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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

ROBERT HUTCHINSON and
JEFFREY SHAPIRO,

Petitioners,

v. Case No. 2023-CA-002361

RON DESANTIS, in his official capacity
as Governor of the State of Florida,

Respondent.
_______________________________/

GOVERNOR DESANTIS'S RESPONSE TO ORDER TO SHOW CAUSE

Respondent Ron DeSantis, in his official capacity as Governor of the State of Florida, pursuant to the Court's Order to Show Cause (DE 9) and Florida Rules of Civil Procedure 1.630(e) and 1.140(b), files this Response. In support, the Governor states:

INTRODUCTION

During the 2023 regular legislative session, the Florida Legislature passed CS/HB 1645 ("the Act"), creating the Gainesville Regional Utilities Authority ("GRU" or "Authority") for the purpose of managing, operating, and controlling the utilities owned by the City of Gainesville. Ch. 2023-348, § 2, art. VII, s. 7.01, Laws of Fla. The Authority is governed by five board members, who are appointed by the Governor. *Id.* at s. 7.04(1).

Board members are subject to various eligibility requirements. For instance, the Authority must contain a residential customer, a private nongovernmental customer consuming at least 10,000 kilowatt hours per month of electric usage during the previous twelve months, and three members competent and knowledgeable in fields such as law,

economics, accounting, engineering, finance, and energy. *Id.* Felons may not serve as board members. *Id.* at s. 7.04(2)(c).

Board members must also meet specific residential criteria. All members must maintain primary residence within the electric service territory of GRU's electric utility system and receive GRU electric utility system service throughout their terms. *Id.* at s. 7.04(2)(a-b). Additionally, each board member must "[b]e 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." *Id.* at s. 7.04(2)(d).

Further, the Act dictated how the Governor was to make his initial appointments to the Authority's board. It required the Governor to "issue a public notice soliciting citizen nominations for Authority members within 120 days" after its effective date, and to keep the solicitation period open for at least 30 days after issuing the public notice. *Id.* at s. 7.05(1). The Governor was then required to appoint initial members to the Authority "from among the nominees within 60 days after the close of the nomination solicitation period." *Id.* at s. 7.05(2).

The Act took effect on July 1, 2023. Governor DeSantis made three appointments to the board on September 26, 2023. On October 2, 2023, Petitioners, two GRU customers, filed a writ of quo warranto with this Court seeking an order that the appointments do not comply with the Act's residency and public notice requirements. DE 3. Governor DeSantis made the two remaining initial appointments on October 4, 2023, and Petitioners filed an amended petition on October 9, 2023. DE 10. Later that day, this Court issued an Order to Show Cause why quo warranto relief should not be granted. DE 9.This Court should not grant Petitioner their requested relief because the Amended Petition fails both on procedure and substance.

Procedurally, Petitioners make two fatal errors: (1) failing to join indispensable parties (the Authority members whom they seek to oust), and (2) seeking an extraordinary writ while possessing an adequate remedy at law (a declaratory judgment).On the merits, the Governor's initial appointments complied with the Act's the residency and the public notice requirements. The Act's plain text and all applicable canons of statutory construction belie Petitioners' argument that the Act required the appointments to reflect the ratio of electric meters inside Gainesville city limits. Further, the Amended Petition fails to disclose that the GRU's website gave notice that the Executive Office of the Governor was soliciting citizen nominations at least as early as August 4, 2023. Finally, even assuming that the public notice posted to the GRU's website was insufficient, the Court should still not grant this extraordinary and discretionary writ of quo warranto under these circumstances.

LEGAL STANDARD

The writ of quo warranto "is very narrow in scope and operation and must be employed with caution and utilized only in emergencies" to prevent an impending injury where there is no other appropriate and adequate legal remedy. *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 620 (Fla. 2008) (Lewis, J., concurring); *accord Fla. Dep't of Transportation v. Miami-Dade Cnty. Expressway Auth.*, 298 So. 3d 1261, 1263 (Fla. 1st DCA 2020) (quoting *Mandico v. Taos Constr., Inc.*, 605 So. 2d 850, 854 (Fla. 1992)); *see also Whiley v. Scott*, 79 So. 3d 702, 723 (Fla. 2011) (Polston, J., dissenting) (collecting cases). "Since the nature of an extraordinary writ is not of absolute right, the granting of such writ lies within the discretion of the court." *See Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004). Petitions for extraordinary writs may be dismissed "based on a number of reasons other than the actual merits of the claim." *Id.*

ARGUMENT

I. The Amended Petition Is Procedurally Defective.

a. The Amended Petition Fails to Join Indispensable Parties.

"An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Fla. Dep't of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006). Florida Rule of Civil Procedure 1.140 lists failure to join an indispensable party as grounds for dismissal. The Florida Rules of Civil Procedure apply to extraordinary writ proceedings. *Pro-Art Dental Lab, Inc. v. V-Strategic Grp., LLC*, 986 So. 2d 1244, 1258 (Fla. 2008) ("By being applicable to all suits of a civil nature, the civil rules cover not only law and equity, tort and contract, but also special statutory proceeding under the various extraordinary writs which have been classified as civil in nature.") (quoting Fla. R. Civ. P. 1.010. ed. cmt.).

This lawsuit seeks "a declaration that the Governor's appointment of members to the Gainesville Regional Utilities Authority Board is void *ab initio*; [a] declaration that the individuals who were nominally appointed to the Authority Board have no power or authority to act in that capacity . . . . ; and [relief] [d]isqualifying James Coats IV, Robert Karow and Eric Lawson from serving as Authority members, or requiring the Governor to select one of those individuals to occupy the single position reserved for a non-resident." DE 10 at 31. But it does not join board members Coast, Karow, and Lawson, whom the Petition seeks to oust from office. Because this matter cannot be adjudicated without affecting their interests, the Amended Petition should be dismissed for failure to join indispensable parties.

b. Quo Warranto Is Not Appropriate Because Petitioners Have an Adequate Remedy at Law.

"It is one of the fundamentals of procedure in quo warranto that the writ will not be issued where there is another ample and sufficient remedy provided by law for the relief sought." *Fuller v. Mortg. Elec. Registration Sys., Inc.*, 888 F. Supp. 2d 1257, 1271 (M.D. Fla. 2012) (quoting *State v. Duval Cnty.*, 141 So. 174, 184 (Fla. 1932)); *see also Gryzik v. State*, 380 So. 2d 1102, 1105 (Fla. 1st DCA 1980) ("Where quo warranto is an adequate remedy, it is the only proper remedy.").[1]

In this case, rather than seeking a writ of quo warranto, Petitioners could have sought a declaratory judgment as to the validity of the Governor's appointments. The purpose of the declaratory judgment statute is "to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations, and it should be *liberally construed*." *Martinez v. Scanlan,* 582 So. 2d 1167, 1170 (Fla. 1991) (emphasis added) (citing § 86.101, Fla. Stat. (1989)). Declaratory judgment actions are regularly sought to challenge the exercise of government power. *See Corcoran v. Geffin*, 250 So. 3d 779, 788 (Fla. 1st DCA 2018) (denying writ of prohibition because petitioners "may be entitled to a declaratory judgment" that Florida Legislature breached contract requiring it to match petitioners' donations to Florida State University); *see also Fla. House of Representatives v. Crist*, 999 So. 2d 601, 619 n.13 (Fla. 2008)

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[1] The same rule applies to other extraordinary writs. *See, e.g.*, *Fla. Dep't of Transportation v. Miami-Dade Cnty. Expressway Auth.*, 298 So. 3d 1261, 1263 (Fla. 1st DCA 2020) ("[A] writ of prohibition is not warranted where there is an adequate remedy at law."); *Kellar v. Moore*, 820 So.2d 1015, 1016 (Fla. 1st DCA 2002) (internal citations omitted) ("Just as equitable remedies are unavailable when there is an adequate remedy at law . . . so relief by mandamus is unavailable unless 'no other adequate remedy exists.'"); *Serv. Painting/Amerisure Companies v. Goff*, 724 So. 2d 1262, 1263 (Fla. 1st DCA 1999) ("[W]e conclude that if error did occur, any harm occasioned thereby can be adequately remedied on appeal. Accordingly, the petition for writ of certiorari is denied.").

(Lewis, J., concurring in result) ("A more appropriate remedy [than quo warranto] to challenge an allegedly erroneous or legally invalid decision of the Governor or an agency in an authorized capacity could be a declaratory-judgment action.") (collecting cases).[2]

Because Petitioner could have sought a declaratory judgment invalidating the appointments, the extraordinary writ of quo warranto does not lie and the Amended Petition must be denied. *See State ex rel. Gibbs v. Bloodworth*, 134 Fla. 369, 372 (Fla. 1938) ("The writ of quo warranto will not be issued where there is another ample and sufficient remedy provided by law for the relief sought.").[3]

II. The Amended Petition Fails on the Merits.

a. The Appointments Complied with the Residency Requirements of Section 7.04(2)(d) and (3).

The Act's disputed residency requirements appear in sections 7.04(2)(d) and 7.04(3). Section 7.04(2)(d) states that "[a]ll members of the Authority shall . . . [b]e a qualified elector

[2] An exception to the rule that challenges to state action are "normally reserved for declaratory judgment" exists "where the functions of government would be adversely affected absent an immediate determination by [the Supreme] Court." *Crist*, 999 So. 2d at 607. The fact that Petitioners chose not to file their petition directly with the Supreme Court shows that even they do not think this dispute requires an immediate and final determination by the Court.

[3] Quo warranto is also improper because there is no statutory or common law basis for the Supreme Court's modern rule, first articulated in *Martinez v. Martinez*, that "[i]n quo warranto proceedings seeking the enforcement of a public right 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." 545 So. 2d 1338, 1339 (Fla. 1989). "[T]he common law authorize[d] no person, however interested, to institute quo warranto proceedings in a case of this nature except through the Attorney General." *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1938). Florida statutory law allows a private individual to initiate quo warranto proceedings without the Attorney General—but only if he or she claims title to an office which is exercised by another, and only upon the refusal of the Attorney General to commence the action him—or herself. § 80.01, Fla. Stat. The Florida Supreme Court has expressed openness to correcting its judicial drift in this area. *See Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020) (holding that the *Martinez* quo warranto standing precedent was not clearly erroneous under the *Poole* stare decisis test "[b]ased on . . . the arguments and analysis that ha[d] been presented to [it]" in that case).

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." Section 7.04(3) then requires the composition of the Authority to 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," and provides the following example:

> 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.

The Governor's interpretation of this statutory scheme is straightforward: it allowed the Governor to choose one or more members from outside the Gainesville city limits for the five initial appointments, but thereafter constrains his ability to fill subsequent vacancies with non-Gainesville-residents unless the appointee satisfies the specified ratio of electric meters. The Governor's initial appointments included four members residing outside Gainesville city limits. One of those four appointees, Dr. Tara Ezell, has since resigned. Because less than 40% of GRU electric meters serve customers outside Gainesville city limits, the Governor must fill Dr. Ezell's seat with a Gainesville resident.

Petitioners, on the other hand, working backward from the example provided by section 7.04(3), take the bold positions (1) that the Governor's initial appointments could include "only one non-[Gainesville-]resident member," and (2) that "[t]here are no

circumstances in which three or more non-resident members may be appointed under the law." DE 10 at 29. Petitioners' argument plainly conflicts with the Act's plain text and plain meaning using the ordinary tools of statutory construction.

First, while Petitioners invoke *in pari materia*, that canon does not apply to their argument. "[T]he '*in pari materia*' canon of statutory construction . . . applies only when two different statutory provisions deal with the same specific subject." *Brown v. State*, 848 So. 2d 361, 364 (Fla. 4th DCA 2003); *see also Fla. Dep't of State v. Martin*, 916 So.2d 763, 768 (Fla. 2005) ("The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes[.]"). That is not the case here. Petitioners do not cite any statutes other than the Act; they simply ask the Court to interpret section 7.04(2)(d) based on the example in section 7.04(3). In other words, Petitioners' argument turns on context.

Contextual canons, however, unequivocally favor the Governor. Read as a whole, the Act draws a clear distinction between the Governor's "initial appointments" and subsequent "vacancies." For example, section 7.05(4) requires the Governor to "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." This provision's reference to the "unexpired portion of a term" presupposes that a vacancy arises only after some portion of the term has been served. Furthermore, if creating the Authority created five "vacancies," then section 7.05(4) would have required the Governor to appoint the initial members within 60 days of the Act's effective date, since the remainder of their terms exceeded 90 days. Instead, section 7.05(1) and (2) give

the Governor up to 210 days to "appoint initial members."[4] Thus, it necessarily follows that the initial appointees did not fill "vacancies,", and that vacancies are created only when an initial appointee (or his or her successors) resigns from the Authority.

In addition, the "presumption of consistent usage" canon provides that "[a] word or phrase is presumed to bear the same meaning throughout a text." *Lab'y Corp. of Am. v. Davis*, 339 So. 3d 318, 324 (Fla. 2022) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)). But Petitioners' argument requires this Court to adopt two different interpretations of the phrase "any vacancy" within the same statute. Section 7.04(3) requires "[t]he composition of the Authority [to] be adjusted . . . upon *any Authority vacancy*" to reflect the ratio of electric meters inside Gainesville city limits. The hidden premise of Petitioners' argument is that the initial appointments filled "vacancies." But, as just discussed, the initial members did not fill "any vacancy," as that term is used in section 7.05(4). Consequently, "[t]he position advanced by the petitioners . . . runs up against the presumption of consistent usage." *Id.*

Petitioners' analysis of section 7.04(3)'s example also conflicts with the whole text and harmonious reading canons. *See Lab'y Corp.*, 339 So. 3d at 324. ("Under the whole-text canon, proper interpretation requires consideration of 'the entire text, in view of its structure and of the physical and logical relation of its many parts.'") (quoting Scalia & Garner, *Reading Law* at 167); *Sec'y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, No. 1D2023-2252, 2023

[4] The Governor had 120 days from the Act's effective date to issue a public notice soliciting citizen nominations. Ch. 2023-348, § 2, art. VII, s. 7.05(1), Laws of Fla. The nomination period was required to remain open for at least 30 days. *Id.* The Act gave the Governor 60 days after the close of the nomination period to make the initial appointments. *Id.* at s. 7.05(2).

WL 8291865, at *22 (Fla. 1st DCA Dec. 1, 2023) (Long, J., concurring) ("The harmonious-reading canon states that the 'provisions of a text should be interpreted in a way that renders them compatible, not contradictory.'") (quoting Scalia & Garner, *Reading Law* 180).

Examples by definition are meant to illustrate the operation of a rule under a particular factual scenario, not to demarcate its meets and bounds. Section 7.04(3)'s example explains how the rule would operate if a vacancy (a) left only one Authority member residing outside of Gainesville and (b) the percentage of electric meters serving customers outside of Gainesville exceeded 40%. In that scenario, the Governor would appoint a second non-Gainesville resident. The example then explains that if the ratio subsequently dipped below 40%, the Governor would be required to fill the next vacancy with a Gainesville resident. This example matches the Governor's interpretation of the statutory scheme. In fact, the Governor's appointments office is currently accepting citizen nominations of (and applications from) only Gainesville residents to fill the vacancy created by Dr. Ezell's resignation.[5]

Under the Petitioners' theory, on the other hand, the Governor's initial appointments filled an "Authority vacancy." But if that was true, and if the percentage of electric meters serving customers outside of Gainesville had exceeded 40% at the time of the first appointment, then section 7.04(3)'s example would have required the Governor to "appoint a second member from outside the City boundaries." It goes without saying that the Governor could not have appointed a second non-Gainesville-resident with his first appointment.

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[5] *See* Executive Office of Florida Governor Ron DeSantis Board Seat Application Portal at https://eogforms.eog.myflorida.com/pages/SeatApplication.aspx, as further discussed below.

Similarly, if Petitioners' theory is correct, then the Act required the Governor's first appointment to "adjust" the composition of the Authority to reflect the ratio of electric meters serving GRU customers outside of Gainesville, which would also make no sense. In short, section 7.04(3)'s example contradicts itself if the Act's residency requirement applied to the Governor's initial appointments.

Finally, if it is true, as Petitioners say, that "[t]here are no circumstances in which three or more non-resident members may be appointed under the Law," then section 7.04(2)(d) also makes no sense. That provision states 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." If the Legislature intended to establish a floor *and a ceiling* for the number of non-Gainesville-residents serving on the Authority—as Petitioners allege—section 7.04(2)(d) would have instead stated that "a minimum of one member [*and a maximum of two members*] must be a resident of the unincorporated area of the county or a municipality in the county other than the City of Gainesville." (emphasis added).

In sum, section 7.04(3) did not apply to the Governor's initial appointments, and all of the appointments fully complied with section 7.04(2)(d)'s requirement 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."

b. The Appointments Complied with the Public Notice Requirements of Section 7.05(1).

Section 7.05(1) required the Governor, in making his initial appointments, to "issue a public notice soliciting citizen nominations for Authority members within 120 days after the effective date of this article," and to keep the nomination solicitation period open for at least

30 days after the date of the public notice. Petitioners argue that the initial appointments are void because "either notice was never given at all, or the Governor appointed members to the Board before the thirty day statutory period expired." DE 10 at 30.

Petitioners are incorrect. The Governor's appointments office posted the GRU Authority board positions to its Board Seat Application Portal on July 1, 2023, the day the Act took effect.[6] The Portal is publicly accessible at https://eogforms.eog.myflorida.com/pages/SeatApplication.aspx, and is the sole means by which the Executive Office of the Governor (EOG) publicizes open board positions. A notice announcing that EOG's appointments office had opened the Application Portal and was soliciting citizen nominations was then posted directly to the GRU's website. *See* Exhibit A. While EOG does not possess a record containing the exact date this notice was posted to the GRU website, Internet resources accessed in response to the Amended Petition show that the notice was posted no later than August 4, 2023. *Id.* at 1. The notice, which was (and still is) available at https://www.gru.com/AboutGRU/TheGRUAuthority.aspx, states:

Who chooses the members of the GRU Authority?

> The governor appoints five members to the board based on specific criteria detailed under **article 7.04** of the new law. The nomination process is currently under way and remains open for at least 30 days from July 1. Those interested in applying or nominating a board member can navigate to the Gubernatorial Appointment link on **flgov.com**.

Clicking the "article 7.04" hyperlink takes users to the enrolled version of CS/HB 1645. The other hyperlink ("flgov.com") takes users to EOG's website, where a graphic stating "CLICK

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[6] New facts may be raised in a response to a petition for an extraordinary writ. *See Deese v. Cochran*, 139 So. 2d 429, 430 (Fla. 1962) ("From the allegations of the petition for writ of habeas corpus and the return filed in response to the writ this court issued, we get the salient facts.") (emphasis added).

HERE to APPLY to a GUBERNATORIAL APPOINTMENT" is prominently displayed. The graphic navigates to a page that provides the EOG appointments office's email address and telephone and fax numbers, and a link to the Application Portal.

The GRU website entry clearly constituted a "public notice soliciting citizen nominations for Authority members" as required by section 7.05(1).[7] It was posted within 120 days of the Act's effective date (July 1, 2023), and the GRU website entry was posted no later than August 4, 2023. By the same token, the citizen nomination period remained open for at least 30 days prior to the initial appointments made on September 26, 2023, and October 4, 2023. Consequently, Petitioners' public notice argument should fail.[8]

c. Even If the Appointments Had Failed to Comply with the Public Notice Requirements, Relief in Quo Warranto Should Be Denied.

Even if the Court determined EOG did not satisfy the public notice requirement, it should still deny quo warranto relief under the circumstances.

"The nature of an extraordinary writ is not of absolute right." *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019). "Although the writ of quo warranto—an extraordinary writ—is potentially available in various circumstances, the granting of an extraordinary writ lies within the discretion of the court." *Warren v. DeSantis*, 365 So. 3d 1137, 1142 (Fla. 2023). As such, the Florida Supreme Court has repeatedly emphasized that "extraordinary writ petitions such as petitions for mandamus, prohibition, all writs, habeas corpus, and quo warranto could certainly

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[7] The text of the statute does not dictate how or where the public notice must be issued, and Petitioners acknowledge that the notice could properly have been issued in "local newspapers in general circulation in Alachua County" or on "the Internet." DE 10 at 12 n.6.

[8] Petitioners' reliance on their counsel's September 6, 2023, public records request is misplaced: EOG possessed no responsive records not because no public notice existed, but rather because EOG is not the custodian of the GRU website.

have relief denied based on a number of reasons other than the actual merits of the claim." *Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004). In this case, there are several reasons not to grant relief in quo warranto, regardless of the merits of Petitioners' public notice claim.

First, Petitioners fail to cite a single decision where a Florida court removed an otherwise eligible appointee simply because the official did not comply with a public notice requirement. Instead, they rely mostly on decisions invalidating zoning ordinances and tax deed sales. *See* DE 10 at 18-19 n.12. They also discuss *Thompson v. DeSantis*, but that case is inapposite because it involved a Florida Supreme Court appointee's *eligibility*, not the public notice accompanying an appointment. SC20-985, 2020 WL 5494603 at *1–2 (Fla. Sept. 11, 2020). Cognizant of their unpersuasive authorities, Petitioners cite a Third District Court of Appeal case from 1984 which opined that the use of quo warranto "may be extended to new situations on a proper showing." *Belle Island Inv. Co. v. Feingold*, 453 So. 2d 1143, 1146 (Fla. 3d DCA 1984). More recent decisions from the First District Court of Appeal and the Supreme Court, however, encourage restraint: "the common-law writ of quo warranto is . . . very narrow in scope, to be employed with great caution and utilized only in emergencies." *Fla. House of Representatives v. Crist*, 999 So. 2d at 620 (Lewis, J., concurring)*; see also Whiley*, 79 So. 3d at 723 (Polston, J., dissenting) (collecting cases); *L.T. v. State*, 296 So. 3d 490, 496 (Fla. 1st DCA 2020).

Second, voiding the Governor's initial appointments based solely upon how or where his office posted the public notice soliciting citizen nominations would only kick the can down the road without changing the outcome. After reissuing a public notice, the Governor would

likely reappoint the same members. Moreover, even if the Court removed the Authority members, the de facto officer doctrine would protect their prior actions.[9]

Further, while standing principles such as redressability are generally inapplicable in quo warranto proceedings, courts do consider whether granting the discretionary writ would promote the public interest. *See State ex rel. Haft v. Adams*, 238 So. 2d 843, 845 (Fla. 1970) ("It is an accepted doctrine that courts in the exercise of their discretionary power to issue extraordinary writs will look to the public interests that may be concerned.").Granting the Petitioners' relief would undermine the public interest. First, forcing the Governor to reissue a public notice would likely violate the Act's requirement that the initial appointments be made within 210 days of its effective date.[10]

Second, removing the board members could leave the Authority without a quorum for at least 30 days, creating a potentially disastrous situation for GRU customers.[11] *See Haft*, 238 So. 2d at 845 ("The court may properly refuse to issue the writ if its issuance would result in confusion and disorder, or an injury to the public that outweighs the relator's individual right

[9] "A de facto officer is '[o]ne who, while in actual possession of the office, is not holding such in a manner prescribed by law.'" *The Fla. Bar v. Sibley*, 995 So. 2d 346, 3551 (Fla. 2008) (quoting Black's Law Dictionary 375 (5th ed.1979)). "A de facto officer . . . may serve if the only defect in title is a failure to comply with some requirement or condition such as executing an oath or doing so in accordance with a prescribed form." *Id.* The alleged public notice defect here does not go to eligibility—it is procedural, akin to failing to take an oath or submit a form. "The law validates the acts of de facto officers as to the public and third persons on the ground that, though not officers de jure, they are in fact officers whose acts public policy requires should be considered valid." *Id.*

[10] *See* note 1, *supra*. January 27, 2024, is 210 days after the Act's effective date of July 1, 2023. Unless this litigation—including any appeals—concludes before December 27, 2024, Petitioner's requested relief could not be granted without disregarding the statutory deadlines for the initial appointments found in section 7.05(1) and (2).

[11] *See* DE 10 at 17 n.11.

to the relief sought."). Put differently, granting the writ here could *create* an emergency where none existed.

Third, "a petitioner who unreasonably delays filing a petition for writ of quo warranto may see that petition denied on that basis." *Warren*, 365 So. 3d at 1142. The Application Portal was made available as early as July 1, 2023. Notice informing the public that the Governor was soliciting citizen nominations for the initial appointments was posted to the GRU's website no later than August 4, 2023, and perhaps much earlier. If Petitioners were dissatisfied with the sufficiency of this public notice under section 7.05(1), they had plenty of time to challenge it before the Governor's first three appointments on September 26, 2023. Their failure to do so prejudiced the judicial process and this Court's ability to fashion reasonable relief. *See Thompson*, 301 So. 3d at 194 n.10 ("This Court has also recognized that the doctrine of laches can bar consideration of unreasonably delayed writ petitions where the delay prejudices the judicial process.") (citing *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997)).

In conclusion, EOG strictly complied with the public notice requirements in section 7.05. But even if EOG had not strictly complied, it would be inappropriate for the Court to grant the discretionary and extraordinary remedy of quo warranto under these circumstances.

CONCLUSION

For the reasons discussed above, the Court should deny the Amended Petition for Writ of Quo Warranto.

Respectfully submitted December 11, 2023,

RON DESANTIS
Governor

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts E-Filing portal, which serves a copy to all counsel of record, on December 11, 2023.

/s/ *Nicholas J.P. Meros*
Deputy General Counsel

EXHIBIT A

ervice
er Service
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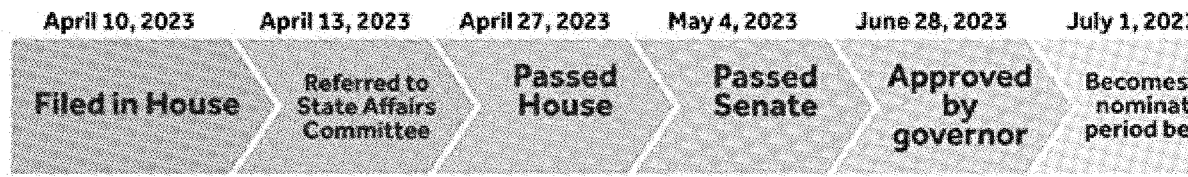
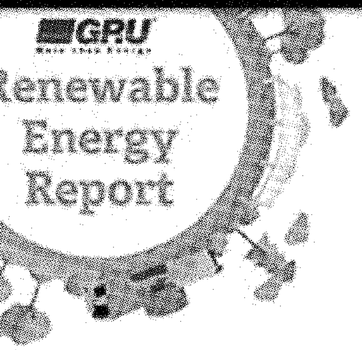
My Bill
ts & Services

HB-1645 Timeline



A new law took effect on July 1, 2023, that creates a governor-appointed, five-member board called the Gainesville Regional Utilities Authority to oversee GRU. GRU remains a public utility and continues to provide safe and reliable electric, water, wastewater, natural gas and telecommunications services to our community. We are confident this transition will occur withou impacting these services or how we do business with our customers.

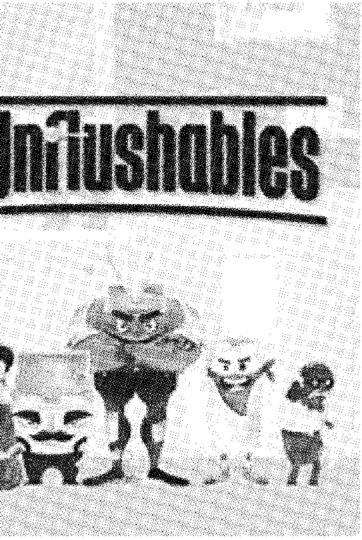
MyHome/TheGRUAuthority.aspx Go JUL AUG SEP 04 2022 2023 2024 About this capture



Hall. This meeting and all future Authority meetings will be publicly noticed and open to the public. In the interim, GRU is focused on facilitating a smooth transition from the Gainesville City Commission to the Authority.

Are any other municipal utilities run by independent boards?

Yes, including JEA in Jacksonville, OUC in Orlando and KUA in Kissimmee



Who chooses the members of the GRU Authority?

The governor appoints five members to the board based on specific criteria detailed under **article 7.04** of the new law. The nomination process is currently under way and remains open for at least 30 days from July 1. Those interested in applying or nominating a board membe can navigate to the Gubernatorial Appointment link on **flgov.com**.

Does the transition to an independent board impact GRU rates?

The GRU Authority establishes and amends rates and prepares and submits an annual budget to the City Commission at least three months

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o pay your GRU bill. are experiencing. or water service.

Questions about the GRU Authority? »

new law took effect on July 1, 2023, that creates a governor-
ppointed, five-member board called the Gainesville Regional
Itilities Authority to oversee GRU.

GRU Upgrading Meters »

GRU is replacing all electric, gas and water mete
AMI meters that can be read remotely and prov
customers with more control of their monthly u