



GIANCARLO & WALD, PLLC
ATTORNEYS AT LAW

3109 Stirling Rd., Ste. 200
Ft. Lauderdale, FL 33312
(954) 842-5232

JGiancarlo@GiancarloWald.com

July 29, 2022

VIA ELECTRONIC DELIVERY

City of Cooper City Commission
9090 SW 50th Place
Cooper City, FL 33328

Re: Decision to Appeal the Order in Cooper City v. Giancarlo

Dear Mayor Ross and Commissioners Green, Meltzer, Pulcini, and Shrouder:

First, I believe it is unfortunate that we now find ourselves in a position that necessitates a special commission meeting to address this matter. I assure you that, if I did have pertinent information that could potentially cause some or all of you to reconsider your position on whether or not to appeal the Court's July 25th ruling, I would not have filed an injunction or raised the issues contained therein. I do, however, believe that my motion for injunction and forcing of this special commission meeting is in the best interests of Cooper City (the "City") and its residents.

The most important point that I would like to make here is that I believe that the anticipated costs discussed at Tuesday night's Commission meeting were grossly underestimated. City Attorney Horowitz ("Jacob") estimated that the original filing and hearing resulted in fees in the \$6,500 range, and that the appeal would be approximately the same. Obviously, you should confer with Jacob on this, but that estimate assumed little or no fight on my side. There was not much a fight on either side, in pleadings or during our hearing, and neither party filed any substantive motions. I agreed to this simplified and expedited process because this entire issue had been presented as a simple and legitimate question of interpretation. Indeed, I was under the impression that this would not be an adversarial issue whatsoever and that the City simply wanted a court of competent jurisdiction to opine on whether the City Charter does or does not allow me to run for District 1 Commissioner. The simplicity of the issue, as presented to me, is precisely why I agreed to an expedited and simplified process and did not file any opposing motions and only file a memoranda of law for the hearing. I now realize that I was misled and that the City does take a very strong position on my ability to run and, as such, will no longer agree to limit my right to raise substantive issues with the trial court or any appellate court. Make no mistake, I felt it was important for the City to obtain a ruling to protect it from legal challenges after the election. I wanted the City and residents to be protected even if that meant that I risked not being allowed to run. As you are now aware, I have already filed an injunction to which Jacob had to review and confer with the Commission on and now, he will be attending a special meeting. I will also be filing several motions asking to court not to allow the appeal, which will also have to be opposed by Jacob and heard in court. Additionally,



GIANCARLO & WALD, PLLC
ATTORNEYS AT LAW

3109 Stirling Rd., Ste. 200
Ft. Lauderdale, FL 33312
(954) 842-5232

JGiancarlo@GiancarloWald.com

if I lose at appellate level, that would not necessarily resolve the case: it would simply reverse the ruling issued by the Circuit Court and send it back to the lower court with instruction. Indeed, the entire appellate process could drag on and on for some time, including a panel from the 4th DCA, a larger panel from the 4th DCA, and the Florida Supreme Court, all with the possibility of it just being sent back to the trial court. As you can see, a \$6,500 estimate to appeal is not really the full story or the full scope of costs and expenses that the City can anticipate. The most significant risk, cost wise, would actually be if the case cannot be resolved before the election. If I were to win the election and the Court then ruled I did not qualify, the City would need to run a special election that would likely cost over \$100,000. Further the Appellate court could rule that neither candidate is qualified which would force a special election. At the special election, I would undoubtedly be allowed to run, so this process would be an exercise in futility. In my estimation, if you choose to proceed with this appeal, expect it to cost Cooper City taxpayers a minimum of \$15,000-\$20,000, substantially more than it already has and costs could be as much as \$150,000-\$200,000 or more. This all could be avoided, if the Commission stays to its original claim: that it was not taking a position and that it simply wanted a court to interpret conflicting qualifying language.

The argument made on the dais at Tuesday's meeting was suddenly that the Charter has not been followed or that it has been shredded or "disintegrated." I wholly disagree with this idea. Indeed, the Commission and Jacob agreed multiple times that a literal reading of the Charter would not be appropriate. A literal reading would mean neither myself nor Jeremy Katzman would be allowed to run in District 1. On June 13, 2021, neither of us were residents of District 1 as "required" under the Charter. As opined in the City Attorney's legal memorandum, a literal counting is not appropriate. As a reminder, I only argued a slightly more liberal method of counting than was recognized in the Jacob's memorandum. Further, by updating the City Ordinance, you can prevent this issue from occurring in the future and put the onus on an individual to sue to be qualified as opposed to the City having to file suit to question a candidate's qualifications. Through updating the ordinance and possibly the City Charter, this could be a one-time issue that surely isn't worth the risk of additional costs - especially since a ruling that the City can rely upon has already been obtained.

I also believe that the prospects of winning on appeal were significantly overstated. While I am not an appellate attorney, I do not see what case can even be made at the appellate level because no argument was presented by the City at the Circuit Court level. Appellate courts do not consider new arguments for the first time - they must be raised at the Circuit level first and made part of the record. Moreover, we have all agreed, publicly and privately, that there is no controlling law on this subject, so the idea that there is a slam dunk legal argument seems unrealistic. Jacob will be the first to tell you that no actual argument was made against my qualification. The City presented the facts and multiple times on the record and stated that it had no position other than that it sought to have the Charter interpreted. The City got what it asked for from the Court, an interpretation of the City Charter and a determination of whether I



GIANCARLO & WALD, PLLC
ATTORNEYS AT LAW

3109 Stirling Rd., Ste. 200
Ft. Lauderdale, FL 33312
(954) 842-5232

JGiancarlo@GiancarloWald.com

qualified. How can the City appeal a ruling they stated they had no position on? Unless of course, there is more than meets the eye.

To that end, an additional issue here may be that three of the five members of the Commission have donated to my opponent's District 1 Commission campaign. These donations were not disclosed prior to the discussion on the issue and I believe that there should have been more transparency on the issue and residents should have been told about the thousands of dollars in donations my opponent's campaign received from three of the four who essentially voted to ask an appellate court to allow their candidate to run unopposed. Allowing three financial supporters of one candidate to vote to use City funds to try disqualify the only other candidate from running certainly doesn't look right regardless of whether it is being addressed as a Charter issue or not. I am no expert on municipal ethics rules, but I believe that voting or participating in this issue could be a possible ethics violation, conflict of interest, or abuse of power for the three donors. Even if it is not, I am sure all of you would agree it is important that you do what is right for the City, and avoid any appearance of impropriety.

The City has legal coverage from the court order that has been issued. It is in the best interests of the City and its residents to let the residents of District 1 decide who will represent them.

I have attached a copy of all pertinent court documents that can be included in the appellate record, and the proposed order that was submitted by the City to the Judge per her instructions. You will see at no point did the City argue that I should not be qualified, therefore the City cannot now make that argument on appeal. I strongly urge to you reconsider your position and act in the best interest of the residents.

Thank you for your time and consideration to this matter. I look forward to seeing you all on Tuesday.

Sincerely,
Joshua Giancarlo, Esq.