

IN THE DISTRICT COURT OF APPEAL  
FOR THE FIFTH DISTRICT, STATE OF FLORIDA

CASE NUMBER: 5D\_\_\_\_\_

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**GEORGE ROSARIO,**

Petitioner

vs.

**CITY OF GROVELAND, DINA SWEATT**, in her official capacity as Council Member and Mayor, **MIKE RADZIK** in his official capacity as Council Member/Vice Mayor, **TIM LOUCKS**, in his official capacity as Council Member, **MIKE SMITH**, in his official capacity as Council Member, and **JOHN GRIFFIN**, in his official capacity as Council Member

Respondents.

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**PETITION FOR WRIT OF QUO WARRANTO**

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## **PETITION FOR WRIT OF QUO WARRANTO<sup>1</sup>**

Petitioner, George Rosario (“Mayor Rosario”), an individual claiming title to the office of Mayor of the City of Groveland, pursuant to Article V, § 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(3), hereby respectfully petitions the court for a writ of quo warranto directed to the Respondents, City of Groveland (the “City”), Dina Sweatt (“Sweatt”), in her official capacity as Council Member and Mayor, Mike Radzik, in his official capacity as Council Member/Vice Mayor, Tim Loucks, in his official capacity as Council Member, Mike Smith, in his official capacity as Council Member, and John Griffin, in his official capacity as Council Member (collectively the “Respondents”), and sets forth the following grounds for relief:

### **I. BASIS FOR INVOKING JURISDICTION**

This Court has jurisdiction to issue a writ of quo warranto under Article V, § 4(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(b)(3). Quo warranto is the proper remedy for a public official to challenge his unlawful ouster from office and to determine entitlement to hold office. *Tobler v. Backett*, 297 So. 2d 59, 61 (Fla. 2d DCA 1974); *Winter v. Mack*, 142 Fla. 1, 8 (Fla. 1940). As the individual claiming title to the office, Mayor Rosario has the

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<sup>1</sup> An appendix accompanies this Petition and is referenced as “Appx.”

right to bring this Petition for Writ of Quo Warranto. § 80.01, *Fla. Stat.*; *Tobler v. Backett*, 297 So. 2d 59, 61 (Fla. 2d DCA 1974); *McGhee v. City of Frostproof*, 289 So. 2d 751, 752 (Fla. 2d DCA 1974). Respondents in this case are the City and elected officials of the City, and Respondents are, therefore, properly within the jurisdiction of this Court. There is no dispute as to any material fact. Accordingly, this Court should exercise its original jurisdiction and grant this petition.

## **II. STATEMENT OF THE FACTS**

### **A. Mayor Rosario's Background.**

In 1987, Mayor Rosario was convicted of a felony for unlawfully possessing a controlled substance in Pennsylvania. Appx. 000063; 000080-83. His sentence was completed on October 11, 1991. Appx. 000063; 000080-83. Since January 22, 2008, Mayor Rosario has continuously resided at 1101 Peregrine Street, Groveland, Florida 34736. Appx. 000060; 000095-97. On February 11, 2008, Mayor Rosario registered to vote in Florida. Appx. 000060.

### **B. The City of Groveland Elected Mayor Rosario as its Mayor.**

Mayor Rosario qualified for and ran for the Groveland City Council District 1 (Mayor) in the November 2016 election. Appx. 000059. The other candidates were James Smith and Glen Wilson ("Wilson"). Appx. 000059. In November 2016, the voters of the City elected Mayor Rosario as their mayor for a two-year

term, expiring in November 2018. Appx. 000059; Appx. 000085-86 (City's Charter, Article III, § 3.04).<sup>2</sup>

According to the City's Charter, the mayor should preside "at meetings of the council and shall be a member of the council and shall be recognized as head of city government for all ceremonial purposes, by the governor for purposes of military law; for service of process; execution of contracts, deeds and other documents and as the city official designated to represent the city in all agreements with other entities." Appx. 000085-86 (City's Charter, Article III, § 3.04).

After the election, the City Council elected one of the council members to the position of vice-mayor. Appx. 000085-86 (City's Charter, Article III, § 3.04). The vice-mayor acts "as mayor during the absence or disability of the mayor. In case of the death, resignation, or removal of the mayor, the vice-mayor shall vacate the office of councilmember and serve as mayor until the next regular election when

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<sup>2</sup> Article III, Section 3.03 of the City's Charter provides in relevant part: "Three (3) councilmembers shall be elected at the general election held on the first Tuesday following the first Monday of November in even-numbered years. The councilmembers shall be qualified and entered upon the ballot as Districts 1, 3 and 5. Of these districts, District 1 shall be that seat reserved for the mayoral candidate and the person elected to District 1 shall serve as mayor for a two-year term. He or she shall be a member of the council and will preside over the meeting of the council." Appx. 000085 (City's Charter, Article III, § 3.03).

the office shall be filled for a full two-year term.” Appx. 000085-86 (City’s Charter, Article III, § 3.04).

**C. Wilson Attempts to Remove Mayor Rosario from Office.**

Wilson was displeased about losing the election to Mayor Rosario and he hired Derek Schroth (“Schroth”) to facilitate Mayor Rosario’s removal from office. To that end, on December 23, 2016, which was about a month after the election, Schroth sent an email to the City’s attorney, Anita Geraci (“Geraci”) demanding that the City Council declare a forfeiture of Mayor Rosario’s office due to Mayor Rosario’s prior felony convictions in Pennsylvania. Appx. 000071-79. On January 3, 2017, the City Council held a meeting to discuss Wilson’s demand and the allegations that Mayor Rosario was not qualified to hold office. Appx. 000098-109; 000260 (¶ 5 council member Radzik’s summary). For that meeting, Geraci prepared a memorandum of law, dated December 28, 2016, to advise the City Council in which she stated, in relevant part:

According to information provided by the National Association of Criminal Defense Lawyers, in Pennsylvania, a person convicted of a felony has his/her rights to vote restored in Pennsylvania once released from incarceration. This is automatic without application. However, upon being convicted for a crime punishable by more than 1 year[,], a person loses eligibility to serve on a jury, and upon conviction of any felony loses eligibility to hold office. In order to have one’s civil rights restored to serve on a jury or hold public office it requires a pardon which must be applied for and granted.

Appx. 000098-99. Geraci further stated that Florida had not granted clemency and Pennsylvania had not issued a pardon. Appx. 000099. Geraci recommended that Mayor Rosario's office be declared forfeited under Article III, Section 3.06 of the City's Charter. Appx. 000099. No action was taken on the recommendation at the January 3, 2017 meeting. Appx. 000260.

On January 4, 2017, Wilson filed a multi-count suit in the Circuit Court of Lake County, Florida, against the City, in *Wilson v. City of Groveland*, Case No. No. 2017-CA-000010 (the "Wilson Lawsuit"), alleging that Mayor Rosario is a convicted felon whose right to hold office was not restored; that Mayor Rosario is not qualified under the Florida Constitution to hold office; and that the City has an obligation to remove Mayor Rosario from office. Appx. 000006; 000011-26. Wilson requested that the circuit court grant mandamus on the issue and enter an injunction enjoining the City from "recognizing the authority of George Rosario as Mayor or Council Member." Appx. 000012-13. The Wilson Lawsuit did not initially name Mayor Rosario as a defendant. Appx. 000011-26.

On the same day that the Wilson Lawsuit was filed, the circuit court held an evidentiary hearing on Wilson's request for a temporary injunction (and on his petition for a writ of mandamus). Appx. 000006-7; 000027-28. Mayor Rosario was not notified of the evidentiary hearing and he did not attend. Appx. 000027-28. After the hearing, the circuit court issued a temporary injunction, dated January 5,

2017, preventing the City from “recognizing the authority of George Rosario as the City of Groveland Mayor.” Appx. 000029-30. In the temporary injunction order, the circuit court made findings of fact that Mayor Rosario was a convicted felon and noted that there was no evidence in the record to show that Mayor Rosario’s civil rights, including the right to hold public office, had been restored. Appx. 000029-30. Mayor Rosario was not given an opportunity to contest these findings of fact prior to the issuance of the temporary injunction. Appx. 000006-7; 000011-28.

On January 9, 2017, Wilson amended his complaint in the Wilson Lawsuit to add Mayor Rosario as a party defendant. Appx. 000006-7; 000031-47. In the amended complaint Wilson sought injunctive relief against Mayor Rosario, and requested a writ of Quo Warranto to determine Mayor Rosario's right to hold office. Appx. 000033-34. On January 26, 2017, Mayor Rosario appealed the circuit court’s temporary injunction order to this Court in *Rosario v. Wilson*, Case No. 5D17–287. Appx. 000007; 000054. On January 23, 2017, the City Council held a closed meeting to discuss the Wilson Lawsuit. Appx. 000187-242.

**D. State of Florida Clemency Letter.**

Mayor Rosario believed that an application for clemency in Florida was unnecessary because his right to vote had been automatically restored by Pennsylvania law after the completion of his incarceration. Nevertheless, because

of the Wilson Lawsuit, Mayor Rosario sought to confirm his right to hold office by filing an Application for Clemency for the Restoration of Civil Rights and Specific Authority to Own Possess or Use Firearms, dated February 13, 2017. Appx. 000061. By letter dated February 20, 2017, the State of Florida Office of Executive Clemency responded to Mayor Rosario's application for clemency:

Since your client has already received his voting rights for his out of state felony conviction(s), he does not need to apply for clemency in Florida. His Pennsylvania restoration of rights will be sufficient.

Appx. 000062-65.<sup>3</sup> This letter from the State of Florida Office of Executive Clemency was consistent with the applicable Florida law and confirmed that there were no grounds for the City Council to remove Mayor Rosario from office, or to otherwise demand any proof of Mayor Rosario's restoration of rights.

**E. The City of Groveland and Wilson Conspire to Oust Mayor Rosario.**

On October 27, 2017, this Court issued its published opinion in *Rosario v. Wilson*, 228 So. 3d 726 (Fla. 5th DCA 2017), reversing the circuit court's temporary injunction order and concluding that "injunctive relief is unavailable because of an adequate remedy at law - application for a writ of quo warranto." *Rosario v. Wilson*, 228 So. 3d 726 (Fla. 5th DCA 2017); Appx. 000054; 000056-

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<sup>3</sup> The letter from the State of Florida Office of Executive Clemency also references the restoration of the right to bear firearms. Appx. 000062. The right to bear firearms is not relevant to Mayor Rosario's right to hold the office of Mayor.

57. On the same date, Mayor Rosario resumed his position as mayor. The mandate was issued November 20, 2017. Appx. 000008; 000055; 000058.

However, the dispute over Mayor Rosario's entitlement to office continued. In the afternoon on December 19, 2017, Wilson sent an email to the City Council in which he stated, in relevant part:

If the council exercises their rights under provision 3.06 of the city charter, and declares a forfeiture of George Rosario's seat, then I will immediately take the following action:

I will instruct my attorney, Derek Schroth to submit the necessary paperwork to Circuit Court Judge Briggs, dismissing my lawsuit and bringing an end to this legal action, which would then become moot with George Rosario's removal.

Appx. 000116. In the evening of December 19, 2017, the City Council held a meeting to discuss litigation strategy. Appx. 000117-186. The above letter was discussed, but the Council took no official action in the meeting. Appx. 000157-169. The Council did note the high expenses of proceeding with litigation and noted that a quick resolution and settlement would be beneficial to the City. Appx. 000173-180.

On January 2, 2018, the City Council voted to have a special meeting on January 10, 2018 "for the Declaration of Forfeiture of Office of Mayor Rosario." Appx. 000112. On January 5, 2018, Wilson filed a notice of dismissal of his claims against City of Groveland, Florida, without prejudice, and a notice of

dismissal of his claims against Mayor Rosario, with prejudice. Appx. 000008; 000048-49; 000050-51. On January 10, 2018, Wilson filed an Amended Notice of Voluntary Dismissal of Case against the City of Groveland Florida, with prejudice. Appx 000008; 000052-53. On January 10, 2018, at a council meeting, council members Mike Radzik, Mike Smith and Vice Mayor Dina Sweatt voted to remove Mayor Rosario from office based on the allegation that Mayor Rosario did not meet the qualifications for the public office. Appx. 000066-79; 000243-267. For authority to remove Mayor Rosario, the City relied upon Article III, section 3.06, of the City's Charter. Appx. 000247; 000261; 000264. Thereafter, on January 16, 2018, Dina Sweatt was sworn in as mayor. Appx. 000268; 000271-273.

**F. Writ of Quo Warranto on Behalf of Mayor Rosario.**

This Writ of Quo Warranto is filed as a result of the foregoing actions.

**III. THE NATURE OF THE RELIEF SOUGHT**

The nature of the relief sought by this petition is a writ of quo warranto directing Respondents to demonstrate their legal authority to remove Mayor Rosario from public office and replace him with an appointed mayor—Dina Sweatt—because they disliked that Mayor Rosario was a convicted felon. Respondents had no grounds to remove Mayor Rosario merely because he was previously convicted of a felony. In Florida, and in particular, in the City, the only qualifications to hold the office of mayor are that the individual is a resident of the

City and an “elector,” – *i.e.*, is a registered voter. Mayor Rosario was both a resident of the City and a qualified elector under both the City’s Charter and Florida law. Mayor Rosario is qualified under Florida law to hold public office and Respondents’ actions in removing Mayor Rosario from his public office were not authorized by the City’s Charter or Florida law.

Additionally, the proper method for the Council to have resolved any question regarding Mayor Rosario’s qualifications for office was to seek a writ of quo warranto. Instead, the Council entered into a back alley agreement with Wilson to resolve an uncomfortable lawsuit by improperly removing Mayor Rosario, without having any authority to do so. The City Council’s unauthorized and erroneous actions interfered with both the voters’ right to elect their representative and with Mayor Rosario’s right to have his elected office.

This petition requests this Court to restore Mayor Rosario to his office and to reunite the City of Groveland’s voters with their elected representative. Ultimately, Mayor Rosario seeks a determination by this Court that Respondents were not authorized to remove Mayor Rosario from public office; that Dina Sweatt wrongfully displaced Mayor Rosario as mayor, and that Mayor Rosario is entitled to reinstatement of his position with full back pay, allowances, benefits, emoluments and privileges from the date of his unlawful ouster to the time of his reinstatement. *Du Bose v. Kelly*, 132 Fla. 548, 562 (Fla. 1938) (“The right to

possess and enjoy the emoluments or the profits of an office is one clearly subject to judicial protection.”). Mayor Rosario also seeks reasonable fees and costs associated with this litigation which was instituted to defend Mayor Rosario’s right to his public office. § 58, 43 Fla. Jur. 2d Quo Warranto (“As in other actions and proceedings, the court in quo warranto has the power to impose costs on the unsuccessful party.”); *Thronber v. City of Ft. Walton Beach*, 568 So. 2d 914, 916-917 (Fla. 1990) (“Florida courts have long recognized that public officials are entitled to legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose.”). Because the removal and replacement of Mayor Rosario as mayor was unauthorized by law, and it is in the public interest that Mayor Rosario—as the duly-elected mayor—resume his duties for the remainder of his term, this Court should stay or reverse the Respondent’s actions, establish an expedited briefing schedule and decide this petition on an emergency basis.

#### **IV. ARGUMENT**

##### **A. The City has no Authority Under the Charter or Florida Law to Remove Mayor Rosario From Office.**

###### **(1) The Charter does not authorize the City to adjudicate forfeiture.**

The City relied upon the purported authority of Article III, Section 3.06 of the City Charter, entitled “Forfeiture of Office,” to improperly remove Mayor

Rosario from office, because he had been convicted of a felony in Pennsylvania over 30 years ago. Appx. 000247; 000261; 000264. At the outset, there is no evidence whatsoever that Mayor Rosario can be removed on this basis because the only qualification for office under the City's Charter is residency and status as a registered elector. Appx. 000084 (City's Charter, Article III, § 3.02). Mayor Rosario meets both of these qualifications as further discussed below. Second, assuming, *arguendo*, that there was a question as to Mayor Rosario's qualifications, the City's Charter does not provide any substantive or procedural basis to determine whether a council member fails to meet a qualification for office. The Charter merely provides the council with authority to administratively announce an office forfeited after removal has been accomplished by proper legal procedure. Appx. 00087 (City's Charter, Article III, § 3.06). A review of the Charter is instructive. First, the Charter provides a basis for forfeiture *if* a council member lacks qualifications:

(b) Forfeiture of office. A councilmember shall forfeit his office if he lacks at any time during his term of office any qualification for the office prescribed by this Charter or law.

Appx. 000087 (City's Charter, Article III, § 3.06(b)). The Charter also provides authority for the council to recognize and announce a vacancy so that the vacancy can be filled:

(a) Vacancies. The office of a councilmember shall become vacant upon his death, resignation, removal from office or any manner authorized by law or forfeiture of his office, such forfeiture *to be declared by the remaining members of the council*.

Appx. 000087 (City's Charter, Article III, § 3.06(a)) (emphasis added); Appx. 000087 (City's Charter, Article III, § 3.06(d)) (authorizing the council to fill a vacancy). Conspicuously absent from the Charter is the authority and procedure for the council to adjudicate the forfeiture.

Nevertheless, the City decided that it had the authority to adjudicate forfeiture of office pursuant to section 3.06(a) based on last few words of the section, to wit, "such forfeiture to be declared by the remaining members of the council." Appx. 000087 (City's Charter, Article III, § 3.06(a)). But the ordinary meaning of the word "declare" belies that interpretation. *Gar-Con Devel, Inc. v. State Dep't of Env'tl. Regulation*, 468 So. 2d 413, 415 (Fla. 1<sup>st</sup> DCA 1985) ("[i]n interpreting rules or statutes, words should be given their plain and ordinary meaning."). The ordinary meaning of the word "declare" is "[t]o publish, to make known." *McConihe v. State*, 17 Fla. 238, 256 (Fla. 1879). The definition does not include the right to adjudicate, but merely the right to announce some decision that was previously determined by the proper authority. *Id.* at 256-57. The City's Charter clearly expresses that the council can "declare" an office forfeited but does not vest the council with the authority to hold proceedings or otherwise adjudicate

the forfeiture itself. Appx. 000087 (City’s Charter, Article III, § 3.06). That power lies elsewhere in the Courts or as dictated by Florida Statutes. The council’s actions in “declaring” Mayor Rosario’s office forfeited were premature without the determination by the proper authority of his right to hold office.<sup>4</sup> Mayor Rosario was thus improperly removed from office.

**(2) Writ of Quo Warranto Is the Exclusive Remedy for Removal.**

Florida law provides that in the absence of an express provision, by statute, to determine entitlement to office, the only remedy is to seek a writ quo warranto. *McSween v. State Live Stock Sanitary Bd. of Fla.*, 122 So. 239, 244 (Fla. 1929) (“The generally accepted and recognized rule is that, in the absence of statutory provision to the contrary, quo warranto proceedings are held to be the only proper remedy in cases in which they are available. Thus they are held to be the exclusive method of determining the right to hold and exercise a public office”) (internal citations omitted); *State ex. rel. Booth v. Byington*, 168 So. 2d 164, 175 (Fla. 1<sup>st</sup> DCA 1964) (“Where quo warranto is an adequate remedy, it is the only proper

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<sup>4</sup> This is consistent with the City’s previous arguments in the Answer Brief filed with this Court in *Rosario v. Wilson*, Case No. 5D17–287. Appx. 000280-308; *Southchase Parcel Community Ass’n, Inc. v. Garcia*, 844 So. 2d 650, 651-52 (Fla. 5<sup>th</sup> DCA 2003) (the doctrine of estoppel against inconsistent opinions prohibits a party from taking an inconsistent position in a related subsequent case). In the City’s Answer Brief, the City admits that a writ quo warranto is the exclusive method to adjudicate the right to hold office where there is an absence of any statutory authority to the contrary. Appx. 000280-308.

remedy and will preclude issuance of a writ of prohibition as a substitute.”). Because the City was effectively determining Mayor Rosario’s right to hold public office, the remedy was not a city council vote, but filing a writ quo warranto.

**B. Mayor Rosario is Qualified to Hold Office.**

**(1) Mayor Rosario resides within the city limits and is an Elector – which are the only qualifications to hold office.**

To start with, the Charter requires only two qualifications to serve as a city council member:

Any registered elector of the City of Groveland who has established primary residency within the City limits twenty-four months prior to the first day of the qualifying period shall be eligible to seek qualification for the elected office of city councilmember. Primary residency shall mean the dwelling, in which the person eats, sleeps and receives regular postal delivery.

Appx. 000084 (City’s Charter, Article III, § 3.02). This provision is in accord with section 166.032 of the Florida Statutes, entitled “Electors:”<sup>5</sup>

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<sup>5</sup> Notably, Florida’s Constitution requires the basic qualifications of age, residency and status as an elector for holding legislative and judicial offices. Surely, holding local mayoral office does not require more. In particular, Article III, Section 15(c), of the Florida Constitution, titled, “Terms and qualifications of Legislators,” provides the qualifications for holding legislative office in the state: “Each legislator shall be at least twenty-one years of age, an elector and resident of the district from which elected and shall have resided in the state for a period of two years prior to election.” Further, Article V, Section 8, of the Florida Constitution, titled, “Eligibility,” provides the qualifications for holding judicial office in the state: “No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the

Any person who is a resident of a municipality, who has qualified as an elector of this state, and who registers in the manner prescribed by general law and ordinance of the municipality shall be a qualified elector of the municipality.

There is no dispute that Mayor Rosario is a resident of the City. The focus has been on whether Mayor Rosario is a “registered elector.” Appx. 000084 (City’s Charter, Article III, § 3.02). The term “registered elector” is not defined in the Charter or in the Florida Statutes, but the meaning is obvious from the relevant law. The Florida legislature has defined being an elector in Chapter 97, entitled “Qualification and Registration of Electors:”

For the purposes of this code, except where the context clearly indicates otherwise, the term:

(15) “Elector” is synonymous with the word “voter” or “qualified elector or voter,” except where the word is used to describe presidential electors.

*See* § 97.021(15), *Fla. Stat.* Further, Article VI, Section 2, of the Florida Constitution, entitled, “Electors,” provides:

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

*See* Art. VI, § 2, *Fla. Const.* Thus, it is clear that a “registered elector” as used Article III, Section 3.02 of the City’s Charter means an

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court. No justice or judge shall serve after attaining the age of seventy years . . . . No person is eligible . . . unless a member of the bar of Florida . . . .”

elector or voter who has properly registered to vote. Appx. 000084 (City's Charter, Article III, § 3.02). The qualifications for becoming a registered elector or registered voter are set forth in section 97.041, Florida Statutes, entitled, "Qualifications to register or vote:"

(1)(a) A person may become a registered voter only if that person:

1. Is at least 18 years of age;
2. Is a citizen of the United States;
3. Is a legal resident of the State of Florida;
4. Is a legal resident of the county in which that person seeks to be registered; and
5. Registers pursuant to the Florida Election Code.

(b) A person who is otherwise qualified may preregister on or after that person's 16th birthday and may vote in any election occurring on or after that person's 18th birthday.

(2) The following persons, who might be otherwise qualified, are not entitled to register or vote:

(a) A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law.

(b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

(3) A person who is not registered may not vote.

*See* § 97.041, *Fla. Stat.* For our purposes, it is notable that this statute circumscribes eligibility to vote by prohibiting “[a] person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law” from qualifying as a registered voter. § 97.041(2)(b), *Fla. Stat.* A similar disqualification provision appears in Article VI, Section 4(a) of the Florida Constitution, entitled “Disqualifications:”

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

*See* Art. VI, § 4(a), *Fla. Const.* Thus, Mayor Rosario would only be barred from qualifying as an elector if he did not have the right to vote restored. In

Pennsylvania, where Mayor Rosario was convicted, a convicted felon’s right to vote is temporarily removed while serving the sentence; however:

The individuals registered to vote before being incarcerated are permitted to vote immediately upon release. And those not previously registered to vote may register in prison if they will be released by the date of the election. Thus, Pennsylvania law do[es] not completely disenfranchise the convicted felon, as is the case in fourteen of [its] sister states; it merely suspends the franchise for a defined period.

*American Civil Rights Union v. Philadelphia City Commissioners*, 872 F.3d 175, 180 (3d Cir. 2017) (internal citations omitted); see *Mixon v. Commonwealth*, 759 A.2d 442, 450-451 (Pa. Commw. Ct. 2000), *aff’d*, 566 Pa. 616, 783 A.2d 763 (2001); *Com. v. Sherwood*, 859 A.2d 807, 809 (Pa. Super. 2004) (“The right to vote is automatically restored after completion of the term of imprisonment.”). In *Owens v. Barnes*, 711 F.2d 25, n. 1 (3d Cir. 1983), the court explained that:

[t]he Pennsylvania Election Code does not explicitly disenfranchise convicted felons. The section dealing with absentee ballots provides:

[T]he words “qualified absentee elector” shall in nowise be construed to include persons confined in a penal institution or a mental institution....

25 Pa.Stat. §§ 2602(w)(12), 3146.1. The Pennsylvania Supreme Court has construed the absentee ballot provision as legislative action defining qualified electors. *Ray v. Commonwealth*, 442 Pa. 606, 609, 276 A.2d 509, 510 (1971).

In this way, the removal of the right to vote by absentee ballot effectively removes the right to vote until released from incarceration. *Id.* Consequently, when Mayor Rosario completed his sentence and was released from incarceration, his right to vote was restored automatically and without any need for government intervention. Florida is bound by full faith and credit to recognize Mayor Rosario's restoration of voting rights. *Schlenther v. Dep't of State, Div. of Licensing*, 743 So. 2d 536, 537 (Fla. 2d DCA 1998) ("Once another state restores the civil rights of one of its citizens whose rights had been lost because of a conviction in that state, they are restored and the State of Florida has no authority to suspend or restore them at that point. The matter is simply at an end."); *Doyle v. Florida Dep't of State, Div. of Licensing*, 748 So. 2d 353, 355-57 (Fla. 1<sup>st</sup> DCA 1999); Appx. 000062-65. Accordingly, Mayor Rosario was a qualified elector and was properly in office.

**(2) Mayor Rosario has not had his right to hold office in Florida removed.**

Despite Mayor Rosario's obvious qualification to hold office under Florida laws and the Florida Constitution, the City Council nevertheless removed Mayor Rosario. To achieve the removal, the City Council applied Pennsylvania's constitutional provisions, specifically, Article II, Section 7, of the Pennsylvania Constitution, entitled "Ineligibility by Criminal Conviction:"

No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other *infamous crime*, shall be eligible to the General Assembly, or capable of

holding any office of trust or profit in this Commonwealth.

(emphasis added).<sup>6</sup> This was in error. Markedly, Pennsylvania’s constitutional prohibition against holding public office is specifically limited to the “General Assembly, or capable of holding any office of trust or profit in this Commonwealth” and, does not remove any civil right to hold office outside of Pennsylvania. *See* Art. II, § 7, *Pa. Const.* Simply, section 7 in Article II of the Pennsylvania Constitution applies only to individuals seeking office in Pennsylvania and does not disqualify or otherwise affect an individual’s right to hold office in another state. This interpretation is consistent with the established law that each state sets its own qualifications for its office holders. *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50 (1959) (discretion is vested in states to establish certain conditions under which the right of suffrage may be exercised and the right to hold public office determined.). Additionally, the law is well-settled that:

[a]t common law, and on general principles of jurisprudence, when not controlled by express statute giving effect within the State which enacts it to a conviction and sentence in another State, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification, beyond the limits of the State in which the judgment is rendered....

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<sup>6</sup> A felony is an “infamous crime” in Pennsylvania. *See Commonwealth ex rel. Pennsylvania Attorney Gen. Corbett v. Griffin*, 596 Pa. 549, 557-58 (2008).

*See Logan v. United States*, 144 U.S. 263, 303 (1892), *abrogated on other grounds by Witherspoon v. Illinois*, 391 U.S. 510, 523, n. 22 (1968); *McCoy v. U.S.*, 247 F. 861 (5<sup>th</sup> Cir. 1918)<sup>7</sup>; *Gutterman v. State, by Ervin*, 141 So. 2d 21, 23 (Fla. 1<sup>st</sup> DCA 1962)<sup>8</sup> (referring to Florida disqualification statutes when deciding the effect of out of state convictions on the qualification to hold office in Florida.). Thus, even assuming the Pennsylvania constitutional qualifications for holding office prevent Mayor Rosario from holding office in Pennsylvania, Pennsylvania’s constitutional provision in no way affects Rosario holding office in Florida.

Looking then to Florida law, it is clear that Florida does not have a similar constitutional provision generally preventing a convicted felon from holding office. *See* Art. VI, § 4(a), *Fla. Const.* In Florida, the right to hold office is linked to being an “elector” under Florida law, a qualification which Mayor Rosario has established, as discussed above. Moreover, in response to Mayor Rosario’s application for restoration of civil rights, the State of Florida confirmed that Mayor Rosario does not need any civil rights restored because his right to vote was

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<sup>7</sup> *See Bonner v. City of Pritchard, Alabama*, 661 F.2d 1206, 1207 (11th Cir. 1981) (The Eleventh Circuit adopted as binding precedent all Fifth Circuit cases submitted or decided prior to October 1, 1981.).

<sup>8</sup> This case was decided under a previous version of the Florida Statutes.

already automatically restored under Pennsylvania law.<sup>9</sup> Appx. 000062. In Florida, the restoration of the civil right to vote “restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.”<sup>10</sup> 16 Fla. Prac., Sentencing § 12:28, 4(I)(G) and 5(E) (2017-2018 ed.). Because Mayor Rosario’s right to hold office in Florida was established when Mayor Rosario’s voting rights were automatically reestablished by operation of law in Pennsylvania, the City incorrectly required Mayor Rosario to submit proof of restoration of the right to hold office in order to maintain his office in Florida. *See Doyle v. Florida Dep’t of State, Div. of Licensing*, 748 So. 2d 356, 355-57 (Fla. 1<sup>st</sup> DCA 1999). Therefore, the City’s decision to remove Mayor Rosario on this basis was insupportable as a matter of law.

## V. CONCLUSION

Based on the plain language of the relevant laws, the City lacked the authority to remove Mayor Rosario from office. Mayor Rosario was wrongfully removed under Florida law because he was, and continues to be, a qualified elector entitled to hold his office. By removing Mayor Rosario from his public office

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<sup>9</sup> Specifically, the letter states: “Since your client has already received his voting rights for his out of state felony conviction(s), he does not need to apply for clemency in Florida. His Pennsylvania restoration of rights will be sufficient.”

<sup>10</sup> The right to bear firearms is not relevant to Mayor Rosario’s right to hold the office of Mayor.

without legal cause and in the manner described in this petition, Respondents have acted without authority and in derogation of Mayor Rosario's right to hold public office and the public's right to elect its chosen representatives. Accordingly, Mayor Rosario respectfully submits that this Court should issue a writ of quo warranto.

Respectfully submitted this 23<sup>rd</sup> day of April, 2018.

*/s/Howard S. Marks*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 23, 2018, a true and correct copy of the foregoing was filed with the Clerk of Court by using the eDCA Fifth District Court of Appeal, and served via email to counsel for the City of Groveland and City Council Members: **Anita Geraci-Carter, Esquire** ([anita@agclaw.net](mailto:anita@agclaw.net)), Law Office of Anita R. Geraci-Carver, P.A., 1560 Bloxam Avenue, Clermont, FL 34711 and **Michael J. Roper, Esquire** ([mroper@bellroperlaw.com](mailto:mroper@bellroperlaw.com)), Bell & Roper, P.A., 2707 E. Jefferson St., Orlando, FL 32803.

*/s/ Howard S. Marks*

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Petition for Writ of Quo Warranto is in the Times New Roman 14-point font and is therefore in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

*/s/ Howard S. Marks*

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