[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 and Electors Right to Vote on City Income Tax Increases v. Gracia*, Slip Opinion No. 2026-Ohio-4350.]

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-4350

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 and Electors Right to Vote on City Income Tax Increases v. Gracia*, Slip Opinion No. 2026-Ohio-4350.]

Mandamus—Elections—Claims of relator association that did not establish that it was composed of local electors dismissed for lack of standing—Board of elections and secretary of state did not abuse their discretion or disregard applicable law by approving municipal-income-tax-levy ballot language that complied with R.C. 718.04(C)(2)—Cause dismissed in part and writ denied—Relators' request for attorney fees denied.

(No. 2026-1371—Submitted October 29, 2026—Decided November 2, 2026.)

IN MANDAMUS.

The per curiam opinion below was joined by KENNEDY, C.J., and FISCHER, BRUNNER, and SHANAHAN, JJ. DEWINE, J., concurred in judgment only and would dismiss the case for lack of standing for the reasons set forth in his separate opinion in *State ex rel. Koebel v. Erie Cty. Bd. of Elections*, 2026-Ohio-3999. DETERS, J., concurred in judgment only and would dismiss the complaint for lack of standing. HAWKINS, J., concurred in judgment only, with an opinion.

Per Curiam.

{¶ 1} The Avon Lake City Council has advanced for voter approval at the November 3, 2026 general election a measure known as Issue 16, which, if approved, would increase the city's income tax rate from 1.5 to 1.9 percent. 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. ("Citizens for Honesty"), oppose the municipal-income-tax increase in the absence of an accompanying credit for income tax paid by Avon Lake residents to other municipalities. Relators believe that the ballot language for Issue 16 is misleading because it does not inform Avon Lake voters that, if passed, the allowable credit for taxes paid to other municipalities will not include the increased amount. Relators seek a writ of mandamus ordering respondents, the Lorain County Board of Elections, along with its director, Lisette Gracia, and individual members (collectively, "the board"),[1] and Ohio Secretary of State Frank LaRose, to invalidate Issue 16 and impound the results of the November 3, 2026 election on Issue 16.

{¶ 2} Relators have pleaded this action, in part, as a statutory taxpayers' action under R.C. 309.13 and filed a motion for this court's approval of a $100 cash

1. The individual board members are Marilyn Jacobcik, who is also the board president, and Michael Witte, Inez James, and Anthony Giardini.

deposit as security for costs. Relators also seek recovery of their attorney fees. In addition to opposing relators' requested relief on the merits, the secretary of state and the board of elections have each asserted the doctrine of laches and the secretary also asserts relators' purported lack of standing as defenses. Relators have also filed a motion for leave to file rebuttal evidence, which addresses the secretary's evidence supporting the laches defense.

{¶ 3} We grant relators' motion for leave to file rebuttal evidence but deny relators' motion for approval of their cash deposit as security for costs. We dismiss Citizens for Honesty's claims for lack of standing, deny the remaining relators' request for a writ, and deny relators' request for attorney fees.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Process for Placing Local-Income-Tax Levy on the Ballot

{¶ 4} A municipal corporation may levy an income tax under R.C. Ch. 718. *See* R.C. 718.04(A). Any municipal corporation that levied an income tax greater than 1 percent on or before March 23, 2015, is permitted to continue levying at that rate in accordance with the original ordinance or resolution authorizing the tax. R.C. 718.04(B). Otherwise, "no municipal corporation shall levy a tax on income at a rate in excess of one per cent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election." R.C. 718.04(C)(2). The requirements for placing an income-tax levy in excess of one percent on the ballot are as follows:

> The legislative authority of the municipal corporation shall file with the board of elections at least ninety days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. *The ballot shall be in the*

following form: "Shall the Ordinance providing for a ___ per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?

FOR THE INCOME TAX	
AGAINST THE INCOME TAX	

"

In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

(Emphasis added.) *Id*.

B. Avon Lake's Income Tax and Proposed Increase

{¶ 5} Avon Lake currently levies an annual municipal income tax of 1.5 percent on all income, salaries, qualifying wages, commissions, and other compensation. Avon Lake Cod.Ord. 886.01(a) and (b)(1). The tax is imposed on all income of Avon Lake residents; for nonresidents, the tax is imposed on income "earned or received by the nonresident for work done, services performed or rendered, or activities conducted in [Avon Lake]. Avon Lake Cod.Ord. 886.03(a)(1) and (2). Under current law, an Avon Lake resident who pays income tax to another municipality may claim a credit of up to 1.5 percent against the tax owed to Avon Lake. Avon Lake Cod.Ord. 886.06(a). For example, if an Avon Lake resident works in another city and pays municipal income tax there at a rate of 2 percent, the resident may claim a credit of 1.5 percent against the municipal income tax owed to Avon Lake and, therefore, owe no income tax to Avon Lake for the income earned in the other city.

{¶ 6} On July 13, 2026, the Avon Lake City Council passed Resolution No. 26-70, which called for the submission to the city's electors at the November 3, 2026 general election "the question of the approval of the passage of an ordinance

. . . to provide for the levy of an additional 0.40% income tax, for six years, commencing on January 1, 2027," for the purpose of funding roadway and storm-sewer projects and purchasing vehicles and equipment for the city. Resolution No. 26-70 contains the full text of Ordinance No. 26-69, which is the proposed ordinance amending various sections of the Avon Lake Codified Ordinances relating to income taxation, including the 0.4 percent increase, effective January 1, 2027. Also among the amendments contained in proposed Ordinance No. 26-69 is an amendment to Avon Lake Cod.Ord. 886.06's provisions related to the credit for income taxes paid by Avon Lake residents to other municipalities. If approved by Avon Lake electors, Ordinance No. 26-69 will keep the credit capped at 1.5 percent despite the 0.4 percent increase in income tax. Thus, taking the aforementioned hypothetical Avon Lake resident who works in another city and pays municipal income tax there at a rate of 2 percent, under Ordinance No. 26-69, the resident may still claim a credit of 1.5 percent against the municipal income tax owed to Avon Lake but would owe 0.4 percent to Avon Lake.

{¶ 7} Also included in Resolution No. 26-70 is the language that the city council proposed for use by the board of elections on the November 3, 2026 general-election ballot:

> A majority affirmative vote is necessary for passage.
> Shall the ordinance (Ordinance No. 26-69) providing for an increase in the municipal levy on income from one and one-half percent (1.50%) to one and nine-tenths percent (1.90%), for six years, commencing January 1, 2027, to provide funds for the purpose of paying costs of (i) maintaining, repairing and improving City streets by constructing, reconstructing, widening, grading, draining, curbing, paving and extending streets and related bridges, and (ii)

constructing storm sewers and related drainage improvements, installing traffic signals and signalization, and acquiring vehicles and equipment for City departments and functions, including debt charges on City notes, bonds or other obligations issued for those purposes, be passed?

	FOR THE INCOME TAX
	AGAINST THE INCOME TAX

{¶ 8} The city council directed the clerk of council to file a certified copy of Resolution No. 26-70 with the board of elections. The board received Resolution No. 26-70 from the city on July 17.

C. Ballot Language Approved by the Board of Elections and Secretary of State

{¶ 9} Under R.C. 3501.11(V), a board of elections must approve ballot language for any local question and transmit the language to the secretary of state for the secretary's final approval. The board sent to the secretary for approval the ballot language for Avon Lake's proposed municipal-income-tax increase, which the board designated as Issue 16 for the November 3, 2026 general-election ballot. The ballot language sent to the secretary was virtually identical to the ballot language passed by the city council in Resolution No. 26-70. On August 6, the secretary approved the ballot language as received from the board. Thus, the ballot language for Issue 16, as approved by the board and the secretary for the November 3, 2026 general-election ballot, is identical to the ballot language passed by the city council in Resolution No. 26-70.

{¶ 10} Under R.C. 3511.04(B), ballots for uniformed-services or overseas voters had to be mailed by September 18, 2026, to comply with the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. 20301 et seq. *See State ex rel. Syx v. Stow City Council*, 2020-Ohio-4393, ¶ 8. Further, early in-person voting and regular absentee voting began on October 6, 2026, *see* R.C. 3509.01, 3509.051, and 3503.19. Every overseas-voter ballot, regular-absentee-voter ballot, and early in-person-voter ballot provided to an Avon Lake voter included the approved ballot language for Issue 16.

D. Relators File This Action

{¶ 11} Relators allege that they obtained copies of the ballots for Avon Lake residents for the first time on October 6, when they checked on the mailing of ballots to absentee voters. It was then, say relators, that they discovered the ballot language for Issue 16. Relators contend that the ballot language is "false, misleading, deceptive and argumentative." Elaborating on this contention, relators aver that the ballot language should have included language notifying voters that the Avon Lake residents who pay income taxes to other municipalities would not be able to obtain a credit for the 0.4 percent increase—that is, the ballot should have stated that the allowable credit for income tax paid to other municipalities would remain at 1.5 percent. According to relators' complaint, this is a "material omission" that "renders Issue No. 16 null and void, and invalidates the election on Issue No. 16."

{¶ 12} Relators commenced this expedited election action under S.Ct.Prac.R. 12.08 on October 7. As set out in the complaint's prayer for relief, relators seek a writ of mandamus compelling respondents to "invalidate Issue No. 16, remove Issue No. 16 [from the ballot], and/or impound the results on Issue No. 16." Relators purport to bring this claim as a statutory and common-law taxpayers' action, and they seek to recover their court costs and attorney fees. In support of their statutory taxpayers' action, relators filed with their complaint a motion for this

court to approve their cash deposit as security for costs, *see* R.C. 309.13 ("a taxpayer, upon securing the costs, may bring such suit").

{¶ 13} In their merit brief, relators abandoned their request for a writ ordering respondents to remove Issue 16 from the November 3 general-election ballot. Relators have limited their requested relief to a writ of mandamus ordering the board of elections and secretary of state to (1) invalidate the election on Issue 16 and (2) impound the election results related to Issue 16 and not certify the results. Relators have also filed a motion for leave to file rebuttal evidence, which consists of a rebuttal affidavit from their counsel, Gerald W. Phillips, who is also a member of the committee.

II. ANALYSIS

A. Motion for Leave to File Rebuttal Evidence

{¶ 14} Relators have moved for leave to file an affidavit from Phillips to rebut the secretary of state's evidence relating to the laches defense. Rebuttal evidence "is that given to explain, refute, or disprove new facts introduced into evidence by the adverse party; it becomes relevant only to challenge the evidence offered by the opponent, and its scope is limited by such evidence." *State v. McNeill*, 1998-Ohio-293, ¶ 44. This court has discretion in determining whether to allow rebuttal evidence. *State ex rel. Mobley v. Powers*, 2024-Ohio-104, ¶ 11, citing *McNeill* at ¶ 44.

{¶ 15} We grant relators' motion for leave. Relators' motion is unopposed and the proffered affidavit serves a proper rebuttal purpose.

B. This Is Not A Statutory Taxpayers' Suit

{¶ 16} In Count II of their complaint, relators purport to bring this action as a statutory taxpayers' suit under R.C. 309.13. In furtherance of their supposed taxpayers' action, relators have filed a motion for this court to approve their cash deposit as security for costs. *See id.* We deny the motion.

{¶ 17} Before bringing a taxpayers' suit under R.C. 309.13, a taxpayer must make a written request of the prosecuting attorney to institute a civil action. Relators did not make such a written demand here. Though relators allege that they made the requisite demand on October 6, 2026, in a letter to the Lorain County Prosecuting Attorney, this allegation appears to be false. The letter that relators submitted as evidence of their demand does not relate to the mandamus relief sought in this case. Rather, in their taxpayers' demand letter, relators asked the prosecuting attorney to file a mandamus action related to a different ordinance.

{¶ 18} Because relators have not commenced a proper statutory taxpayers' action under R.C. 309.13, we deny relators' motion to approve their cash deposit as security for costs.

C. Standing

{¶ 19} With relators having not established statutory taxpayer standing, the secretary of state argues that relators' complaint should be dismissed for lack of standing because they have not alleged any particularized injury distinct from that of the public at large. Despite a majority of this court having ruled against virtually identical standing arguments in two recent cases, *see State ex rel. Koebel v. Erie Cty. Bd. of Elections*, 2026-Ohio-3999, and *State ex rel. Derrig v. LaRose*, 2026-Ohio-3989, the secretary suggests that this court should revisit the issue of standing in the context of election cases.

{¶ 20} "Traditional standing principles require litigants to show, at a minimum, that they have suffered '(1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.'" *ProgressOhio.Org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7, quoting *Moore v. Middletown*, 2012-Ohio-3897, ¶ 22. In a mandamus case, "the applicable test is whether relators would be directly benefited or injured by a judgment in the case." *State ex rel. Sinay v. Sodders*, 1997-Ohio-344, ¶ 9. The "injury must be personal—that is, the plaintiff or relator must suffer a particular

harm, not the general harm that may be suffered by the public at large." *State ex rel. Martens v. Findlay*, 2025-Ohio-5589, ¶ 16.

{¶ 21} We have long held in election cases that an elector is a proper relator in mandamus because he is "beneficially interested in the case." *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 12, fn. 1, citing *State v. Brown*, 38 Ohio St. 344, 346-347 (1882), and *State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656, 662 (1892). Indeed, a "long line of cases establish[es] that mandamus is available to enforce public duties, that any duty related to an election is public, and that a citizen has the capacity to sue even if the duty only generally affects him." *State ex rel. Barth v. Hamilton Cty. Bd. of Elections*, 65 Ohio St.3d 219, 221 (1992); *see also Findlay Mun. Court* at ¶ 12, fn. 1 ("Because of this unique injury to their vote, electors satisfy the standing requirement in these cases."). We declined to depart from this line of cases last month in deciding *Koebel* and *Derrig*, and we decline to depart from them now.

{¶ 22} Accordingly, we do not dismiss this action for lack of standing by Zimmerman and Seljan, who are Avon Lake electors, or for lack of standing by the committee, which is composed of electors, taxpayers, and residents of Avon Lake and whose purpose relates to advancing the right of Avon Lake citizens and electors to vote on city-income-tax increases.[2] However, we dismiss the claims of relator Citizens for Honesty for lack of standing. According to relators, Citizens for Honesty is a limited-liability company, that along with other causes, promotes and advocates "honesty, integrity and openness in government." Relators, however, have not established that Citizens for Honesty is an association composed of Avon

2. An association has "standing to bring a lawsuit on behalf of its members when (1) its members would otherwise have standing to sue in their own right, (2) the interests [the association] seeks to protect are germane to [its] purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *State ex rel. Food & Water Watch v. State*, 2018-Ohio-555, ¶ 18.

Lake electors; nor have relators explained how Citizens for Honesty has standing as a nonelector, limited-liability company.

D. Laches

{¶ 23} The board of elections and secretary of state each argue that this court should deny the writ based on the doctrine of laches. Because relators in election cases "must exercise the utmost diligence," laches may bar relief if they fail to act "with the required promptness." *State ex rel. Fuller v. Medina Cty. Bd. of Elections*, 2002-Ohio-5922, ¶ 7. The doctrine of laches will bar relief 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." *State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 11.

{¶ 24} In opposition to the laches defense raised by both the board of elections and the secretary of state, relators argue that the doctrine of laches does not apply to election cases involving a tax levy. For this proposition, relators cite *In re Contest of Election Held on Stark Cty. Issue 6*, in which more than 300 people who had voted in a recent election filed a verified petition contesting the voters' approval of an issue in that election and asking that the election be set aside and the issue deemed rejected. 2012-Ohio-2091, ¶ 5. In that case, we explained that this court has "long held that in cases involving tax levies and bond issues, '"the form of the ballot and all procedural steps are conditions precedent to the validity of the election"'" and, therefore, this court has permitted claims challenging the propriety of tax levies and bond issues *in election-contest cases* without applying laches or estoppel. *Id.* at ¶ 13, quoting *Beck v. Cincinnati*, 162 Ohio St. 473, 476 (1955), quoting the trial-court decision in *Beck*. But this is not an *election-contest* case and relators have not cited an election case brought in mandamus in which this court has held that laches is categorically inapplicable. Moreover, in *Stark Cty. Issue 6*, this court did not hold that laches can never apply in any type of election case

involving a tax levy. *See Smith v. Scioto Cty. Bd. of Elections*, 2009-Ohio-5866, ¶ 13-17 (applying the doctrine of laches to bar an election contest in a case involving a tax-levy issue). We reject relators' assertion that laches can *never* apply in an election case involving a tax levy.

{¶ 25} As to the merits of the laches defense raised by both the board of elections and secretary of state, we agree that relators unreasonably delayed, without valid excuse, in bringing this action. The city council passed Resolution No. 26-70 on July 13, 2026, and that resolution included the proposed ballot language for the proposed income-tax ordinance and directed the clerk of council to transmit the proposed ballot language to the board. The evidence shows that relators' counsel (who is also a member of the committee) was present at the July 13 city-council meeting and voiced his opposition to Resolution No. 26-70 because of the perceived reduction in the income-tax credit that would result from the amended income-tax ordinance. Zimmerman was also present at the July 13 city-council meeting. Thus, relators knew of the proposed ballot language on July 13—87 days before they filed this action—and they should have known that the ballot language would be finalized by the board and the secretary shortly thereafter. *See State ex rel. Demaline v. Cuyahoga Cty. Bd. of Elections*, 2000-Ohio-108, ¶ 14. Much shorter delays in election cases have been found unreasonable when considering whether the doctrine of laches applies. *See, e.g.*, *State ex rel. Pinkston v. Delaware Cty. Bd. of Elections*, 2023-Ohio-1060, ¶ 16 (lead opinion) (14-day delay). And relators have shown no justification for their delay here.

{¶ 26} However, when asserting a laches defense in an election case, the respondent must demonstrate that it has been materially prejudiced by the other party's delay. *State ex rel. Pennington v. Bivens*, 2021-Ohio-3134, ¶ 26. And here, the board of elections presents no evidence or argument relating to the element of prejudice in support of their laches defense. By contrast, the secretary of state argues that the relators' delay in this case is prejudicial because ballots have been

printed and sent to overseas and absentee voters and because early voting has already begun. The secretary presents an affidavit from a deputy secretary of state, who avers that the board would be required to send a notice to all recipients of UOCAVA and absentee ballots informing them that Issue 16 has been invalidated and that their votes on the issue would not count. The affidavit also avers that the board would need to create and post signage at all polling locations in Avon Lake, informing voters that Issue No. 16 had been invalidated, a process that would require the board to engage outside vendors. The cost and time that would be associated with these efforts, according to the secretary, would materially prejudice the board.

{¶ 27} As an initial matter, the secretary of state's prejudice argument is lacking because it addresses prejudice to the board of elections and voters, rather than to the secretary. And we recently reaffirmed our position that we "declin[e] to apply laches when this type of prejudice has been raised *by parties other than the board of elections itself*." (Emphasis added.) *Derrig*, 2026-Ohio-3989, at ¶ 20, citing *State ex rel. Halstead v. Jackson*, 2022-Ohio-3205, ¶ 19. The board, however, has submitted no evidence and made no argument with respect to the prejudice prong of a laches defense.

{¶ 28} In any event, the secretary of state's prejudice arguments that it makes on behalf of the board of elections are not persuasive, despite relators' unreasonably long delay in bringing this action. "[C]ases in which laches is dispositive generally involve prejudice to the respondents in their statutory obligation to absentee voters to have absentee ballots printed and ready for use." *State ex rel. Steele v. Morrissey*, 2004-Ohio-4960, ¶ 14. But in this case, ballots have already been printed and mailed; neither the secretary nor the board contends that relators' requested relief would require them to print and mail additional ballots. More importantly, relators have limited their requested relief to postelection remedies, i.e., impounding the ballots and not certifying the election

results for Issue 16. In other words, relators are not requesting that the board or secretary take any action with regard to how they conduct the November 3, 2026 general election. On this record, based on the postelection remedies to which relators now limit their claims, the board and secretary have not established prejudice for purposes of a laches defense.

{¶ 29} This is not to say that laches is inapplicable in all expedited election cases in which only postelection extraordinary relief is requested. *See State ex rel. Newell v. Tuscarawas Cty. Bd. of Elections*, 2001-Ohio-1806, ¶ 18 (rejecting the argument that because relief can be effected postelection, laches should not apply in an expedited election writ case seeking removal of an issue from the ballot). But on the record before us, even though relators failed to act diligently in bringing this action, respondents have not established that they will be prejudiced, for laches purposes, by the post-election relief relators seek.

E. The Ballot Language Is Appropriate

{¶ 30} To obtain a writ of mandamus, relators must establish by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of respondents to provide it, and (3) the lack of an 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 November 3 election is imminent, relators do not have an adequate remedy in the ordinary course of the law. *State ex rel. Schuck v. Columbus*, 2018-Ohio-1428, ¶ 11.

{¶ 31} As to the remaining elements, this court must determine whether the board of elections or secretary of state have engaged in fraud or corruption, abused their discretion, or acted in clear disregard of applicable legal provisions. *State ex rel. Mann v. Delaware Cty. Bd. of Elections*, 2015-Ohio-718, ¶ 13. There is no allegation of fraud or corruption here. Therefore, the relevant inquiry is whether the board or secretary abused their discretion or clearly disregarded applicable legal provisions in approving the ballot language for Issue 16.

{¶ 32} Generally speaking, "[w]hen a local issue qualifies for the ballot, the board of elections may either use the entire text of the proposed [issue] as ballot language or it may prepare and certify a condensed text so long as the text 'properly describe[s]' the issue." (Bracketed text in original.) *State ex rel. Cincinnati for Pension Reform v. Hamilton Cty. Bd. of Elections*, 2013-Ohio-4489, ¶ 22, quoting R.C. 3505.06(E). Ballot language must be "fair, honest, clear and complete" and "no essential part" of the proposed issue may be omitted. *State ex rel. Minus v. Brown*, 30 Ohio St.2d 75, 81 (1972).

{¶ 33} In this case, relators claim that the ballot language for Issue 16 is not a fair, honest, and complete representation of the proposed income-tax increase in Ordinance No. 26-69, because of the "material omission" of the ordinance's provisions relating to the credit for income tax paid to other municipalities. Relators' claim fails, however, because R.C. 718.04(C)(2) is a specific statute that prescribes the ballot language for a municipal-income-tax issue. *See State ex rel. New Carlisle v. Clark Cty. Bd. of Elections*, 2025-Ohio-814, ¶ 15 (describing R.C. 718.04(C)(2) as setting forth what a municipal legislative authority must file with the board of elections and "what will be on the ballot for voter approval").

{¶ 34} R.C. 718.04(C)(2) states: "The ballot *shall* be in the following form: 'Shall the Ordinance providing for a ___ per cent levy on income for (Brief description of the purpose of the proposed levy) be passed?'" (Emphasis added.) Under this statutory provision, neither the board of elections nor the secretary of state are given discretion to depart from the prescribed ballot language. While R.C. 3505.06(E) is a general provision applicable to ballot language for questions or issues when something other than the full text of a measure is used, the more specific provision, R.C. 718.04(C)(2), controls with respect to the required ballot language for a municipal-income-tax issue. *See State ex rel. Belknap v. Lavelle*, 18 Ohio St.3d 180, 182 (1985) ("It is a well-established rule of construction that specific provisions prevail over general provisions."); *State ex rel. Brinda v. Lorain*

Cty. Bd. of Elections, 2007-Ohio-5228, ¶ 21 (to the extent that two arguably applicable election statutes conflicted, the more specific statute controlled). And here, the ballot language for Issue 16 comports with R.C. 718.04(C)(2): it includes the percentage of the levy on income and a brief description of the purpose of the proposed levy. Notably, relators do not cite a case in which we have invalidated ballot language for a municipal-income-tax issue under R.C. 3505.06(E) when the ballot language complied with R.C. 718.04(C)(2).[3]

{¶ 35} Because the Issue 16 ballot language is consistent with R.C. 718.04(C)(2), relators cannot show entitlement to relief in mandamus. The board of elections and secretary of state did not abuse their discretion or disregard applicable law in approving the Issue 16 ballot language.

F. Attorney Fees

{¶ 36} Relators seek recovery of their attorney fees. In their merit brief, they argue for recovery of fees based on two theories: (1) for bringing a statutory taxpayers' action under R.C. 309.13 and (2) for bringing a common-law taxpayers' action. For the reasons stated above, this is not a statutory taxpayers' action; therefore, relators may not recover attorney fees on the first of their two theories. Nor may they recover attorney fees under their second theory, because they are not prevailing parties in a common-law taxpayers' action. *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).

III. CONCLUSION

{¶ 37} We deny relators' motion to approve their cash deposit as security for costs, but we grant relators' motion for leave to file rebuttal evidence. We

3. R.C. 718.04 in its current form was enacted in 2014 and became effective on March 23, 2015. 2014 Sub.H.B. No. 5.

dismiss the claims of relator Citizens for Honesty, Integrity, and Openness in Government, Ltd., for lack of standing. As to the remaining relators, we deny the writ and deny their request for attorney fees.

Cause dismissed in part
and writ denied.

HAWKINS, J., concurring in judgment only.

{¶ 38} I agree that relators[4] are not entitled to a writ of mandamus, though I would dismiss the case for lack of standing for the reasons explained in Justice DeWine's opinions concurring in judgment only in *State ex rel. Koebel v. Erie Cty. Bd. of Elections,* 2026-Ohio-3999, ¶ 85 (DeWine, J., concurring in judgment only), and *State ex rel. Derrig v. LaRose*, 2026-Ohio-3989, ¶ 38 (DeWine, J., concurring in judgment only). I am not writing separately to repeat Justice DeWine's arguments here. Rather, I write separately because the holdings in our elector-standing cases are inconsistent with our current standing doctrine, and I believe we must recognize this inconsistency and resolve it in an appropriate case. My aim here is to show why I believe there is such an inconsistency.

{¶ 39} Because this issue is complicated, I start with a brief overview of the history of standing in mandamus cases, which will help contextualize the present controversy. A number of English decisions in the early 19th century appear to endorse what I will call the "special-injury rule," which requires that a relator in a mandamus action show some injury apart from that suffered by the public in general. For example, in 1807, Lord Ellenborough explained:

4. Relators are the City of Avon Lake, Ohio Committee for the Citizens and Electors Right to Vote on City Income Tax Increases; committee members William Zimmerman and Melissa Seljan; and Ohio Citizens for Honesty, Integrity, and Openness in Government, Ltd.

> There ought in all cases to be a specific legal right, as well as the want of a specific legal remedy, in order to found an application for a mandamus. But here nothing appears to show that [the relator[5]] has any legal right to what he claims, *more than any other of His Majesty's subjects*: therefore, however sorry we may feel for the disappointment of the individual who has consumed his time and substance in a fruitless pursuit, we cannot interfere.

(Emphasis added.) *King v. The Archbishop of Canterbury*, 103 Eng. Rep. 323, 326 (1807). Similarly, in 1831, Lord Tenterden explained that "in all the cases where a mandamus ha[s] been granted, the application ha[s] been limited *by some legitimate and particular object, in which the party had an interest*." (Emphasis added.) *King v. The Master and Wardens of the Merchant Tailors' Co.*, 2 B. & Ad. 115, 124 (1831).

{¶ 40} These English authorities influenced many early American decisions, with one American court saying that the English courts "molded and formed the common law . . . which governs both them and us" on this subject. *People ex rel. Drake v. Univ. of Michigan Regents*, 4 Mich. 98, 103 (1856). Thus, it was common for courts in this country to require a showing of special injury for mandamus to lie. For instance, in 1834, the Supreme Court of Massachusetts said:

> Undoubtedly the general rule is that a private individual can apply for a writ of mandamus only in a case where he has some

5. There is some disagreement, however, as to the significance of *Canterbury*. *See* George Van Cleve, *Congressional Power to Confer Broad Citizen Standing in Environmental Cases*, 29 Environmental Law Review, 10028, 10033, fn. 46 (1999) ("[W]hat [*Canterbury*] actually decided was merely that the writ would not be granted where no one would have a right to the requested relief, because the act sought to be required by mandamus was totally discretionary.").

> private or particular interest to be subserved, or some particular right to be pursued or protected by the aid of this process, *independent of that which he holds in common with the public at large*; and it is for the public officers exclusively to apply, where public rights are to be subserved.

(Emphasis added.) *In re Wellington*, 33 Mass. 87, 105 (1834), citing *Merchant Tailors' Co*. The supreme courts of Maine, Michigan, and Pennsylvania came to similar conclusions. *See Sanger v. Kennebec Cty. Commrs.*, 25 Me. 291, 296 (1845) (virtually identical language to *Wellington*); *Drake* at 103 (agreeing that "to entitle an individual citizen to be heard as a relator and on his own motion, he must show that he has some individual interest in the subject matter of complaint which is not common to all the citizens of the state"); *Pennsylvania RR. Co. v. Canal Commrs*., 21 Pa. 9, 22 (1852).

{¶ 41} Admittedly, however, many English courts appear to have granted mandamus even when the relator had no special interest in the underlying action but sought to enforce public rights and duties, an approach that I will call the "public-rights rule." For example, in *King v. Brown & Two Others*, East 29 Geo. 3 (B.R. 1789), a writ of quo warranto was sought against the officers of a municipal corporation, asserting that they could not hold office because they had not received a religious sacrament within the 12 months before their election as required by an act of parliament. *See King v. Smith*, 3 T.R. 573, 574 fn. b(2) (1790) (citing at length to *Brown & Two Others*). The court in *Brown & Two Others* acknowledged openly that the relator was not a member of the corporation, and yet the writ issued nonetheless. *See Smith* at 574-575. Justice Ashurst observed:

> "Where the application is made merely to disturb the local peace of the corporation, it is right to inquire into the motives of the party, to see how far he is connected with the corporation. But the ground on which this application is made is to enforce a general Act of Parliament, which interests all the corporations in the kingdom."

See Smith at fn. b(2), quoting *Brown & Two Others*. There are many other English cases cited in support of the public-rights rule in writ actions. *See People ex rel. Case v. Collins*, 19 Wend. 56, 65-67 (N.Y.Sup.Ct. 1837) (citing various English cases); *see also* George Van Cleve, *Congressional Power to Confer Broad Citizen Standing in Environmental Cases*, 29 Environmental Law Review, 10028, 10033 (1999) ("[T]he reach of the writ [of mandamus], as described by the English courts, was broad enough to encompass actions brought by a complete stranger."); *id.* at fn. 46 (citing various English cases).

{¶ 42} Against this backdrop, some American courts adopted the public-rights rule. It is unclear when the rule first appeared in this country, but as early as 1845, one state court held that "[i]n a matter of public right, any citizen may prosecute a *mandamus*," *People ex rel. Blacksmith v. Tracy*, 1 Denio 617, 618 (N.Y. Sup.Ct. 1845); *see also Case* at 65 ("In matter of mere public right, . . . the people are the real party.") In fact, by 1875, the United States Supreme Court said, "There is . . . a decided preponderance of American authority in favor of the doctrine, that private persons may move for a *mandamus* to enforce a public duty, not due to the government as such, without the intervention of the government law-officer." *Union Pacific RR. Co. v. Hall*, 91 U.S. 343, 355 (1875).

{¶ 43} It was about that time that this court entered the fray. In what seems to be our first opinion explicitly addressing the issue of standing in mandamus cases, we suggested that the public-rights doctrine was the correct rule of law. *See*

State ex rel. Meyer v. Henderson, 38 Ohio St. 644 (1883). It is useful to quote at length from *Henderson*:

> As regards the degree of interest on the part of the relator, requisite to make him a proper party on whose information the proceedings may be instituted, a distinction is taken between cases where the extraordinary aid of a mandamus is invoked, merely for the purpose of enforcing or protecting a private right, unconnected with the public interest, and those cases where the purpose of the application is the enforcement of a purely public right, where the people at large are the real party in interest, and, while the authorities are somewhat conflicting, yet the decided weight of authority supports the proposition that, where the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject matter, since he is regarded as the real party in interest and his rights must clearly appear. On the other hand, where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party, and the relator need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen, and, as such, interested in the execution of the laws.

Id. at 648-649.[6]

6. We nonetheless refused the writ in *Henderson*, because the relator had no particular interest; thus, the paragraph quoted above is arguably dicta. *See id*. at 649-650 (affirming refusal of the writ because the request "would invest [relator] with no right whatever against the city" and no right of the relator had been "invaded").

{¶ 44} Around the time *Henderson* was decided and for some time after, we applied the public-rights rule. In 1882, we permitted an elector to pursue mandamus and rejected the argument that only the attorney general was the proper party to bring such a case. *State v. Brown*, 38 Ohio St. 344, 346 (1882). We held similarly in 1892. *See State ex rel. Gregg v. Tanzey*, 49 Ohio St. 656, 662 (1892). And in 1902, although we observed that "a majority of the courts which have pronounced opinions on the subject have held that a private relator applying for a mandamus must show a special interest in himself," *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 615 (1902), we nonetheless re-endorsed the public-rights rule, *id*. at 616, citing *Hall*, *Brown*, and *Tanzey*.

{¶ 45} Our application of the public-rights rule continued into the 20th century. *See Brissel v. State ex rel. McCammon*, 87 Ohio St. 154 (1912), paragraph three of the syllabus ("In a proceeding in mandamus, where the relief sought is the enforcement of a public duty by a public officer or board, it is sufficient to sustain the right of the relator to maintain the suit that he show that he is a citizen and as such [is] interested in the execution of the laws."); *see also State ex rel. Newell v. Brown*, 162 Ohio St. 147, 150-151 (1954), citing *Brown*, *Henderson*, *Tanzey*, *Trauger*, and *Brissel*.

{¶ 46} Around the middle of the 20th century, however, we began expressly requiring a special injury for citizen-initiated mandamus actions. For example, in 1955, we stated that "in the absence of injury to the relator in a manner different from that as to the public in general, [a] relator has not such beneficial interest" as to entitle him to mandamus. *State ex rel. Skilton v. Miller*, 164 Ohio St. 163, 169 (1955). *See also State ex rel. Brophy v. Cleveland*, 141 Ohio St. 518 (1943), paragraph one of the syllabus ("Where no legal right of a person can be affected by the failure of public officials to act in any given matter, he has no such beneficial interest as will permit him to maintain an action in mandamus against them to

require official action in such matter."); *State ex rel. Latta v. White*, 140 Ohio St. 197, 199-200 (1942).

{¶ 47} However, we again applied the public-rights rule in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 1999-Ohio-123, paragraph one of the syllabus ("Where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that the relator is an Ohio citizen and, as such, [is] interested in the execution of the laws of this state."). And finally, the controversy came to a head in 2024, when we expressly overruled *Sheward* and applied the special-injury rule in *State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667, ¶ 3.

{¶ 48} My purpose in presenting this history is to contextualize the issue of elector standing that has arisen in the present case and recently in both *Koebel*, 2026-Ohio-3999, and *Derrig*, 2026-Ohio-3989. *See Koebel* at ¶ 30 (Brunner, J., concurring); *id*. at ¶ 46 (Kennedy, C.J., concurring in part and concurring in judgment only in part); *id*. at ¶ 85 (DeWine, J., concurring in judgment only); *Derrig* at ¶ 38 (DeWine, J., concurring in judgment only). The per curiam opinions in both *Koebel* and *Derrig* cite a footnote in *Martens* for the proposition that "in mandamus cases regarding election matters[,] . . . an elector is a proper relator because he is beneficially interested in the case," and both *Koebel* and *Derrig* cite *Brown* and *Tanzey*. *See Koebel* at ¶ 19; *Derrig* at ¶ 14. The separate opinions in *Koebel* also presented different readings of *Brown* and *Tanzey*, with Justice DeWine arguing that the cases were factually distinguishable, *see Koebel* at ¶ 96-98 (DeWine, J., concurring in judgment only), and Chief Justice Kennedy and Justice Brunner arguing that the cases broadly supported public-rights standing in election cases, *id*. at ¶ 32-33 (Brunner, J., concurring); *id*. at ¶ 49-52 (Kennedy, C.J., concurring in part and concurring in judgment only in part).

{¶ 49} As demonstrated above, *Brown* and *Tanzey* do not lie at the "outer bounds" of our standing doctrine. *See Martens* at fn. 1. Rather, *Brown* and *Tanzey* are public-rights cases that belong on the opposing side of the mandamus-standing controversy from *Martens*. They were respectively decided shortly before and after *Henderson*, 38 Ohio St. 644, a case that rejected the notion that a relator must demonstrate a special injury to have standing in a mandamus case, *see Henderson* at 649. In *Brown*, this court even alluded to the underlying controversy when it rejected the argument that the action in that case "could only [have] be[en] properly instituted upon the relation of the attorney-general." *Brown*, 38 Ohio St. at 346. This, after all, was one of the central divisions between the special-injury and public-rights rules. Under the special-injury rule, it was the role of the government to seek redress for injuries to public rights. *See Wellington*, 33 Mass. at 105. By specifying in *Brown* that not just the attorney general could bring a claim for mandamus, this court implicitly rejected the special-injury rule in favor of the public-rights rule. And we made what was implicit in *Brown* explicit two decades later in *Trauger*, when we said, "The right of a citizen to enforce a public right without the intervention of the attorney general has been established in this state in two cases, viz., *State v. Brown* . . . [and] *State ex rel. v. Tanzey*," *Trauger*, 66 Ohio St. at 616. *Brown* and *Tanzey*, as *Trauger* demonstrates, do not represent some standing exception available only to electors; rather, they represent consistent applications of the public-rights rule by this court.

{¶ 50} In *Martens*, however, this court adopted the special-injury rule that was applied in England and was arguably a part of the common law in this country at one time. In *Martens*, this court held that a "relator must suffer particular harm that is different from some general harm suffered by the public at large" to have standing. *Martens*, 2024-Ohio-5667, at ¶ 12. *Martens* also rejected the public-rights rule, stating that "*Sheward*'s public-right standing [is] contrary to our well-established principles." *Id.* at ¶ 21; *see also id.* at ¶ 14 (describing the rule from

Sheward), citing *Sheward*, 1999-Ohio-123, at ¶ 33, 47; *see generally Sheward* at ¶ 34-35, citing *Brown* at paragraph one of the syllabus, and *Henderson* at 644.

{¶ 51} Therefore, the public-rights rule applied in *Brown* and *Tanzey* and by the majority here is inconsistent with our adoption and application of the special-injury rule in *Martens*. Either a private relator can pursue public rights without showing a special injury or every relator must be required to show an injury different in kind from the public generally. The per curiam opinions in our recent cases have made no attempt to resolve this inconsistency, and no principled reason has been offered to explain why electors—but no other relators—are not required to allege an injury different in kind from the public generally.

{¶ 52} We cannot have it both ways, and it is not enough to cite to a footnote in a case—a footnote that is dicta—to resolve such a conflict within our caselaw. And it is not enough to say that the *Martens* rule is constitutional and the rule applied in *Brown* and *Tanzey* is statutory, and, therefore, there is no conflict. *See Brown*, 38 Ohio St. at 346 (applying former R.S. 6744—now R.C. 2731.02, a statute providing that mandamus may issue only "on the information of the party beneficially interested"). Though "the legislature may confer standing by statute," it may not do so "beyond the traditional bounds of the judicial power." *Voss v. Quicken Loans, L.L.C.*, 2026-Ohio-531, ¶ 13. And regardless, the statutory "beneficially interested" standard was subject to the same public-rights-versus-special-injury debate recounted above. *See Bobbett v. State*, 10 Kan. 9, 15 (1872) (Interpreting text identical to what is now found in R.C. 2731.02 and explaining, "This [statute] evidently refers to an interest peculiar and specific, and not one common and general. All citizens are in a certain sense interested in the proper discharge of their duties by public officers, but it is not such an interest as will enable each citizen to describe himself as '*the party* beneficially interested.'" [Emphasis added in *Bobbett*.]).

{¶ 53} Although I recognize that much of our caselaw appears to support the public-rights rule, the problem is that this rule is no longer the law because of *Martens*, 2024-Ohio-5667, notwithstanding the footnote in that case. I believe that this court needs to face the discrepancy between our elector-standing doctrine and *Martens* and, in an appropriate case, resolve it. This would bring consistency to our caselaw and clarity to litigants in all mandamus cases, not just those involving elections.

{¶ 54} Turning briefly to the case at hand, because *Martens* is the law, and because *Martens* rejected the principles upon which our elector-standing cases rest, relators here lack standing. As the majority points out, there is no taxpayer standing here under R.C. 309.13. Majority opinion, ¶ 18. I also agree that Citizens for Honesty, Integrity, and Openness in Government, Ltd., does not have standing, regardless of which standing rule is applied. *Id.* at ¶ 22. But the Committee for the Citizens and Electors Right to Vote on City Income Tax Increases and the individual relators allege no injury apart from that which would be suffered by any other taxpayer or elector in Avon Lake. Therefore, under a faithful application of the special-injury rule adopted by this court in *Martens*, I would dismiss this case for want of standing. Because the majority does not reach the same conclusion, I respectfully concur in judgment only.

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 Lisette Gracia, Lorain County Board of Elections, Michael Witte, Inez James, Anthony Giardini, and Marilyn Jacobcik.

D. Andrew Wilson, Attorney General, and Ann Yackshaw, Gregory A. Rustico, and Tyler W. Blair, Assistant Attorneys General, for respondent Secretary

of State Frank LaRose.
