

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.

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**DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER**

Defendants City of Palm Coast (the "City") and City Council Member District 4 Charles Gambaro ("Gambaro") (collectively, "Defendants") hereby respond to Plaintiff Michael Norris's ("Plaintiff")<sup>1</sup> Emergency Motion to Show Cause ("Motion") and the Court's May 14, 2025, Show Cause Order ("Order") as follows:

**ARGUMENT SUMMARY**

The City lawfully appointed Gambaro on October 1, 2024. Inexplicably, **seven months later**, Plaintiff demanded "emergency" relief and immediate, expedited process to remove Gambaro from office. Nothing has changed since Gambaro's October appointment to trigger an "emergency," and there is no upcoming City election necessitating quick action. The next City election is in November 2026, and Gambaro's seat will be up for election at that time. Plaintiff's false urgency – coupled with Plaintiff's

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<sup>1</sup> Plaintiff improperly filed this action in his capacity as City Mayor. Under the City Charter, the Mayor lacks the ability to bring this action unless approved by the City Council. See Article IV (4)(a) and (b); Article IV (8)(b).

refusal to coordinate or communicate with City's counsel regarding scheduling – is unproductive.

Plaintiff's suit is frivolous. Plaintiff has no standing to bring a quo warranto action, and as decades of Florida law make clear, injunctive and declaratory relief are not available to challenge someone's right to hold office. Even if Plaintiff could challenge Gambaro's office (he cannot), his claim fails substantively, because there was no time to follow the City's election process and have a legitimate election by November 2024.

Finally, a special election is an improper remedy for vacant council seats under the City's Charter. Plaintiff asks this Court to oust Gambaro from office and force the City to hold a special election for the District 4 seat. The Palm Coast City Charter does not allow for special elections in the event of a council vacancy (other than for the mayor). Thus, even if the Court found Gambaro should be removed, the result is a vacancy for that seat for which the only permissible remedy is a new appointment by the Council until the November 2026 election. This outcome is the same as the status quo.

### **BACKGROUND**

1. Councilwoman Cathy Heighter ("Heighter") was elected to City Council District Seat 4 in November 2022 for a 4-year term ending in 2026.

2. To become a candidate for election to the City Council, an individual must be a qualified elector of the City and reside in the District sought. [City Charter, Art. IV (1)(b)1. and (1)(b)2. b.].

3. The potential candidate must file an Appointment of Campaign Treasurer and Designation of Campaign Depository (Form DS-DE 9) with the City Clerk's Office

before any contributions are accepted, before opening a campaign account, and before expenditures are made. See § 106.021, Fla. Stat.

4. The potential candidate must also file a Statement of Candidate (Form DS-DE 84) within ten (10) days of filing the Appointment of Campaign Treasurer and Designation of Campaign Depository. See § 106.023, Fla. Stat.

5. To be on the City ballot, once a candidate has completed the requisite forms, he must then be qualified to have his name on the ballot by petition signed by 1% of the population of the District sought and subsequently verified by the Supervisor of Elections,<sup>2</sup> or by payment of a qualifying fee of \$2,867.04. [City Charter, Art. IV (1)(b)(2)].

6. For the November 2024 election, candidates for City council were required to submit qualifying petitions to the Flagler County Supervisor of Elections Office (“SOE”) for verification before May 13, 2024.

7. During the 2024 election cycle, the qualifying period for City council candidates ended on June 14, 2024.

8. For City Council elections, when there are more than two candidates after the qualifying period, “a primary election shall be held at the time of the State and Federal Primary Elections.”<sup>3</sup> [City Charter at Art. VII (4)].

9. The City’s 2024 primary election, where City seats 1 and 3 and for Mayor were on the primary ballot, took place on August 20, 2024. Specifically, early voting for

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<sup>2</sup> In 2024, the number of Petitions needed for District 4 would have been 165.

<sup>3</sup> Article VII (4) of the City Charter provides: Schedule of regular elections and primaries: The regular City election shall be the first Tuesday after the first Monday in November of each even-numbered year. Such City elections shall be general City elections. If there are more than two candidates who qualify for any office, a primary City election **shall** be held at the time of the State and Federal Primary Elections. (*Emphasis added*).

the 2024 primary election was held from August 10-17, 2024, and the primary election concluded August 20, 2024.

10. Heigther resigned from the Council effective Friday, August 23, 2024 – after the City primary election and after the qualifying period had closed.

11. The ballots were due to the Flagler Supervisor of Elections (“SOE”) by September 6, 2024 – 14 total days and 10 business days – after Heigther’s resignation.

12. The next City Council meeting following Heigther’s resignation was August 27, 2024. The Council determined an appointment was necessary to fill the vacant seat and received applications from eleven individuals, each of whom presented their application during an open City Council public meeting on September 17, 2024.

13. On October 1, 2025, the City Council selected Charles Gambaro to fill the vacant seat.

14. Gambaro’s seat is up for election in November 2026.

15. The City does not hold elections in odd-numbered years (such as 2025).

16. The City Charter does not provide for special set elections to fill council vacancies. Council vacancies are filled by appointment followed by an election at the next regularly scheduled election. A special set election is only authorized to fill the mayor’s vacancy. [City Charter, Art. IV (7)(e); Art. VII (4) and (5)(a)].

## **ARGUMENT**

### **I. Plaintiff’s Request for Emergency Relief is Unwarranted**

Plaintiff's action – tardily filed seven months after Gambaro took his seat – does not constitute an “emergency” under Rule 2.215(h), Fla. R. Gen. Prac. Jud. Admin.<sup>4</sup> Rule 2.215(h) is reserved for the most urgent of matters such as those involving at-risk children and capital punishment. Plaintiff alleges the Rule applies under the “challenges involving elections” language. However, Plaintiff is not challenging a past or upcoming election; he is challenging an appointment made over seven months ago.

There is no City election in 2025, and thus, no urgency to place someone on an upcoming ballot. Rather, Plaintiff is requesting the City hold a special election “at the nearest reasonable date” (which is not permissible under the City Charter for council seats). Plaintiff did not raise a challenge following Gambaro's appointment in October 2024, and he did not raise a challenge before (or reasonably after) the November 2024 elections.

## **II. Plaintiff Has No Standing to Bring a Quo Warranto Action**

Other than the Florida Attorney General, the only party who can commence a quo warranto action to challenge someone's title to office is one who claims he/she is rightfully entitled to hold that office. Fla. Stat. § 80.01; *Fouts v. Bolay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001) (section 80.01 requires the person filing the quo warranto challenging an individual's right to hold office must demonstrate not only that the respondent has no right to hold the office but also that the petitioner is the lawful holder of the challenged office); *State ex rel. Clark v. Klingensmith*, 163 So. 704, 705 (Fla. 1935) (in quo warranto proceeding, the petitioner must not only demonstrate by his allegations and proof that

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<sup>4</sup> Incorrectly cited in Plaintiff's Complaint as Rule 2.215(g) and not cited at all in Plaintiff's Emergency Motion.

respondent was not elected, but that petitioner himself was the lawful office holder); *McGhee v. City of Frostproof*, 289 So. 2d 751, 752 (Fla. 2d DCA 1974) (quo warranto is the proper method to determine entitlement to an office and may only be instituted by the Attorney General or by a person claiming title to the office); *Butterworth v. Espey*, 523 So. 2d 1278, 1279 (Fla. 2d DCA 1988) (private individuals were not entitled to bring quo warranto suit challenging the right of a school board member to hold office notwithstanding the fact the Attorney General refused to bring the suit where the private individuals did not claim entitlement to the office); *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1938) (the purpose of section 80.01 is to authorize only the Attorney General or one claiming title to the office to file a quo warranto action); *Tobler v. Beckett*, 297 So. 2d 59, 61 (Fla. 2d DCA 1974) (plaintiff lacked standing to challenge right of office through quo warranto proceeding where he did not claim entitlement to the office).

The Attorney General is not a plaintiff in this action. Plaintiff does not and cannot claim entitlement to Gambaro's office. Thus, Plaintiff has no standing to bring a quo warranto action. Gambaro has better title to the office than Plaintiff.<sup>5</sup> Gambaro was rightfully appointed by the City to the Council within 90 days of Heighter's resignation as mandated by the City Charter. [City Charter, Art. IV (7)(e)1.].

### **III. Declaratory and Injunctive Relief are Not Available to Challenge Gambaro's Right to Hold Office**

Decades of Florida law make clear quo warranto proceedings are the sole and exclusive means of challenging someone's right to hold office, and neither declaratory nor injunctive actions are permitted. Where quo warranto is available, equity cannot, in

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<sup>5</sup> See Rule 1.630(e), Fla. R. Civ. P.

the absence of an authorizing statute, declare an election void or remove or enjoin an officer. *Gentry-Futch Co. v. Gentry*, 106 So. 473, 476 (Fla. 1925). Quo warranto is the exclusive method of determining the right to hold a public office. *McSween v. State Live Stock Sanitary Brd.*, 122 So. 239, 244 (Fla. 1929). An equity court cannot assume jurisdiction to declare an election void or to remove or enjoin officers; quo warranto is the appropriate remedy. *Swoope v. City of New Smyrna Beach*, 125 So. 371, 371-372 (Fla. 1929) (injunctive relief not available; sole remedy was quo warranto proceeding). Quo warranto is the only proper remedy to test the right of a person to hold office. *Winter v. Mack* 194 So. 225, 228 (Fla. 1940); *Penn v. Pensacola -Escambia Governmental Center Auth.*, 311 So. 2d 97, 101 (Fla. 1975) (remedy had to be direct attack upon right to hold office by quo warranto and not a collateral attack through other counts).

Because quo warranto proceedings are the only proper remedy in cases in which they are available, a plaintiff may not file suits for injunctive or declaratory relief. See 43 Fla. Jur 2d Quo Warranto § 8, Exclusiveness of Quo Warranto as Remedy (2025) and § 9, Effect of Quo Warranto on Equitable Remedies; Injunction; *City of Pompano Beach v. Broward Cnty.*, 320 So. 2d 831, 831 (Fla. 4th DCA 1975); *Hajec v. Town of Medley*, 189 So. 2d 835, 836 (Fla. 3d DCA 1966) (upholding court's dismissal of injunctive and declaratory counts because the proper remedy was quo warranto); *Heyward v. Hall*, 198 So. 114, 1196 (Fla. 1940) (injunction suit will not lie when quo warranto is available); *Caldwell v. Losche*, 108 So. 2d 295, 296 (Fla. 2d DCA 1959) (injunction was not the proper remedy where quo warranto action should be brought); *Orange Cnty. v. City of*

*Orlando*, 327 So. 2d 7, (Fla. 1976) (counts for declaratory and injunctive relief could not stand when quo warranto was the proper remedy).<sup>6</sup>

#### **IV. The City Rightfully Appointed Gambaro and There was No Time to Offer Seat 4 for Election in November 2024**

Plaintiff has no standing to bring this action, but even if he did, his claim fails substantively. By the time Heighter resigned, it was impossible to comply with the City Charter and place Seat 4 for election in November 2024. Thus, the “next regularly scheduled election” is the November 2026 election.

Heighter resigned effective Friday, August 23, 2024, which was after:

- the May 13, 2024, deadline for potential city council candidates to submit their qualifying petitions to the SOE;
- the end of the city council qualification period on June 14, 2024; and
- the August 20, 2024, City primary election

Additionally, written ballots were due to the SOE by September 6, 2024 – just 10 business days after Heighter’s resignation. The City appointed Gambaro on October 1, 2025, which was after all the events above and after the September 6, 2024, deadline to provide ballots to the SOE. Thus, it was wholly impossible to place Seat 4 on the November 2024 ballot making the November 2026 election “the next regularly scheduled election.”

Due to the timing of Heighter’s resignation, the City had no qualifying candidates to place on the 2024 ballot, and the qualifying period was closed. Moreover, the City (and potential council candidates) had no time to comply with the qualifying process and make the November 2024 ballot. The City’s primary election had also already taken place when

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<sup>6</sup> Unlike in *Orange Cnty. v. Orlando*, here, Plaintiff is not allowed to proceed in quo warranto without the Attorney General because he is not seeking the office himself. § 80.01, Fla. Stat.

Heighter resigned – thus making it impossible to hold the required primary for city council candidates.

The City Charter requires a primary election be held when more than two candidates for City council are qualified to run.<sup>7</sup> Indeed, in 2024, the City's mayor seat and District Seats 1 and 3 were up for election. All three seats were required to be on the 2024 primary ballot.<sup>8</sup> Here, the primary election had already been held when Heighter resigned, making the next regularly scheduled primary cycle and election 2026.

During the City's September 2024 appointment process for Seat 4, the City Council received eleven applications for the seat. Because the qualifying period was over, the City had no candidates to offer on the November 2024 ballot. Assuming even one-fourth of the applicants for appointment to Seat 4 would have wanted to participate in an election for the seat, a primary would have been required.

Based on the timing of Heighter's resignation, a primary election was impossible and the deadlines for candidate inclusion in the 2024 general election were insurmountable. Gambaro's appointment was clearly permissible under the City Charter. [City Charter, Art. IV (7)(e)1.]. Plaintiff's request to remove Gambaro and order a special election would unnecessarily deprive District 4's constituency a voice on the Council for months and would result in significant costs to the City. Gambaro should remain on the

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<sup>7</sup> Article VII. (4) provides: Schedule of regular elections and primaries: The regular City election shall be the first Tuesday after the first Monday in November of each even-numbered year. Such City elections shall be general City elections. If there are more than two candidates who qualify for any office, a primary City election **shall** be held at the time of the State and Federal Primary Elections. (*Emphasis added*).

<sup>8</sup><https://www.flaglerelections.gov/Portals/Flagler/pdfs/results/2024-PRI-OFFICIAL-SUMMARY.PDF>

Council until the regularly scheduled November 2026 election when proper procedures can be maintained.

#### **V. A Special Election is an Inappropriate Remedy**

Other than for mayor, a special election is not a proper remedy for vacant council seats under the City's Charter. [City Charter, Art. IV (7)(e); Art. VII (4) and (5)(a)]. Plaintiff asks this Court to oust Gambaro from office and force the City to hold a costly special election for the District 4 seat. The Palm Coast City Charter does not allow for special elections in the event of a council vacancy; it only allows for appointments to fill a vacancy. Accordingly, a special election would not have been an available remedy when the District 4 Seat was vacated by Heighter, and cannot be available now – regardless of the outcome of this case.

Even if the Court found Gambaro should be removed, the result is a vacancy in that seat for which the only permissible remedy is for the City to appoint a new Councilmember until the November 2026 election cycle – the next “regularly scheduled election.” This is the same outcome as the status quo.

Gambaro has been in office for over seven months. Plaintiff's delay evidences a grossly inappropriate attempt to oust a political opponent from office and bring into question months of prior votes and actions by the City Council.<sup>9</sup> Plaintiff's attempt to have this Court invade the legislative sphere, remove a councilperson, and undo months of legislative actions is contrary to the separation of powers doctrine.

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<sup>9</sup> Defendants ***strongly disagree*** Gambaro's removal would or could call into question past Council votes and actions. However, Plaintiff has openly discussed this desired effect in social media and public forums.

## **CONCLUSION**

Plaintiff's claims are an inappropriate attempt to weaponize the judicial process against a lawfully appointed Councilmember with whom Plaintiff has political disagreements. Plaintiff lacks standing to raise a quo warranto challenge against Gambaro, and his claims for declaratory and injunctive will not lie to remove a political opponent from office. The timing of Heighter's resignation made a November 2024 election for the District 4 seat impossible. Even if Gambaro was removed from office today, the vacancy would be filled by appointment under the City Charter until the next election in November 2026.

For the foregoing reasons, all Plaintiff's requested relief should be denied. Plaintiff's complaint should be dismissed with prejudice, and Defendants are entitled to a judgment on the pleadings.

Respectfully submitted this 29th day of May, 2025.



/s/ Rachael M. Crews

RACHAEL M. CREWS, ESQUIRE

Florida Bar No. 795321

William T. Dove, Esquire

Florida Bar No. 1032175

rachael.crews@gray-robinson.com

billy.dove@gray-robinson.com

mariah.richardson@gray-robinson.com

jamal.wilson@gray-robinson.com

GRAYROBINSON, P.A.

Post Office Box 3068

Orlando, Florida 32802

407-843-8880

*Counsel for Defendants, City of Palm  
Coast and Charles Gambaro*

**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 29th day of May, 2025.

/s/ Rachael M. Crews

RACHAEL M. CREWS, ESQUIRE  
Florida Bar No. 795321

