-breaking decision 29 days before the September 18 date by which UOCAVA ballots must be printed and ready for use, *see* R.C. 3509.01(B)(1), and if Koebel had promptly filed his complaint, there is a reasonable chance that we could have issued an opinion by the deadline. And at a minimum, any prejudice related to the board of elections' printing of non-UOCAVA absentee ballots could have been limited. Moreover, Koebel's 25-day delay in filing his complaint was particularly lengthy and therefore prejudicial to respondents.

{¶ 26} In his reply brief, Koebel argues that his delay in filing was justified because he needed to find counsel and conduct an investigation to determine whether the party-district-committee meeting had been closed to the public before he brought his complaint. But it is difficult to see how confirming that the meeting

had been closed would take a significant amount of time, and regardless, Koebel offers no evidence showing that he promptly began investigating whether the meeting had been closed.

{¶ 27} Koebel also cites R.C. 3511.04(B), which generally provides that boards of elections must send separate absentee ballots to overseas and military voters if a candidate or issue is added to the ballot after the initial absentee ballot has been sent. Koebel recognizes that the statute does not prescribe a procedure for replacement ballots when a candidate is *removed* from the ballot, but he argues that the statute supports the argument that late changes to the ballot are permissible. But even if late changes to the ballot may be possible, the boards of elections would still be prejudiced by having to spend extra time and money because of Koebel's delay in filing his complaint. Koebel also notes that the board of elections chose to continue placing orders for the printing of non-UOCAVA absentee ballots after Koebel filed his complaint. He seems to be arguing that the board should have avoided incurring these costs once it had notice that Koebel's complaint had been filed. But the board of elections could not reasonably have been expected to stop preparing for the election, and in any event, it was Koebel's unreasonable delay in bringing his case that prevented this court from deciding this case before the board had to begin printing ballots.

{¶ 28} For these reasons, we conclude that Koebel's action is barred by laches. Because we deny the writ based on laches, we do not address the merits of Koebel's claim. *See Fuller*, 2002-Ohio-5922, at ¶ 12; *Polo*, 1995-Ohio-269, at ¶ 14.[2]

2. In his reply brief, Koebel requests an award of attorney fees "if [he] prevails." He did not request attorney fees either in his complaint or his merit brief, but even if Koebel were otherwise entitled to attorney fees, he has not prevailed in this action. We deny the request for attorney fees.

III. CONCLUSION

{¶ 29} Koebel unreasonably delayed in bringing his complaint, and the board of elections and secretary of state were prejudiced by this delay. Therefore, Koebel's action is barred by laches and we deny the writ. In addition, we grant Koebel's motion for leave to submit a supplemental affidavit.

Writ denied.

BRUNNER, J., concurring.

{¶ 30} I agree that the writ requested in this case should be denied, and I join in full the per curiam opinion and also Part I of the second separate opinion, such that a majority of this court reaffirms that an elector has standing to seek an extraordinary writ relating to an election by virtue of his or her status as an elector. I write separately to address the conclusion of the third separate opinion that relator, Carl Koebel, does not have standing. I offer this concurring opinion because additional considerations fundamental to voting and an elector's status demonstrate why it is fundamentally and patently wrong to deny standing to an elector who did not plead additional evidence to show standing beyond his or her status as an elector.

{¶ 31} We have "long held in mandamus cases regarding election matters that an elector is a proper relator because he is beneficially interested in the case." *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 12, fn. 1, citing *State v. Brown*, 38 Ohio St. 344, 346-347 (1882), and *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656, 662 (1892). "The elector's beneficial interest arises from the particular injury to his vote that would occur if election officials disregarded their election duties." *Id.*

Overturning Nearly 150 Years of Ohio Legal Precedent

{¶ 32} The third separate opinion would effectively overturn this precedent. The reasoning it provides for overturning the precedent, however, relies on misstating this court's holdings in *Brown* and *Gregg*. In *Brown*, the court identified several factors that established the relator's beneficial interest in the case, including that "as an elector, he would be entitled to vote at the election, if an election were proper, and would be himself eligible to the office." *Brown* at 346-347. We gave no indication in *Brown* that the relator's eligibility to run for the office was an *essential* factor in establishing standing. In fact, we indicated the exact opposite. In the syllabus, the court made no mention of that factor and instead stated as follows: "A proceeding in mandamus to compel the sheriff to give notice and make proclamation to the qualified voters of a county to elect a judge of the court of common pleas therein is properly instituted upon the relation of an elector of such county." *Id.* at paragraph one of the syllabus.

{¶ 33} Our decision in *Gregg* reflects this understanding of *Brown*. In *Gregg*, we stated: "It was held in *State v. Brown*, 38 Ohio St. 344, that an elector has such beneficial interest in an election as entitles him to institute 'a proceeding in *mandamus* to compel the sheriff to give notice and make proclamation to the qualified voters of a county to elect a judge of the court of common pleas therein.' " (Emphasis in original.) *Gregg* at 662, quoting *Brown* at paragraph one of the syllabus. We then recognized that the elector's interest exists beyond the mere calling of an election and extends through to the completion of the election. *Id.* ("The beneficial interest of the elector in the election does not cease, we think, when the machinery for holding it is set in motion, nor until all lawful steps are taken to its completion."). Contrary to the claim of the third separate opinion, we did *not* indicate that our holding was based on any *unique* injury to the elector's ability to have his vote counted or have a winner declared. Our holding was that "[a]n action in mandamus, to compel the board to make, certify, and transmit to the proper

officers, as required by law, the several abstracts of votes shown by the tally sheets returned from the various election precincts of the county, may be instituted on the relation of any elector of the county." *Id.* at paragraph three of the syllabus.

{¶ 34} In the nearly 150 years since *Brown* and *Gregg* were decided, we have continued to adhere to their holdings. *See State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219, 221 (1992) ("*Brown* and *Gregg* are part of a long line of cases establishing that mandamus is available to enforce public duties, that any duty related to an election is public, and that a citizen has the capacity to sue even if the duty only generally affects him."); *State ex rel. Skilton v. Miller*, 164 Ohio St. 163, 164-165 (1955) (same). We have recognized the ongoing validity of these holdings as recently as two years ago—in an opinion written by the author of the third separate opinion in this case, no less. *See Martens*, 2024-Ohio-5667, at ¶ 12, fn. 1 ("We have long held in mandamus cases regarding election matters that an elector is a proper relator because he is beneficially interested in the case. . . . The elector's beneficial interest arises from the particular injury to his vote that would occur if election officials disregarded their election duties.").

{¶ 35} At no point have we questioned the validity of this line of cases. That fact is significant on its own, as the public benefits from stability in the law. I also note, however, that the constitutional language on which the standing requirement is based is contained in Article IV, Section 1 of the Ohio Constitution. And while that section has been amended numerous times in the last 150 years, the core language on which the standing requirement is grounded—the vesting of the "judicial power of the state" in the "supreme court"—has remained unchanged. *See Martens* at ¶ 10; *Voss v. Quicken Loans*, 2026-Ohio-531, ¶ 10. In light of that, I find it hard to believe that the long line of precedent discussed above is inconsistent with the Ohio Constitution.

Consequences for Electors Relating to Voting Eligibility and First Amendment Rights

{¶ 36} I also reject the position of the third separate opinion that it would be appropriate to make such a massive change to our standing requirements in the present case. Koebel understandably based the allegations of his complaint on the well-established law discussed above. Although the secretary of state raised a sliver of an argument that Koebel lacks standing, there is no mention of the long-standing precedent discussed above, much less presentment of any argument by *any* party for why it should be overturned. It is sorely difficult to characterize the legal position of the third separate opinion as anything other than judicial activism and legislating from the bench. The position taken by the third separate opinion also steps on the toes of the executive branch.

{¶ 37} The secretary of state is the chief election officer of the State and is required to provide instructions, directives, and advisory opinions for the State's 88 county boards of elections. R.C. 3501.05(B), (C), (M), (X), and (EE). The county boards of elections are required to follow the secretary's instructions and issue their own instructions for conducting elections in their respective counties that are consistent with the secretary's instructions, directives, and advisory opinions. R.C. 3501.11(E), (P), and (U).

{¶ 38} Key instructions the secretary of state must provide are those in furtherance of the state's implementation of the National Voter Registration Act of 1993 ("NVRA"). 52 U.S.C. 20501 et seq. The NVRA specifically requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" who have died or changed residence from state voter-registration databases. 52 U.S.C. 20507(a)(4). These list-maintenance programs of states' voter-registration databases must be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965." 52 U.S.C. 20507(b)(1).

{¶ 39} The NVRA also establishes a confirmation-notice procedure that must be followed before names may be removed from the voter-registration rolls based on a change of residence. Specifically, a name cannot be removed unless the registrant confirms the change of residence in writing. A name can be removed if the registrant (1) does not respond to a notice asking for their address to be confirmed and (2) has failed to vote during a specified period encompassing two federal elections. 52 U.S.C. 20507(d)(1)(A) and (B).[3]

{¶ 40} To further protect Ohio electors from being removed from Ohio's voter-registration database, Ohio has created additional protections in state law that protect a registration from cancellation, which can be found in statutes, rules, and instructions of the secretary of state. *See, e.g.*, R.C. 3503.15(C)(11) (requiring the database to include the elector's "last activity date"); Adm.Code 111:3-11-01; Secretary of State, *Directive 2026-19* (accessed Oct. 5, 2026) [https://perma.cc/TE45-KJ3Y] (governing Ohio's 2026 General Voter Records Maintenance Program and instructing boards of elections that an elector's status must be changed from "active-confirmation" to "active-active" if a record is located on review of the "Automatic Confirmation of Address Safeguard" file from the "Board of Elections Portal" and that the elector's registration must not be canceled if the elector updates his or her registration or engages in "voter-initiated activity"); Secretary of State, *Election Official Manual*, https://www.ohiosos.gov/assets/2026-02_fulleom.pdf (accessed Oct. 5, 2026) [https://perma.cc/ZT73-G9DL] (providing that "voter-initiated activity" includes voting, submitting a valid absentee-ballot application, registering to vote, updating or confirming an address with a board of elections or the Ohio Bureau of Motor Vehicles, and "*[s]igning verified candidate*

3. Notably, 52 U.S.C. 20507(b)(2) provides that a state voter-list-maintenance program "shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote."

or valid issue petitions" [emphasis added]). Even though Koebel was not engaged in petition signing, there is a clear argument that he was engaged in election activity. If he could have filed a protest, it is clear from the record that he would have; instead, he instituted a lawsuit. The third separate opinion makes an assumption that a protest can be filed only when a statute specifically authorizes it. Statutes governing the duties of boards of elections point to the general work of a board to hear from the public about irregularities and violations of Title XXXV of the Revised Code and to investigate them, including the validity of "nomination papers." R.C. 3501.11(J) and (K)(1).

{¶ 41} The ramifications of the position of the third separate opinion if adopted by a majority of this court would be deep and troubling. Fortunately, there is no majority view for this ill-conceived position. In the election-law context, original actions brought by individual voters are essential to the protection of individual rights—including voting rights. Denying electors standing to engage in what is purely election activity by requiring specific standing beyond being an elector, could result in their disenfranchisement, because challenging what is on the ballot by protest or lawsuit is the flip side of signing a petition to place a candidate or issue on the ballot. As such, the speech associated with voter activity challenging the right to hold an election would be restrained. And this restraint could extend to voting with the application of the NVRA, because clearly what Koebel did is election activity, which would prevent voter registration cancellation if he did not respond to a notice to confirm his address.

{¶ 42} The United States Supreme Court has consistently recognized that voting is a fundamental form of political participation and that election-related activities lie at the core of First Amendment protection. *See, e.g.*, *Meyer v. Grant*, 486 U.S. 414, 421-422 (1988) ("The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change . . . . Thus, the circulation of a petition involves the

type of interactive communication concerning political change that is appropriately described as 'core political speech.' "). Whatever underlies the rationale for the unusual position of the third separate opinion, to dismiss the action for standing is strongly aberrant and misguided. It is repugnant to free and fair elections and to the exercise of the First Amendment by electors who engage in voter activity.

Conflating Electors with Relators When There Is a Protest Procedure

{¶ 43} Finally, I note with concern that the expressed disregard of our well-established standing precedent by the third separate opinion may lead to further infringement on free speech in its conflation of an elector with a relator. For example, the third separate opinion gratuitously states that "[w]e have *assumed* that when a statutory protest is denied, the elector who unsuccessfully pursued the protest has a particularized injury sufficient to establish standing to pursue an action in mandamus to challenge the denial of the protest." (Emphasis added.) Opinion concurring in judgment only, ¶ 93-94. It is electors who file protests of elections, and they may *become* relators, but they are not relators until they appear as such before this court or a court with jurisdiction in original actions such as mandamus and prohibition. When they do appear, having first been electors who are protestors, by virtue of their election activity in protesting, they have standing.

Expedited and Last-Minute Election Cases are Generally Inappropriate Vehicles for Overturning Nearly 150-Year-Old Legal Precedents

{¶ 44} Finally, even if it were appropriate to reexamine the precedent that the third separate opinion wishes to overturn, the expedited nature of this litigation due to the general election scheduled to take place less than a month from now prevents this court from giving the issue the thorough consideration it deserves, including the opportunity for the parties to fully brief arguments on this issue. It is therefore not proper to use the present case to make such a significant change in our case law. Accordingly, under our nearly 150 years of precedent, Koebel has established standing.

Conclusion

{¶ 45} Although the third separate opinion may cloak its drastic position in legalese, the public should understand that the effects of such a holding, if adopted by a majority of this court, would be real and tangible. The path the third separate opinion would blaze through our precedent could and would lead to nothing short of disenfranchisement—not just of citizens' rights to full participation in our electoral process, but of the very act of voting itself. For the foregoing reasons, I fully join the per curiam opinion and Part I of the second separate opinion and express resolute words of caution regarding the irresponsible position of law taken by the third separate opinion.

KENNEDY, C.J., concurring in part and concurring in judgment only in part.

{¶ 46} I fully join Part II(B) of the per curiam opinion and its holding that relator, Carl Koebel, has standing to bring this action. And because Koebel has standing, I would address the merits of his request for a writ of mandamus.

{¶ 47} I concur in the majority's judgment denying Koebel the requested writ. However, I disagree with the per curiam that laches applies, because respondents, Ohio Secretary of State Frank LaRose and the Erie County Board of Elections, and intervening respondent, Caleb Stidham, have failed to prove material prejudice from Koebel's delay in filing the action. Therefore, I would resolve this action on the basis that Koebel has not established that he has a clear legal right to the requested relief or that the secretary of state and the board have a clear legal duty to provide that relief. *See State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18.

I. STANDING

{¶ 48} I fully agree with the per curiam opinion that "Koebel has standing because his 'beneficial interest arises from the particular injury to his vote that would occur if election officials disregarded their election duties,' " per curiam opinion, ¶ 48, quoting *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 12, fn. 1. I write separately to further explain this court's long history of holding that electors have beneficial-interest standing in mandamus cases involving election matters and to rebut the claim of the third separate opinion that the overruling of *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 1999-Ohio-123, in *Martens* limited our precedent on beneficial-interest standing for electors.

A. This Court's Long History of Recognizing That Electors Have Standing in Mandamus Cases to Challenge Election-Related Matters

{¶ 49} The principle that an elector is a proper relator in a mandamus action involving an election-related matter because he or she has beneficial-interest standing in such cases dates back to at least the late 19th century and has been consistently reaffirmed.

{¶ 50} In *State v. Brown*, 38 Ohio St. 344 (1882), an elector requested a writ of mandamus compelling the sheriff in his county to give notice to qualified electors that there was to be an election for a judge of the court of common pleas. *Id.* at 345. This court rejected an argument that the case could be instituted only by the attorney general and held that the relator, as an elector, had a beneficial interest in compelling the sheriff to hold an election under the statute providing for writs of mandamus, stating that, "as an elector, he would be entitled to vote at the election, if an election were proper, and would be himself eligible to the office." *Id.* at 346-347.

{¶ 51} Likewise, in *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656 (1892), the relator, a citizen and elector of Fayette County, brought a mandamus action seeking to compel the board of deputy state supervisors of elections to complete

and transmit required abstracts of votes cast at the general election. *Id.* at 657. The board in that case was split on whether to transmit the abstracts due to irregularities on the tally sheets. *Id.* at 657-658. This court held that the board's duty was ministerial because, under the relevant statute, such boards had no authority other than "to 'make abstracts of the votes' returned by the precinct officers" before they "certify and transmit them to the proper officer, as required by law." *Id.* at 661. After addressing the merits of the case, the court turned to whether the relator, an elector in the county, was entitled to institute the mandamus action. *Id.* at 662. The court acknowledged that the principle announced in *Brown* applied to a relator who has "no other interest than that of an elector." *Id.* In doing so, the court reaffirmed that an elector "has such beneficial interest in an election as entitles him to institute" a proceeding in mandamus. *Id.*, citing *Brown*. This court further held that "[t]he beneficial interest of the elector in the election does not cease . . . when the machinery for holding [the election] is set in motion, *nor until all lawful steps* are taken to its completion." (Emphasis added.) *Id.*

{¶ 52} Indeed, the case before us today is almost a perfect analogue to *Gregg* in regard to whether a relator has standing. In *Gregg*, the relevant election board was split on whether to certify votes in contravention of its legal duty because some members had concerns about the legality of the process. *Id.* at 657-658. Here, the board was split on whether to certify Stidham's candidacy because of concerns about the legality of the process. There, the relator was an elector and citizen of the relevant county. *Id.* at 657. Here, Koebel is an elector and citizen of the relevant county. There, this court held that the relator, in his capacity as an elector, had standing. *Id.* at 662. Here, this court does the same. Any attempt to hold otherwise undermines nearly 150 years of precedent recognizing that electors enjoy beneficial-interest standing to challenge whether election officials complied with their statutory duties.

B. The Third Separate Opinion Would Improperly Limit Our Holding in State ex rel. Martens v. Findlay Mun. Court

{¶ 53} Two years ago, in *Martens,* 2024-Ohio-5667, this court reaffirmed our long-standing precedent that a qualified elector has a "beneficial interest [that] arises from the particular injury to [the elector's] vote that would occur if election officials disregarded their election duties." *Id.* at ¶ 12, fn. 1. This court adhered to precedent saying that because there is a "unique injury to their vote, electors satisfy the standing requirement in these cases." *Id.*

{¶ 54} Today, the third separate opinion seeks to cabin that holding by arguing that beneficial-interest standing depends on whether the General Assembly has enacted a law granting an elector a right of remedy. Opinion concurring in judgment only, ¶ 94. The third separate opinion would improperly limit—if not abrogate—beneficial-interest standing by misreading *Martens*. Fundamental to the holding in *Martens* is this court's understanding that "[i]n *Sheward*, [1999-Ohio-123,] this court *abruptly* departed from our long history of 'always adher[ing]' to the standing requirement." (Bracketed text added in *Martens*; emphasis added.) *Martens* at ¶ 13, quoting *State ex rel. Williams v. Indus. Comm.*, 116 Ohio St. 45, 56 (1927) (lead opinion). This court emphasized that "*Sheward* is an *aberration* in our caselaw. It was contrary to our deeply rooted standing requirement and the Ohio Constitution." (Emphasis added.) *Id.* at ¶ 3.

{¶ 55} *Sheward* "created an exception 'when the issues sought to be litigated are of great importance and interest to the public.' " *Martens* at ¶ 14, quoting *Sheward* at ¶ 33. This exception essentially established standing for all Ohio citizens if they are "'interested in the execution of the laws of this state.' " *Id.*, quoting *Sheward* at ¶ 47.

{¶ 56} Yet by declaring *Sheward* an "aberration," this court implicitly held that the court in *Sheward* misread this court's prior caselaw as overly expansive when it created the public-rights doctrine. But in *Martens*, this court did not

overturn the precedent on which *Sheward* had relied or otherwise invalidate that caselaw's precedential value. Indeed, in *Martens,* this court acknowledged that *Sheward* "created an exception" to our "traditional standing requirement." *Martens*, 2024-Ohio-5667, at ¶ 14. Therefore, our holding in *Martens* does not, as the third separate opinion argues, place the cases that *Sheward* misread in a position of "dubious precedential value." Opinion concurring in judgment only at ¶ 100.

{¶ 57} Perhaps recognizing the logical stretch required to read *Martens* as limiting the beneficial interest electors have in compelling elections officers to perform their duties—as opposed to reading it as overruling the broad public-right standing created in *Sheward*—the third separate opinion attacks *Brown*, 38 Ohio St. 344, *Gregg*, 49 Ohio St. 656, and *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219 (1992).

{¶ 58} First, the third separate opinion attempts to distinguish *Brown* and *Gregg* from the present case and confine them to their specific facts. Opinion concurring in judgment only at ¶ 97-98. However, that is not how this court has treated *Brown* and *Gregg* in the past.

{¶ 59} The court has repeatedly affirmed the principle that electors have a beneficial interest in ensuring the integrity of the election process. *See, e.g.*, *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 616 (1902) (in an action in which the relator sought a writ to compel the governor to fill a vacancy in the office of lieutenant governor, this court held that "[t]he right of a citizen to enforce a public right without the intervention of the attorney general has been established in this state"); *State ex rel. Newell v. Brown*, 162 Ohio St. 147, 150-151 (1954) (in allowing an elector to bring a writ of prohibition, the court acknowledged that "[w]here a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right"); *State ex rel. Skilton v. Miller*, 164 Ohio St. 163, 164-165 (1955) (acknowledging the "line of

cases involving election questions where it was held that a citizen has sufficient interest as an elector to maintain an action in mandamus to compel compliance with the election laws"); *State ex rel. Nimon v. Springdale*, 6 Ohio St.2d 1, 4 and 4, fn. 5 (1966) (listing cases and noting "an election . . . is of the utmost public concern and any duty related thereto is properly characterized as public"); *Barth* at 221 ("*Brown* and *Gregg* are part of a long line of cases establishing that mandamus is available to enforce public duties, that any duty related to an election is public, and that a citizen has the capacity to sue even if the duty only generally affects him."). Moreover, as stated above, the question of standing in *Gregg* is closely analogous to the question of standing in this case.

{¶ 60} Second, the third separate opinion attempts to undermine the holding in *Barth*, 65 Ohio St.3d 219, based on speculation. It suggests that "the court would have needed to find that only one relator had standing to satisfy the constitutional requirement," implying that the court in *Barth* analyzed only whether one of the relators had standing. Opinion concurring in judgment only at ¶ 99. Yet there is no indication that the court relied on that thought process in reaching the merits of the case. Indeed, this court found that both relators had standing and that they had standing because they were electors. *Barth* at 222. ("Accordingly, we conclude that relators have standing as electors to bring this action."). Koebel has a beneficial interest "in securing compliance with the election laws." *Barth* at 221. This interest has been affirmed repeatedly for nearly 150 years. Overturning our long line of caselaw regarding this issue based on one page of briefing by the secretary of state is imprudent at best. *State ex rel. King v. Cuyahoga Cty. Bd. of Elections*, 2022-Ohio-3613, ¶ 34, quoting *State ex rel. LetOhioVote.org v. Brunner*, 2009-Ohio-4900, ¶ 51, quoting *PDK Laboratories, Inc. v. United States Drug Enforcement Administration*, 362 F.3d 786, 799 (D.C.Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment) ("And we have 'recogniz[ed] the "cardinal principle of judicial restraint—if it is not necessary to decide more, it

is necessary not to decide more."' " [Bracketed text added in *King*.]). For these reasons, I join in the majority's holding that Koebel has standing and, because he has standing, I would also address the merits of the writ action.

II. WRIT OF MANDAMUS

{¶ 61} Entitlement to a writ of mandamus requires relator to show a clear legal right to the requested relief, a clear legal duty on the part of respondents to provide that relief, and the lack of an adequate remedy in the ordinary course of law. *Manley*, 2014-Ohio-4563, at ¶ 18. I concur in the majority's judgment denying the writ, but I would reach that outcome on the merits of his claim, not laches.

A. Laches

{¶ 62} "The doctrine of laches . . . is an instance of the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair and unjust." Walsh, *A Treatise on Equity*, 472 (1930). "The elements of a laches defense are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Carrier v. Hilliard City Council*, 2016-Ohio-155, ¶ 8.

{¶ 63} "'[I]n order to successfully prosecute a claim of laches, the person asserting the claim must show that he has been *materially prejudiced* by the delay of the adverse party in asserting his rights.' " (Emphasis added.) *State ex rel. Pennington v. Bivens*, 2021-Ohio-3134, ¶ 26, quoting *Smith v. Smith*, 168 Ohio St. 447, 455 (1959); *accord id.* ("the prejudice must be material before laches will bar relief").

{¶ 64} As evidence of prejudice, the per curiam opinion points to the facts that (1) the board has sent absentee ballots to overseas and absent uniformed services voters, (2) the board had to send absentee ballots to other voters beginning

on October 6, (3) the board has run its final test of the ballots and voting machines, and (4) the board has submitted to its vendor the approved form of ballots for the printing of 36,450 ballots. In support of its position, the per curiam cites *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4953, ¶ 27, for the proposition that "[p]rejudice occurs in election cases involving requested changes to absentee ballots if a relator's delay in filing leads to the impossibility of relief before the ballots are printed and mailed." I joined the majority in *Ohio Democratic Party* because the secretary of state had established material prejudice. *Id.* at ¶ 26.

{¶ 65} In *Ohio Democratic Party*, the secretary of state issued Directive 2024-21 on August 31, *id.* at ¶ 23, a second directive on September 17, and an advisory on September 20, informing county boards of elections about a federal-district-court injunction, *id.* at ¶ 24. The second directive was substantially similar to Directive 2024-21. The relators knew about Directive 2024-21 when it was issued but waited until September 27 to file their complaint seeking a writ of mandamus. *Id.* at ¶ 23. The secretary of state showed material prejudice in that case because the requirements of Directive 2024-21 had been "printed and mailed to voters as part of the instructions included with absentee ballots," and "[t]he secretary and county boards of elections would [have been] prejudiced by the cost and time of printing and mailing new instructions." *Id.* at ¶ 26, 27.

{¶ 66} Here, neither the board nor the secretary of state have shown material prejudice. In their merit briefs, the board and the secretary respectively assert that they have been materially prejudiced by Koebel's delay in filing this action because the board has already met its statutory duties under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. 20302, by printing and mailing ballots. However, neither the board nor the secretary explain how printing and mailing a ballot with Stidham's name on it causes material prejudice.

{¶ 67} I recognize that "'[c]ases in which laches is dispositive generally involve prejudice to the respondents in their statutory obligation to absentee voters

to have absentee ballots printed and ready for use.' " *Pennington*, 2021-Ohio-3134, at ¶ 28, quoting *State ex rel. Steele v. Morrissey*, 2004-Ohio-4960, ¶ 14. But granting relief in this case does not implicate the board's statutory duty to timely print and transmit ballots to absentee voters, because granting relief to Koebel would not require the board to reprint ballots. This court might order the board of elections not to count votes cast for Stidham. *See State ex rel. Ontko v. Sandusky Cty. Bd. of Elections*, 2026-Ohio-3573, ¶ 30 (indicating that a relator's request for a writ ordering the board of elections "to count only votes for qualified persons" sounds in mandamus and not in prohibition).

{¶ 68} In his merit brief, Stidham argues that he is materially prejudiced by Koebel's delay because he has had to "divert his scarcest resources, time and money, to defending an original action." But merely having to defend a mandamus action on an expedited basis does not, by itself, establish prejudice, *Pennington* at ¶ 31, and Stidham fails to give any concrete details regarding how his "preparation and defense of this case have been materially affected," *id.* at ¶ 29. Stidham cites no authority to support his argument that defending his candidacy qualifies as material prejudice.

{¶ 69} Because respondents have failed to show that they are materially prejudiced by any delay in commencing this action, laches does not apply.

B. Koebel Has Not Established Entitlement to the Writ

{¶ 70} As stated above, to be entitled to a writ of mandamus a relator must show: a clear legal right to the requested relief, a clear legal duty on the part of the respondent to provide that relief, and the lack of an adequate remedy in the ordinary course of law. *Manley*, 2014-Ohio-4563, at ¶ 18. This court has recognized that the proximity of an election can render inadequate what would otherwise be an adequate remedy in the ordinary course of law. *See, e.g.*, *State ex rel. N. Main St. Coalition v. Webb*, 2005-Ohio-5009, ¶ 43. But while Koebel lacks an adequate remedy in the ordinary course of law due to the expedited need for relief, he has

failed to prove that he has a clear legal right to the requested relief or that respondents have a clear legal duty to provide it. In other words, Koebel must show that the law commands the board or the secretary of state to give him the relief he requests. He cannot.

{¶ 71} "[T]o establish the requisite legal right and legal duty, [a relator] 'must prove that the board of elections engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law.' " *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 2007-Ohio-5346, ¶ 9, quoting *Rust v. Lucas Cty. Bd. of Elections*, 2005-Ohio-5795, ¶ 8. Koebel does not allege fraud or corruption but rather argues that the board and the secretary of state clearly disregarded applicable law and abused their discretion. "'An abuse of discretion implies an unreasonable, arbitrary, or unconscionable attitude.' " *State ex rel. Miller v. Union Cty. Bd. of Elections*, 2023-Ohio-3664, ¶ 16, quoting *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections*, 1997-Ohio-315, ¶ 13.

{¶ 72} Koebel does not assert any specific statutory provision that the board or the secretary of state has failed to comply with. In support of his argument, Koebel asserts that the secretary abused his discretion when he examined the Form 289 —the form that the party district committee sends to the board of elections under R.C. 3513.31(B) to certify a candidate to fill a vacancy in a party nomination. Koebel asserts that the secretary was required to first determine whether the "district-committee selection [meeting] complied with the mandatory prerequisites of R.C. 3513.31(B)." Koebel maintains that Stidham's nomination is invalid on the basis that the party district committee failed to comply with R.C. 3513.31(B) because the meeting was "closed" to the public.

{¶ 73} As a result, he requests a writ directing the secretary of state to deny Stidham's certification to the ballot and a writ directing the board not to certify or place Stidham's name on the general-election ballot. Alternatively, he requests a

writ directing the board to investigate whether Stidham's selection was proper under R.C. 3513.31(B).

{¶ 74} In response, the secretary of state argues that Koebel's request for relief is based on an "irredeemably flawed assumption" that R.C. 3513.31(B) requires the party-district-committee meeting to be a "public" meeting and that the secretary has the duty to "undo" Stidham's certification.

{¶ 75} Koebel admits that there is "no precedent directly address[ing] whether a [party district committee] is subject to the Open Meetings Act." Nor does Koebel cite any precedent that establishes that a party district committee performs the same function as a county central committee filling a vacancy in county offices under R.C. 305.02. Instead, Koebel speculates that a court would find that the Open Meetings Act, R.C. 121.22 et seq., would apply to party-district-committee meetings, and in support of his hypothesis, Koebel cites *State ex rel. Hayes v. Jennings*, 173 Ohio St. 370 (1962), and *State ex rel. Cain v. Kay*, 38 Ohio St.2d 15 (1974). Koebel's reading of the statutes and this court's caselaw is wrong for three reasons.

{¶ 76} First, R.C. 3513.31(B) is devoid of any language giving oversight authority over party-district-committee meetings to the secretary of state. Moreover, the statute Koebel cites that requires the board to "[i]nvestigate irregularities, nonperformance of duties, or violations of [Ohio's election laws]," R.C. 3501.11(J), does not have a candidate-removal provision. It is a self-executing statute that instructs the board on how to begin an investigation if a board truly believes an irregularity or nonperformance of a duty of election law has occurred. So, if the two board members who voted "no" on Stidham's candidacy believed a violation of Ohio election law had occurred, then they had the authority to place the matter before the board for a vote. If that vote of the board tied, then the secretary of state could have been called on under R.C. 3501.11(X) to break the tie vote. But that did not happen.

{¶ 77} Second, the secretary of state's duty to break a tie vote of a board is statutorily limited. R.C. 3501.11(X) provides, "In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, *to the secretary of state, who shall summarily decide the question*, and the secretary of state's decision shall be final." (Emphasis added.)

{¶ 78} The statute does not say that the secretary of state must "investigate" the underlying cause of the tie vote or "investigate" the underlying cause of the board's disagreement before breaking a tie vote. The law requires the secretary to "summarily" decide the question—and *immediately* break the tie vote. Therefore, when the board's vote resulted in a tie, the secretary was required to resolve the question whether the Form 289 was valid and vote accordingly. That was all the secretary was required to do, and that is what the secretary did.

{¶ 79} Third, Koebel's argument that R.C. 305.02 and this court's precedent in *Hayes*, 173 Ohio St. 370, and *Cain*, 38 Ohio St.2d 15, apply to the duty of a party district committee organized under R.C. 3513.31(B) is speculative. In his complaint, Koebel asserts that the Open Meetings Act, requires "official action and deliberations on official business to occur in open meetings," citing R.C. 121.22 (A), (C) and (H). Koebel only briefly mentions that R.C. 121.22 applies only to people who are identified as "public officials," R.C. 121.22(A), and to entities that are identified as a "public bod[ies]," R.C. 121.22(C), but he relies on *Hayes* and *Cain* for the proposition that a committee of a policial party may act as a public body when it exercises a "sovereign governmental function." And if such a committee is a public body, he reasons, then the Open Meetings Act applies to it. Koebel therefore argues that the same reasoning applies to the party-district-committee meeting at which Stidham was nominated. But there are two problems with Koebel's argument.

{¶ 80} First, Koebel is before this court in mandamus, and his burden is to show that the law requires either the board or the secretary of state to remove Stidham from the ballot. Neither R.C. 121.22 nor R.C. 3513.31 nor *Hayes* and *Cain* require that result.

{¶ 81} Second, *Hayes* is distinguishable from this case. *Hayes* involved the appointment of someone to a county elective office. *Hayes* at 372. And *Cain* distinguished *Hayes* on the basis that the chairperson of a party's state central committee is not an elective office. *Cain* at 19. Here, Stidham has not been appointed to an elective office—he has been nominated to represent the Republican Party as the candidate for state representative for the 89th Ohio House District on the general-election ballot because the Republican Party candidate withdrew his nomination and R.C. 3513.31(B) afforded the Republican Party a pathway to nominate a new candidate. A nomination to a general-election ballot for a House district is not an appointment to an elective office. It is an opportunity to stand for election and have voters decide who will serve in that district office.

{¶ 82} Koebel's brief notes that the Attorney General's 2026 Sunshine Laws Manual provides that when a "county central committee" makes an appointment for a vacant public office under R.C. 305.02, that committee is required to comply with the Open Meetings Act. That may be true, but as shown above, that is irrelevant here.

{¶ 83} Contrary to Koebel's assertion that the "*relevant inquiry*" is whether the party district committee was "performing a statutory electoral function," that is not the relevant inquiry before this court. (Emphasis added.) The relevant inquiry here, as explained above, is whether Koebel has established a clear legal right to have Stidham's certification stricken and removed from the ballot and a clear legal duty on the part of the board or the secretary of state to strike Stidham's certification and remove him from the ballot. He has not.

III. CONCLUSION

{¶ 84} I fully join Part II(B) of the per curiam opinion and its holding that Koebel has standing to bring this mandamus action, and I agree that the request for a writ of mandamus should be denied.

DEWINE, J., joined by DETERS and HAWKINS, JJ., concurring in judgment only.

{¶ 85} Like the per curiam opinion, I would not grant a writ of mandamus in this case. But while the per curiam opinion would deny the writ based on laches, I would dismiss the writ based on the failure of relator, Carl Koebel, to establish standing.

{¶ 86} "Standing is a threshold requirement that must be met before a court may consider the merits of a legal claim." *Beaver Excavating Co. v. Testa*, 2012-Ohio-5776, ¶ 8. The burden is on the relator to establish standing to sue. *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 2007-Ohio-5024, ¶ 27. Because laches is an affirmative defense, *State ex rel. Nguyen v. Lawson*, 2025-Ohio-507, ¶ 18; Civ.R. 8(C), it is a question on the merits that can be reached only when standing has been established.

{¶ 87} The standing requirement derives from the Ohio Constitution which vests this court and inferior courts with the judicial power. Ohio Const., art. IV, § 1. "This grant of the judicial power allows us to decide 'specific cases' between conflicting parties." *Voss v. Quicken Loans, L.L.C.*, 2026-Ohio-531, ¶ 10, quoting *Stanton v. State Tax Comm.*, 114 Ohio St. 658, 671-672 (1926). Thus, we may only "decide actual controversies between parties legitimately affected by specific facts." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970).

{¶ 88} Under standing principles, "a plaintiff must show an actual injury fairly traceable to the defendant's conduct and that it is likely that a court can redress the injury." *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667,

¶ 12; *accord ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7. In mandamus, that means the relator must show both that he "would be directly benefitted or injured by a judgment in the case" and that he suffers "particular harm that is different from some general harm suffered by the public at large." (Cleaned up.) *Martens* at ¶ 12; *see also Voss* at ¶ 11.

{¶ 89} The standing requirement in a mandamus action derives not only from the constitution, but also from statute. R.C. 2731.02 authorizes this court to grant a writ of mandamus on "the information of the party beneficially interested." *See also State ex rel. Ames v. Portage Cty. Bd. of Revision*, 2021-Ohio-4486, ¶ 10, quoting *State ex rel. Hills & Dales v. Plain Local School Dist. Bd. of Edn.*, 2019-Ohio-5160, ¶ 9, quoting *State ex rel. Spencer v. E. Liverpool Planning Comm.*, 1997-Ohio-77, ¶ 7 ("To have standing in a mandamus case, a relator must be '"beneficially interested"' in the case.").

{¶ 90} Although it is his burden to demonstrate standing, *Ohio Pyro*, 2007-Ohio-5024, at ¶ 27, Koebel has submitted nothing that would establish his standing to sue. He asserts only that he is a qualified elector. His claim is that the Erie County Central Committee—a private organization—was required to follow Ohio's Open Meetings Act and that because it did not, the secretary of state should not have broken a tie vote of the central committee, certifying Caleb Stidham as the Republican Party's replacement candidate on the ballot. Koebel seeks a writ of mandamus that would remove Stidham from the ballot.

{¶ 91} Nothing in Koebel's allegations demonstrate that he has suffered "an actual injury fairly traceable to [the Erie County Board of Elections and the secretary of state's] conduct and that it is likely that a court can redress the injury." *Martens*, 2024-Ohio-5667, at ¶ 12. Koebel makes no allegation that he tried to attend the central committee meeting at which Stidham was selected as the replacement candidate. So plainly Koebel has no redressable injury from the alleged Open Meetings Act violation. Nor can Koebel plausibly show an injury

from the decision to certify Stidham to the ballot. Koebel does not allege that he is a member of the Republican Party, so he cannot establish any injury stemming from the selection and placement on the ballot of the Republican Party's candidate. Nor does Koebel allege that he is being deprived of an opportunity to vote for the candidate of his choice in the upcoming election—he simply wants other people to be unable to vote for Stidham.

{¶ 92} In short, Koebel has failed to allege an injury to him different from the electorate at large and has failed to show that he would be directly benefitted or injured by a judgment in this case. *See id.* at ¶ 12. He has no redressable injury and no beneficial interest in this lawsuit.

{¶ 93} It is true that we have characterized our election-mandamus cases as at "the outer bounds of the standing requirement." *Id.* at ¶ 12, fn. 1. A number of statutes allow "any qualified elector" the ability to protest a candidacy or another voter's qualifications to vote. *See, e.g.*, R.C. 3503.24(A); R.C. 3513.041; R.C. 3513.05; R.C. 3513.262; R.C. 3513.263. For example, R.C. 3503.24(A) provides that "a challenge of the right to vote of any registered elector may be made by any qualified elector at the office of the board of elections not later than the thirtieth day before the day of the election." We have assumed that when a statutory protest is denied, the elector who unsuccessfully pursued the protest has a particularized injury sufficient to establish standing to pursue an action in mandamus to challenge the denial of the protest. *See, e.g.*, *State ex. rel Duckett v. Hancock Cty. Bd. of Elections*, 2026-Ohio-3747, ¶ 3, 5-6. We have also held that a relator who fails to satisfy the statutory requirements for such a challenge lacks standing to pursue a challenge. *State ex rel. Hoag v. Lucas Cty. Bd. of Elections*, 2010-Ohio-1629, ¶ 13. In other words, a generalized interest in enforcing the election laws is not a sufficient basis to confer standing absent an available statutory protest procedure.

{¶ 94} Indeed, most of our election cases arise from writ actions filed after a relator has unsuccessfully pursued a statutorily authorized protest. *See, e.g.*, *State*

ex rel. Dunn v. Delaware Cty. Bd. of Elections, 2026-Ohio-1084; *State ex rel. Spencer v. Stark Cty. Bd. of Elections*, 2026-Ohio-966; *State ex rel. Schreiner v. Erie Cty. Bd. of Elections*, 2024-Ohio-290. But this case is different. Here, there is no statute that authorizes Koebel to challenge Stidham's placement on the ballot.

{¶ 95} Despite the lack of a statute authorizing Koebel to file a protest, the majority suggests that Koebel has standing because he has a "beneficial interest" in the case. *See* per curiam opinion, ¶ 20; opinion concurring in part and concurring in the judgment in part, ¶ 48; concurring opinion, ¶ 30. But it never explains what "beneficial interest" Koebel has in removing the Republican Party's candidate from the ballot. Nor do the cases relied on by the majority support its dramatic extension of our standing doctrine. The per curiam opinion cites *Martens*, 2024-Ohio-5667. Per curiam opinion at ¶ 19. But in *Martens*, we made clear that to establish standing, a "relator must suffer particular harm that is different from some general harm suffered by the public at large," *Martens* at ¶ 12—a requirement that Koebel plainly does not meet.

{¶ 96} The per curiam opinion also includes a reference to the two cases that the *Martens* court characterized as "represent[ing] the outer bounds" of our standing jurisprudence: *State v. Brown*, 38 Ohio St. 344 (1882), and *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656 (1892).[4] *See* per curiam opinion at ¶ 20. For "one decision to be precedent for another, the facts in the two cases . . . must be substantially similar, without material difference." Bryan Garner et al., *The Law of Judicial Precedent*, 92 (2016); *see also State v. McDermott*, 1995-Ohio-80, ¶ 15 ("The syllabus of a Supreme Court opinion is not to be construed as being broader

4. Gratuitously, the per curiam opinion criticizes the secretary of state for not "mention[ing] [the cases on standing cited by the per curiam opinion], much less argu[ing] that they were wrong or do not apply to this action," per curiam opinion at ¶ 20. But, of course, it was Koebel's burden to establish standing. The secretary of state can hardly be faulted for not discussing cases that were not raised by Koebel and that are factually distinguishable.

than the facts of that specific case warrant."). But both *Brown* and *Gregg* involve very different facts—and much stronger arguments for standing—than this case.

{¶ 97} In *Brown*, an elector argued that the county sheriff was unlawfully refusing to take the necessary steps to institute a statutorily-required election to fill the office of common pleas judge. *Brown* at 344-345. This court found that that the relator was "beneficially interested" because "as an elector, he would be entitled to vote at the election, if an election were proper, and would be himself eligible to the office." *Id.* at 346-347. In other words, if the relator was correct that an election was required, without a writ of mandamus, there would have been no election and the relator would have lost both his right to vote in the election and his right to run for office. Not so here. Koebel is entitled to vote in the election regardless of whether Stidham's name is on the ballot, and Koebel makes no claim that he is entitled to be the Republican Party's nominee for the office.

{¶ 98} *Gregg* involved a judicial election in a district that encompassed multiple counties. *Gregg* at 657. A voter sued Fayette County election officials for failing to fulfill their duty to tally election results and to transmit those results to the board of elections of the largest county in the district. *Id.* Not surprisingly, this court found that the relator had a "beneficial interest" in obtaining a writ of mandamus. *Id.* at 662. Absent a writ compelling the transmission of the results of the county votes, the relator's vote would not have been counted and no winner of the election could have been declared. *See id.* That's not the case here. Regardless of whether a writ of mandamus is issued, the election for state representative will take place, Koebel's vote will be counted, and a winner will be declared.

{¶ 99} The only case cited by the per curiam opinion from the past four decades affording standing to a relator to bring a mandamus action in the absence of a statutory protest procedure is *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219, 221 (1992). Per curiam opinion at ¶ 19. In *Barth*, a registered Republican elector and a Democratic Party nominee sought to challenge

the Republican Party's replacement of a candidate on the ballot. *Barth* at 219. Even though this court did not identify any statute authorizing the protest, we concluded that the relators had standing to maintain a prohibition action. *Id.* at 221-222. Both relators in *Barth* had a much better case for standing than Koebel. The Democratic nominee claimed standing on the basis that she was challenging the placement of her general-election opponent on the ballot and thus had an "adverse interest" that was directly affected by her competitor's alleged illegal placement on the ballot. *Id.* at 221. And the Republican elector claimed standing based on his status as a member of the Republican Party seeking to challenge his own party's internal selection procedures. And, of course, the court would have needed to find that only one relator had standing to satisfy the constitutional requirement. *See Beaver Excavating Co.*, 2012-Ohio-5776, at ¶ 16 ("it is sufficient for purposes of jurisdiction that at least one plaintiff has standing for the claims of the remaining plaintiffs to be heard and the court to proceed to decide the case on the merits").

{¶ 100} In addition to being factually distinguishable, *Barth* is of dubious precedential value because it explicitly relied on *State ex rel. Newell v. Brown*, 162 Ohio St. 147 (1954), which held that a citizen's interest in his government gives him capacity to enforce a public duty affecting himself and citizens generally. *See Barth* at 221, quoting *Newell* at paragraphs one and two of the syllabus. *Newell* was one of the cases that formed the foundation of this court's creation of "public right" standing in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 1999-Ohio-123, ¶ 37. We overruled *Sheward* in *Martens* and made clear that the personal-injury requirement of standing is a constitutional requirement. 2024-Ohio-5667 at ¶ 3. So, the per curiam opinion's reliance on *Barth* is difficult to square with our more recent precedent.[5]

5. The second separate opinion cites several other cases in which the court suggested a relator could have standing to protect a "public right." Opinion concurring in part and concurring in the judgment

{¶ 101} The two other separate opinions attempt to defend the per curiam opinion's position that Koebel has standing, but their logic suffers the same fatal flaw. Neither opinion disputes that standing is a constitutional requirement. And standing—by definition—requires a particularized injury. *See Voss*, 2026-Ohio-531, at ¶ 11. But both separate opinions would dispense with the particularized-injury requirement in election cases and instead allow any elector to pursue a generalized grievance. But if standing is really a constitutional requirement, we can't simply ignore the standing requirement in election cases.

{¶ 102} Nothing in our constitution empowers us to decree election cases a "standing-free zone" in which anyone can sue for any alleged violation regardless of whether he has a personal stake in the controversy. Because Koebel has failed to meet his burden to establish standing, I would resolve the case on that basis. Because the per curiam opinion does otherwise, I respectfully concur in judgment only.

Grandillo Legal, L.L.C., and Gina R. Grandillo; and Albrechta & Liebold, Ltd., Christopher E. Liebold, and Joseph F. Albrechta, for relator.

Kevin J. Baxter, Erie County Prosecuting Attorney, and Jason J. Hinners and Gerhard R. Gross, Assistant Prosecuting Attorneys, for respondent Erie County Board of Elections.

D. Andrew Wilson, Attorney General, and Ann Yackshaw and Gregory A. Rustico, Assistant Attorneys General, for respondent Secretary of State Frank LaRose.

Taft Stettinius & Hollister, L.L.P., and W. Stuart Dornette, for intervening-respondent Caleb Stidham.

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in part at ¶ 59. But in *Martens*, we rejected the public-right doctrine and made clear that litigants may not "rely on it to bypass our well-established standing requirement." *Martens* at ¶ 23.