

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Avon Lake Commt. for the Citizens & Electors Right to Vote on City Income Tax Increases v. Gracia*, Slip Opinion No. 2026-Ohio-4262.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2026-OHIO-4262

**THE STATE EX REL. CITY OF AVON LAKE, OHIO COMMITTEE FOR THE
CITIZENS AND ELECTORS RIGHT TO VOTE ON CITY INCOME TAX INCREASES
ET AL. v. GRACIA, DIR., 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 Citizens & Electors
Right to Vote on City Income Tax Increases v. Gracia*, Slip Opinion No.
2026-Ohio-4262.]**

*Mandamus—Elections—Board of elections did not abuse its discretion or clearly
disregard applicable law by not placing proposed amendment to municipal
charter on November 3, 2026 general-election ballot, because November 3
general election will not occur within 60 to 120 days after passage of
ordinance providing for submission of proposed amendment to electors, as
required by Article XVIII, Section 8 of Ohio Constitution—Relators were
not prevailing parties and therefore not entitled to attorney fees—Writ and
relators’ request for attorney fees denied.*

(No. 2026-1358—Submitted October 23, 2026—Decided October 28, 2026.)

SUPREME COURT OF OHIO

IN MANDAMUS.

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

Per Curiam.

{¶ 1} In this expedited election case, relators, the City of Avon Lake, Ohio Committee for the Citizens and Electors Right to Vote on City Income Tax Increases (“the committee”); committee members William Zimmerman and Melissa Seljan; and Ohio Citizens for Honesty, Integrity, and Openness in Government, Ltd., request a writ of mandamus ordering respondents, the Lorain County Board of Elections, its director, and its individual members¹ (collectively, “the board”), to place on the November 3, 2026 general-election ballot a proposed amendment to the City of Avon Lake’s municipal charter. On September 28, 2026, the Avon Lake City Council passed an ordinance submitting the proposed amendment “to the electors at the election to be held on *November 5, 2026*.” (Emphasis added.) The city council transmitted the ordinance to the board on October 2, but the board did not place the proposed amendment on the November 3 general-election ballot. Relators seek a writ of mandamus compelling the board to do so, as well as an award of attorney fees. Additionally, relators have filed a motion requesting approval of a cash deposit as security for court costs, the board has filed a motion to dismiss for want of prosecution and a motion for sanctions, and relators have filed a motion to strike the board’s motion to dismiss.

{¶ 2} We deny relators’ motion to strike and the board’s motion to dismiss, and we grant relators’ motion to approve a cash deposit as security for court costs.

1. The complaint names as respondents the board’s director, Lisette Gracia, as well as its president, Marilyn Jacobcik, and members Michael Witte, Inez James, and Anthony Giardini.

Because relators have not shown that they have a clear legal right to placement of the proposed charter amendment on the November 3 general-election ballot, we deny the writ. We also deny relators' request for attorney fees and deny the board's motion for sanctions.

I. FACTS AND PROCEDURAL HISTORY

{¶ 3} Avon Lake is a chartered municipality. *See* Avon Lake Charter, Preamble. The charter amendment proposed by relators would add Section 69(C) to Chapter XIII of the Avon Lake Charter. Among other things, the proposed amendment would repeal an existing city ordinance prescribing the percentage of the city-income-tax resident credit and restore the percentage to 1.5 percent. On September 1, 2026, Gerald W. Phillips, the committee's chairperson and relators' counsel in this case, filed with city officials the proposed charter amendment petition, consisting of 26 part-petitions containing a total of 614 signatures. The city transmitted the petition to the board, which determined that the part-petitions contained a sufficient number of valid signatures and then returned the petition to the city.

{¶ 4} On September 3, the city council convened a special meeting to consider Ordinance No. 26-83, an ordinance submitting the proposed charter amendment to the electors. Avon Lake Cod.Ord. 220.17(a) provides that "[n]o ordinance or resolution shall be passed until it has been read on three different meetings of Council, unless [the] rule is suspended by a two-thirds vote of members of Council." Relators allege in their complaint that the city council voted on a motion to suspend the three-readings rule for purposes of Ordinance No. 26-83 but that the motion failed. Thus, the first reading of Ordinance No. 26-83 occurred on September 3. The second and third readings occurred at the city council's regular meetings on September 14 and 28. On September 28, after the third reading, the city council passed and enacted Ordinance No. 26-83.

{¶ 5} As enacted, Ordinance No. 26-83 provides:

Council submits the petition for the proposed amendment to the City Charter of Avon Lake, Ohio, pursuant to the Ohio Constitution, to the electors at the election to be held on November 5, 2026.

The city council submitted a certified copy of Ordinance No. 26-83 to the board on October 2. However, the board did not place the proposed amendment on the November 3 general-election ballot.

{¶ 6} Relators filed a verified complaint on October 6, seeking a writ of mandamus compelling the board to place the proposed charter amendment on the November 3 general-election ballot, as well as an award of attorney fees. Relators also filed an unopposed motion requesting approval of a cash deposit as security for court costs. In accordance with this court’s scheduling order, *see* 2026-Ohio-3947, the board filed an answer on October 9. On October 13, relators filed a merit brief and evidence. The board subsequently filed a motion to dismiss for want of prosecution, a merit brief, and a motion for sanctions but did not file evidence. Relators filed a reply brief and, after merit briefing concluded, a motion to strike the board’s motion to dismiss.

II. ANALYSIS

A. The board’s motion to dismiss and relators’ motion to strike

{¶ 7} On October 13, the board filed a motion to dismiss, contending that we should dismiss this action under S.Ct.Prac.R. 12.07(B)(1). Relators did not file a response to the motion. Instead, on October 23, relators filed a motion to strike the board’s motion to dismiss under Civ.R. 12(F). We deny both motions.

1. Relators’ motion to strike

{¶ 8} Relators assert that the board’s motion to dismiss “has no basis in law,” and they request that we strike it under Civ.R. 12(F). That rule, however, applies only to motions to strike material contained in *pleadings*. Civ.R. 12(F) (“the

court may order stricken *from any pleading* any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter” [emphasis added]). A motion to dismiss is not a pleading. *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.”). We therefore deny relators’ motion to strike. *See State ex rel. Avon Lake Commt. for the Election of the Law Dir. v. Rosmarin*, 2026-Ohio-3948, ¶ 15 (denying Civ.R. 12(F) motion to strike material contained in the respondents’ merit brief because “[a] merit brief is not a pleading”).

2. *The board’s motion to dismiss*

{¶ 9} S.Ct.Prac.R. 12.07(B)(1) provides that “[i]f the relator fails to file a merit brief within the time provided by these rules or as ordered by the Supreme Court, the original action shall be dismissed for want of prosecution.” The board argues that relators’ merit brief was due on October 12 and that because relators did not file their merit brief until October 13, S.Ct.Prac.R. 12.07(B)(1) requires dismissal. Because October 12 was a legal holiday, the board is wrong.

{¶ 10} Our scheduling order in this case required that the board file its answer by 4:00 p.m. on October 9 and provided that “[a]ll remaining deadlines . . . shall proceed in accordance with Rule 12.08, with the exception that all documents shall be filed no later than 4:00 p.m. on the date the filing is due.” 2026-Ohio-3947. The board filed its answer on October 9, which was a Friday; thus, relators’ merit brief ordinarily would have been due no later than Monday, October 12. *See* S.Ct.Prac.R. 12.08(A)(2)(a) (a relator in an expedited election case must file a merit brief “within three days after the filing of the answer”). However, under S.Ct.Prac.R. 3.03(A)(1), when the last day of a “period of time prescribed or allowed by these rules or by an order of the Supreme Court” falls on a “Saturday, Sunday, or legal holiday, the period runs until 11:59:59 p.m. . . . on the next day that is not a Saturday, Sunday, or legal holiday.”

{¶ 11} Monday, October 12 was recognized by the State of Ohio as a legal holiday—Columbus Day. *See State Holidays*, <https://ohio.gov/government/resources/state-holidays/> (recognizing the “second Monday in October” as Columbus Day) (accessed Oct. 23, 2026) [<https://perma.cc/L4DG-SC9U>]. Because relators’ merit brief would have been due on a legal holiday, S.Ct.Prac.R. 3.03(A)(1) operated to extend their time to file that brief until Tuesday, October 13. *See* Supreme Court of Ohio, *How Court Holidays Affect Filing Deadlines*, <https://www.supremecourt.ohio.gov/opinions-cases/office/holiday-filing-rule/> (stating that “because Columbus Day is a legal holiday, any documents that are due to be filed that day may be filed the following day”) (accessed Oct. 23, 2026) [<https://perma.cc/5B67-EV5Z>]. Relators filed their merit brief before 4:00 p.m. on October 13; thus, it was timely. We therefore deny the board’s motion to dismiss.

B. Mandamus

{¶ 12} Relators seek a writ of mandamus ordering the board to place the proposed charter amendment on the November 3 general-election ballot. To be entitled to the writ, relators must establish by clear and convincing evidence that (1) they have a clear legal right to the relief requested, (2) the board has a clear legal duty to provide that relief, and (3) they lack an adequate remedy in the ordinary course of the law. *See State ex rel. Tjaden v. Geauga Cty. Bd. of Elections*, 2024-Ohio-3396, ¶ 21. Because of the proximity of the upcoming election, relators lack an adequate remedy in the ordinary course of the law, *see id.* at ¶ 22, and the board does not argue otherwise. In determining whether relators have established the remaining two elements of mandamus, we consider whether the board engaged in fraud, corruption, or abuse of discretion or acted in clear disregard of applicable law. *See id.* at ¶ 23, citing *State ex rel. Allen v. Warren Cty. Bd. of Elections*, 2007-Ohio-4752, ¶ 9.

{¶ 13} 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. Ohio Const., art. XVIII, § 9 (“The submission of proposed amendments to the electors shall be governed by the requirements of section 8 . . .”).

{¶ 14} Under Article XVIII, Section 8, the municipal legislative authority “shall forthwith . . . provide by ordinance for the submission” of the proposed charter amendment “to the electors.” “The ordinance providing for the submission” of the proposed charter amendment “shall require that it be submitted 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 its passage.” Ohio Const., art. XVIII, § 8. If no regular municipal election is scheduled within that time, the ordinance “shall provide for the submission of” the proposed charter amendment “at a special election to be called and held within” the same 60- to 120-day period. *Id.*

{¶ 15} Relators argue in their merit brief that a board of elections’ duty in placing a proposed charter amendment on the ballot is “clear” and “ministerial.” Their argument begins on solid legal footing. An act is ““ministerial”” when it must be performed ““in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority.”” *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 618 (1902), quoting *Flournoy v. Jeffersonville*, 17 Ind. 169, 174 (1861). And we have stated that once a municipal legislative authority “passes an ordinance placing [a] proposed charter amendment on the ballot, the duty of the board is to simply add the proposed charter amendment to the ballot.” *Maxcy* at ¶ 19. In this part of the process, the ““board of elections has nothing but a ministerial role under the Constitution.”” *Id.*, quoting *State ex rel. Semik v. Cuyahoga Cty. Bd. of Elections*, 1993-Ohio-36, ¶ 9.

{¶ 16} But even if the board’s duty in this regard is ministerial, relators still must establish by clear and convincing evidence their clear legal right to the relief sought. *See Tjaden*, 2024-Ohio-3396, at ¶ 21; *compare State ex rel. Fenske v. McGovern*, 11 Ohio St.3d 129 (1984), paragraph three of the syllabus (“The ministerial act of making payment of money due a public employee may be compelled by mandamus *where the public employee has a clear legal right to payment of the compensation . . .*” [Emphasis added.]). Relators cannot make that showing here, because the right asserted—placement of the proposed charter amendment on the November 3 general-election ballot—is contrary to Article XVIII, Section 8 of the Ohio Constitution. *See Switzer v. State ex rel. Silvey*, 103 Ohio St. 306, 314 (1921) (“the constitutional provisions relating to amendments to the municipal . . . charters . . . are not only mandatory, but they are also exclusive; that is, they are controlling as against any statutory enactment or departure therefrom”).

{¶ 17} Ordinance No. 26-83 was passed on September 28, 2026. As the board correctly notes in its merit brief, no regular municipal election was scheduled to occur within 60 to 120 days after September 28, 2026. *See* R.C. 3501.01(B) (“‘Regular municipal election’ means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.”). Thus, under Article XVIII, Section 8, the earliest date on which the proposed charter amendment could have been submitted to the electors was at a special election at least 60 days after passage of the ordinance. *See* Ohio Const., art. XVIII, § 8. But Ordinance No. 26-83 called for the proposed charter amendment to be submitted to the electors at “the election to be held on November 5, 2026”—i.e., an election fewer than 60 days after passage of the ordinance.² In purporting to submit the proposed charter

2. Relators repeatedly represent that Ordinance No. 26-83 “expressly demands that the charter amendment be submitted . . . for placement on the November 3, 2026, General Election [ballot].” This representation does not square with relators’ evidence, which includes a certified copy of the

amendment to the electors at an election fewer than 60 days after passage of the ordinance, Ordinance No. 26-83 did not comply with Article XVIII, Section 8 of the Ohio Constitution. Therefore, the board argues relators lack a clear legal right to the relief they seek.

{¶ 18} Relators’ response to this is, essentially, that the city council *should have* passed and enacted Ordinance No. 26-83 on September 3, 2026, when it was first introduced. Had it done so, relators imply, the November 3 general election would have been within the 60- to 120-day period authorized by the Ohio Constitution. Relators contend that it was an “abuse of discretion” by the city council to wait to pass Ordinance No. 26-83 until after the ordinance had received three readings.

{¶ 19} In support, relators cite cases in which this court issued a writ of mandamus compelling a municipal legislative authority to pass an ordinance submitting a proposed charter amendment for placement on the ballot at a regularly scheduled election in an even-numbered year (i.e., at a “regular state election,” *see* R.C. 3501.01(C)), despite the plain language of Article XVIII, Section 8. *See, e.g., State ex rel. Commt. for the Charter Amendment, City Trash Collection v. Westlake*, 2002-Ohio-5302, ¶ 42; *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53 (1991). In those cases, this court held that when a municipal legislative authority has the opportunity to pass an ordinance submitting a proposed charter amendment for a regularly scheduled election in an even-numbered year—i.e., on a state-election ballot, rather than municipal-election ballot—but for unlawful or otherwise unjustifiable reasons fails to do so, then mandamus will lie to compel the municipal legislative authority to submit the issue for placement on

ordinance as transmitted to the board on October 2. That copy shows that Ordinance No. 26-83 called for submission of the proposed charter amendment to the electors “at the election to be held on November 5, 2026.” The parties do not attempt to reconcile the discrepancy in dates in their respective briefs. But in any event, this discrepancy is immaterial: an election on either November 3 or 5 would be outside the 60- to 120-day time frame required by Article XVIII, Section 8.

the regular state general-election ballot instead of at a later special election. *Sydnor* at 53-54; *Westlake* at ¶ 42.

{¶ 20} As an initial matter, these authorities contrast with the language of Article XVIII, Section 8, which expressly provides that if no regular municipal election is scheduled within 60 to 120 days after passage of the ordinance, the issue “shall” be submitted “at a special election to be called and held within” the same 60- to 120-day period. Indeed, more recently, we have emphasized the timing requirements of Article XVIII, Section 8, rather than relying on the reasoning of *Westlake* and *Sydnor*. See, e.g., *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, ¶ 34 (“Although the city commission *could* have submitted the proposed amendment to the electors at the November 8 general election, . . . there is nothing in Article XVIII, Section 8 of the Ohio Constitution or Section 82 of the Sandusky Charter that *required* the commission to do so.” [Emphasis in original.]); *State ex rel. Blankenship v. Trenton City Council*, 2026-Ohio-3406, ¶ 28 (granting writ of mandamus ordering city council to pass an ordinance submitting the proposed charter amendment “at a special election within the time parameters stated in Article XVIII, Section 8 of the Ohio Constitution”).

{¶ 21} But in any event, the circumstances presented by *Westlake* and *Sydnor* are distinguishable from the present action. Those cases centered on the duties of the municipal legislative authority—the entity enjoined by the Constitution to pass an ordinance submitting a proposed charter amendment in the first instance, see Ohio Const., art. XVIII, § 8—and the relief ordered in those cases was consequently directed against those municipal legislative authorities. The board of elections, not the city council, is the named respondent in this action. We therefore express no opinion on the underlying issue of whether the city council could have passed Ordinance No. 26-83 after its first reading on September 3; the evidence in this case establishes that it did not pass it on that date.

{¶ 22} At bottom, relators appear to assert that their clear legal right to have the proposed charter amendment placed on the November 3 general-election ballot flows from Ordinance No. 26-83 itself, notwithstanding the language of Article XVIII, Section 8 of the Ohio Constitution. But this position does not withstand the general principle that the requirements of the Constitution must prevail. *See State ex rel. Hinchliffe v. Gibbons*, 116 Ohio St. 390, 395 (1927) (“The paramount authority must prevail over the subordinate authority.”); *Billington v. Cotner*, 25 Ohio St.2d 140, 146 (1971) (explaining that the constitutional requirements regarding “submission of a charter amendment to electors . . . are clear and complete, and are not to be added to or subtracted from”). Thus, relators have not, under Article XVIII, Section 8, established by clear and convincing evidence that they have a clear legal right to the relief they request. *See State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18, quoting *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166 (1977) (“Mandamus is an extraordinary remedy ‘to be issued with great caution and discretion and only when the way is clear.’”). We therefore deny the writ.

C. Attorney fees

{¶ 23} Relators ask for attorney fees under a variety of theories, but primarily as recovery for a successful taxpayers’ action under R.C. 733.59. To facilitate their request for attorney fees, relators have 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 such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.”). We grant the motion seeking approval of a cash deposit.

{¶ 24} 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 reasonable attorney fees “if judgment is finally ordered

in his favor”); *Sanduskians*, 2022-Ohio-3362, at ¶ 36 (“R.C. 733.61 allows a court, in its discretion, to award reasonable attorney fees to a *successful taxpayer*.” [Emphasis added.]). Nor are relators entitled to an award of attorney fees as losing parties under any other theory they raised, including recovery under the taxpayer’s-suit provision of R.C. 309.13, under the common law, under the common-fund doctrine, or for alleged bad faith on the part of the board. *See* R.C. 309.13 (authorizing a court to award “reasonable compensation” to a taxpayer’s attorney “[i]f . . . judgment is ordered in [the taxpayer’s] favor”); *Billington v. Cotner*, 37 Ohio St.2d 17 (1974), at 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).

D. The board’s motion for sanctions

{¶ 25} The board has filed a motion requesting that we sanction relators and their counsel under S.Ct.Prac.R. 4.03(A) by awarding the board its reasonable attorney fees. The board contends that relators’ complaint is frivolous because it “ought to have been clear” after our dismissal of *State ex rel. Avon Lake Comm. for the Citizens & Electors Right to Vote on City Income Tax Increases v. Rosmarin*, 2026-Ohio-3905, that relators are not entitled to placement of the proposed charter amendment on the November 3 general-election ballot. The board argues that relators seek in this case—based on similar arguments and allegations—essentially the same relief that they requested in *Rosmarin*. Relators oppose the motion, arguing that placement of a proposed charter amendment on the November 3 general-election ballot is a two-step process and that the relief they sought in *Rosmarin* represented only the first step.

{¶ 26} Since its amendment effective April 1, 2025, S.Ct.Prac.R. 4.03(A) applies to “filing[s]” in this court. *See* 177 Ohio St.3d LXXXVII, CIX; *Gordon v. Smith*, 2025-Ohio-4768, ¶ 8, fn. 1 (“As of April 1, 2025, S.Ct.Prac.R. 4.03(A) applies to a ‘filing’ rather than to an ‘appeal or other action.’”). Under that rule, if we “determine[] that a filing is frivolous or is prosecuted for delay, harassment, or any other improper purpose,” we “may sanction the person who signed or submitted the filing,” the represented party, or both. S.Ct.Prac.R. 4.03(A). “A filing is frivolous if it is not reasonably grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” *Id.*

{¶ 27} It is true that this case shares much of its factual basis with *Rosmarin* and that relators have raised similar arguments and cited many of the same legal authorities in this case as they did in their filings in *Rosmarin*. However, relators’ claim for relief in this case is distinguishable from the relief they requested in *Rosmarin*; they also named different respondents in this case. In *Rosmarin*, relators sought a writ of mandamus compelling *the Avon Lake City Council* to “forthwith enact and pass” an ordinance submitting to the Lorain County Board of Elections the same proposed charter amendment that is at issue here for placement on the November 3 general-election ballot. By contrast, in this case, they seek a writ of mandamus compelling *the board of elections* to place the proposed charter amendment on the November 3 general-election ballot.

{¶ 28} The relief that relators sought in *Rosmarin*—i.e., a writ of mandamus compelling the city council to pass an ordinance submitting the proposed charter amendment for placement on the ballot—was a necessary prerequisite to their request for relief against the board here. *See Maxcy*, 2018-Ohio-4035, at ¶ 1, 24 (denying writ of mandamus seeking to compel board of elections to place proposed charter amendment on ballot because city council had not passed ordinance submitting proposed charter amendment for placement on ballot). And, in

dismissing relators' request for a writ against the city council as moot in *Rosmarin*, we did not address relators' entitlement to have the board place the proposed charter amendment on the November 3 general-election ballot. *See Rosmarin*, 2026-Ohio-3905.

{¶ 29} In sum, although we deny relators' request for a writ in this case for the reasons explained above, the fact that we dismissed *Rosmarin* as moot does not render this case frivolous under S.Ct.Prac.R. 4.03(A). We therefore deny the board's motion for sanctions.

III. CONCLUSION

{¶ 30} For the foregoing reasons, we deny relators' motion to strike the board's motion to dismiss, and we deny the board's motion to dismiss. We also 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. Finally, we deny the board's motion for sanctions.

Writ denied.

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

Anthony Cillo, Lorain County Prosecuting Attorney, and Leigh S. Prugh,
Assistant Prosecuting Attorney, for respondents.
