

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

MICHAEL KURTH, a natural person,
and on behalf of Jupiter Residents to
KEEP Palm Beach County Firefighters,

Petitioner,

CASE NO.:

v.

TOWN OF JUPITER, FLORIDA

Respondent.

_____ /

PETITION FOR WRIT OF MANDAMUS

Petitioner, MICHAEL KURTH, a natural person, and on behalf of Jupiter Residents to KEEP Palm Beach County Firefighters, files this petition, by and through undersigned counsel and in accordance with Rule 1.630, Florida Rules of Civil Procedure, seeking a writ of mandamus ordering the Respondent, TOWN OF JUPITER, FLORIDA, to perform a ministerial act and comply with its statutory obligations pursuant to Section 166.031(1), Florida Statutes. As prima facie grounds in support, Petitioner states:

Nature of the Controversy

1. Must the Town of Jupiter follow the law provided in Section 166.031(1), Florida Statutes, and allow the voters – not elected officials – to determine the future of its fire protection and emergency medical services? The Petitioner and Jupiter Residents to KEEP Palm Beach County Firefighters believe the answer is yes and seek an order from this Court directing the Town of Jupiter, Florida, to abide by its statutory requirements and place the citizens’ initiative on the ballot.

Parties, Venue, and Jurisdiction

2. Petitioner, Michael Kurth, is a natural person over 18 years old, *is sui juris*, and at all material times, was a citizen of Palm Beach County, Florida, and a resident of the Town of Jupiter, Florida.

3. Respondent, Town of Jupiter, Florida, (“Jupiter”), is an incorporated municipality existing under the laws of State of Florida and located in Palm Beach County. Jupiter exercises its power to conduct municipal government pursuant to Article VIII, Section 2(b), of the Florida Constitution, the Florida Statutes, and its municipal charter. Jupiter is governed by a political body known as the Town Council.

4. Venue is proper in Palm Beach County (“County”), Florida, and the Fifteenth Judicial Circuit because Mr. Kurth resides in the County, specifically within Jupiter, the municipality of Jupiter is located within the County, and the events related to this cause of action accrued within the County.

5. This Court has jurisdiction over this action pursuant to Section 26.012(2), Florida Statutes. See also, *Lyden v. Wainwright*, 307 So. 2d 258, 259 (Fla. 2d DCA 1974) (“It appears to us that orderly procedure would require that [writs of mandamus] be brought initially to the attention of a Circuit Judge in the appropriate county.”).

Statement of the Facts

6. During a regular meeting of Jupiter’s Town Council on August 15, 2023, members of the Town Council directed staff to proceed with creating an independent fire-rescue department, the Jupiter Fire Rescue District (“JFRD”). This decision was not formally noticed and occurred following an update from Chief Joe Pozzo of the International City Manager’s Association who

the Town Council had retained to perform a Fire and EMS Sustainability and Feasibility Study. The August 15, 2023, agenda and meeting minutes are included in the Appendix as A-1.¹

7. The Town Council's decision spread like proverbial wildfire throughout the community and its electorate.

8. Following the meeting, Jupiter's Town Manager contacted the Fire Rescue Administrator for Palm Beach County Fire Rescue, the entity that is currently responsible for providing fire protection and emergency medical services in Jupiter, and served notice of Jupiter's intent to terminate its participation in the Jupiter Municipal Services Taxing Unit². A copy of the correspondence is included in the Appendix as A-2.

9. This correspondence set an end to Jupiter's 38-year relationship with Palm Beach County Fire Rescue Services ("PBC Fire Rescue") and kicked off a 36-month timeline for Jupiter's Town Council to establish new fire protection and emergency medical services for its constituents.

10. A group of concerned Jupiter residents formally organized and, on or about September 28, 2023, Jupiter Residents to KEEP Palm Beach County Firefighters ("Jupiter Residents") was formed in an effort to have Jupiter's residents decide the future of its fire protection and emergency medical services.

11. Since that momentous August council meeting, a majority of the Town Council has moved quickly to allocate funds to advance JFRD, approved the purchase of fire engines and other

¹ Video of the Town Council's August 15, 2023, council meeting is available at the following link: <https://jupiterfl.new.swagit.com/videos/269331> (last visited November 29, 2023).

² The Jupiter Municipal Services Taxing Unit is a special district created by the Palm Beach County Commission that lies within the boundaries of Jupiter wherein Palm Beach County Fire Rescue currently provides fire protection and emergency medical services.

equipment, as well as advertising and actively recruiting for new JFRD employees, such as the fire chief, 18 staff-command positions, and 74 other positions.³

12. Jupiter Residents also acted quickly. It immediately began organizing efforts for a citizen's initiative that would amend Jupiter's Charter. The proposed referendum will keep the status quo and maintain fire protection and emergency medical services from PBC Fire Rescue, until Jupiter's electorate, not its elected officials, decides that a new service provider is needed.

13. A municipal charter may be amended pursuant to Article VIII, Section 2(a), of the Florida Constitution, and Section 166.031, Florida Statutes. The electors of a municipality "may, by petition signed by 10 percent of the registered electors as of the last preceding general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except the part describing the boundaries of such municipality." §166.031(1), Fla. Stat.

14. Following this statutory directive, Jupiter Residents began collecting the necessary signatures for its citizens' initiative. As confirmed by the Palm Beach County Supervisor of Elections ("Supervisor of Elections"), 4,415 Jupiter electors' signatures⁴ were required to meet the threshold.

15. Jupiter Residents collected considerably more than the necessary signatures. It ultimately delivered to Jupiter's Town Clerk six bankers' boxes full of approximately 8,000 executed petitions as well as a check made out to the Supervisor of Elections to cover the signature verification process.

³ Additional information about Jupiter's efforts to establish JFRD is available at the following webpage <https://www.jupiter.fl.us/firerescue> (last visited November 30, 2023).

⁴ The last preceding municipal election in Jupiter was on April 3, 2023. At that time, Jupiter had 44,142 registered voters. Jupiter Residents contacted the Supervisor of Elections and confirmed with staff the necessary number of signatures – 4,415 (10% of 44,142 equals 4,414.2).

16. Approximately 7,400 of these executed petitions were reluctantly accepted by the Town Clerk on October 25, 2023, and submitted to the Supervisor of Elections several days later. An additional approximately 600 executed petitions were delivered directly to the Supervisor of Elections at the direction of the Town Clerk's Office on or about October 30, 2023.

17. The Supervisor of Elections performed her review and issued a petition certification, confirming that the petition had more than the requisite signatures on or about November 17, 2023. Staff further contacted Jupiter's Town Clerk to pick up the executed petitions. A copy of the Supervisor of Election's certification is included in the Appendix as **A-3**.

18. The Supervisor of Election's certification put the obligation onto the Town Council to present Jupiter Residents' citizens' initiative to its constituents. Section 166.031(1), Florida Statutes, states:

The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

19. The Town Council discussed the Supervisor of Election's certification during its regularly scheduled council meeting on November 21, 2023.⁵ The November 21, 2023, agenda and meeting minutes are included in the Appendix as **A-4**.

20. During the meeting, the Town Attorney reported that he had evaluated the petitions following their return and found: "... that the proposed referendum question is misleading, and that it – that the amendment does not – the amendment to the charter that's being proposed would [*sic*] conflict with existing provisions of the Town's charter, state statutes, and the Florida

⁵ Video of the Town Council's November 21, 2023, council meeting is available at the following link: <https://jupiterfl.new.swagit.com/videos/281760> (last visited November 29, 2023).

Constitution.” A transcript of the relevant portions of the November 21, 2023, council meeting is included in the Appendix as **A-5**.

21. The Town Attorney concluded: “So it would not be my recommendation to place that particular referendum question and that particular amendment to the charter on either the March 2024 ballot or the March 2025 ballot.” *Id.*

22. Following this recommendation, the Town Council failed to take any action. No motion, resolution, or vote was made. It simply moved on to other local government matters. Petitioner’s Appendix at **A-4**.

23. Through its inaction, the Town Council effectively refused to proceed forward and send Jupiter Residents citizens’ initiative to the Supervisor of Elections for placement on the ballot.⁶

24. Accordingly, this matter is ripe for adjudication because Jupiter Residents’ citizens’ initiative has been stalled by the Town Council and will not be presented to Jupiter’s voters for consideration. The next general election is in March 2024 and the Supervisor of Elections needs direction by December 15, 2023, for this referendum to be timely placed on the ballot. The next election following the March 2024 election would be the 2024 General Election on November 5, 2024, unless a special election is called.

Argument

25. Jupiter Residents petition this Court for a writ of mandamus ordering the Town Council to fulfill its ministerial duty in accordance with Section 166.031(1), Florida Statutes, and

⁶ Although the Town Council collectively failed to act, that failure was not unanimous. Following the Town Attorney’s report, Councilor May tried to make a motion to have the Town Council consider the citizens’ initiative and forward the referendum question to the Supervisor of Elections before the December 15, 2023, deadline. Those efforts were stonewalled by other Town Council members. Petitioner’s Appendix at **A-5**.

“place the proposed amendment” to “a vote of the electors at the next general election held within the municipality.”

26. Mandamus is a remedy to command a public agency to perform a ministerial act that the agency has a clear legal duty to perform. *RHS Corp., v. City of Boynton Beach*, 739 So. 2d 1211, 1213 (Fla. 4th DCA 1999) (citing *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996)). An act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law. *Id.* A ministerial act is “performed at a time and manner or upon conditions which are specifically designated by the law itself.” *Solomon v. Sanitarians’ Registration Bd.*, 155 So. 2d 353, 356 (Fla. 1963).

27. The placement of a citizen initiative on the ballot is a ministerial act by a public agency that is directed by law, specifically, Section 166.031, Florida Statutes. *Wright v. Frankel*, 965 So. 2d 365, 370 (Fla. 4th DCA 2007). Accordingly, mandamus relief is available when a public agency, like Jupiter, fails to follow this statutory directive. *Id.*

28. To state a claim for mandamus relief a petitioner must establish a clear legal right to the performance of a clear legal duty by a public officer and no other legal remedies are available. *RHS Corp.*, 739 So. 2d at 1213. Jupiter Residents met the statutory requirements to advance its citizens’ initiative. Now it is time for the Town Council to act in accordance with its statutory obligations and have the future of Jupiter’s fire protection and emergency medical services be decided by its electors in March 2024.

Jupiter Residents has a clear legal right to have
Jupiter’s electorate to vote on its citizen’s initiative.

29. The reservation of power to the people is a fundamental tenant of a constitutional democracy. Amend. X, U.S. Const; Art. I, §1, Fla. Const. (“All political power is inherent in the people.”). The people’s ability to amend or revise a municipal charter, through a referendum, is

one of these reserved powers. *Fla. Land Co. v. City of Winter Springs*, 427 So. 2d 170, 172 (Fla. 1983) (“The referendum, then, is the essence of a reserved power.”).

30. The Florida Constitution gives the Legislature the authority over municipal charter amendments. Art. VIII, §2(a), Fla. Const. (“Municipalities may be established or abolished, and their charters amended pursuant to general or special law.”). The Legislature exercises this authority through Section 166.031, Florida Statutes, which describes the process to amend a municipal charter. At issue here is Section 166.031(1), Florida Statutes, which states, in full:

The governing body of a municipality may, by ordinance, or the electors of a municipality may by petition signed by 10 percent of the registered electors as of the last preceding municipal election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

31. There is no dispute that Jupiter Residents fulfilled its statutory obligations to advance a citizens’ initiative. *Fla. Land Co.*, 427 So. 2d at 172, (“The concept of referendum is thought by many to be a keystone of self-government and its increasing use is indicative of a desire on the part of the electorate to exercise greater control over the laws which directly affect them.”).

32. First, it prepared a petition to amend Jupiter’s municipal charter which includes the following ballot title and proposal:

BALLOT TITLE: PROHIBITING FIRE RESCUE DEPARTMENT AND CONTINUING CURRENT FIRE PROVIDER UNTIL FUTURE VOTER APPROVAL IS RECEIVED

BALLOT PROPOSAL: Shall the Town of Jupiter’s Charter be amended to prohibit the establishment or operation of a town fire rescue department or provision of such services and to provide for the continued inclusion of town boundaries within the associated

Palm Beach County municipal services taxing unit for fire rescue and emergency services for Jupiter, until the town's voters approve the creation and operation of a town fire rescue department at a future referendum?

The actual petition and full text of the municipal charter amendment are available in the Appendix as **A-6**.

33. It also collected significantly more than the required 4,415 signatures (10% of the registered electors as of the last preceding municipal election) and presented these executed petitions, with the related checks, to Jupiter's Town Clerk. The Supervisor of Elections issued a certification confirming this fact on November 17, 2023. Petitioner's Appendix at **A-3**.

Jupiter's Town Council has a clear legal duty
to comply with Section 166.031, Florida Statutes

34. Once a citizen meets the statutory requirements to advance a referendum, the Legislature then commands a local government to act. §166.031(1), Fla. Stat. A local government's compliance with Section 166.031, Florida Statutes, is clearly ministerial. Op. Att'y Gen. Fla. 74-69 (1998) ("I am of the opinion that the duty under s. 166.031, F.S., to place an initiative proposal on the ballot is ministerial and vests no discretion in the city council.").

35. The statutory directive to a local government is clear. The "governing body of the municipality" – Jupiter's Town Council – "shall place the proposed amendment ... to a vote of the electors at the next general [or special] election." § 166.031(1), Fla. Stat; Op. Att'y Gen. Fla. 74-69 (1998) ("A city council may not look beyond the valid form of an initiative petition in order to determine whether it should be placed on the ballot.").

36. The Florida Supreme Court and multiple appellate courts have found that the Legislature's use of the word "shall" is normally meant to be mandatory in nature. *State v. Goode*, 830 So. 2d 817, 823 (Fla. 2002) (quoting *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977)); *City of St. Petersburg v. Remia*, 41 So. 3d 322, 326 (Fla. 2d DCA 2010) ("[T]he use of the mandatory

term ‘shall’ normally creates an obligation impervious to judicial discretion.”); see also, *Allied Fid. Ins. Co. v. State*, 415 So. 2d 109, 111 (Fla. 3d DCA 1982). So has the Attorney General in connection with Section 166.031, Florida Statutes. Op. Att’y Gen. Fla. 74-69 (1998) (“The word ‘shall’ as opposed to may connotes a mandatory duty. The statute vests no discretion in the governing body of the city.”).

37. Here, the right of the people of Jupiter to present, through a citizen’s initiative, an amendment to Jupiter’s municipal charter that ensures its electorate (and not its elected officials) will determine what entity provides fire protection and emergency medical services is a substantive right that is being advanced for the public benefit.

38. If Jupiter truly had concerns about the legality or misleading nature of this citizens’ initiative, it had choices on how it could proceed. See *West Palm Beach Ass’n of Firefighters, Local Union 727, v. Board of City Comm’n of West Palm Beach*, 448 So. 2d 1212, 1213 (Fla. 4th DCA 1984). But doing nothing does not comply with Section 166.031(1), Florida Statutes, and its ministerial obligations. *Id.* at 1214 (“Why, then, the city did not seek declaratory relief from the circuit court to resolve the issue we are not aware.”) By allowing a municipality to just say “NO” and kill a citizens’ initiative effectively nullifies the statutory process that plainly allows Florida’s citizens the right to amend municipal charters.

39. Because political power remains with the people, courts should be reluctant to prevent a citizens’ initiative from being presented to the electorate. Only when the proposed amendment is clearly and entirely illegal or unconstitutional on its face should a court make such a determination. *Dade Cnty. v. Dade Cnty. League of Municipalities*, 104 So. 2d 512, 515 (Fla. 1958); *State v. Colton*, 198 So. 3d 737, 742 (Fla. 2d DCA 2016) (“A facial constitutional challenge considers only the text of the [proposed referendum], not the application to a particular set of

circumstances.”). However, Jupiter Residents citizens’ initiative is not misleading nor facially unconstitutional. It simply seeks to keep the status quo and ensure that Jupiter’s residents get to decide the future of its fire protection and emergency medical services. Petitioner’s Appendix at **A-6**.

Jupiter Residents has no other alternative remedy.

40. With the Town Council failing to abide by its ministerial obligations to place Jupiter Residents referendum to a vote of its electorate, Jupiter Residents has no other option but to seek this legal alternative. *Local Union 727*, 448 So. 2d at 1213.

41. Although they failed to formally act, the Town Council’s position on this issue was made abundantly clear during its November 21, 2023, council meeting. When a Councilor sought to move forward and put Jupiter Residents citizens’ initiative to the Town Council for a vote, Mayor Kuretski explicitly stated: “I am not in favor of proceeding with that item. So I want to make sure that’s clear tonight. I don’t want it on the next agenda. It’s rejected.” Petitioner’s Appendix at **A-5**.

42. With a Town Council that is quickly spending taxpayer funds and looming election deadlines, time is of the essence. The next municipal election within Jupiter is March 2024⁷ and the Supervisor of Elections needs ballot language by December 15, 2023, to make that deadline. Consequently, Jupiter Residents cannot sit on the sidelines to wait to and see what Jupiter may do in response to its alleged concerns.

⁷ Section 9-5 of the Code of the Town of Jupiter, Florida, is titled *Day of general election* and states: “A general election shall be held in the town on the second Tuesday in March of each and every year, at which general election there shall be chosen the qualified electors of the town, such town officers whose terms of office may require an election to be held to fill such offices, and such other elective officers as may be required to be elected, as provided by the Charter.”

43. In seeking this relief, the Petitioner and Jupiter Residents chose action to ensure that Jupiter's voters retain their power and have the ultimate choice about its fire protection and emergency medical services.

Requested Relief

WHEREFORE, Petitioner, Jupiter Residents to KEEP Palm Beach County Firefighters, respectfully requests that this Court:

- a) Issue an Order to Show Cause or an Alternative Writ of Mandamus;
- b) Issue a Final Judgment ordering Respondent, the Town of Jupiter, Florida, to comply with Section 166.031(1), Florida Statutes, and proceed with placing the citizen initiative at issue on the ballot at the next general election held within the municipality; and
- c) Grant such other relief as the Court deems appropriate.

Respectfully submitted on this 1st day of December 2023.

MANSON BOLVES DONALDSON TANNER, P.A.

/s/ Laura S. Olympio

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