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IN THE DISTRICT COURT OF APPEAL
FOR THE THIRD DISTRICT OF FLORIDA

CASE NO. 3D2024-1694

TRIAL COURT CASE NO. 24-793-CA-01

WILLIAM FULLER, *et. al*.,
Appellants,

v.

THE CITY OF MIAMI, *et. al*.,
Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE AND FACTS

"[T]he paramount law of" the City of Miami is its Charter, "just as the State Constitution is the charter of the State of Florida" and the United States Constitution is the charter of the nation. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801, 803 (Fla. 1972). The text of that that foundational municipal compact could hardly be clearer in mandating that any "public official . . . who is found by the court to have willfully violated" the Citizens' Bill of Rights, including its prohibition against "interfer[ing] with the rights . . . of freedom of speech," "shall forthwith forfeit his or her office[.]" City of Miami Charter, Citizens' Bill of Rights at §§ (A)(3) & (C).[1]

On June 1, 2023, a federal jury found that one of Miami's most notorious public officials, Miami City Commissioner Joe Carollo, had willfully violated the free speech rights of Bill Fuller and Martin Pinilla while acting "under color of law" in his capacity as a City of Miami Commissioner. The verdict specified that the jury had found both that Carollo had "intentionally" violated the "right to free speech and assembly" and also that he had done so "under color of law":

[1] Section 12 of Miami's Charter states that "A vacancy on the city commission … caused by … forfeiture …. shall be filled within ten days after such vacancy occurs by a majority of the remaining city commissioners."

VERDICT FORM

We, the jury, find by a preponderance of the evidence:

1. Did Joe Carollo intentionally commit acts that violated Bill Fuller's right to free speech or assembly?

Yes ✓ No ____

If your answer is "No," your verdict is in favor of Defendant, Joe Carollo, on Bill Fuller's claim, skip Questions 2-7, and answer Question 8. If your answer is "Yes," go to the next question.

2. Were Joe Carollo's actions done "under color" of state law?

Yes ✓ No ____

Fuller, et al. v. Carollo, No. 18-24190-CIV, DE 470 (S.D. Fla. June 1, 2023).

The federal verdict and judgment also imposed a damage award of $63.5 million, which included $47.6 million in punitive damages. Judge Rodney Smith denied Carollo's motion for judgment as a matter of law after the verdict, or to reduce the damage amount, and instead confirmed the jury's findings, holding that Carollo "used his position and power to weaponize the City government against Plaintiffs because Plaintiffs chose to exercise their First Amendment rights by supporting his election opponent." *Id.,* DE 631 at 7. The Court characterized Carollo's misconduct as a "shock to the conscience" noting that his reprehensible "actions were continuous and unrelenting," "intentional and malicious," and "continued long after Plaintiffs filed suit." *Fuller v. Carollo*, No. 18-24190-CIV, 2024 WL 3838519, at *5 (S.D. Fla. Feb. 21, 2024).

After the verdict, the Miami Herald's Editorial Board published an article entitled, "**After 40 years, Joe Carollo, Miami's biggest bully, is finally held accountable," which asked the following question:** "Now that the legal system has held him accountable, who will do the same in Miami's toxic political world?"[2] The answer lies not with the political world, but rather with ancient but regularly enforced common law and the Florida Constitution. As explained by the Florida Supreme Court, "the Florida Constitution authorizes … circuit courts to issue writs of *quo warranto*" which simply means 'by what authority.'" *Whiley v. Scott,* 79 So. 3d 702, 707 (Fla. 2011) (citing art. V, § 5(b), Fla. Const.); *accord W. Flagler Assocs., Ltd. v. DeSantis,* 382 So. 3d 1284, 1286 (Fla. 2024) ("*[Q]uo warranto* is a common law remedy that was historically used to 'test the right of a person to hold an office of franchise or exercise some right or privilege the peculiar powers of which are derived from the state'"); *Fouts v. Bolay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001) ("*Quo warranto* is a writ of inquiry through which a court determines the validity of a party's claim that an individual is exercising a public office illegally.").

Under Florida law, "the court **must** issue" the writ of *quo warranto* if the plaintiff states "a prima facie ground for relief." Fla. R. Civ. P. 1.630(d)(3) (emphasis

2 The Miami Herald Editorial Board, *After 40 years, Joe Carollo, Miami's biggest bully, is finally held accountable | Opinion*, The Miami Herald (June 1, 2023, 12:47 PM) https://www.aol.com/40-years-joe-carollo-miami-164718829.html.

added; *accord* art. V, § 5(b), Fla. Const. ("[T]he circuit courts … shall have the power to issue writs of … *quo warranto*"). As long ago as 1934, the Florida Supreme Court has held in cases like this one that a "*quo warranto* proceeding against an officer is . . . a proper remedy to test the legality of his past or future conduct or acts . . . where they . . . ipso facto operate as or constitute grounds for forfeiture of the office," or where "title to the office . . . is involved." *State ex rel. Landis v. Valz*, 157 So. 651, 654 (Fla. 1934); *accord Lerman v. Scott,* No. SC16-783, 2016 WL 3127708, at *1 (Fla. June 3, 2016) ("[T]he writ is the proper means for inquiring into whether a particular individual has improperly exercised a power or right derived from the State."); *Thompson v. DeSantis*, 301 So. 3d 180, 183 (Fla. 2020) (holding that *quo warranto* was the appropriate mechanism to challenge whether the appointment of a judge "exceeded the Governor's constitutional authority.").[3]

Indeed, *quo warranto* is recognized in states throughout the country as "properly granted where a person remains in office after engaging in conduct that constitutes forfeiture." *State ex rel. Nixon v. Wakeman*, 271 S.W.3d 28, 30 (Mo. Ct. App. 2008) (affirming writ of *quo warranto* removing official from office based upon violation on state constitution's anti-nepotism clause); *accord State ex rel.*

[3] "In a *quo warranto* proceeding for ouster brought against an individual usurping or intruding into or unlawfully holding any office or franchise, a judgment of ouster should be rendered." Fla. Jur. 2d (Judgment) § 55; *cf., e.g.,* Fla. Stat. § 80.032 ("a judgment of ouster may issue . . . to the extent that the petition is well-founded").

Gardner v. Carmody, 618 S.W.3d 560, 564 (Mo. App. E. Dist. 2020) (similar); *In re Belew*, No. 08-23-00319-CV, 2024 WL 1141064, at *3 (Tex. App.--El Paso Mar. 15, 2024) (affirming writ of *quo warranto* removing official from office based upon discovery of a prior felony from 1973); *People v. Zimel*, 2023 IL App (2d) 230201-U, ¶ 2, *appeal denied*, 238 N.E.3d 313 (Ill. 2024) (affirming writ of *quo warranto* removing as township trustee "because he had previously been convicted of a felony and was therefore barred from holding office under section 55-6 of the Township Code").

In materially identical circumstances to the present case, the Hawaii Supreme Court explained that the common-law writ of *quo warranto* is the appropriate procedural mechanism to enforce a city charter provision that "automatically and instantly creates a forfeiture and vacancy of office." *Dejetley v. Kaho'ohalahala*, 226 P.3d 421, 436 (Hawaii 2010) (quoting Black's Law Dictionary at 1049-50 (3d ed.)). The *Dejetly* court held that, "given the plain meaning of 'shall immediately forfeit office,' a duty is not imposed to leave office but, rather, the right of office is automatically and instantly lost." 226 P.3d at 432-33; *accord Sapp v. Foxx*, 106 F.4th 660, 662 (7th Cir. 2024) (citing cases) ("The purpose of a *quo warranto* proceeding is to 'achieve the ouster of a person who is illegally occupying a public office' … [u]pon proof that a person is ineligible to hold a particular position, an appropriate court may enter an order removing the person from office.").

To be sure, it is not every day that a public official, like Appellee Joe Carollo, attempts to cling to power in contravention of the plain text of the City Charter following a unanimous jury's verdict and a federal court's final judgment finding that he willfully violated the First Amendment. But *quo warranto* remains an integral component of Florida law that is routinely analyzed and applied by courts in Florida and across the country, including the Florida Supreme Court.

Here, the Citizens of Miami have spoken through their City Charter, the Constitution of the City. And the Citizens have stated that if a public official is found by a court of law to have violated First Amendment Rights, that public official immediately forfeits his or her right to office. The circuit court erred in dismissing Plaintiffs' petition for *quo warranto* as a matter of law. Contrary to the circuit court's order: a) decades of Florida Supreme Court jurisprudence confirm that Plaintiffs – including the victims of Carollo's unconstitutional campaign of First Amendment retaliation – have standing to file the petition; b) the Miami City Charter forbids Miami's individual public officials – and not the City itself – from violating constitutional rights; and c) the language of the Charter requires the forfeiture of the public official's employment to occur "forthwith" upon a finding that he violated Constitutional rights, and does not permit the offending official to serve out the remainder of his term and thereby defeat the will of the Citizens of Miami by delaying the forfeiture of his employment pending an exhaustive appeals process.

A. PROCEDURAL HISTORY

On January 16, 2024, Plaintiffs/Appellants Fuller and Pinilla, the individuals whose First Amendment rights Carollo violated, filed one-count complaint seeking a declaration that under the City Charter a court finding that Carollo's violation of their First Amendment rights resulted in the immediate forfeiture of his public office.

On January 18, 2024, because Plaintiff Fuller resides in unincorporated Miami Dade County, and because Plaintiff Pinilla resides in Key Biscayne, Plaintiffs filed an amended complaint adding Ms. Denise Galvez Turros as a Citizen of Miami Plaintiff but not changing any of the substantive allegations.

On May 5, 2024, the Circuit Court dismissed the amended complaint finding that Plaintiffs Fuller and Pinilla lacked standing to seek a declaratory judgment under Miami's City Charter's Bill of Rights because, while they had suffered a special injury, they did not reside in the City of Miami, and that Plaintiff Galvez-Turros, while she resided in the City of Miami, did not suffer a special injury.

On May 28, 2024, the Plaintiffs filed a Second Amended Complaint and Petition for *Quo Warranto* and also added additional Plaintiffs, all of which are businesses based in the City of Miami, all owned by Plaintiffs Fuller and Pinilla, and all of which suffered injury due to Carollo's campaign of retaliation. These are Appellants Barlington Group, LLC, Calle Ocho Marketplace, LLC, Little Havana

Arts Building, LLC, Little Havana Arts Building Too, LLC, Tower Hotel, LLC, El Shopping, LLC, Beatstik, LLC, Viernes Culturales/Cultural Fridays, Inc.,

On September 24, 2024, the Circuit Court issued an Order Granting Joe Carollo and the City of Miami's Motions to Dismiss with Prejudice Plaintiffs' Second Amended Complaint and Petition for Writ of *Quo Warranto*.

On September 25, 2024, Appellants filed their timely Notice of Appeal.

STANDARD OF REVIEW

To be sure, the denial of a petition for *quo warranto* on discretionary grounds is reviewed for an abuse of discretion. *See Detzner v. Anstead*, 256 So.3d 820, 822 n.4 (Fla. 2018).

But, to the extent that the circuit court's order was based on a matter of constitutional or statutory interpretation relating to the text of the City Charter – a constitutional compact, *see City of Miami Beach v. Fleetwood Hotel, Inc*., 261 So.2d 801, 803 (Fla. 1972) – the standard of review is *de novo*. *See Zingale v. Powell*, 885 So.2d 277, 280 (Fla. 2004) (constitutional interpretation); *Israel v. Desantis*, 268 So. 3d 491, 494 (Fla. 2019) (same); *Jackson-Shaw Co. v. Jacksonville Aviation Auth.,* 8 So. 3d 1076, 1085 (Fla. 2008) (statutory interpretation); *Fortune v. Gulf Coast Tree Care Inc.,* 148 So. 3d 827, 828 (Fla. 1st DCA 2014) (same); *Lombardi v. S. Wine & Spirits,* 890 So. 2d 1128, 1129 (Fla. 1st DCA 2004) (same).

And, to the extent that the circuit court's order was based on a determination of standing or a legal conclusion on ripeness, the standard of review is also *de novo*. *See Reynolds v. Nationstar Loan Services, LLC,* 190 So. 3d 219, 221 (Fla. 4th DCA 2016) (citing *Elston/Leetsdale, LLC v. CW Capital Asset Mgmt., LLC,* 87 So.3d 14, 16 (Fla. 4th DCA 2012)) (standing); *Matlacha Civic Assn., Inc. v. City of Cape Coral,* 273 So. 3d 243, 245 (Fla. 2d DCA 2019) (same); *State, Dep't of Env't Prot. v. Beach Grp. Invs., LLC*, 201 So. 3d 679, 686 (Fla. 4th DCA 2016) (citing *Alachua Land Inv'rs, LLC v. City of Gainesville*, 107 So. 3d 1154, 1159 (Fla. 1st DCA 2013)) (ripeness).

SUMMARY OF ARGUMENT

The circuit court clearly erred by dismissing Plaintiffs' complaint and petition for writ of *quo warranto* and refusing to enforce the plain text of the City of Miami Charter, including without a due-process opportunity for Plaintiffs to introduce evidence to bolster their *prima facie* case for *quo warranto* or declaratory relief.

First, Miami's Charter mandates that any "public official . . . who is found by the court to have willfully violated" the Citizens' Bill of Rights, including its prohibition against "interfer[ing] with the rights . . . of freedom of speech," "shall forthwith forfeit his or her office[.]" Carollo was found by a court to have willfully violated the freedom of speech of Plaintiffs Fuller and Carollo "under color of law," and the circuit court's conclusion that the forfeiture provision of the Miami Charter

supposedly "does not apply" because Carollo was acting "in his individual capacity" is unsupported by any legal authority or any text in the Miami Charter.

Second, the circuit court erred in concluding that not a single Plaintiff had standing to enforce the Miami Charter by seeking either *quo warranto* or declaratory relief:

(a) The circuit court ignored an unbroken line of Florida Supreme Court cases holding that "any citizen or taxpayer" has standing to file a petition for *quo warranto* because in *quo warranto* proceedings seeking the enforcement of a public right, and thus all citizens and taxpayers are the real parties to the action and need not show that they have any special interest in it.

(b) The circuit court overlooked the fact that the federal court expressly found that Plaintiffs Fuller and Pinilla's First Amendment rights were violated, as well as the fact that the remaining Plaintiffs' First Amendment rights were necessarily chilled, each of which comprises the "special injury" necessary to seek *quo warranto* and declaratory relief.

(c) The circuit court disregarded the plain text of the Miami Charter which states that states that "Residents of the City shall have standing to bring legal actions to enforce … the Citizens' Bill of Rights," in concluding that the Plaintiffs residing in the City purportedly lacked the special injury necessary to demonstrate standing.

Third, the Miami Charter states that any public official found by a court to have violated First Amendment Rights shall "forthwith forfeit" his office. The Circuit Court erred in holding that "forthwith forfeit" means shall forfeit his office only if an appellate process that likely could take two years to resolve finally concludes, during which time the offending commissioner is able to serve out his full term in office contrary to the will of the Citizens of Miami.

ARGUMENT

Plaintiffs' complaint stated a *prima facie* case for declaratory and *quo warranto* relief, and the circuit court erred by dismissing the action with prejudice and without an opportunity for Plaintiffs to seek a remedy expressly provided under Miami's Charter consistent with their due process rights.

I. The Miami City Charter Mandates That Public Officials Who Violate First Amendment Rights Forfeit Their Public Office.

Miami's Charter mandates that any "public official . . . who is found by the court to have willfully violated" the Citizens' Bill of Rights, including its prohibition against "interfer[ing] with the rights . . . of freedom of speech," "shall forthwith forfeit his or her office[.]" City of Miami Charter, Citizens' Bill of Rights at §§ (A)(3) & (C). The Citizens' Bill of Rights is not limited to disqualifying public officials who violate the Constitution in an "official capacity" pursuant to a policy or custom, while tolerating public officials who violate the Constitution in an "individual capacity" under color of law.

Despite this clear mandate, the circuit court held that, because Carollo was sued in his individual capacity in *Fuller I*, "his acts d[id] not constitute acts of the City" and that "[t]herefore, the Charter's Citizens' Bill of Rights Section (A)(3) d[id] not apply[.]" The circuit court did not explain its reasoning, which appears to be based on a specious distinction advanced in Defendants' motions to dismiss.

Under principles that are not pertinent to the analysis in this case, federal law creates statutory liability **both** for public officials who implement an illegal government policy or custom (i.e., "official capacity" liability) **and** for government officials who abuse their government authority under color of law (i.e., "individual capacity" liability). Whatever value that distinction may have in direct federal enforcement proceedings, it bears no relevance to determining whether a public official "shall forthwith forfeit his or her office or employment" for violating the Constitution under the Citizens' Bill of Rights in the Miami Charter. Indeed, drawing such a distinction in this context would be nonsensical, as a public official who abuses the authority of his office to advance personal objectives is no less culpable – and indeed is likely more culpable – than a public official who follows an unconstitutional public policy or custom.

Specifically, federal law provides that "[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia*, subjects, or causes to be subjected, any citizen of the United

States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured ….” 42 U.S.C. § 1983 (emphasis added). Thus, as relevant here, Section 1983’s plain language only permits liability to be imposed on public officials, not on private actors. *See, e.g., Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001) (“The dispositive issue is whether the official was acting pursuant to the power he/ she possessed by state authority or acting only as a private individual.’ (internal citations omitted)).

To be sure, in cases arising under Section 1983, it is often important for the parties and court to determine whether the individual alone will be liable for damages, or whether the governmental unit will share liability. And, to hold the government entity accountable for any remedy, a plaintiff asserting a claim under Section 1983 must plead and prove that the official was acting pursuant to an official government policy or pervasive custom. *See Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658, 694 (1978) (“[W]hen execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.”); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[I]n an official-capacity action, … a governmental entity is liable under § 1983 only when the entity itself is a ‘“moving force”’ behind the deprivation; thus,

in an official-capacity suit the entity's 'policy or custom' must have played a part in the violation of federal law." (internal citations omitted)).[4]

In this case, however, the distinction between "official capacity" liability and "individual capacity" liability has no role to play. In the underlying Section 1983 action, Plaintiffs Fuller and Pinilla were limited to seeking damages against the offending official (Carollo) and could not recover damages against the government itself (the City of Miami). But that limitation on the damages recoverable by Plaintiffs did not change the fact that their underlying lawsuit necessarily implicated government action that Carollo implemented as a City Commissioner. *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019) ("The text and original meaning of those Amendments, as well as this Court's longstanding precedents, establish that the Free Speech Clause prohibits only governmental abridgment of speech. The Free Speech Clause does not prohibit private abridgment of speech.").

[4] This is true even where an "official capacity" lawsuit lists a specific government official as the named defendant. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) ("Official-capacity suits … 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity." (internal citations omitted)); *C.P. by & through Perez v. Collier Cnty.*, 145 F. Supp. 3d 1085, 1090–91 (M.D. Fla. 2015) ("Section 1983 suits against officers in their official capacities 'generally represent only another way of pleading an action against an entity of which an officer is an agent,' not against the officer individually. … [A] suit against an individual in his official capacity is the functional equivalent of a suit against the government entity the official represents.").

In fact, Carollo affirmatively argued throughout the underlying Section 1983 proceedings that he was always acting in his capacity as a City Commissioner. For instance, as the Eleventh Circuit noted, Carollo argued and that "the district court *agreed* that Carollo was acting in his discretionary capacity as a city commissioner." *Fuller v. Carollo,* No. 21-11746, 2022 WL 333234, at *3 (11th Cir. Feb. 4, 2022), *cert. denied*, 143 S. Ct. 203 (2022) (emphasis in original). Indeed, the Eleventh Circuit denied Carollo's claim for governmental immunity precisely because Carollo "violated settled law prohibiting *officials* from retaliating against constituents who engage in political activities protected by the First Amendment." *Id.* (emphasis added).[5]

In sum, as the U.S. Supreme Court has explained, "[p]ersonal-capacity suits," like the underlying Section 1983 action at issue in this case, "seek to impose personal liability upon a government official for actions he takes under the color of state law…." *Kentucky v. Graham*, 473 U.S. 159, 159 (1985))). Indeed, one of the key

[5] "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988). "It is firmly established that a defendant in a § 1983 suit acts under color of law when he abuses the position given to him by the State." *Williams v. United States*, 341 U.S. 97, 100 (1951) ("There was, therefore, evidence that he acted under authority of Florida law; and the manner of his conduct of the interrogations makes clear that he was asserting the authority granted him and not acting in the role of a private person." (emphasis added)).

elements Plaintiffs Fuller and Pinilla had to prove when they sued Carollo in his "individual capacity" was that Carollo acted "under color of law," meaning that they had to show that Carollo was exercising power possessed by him by virtue of his position as a City Commissioner. Specifically, Plaintiffs had to prove that Carollo was either acting "within the limits of [his] lawful authority," or claimed "to be performing an official duty," or "misuse[d] his power" in a way that was only possible "because he is an official." *Fuller, et al. v. Carollo*, No. 18-24190-CIV, DE 475 at 8 (S.D. Fla. June 1, 2023).

In turn, by prevailing in the *Fuller I* trial, Plaintiffs Fuller and Pinilla successfully demonstrated, and the federal jury expressly found, that Carollo willfully violated the Constitution while acting as an employee on behalf of the City which – like a corporation – is an artificial entity that can only perform functions through its individual agents and representatives. *St. Petersburg Coca-Cola Bottling Co. v. Cuccinello*, 44 So. 2d 670, 676 (Fla. 1950); *see also Fuller, et al. v. Carollo*, No. 18-24190-CIV, DE 470 at 1 (S.D. Fla. June 1, 2023) (verdict form) (incorporating an express finding by the jury that Carollo acted "under color of law" to carry out his First Amendment retaliation campaign). Judge Smith, moreover, echoed the jury's findings that Carollo was acting as a City official when he "used his position and power to weaponize the City government against Plaintiffs"—including by flashing his City credentials and declaring "I am the law," in order to

intimidate Plaintiffs' business associates throughout the City. *Fuller v. Carollo*, No. 18-24190-CIV, DE 631 at 7 (S.D. Fla. Feb. 21, 2024).

In short, the circuit court was apparently misled by Defendants to believe Carollo was not acting as a "public official" merely because he was successfully sued in his "individual capacity" (under color of law) – but not his official capacity – for conducting a campaign of First Amendment retaliation. Based on that mistaken belief, the circuit court impermissibly added into the City Charter a restriction on the kinds of unconstitutional actions that will result in the forfeiture of a city official's office in violation of cardinal principles of statutory construction. *Megladon, Inc. v. Vill. of Pinecrest*, 661 F. Supp. 3d 1214, 1228 (S.D. Fla. 2023) (noting that courts "don't have the power to add to the words the legislature elected to use in [an] Ordinance").

In other words, the lower court's interpretation reads into the City Charter's forfeiture provision a limitation that only a city official "who is found by the court [in an "official capacity" Section 1983 lawsuit] to have "willfully violated" the Charter **as part of an official policy or custom** would forfeit his or her office. If upheld, the circuit court's counter-textual decision will lead to perplexing results where public officials will be able to retain their positions so long as they do not let their unconstitutional actions get so widespread as to establish an official custom or policy of unconstitutional retaliation. *But see Catlin Specialty Ins. Co. v. Cohen*, 883

F. Supp. 2d 1182, 1191 (M.D. Fla. 2012) ("[T]he canons of statutory construction permit the court to interpret a statute to avoid patent absurdity."); *Lewis v. Barnhart*, 285 F.3d 1329, 1332 (11th Cir. 2002) ("'[I]t is an elementary principle of statutory construction that, in construing a statute, we must give meaning to all the words in the statute.'" (quoting *Legal Envtl. Assistance Found., Inc. v. EPA*, 276 F.3d 1253, 1258 (11th Cir.2001))).

II. While Only One Plaintiff Need Establish Standing, Several Plaintiffs Have Standing to Enforce the City Charter As Residents of the City and/or Individuals and Entities Subjected to "Special Injury"

The Circuit Court also erred in holding that not a single Plaintiff had standing to pursue either *quo warranto* relief or declaratory relief. In fact, multiple categories of Plaintiffs have standing.

A. Any Citizen or Taxpayer Has Standing To File A Petition For a Writ of *Quo Warranto* Requiring Any Public Official to Demonstrate "By What Authority" They Hold Office

Relying on precedent dating all the way back to 1936, the Florida Supreme Court has squarely held that, in "*quo warranto* proceedings seeking the enforcement of a public right[,] the people are the real party to the action and the person bringing suit 'need not show that he has any real or personal interest in it.'" *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989) (citing *State ex rel. Pooser v. Wester,* 126 Fla. 49, 53, 170 So. 736, 737 (1936)).

Since then, the Florida Supreme Court has repeatedly underscored that any citizen or taxpayer has standing to seek a writ of *quo warranto*. For example, in *Whiley v. Scott*, 79 So. 3d 702, 705 (Fla. 2011), the petitioner sought a writ of *quo warranto* to establish that an executive order suspending certain agency rulemaking exceeded the governor's constitutional authority. As to standing, the Court held that "the extent of harm to the petitioner is not pertinent" because, "when bringing a petition for writ of *quo warranto*, individual members of the public have standing as citizens and taxpayers." *Id*. at 706 n.4. Likewise, in *Thompson v. DeSantis*, the Florida Supreme Court followed the precedent set in both *Martinez* and *Whiley* to find citizen and taxpayer standing in a *quo warranto* action. *Id.*, 301 So. 3d 180, 184 (Fla. 2020).

The circuit court, however, ignored this unbroken line of Florida Supreme Court precedent and instead applied an inapposite First District case. Specifically, in refusing to honor the Plaintiffs' standing as citizens and taxpayers, the circuit court expressly – and exclusively – "relie[d] on *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022)." Order Granting Joe Carollo's and the City of Miami's Motions to Dismiss at 4. According to the circuit court, "[i]n *Hall*, the First District Court of Appeal held that the trial court correctly ruled that 'only the Florida Attorney General or person claiming title to the office in question has standing to seek a writ

of *quo warranto'* where the aim is to remove an elected official." *Id*. (quoting *Hall*, 346 So. 3d at 189).

The circuit court's reliance on *Hall* was erroneous in multiple respects. First, even if the First District's refusal to recognize citizen and taxpayer standing for *quo warranto* claims stood on equal footing with the Florida Supreme Court's express recognition of those principles – which it obviously does not – *Hall* still would not be controlling law in the face of a conflict. Indeed, the First District expressly noted that "plaintiffs have waived th[e] issue" of standing in *quo warranto* proceedings by flatly "insist[ing]" on appeal "that they 'did not assert a *quo warranto* claim.'" *Hall*, 346 So. 3d at 189. Thus, the circuit court relied on *Hall*'s assessment of taxpayer and citizen standing in *quo warranto* actions that represents pure dicta on an issue that was neither addressed nor resolved on its merits in the First District's opinion.

Second, even if *Hall* had squarely addressed and resolved the standing issue contrary to Florida Supreme Court precedent, its analysis would remain inapplicable to the circumstances presented in this case. Specifically, rather than citing any of the Florida Supreme Court cases that address standing in *quo warranto* actions, the First District in *Hall* instead primarily relied on an inapplicable statutory provision – namely, Fla. Stat. § 80.01.

But none of the Plaintiffs in this case are a "person claiming title to an office" who is pursuing an action based on the Attorney General's refusal to recognize any

Plaintiff "as the person rightfully entitled to the office." And it is only under those circumstances that Fla. Stat. § 80.01 applies in the first instance:

> Any person claiming title to an office which is exercised by another has the right, on refusal by the Attorney General to commence an action in the name of the state upon the claimant's relation, or on the Attorney General's refusal to file a petition setting forth the claimant's name as the person rightfully entitled to the office, to file an action in the name of the state against the person exercising the office, setting up his or her own claim.

Fla. Stat. § 80.01. In other words, while Fla. Stat. § 80.01 merely dictates the procedures applicable in an election contest between two challengers who are parties to the action, the Florida Supreme Court has repeatedly reaffirmed that any citizen or taxpayer has standing to pursue a *quo warranto* petition to challenge a public official's eligibility for a position that the petitioner does not seek to occupy.

This statute has never been applied to any *quo warranto* action seeking to know by what authority a public official who has been held by a court to have violated the United States Constitution continues to serve in that office. Meanwhile, the Florida Supreme Court has clearly held that any citizen or taxpayer has standing to seek a writ of *quo warranto* to assure that public officials are operating within the bounds of their authority, including whether they have forfeited their office under a City Charter by having been found by a federal court to have committed a constitutional violation of the First Amendment right to free speech. Whether public officials are acting outside of their authority is an issue for the citizens and the

available remedies should not be limited to situations where there is a competing candidate for office or for the Attorney General to decide. In this instance, pursuant to the City Charter, forfeiture is automatic and the ability to bring the instant suit to enforce the automatic forfeiture is not reserved solely for the Attorney General or any specific individual.

B. Plaintiffs Have Standing Based On Special Injury

Plaintiffs Fuller and Pinilla suffered the "special injury" required to enforce the City Charter's prohibition against Carollo's First Amendment retaliation. The federal court and federal jury recognized that injury in awarding more than $15 million in damages to compensate for the injury sustained by the deprivation of their First Amendment Rights. Likewise, the remaining Plaintiffs suffered a "special injury" based on their association with Fuller and Pinilla and the fact that his retaliation campaign was intended to chill their First Amendment rights of association and expression just the same.

It is well settled that precisely this sort of targeted, intentional harm to individuals comprises the "special injury" that is more than sufficient to give rise to standing as a matter of Florida law. For instance, alleging that a City "ordinance encumbered [plaintiffs'] free exercise of speech and religious freedoms individually and in their business activities" is "legally sufficient to demonstrate standing." *Parsons v. City of Jacksonville*, 295 So. 3d 892, 895 (Fla. 1st DCA 2020). Likewise,

here, Carollo's violation of the City Charter was alleged—*and proven*—not only to have violated Appellants' First Amendment rights, but also to have caused them substantial financial harm. *See Rhodes v. City of Homestead*, 248 So.2d 674, 674-75 (Fla. 3d DCA 1971) (reversing order of dismissal where the "ground presented by defendants in moving to dismiss," i.e., a lack of standing, "has no application where the person affected seeks to challenge such action").

In other words, this is not a case where Appellants have a mere inchoate or speculative interest in a controversy, but rather a "sufficient stake [and] cognizable interest to satisfy the requirements for standing." *Matheson v. Miami-Dade County*, 258 So. 3d 516, 519 (Fla. 3d DCA 2018); *accord Accela, Inc. v. Sarasota County*, 901 So. 2d 237, 238 (Fla. 2d DCA 2005) ("[T]he plaintiffs had standing because they were potential competitors" who "stood ready, willing, and able to submit a competitive bid or proposal had the County invited such bids or proposals," and thus "had a right to seek a determination of whether competitive bidding was required"); *Randall Indus., Inc. v. Lee County*, 307 So. 2d 499, 501 (Fla. 2d DCA 1975) ("According to the complaint, . . . appellant had a right [that] was effectively denied him," and thus the "appellees' contention that appellant has no standing to complaint is without merit"); *Setai Resort & Residences Condo. Assn., Inc. v. BHI Miami Ltd. Corp.*, 2023 WL 4450343, at *2 (Fla. Cir. Ct. July 10, 2023) (Trawick, J.) ("Petitioners have standing due to their special injury," because they "own[ ]

property within 375 feet of the Applicants' Property" and allege "that their view of the ocean will be obstructed").

Notably, before entering its final judgment against Carollo and in favor of Fuller and Pinilla, the court in the underlying federal action expressly held that "Plaintiffs have alleged a personal injury sufficient to demonstrate standing" based on the First Amendment retaliation campaign that Carollo directed against them. *Fuller v. Carollo*, No. 18-24190-CIV, 2019 WL 13293974, at *4 (S.D. Fla. Apr. 30, 2019), report and recommendation adopted, No. 18-24190-CIV, 2019 WL 13293972 (S.D. Fla. June 13, 2019); *Fuller v. Carollo*, No. 18-24190-CIV, 2021 WL 2143743, at *4 (S.D. Fla. May 24, 2021) (Plaintiffs have adequately pled that they have standing and that the damages Plaintiffs seek are not for the harm suffered by non-parties but for the injuries suffered by Plaintiffs."), *aff'd*, No. 21-11746, 2022 WL 333234 (11th Cir. Feb. 4, 2022).[6]

There is no case holding that non-residents who suffer a special injury (like Fuller and Pinilla) cannot sustain a claim for a violation of the City Charter solely because of their status as non-residents.

[6] Fuller and Pinilla are not the only parties to have suffered a special injury. The City of Miami itself—having its Charter violated by a Commissioner—has also suffered a grave special injury, and it is troubling that the City of Miami has elected to endorse Carollo's ongoing violation of the City Charter, rather than joining Appellants in recognizing that Carollo has forfeited his office under the City Charter.

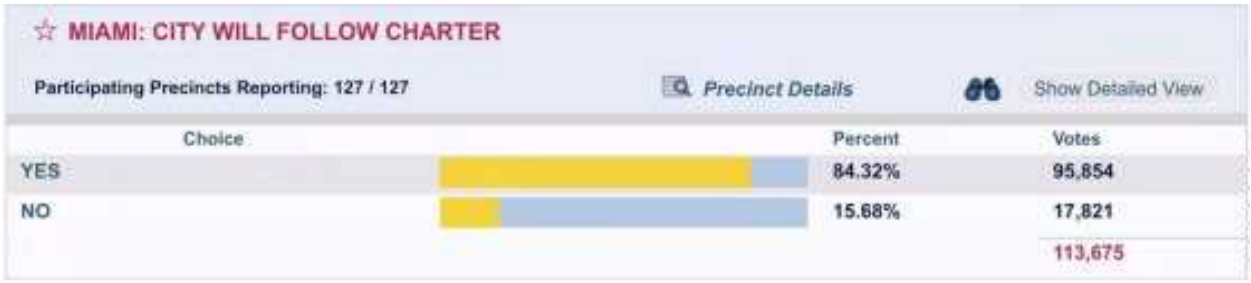
C. All City of Miami Residents Have Standing To Enforce The Miami City Charter's Bill Of Rights Regardless of Special Injury

Echoing both the ancient common law writ of *quo warranto*, enshrined in Florida's Constitution and in the unbroken line of Florida Supreme Court cases is Miami's Charter, which expressly states that "Residents of the City shall have standing to bring legal actions to enforce … the Citizens' Bill of Rights." This express grant of standing as added to Miami's City Charter pursuant to a referendum in 2017.

In the discussion leading up to its adoption, Miami's Mayor, Francis Suarez, who was then a Commissioner, said that if Citizens could not enforce Miami's Bill of Rights, "[i]t would be like having a United States Constitution and not being able to sue if somebody violates your rights under the Constitution; not being able to sue if you don't have the freedom of the press or you don't have, you know, you don't have the right to bear arms; whatever the different amendments are." Exhibit A at 135 (July 29, 2016 City of Miami Commission Meeting Minutes) (Commissioner Suarez). Vice Chair Ken Russell agreed: "if we violate the Charter," then "everyone is injured," and such allegations "should be heard on [their] merits." *Id*.at 136 ("[I]f we're wrong, we should lose") (Commissioner Russell).

Once the Commission passed the proposed amendments, the City Attorney signed them indicating they were legal and of proper form. Exhibit B (R16-01049).

The referendum was then presented to the Citizens of Miami, who voted overwhelmingly in favor 95,854 to 17,821:



The outcome of this amendment to the City Charter placed the City of Miami in accord with other jurisdictions across the country which confer standing on classes of plaintiffs regardless of whether a particular plaintiff suffered a "special injury" under traditional standing principles For example, Florida's Sunshine Law provides that the "circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state." Fla. Stat. § 286.011(2). As the Second District has held, the Sunshine Law "on its face[ ] gives the appellant standing without regard to whether he suffered a special injury." *Fla. Citizens All., Inc. v. Sch. Bd. of Collier Cnty*., 328 So. 3d 22, 25 (Fla. 2d DCA 2021) (quoting *Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983)). Numerous other "remedial statute[s]" incorporate similar provisions "affording aggrieved parties the right to enforce comprehensive plans," which are "liberally construe[d] to grant standing to . . . broad class[es] of plaintiffs." *Bay Cnty. v. Harrison*, 13 So. 3d 115, 118-19 (Fla. 1st DCA 2009) (citing Fla. Stat. §

163.3215(2)); accord Fla. Stat. § 403.412(6) (conferring standing on "[a]ny Florida corporation not for profit which has at least 25 current members residing within the county where the activity is proposed, and which was formed for the purpose of the protection of the environment, fish and wildlife resources, and protection of air and water quality").[7]

In short, a legislative body is permitted to embrace an expansive conception of standing on certain groups of plaintiffs who might not have necessarily suffered a special injury. And this principle is commonly applied in cases challenging the validity of legislative acts. For example, in *Parsons v. City of Jacksonville*, the City of Jacksonville had passed a human rights ordinance adding sexual orientation and gender identity to its existing non-discrimination laws. *Id*., 295 So. 3d 892, 894 (Fla. 1st DCA 2020). Parsons and others filed suit alleging that the notice given prior to adopting the ordinance was inadequate, relying on Florida Statute § 166.041(8), which provides: "Standing to initiate a challenge to the adoption of an ordinance or resolution based on a failure to strictly adhere to the provisions contained in this

[7] Even outside of Florida, laws geared towards the enforcement of public interest legislation by conveying standing to "[a]ny person affected by" either "an alleged violation" or "a decision of a public agency" are routinely upheld as "confer[ring] standing based upon a claimant's interest in preserving the values of transparency and accountability that these laws enshrine, not because of a claimant's equitable ownership of tax revenues." *Welch v. Cochise Cnty. Bd. of Supervisors*, 494 P.3d 580, 583 (Ariz. 2021).

section shall be limited to a person who was entitled to actual or constructive notice at the time the ordinance or resolution was adopted."

After the trial court dismissed for failure to allege a special injury sufficient to convey standing in *Parsons*, the First District reversed, holding: "We agree with Appellants that they had standing to challenge the ordinance. Under Florida law, no special injury is required for actions attacking void ordinances; i.e., ordinances adopted without proper notice or legislative authority, or in excess of police powers." *Parsons*, 295 So. 3d at 894. The First District further held that Appellants were not "required to wait until they are injured by an adverse application of the ordinance before they can challenge its enactment. This argument runs contrary to the broad grant of standing that the statute confers and case law supports." *Id*. at 896; *accord Renard v. Dade Cty*., 261 So. 2d 832, 838 (Fla. 1972) (holding "[a]ny affected resident, citizen or property owner of the governmental unit in question has standing to challenge" a zoning ordinance that is void as improperly enacted); *David v. City of Dunedin*, 473 So. 2d 304, 305–06 (Fla. 2d DCA 1985) (no special injury required for general attack on validity of ordinance for failure to comply with section 166.041(3)).

Similar to cases in which citizens and residents are authorized to challenge the validity of a legislative act, here Galvez-Torres challenges the validity of Carollo's performance of any legislative act after forfeiting his office due to

pervasive First Amendment violations in contravention of the City Charter. In this sense, the Citizens' Bill of Rights under the City Charter mirrors a traditional "*quo warranto*" remedy—a term that means "by what authority," and describes a mechanism "for inquiring into whether a particular individual has improperly exercised a power or right derived" from the relevant government authority. *Whiley v. Scott,* 79 So. 3d 702, 706-07 (Fla. 2011).

In other words, under the self-effectuating provisions of the Citizens' Bill of Rights under the City Charter, Carollo has already forfeited his office. It is only due to the City and Carollo's obstinance in refusing to acknowledge that Carollo is no longer permitted to exercise governmental authority under the City Charter that judicial enforcement is required. Galvez-Torres has a sufficient interest in the outcome of the proceeding to answer this question, and to determine whether Carollo purporting to act as Commissioner "exceeds [his] position's constitutional authority" under the City Charter. *Id*. at 706, n.4. In other words, "the extent of harm to" Galvez Torres "is not pertinent to the Court's inquiry," as this action "is directed at the action[s] of" Carollo, and whether he has forfeited his office, which enforces "a public right" without requiring any individual to "show that he has any real or personal interest in it." *Id*.

III. This Action to Enforce a Forfeiture "Forthwith" Is Ripe

The circuit court erred in holding that, "even if plaintiffs had standing to assert a writ of *quo warranto*, this case is not yet ripe for consideration because the *Fuller I* judgment is on appeal." See *Order Granting Joe Carollo and the City of Miami's Motions to Dismiss*, p. 4. But the *Fuller I* judgment is final and has not been stayed pending appeal. The circuit court's order does not cite any controlling legal authority relating to ripeness, much less the ripeness of a dispute founded on a *quo warranto* petition for a forfeiture of public office.

The issue of ripeness was raised in the written brief of the City, citing four cases, none of which even mentioned the word "ripeness" nor had any type of holding as to ripeness. Those cases only stand for the proposition that a judgment for certain purposes only become final after an appeal. But the plain language of the City Charter does not require or even mention a "final judgment after appeal." Rather, the City Charter only references a "public official who is **found by the court** to have willfully violated" any of the enumerated rights therein, "shall forthwith forfeit his or her office[.]" *City of Miami Charter*, Citizens' Bill of Rights §§ (A)(3) & (C) (emphasis added). There is no reference to any need for a final judgment.

Nor would it make sense to interpret the City Charter to require any appeals process to conclude as that would defeat the immediacy of the forfeiture as the public official "shall forthwith forfeit his or her office." Black's Law Dictionary defines

"**forthwith**" as: "1. Immediately; without delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch." Black's Law Dictionary 769 (10th ed. 2014).

Indeed, as this case demonstrates, prompt relief upon a final judgment is necessary to give effect to the Citizens' Bill of Rights, as inordinate appellate delays make it all too easy for a public official to run out the clock until the end of his electoral term.

CONCLUSION

WHEREFORE, Appellants respectfully request that this Court vacate the circuit court's order of dismissal with prejudice and remand this action for further proceedings.

Dated: October 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that that on this 28th day of October 2024, I filed the foregoing using the Third District's ePortal Filing System. I further certify that a copy of the foregoing has been served via e-mail through the third District's ePortal Filing System on all counsel of record listed on the Service List below:

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CERTIFICATE OF COMPLIANCE

I, Jeffrey W. Gutchess, certify that this brief is computer-generated and prepared in Times New Roman Style, 14-point font and satisfies the word count requirement, pursuant to and in compliance with Rule 9.045 of the Florida Rules of Appellate Procedure.

By: */s/Jeffrey W. Gutchess*