

**IN THE
SUPREME COURT OF OHIO**

**STATE OF OHIO *ex rel.* ERIC J.
BREWER,**

Relator,

v.

**FRANK LAROSE, in his official capacity
as Ohio Secretary of State,**

Respondent.

Case No. 2026-0601

Original Action in Prohibition

**MOTION TO DISMISS RELATOR’S COMPLAINT IN PROHIBITION
AND PETITION FOR WRIT OF PROHIBITION**

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I. INTRODUCTION

Respondent Frank LaRose, in his official capacity as Ohio Secretary of State (“Respondent”), respectfully moves the Court to dismiss the Complaint in Prohibition and Petition for Writ of Prohibition (“Complaint”) of Relator Eric J. Brewer’s (“Relator”) pursuant to Civ.R.12(B)(6). Relator’s Complaint against the Respondent fails as a matter of law to state a claim upon which relief can be granted.

Relator’s Complaint fails as a matter of law for multiple reasons. First, he lacks standing to bring his claims because he does not allege any particularized injury that would give him standing.

Second, Relator’s request for a writ prohibiting Respondent from certifying the primary election is now moot. Respondent certified the primary election results on June 3, 2026, as he was required to do under Ohio law. Therefore, Relator’s requested relief is moot and no active controversy remains.

Third, Relator’s Complaint is barred by the doctrine of laches. Relator’s Complaint requests that this Court prohibit Respondent from certifying the votes received by Mr. Vivek Ramaswamy (“Mr. Ramaswamy”) in the Ohio Republican Primary Election. Relator did not file this action until over three months after Mr. Ramaswamy filed his petition to run for statewide office, and one week after the primary election occurred. Relator’s extreme and unjustified delay in pursuing any relief urges dismissal of his Complaint under the laches doctrine.

Finally, even overlooking all of these fatal defects, the face of the Complaint makes clear that Relator cannot establish the three prongs necessary to obtain a writ of prohibition. Relator cannot establish that (1) Respondent is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) if the writ is denied, Relator will suffer injury for which no

other adequate remedy at law exists. For all of these reasons, the Court should dismiss Relator's Complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND

On May 13, 2026, Relator filed this Complaint in Case No. 2026-0601, and an accompanying Complaint in Mandamus and Petition for Writ of Mandamus, Case No. 2026-0598. In the Complaint, Relator seeks a writ prohibiting Respondent from "certifying the vote count received by Vivek Ganapathy Ramaswamy in the May 6, 2026 Ohio Republican Primary Election for Governor, until such time as the Secretary has made an affirmative, documented determination that the candidate satisfies the mandatory qualification of being a 'qualified elector' as required by Article XV, Section 4 of the Ohio Constitution and R.C. 3503.01(A)." *Complaint*, p. 1.

Respondent's statutory deadline to certify and declare the results of the gubernatorial primary elections was June 5, 2026. *See* R.C. 3513.22(A), 3505.35(A) (setting a 21-day deadline for county boards of elections to finish canvassing election returns, and an additional 10 days for Respondent to declare the results). Respondent complied with this statutory duty by certifying the voting results of the gubernatorial primary election on June 3, 2026. Press Release, Ohio Secretary of State, Secretary LaRose Certifies 2026 Official Primary Election Results, <https://www.ohiosos.gov/office/media-center/categories/press-releases/2026-06-03>.¹ Thus, Mr. Ramaswamy is the Republican candidate for governor in Ohio's 2026 gubernatorial election, and no further certification is necessary.

¹ Ohio law permits the Court to take judicial notice of public records accessible on the internet. *See Otarma v. Miami Twp.*, 2025-Ohio-2897, ¶ 5, n.1 (2nd Dist.). As such, the Court may take judicial notice of Respondent's certification of the primary election results for purposes of this Motion.

III. LAW AND ARGUMENT

A. Applicable Legal Standards.

An action for an extraordinary writ should be dismissed under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted if, after all factual allegations of the complaint are presumed true and interpreted in the relator's favor, the relator can prove no set of facts entitling him to the requested writ. *See State ex rel. Russell v. Thornton*, 2006-Ohio-5858, ¶ 9.

Ohio law sets high standards for the extraordinary writ that Relator seeks. To obtain a writ of prohibition, a relator must establish that (1) the court or party against whom prohibition is sought is about to exercise judicial power, (2) the exercise of such power is unauthorized by law, and (3) if the writ is denied, the relator will suffer injury for which no other adequate remedy at law exists. *State ex rel. Fyffe v. Pierce*, 40 Ohio St.3d 8, 9 (1988).

B. Relator lacks standing to bring this case.

To establish standing, “a party must show that the party has ‘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.’” *State ex rel. Food & Water Watch v. State*, 2018-Ohio-555, ¶ 19, quoting *Moore v. Middletown*, 2012-Ohio-3897, ¶ 22. To establish injury, “the injury must be concrete and not simply abstract or suspected.” *Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994). Further, the injury cannot be “borne by the population in general, but affects the plaintiff in a personal and individual way.” *Collins v. State*, 2025-Ohio-4347, ¶ 30 (10th Dist.). “A plaintiff who complains only of an injury sustained by the general public raises a generalized grievance against the law instead of establishing a particularized injury.” *Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, ¶ 23 (10th Dist.), citing *State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, ¶ 19.

Here, Relator's only alleged injury is “the certification of a vote count for a candidate who was never legally eligible to receive votes.” *Complaint*, p. 19. This injury is not “different in

manner or degree from those caused to the general public.” *Walgate*, 2016-Ohio-1176, at ¶ 22. It therefore cannot suffice as an injury sufficient to give Relator standing to bring this action.

Standing may also be conferred by statute. *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 17. For example, R.C. 3503.24 confers standing to qualified electors to “challenge the right to vote of any registered elector.” *See State ex rel. Hicks v. Adamas Cnty. Bd. of Elections*, 2026-Ohio-1274, ¶ 62. However, Relator in this case is not seeking relief under either R.C. 3503.24 or any other statute that confers standing to qualified electors. As such, statutory standing is not available to him.

C. Relator’s Complaint should be dismissed as moot because Respondent already certified the primary election results on June 3, 2026.

It is axiomatic that, with limited exceptions, courts will not entertain a case when all claims asserted therein have become moot. This is because “[t]he role of courts is to decide adversarial legal cases and to issue judgments that can be carried into effect.” *Cyran v. Cyran*, 2018-Ohio-24, ¶ 9. When parties “lack a legally cognizable interest in the outcome,” the case becomes moot. *Id.* “Under the mootness doctrine, American courts will not decide cases in which there is no longer an actual legal controversy between the parties.” *Id.*

Relator’s Complaint seeks to prohibit Respondent from taking an action that has already occurred. Specifically, Relator seeks a writ prohibiting Respondent from “certifying the vote count received by Vivek Ganapathy Ramaswamy in the May 6, 2026 Ohio Republican Primary Election for Governor” until certain steps are taken. *Complaint*, p.1. Yet Respondent already certified the primary election results on June 3, 2026, as he was required to do under R.C. §§ 3513.22 and 3505.35.

Because the act Relator seeks to prohibit has already occurred, this case is moot and no active legal controversy exists between the parties. Relator's Complaint thus fails as a matter of law and should be dismissed.

D. Relator's Complaint fails under the Doctrine of Laches because he waited over three months before challenging Mr. Ramaswamy's candidacy.

This Court has "consistently required relators in election cases to act with the utmost diligence," and has stated that "[l]aches may bar an action for relief in an election-related matter" if the relator fails to act with such diligence. *Smith v. Scioto Cty. Bd. of Elections*, 2009-Ohio-5866, ¶ 11. In election cases, "laches is not an affirmative defense, and [relators] have the burden of proving that they acted with the requisite diligence." *Id.* at ¶ 14.

To this point, this Court has consistently denied relief to parties who do not bring election challenges in a timely fashion. In *Smith v. Scioto County Board of Elections*, the Court held that laches barred a party's post-election challenge to allegedly misleading language in a proposed charter amendment that had been finalized months before the subject election. *Smith v. Scioto Cty. Bd. of Elections*, 2009-Ohio-5866, ¶¶ 6, 18. In *Newell v. Tuscarawas County Board of Elections*, the Court denied a writ of prohibition on laches grounds because the relator took 21 days to protest petitions filed with his local board of elections, then another 14 days after the board's decision denying his protest to file for a writ of prohibition. *State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections*, 93 Ohio St.3d 592, 595-96 (2001).

Here, Relator filed his Complaint on May 13, 2026. On February 4, 2026, Respondent identified Mr. Ramaswamy as having submitted a petition to run for statewide office. Press Release, Ohio Secretary of State, Secretary LaRose Releases List of Candidates Filing for Statewide Office, <https://www.ohiosos.gov/office/media-center/categories/press-releases/2026->

02-04.² Relator could have protested Mr. Ramaswamy’s candidacy at this time. Instead, he waited until May 13, 2026—over 3 months later—to file the instant Complaint.

Not only did Relator wait 3 months to challenge Mr. Ramaswamy’s candidacy, he also waited until 1 week *after* the primary election took place. Waiting three months and only challenging Mr. Ramaswamy’s candidacy after the primary election falls well short of the “utmost diligence” this Court requires of relators seeking election-related relief. *See Smith*, 2009-Ohio-5866, ¶ 11. Further, allowing Relator to proceed with his case would effectively sanction the practice of electors withholding eligibility challenges until after an election outcome is known. For these reasons, Relator’s Complaint is barred by the doctrine of laches, and this Court should dismiss it in its entirety.

Likely recognizing his lack of timeliness, Relator argues in his Complaint that laches does not apply because (1) the allegedly unauthorized act has not yet occurred, and (2) he filed this action before certification occurred and not after the fact. *Complaint*, p. 22. Relator’s argument fails for at least two reasons. First, Respondent already certified the results of the primary election on June 3, 2026. Second, Relator’s Complaint makes clear that he is not challenging the certification process in a vacuum; rather, he is attempting to protest Mr. Ramaswamy’s candidacy and framing it as a writ to prohibit certification of the primary election. *See Complaint*, p. 1. Relator had over two months after Mr. Ramaswamy submitted a petition to run for statewide office to challenge Mr. Ramaswamy’s candidacy or eligibility, and he had multiple avenues for doing so. *See* R.C. 3513.05 (challenges to petitions must be made by the 74th day before the election); R.C. 3503.24(A) (challenges to a person’s right to vote must be made by the 30th day before the

² The Court may take judicial notice of Respondent’s announcement of the candidates for statewide election because it is a public record accessible on the internet. *See Otarma*, 2025-Ohio-2897, ¶ 5, n.1.

election). Yet Relator did nothing until one week after the primary election. In so acting (or not acting), Relator exhibited the antithesis of diligence in asserting his claims, and, as a result, the Court should dismiss his Complaint.

E. Relator is not entitled to a writ of prohibition.

Even if the doctrines of mootness and laches were not fatal to Relator's Complaint, the Court should still dismiss the Complaint because its face makes clear Relator is not entitled to a writ of prohibition. This Court has stated in "extraordinary actions challenging the decisions of the Secretary of State . . . the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions." *Whitman v. Hamilton Cty. Bd. of Elections*, 2002-Ohio-5923, ¶ 11. Judged against this high standard, Relator cannot establish any of the three prongs necessary to obtain a writ of prohibition: 1) the party against whom the writ is sought is about to exercise judicial power, 2) the exercise of such power is unauthorized by law, and 3) if the writ is denied, the relator will suffer injury for which no other adequate remedy at law exists. *Pierce*, 40 Ohio St.3d at 9.

1. Certifying the results of the primary election does not constitute a judicial or quasi-judicial power.

The first prong necessary to obtain a writ of prohibition is demonstrating the party against whom the writ is sought is about to exercise judicial power. *Id.* Relator claims this prong is met because the "certification of election results" requires Respondent to "make a legal determination—that the candidate who received the votes was legally eligible to appear on the ballot and to receive those votes." *Complaint*, p. 15. Relator argues this is a "quasi-judicial act." *Id.* As an initial matter, Relator cannot meet this prong because Respondent is not "about" to do anything with respect to certifying the primary elections. Respondent already certified the primary elections on June 3, 2026. For this reason alone, Relator cannot satisfy the first prong.

Further, this Court has “defined quasi-judicial authority as ‘the power to hear and determine controversies between the public and individuals that *require* a hearing resembling a judicial trial.” *State ex rel. Varnau v. Wenninger*, 2011-Ohio-759, ¶ 11 (emphasis in original). Following this reasoning, the Court has held it is not a quasi-judicial act when a board of elections certifies that a candidate for sheriff meets the qualifications set forth under Ohio law. *Id.* at ¶ 12. In reaching this conclusion, the Court noted that, although the board may “exercise quasi-judicial authority in denying protests filed pursuant to statute,” the subject protest “was withdrawn before the board could exercise its quasi-judicial authority.” *Id.* at ¶ 13.

The Respondent’s duty to certify the primary election results is governed by R.C. 3513.22, which provides in pertinent part:

(D)(1) When certified copies of abstracts are received by the secretary of state, the secretary of state shall canvass those abstracts and determine and declare the results of all elections in which electors throughout the entire state voted . . . [t]he declaration of results by the secretary of state shall be in writing and shall be signed by the secretary of state.

There is nothing judicial or quasi-judicial involved in this process of certifying the primary election results. Respondent merely receives abstracts from each county board of elections, canvasses those abstracts, and declares the winner(s) of the various primary election races. There is no consideration of potential controversies surrounding candidate eligibility. Even if the statute stated such a consideration were required, it clearly does not contemplate any “hearing resembling a judicial trial.” *Wenninger*, 2011-Ohio-759, ¶ 11. For all of these reasons, Respondent’s act of certifying the primary election is not a quasi-judicial act.

Relator’s arguments to the contrary rely on easily distinguishable caselaw and a mischaracterization of the relief he requests. To the latter, Relator’s Complaint seeks a writ prohibiting Respondent from “certifying the vote count received by Vivek Ganapathy Ramaswamy

in the May 6, 2026 Ohio Republican Primary Election for Governor” pending further determinations related to candidate eligibility. *Complaint*, p. 1. Nowhere in R.C. 3513.22 is Respondent required to conduct a detailed eligibility determination as part of the certification process. To the contrary, the statute requires Respondent to receive the abstracts from each county board of elections and declare the voting results. *See* R.C. 3513.22. Relator cannot transform a ministerial act into a quasi-judicial one by adding his own words to the statute.

The cases Relator cites do not change this result. Both cases pertain to the Secretary of State’s authority to evaluate, appoint, or deny recommendations for an elector to serve as a member of a board of elections. *See, e.g., State ex rel. Derwort v. Hummel*, 146 Ohio St. 653, 655 (1946); *State ex rel. Democratic Exec. Committee of Lucas Cty. v. Brown*, 39 Ohio St.2d 157, 161 (1974). Notably, in both cases, the Court denied the requested writs due to deference given to the Secretary of State. *See, e.g., Hummel*, 146 Ohio St. at 656; *Brown*, 39 Ohio St.2d at 163-64. Regardless, both cases involved a potential resolution of public and individual controversies, and the statute giving rise to those cases expressly contemplates a writ of mandamus to challenge the Secretary’s decision. R.C. 3501.07. As such, the fact patterns in each case are a far cry from the ministerial act of certifying primary election results.

2. The certification is authorized by law and is a statutory duty Respondent must fulfill.

The second prong Relator must meet to obtain a writ of prohibition is demonstrating the power he seeks to prohibit is unauthorized by law. *Pierce*, 40 Ohio St.3d at 9. Relator makes the naked claim that Respondent’s “duty to verify that a candidate is a ‘qualified elector’ before certifying is mandatory,” and insinuates Respondent has a duty to verify candidate citizenship with “any competent federal authority.” *Complaint*, p. 6. Relator provides no legal authority in support of either claim. Simultaneously—and confusingly—Relator argues Respondent “possesses no

statutory authority to determine candidate qualifications in the first instance.” *Complaint*, p. 17. In brief, Relator seemingly seeks a writ prohibiting Respondent from certifying the primary election until Respondent takes some further action that (according to Relator) he has “no statutory authority” to do.

As perplexing as Relator’s argument on this point seems, the basic fact remains that Respondent’s certification of the primary election is not “unauthorized by law.” To the contrary, it is Respondent’s *duty* under Ohio law to certify the primary election results within a set timeframe. *See* R.C. 3513.22(A), 3505.35(A). So not only is this certification authorized by law, it is, in fact, required. At a bare minimum, Respondent’s act of complying with black-letter Ohio statutory law falls well short of the “fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions” that this Court requires to prevail in challenging decisions of the Secretary of State. *Whitman*, 2002-Ohio-5923, ¶ 11.

Because Relator cannot demonstrate Respondent’s act of certifying the primary election is unauthorized by law, he cannot satisfy the second prong necessary to obtain a writ of prohibition. Dismissal is thus appropriate.

3. Relator possesses adequate remedies at law.

The third and final prong requires Relator to demonstrate he would suffer injury for which no adequate remedy at law exists in the absence of the requested writ. *Pierce*, 40 Ohio St.3d at 9. Relator alleges the “injury” in the absence of a writ would be the “certification of a vote count for a candidate who was never legally eligible to receive votes.” *Complaint*, p. 19. As is evident throughout his Complaint, the gravamen of Relator’s alleged injury is his various insinuations about Mr. Ramaswamy’s candidate eligibility.

Despite Relator’s arguments to the contrary, the Revised Code provides a method for a qualified elector to protest a candidate’s eligibility:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

* * *

(4) The candidates candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

R.C. 3501.39(A). This statutory provision sets forth a clear-cut method by which Relator could protest Mr. Ramaswamy's candidacy. This constitutes an adequate remedy at law Relator could have pursued.

Additionally, Relator could have brought his grievances against a candidate's qualifications under R.C. 3503.24, which prescribes a method a qualified elector may challenge the right to vote of any registered elector:

Application for the correction of any precinct registration list or 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. The applications or challenges, with the reasons for the application or challenge, shall be filed with the board in person or by mail on a form prescribed by the secretary of state and shall be signed under penalty of election falsification.

R.C. 3503.24(A). The Secretary of State provides an easily accessible form (Form No. 257) for qualified electors to raise R.C. 3503.24(A) challenges, to be filed with the applicable board of elections.³ Relator chose to forego this option as well.

The mere fact Relator failed to pursue the remedies provided by law due to his dilatory conduct does not mean those remedies do not exist. Relator could have challenged Mr. Ramaswamy's candidacy under R.C. 3501.39(A) shortly after he submitted a petition to run for office on February 4, 2026. Instead, Relator sat on his hands, did not pursue the statutory remedies available, and filed this action after the primary election already took place. Issuance of an extraordinary writ cannot be the reward for Relator's dilatory conduct.

For these reasons, Relator cannot meet any of the three prongs required to obtain a writ of prohibition. The Court should thus dismiss the Complaint in its entirety.

F. This Court lacks jurisdiction.

This Court is not bound by the labels assigned to complaints but may review the allegations to determine the nature of the relief requested. *See State ex rel. Gadell-Newton v. Husted*, 2018-Ohio-1854, ¶ 9; *State ex rel. Leneghan v. Delaware Cty. Bd. of Elections*, 2026-Ohio-1598, ¶ 18. While Relator requests a writ of prohibition, the allegations establish Relator actually requests this Court issue an injunction prohibiting Respondent from certifying the primary election results. "Neither this court nor a court of appeals has original jurisdiction in prohibitory injunction." *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 1997-Ohio-274, ¶ 6. Accordingly, the Court lacks jurisdiction to consider Relator's Complaint.

IV. CONCLUSION

³ Challenge of Right to Vote and Correction of Registration List - Form 257, available at <https://www.ohiosos.gov/assets/257.pdf>.

Relator's Complaint does not meet the high burden for the extraordinary relief that he seeks. Relator lacks standing to assert his claims because he cannot show a particularized injury. Further, Relator's claims are barred by the doctrines of mootness and laches. Finally, Relator cannot establish that Respondent is about to exercise judicial power, that the power is unauthorized by law, or that he lacks an adequate remedy at law in the absence of a writ of prohibition. Therefore, his request for a writ of prohibition is barred, should be denied, and this case should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 9, 2026, a true and accurate copy of the foregoing was filed with the Clerk of Court using the Court's e-filing system, which will send notice of filing to all counsel of record. It was also served via email and/or regular U.S. Mail upon the following:

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