The Supreme Court of Ohio

State ex. rel. Kimberly J. Ontko, relator, vs. Sandusky County Board of Elections, respondent.	)))))))))	Case No. 2026-1133 **Original action involving expedited election matter**

RELATOR'S MERIT BRIEF

Andrew R. Mayle (0075622)
Richard R. Gillum (0070227)
Benjamin G. Padanilam (0101508)
Nichole Kanios Papageorgiou (0101550)
MAYLE LLC
P.O. Box 263
Perrysburg, Ohio 43552
419.334.8377
Fax: 419.355.9698
amayle@maylelaw.com
rgillum@maylelaw.com
bpadanilam@maylelaw.com
npapageorgiou@maylelaw.com
Counsel for relator

Beth A. Tischler (0077490)
Laura Alkire (0077593)
Sandusky County Prosecutor's Office
100 N. Park Avenue
Fremont, OH 43420
419.334.6222
Counsel for respondent

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Statement of the Facts

As shown by relator Kimberly J. Ontko's evidence, the facts are simple and undeniable.

Ontko is a magistrate at the Sandusky county court of common pleas and an independent candidate for judge of that court for the term commencing January 1, 2027. Nonparty Jon Marshal Ickes was a judge of that court for the term ending December 31, 2026, but on August 19, 2026, this court suspended him from the practice of law for two years and thus also immediately suspended him from judicial office. *Disciplinary Counsel v. Ickes*, Slip Opinion No. 2026-Ohio-3173.

Ickes ran unopposed in the Republican primary and was therefore set to appear as the incumbent candidate against Ontko in the general election. But this court's intervening suspension makes him ineligible to take judicial office for the term beginning January 1, 2027. Thus, Ontko protested Ickes' candidacy on August 20, 2026. The board of elections scheduled an emergency meeting for August 24, 2026; however, based on advice that county prosecutor Beth Tischler emailed to the board before the meeting, the board voted to deny the protest without holding a formal hearing. A few hours later, Ontko sued the board in mandamus and prohibition.

This court should issue a decision that either prevents Ickes' name from appearing on the ballot or that orders respondent to count only votes for qualified persons. Because it has already stripped Ickes of the privileges of being a lawyer, he isn't qualified to be a judge and thus cannot be treated as a "candidate" as defined by R.C. 3501.01(H), which requires the person to be "**qualified**."

Argument

The judiciary is a cornerstone of our legal system, and election law should prevent voter confusion—not invite it by presenting to voters a disqualified "candidate" whom this court, in the exercise of its constitutional authority, has already rendered incapable of assuming the judgeship that they are being asked to fill at the general election. Leaving Ickes' name on the general election ballot would border on a fraud upon the electorate and would ultimately undermine the very public confidence in the judiciary that this court sought to protect by disciplining Ickes in the first place.

I. This court's own special powers reserved to it under Article IV, Section 2(B)(1)(g) permit the court to issue orders vindicating its original jurisdiction over all matters relating to the practice of law—including orders relating to the electoral consequences of the suspensions it imposes.

In addition to Article IV, Section 2(B)(1)(b) & (d) granting this court original jurisdiction in mandamus and prohibition, Section 2(B)(1)(g) grants this court original jurisdiction over the admission to the practice of law, the discipline of persons so admitted, and "all other matters relating to the practice of law." This broad residual grant—**all** other **matters relating to** the practice of law—necessarily includes determining the electoral consequences of this court's own disciplinary orders when those consequences turn directly on a person's status as a lawyer. Indeed, this court has previously held that whether a judicial candidate's work activities constituted the practice of law for purposes of satisfying R.C. 2301.01's eligibility requirements squarely falls within this court's original jurisdiction under Section 2(B)(1)(g).[1] And here, this court exercised its 2(B)(1)(g) authority in suspending Ickes from the practice of law for two years. "No longer satisfying the requirements of R.C. 2301.01, **he is thus precluded from holding judicial office**." *State ex rel. Green v. Tilton*, 1 Ohio St.3d 54, 56 fn. 2 (1982).[2] Because the issue of whether Ickes may continue as a candidate for

[1] *State ex rel. Emhoff v. Medina Cnty. Bd. of Elections*, 2018-Ohio-1660, ¶19 ("Whether a judicial candidate was engaged in the practice of law is a mixed question of law and fact. A board of elections has the right to determine what 'the practice of law' means as a statutory qualification for judge. However, that determination is subject to our review in accordance with Article IV, Section 2(B)(1)(g) of the Ohio Constitution, which confers 'exclusive jurisdiction over all matters related to the practice of law' upon this court.") (internal citations omitted).

[2] All emphasis in this brief is added by relator. *See also*, *State ex rel. Williams v. Bd. of Elections of Trumbull Cnty.*, 175 Ohio St. 253, 254 (1963) ("The board in this proceeding was not determining the qualifications for office, but whether the candidate had met the qualifications imposed by the statute. The qualifications themselves are created by statute and not by the board. The statute requires, as one of the qualifications for the office, that the candidate be 'admitted to the practice of law in the state.' A determination as to whether one has been admitted to the practice of law is clearly a matter of fact. The board found that relator has not been admitted to the practice of law, and this relator admits. He was, therefore, as the board properly determined, not eligible as a candidate for municipal judge.")

that very judicial office cannot be separated from his legally disabled status as a practitioner of law, this isn't an ordinary election dispute merely involving a candidate who happens to have become ineligible for some reason unrelated to Article IV, Section 2(B)(1)(g).

The office at issue is a **judicial** office whose qualifications depend upon the candidate's legal status as an attorney. This court imposed upon Ickes an electoral disability arising from a constitutional power committed exclusively to this court.

Determining whether that constitutionally imposed disability permits the affected lawyer to continue seeking an office he cannot legally occupy is therefore a matter "relating to" the practice of law, which is an intentionally broad phrase meriting broad application.[3] Any narrower construction would produce an anomalous division of constitutional authority under which this court could conclusively determine that Ickes may not practice law and may not serve as a judge through the commencement of the next term, yet supposedly lack authority to prevent the election machinery from continuing to present him to voters as a candidate to become a judge during that same period.

Nothing in Article IV requires that disconnect.

To the contrary, the residual phrase "all other matters relating to the practice of law" ensures that this court's constitutional authority is broad enough to address the legal incidents and consequences of the professional status it exclusively controls. That said, the requested relief is tailored to the circumstances presented. Ontko does not invite this court to exercise general supervisory authority over elections or to invalidate nonjudicial candidacies based upon an ordinary statutory defect—Ontko merely asks this court to prevent its own active disciplinary order from

[3] *Cf.*, *Beaver Excavating Co. v. Testa*, 2012-Ohio-5776, ¶31 ("the phrase 'relating to' is plainly intended to be interpreted broadly.") (construing Article XII, Section 5a). Here, the sweeping nature of the phrase "relating to" as used in Article IV, Section 2(B)(1)(g) is punctuated by that same provision's preceding usage of the equally broad phrase "**all** other matters…"

being given the contradictory legal consequence of sustaining a candidacy for an office that Ickes cannot possibly assume. Recognizing this court's supremacy in these narrow circumstances would not displace the ordinary rules governing election disputes. This court's authority arises here because the office is judicial, the legal qualification at issue is the right to practice law, and the disqualification results directly from a prolonged suspension deliberately imposed by this court.

To grant a writ of mandamus here, this court need not exercise some novel form of inherent ballot-control authority. Its original jurisdiction already includes mandamus. Ohio Const., Art. IV, Section 2(B)(1)(b). In turn, Article IV, Section 2(B)(1)(g) independently vests this court with original jurisdiction over the underlying matter—the consequences of its own suspension of a lawyer from the practice of law—while mandamus provides the procedural vehicle for requiring respondent to give those consequences legal effect. This court should thus order respondent to grant the protest, which is a proper usage of mandamus,[4] or to count only votes for qualified candidates.

We anticipate that the board might insist upon a supposed statutory silence regarding post-primary protests. But even if there were no protest mechanism, it does not logically follow that Ickes' name must therefore be heedlessly placed on the ballot. For this court's constitutional jurisdiction exists independent of the Revised Code. And our constitution also provides that "[n]o law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court." Ohio Const., Art. IV, Section 2(B)(3). Thus, even if R.C. 3501.39 did not itself authorize Ontko's protest, this statutory point would negate neither this court's constitutionally conferred original jurisdiction in mandamus, nor its parallel jurisdiction over "all other matters relating to the practice of law."

[4] *State ex rel. Thomas v. Wood Cnty. Bd. of Elections*, 2024-Ohio-379, ¶25 ("Relators seek an affirmative act of the board: they seek a writ of mandamus ordering the board to sustain Thomas's protest, which would result in removing the referendum from the ballot, because they claim that the referendum petition does not meet certain statutory requirements. Accordingly, relators have stated a proper mandamus claim over which we have jurisdiction.")

Granted, the existence of original jurisdiction does not by itself entitle Ontko to a writ of mandamus. But once that jurisdiction is invoked, the question becomes whether Ontko has a clear legal right to the requested relief, and respondent has a corresponding clear legal duty to provide it.

Here, both follow from the legal consequence of this court's disciplinary decision.

Ickes cannot practice law when the next judicial term begins, cannot legally assume that judicial office, and therefore has "**no right to be a candidate for election thereto, since his election would be a nullity.**" *State ex rel. Flynn v. Board of Elections*, 164 Ohio St. 193, 200, 129 N.E.2d 623 (1955).[5] Thus, the board of elections cannot have lawful discretion to maintain on the ballot a judicial candidacy for an office that Ickes is now prohibited by order of this court from holding. Recognizing this court's authority to enforce the legal consequences of its own order in these narrow circumstances leaves undisturbed the ordinary statutory rules governing challenges to candidates for nonjudicial office, which typically do **not** condition eligibility upon a professional status constitutionally controlled by this court.

II. R.C. 3501.39(A)(2) permits a post-primary protest of a candidacy based on a subsequently arising violation of law that renders the putative candidate unqualified to hold judicial office.

The text of R.C. 3501.39(A)-(B) provides as follows:

> (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.

[5] *See also*, 2002 Ohio Atty.Gen.Ops. No. 2-88 ("We note first, that **a person is not eligible to be a candidate for elective office if he will not be qualified to assume that office if elected**."); *Compare*, 2002 Ohio Atty.Gen.Ops. No. 2-127 ("a person who has been suspended from the practice of law is not precluded from being a candidate for the office of common pleas court judge, so long as his suspension will have expired and he is reinstated by the time he assumes office if elected thereto.")

> (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.
>
> (3) In the case of an initiative petition received by the board of elections, the petition falls outside the scope of authority to enact via initiative or does not satisfy the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.
>
> (4) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.
>
> (B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A) (4) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition. ***

We believe that division (A)(2) affords Ontko a right to protest Ickes' candidacy even after a primary election. To explain this, however, we will first address (A)(2)'s neighboring provisions.

We know that (A)(3) is inapplicable here, as it concerns initiative petitions. Next, (A)(4) is arguably inapplicable because all putative Republican candidates (such as Ickes) for common pleas court must file a declaration of candidacy, and R.C. 3501.39(B) forbids a board of elections from invalidating a declaration of candidacy under division (A)(4) after the sixtieth day prior to the election at which the candidate seeks **nomination** to office, if the candidate filed a declaration of candidacy. The election at which a candidate who filed a declaration of candidacy seeks nomination to office is the primary election. Thus, by operation of R.C. 3501.39(B), a board of elections cannot invalidate a "declaration of candidacy" after the sixtieth day prior to the primary election. That said, we will revisit (A)(4) below. Moving along for now, (A)(1) would be inapplicable under this court's decision in *Whitman v. Hamilton Cty. Bd. of Elections*, 2002-Ohio-5923, which, in reliance upon *State ex rel. Harbarger v. Cuyahoga Cty. Bd. of Elections*, 1996-Ohio-254, 75 Ohio St. 3d 44, 661 N.E.2d 699, held that because (A)(1) says that protests under that subdivision must be determined "in accordance with any section of the Revised Code providing a protest procedure," it incorporates the protest procedures established in R.C. 3513.05, which concerns primary protests. Such protests must be filed "not later than four p.m. of the seventy-fourth day before the day of the primary election," which has since passed. However, (A)(2) is neither mentioned in nor limited by R.C. 3501.39(B) and omits any reference to any section of the Revised Code providing a protest procedure.

Division (A)(2) must accordingly be given independent effect.

Nothing in division (A)(2) states that the protest must precede the primary election.

It instead contemplates protests of a "candidacy" and thus that any "candidacy" may be subject to a disqualifying event as it "occurs." This must be read in context of the entire statute.

The legislature distinguished a candidate's "candidacy" from the "petition" supporting it.

Divisions (A)(1) and (A)(2) each expressly authorize protests of the "petition <u>or</u> candidacy," while division (A)(4) separately refers to circumstances in which "[t]he candidate's candidacy or the petition" violates applicable law. Those words shouldn't be treated as synonymous. A petition is the instrument by which ballot access is initially sought; a candidacy is the continuing legal status resulting from it. Giving independent effect to the word "candidacy" thus permits the statute to address a legal defect that "occurs" in the candidate's continuing eligibility even when that defect was not present when the underlying petition paperwork was filed.

The structure of divisions (A)(1) and (A)(2) confirms that conclusion.

Division (A)(1) expressly incorporates the protest procedures prescribed elsewhere in the Revised Code: the protest must proceed "in accordance with any section of the Revised Code providing a protest procedure." Division (A)(2) contains no corresponding limitation. Instead, it prescribes its own procedural safeguards—a written protest naming specific objections, a hearing, and a determination of illegality. Reading (A)(2) as nevertheless subject in every instance to whatever deadline might have governed an earlier protest under (A)(1) would substantially collapse the two provisions and import into (A)(2) language that the legislature itself placed only in (A)(1). The wording of R.C. 3501.39(B) makes that omission particularly significant, as R.C. 3501.39(B) provides that a board "shall not invalidate" a declaration of candidacy or nominating petition "under division (A)(4)" after the sixtieth day before the relevant election. The General Assembly therefore considered the temporal reach of R.C. 3501.39(A) and knew precisely how to restrict it—yet it attached the limitation to (A)(4), not (A)(2). This court should not extend to (A)(2) a limitation the legislature imposed only upon a neighboring provision. Doing so would treat (A)(2) as surplusage and deprive it of any independent force or effect, thus contradicting the presumption that "[t]he entire statute is intended to be effective." R.C. 1.47(B).

Our reading does not render the deadlines incorporated through (A)(1) meaningless.

This court's decision in *Harbarger* supplies the principle harmonizing the provisions.

Although recognizing that (A)(2) contains no time requirement, this court in *Harbarger* refused to permit that provision to circumvent a specifically applicable statutory protest procedure.

This rule makes sense: when the factual and legal basis for an objection *already* exists during the period in which the General Assembly has provided a specific procedure for asserting it, a protestor cannot simply wait for that procedure to expire, observe the results of the primary election, and then resurrect the same objection under (A)(2). Otherwise, (A)(2) would swallow (A)(1). But *Harbarger's* anti-circumvention rule necessarily presupposes an available route that could have been taken. Here, Ontko had none.

When Ickes filed his declaration, when the pre-primary protest period ran, and when the Republican primary occurred, Ickes remained admitted to the practice of law. Neither Ontko nor any other elector could have protested on the grounds he was disqualified by a suspension from the practice of law—precisely because this court had not suspended Ickes. Ontko could not know what discipline this court might select, or—critically—whether any suspension would extend beyond

January 1, 2027. A pre-primary protest asserting that Ickes was legally incapable of assuming office would therefore have been futile. Of course, the landscape has since changed significantly.

On August 19, 2026, this court imposed a two-year suspension extending far beyond commencement of the next judicial term. The present objection therefore did not merely become known after the primary; it only came into legal existence *after* the primary. Ontko protested the following day. She did not sleep on an available objection and later select (A)(2) to escape an expired deadline. She protested immediately after the legal ground for doing so first arose.

Recognizing this sequence gives full effect to every part of the statutory scheme. Division (A)(1) and the deadlines it incorporates govern objections capable of being asserted through specifically prescribed protest procedures. *Harbarger* and its progeny prevent (A)(2) from circumventing those procedures after their deadlines expire. Division (A)(4) remains subject to the express temporal limitation imposed by division (B). And (A)(2), which is expressly made applicable to a "candidacy" and has no specific deadlines, retains independent effect when a legal ground for protesting the continuing candidacy subsequently "occurs."

No provision is displaced, rewritten, or rendered superfluous under relator's view.

Respondent's paradoxical position—i.e., Ontko could not successfully protest Ickes' present disqualification before August 19 because it did not yet exist, yet once the disqualification actually "occurs," she may not protest it because she should have done so earlier—serves no logical purpose. Nothing in R.C. 3501.39 commands this outcome, and the familiar presumption that the General Assembly intends a just and reasonable result (*see* R.C. 1.47(C)) weighs strongly against creating it.

Nor should the reference in the final clause of (A)(2) to a determination that "the petition" violates a requirement established by law compel a different result. That phrase must be read in conjunction with the same division's express authorization of protests against the "petition or candidacy." The statute cannot logically be said to authorize protests of a candidacy, yet exclude protests of legal defects arising in that candidacy after the petition was filed. Rather, the provisions are readily harmonized: when an intervening legal disqualification renders the candidacy unlawful, the petition can no longer lawfully sustain the candidacy for which it was filed.

On this point, *Flynn* supplies the substantive rule: a person who will be ineligible to hold an office "**has no right to be a candidate for election thereto**."

Applying this rule here, once this court imposed a suspension that made Ickes incapable of assuming the next judicial term, his petition could no longer lawfully support a candidacy.

And so, while R.C. 3501.39(A)(2) cannot revive an objection that could have been timely asserted through an applicable pre-primary protest procedure, neither *Harbarger* nor the statutory text enables or requires an elector to protest a legal disqualification *before* it exists.

Where, as here, the disqualification first occurs after the primary and the elector promptly protests it, application of (A)(2) circumvents nothing.

Rather, it gives that division its necessary independent effect.

Finally, (A)(2) and (A)(4)—the former permitting protests and the latter permitting the board to act of its own accord—both permit objections to a "candidacy" itself. Again, a candidacy is distinct from the "declaration of candidacy," which is the **paperwork** filed with the board of elections. The limitation imposed by R.C. 3501.39(B), insofar as it is relevant here, provides only that a board of elections "shall not invalidate any declaration of candidacy" under (A)(4) after the sixtieth day before the primary election. It does not say that a board may never thereafter recognize that the **candidacy itself** has become legally invalid because of a subsequently arising disqualification.

That distinction finds further support in R.C. 3501.01(H), which defines "candidate" as "any **qualified** person certified in accordance with the provisions of the Revised Code for placement on the official ballot of a primary, general, or special election" and similarly requires a write-in candidate to be a “qualified person.” The General Assembly thus swept the substantive qualifications for the underlying office at issue into the very definition of “candidate.”

Certification alone is insufficient; the person must also remain qualified.

That textual choice is particularly significant here. Ickes may have been a “qualified person” when he filed his declaration of candidacy and when the primary occurred, but this court’s intervening two-year suspension has since made him indisputably **un**qualified to assume the judicial office sought. Once that disqualification “occurs,” Ickes ceased satisfying an express component of the statutory definition of “candidate.” Thus, R.C. 3501.39(A)(2)’s express authorization of a protest against a “candidacy” should be construed consistently with that definition, rather than as requiring election officials to continue treating as a “candidate” someone whom Title 35 no longer recognizes as a qualified person. The statutory pieces therefore fit together.

A valid declaration of candidacy may create a candidacy, but it does not immunize that candidacy from a legal disqualification that subsequently “occurs.” R.C. 3501.39(A)(2) provides the mechanism for protesting such a subsequently defective candidacy; R.C. 3501.01(H) requires a “candidate” to be a “qualified person”; and nothing in R.C. 3501.39(B) requires election officials to preserve a candidacy after the person pursuing it has become legally unqualified to hold the office sought. R.C. 3501.39(A)(4) independently supports the same result.

Unlike divisions (A)(1) and (A)(2), division (A)(4) does not require a protest, hearing, or determination initiated by an elector. It simply provides that the board of elections “shall accept” a petition **unless** “[t]he candidate’s candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or ***any*** other requirements established by law.” The omission is meaningful. Divisions (A)(1) and (A)(2) prescribe what must occur when an elector invokes the board’s authority through a protest; division (A)(4) independently directs election officials themselves not to accept a candidacy or petition that violates law. It is therefore not merely another vehicle for Ontko's protest but imposes an independent statutory obligation upon respondent. Once this court suspended Ickes for two years, respondent became aware—via Ontko's protest or otherwise—of a subsequently arising legal fact that rendered his continuing judicial "candidacy" unlawful. Because Ickes is not qualified, he cannot satisfy the definition of "candidate" and thus cannot be one.

At that point, the board did not need Ontko's protest to give effect to the governing law.

Division (A)(4) itself authorized respondent to address a "candidate's candidacy" that had become inconsistent with "requirements established by law," which certainly for judicial office include having an active license to practice law when the term commences.

The limiting effect of R.C. 3501.39(B) does not necessarily compel a different conclusion.

Its prohibition is carefully phrased: after the specified deadline, "a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(4)." R.C. 3501.39(B). But division (A)(4) itself separately speaks of "[t]he **candidate's candidacy**…"

This distinction again matters here because nobody contends that Ickes' declaration of candidacy was invalid when filed. The defect concerns Ickes' intervening inability to practice law.

Here too, R.C. 3501.01(H) reinforces this point by defining a "candidate" as a "qualified person certified" for placement on the ballot. Nothing in division (B) expressly commands a board to continue recognizing such an unqualified "candidate" merely because the paperwork that originally produced his candidacy went unchallenged before this court suspended Ickes' law license.

III. Either mandamus or prohibition is an appropriate remedy—and under either, Ontko has no adequate remedy in the ordinary course of law.

A. Mandamus

Election officials have a duty to enforce election law, "which includes caselaw from this court applying and interpreting those laws." *State ex rel. Conrath v. LaRose*, 2022-Ohio-3594, ¶16. Additionally, *State ex rel. McQueen v. Cuyahoga Cty. Ct. of Common Pleas*, Prob. Div., 135 Ohio St.3d 291, 2013-Ohio-65, 986 N.E.2d 925, confirms that "courts in mandamus actions have a duty to construe constitutions, charters, and statutes, if necessary, and thereafter evaluate whether the relator has established the required clear legal right and clear legal duty." Thus, the clear legal duty necessary for mandamus may arise from this court's construction of the Ohio Constitution and governing law; it need not appear verbatim in an express statutory command.

Stated differently, mandamus does not require Ontko to identify a statute containing the precise words "the board shall remove Ickes from the ballot." It requires a clear legal duty. And *McQueen* confirms that, in determining whether such a duty exists, this court must construe the Constitution, statutes, and governing law together. The resulting legal duty is no less enforceable merely because it follows from that construction rather than appearing verbatim in a single statutory command. That principle has particular force in election cases because election officials are themselves charged with enforcing election law, including "caselaw from this court applying and interpreting those laws." *Conrath*, 2022-Ohio-3594, ¶16. Thus, once governing law establishes that Ickes cannot hold the judicial office and therefore has "no right to be a candidate for election thereto," *Flynn*, supra, respondent cannot avoid the corresponding duty merely by demanding a statute that expressly addresses the factual circumstances presented here.[6] Similarly, Ontko has a corresponding right. She has a direct personal stake as a certified candidate for the same judicial

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[6] In issuing a writ of mandamus directing the removal of a judicial candidate's name from the ballot, the Supreme Court of West Virginia summarized these concepts as applied to ineligible judicial candidates: "the intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election. Consequently this Court has recognized that **some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery**." *State ex rel. Judicial Investigation Com'n v. Putnam Cnty. Bd. of Ballot Commrs.*, 237 W.Va. 99, 115 (2016), quoting *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976); *See also*, *Gamble v. White*, 566 So.2d 171, 172 (La.App. 1990), writ denied, 565 So.2d 923 (La. 1990) (affirming removal of name of ineligible judicial candidate from ballot). *State ex rel. Summerfield v. Maxwell*, 148 W.Va. 535 (1964), syllabus ("The eligibility of a candidate for an elective office may be determined in a proceeding in mandamus and, upon a determination therein that a candidate is ineligible to be elected to or to hold the office for which he seeks nomination or election, a writ of mandamus will issue directing the board of ballot commissioners to strike or omit such candidate's name from the primary or general election ballot.")

term, and the election itself is "of the utmost public concern and any duty related thereto is properly characterized as public." *State ex rel. Nimon v. Village of Springdale*, 6 Ohio St.2d 1, 4 (1966).

Notably, this court held in *Nimon* that "[a] writ of mandamus will not issue to compel submission to the electorate of an invalid referendum petition." *Id.* at 8.

A reciprocal principle applies with equal force here.

If mandamus will not compel election officials to place an invalid measure before the electorate, there is little reason to conclude that mandamus is powerless to prevent election officials from placing before the electorate a judicial candidacy that governing law does not permit.

As shown above, this court has already held that a putative candidate who cannot satisfy the eligibility requirements for judicial office is precluded from holding judicial office and that one who is ineligible to hold public office "has no right to be a candidate for election thereto, since his election would be a nullity." *Tilton*; *Flynn*, supra. Respondent therefore has an implicit negative duty to refrain from placing on the general election ballot a judicial "candidate" who suffers from a disqualification that the respondent must concede cannot be cured before the relevant term commences. Ontko has a corresponding right to enforce that duty, and she has no conceivable remedy in the ordinary course of law.

On this point, Ohio law's incorporation of a qualification element into its definition of "candidate," which is a term of art that interacts with other salient terms, again favors relator's position. Indeed, under R.C. 3505.04, candidates for judicial office are placed on the nonpartisan ballot and considered "nonpartisan candidates." In turn, R.C. 3501.01(J) defines a "nonpartisan candidate" as "any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot," expressly including candidates for judge of a common pleas court. The definition thus incorporates the separately defined term "candidate," which, as mentioned above, means a "**qualified** person certified" for placement on the ballot. R.C.

3501.01(H). Accordingly, the statutory definition of a "nonpartisan candidate" incorporates the requirement that the person be "qualified." Because Ickes' disqualification cannot be cured, he may **not** be a candidate on the official ballot of a general election to be held in this state.

B. Prohibition

The familiar elements of prohibition are (1) an exercise or impending exercise of judicial or quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) the relator lacks an adequate remedy in the ordinary course of law. Here, while the board denied Ontko's protest at a meeting without holding a "hearing" per se, the board still effectively exercised quasi-judicial authority by dismissing the protest on legal grounds, including an apparently flawed interpretation of R.C. 3501.39(A)(2), which itself contemplates the board holding a hearing. Thus, the fact that the board dismissed the protest without a formal hearing cannot be an obstacle to relief in prohibition.[7]

Indeed, a local board of elections lacks authority to place on this state's official general-election ballot the name of a person who does not satisfy the eligibility requirements for judicial office under R.C. 2301.01 due to a suspension imposed by the state supreme court. Because Ickes does not satisfy those requirements, he is not a qualified "candidate" and thus cannot be a "nonpartisan candidate" as those terms are respectively defined by R.C. 3501.01(H) and (J).

Axiomatically, Ontko has no adequate remedy in the ordinary course of law.

CONCLUSION

Ickes cannot practice law. He cannot hold the judicial office he seeks. And under Ohio law, he therefore has no right to be a candidate for election thereto—in fact, he cannot even be a "candidate" as that term is defined by statute. That is why Ontko filed this case. Notably, *State ex rel.*

[7] As an aside, to the extent the board insists that post-primary protests are forbidden and therefore prohibition actions premised upon them are automatically invalid, relator notes that this court entertained a prohibition action concerning a post-primary protest based upon intervening circumstances in *State ex rel. Addis v. McClenen*, 2008-Ohio-4924. While this court denied a writ of prohibition, it did so on the merits of the protest, not because no protest was permissible.

Emhoff v. Medina Cnty. Bd. of Elections, supra, confirms that whether a judicial candidate satisfies a qualification dependent upon the practice of law implicates this court's exclusive constitutional authority under Article IV, Section 2(B)(1)(g). In *Emhoff*, the disputed question was whether a candidate's prior employment constituted the practice of law, and this court reviewed the election officials' determination pursuant to that constitutional authority. Here, the question is easier.

Indeed, there is nothing for respondent to determine concerning whether Ickes may practice law: this court has **already** determined that he may not.

Thus, issuing a writ here would not enlarge this court's authority over elections. Although the circumstances may be novel, the remedial principles are not. There already exists "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. The same rule applies in prohibition actions." *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219, 221 (1992) (internal citations omitted). A writ would simply give electoral effect to the consequences of a disciplinary judgment this court has already imposed in connection with its supremacy over the practice of law. Precisely because these issues are within this court's special original jurisdiction, Ontko has no adequate remedy other than to invoke this court's complementary original jurisdiction in mandamus or prohibition to secure that electoral effect.

Respectfully submitted,

/s/ Andy Mayle

CERTIFICATE OF SERVICE

We emailed a copy of this brief to respondent's counsel at BTischler@sanduskycountyoh.gov and LAlkire@sanduskycountyoh.gov on Friday, August 28, 2026.

/s/ Andy Mayle