

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

Kristen Young, and  
David Hammer

Petitioners,

v.

CITY OF GAINESVILLE, FLORIDA,  
HARVEY WARD, in his official capacity  
as Mayor of the City of Gainesville, and  
CRAIG CARTER, in his official capacity  
as chairman of the Gainesville Regional  
Utility Authority a  
+unit of the City of Gainesville

Respondents,

\_\_\_\_\_ /

**PETITION FOR WRIT OF QUO WARRANTO**

Pursuant to Fla. R. Civ. P. 1.630, Petitioners petition this Court for a Writ of Quo Warranto directed to the named Respondents.

1. Petitioners submit that Chapter 2023-348, Laws of Florida, a special law enacted as HB 1645 in the 2023 regular session of the Florida legislature, is unconstitutional and void *ab initio* and seek these remedies:
  - a. As to the City of Gainesville, Florida, to justify the existence of a purported unit of government known as the Gainesville Regional Utility Authority (hereinafter referred to as the Authority), which Petitioners submit

has no legal existence because the statute that created it, Chapter 2023- 348, Laws of Florida a special law enacted in the 2023 regular session of the Florida legislature, is unconstitutional and void *ab initio*.

- b. As to Harvey Ward, in his official capacity as mayor of the City of Gainesville, Florida, to justify his authority and actions to swear into office the appointed members of the purported Authority, including Respondent Craig Carter, created by Chapter 2023- 348, Laws of Florida, which Petitioners submit is unconstitutional and void *ab initio*.
- c. As to Craig Carter, in his official capacity as chairman of the Authority, to justify his authority and actions to serve as the chairman of the purported Authority, created by Chapter 2023- 348, Laws of Florida, which Petitioners submit is unconstitutional and void *ab initio*.

### **PARTIES**

- 2. Petitioner Kristen Young is a citizen, taxpayer and elector of the State of Florida and of the City of Gainesville and is a consumer of utility services provided by the City of Gainesville.
- 3. Petitioner David Hammer is a citizen, taxpayer and elector of the State of Florida and of the City of Gainesville and is a consumer of utility services provided by the City of Gainesville.
- 4. Respondent City of Gainesville, Florida is a Florida municipal corporation created pursuant to Art. VIII §2 Florida Constitution and possesses all of the immutable constitutional home rule powers and limitations prescribed therein.
- 5. Respondent Harvey Ward in his official capacity as mayor of the City of Gainesville was elected to serve in that office by the electorate of the City of Gainesville.

6. Respondent Craig Carter in his official capacity as purported chairman of the Gainesville Regional Utility Authority by virtue of his being elected to that position by the Authority in its initial meeting convened on October 4, 2023.

### **STANDING**

7. Petitioners have standing to bring this action as citizens, taxpayers and electors of the State of Florida and of the City of Gainesville under the holding of the Supreme court of Florida in *Whiley v. Scott*, 79 So. 3d 702, 706 (Fla. 2011) (“when bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers”), approved *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020).
8. In addition, Petitioners have individual standing by virtue of the personal harm Chapter 2023- 348, Laws of Florida inflicts upon them by taking away their constitutional right to vote for the persons who make legislative decisions for the City of Gainesville. Art. VIII §2(b) Florida Constitution. (“Each municipal legislative body shall be elective.”)

### **FACTS**

9. Chapter 2023- 348, Laws of Florida is a special law enacted in the 2023 regular session of the Florida legislature.
10. A copy of Chapter 2023- 348, Laws of Florida as enacted is attached as an exhibit hereto.
11. Citations to Chapter 2023- 348, Laws of Florida provide references to the specific sections of the law as enacted
12. The governor of the state of Florida signed HB 1645 to make it

a law.

13. By its terms HB 1645 became law on July 1, 2023.
14. After signed by the governor, HB 1645 has been designated as Chapter 2023-348, Laws of Florida.
15. Since early in the twentieth century the City of Gainesville has owned and operated a public utility as a department of the City of Gainesville.
16. In recent years and before Chapter 2023- 348, Laws of Florida became effective, the City of Gainesville’s public utility department was known as the Gainesville Regional Utility and referred to as GRU.
17. Until the effective date of Chapter 2023-348, Laws of Florida the City Commission of the City of Gainesville was the exclusive municipal governing body of the City of Gainesville and all of its departments, including GRU.
18. The members of the City Commission of the City Gainesville are and were always elected by the electorate of the City of Gainesville as now mandated by Art. VIII §2(b) Florida Constitution. (“Each municipal legislative body shall be elective.”)
19. Setting utility rates is a legislative function in Florida. *Mohme v. City of Cocoa*, 328 So. 2d 422, 424 (Fla. 1976).
20. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and exercised the legislative function and power of setting utility rates.

21. Prescribing the budget of a municipality is a legislative function in Florida. § 166.241 Fla. Stat.
22. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and had and exercised the legislative function of determining the amount of the net earnings of the utility system to transfer to the general government of the City of Gainesville to finance the provision of city services.
23. Approving the undertaking of municipal indebtedness by a municipality is a legislative function in Florida.
24. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and had and exercised the legislative function of approving the sale of bonds and other forms of indebtedness secured by the earnings of the utility system to finance new construction of utility facilities and for other purposes.
25. Approving the acquisition of real and personal property is a legislative function in Florida. § 166.401 Fla. Stat.
26. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and exercised the legislative function of approving the acquisition of property for the use of the utility system by the exercise of the power of eminent domain.
27. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville governed and operated the utility system as a department of the City of

Gainesville under a manager appointed by the City Commission of the City of Gainesville.

28. Until the effective date of Chapter 2023- 348, Laws of Florida, the City Commission of the City of Gainesville made all municipal legislative decisions and policies pertaining to GRU including, *inter alia*, setting rates (*Mohme v. City of Cocoa*, 328 So. 2d 422, 424 (Fla. 1976)), authorizing financing, authorizing eminent domain actions (§ 166.401 Fla. Stat.), and entering and enforcing labor contracts with unionized employees. §§ 447.403 , 447.309 Fla. Stat.
29. Chapter 2023- 348, Laws of Florida purports to establish a regional utilities authority known as the “Gainesville Regional Utilities Authority.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.02.
30. The purported “Gainesville Regional Utilities Authority” is hereinafter referred to as the “Authority.”
31. Chapter 2023- 348, Laws of Florida purports to establish the Authority as a “unit of city government.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.02.
32. Chapter 2023- 348, Laws of Florida purports to free the Authority from “direction and control of the Gainesville City Commission,” except as otherwise provided. Chapter 2023- 348, Laws of Florida, §2, sub § 7.02.
33. The only “direction and control” Chapter 2023- 348, Laws of Florida leaves in the City Commission of the City of Gainesville is:
  - a. The city shall “perform all acts necessary and proper to effectuate” the directions of Chapter 2023- 348, Laws of Florida. Chapter 2023- 348, Laws of Florida, §2, sub §

- 7.10(1).
  - b. Each member of the Authority shall “be given an oath of affirmation by the Mayor,” or the mayor’s designee. Chapter 2023- 348, Laws of Florida, §2, sub § 7.07(2).
  - c. To receive recommendations from the Authority pertaining to “the acquisition and operation of a utility system not owned or operated by GRU at the date of the transfer of governing authority to the Authority.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(I).
34. The City of Gainesville has complied with the mandates imposed upon it by Chapter 2023-348 Laws of Florida.
35. Among, but not limited to, the powers and duties Chapter 2023- 348, Laws of Florida purports to transfer to the Authority are:
- a. “To manage, operate and control the utilities.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(a).
  - b. “To establish and amend rates, fees” etc. and “rules, regulations and policies governing the sale and use of services provided through the utilities.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(b).
  - c. “To acquire real and personal property, and to construct such projects as necessary, etc.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)( c).
  - d. “To exercise the power of eminent domain, etc.” provided that “the title to all such property is vested in the city.” Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(d).
  - e. “To authorize the issuance of revenue bonds and other evidences of indebtedness of the city” secured by the revenues of the utility system. Chapter 2023- 348, Laws

of Florida, §2, sub § 7.03(1)(e).

- f. “To dispose of utility system assets only to the extent and under the conditions that the City Commission” may dispose of them. Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(f).
  - g. To determine the amount of the earnings of the utility system to transfer to the City of Gainesville to finance the operations of the general government of the city. Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(g).
  - h. “To appoint and remove” a chief operating officer and general manager of the utility system. Chapter 2023- 348, Laws of Florida, §2, sub § 7.03(1)(h).
36. Members of the Authority are not elected by the electorate of the City of Gainesville.
37. Members of the Authority are not appointed by the elected City Commission of the City of Gainesville
38. Members of the Authority are appointed by the governor of the State of Florida. Chapter 2023- 348, Laws of Florida, §2, sub § 7.05(2).
39. The governor of the State of Florida has no constitutional power to appoint members of the governing bodies of Florida municipalities.
40. Chapter 2023- 348, Laws of Florida purports to provide the governor the power to remove members of the Authority and to appoint new members to fill vacancies. Chapter 2023- 348, Laws of Florida, §2, sub § 7.05(4).

41. After the effective date of Chapter 2023- 348, Laws of Florida, the electorate of the City of Gainesville has no right to vote for members of the governing body, i.e., the Authority, that makes municipal legislative decisions pertaining to the governance of GRU.
42. Prior to October 4, 2023, the governor of the State of Florida appointed members to serve as the Authority.
43. On October 4, 2023 the appointed members of the authority met in the meeting chamber of the City Commission of the City of Gainesville.
44. On October 4, 2023 Respondent Harvey Ward, as mayor of the City of Gainesville, administered and took the oath of office from each and every appointed member of the Authority then present including Respondent Craig Carter.
45. On October 4, 2023, after the administration and the taking of the oath of office, the members of the Authority then present elected Respondent Craig Carter as chairman of the Authority.
46. On October 4, 2023 Respondent Craig Carter accepted his election as chairman of the Authority.
47. Until the effective date of Chapter 2023- 348, Laws of Florida, Petitioners had the right guaranteed by Article VIII §2 Florida Constitution to vote for members of the municipal governing authority, i.e., the City Commission of the City of Gainesville, that made all decisions, including municipal legislative decisions, pertaining to the governance, management and operation of the City of Gainesville's utility system.
48. Chapter 2023- 348, Laws of Florida deprives Petitioners of the right pursuant to Article VIII §2 Florida Constitution to vote for

members of the municipal governing authority that makes all decisions, including municipal legislative decisions, pertaining to the governance, management and operation of the City of Gainesville’s utility system by transferring all governing power, as stated above, to the members of the Authority all of which are appointed by the governor and are not elected by the electorate of the City of Gainesville.

49. Article I § 5 Florida Constitution states: “The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.”
50. Prior to the effective date of Chapter 2023- 348, Laws of Florida, Petitioners had the right pursuant to Article 1 § 5 Florida Constitution and the First and Fourteenth Amendments to the United States Constitution to petition an elective municipal legislative body, i.e., the City Commission of the City of Gainesville, for redress of grievances that were within its power to resolve pertaining to the governance, control, management, and operation of the City of Gainesville’s utility system.
51. Chapter 2023- 348, Laws of Florida deprives Petitioners of the right pursuant to Article 1 § 5 Florida Constitution and the First and Fourteenth Amendments to the United States Constitution to petition an elective municipal legislative body for redress of grievances that are within its power to resolve pertaining to the governance, control, management, and operation of the City of Gainesville’s utility system.
52. Article I § 4 Florida Constitution states:

SECTION 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to

restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

53. The right to vote is pure political speech protected by Article I § 4, Florida Constitution and by the First and Fourteenth Amendments to the United States Constitution.
54. Chapter 2023- 348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article VIII § 2, Florida Constitution.
55. Chapter 2023- 348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article I § 4, Florida Constitution.

### **RELIEF SOUGHT**

Petitioners request this Court to:

1. Direct a writ of Quo Warranto to Respondent City of Gainesville, Florida directing it to establish by what valid legal authority the City Commission of the City of Gainesville has given up and been deprived of the municipal power and duty to govern the utility system owned by the City of Gainesville, Florida.
2. Direct a writ of Quo Warranto to Respondent Harvey Ward directing him to establish by what valid legal authority he had the power and duty to administer the oath of office to the members of the purported Authority.
3. Direct a writ of Quo Warranto to Respondent Craig Carter

directing him to establish by what valid legal authority he has the power and duty to act as a governor of the City of Gainesville’s utility system and to serve as the chairman of the purported Authority.

4. Enter an order holding that Chapter 2023- 348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article VIII §2, Florida Constitution.
5. Enter an order holding that Chapter 2023- 348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article I § 4, Florida Constitution.
6. Enter an order holding that the Gainesville Regional Utilities Authority purported to having been created by Chapter 2023- 348, Laws of Florida has no legal existence.
7. Enter an order holding that Respondent Craig Carter has no legal standing as chairman of the purported Gainesville Regional Utilities Authority.

**MEMORANDUM OF LAW**

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**A. Chapter 2023- 348, Laws of Florida VIOLATES ARTICLE VIII**

**§2(b) 1968 FLORIDA CONSTITUTION AND IS VOID *AB INITIO*.**

This petition is governed by the application of Article VIII § 2 1968 Florida Constitution that provides:

SECTION 2. Municipalities.—

(a) ESTABLISHMENT. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. **Each municipal legislative body shall be elective.**

( c) ANNEXATION. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

(Bold added.)

This provision grants constitutional home rule powers to all Florida municipalities and, as stated, was adopted by the electorate of the State of Florida when it voted to adopt the 1968 Florida Constitution. In 1973, the Florida legislature executed Article VIII § 2 1968 Florida Constitution, Ch. 73—129 Laws of Florida, after the *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla.

1972) had held that it was not self-executing. Thereafter, Florida courts have consistently applied Article VIII § 2 1968 Florida Constitution to decide cases.

This Petition invokes the operation of the final sentence in Article VIII §2(b): **”Each municipal legislative body shall be elective.”** (Bold added.) This provision was proposed by the 1967 Constitution Revision Commission, was approved by a proposal of the Florida Legislature, was submitted by the Florida legislature to the people of the State for vote, and was adopted by the Florida electorate in 1968.

Article VIII §2(b) 1968 Florida Constitution supersedes and renders nugatory several decisions of the Florida Supreme Court decided under the 1885 Constitution before the 1885 Constitution was superseded by the 1968 Florida Constitution.

The background and reason for this constitutional home rule provision are explained by pre-1968 decisions of the Florida Supreme Court. That Court had repeatedly held that Florida municipalities had no home rule power under the 1885 Florida Constitution, but were entirely subservient to the legislature even in

the selection of members of the municipal governing bodies. Prior to 1968 Florida Supreme Court justice Armstead Brown strongly dissented from these opinions and argued that the 1885 Florida Constitution supported constitutional and common law home rule authority of Florida municipalities. The remainder of the Florida Supreme Court rejected that proposition.

Several of the disputed cases arose when the Florida legislature objected to the politics of an existing elective governing body of a Florida municipality and cured the “problem” by abolishing the municipality and simultaneously creating a new municipality with a governing body whose members were appointed and named by the legislature or appointed by the governor. In ensuing legal actions, plaintiffs argued that this process deprived the electorate of the municipalities of the right to elect the governing boards of their municipalities. The process was reminiscent of the Coercive Acts of 1794 that removed the power of the city of Boston to elect its governors and replaced it with royal appointees. This was a thorn in the side of American revolutionaries intent upon independence from Great Britain. It is also reminiscent of the

demise of the elected Greater London Council, whose socialist tendencies infuriated the Thatcher administration, resulting in abolition of the Greater London Council by the British Local Government Act 1985.

*State v. Johns*, 109 So. 228(Fla.1926) is exemplary of the Florida pre-1968 actions. There the legislature enacted a bill to abolish the City of Hollywood, Florida and immediately to supersede it with a new City of Hollywood with a governing body whose members were named in the legislation. Petitioners filed a petition for writ of Quo Warranto to challenge the power of the legislature to deprive the people of the right to elect municipal officials. The then Florida Supreme Court rejected the challenge, saying:

Whatever the phrase 'local self-government' may mean in government, the Constitution of this state contains no express provision with reference thereto, and there are no provisions of the organic law that so modify the express provision of section 8, art. 8, of the Constitution, that 'the Legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time,' as to withhold from the Legislature the power to designate by statute the particular persons who shall exercise the power of a municipality created by statute, such power to designate being a part of or incidental to the quoted organic power to establish municipalities, to provide for their government, and to prescribe their jurisdiction and powers. See 1 McQuillin, *Munic. Corp.* § 176.

*Id.*, at 231.

Justice Armstead Brown vigorously dissented, saying in part:

Is not this time-honored right of the people of municipal corporations to choose their own local officers one of the rights retained by the people under section 24 of our Declaration of Rights? Nowhere does our Constitution expressly confer the power upon the Legislature to take away this right, nor is the right of local self-government anywhere forbidden by that instrument, and the framers of the Constitutions must have contemplated that the then existing right of municipal corporations to choose their local officers to administer their local affairs would continue as the one great essential feature of municipalities in this state.

*Id.*, 109 So. at 234. Justice Armstead's argument fell on deaf ears.

*State ex rel. Gibbs v. Couch*, 190 So. 723 (Fla. 1939) is also exemplary. There the legislature abolished the existing City of Daytona Beach, Florida and created a new city with virtually the same powers but whose governing board was appointed. Denying a Quo Warranto home-rule challenge to the law, *Couch* held: "There is nothing in our Constitution which precludes the legislature from providing for the appointment of any municipal officers by the Governor." *Id.* 190 So. at 731.

In *State v. Johnson*, 135 So. 816 (Fla. 1931) the legislature created a board of elections of the City of Tampa, Florida as a unit

of the government of the City and gave it all power to conduct elections for the City. The members of the board were appointed by the legislature. Against a home rule challenge, the Supreme Court approved this statute. Justice Brown again dissented, saying:

No matter how beneficent the purpose of this act may be, nor how well qualified the members of the board named in the act may also be, I cannot escape the conclusion that the act, creating as it does, a self-perpetuating board, with powers to fill future vacancies therein, is contrary to the implications of the Constitution, arising from section 2 of the Declaration of Rights; article 2, and section 7 of article 4, of the Constitution. This act goes further than the act considered in *State v. Johns*, 92 Fla. 187, 109 So. 228, though the writer thought that even that act went too far, as indicated by the dissenting opinion in that case.

*Id.*, at 135 So. 821.

The action in *City of Orlando v. Evans*, 182 So. 264

(Fla.1938) was predicated upon these facts as stated by the

Court:

The plaintiff is a municipal corporation and in 1923 acquired title to an electric light and water works plants situated within the municipal boundaries of the City of Orlando, and that the plant consisted of real estate, generating and pumping machines, wires, poles, pipes, and other equipment incidental to a plant of this kind. The 1923 special session of the Florida Legislature, by Chapter 9861, created a Board for said City and designated it by the name of Orlando Utilities Commission. The Act gave the Board full 'authority over the management and control of the electric light and water works plants in the City of Orlando.' Section 6. It likewise had power and authority to prescribe rates,

rules and regulations governing the sale of electricity and water to the inhabitants and residents of the City of Orlando. It had power to borrow money under prescribed restrictions. The defendant, since its creation, had never been presumed to have power to make other than casual or incidental extensions to the plant, but recently the defendant had assumed the power or authority to make larger scale improvements.

*Id.*, 182 So. at 267.

The City of Orlando filed *inter alia* a “constitutional writ” to challenge the constitutionality of the statutes authorizing the Orlando Utilities Commission to act. The challenge, as stated by the Supreme Court, was:

Counsel for appellant contends that chapters 9861 and 10968, *supra*, are each unconstitutional and void: (a) because the Legislature could not interfere with the administrative control of utilities plants; (b) that Legislature could not create a self-perpetuating administrative board to supersede the City of Orlando in the management and control of the plants.

*Id.*, 182 So. at 267.

The Florida Supreme Court rejected the City’s arguments and cited *State ex rel. Johnson v. Johns, supra.*, as “a full and complete answer” to that objection. *Id.*, 182 So. at 267.

In *Cobo v. O'Bryant*, 116 So. 2d 233 (Fla. 1959) petitioners challenged the constitutionality of legislation described in the syllabus to the opinion as follows:

The Supreme Court, Thornal, J., held legislative act pertaining to the operation and management of an electric utility owned by Key West in a proprietary capacity was not unconstitutional on theory that the legislature had no power over property owned by the city in its proprietary capacity, and legislative act creating the position of assistant city clerk and appointing a named man to fill the job, and giving him certain duties, including exclusive control of registration of voters and other election matters, was not unconstitutional on theory that such act constituted an unlawful invasion of the city's right to local self-government.

*Id.*, 116 So. at 233. The Florida Supreme Court approved the act on the same grounds as in the earlier cases but did observe that Justice Brown had dissented to them. *Id.*, 116 So. at 237.

All of the foregoing describe the status of the law under the 1885 Constitution. In the meantime, the 1885 Constitution was changed and superseded by the adoption of the 1968 constitution, including specifically Article VIII §2(b) thereof. To the extent legislative control of governance of municipalities was permitted under the 1885 constitution, as applied in the cases above, that legislative control has been eliminated by the adoption of Article VIII §2(b) Florida Constitution. Under the 1968 Constitution, all municipal governing bodies that make legislative decisions for the municipality must be *elected*. The legislature has no power to peel off the Gainesville Fire Department, nor the finance department,

nor the parks and recreation department, nor the planning department from the governance control of the elected City Commission of the City of Gainesville. Nor does it have the power to peel off the City of Gainesville's utility department from governance and control by the elected City Commission of the City of Gainesville and place it under the exclusive control of a body appointed by the governor. Chapter 2023- 348, Laws of Florida is unconstitutional and should be rendered so by order of this Court.

Accordingly, on this grounds alone, Petition respectfully submits that this Court should enter an order issuing the writs to Respondents and ultimately holding Chapter 2023- 348, Laws of Florida to be unconstitutional and *void ab initio*.

**B. Chapter 2023- 348, Laws of Florida VIOLATES ARTICLE I § 4 1968 FLORIDA CONSTITUTION AND ON THAT INDEPENDENT GROUNDS IS VOID AB INITIO.**

In addition to and independent of the foregoing basis of unconstitutionality, Chapter 2023- 348, Laws of Florida injures Petitioners personally by depriving them of the Article VIII §2(b) Florida Constitution right to vote for the municipal governing body

that makes legislative decisions for the governance of the Gainesville Regional Utility system. Accordingly, Chapter 2023-348 Laws of Florida is unconstitutional under Article I § 4 1968 Florida Constitution.

The Florida Constitution does not create a general right to vote in all circumstances but does create the right of the electorate of a municipality to vote for the legislative governing body of the municipality. Article VIII §2(b) 1968 Florida Constitution. In Florida, once a right to vote is created by the constitution that right is thereafter protected and enforced by the courts. As the Florida Supreme Court held in *Joughin v. Parks*, 147 So. 273 (Fla. 1933):

The right to vote, for example, is not inherent. It is secured by law. So long as the security extends only to the naked right to vote it is purely political, but when the law takes it over and throws around it safeguards in the interest of the voter and requires it to be exercised under rules and regulations to safeguard the ballot and the body politic it becomes more than a naked political right and *will be protected in like manner as a civil right*. A court of equity will in other words not attempt to supervise or control the management of a political party or a political function, but when the law prescribes rules and regulations for the party to conduct an election any interested elector may invoke the aid of a court of appropriate equitable remedies to enforce such rules and regulations. (Italics added.)

*Ervin v. Richardson*, 70 So. 2d 585 (Fla. 1954) applied this

principle in circumstances that control in this case. *Ervin v.*

*Richardson* involved a challenge to a statute<sup>1</sup> that limited the right of the electors in each county commission district to vote in primary elections for a single county commission nominee, i.e., the nominee from the voter's district, and not at large for nominees from all 5 districts as then prescribed by Article VIII §5 1885 Florida. That provision stated:

There shall be one County Commissioner in each of the five County Commissioner's districts in each county, which districts shall be numbered one to five inclusive, and shall be as nearly as possible equal in proportion to population. The Board of County Commissioners in the respective counties shall from time to time fix the boundaries of such districts. Said County Commissioners shall be elected by the qualified electors of said county at the time and place of voting for other county officers, and shall hold office for four years, \* \* \*.'

The offending statute permitted county voters to vote in primary elections for only for the nominees from their own districts and did not allow the voters at large to vote for primary nominees in

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<sup>1</sup>The then statute provided in pertinent part:  
The primary elections shall provide for the nomination of county commissioners by the qualified electors of such county at the time and place set for voting on other county officers, provided, that county, commissioners are nominated by the several districts of the county instead of by the county at large, \* \* \*. [Section 100.081, Florida Statutes 1951, F.S.A.] *Id.*, 70 So. 2d at 586 .

all five districts. The Florida Supreme Court invalidated the statute (which was a general law and not a mere special law as in this case), saying:

There may be substance to the contention that nomination of county commissioners by districts has been the established policy of the State for many years but I do not think we can escape the chancellor's conclusion that the effect of it is to unduly limit the voter's choice in the general election as contemplated by Section 5, Article VIII of the Constitution. Neither can we now escape the conclusion that the primary is a part of the general election machinery of the State and that it is comprehended by those provisions of the Constitution regulating elections, that *where the Constitution has conferred the right to vote, the legislature is powerless to impose regulations in a primary or general election that will unduly limit the right.*

70 So. 2d 585, 587 (Fla. 1954). (Italics added.)

While *Ervin v. Richardson* did not rely upon it, it may be presumed that the right to vote - where it existed - was protected as a mode of free speech pursuant to the 1885 version of Article I § 4 1885 Florida Constitution:

SECTION 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. *No law shall be passed to restrain or abridge the liberty of speech or of the press.* In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated. (Italics added.)

The facts in *Ervin v. Richardson* are exactly analogous to the facts in this case and control the outcome. There the legislature deprived county voters of the right to vote for *all nominees* in primary elections of county commissioner as was guaranteed by Article V § 5 1885 Florida Constitution, leaving county electors the right to vote for only one nominee. The Florida Supreme Court invalidated the limiting statute. Here Chapter 2023- 348, Laws of Florida deprives the Petitioners (and the electorate of the City of Gainesville) of the right to vote for *all members* of the governing board (the appointed Authority) that makes legislative decisions pertaining to GRU, leaving the voters the right to vote for no one at all.

Analogous decisions of the United States Supreme Court have applied the First and Fourteenth Amendments of the United States Constitution to invalidate statutes that took away a lawful right to vote. These decisions strongly support Petitioners' contention that Chapter 2023-348 Laws of Florida violates Article I § 4 1968 Florida Constitution. Among these decisions, *Wesberry v. Sanders*, 84 S. Ct. 526 (1964) held that the right to vote for members of Congress

guaranteed by Article I § 2 of the United States Constitution is a constitutionally protected right:

It is in the light of such history that we must construe Art. I, s 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen 'by the People of the several States' and shall be 'apportioned among the several States \* \* \* according to their respective Numbers.' It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted. *United States v. Mosley*, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355; *Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274. Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, or diluted by stuffing of the ballot box, see *United States v. Saylor*, 322 U.S. 385, 64 S.Ct. 1101, 88 L.Ed. 1341. No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

In a *Burdick v. Takushi*, 112 S. Ct. 205 (1992) the United States Supreme Court upheld a voting system in the state of Hawaii that authorized several means of voting but had no provision for write-in voting. Nevertheless, the Court acknowledged that *Wesberry* limits a state's power to abridge entirely the right to vote, opining:

No right is more precious in a free country than that of having a

voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 534–535, 11 L.Ed.2d 481 (1964). But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system. *Anderson, supra*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; *Storer*, 415 U.S., at 730, 94 S.Ct., at 1279. We think that Hawaii's prohibition on write-in voting, considered as part of an electoral scheme that provides constitutionally sufficient ballot access, does not impose an unconstitutional burden upon the First and Fourteenth Amendment rights of the State's voters.

Unlike the statute in *Burdick*, Chapter 2023- 348, Laws of Florida does not merely *omit* a particular means of voting preferred by the Petitioners from an array of permissible and readily available voting alternatives. In contrast, Chapter 2023- 348, Laws of Florida entirely *eliminates and denies* Petitioners’ Article VIII §2(b) 1968 Florida Constitution right to vote for members of the municipal legislative body that legislates for and governs GRU.

These federal cases mirror the outcomes required by the Florida Constitution. In *Traylor v. State*, 596 So. 2d 957 (Fla. 1992) the Florida Supreme Court explained that the Florida bill of rights is more protective of the individual than the Federal bill of rights:

Federal and state bills of rights thus serve distinct but complementary purposes. The federal Bill of Rights facilitates political and philosophical homogeneity among the basically heterogeneous states by securing, as a uniform minimum, the

highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation. Accordingly, when called upon to construe their bills of rights, state courts should focus primarily on factors that inhere in their own unique state experience, such as the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law.

*Id.*, at 596 So. 962.

The text of our Florida Constitution begins with a Declaration of Rights—a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. These rights embrace a broad spectrum of enumerated and implied liberties that conjoin to form a single overarching freedom: They protect each individual within our borders from the unjust encroachment of state authority—from whatever official source—into his or her life. Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government. This Court over half a century ago addressed the fundamental principle of robust individualism that underlies our system of constitutional government in Florida:

It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights ... have cost much, and breathe the spirit of that sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government. No race of hothouse plants could ever have produced and compelled the recognition of such a stalwart set of basic principles, and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it

may advance to invade these vital rights of personal liberty and private property, “Thus far shalt thou come, but no farther.”

*State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 102–03, 120 So. 335, 347 (1929). No other broad formulation of legal principles, whether state or federal, provides more protection from government overreaching or a richer environment for self-reliance and individualism than does this “stalwart set of basic principles.”

*Id.*, 596 So. 2d at 963. Hence, when the federal bill of rights guarantees the right to vote, *a fortiori*, the Florida bill of rights does no less.

## **CONCLUSION**

In sum, exercising the Article VIII §2(b) 1968 Florida Constitution right to vote for the election of members of a Florida municipal legislative body is an expression of core political speech guaranteed by Article VIII §2 1968 Florida Constitution and protected by Article I § 4 Florida Constitution. The Florida legislature and Florida governor have no lawful power to eliminate, deny, or abridge that right. Moreover, the Florida legislature and Florida governor will have no power to eliminate, deny, or abridge the Article VIII §2(b) 1968 Florida Constitution right of the electorate of a Florida municipality to elect the members of a Florida

elective municipal legislative body unless and until the electorate of the State of Florida votes to amend the Florida constitution to remove that constitutional right to vote. The electorate of the State of Florida has not voted to amend the Florida Constitution to remove the constitutional right of the electorate of a Florida municipality to elect members of every municipal legislative body. The Article VIII §2(b) 1968 Florida Constitution right to vote exists and may not be taken away by Chapter 2023- 348, Laws of Florida.

Petitioners respectfully submit that, pursuant to Article I § 4 1968 Florida Constitution, Article VIII § 2(b) 1968 Florida Constitution, and the holding in *Ervin v. Richardson*, this Court must enter orders issuing the requested writs, ultimately invalidating Chapter 2023- 348, Laws of Florida, and granting other appropriate relief on the independent grounds stated herein.

This document was prepared by:  
Joseph W. Little  
Florida Bar No.:196749  
3731 NW 13<sup>th</sup> Place  
Gainesville, Fl. 32605  
352-214-8454  
Littlegnv@gmail.com

## CHAPTER 2023-348

### Committee Substitute for House Bill No. 1645

An act relating to the City of Gainesville, Alachua County; amending chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, relating to the City's charter; repealing section 3.06 of the charter, relating to the general manager for utilities of Gainesville Regional Utilities; creating the Gainesville Regional Utilities Authority and establishing it as the governing board of Gainesville Regional Utilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 3.06 of Article III of section 1 of chapter 90-394, Laws of Florida, is repealed.

Section 2. Article VII is added to chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, to read:

#### ARTICLE VII

#### GAINESVILLE REGIONAL UTILITIES AUTHORITY

##### 7.01 Establishment.—

There is created a regional utilities authority to be known as the “Gainesville Regional Utilities Authority” (“Authority”). Gainesville Regional Utilities shall be governed by the Authority upon installation of the Authority's members pursuant to this article. The Authority shall operate as a unit of city government and, except as otherwise provided in this article, shall be free from direction and control of the Gainesville City Commission. The Authority is created for the express purpose of managing, operating, controlling, and otherwise having broad authority with respect to the utilities owned by the City of Gainesville.

##### 7.02 Definitions.—

For the purposes of this article, unless otherwise designated, or the context otherwise requires, the following terms have the following meanings:

(1) “Authority” means the Gainesville Regional Utilities Authority created in this article.

(2) “City” means the City of Gainesville.

(3) “City Commission” means the Gainesville City Commission.

(4) “County” means Alachua County.

(5) “Customer” means a person or an entity that makes application for and is supplied with service by GRU for its ultimate use.

(6) “Flow of funds” means the sum of required debt service, necessary operations and management expenses, a reasonable contribution to a utility plan improvement fund, identified SLA-related losses, and any other lawful purpose as provided in bond covenants.

(7) “Government services contribution” or “GSC” means the portion of revenues generated from rates, fees, assessments, and charges for the provision of utility services by the utility system which is annually transferred by the Authority to the City for use in funding or financing its general government municipal functions.

(8) “GRU” means Gainesville Regional Utilities.

(9) “Member” means a member of the Authority.

(10) “Net revenues” means the gross revenues less fuel revenues.

(11) “Service-level agreement” or “SLA” means a contract entered into by the Authority that establishes a set of deliverables that one party has agreed to provide another.

(12) “Utilities” means the electric utility system, water utility system, wastewater utility system, reuse water utility system, natural gas utility system, communications utility system, and such other utility systems as may be acquired by GRU in the future.

### 7.03 Powers and duties.—

(1) The Authority shall have the following powers and duties, in addition to the powers and duties otherwise conferred by this article:

(a) To manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article.

(b) To establish and amend the rates, fees, assessments, charges, rules, regulations, and policies governing the sale and use of services provided through the utilities.

(c) To acquire real or personal property and to construct such projects as necessary to operate, maintain, enlarge, extend, preserve, and promote the utility systems in a manner that will ensure the economic, responsible, safe, and efficient provision of utility services, provided that title to all such property is vested in the City.

(d) To exercise the power of eminent domain pursuant to chapter 166, Florida Statutes, and to use utility funds to appropriate or acquire property,

excluding federal or state property, for the purpose of obtaining, constructing, and maintaining utility facilities, provided that title to all such property is vested in the City.

(e) To authorize the issuance of revenue bonds and other evidences of indebtedness of the City, secured by the revenues and other pledged funds and accounts of the utility system, pursuant to Florida law. Upon resolution of the Authority establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166, Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general obligation bonds. Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM) or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

(f) To dispose of utility system assets only to the extent and under the conditions that the City Commission may dispose of such assets pursuant to section 5.04 of Article V.

(g) To prepare and submit to the City Commission, at least 3 months before the start of the City's fiscal year, an annual budget for all Authority and GRU operations, including the amount of any transfer to the City. The term of the budget shall coincide with the City's fiscal year. The amount of any transfer is subject to the limitations specified in section 7.11.

(h) To appoint and remove a CEO/GM as provided in this article.

(i) To recommend, by resolution to the City Commission, the acquisition and operation of a utility system not owned or operated by GRU as of the date of transfer of governing authority to the Authority.

#### 7.04 Authority members.—

(1) There shall be five members of the Authority appointed by the Governor. Each member shall be a person of recognized ability and good business judgment as identified by the Governor who is expected to perform his or her official duties in the best interests of GRU and its customers. Appointments shall be made as follows:

(a) One member shall be a residential customer with substantial knowledge of GRU, its operations, and its history.

(b) One member shall be a private, nongovernment customer consuming at least 10,000 kilowatt hours per month of electric usage during each of the previous 12 months. This member may be the owner or representative of the customer.

(c) Three members shall be competent and knowledgeable in one or more specific fields substantially related to the duties and functions of the Authority, including, but not limited to, law, economics, accounting, engineering, finance, or energy.

(2) All members of the Authority shall:

(a) Maintain primary residence within the electric service territory of GRU's electric utility system.

(b) Receive GRU electric utility system service at all times during the term of appointment.

(c) Not have been convicted of a felony as defined by general law.

(d) Be a qualified elector of the City, except that a minimum of one member must be a resident of the unincorporated area of the county or a municipality in the county other than the City of Gainesville.

(3) The composition of the Authority shall be adjusted upon expiration of any member's term, or upon any Authority vacancy, to reflect the ratio of total electric meters serving GRU electric customers outside the City's jurisdictional boundaries to total electric meters serving all GRU electric customers. For example, upon expiration of a member's term or upon an Authority vacancy, if the ratio of total electric meters serving customers outside the City boundaries to total electric meters serving all electric customers reaches 40 percent, the Governor must appoint a second member from outside the City boundaries to serve the next term that would otherwise be served by a qualified elector of the City. Conversely, upon expiration of any member's term or upon any Authority vacancy, if the ratio subsequently falls below 40 percent, the Governor must appoint a qualified elector of the City to serve the next term that otherwise would have been served by a resident from outside the City boundaries.

#### 7.05 Member nominations and terms.—

(1) The Governor shall issue a public notice soliciting citizen nominations for Authority members within 120 days after the effective date of this article. The nomination solicitation period shall remain open for at least 30 days after the date of the public notice.

(2) The Governor shall appoint initial members to the Authority from among the nominees within 60 days after the close of the nomination solicitation period. The initial terms of office for the five members shall commence at 12 a.m. on October 1, 2023. The terms of the initial appointments shall be as follows: one member shall be designated to

serve until 12 a.m. on October 1, 2024; one member shall be designated to serve until 12 a.m. on October 1, 2025; one member shall be designated to serve until 12 a.m. on October 1, 2026; and two members shall be designated to serve until 12 a.m. on October 1, 2027.

(3) The Governor shall have a citizen nomination solicitation period for at least 30 days and appoint members for subsequent terms from among the nominees. Members appointed for subsequent terms shall be appointed for 4-year terms commencing at 12 a.m. on October 1 of the year in which they are appointed. If a member is appointed to complete an unexpired term, the member's term shall commence at the time of appointment and shall continue through the remainder of the unexpired term.

(4) The Governor shall fill any vacancy for the unexpired portion of a term within 60 days after the vacancy occurs if the remainder of the term exceeds 90 days.

7.06 Member compensation.—Beginning October 1, 2023, necessary expenses of members incurred in carrying out and conducting the business of the Authority shall be paid in accordance with Authority policy and procedures, subject to the approval of a majority of the members of the Authority. No supplemental benefits shall be provided for a member position.

7.07 Authority; oath; organization; and meeting.—

(1) The Authority shall initially meet at the chambers of the City Commission at 6 p.m. on Wednesday, October 4, 2023.

(2) Before taking office for any term, each member shall be given an oath or affirmation by the Mayor or his or her designee similar to the oath or affirmation required of a member of the City Commission.

(3) The first official action of the Authority shall be election of a chairperson and a vice chairperson from among its membership.

(4) The Authority shall meet at least once each month, except in case of unforeseen circumstances. All meetings of the Authority shall be noticed and open to the public, and minutes shall be kept as required by law, except that meetings related to settlement of then existing litigation may be held as allowed by law.

(5) The GRU general manager or his or her designee shall be responsible for making arrangements for and providing adequate notice for the initial meeting of the Authority.

7.08 Removal and suspension of members.—

(1) A member may be removed or suspended from office by the Governor in accordance with s. 112.501, Florida Statutes. In addition to the grounds

for removal set forth therein, a member may be removed by the Governor for failure to maintain the qualifications specified in section 7.04.

(2) The Authority may recommend to the Governor that a member be removed or suspended from office if it finds, by vote of at least three members, a reasonable basis for removal or suspension on one or more of the grounds set forth in s. 112.501, Florida Statutes, or for failure to maintain the qualifications specified in section 7.04. The Authority shall give reasonable notice of any proceeding in which such action is proposed and must provide the member against whom such action is proposed a written statement of the basis for the proposed action and an opportunity to be heard. The member against whom such action is proposed may not participate in the Authority's debate or vote on the matter.

#### 7.09 Management and personnel.—

(1) A chief executive officer/general manager (CEO/GM) shall direct and administer all utility functions, subject to the rules and resolutions of the Authority. The CEO/GM shall serve at the pleasure of the Authority. Appointment or removal of the CEO/GM shall be by majority vote of the Authority. Until such time as the Authority appoints a CEO/GM, the sitting general manager of GRU shall serve as the CEO/GM. A sitting member of the Authority may not be selected as the CEO/GM.

(2) All officers and employees of the City who serve under the supervision and direction of the sitting general manager of GRU shall serve under the CEO/GM. The CEO/GM shall have the exclusive authority to hire, transfer, promote, discipline, or terminate employees under his or her supervision and direction.

(3) The Authority shall fix the salary of the CEO/GM, and the CEO/GM shall fix the salaries of all other employees who serve under his or her direction consistent with the annual budget approved by the Authority. The sitting general manager of GRU, as well as all officers and employees of the City who, by virtue of this article, become subject to the supervision and direction of the CEO/GM, shall continue without any loss of rights or benefits as employees under the pension plans and civil service merit system of the City existing as of the creation of the Authority.

#### 7.10 General provisions.—

(1) The City and the Authority shall perform all acts necessary and proper to effectuate an orderly transition of the governance, operation, management, and control of all utility systems, properties, and assets held in the possession of GRU as of January 1, 2023, to the Authority, including, but not limited to, the creation of such instruments as are necessary for the Authority to function in accordance with this article. Notwithstanding the reorganization of the governance structure of the management of the utility system as provided in this section, the utility system shall continue to be

operated as a single enterprise and there shall be no change to the ownership of the utility system.

(2) All City ordinances, policies, rates, fees, assessments, charges, rules, regulations, and budgets related to operation of the utilities shall remain in effect until such time as the Authority, pursuant to the powers granted in this article, modifies any such item. In the event that any City charter provision, ordinance, resolution, decree, or any part thereof conflicts with the provisions of this article, the provisions of this article shall govern. This subsection is not intended to and shall not interfere with existing contractual arrangements between the City and county, regardless of whether such arrangements are reflected in charter provisions, ordinances, resolutions, decrees, or any part thereof.

(3) All rights, responsibilities, claims, and actions involving GRU as of the transfer to the Authority shall continue, except as may be modified by the Authority under the powers granted by this article and consistent with law.

(4) No franchise, right-of-way, license, permit or usage fee or tax may be levied by the City upon the Authority or the utilities unless allowed by general law.

(5) Any utility advisory board created by the City Commission shall have no role with respect to the Authority.

(6) No member of the Authority shall be individually responsible for Authority debts or liabilities.

(7) The Authority shall develop an ethics policy and a code of business conduct that shall be reviewed at least biennially.

(8) In order to provide for the transitional administrative needs and orderly compliance with the provisions of this act, the chairperson of the Authority or his or her designee is authorized to execute documents required for the transition.

#### 7.11 Limitation on government services contribution.—

(1) MAXIMUM CAP ON GSC.—For any fiscal year, the GSC may not exceed aggregate utility system net revenues less flow of funds.

(2) DEBT SERVICE AND AVOIDANCE.—Any remaining funds, after deductions for flow of funds and GSC, shall be dedicated to additional debt service or utilized as equity in future capital projects.

7.12 Limitation on utility directives.—The Authority and the CEO/GM, in making all policy and operational decisions over the affairs of the utility system as contemplated under the provisions of this act, shall consider only pecuniary factors and utility industry best practices standards, which do not include consideration of the furtherance of social, political, or ideological

interests. Appropriate pecuniary factors and utility industry best practices are those which solely further the fiscal and financial benefit of the utility system and customers. This provision does not prohibit the establishment and application of rate structures based on utility usage.

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor June 28, 2023.

Filed in Office Secretary of State June 28, 2023.