

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Sommers Dev. Group, L.L.C. v. Cuyahoga Cty. Bd. of Elections*, Slip Opinion No. 2026-Ohio-4091.]

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SLIP OPINION NO. 2026-OHIO-4091

THE STATE EX REL. SOMMERS DEVELOPMENT GROUP, L.L.C. v. CUYAHOGA COUNTY BOARD OF ELECTIONS.

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Elections—Prohibition—Mandamus—Writs sought to remove an initiative ordinance from November 2026 general-election ballot—Relator’s claim not barred by doctrine of laches, because it did not unreasonably delay in asserting a right—Relator failed to show that board of elections abused its discretion or clearly disregarded applicable law in placing initiative ordinance on ballot and denying relator’s protest—Writs denied.

(No. 2026-1307—Submitted October 13, 2026—Decided October 19, 2026.)

IN PROHIBITION and MANDAMUS.

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

Per Curiam.

{¶ 1} In this expedited election case, relator, Sommers Development Group, L.L.C. (“Sommers”), seeks a writ of prohibition or a writ of mandamus ordering respondent, the Cuyahoga County Board of Elections, to remove an initiative ordinance from the November 3, 2026 general-election ballot. Sommers plans to build a townhome community on real property located in the City of Mayfield Heights. In May 2026, the Mayfield Heights City Council rezoned the property from “Headquarters or Executive Offices Park Districts” to “Planned Unit Development Districts, Minimum Three Acres.” A citizen’s committee (“the petition committee”) submitted a signed initiative petition to the city council to return the zoning to “Headquarters or Executive Offices Park Districts,” which the city council certified to the board of elections for placement on the ballot. Sommers filed a protest against the petition with the board, which the board denied after conducting a hearing.

{¶ 2} Sommers argues that the initiative ordinance should be removed from the ballot for four reasons: (1) the initiative petition was disguised as an untimely referendum petition, (2) the initiative ordinance constitutes an administrative action, (3) the petition committee and the city council did not comply with the requirements of the Mayfield Heights Charter for placing an initiative ordinance on the ballot, and (4) the city council certified the initiative petition to the board of elections after the statutory-certification deadline.

{¶ 3} For the following reasons, we deny the writs.

I. BACKGROUND

A. Legal Background

{¶ 4} Mayfield Heights is a chartered municipality. Under Article II, Section 1f of the Ohio Constitution, “[t]he initiative and referendum powers are . . . reserved to the people of each municipality on all questions which such

municipalities may . . . be authorized by law to control by legislative action; such powers shall be exercised in the manner . . . provided by law.”

{¶ 5} The city charter provides for the exercise of initiative and referendum rights. Article VIII, Section 1 of the city charter provides for the right of initiative, stating that “[t]he electors of the City shall have power to propose any ordinance or resolution, except an ordinance for the appropriation of money, and to adopt or reject the same at the polls.” Article VIII, Section 2 of the city charter provides for the right to referendum, stating that “[t]he electors of the City shall have the power to approve or reject at the polls any ordinance or resolution passed by the Council except as hereinafter provided.”

B. Factual Background

{¶ 6} Sommers is a party to a contract with Rockwell Automation, Inc., which it negotiated for the purpose of redeveloping real property located in Mayfield Heights into a townhome community. Sommers is the property developer; Rockwell Automation owns the property.

{¶ 7} At one time, the property was zoned under the U-7 classification, which applies to “Headquarters or Executive Offices Park Districts.” But to implement its plan to redevelop the property, Sommers requested that the city council rezone the property from the U-7 classification to the U-2A(1) classification, the latter of which applies to “Planned Unit Development Districts, Minimum Three Acres.” Sommers also requested approval of a preliminary site plan and requested a variance from the U-2A(1) classification to allow for additional site development.

{¶ 8} On May 27, 2026, the city council held a meeting at which it adopted an ordinance granting a zoning amendment that rezoned the property to the U-2A(1) classification. At the same meeting, the city council adopted a resolution approving the Mayfield Heights Board of Zoning Appeals’ grant of a density variance to the property.

{¶ 9} On July 24, a committee opposed to the project filed an initiative petition with the city council, seeking an ordinance that would return the zoning of the property to the U-7 classification. In an affidavit, Brian Wright, the person who submitted the petition, attests that he went to the Mayfield Heights City Hall during its posted business hours to deliver the petition to the clerk of council. Wright was required to use an intercom to enter the city hall, but no one responded when he used the intercom, so he went to the office of the Mayfield Heights Police Department, which is part of the city-hall compound. He explained to the police officer at the counter that he had a document to deliver to the clerk of council. A few moments later, a woman who identified herself as the mayor’s assistant arrived. She said that the clerk of council was out of town but that she could accept the document. Wright gave her the initiative petition, but when she signed a form indicating receipt of the petition, she crossed out the words “Clerk of Council.” The receipt form as signed by the assistant provides that on July 24, 17 part-petitions containing approximately 535 signatures were delivered to the “~~Clerk of Council~~.”

{¶ 10} On August 18, the city council held a hearing on the initiative petition, but it did not vote on the petition.

{¶ 11} On September 1, the city council held a special meeting, at which it voted four to three to reject the initiative petition.

{¶ 12} On September 2, the petition committee filed a supplemental initiative petition, ostensibly for the purpose of obtaining additional signatures. Two days later, the board of elections advised the clerk of council that the initiative petition—inclusive of the original and supplemental part-petitions—had 691 valid signatures, which no one disputes was sufficient to meet the minimum number required by law.

{¶ 13} On September 9, the city council adopted an emergency resolution authorizing the clerk of council to certify the initiative petition to the board of

elections for placement on the November 3, 2026 general-election ballot. The next day, Sommers filed a protest with the board, outlining its objections to the petition.

{¶ 14} On September 21, the board of elections held a protest hearing, which included the presentation by Sommers of documentary evidence and argument supporting its request that the board grant its protest. At the conclusion of the hearing, the board denied the protest.

{¶ 15} Sommers filed this original action four days later. Sommers requests a writ of prohibition preventing the board of elections from certifying and placing the initiative ordinance on the November 3, 2026 general-election ballot, adding that if ballots have already been prepared, the board should be barred from counting or certifying votes cast on the ordinance. Alternatively, Sommers requests a writ of mandamus ordering the board to grant its protest and remove the initiative ordinance from the ballot, adding that if ballots have already been prepared, the votes cast on the ordinance should not be counted or certified. The members of the petition committee, Robert K. Agresta, Diane M. Agresta, Iwona Tietz-Golczak, Marcin B. Golczak, and Elvera Ranallo, filed a motion to intervene as respondents, which we granted. 2026-Ohio-3896.

II. LEGAL ANALYSIS

A. *Laches*

{¶ 16} The board of elections and the petition committee argue that we should deny the writs on the basis of laches. We disagree.

{¶ 17} ““Extreme diligence and promptness are required in elections-related matters.”” *State ex rel. Miller v. Union Cty. Bd. of Elections*, 2023-Ohio-3664, ¶ 18, quoting *State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 11, quoting *State ex rel. Comm. for the Charter Amendment, City Trash Collection v. Westlake*, 2002-Ohio-5302, ¶ 16. ““Laches will bar an action when there is (1) an unreasonable delay or lapse of time in asserting a right, (2) the absence of an excuse

for the delay, (3) actual or constructive knowledge of the injury or wrong, and (4) prejudice to the opposing party.” *Id.*, quoting *Clark* at ¶ 11.

{¶ 18} On September 9, 2026, the city council adopted an emergency resolution authorizing the clerk of council to certify the initiative petition to the board of elections for placement on the November 3, 2026 general-election ballot. The next day, Sommers filed a protest with the board, outlining its objections to the petition. In addition, Sommers filed its complaint in this court four days after the board denied its protest. The board and the petition committee do not argue that either of these periods constitutes unreasonable delay.

{¶ 19} Rather, the board of elections and the petition committee argue that Sommers should have acted earlier, before the city council certified the initiative petition to the board, to prevent either the city council from considering the petition or the board from placing the initiative ordinance on the ballot. The board argues that Sommers could have filed an unspecified action in August to compel the city council to not consider the petition. The petition committee argues that Sommers could have filed a protest with the board earlier than it did. In support, the petition committee cites *Mason City School Dist. v. Warren Cty. Bd. of Elections*, 2005-Ohio-5363.

{¶ 20} In *Mason*, a petition was submitted to the Warren County Board of Elections under R.C. 5705.261 to place a school-district-levy decrease on the ballot. The petition was submitted to the board on May 24, 2005, but the board did not certify the petition to the ballot until August 16. The school district filed a protest against the petition with the board on August 22. We held that the school district “did not need to await the board of elections’ certification of the petition before [it] protested the petition.” *Id.* at ¶ 15. This holding implies that the school district could have filed its protest at any time after the petition was submitted to the board. *See id.* at ¶ 14, 16. We cited two other cases in which we held similarly. *See id.* at ¶ 15, citing *State ex rel. Ascani v. Stark Cty. Bd. of Elections*, 1998-Ohio-586, ¶ 12

(petition regarding a horse-racing satellite facility submitted under R.C. 3769.27), and *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections*, 1997-Ohio-315, ¶ 27 (local-liquor-option petition submitted under R.C. 4301.33). Our holdings in *Mason*, *Ascani*, and *Cooker Restaurant Corp.* are distinguishable, however, because under the statutes at issue in those cases, a petition is submitted directly by a petitioner to a board of elections. See R.C. 5705.261(A); R.C. 3769.27(A); R.C. 4301.33(B). Thus, in each case, there was no intervening step that a local government was required to take before a board of elections certified the petition at issue to the ballot.

{¶ 21} In contrast, here, the initiative petition had to be submitted to the clerk of council before it was submitted to the Cuyahoga County Board of Elections for placement on the ballot. See Mayfield Heights Charter, art. VIII, ¶ 1. At a minimum, up until the board notified the clerk on September 4 that the original and supplemental part-petitions contained sufficient signatures, the city council was under no obligation to certify the petition to the ballot. Sommers could not have presumed that the initiative ordinance would be placed on the ballot until that point. As such, Sommers did not unreasonably delay in asserting a right, and its action is not barred by laches.

B. Prohibition

{¶ 22} Sommers first requests a writ of prohibition.

{¶ 23} As an initial matter, the board of elections argues that this court does not have subject-matter jurisdiction to grant a writ of prohibition. It argues that Sommers is really seeking a prohibitory injunction and declaratory judgment. In support, the board cites a case pertaining to *mandamus*. See *State ex rel. King v. Cuyahoga Cty. Bd. of Elections*, 2022-Ohio-3613, ¶ 26. The writ of prohibition, however, may issue to prevent the placement of an initiative ordinance from a chartered municipality on the ballot following a board of elections' denial of a protest challenge. See *State ex rel. Upper Arlington v. Franklin Cty. Bd. of*

Elections, 2008-Ohio-5093, ¶ 1, 29; *State ex rel. Thurn v. Cuyahoga Cty. Bd. of Elections*, 72 Ohio St.3d 289, 290, 295 (1995). We therefore have subject-matter jurisdiction in prohibition.

{¶ 24} To be entitled to a writ of prohibition, Sommers must prove by clear and convincing evidence that (1) the board of elections has exercised quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no adequate remedy exists in the ordinary course of the law. *State ex rel. M/I Homes of Cincinnati, L.L.C. v. Clermont Cty. Bd. of Elections*, 2025-Ohio-4362, ¶ 9. Because of the proximity of the election, Sommers lacks an adequate remedy in the ordinary course of the law. *See Upper Arlington* at ¶ 17. The third prong is therefore satisfied.

{¶ 25} Regarding the first prong, the board of elections argues that it did not exercise quasi-judicial authority. We disagree.

{¶ 26} “A board of elections exercises quasi-judicial authority when it makes a decision regarding a protest after a mandatory hearing that includes sworn testimony.” *State ex rel. Barney v. Union Cty. Bd. of Elections*, 2019-Ohio-4277, ¶ 12. We have found a board of elections to have exercised quasi-judicial authority under certain circumstances even if at the protest hearing it did not take sworn testimony. For example, in *State ex rel. Miller v. Hamilton Cty. Bd. of Elections*, we concluded that a protest hearing sufficiently resembled a judicial trial to be a quasi-judicial proceeding when a party’s attorney made factual assertions that were documented by information retained by the Hamilton County Board of Elections. 2021-Ohio-831, ¶ 27. Here, the Cuyahoga County Board of Elections did not take sworn testimony at Sommers’s protest hearing, but the parties submitted evidence and their attorneys made factual assertions. The protest hearing here was similar enough to that in *Miller* such that the hearing was quasi-judicial despite the absence of sworn testimony.

{¶ 27} “R.C. 3501.39(A) requires a board of elections to conduct a quasi-judicial hearing on a petition protest.” *Barney* at ¶ 12; *see Thurn*, 72 Ohio St.3d at 291 (a board of elections exercised quasi-judicial authority when it denied a protest, after a hearing, to proposed initiative ordinances certified to it by a city council). The board of elections argues, however, that it was not required to hold a hearing on *this* protest, because R.C. 3501.39(A)(3) requires a board of elections to reject an initiative petition if “the petition falls outside the scope of authority to enact via initiative or does not satisfy the statutory prerequisites to place the issue on the ballot.” The board notes that R.C. 3501.39(A)(3) does not mention a hearing. But R.C. 3501.39(A)(3) also does not mention a protest.

{¶ 28} The board of elections’ argument regarding R.C. 3501.39(A)(3) is inapt because, here, there was a protest filed against the initiative petition. R.C. 3501.39(A)(2), which concerns objections “that the petition violates any requirement established by law,” does require that a hearing be held if a written protest is filed. *See Miller* at ¶ 31 (“R.C. 3501.39(A)(2) requires the board to conduct a quasi-judicial hearing”). In *Upper Arlington*, we held that the Franklin County Board of Elections exercised quasi-judicial authority because R.C. 3501.39(A)(2) required it to conduct a hearing on a protest, which was ultimately denied after it conducted the required hearing. 2008-Ohio-5093 at ¶ 16. We granted a writ of prohibition preventing the Franklin County board from placing an initiative ordinance on the ballot after determining that the ordinance concerned an administrative action, which is not a proper subject of initiative. *Id.* at ¶ 1, 24-25, 29. In this case, in addition to its challenges to the legal authority of the initiative petition, Sommers also challenged in its protest the form of the part-petitions and the circulator statements. The latter challenges in a protest generally require that a board of elections hold a hearing. *See Barney* at ¶ 8, 12; *State ex rel. Eshleman v. Fornshell*, 2010-Ohio-1175, ¶ 12, 17-18. Under these circumstances, we hold that

the Cuyahoga County Board of Elections exercised quasi-judicial authority in denying Sommers’s protest.

{¶ 29} Regarding the second prong, a board of elections’ exercise of quasi-judicial power is unauthorized if the board “‘acted fraudulently or corruptly, abused its discretion, or clearly disregarded applicable law.’” *Upper Arlington* at ¶ 18, quoting *State ex rel. Brown v. Butler Cty. Bd. of Elections*, 2006-Ohio-1292, ¶ 23. Sommers argues that the board of elections abused its discretion and clearly disregarded applicable law; it does not allege fraud or corruption. “‘An abuse of discretion implies an unreasonable, arbitrary, or unconscionable attitude.’” *Id.*, quoting *Cooker Restaurant Corp.*, 1997-Ohio-315, at ¶ 13.

{¶ 30} Sommers offers four reasons in support of its argument that the board of elections abused its discretion and clearly disregarded applicable law in placing the initiative ordinance on the ballot and denying Sommers’s protest. We address each reason in turn.

1. The initiative petition was not a disguised referendum petition

{¶ 31} Sommers first argues that the petition committee errantly invoked the right to initiative as a means of bypassing the right to referendum. Under the city charter, referendum petitions must be submitted to the clerk of council within 30 days after the passage of the ordinance that the petition seeks to repeal. Mayfield Heights Charter, art. VIII, § 2. The city council adopted the ordinance rezoning the property on May 27. The petition committee submitted its initiative petition on July 24—58 days later. Sommers argues that the initiative petition should be construed as a referendum petition, and because the petition was filed after the deadline for filing a referendum petition, Sommers maintains that the petition was untimely.

{¶ 32} Sommers’s argument depends on reading the city charter’s right to initiative in tandem with its right to referendum. The city charter’s right to initiative provides that “[t]he electors of the City shall have power to propose any ordinance

or resolution, except an ordinance for the appropriation of money, and to adopt or reject the same at the polls, such power being known as the initiative.” Mayfield Heights Charter, art. VIII, § 1. The city charter’s right to referendum provides that “[t]he electors of the City shall have the power to approve or reject at the polls any ordinance or resolution passed by the Council except as hereinafter provided.” Mayfield Heights Charter, art. VIII, § 2. Reading these provisions in *pari materia* and giving effect to each, *see State ex rel. Ditmars v. McSweeney*, 2002-Ohio-997, ¶ 24 (lead opinion), Sommers posits that the initiative petition is in substance a referendum petition because it seeks to (1) repeal the city council’s May 27, 2026 ordinance granting Sommers’s requested zoning amendment and (2) return the property to its original zoning classification. If an initiative petition can be submitted to repeal an ordinance, the argument runs, the city charter’s referendum provision is superfluous.

{¶ 33} There are at least two problems with Sommers’s argument. First, we rejected it over 75 year ago in *State ex rel. Sharpe v. Hitt*, in which we held that “[t]he electors of a municipality may by the initiative enact a measure conflicting with or repealing legislation previously passed by the municipal council, so long as the subject matter of such initiative ordinance is within the powers of the municipality to control by legislative procedure.” 155 Ohio St. 529 (1951), paragraph three of the syllabus. Our holding in *Sharpe* has since been reaffirmed. *See State ex rel. Commt. for the Proposed Ordinance to Repeal Ordinance No. 146-02, W. End Blight Designation v. Lakewood*, 2003-Ohio-5771, ¶ 12 (“Although the proposed initiative ordinance has the effect of a referendum on the ordinance it seeks to repeal, this is permissible under Ohio law.”), citing *Sharpe* at paragraph three of the syllabus.

{¶ 34} Sommers claims that *Sharpe* and *Lakewood* are distinguishable because in those cases, the ordinances at issue were passed as emergency measures, took effect immediately, and were therefore never subject to referendum. Thus,

Sommers says, the right to initiative in those cases was the electors’ only means of recourse. However, we went on to state in *Sharpe* that “[e]ven though this opinion suggests an overlapping use of the initiative and referendum, we are confident it sustains the intentions and purposes of the people in making the initiative and referendum a part of their organic law.” *Sharpe* at 540.

{¶ 35} Second, under the city charter, there is an important substantive difference between a referendum petition and an initiative petition. If electors submit a sufficient referendum petition within 30 days of the passage of the ordinance sought to be repealed, the ordinance subject to referendum does not go into effect until the referendum is voted on and approved by a majority of those voting at the appropriate election. Mayfield Heights Charter, art. VIII, § 2. The filing of the referendum petition essentially stays the ordinance. In contrast, an initiative petition might—if the initiative ordinance is adopted by the voters at an election in the future—result in the law being changed, but in the meantime, the law enacted by an ordinance remains operative. *See* Mayfield Heights Charter, art. VIII, § 1. Under the city charter, an initiative petition is simply not equivalent to a referendum petition.

{¶ 36} Sommers points to other actions that the members of the petition committee allegedly have taken to stop the development of the property and argues that these actions support its argument that the committee’s real intent is to hold a referendum. For example, it notes that the committee asked the city council to “refrain to the extent permitted by law from granting discretionary approvals that would frustrate the voters’ ability to decide the issue.” Sommers also states that the members have pursued administrative appeals against the preliminary-site-plan and variance approvals. But the intent of the members and other actions they have taken cannot control over the language of the initiative ordinance and are irrelevant to the question whether the petition was correctly submitted as an initiative instead of a referendum.

{¶ 37} Because the initiative petition is not a referendum petition, Sommers’s argument that the petition was not timely submitted is unpersuasive.

2. *The initiative ordinance does not constitute an administrative action*

{¶ 38} Sommers next argues that the initiative ordinance constitutes an administrative action and thus is not subject to initiative. We disagree.

{¶ 39} The Ohio Constitution “limits the referendum and initiative power to questions the municipality is ‘authorized by law to control by legislative action.’” *State ex rel. Ebersole v. Delaware Cty. Bd. of Elections*, 2014-Ohio-4077, ¶ 29, quoting Ohio Const., art. II, § 1f. An ordinance that constitutes *administrative* action—rather than legislative action—may not be proposed by initiative. *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 35. “‘The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence.’” *Id.* at ¶ 36, quoting *Donnelly v. Fairview Park*, 13 Ohio St.2d 1 (1968), paragraph two of the syllabus.

{¶ 40} Generally, the enactment of a zoning ordinance constitutes a legislative act. *See State ex rel. Federle v. Warren Cty. Bd. of Elections*, 2019-Ohio-849, ¶ 13 (“A township’s action that effects a rezoning of property is a legislative act”); *State ex rel. Zonders v. Delaware Cty. Bd. of Elections*, 69 Ohio St.3d 5, 11 (1994) (“Generally, the adoption of a zoning amendment, like the enactment of the original zoning ordinance, is a legislative act which is subject to referendum.”). In this case, the initiative ordinance would, if approved, change the zoning classification of the property from U-2A(1) to U-7, and as such, on its face, fits within the scope of a legislative act.

{¶ 41} Sommers recognizes that ordinarily a zoning ordinance constitutes a legislative act. But it argues that portions of the initiative ordinance would retroactively and improperly invalidate preliminary-site-plan and variance

approvals it has already obtained from the city council and that the ordinance therefore constitutes an administrative act. Approval of certain developments as being in compliance with existing standards is an administrative act. *See Zonders* at 13 (“where specific property is already zoned as a [planned-unit-development] area, approval of subsequent development as being in compliance with the existing [planned-unit-development] standards is an administrative act which is not subject to referendum”); *see also Ebersole* at ¶ 36 (an ordinance that “approves development within the contours of a preexisting zoning code . . . is not subject to referendum or initiative”).

{¶ 42} In support of this argument, Sommers points to Section 3 of the initiative ordinance, which states:

In the event of any conflict between the zoning of the Property pursuant to this Ordinance and any other Ordinance, zone map, or any other official act of the City or any City official or designee, the zoning of the Property under this Ordinance as *U-7: Headquarters or Executive Offices Park Districts* shall take precedence and no other zoning classification shall apply to the Property.

(Emphasis in original.)

{¶ 43} Sommers argues that the language in Section 3 that the zoning provided for in the initiative ordinance “shall take precedence” over that provided for in other official acts would essentially repeal the city council’s prior approvals. As such, Sommers argues that the section constitutes an administrative act that is not subject to initiative. But nothing on the face of Section 3 purports to change or eliminate prior approvals Sommers has obtained from the city council. Rather, the section clarifies that the zoning provided for in the initiative ordinance controls over

zoning provided for in other official acts. The initiative ordinance concerns zoning, which is a legislative act. *See Zonders*, 69 Ohio St.3d at 11.

{¶ 44} Underlying Sommers’s arguments is its belief that the initiative ordinance is “designed to operate backward,” which it argues shows that the ordinance is, in reality, an improper referendum. It cites *Gibson v. Oberlin*, in which we stated that when enacting a zoning ordinance, “a municipal council may not give retroactive effect to such ordinance so that a property owner is deprived of his right to a building permit in accordance with a zoning ordinance in effect at the time of the application for such permit,” 171 Ohio St. 1 (1960), paragraph two of the syllabus. But the initiative ordinance is not retroactive on its face, and any question of improper retroactivity is premature because the answer to Sommers’s property-rights concerns will depend on whether and how the city council attempts to apply the ordinance, if approved, to the property. That question is both hypothetical and separate from the question whether the initiative ordinance may be placed on the ballot.

3. *The city charter’s procedure for placing an initiative ordinance on the ballot*

{¶ 45} Sommers argues that in several instances, the petition committee and the city council did not follow the city charter’s required procedure for placing an initiative ordinance on the ballot.¹

i. Submission to the clerk of council

{¶ 46} The city charter provides that “[a]n initiated ordinance or resolution shall be submitted to the Clerk of Council by petition [signed by the appropriate number of electors].” Mayfield Heights Charter, art. VIII, § 1. Sommers argues

1. Sommers appears to allege in its complaint that the initiative petition was submitted on a form that was inapplicable to the city. But it does not argue in its merit brief that the city council was required to reject the petition because of the form it was printed on. Sommers has thus forfeited any such argument. *See State ex rel. Tjaden v. Geauga Cty. Bd. of Elections*, 2024-Ohio-3396, ¶ 25, fn. 6 (concluding that an argument that was not developed or advanced in a party’s merit brief was forfeited).

that the submission of the initiative petition to a city official other than the clerk of council constitutes a fatal error.

{¶ 47} Wright avers that on July 24, 2026, he submitted the signed initiative petition to the city. On that day, he went to city hall during its posted business hours and told a police officer at the counter of the city’s police department’s office, which is part of the city-hall compound, that he had a document to deliver to the clerk of council. A few moments later, a woman who identified herself as the mayor’s assistant arrived. She said that the clerk of council was out of town but that she could accept the document. Wright gave her the petition.

{¶ 48} Sommers argues that that initiative petition was not “submitted to the Clerk of Council” in accordance with Article VIII, Section 1 of the city charter, because Wright gave it to the mayor’s assistant. We disagree. It is clear from the record that either the mayor’s assistant or somebody else on behalf of the city gave the petition to the clerk of council; indeed, the clerk must have received the petition because the clerk submitted the part-petitions to the board of elections for signature verification and verified to the city council that a sufficient number of valid signatures had been obtained to place the initiative ordinance on the ballot. Sommers has failed to show that the petition was not submitted to the clerk. *See Webster’s Third New International Dictionary* (2002) (defining “submit” as “to present or make available for use or study”).

ii. The clerk of council’s sufficiency determination

{¶ 49} The city charter requires that when an initiative petition is submitted to the clerk of council, “the Clerk shall forthwith determine the sufficiency of the petition and if found sufficient, the Council shall at once have the proposed ordinance or resolution read and referred to an appropriate committee which may be a committee of the whole.” Mayfield Heights Charter, art. VIII, § 1. Sommers argues that the clerk did not determine whether the initiative petition was sufficient.

{¶ 50} The city council passed a resolution with a whereas clause stating that “[t]he Clerk of Council has verified that the petitioners have obtained a sufficient number of valid signatures to place [the initiative ordinance] on the November 3, 2026, ballot and that the Charter requires said ordinance to be sent to the Board of Elections for said purpose.” Sommers argues that the clerk’s sufficiency determination required more than just determining whether the number of signatures was sufficient, but it does not specify what else it believes the clerk was required to determine or why it believes the city council’s description of the clerk’s actions was insufficient. Regardless, Sommers points to no affidavit or other evidence stating that the clerk failed to determine that the petition was sufficient, instead arguing that “the record reflects no such determination by the clerk.” But “[u]nder the ‘presumption of regularity,’ in the absence of evidence to the contrary, [we] will presume that public officers have properly performed their duties and acted lawfully.” *State ex rel. Hicks v. Clermont Cty. Bd. of Commrs.*, 2022-Ohio-4237, ¶ 21. It is Sommers’s duty to show by clear and convincing evidence its entitlement to a writ of prohibition, *see State ex rel. Federle v. Warren Cty. Bd. of Elections*, 2019-Ohio-849, ¶ 10, and Sommers has not shown that the clerk failed to perform a required duty.

{¶ 51} In sum, we reject Sommers’s argument that the petition committee or the city council did not follow the city charter’s required procedure for placing an initiative ordinance on the ballot.

4. Deadline for certification to the board of elections

{¶ 52} Sommers next argues that the initiative ordinance should be removed from the ballot because the city council certified the ordinance to the board of elections after the statutory deadline for certification of issues to the ballot. This argument arises from differences between the Revised Code and the Mayfield Heights Charter regarding when an issue may be submitted to the ballot. We hold

that the board of elections did not abuse its discretion or clearly disregard applicable law in placing the initiative ordinance on the ballot.

{¶ 53} The petition committee submitted its supplemental initiative petition to the clerk of council on September 2, 2026—62 days before the November 3, 2026 general election. The supplemental petition stated that petitioners sought placement of the initiative ordinance on the November 3 general-election ballot. The city council certified the initiative petition to the board of elections on September 9—55 days before the election. According to an affidavit submitted by the deputy director of the board of elections, the city council submitted the initiative petition to the board of elections with sufficient time for the board to place the initiative ordinance on absentee ballots.

{¶ 54} The city charter provides that a supplemental initiative petition may contain the date of the election, “not less than sixty (60) days from the time of filing [the] supplemental petition,” at which the initiative ordinance will be placed on the ballot. Mayfield Heights Charter, art. VIII, § 1. The city council must submit the initiative ordinance to a vote of the electors “at the date so fixed” in the petition. *Id.* In contrast, R.C. 3501.02(F)(1) requires that an issue be certified to a board of elections no later than 90 days before an election. In full, R.C. 3501.02(F)(1) states:

Notwithstanding any provision of the Revised Code to the contrary, any question or issue, except a candidacy, to be voted upon at an election shall be certified, for placement upon the ballot, to the board of elections not later than four p.m. of the ninetieth day before the day of the election.

{¶ 55} Sommers argues that the 90-day deadline in R.C. 3501.02(F)(1) controls and that because the city council did not certify the initiative petition to the

board of elections until 55 days before the election, the board was required to refuse to place the initiative ordinance on the ballot. In contrast, the board and the petition committee argue that the city charter controls, and because the petition committee submitted the supplemental initiative petition to the clerk of council not less than 60 days before the election, the initiative ordinance may be lawfully placed on the ballot.

{¶ 56} As an initial matter, Sommers argues that the city-charter provision and R.C. 3501.02(F)(1) do not actually conflict. It notes that Article VIII, Section 1 of the city charter does not mention when the board of elections “must receive certification” and argues that the city council could submit the initiative ordinance for placement on the ballot at a later election. That approach would not comply with the language of the city charter. If the supplemental initiative petition contains the date of the election and that election is not less than 60 days from the filing of the supplemental petition, the city council “shall thereupon provide for submitting such ordinance . . . to the vote of the electors at the date so fixed.” Mayfield Heights Charter, art. VIII, § 1. Only if the supplemental petition does not contain the date of such an election may the city council submit the initiative ordinance for a vote at a later election. *Id.*

{¶ 57} No party points to any case that has addressed the question whether the Revised Code or a municipal charter controls when there is a conflict between R.C. 3501.02(F) and a municipal charter as to the deadline for placement of an issue on the ballot. We find, however, that the board of elections did not abuse its discretion or clearly disregard applicable law in placing the initiative ordinance on the ballot and denying Sommers’s protest.

{¶ 58} To begin, R.C. 3501.02(F)(1) does not by its terms clearly apply to issues submitted to a board of elections by a charter municipality. As the board points out, R.C. 3501.02(F)(1) states that “[n]otwithstanding any provision of the Revised Code to the contrary,” an issue shall not be certified later than 90 days

before an election. The Revised Code, however, is not a municipal charter. In several other statutes that relate to municipalities and contain a “notwithstanding” clause, the legislature has specified that the clause encompasses municipal-charter provisions. *See, e.g.*, R.C. 109.77(B)(1)(a) (prohibiting municipal appointment of certain persons as peace officers “[n]otwithstanding any general, special, or local law or charter to the contrary”); R.C. 133.22(E) (statute concerning the interest rates political subdivisions may charge on securities stating “notwithstanding any statutory or charter limitation”); R.C. 715.70(G) (membership on the board of directors of a joint economic-development district shall not disqualify a person from government office “notwithstanding any law or charter provision to the contrary”). And R.C. 3501.02(F) does not use the broader language “notwithstanding any *law*” that some other statutes related to municipalities use (emphasis added), *e.g.*, R.C. 167.07(C) (membership on a regional council of governments shall not disqualify a person from government office “notwithstanding any law to the contrary”).

{¶ 59} A different division of R.C. 3501.02—R.C. 3501.02(E)—states that “[n]o special election shall be held on a day other than the day of a general election, unless a law or charter provides otherwise, regarding the submission of a question or issue to the voters of a county, township, city, village, or school district.” Sommers argues that the language in this division shows that the legislature knows how to include a charter provision in R.C. 3501.02 if it so wishes. This argument carries some persuasive weight, but it does not carry the day.

{¶ 60} Moreover, a long line of cases interpreting a municipality’s home-rule authority under Article XVIII, Section 3 of the Ohio Constitution have opined that that authority includes the method of holding municipal elections. *See, e.g.*, *State ex rel. Pennington v. Bivens*, 2021-Ohio-3134, ¶ 11; *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 347 (1913) (“It is clear upon reason and authority that municipal elections are and should be regarded as affairs relating to the municipality itself

and, in the absence of fundamental limitations prohibiting, are things that may be provided for by the local government.”). Perhaps most relevant here, in *State ex. rel. Stanley v. Bernon*, 127 Ohio St. 204 (1933), we addressed a discrepancy between the General Code’s deadline for the submission of nominating petitions to a board of elections and a city charter’s deadline for submission of nominating petitions. The General Code required that nominating petitions be submitted no later than 60 days before the election while the Cleveland Heights Charter required that the petitions be submitted no later than 40 days before the election. We held that the 40-day deadline in the city charter controlled. *See id.* at paragraph four of the syllabus. Although *Stanley* involved nominating petitions rather than initiative petitions, similar logic applies to charter provisions concerning initiative petitions.

{¶ 61} Given the language of R.C. 3501.02(F), our precedent regarding a municipality’s home-rule authority related to elections, and the timing of the city council’s certification of the initiative petition to the board of elections, the board did not abuse its discretion or clearly disregard applicable law in placing the initiative ordinance on the ballot and denying Sommers’s protest, despite the certification deadline set forth in R.C. 3501.02(F)(1).

{¶ 62} In sum, we deny Sommers’s request for a writ of prohibition. Sommers has not shown that the board of elections abused its discretion or clearly disregarded applicable law in placing the initiative ordinance on the ballot and denying Sommers’s protest.

C. Mandamus

{¶ 63} As an alternative to a writ of prohibition, Sommers seeks a writ of mandamus ordering the board of elections to grant its protest and remove the initiative ordinance from the ballot. In certain cases, we have held that we have jurisdiction in mandamus to order a board of elections to sustain a proper statutory protest and remove an issue from the ballot. *See, e.g., State ex rel. Thomas v. Wood Cty. Bd. of Elections*, 2024-Ohio-379, ¶ 25. Sommers’s arguments in support of a

writ of mandamus are substantively the same as its arguments in support of a writ of prohibition. As such, we reject them and deny the writ. *See M/I Homes of Cincinnati*, 2025-Ohio-4362, at ¶ 40 (when a party “treats the mandamus analysis as duplicative of the prohibition analysis,” we may summarily deny relief in mandamus when we deny relief in prohibition).

III. CONCLUSION

{¶ 64} Sommers has not shown that the Cuyahoga County Board of Elections abused its discretion or clearly disregarded applicable law in placing the initiative ordinance on the ballot and denying Sommers’s protest. Therefore, Sommers is not entitled to its requested writs, and we deny both the writ of prohibition and the writ of mandamus.

Writs denied.

Kohrman Jackson & Krantz, L.L.P., Jon J. Pinney, Nathan F. Studeny, David M. Ebersole, Thomas J. Hunt, and Josephine F. Forney, for relator.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Mark R. Musson, Assistant Prosecuting Attorney, for respondent.

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