

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. LaChapelle v. Harkey*, Slip Opinion No. 2023-Ohio-2723.]

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SLIP OPINION NO. 2023-OHIO-2723

THE STATE EX REL. LACHAPELLE v. HARKEY, FINANCE DIR.

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Mandamus—R.C. 731.29—City official has mandatory, ministerial duty to transmit referendum petition to board of elections for signature verification—Writ granted.

(No. 2023-0687—Submitted August 1, 2023—Decided August 7, 2023.)

IN MANDAMUS.

Per Curiam.

{¶ 1} Relator, Colleen LaChapelle, filed this action seeking a writ of mandamus ordering respondent, Jennifer Harkey, the finance director of the city of Maumee, to transmit a referendum petition to the Lucas County Board of Elections. We grant a peremptory writ and order Harkey to transmit the petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} On March 20, 2023, Maumee passed Ordinance 002-2023. The ordinance relates to requirements for nonowner-occupied residential property. LaChapelle is a member of a five-person committee that is attempting to place a referendum of the ordinance on the ballot for the November 7, 2023 election. Harkey, as the finance director for Maumee, performs the duties equivalent to those of a city auditor.

{¶ 3} On March 31, LaChapelle filed with Harkey’s office a copy of the ordinance. The copy contained a certification by Lorrie Parry, the Maumee municipal clerk. In addition, LaChapelle attached to the ordinance a document titled “certification,” which she had signed, that states, “I hereby certify that the attached is a true and exact reproduction of the original City of Maumee Ordinance 002-2023.”

{¶ 4} After filing the ordinance, LaChapelle and the other committee members circulated the referendum petition for signatures. On April 19, 30 days after Maumee passed the ordinance, the committee filed the referendum petition with Harkey’s office. To date, Harkey has not transmitted the petition or the ordinance to the Lucas County Board of Elections.

{¶ 5} LaChapelle filed her original verified complaint in this matter on May 30 and an amended verified complaint on June 30. She seeks a writ of mandamus ordering Harkey to immediately transmit the referendum petition to the Lucas County Board of Elections.

{¶ 6} Harkey filed a timely answer, asserting that she is not required to transmit the petition to the board, because the precirculation copy of the ordinance filed with her office was not a properly certified copy. In addition, she asserts that the ordinance is administrative in nature and thus is not subject to referendum.

II. LEGAL ANALYSIS

A. Legal standards

{¶ 7} We must determine whether dismissing the complaint, denying the writ, or issuing an alternative or a peremptory writ is appropriate in this case. *See* S.Ct.Prac.R. 12.04(C). Dismissal is required if it appears beyond doubt, after presuming the truth of all material factual allegations in the complaint and making all reasonable inferences in the relator’s favor, that the relator is not entitled to the requested relief. *State ex rel. State Farm Mut. Ins. Co. v. O’Donnell*, 163 Ohio St.3d 541, 2021-Ohio-1205, 171 N.E.3d 321, ¶ 7. If it appears that the claim may have merit, we will grant an alternative writ and issue a schedule for the presentation of evidence and briefs. *State ex rel. Johnson v. Richardson*, 131 Ohio St.3d 120, 2012-Ohio-57, 961 N.E.2d 187, ¶ 13. If the pertinent facts are uncontroverted, however, and it appears beyond doubt that the relator is entitled to the requested relief, a peremptory writ should issue. *State Farm Mut. Ins. Co.* at ¶ 7.

{¶ 8} To obtain a writ of mandamus, LaChapelle 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 Harkey to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *See State ex rel. Clark v. Twinsburg*, 169 Ohio St.3d 380, 2022-Ohio-3089, 205 N.E.3d 454, ¶ 16. Here, LaChapelle lacks an adequate remedy in the ordinary course of the law due to the proximity of the election. *See id.*

B. The municipal referendum procedure

{¶ 9} The Revised Code establishes a referendum procedure for cities, R.C. 731.28 through 731.41, and Maumee’s charter adopts this procedure, Maumee City Charter, Article IX, Section 2. To hold a referendum on a city ordinance, the referendum proposers must first file a “certified copy of the proposed ordinance”

with the city auditor.¹ R.C. 731.32. “As used in [R.C. 731.32], ‘certified copy’ means a copy containing a written statement attesting that it is a true and exact reproduction of the * * * original ordinance or measure.” *Id.* Next, the referendum proposers circulate the petition, and they must submit a petition to the city auditor signed by at least 10 percent of the number of city electors who voted for governor in the last general election for governor. R.C. 731.29. The petition must be filed within 30 days of the passage of the ordinance. *Id.*

{¶ 10} Upon receiving the petition, the auditor “shall, after ten days, and not later than four p.m. on the ninetieth day before the day of election, transmit a certified copy of the text of the ordinance or measure to the board of elections.” *Id.* The auditor shall transmit the petition along with the certified copy of the ordinance. *Id.* Within ten days, the board of elections must examine and attest to the number of valid signatures on the petition and return the petition to the city auditor. *Id.* The board must submit the referendum to the voters “at the next general election occurring subsequent to ninety days after the auditor or clerk certifies the sufficiency and validity of the petition to the board of elections.” *Id.*

{¶ 11} The procedure set forth in R.C. 731.29 separates the auditor’s duties into several steps. When a petition is timely filed with the city auditor, the auditor must transmit the petition and a certified copy of the ordinance to the board of elections. The board of elections examines the signatures and returns the petition to the auditor. If the board determines that there is a sufficient number of signatures, the auditor certifies the sufficiency and validity of the petition back to the board of elections. *See State ex rel. Luonuansuu v. King*, 161 Ohio St.3d 178, 2020-Ohio-4286, 161 N.E.3d 619, ¶ 4; *see also State ex rel. Oberlin Citizens for*

1. Maumee does not have a city auditor, but the parties agree that Harkey, as the city’s finance director, is the appropriate official to fulfill the auditor’s referendum duties for Maumee. *See State ex rel. Donahue v. Bellbrook*, 44 Ohio St.2d 36, 37-38, 336 N.E.2d 635 (1975) (“In the absence of an official specifically designated village clerk or city auditor, a referendum petition must be filed with the official who in fact performs the duties of clerk or auditor”).

Responsible Dev. v. Talarico, 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529, ¶ 14. At the first stage—when the petition is first filed with the auditor—the auditor has a “ ‘mandatory, ministerial’ ” duty to transmit the petition to the board of elections. *Twinsburg*, 169 Ohio St.3d 380, 2022-Ohio-3089, 205 N.E.3d 454, at ¶ 19, quoting *Oberlin Citizens* at ¶ 16.

**C. Harkey is required to transmit the referendum petition
to the board of elections**

{¶ 12} Maumee passed the ordinance on March 20. On April 19—within 30 days of the passage of the ordinance—the committee filed a referendum petition with Harkey. The filing of the petition with Harkey within 30 days after the passage of the ordinance triggered Harkey’s duty to transmit the petition and a certified copy of the ordinance to the board of elections. *See* R.C. 731.29. At this step of the process, the statute imposes no additional requirements. Harkey has a “mandatory, ministerial” duty to transmit the petition to the board of elections. *See Oberlin Citizens* at ¶ 16.

{¶ 13} In her answer, Harkey suggests several reasons why this court should not grant a writ. First, Harkey denies LaChapelle’s assertion that the copy of the ordinance she filed prior to circulating the petition was a properly certified copy. This denial appears to be based upon a dispute about whether the municipal clerk actually certified the copy that LaChapelle provided to Harkey, and if the municipal clerk did not, whether LaChapelle examined the original ordinance before signing her separate certification. An attested copy of a document for purposes of R.C. 731.32 is “ ‘one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it.’ ” (Emphasis sic.) *State ex rel. Lewis v. Rolston*, 115 Ohio St.3d 293, 2007-Ohio-5139, 874 N.E.2d 1200, ¶ 16, quoting *Black’s Law Dictionary* 127-128 (6th Ed.1990).

{¶ 14} At this stage of the referendum process, however, this argument is premature. The copy of the ordinance that LaChapelle filed in accordance with R.C. 731.32 contains a certification signed by LaChapelle attesting that it “is a true and exact reproduction of the original City of Maumee Ordinance 002-2023.” This language tracks almost verbatim the definition of “certified copy” in R.C. 731.32. Arguments about whether this certification is accurate relate to the sufficiency and validity of the petition. *See State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 39 (city auditor properly refused to certify the sufficiency and validity of an initiative petition because the petition failed to comply with R.C. 731.32). Because Harkey’s duty to certify the sufficiency and validity of the petition does not arise until *after* the board of elections examines the petition, *see* R.C. 731.29, Harkey may not refuse to transmit the petition to the board of elections on these grounds.

{¶ 15} Harkey relies on *Lewis* for the proposition that she may refuse to transmit a petition to the board of elections based on her determination that the copy of the ordinance filed pursuant to R.C. 731.32 was not properly certified. In *Lewis*, the proposer of an initiative filed a copy of the proposed ordinance with his petition. *Id.* at ¶ 17. But the copy contained no certification whatsoever that the ordinance was “ ‘a true and exact reproduction of the original proposed ordinance.’ ” *Id.*, quoting R.C. 731.32. In this case, however, the copy of the ordinance that LaChapelle filed was attached to a signed document that contained the certification language of R.C. 731.32. It is premature for Harkey to contest the validity of this certification or the petition.

{¶ 16} Harkey also asserts that the ordinance is administrative in nature and thus not subject to referendum. Municipal administrative actions are not subject to referendum. *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 697 N.E.2d 181 (1998), paragraph two of the syllabus. But Harkey does not have discretion to withhold the referendum petition on a ground that requires her to

make a judicial or quasi-judicial determination, *Twinsburg*, 169 Ohio St.3d 380, 2022-Ohio-3089, 205 N.E.3d 454, at ¶ 19. She abuses her authority in doing so. *See id.*

III. CONCLUSION

{¶ 17} The pertinent facts in this case are uncontroverted, and it appears beyond doubt that LaChapelle is entitled to a writ of mandamus. Harkey has a mandatory, ministerial duty to transmit the referendum petition to the Lucas County Board of Elections. We therefore grant a peremptory writ of mandamus.

Writ granted.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

Isaac Wiles & Burkholder, L.L.C., Donald C. Brey, and Trista M. Turley,
for relator.

Alan Lehenbauer; and Spengler Nathanson, P.L.L., and Stephen Hartman,
for respondent.
