

IN THE SUPREME COURT OF OHIO

STATE EX REL. MARK DERRIG
2191 Canterbury Circle
Akron, Ohio 44319

Relator,

v.

**FRANK LAROSE, in his official capacity as Ohio
Secretary of State**
180 Civic Center Drive
Columbus, Ohio 43215

SUMMIT COUNTY BOARD OF ELECTIONS
1050 E Tallmadge Ave
Akron, OH 44310

Respondents.

Case No.

Original Action in Mandamus

**Peremptory or Alternative Writs
Requested**

EXPEDITED ELECTION CASE

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

J. Corey Colombo* (0072398)
**Counsel of Record*
Helen G. Lohre (0104667)
McTIGUE & COLOMBO, LLC
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Columbus, Ohio 43215
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ccolombo@electionlawgroup.com
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Counsel for Relator

D. Andrew Wilson (0073767)
Ohio Attorney General

Julie Pfeiffer (0069762)
Chief of Constitutional Offices
30 E. Broad Street, 16th Floor
Columbus, Ohio 43215
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*Counsel for Respondent Ohio Secretary of
State*

Elliot Kolkovich (0087316)
Summit County Prosecutor

53 University Avenue, 6th Floor
Akron, Ohio 44308
Phone: (330) 643-2800
ekolkovich@prosecutor.summitoh.net

*Counsel for Respondent Summit County
Board of Elections*

INTRODUCTION

This action is brought in the name of the State of Ohio on the relation of Mark Derrig (“Relator”), who is seeking that a writ of mandamus be issued to compel Ohio Secretary of State Frank Larose (“Respondent Secretary”) and the Summit County Board of Elections (“Respondent Board”) to find that the Republican Party district committee of the county chairs and secretaries of Summit, Medina, Wayne and Lorain counties who make up the Ninth District Court of Appeals (“Republican Party district committee”) failed to follow R.C. 3513.31(I) by selecting Nathan Manning as its candidate for an unexpired term on the Ninth District Court of Appeals, to find that Nathan Manning was not eligible to be selected for an unexpired term on the Ninth District Court of Appeals and may not be submitted to the electors at the November 2026 General Election, for Respondent Secretary to break the tie vote of Respondent Board in accordance with applicable law, and for Respondent Board to notify other Boards of Elections in the Ninth District Court of Appeals that Nathan Manning’s name is not to be placed on the ballot.

NATURE OF THE ACTION AND JURISDICTION

1. These are original actions in mandamus commenced pursuant to this Court’s original jurisdiction under Article IV, Section 2 of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code, both of which govern mandamus actions.

2. Relator affirmatively alleges that he has acted with the utmost diligence and that there has been no unreasonable delay or lapse of time in asserting his rights and that there is no prejudice to the Respondents. See *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).

3. Because this action is being filed fewer than 90 days before the date of the election at issue, it is an expedited election case subject to the schedule set out in Supreme Court Rule of Practice 12.08.

PARTIES

4. Relator Mark Derrig is an elector of Summit County, Ohio and qualified to vote for judicial candidates for the Ninth District Court of Appeals. He is a member of the Democratic Party. Relator filed a protest letter with Respondent Summit County Board of Elections requesting a hearing on the candidacy of Nathan Manning for the Ninth District Court of Appeals which resulted in the tie vote decision by Respondent Secretary.

5. Respondent Frank Larose is the Ohio Secretary of State and the chief election official of Ohio. Respondent Secretary has a clear legal duty to decide tie votes of county Boards of Elections without abusing his discretion or clearly disregarding applicable law.

6. Respondent Summit County Board of Elections is the duly established and acting election authority for Summit County, Ohio, pursuant to Ohio Rev. Code § 3501.06. Respondent Board has a clear legal duty under R.C. 3501.11(J) to investigate violations of Title XXXV by any person and report facts to the Secretary of State. Respondent Board has a clear legal duty under R.C. 3505.01(A)(2) to certify to the other Boards of Elections in the Ninth District Court of Appeals the names of the candidate to be printed on such ballots.

ALLEGATIONS IN SUPPORT OF CLAIMS

7. On May 5, 2026, Nathan Manning was nominated in the Republican Party primary election to be the Republican Party candidate at the November 2026 General Election for the office of Ohio House of Representatives District 52. A true and accurate copy of the Lorain County Board

of Elections May 2026 Republican Party primary result for Ohio House District 52 is attached as Exhibit A.

8. On May 31, 2026, Judge Donna Carr on the Ninth District Court Appeals retired before the end of her term, creating a vacancy on the court.

9. On July 10, 2026, Governor Mike DeWine appointed Nathan Manning, the winner of the Republican Party primary election for the office of Ohio House of Representatives District 52, to fill the judicial vacancy.

10. On July 13, 2026, Nathan Manning (now Judge Manning) attempted to withdraw his candidacy at the November 2026 General Election for the office of District 52 of the Ohio House of Representatives. A true and accurate copy of Nathan Manning's withdrawal letter filed with the Lorain County Board of Elections is attached as Exhibit B. The withdrawal fails to comply with R.C. 3513.30(D).

11. The last sentence of R.C. 3513.31(I) states "If a person has been nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code, **the authorized committee of that political party shall not** select and certify a person as the party candidate." (Emphasis added.)

12. On August 4, 2026, the Republican Party district committee met and certified Nathan Manning, under R.C. 3513.31(I), to be the party's candidate at the November 2026 General Election for the unexpired term of Judge Carr. Nathan Manning accepted this nomination. The certification and acceptance were filed with the Summit County Board of Elections as the most populous county in the Ninth District Court of Appeals, and a true and accurate copy is attached as Exhibit C.

13. Relator filed his protest with Respondent Board on August 31, 2026. Respondent Board had not yet voted to certify the candidacy Nathan Manning for the unexpired term to the other Boards of Elections in the Ninth District Court of Appeals. The protest requested that Respondent Board hold a hearing on whether the last sentence of R.C. 3513.31(I) prohibits the selection of Nathan Manning as the Republican Party's candidate for the unexpired term on the Ninth District Court of Appeals, and for the Respondent Board to not submit Nathan Manning's candidacy to the voters at the November 3, 2026 general election. A true and accurate copy of the protest letter is attached as Exhibit D.

14. Respondent Board scheduled a hearing and received a written argument from Nathan Manning's counsel on the protest. On September 8, 2026, counsel for Relator and Nathan Manning appeared, presented oral arguments on the protest, and answered questions from the Board. The Board then voted 2-2 on whether to sustain Relator's protest. A true and accurate copy of the written argument by Nathan Manning's counsel is attached as Exhibit E.

15. Respondent Secretary has a duty to break tie votes from a Board of Elections, but may not do so in a manner that abuses his discretion or in clear disregard of applicable law.

16. A majority of this Court in *State ex rel. Trumbull Cnty. Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*, 170 Ohio St. 3d 29, 34, 2022-Ohio-3268, P18 stated that the last sentence of "R.C. 3513.31(I) simply makes clear that **a party central committee may not choose a winner** from the previous primary election to be its party's nominee to fill a vacancy for an unexpired term of office in the ensuing general election." (Bold emphasis added.)

17. The last sentence of R.C. 3513.31(I) is clear and unambiguous and must be applied as written.

18. Position statements were submitted to Respondent Secretary by the Respondent Board members stating the reasons for the opposing positions on the candidacy of Nathan Manning. True and accurate copies of both letters are attached as Exhibit F.

19. On September 11, 2026, Respondent Secretary broke the tie in favor of Nathan Manning's candidacy for the unexpired term on the Ninth District Court of Appeals, in part finding that the last sentence of R.C. 3513.31(I) did not apply to the Republican Party district committee's selection of Nathan Manning. A true and accurate copy of Respondent Secretary's tie vote letter is attached as Exhibit G.

20. Respondent Secretary acted in contravention of the plain language of R.C. 3513.31(I), which states that a person nominated in a primary election may not be selected by a political party committee as the party's candidate for an unexpired term election.

21. Respondent Secretary must find that the Republican Party district committee did not comply with R.C. 3513.31(I), that as a result Nathan Manning is ineligible for the November ballot, and break the tie of the Respondent Board in a manner that follows applicable law.

22. Respondent Board must find that the Republican Party district committee did not comply with R.C. 3513.31(I), not submit Nathan Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 2026 General Election, and notify the Medina, Wayne, and Lorain County Boards of Elections that Nathan Manning's name is not to be placed on the November 2026 General Election ballot as a candidate for the unexpired term on the Ninth District Court of Appeals.

CLAIMS FOR RELIEF

First Claim – Relator is entitled to a writ of mandamus ordering Respondent Secretary to find that the Republican Party district committee did not follow the procedure in R.C. 3513.31(I), that as a result Nathan Manning is ineligible for the November ballot and break the tie of Respondent Board in a manner that follows applicable law.

23. Each and every allegation contained above is incorporated as if fully rewritten herein.

24. To be entitled to a writ of mandamus, relators must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Stevens v. Fairfield Cty. Bd. of Elections*, 152 Ohio St.3d 584, 2018-Ohio-1151, ¶ 6.

25. Due to the proximity of the November General Election, Relator lacks a remedy in the ordinary course of law. *State ex rel. Porteous v. Franklin Cnty. Bd. of Elections*, 179 Ohio St. 3d 177, 181, 2025-Ohio-939, P14.

26. “In evaluating the remaining elements as applied to Secretary LaRose and the boards of elections, 'the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.'" *State ex rel. Conrath v. Larose*, 170 Ohio St. 3d 222, 224, 2022-Ohio-3594, P7.

27. Relator has a clear legal right to compel the compliance of the Secretary of State with election laws as applied to Nathan Manning’s candidacy as an elector of the Ninth District Court of Appeals. *State ex rel. Barth v. Hamilton County Bd. of Elections*, 65 Ohio St. 3d 219, 222, 602 N.E.2d 1130, 1133 (1992).

28. Respondent Secretary has a clear legal duty to decide tie votes of county Boards of Elections without abusing his discretion, engaging in fraud or corruption, or disregarding

applicable law. R.C. 3501.11(X), *State ex rel. Guest v. Husted*, 153 Ohio St. 3d 630, 633, 2018-Ohio-3161, P12.

29. Respondent Secretary has a clear legal duty to apply the plain language of R.C. 3513.31(I) and this Court's analysis in *State ex rel. Trumbull Cnty. Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*.

30. Mandamus, as an extraordinary writ, is a correct remedy to challenge the decision of the Secretary of State under R.C. 3501.11(X). *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581 (1995).

31. Relief in mandamus is appropriate when statutory ballot-access procedures have not been followed. *State ex rel. Thomas v. Wood Cty. Bd. of Elections*, 2024-Ohio-379, ¶ 25.

32. Relator has a clear legal right to a writ of mandamus to compel Respondent Secretary to find that the Republican Party district committee did not comply with in R.C. 3513.31(I), that as a result Nathan Manning is ineligible for the November ballot, and break the tie of the Respondent Board in a manner that follows applicable law.

Second Claim – Relator is entitled to a writ of mandamus ordering Respondent Board to find that the Republican Party district committee did not follow the procedure in R.C. 3513.31(I), to not submit Nathan Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 2026 General Election, and notify the Medina, Wayne, and Lorain County Boards of Elections that Nathan Manning's name is not to be placed on the November 2026 General Election ballot as a candidate for the unexpired term on the Ninth District Court of Appeals.

33. Each and every allegation contained above is incorporated as if fully rewritten herein.

34. To be entitled to a writ of mandamus, relators must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the

lack of an adequate remedy in the ordinary course of the law. 152 Ohio St.3d 584, 2018-Ohio-1151, ¶ 6.

35. Due to the proximity of the November General Election, Relator lacks a remedy in the ordinary course of law. 179 Ohio St. 3d 177, 181, 2025-Ohio-939, P14.

36. "In evaluating the remaining elements as applied to Secretary LaRose and the boards of elections, 'the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.'" 170 Ohio St. 3d 222, 224, 2022-Ohio-3594, P7.

37. Relator has a clear legal right to compel the compliance of Respondent Board with election laws as applied to the Republican Party district committee's selection of Nathan Manning and Nathan Manning's candidacy as an elector of the Ninth District Court of Appeals. 65 Ohio St. 3d 219, 222, 602 N.E.2d 1130, 1133 (1992).

38. Respondent Board is the duly established and acting election authority for Summit County, Ohio, pursuant to Ohio Rev. Code § 3501.06.

39. In the absence of any applicable statutory protest provision, Respondent Board exercised its discretion to hold a hearing on the protest.

40. Respondent Board has a clear legal duty under R.C. 3501.11(J) to investigate violations of Title XXXV by any person and report facts to the Secretary of State, including compliance with the last sentence of R.C. 3513.31(I).

41. The Republican Party district committee of the Ninth District violated Title XXXV when it selected an ineligible person to be a party candidate to fill an unexpired term.

42. Respondent Board has a clear legal duty under R.C. 3505.01(A)(2) to certify to the other Boards of Elections in the Ninth District the names of the candidates to be printed on such ballots who are eligible to appear on the ballot.

43. Despite clear statutory language and direction from this Court, Respondent Board failed to perform its clear legal duty to find that the Republican Party district committee failed in selecting a party candidate for an unexpired term to comply with R.C. 3513.31(I) and that Nathan Manning candidacy should not be submitted to the electors of the Ninth District at the November 2026 General Election.

44. Relator has a clear legal right to a writ of mandamus ordering Respondent Board to find that the Republican Party district committee did not follow the procedure in R.C. 3513.31(I), to not submit Nathan Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 2026 General Election, and notify the Medina, Wayne, and Lorain County Boards of Elections that Nathan Manning's name is not to be placed on the November 2026 General Election ballot as a candidate for the unexpired term on the Ninth District Court of Appeals.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays for the Court to grant the following relief:

A. Issue a Writ of Mandamus or Peremptory Writ of Mandamus ordering Respondent Secretary to find that the Republican Party district committee did comply with R.C. 3513.31(I), that as a result Nathan Manning is ineligible for the November ballot and break the tie of the Respondent Board in a manner that follows applicable law.

B. Issue a Writ of Mandamus or Peremptory Writ of Mandamus ordering Respondent Board to find that the Republican Party district committee did not comply with R.C. 3513.31(I),

to not submit Nathan Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 2026 General Election, and notify the Medina, Wayne, and Lorain County Boards of Elections that Nathan Manning's name is not to be placed on the November 2026 General Election ballot as a candidate for the unexpired term on the Ninth District Court of Appeals.

- C. Issue an alternative writ setting an expedited case schedule.
- D. Assess the costs of this action against Respondents.
- E. Award such other relief as may be appropriate.

Respectfully submitted,

/s/ J. Corey Colombo
J. Corey Colombo* (0072398)
*Counsel of Record
Helen G. Lohre (0104667)
McTIGUE & COLOMBO, LLC
545 East Town Street
Columbus, Ohio 43215
Phone: (614) 263-7000
ccolombo@electionlawgroup.com
hlohre@electionlawgroup.com

Counsel for Relator

VERIFICATION

Summit County

/s

State of Ohio

I, Mark Derrig, having been duly sworn and cautioned according to law, declare that I am over the age of eighteen years and am competent to testify as to the factual allegations set forth above in the Complaint, that I have read the allegations and referenced exhibits, and that such allegations are true and accurate based on my personal knowledge.

Mark Derrig

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this 15th day of September 2026.

Notary Public



TONYA BURNS
Notary Public, State of Ohio
My Commission Expires:
September 4, 2029

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Complaint was served today, September 15, 2026, on the following via email:

Julie Pfeiffer (0069762) - Julie.Pfeiffer@ohioago.gov

Counsel for Respondent Ohio Secretary of State Frank Larose

Elliot Kolkovich (0087316) - ekolkovich@prosecutor.summitoh.net

Counsel for Respondent Summit County Board of Elections

/s/ Helen G. Lohre
Helen G. Lohre (0104667)

EXHIBIT A

REP For State Senator (13th District) 13TH SENATE DIST

Vote For 1

TOTAL VOTE %

Gayle Manning	17,265	100.00%
Precincts Reporting	210 of 210	

REP For State Representative (52nd District) HOUSE DIST 52ND

Vote For 1

TOTAL VOTE %

Nathan H. Manning	6,302	100.00%
Precincts Reporting	82 of 82	

REP For State Representative (53rd District) HOUSE DIST 53RD

Vote For 1

TOTAL VOTE %

Bradley Lacko	5,442	100.00%
Precincts Reporting	80 of 80	

REP For State Representative (54th District) HOUSE DIST 54TH

Vote For 1

TOTAL VOTE %

Kellie Deeter	5,087	100.00%
Precincts Reporting	51 of 51	

REP For Member of State Central Committee, Man (13th District) 13TH SENATE DIST

Vote For 1

TOTAL VOTE %

Mike Witte	11,265	66.22%
Peter B. Aldrich	5,747	33.78%
Precincts Reporting	210 of 210	

REP For Member of State Central Committee, Woman (13th District) 13TH SENATE DIST

Vote For 1

TOTAL VOTE %

Kirsten Hill	12,051	71.35%
Jean Anderson	4,839	28.65%
Precincts Reporting	210 of 210	

REP For Judge of the Court of Appeals (9th District) (FTC 2-9-2027) 9TH CRT OF APPEALS

Vote For 1

TOTAL VOTE %

Cynthia Curtin	15,655	100.00%
Precincts Reporting	210 of 210	

EXHIBIT B

COPY

Nathan H. Manning

LORAIN COUNTY
BOARD OF ELECTIONS

2026 JUL 14 P 3:04

July 13, 2026

Lorain County Board of Elections
1985 North Ridge Rd., E
Lorain, OH 44055

To Whom It May Concern:

I hereby formally withdraw my candidacy as the Republican nominee for the Ohio House of Representatives, 52nd District.

I am deeply honored to have been nominated to represent the citizens of the 52nd District and sincerely appreciate the confidence and support shown by the Republican Party and the many voters who have encouraged me throughout this process.

On July 10, 2026, I was appointed by Governor Mike DeWine to serve on the Ninth District Court of Appeals, filling the vacancy created by the retirement of Judge Donna Carr. It is a tremendous honor to accept this judicial appointment and to continue serving the people of Ohio in this new capacity.

Thank you again for the trust placed in me and for the opportunity to seek this office. I remain committed to serving the people of Ohio with integrity, fairness, and dedication.

Respectfully,

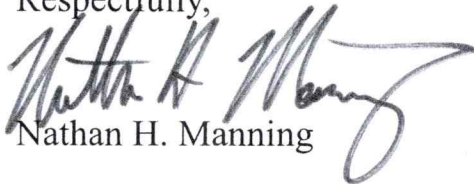

Nathan H. Manning

EXHIBIT C



Certification of Selection of Candidate to Fill Vacancy in Party Nomination

R.C. 3513.31

State of Ohio

Summit, County

SS:

To the Board of Elections of Summit County

(County)

The undersigned, under oath, say that they were the chairperson and secretary of the

District committee meeting of the Republican

(Central, Executive, District or Subcommittee)

Party of the 9th District Court of Appeals, which meeting, to fill the vacancy in nomination due to the

☐ withdrawal, ☐ disqualification, ☒ resignation, or ☐ death of

Donna J. Carr

(Name of Candidate or Office Holder)

was held after lawful notice and pursuant to the provisions of Section 3513.31 of the Revised Code, on the

4th of August for the purpose of selecting a candidate for the Republican Party

for the office of Court of Appeals Judge (UTE 2-9-29) in said county, district or subdivision of the General Election to held

on November 3, 2026; and they hereby certify that the said committee met with a majority of its members

present and selected Nathan H. Manning whose address is

38179 Terrell Dr., North Ridgeville, OH 44039 to be such candidate.



Stephanie Kassos
Notary Public, State of Ohio
My Commission Expires:
November 27, 2028

Signed: Joseph P. Masich, Chairperson

Signed: Melissa R. Melker, Secretary

Sworn to before me and signed in my presence this 4th day of August, 2026

, Notary Public

Statement of Acceptance

I hereby accept the nomination of the Republican Party as its candidate for

office of Court of Appeals Judge (UTE 2-9-29) in the 9th District County.

, Nominee

WHOMEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

2026 AUG -5 AM 11:15

SUMMIT COUNTY
BOARD OF ELECTIONS
AKRON, OH 44310

EXHIBIT D

August 31, 2026

VIA HAND DELIVERY

Summit County Board of Elections
1050 E Tallmadge Avenue
Akron, Ohio 44310

Re: Protest on the Candidacy of Judge Nathan Manning to the Ninth District Court of Appeals

To the Summit County Board of Elections:

I hereby file this protest against the candidacy of Judge Nathan Manning ("Judge Manning"), who was certified to be a candidate for the unexpired term on the Ninth District Court of Appeals after the retirement of Judge Donna Carr. I am a qualified elector eligible to vote for the judicial office on the Ninth District Court of Appeals in the upcoming General Election. We request the Summit County Board of Elections ("the Board") promptly fix the time and place for hearing the protest and notify both Judge Manning and our legal counsel Corey Colombo (ccolombo@electionlawgroup.com) of the hearing time and place.

R.C. 3513.31(I) provides the procedure to select candidates to fill an unexpired term. It states that when a person holding elective offices resigns prior to the eighty-sixth day before the general election and Ohio law provides that the unexpired term must be filled at that general election, the appropriate committee of each political party may select a person as the party candidate for the unexpired term and certify the person's name to the Board of Elections.

R.C. 3513.31(I), however, also states that "[i]f a person has been nominated in a primary election..., the authorized committee of that political party shall not select and certify a person as the party candidate." In the words of the Ohio Supreme Court from 2022, "R.C. 3513.31(I) simply makes clear that a party central committee may not choose a *winner* from the previous primary election to be its party's nominee to fill a vacancy for an unexpired term of office in the ensuing general election." *State ex rel. Trumbull Cnty. Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*, 170 Ohio St. 3d 29, 34, 2022-Ohio-3268, P18.

Earlier this year, Nathan Manning was nominated in the May 2026 Primary Election to be the Republican candidate for Ohio House District 52. Upon the retirement of Judge Donna Carr, Governor Mike DeWine appointed Judge Manning to fill her seat on the Ninth District Court of Appeals on July 10, 2026. Ohio law requires an election to be held to fill the unexpired term, which will be on the November 2026 General Election ballot. The Republican Party district committee met on August 4, 2026 and selected Judge Manning to be the Republican Party's candidate to fill the unexpired term. To this date, the Board has not certified the candidacy of Judge Manning for submission to the voters.

2026 AUG 31 PM 3:50
BOARD OF ELECTIONS
AKRON, OH 44310

Lastly, it is understood that Judge Manning may have filed a withdrawal his candidacy for Ohio House District 52 after winning the primary election. However, the Ohio Revised Code makes no exception for this.

R.C. 3513.052(G) states:

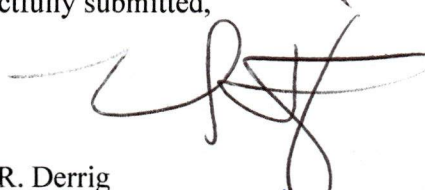
Nothing in this section or section 3513.04, 3513.041, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, or 3513.261 of the Revised Code prohibits, and the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code.

The Revised Code carefully lists different sections where timely withdrawal would allow the candidacy to proceed and does not list R.C. 3513.31. Therefore, it follows that timely withdrawal is not a method that can be used to circumvent the limitation in R.C. 3513.31(I) that primary election winners may not be certified to be a candidate for an unexpired term to a different office.

The Board of Elections may not certify or submit to the voters Judge Manning's candidacy to fill the unexpired term on the Ninth District Court of Appeals on the basis that R.C. 3513.31(I) prohibits a primary election winner to become a candidate for an unexpired term at the November 2026 General Election. I respectfully request that the Board hold a protest hearing and not submit the Judge Manning's candidacy to the voters at the November 2026 General Election.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



Mark R. Derrig
2191 Canterbury Drive
Akron, OH 44319

2026 AUG 31 PM 3:50

BOARD OF ELECTIONS
AKRON, OH 44310



EXHIBIT E



200 Public Square, Suite 3500
Cleveland, OH 44114-2302
Tel: 216.241.2838 | Fax: 216.241.3707
taftlaw.com

Cary Snyder
216.706.3682
csnyder@taftlaw.com

September 4, 2026

VIA EMAIL

Summit County Board of Elections
c/o William D. Rich, Chairman
Valerie J. McKittrick, Member
Bryan C. Williams, Member
Ray L. Weber, Member
1050 E. Tallmadge Avenue
Akron, Ohio 44310
Summit@ohiosos.gov
Summit@SummitCountyBOE.gov

Re: Response to Protest on the Candidacy of Judge Nathan Manning for the Ninth District Court of Appeals

Dear Summit County Board of Elections:

We represent Judge Nathan Manning with respect to the protest questioning his candidacy for the Ninth District Court of Appeals (unexpired term ending 2/9/2029) that Mark R. Derrig filed with your office on August 31, 2026. I will appear with Judge Manning at the hearing set for 9:00 a.m. September 8, 2026 at the Board of Elections.

The Board should deny the protest and certify Judge Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 3, 2026 General Election. The protest asks this Board to invent a disqualification for winners of primary elections who timely withdraw their candidacy that does not appear in the Ohio Revised Code or in the case the protestor cited, that the General Assembly expressly legislated against, that the Secretary of State rejected on materially identical facts before this Board four years ago, and that is contradicted by the sole authority the protestor cites. Under the plain text of R.C. 3513.052(G) and (H)(2)(b), Judge Manning's timely withdrawal as a candidate to represent Ohio House District 52 is dispositive of the protest and fully satisfies any dual-candidacy objection under Ohio law.

Equally as telling is the protest's procedural failing. By waiting four weeks, until August 31, to file the protest, the protestor assured there was no way this Board could schedule a hearing,

conduct a hearing, and decide the issue prior to September 4, 2026. That date is 60 days before the General Election and the statutory cutoff for the Board to invalidate Judge Manning as a candidate. R.C. 3501.39(B).

FACTUAL BACKGROUND

Nathan Manning was nominated in the May 2026 primary election as the Republican candidate for Ohio House District 52. On July 10, 2026, upon the retirement of Judge Donna Carr, Governor DeWine appointed him to the Ninth District Court of Appeals pursuant to Article IV, Section 13 of the Ohio Constitution. On July 13, 2026—the next business day—Judge Manning formally withdrew his House candidacy, which is well before August 9, 2026, the eighty-sixth day before the November 3, 2026 General Election and the applicable deadline for the filling of the vacancy under R.C. 3513.31(I). (A copy of his July 13, 2026 withdrawal letter to the Lorain County Board of Elections is enclosed as Attachment A.) On August 4, 2026, the Republican district committee certified Judge Manning (via SOS Form 289) to this Board as the party’s candidate for Judge Carr’s unexpired term. (A copy of this certification is enclosed as Attachment B.) The protest was not filed until August 31, 2026, twenty-seven days after the selection it challenges.

ARGUMENT

I. The Board lacks authority to invalidate Judge Manning’s candidacy at a September 8 hearing.

The district committee certified Judge Manning as the Republican candidate on August 4, 2026, pursuant to R.C. 3513.31. (Att. B.) The protestor, chair of the County Democratic Party, waited four weeks, until August 31, to file this protest. He did so, understanding that R.C. 3501.39(B) bars this Board from invalidating Judge Manning’s candidacy at any time after September 4, 2026—sixty days before this year’s general election: “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.” R.C. 3501.39(B).

By waiting until August 31 to file the protest, the protestor assured this Board could not conduct a hearing and decide the issue prior to the September 4 deadline. While R.C. 3501.39(B) does not set a deadline for filing a protest, it categorically prohibits a board of elections from invalidating a candidacy after the sixtieth day before the election. The statute’s plain language forecloses the Board from granting the relief the protest seeks—invalidation of Judge Manning’s candidacy—at a hearing to be held on September 8.

Such delay is fatal to the protest itself. Ohio election law demands “extreme diligence and promptness” in election-related matters. *State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections*, 91 Ohio St.3d 465, 467 (2001). R.C. 3513.05, which governs the timeline for protests against partisan candidates, mandates that a protest “shall be filed not later than four p.m. of the

seventy-fourth day before the day of the primary election.” Applying the same standard to the general election, any protest must have been filed 74 days prior to November 3, 2026, or by August 21. Instead, the protestor waited to file until August 31—a mere 64 days before the general election, 27 days after the district committee certified Judge Manning’s candidacy to this Board, and 22 days after the committee’s August 9 deadline to do so under R.C. 3513.31(I). The protestor failed to act with the requisite diligence. The Board should deny the protest for these threshold reasons.

II. The General Assembly expressly authorized the exact sequence Judge Manning followed: win a primary; timely withdraw; and become a candidate by the filling of a vacancy under R.C. 3513.31.

The protest also separately fails on its merits. R.C. 3513.052(G) commands that “the secretary of state or a board of elections *shall not disqualify*, a person from being a candidate for an office, if that person timely withdraws as a candidate” for an office for which the person first sought to become a candidate “*by party nomination in a primary election.*” (emphasis added.) The General Assembly enacted this statute in 2002 and intentionally inserted the language specifically to address what happened in this case: the timely withdrawal of a candidate:

The bill establishes two circumstances in which the general prohibition against seeking nomination or election to two or more specified offices at the same election does not apply. The Secretary of State or a board of elections must not disqualify a person from being a candidate for two or more prohibited offices under either of the following circumstances (sec. 3513.052(G) and (H)):

- The person is a candidate to fill a vacant office.
- The person timely withdraws as a candidate for any prohibited offices for which that person first sought to become a candidate.

Ohio Legislative Serv. Comm’n, Bill Analysis of Sub. H.B. 445, 124th Gen. Assemb., at 13-14.¹ Through this statute, the General Assembly expressly contemplated Judge Manning’s circumstance—a successful primary candidate—and gave him a safe harbor to seek to fulfill Judge Carr’s unexpired term so long as he timely withdrew his candidacy. Judge Manning did so.

The definition of “timely withdraws” under the statute, which the protest does not mention, reinforces that Judge Manning is entitled to be a candidate on the General Election ballot. One “timely withdraws” as a candidate if they do so “before the applicable deadline for the filling of a vacancy under section 3513.50 or 3513.31 of the Revised Code, if the person is seeking to become

¹ https://search-prod.lis.state.oh.us/api/v2/general_assembly_124/legislation/hb445/supporting_documents/an_124_hb445rs/pdf/

a candidate for a subsequent office at the same election under either of those sections.” R.C. 3513.052(H)(2)(b) (emphasis added). The General Assembly created this timeliness definition for Judge Manning’s circumstance, in which he withdrew his candidacy for Ohio House District 52 well before August 9, 2026, the deadline for the district committee to select a candidate under R.C. 3513.31 to place on the General Election ballot for Judge Carr’s unexpired term.

III. The Secretary of State resolved this precise question before this Board in favor of certification, and the Ohio Supreme Court’s case law confirms that outcome.

The Board has seen this fact pattern before. In 2022, Judge Lynne Callahan won her primary for a seat on the Ninth District Court of Appeals and withdrew her candidacy after the primary. The Republican Party selected Jill Flagg Lanzinger—herself the winner of the May 2022 primary for a different Ninth District seat—to fill the resulting ballot vacancy under R.C. 3513.31, after she timely withdrew her own nomination. This Board split 2-2, and the Secretary of State voted to certify now-Judge Flagg Lanzinger as a candidate. In doing so, Secretary LaRose wrote that “the Candidate sought a party nomination . . . by declaration of candidacy, *was successful in doing so*, and subsequently was selected to fill a vacancy on the ballot for another office *after timely withdrawing* as a candidate for that seat.” (9/2/2022 Letter of Secretary LaRose to L. Reed & P. Zeigler, a copy of which is enclosed as Attachment C) (emphasis added.)

Secretary LaRose confirmed that the protest as to now-Judge Flagg Lanzinger’s candidacy was governed by R.C. 3513.04, which, by its terms and its case law, reaches “an *unsuccessful* candidate.” (*Id.*) (emphasis in original.) R.C. 3513.04, Ohio’s so-called “Sore-Loser Law,” generally “bars a person losing in a partisan primary election from participating as a candidate for another office in the succeeding general election[.]” *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 2007-Ohio-5228, ¶ 26. Judge Flagg Lanzinger appeared on the November 2022 ballot, was elected, and sits on the Ninth District today. No court disturbed that certification.²

Secretary LaRose’s deciding vote is entitled to deference here, both because his instructions and advisories control this Board, *see* R.C. 3501.11(E), but also because the overriding interest in the fair and uniform administration of elections should command the same outcome on materially indistinguishable facts, in the same district, under the same statutes.

The protest cites *State ex rel. Trumbull Cnty. Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*, 2022-Ohio-3268, as barring Judge Manning’s candidacy. But *Trumbull Cnty.*

² A Franklin County Court of Common Pleas judge affirmed “the reading of 3513.04 advanced by Secretary LaRose” in denying a motion for a temporary restraining and preliminary injunction filed by protestors seeking to keep Judge Flagg Lanzinger off of the general election ballot. *See McKitrick v. LaRose*, No. 22CVH09-6230 (Franklin Cty. C.P.) (9/22/2022 Order, p. 7) (holding that “keeping [Judge Flagg Lanzinger’s name] on the ballot preserves the ‘sore-loser’ rule and gives effect to the intent of the law-making body, while avoiding a plainly unintended result.”). The Tenth District Court of Appeals later vacated the opinion on the basis that the trial court lacked subject-matter jurisdiction to hear a challenge to Secretary LaRose’s tie-breaking decision, which was “final” under R.C. 3501.11(X). *McKitrick v. LaRose*, 2022-Ohio-3800, ¶ 8 (10th Dist.).

confirms that primary winners are not subject to the “Sore Loser Law,” as the Supreme Court of Ohio enforced R.C. 3513.04 to bar an unsuccessful primary candidate for the Eleventh District Court of Appeals from running for Trumbull County Court of Common Pleas judge in the ensuing general election. *Id.*, ¶ 18. No case bars a successful primary candidate who timely withdraws from filling another candidacy vacancy, and the protest cites none.

The only material difference between Judge Flagg Lanzinger’s scenario and Judge Manning’s is that Judge Flagg Lanzinger’s situation involved a nomination vacancy in which the winner of the primary withdrew, rather than, as here, an unexpired term vacancy caused by a retirement. This distinction has no legal consequence. The timely withdrawal definition in R.C. 3513.052(H)(2)(b) references “section 3513.31” without qualification. The General Assembly would not permit a primary winner—such as Judge Flagg Lanzinger—who timely withdraws, to fill a *full-term* ballot vacancy on the Ninth District Court of Appeals while flatly forbidding the identical person from filling an *unexpired-term* vacancy on the same court, at the same election, before the same voters. The interests that the statutes serve—preventing dual candidacies, voter confusion, and intraparty conflict—are fully satisfied when the first candidacy is relinquished, as Judge Manning timely did.

IV. The final sentence of R.C. 3513.31(I) does not apply to Judge Manning.

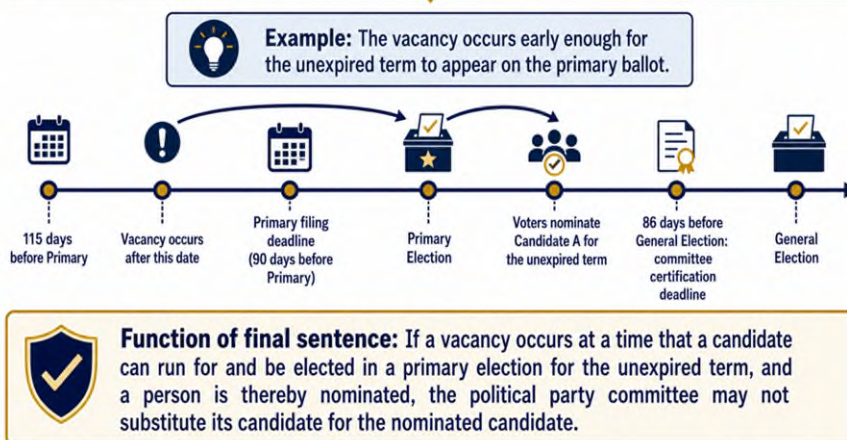
The protest centers on the final sentence of R.C. 3513.31(I), which states: “If a person has been nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code, the authorized committee of that political party shall not select and certify *a person* as the party candidate.” (emphasis added.) The protest seeks to use this sentence to expand R.C. 3513.04 to also apply to winners of primary elections who timely withdrew. As written, that sentence refers to the *unexpired term itself*—not about candidates for other offices—and it does not apply to Judge Manning.

A. The final sentence speaks to nominating authority for the same office.

Subsection (I) governs vacancies arising “subsequent to the one hundred fifteenth day before the day of a primary election.” R.C. 3513.31(I). That window opens *before* the ninety-day deadline before the primary election by which an individual must file to be candidate under R.C. 3513.05.

When a vacancy occurs early in the 115-day window, candidates for the unexpired term can file for, and be nominated at, the primary itself. In that circumstance, the final sentence of R.C. 3513.31(I) does exactly what it says: because “a person has been nominated” for the unexpired term already—by the voters or by petition—“the authorized committee of that political party shall not select and certify a person” for that term. Without that sentence in the statute, the party could replace the candidate nominated by the voters. The party’s power to choose yields when the nomination has already been made, as shown below.

R.C. 3513.31(I): Why the Final Sentence Protects an Existing Nominee



In contrast, the protest’s reading requires rewriting the final sentence of R.C. 3513.31(I) so that “shall not select and certify *a person*” must become “shall not select and certify *that person*.” Under the protest’s reading, a party would be barred from selecting *anyone* for an unexpired term whenever any of its members had been nominated in the primary for any office, which is to say, always. A construction that requires amending the Ohio Revised Code cannot be a basis to bar Judge Manning’s candidacy. Because the vacancy in Judge Carr’s seat arose on July 10, 2026, after the primary, no person was or could have been nominated in the 2026 primary *for the unexpired term*, so the party committee retained its authority under subsection (I) to select Judge Manning as the party’s candidate for the Ninth District.

B. The protest relies on a single sentence in *Trumbull Cty.* taken out of context to upend the General Assembly’s carefully structured statutory scheme.

The protest bases its position on one sentence in *Trumbull Cty.*, “R.C. 3513.31(I) ensures that a party central committee will not select someone who is already a general-election candidate for another office.” 2022-Ohio-3268, ¶ 18. That sentence cannot be controlling here because

- the discussion arose in a case concerning a primary loser, not someone nominated in the primary who withdrew;
- the *Trumbull Cty.* Court did not analyze R.C. 3513.052(G) or the tailored definition in R.C. 3513.052(H)(2)(b);
- the Court’s description—“already a general-election candidate”—does not fit Judge Manning, a primary winner whose withdrawal was effective before the vacancy-filling deadline; and
- applying § 3513.31(I)’s final sentence to a formerly nominated candidate notwithstanding timely withdrawal effectively erases the express safe harbor in § 3513.052(G)–(H)(2)(b) for precisely the later-vacancy context.

The protest also says that 3513.052(G) has no application here where the vacancy rules are found in 3513.31 and that is not one of the specifically listed sections in 3513.052(G). But the protest's reading would rewrite the legislation to remove the conjunctive "and" between the first two clauses of the provision:

Nothing in this section or section 3513.04, 3513.041, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, or 3513.261 of the Revised Code prohibits, **and** the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section 3513.30 **or 3513.31** of the Revised Code.

While the first clause speaks to what is or is not prohibited by 3513.052 and various other statutory provisions, the second clause stands alone and sets out the clear obligation of this Board not to disqualify a candidate who meets the safe harbor. And, of course, 3513.31 is specifically listed in both subsections G and H.

V. The protest's position, if accepted, would lead to an undesirable result.

Judge Manning was compelled to withdraw his candidacy for Ohio House District 52. Upon accepting Governor DeWine's appointment to the Ninth District, Jud. Cond. R. 4.5(A) prohibited him from remaining a candidate "for a nonjudicial elective office." Based on the protestor's reading, Ohio's Code of Judicial Conduct and election code would combine to bar any sitting legislator or legislative nominee who accepts a mid-cycle judicial appointment under Article IV, Section 13 of the Ohio Constitution to stand before voters to seek the very seat to which the Governor appointed him. This result is not supported by Ohio law and would serve only to narrow the universe of qualified candidates for judicial appointments.

CONCLUSION

The General Assembly created a safe harbor—R.C. 3513.052(G)—for primary winners who timely withdraw and defined its timeliness by referring to the same vacancy-filling statute—R.C. 3513.31—that the protestor says forbids Judge Manning's candidacy. The Secretary of State applied that safe harbor before this Board to certify a Ninth District Court of Appeals candidate on facts materially indistinguishable from these. The Board should deny the protest and certify Judge Manning's candidacy for the unexpired term on the Ninth District Court of Appeals at the November 3, 2026 General Election.

Please feel free to contact me if you have any questions or need more information.

Summit County Board of Elections
September 4, 2026
Page 8

Best regards,

Taft Stettinius & Hollister LLP

A handwritten signature in blue ink, appearing to read 'Cary M. Snyder', is displayed within a light gray rectangular box.

Cary M. Snyder

Enclosures

cc: Corey Colombo, Esq. (ccolombo@electionlawgroup.com)

303475661

COPY

Attachment A

Nathan H. Manning

July 13, 2026

LORAIN COUNTY
BOARD OF ELECTIONS
2026 JUL 14 P 3:04

Lorain County Board of Elections
1985 North Ridge Rd., E
Lorain, OH 44055

To Whom It May Concern:

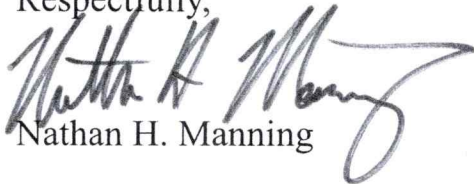
I hereby formally withdraw my candidacy as the Republican nominee for the Ohio House of Representatives, 52nd District.

I am deeply honored to have been nominated to represent the citizens of the 52nd District and sincerely appreciate the confidence and support shown by the Republican Party and the many voters who have encouraged me throughout this process.

On July 10, 2026, I was appointed by Governor Mike DeWine to serve on the Ninth District Court of Appeals, filling the vacancy created by the retirement of Judge Donna Carr. It is a tremendous honor to accept this judicial appointment and to continue serving the people of Ohio in this new capacity.

Thank you again for the trust placed in me and for the opportunity to seek this office. I remain committed to serving the people of Ohio with integrity, fairness, and dedication.

Respectfully,


Nathan H. Manning



Certification of Selection of Candidate to Fill Vacancy in Party Nomination

R.C. 3513.31

State of Ohio

Summit, County

SS:

To the Board of Elections of Summit County
(County)

The undersigned, under oath, say that they were the chairperson and secretary of the

District committee meeting of the Republican
(Central, Executive, District or Subcommittee)

Party of the 9th District Court of Appeals, which meeting, to fill the vacancy in nomination due to the

☐ withdrawal, ☐ disqualification, ☒ resignation, or ☐ death of

Donna J. Carr

(Name of Candidate or Office Holder)

was held after lawful notice and pursuant to the provisions of Section 3513.31 of the Revised Code, on the
4th of August for the purpose of selecting a candidate for the Republican Party
for the office of Court of Appeals Judge (UTE 2-9-29) in said county, district or subdivision of the General Election to held
on November 3, 2026; and they hereby certify that the said committee met with a majority of its members
present and selected Nathan H. Manning whose address is
38179 Terrell Dr., North Ridgeville, OH 44039 to be such candidate.



Stephanie Kassos
Notary Public, State of Ohio
My Commission Expires:
November 27, 2028

Signed: Joseph P. Masich, Chairperson

Signed: Melissa R. Melker, Secretary

Sworn to before me and signed in my presence this 4th day of August, 2026

, Notary Public

Statement of Acceptance

I hereby accept the nomination of the Republican Party as its candidate for
office of Court of Appeals Judge (UTE 2-9-29) in the 9th District County.

, Nominee

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

2026 AUG -5 AM 11:15

SUMMIT COUNTY
BOARD OF ELECTIONS
AKRON, OH 44310



Via Electronic Mail

September 2, 2022

Lance E. Reed, Director
Pete Zeigler, Deputy Director
Summit County Board of Elections
470 Grant Street
Akron, OH 44311

Re: Tie Vote Regarding the Candidacy of Jill Flagg Lanzinger

Dear Director Reed and Deputy Director Zeigler:

At a meeting of the Summit County Board of Elections held on August 22, 2022, the Summit County Board of Elections considered the certification of Jill Flagg Lanzinger (“the Candidate”) as a candidate for the Ninth District Court of Appeals resulting from a recent withdrawal of candidate Lynne Callahan for the term commencing February 11, 2023.

In the May 3, 2022 Primary Election, the Candidate successfully sought party nomination for judge of the Ninth District Court of Appeals, term commencing February 9, 2023. The Candidate withdrew from that race before the party central committee selected her as a candidate for the term commencing February 11, 2023. Member Bryan C. Williams moved to certify the Candidate. The vote resulted in a two-to-two tie vote with members Williams and Ray L. Weber voting to certify, and members William D. Rich and Marco S. Sommerville voting not to certify. The Board timely submitted the matter in controversy to my office, to decide the question pursuant to R.C. 3501.11(X).

This matter is governed by R.C. 3513.04, which states in relevant part:

*... No person who seeks party nomination for an office or position at a primary election by declaration of candidacy... shall be permitted to become a candidate by nominating petition, including a nominating petition filed under section 3517.012 of the Revised Code, by declaration of intent to be a write-in candidate, or by filling a vacancy under section 3513.31 of the Revised Code at the following general election for any office...*¹

Courts, including the Ohio Supreme Court, have reviewed this law over the years and found that its language is straightforward, mandatory, and constitutional.² Likewise, the Supreme Court

¹ The statute makes exceptions to this prohibition for “the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee,” none of which apply here.

² See *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338 (1997); *State ex rel. Brown v. Ashtabula County Bd. of Elections*, 142 Ohio St. 3d 370 (finding that the statute prohibiting a candidate who was unsuccessful

has noted that R.C. 3513.04 applies to “unsuccessful” candidates, and for that reason, frequently refers to the law as the “so-called sore loser provision.”³ Additionally, various Ohio Attorneys General have issued Opinions finding that such candidates are prohibited from running in the general election if they unsuccessfully ran for another office in the preceding primary election.⁴

In the matter before me, the Candidate sought a party nomination for an office or position at the May 3, 2022 Primary Election by declaration of candidacy, was successful in doing so, and subsequently was selected to fill a vacancy on the ballot for another office after timely withdrawing as a candidate for that seat. R.C. 3513.04 and years of case law interpreting that statute’s language prohibit an *unsuccessful* candidate from becoming a candidate at the general election by filling a vacancy on the ballot for “any” office that is not one of the express exceptions in the statute.

For these reasons, I uphold the law and precedent as it currently stands, break the tie and vote in favor of certifying Jill Flagg Lanzinger as a candidate for Ninth District Court of Appeals judge (term commencing February 11, 2023) in the November 8, 2022 General Election.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: William D. Rich, Chair of Summit County Board of Elections
Marco S. Sommerville, Member of Summit County Board of Elections
Bryan C. Williams, Member of Summit County Board of Elections
Ray L. Weber, Member of Summit County Board of Elections

in a primary common pleas court election from seeking a county court judicial seat at the general election was constitutional); *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

³ *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

⁴ See 1958 OAG 2479; 1960 OAG 1787; 1963 OAG 478; and 1993 OAG 052.

EXHIBIT F

Summit County Board of Elections

1050 E. Tallmadge Ave – Akron, Ohio 44310
(330) 643-5200 – Fax (330) 643-5422
www.summitcountyboe.gov

Members:

William D. Rich
Valerie J. McKittrick
Democrats

Bryan C. Williams
Ray L. Weber
Republicans

William D. Rich
Chairman

Lance E. Reed
Director
Pete Zeigler
Deputy Director

September 10, 2026

The Honorable Frank LaRose
Ohio Secretary of State
180 S Civic Center Dr.
Columbus, Ohio 43215

Dear Secretary LaRose:

In the September 8, 2026 meeting of the Summit County Board of Elections, Board Member William D. Rich moved to sustain the protest of Nathan Manning's candidacy for judge of the 9th District Court of Appeals for the unexpired term ending February 9, 2029. The motion was seconded by Board Member Valerie J. McKittrick. After debate (see below), Board Members Rich and McKittrick voted in favor of the motion and Board Members Williams and Weber voted against the motion.

Facts

On May 5, 2026, the Republican voters of the 52nd State House District voted to nominate Nathan Manning to be their candidate for State Representative. (All dates mentioned hereinafter are in 2026.)

On May 15, the Summit County Board of Elections staff became aware of a statement issued by the 9th District Court of Appeals announcing the retirement of one of its judges, Donna Carr, effective May 31.

On July 10, Governor DeWine announced the appointment of Mr. Manning to fill the seat vacated by Judge Carr.

On July 13, Mr. Manning filed a letter with Lorain County Board of Elections withdrawing his candidacy as the Republican nominee for the Ohio House of Representatives in the 52nd District.

In accordance with the process established by R.C. § 3513.31(I), the Republican Party Committee for the 9th Judicial District met on August 4 and nominated Nathan Manning to be the Republican

candidate in the November General Election for the seat vacated by Carr. Form 289 certifying the nomination of Manning as the Republican candidate was filed at the Summit County Board of Elections on August 5. Upon receipt of the filing, Board staff updated the 100-day FWAB and included Manning on candidate lists. The Board itself took no formal action.

On August 31, Mark Derrig filed a protest against the candidacy of Nathan Manning. Mr. Derrig is a registered Summit County voter.

On September 8, the Summit County Board of Elections conducted a quasi-judicial hearing to consider the protest. Upon presentation of arguments and evidence by counsel for the protestor and counsel for Manning, the Board voted 2-2 on a motion to sustain the protest.

Legal Analysis

The facts of this matter are not in dispute. The issues are pure questions of law. First, does R.C. § 3513.31(I) prohibit party committees from nominating a person – in this instance Mr. Manning, hereinafter also referred to as the nominee – to fill a ballot vacancy created by a resignation that occurred less than 115 days before a primary election if that person was nominated in the primary election for another office? Second, if so, does the exception in R.C. § 3513.052(G) for nominees who timely withdraw their candidacies apply to persons nominated by party committees to fill vacancies under § 3513.31(I)? Third, is Mr. Derrig's protest time-barred?

1. § 3513.31(I) prohibits Manning's candidacy.

§ 3513.31(I) provides as follows:

If a person holding an elective office dies or resigns subsequent to the one hundred fifteenth day before the day of a primary election and prior to the eighty-sixth day before the day of the next general election, and if, under the laws of this state, a person may be elected at that general election to fill the unexpired term of the person who has died or resigned, the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, as provided in divisions (A) to (D) of this section, may select a person as the party candidate for election for such unexpired term at that general election, and certify the person's name to the appropriate election official not later than four p.m. on the eighty-sixth day before the day of that general election, or on the tenth day following the day on which the vacancy occurs, whichever is later. When the vacancy occurs on or subsequent to the eighty-sixth day and six or more days prior to the fortieth day before the general election, the appropriate committee may select a person as the party candidate and certify the person's name, as provided in the preceding sentence, not later than four p.m. on the tenth day following the day on which the vacancy occurs. When the vacancy occurs fewer than six days before the fortieth day before the general election, the deadline for filing shall be four p.m. on the thirty-sixth day before the general election. Thereupon the name shall be printed as the party candidate under proper titles and in the proper place on the proper ballots for use at the election. *If a person has been nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code, the authorized committee of that political party shall not select and certify a person as the party candidate.*

(Emphasis added.)

Judge Carr resigned her seat on the 9th District Court of Appeals less than 115 days before the 2026 primary election and more than 86 days before the 2026 general election. The appropriate committee of the Republican Party selected Mr. Manning as the Republican candidate for election to the unexpired term and certified his name to the appropriate election official before four p.m. on the eighty-sixth day before the day of the general election. However, Mr. Manning had been nominated for a seat in the Ohio House of Representatives in the 2026 primary election.

As interpreted by the Ohio Supreme Court in *Trumbull County Republican Party Central Committee v. Trumbull County Board of Elections*, 2022-Ohio-3268 (hereinafter “*Trumbull*”), the last sentence of § 3513.31(I) prohibits party committees from nominating to fill a ballot vacancy pursuant to § 3513.31(I) anyone who was nominated for an office in the immediately preceding primary election. The Court writes at ¶ 18, “R.C. 3513.31(I) simply makes clear that a party central committee may not choose a *winner* from the previous primary election to be its party’s nominee to fill a vacancy for an unexpired term of office in the ensuing general election.” (Emphasis in original.) This statement in the Court’s opinion in *Trumbull* cannot be dismissed as *obiter dictum*. The Court expressly relied on it in rejecting one of relator’s arguments.

The nominee argues for a different interpretation of the last sentence in § 3513.31(I). However, in a rule-of-law system such as ours, an administrative body such as a board of elections is not at liberty to act on the basis a statutory interpretation different from that of the Ohio Supreme Court.

In his view, that sentence merely prohibits a party committee from nominating someone under § 3513.31(I) if someone has already been nominated by that party for the same office in the primary election. This interpretation is untenable because it is predicated on the idea that there is a period of time beginning 115 days before the primary election during which, if a vacancy in office occurs due to death or resignation of the officeholder, there would be a primary election to nominate candidates to fill the unexpired term. That is not true. There would be no such primary election, even if the vacancy occurred on the 116th day before the primary election. Therefore, the last sentence of § 3513.31(I) cannot have been meant to rule out a party committee nomination in the event that a candidate of that party had been nominated in the primary election for the vacated office. In any event, this argument about the interpretation of § 3513.31(I) is properly addressed to the Ohio Supreme Court, which has the power to overturn the interpretation it arrived at in *Trumbull*, not to the Board of Elections, which has no such power.

2. § 3513.052(G) does not apply.

The nominee argues that his candidacy is permitted by § 3513.052(G), which provides as follows:

Nothing in this section or section 3513.04, 3513.041, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, or 3513.261 of the Revised Code prohibits, and the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a

write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section 3513.30 or 3513.31 of the Revised Code.

The nominee argues that the second clause (“and the secretary of state or a board of elections shall not disqualify”) should be interpreted to be completely independent of the first, so that anyone who was nominated for an office in the primary election, timely withdrew from the general election contest, and was nominated by a party committee to fill a ballot vacancy must be placed on the ballot. This out-of-context reading is untenable because it would require boards of elections to put on the ballot candidates who are manifestly ineligible (*e.g.*, one who does not meet a citizenship, residency, or age requirement or, in the case of an election for judicial office, one who does not meet the requirements of licensure and experience in the practice of law). The only tenable interpretation of the second clause of that sentence is that such a candidate who is otherwise eligible must be placed on the ballot notwithstanding any prohibition in the sections of Title XXXV enumerated in the first clause, provided that they have timely withdrawn from the contest for which they were nominated in the primary election. § 3513.31 is not among the sections enumerated in the first clause of § 3513.052(G), so it is not subject to the exception that division (G) makes for candidates who timely withdraw.

The nominee speciously argues that the mention of § 3513.31 later in § 3513.052(G) somehow makes the exception in § 3513.052(G) applicable to nominations made under § 3513.31. The reference to § 3513.31 in § 3513.052(G) pertains to a way in which the candidate could have been nominated as a candidate for the contest *from which the candidate withdrew*, not to the provisions to which § 3513.052(G) makes an exception for candidates who timely withdraw. If anything, the mention of § 3513.31 indicates that its omission from the enumerations in the first clause was deliberate, not inadvertent. Regardless, it *was* omitted and therefore is not among the sections to which § 3513.052(G) makes an exception.

3. The protest is not time-barred.

The nominee argues that the protest is barred by § 3501.39(B), which provides as follows:

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.

However, this prohibition, by its express terms, applies only to the invalidation of a declaration of candidacy or nominating petition. The protest does not seek to have the Board invalidate a declaration of candidacy or nominating petition. Consequently, this prohibition does not apply here.

The nominee cites no other statutory deadline that might apply here, nor are we aware of any. It should also be noted that under § 3513.31(l), depending when the death or resignation occurred that caused the ballot vacancy, the nomination could occur as late as thirty-six days before election day. A protest deadline of sixty days before election day would necessarily prohibit protests of candidates nominated less than sixty but more than thirty-five days before election day.

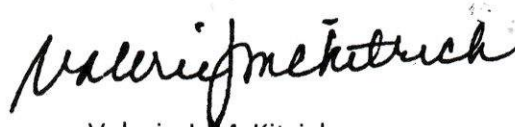
Conclusion

For the foregoing reasons, we respectfully urge you to break the tie vote by voting in the affirmative on the motion to sustain the protest against Nathan Manning's candidacy for judge of the 9th District Court of Appeals for the term ending February 9, 2029.

Respectfully submitted,



William D. Rich
Chairman



Valerie J. McKittrick
Member

Summit County Board of Elections

1050 E. Tallmadge Ave – Akron, Ohio 44310
(330) 643-5200 – Fax (330) 643-5422
www.summitcountyboe.gov

Members:

William D. Rich
Valerie J. McKittrick
Democrats

Bryan C. Williams
Ray L. Weber
Republicans

William D. Rich
Chairman

Lance E. Reed
Director
Pete Zeigler
Deputy Director

September 10, 2026

The Honorable Frank LaRose
Ohio Secretary of State
180 S. Civic Center Drive
Columbus, OH 43215

RE: SEPTEMBER 8, 2026 – TIE-VOTE ARGUMENT

Dear Secretary LaRose:

Board Members Bryan C. Williams and Ray L. Weber hereby present for your consideration the tie-vote motion from the Summit County Board of Elections meeting of September 8, 2026, with an explanation regarding why we believe you should vote in the negative on the motion in question.

TIE VOTE

The Motion

Mr. Rich moved to sustain the protest.

Mr. Rich and Ms. McKittrick voted aye.

Mr. Williams and Mr. Weber voted nay.

Motion tied: Votes two to two.

FACTUAL BACKGROUND

The relevant facts are few and were undisputed during the September 8 meeting:

- Nathan Manning was nominated in the May 2026 primary election as the Republican candidate for Ohio House District 52.
- On July 10, 2026, upon the retirement of Judge Donna Carr, Governor DeWine appointed Mr. Manning to the Ninth District Court of Appeals pursuant to Article IV, Section 13 of the Ohio Constitution.

- On July 13, 2026—the next business day—Judge Manning formally withdrew his House candidacy. (See Attachment A)
- On August 5, 2026, the Republican district committee certified Judge Manning (via SOS Form 289) to this Board as the party’s candidate for Judge Carr’s unexpired term. (See Attachment B)
- The protest was filed on August 31, 2026, twenty-six days after the selection it challenges.

ARGUMENT

I. The Board lacked authority to invalidate Judge Manning’s candidacy on September 8, within 60 days of the general election.

Ohio election law demands “extreme diligence and promptness” in election-related matters. *State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections*, 91 Ohio St.3d 465, 467 (2001). The district committee certified Judge Manning as the Republican candidate on August 4, 2026, pursuant to R.C. 3513.31, and filed that certification with the Board the next day. (Att. B.) The protestor, chair of the Summit County Democratic Party, waited nearly four weeks, until August 31, to file this protest. He did so even though R.C. 3501.39(B) bars this Board from invalidating Judge Manning’s candidacy at any time after September 4, 2026—sixty days before this year’s general election: “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.” R.C. 3501.39(B). R.C. 3501.39(A)(4) refers to the entirety of “Chapter 3513,” which makes a candidate’s timely certification under R.C. 3513.31 subject to the 60-day bar on the Board invalidating the candidacy.

At the September 8 hearing, the protestor’s counsel had no explanation for why his client waited nearly four weeks after the district committee certified Judge Manning’s candidacy before filing the protest. While R.C. 3501.39(B) does not set a deadline for filing a protest, it categorically prohibits a board of elections from invalidating a candidacy after the sixtieth day before the election. The statute’s language forecloses the Board from granting the relief the protest seeks—invalidation of Judge Manning’s candidacy—at a hearing that was held on September 8.

II. The General Assembly expressly authorized the exact sequence Judge Manning followed: win a primary; timely withdraw; and become a candidate by the filling of a vacancy under R.C. 3513.31.

The protest also fails on its merits. Section (G) of R.C. 3513.052, titled “Candidacy for more than one office at a time prohibited,” commands that “the secretary of state or a board of elections *shall not disqualify*, a person from being a candidate for an office, if that person timely withdraws as a candidate” for an office for which the person first sought to become a candidate “*by party nomination in a primary election.*” (emphasis added.) The General Assembly enacted this statute in 2002 and intentionally inserted the language specifically to address what happened in this case: the timely withdrawal of a candidate:

The bill establishes two circumstances in which the general prohibition against seeking nomination or election to two or more specified offices at the same election does not apply. The Secretary of State or a board of elections must not disqualify a person from being a candidate for

two or more prohibited offices under either of the following circumstances (sec. 3513.052(G) and (H)):

- The person is a candidate to fill a vacant office.
- The person timely withdraws as a candidate for any prohibited offices for which that person first sought to become a candidate.

Ohio Legislative Serv. Comm’n, Bill Analysis of Sub. H.B. 445, 124th Gen. Assemb., at 13-14.¹ Through this statute, the General Assembly expressly contemplated Judge Manning’s circumstance—a successful primary candidate—and gave him a safe harbor to seek to fulfill Judge Carr’s unexpired term so long as he timely withdrew his candidacy. Judge Manning did so.

The definition of “timely withdraws” under the statute, which the protest does not mention, reinforces that Judge Manning is entitled to be a candidate on the General Election ballot. One “timely withdraws” as a candidate if they do so “before the applicable deadline for the filling of a vacancy under section 3513.50 *or* 3513.31 of the Revised Code, if the person is seeking to become a candidate for a subsequent office at the same election under either of those sections.” R.C. 3513.052(H)(2)(b) (emphasis added). The General Assembly created this timeliness definition for Judge Manning’s circumstance, in which he withdrew his candidacy for Ohio House District 52 well before August 9, 2026, the deadline—86 days before the General Election—for the district committee to select a candidate under R.C. 3513.31 to place on the ballot for Judge Carr’s unexpired term.

III. You previously resolved this precise question before this Board in favor of certification, and the Ohio Supreme Court’s case law confirms that outcome.

You and the Board have seen this fact pattern before. In 2022, Judge Lynne Callahan won her primary for a seat on the Ninth District Court of Appeals and withdrew her candidacy after the primary. The Republican Party selected Jill Flagg Lanzinger—herself the winner of the May 2022 primary for a different Ninth District seat—to fill the resulting ballot vacancy under R.C. 3513.31, after she timely withdrew her own nomination. This Board split 2-2, and you voted to certify now-Judge Flagg Lanzinger as a candidate. In doing so, you wrote that “the Candidate sought a party nomination . . . by declaration of candidacy, *was successful in doing so*, and subsequently was selected to fill a vacancy on the ballot for another office *after timely withdrawing* as a candidate for that seat.” (9/2/2022 Letter of Secretary LaRose to L. Reed & P. Zeigler, a copy of which is enclosed as Attachment C) (emphasis added.)

You confirmed that the protest as to now-Judge Flagg Lanzinger’s candidacy was governed by R.C. 3513.04, which, by its terms and its case law, reaches “an *unsuccessful* candidate.” (*Id.*) (emphasis in original.) Judge Flagg Lanzinger appeared on the November 2022 ballot, was elected, and sits on the Ninth District today. No court disturbed that certification.² The overriding interest in

¹ https://search-prod.lis.state.oh.us/api/v2/general_assembly_124/legislation/hb445/supporting_documents/an_124_hb445rs/pdf/

² A Franklin County Court of Common Pleas judge affirmed “the reading of 3513.04 advanced by Secretary LaRose” in denying a motion for a temporary restraining and preliminary injunction filed by protestors seeking to keep Judge Flagg Lanzinger off of the general election ballot. *See McKittrick v. LaRose*, No. 22CVH09-6230 (Franklin Cty. C.P.) (9/22/2022 Order, p. 7) (holding that “keeping [Judge Flagg Lanzinger’s name] on the ballot preserves the ‘sore-loser’ rule and gives effect to the intent of the law-making body, while avoiding a plainly unintended result.”). The Tenth District Court of Appeals later vacated the opinion on the basis that the

the fair and uniform administration of elections should command the same outcome on materially indistinguishable facts, in the same district, under the same statutes.

The protest cites *State ex rel. Trumbull Cnty. Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*, 2022-Ohio-3268, as barring Judge Manning’s candidacy. But *Trumbull Cnty.* confirms that primary winners are not subject to the “Sore Loser Law,” as the Supreme Court of Ohio enforced R.C. 3513.04 to bar an unsuccessful primary candidate for the Eleventh District Court of Appeals from running for Trumbull County Court of Common Pleas judge in the ensuing general election. *Id.*, ¶ 18. No court case bars a successful primary candidate who timely withdraws from filling another candidacy vacancy, and the protest cites none.

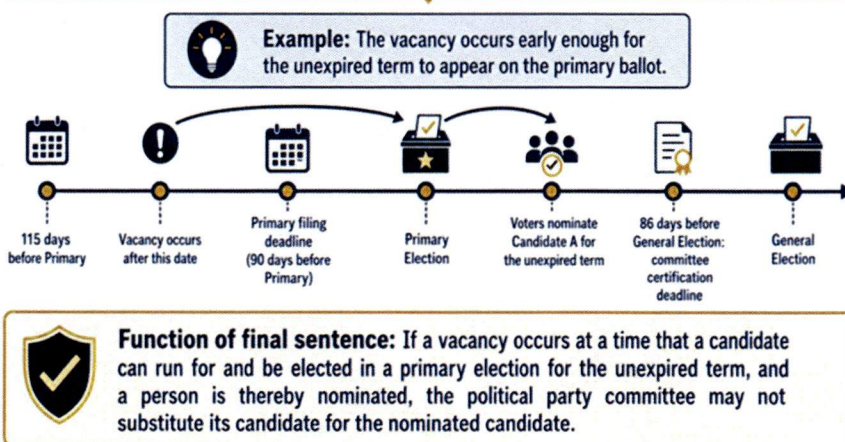
IV. The final sentence of R.C. 3513.31(I) does not apply to Judge Manning.

The protest centers on the final sentence of R.C. 3513.31(I), which states: “If a person has been nominated in a primary election or nominated by petition under section 3517.012 of the Revised Code, the authorized committee of that political party shall not select and certify *a person* as the party candidate.” (emphasis added.) The protest seeks to use this sentence to expand R.C. 3513.04—the “Sore Loser Law”—to also apply to winners of primary elections who timely withdrew. As written, that sentence refers to the *unexpired term itself*—not about candidates for other offices—and it does not apply to Judge Manning.

A. The final sentence speaks to nominating authority for the same office.

Because R.C. 3513.31(I) provides for the appointment of a substitute candidate where an elected official dies or resigns “subsequent to the one hundred fifteenth day before the day of a primary election,” it could cover a circumstance in which—after the official vacates the office, someone is nominated for the unexpired term in the subsequent primary:

R.C. 3513.31(I): Why the Final Sentence Protects an Existing Nominee



To guard against that precise possibility, the General Assembly added the last sentence to R.C. 3513.31(I) to prevent a party committee from substituting a committee-selected nominee in the general election where a person has already been nominated in the primary for the unexpired term at issue. The sentence does not create a categorical, cross-office disqualification for every person nominated at any primary, particularly where the candidate has timely withdrawn and is no longer a general-election candidate for the prior office for which they were nominated in the primary.

trial court lacked subject-matter jurisdiction to hear a challenge to Secretary LaRose’s tie-breaking decision, which was “final” under R.C. 3501.11(X). *McKittrick v. LaRose*, 2022-Ohio-3800, ¶ 8 (10th Dist.).

This construction of the final sentence of R.C. 3513.31(I) gives effect to the other three relevant provisions of the Revised Code.

- R.C. 3513.04 continues to bar an individual who loses a primary election from being nominated to “fill[] a vacancy under section 3513.31 of the Revised Code at the following general election,” R.C. 3513.04;
- R.C. 3513.052(G)—the safe harbor—preserves the eligibility of a primary winner to fill a vacancy under R.C. 3513.31 if that person “timely withdraws” from the first candidacy; and
- R.C. 3513.052(H)(2)(b), which the protest does not mention, provides that a candidate “timely withdraws” as a candidate if they do so before the “applicable deadline for the filling of a vacancy” under R.C. 3513.31, which in this case, was August 9, 2026, or 86 days before the upcoming November 3, 2026 general election, R.C. 3513.31(I).

In short, the last sentence in R.C. 3513.31(I) prevents a party committee from selecting a candidate to fill a vacancy for an unexpired term when a nominee already exists for the particular vacancy as a result of being nominated in a primary election. The party committee’s power to choose yields when the nomination has already been made. Because the vacancy in Judge Carr’s seat arose on July 10, 2026, after the primary, no person was or could have been nominated in the 2026 primary for the unexpired term, so the party committee retained its authority under subsection (I) to select Judge Manning as the party’s candidate for the Ninth District Court of Appeals.

By contrast, the protest’s reading requires rewriting the final sentence of R.C. 3513.31(I) so that “shall not select and certify *a person*” must become “shall not select and certify *that person*.” Under the protest’s reading, a party would be barred from selecting *anyone* for an unexpired term whenever any of its members had been nominated in the primary for any office, which is to say, always. A construction that requires amending the Ohio Revised Code cannot be a basis to bar Judge Manning’s candidacy.

The protest’s contention that R.C. 3513.052(G) “does not list R.C. 3513.31” likewise misreads the statute as a whole. If accepted, the protest’s reading would rewrite the legislation to remove the conjunctive “and” between the first two clauses of the provision:

Nothing in this section or section 3513.04, 3513.041, 3513.05, 3513.251, 3513.253, 3513.254, 3513.255, 3513.257, or 3513.261 of the Revised Code prohibits, *and* the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a nominating petition, by party nomination in a primary election, or by the filling of a vacancy under section 3513.30 *or 3513.31* of the Revised Code.

While the first clause speaks to what is or is not prohibited by 3513.052 and various other statutory provisions, the second clause stands alone and sets out the clear obligation of this Board not to disqualify a candidate who meets the safe harbor. And, 3513.31 is specifically listed in both subsections G and H. The protest’s construction would render these express references to 3513.31 substantially without effect.

Moreover, there is no reason why the General Assembly would have placed R.C. 3513.31 among the sections listed in the first clause of 3513.052(G). Each section listed in that clause provides how a person may become a candidate for office:

Category	Sections	Function
Major-party primary candidacy	R.C. 3513.04; 3513.05	Declaration of candidacy, petition, and related requirements for appearing as a party candidate in a primary
Write-in candidacy	R.C. 3513.041	Write-in ballot treatment and the related candidate mechanism
Petition-based / nonparty candidacy	R.C. 3513.251; 3513.253; 3513.254; 3513.255; 3513.257; 3513.261	Nominating-petition procedures for particular offices and independent candidates

R.C. 3513.052 addresses persons who become candidates—through any of those other sections—for multiple offices and provides specifically that there is no prohibition if there is a timely withdrawal.

The specific sentence in 3513.31(I) to which the protest points is language on how a person may not become a candidate by appointment of a party committee. It would be out of place if it were included in the listing in the first clause.

Judge Manning did exactly what subsection 3513.052(H)(2)(b) prescribes: he withdrew as a candidate for House District 52 before August 9, 2026, the applicable deadline to do so under R.C. 3513.31. The party central committee then selected him to be the party’s candidate for the vacancy on the appellate court.

B. The protest relies on a single sentence in *Trumbull Cty.* taken out of context to upend the General Assembly’s carefully structured statutory scheme.

The protest also bases its position on this single sentence in *Trumbull Cty.*: “R.C. 3513.31(I) simply makes clear that a party central committee may not choose a *winner* from the previous primary election to be its party’s nominee to fill a vacancy for an unexpired term of office in the ensuing general election.” (*Trumbull Cty.*, 2022-Ohio-3268, ¶ 18 (emphasis in original)). That sentence does not control here because

- the discussion arose in a case concerning a candidate who lost the primary election for an appellate judgeship and then sought to run for judge in a trial court, not someone nominated in the primary who withdrew;
- the *Trumbull Cty.* Court did not analyze R.C. 3513.052(G) or the tailored definition in R.C. 3513.052(H)(2)(b);
- the next sentence of the opinion—which the protest did not mention—confirms that it does not apply to Judge Manning, “In other words, the last sentence of R.C. 3513.31(I) ensures that a party central committee will not select someone who is already a general-election candidate for another office”;
- the Court’s description—“already a general-election candidate”—does not fit Judge Manning, a primary winner whose withdrawal was effective before the vacancy-filling deadline; and

- applying § 3513.31(I)'s final sentence to a formerly nominated candidate notwithstanding timely withdrawal effectively erases the express safe harbor in § 3513.052(G)–(H)(2)(b) for precisely the later-vacancy context.

Moreover, at the September 8, 2026 meeting, Mr. Rich even conceded it was “possible” that the Ohio Supreme Court “misinterpreted” R.C. 3513.31(I) in the very sentence of *Trumbull Cty.* that the protest relies on.

V. The protest’s position, if accepted, would restrict the right of a person to hold office and narrow the field of candidates for the judiciary.

Public policy favors free and open elections. Indeed, rejecting the protest is not only compelled by Ohio law, as noted, it is also consistent with the duty of courts to “liberally construe words limiting the right of a person to hold office in favor of those seeking to hold office so that the public may have the benefit of choice from all qualified persons.” *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 2007-Ohio-4588, ¶ 34.

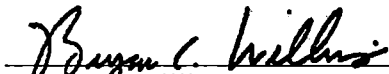
Judge Manning was compelled to withdraw his candidacy for Ohio House District 52. Upon accepting Governor DeWine’s appointment to the Ninth District, Jud. Cond. R. 4.5(A) prohibited him from remaining a candidate “for a nonjudicial elective office.” Based on the protestor’s reading, Ohio’s Code of Judicial Conduct and election code would combine to bar any legislative nominee who accepts a mid-cycle judicial appointment under Article IV, Section 13 of the Ohio Constitution to stand before voters to seek the very seat to which the Governor appointed him. This result is not supported by Ohio law and would serve only to narrow the universe of qualified candidates for judicial appointments.

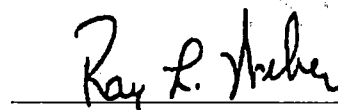
CONCLUSION

The General Assembly created a safe harbor—R.C. 3513.052(G)—for primary winners who timely withdraw and defined its timeliness by referring to the same vacancy-filling statute—R.C. 3513.31—that the protestor says forbids Judge Manning’s candidacy. You refused four years ago before this Board to bar a candidate from the general election ballot for the Ninth District Court of Appeals who, like Judge Manning, won a primary election. There remains no case law barring a successful primary candidate who timely withdraws from filling another candidate vacancy.

For these reasons, we believe you should break the tie vote of September 8, 2026, in our favor and deny the protest.

Respectfully submitted,


Bryan C. Williams


Ray L. Weber

COPY

Attachment A

Nathan H. Manning

LORAIN COUNTY
BOARD OF ELECTIONS

2026 JUL 14 P 3:04

July 13, 2026

Lorain County Board of Elections
1985 North Ridge Rd., E
Lorain, OH 44055

To Whom It May Concern:

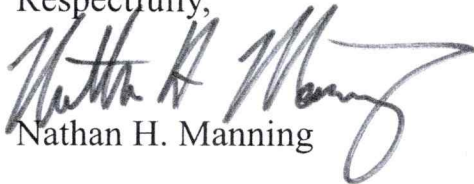
I hereby formally withdraw my candidacy as the Republican nominee for the Ohio House of Representatives, 52nd District.

I am deeply honored to have been nominated to represent the citizens of the 52nd District and sincerely appreciate the confidence and support shown by the Republican Party and the many voters who have encouraged me throughout this process.

On July 10, 2026, I was appointed by Governor Mike DeWine to serve on the Ninth District Court of Appeals, filling the vacancy created by the retirement of Judge Donna Carr. It is a tremendous honor to accept this judicial appointment and to continue serving the people of Ohio in this new capacity.

Thank you again for the trust placed in me and for the opportunity to seek this office. I remain committed to serving the people of Ohio with integrity, fairness, and dedication.

Respectfully,


Nathan H. Manning



Certification of Selection of Candidate to Fill Vacancy in Party Nomination

R.C. 3513.31

State of Ohio

Summit, County

SS:

To the Board of Elections of Summit County
(County)

The undersigned, under oath, say that they were the chairperson and secretary of the

District committee meeting of the Republican
(Central, Executive, District or Subcommittee)

Party of the 9th District Court of Appeals, which meeting, to fill the vacancy in nomination due to the

☐ withdrawal, ☐ disqualification, ☒ resignation, or ☐ death of

Donna J. Carr

(Name of Candidate or Office Holder)

was held after lawful notice and pursuant to the provisions of Section 3513.31 of the Revised Code, on the
4th of August for the purpose of selecting a candidate for the Republican Party
for the office of Court of Appeals Judge (UTE 2-9-29) in said county, district or subdivision of the General Election to held
on November 3, 2026; and they hereby certify that the said committee met with a majority of its members
present and selected Nathan H. Manning whose address is
38179 Terrell Dr., North Ridgeville, OH 44039 to be such candidate.



Stephanie Kassos
Notary Public, State of Ohio
My Commission Expires:
November 27, 2028

Signed: Joseph P. Masich, Chairperson

Signed: Melissa R. Melker, Secretary

Sworn to before me and signed in my presence this 4th day of August, 2026

, Notary Public

Statement of Acceptance

I hereby accept the nomination of the Republican Party as its candidate for
office of Court of Appeals Judge (UTE 2-9-29) in the 9th District County.

, Nominee

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

2026 AUG -5 AM 11:15

SUMMIT COUNTY
BOARD OF ELECTIONS
AKRON, OH 44310



Via Electronic Mail

September 2, 2022

Lance E. Reed, Director
Pete Zeigler, Deputy Director
Summit County Board of Elections
470 Grant Street
Akron, OH 44311

Re: Tie Vote Regarding the Candidacy of Jill Flagg Lanzinger

Dear Director Reed and Deputy Director Zeigler:

At a meeting of the Summit County Board of Elections held on August 22, 2022, the Summit County Board of Elections considered the certification of Jill Flagg Lanzinger (“the Candidate”) as a candidate for the Ninth District Court of Appeals resulting from a recent withdrawal of candidate Lynne Callahan for the term commencing February 11, 2023.

In the May 3, 2022 Primary Election, the Candidate successfully sought party nomination for judge of the Ninth District Court of Appeals, term commencing February 9, 2023. The Candidate withdrew from that race before the party central committee selected her as a candidate for the term commencing February 11, 2023. Member Bryan C. Williams moved to certify the Candidate. The vote resulted in a two-to-two tie vote with members Williams and Ray L. Weber voting to certify, and members William D. Rich and Marco S. Sommerville voting not to certify. The Board timely submitted the matter in controversy to my office, to decide the question pursuant to R.C. 3501.11(X).

This matter is governed by R.C. 3513.04, which states in relevant part:

*... No person who seeks party nomination for an office or position at a primary election by declaration of candidacy... shall be permitted to become a candidate by nominating petition, including a nominating petition filed under section 3517.012 of the Revised Code, by declaration of intent to be a write-in candidate, or by filling a vacancy under section 3513.31 of the Revised Code at the following general election for any office...*¹

Courts, including the Ohio Supreme Court, have reviewed this law over the years and found that its language is straightforward, mandatory, and constitutional.² Likewise, the Supreme Court

¹ The statute makes exceptions to this prohibition for “the office of member of the state board of education, office of member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee,” none of which apply here.

² See *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338 (1997); *State ex rel. Brown v. Ashtabula County Bd. of Elections*, 142 Ohio St. 3d 370 (finding that the statute prohibiting a candidate who was unsuccessful

has noted that R.C. 3513.04 applies to “unsuccessful” candidates, and for that reason, frequently refers to the law as the “so-called sore loser provision.”³ Additionally, various Ohio Attorneys General have issued Opinions finding that such candidates are prohibited from running in the general election if they unsuccessfully ran for another office in the preceding primary election.⁴

In the matter before me, the Candidate sought a party nomination for an office or position at the May 3, 2022 Primary Election by declaration of candidacy, was successful in doing so, and subsequently was selected to fill a vacancy on the ballot for another office after timely withdrawing as a candidate for that seat. R.C. 3513.04 and years of case law interpreting that statute’s language prohibit an *unsuccessful* candidate from becoming a candidate at the general election by filling a vacancy on the ballot for “any” office that is not one of the express exceptions in the statute.

For these reasons, I uphold the law and precedent as it currently stands, break the tie and vote in favor of certifying Jill Flagg Lanzinger as a candidate for Ninth District Court of Appeals judge (term commencing February 11, 2023) in the November 8, 2022 General Election.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: William D. Rich, Chair of Summit County Board of Elections
Marco S. Sommerville, Member of Summit County Board of Elections
Bryan C. Williams, Member of Summit County Board of Elections
Ray L. Weber, Member of Summit County Board of Elections

in a primary common pleas court election from seeking a county court judicial seat at the general election was constitutional); *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

³ *State ex rel. Brinda v. Lorain County Board of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228.

⁴ See 1958 OAG 2479; 1960 OAG 1787; 1963 OAG 478; and 1993 OAG 052.

EXHIBIT G

Via Electronic Mail

September 11, 2026

Board Member William D. Rich, Chairman
Board Member Valerie J. McKittrick
Board Member Bryan C. Williams
Board Member Ray L. Weber
Summit County Board of Elections
1050 E. Tallmadge Ave.
Akron, Ohio 44310

Re: Tie Vote Regarding Protest of Judge Nathan Manning's Candidacy for the
Ninth District Court of Appeals

Dear Chairman Rich and Board Members:

On September 8, 2026, the Summit County Board of Elections (BOE) conducted a hearing on a protest against the candidacy of Judge Nathan Manning for the Ninth District Court of Appeals. Board Chairman William D. Rich moved to sustain the protest and member Valerie J. McKittrick seconded. The motion tied 2-2, with Rich and McKittrick voting to sustain the protest and members Bryan C. Williams and Ray L. Weber voting against the motion. The Board subsequently submitted the matter to this office to break the tie on September 10, 2026.

I have reviewed the materials referred to me by the Board. This includes, among other documents, the Form 289, "Certification of Selection of Candidate to Fill Vacancy in Party Nomination," filed with the Board regarding Judge Manning's candidacy; the protest letter submitted by Mark R. Derrig dated August 31, 2026; arguments of Board members; legal analysis and authorities considered by the Board; and a video recording of the September 8, 2026, meeting.¹

I now break the tie vote against sustaining the protest and in favor of Judge Manning's candidacy. A statutory protest is not available here. Furthermore, if a protest were available, it would not be well-taken.

¹ Summit County Board of Elections Board Meeting 09.08.2026, *available at* <https://www.youtube.com/watch?v=dVjcVXiZKoM> [hereinafter "9/8/2026 Meeting Video"].

Background

The relevant facts are undisputed. Nathan Manning was nominated in the May 2026 primary as the Republican candidate for Ohio House District 52. On July 10, 2026, Manning was appointed by Governor DeWine to fill an unexpired term on the Ninth District Court of Appeals, to a vacancy created by the retirement of Judge Donna Carr. On the following business day, July 13, 2026, Manning withdrew his candidacy for the Ohio House of Representatives. Subsequently, and in accordance with R.C. 3513.31(I), each major political party nominated a candidate for the November 2026 general election for the seat vacated by Judge Carr. The Republican district committee met on August 4, 2026, and selected Manning as the party's candidate. The district committee then filed a completed Form 289 with the Summit County Board of Elections on August 5, 2026.

Based on the record before me, there is no dispute that the Republican district committee correctly completed, and timely filed, Form 289 with the Board. Upon receiving each party's Form 289 filings, the Board staff updated the ballot and included each party's nominee on the applicable candidate lists. (See 9/10/2026 Letter from Rich & McKittrick, at 2.)

Nearly four weeks later, on August 31, 2026, Mark R. Derrig filed a protest with the Summit County Board of Elections against Judge Manning's candidacy for the Ninth District Court of Appeals. The protest argues that Manning, as the winner of a May 2026 primary election, is ineligible to be nominated by the district committee for the subsequent November general election.

The Board met on September 8, 2026, to consider the protest against Judge Manning's candidacy. Following extensive arguments from attorneys on both sides of the protest, as well as questioning from the Board members, the Board voted 2-2 on the motion to sustain the protest. To be clear, but for the protest, Judge Manning has been added to the general election ballot and would remain a candidate for that office.²

Analysis

Upon reviewing the relevant facts in this dispute, as well as the relevant legal authorities, I hereby break the tie vote against sustaining the protest. As I indicate above, a statutory protest is not available here. This procedural defect alone is fatal to the attempted protest

² See R.C. 3513.31(I) (following certification by the political party committee, "the name shall be printed as the party candidate under the proper titles and in the proper place on the proper ballots for use at the election") (emphasis added).

against Judge Manning's candidacy. Additionally, even if a protest were available here, it would not be well-taken.

First, the attempted protest suffers from a fatal jurisdictional defect. The ability to protest a candidacy is governed by the Ohio Revised Code and exists only where the General Assembly expressly provides for it. For instance, the General Assembly has specifically provided for protests in numerous circumstances covering most situations that might come before elections officials. This includes protests against declarations of candidacy (see R.C. 3513.05), nominating petitions (see R.C. 3513.262 and R.C. 3513.263), write-in declarations (see R.C. 3513.041), and party formation petitions (see R.C. 3517.012). Furthermore, this office and board of elections are given authority to reject a candidacy when a successful protest targets "petition[s]," which are not implicated here. See R.C. 3501.39(A)(1), (2).

Noticeably, the August 31, 2026, protest letter does not point us to any statute that would authorize a protest of a candidacy under the process followed here—the certification of a candidate to fill a vacancy in a party nomination in accordance with R.C. 3513.31(I). That omission remained unresolved at the September 8 hearing, when a board member asked protestor's counsel to identify the statutory basis for the protest. Specifically, when member Williams asked protestor's counsel, "Under what statute are we considering this protest at all?", protestor's counsel replied, "I can't quote a statute for you ... or a directive" (9/8/2026 Meeting Video, at 29:40-29:55).

This is no small matter. The Ohio Supreme Court has made clear that the process under R.C. 3513.31(I) is "inapposite" to cases "involv[ing] persons filing declarations of candidacy or candidacy petitions." *State ex rel. Scherach v. Lorain County Board of Elections*, 123 Ohio St.3d 245, 248-49, 2009-Ohio-5349, ¶ 20. "If the General Assembly had intended that the certification of a candidate for election to fill a vacancy caused by death or resignation under R.C. 3513.31(I) be by a declaration of candidacy or nominating petition for purposes of being subject to a protest under R.C. 3501.39(A)(2), it would have done so by appropriate language, as it has in certain other circumstances." *Id.* at ¶ 21.

In the apparent absence of authority for even considering the protest, I break the tie against sustaining it.³ This, standing alone, is determinative of the issue before me.

³ Significantly, because there was no statutory requirement that the Board conduct a quasi-judicial hearing on the protest, the Board did not exercise quasi-judicial authority. Compare 9/10/2026 Letter from Rich & McKittrick, at 2 (claiming that "the Summit County Board of Elections conducted a quasi-judicial hearing to consider the protest"), with *Scherach* at ¶ 22 ("When no statute or other pertinent law *requires* the board of elections to conduct a hearing resembling a judicial trial, the board does **not** exercise quasi-judicial authority regardless of whether protests have been filed.") (emphasis in original).

Second, if a protest were available here, it would not be well-taken. As the Board is aware, I cast a tie-breaking vote on a similar question in 2022, regarding the candidacy of Jill Flagg Lanzinger for a different seat on the Ninth District Court of Appeals. There, as here, the candidate was certified by a party committee to fill a vacancy on the ballot after winning a primary election for a different position. Board members Williams and Weber correctly note that “No court disturbed that certification.” (9/10/2026 Letter from Williams & Weber, at 3). They further argue that there is an “overriding interest in the fair and uniform administration of elections” that “command[s] the same outcome on materially indistinguishable facts, in the same district, under the same statutes.” *Id.* at 3-4. I agree. It would be an absurd result to allow one candidacy while disallowing another under materially indistinguishable facts. In any event, however, Ohio law does not require such an outcome.

I recognize that there is a distinction between the legal arguments that resulted in the 2022 tie vote and this one. In 2022, two Board members opposed certification of Ms. Lanzinger based on their reading of R.C. 3513.04, the so-called “sore loser provision.” Here, by contrast, the attempted protest relies upon the final sentence of R.C. 3513.31(I), which says that the party committee “shall not select and certify a person as a party candidate” if “that person has been nominated in a primary election.” Thus, while the factual background is materially the same as for the 2022 tie vote, the purported legal basis is different.

For lack of a better term, the protestor here is suggesting that R.C. 3513.31(I) effectively includes a “sore winner” provision. It does not. In the very same case cited in the protest letter—indeed, in the very next sentence of that case—the Ohio Supreme Court is clear that the purpose of the limitation is to ensure that a party committee “will not select someone who is already a general-election candidate for another office.” *Republican Cent. Comm. v. Trumbull Cnty. Bd. of Elections*, 170 Ohio St.3d 29, 34, 2022-Ohio-3268, ¶ 18.

Of course, Judge Manning was not a general election candidate for another office when the party committee certified him under R.C. 3513.31. Nor is he seeking two offices in the November election. It is undisputed that Manning withdrew his candidacy for the Ohio House of Representatives on July 13, 2026. It is likewise undisputed that the party committee met to certify his candidacy for the Ninth District Court of Appeals more than three weeks later, on August 4, 2026. Applying this limitation to Judge Manning’s candidacy would go well beyond the strictures previously recognized by the Ohio Supreme Court.

Decision

This decision breaks the Summit County Board of Elections' tie vote *against* sustaining the protest of Judge Nathan Manning's candidacy for the Ninth District Court of Appeals.

If you have any questions regarding this decision, please contact Deputy Chief Legal Counsel Lisa Eschbacher at leschbacher@OhioSoS.gov.

Yours in service,



Frank LaRose

Ohio Secretary of State

cc: Lance Reed, Director
Pete Zeigler, Deputy Director