

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2026-OHIO-4090

THE STATE EX REL. FLORIO v. SANDUSKY COUNTY BOARD OF ELECTIONS.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Florio v. Sandusky Cty. Bd. of Elections*, Slip Opinion No. 2026-Ohio-4090.]

Elections—Mandamus—Writ sought to require board of elections to count, tally, or record only the votes cast for one candidate in November 2026 general election for office of common-pleas-court judge—Relator’s claim is an ill-disguised claim for a prohibitory injunction—A relator does not invoke this court’s mandamus jurisdiction if the allegations establish that the relator instead seeks relief in nature of a declaratory judgment and a prohibitory injunction—State ex rel. Williamson v. Cuyahoga Cty. Bd. of Elections distinguished—Cause dismissed for want of jurisdiction.

(No. 2026-1253—Submitted October 13, 2026—Decided October 19, 2026.)

IN MANDAMUS.

The per curiam opinion below was joined by KENNEDY, C.J., and FISCHER,

DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ.

Per Curiam.

{¶ 1} Relator, Alisa Florio, has filed this action for a writ of mandamus, seeking an order requiring respondent, the Sandusky County Board of Elections (“the board”), to count, tally, or record only the votes cast for candidate Kimberly J. Ontko in the November 3, 2026 general election for the office of judge of the Sandusky County Court of Common Pleas. Florio claims that Ontko’s opponent in the election, Jon Marshal Ickes, is unqualified for office and that votes for Ickes therefore should not be counted. Ickes was a sitting judge in the Sandusky County Court of Common Pleas until we suspended him from the practice of law and from judicial office for two years due to judicial misconduct. *Disciplinary Counsel v. Ickes*, 2026-Ohio-3173, ¶ 68.

{¶ 2} Florio argues that she is entitled to her requested writ of mandamus under our ruling in *State ex rel. Williamson v. Cuyahoga Cty. Bd. of Elections*, 11 Ohio St.3d 90 (1984). She has also filed a motion for leave to file rebuttal evidence to address the board’s argument that this suit is barred by res judicata.

{¶ 3} For the reasons set forth below, we dismiss this action for want of jurisdiction because Florio’s mandamus claim is an ill-disguised claim for a prohibitory injunction. Because we do not reach the merits of Florio’s mandamus claim or the board’s affirmative defenses, we deny Florio’s motion for leave to file rebuttal evidence.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 4} Ontko is an independent candidate at the upcoming general election to become a judge on the Sandusky County Court of Common Pleas with a term commencing January 1, 2027. *State ex rel. Ontko v. Sandusky Cty. Bd. of Elections*, 2026-Ohio-3573, ¶ 2. Ontko is opposed by Ickes, who prevailed at the May 2026 primary election as the Republican Party nominee for the office. *Id.* Ickes is

running for reelection, as he had previously been elected to a full term that commenced in January 2021. *Id.* at ¶ 3.

{¶ 5} During his time in office, Ickes became the subject of a disciplinary complaint filed in this court alleging multiple ethical violations. *Ickes*, 2026-Ohio-3173, at ¶ 2. In May 2025, following a hearing, a panel of the Board of Professional Conduct recommended that Ickes be suspended from the practice of law for one year fully stayed on the condition that he commit no further misconduct. *Id.* at ¶ 3. The board adopted the panel’s report. *Id.* We adopted the findings of misconduct but imposed a harsher sanction, suspending Ickes from the practice of law for two years and immediately suspending him from judicial office without pay for the same period. *Id.* at ¶ 68.

{¶ 6} A day after *Ickes* was decided, Ontko filed with the board a protest of Ickes’s candidacy. *Ontko* at ¶ 5. The board denied the protest as untimely. *Id.* Ontko then filed an expedited election action in this court, seeking a writ of prohibition to prohibit the board from placing Ickes’s name on the ballot or, alternatively, a writ of mandamus to compel the board to sustain her protest against Ickes’s candidacy. *Id.* at ¶ 1. We denied the writ of prohibition, determining that because Ontko’s protest was not authorized by statute, there was no basis on which to grant a writ of prohibition. *Id.* at ¶ 28, 31; *see also State ex rel. Fritz v. Trumbull Cty. Bd. of Elections*, 2021-Ohio-1828, ¶ 10 (writ of prohibition is not available when there is no statute requiring a board of elections to conduct a quasi-judicial hearing on a protest).

{¶ 7} As an alternative form of relief in prohibition, Ontko asked for a judgment ordering the board “to count only votes for qualified persons.” *Ontko* at ¶ 30. We rejected the claim as framed by Ontko because “it [sought] to compel action on the part of the board of elections, which is not the function of a writ of prohibition.” *Id.* And in any event, because the board was not required by statute to conduct a quasi-judicial hearing on her protest, any claim for a writ of prohibition

requesting that the board be prohibited from counting votes for Ickes necessarily failed. *Id.* at ¶ 31. We also denied Ontko’s alternative claim for a writ of mandamus compelling the board of elections to sustain her protest against Ickes’s candidacy. *Id.* at ¶ 33, 38. We explained that because Ontko’s protest was untimely under the relevant statutes, she could not show that she had a clear legal right to have the board of elections grant her protest or that the board of elections had a clear legal duty to sustain her protest. *Id.* at ¶ 37.

{¶ 8} Four days after our decision in *Ontko*, Florio commenced this expedited election action under S.Ct.Prac.R. 12.08, seeking a writ of mandamus compelling the board to count, tally, or record only the votes cast for Ontko in the November 3 general election for the office of judge of the Sandusky County Court of Common Pleas. The board filed an answer to the complaint, asserting, among other defenses, the doctrines of laches and res judicata as barring this action. In response to the board’s assertion of res judicata, Florio filed a motion for leave to file rebuttal evidence, namely, an affidavit in which Florio avers that she is not in privity with Ontko.

II. ANALYSIS

{¶ 9} To obtain a writ of mandamus, Florio must establish by clear and convincing evidence that (1) she has a clear legal right to the requested relief, (2) the board has a clear legal duty to provide it, and (3) she does not have an adequate remedy in the ordinary course of the law. *State ex rel. Lambert v. Medina Cty. Bd. of Elections*, 2023-Ohio-3351, ¶ 12. The third element is satisfied due to the proximity of the November 3, 2026 general election. *Id.* As to the remaining elements, the standard is whether the board of elections engaged in fraud or corruption, abused its discretion, or acted in clear disregard of applicable law. *Id.*

A. Mandamus Claim Is a Disguised Request for a Prohibitory Injunction

{¶ 10} As a threshold matter, the board argues that Florio’s complaint should be dismissed for want of jurisdiction because it does not seek proper relief

in mandamus. The board argues that Florio is not truly seeking a writ of mandamus but, rather, a declaratory judgment and prohibitory injunction. We agree with the board.

{¶ 11} This court has original jurisdiction in actions for writs of mandamus. Ohio Const., art. IV, § 2(B)(1)(b). However, a relator does not properly invoke this court’s mandamus jurisdiction if the allegations establish that the relator instead seeks relief in the nature of a declaratory judgment and a prohibitory injunction. *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 2010-Ohio-4450, ¶ 29. “We have applied this jurisdictional rule to expedited election cases by examining the complaint to determine whether it actually seeks to prevent, rather than compel, official action.” *State ex rel. Evans v. Blackwell*, 2006-Ohio-5439, ¶ 20. If the relator seeks to prevent official action, the relief sought is injunctive in nature and is beyond this court’s original jurisdiction to grant in mandamus. *See id.* at ¶ 19-20.

{¶ 12} Florio attempts to couch her requested relief in terms of affirmative duties. She asks this court to issue a writ of mandamus “compelling the board of elections to, after the general election, count (or tally or record) *only* votes for the sole eligible candidate, Kimberly J. Ontko.” (Emphasis added.) But Florio’s careful wordsmithing of her complaint does not obscure what she truly seeks in this action: an order *prohibiting* the board of elections from counting votes cast for Ickes at the November 3 election. *See State ex rel. Bur. of Workers’ Comp. v. O’Donnell*, 2023-Ohio-428, ¶ 13-14 (this court is not bound by a party’s artful wording in determining the essence of the party’s claim). Florio’s demand that the board of elections count only the votes for Ontko seeks to prevent the board from counting the votes cast for Ickes. *See State ex rel. Kay v. Brown*, 24 Ohio St.2d 105, 106 (1970) (mandamus action seeking to prevent secretary of state from counting votes cast for a United States Senate candidate was really an action seeking a prohibitory injunction). Though Florio designates her claim as one brought in mandamus, she

seeks relief that is injunctive in nature. *See generally id.*; *State ex rel. Tam O'Shanter Co. v. Stark Cty. Bd. of Elections*, 2017-Ohio-8167, ¶ 13 (dismissing mandamus claim when the relator's true objective was a declaratory judgment that a referendum petition was insufficient and a prohibitory injunction to prevent its placement on the ballot); *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 2010-Ohio-1115, ¶ 15-16 (dismissing mandamus claim when the relator truly sought a prohibitory injunction to prevent a candidate from appearing on the primary-election ballot); *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 2007-Ohio-4588, ¶ 14-15 (dismissing mandamus claim because it was apparent that the relator sought "a prohibitory injunction preventing" a candidate from appearing on the general-election ballot); *Whitman v. Hamilton Cty. Bd. of Elections*, 2002-Ohio-5923, ¶ 7-8, (dismissing the relator's mandamus claim as "an ill-disguised request for prohibitory injunctive relief" to prevent board of elections from placing a candidate's name on the ballot); *State ex rel. Phillips v. Lorain Cty. Bd. of Elections*, 2001-Ohio-1627, ¶ 10-11 (dismissing mandamus claim seeking to prevent board of elections from placing a candidate's name on the ballot and counting any votes cast for him at the election as "an ill-conceived request for prohibitory injunctive relief").

{¶ 13} The real object of Florio's action is not to compel performance of an official action required by statute; rather, it is to obtain a declaratory judgment that Ickes is ineligible for office if elected and a prohibitory injunction ordering the board not to count votes cast for him when it performs its statutory duty to count, tally, and record votes after the election. As such, Florio's complaint does not state a mandamus claim within our original jurisdiction and must be dismissed for want of jurisdiction. *State ex rel. Grendell v. Davidson*, 1999-Ohio-130, ¶ 20.

B. *Williamson* Does Not Provide a Path to Relief

{¶ 14} For her part, Florio disputes that her complaint seeks prohibitory injunctive relief, relying on this court’s decision in *Williamson*, 11 Ohio St.3d 90. *Williamson*, however, does not support Florio’s mandamus claim in this case.

{¶ 15} In *Williamson*, the relator was a candidate for the office of law director for the City of Brook Park at the November 8, 1983 general election. *Id.* at 91. In a case decided before the election, this court had granted a writ of mandamus ordering the respondent board of elections to strike the name of Arthur P. Lambros from the ballot, holding that a protest to Lambros’s candidacy should have been sustained. *See State ex rel. Spangler v. Cuyahoga Cty. Bd. of Elections*, 7 Ohio St.3d 20, 22 (1983). Six days before the election, however, Lambros filed a lawsuit in federal district court and obtained a temporary restraining order to enjoin the board of elections from removing his name from the ballot. *Williamson* at 91. As a result, Lambros’s name remained on the ballot by order of the federal court, despite this court’s writ of mandamus ordering its removal. *Id.* After the election, the federal district court dissolved the temporary restraining order and dismissed Lambros’s lawsuit. *Id.* Williamson then brought an action in this court, seeking a writ of mandamus “to compel [the] respondents to count only the votes cast for [Williamson] and to certify his name as the winner of the election.” *Id.*

{¶ 16} In a four-to-three decision, this court granted the writ. *Id.* at 93. The majority harkened back to *Spangler*, which had ordered Lambros’s name removed from the ballot because Lambros was not an eligible candidate for city law director. *Id.* at 91. Though the federal court’s temporary restraining order allowed Lambros to remain on the election ballot, the majority deemed that order to have had “no effect on the *Spangler* ruling” because it had since been dissolved. *Id.* Thus, Williamson was viewed as “the only eligible candidate on the ballot,” and we held that only votes cast for him could be counted. *Id.*

{¶ 17} Florio argues that *Williamson* supports her requested relief in mandamus. Florio contends that just as Lambros was disqualified from being the law director before the election was held in *Williamson*, Ickes is disqualified by virtue of his suspension from judicial office. Thus, she urges this court to grant a writ ordering the board to count only the votes cast for Ontko.

{¶ 18} Florio’s argument is unpersuasive because she downplays the unique factual and procedural circumstances that distinguish *Williamson* from this case. Absent the federal district court’s issuance of a temporary restraining order before the November 8, 1983 election, Lambros would not have appeared on the ballot and could not have had votes cast in his favor in the first place. Thus, an intervening federal-court order prevented this court’s writ of mandamus from taking effect. However, after the temporary restraining order was dissolved, this court determined that the defunct order could have “no effect on the *Spangler* ruling.” *Id.* at 91. In other words, the *Williamson* majority treated the November 8, 1983 election as though Lambros was not on the ballot, leaving *Williamson* as the only candidate. *See id.*

{¶ 19} The grant of the writ of mandamus in *Williamson* is best understood as this court’s enforcement of the writ of mandamus it had granted in *Spangler*, which ordered the board of elections to strike Lambros’s name from the ballot, *see Spangler*, 7 Ohio St.3d at 22. Ordering that only the votes cast for *Williamson* were to be counted ensured that the writ granted in *Spangler* would be carried into effect. Had the votes for Lambros been counted, Lambros would have effectively circumvented the court’s order striking him from the ballot. The writ granted in *Williamson* was necessary to enforce the writ granted in *Spangler*.

{¶ 20} This case is different from *Williamson*. In *Ontko*, we determined that there had been no proper statutory protest filed against Ickes’s candidacy and that therefore, there was no valid basis to issue a writ of prohibition or mandamus to remove Ickes’s name from the general-election ballot. *Ontko*, 2026-Ohio-3573,

at ¶ 14-32, 36-38. Thus, there is no preexisting writ in this case ordering Ickes's removal from the ballot that we must carry into effect by way of an order preventing the counting of votes cast in his favor. Accordingly, *Williamson* does not support Florio's requested relief in this case.

{¶ 21} *Williamson* presented an unusual factual situation in which an intervening, temporary order of a federal court prevented an order of this court from taking effect before an election. The case, therefore, is best understood in context as a case in which this court issued a writ of mandamus to enforce and fully effectuate the writ of mandamus it had previously issued to order a candidate's name stricken from the ballot. See *State ex rel. Obetz v. Stinziano*, 2024-Ohio-5460, ¶ 37 (observing that court opinions must be read carefully and in context). Understood for what it is, *Williamson* does not salvage Florio's complaint in this case. Florio is asking us to order the board *not* to count votes cast for Ickes at the November 3, 2026 general election even though Ickes's name has not been previously stricken from the ballot. This is a request for a prohibitory injunction, which is beyond this court's original jurisdiction to grant.

C. We Do Not Reach the Board's Affirmative Defenses

{¶ 22} Because we dismiss Florio's complaint for want of jurisdiction, we need not reach the board's affirmative defenses of laches and res judicata. Accordingly, we deny Florio's motion for leave to file rebuttal evidence on the issue of res judicata.

III. CONCLUSION

{¶ 23} For the foregoing reasons, we dismiss Florio's complaint for want of jurisdiction and deny Florio's motion for leave to file rebuttal evidence.

Cause dismissed.

Mayle, L.L.C., Andrew R. Mayle, Richard R. Gillum, Benjamin G. Padanilam, and Nichole Kanios Papageorgiou, for relator.

SUPREME COURT OF OHIO

Beth A. Tischler, Sandusky County Prosecuting Attorney, and Laura E. Alkire, Assistant Prosecuting Attorney, for respondent.
