

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

EUNICE BARNUM, individually and as  
guardian and next friend of J.M.L.W., J.L.W.,  
and Z.W., minors; TIMOTHY ALBRO and  
LAURA HEFFERNAN, individually and as  
parents and next friend of L.H., a minor; and  
ANN GIPALO, individually and as parent and  
next friend of B.G., a minor,

CASE NO.:

Plaintiffs,

vs.

THE CONSOLIDATED CITY OF  
JACKSONVILLE, FLORIDA.

Defendant.

**EMERGENCY PETITION FOR WRITS OF QUO WARRANTO AND MANDAMUS**

COME NOW, Plaintiffs, by and through the undersigned attorneys, and file this emergency petition for extraordinary relief challenging the authority of Defendant, THE CONSOLIDATED CITY OF JACKSONVILLE, FLORIDA, (the "City"), acting through its governing body, the City Council of the Consolidated City of Jacksonville (the "City Council"), to withdraw Bill 2019-0380, which called for a special election to hold a referendum for the approval of a half-cent school capital outlay sales surtax as levied by the Duval County School Board (the "Board") in its May 7, 2019 resolution (the "Resolution"), and mandating that Defendant take action to place the referendum on the ballot for its consideration by voters in the Consolidated City of Jacksonville.

## **PARTIES AND JURISDICTION**

1. Plaintiff EUNICE BARNUM is a citizen of and registered voter in Duval County, Florida whose grandchildren, over whom she is guardian, J.M.L.W., J.L.W., and Z.W are enrolled in Duval County Public Schools.
2. Plaintiffs TIMOTHY ALBRO and LAURA HEFFERNAN are citizens of and registered voters in Duval County, Florida whose child, L.H is enrolled in Duval County Public Schools.
3. Plaintiff ANN GIPALO is a citizen of and a registered voter in Duval County, Florida whose child, B.G., is enrolled in Duval County Public Schools.
4. The City Council is the governing body of the Defendant, City of Jacksonville.
5. The City of Jacksonville is a consolidation of city and county government in Duval County, Florida, and is a political subdivision of the State of Florida.
6. This Court has jurisdiction over this action seeking extraordinary relief pursuant to Rule 9.030(c)(3), FLA.R.APP.P. and Rule 1.630 of the FLA.R.CIV.P.
7. Venue is proper in this Court.

## **STATEMENT OF FACTS**

8. As voters and parents/grandparents of students enrolled in Duval County's public schools, Plaintiffs are acutely aware of the infrastructure and safety challenges facing the Duval County's schools including, but not limited to maintenance, repairs, renovations, and, in some cases, replacement in order to protect the safety of, and promote the education of, Duval County public school students. The extent of these challenges is outlined in Master Facility Plan Recommendations. **Exhibit "A."**

9. As a result of the Board's liberal school assignment and magnet school policies, the condition of any Duval County Public School is of interest to and has the potential to affect any student living in any part of Duval County regardless of his or her neighborhood school assignment.

10. Pursuant to § 212.055(6), Fla. Stat., and in accordance with the taxation authority granted to it by Article IX, Section 4(b) of the Constitution of the State of Florida, the Board properly adopted the Resolution on May 7, 2019, proposing a sales surtax to go into effect on January 1, 2020 once approved by referendum. **Exhibit "B."**

11. Pursuant to § 212.055(6), Fla. Stat., the Resolution instructed the City Council as the governing board of Duval County to place the sales surtax question on the November 5, 2019 special election ballot.

12. On May 28, 2019, Bill 2019-0380 was introduced by the City Council, which called for a special election to hold a referendum for the approval of a half-cent school capital outlay sales surtax as levied by the Board pursuant to the Resolution (the "Bill.")

13. Since the introduction of the Bill, the City Council has met as a body on seven distinct occasions (May 28, 2019, June 11, 2019, June 25, 2019, July 6, 2019, July 20, 2019, August 13, 2019 and August 27, 2019).

14. In addition to the seven regularly scheduled meetings, the City Council has taken the Bill into consideration during numerous committee meetings and considered a number of amendments and deferrals on the proposed surtax legislation.

15. Ultimately, the City Council voted on August 27, 2019 to withdraw the Bill.

16. Defendant, through the actions of the City Council abused its discretion by failing to uphold its non-discretionary duty to place the sales surtax on the ballot.

## PETITION FOR WRIT OF QUO WARRANTO

17. Plaintiffs reallege paragraphs 1 through 16 immediately above, as fully as if they were restated herein.

18. Quo warranto is the proper method to test the “exercise of some right or privilege, the peculiar powers of which are derived from the State.” *Winter v. Mack*, 142 Fla. 1, 8, 194 So. 225, 228 (1940). Under Florida law, a complaint for a writ of quo warranto is the proper method for challenging the authority of a public official to take a particular action in his or her official capacity. See *Philip J. Padavano, QuoWarranto*, 5 Fla. Prac., Civil Practice § 30:3 (2018-2019 ed.). Florida courts have recognized quo warranto as an appropriate tool for contesting the validity of official actions in a variety of circumstances.<sup>1</sup>

19. Plaintiffs ask this Court to enter a writ of quo warranto, commanding Defendant to immediately place the referendum on a ballot or to answer the allegations in the Complaint by justifying the authority in question.

20. Plaintiffs are both citizens and taxpayers in Duval County, Florida, and therefore, have standing to bring a petition for quo warranto against Defendant. *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011).

21. Plaintiffs request that this Court issue a writ of quo warranto finding that Defendant, through the City Council, abused its discretion when it voted to withdraw the Bill, and in doing

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<sup>1</sup> See e.g., *Chiles v. Webster*, 714 So.2d 453, 456-57 (Fla. 1998) (quo warranto was “an appropriate method” for challenging legislative authority to override gubernatorial veto); *State Department of Health and Rehabilitative Services v. Screiber*, 561 So.2d 1236, 1242 (Fla. 4th DCA 1990) (quo warranto was warranted to prevent public defender from making motions on behalf of individuals he had not been appointed to represent); *Martinez v. Martinez*, 545 So.2d 1338, 1339 (Fla. 1989) (governor's power to call special session of legislature was proper subject of quo warranto complaint); *Snead v. State*, 415 So.2d 887, 890 (Fla. 5th DCA 1982) (challenge to authority of an assistant state attorney to sign an indictment “must be done by quo warranto”).

so, Defendant improperly abrogated the Board's state constitutional authority to tax for the benefit of the schools.

22. When the Board adopted the Resolution, the City Council, as the governing body of Duval County, had a non-discretionary duty to place the question on the ballot. *See School Board of Clay County, Florida v. Clay County*, No. 10-19-CA-806 (Fla. Cir. Ct. August 15, 2019 citing Op. Att'y Gen. Fla. 98-29 (1998)).

23. The non-discretionary nature of the City Council's duty is made clear by the plain language of § 212.055(6), Fla. Stat., which states in pertinent part:

The resolution shall include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The statement shall conform to the requirements of s. 101.161 and **shall** be placed on the ballot by the governing body of the county.

(Emphasis added.)

24. The word "shall" in § 212.055(6), Fla. Stat. should be given the compulsory meaning presumed to exist when used by the legislature. It is well settled that, where the language of a statute is clear and unambiguous and conveys a clear and definite meaning, courts should not resort to rules of statutory interpretation and construction. *Winter v. Playa del Sol, Inc.*, 353 So. 2d 598, 599 (Fla. 4th DCA 1977). Instead, the statute must be given its plain and obvious meaning. *Id. citing Union Camp Corporation v. Seminole Forest Water Management District*, 302 So.2d 419 (Fla. 1st DCA 1974).<sup>2</sup> Here, the word "shall" in the statute is clear and unambiguous in its intent that Defendant place the surtax on the ballot. To infer any other meaning requires this Court to look beyond the plain meaning of the statute.

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<sup>2</sup> The ordinary meaning of language should always be favored. *In re Forfeiture of One (1) 1984 Ford Van 150*, 521 So. 2d 244 (Fla. 1st DCA, 1988).

25. In his recent opinion, Circuit Court Judge Steven B. Whittington found that “[t]he [county’s governing] Board does have a clear legal duty to place the Resolution on the ballot; a local governing body cannot simply ignore a school board's request and refuse to place a resolution on the ballot.” *See School Board of Clay County, Florida v. Clay County*, No. 10-19-CA-806 (Fla. Cir. Ct. August 15, 2019).

26. Although Judge Whittington concluded that “[t]he [county’s governing] Board...has some discretion in selecting the date of an election,” he also found that “[t]he local district school boards have the sole authority to levy the sales surtax” and “[a]ny attempt by a county commission to undermine or usurp that authority, through unnecessary delay in setting a resolution on a ballot, would constitute an abuse of its discretion.” *Id.*

27. In *School Board of Clay County*, the Clay County Board of County Commissioners affirmatively stated, through its individual commissioners at the July 9, 2019 public meeting, and through its counsel at the hearing before Judge Whittington, that it intended to place that resolution on the ballot at the next general election, in November 2020. Based on those guarantees, Judge Whittington determined that the Clay County Board of County Commissioners did not abuse its discretion in voting down its bill to place the surtax question on the ballot.

28. In the instant case, the City Council has not made any guarantees regarding the future placement of the surtax question on the ballot. Instead, Defendant voted to withdraw the Bill after refusing to adopt an amendment to the Bill that would place the surtax question on the November 2020 general election ballot.

29. The City Council’s actions constitute an abuse of its discretion and exceed the powers granted to it by the relevant statute.

30. Plaintiffs ask this Court to issue a writ of quo warranto commanding Defendant to immediately place the referendum on a ballot or to answer the allegations in the Complaint by justifying the authority in question.

### **PETITION FOR WRIT OF MANDAMUS**

31. Plaintiffs reallege paragraphs 1 through 16, and 22-28, as fully as if they were restated herein.

32. This Court has jurisdiction over the instant action pursuant to Article I, Section 21 of the Florida Constitution, Rule 9.030(c)(3), FLA.R.APP.P., and Rule 1.630, FLA.R.CIV.P.

33. Petitioner ask this Court to enter a writ of mandamus, compelling Defendant to take legislative action to place the surtax question on a ballot.

34. Mandamus relief lies to compel a ministerial act. *City of Miami Beach v. Mr. Samuel's, Inc.*, 351 So.2d 719 (Fla.1977). A ministerial act is one where the defendant has a clear legal duty to perform the act. *Monroe County v. Cisneros*, 49 So. 3d 801 (Fla. 3d DCA 2010). In order to constitute a ministerial act, there must not be room for the exercise of discretion, and the performance being required is directed by law." *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (1st DCA 2013) *citing* *Shea v. Cochran*, 680 So. 2d 628, 629 (Fla. 4th DCA 1996).

35. As Judge Whittington articulated in his August 15, 2019 Order in Case No. 10-19-CA-806, the statutory construction of §212.055(6)(b), Fla. Stat. creates a non-discretionary duty on the part of the county's governing body to place the surtax question on the ballot.

36. Although the City Council, has some discretion to select the election date and type, that discretion cannot be abused through delays that prevent the surtax question from being placed on the ballot.

37. Defendant, through the City Council, abused its limited discretion to choose the ballot on which the surtax referendum should be placed when it voted to withdraw the Bill.

38. In doing so, Defendant, through the City Council, has failed to perform its non-discretionary duty to place the surtax question on a ballot, undermining and usurping the Board's Constitutional power to levy the surtax. Defendant has therefore deprived Plaintiffs of representation by their duly elected school board on taxation for the benefit of the schools, a matter which is reserved to the school board under the Florida constitution and statutes.

39. Defendant has not committed to placing the surtax referendum on any ballot, but instead has rejected the Bill to place the surtax question on a special election in November 2019, and also rejected amendments to the Bill that would have scheduled the surtax question for the November 2020 general election ballot.

40. Plaintiffs ask this Court to enter a writ of mandamus, requiring the City Council, to immediately take the legislative action necessary to place the surtax referendum on a ballot.

WHEREFORE, Plaintiffs respectfully ask this Court to enter a writ of quo warranto or order to show cause, commanding Defendant to immediately place the referendum on a ballot or to answer the allegations in the petition for writs of quo warranto and mandamus by justifying the authority in question. **Exhibit "C."**

Respectfully submitted this 16th day of September, 2019.

**DELEGAL & POINDEXTER, P.A.**

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COUNSEL FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this  
16<sup>th</sup> day of September, 2019 by email:

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