[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Avon Lake Commt. for the Election of the Law Dir. v. Rosmarin*, Slip Opinion No. 2026-Ohio-3948.]

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SLIP OPINION NO. 2026-OHIO-3948

THE STATE EX REL. CITY OF AVON LAKE, OHIO COMMITTEE FOR THE ELECTION OF THE LAW DIR. ET AL. *v.* ROSMARIN, CLERK, ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Avon Lake Commt. for the Election of the Law Dir. v. Rosmarin*, Slip Opinion No. 2026-Ohio-3948.]

Mandamus—Elections—City council did not abuse its discretion or clearly disregard applicable law by declining to enact ordinance submitting proposed charter amendment to city's electors at upcoming general election, because part-petitions submitted to city council contained divergent election dates and, in effect, asked city council to submit the same proposed amendment to electors two years apart—Writ and relators' request for attorney fees denied.

(No. 2026-1207—Submitted October 2, 2026—Decided October 8, 2026.)

IN MANDAMUS.

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

DEWINE, DETERS, HAWKINS, and SHANAHAN, JJ. BRUNNER, J., concurred in part and dissented in part and would grant a writ of mandamus ordering the city council and its members to enact an ordinance submitting relators' proposed charter amendment to Avon Lake electors at a special election to be called and held within the time frame set forth in Article XVIII, Section 8 of the Ohio Constitution, would hold that the difference in the two sets of part-petitions is immaterial because both sets of part-petitions contain on their face the language "or at such other election as is provided by law," would deny relators attorney fees, and would award them costs.

Per Curiam.

{¶ 1} Relators, the City of Avon Lake, Ohio Committee for the Election of the Law Director ("the committee"), William Zimmerman, Melissa Seljan, and Ohio Citizens for Honesty, Integrity, and Openness in Government, Ltd., are proponents of a proposed amendment to the Avon Lake Charter, which would make the city's law director an elected office. Relators contend that they submitted a petition to respondent Avon Lake City Council with enough valid signatures to trigger the city council's duty to "forthwith" enact an ordinance submitting the proposed charter amendment to the city's electors for rejection or approval at an election under Article XVIII, Section 8 of the Ohio Constitution. The city council did not enact such an ordinance, however, because it believed the petition to be defective since "divergent" sets of part-petitions were filed, some of which asked the city council to submit the proposed charter amendment to the Avon Lake electors at the November 5, 2024 general election and others of which asked for submission of the proposed charter amendment at the November 3, 2026 general election. Neither set of part-petitions, standing alone, contains enough signatures to qualify relators' proposed charter amendment for submission to the Avon Lake electors.

{¶ 2} In this expedited election case, relators seek a writ of mandamus ordering the city council to forthwith enact an ordinance submitting the charter-amendment petition to the Lorain County Board of Elections for placement of the proposed charter amendment on the November 3, 2026 general-election ballot. Relators also seek an award of attorney fees. In addition to the city council, named respondents in this action are Clerk of Avon Lake City Council Valerie Rosmarin, the City of Avon Lake, and councilmembers David Kos, Amy Gentry, Jennifer Fenderbosch, Rob Shahmir, Geoffrey Smith, Kayla Goodwin, and Matthew Reynolds. Relators also filed with their complaint a motion for this court's approval of a cash deposit as security for the costs required for statutory taxpayer actions under R.C. 733.59. After the case was fully briefed, relators filed a motion to strike all references made by respondents in their merit brief to evidence that respondents did not timely file in this case and a motion for an emergency peremptory writ of mandamus.

{¶ 3} We grant relators' motion for approval of their cash deposit as security for costs but deny their motion to strike and their motion for an emergency peremptory writ. And for the reasons explained below, we deny the writ and relators' request for an award of attorney fees. The city council did not abuse its discretion or clearly disregard applicable law in refusing to enact an ordinance submitting the proposed charter amendment to the city's electors for approval or rejection at an election.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Charter-Amendment Petitions Circulated in 2024 and 2026

{¶ 4} Under the Avon Lake Charter, the director of law is the chief legal officer of the city and is appointed by the mayor, with the concurrence of a majority of the city council. Avon Lake Charter, § 37. In July 2024, the committee began circulating a petition proposing to amend Section 37 of the Avon Lake Charter to

make the city law director an elected office. In the paragraph above the text of the proposed charter amendment, the petition stated:

> To the Council, the legislative authority of the City of Avon Lake located in Lorain County, Ohio.
>
> We, the undersigned qualified electors of the City of Avon Lake, Lorain County, Ohio, respectfully petition the legislative authority, City Council, to forthwith provide by Ordinance for the submission to the electorate of the City of Avon Lake, the following proposed amendment to the Charter of Avon Lake to be submitted pursuant to the Ohio Constitution, Article 18, Section 9, to be submitted to electors of such City of Avon Lake for their approval or rejection *at the general election to be held on the 5th day of November 2024*, or at such other election as is provided by law . . .

(Emphasis added.)

{¶ 5} While circulating the petition, the committee determined that it would be unable to gather enough valid signatures to have the proposed charter amendment submitted to the Avon Lake electors at the November 5, 2024 general election. Therefore, the committee paused its circulation of the petition in 2024 and resumed circulating it in June 2026, with an eye toward having the proposed charter amendment submitted to the Avon Lake electors at the November 3, 2026 general election.

{¶ 6} When the committee resumed gathering signatures for the charter-amendment petition, it used the same part-petitions that it circulated in 2024. Thus, some of the part-petitions circulated in 2026 contained the same text quoted above, i.e., petitioning the Avon Lake City Council to forthwith provide by ordinance for

the proposed charter amendment to be submitted to the Avon Lake electors at the November 5, *2024* general election or at another election provided by law. The part-petitions that referred to the 2024 election date contained signatures that were gathered in both 2024 and 2026. The committee circulated additional part-petitions in 2026 requesting that the city council submit the proposed charter amendment to the electors at the November 3, *2026* general election or at another election provided by law. The text of the proposed charter amendment on the part-petitions asking for submission of the proposed amendment to the city's electors at the November 5, 2024 general election is the same as the text on the part-petitions asking for the proposed amendment's submission to the electors at the November 3, 2026 general election.

{¶ 7} On August 26, 2026, Gerald W. Phillips, the committee's chairperson, filed with Rosmarin the charter-amendment petition at issue. The petition consists of 33 part-petitions: 20 part-petitions request submission of the proposed charter amendment to the Avon Lake electors at the November 5, 2024 general election, and 13 part-petitions request its submission to the electors at the November 3, 2026 general election. The 33 part-petitions collectively contain 769 signatures, some of which were obtained in 2024 but most of which were obtained in 2026. Phillips also filed with Rosmarin a two-page letter, stating, "**Time is of the essence**," and demanding that the city council immediately transmit the petition to the board of elections for signature verification and, if necessary, call a special meeting to pass the legislation that is required to submit the proposed charter amendment to the city electors at the November 3, 2026 general election. (Boldface in original.)

{¶ 8} The 33 part-petitions were transmitted to the board of elections on August 27, 2026. Lisette Gracia, director of the board of elections, certified that the part-petitions contained 678 valid signatures and reported that 483 signatures were needed for the proposed charter amendment to qualify for submission to the city's electors. A breakdown of the signature report shows that the 20 part-petitions

requesting submission of the proposed amendment to the electors at the November 5, 2024 general election contained 393 valid signatures and the 13 part-petitions requesting its submission at the November 3, 2026 general election contained 285 valid signatures.

{¶ 9} On a certification form, Gracia noted that the board of elections' role at that stage was limited to "determining the sufficiency and validity of signatures and reporting its findings to the legislative authority." The board did not determine the sufficiency or validity of the petition in any other respect.

B. The City Council Declines to Enact an Ordinance Submitting the Proposed Charter Amendment to the Electors

{¶ 10} At its regular meeting on August 31, 2026, the city council considered Ordinance No. 26-81, which, if enacted, would have submitted the proposed charter amendment for approval or rejection by the Avon Lake electors at the November 2026 general election. The city council discussed whether the charter-amendment petition was actually two distinct petitions based on the different election dates noted therein. The city council observed that neither the part-petitions seeking submission of the proposed amendment to the electors at the November 2024 general election nor the part-petitions seeking submission of the proposed amendment to the electors at the November 2026 general election contained enough signatures, standing alone, to qualify for submission of the petition to the board of elections for placement of the proposed amendment on a ballot. The city council ultimately voted 6 to 1 against enacting Ordinance No. 26-81.

{¶ 11} After the city council declined to enact Ordinance No. 26-81, Phillips emailed a "taxpayers demand" to Avon Lake Law Director Gary Ebert on behalf of himself, Zimmerman, the committee, and the taxpayers of Avon Lake, demanding that Ebert file a mandamus action against the city council and its clerk to compel them "to certify the ordinance and transmit the certified ordinance to the

Lorain County Board of Elections to place the Charter Amendment on the November 3, 2026, General Election [ballot]." Relators contend that Ebert ignored Phillips's demand.

C. Relators Commence This Action

{¶ 12} On September 9, relators filed this expedited election action under S.Ct.Prac.R. 12.08. They seek a writ of mandamus compelling respondents to "**forthwith** enact and pass Ordinance No. 26-81 and submit Ordinance No. 26-81 to the Board for placement on the November 3, 2026, General Election Ballot." (Boldface in original.) They also seek an award of attorney fees. Relators also filed a motion asking this court to approve a cash deposit as security for costs. *See* R.C. 733.59 (requiring taxpayer to give security for costs of the taxpayer's suit). On October 5, after the parties filed their respective briefs, relators filed a motion to strike under Civ.R. 12(F), asking this court to strike all references made by respondents in their merit brief to evidence that respondents did not timely file in this case. Later the same day, relators filed a motion for an emergency peremptory writ of mandamus, arguing that "**TIME IS OF [THE] ESSENCE**" and that the court therefore needed to grant relators' request for relief because the board of elections was poised to send out absentee ballots. (Boldface and capitalization in original.)

{¶ 13} Relators' merit brief contains 23 propositions of law, which can be distilled to three principal issues: (1) whether the city council erred in finding relators' petition insufficient for submission of the proposed charter amendment to the Avon Lake electors; (2) if the city council did err, whether the appropriate remedy is a writ of mandamus ordering placement of the proposed charter amendment on the November 3, 2026 general-election ballot; and (3) whether relators are entitled to an award of attorney fees.

II. ANALYSIS

A. Relators' Motion to Strike

{¶ 14} In their merit brief, respondents refer to evidence that they purported to file in this case. However, respondents did not timely file evidence under the court's schedule for expedited election cases, *see* S.Ct.Prac.R. 12.08, so the evidence to which they cite in their merit brief is not part of the record in this case. Relators accordingly ask this court to strike all references made by respondents in their merit brief to evidence that respondents did not timely file.

{¶ 15} We deny relators' motion to strike. Relators expressly bring their motion under Civ.R. 12(F). That rule, however, applies only to motions to strike material contained in *pleadings*. A merit brief is not a pleading. *See State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 1992-Ohio-73, ¶ 14 ("Under Civ.R. 7(A), only complaints, answers and replies constitute pleadings."). Even though we deny relators' motion to strike, we note that we have not considered respondents' citations to evidence that they did not timely file.

B. The Charter-Amendment Process

{¶ 16} Amendments to municipal charters are governed by Article XVIII, Sections 8 and 9 of the Ohio Constitution. *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035, ¶ 9. Under Article XVIII, Section 9, a municipality's legislative authority "shall . . . submit[]" a proposed charter amendment to the electors of the municipality "upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment." Submission of the proposed amendment to the municipality's electors is governed by Article XVIII, Section 8, *id.*, which states that the legislative authority "shall forthwith . . . provide by ordinance for the submission" of the proposed charter amendment "to the electors . . . at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days" after passage of the ordinance. If no regular municipal election is scheduled within that time, the municipality's

legislative authority must submit the proposed amendment to the electors at a special election occurring within the same 60- to 120-day period. Ohio Const., art. XVIII, § 8.

C. Mandamus

{¶ 17} To be entitled to the requested writ of mandamus, relators must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) respondents are under a clear legal duty to provide that relief, and (3) relators do not have a plain and adequate remedy in the ordinary course of the law. *State ex rel. Strbich v. Montgomery Cty. Bd. of Elections*, 2024-Ohio-4933, ¶ 11. Because the election at which relators seek to submit their proposed charter amendment to the city's electors is less than a month away, relators lack an adequate remedy in the ordinary course of the law. *See State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 16. Accordingly, the dispositive issue is whether relators have established a right to the relief they request in their complaint and whether respondents have a duty to provide it. *Id.* at ¶ 18. In election cases, resolving this issue "require[s] this court to determine whether respondents engaged in fraud, corruption, or an abuse of discretion or acted in clear disregard of applicable law." *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, ¶ 15. Since relators do not allege fraud or corruption on the part of respondents, we must determine whether respondents abused their discretion or clearly disregarded applicable law in failing to enact an ordinance submitting the proposed charter amendment to the city's electors at the November 3, 2026 general election.

1. Relators' Motion for an Emergency Peremptory Writ

{¶ 18} Between the close of the parties' briefing and our decision today, relators filed a motion for an emergency peremptory writ of mandamus asking this court to immediately issue a writ of mandamus ordering the relief they seek in their complaint. Relators contend that "**TIME IS OF [THE] ESSENCE**" in this case

because the board of elections will send out absentee ballots to voters this week. (Boldface and capitalization in original.) We deny the motion as procedurally improper.

{¶ 19} First, under R.C. 2731.04, an application for a writ of mandamus "must be *by petition*." (Emphasis added.) And our rules require that the relief requested in an original action "be set forth in the complaint," S.Ct.Prac.R. 12.02(B)(3), rather than in a motion.

{¶ 20} Second, relators already asked for a peremptory writ in their complaint. The substance of their emergency motion is simply a condensed version of the arguments they raised in their merit brief. Accordingly, the motion amounts to little more than a supplemental brief, which is prohibited by S.Ct.Prac.R. 16.08. Moreover, relators attached an evidentiary exhibit to their emergency motion, which is an untimely evidentiary submission under the expedited-election-case schedule in S.Ct.Prac.R. 12.08.

{¶ 21} Accordingly, we deny relators' motion for an emergency peremptory writ.

2. Relators' Filing of Divergent Sets of Part-Petitions Is Fatal to Their Claim

{¶ 22} A municipality's legislative authority need not submit a charter-amendment petition to the local board of elections for placement of the proposed charter amendment on an election ballot unless it is satisfied of the petition's sufficiency and all statutory requirements for submission have been met. *Id.* at ¶ 17. In this case, respondents contend that relators' charter-amendment petition was defective because the part-petitions were "divergent" in that 20 part-petitions asked the city council to submit the proposed charter amendment to the electors for approval or rejection at the November 5, 2024 general election while the remaining 13 part-petitions asked the city council to submit the measure at the November 3, 2026 general election. And because neither set of part-petitions, standing alone, contains a sufficient number of signatures to qualify for submission of the proposed

amendment to the electors, respondents argue that the city council correctly refused to enact an ordinance submitting the measure to the electors at the November 2026 general election.

{¶ 23} Respondents argue that this court decided the effect of "divergent petitions" in *State ex rel. Carter v. Celebrezze*, 63 Ohio St.2d 326 (1980). In that case, the petitioners sought to propose an amendment to Articles II and XI of the Ohio Constitution. The secretary of state rejected their filing because the part-petitions comprising the petition were not identical: one set of part-petitions contained the then-existing text of Article XI, Section 13 of the Ohio Constitution, while the other set did not. The petitioners sought a writ of mandamus compelling the secretary of state to accept their part-petitions for filing and transmit them to the county boards of elections for signature verification. They argued that their part-petitions did not have to be identical and that their omission of the then-existing constitutional language on some part-petitions was immaterial because the proposed constitutional amendment did not intend to remove that language from the Constitution.

{¶ 24} This court framed the "determinative issue" in *Carter* as follows: "whether the two divergent sets of part-petitions represent different proposed amendments, in which case neither has sufficient signatures to qualify for acceptance by [the secretary of state], or whether they should be considered as one, thus containing in excess of the number of signatures required." *Carter* at 328. Deciding the issue against the petitioners, this court found "no authorization in the Constitution or in the statutes" for the secretary of state to ignore the nondisclosure of the then-existing constitutional language from some of the part-petitions. *Id.* The divergent sets of part-petitions were deemed to "represent two different proposed amendments," and neither set of part-petitions had enough signatures, standing alone, to qualify for acceptance by the secretary of state. *Id.* at 329. This court therefore denied the writ. *Id.*

{¶ 25} Respondents here argue that *Carter* controls the disposition of this case. But *Carter* is not directly on point. The defect in the part-petitions in *Carter* related to the text of the proposed constitutional amendment: one set of part-petitions contained the full text of the then-existing section of the Constitution to be amended while the other set did not. *See id.* at 328. In contrast, the text of relators' proposed charter amendment in this case is the same in both sets of part-petitions.

{¶ 26} Even though *Carter* is not directly on point, the same result obtains. The two sets of part-petitions filed with the city council in this case request different actions from the council. The operative sentence of a charter-amendment petition is the electors' request to the municipality's legislative authority, i.e., the request that the legislative authority enact an ordinance to submit the proposed charter amendment to the electors for approval or rejection at an election. In this case, 20 of relators' part-petitions asked the city council to provide by ordinance for submission of the proposed charter amendment to the city's electors at the November 5, 2024 general election while 13 others asked for its submission to the electors at the November 3, 2026 general election. These are, in effect, two different petitions because they asked the city council for different actions, two years apart. This problem is the result of the committees' having used the 2024 part-petitions, as well as new ones dated 2026, when it resumed its petition effort in 2026. Consequently, the committee, in effect, submitted to the city council two sets of part-petitions requesting two different actions by the council.

{¶ 27} Relators downplay the significance of the differing election dates in the part-petitions, contending that the dates are in "the preamble" of the charter-amendment petition, which is not part of the text of the proposed charter amendment. This argument is unpersuasive. The paragraph of the charter-amendment petition that relators call the "preamble" is significant because it contains the petition signatories' request to the municipality's legislative authority

for a specific action, i.e., to provide by ordinance for submission of the proposed charter amendment to the electors. This paragraph is the sine qua non of a charter-amendment petition. And in this case, by requesting submission of the proposed charter amendment to the electors at two different elections, the two sets of part-petitions requested different actions of the Avon Lake City Council.

{¶ 28} Relators also make much of the fact that they hedged the proposed election date on each set of part-petitions by adding the clause "or at such other election as is provided by law" after the specified election date. But that clause does not cure the difference between the two sets of part-petitions. The fact remains that relators submitted two sets of part-petitions to the city council seeking two different ordinances: one to submit a proposed charter amendment to the electors on the November 2024 general-election ballot and the other to submit a proposed charter amendment to the electors on the November 2026 general-election ballot. The clause "or at such other election as is provided by law" does not nullify the fact that the two sets of part-petitions primarily asked the city council for two different actions.

3. Baur *and* Nauth *Do Not Salvage Relators' Part-Petitions*

{¶ 29} Relators argue that an error in the proposed election date in a charter-amendment petition is not a fatal defect, because the correct election date is determined by operation of law. Moreover, relators note that they were not even required to include an election date in their charter-amendment petition. Relators contend that the city council should have treated the entirety of their part-petitions as one proposed charter amendment, regardless of the divergence in the proposed election dates listed in the part-petitions.

{¶ 30} Relators rely principally on two cases for the proposition that the divergent election dates stated in the part-petitions are inconsequential. In the first of these, *State ex rel. Baur v. Medina Cty. Bd. of Elections*, 2000-Ohio-49, the petitioners circulated a referendum petition regarding a City of Wadsworth

ordinance for submission to that city's electors at the November 2, 1999 general election. By the time the petitioners filed their petition, however, the earliest election at which the referendum could be submitted to the Wadsworth electors was the November 7, 2000 general election. A group of referendum opponents protested the referendum's placement on that election ballot, arguing that the petitioners submitted an invalid petition when they specified a date for the referendum vote that became impossible under the timing requirements applicable to referendums. *See* R.C. 731.29 (a board of elections shall submit an ordinance for referendum at the next general election occurring subsequent to 90 days[1] after the city auditor certifies sufficiency of the petition). After the Medina County Board of Elections denied the petitioners' protest, the referendum opponents sought a writ of prohibition to prevent the board from proceeding with the referendum vote at the November 7, 2000 general election.

{¶ 31} We denied the writ, rejecting the argument that an incorrect election date noted on the referendum petition was fatal to the referendum's placement on an appropriate election ballot. *Baur* at ¶ 12, 20. We held that "[u]nder R.C. 731.29, the determination of the date of the election for a valid petition for referendum of a municipal ordinance is a mechanical, administrative matter, and error concerning the date is not fatal to the referendum." *Id.* at ¶ 13.

{¶ 32} Relators also rely on *State ex rel. Nauth v. Dirham*, 2020-Ohio-4208, which followed the holding in *Baur*. In *Nauth*, the Medina County Board of Elections determined that a referendum petition did not contain enough valid signatures to qualify the referendum for placement on the November 3, 2020

1. When this court issued its decision in *Baur*, R.C. 731.29 provided that the ordinance be submitted for a referendum vote no later than 75 days after the auditor certified the sufficiency and validity of the referendum petition to the local board of elections. *See* Am.Sub.H.B. No. 99, 146 Ohio Laws, Part I, 549, 586-587 (effective Aug. 22, 1995). The statute was later amended, changing the date to 90 days after the auditor's certification. *Compare* 2010 Am.Sub.H.B. No. 48 (effective July 2, 2010).

general-election ballot. The referendum proponents sought a writ of mandamus ordering the board to reexamine the signatures on the petition and certify as valid certain signatures that the board had earlier found to be invalid. The board argued, among other things, that the case was moot because the referendum proponents had originally sought placement of the referendum on the November 5, 2019 general-election ballot. By the time the proponents filed their petition, however, it was impossible under R.C. 731.29 for the measure to be placed on the 2019 ballot.

{¶ 33} We rejected the board's mootness argument. Relying on *Baur*, we concluded that the declaration of a November 5, 2019 election date on the referendum petition was "of no legal significance," noting that "[t]he appropriate election date for a valid referendum petition is not a matter of the proponents' choosing," but, rather, "'is a mechanical, administrative matter' " that was not fatal to the referendum. *Nauth* at ¶ 17, quoting *Baur*, 2000-Ohio-49, at ¶ 13. Thus, if the referendum proponents had prevailed in showing that certain signatures on the petition were improperly invalidated by the board, they could have had their measure placed on the appropriate election ballot.

{¶ 34} Relators argue that *Baur* and *Nauth* support the validity of the charter-amendment petition in this case. But the facts of those cases are distinguishable from the facts present here. Neither *Baur* nor *Nauth* involved part-petitions that identified different election dates for the measure the petitioners sought to have placed on a general-election ballot. Rather, both cases involved one date that was consistently incorrect throughout the referendum petitions that were submitted to the Medina County Board of Elections. Thus, we did not have occasion in either case to address the issue presented here—whether divergent election dates identified on different part-petitions in the context of a charter-amendment petition is fatal to the submission of the proposed charter amendment to the electors at an election.

{¶ 35} In this case, some people signed a petition asking the Avon Lake City Council to submit a proposed charter amendment to the city's electors at the November 5, 2024 general election and others signed a petition asking for the same proposed amendment to be submitted to the electors at the November 3, 2026 general election. Even though *Baur* and *Nauth* state that the election date is not a matter of the petitioners' choosing, those cases say nothing of the significance of different part-petitions asking a municipality's legislative authority to submit a proposed charter amendment to the electors for acceptance or rejection at different elections.

4. Respondents Are Not Required to Treat Relators' Filings as "One Instrument"

{¶ 36} Regardless of the differing election dates identified on the two sets of part-petitions, relators contend that they filed their part-petitions "as one instrument," as required by R.C. 3501.38(K), and therefore, the part-petitions should be treated as "one instrument" because they all propose the same amendment to the Avon Lake Charter. Relators argue that respondents and the Lorain County Board of Elections have already deemed the part-petitions to be "one instrument" because (1) the city forwarded the part-petitions to the board for signature review and (2) the board verified the signatures on the part-petitions as "one instrument." Relators' argument is meritless.

{¶ 37} Relators assume too much when they say that respondents and the board of elections already determined that their submission was "one instrument." Indeed, the evidence before us shows that the city council simply performed its constitutional duty. By forwarding the petition papers to the board of elections, the city council was simply performing the first step in complying with Article XVIII, Section 8 of the Ohio Constitution. *See State ex rel. Turner v. Barhorst*, 2026-Ohio-3439, ¶ 1, 3, 22 (ordering a city clerk to transmit a charter-amendment petition to the local board of elections after the clerk had previously rejected the petition

without sending it to the board for verification of signatures). The city council made no determination of the petition's sufficiency in any respect.

{¶ 38} As for the board of elections, it conducted a signature review and reported the number of valid signatures on the part-petitions submitted to it. On a certification form, the board director noted that the board's initial role at that stage was limited to determining the sufficiency and validity of signatures and reporting its findings. Thus, the board did not opine on the validity of the petition in any other respect, much less determine definitively that the part-petitions should be treated as one instrument.

{¶ 39} For all the foregoing reasons, we deny the writ. The city council did not abuse its discretion or act in clear disregard of applicable law in not enacting an ordinance for submission of the proposed charter amendment to the Avon Lake electors at the November 3, 2026 general election.

D. Attorney Fees and Deposit for Court Costs

{¶ 40} Relators ask for an award of attorney fees under a variety of theories, but primarily as recovery for a successful taxpayers' action under R.C. 733.58. To facilitate their request, relators filed an unopposed motion seeking approval of a cash deposit for court costs as security for the costs of this proceeding. *See* R.C. 733.59 (no suit or proceeding brought by a taxpayer in his own name when a city law director fails to institute a mandamus action at the request of the taxpayer "shall be entertained by any court until the taxpayer gives security for the cost of the proceeding"). We grant relators' motion for approval of their cash deposit as security for costs.

{¶ 41} However, we deny relators' request for an award of attorney fees. Because we deny the writ, relators are not prevailing parties entitled to recovery of attorney fees in a statutory taxpayer's suit. *See* R.C. 733.61 (in a taxpayer's suit, the taxpayer may recover attorney fees "if judgment is finally ordered in his favor"). Nor are relators entitled to an award of attorney fees as losing parties under any

other theory they raised, including recovery under the common law, under the common-fund doctrine, or for alleged bad faith on the part of respondents. *See Billington v. Cotner*, 37 Ohio St.2d 17 (1974), paragraph one of the syllabus (attorney fees may be awarded in common-law taxpayer's action if taxpayer's efforts bestowed a benefit on the public); *Smith v. Kroeger*, 138 Ohio St. 508 (1941), paragraphs two and three of the syllabus (attorney fees may be awarded under common-fund doctrine when claimants have prevailed in a suit brought in equity); *Wilborn v. Bank One Corp.*, 2009-Ohio-306, ¶ 7 (attorney fees may be awarded when the *prevailing party* demonstrates bad faith on the part of the losing party).

III. CONCLUSION

{¶ 42} For the foregoing reasons, respondents did not abuse their discretion or clearly disregard applicable law by refusing to enact an ordinance submitting relators' proposed charter amendment to the Avon Lake electors for approval or rejection at the November 3, 2026 general election. We therefore deny the writ and relators' request for an award of attorney fees. We grant relators' motion for approval of their cash deposit as security for costs, but we deny relators' motion to strike and relators' motion for an emergency peremptory writ.

Writ denied.

Phillips & Co., L.P.A., and Gerald W. Phillips, for relators.

McDonald Hopkins, L.L.C., Kevin M. Butler, and Luke A. Davis, for respondents.