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**SLIP OPINION NO. 2026-OHIO-4667**

**THE STATE EX REL. SCHIMMEL v. LUCAS 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. Schimmel v. Lucas Cty. Bd. of Elections*, Slip Opinion No. 2026-Ohio-4667.]**

*Elections—Mandamus—Writ sought to compel board of elections to not count certain provisional ballots—Court lacks original jurisdiction over claims seeking declaratory judgment or prohibitory injunction—Relator's objective in filing his original action is to obtain declaratory judgment and prohibitory injunction—Complaint dismissed for lack of subject-matter jurisdiction.*

(No. 2026-1574—Submitted November 23, 2026—Decided November 24, 2026.)

IN MANDAMUS.

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The per curiam opinion below was joined by KENNEDY, C.J., and DEWINE, BRUNNER, DETERS, and SHANAHAN, JJ. FISCHER, J., dissents and would issue a

show-cause order requiring the parties to brief the issue of subject-matter jurisdiction. HAWKINS, J., did not participate.

**Per Curiam.**

**{¶ 1}** Relator, Edward L. Schimmel, is a candidate for the 44th District of the Ohio House of Representatives in the November 2026 general election. The 44th House District consists of portions of Lucas, Wood, and Ottawa Counties. Schimmel alleges that respondents, the Lucas County Board of Elections and its members, Fritz Schoen, Kurt M. Young, Dawn Christen, and Donald R. Miller (collectively, "the board of elections"), intend to count certain provisional ballots that Schimmel alleges were not validly cast. Specifically, Schimmel claims that the provisional ballots were cast at precinct-polling places by electors who moved to Lucas County from a different county without updating their voter-registration addresses. Schimmel alleges that under R.C. 3503.16(C), such electors may cast their ballot only at the office of the board of elections and not at precinct-polling places. Schimmel primarily seeks a writ of mandamus ordering the board of elections to not count the ballots. The board of elections filed an answer and a motion for judgment on the pleadings.

**{¶ 2}** For the following reasons, we sua sponte dismiss the case for lack of subject-matter jurisdiction. The board of elections does not argue lack of subject-matter jurisdiction, but "'[s]ubject-matter jurisdiction cannot be waived and is properly raised by this court sua sponte,'" *State ex rel. Dunlap v. Sarko*, 2013-Ohio-67, ¶ 13, quoting *State v. Davis*, 2011-Ohio-5028, ¶ 11.

**{¶ 3}** This court lacks original jurisdiction over claims seeking a declaratory judgment or a prohibitory injunction. *See State ex rel. JobsOhio v. Goodman*, 2012-Ohio-4425, ¶ 14 (declaratory judgment); *State ex rel. Esarco v. Youngstown City Council*, 2007-Ohio-5699, ¶ 11 (prohibitory injunction). "It is axiomatic that 'if the allegations of a complaint for a writ of mandamus indicate that the real objects

sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction.'" *State ex rel. Obojski v. Perciak*, 2007-Ohio-2453, ¶ 13, quoting *State ex rel. Grendell v. Davidson*, 1999-Ohio-130, ¶ 20. "What distinguishes a proper mandamus complaint from an improper one is not whether the relator is seeking declaratory judgment as part of the complaint but whether the complaint seeks to prevent or compel official action." *State ex rel. Ethics First—You Decide Ohio Political Action Commt. v. DeWine*, 2016-Ohio-3144, ¶ 10. "'[T]he difference between a request for a writ of mandamus in the nature of a mandatory injunction (over which this court has original jurisdiction) and a request for a writ of mandamus in the nature of a prohibitory injunction (over which it does not) is temporal.'" *State ex rel. King v. Cuyahoga Cty. Bd. of Elections*, 2022-Ohio-3613, ¶ 26, quoting *State ex rel. Gadell-Newton v. Husted*, 2018-Ohio-1854, ¶ 13. A prohibitory injunction is used to prevent an injury that has not yet occurred, but a mandatory injunction is used to remedy past injuries. *Id.* As described in *Gadell-Newton*, a request for a writ to block an official from performing an affirmative action is not in the nature of mandamus. *See Gadell-Newton* at ¶ 12-13.

**{¶ 4}** Here, we conclude that Schimmel is seeking to prevent official action. Schimmel frames his request as seeking a writ ordering the board of elections to comply with certain statutory duties related to how a board of elections processes and counts provisional ballots. Specifically, he requests an order compelling the board "(1) to identify, from its records, the provisional ballots [at issue]; (2) to determine, under R.C. 3505.183(B)(4)(a)(ii), that those ballots are not eligible to be counted and to leave the envelopes unopened and the ballots uncounted; (3) to record each rejection and the reason as R.C. 3505.183(C) requires; and (4) to preserve the envelopes as R.C. 3505.183(E) requires."

**{¶ 5}** But we are not bound by a party's artful wording in determining the essence of the party's claim. *See State ex rel. Florio v. Sandusky Cty. Bd. of*

*Elections*, 2026-Ohio-4090, ¶ 12. In our view, Schimmel's real objective is to obtain a declaration that the provisional ballots at issue are invalid and a prohibitory injunction prohibiting the board of elections from counting them. Indeed, much of his complaint is predicated on his belief that once the board of elections opens the ballots and counts the votes, that count may not be unwound, because the ballots will be commingled with other ballots. Schimmel's request seeks to prevent an injury from an event which (he asserts) has not yet occurred, which is a request in the nature of a prohibitory injunction. He does not seek a mandatory injunction to remedy a past injury.

**{¶ 6}** We have previously ruled that requests for writs of mandamus ordering a board of elections to refrain from counting certain ballots are in reality requests for prohibitory injunctions that are not within our jurisdiction. *See id.*, citing *State ex rel. Kay v. Brown*, 24 Ohio St.2d 105, 106 (1970). Schimmel acknowledges that *Florio* involved a request to not count ballots for a specific candidate but claims that the relief he seeks is different because he is asking us to order the board of elections to comply with certain statutes. While *Florio* did not involve arguments that all ballots in a specific category should not be counted because of the way in which the ballots were cast, the relief requested in *Florio* is essentially the same as that requested here: Schimmel seeks an order directing the board of elections to *not* count certain ballots—i.e., to refrain from acting.

**{¶ 7}** One other case is worth discussing. In *State ex rel. Skaggs v. Brunner*, we issued a writ of mandamus ordering the Franklin County Board of Elections to "reject any provisional ballot[]" that did not contain the name and signature of the voter on the affirmation accompanying the ballot. 2008-Ohio-6333, ¶ 63. In *Skaggs*, however, we did not address the issue of subject-matter jurisdiction. Moreover, in *Skaggs*, the relator also named the secretary of state as a respondent and sought a writ requiring the secretary to issue a directive ordering the Franklin County board to not count certain ballots. *Id.* at ¶ 1. Based on the circumstances

at issue in the case, we ordered the secretary of state to issue the requested directive, which is a distinguishing factor, as the relator arguably sought affirmative action. *See id.* at ¶ 63. Thus, the writ of mandamus ordering the Franklin County board to reject certain provisional ballots could be understood as necessary to carry out the court's writ of mandamus as to the secretary. *See id.* Given that *Skaggs* did not address subject-matter jurisdiction and involved a request that the secretary take affirmative action of issuing a directive, we do not view it as having significant weight on the questions raised in this case.

**{¶ 8}** In sum, we conclude that the real objective of Schimmel's original action is to obtain a declaratory judgment and a prohibitory injunction. As such, his action is outside our subject-matter jurisdiction, and we therefore dismiss it. Because we do so, we do not reach the question whether the board of elections has a duty to not count the provisional ballots at issue.

**{¶ 9}** In addition, because we dismiss the case for lack of subject-matter jurisdiction, we deny as moot (1) the board of elections' motion for judgment on the pleadings, (2) proposed intervenor David J. Fournier's motion to intervene, (3) the League of Women Voters and Common Cause's motion to file an amici curiae brief, and (4) the board of elections' motion for leave to file an exhibit instanter.

Complaint dismissed.

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Taft Stettinius & Hollister, L.L.P., W. Stuart Dornette, Philip D. Williamson, and Dominic Bayer, for relator.

Julia R. Bates, Lucas County Prosecuting Attorney, and John A. Borell, Kevin A. Pituch, and Evy M. Jarrett, Assistant Prosecuting Attorneys, for respondents.

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