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State ex rel. Michael T. Hilgers, in his official capacity as Attorney General of the State of Nebraska, relator, v. Brodey Weber et al., together as the Lincoln City Council, and Soulinne Phan, Lincoln city clerk, respondents.

___ N.W.3d ___

Filed September 9, 2026. No. S-26-706.

1. **Mandamus: Words and Phrases.** Mandamus is an extraordinary remedy, not a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act, and (3) there is no other plain and adequate remedy in the course of the law.
2. **Mandamus: Proof.** In a mandamus action, the party seeking mandamus has the burden of proof and must show clearly and conclusively that such party is entitled to the particular thing the relator asks and that the respondent is legally obligated to act.
3. **Mandamus.** Whether to grant a writ of mandamus is within a court's discretion.
4. **Constitutional Law: Intent.** Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.
5. **Constitutional Law.** That a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing; nor does the self-executing character of the constitutional provision necessarily preclude legislation for the better protection of the right secured.
6. **Constitutional Law: Time.** The timing requirement set forth in Neb. Const. art. XI, § 4, is self-executing.

7. **Mandamus: Public Officers and Employees.** A duty imposed by law which may be enforced by writ of mandamus must be one which the law specifically enjoins as a duty resulting from an office, trust, or station.
8. **Mandamus.** The general rule is that an act or duty is ministerial only if there is an absolute duty to perform in a specified manner upon the existence of certain facts. A duty or act is ministerial when there is no room for the exercise of discretion, official or otherwise, the performance being required by direct and positive command of the law.
9. ____. To warrant the issuance of a peremptory writ of mandamus to compel the performance of a legal duty to act, (1) the duty must be imposed by law, (2) the duty must still exist at the time the writ is applied for, and (3) the duty must be clear.
10. **Statutes: Words and Phrases.** In the context of statutory construction, appellate courts have recognized that the word "shall" is considered mandatory and inconsistent with the idea of discretion.
11. **Statutes.** No universal test distinguishes mandatory from directory statutory provisions. Broadly, provisions that relate to the essence of the thing to be done are mandatory while provisions for which compliance is a matter of convenience rather than substance are directory.
12. **Constitutional Law: Municipal Corporations: Voting: Time.** The timing requirement in Neb. Const. art. XI, § 4, is a self-executing provision that imposes a mandatory duty upon the city council or governing authorities to submit the proposed charter amendment to a vote of the qualified electors at the next general or special election not held within 30 days after such petition is filed.
13. **Constitutional Law: Statutes.** The rules of statutory interpretation apply to constitutional interpretation as well.
14. **Constitutional Law: Courts.** As in statutory interpretation, the construction of constitutional provisions requires the Nebraska Supreme Court to apply basic tenets of interpretation.
15. **Constitutional Law: Intent.** Constitutional provisions are not open to construction as a matter of course; construction is appropriate only when it has been demonstrated that the meaning of the provision is not clear and that construction is necessary.
16. **Constitutional Law: Courts: Intent.** If the meaning is clear, the Nebraska Supreme Court gives a constitutional provision the meaning that laypersons would obviously understand it to convey.
17. **Constitutional Law: Voting: Time: Words and Phrases.** In the context of Neb. Const. art. XI, § 4, "next general . . . election" means the next regular election, one that is recurring automatically as to time.

18. **Constitutional Law.** A constitution represents the supreme written will of the people regarding the framework for their government.

Original action. Peremptory writ of mandamus issued.

Michael T. Hilgers, Attorney General, Cody S. Barnett, Zachary B. Pohlman, and Lincoln J. Korell for relator.

Yohance L. Christie, Lincoln City Attorney, Margaret M. Blatchford, and Nicholas T. Bussey for respondents.

CASSEL, STACY, PAPIK, FREUDENBERG, BERGEVIN, and VAUGHN, JJ., and PIRTLE, Judge.

PER CURIAM.

INTRODUCTION

A citizen group submitted three initiative petitions to amend the Lincoln City Charter. Anticipating that the city of Lincoln, Nebraska, would decline to submit the charter amendments to the voters at the November 2026 statewide general election, the Nebraska Attorney General asked this court for peremptory writs of mandamus directing the city council and city clerk (Respondents) to submit the charter amendments at that election. The city attorney then advised that the city council planned to place the charter amendments on the ballot at the May 2027 city general election pursuant to state law.

In deciding whether to grant the Attorney General's request, we must determine which election is "the next general . . . election" under Neb. Const. art. XI, § 4. The Attorney General contends that it is the next statewide general election in November 2026. Respondents claim it is the next city general election in May 2027. We agree with the Attorney General and conclude that in this case, "the next general . . . election" under article XI, § 4, is the next statewide general election in November 2026. Accordingly, we grant the petition and issue a peremptory writ of mandamus, commanding Respondents to submit the proposed charter amendments to a vote of

the qualified electors at the next general election held on November 3, 2026.

BACKGROUND

Petitions for Charter Amendment

Good Government Lincoln, a Nebraska ballot question committee, submitted three petitions to amend the Lincoln City Charter. The first petition (the "Term Limits Petition") had the stated purpose "to provide term limits for members of the city council." The second petition (the "Rescheduling Petition") had the stated purpose "to increase participation in city elections by aligning city elections with statewide elections." The third petition (the "Extraterritorial Voters Petition") had the stated purpose "of allowing all citizens residing in an area governed by the City of Lincoln to vote in its elections."

On August 5, 2026, Good Government Lincoln submitted copies of the proposed amendments to the city clerk "to initiate circulation of petitions to place the three proposed charter amendments on the statewide general election ballot." After the petitions were circulated and signatures were gathered, the signed petitions were submitted to the city clerk on August 19.

On August 25, 2026, the Lancaster County Election Commissioner certified that the Term Limits Petition had met the signature threshold for a charter amendment petition, and on August 26, the commissioner certified that the Rescheduling Petition had met the signature threshold. On August 27, the city attorney issued a statement regarding the petitions in which he stated that Good Government Lincoln had "missed the deadline for the City Council's process to allow inclusion on the November 3rd ballot" and that the "City Council will place the Charter amendments on the next general election ballot (May 2027) pursuant to state law." On August 28, the election commissioner certified that the Extraterritorial Voters Petition had also met the signature threshold.

Attorney General Involvement

A state senator asked the Attorney General whether,

> "[u]nder existing state law, if a petition to amend a home-rule charter satisfies the signature and timeline requirements of Neb. Const. art. XI, section 4, does the home-rule city have any discretion to impose additional procedural requirements or processes that could keep such petition off the ballot for the next election not within 30 days of when the petition was submitted?"

On August 24, 2026, the Attorney General issued a formal opinion to the senator.

In the opinion, the Attorney General concluded that "[w]here petitions are submitted, and the requisite signatures certified, in advance of 30 days before the November general election, the City has a ministerial duty to submit them for the ballot for such election." The Attorney General explained that "[t]he City has no discretion to implement any procedure that would delay the proposals for a subsequent election."

On August 25, 2026, the Attorney General sent a letter to Respondents in which he inquired about

> whether the Lincoln City Council and City Clerk plan to submit to the Lancaster County Election Commissioner, by the statutory deadline on September 1, the three charter-amendment petitions recently submitted to the City for inclusion on the general election ballot in November 2026, so long as the Commissioner certifies that each contains the requisite signatures.

The letter advised Respondents that "[f]ailing to submit a compliant petition for the November election would violate a direct constitutional command and constitute a dereliction of duty by members of the City Council and the City Clerk." The letter asked for Respondents' response by 5 p.m. on Thursday, August 27, 2026. The letter explained that the Attorney General would consider a failure to respond by the deadline as "an answer in the negative" and advised that "immediate legal action" would be considered "[i]f the City

Council and City Clerk do not agree to obey their constitutional duty." Respondents did not respond to the Attorney General's inquiry.

On August 27, 2026, the Attorney General, in his official capacity, filed an emergency application for leave to commence an original action in this court for writs of mandamus. In a verified petition, the Attorney General sought peremptory writs of mandamus requiring Respondents to submit and certify to the election commissioner by September 1 proposed Lincoln City Charter amendments that satisfied the constitutional requirements for inclusion on the general election ballot in November 2026.

The verified petition alleged that Neb. Const. art. XI, § 4, demands that when municipal officials receive a petition with the requisite number of signatures, the "council or governing authorities shall submit the same to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed."

On August 28, 2026, the Attorney General moved to supplement the verified petition for writs of mandamus. The motion claimed that after the Attorney General filed its emergency application at 5:44 p.m. on August 27, Respondents issued a press release at 6:09 p.m. that same day, which confirmed that Respondents did not intend to submit the three petitions at issue to the election commissioner for inclusion on the November 2026 general election ballot.

Alternative Writ and Response

On August 28, 2026, we granted the Attorney General leave to docket an original action in this court and accepted the supplemental verified petition for writs of mandamus. The same day, we issued an alternative writ of mandamus to Respondents. The writ stated, in part:

> IT IS ORDERED, ADJUDGED, AND DECREED that Respondents shall forthwith submit and certify the "Term Limits for Members of the City Council"

> Petition, the "Increase Participation in City Elections by Holding City Elections in Conjunction with Statewide Elections" Petition, and the "Allow all Citizens who are Residents of an Area Governed by the City of Lincoln to Vote in its Elections" Petition to the Lancaster County Election Commissioner for certification for the November 3, 2026, General Election Ballot, or show cause by Answer to this Court on or before 9:00 p.m. on Monday, August 31, 2026, why a peremptory writ commanding Respondents to do so should not issue, and then and there return this writ.

On August 31, 2026, Respondents filed their answer to our order to show cause why a peremptory writ should not issue. Respondents argued that the Attorney General had no clear right to the relief sought because the petitions were submitted too late for them to complete all the steps necessary and allowed by law to submit the proposed charter amendments to the election commissioner by the September 1 statutory deadline under 2026 Neb. Laws, L.B. 1075 (operative July 18, 2026; amending Neb. Rev. Stat. § 32-559(2)(a) (Cum. Supp. 2024)), to be included on the ballot for the November 3 election. Respondents asserted that to certify the proposed charter amendments for placement on the ballot, they were required to act by passing a resolution and were required to meet certain requirements under Nebraska's Open Meetings Act[1] and municipal law, including the Lincoln Mun. Code, ch. 2.04, and City of Lincoln Executive Order No. 19107, Administrative Regulation 1-1, § C.1. (Apr. 19, 1977).

Respondents also argued that there was no clear duty for them to submit and certify the proposed charter amendments for the November 2026 election because the "next general . . . election" under Neb. Const. art. XI, § 4, clearly meant the next City general election in May 2027. They argued that article XI, § 4, allowed, but did not require, them to hold a

[1] Neb. Rev. Stat. §§ 84-1407 to 84-1414 (Reissue 2024).

special election, and that therefore, they had no clear duty to call a special election and submit the proposed charter amendments at a special election.

Respondents further noted that article XI, § 4, gave them the right, when submitting a charter amendment proposed by voters, to present and submit "any alternative article or section" for the choice of the voters. They argued that in addition to the time necessary to submit the charter amendments proposed by the petitions, they would also need time to prepare, adopt, and submit such alternatives. They further argued that issuance of the writ would "prohibit [them] from any meaningful opportunity to exercise [their] constitutionally-granted right to perform discretionary legislative functions to consider and present alternative amendments."

Respondents finally contended that the issuance of a peremptory writ requiring them to submit the proposed charter amendments for the November 2026 election would require them to "upend [their] regular and routine operations," by requiring them to "hold emergency meetings or suspend the normal rules." They cited authority that issuance of a writ should be denied "where the issuance of a writ would disturb official action, or create disorder or confusion."[2]

After receiving the parties' pleadings, we ordered the parties to submit simultaneous supplemental briefing. The briefs were to address (1) the understanding of the term "next general or special election" when article XI, § 4, was adopted in 1912; (2) the relevance, if any, of *State v. Schroeder*[3] to the proper construction of the phrase "next general . . . election" in article XI, § 4; and (3) if "next general . . . election" is construed to mean the next statewide general election or the next city general election, whether any current provision of the Election Act[4] would

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[2] See *State ex rel. Goetz v. Lundak*, 199 Neb. 585, 594, 260 N.W.2d 589, 594 (1977).

[3] *State v. Schroeder*, 79 Neb. 759, 113 N.W.192 (1907).

[4] Neb. Rev. Stat. §§ 32-101 to 32-1552 (Reissue 2016, Cum. Supp. 2024 & Supp. 2025).

be rendered unconstitutional as applied. The parties filed such briefs, and this matter was submitted without oral argument.

Mandamus Legal Standards

[1-3] Mandamus is an extraordinary remedy, not a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act, and (3) there is no other plain and adequate remedy in the course of the law.[5] In a mandamus action, the party seeking mandamus has the burden of proof and must show clearly and conclusively that such party is entitled to the particular thing the relator asks and that the respondent is legally obligated to act.[6] Whether to grant a writ of mandamus is within a court's discretion.[7]

ANALYSIS

The portion of Neb. Const. art. XI, § 4, that is relevant to this case provides:

> Such charter so ratified and adopted may be amended, or a charter convention called, by a proposal therefor made by the law-making body of such city or by the qualified electors in number not less than five per cent of the next preceding gubernatorial vote in such city, by petition filed with the council or governing authorities. The council or governing authorities *shall submit the same to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed*. In submitting any such charter or charter amendments, *any alternative article or section*

[5] *State ex rel. Spung v. Evnen*, 317 Neb. 800, 12 N.W.3d 229 (2024).

[6] *Id.*

[7] *Id.*

> *may be presented for the choice of the voters* and may be voted on separately without prejudice to others.

(Emphases supplied.)

Based on the showing that the Attorney General must make to warrant the issuance of a writ of mandamus, we first address the Attorney General's authority to bring this action. Next, we consider whether article XI, § 4, imposes a self-executing ministerial duty. Then, we determine the proper interpretation of article XI, § 4, based on the positions of the parties. Finally, we exercise our discretion in issuing a peremptory writ of mandamus.

Attorney General's Authority

The Attorney General asserts that he has authority to bring this original mandamus action to protect the public interests of the State of Nebraska.[8] He notes that under Neb. Rev. Stat. § 84-203 (Reissue 2024), the Attorney General "is authorized to appear for the state and prosecute and defend, in any court[,] any cause or matter, civil or criminal, in which the state may be a party or interested." He maintains that as the "'chief law officer of the state,'"[9] the Attorney General has a duty to "uphold the Constitution" and protect the rights of Nebraskans announced therein,[10] and the common-law authority to "'exercise all such power and authority as public interests may from time to time require.'"[11]

We agree that the Attorney General is a proper party to bring this mandamus action because of the authority granted under

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[8] See, *State, ex rel. Johnson, v. Tilley*, 137 Neb. 173, 288 N.W.521 (1939) (issuing peremptory writ sought by Attorney General); *State, ex rel. Johnson, v. Goble*, 136 Neb. 242, 285 N.W.569 (1939) (same).

[9] *State ex rel. Meyer v. Peters*, 188 Neb. 817, 820, 199 N.W.2d 738, 740 (1972).

[10] *Id*. at 821, 199 N.W.2d at 741.

[11] *Id.* at 820, 199 N.W.2d at 740.

§ 84-203. The state is interested in enforcing constitutional and statutory ministerial duties of the city officials in this case.[12]

SELF-EXECUTING MINISTERIAL DUTY

[4,5] We first recognize that constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.[13] That a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing; nor does the self-executing character of the constitutional provision necessarily preclude legislation for the better protection of the right secured.[14]

[6] The timing requirement set forth in Neb. Const. art. XI, § 4, is self-executing. The mandate is clear: "The council or governing authorities shall submit the [issue] to a vote . . . at the next general or special election not held within thirty days after such petition is filed."[15] No ancillary legislation is necessary to effectuate the 30-day timeline. Neither party disputes the self-executing nature of this timing requirement. They concede that a proposed charter amendment satisfying the signature requirement must be submitted to the voters at the next general or special election, so long as that election is not within 30 days of its filing with the council or governing authorities.

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[12] See *State, ex rel. Sorensen, v. Ak-Sar-Ben Exposition Co.*, 121 Neb. 248, 236 N.W. 736 (1931) (violations of law are public wrongs that state may prevent). See, also, *State, ex rel. Hall, v. Ure*, 99 Neb. 486, 156 N.W. 1053 (1916) (holding action may have more than one proper party).

[13] *Wilfong v. Omaha & C. B. Street R. Co.*, 129 Neb. 600, 262 N.W. 537 (1935).

[14] *Id.*

[15] Neb. Const. art. XI, § 4.

[7-9] Moreover, as the parties do not dispute, the self-executing timing requirement is a ministerial duty. Mandamus is available to enforce the performance of ministerial duties of a public official but is not available if the duties are quasi-judicial or discretionary.[16] A duty imposed by law which may be enforced by writ of mandamus must be one which the law specifically enjoins as a duty resulting from an office, trust, or station.[17] The general rule is that an act or duty is ministerial only if there is an absolute duty to perform in a specified manner upon the existence of certain facts.[18] A duty or act is ministerial when there is no room for the exercise of discretion, official or otherwise, the performance being required by direct and positive command of the law.[19] A ministerial duty is not dependent upon a public officer's judgment or discretion—it is performed under the conditions specified in obedience to the mandate of legal authority, without regard for the exercise of the officer's judgment upon the propriety of the act being done.[20] To warrant the issuance of a peremptory writ of mandamus to compel the performance of a legal duty to act, (1) the duty must be imposed by law, (2) the duty must still exist at the time the writ is applied for, and (3) the duty must be clear.[21]

[10,11] In the context of statutory construction, we have recognized that the word "shall" is considered mandatory and inconsistent with the idea of discretion.[22] No universal test distinguishes mandatory from directory statutory provisions.[23] Broadly, provisions that relate to the essence of the thing to be

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[16] *Burbank v. Evnen*, 321 Neb. 65, 32 N.W.3d 612 (2026).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *American Exch. Bank v. Topp*, 321 Neb. 409, 35 N.W.3d 411 (2026).

[23] *D.I. v. Gibson*, 291 Neb. 554, 867 N.W.2d 284 (2015).

done are mandatory while provisions for which compliance is a matter of convenience rather than substance are directory.[24] Put another way, we have been reluctant to deem provisions mandatory if something less than strict compliance would not interfere with the law's fundamental purpose.[25]

[12] The timing requirement in article XI, § 4, relates to the essence of the thing to be done—the timing of the submission of the issue to voters. The timing requirement is a self-executing provision that imposes a mandatory duty upon the city council or governing authorities to submit the proposed charter amendment to a vote of the qualified electors at the next general or special election not held within 30 days after such petition is filed.

Respondents contend that the timing requirement establishes a "floor" by which proposed charter amendments cannot be submitted to voters because the next election would be too soon, rather than a deadline for proposed charter amendments to be submitted to voters. Respondents also contend that because "[i]n submitting any . . . charter amendments, any alternative article or section may be presented for the choice of the voters,"[26] the city council has discretionary authority to present alternative articles or sections alongside the charter petition amendments for the voters to choose from. This right of the city council is discretionary, and the city council is free to exercise that right. However, Respondents go further; they assert that the 30-day timing requirement cannot be a deadline because they need time to consider submitting such alternatives.

But Respondents' contentions are not inconsistent with a reading of a mandatory deadline. Although we agree that the timing requirement does create a "floor" as Respondents contend, it also creates a positive deadline that must be met.

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[24] *Id.*

[25] *Id.*

[26] Neb. Const. art. XI, §4.

Accordingly, we must next address whether Respondents' ministerial duty to submit the issue to voters at the "next general . . . election"[27] includes the statewide general election in November 2026 as the Attorney General contends.

"GENERAL" IS "REGULAR"

[13-16] The rules of statutory interpretation apply to constitutional interpretation as well.[28] As in statutory interpretation, the construction of constitutional provisions requires us to apply basic tenets of interpretation.[29] Constitutional provisions are not open to construction as a matter of course; construction is appropriate only when it has been demonstrated that the meaning of the provision is not clear and that construction is necessary.[30] If the meaning is clear, we give a constitutional provision the meaning that laypersons would obviously understand it to convey.[31]

In 1910, close in time to the Legislature's proposal of article XI, § 4, the term "general election" meant:

> (1) One at which the officers to be elected are such as belong to the *general* government,—that is, the general and central political organization of the whole state: as distinguished from an election of officers for a particular locality only. (2) One held for the selection of an officer after the expiration of the full term of the former officer; thus distinguished from a *special* election, which is one held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected [or] [a]n election for a particular emergency; out of the regular course . . . .[32]

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[27] *Id.*

[28] *Conroy v. Keith Cty. Bd. of Equal.*, 288 Neb. 196, 846 N.W.2d 634 (2014).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Black's Law Dictionary 416 (2d ed. 1910).

The definition of "regular election" is also relevant here: "A general, usual, or stated election. When applied to elections, the terms 'regular' and 'general' are used interchangeably and synonymously."[33]

In article XI, § 4, "general" election is juxtaposed with "special" election. This dichotomy indicates that article XI, § 4, contemplates only two kinds of elections: those that are regular and those that are out of the regular course. While not dispositive, we note that at least one newspaper interpreted "general" to be "regular" before the voters took to the polls in 1912.[34] We agree. In the context of article XI, § 4, we interpret "general" election to be used interchangeably and synonymously with "regular" election.

"General" Includes Statewide General Elections

The determinative question in this case then is whether the "next general . . . election" in Neb. Const. art. XI, § 4, is limited to a regular election for the city alone or whether it includes a regular statewide election. We interpret the words at the heart of this dispute to include a regular statewide election.

Respondents argue that language in *State v. Schroeder* indicates that when article XI, § 4, was adopted in 1912, the term "general election" in article XI, § 4, would have been understood to refer to city elections only and not the November general election.[35] But Respondents reach that conclusion by plucking that language from its context.

The issue in *State v. Schroeder* was how long someone appointed to fill a vacancy as city alderman was entitled to hold that office. A statute pertaining to aldermen provided

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[33] *Id.*

[34] Omaha Daily Bee, Jan. 12, 1911, at 2 ("after which it is to be submitted to the voters at a regular or special election").

[35] See *State v. Schroeder, supra* note 3.

that those appointed to fill vacancies were to hold the office "'until the next general election.'"[36] The appointed alderman argued that "general election" for purposes of that statute meant "the [municipal] election expressly appointed by statute for the election of aldermen,"[37] while the relator argued that "general election" referred to the "next election at which municipal officers in general are elected."[38] This court adopted the relator's reading of the statute and stated, "The words 'general election' have no uncertain meaning in this state, and when used with reference to city elections[,] without any qualifying words, must mean the election for municipal officers in general."[39]

Respondents claim that the above-quoted language shows that at the time article XI, § 4, was enacted, "general election" in that provision would have been understood to refer to a city general election because article XI, § 4, pertains to amendments of city charters and appears "without any qualifying words." But it must be recalled that the dispute in *State v. Schroeder* was not whether the term "general election" included a statewide general election in November; it was whether "general election" in that particular statute meant the next municipal election at which aldermen were elected or the next municipal election at which municipal officers in general were elected. Viewed in its proper context, the language relied on by Respondents is not, in our opinion, instructive as to the original understanding of article XI, § 4.

Similarly, our invocation of that proposition in *Allen v. Tobin*[40] fails to move the needle in Respondents' favor. In that case, the plaintiffs contended that a petition was invalid for failing to have sufficient signatures based on the percentage

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[36] *Id.* at 761, 113 N.W. at 193.

[37] *Id.* at 762, 113 N.W. at 193.

[38] *Id.* at 761, 113 N.W. at 193.

[39] *Id.* at 762, 113 N.W. at 194.

[40] *Allen v. Tobin*, 155 Neb. 212, 51 N.W.2d 338 (1952).

of votes cast at "the last general election."[41] The petitioners argued that the last general election was limited to the last state general election and that the intervening city election was not a general election for the purposes of the relevant statute. We disagreed.

We noted:

> Ordinarily, a general election is one provided for by law for the election of officers throughout the state, or certain subdivisions thereof, after the expiration of the full terms of the former officers. . . .
>
> A regular or general election is one which recurs at stated intervals as fixed by law; it is one which occurs at stated intervals without any superinducing cause other than the efflux of time. In the application of the foregoing rules, it is held that the term "general election" embraces a regular annual municipal election. . . .
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> Any election at which there is a general and popular expression of the public will, whether that election be a state, county, or city election, is a general election.[42]

We went on to hold that the city general election was, in fact, a general election. We did not, however, contrary to Respondents' position, hold that the city general election was the *only* applicable general election. That opinion stands for the principle that a city general election is included in the definition of "general election," and, inherently, it does not exclude the state general election.

Our holding in *Allen v. Tobin* is similar to our holding in *State, ex rel. City of Lincoln, v. Marsh*.[43] There, we recognized that a general election was merely one that occurs on a "regular date[,] operating automatically as to time."[44] General elec-

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[41] *Id.* at 217, 51 N.W.2d at 341.

[42] *Id.* at 218-19, 51 N.W.2d at 342 (citations omitted).

[43] *State, ex rel. City of Lincoln, v. Marsh*, 107 Neb. 607, 187 N.W. 88 (1922).

[44] *Id.* at 608, 187 N.W. at 88. Accord *State, ex rel. City of Lincoln, v. Johnson*, 117 Neb. 301, 220 N.W. 273 (1928).

tions were those held automatically and scheduled on a regular basis, as opposed to special elections. Likewise, in *State, ex rel. Long, v. City of Nebraska City*,[45] we rejected the notion that the state general election was a special city election as far as it affected a purely municipal question. We recognized that in the context of elections, the word "general" has the same meaning as "regular"; that is, "'returning or recurring at stated or fixed times or uniform intervals.'"[46]

Moreover, when article XI, § 4, was adopted in 1912, so too was an amendment to Neb. Const. art. XVII, § 4, which provides that "[t]he general election of this state" is held in November every 2 years. Therefore, the voters contemplated that "general . . . election" in article XI, § 4, included the statewide general election set forth in article XVII, § 4. Interpreting the use of the general term "general . . . election," without a modifier, in article XI, § 4, to be limited to city general elections disregards the constitution's own recognition of a statewide general election.

One other canon of construction guides our analysis—the general terms canon.[47] General words, as all words, "are to be accorded their full and fair scope. They are not to be arbitrarily limited."[48] The general terms canon supports construction of the words "next general . . . election" in article XI, § 4, to include both statewide general elections and city general elections.

[17] We hold that in the context of article XI, § 4, "next general . . . election" means the next regular election, one that is recurring automatically as to time. The statewide general election, which recurs every 2 years "on the Tuesday

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[45] *State, ex rel. Long, v. City of Nebraska City*, 123 Neb. 614, 243 N.W. 858 (1932).

[46] *Id.* at 617-18, 243 N.W. at 860.

[47] See, generally, Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Texts 101-106 (2012).

[48] *Id.* at 101.

succeeding the first Monday of November," is such a general election.[49]

Effectuating Article XI, § 4

[18] Respondents argue that our interpretation of article XI, § 4, in this matter will create problems with the administration of state statutes, including the Election Act,[50] Open Meetings Act,[51] and their own municipal laws.[52] While we are cognizant of Respondents' concerns, we are unpersuaded by this argument. "[S]tatutes [and municipal laws] follow constitutions, not the other way around."[53] A constitution represents the supreme written will of the people regarding the framework for their government.[54] Accordingly, the proposed charter amendments must be submitted to voters at the next statewide general election in November 2026.

Respondents argue that the granting of a writ of mandamus in this matter will prevent them from presenting "for the choice of the voters" an "alternative article or section" when "submitting any . . . charter amendments" to a "vote of the qualified electors" as they are empowered to do under article XI, § 4. However, Respondents' opportunity to offer an "alternative article" when submitting the charter amendments for a vote does not affect their ministerial duty under article XI, § 4, to "submit the [petition charter amendment] to a vote of the qualified electors at the next general or special election." Laws that may frustrate such opportunities for

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[49] Neb. Const. art. XVII, § 4.

[50] E.g., §§ 32-556 and 32-559(2)(a).

[51] §§ 84-1407 to 84-1414.

[52] See, Lincoln Municipal Code, ch. 2.04; City of Lincoln Executive Order No. 19107, Administrative Regulation 1-1, § C.1. (Apr. 19, 1977).

[53] *Working Families Party v. Commonwealth*, 653 Pa. 41, 98, 209 A.3d 270, 304 (2019) (Wecht, J., concurring and dissenting).

[54] E.g., *State ex rel. Brooks v. Evnen*, 317 Neb. 581, 10 N.W.3d 887 (2024); *Pony Lake Sch. Dist. v. State Committee for Reorg.*, 271 Neb. 173, 710 N.W.2d 609 (2006).

Respondents to submit alternative articles in this matter do not remove their responsibility to submit the petition charter amendments for a vote.

PEREMPTORY WRIT SHOULD ISSUE

Based on our analysis above, we determine that the Attorney General has clearly and conclusively shown that (1) the Attorney General has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of Respondents to perform the act, and (3) there is no other plain and adequate remedy in the course of the law. Because the Attorney General has made the required showing, a peremptory writ of mandamus should issue.

CONCLUSION

Neb. Const. art. XI, § 4, commands Respondents to submit proposed charter amendments "at the next general . . . election not held within thirty days after" a petition by the required number of qualified electors is filed. Because qualifying petitions were filed, Respondents were obligated to submit the proposed amendments in conformity with this constitutional mandate. Because "the next general . . . election not held within thirty days after" the petitions were filed is the November 2026 statewide general election, Respondents have a ministerial duty to submit the amendments at that election.

We therefore issue a peremptory writ of mandamus directing Respondents to submit the proposed charter amendments to a vote of the qualified electors at the November 3, 2026, election. Nothing in this opinion should be read to impair any constitutional right to submit "any alternative article or section" under Neb. Const. art. XI, § 4.

PEREMPTORY WRIT OF MANDAMUS ISSUED.

FUNKE, C.J., not participating.

STACY, J., dissenting.

Today, the majority issues a peremptory writ of mandamus based on an interpretation of article XI, § 4, of the Nebraska

Constitution that, in my opinion, is not supported by the constitutional text and is contrary to the Lincoln City Charter. I respectfully dissent.

Since its adoption in 1912, article XI, § 4, has prescribed the only process by which city charters can be amended once adopted.[1] It states that when a petition proposing a charter amendment is filed by a sufficient number of qualified city electors, the petition must be submitted "to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed."[2]

In this mandamus action, the Nebraska Attorney General and the Lincoln City Council disagree on the meaning of "next general or special election" as that phrase is used in article XI, § 4. Although this court has construed similar language in statutes,[3] we have not, until today, construed the constitutional text.

The city council argues the text of article XI, § 4, is referring to the next *city* general or special election. Based on that construction, the city council states that it intends to submit three recently filed charter amendment petitions to the city electors at the May 2027 city general election.

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[1] See, generally, 2A Eugene McQuillin, The Law of Municipal Corporations § 9:27 at 341-42 (3d ed. 2017) (explaining that "[a] mode of direct amendment prescribed by the constitution is exclusive and constitutes the only method by which changes may be made directly by the electors. That is, a charter adopted by virtue of the constitution can be amended only in the way prescribed in the constitution, which is controlling as against any conflicting statutory enactment").

[2] Neb. Const. art. XI, § 4.

[3] See, *Allen v. Tobin*, 155 Neb. 212, 221, 51 N.W.2d 338, 343 (1952) (concluding language in state statute that required city petitions to be signed by "20 percent of the votes cast at the last general election" meant "the last general municipal election"); *State v. Schroeder*, 79 Neb. 759, 113 N.W. 192 (1907) (construing phrase "next general election" in state statute governing cities of first class to mean next general municipal election).

The Attorney General says that will be too late. He argues the text of article XI, § 4, should be construed to mean "*any* general election—city or state."[4] And based on that construction, he contends the city council must submit the charter amendment petitions to city electors at the November 2026 statewide general election. The Attorney General candidly acknowledges there is a statutory barrier to doing so because the deadline for cities to submit issues at the statewide general election has already lapsed.[5] He therefore suggests that such statute is unconstitutional as applied, but I do not read the majority opinion to address that issue.

Today, the majority adopts the interpretation urged by the Attorney General and holds that the phrase "next general. . . election" as used in article XI, § 4, means the "next regular election . . . recurring automatically as to time" and therefore necessarily includes "both statewide general elections and city general elections." Applying this construction, the majority concludes the city council will violate article XI, § 4, if it does not submit the charter amendment petitions to city voters at the next statewide general election in November 2026, and it therefore issued a peremptory writ compelling the city council to submit the petitions "to a vote of the qualified electors at the next general election held on November 3, 2026."

I would not issue the writ on the facts of this case. As I will explain, I disagree with the majority's interpretation of article XI, § 4, and I think compelling the city council to submit a strictly local matter to Lincoln voters at the statewide general election in November will require the city council to ignore provisions of its home rule charter and to violate the established timeframes prescribed in the Election Act. But even

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[4] Brief for relator at 6.

[5] See 2026 Neb. Laws, L.B. 1075 (operative July 18, 2026; amending Neb. Rev. Stat. § 32-559(2) (Cum. Supp. 2024)) (setting September 1 deadline for political subdivision to submit issue to voters at statewide general election).

if I could be persuaded that the majority's interpretation of article XI, § 4, is correct and should be applied prospectively,[6] I do not think mandamus relief is warranted on the specific facts of this case.

MEANING OF "GENERAL ELECTION" UNDER ARTICLE XI, § 4

Article XI, § 4, prescribes the method for submitting proposed charter amendment petitions to city voters, but it does no more. Beyond the requirement that the petition must be submitted "at the next general or special election not held within thirty days after such petition is filed," article XI, § 4, is silent as to what type of general or special election must be held or when it must be scheduled.

To construe the meaning of the phrase "general or special election," the majority opinion starts by reviewing dictionary definitions. I think the analysis should instead start by reviewing the general election provisions in the Lincoln City Charter and considering the effect of those provisions under our jurisprudence on home rule charters and related election statutes.

Home Rule Charters Generally.

When construing state constitutional provisions regarding city charters, we have adopted the principle that "the constitutional provision granting all cities the right to form their charters for their own government should be liberally construed in order that the beneficent intention thereof may be fully carried out."[7] And for more than a century, it has been understood that "'[t]he purpose of the constitutional provision (as

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[6] See, e.g., *AVG Partners I v. Genesis Health Clubs*, 307 Neb. 47, 59, 948 N.W.2d 212, 227 (2020) (principles of fairness and equity can support applying new rule prospectively if court decides "'an issue of first impression whose resolution was not clearly foreshadowed'").

[7] *Consumers Coal Co. v. City of Lincoln*, 109 Neb. 51, 75, 189 N.W. 643, 652 (1922).

to home rule charters) is to render cities independent of state legislation as to all subjects which are of strictly municipal concern; therefore, as to such matters general laws applicable to cities yield to the charter.'"[8]

We explained the effect of this principle in *Schroeder v. Zehrung*,[9] where we said:

> While a home rule charter adopted pursuant to the constitutional provision may not contravene any provisions of the Constitution or of any general statute enacted by the [L]egislature, it is, in all other respects, binding and controlling. A city may enact and put into its charter any provisions for its government that it deems proper, so long as they do not run contrary to the Constitution or to any general statute.

Under this principle, a provision of a home rule charter takes precedence over a conflicting state statute in instances of local municipal concern.[10] But when the Legislature enacts a law affecting municipal affairs that is of statewide concern, the state law takes precedence over any municipal action taken under the home rule charter.[11] Stated differently, as to all subjects of strictly local municipal concern in a home rule charter, the city operates free and independent of state legislation.[12] There is no sure test for distinguishing between matters of strictly municipal concern and those of statewide concern, and

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[8] *Eppley Hotels Co. v City of Lincoln*, 133 Neb. 550, 556, 276 N.W. 196, 200 (1937) (quoting *Consumers Coal Co., supra* note 7).

[9] *Schroeder v. Zehrung*, 108 Neb. 573, 576, 188 N.W. 237, 238 (1922).

[10] *Kubicek v. City of Lincoln*, 265 Neb. 521, 658 N.W.2d 291 (2003); *Hall v. Cox Cable of Omaha, Inc.*, 212 Neb. 887, 327 N.W.2d 595 (1982); *Herman v. Lee*, 210 Neb. 563, 316 N.W.2d 56 (1982).

[11] *Dwyer v. Omaha-Douglas Public Building Commission*, 188 Neb. 30, 195 N.W.2d 236 (1972); *Omaha Parking Authority v. City of Omaha*, 163 Neb. 97, 77 N.W.2d 862 (1956).

[12] See *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

courts must consider each case as it arises and draw the line of demarcation.[13]

Because the purpose of home rule charters is to render cities independent of state legislation on all subjects of strictly municipal concern, and because the provisions of article XI, § 4, must be liberally construed to carry out that purpose, I suggest we need look no further than Lincoln's home rule charter to determine the proper meaning of "next general . . . election."

Lincoln's Home Rule Charter.

The record in this mandamus action includes a certified copy of Lincoln's home rule charter, which provides in relevant part:

> The general election in the city shall be held on the first Tuesday in May in every odd-numbered year. At all general, primary and special elections, the polls shall be kept open between the hours of 8:00 a.m. and 8:00 p.m. All elections shall be proclaimed by the mayor not less than ten (10) or more than forty (40) days prior to the date of holding such elections. Notice of elections, including elections to authorize the issuance of bonds, shall be published in the city not less than ten (10) days before the date of election. No other notice shall be required. In all other respects such elections shall be held and conducted, the vote canvassed and the result declared as provided by the general laws of the state.[14]

By virtue of the power conferred in article XI, § 2, of the Nebraska Constitution, the qualified electors in Lincoln adopted a home rule charter that expressly states how and when its city general elections must be held and provides that

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[13] *Dwyer, supra* note 11.

[14] Lincoln City Charter, art. III, § 1.

such elections "shall" be held in May of odd-numbered years. Because the general city election schedule in Lincoln's home rule charter is a quintessential example of a strictly local municipal concern, any general statutes governing municipal general elections must yield to the charter.[15]

Additionally, I see nothing in this home rule charter provision that contravenes any provision of the state constitution or any state statute governing municipal elections. In fact, I find it notable that Neb. Rev. Stat. § 32-556 (Reissue 2016) expressly states:

> *All city elections in cities with home rule charters shall be held in accordance with the home rule charter* except as otherwise provided in the Election Act and may be held in conjunction with the statewide primary or general election. If the home rule charter is silent as to any subject covered by the act, the act shall apply.

(Emphasis supplied.)

It seems to me that whether this issue is considered under our established jurisprudence governing home rule charters or under current state statute, the answer is the same—Lincoln's next general election must be held in accordance with its home rule charter. So, for purposes of article XI, § 4, the "next general . . . election" will be in May 2027.

Because the city council has no clear legal duty under either Lincoln's home rule charter or current Nebraska statute to submit the charter amendment petitions to city voters any sooner than May 2027, it should not be compelled to do so. And though the city council has discretion to hold a city general election in conjunction with the statewide general election,[16] mandamus will not lie to control a city's decision

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[15] See, *Eppley Hotels Co., supra* note 8; *Consumers Coal Co., supra* note 7.

[16] See § 32-556.

of matters left by statute to the discretion of the governing body.[17]

In this mandamus action, the Attorney General has the burden to prove clearly and conclusively[18] that under article XI, § 4, the Lincoln City Council is legally obligated to place the charter amendment petitions on the November 2026 statewide general election ballot, rather than on the May 2027 city general election ballot. In my opinion, that burden has not been met and the peremptory writ should not have issued.

Writ Should Not Issue Even Under Majority's Interpretation.

Finally, even if I could be persuaded that the majority's interpretation of "next general . . . election" under article XI, § 4, is correct, I would still decline to issue the writ on the facts of this case. It is a settled principle in our mandamus jurisprudence that

> the remedy of mandamus is not a writ of right and in determining whether or not the writ should issue, the court should consider the facts of the particular case, the nature of the exigency which calls for the exercise of the court's discretion, the consequences of the granting of the writ, and the nature and extent of the wrong which would result from its refusal. Such a writ will be issued ordinarily only to prevent injustice and not to promote it.[19]

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[17] *State ex rel. Evans v. Brown*, 152 Neb. 612, 614, 41 N.W.2d 862, 863 (1950) (holding mandamus will not lie to compel city to hold special election on municipal ordinance referendum because operative statute gave city discretion to submit matter at "'next municipal election held not less than thirty days after filing of the petition'" or at a "'special election for that purpose'").

[18] See, *Burbank v. Evnen*, 321 Neb. 65, 32 N.W.3d 612 (2026); *State ex rel. Lanman v. Board of Cty. Commissioners*, 277 Neb. 492, 763 N.W.2d 392 (2009).

[19] *State ex rel. City of Omaha v. Lynch*, 181 Neb. 810, 815, 151 N.W.2d 278, 282 (1967).

Applying this principle, we have regularly declined to issue a writ when the effect would be to compel the performance of an unlawful act.[20] Relatedly, we have observed that "'"[w]here the issue of a writ would disturb official action, or create disorder or confusion, it may be denied; and this is so even where the petitioner has a clear legal right for which mandamus would be an appropriate remedy."'"[21] I think the facts of this case fall squarely within these rules, and I suggest that mandamus is not an appropriate remedy even under the majority's interpretation of article XI, § 4.

Under the rule announced by the majority today, if a petition to amend a city's home rule charter is filed with the city council 31 days before a statewide general election, the city council will have no choice but to submit the proposal to the city electors for their approval or rejection at that statewide general election, even though the deadlines established in state statutes for placing matters on the statewide general election ballot have already lapsed and the election process mandated by the city's home rule charter cannot be completed. In other words, to comply with article XI, § 4, as construed by the majority today, the city council must not only ignore the process established in its own home rule charter, but it must also defy the statutory time limits imposed by the Election Act.

I see nothing in the verified petition that supports any need for exigency or that suggests any specific harm would

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[20] See *State ex rel. School Dist. v. Board of Equalization*, 166 Neb. 785, 793, 90 N.W.2d 421, 427 (1958) ("[i]t would be anomalous indeed that a court should be required to issue a writ of mandamus to compel action which the court would be required to subsequently enjoin at the suit of an injured party"). Accord, *State ex rel. League of Nebraska Municipalities v. Loup River P. P. Dist.*, 158 Neb. 160, 62 N.W.2d 682 (1954); *State ex rel. Heil v. Jakubowski*, 151 Neb. 471, 38 N.W.2d 26 (1949); *State, ex rel. Read, v. Farmers Irrigation District*, 116 Neb. 373, 217 N.W. 607 (1928); *State v. Cowles*, 90 Neb. 839, 134 N.W. 959 (1912).

[21] *State ex rel. School Dist., supra* note 20, 166 Neb. at 794, 90 N.W.2d at 427 (quoting *State, ex rel. Long, v. Barstler*, 122 Neb. 167, 240 N.W. 273 (1931)).

result if the peremptory writ were not granted and the charter amendment petitions were instead submitted to city voters at the next city general election in May 2027. But even assuming some harm could be shown from such a delay, I am not persuaded it would outweigh the consequences of granting the peremptory writ in this case, and the disorder and confusion it is likely to cause to election officials and electors.

CONCLUSION

For all these reasons, I would deny the writ and dismiss this action.

Pirtle, Judge, joins.