

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-3439

THE STATE EX REL. TURNER ET AL. v. BARHORST, MAYOR, ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Turner v. Barhorst*, Slip Opinion No. 2026-Ohio-3439.]

Elections—Mandamus—R.C. 731.32—R.C. 731.32 does not apply to a proposed amendment to a city charter—Limited writ granted ordering city clerk to transmit relators’ charter-amendment petition to county board of elections to determine sufficiency of the petition and, if the petition is sufficient, ordering city council to provide by ordinance for submission of proposed charter amendment to city’s electors at an election within the time parameters set forth in Article XVIII, Section 8 of Ohio Constitution—Relators’ requests for attorney fees and court costs denied—Limited writ granted.

(No. 2026-1088—Submitted August 31, 2026—Decided September 3, 2026.)

IN MANDAMUS.

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

Per Curiam.

{¶ 1} Relators, Matthew Turner Jr., Steven Taylor, and Marcia Montgomery, filed with the City of Sidney a petition to submit a proposed amendment to the city charter to the city’s electors at the November 3, 2026 general election. Respondent Sidney City Clerk Kari Egbert rejected the petition because relators had not filed a certified copy of the proposed charter amendment with her office before they circulated the petition, which Egbert said was required by R.C. 731.32.

{¶ 2} In this expedited election case, relators seek a writ of mandamus ordering respondents Sidney City Council members—Mayor Mike Barhorst, Vice Mayor Steve Wagner, and councilpersons Mardie Milligan, Darryl Thurber, Alysha Orsborne, Cory Huelskamp, and Jenny VanMatre (collectively, “city council”)—to immediately adopt an ordinance certifying relators’ charter-amendment petition to respondent Shelby County Board of Elections. Relators also ask for a writ of mandamus ordering the board of elections to verify the signatures on the petition and if the signatures are sufficient, place the proposed charter amendment on the November 3, 2026 general-election ballot. Sidney Law Director Robert Ratliff is also named as a respondent. Finally, relators seek recovery of their attorney fees and an assessment of court costs against respondents.

{¶ 3} Egbert erred in rejecting relators’ charter-amendment petition because R.C. 731.32 does not apply to a proposed amendment to a city charter. Notwithstanding Egbert’s misapplication of the law, relators’ requested relief is premature. We instead grant a limited writ of mandamus ordering Egbert to transmit the charter-amendment petition to the board of elections for determination

of its sufficiency and if the petition is sufficient, ordering the city council to provide by ordinance for submission of the proposed amendment to the city's electors at an election within the time parameters set forth in Article XVIII, Section 8 of the Ohio Constitution. We deny the writ as to Ratliff and the board of elections, and we deny relators' requests for an award of their attorney fees and an assessment of court costs against respondents.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 4} Relators are qualified electors and residents of Sidney. They comprise the committee seeking to amend the Sidney Charter to add Article XI, which would establish a procedure for the recall of the city's elected officials. On July 15, 2026, relators filed with Egbert a petition to submit the proposed charter amendment to the city's electors. Relators submitted their proposal under Article IX, Section 9-6 of the Sidney Charter, which provides that the charter "may be amended at any time in the manner provided by the Constitution of Ohio." The petition contained 561 signatures, which relators allege are enough to qualify the petition for submission to the city's electors.

{¶ 5} Egbert did not transmit relators' charter-amendment petition to the board of elections for verification of the petition's signatures. In a July 27 letter to relators, Egbert stated that the petition was "facially invalid and insufficient" for failure to comply with R.C. 731.32. That statute provides:

Whoever seeks to propose an ordinance or measure in a municipal corporation by initiative petition or files a referendum petition against any ordinance or measure shall, before circulating such petition, file a certified copy of the proposed ordinance or measure with the city auditor or the village clerk.

{¶ 6} According to Egbert, a certified copy of the proposed charter amendment was not submitted to her office before relators circulated their charter-amendment petition, which she claims is required by R.C. 731.32. Egbert therefore returned the charter-amendment petition to relators without taking further action on it.¹

{¶ 7} Relators commenced this mandamus action on August 14. Relying on *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, relators contend that general statutory procedures applicable to initiatives and referendums, including R.C. 731.32, do not apply to proposed charter amendments unless a city’s charter incorporates those procedures into the charter-amendment process. *See id.* at ¶ 31. And here, the Sidney Charter does not incorporate state statutes governing initiatives and referendums into its charter-amendment process. Relators therefore contend that they “have a clear legal right” under Article XVIII, Section 8 of the Ohio Constitution to have the city council immediately adopt an ordinance submitting their proposed charter amendment to the board of elections for placement on the November 3, 2026 ballot and that the city council has failed to carry out its legal duty to adopt such an ordinance.

{¶ 8} In their complaint, relators request a writ of mandamus (1) ordering the city council “to enact forthwith” relators’ proposed ordinance certifying relators’ charter-amendment petition to the board of elections and (2) ordering the board of elections to verify the petition’s signatures and if the signatures are sufficient, submit the proposed charter amendment to the city’s electors at the November 3, 2026 general election. Relators’ complaint also requests an award of their attorney fees and an assessment of court costs against respondents.

1. The same committee that submitted the charter-amendment petition submitted two other petitions to Egbert’s office on July 15, proposing (1) an ordinance related to live streaming and (2) an amendment to a zoning ordinance. Egbert also rejected those petitions for noncompliance with R.C. 731.32. Relators do not challenge the rejection of those two petitions in this action.

II. ANALYSIS

A. Laches

{¶ 9} In expedited election cases, the laches defense will bar relief if the relator has not acted with the utmost diligence. *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 2013-Ohio-4490, ¶ 30. The city council and Egbert (collectively, “city respondents”) argue in their merit brief that relators’ complaint is barred by laches because relators waited nearly three weeks to file this action after Egbert rejected their charter-amendment petition.

{¶ 10} Under Civ.R. 8(C), laches must be pleaded as an affirmative defense in an answer to preserve the defense. The city respondents did not file an answer in this case and have accordingly waived their right to assert a laches defense. *See State ex rel. Parker Bey v. Bur. of Sentence Computation*, 2022-Ohio-236, ¶ 17, citing *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 2021-Ohio-1762, ¶ 31.

B. Mandamus

{¶ 11} To be entitled to a writ of mandamus, relators must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) respondents have a clear legal duty to perform the requested acts, and (3) there is no plain and adequate remedy in the ordinary course of the law. *State ex rel. Linnabary v. Husted*, 2014-Ohio-1417, ¶ 13. Relators satisfy the third element because they have no statutory right to appeal the rejection of their charter-amendment petition on R.C. 731.32 grounds. *See generally* R.C. 731.29 through 731.41; *see also State ex rel. Nauth v. Dirham*, 2020-Ohio-4208, ¶ 12 (holding that the relators had no adequate remedy in the ordinary course of the law when they had no statutory right to appeal the invalidation of signatures on a referendum petition).

{¶ 12} Accordingly, the dispositive issue is whether relators have established a right to the relief requested in their complaint and whether

respondents against whom that relief is sought have a duty to provide it. *State ex rel. Clark v. Twinsburg*, 2022-Ohio-3089, ¶ 18. In election cases, resolving this issue “require[s] this court to determine whether respondents engaged in fraud, corruption, or an abuse of discretion or acted in clear disregard of applicable law.” *Sanduskians for Sandusky*, 2022-Ohio-3362, at ¶ 15. Since relators do not allege fraud or corruption, we must determine if respondents abused their discretion or clearly disregarded applicable law. *Id.* at ¶ 16.

1. The Charter-Amendment Process

{¶ 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.” Ohio Const., art. XVIII, § 9. Submission of the proposed charter amendment to the municipality’s electors is then governed by Article XVIII, Section 8. *Id.* Section 8 states that the legislative authority “shall forthwith[] provide by ordinance for the submission” of the proposed charter amendment “to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days” after passage of the ordinance. Ohio Const., art. XVIII, § 8. If no regular municipal election is scheduled within that time, the legislative authority must submit the proposed amendment to the electors at a special election occurring within the same 60-to-120-day period. *Id.*

2. R.C. 731.32 Does Not Apply to Relators’ Charter-Amendment Petition

{¶ 14} “A municipal legislature need not submit a proposed charter amendment to its electors ‘unless satisfied of the sufficiency of the petitions and that all statutory requirements are fairly met.’” *Sanduskians for Sandusky* at ¶ 17, quoting *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 55 (1994). In this

case, Egbert, the city clerk, returned relators' charter-amendment petition without submitting it to the board of elections for signature verification because relators had not filed a certified copy of the proposed charter amendment with her office before they circulated the petition. Egbert informed relators that the precirculation filing was required by R.C. 731.32.

{¶ 15} Egbert erroneously rejected relators' charter-amendment petition. R.C. 731.32 applies, by its plain terms, only to initiative or referendum petitions. A petition to amend a city charter is neither of those. *State ex rel. Ebersole v. Powell City Council*, 2014-Ohio-4283, ¶ 11. Thus, R.C. 731.32 is inapplicable to relators' petition "unless something in the municipal charter incorporates the statute into the charter-amendment process," *Sanduskians for Sandusky*, 2022-Ohio-3362, at ¶ 31. And here, the Sidney Charter does not incorporate R.C. 731.32 into its amendment process. To the contrary, the Sidney Charter states simply that it "may be amended at any time in the manner provided by the Constitution of Ohio." Sidney Charter, art. IX, § 9-6. Accordingly, Egbert erred in rejecting relators' petition for noncompliance with R.C. 731.32.

{¶ 16} The city respondents acknowledge that R.C. 731.32 does not apply to Sidney's charter-amendment process. They argue, however, that relators "created the problem" themselves because the exhibit attached to their charter-amendment petition, which contained the full text of the proposed charter amendment, was titled "AN *INITIATIVE ORDINANCE* SUBMITTING TO THE ELECTORS OF THE CITY OF SIDNEY, OHIO, A PROPOSED AMENDMENT TO THE CHARTER" (Capitalization in original and emphasis added.) The city respondents argue that relators brought R.C. 731.32 into play by labeling Exhibit A to their petition as "an initiative ordinance."

{¶ 17} We do not agree with the city respondents' argument. Relators' charter-amendment petition was submitted on Form No. 6-B, which is a form prescribed by the secretary of state and conspicuously titled "Petition for

Submission of Proposed Amendment to Charter.” The preprinted text of the petition goes on to state that “the undersigned, qualified electors of [Sidney,] Ohio respectfully petition the legislative authority to forthwith provide by Ordinance, for the submission to the electors of [Sidney], the following *proposed amendment to the Charter*.” (Emphasis added.) For the text of the amendment, the petition refers to “Exhibit A,” which is a draft of the ordinance by which relators would have the city council provide for the submission of the proposed amendment to the electors under Article XVIII, Section 8 of the Ohio Constitution. That document contains the full text of the proposed amendment to the Sidney Charter.

{¶ 18} Relators’ submission of a draft ordinance did not, as city respondents posit, invoke the initiative process. They were not proposing an ordinance for consideration at a municipal election. To the contrary, relators clearly submitted to Egbert a petition proposing an amendment to the city charter. Their attachment of the proposed ordinance by which they wanted the city council to submit the petition to the board of elections did not change that fact. As such, the petition was not subject to R.C. 731.32’s precirculation filing requirement.

3. *Relators Are Entitled to Only a Limited Writ*

{¶ 19} In their complaint, relators ask for a writ of mandamus (1) ordering the city council “to enact forthwith” relators’ proposed ordinance certifying relators’ charter-amendment petition to the board of elections and (2) ordering the board of elections “to verify the signatures and if sufficient, provide for the submission of the proposed charter amendment to the electors of the City of Sidney on November 3, 2026.” Framed as such, relators’ requested relief is premature.

{¶ 20} “When a municipal legislative authority erroneously fails to submit a charter amendment when it is presented with *a legally sufficient petition*, extraordinary relief in mandamus is available to order placement on the next regular election ballot.” (Emphasis added.) *State ex rel. Comm. for the Charter Amendment Petition v. Hamilton*, 2001-Ohio-1623, ¶ 8. But in this case, there has

been no determination whether relators' charter-amendment petition is legally sufficient. Most notably, though relators allege that their petition contained 561 total signatures, which they say is more than the number required for submission of their proposed charter amendment to the ballot, the board of elections has not reviewed the petition. Thus, the board of elections has yet to determine whether the petition is legally sufficient.

{¶ 21} Relators' requested relief contemplates that we will first order the city council to adopt an ordinance to submit relators' charter-amendment petition to the board of elections and then order the board of elections to verify the petition for sufficiency before placement on the ballot. But relators' requested relief has the process backwards: the sufficiency of the charter-amendment petition must be determined *before* a municipal legislative authority has a duty to adopt an ordinance submitting the proposed charter amendment for a vote. *Hamilton* at ¶ 9 (a city council "had no duty to submit the proposed charter amendment to the electorate unless all statutory requirements were satisfied"). Relators are therefore not entitled to the specific relief requested in their complaint.

{¶ 22} Relators are not, however, entirely without recourse. In election cases, we have granted limited writs ordering appropriate relief in mandamus when relators had prematurely sought broader relief. *See, e.g., State ex rel. Dudley v. Yost*, 2024-Ohio-5166, ¶ 42 (granting limited writ ordering the attorney general to perform his statutory certification responsibility relating to a summary of a proposed constitutional amendment when the relators had sought a writ of mandamus ordering the attorney general to certify their summary and forward their petition to the Ohio Ballot Board); *State ex rel. Ferrara v. Trumbull Cty. Bd. of Elections*, 2021-Ohio-3156, ¶ 24-25 (granting limited writ of mandamus ordering a board of elections to consider disputed signatures and certify the relator's name to the ballot if review revealed a sufficient number of valid signatures when the relator's complaint had requested an order to certify his name to the ballot outright);

State ex rel. Dunn v. Plain Local School Dist. Bd. of Edn., 2020-Ohio-339, ¶ 23 (granting a limited writ ordering a board of elections to review a petition for placement on the ballot, holding that the relator’s requested writ of mandamus to compel the placement of the measure on the ballot was “premature”). We have also granted limited writs ordering appropriate relief in mandamus when relators have requested more general relief in their complaint, like relators did here in asking this court to “[a]ward such other and further relief as may be appropriate.” *See State ex rel. Gil-Llamas v. Hardin*, 2021-Ohio-1508, ¶ 44-45 (granting a limited writ ordering a city council to proceed with the relators’ initiative petition under the process set forth for initiated ordinances under the city’s charter, when the relators were not entitled to the specific relief sought in their complaint but had also sought general relief by requesting “such other relief that this Court deems just and proper”). It is appropriate to do the same here. We therefore issue a limited writ of mandamus ordering Egbert to transmit relators’ charter-amendment petition to the board of elections to determine the sufficiency of the petition and if the petition is sufficient, ordering the city council to provide by ordinance for the submission of the proposed charter amendment to the city’s electors at an election within the time parameters set forth in Article XVIII, Section 8 of the Ohio Constitution.

{¶ 23} We deny the writ as to respondent Ratliff, the Sidney law director, because relators make no argument for relief as to him. And we deny the writ as to the board of elections as premature. The record before us indicates that relators’ charter-amendment petition was not transmitted to the board for signature verification. Accordingly, the board has not failed to comply with any statutory duty with respect to the petition and a writ of mandamus will not issue to compel the general observance of the board’s legal duty in the future, *see State ex rel. Kirk v. Burcham*, 1998-Ohio-224, ¶ 10.

C. Attorney Fees and Court Costs

{¶ 24} Relators also seek an award of their attorney fees and an assessment of court costs against respondents. We deny these requests.

{¶ 25} Absent a statutory provision allowing attorney fees as costs, the prevailing party is not entitled to an award of attorney fees unless the losing party is found to have acted in bad faith. *See State ex rel. Maloney v. Sherlock*, 2003-Ohio-5058, ¶ 55. To recover attorney fees based on bad faith, relators must show more than negligence or bad judgment on the part of the city respondents. *State ex rel. Grumbles v. Delaware Cty. Bd. of Elections*, 2021-Ohio-3132, ¶ 20. “Bad faith” connotes a dishonest purpose, moral obliquity, conscious wrongdoing, or some ulterior motive or ill will. *Id.* Relators have made no such showing here. Their argument for attorney fees is conclusory and is not developed in either their merit brief or reply brief.

{¶ 26} We also deny relators’ request to assess court costs against respondents. Because we issue a limited writ, the parties must bear their respective costs under S.Ct.Prac.R. 18.05(A)(2)(d). Relators make no argument in their merit brief for departing from our default rule.

III. CONCLUSION

{¶ 27} For the foregoing reasons, we grant a limited writ of mandamus ordering Egbert to transmit relators’ charter-amendment petition to the Shelby County Board of Elections to determine the sufficiency of the petition and if the petition is sufficient, ordering the city council to provide by ordinance for submission of the proposed amendment to the city’s electors at an election within the time parameters set forth in Article XVIII, Section 8 of the Ohio Constitution. We deny the writ as to Ratliff and the board of elections, and we deny relators’ requests for an award of their attorney fees and an assessment of court costs against respondents.

Limited writ granted.

SUPREME COURT OF OHIO

Waite, Tomb & Eberly, L.L.P., Lauren P. Williams, and Stephen E. Klein,
for relators.

Robert A. Ratliff, Sidney Law Director, for respondents Mike Barhorst,
Steve Wagner, Mardie Milligan, Darryl Thurber, Alysha Orsborne, Cory
Huelskamp, Jenny VanMatre, and Kari Egbert.

William R. Zimmerman Jr., Shelby County Prosecuting Attorney, and
Michael P. Doyle Jr., Assistant Prosecuting Attorney, for respondent Shelby
County Board of Elections.
