

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT COURT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

DAWN PARDO,

Case No.:

Petitioner,

vs.

JIM JACKSON, NORMA DUNCOMBE,  
VANESSA LEE, ELIZABETH WADE,  
ANN ILES, as city council members of  
the City of Riviera Beach, a municipality  
of the State of Florida, CARRIE WARD,  
as city clerk of the City of Riviera Beach,  
a municipality of the State of Florida,  
and CITY OF RIVIERA BEACH, a municipality  
of the State of Florida

Respondents.

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**COMPLAINT FOR ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS**

Petitioner, Dawn Pardo, files this Complaint for the issuance of an Alternative Writ of Mandamus directed to Respondents JIM JACKSON, NORMA DUNCOMBE, VANESSA LEE, ELIZABETH WADE and ANN ILES (“CITY COUNCIL”), CARRIE WARD, (“CITY CLERK”) and City of Riviera Beach commanding them to perform their legal duty as set forth in the Florida Statutes and City Charter of the City of Riviera Beach and as grounds therefore state as follows:

1. This is an action for issuance of an alternative writ of mandamus pursuant to Fla. R. Civ. P. Rule. 1.630.
2. Petitioner is at all times a registered voter, resident, citizen, and legally qualified elector of Riviera Beach, a municipality, located within the boundaries of Palm Beach County, Florida and has a clear, certain, present, and legal right to the

performance of the legal duty of the CITY COUNCIL to perform their duties as set forth by Section 166.031, Florida Statutes, and the City Charter of the City of Riviera Beach. *See North Palm Beach v. Cochran*, 112 So.2d 1 (Fla. 1959)(holding that a citizen has standing to procure the enforcement of a public duty)

3. The CITY COUNCIL is the duly elected governing body for the City of Riviera Beach and have the clear, certain, and present legal duty to perform their duties as set forth in the City Charter of the City of Riviera Beach and in compliance with Florida law. The CITY CLERK is the clerk for the City of Riviera Beach.
4. The City of Riviera Beach is a municipality located in Palm Beach County, Florida.
5. Petitioner is the chairwoman of three petition committees seeking (1) to amend the City Charter pursuant to Section 166.031, Florida Statutes and (2) to repeal an ordinance enacted by the CITY COUNCIL pursuant to the City Charter.

#### **I. PETITIONS TO AMEND THE CITY CHARTER**

6. The facts and grounds upon on which Petitioner is entitled to a writ of mandamus for the charter amendments are as follows:
  - A. Amendments to the City Charter are governed by Section 166.031, Florida Statutes. Section 166.031 provides that only ten (10) percent of the registered voters need to sign a petition to amend the City Charter.

Specifically, Section 166.031(1) provides as follows:

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 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 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.

- B. Section 166.031(3) provides that a municipality may amend its Charter pursuant to the procedures of the statute notwithstanding any charter provisions to the contrary.
- C. Petitioner is a qualified voter and chairwoman of two petition committees that were responsible for circulating petition papers for the purpose of (1) petition to amend charter to limit the number of years the City may lease municipal beach property and (2) petition to amend the City Charter to establish height limitations for municipal beach property. (A copy of the petition for charter amendment "Petition for Charter Amendment Limiting the Number of Years that the City may Lease Municipal Property" is attached as Exhibit "A". A copy of the petition for charter amendment "Petition for Charter Amendment Establishing Height Limitations for Municipal Beach Property" is attached as Exhibit "B")
- D. Pursuant to the CITY CLERK the City of Riviera Beach had a total of 19,617 register voters. (A copy of an October 10, 2006 letter is attached as Exhibit "C")
- E. On November 3, 2006 the petition committees submitted petition papers for both proposed amendments to the City Charter.
- F. Initially the CITY CLERK refused to accept the charter amendment petitions. In a letter dated November 6, 2006 attached as Exhibit "D" the CITY CLERK states that her office could not handle the verification of

whether the petitions contained the required number of signatures of qualified voters. Ultimately, the CITY CLERK directed that the referendum petition papers be submitted to the Palm Beach County Supervisor of Elections to examine and determine whether the required number of qualified electors signed the charter amendment petitions.

- G. On November 21, 2006 the Palm Beach County Supervisor of Elections timely and accurately certified that 2682 qualified voters signed the “Petition for Charter Amendment Establishing Height Limitations for Municipal Beach Property”, which is greater than ten (10%) percent of the 19,617 qualified voters required by Section 166.031. ( A copy of the Certification is attached as Exhibit “E”) On December 12, 2006, the CITY CLERK also certified that the petition to amend the City Charter bore the signatures of 2682 qualified voters. (A copy of the certification is attached as Exhibit “F”)
- H. On November 21, 2006 the Palm Beach County Supervisor of Elections timely and accurately certified that 2646 qualified voters signed the “Petition for Charter Amendment Limiting the Number of Years that the City May Lease Municipal Beach Property”, which is greater than ten (10%) percent of the 19,617 qualified voters required by Section 166.031. ( A copy of the Certification is attached as Exhibit “G”) On December 12, 2006, the CITY CLERK also certified that the petition to amend the City Charter bore the signatures of 2646 qualified voters. (A copy of the certification is attached as Exhibit “H”)

- I. Pursuant to Section 166.031(1) the CITY COUNCIL is required to place the proposed charter amendments to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose. The next general election is scheduled for March 2007.
- J. Despite a clear legal duty the CITY COUNCIL refuses to place the proposed charter amendments to a vote of the electors.
- K. The CITY COUNCIL has been put on notice to perform their legal duty to submit the proposed charter amendments to the electors of the City of Riviera Beach as required by Florida law. (Attached as Exhibit "I" is a copy of the demand letter). Notwithstanding this demand the CITY COUNCIL has continued to default on their legal duty.

## **II. PETITION TO REPEAL AN ORDINANCE BY REFERENDUM**

- 7. The facts and grounds upon on which Petitioner is entitled to a writ of mandamus for a referendum are as follows:
  - A. Article X of the Charter of City of Riviera Beach provides the power of referendum. The qualified voters have the power to require reconsideration of any adopted ordinance and if the CITY COUNCIL fails to repeal an ordinance so reconsidered, the qualified voters have the right to approve or reject it a city election, provided that such power shall not extend to the budget or capital program except on capital projects financed by tax certificate. Any five qualified voters may commence referendum proceedings by filing with the CITY CLERK an affidavit stating they will constitute the petitioners' committee and be responsible for

circulating the petition. (A copy of the City Charter concerning referendums is attached as Exhibit "J")

- B. Petitioner is a qualified voter and chairwoman of a petition committee that was responsible for circulating petition papers for the purpose of having the CITY COUNCIL reconsider Ordinance 3016 enacted by the CITY COUNCIL on October 4, 2006. (A copy of the referendum petition "Petition for Reconsideration and Repeal of Riviera Beach Ordinance 3016" is attached as Exhibit "K")
- C. On October 6, 2006 the petition committee submitted the appropriate affidavit as required by the City Charter. (A copy of the affidavit is attached as Exhibit "L") In an October 10, 2006 letter attached as Exhibit "C" the CITY CLERK acknowledged receipt of the affidavit of the petition committee for the referendum petition. In this letter the CITY CLERK verifies that the City of Riviera Beach March 7<sup>th</sup> Municipal Election certification revealed a total of 19,617 registered voters. In this letter the CITY CLERK also states that Palm Beach Supervisor of Elections will verify the required number of signatures for the petition.
- D. Pursuant to Article X, Section 3 of the City Charter a referendum petition need only be signed by at least 15 percent of the qualified voters.
- E. On November 3, 2006, within 30 days after adoption by the CITY COUNCIL of the ordinance sought to be reconsidered, the petition committee filed with the CITY CLERK the referendum petition papers signed by a sufficient percentage of the City electors along with the proper

affidavit of each circulator.

- F. Pursuant to Article X, Section 4 of the Charter the CITY CLERK was required to complete a certificate as to the referendum petition within 20 days after the petition is filed.
- G. Initially the CITY CLERK refused to accept the referendum petition. In a letter dated November 6, 2006 attached as Exhibit "D" the CITY CLERK states that her office could not handle the verification of whether the petitions contained the required number of signatures of qualified voters. Ultimately, the CITY CLERK directed that the referendum petition papers be submitted to the Palm Beach County Supervisor of Elections to examine and determine whether the required number of qualified electors signed the referendum petition.
- H. On November 21, 2006 the Palm Beach County Supervisor of Elections timely and accurately certified that 2944 qualified voters signed the referendum petition papers, which is greater than fifteen (15%) percent of the qualified voters. The Palm Beach County Supervisor of Elections stopped counting the qualified voters upon reaching the 15% threshold requirement. ( A copy of the Certification is attached as Exhibit "M")
- I. On December 12, 2006, the CITY CLERK certified that the referendum petition papers bore the signatures of 2944 qualified voters although the CITY CLERK improperly refused to certify the referendum petition in violation of the clear duty as set forth in the City Charter. In addition the CITY CLERK's efforts to disenfranchise the qualified voters of the City of

Riviera Beach is invalid since the CITY CLERK issued the certificate nineteen (19) days late in violation of her clear legal duty as set forth in the City Charter. ( A copy of the CITY CLERK's certification is attached as Exhibit "N")

- J. As set forth in Article X, Section 4 of the Charter, the petition committee filed a request on December 14, 2006 that the CITY CLERK comply with her clear legal duty to certify the referendum petition or in the alternative have the referendum petition reviewed by the CITY COUNCIL. (A copy of the demand is attached as Exhibit "I")
- K. Pursuant to Article X, Section 5 of the Charter, the ordinance sought to be reconsidered is suspended from taking effect until there is a final determination as to the insufficiency of the petition.
- L. On Wednesday, December 18, 2006 the CITY COUNCIL made a final determination that the referendum petition was insufficient for lack of the required number of signatures of qualified voters. The final determination is subject to court review.
- M. Pursuant to Article X, Section 6 of the Charter upon the submission of a referendum petition with the sufficient number of signatures the CITY COUNCIL shall promptly reconsider the referred ordinance by voting its repeal. If the CITY COUNCIL fails to adopt the referred ordinance within 30 days after the date the petition with sufficient number of signatures a vote on the referred ordinance shall be held not less than 30 days and not later than one year from the date of the final CITY COUNCIL vote. If no

regular city election is to be held within the period prescribed the CITY COUNCIL shall provide a special election.

- N. The CITY COUNCIL has been put on notice to perform their legal duty to submit the proposed referendum to the electors of the City of Riviera Beach as required by Article VI. (Attached as Exhibit "I" is a copy of the demand letter). Notwithstanding this demand the CITY COUNCIL has continued to default on their legal duty.
8. The next scheduled general election is March 13, 2007.
  9. The issuance of a writ of mandamus is appropriate to compel the performance of the duties of CITY COUNCIL and CITY CLERK imposed upon them by virtue of their office. *Accursio v. Harris*, 174 So.2d 613 (Fla. 3d DCA 1965); *Gough v. State*, 55 So.2d 111 (Fla. 1951).
  10. Petitioner makes this Complaint for an Alternative Writ of Mandamus to this Court because the matters involved are of great public and general importance to the registered voters and citizens of the City of Riviera Beach, in Palm Beach County, Florida, and the speedy and final determination is necessary because the Petitioner has no adequate remedy at law. Petitioner has a clear and certain legal right to preserve the sanctity of the election process, to preserve the power of amending the City Charter as set forth in Section 166.031, and to preserve the power of referendum reserved to registered voters and citizens by the City Charter, and the Florida Constitution.

WHEREFORE, the Petitioner moves this Court to make a determination that the petitions are sufficient and to issue an Alternative Writ of Mandamus directed to the

CITY COUNCIL commanding them to comply with their legal duty as prescribed in the City Charter and Florida law by setting an election on proposed charter amendments and proposed referendum in their original form to the electors of the City of Riviera Beach at the next scheduled general election, or if required, by special election.

DATED on this \_\_\_\_\_ day of December, 2006.

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