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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

STATE OF FLORIDA, ex rel. MICHAEL P. COLOSI,	**CASE NO.** 2025-CA-1290

Petitioner,

v.

ZACK STAMP, in his official capacity as Chairperson of the Flow Way Community Development District,

DEAN BRITT, in his official capacity as Chairperson of the Quarry Community Development District,

and

ESPLANADE GOLF & COUNTRY CLUB OF NAPLES, INC.
a Florida not-for-profit corporation,

Respondents.
_____/

MOTION TO STRIKE CDD RESPONDENTS' MOTION TO DISMISS, AND, IN THE ALTERNATIVE, RESPONSE IN OPPOSITION TO MOTION TO DISMISS

COMES NOW the State of Florida, ex rel. Michael P. Colosi, respectfully moves this Honorable Court to immediately strike the CDD Respondents' Motion to Dismiss from the record as procedurally improper under Rule 1.630 and Rule 1.140, and to notify the parties of their obligation to maintain decorum and adhere to the standards of professional conduct and advocacy governing proceedings before this Court. In the alternative, and without waiving the objection to the procedural impropriety of the Motion to Dismiss, should the Motion to Dismiss not be struck from the record, the Petitioner submits the below alternative response to the Motion to Dismiss.

MOTION TO STRIKE CDD RESPONDENTS' MOTION TO DISMISS

Motion to Dismiss Is Procedurally Improper for Relying on Unverified Factual Assertions

1. CDD Respondents' Motion to Dismiss relies on the following factual claim:

> *"Petitioner is not a landowner in either CDD, thus he cannot be on the Board of Supervisors, nor could he be elected as chairperson. Therefore, as a matter of law, the Petitioner cannot remove these officials through a petition for writ quo warranto. As such, the Petitioner's Pleading should be dismissed."*

2. This assertion is a material factual claim that does not appear on the face of the Petition, is not supported by any affidavit, verification, or judicially noticeable source, and is not admitted by Petitioner. As such, it is procedurally improper under Rule 1.140(b) and cannot form the basis for dismissal.

"The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion."

3. A motion to dismiss must accept the petition's well-pleaded allegations as true and may not introduce new facts, particularly those unsupported by verification, affidavit, or judicial notice, as a basis for dismissal. The CDD Respondents' reliance on such an unverified factual assertion renders this portion of their motion procedurally improper, and the Court should disregard it in its entirety.

Motion to Dismiss is Premature, Procedurally Defective, and Prejudices Petition

4. CDD Respondents' Motion to Dismiss is premature and procedurally improper because it was filed before the Court determined whether the Petition states a prima facie case under Florida Rule of Civil Procedure 1.630(d). The rule requires the trial court to first review the Petition for facial sufficiency and, if appropriate, issue a writ or order to show cause. Only after that threshold determination is made do respondents become obligated or even permitted to file a Verified Return under Rule 1.140.

5. The Fourth District Court of Appeal's decision in *Quigley v. Satz, 596 So. 2d 753 (Fla. 4th DCA 1992*), confirms this. The court held:

"Rule 1.630 governs extraordinary remedies. The procedure to obtain an extraordinary remedy, in this case, the issuance of a writ of mandamus, is different from the procedure involved in other original actions. Rule 1.630 reads in pertinent part"

There, the court reversed dismissal of a mandamus petition where the trial court erroneously required service of the petition before issuing the writ. The appellate court held that Rule 1.630 does not require the plaintiff to serve the defendant with the complaint before the circuit court determines whether the complaint is facially sufficient, and that the court mistakenly waited for service when none was required prior to issuance of the writ. Petitioner was not even required to notify CDD Respondents of the Petition prior to an order to show cause, but did so in good faith and in transparency.

6. The First District Court of Appeal also affirmed this same procedure for extraordinary writs in *Holcomb v. Department of Corrections, 609 So. 2d 751 (Fla. 1st DCA 1992)*, stating:

> *"When a petitioner files a petition for mandamus, the court has the initial task of assessing the legal sufficiency of the allegations. If the court finds the allegations insufficient, it will deny the petition, see, e.g., Gibson v. Florida Parole & Probation Comm'n, 450 So.2d 553(Fla. 1st DCA1984), or dismiss those claims that are factually insufficient, see, e.g., Adams v. Wainwright, 512 So.2d 1077(Fla. 1st DCA1987). However, if the petition is facially sufficient, the court must issue an alternative writ, i.e., an order directed to the respondent to show cause why the requested relief should not be granted.Conner v. Mid-Florida Growers, Inc., 541 So.2d 1252, 1256(Fla. 2d DCA1989);Fla.R.Civ.Pro. 1.630(d).*
>
> *Once a show cause order has issued, it becomes in all respects the complaint and subject to the same rules of pleading as are any other complaints.West Palm Beach v. Knuutila, 183 So.2d 881(Fla. 4th DCA1966);Fla.R.Civ.Pro. 1.630(e). It is then up to the respondent to admit or deny the factual allegations upon which relief is based, and to present any and*

all affirmative defenses.All facts alleged in the order to show cause, which generally incorporates by reference the original petition, that are not specifically denied are admitted to be true. Arnold v. State ex rel. Mallison, 147 Fla. 324, 2 So.2d 874(1941).If the respondent raises material issues of fact, a trial to resolve such disputes is appropriate.Bal Harbour Village v. State ex rel. Giblin, 299 So.2d 611, 615(Fla. 3d DCA1974), cert. denied, 311 So.2d 670(Fla.1975)." [Holcomb v. Department of Corrections, 609 So. 2d 751 (Fla. 1st DCA 1992)]

7. Here, however, CDD Respondents filed a motion to dismiss before the Court had any opportunity to conduct the required sufficiency review. In writ proceedings, an order to show cause is issued first and then served on the respondents. CDD Respondents' Motion to Dismiss bypasses the judicial gatekeeping and supervisory function prescribed by Rule 1.630 and Florida jurisprudence, and improperly initiates adversarial litigation in a proceeding that has not yet matured procedurally. It also introduces legal and factual arguments in a context where the rules prohibit any response unless and until a writ issues. Additionally, the CDD Respondents were notified of this and chose not to withdraw the Motion to Dismiss.

8. Writ proceedings are logically and legally separate from typical adversarial ordinary civil proceedings. The Petition in this case is not an ordinary civil adversarial complaint, rather it invokes the sovereign interests of the State to test authority of officials acting under its own delegated powers. Petitions for writ of quo warranto, in particular, invite the Court's supervisory and gatekeeping role over its subordinate government agencies, and must consider a verified petition as valid or invalid prima facie on the facts as presented.

Unless and until an order to show cause is issued, Respondents are neither obligated nor entitled to respond to a petition.

9. The Court's neutral review of the Petition is compromised when one party is permitted to challenge it prematurely and outside the authorized procedural sequence. Petitioner is entitled to facial sufficiency review without the influence of unauthorized pleadings or factual assertions. The Motion to Dismiss should therefore be stricken as premature, procedurally defective, and prejudicial to the framework and purpose of extraordinary writ proceedings.

Motion to Strike Conclusion

10. Florida Rule of Civil Procedure 1.630 vests the judiciary with the exclusive authority to determine, in the first instance, whether a verified petition presents a prima facie case for relief. That threshold determination is a judicial function, not one subject to executive litigants' preemption or interference.

11. By filing a Motion to Dismiss before the Court has issued an order to show cause or review the Petition for facial sufficiency, CDD Respondents have improperly circumvented the Court's gatekeeping role. This not only disregards the procedural framework for extraordinary writs, but also undermines judicial oversight over allegedly unlawful government conduct. It allows executive actors, whose authority is under challenge, to interject at a stage specifically designed to be inquisitorial and non-adversarial.

12. Such conduct disrupts the constitutional separation of powers by allowing the executive to preempt a judicial process designed to test the legality of executive action. It displaces the judiciary's constitutionally reserved function under Rule 1.630, replacing it with premature adversarial posturing. This procedural violation threatens the orderly administration of justice and burdens the Relator's constitutional right of access to courts. It is incompatible with the legal standards governing extraordinary writ proceedings and undermines their structural integrity.

13. Under Rule 1.140(f), the Motion to Dismiss should be stricken. It is immaterial because it advances factual assertions and legal conclusions irrelevant to the Court's initial, limited inquiry into whether the Petition states a prima facie case. It is impertinent because it injects unauthorized argument before any responsive pleading is allowed, intruding on the judiciary's exclusive function of sufficiency review. It is scandalous because it circumvents established procedural safeguards, undermines the Court's authority, and seeks to prejudice the Petition through improper adversarial engagement.

14. Under standard writ proceedings, the court cannot dismiss a petition before determining whether to issue an order to show cause, and the mere existence of the Motion to Dismiss and its contents are prejudicial to the public's interest. As such, the Motion to Dismiss is procedurally improper under the standards of writ proceedings and Rule 1.140, and should be immediately struck from the record to avoid prejudicing the State's interest.

ALTERNATIVE RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Petition is Proper Under Rule 1.630

15. The Petition for Writ of Quo Warranto and Writ of Mandamus is procedurally proper under Rule 1.630. Rule 1.110's *"a short and plain statement"* clause applies to ordinary civil actions, not extraordinary writs. Both are distinct and separate areas of law. Rule 1.110 (General Rule on Pleadings) was last amended Fla. June 6, 2024 for the purpose of ordinary civil procedures and does not apply to extraordinary writs. Rule 1.630, which does govern extraordinary writs, specifies the requirements of a petition, and does so without mention of a *"short and plain statement"* clause.

> *(b) Initial Pleading. The initial pleading must be a complaint. It must contain:*
>
> *(1) the facts on which the plaintiff relies for relief;*
>
> *(2) a request for the relief sought; and*
>
> *(3) if desired, argument in support of the complaint with citations of authority.*

16. The Petition clearly identifies facts which, if true, constitute clear ultra vires conduct. It requests the relief of removal, invalidation, and requests the court to compel the CDD Respondents to perform their ministerial duties. It additionally includes an addendum of legal arguments in support of the facts presented to the court. The Petition meets all of the standards strictly in compliance with Rule 1.630. The Court should note that there is no page limit, specific structure, formatting, or other elements that Respondents' claim must be present.

Petition is Clear, Organized, and a Proper Length

17. CDD Respondents' Motion to Dismiss challenges the Petition's form, but is substantively hollow and tonally inappropriate. The Petition clearly lays out a preliminary statement, ultimate facts, standing, jurisdiction, counts of quo warranto and mandamus, the relief requested, and an addendum containing legal arguments. The sections are logically ordered and consistent in their respective objectives.

18. Petitioner agrees that the Petition is lengthy; however there are three Respondents and two extraordinary writ counts, and a strong factual basis supporting both. The length is necessary and proper in high stakes and complex writ proceedings. CDD Respondents have not identified any specific statements within the Petition that are legally or factually irrelevant. Instead, they rely on vague generalizations and conclusory assertions, which would not satisfy even a minimal pleading challenge, let alone the context of the liberal construction doctrine afforded to pro se filers.

19. Complexity and length are not grounds for dismissal. The CDD Respondents' claims against the Petition's organization, structure, and length have no legal or procedural merit.

Petition's Claims are Connected, Relevant, Attributable and Joinder is Proper

20. CDD Respondents state that the Petition 'comingles claims'. This is without merit. The Petition lays out each fact and claim, naming which Responding District it originates from. Any perceived "comingling" of claims arises from the fact that the CDD Respondents engaged in the same or substantially similar conduct, and therefore the

Petitioner seeks the same form of relief against each. On the one hand, the CDD Respondents object to the Petition's length; on the other, their critique appears to favor duplicative, segmented pleadings for each Respondent, which would only increase the length and redundancy of the filing. The Petition names both CDD Respondents because the Petition arises from a common nucleus of facts and is compliant with Rule 1.210(a).

21. Though each Respondent engaged in unlawful actions, the Petition alleges they acted in concert, in a specific geographical area, that together, affected the public's interest in these specific circumstances. The CDD Respondents' joint retention of the same legal counsel, despite being independent special districts, underscores the extent of their coordination and functional interrelationship as alleged in the Petition.

22. CDD Respondents seem to suggest either severance or expanding the Petition's size to separate Respondents more "clearly". However, Petitioner contends that the Petition is clear enough, that facts and actions are easily attributable, and that severance or expanding the Petition further undermines judicial economy and fractures a connected set of facts into different cases. Petitioner contends that the Petition is appropriate and proper under the Judicial Economy Doctrine and the Court can later clarify case elements if needed. The Motion to Dismiss's claims, for the above reasons, are without merit.

Liberal Construction Doctrine

23. Under the Liberal Construction Doctrine, courts must consider filings of pro se filers liberally. In this context, it means overlooking minor form or redundancy as the Petition

generally complies with common law doctrine, statute, and court rules. The definition of liberal construction in law generally means:

> *"Liberal construction is a way of interpreting a law or document that tries to understand its purpose and apply it to the situation at hand. It looks at the bigger picture and tries to make sure the law is being used to fix the problem it was meant to solve. This is different from strict construction, which only looks at the exact words of the law and doesn't consider the bigger picture. Liberal construction tries to make sure the law is being used in a fair and helpful way."*

Petition's Named Parties are Proper

24. The Motion to Dismiss argues that Respondents are unsure whether the Petition is brought against the Districts themselves or the individual chairpersons. This reflects a misunderstanding of how extraordinary writs and constitutional challenges function. In quo warranto, the action must be brought against the individuals who are exercising the questioned authority, not the agency or entity itself. Thus, Here, the Petition properly names the chairpersons in their official capacities because they are the highest-ranking officials through whom the Districts act. In the context of special districts, the chairpersons are ultimately responsible for the actions taken under the Districts' authority, even if carried out by staff.

25. The Petition challenges both the unlawful exercise of authority (ultra vires conduct) and the failure to perform required legal duties (ministerial duties). These types of challenges do not require proof that the chairpersons personally made every decision, only that the unlawful actions were taken under their official authority and leadership. In this case,

both chairpersons received direct notice from Relator over a period of two years, through repeated correspondence and filings. Despite that notice, they continued to allow and participate in ultra vires and unlawful conduct.

26. The Petition seeks not only the removal of the chairpersons for their direct involvement in and oversight of unlawful conduct, but also the invalidation of ultra vires actions taken under their authority, and an order compelling the performance of their non-discretionary, ministerial duties as required by law.

Petition's Ultimate Facts Remain Uncontested

27. The CDD Respondents have not challenged or refuted the core factual allegations set forth in the Verified Petition. Rather than submitting evidence or filing a responsive pleading capable of addressing those facts, they opted to file a motion to dismiss. That choice operates under the presumption that the well-pleaded facts are true and tests only the legal sufficiency of the claims. By invoking that limited procedural mechanism, the CDD Respondents have effectively left the Petition's factual allegations unrebutted. As such, the Verified Petition stands as a facially sufficient and justiciable claim warranting the Court's review.

Motion to Dismiss Mispresents Petition & Claims

28. The Motion to Dismiss states:

> *"Additionally, Petitioner makes several allegations regarding his Federal and Florida Constitutional due process rights, but does not bring any specific count for violation of these rights." [¶ 20]*

This is a mischaracterization of the structure and purpose of the Petition. Quo warranto is not pled in counts like a civil complaint; it is an inquisitorial writ proceeding brought on behalf of the State of Florida to test the unlawful exercise of public authority. Allegations referencing constitutional violations are not independent claims, but rather evidence that CDD Respondents acted ultra vires, thereby supporting issuance of the writ. Petitioner brings this action solely in his capacity as relator on behalf of the public. He does not assert individual constitutional rights, apart from his right of access to courts in this limited procedural context.

29. No federal claims have been asserted or mentioned by the Petition. All respective claims are made within the context of Florida law and the Florida Constitution, not the U.S. Constitution. Relator expressly reserves all individual state related claims under their respective statutes and separately reserves the right to pursue an independent federal action under 42 U.S.C. § 1983 to redress any personal constitutional injuries that may be cognizable in a separate proceeding.

Quo Warranto is Proper to Test Authority

30. The Motion to Dismiss misstates and misapplies quo warranto and claims Petitioner has failed to state a claim. This is false. There are two types of quo warranto:

I. Type I: To test title to office by someone making a claim to that office.

II. Type II: To test the exercise of authority by an office holder by a private relator.

The Motion to Dismiss falsely claims that Petitioner is attempting to test title to the chairpersons' seats, claiming Petitioner is making a Type I claim. However, Petitioner has filed a quo warranto petition to test the exercise of power as a Type II claim. Quo warranto is well established and is used consistently for the purpose of Type II.

30. Petitioner is not testing whether CDD Respondents were lawfully seated originally, Petitioner instead asserts that they once were lawfully seated but have voluntarily abdicated their office through knowingly, willingly, and deliberate exercise of power that they do not possess. By exceeding their authority in such an egregious manner that it undermines the legitimacy of their office, institutional integrity, and lawful operations, this has resulted in a voluntary forfeiture by the chairpersons. Petitioner notes that removal is not the only remedy requested, and it stands alone as an alternative to removal should the Court later find that removal is not warranted.

31. The Motion to Dismiss cites *Fouts v. Bolay, 795 So. 2d 1116 (Fla. 5th DCA 2001)* incorrectly. That case involved a petitioner asserting a personal claim to title to office, not

a challenge to an official's unlawful exercise of authority. It was a Type I quo warranto proceeding and is therefore inapplicable to the present Type II petition."

32. The Motion to Dismiss cites *Butterworth v. Espey, 565 So. 2d 398 (Fla. 2d DCA 1990* in support of dismissal, and is another misrepresentation of law. This case was about whether an individual was lawfully elected to the seat, there was seemingly no allegation of the officeholder themselves exceeding their authority after being seated. This is a Type I quo warranto case and is inapplicable in this context.

33. The Florida Supreme Court has repeatedly upheld the use of quo warranto in Type II scenarios. In *Martinez v. Martinez 545 So. 2d 1338 (1989)* the Court ruled:

> *"We disagree with the governor's last two contentions. 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). Compare, e.g., State ex rel. Smith v. Brummer, 426 So. 2d 532 (Fla. 1982) (quo warranto issued because public defender did not have authority to file class action on behalf of juveniles in federal court), cert. denied, 464 U.S. 823, 104 S. Ct. 90, 78 L. Ed. 2d 97 (1983); Orange County v. City of Orlando, 327 So. 2d 7 (Fla. 1976) (legality of city's actions regarding annexation ordinances can be inquired into through quo warranto); Austin v. State ex rel. Christian, 310 So. 2d 289 (Fla. 1975) (power and authority of state attorney should be tested by quo warranto). Testing the governor's power to call special sessions through quo warranto proceedings is therefore appropriate. "*

34. The Court then continued to explicitly address and reaffirm standing by private relators:

> *"In quo warranto proceedings seeking the enforcement of a public right[3] 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." State ex rel. Pooser v. Wester, 126 Fla. 49, 53, 170 So. 736, 737 (1936). However, in the instant case, as a member of the legislature being called into special session, Representative Martinez is directly affected by the governor's action. We hold, therefore, that he has standing to challenge the governor's power to call a special session."*

35. The Florida Supreme Court has also maintained that an individual Relator need not show any real or personal interest, only that they are interested in having the law upheld.

> *"The doctrine of these cases is generally approved in this county and it is well settled that when the enforcement of a public right is sought, the people are the real party to the cause. The relator need not show that he has any real or personal interest in it. It is enough that he is a citizen and interested in having the law upheld, but this, like all other rules of law has its limitations. "[State Ex Rel. Pooser v. Wester, 126 Fla. 49, 170 So. 736]*

36. Quo warranto is indisputably the correct writ to test whether an officeholder is lawfully exercising governmental authority. The CDD Respondents have not challenged that principle, but instead mischaracterize the nature of the relief sought, removal, as though it were determinative of the type of quo warranto proceeding and the standing required. This is a categorical error. The remedy sought does not alter the nature of the writ. The Petition does not assert a claim to office; it challenges the unlawful exercise of power by those currently holding it, which places it squarely within the well-established Type II quo warranto framework.

37. By treating the requested remedy, removal, as if it transforms a proper Type II quo warranto petition into an improper Type I proceeding, CDD Respondents conflate a remedy-based objection with a standing-based one. They cite no authority, because none exists, holding that a quo warranto petition is jurisdictionally defective merely because it seeks removal and invalidation, rather than invalidation alone.

38. The distinction they attempt to draw improperly collapses the nature of the relief into the threshold question of standing. Their argument thus fails as a matter of law and is procedurally improper. If CDD Respondents wish to contest the scope or appropriateness of removal as a remedy, they may do so after the issuance of an order to show cause or in response to findings of ultra vires conduct. At the motion to dismiss stage, however, such remedy arguments are premature.Therefore, the Motion to Dismiss the count of quo warranto is frivolous and without merit, and should be denied.

Mandamus is Proper Compel Performance of Ministerial Duties

31. The Motion to Dismiss erroneously contends that the Petition fails to state a claim. It appears to assert that procedural due process is not a ministerial duty. This is incorrect as a matter of law. Procedural due process is a mandatory obligation when a protected property or liberty interest is implicated. The Florida Constitution imposes non-discretionary minimums: adequate notice, a neutral decision-maker, a meaningful opportunity to be heard, application of legal standards, and fair consideration of evidence. Here, none of these elements were present.

32. The Fourth District Court of Appeal expressly acknowledged in *Broward County v. Coral Ridge Properties, 408 So. 2d 625 (Fla. 4th DCA 1982)*, that mandamus is not available to correct an erroneous discretionary decision, but it is appropriate "where a governmental unit simply refuses to take any action."

> *"We then suggested that consideration of a plat involves the exercise of discretion so that ordinarily mandamus is inappropriate. An exception would exist where a governmental unit simply refuses to take any action on an application."*

33. This distinction is dispositive. The Petition does not contest how discretion was exercised, it alleges that no process was provided at all. CDD Respondents failed to give notice, hold a hearing, permit the introduction of evidence, and applied no governing standards. Once a protected liberty or property interest is implicated, the duty to afford procedural due process becomes mandatory, not discretionary. That duty is ministerial and enforceable by writ.

34. Petitioner challenges the absence of process, not the substance or outcome of any governmental decision. The constitutional guarantees under Article I, Section 9 of the Florida Constitution impose a clear legal duty on CDD Respondents to provide minimum procedural safeguards. Their failure to initiate any such process gives rise to a corresponding legal right in the Petitioner and the public to demand performance. Mandamus is therefore proper and should issue to compel performance of this non-discretionary obligation.

Objection to CDD Respondents' Counsel's Conduct and Misstatements of Law

35. Petitioner's invocation of quo warranto is firmly grounded in black letter Florida law. The Motion to Dismiss, though seemingly polished and well drafted on the surface, is substantively hollow and an attempt to procedurally delay and to an otherwise proper and lawful writ. The government respondents improperly seek to dispose of the case at a preliminary stage and deny Relator access to the courts under Article I, §21 by relying on incorrect procedural rules and case law that are materially inapplicable to the Petition. CDD Respondents' counsel knowingly and willingly chose to repeatedly use unnecessary and pejorative adjectives such as "*unintelligible*", "*convoluted*", and "*disjointed narrative of scandalous, impertinent, and irrelevant allegations*" over simply professionally responding with legal arguments, all while not even attempting to dispute the core facts.

36. Petitioner extended the CDD Respondents' counsel a professional courtesy to not oppose an amended Motion to Dismiss, which Counsel could have then removed these statements However, counsel amended the Motion to Dismiss to correct a clerical error while deliberately maintaining the pejorative rhetoric and misstatements of law. The CDD Respondents' counsel, a highly experienced trial and appellate attorney, has falsely characterized this petition as a claim to office rather than what it plainly is, a challenge to the unlawful exercise of public authority. Given the settled nature of the distinction and the well-established case law affirming the use of quo warranto in such contexts, this is not a matter of reasonable error. It is a material misstatement of law made to the Court and, as such, it implicates Rule 4-3.3(a)(1) (Candor Toward the Tribunal) and Rule 4-4.1(a) (Truthfulness in Statements to Others) of the Rules Regulating The Florida Bar.

37. Alternatively, if the Court determines that the misstatement stems from a lack of understanding rather than intentional misrepresentation, then Rule 4-1.1 (Competence) is implicated. Under that rule, an attorney must possess the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. If Counsel lacks the requisite knowledge to properly distinguish among well-established categories of extraordinary writs, particularly in proceedings as sensitive as quo warranto, then it raises concerns about whether he is fit to represent governmental entities in such matters. The legal positions advanced here, whether by omission or design, suggest deficiencies that directly undermine the integrity of the proceeding and the interests of the public clients he purports to serve.

38. Except as set forth in the Motion for Conditional Disqualification of Publicly Funded or Insurance-Funded Counsel Pending Determination of Ultra Vires Conduct, Petitioner makes no present request for admonishments, sanctions, or ethical disqualifications. Instead, Petitioner objects on record of the tone and procedural tactics employed in the Motion to Dismiss for future review. Petitioner respectfully requests that the Court disregard the CDD Respondents' inflammatory statements, take note of their conduct as part of the broader pattern alleged in the Petition, and direct its attention to the specific legal merits properly before it.

Public Funds Used in Unlawful and Ultra Vires Conduct

39. Petitioner has filed a Motion for Conditional Disqualification of Publicly Funded or Insurance-Funded Counsel Pending Determination of Ultra Vires Conduct which outlines the well-established legal basis that government respondents may not use public funds to

defend unlawful and ultra vires conduct. In this case, however, CDD Respondents seek to have the Court dismiss a legitimate Petition through procedurally improper means while improperly relying on the public fisc to defend such conduct.

40. If this Court allows an improper dismissal, the result would be the overturning of long-established precedent in public finance law, permitting indemnity where it has traditionally been barred, and implicitly signaling that government actors are immune from judicial scrutiny simply by raising a procedurally defective motion to dismiss. It would further signal to government actors that they may use public tax dollars not only to defend unlawful and ultra vires conduct, but also to do so through abuse of court procedures, to deny individual citizens access to the courts, and to continue their unlawful conduct without challenge.

41. Given that Petitioner has raised substantial public finance concerns, which directly affect whether the Motion to Dismiss was lawfully filed, whether CDD Respondents' counsel may properly appear, and whether prior expenditures by the CDD Respondents are subject to clawback, and considering that the core factual allegations in the Verified Petition remain uncontested, this Court should deny the Motion to Dismiss.

Alternative Response Conclusion

42. The Verified Petition satisfies all procedural requirements under Rule 1.630 and presents a facially sufficient claim for quo warranto and mandamus. It identifies with specificity the unlawful acts, the legal duties breached, and the relief requested, all supported by well-pleaded facts and legal authorities. Their arguments rely on mischaracterizations of

the Petition's structure, misstatements of law, and legally irrelevant complaints about formatting and length.

43. The Petition properly invokes the Court's jurisdiction to test the exercise of public authority, not the right to title. Its joinder of similarly situated parties, common factual nucleus, and parallel claims of ultra vires conduct are all consistent with settled precedent. The Petition is logically structured, its legal claims are attributable, and it identifies clear unlawful conduct that is subject to judicial review. That CDD Respondents share the same legal counsel despite statutory independence underscores the coordination alleged and supports the propriety of joint adjudication.

44. CDD Respondents' use of the public fisc to defend alleged unlawful conduct implicates longstanding prohibitions on the use of tax dollars to shield ultra vires acts. Petitioner has filed a separate motion challenging the propriety of such funding, but the issue bears directly on the integrity of the pending Motion to Dismiss. If CDD Respondents lacked lawful authority when they authorized their defense or litigation expenditures, the filing itself may be void. Continued reliance on public insurance or tax funding under these conditions risks entrenching unlawful governance with public resources.

45. The Motion to Dismiss is deficient both procedurally and substantively. Preliminary dismissal is appropriate only where the petition is legally insufficient on its face, yet the CDD Respondents have failed to identify any valid legal ground for dismissal, even under the most minimal threshold. It seeks to preclude review of the Petition before the Court has evaluated its sufficiency, undermining the judicial function and public accountability.

It ignores established writ procedure and invites this Court to extend dismissal at a time when it has no place. For these reasons, and those detailed above, this Court must deny the Motion to Dismiss in its entirety.

WHEREFORE, the State of Florida, ex rel. Michael P. Colosi, respectfully moves this Honorable Court to immediately strike the CDD Respondents' Motion to Dismiss from the record as procedurally improper under Rule 1.630 and Rule 1.140, and to notify the parties of their obligation to maintain decorum and adhere to the standards of professional conduct and advocacy governing proceedings before this Court. In the alternative, and without waiving the objection to the procedural impropriety of the Motion to Dismiss, should the Motion to Dismiss not be struck from the record, the Petitioner submits the above alternative response to the Motion to Dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on July 11, 2025, to:

Flow Way Community Development District & Quarry Community Development District

Mr. Jeffrey W. Hurcomb <jhurcomb@rrbpa.com>

For Mr. Jeffrey W. Hurcomb <service_JWH@rrbpa.com>

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Respectfully Submitted,

/s/ Michael P. Colosi, Relator

on behalf of the State of Florida

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