

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JUL 17 2025

STATE EX REL., LATEEK SHABAZZ, :
ET AL.,

Relator and Respondent, : Nos. 115185 and 115210
v. :
SANDRA MORGAN, ET AL., :
Respondents. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRIT GRANTED
DATED: July 17, 2025

Writ of Quo Warranto
Motion Nos. 585088, 585283, and 585466
Order No. 585872

Appearances:

Kenneth D. Myers, *for relator and respondent* Lateek Shabazz.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Regina A. Russo, Assistant Prosecuting Attorney, *for relator* Michael C. O'Malley.

Roetzel and Andress, LPA, Diana M. Feitl, and Matthew G. Vansuch, *for respondent*.



EMANUELLA D. GROVES, J.:

{¶ 1} On June 2, 2025, the petitioner, Lateek Shabazz, president of the East Cleveland City Council, commenced a quo warranto action against Sandra Morgan, interim East Cleveland mayor, to oust her as interim mayor and to recognize him as the rightful mayor of East Cleveland (Case No. 115185). On June 5, 2025, Morgan moved to dismiss the quo warranto action. On June 6, 2025, Cuyahoga County Prosecuting Attorney Michael C. O’Malley brought a quo warranto action against Shabazz to bar him from exercising the functions of East Cleveland mayor and receiving any compensation for that office and to recognize Sandra Morgan as the rightful mayor of East Cleveland (Case No. 115210). The court consolidated these two cases for all purposes, briefing, evidence, and decision. On June 10, 2025, Shabazz filed his brief in opposition to Morgan’s motion to dismiss. On June 13, 2025, Shabazz filed a motion to dismiss or in the alternative a motion for summary judgment on O’Malley’s quo warranto claim. On June 17, 2025, Morgan filed a reply brief on her motion to dismiss, and the court set Monday, June 23, 2025, as the final day for submitting briefs and evidence. On June 18, 2025, O’Malley filed his brief in opposition to Shabazz’s motion for summary judgment and his own cross-motion for summary judgment. On June 23, 2025, Shabazz filed a brief in opposition to O’Malley’s cross-motion for summary judgment, and Morgan filed a supplemental affidavit.

{¶ 2} The court has reviewed the motions, briefs, and evidence and concludes that the matter is ripe for decision. For the following reasons, this court

grants Shabazz's writ of quo warranto, ousting Sarah Morgan as interim mayor and recognizing Lateek Shabazz as the rightful mayor of East Cleveland.

Factual and Procedural Background

{¶ 3} As of October 10, 2024, Brandon King was mayor of East Cleveland. On that date, the grand jury indicted him for two counts of theft in office, four counts of having an unlawful interest in a public contract, four counts of an improper representation by a public official, one count of filling a false disclosure statement, and one count of soliciting improper compensation. *State v. King*, Cuyahoga C.P. No. CR-24-695872-B.

{¶ 4} The Supreme Court of Ohio appointed a special commission to determine whether King should be suspended as mayor.¹ The commission so found, and the suspension went into effect immediately. During the suspension, the suspended public official "shall retain the title of the holder of that office during the period of suspension and continue to receive the compensation that the official is entitled to receive for holding that office." R.C. 3.16(E)(1). The Supreme Court appointed Probate Court Judge Anthony Russo to appoint an interim mayor for East Cleveland pursuant to R.C. 3.16(E)(4).

{¶ 5} The judge exercised this duty by soliciting applications and conducting interviews. On February 3, 2025, during the selection process, Shabazz commenced a prohibition and mandamus action against Judge Russo and also

¹ The prosecutor initiated a proceeding pursuant to R.C. 3.16, for the suspension of a local official charged with a felony relating to official conduct.

sought a writ of quo warranto. *State ex rel. Shabazz v. Russo*, Supreme Court Case No. 2025-0167. Pursuant to Article XVIII of the Ohio Constitution, the Home Rule Provision, East Cleveland had adopted a charter for self-government. Section 114, Vacancy, provides in pertinent part as follows: “In the case of death, resignation, removal or long-term absence of the Mayor, the order of succession as Mayor shall be as follows: President of Council, Vice-President of Council” Shabazz asserted that pursuant to Home Rule, Section 114 controls the selection of the mayor and Judge Russo lacked jurisdiction to appoint an interim mayor. In the alternative, Shabazz argued that mandamus lies because pursuant to Section 114 Judge Russo had the duty to appoint Shabazz as mayor. Specifically, Shabazz invoked Section 114’s provision that upon the mayor’s removal or long-term absence the council president becomes the mayor.

{¶ 6} On February 28, 2025, Judge Russo in a judgment entry (“the Order”) appointed Morgan interim mayor of East Cleveland, pursuant to the following pertinent language:

IT THEREFORE ORDERED, ADJUDGED AND DECREED that Sandra Morgan is hereby appointed as interim Mayor of the City of East Cleveland for the date hereof until one of the following occurs: (1) the suspended Mayor is reinstated to office by an appeal as provided in R.C. 3.16(D); (2) all charges against the suspended Mayor are disposed of by dismissal or by a finding or findings of not guilty; or (3) a successor Mayor is elected and qualified to serve the next succeeding term of the public official’s office.

This language follows nearly verbatim the language of R.C. 3.16(C)(4). *In re: Interim Mayor Appointment, City of E. Cleveland*, Cuyahoga Probate Court No. 2021 MSC 260807.

{¶ 7} On March 13, 2025, the Supreme Court of Ohio in *State ex rel. Shabazz v. Russo*, 2025-Ohio-855, summarily granted Judge Russo's motion to dismiss.² It also summarily denied Shabazz's emergency motion for peremptory or alternative writs of prohibition, mandamus, and/or quo warranto.

{¶ 8} On June 2, 2025, a jury convicted King, *inter alia*, of one count of theft in office, a fourth-degree felony, and four counts of having an unlawful interest in a public contract, which are also fourth-degree felonies. Pursuant to R.C. 2921.41(C)(1), such a conviction forever disqualifies the defendant from holding any public office. A guilty verdict, even without a sentence, invokes the statute and immediately disqualifies the defendant. *State ex rel. Watkins v. Fiorenzo*, 1994-Ohio-104, and *State ex rel. Gains v. Hill*, 1998 Ohio App. LEXIS 1820 (7th Dist.). Furthermore, R.C. 2961.01(A)(1) provides that a person who is

² The decision did not specify the reason for granting the motion to dismiss. Judge Russo's motion proposed multiple reasons for dismissal including *inter alia*: (1) Prohibition did not lie because R.C. 3.16 vested him with jurisdiction to make the appointment. (2) Charter Section 114 applies to "Vacancy," and the suspension did not create a vacancy. Thus, there was no conflict between the Charter and the statute. (3) The Charter did not define the difference between short-term absence and long-term absence preventing the certainty for the charter to trump the statute or to create a clear, legal right enforceable in mandamus. (4) Shabazz had adequate remedies at law by applying for the position, filing a declaratory judgment action, or appealing the appointing judgment entry.

found guilty of a felony is incompetent to be an elector or to hold an office of honor, trust, or profit.

{¶ 9} Following King's conviction, Shabazz endeavored to have himself sworn in as mayor and to exercise the functions of mayor. He also commenced this quo warranto action.

Legal Analysis

{¶ 10} Ohio Revised Code Chapter 2733 controls quo warranto actions. R.C. 2733.01 provides in pertinent part: A civil action in quo warranto may be brought in the name of the State: "(A) Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office . . ." Quo warranto is the exclusive remedy to litigate the right of a person to hold public office. *State ex rel. Deiter v. McGuire*, 2008-Ohio-4536, ¶ 20. In that case, the Supreme Court held that actions for injunctive and declaratory relief were not adequate remedies at law precluding quo warranto because those remedies could not provide the complete remedy of ousting the improper official.

{¶ 11} To prevail on his claim for a writ of quo warranto, Shabazz must establish (1) that Morgan is not entitled to the office of interim mayor and (2) that he is entitled to the office of mayor of East Cleveland.

{¶ 12} Shabazz maintains that King's conviction of theft in office ended the suspension that created the temporary position to which Morgan was appointed by Judge Russo and created a vacancy for the position of mayor, which he filled. Morgan argues that the statute that governs her appointment as interim mayor,

R.C. 3.16, states that her appointment only ends on the happening of any of three conditions, none of which has occurred. This court must determine the meaning and applicability of the various statutory and charter provisions, whether there is a conflict between them, and, if a conflict exists, which one prevails.

The Relevant Law

{¶ 13} An analysis of the following relevant law is necessary to resolve the issue. R.C. 3.07, “Misconduct in office – forfeiture,” provides that any person holding office in Ohio who is guilty of, *inter alia*, gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon a complaint and hearing as specified in R.C. 3.07 through 3.10 such person shall have judgment of forfeiture of the office rendered against them, creating a vacancy to be filled as prescribed by law. Such proceedings are in addition to impeachment and other methods of removal authorized by law.

{¶ 14} R.C. 3.16 provides in pertinent part:

(C)(4) A suspension imposed or continued under division (C)(3) of this section shall continue until one of the following occurs:

(a) The public official is reinstated to office by an appeal as provided in division (D) of this section;

(b) All charges are disposed of by dismissal or by a finding or findings of not guilty;

(c) A successor is elected and qualified to serve the next succeeding term of the public official’s office

...

(E)(1) Any public official suspended from office under this section shall not exercise any of the rights, powers, or responsibilities of the holder

of that office during the period of the suspension. The suspended public official, however, shall retain the title of the holder of that office during the period of the suspension and continue to receive the compensation that the official is entitled to receive for holding that office during the period of the suspension, until the public official pleads guilty to or is found guilty of any felony with which the public official is charged, or until one of the conditions in division (C)(4)(a), (b), or (c) of this section occurs.

...

(4) For the duration of the public official's suspension, an interim replacement official shall be appointed by the probate judge of the court of common pleas if the suspended public official is an elected official of a municipal corporation, . . . to perform the suspended public official's duties.

(5) . . . The acting officer or interim replacement official so certified shall have all of the rights, powers, and responsibilities of, and shall be entitled to the same rate of pay as, the suspended public official. The acting officer or interim replacement official shall give bond and take the oath of office. If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law. If a regular election is to occur during the period of suspension, a public official shall be elected as provided by law.

{¶ 15} Article XVIII of the Ohio Constitution, the Home Rule Provision, vests municipalities with the authority to exercise all powers of local self-government. East Cleveland has adopted a charter pursuant to Section 7, Article XVIII of the Ohio Constitution establishing the parameters of those powers of local self-governance. It is well established that if a conflict exists between a city charter and statutory provisions governing the filling of a vacancy, the charter takes precedence and must be followed to fill the vacancy. *State ex rel. Devine v. Hoermle*, 168 Ohio St. 461 (1959), paragraph two of the syllabus; *State ex rel. Branch v. Pitts*, 2018-Ohio-1184, ¶ 9 (8th Dist.). This is because "Home Rule gives municipalities a

sovereignty over matters of local government. In such matters, if a provision of a municipal charter conflicts with state law, the charter provisions will prevail.” *Kanter v. Cleveland Hts.*, 2017-Ohio-1038, ¶ 15 (8th Dist.), citing *State ex rel. Bardo v. Lyndhurst*, 37 Ohio St.3d 106, 108-109 (1988), citing *State ex rel. Devine v. Hoermle*, 168 Ohio St. 461 (1959), and *State ex rel. Allison v. Jones*, 170 Ohio St. 323 (1960). See also *State ex rel. Minor v. Eschen*, 74 Ohio St.3d 134, 138 (1995) (“In matters of local self-government, if a portion of a municipal charter expressly conflicts with parallel state law, the charter provisions will prevail.”).

{¶ 16} Charter Section 114 provides in pertinent part:

In the case of death, resignation, removal or long-term absence of the Mayor, the order of succession as Mayor shall be as follows: President of Council, Vice President of Council and ranking Council member based upon aggregate years of service or, in the event of equal years of service, aggregate votes received during all successful elections, except in the event that a vacancy occurs in the office of mayor and there exists a mayor-elect who has not yet assumed such office, then, in that event the person so elected to the office of Mayor shall become Mayor for the unexpired term and for the full term for which such person was elected.

{¶ 17} The following provisions must also be examined prior to resolving the ultimate mayoral issue.

{¶ 18} Section 98 specifies that there shall be five council members, one from each of the three wards and two councilmembers at large. Section 99 of the charter specifies the qualifications of council members. A council member must be a resident of East Cleveland for at least one year prior to election and shall have the qualifications of an elector therein. A council member may not be an employee of East Cleveland, the East Cleveland Board of Education, or other incompatible public

employment. Any member becoming guilty of misconduct or malfeasance in office, being convicted of a crime involving moral turpitude while in office or ceasing to possess the qualifications herein provided, shall thereby forfeit their office.

{¶ 19} Section 102 of the charter provides that at the first meeting of council following a regular municipal election, the mayor or the mayor's designee shall chair the meeting until all council members have been sworn in and the president of council has been elected. This section further provides: "The President of Council, in addition to the Council's obligations, rights, and duties as a Councilperson at large, shall preside at all meetings and shall perform such duties as may be imposed upon him or her by the Council."

{¶ 20} East Cleveland Ordinance Section 111.01(d) specifies how the nominations for council president are made: "Any Council member shall be qualified to nominate any other Council member or himself or herself for the office of President or Vice President and no second shall be required."

The Arguments of the Parties

{¶ 21} Shabazz maintains that King's conviction of theft in office ended the suspension and created a vacancy for the position of mayor. His argument begins with the language of R.C. 3.16. Pursuant to R.C. 3.16(E)(1), a suspended official retains the office title and his compensation until he pleads guilty to a felony, is found guilty of a felony, or one of the conditions of R.C. 3.16(C)(4), inapplicable here, is fulfilled. According to Shabazz, King's conviction for theft in office activates R.C. 3.16(E)(1), ends the statutory suspension, and creates a vacancy so that subsection

(E)(5) becomes effective to fill such vacancy as provided by law. He further argues that Section 114 of the Charter applies through R.C. 3.16(E)(5) and pursuant to Article XVIII of the Ohio Constitution, the Home Rule Amendment, the Charter provides the means for filling the vacancy in the office of mayor that is created.

{¶ 22} As evidence of this vacancy, Shabazz submitted an email from Interim Mayor Morgan to East Cleveland's finance director noting King's conviction and stating: "He is effectively no longer Mayor of East Cleveland, and as such is no longer entitled to salary payments. Therefore, please end payment to Brandon King as of May 29, 2025. He is officially separated from employment at the City of East Cleveland."

{¶ 23} Shabazz also relies upon R.C. 2921.41(C)(1) that provides in pertinent part as follows: "a public official . . . against whom a verdict or finding of guilty for committing theft in office is returned is forever disqualified from holding any public office, employment, or position of trust in this State." Shabazz asserts that this provision takes effect immediately upon the finding of guilt. For support of this proposition, he points to *State ex rel. Watkins v. Fiorenzo*, 71 Ohio St.2d 259 (1994).

{¶ 24} There, Fiorenzo, the Trumbull County engineer, was found guilty of theft in office, but had not yet been sentenced and had moved for a new trial. The county prosecutor sought a quo warranto action to oust him from his position. Fiorenzo argued that the statute could not take effect because there was no sentence and thus no conviction. Nor had the trial court ruled on his motion for new trial. The Supreme Court of Ohio rejected these arguments. The statute requires only a

plea of guilty to invoke the sanction of permanent disqualification. “Therefore, Fiorenzo was disqualified from his position as Trumbull County Engineer when he was adjudicated guilty of theft in office in November 1994.” *Id.* at 261. The Seventh District Court of Appeals followed *Fiorenzo* in *State ex rel. Gains v. Hill*, 1998 Ohio App. LEXIS 1820, *6 (7th Dist. Mar. 24, 1998) (“The determination of guilt alone triggers disqualification under R.C. 2921.41(C)(1).”).

{¶ 25} Moreover, Shabazz points to R.C. 2961.01(A) for further support for his claim. That statute states in pertinent part: “A person against whom a verdict or finding of guilt for committing a felony under any law of the type is returned, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.”

{¶ 26} On the other hand, Morgan argues that the Order controls and specifies the length of her appointment. The Order and R.C. 3.16(C)(4) provide that the suspension continues until King is reinstated, the charges are disposed of by dismissal or a finding of not guilty, or until the next election. Consequently, Morgan claims she should remain interim mayor until the next election in November. This follows as a corollary to the statute and the Order’s wording. She argues that because R.C. 3.16 does not explicitly state that the suspension ends upon conviction, the suspension continues pursuant to subsection (C)(4). Morgan continues that a parsing of subsection (E)(1) supports her position. The statute states that the suspended public official retains title of the office and continues to receive compensation until the suspended official pleads guilty, is found guilty, or one of the

conditions of subsection (C)(4) is fulfilled. She points out that it does not say that the officer is removed or that the office is vacant. Therefore, she concludes she properly holds office pursuant to the Order.

{¶ 27} The gravamen of the prosecutor's position is that despite being found guilty of theft in office and other felonies, despite being stripped of the title of mayor, and despite not being paid, King has not been removed from office and that Morgan remains mayor. Removal from office must be effected by death, resignation, recall, a 3.07 hearing, a judgment of forfeiture under R.C. 3.08, a quo warranto action against King, or some other legal mechanism to remove him from office. Until that is done, there is no vacancy, and Charter Section 114 does not come into play. The prosecutor cites *State ex rel. Corrigan v. Haberek*, 53 Ohio St.3d 150 (1988), *Watkins v. Fiorenzo*, *Gains v. Hill*, and *State ex rel. Branch v. Pitts*, 2018-Ohio-1184 (8th Dist.), for the proposition that quo warranto against the convicted office-holder is necessary to create a vacancy.

The Existence of a Vacancy

Conviction Creates a Vacancy in the Office of Mayor

{¶ 28} The prosecutors' arguments that some other step to effectuate a vacancy is necessary is contrary to *State ex rel. Hover v. Wolveen*, 175 Ohio St. 114 (1963). In that case William Judd was elected to the Forest Hills Local School Board in 1959. He was then elected to the Hamilton County Board of Education. The two positions are incompatible and created a conflict of interest. Thus, the local school board passed a resolution declaring Judd ineligible to hold his office and appointed

Wolven to Judd's position. The county prosecutor brought a quo warranto action against Wolven, because the local school board had not removed Judd pursuant to R.C. 3.07, Misconduct in office – forfeiture, which requires a complaint and a hearing. The Supreme Court rejected the argument holding that by "accepting membership on the county board of education, Judd vacated his first office – that of membership on the local board of education. Accordingly, it is not necessary to utilize [R.C.] 3.07 to remove him from office. He removed himself." *Id.* at 118.

{¶ 29} Similarly, in *State ex rel. Atty. Gen. v. Craig*, 69 Ohio St. 236 (1903), members of the city council were improperly appointed to the board of health because of the prohibition of a public officer holding more than one position. That board of health appointed Dr. Craig as health officer. When a new board of health was properly appointed, it named a new doctor as health officer. When Dr. Craig refused to turn over the books and property of the health officer to the new doctor, the attorney general sued Dr. Craig in quo warranto. In ousting Dr. Craig, the Supreme Court of Ohio reasoned that because the members of council were not eligible to be on the board of health, their appointment was a nullity and that therefore Dr. Craig's position as health officer was absolutely void. Dr. Craig ceased to be the health officer when the new doctor was appointed.

{¶ 30} In deciding the propriety of an individual to hold a council position, the Twelfth District held: "Because the nature of relator's incompetency to hold office stems from the 'accomplished fact' of a prior felony conviction, it is unnecessary that a complaint and hearing be held pursuant to R.C. 3.07 prior to

relator's forfeiture of office. Nor is it necessary that a quo warranto action first be brought before ousting relator." (Citations omitted.) *State ex rel. Powers v. Curtis*, 2003-Ohio-6104, ¶ 57 (12th Dist.).

{¶ 31} Further, the Tenth District rejected a similar argument that R.C. 2961.01 was not self-executing and that a R.C. 3.07 hearing had to be held before removing a board of elections member who was convicted of a federal felony. *Hughes v. Brown*, 62 Ohio App.3d 417 (10th Dist. 1989).

{¶ 32} King's convictions for theft in office and other felonies removed him from office. R.C. 2921.41(C)(1) disqualified him. R.C. 3.16(E)(1) specifies that upon conviction a suspended official loses the title to the office and compensation. Charter section 99 and R.C. 2961.01(A) provide that a conviction of serious crime deprives the person from holding office. *Wolven*, *Curtis*, *Craig*, and *Hughes* hold that vacancies are created by operation of law. Consequently, King no longer holds the position of mayor. Contrary to the prosecutor's argument, King's removal is automatic and no other steps are needed to create a vacancy.

{¶ 33} Morgan's argument that a vacancy does not exist is centered around R.C. 3.16, concerning the suspension of a public official who has been charged with a felony. Contrary to her argument, we find that the foundation of the suspension is the charge against the official. On conviction, the foundation disappears, and the suspension ends.

{¶ 34} In *Homrighausen v. Dover*, 2024-Ohio-5454 (5th Dist.), the mayor had been suspended on May 2, 2022, when charged with theft in office and other

crimes. He was convicted of theft in office on November 17, 2022. Dover then sued to recoup money paid during the suspension and for fees for solemnizing marriages. The Fifth District indicated that the period of suspension was from May 5, 2022, through November 16, 2022, up to the date of his conviction. Accordingly, this is additional support for the conclusion that the Order is applicable only up to the time of conviction, especially for theft in office.

{¶ 35} To parse R.C. 3.16(E)(1) that a conviction deprives the convicted office-holder of merely the title of office and its compensation but does not remove the official from office is strained and fails to recognize that without the title and compensation the office-holder no longer occupies the office.

{¶ 36} The statutory provisions disqualifying King as mayor are emphatic. R.C. 2921.41(C)(1) disqualifies an official for theft in office, and the courts have held that it is effective upon the finding of guilt. R.C. 2961.01(A)(1) renders a felon incompetent to be an elector or to hold office. Section 99 of the Charter provides that any member guilty of gross misconduct or malfeasance in office, convicted of a crime of moral turpitude or ceasing to possess the qualifications, e.g., being an elector, “shall thereby forfeit his office.” As *Curtis* and *Hughes* held, these provisions are self-effecting and a formal removal pursuant to R.C. 3.07 or a quo warranto is not necessary. Admittedly in *Corrigan*, *Watkins*, and *Gains* quo warranto was used to remove felons from their offices, but the courts stopped short of holding that this was a necessary step. Therefore, we find that there is a vacancy in office of mayor of East Cleveland.

Who Fills the Vacancy?

{¶ 37} Having determined that a vacancy exists in the office of mayor, we turn to the question of what provision controls in the filling of that vacancy.

{¶ 38} When a vacancy in an office of mayor exists, statutory provisions provide a means to fill them. For instance, R.C. 733.08 provides the mechanism for filling a vacancy in office of a mayor for a city. However, these are default provisions that a municipality may decide that an alternative method is best for them. *State ex rel. Devine v. Hoermle*, 168 Ohio St. 461, 462 (1959). As previously stated, matters of local self-governance, like filling a vacancy in the position of mayor, can be decided by the locality pursuant to the Home Rule Amendment of the Ohio Constitution. This provision grants authority to municipalities to exercise “all powers of local self-government.” Where a city charter exists in a municipality, if a conflict arises between a statutory provision, the local charter provision controls. *State ex rel. Harris v. Rubino*, 2018-Ohio-3609, ¶ 17. However, a charter provision will “prevail over a parallel state statute ‘only where the conflict appears by the express terms of the charter and not by mere inference.’” *Id.* Section 114 of the Charter provides for the means of filling a mayoral vacancy.

{¶ 39} We have determined that a vacancy exists. Between a conflicting statute and charter provision, the charter provision controls. Therefore, Section 114 of the Charter provides that Shabazz, as president of council, becomes mayor.

{¶ 40} Morgan argues that the Order, issued pursuant to R.C. 3.16, dictates who is mayor. However, even if Morgan’s reading of certain provisions of R.C. 3.16

were accurate, she does not adequately address the language of R.C. 3.16(E)(5), which provides that when a vacancy occurs within the scope of R.C. 3.16, “a public official shall be appointed or elected to fill such vacancy as provided by law.” Because the Home Rule provision of the Ohio Constitution provides for the right of local self-governance, that law is Section 114 of the Charter, which states that the president of council succeeds the mayor in the event of the mayor’s death, resignation, removal, or long-term absence. Thus, pursuant to R.C. 3.16(E)(5) and the Charter, Shabazz becomes mayor.

{¶ 41} Further, the previous action filed against Judge Russo in the Supreme Court of Ohio, *State ex rel. Shabazz*, 2025-Ohio-855, is not controlling here. The factual and procedural postures have changed since the Supreme Court of Ohio summarily resolved that case. At that time, King was charged with felonies, and R.C. 3.16 governs suspension when charges are pending. Shabazz was claiming entitlement to office even though the Charter provided for the filling of a temporary vacancy in the office of mayor by the director of finance, director of law, or the director of public services, in that order. Even though the Charter makes a distinction between temporary and long-term absence, it does not define the terms as it relates to the unavailability of a mayor. Now, King has been convicted of theft in office and other felonies, and the issue is whether such a conviction creates a vacancy in the office such that the Ohio Constitution’s Home Rule provisions should be given effect.

{¶ 42} Here, there is no conflict present based on the arguments of the parties because R.C. 3.16(E)(5) provides that a vacancy shall be filled by operation of law and the Charter provides for the filling of vacancies in the office of mayor. Morgan's reliance on the Order is therefore unavailing. Even if there were a conflict in what happened after King's conviction and his removal from the office of mayor by operation of law, the Charter provision would prevail here.

{¶ 43} The prosecutor also argues that, even if the Charter provision governs the outcome, Shabazz is not entitled to a writ of quo warranto because he is not validly holding the office of president of council. Section 102 of the East Cleveland Charter states: "The President of Council, in addition to the Council's obligation, rights, and duties as a Councilperson at large, shall preside at all meeting and shall perform such duties as may be imposed upon him or her by the Council." This provision implies that the president of council must be a councilperson at large; Shabazz was elected as a ward representative, not as a councilperson at large.

{¶ 44} The court concludes that this provision does not state an authentic limitation or qualification for the office of president of council. It is not listed as a qualification for president of council, such as is stated in Section 99, Qualifications of Members, and Section 112, Mayor, Qualifications and term of office. Rather, it is a modifying phrase to an object of a preposition; this is an irregular way to state the qualifications for a political office. Moreover, it would limit who could be president to only two members of council. This is inconsistent with Ordinance 111.001(d) that provides any council member may nominate any other council member or himself

or herself for the office of president of council. As noted in the affidavit of Stacey White, East Cleveland city council clerk, the subject provision is also inconsistent with the practice of council; other ward representatives have been elected council president. The court also notes that the prosecutor withdrew this as an argument against Shabazz. Accordingly, this court considers the language “as a Councilperson at large” as directory, instructing the council president on how to perform the duties of office.

Conclusion

{¶ 45} In summary, pursuant to King’s conviction for theft in office and other felonies, the immediate disqualification for theft in office as provided by R.C. 2921.41(C)(1), *Watkins*, and *Gains*, the immediate forfeiture provision of East Cleveland Charter Section 99, and the disqualification consequence of R.C. 2961.01(A)(1), King lost the office of mayor. His suspension as mayor ended upon his conviction, thereby the office of mayor became vacant, and the office needed to be filled pursuant to law. Accordingly, Shabazz is a proper relator in this quo warranto action because he has a colorable claim to the office of mayor. Morgan is a proper respondent because she is acting as mayor. Pursuant to the Home Rule provision, Section 114 of East Cleveland’s charter controls the selection of mayor, making Lateek Shabazz the rightful mayor of East Cleveland. This court issues the writ of quo warranto removing Sandra Morgan as mayor effective 12:00 p.m., July 17, 2025 and recognizing Lateek Shabazz as the rightful mayor of East Cleveland effective 12:00 p.m., on July 17, 2025. Each party to bear its own costs.

This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 46} Writ of quo warranto issued as indicated above.



EMANUELLA D. GROVES, JUDGE

Filed and Journalized
Per App.R. 22(C)

LISA B. FORBES, P.J., CONCURS;
SEAN C. GALLAGHER, J., DISSENTS (WITH SEPARATE OPINION)

JUL 17 2025

Cuyahoga County Clerk

Of the Court of Appeals

 Deputy

SEAN C. GALLAGHER, J., DISSENTING:

{¶ 47} I respectfully dissent from the majority's judgment that grants Lateek Shabazz relief in his quo warranto action to become mayor of East Cleveland. Given the procedural history involved, I would grant Sandra Morgan's motion to dismiss Shabazz's action and leave Judge Russo's appointment of Sandra Morgan as interim mayor in place pending resolution of the mayor's race in November 2025. I also would grant the relief requested in Prosecuting Attorney Michael C. O'Malley's quo warranto action against Shabazz and deny Shabazz's motion to dismiss or alternative motion for summary judgment in that action.

{¶ 48} Shabazz asserts that pursuant to Home Rule and Section 114 of the East Cleveland Charter, Judge Russo had the duty to appoint Shabazz as mayor. He seeks to invoke Section 114's provision that upon removal or long-term absence of the mayor, the council president becomes the interim mayor. Yet, whether that provision is controlling was not fully vetted in this action.

{¶ 49} The majority opinion focuses on the jury finding King guilty on June 2, 2025, to declare Shabazz the rightful heir to King as mayor. In effect, the majority decision favors the East Cleveland Charter provision over the statutory provision, even though the majority in the Supreme Court of Ohio did not do so prior to the conviction. *See State ex rel. Shabazz v. Russo*, 2025-Ohio-855.

{¶ 50} For this reason, I would leave Judge Russo's original order intact and not remove Morgan at this time. I believe this is an issue that the Supreme Court of Ohio should ultimately decide given their past ruling.

{¶ 51} I am cognizant that at the time of the prior ruling by the Supreme Court, King was only suspended and had not yet been convicted. Yet, because Judge Russo issued a valid order appointing Morgan as the interim mayor pursuant to R.C. 3.16 and the Supreme Court did not disturb that order, I believe that the order as written should remain in full force and effect.

{¶ 52} I also have some lesser concerns about King not being named as a party to this action by Shabazz as raised in the prosecutor's brief. I understand Morgan is the current interim office-holder whom Shabazz seeks to oust, but it is King who was the office-holder and was the subject of the initial suspension and subsequent conviction as mayor. I would like the Supreme Court to provide more clarity on the question of who the proper party is in these actions.

{¶ 53} I am also concerned that any ruling in this case runs up against the pending election that is less than five months away where the voters will select a mayor. Though I believe a better approach would be for the majority to stay its

decision pending further review by the Supreme Court, I can understand their desire to resolve the issue and create finality.