IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

MICHAEL NORRIS, Mayor of the City of Palm Coast

Case No.: 2025-CA-000269

Plaintiff,

v.

CITY OF PALM COAST, THE SUPERVISOR OF ELECTIONS OF FLAGLER COUNTY, and CHARLES GAMBARO, City Council Member District 4 of The City of Palm Coast,

Defendants.
_____/

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR REHEARING

Defendant City of Palm Coast (the "City" or "Defendant") hereby file this Response in Opposition to Plaintiff Michael Norris' ("Mayor Norris" or "Plaintiff") Motion for Rehearing ("Rehearing Motion") and in support writes:

SUMMARY OF ARGUMENT

Plaintiff's Rehearing Motion should be denied without further hearing. Plaintiff asks the Court to revisit legal conclusions which have already been extensively briefed, argued, and determined by the Court. With no new evidence or legal basis, Plaintiff reargues a legal issue specifically addressed by the Court –whether Plaintiff had standing under Florida's Declaratory Judgment Act.

Rehearing motions that raise arguments previously made and rejected by the Court are patently improper. Here, Plaintiff claims the Court failed to consider his standing under Florida's Declaratory Judgment Act. This is false. This exact standing argument was a central focus of Plaintiff's argument at the July 3, 2025, hearing, and it was specifically addressed and rejected in the Court's Final Order. Plaintiff's initial lawsuit

against the City was unsupported in law and fact, because under clear Florida law, Plaintiff has no standing to challenge Charles Gambaro's right to hold office. Plaintiff's Rehearing Motion, which is improperly based on an exact argument the Court previously heard, considered, and rejected, is inexcusable.

Moreover, in its Final Order, the Court further held that even if Plaintiff had standing, he would lose on the substantive merits of the case. This heightens the frivolity of the Rehearing Motion, because even if Plaintiff somehow had standing, the result would be the same.

BACKGROUND

1. Former-Councilwoman Cathy Heighter ("Heighter") resigned from the City Council effective Friday, August 23, 2024 – after the City primary election and after the qualifying period had closed.

2. On October 1, 2025, the City Council appointed Charles Gambaro to fill the vacant seat.

3. On November 19, 2024, Plaintiff Mike Norris was sworn into office as Mayor of the City of Palm Coast.

4. Prior to filing this lawsuit, Plaintiff was advised by the Council's City Attorneys on several occasions that Gambaro's appointment was legal.[1]

5. On May 5, 2025 – seven months after Gambaro's appointment – Norris filed his "Emergency" Complaint seeking to remove Gambaro and force a special election for Gambaro's seat.

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[1] *See* Meeting Minutes of December 3, 2024, Palm Coast City Council Meeting at https://agendas.palmcoastgov.com/meetings/2024/12/123_M_City_Council_24-12-03_Minutes.pdf

6. On May 13, 2024, Plaintiff's counsel emailed the Court requesting an emergency hearing on the Complaint. The City's undersigned counsel filed a Notice of Appearance the same day and told Mr. Sabatini they were unavailable on May 28 but were available on July 3, July 17, or August 14 for a hearing.

7. Rather than respond to the undersigned's email, Mr. Sabatini emailed the Court directly that evening, without including Defendant's attorneys, and requested a hearing on May 15, the only date the undersigned was unavailable.

8. The sudden urgency for this action after seven months of delay was never fully explained by Plaintiff or his counsel, nor was the failure to confer with Defendant's counsel when attempting to schedule a substantive hearing.

9. The Court set this matter for final hearing for July 3, 2025.

10. On May 29, 2025, Defendants filed their Answer and Affirmative Defenses to the Complaint and a Response to Plaintiff's Show Cause Order. Defendants' Answer and Response outlined well-established Florida law holding that only Quo Warranto may be used to challenge someone's title to public office. The cases also made clear one cannot avoid such a lack of standing by filing a declaratory action.

11. At the July 3 hearing, Mr. Sabatini admitted Plaintiff was not the Attorney General and had no claim to Gambaro's office. Instead, Mr. Sabatini argued at length that Florida's "broadly construed" declaratory judgment act somehow provided standing – despite a plethora of Florida case law holding the exact opposite.

12. The Court's Final Order also made clear that even if Plaintiff had standing, which he did not, Plaintiff would lose on the merits in any event. *See* Final Order, ¶ 21.

ARGUMENT

I. LEGAL STANDARD

While courts have the authority to revisit previous orders, such authority should be used sparingly and with great hesitation. *Hunter v. Dennies Contracting Co.*, 693 So. 2d 615, 616 (Fla. 2d DCA 1997); *Tingle v. Dade Cnty. Bd. Of Cnty. Comm. V. Tingle*, 245 So. 2d 76, 78 (Fla. 1971). The law is well settled that the function of "a motion for rehearing or for reconsideration" is not a chance for counsel to "advise the court they disagree with its conclusions, to reargue matters already considered, to request the court change its mind as to a matter which has already received careful attention of the judge, or to advance new or other points or theories not previously relied on." *Espinosa v. Domingo*, Case No. 12CACE022019, 2013 WL 5876791 (Fla. Cir. Ct., Broward Cnty. 2013) *citing Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959). Motions for relief from judgment can be dismissed without a hearing if the motion fails to raise entitlement to relief. *Zivitz v. Zivitz*, 16 So. 3d 841, 849 (Fla. 2d DCA 2009).

II. THE CITY'S MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE COURT HAS ALREADY CONSIDERED STANDING FOR DECLARATORY JUDGMENT

Plaintiff's Rehearing Motion is unsupported by Florida law and contrary to Rule 1.530, *Florida Rules of Civil Procedure*, because Plaintiff fails to allege any new facts or issues which the Court did not consider in entering the Final Order. *Fla. R. Civ. P.* 1.530. The law is well settled that the function of "a motion for rehearing or for reconsideration" is not a chance for counsel to "advise the court they disagree with its conclusions, to reargue matters already considered, to request the court change its mind as to a matter which has already received careful attention of the judge, or to advance new or other points or theories not previously relied on." *Espinosa*, (Fla. Cir. Ct., Broward Cnty. 2013) *citing Sherwood*, 111 So. 2d 96 (emphasis added).

Motions for rehearing are inappropriate vehicles for raising arguments presented in oral arguments as well as in briefs.

> [I]t is not a compliment to the intelligence, the competency or the industry of the court for it to be told in each case which it decides that it has 'overlooked and failed to consider'…matters which, had they been given proper weight, would have necessitated a different decision. Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

State v. Green, 105 So. 2d 817, 818-19 (Fla. 1st DCA 1958) (emphasis added); *See also Groover v. Walker*, 88 So. 2d 312, 315 (Fla. 1956) (holding "where the petition for rehearing merely reargues the case on points and facts found and considered in the prior hearing of the cause, then the petition for rehearing goes beyond its proper scope and it should be denied in any event.").

Here, Plaintiff's Rehearing Motion fails to state any facts, arguments, or issues which the Court did not consider before entering its Final Order. Instead, Plaintiff recites the exact same legal argument he previously made at the hearing, which was specifically addressed and rejected by the Court in its Final Order. *See* Final Order at ¶ 20.

Specifically, paragraph 20 of the Court's Final Order reads: "*Plaintiff's counts for declaratory and injunctive relief fail because quo warranto is the sole and exclusive remedy to challenge title to an office. Tobler, 297 So. 2d at 61; Gentry-Futch Co. v. Gentry, 106 So. 473, 476 (Fla. 1925); Swoope v. City of New Smyrna Beach, 125 So. 371, 371-372 (Fla. 1929); McSween v. State Live Stock Sanitary Brd., 122 So. 239, 244*

(Fla. 1929); Winter v. Mack, 194 So. 225, 228 (Fla. 1940); Penn v. Pensacola-Escambia Governmental Center Auth., 311 So. 2d 97, 101 (Fla. 1975)." Final Order at ¶ 20.

Moreover, the Court's Final Order made a ruling on the merits, regardless of Plaintiff's standing: "*Even if Plaintiff had standing, which he does not, the passage of essential election deadlines prior to Heighter's resignation and the proximity of the resignation to the general November 5, 2024, election thereafter, created a logistical impossibility of placing District Seat 4 on the November 2024 ballot. Accordingly, under the facts of this case, the next "regularly scheduled election" for District Seat 4 as contemplated by the Palm Coast City Charter was November 2026. See City Charter, Art. IV, § 7(e).*" Final Order at ¶ 21.

The frivolous nature of the initial complaint is underscored by the myriad grounds for judgment in favor Defendants. *See* Final Order at ¶¶ 18 – 22. Plaintiff's attempt to double down on an originally unsupportable claim were improper when filed and are improper now.

III. MAYOR NORRIS' REHEARING MOTION SHOULD BE DISPOSED OF WITHOUT ANOTHER HEARING

Mayor Norris wants a do-over hearing to re-assert a previously stated losing argument. He is not entitled to one. *Aubourg v. Erazo*, 922 So. 2d 1106, 1108 (Fla. 4th DCA 2006) (a court may assume a party's motion for rehearing or reconsideration contains all relevant arguments and deny the motion without a hearing); *Zivitz*, 16 So. 3d 841, 849; *Harvey v. Deutsche Bank Natl. Trust Co.*69 So. 3d 300, 302-03 (Fla. 4th DCA 2011) (circuit court properly denied borrower's request for hearing on her reconsideration motion which sought reconsideration of a summary judgment order).

The Court considered the pleadings and held a lengthy hearing on the Complaint and Petition for Writ of Quo Warranto, and the parties vigorously argued their positions. At great expense to the City (and its taxpayers), Defendants' counsel spent hours briefing the issue, preparing for the hearing, creating notebooks for the hearing, and creating multiple blown-up boards, which were presented at the hearing. Mayor Norris does not get a redo because he continues to lose. The Court is fully justified in denying the Motion for Rehearing, and doing so would be legally appropriate and avoid any further burden caused by Plaintiff's frivolous actions.

CONCLUSION

WHEREFORE, Defendant City of Palm Coast respectfully requests this Court deny Plaintiff's Motion for Rehearing – without hearing on the Motion, which is unsupported in law and fact.

Respectfully submitted this 8th day of August, 2025.

/s/ Rachael M. Crews
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY I electronically filed the foregoing with the Clerk of the Court by using the eFiling Portal, which will electronically serve a copy of the foregoing to all registered participants this 8th day of August, 2025.

/s/ Rachael M. Crews
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