

**IN THE CIRCUIT COURT
OF THE 19th JUDICIAL CIRCUIT
IN AND FOR
INDIAN COUNTY, FLORIDA**

CASE NO.: 31-2020-CA-_____XXXXXX

312020CA000475XXXXXX

ASSIGNED DIVISION: CIVIL

DAMIEN H. GILLIAMS,

Plaintiff,

v.

**TRACEY COLE, individually and as Chair of
SEBASTIAN VOTERS AGAINST GILLIAMS AND PARRIS,
JEANETTE WILLIAMS, in her official capacity,
LESLIE ROSSWAY SWAN, in her official capacity, and
PAMELA PARRIS, an interested party, and
CHARLES MAUTI, an interested party,**

Defendants.

**VERIFIED COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT
AND OTHER RELIEF**

Plaintiff, DAMIEN H. GILLIAMS (hereinafter “Plaintiff” or “Councilman”), files this Complaint against Defendants, TRACEY COLE (hereafter “Cole”) as Chair of SEBASTIAN VOTERS AGAINST GILLIAMS AND PARRIS, a political committee (hereafter “Recall Committee”), JEANETTE WILLIAMS in her official capacity as TOWN CLERK of the City of Sebastian, Florida, (hereinafter “City Clerk”); and LESLIE ROSSWAY SWAN in her official capacity as SUPERVISOR OF ELECTIONS for INDIAN RIVER COUNTY, (hereinafter “Supervisor of Elections”. PAMELA PARRIS and CHARLES MAUTI are named as possible interested parties.

This is an action for both a temporary and permanent injunction to enjoin further proceedings in the effort to recall Plaintiff from office as a Council Member, actions for declaratory judgment to determine the rights and responsibilities of the parties, including a speedy determination concerning the facial validity and legal sufficiency of the purported petition for recall of Plaintiff pursuant to Fla. Stat. 100.361, and also an action pursuant to Fla. Stat. s.99.097 seeking a verification of each petition due to fraud and irregularities concerning the collection of the petitions. Further, Plaintiff requests an immediate hearing on his request for a temporary injunction enjoining further recall proceedings until this Court determines the legal sufficiency of the petition.

As grounds, Plaintiff states as follows:

NATURE OF THE CASE, JURISDICTION AND PARTIES

1. This is an action for temporary injunctive and declaratory relief and all persons and/or legal entities whose interests are directly affected by the outcome of this action have been named as parties. Accordingly, this court has subject matter jurisdiction pursuant to sections 26.012 and 86.011, Florida Statutes and the causes of action exceed \$30,000 exclusive of attorney's fees, interest and costs.

2. The Court has jurisdiction pursuant to Section 26.012 Fla. Stat., because Plaintiff is seeking an injunction to enjoin further proceedings in the efforts to recall the Plaintiff from his position as Council Member of the City of Sebastian, and pursuant to Section 86.011 Fla. Stat., because Plaintiff is seeking a declaratory judgment to determine the rights and responsibilities of the parties, including the legal sufficiency of the petition for recall pursuant to Fla. Stat. 100.361.

3. Venue is proper in Indian River County, Florida, pursuant to section 47.011, Florida Statutes, because the cause of action accrued in the City of Sebastian, Indian River County, Florida.

4. Plaintiff, DAMIEN H. GILLIAMS, is a natural person who is the elected as a City Council Member of the City of Sebastian, a municipality located in Indian River County. Plaintiff brings this action in his indicial capacity and in his official capacity as the elected Councilman of the City of Sebastian as there is a need for a declaration of the parties' right as they pertain to the legal sufficiency of the Petition Document, as a matter of law, as well as the parties' need for speedy hearing and immediate determination of Plaintiffs rights as an elected official of the City of Sebastian.

5. Defendants, TRACEY COLE, ("Cole") is a natural person who resides in Sebastian, Indian River County and upon information and belief is the Chairman of the political committee SEBASTIAN VOTERS AGAINST GILLIAMS AND PARRIS ("Recall Committee") and Defendant, Recall Committee, purports to be a political committee located in the City of Sebastian, Florida.

7. Defendant, JEANNETTE WILLIAMS ("City Clerk"), is a natural person who resides in Indian River County, and is the City Clerk of the City of Sebastian with the responsibility for, among other things, serving as the City's official records custodian as well as publishing and posting notices, ordinances, and other public documents in accordance with Florida law. The City Clerk is named as a party defendant in this lawsuit solely because of her ministerial duties required under section 100.361, Florida Statutes, which include receiving recall petition forms and immediately submitting such petitions to the Supervisor of Elections.

8. Defendant, LESLIE ROSSWAY SWAN, ("Supervisor of Elections") is a natural person who resides in Indian River County and is also currently employed as the Indian River County Supervisor of Elections, with responsibility for supervising and administering the conduct of municipal recall elections in Indian River County, including among other things, determining whether a recall petition contains the requisite number of verified and valid signatures. The Supervisor of Elections is named as a party defendant in this lawsuit solely because of her ministerial duties required under section s.100.361, Florida Statutes.

9. PAMELA PARRIS, is a natural person who is elected as a City Council Member of the City of Sebastian, a municipality located in Indian River County, and may have an interest in the outcome of this matter as a target of the Recall Committee and should be brought before this Court as a party plaintiff under the Rules of Civil Procedure.

10. CHARLES MAUTI, is a natural person who is elected as a City Council Member of the City of Sebastian, a municipality located in Indian River County, and may have an interest in the outcome of this matter as a target of the Recall Committee and should be brought before this Court as a party plaintiff under the Rules of Civil Procedure.

GENERAL ALLEGATIONS

11. On or about July 29, 2020, Defendants, Cole and Recall Committee, submitted the Petition Document to the City Clerk purporting to initiate final proceedings to recall and remove Plaintiff, Gilliams, and also Parris and Mauti, as City Councilmen through a recall election, pursuant to section 100.361, Florida Statutes. A true and correct sample of the Petition Document is attached hereto as Exhibit "1".

12. The verbatim statement of the grounds for recall in the Petition Document are:

This petition is being circulated for the purpose of recalling Damien Gilliams, Council Member for the City of Sebastian, to section 100.361 - Municipal Recall, Florida Statutes, and per section 2.12 of the City of Sebastian Charter. We, the electors of the City of Sebastian, wish to recall Council Member Damien Gilliams based on Malfeasance (100.361(2) (c) (1)). Council Member Damien Gilliams, on Wednesday, April 22, 2020, conducted a "City Council Meeting," in secret, without public notice, public input and the knowledge of the entire City Council or Charter Officers such as the City Manager, City Attorney, or City Clerk. Council Member Damien Gilliams through his signature, read and affirmed he understood the City Charter for the City of Sebastian as well as, section 286.011 - Public meetings and records, Florida Statutes. Additionally, Council Member Damien Gilliams took an oath to uphold the Constitution of the State of Florida. Therefore, we feel he is unfit to continue as Council Member and wish to recall his elected position.

13. The Petition Document is legally insufficient for several reasons and as such the Plaintiff/Councilman should not face removal from office. As stated by the Florida Supreme Court, "the present legislative scheme protects public officials from being ousted when illegal grounds provide the basis for recall ... Accordingly, public officials should not face removal from the office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute." *Garvin v. Jerome*, 767 So.2d 1190 (Fla. 2000).

The Petition Document is Invalid on Its Face Because It Does Not Provide Legally Sufficient Reasons for a Recall

14. The Petition Document does not provide legally sufficient grounds for recall under Fla. Stat. s.100.361(2)(d)(1). The Petition Documents states "**based on Malfeasance (100.361(2) (c) (1)**" (emphasis added). Section 100.361(2)(c)(1) does not exist and typographical errors are not permissible with respect to any Petition/Initiative required to come before the electorate.

15. The Petition also creates illusory City Charter recall rights reciting to section 2.12 of the City of Sebastian Charter, in the first line of the Statement of Reason For Recall, where at Art. II, section 2.12 of the Charter of the City of Sebastian, it clearly reads,

Sec. 2.12. - Procedure.

(a) Meetings. **The city council shall meet regularly at least once a month** at such times and places as the city council may prescribe by resolution. Special meetings of the city council may be held on the call of the mayor or any council member. There shall be at least twenty-four (24) hours advance notice of any special council meeting called and said meetings shall only be held after 5 p.m. If a public emergency exists any council member or charter officer may call a special meeting, and the advance notice requirement as well as the time restriction shall be waived. All city council meetings shall be public meetings, except as otherwise permitted by law.

(b) Rules and journal. The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting may be by voice vote, except that a roll call vote shall be required on appropriation of funds, for the approval of an ordinance or upon any motion upon the call of any council member. The ayes and nays on each roll call vote shall be recorded in the minutes of the meeting. Three (3) members of the city council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent council members in the manner and subject to the penalties prescribed by the rules of the city council then in force. No action of the city council, except as otherwise provided in this Charter, shall be valid or binding unless adopted by the affirmative vote of three (3) or more council members.

(emphasis added).

15. As grounds for the alleged violation of section 2.12, the Petition Document charges the Plaintiff with malfeasance on the alleged ground **that he conducted** a “City Council Meeting” in secret. However, the City Charter at 2.12 requires the City Council to meet at least once a month and in April, the City Council had not scheduled to meet until April 22, 2020. Additionally, the record is quite clear that the Plaintiff had requested a special meeting as found in Case No. 2020-CA-275. Under Fla. Stat. § 100.361, a recall election is impermissible where the alleged misfeasance by a municipal official consists of lawful actions done in a proper and lawful manner and it is up to the Courts to decide that issue.

16. The Constitution of the State of Florida at Art. IV, Sec. 7(c), requires a municipal officer to be indicted of a crime. The grounds of malfeasance would require a crime that is indictable. Indictments are only issued by the Grand Jury.

The Signature Collection Process Employed by Recall Committee Is Tainted With Fraud and Deceit

17. In addition to the legal insufficiency of the Petition Document on its face, the recall efforts of Recall Committee are also tainted with fraud and deceit in the signature collecting process, thus violating Fla. Stat. 100.361(2)(e).

18. Fla. Stat. 100.361(2)(e) requires that each petition form be witnessed by a person who can verify they saw each person sign the petition, that each signature appearing on the petition is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

19. Among other things, Recall Committee used Christopher Nunn, a Co-Chair or Vice Chair of the Recall Committee, to canvass neighborhoods and allegedly witness signatures of the Sebastian residents as they signed the recall petition. Christopher Nunn formally resigned from the Recall Committee on July 20, 2020.

20. Plaintiff's investigation has revealed other irregularities and indications of fraud on the part of Recall Committee in obtaining signatures.

21. At least one resident of the City of Sebastian has produced to Plaintiff a FaceBook feed showing messages between a "Mark N Dot Suttle" (hereinafter referred to as Mr. Suttle) and Charles Nunn, a Cole operative and member of the Recall Committee, where Mr. Suttle asks if he can witness his spouses signature and Mr. Nunn's reply comment is "no spouse, any other adult, **or leave empty and I will witness them.**" Mr. Nunn followed his own Face Book comment with

“You can drop off at my house if local or mail if not”. These acts by Mr. Nunn are in direct violation of s. 100.361(2)(c), Fla. Stats. (emphasis added).

22. Notwithstanding the illegality of the Petition Document that was sworn by Cole, the Defendant, City Clerk submitted said petitions to Defendant, Supervisor of Elections, on or about July 29, 2020 and the Defendant, Supervisor of Elections issued a “Batch Certification” of 3398 signatures rejecting 89 including 16 as duplicates.

23. On Friday July 31, 2020, the Plaintiff appeared at the office of supervisor of elections at 3:55pm and spoke with Cathy Boyle at the front desk. The Plaintiff had asked to observe the recall petitions from City of Sebastian and Ms. Boyle she said no and that she would have to get Leslie Swan on the phone and get permission. The Plaintiff waited to speak to Mrs. Swann. The Defendant, Supervisor of Elections first said yes to the Plaintiff that he would have to stay 6 feet away from signature verifiers and then changed her mind and said no that the Plaintiff would have to come back on Monday morning. Plaintiff then requested a time for Monday and she would not give one and stated that she would call Plaintiff and let him know a time on Monday. While talking to Plaintiff, she said everyone in the office is helping to verify the signatures and taking turns while working the phones and in between doing their work. Cathy Boyle also pointed to a lady by the name of Maureen Hogel who was working the petitions. Mrs. Swann also refused to permit the Plaintiff to go back to take pictures where petitions were being counted and verified signatures. The Plaintiff did not receive a call on Monday Aug 3, 2020 by the Supervisor of Elections or any of her employees.

The Signature Collection Process Employed by Recall Committee Was Premature

24. The Recall Committee was formed by Cole, Nunn and others on March 11, 2020.

25. The Plaintiff was sworn into office on November 20, 2019 to a two (2) year term of office.

26. Fla. Stat. s.100.361(8) states that no petition for recall can be commenced until after an elected municipal official has served one quarter of their elected term of office.

27. The Defendant Cole and Recall Committee opened the petition on May 20, 2020.

28. The Defendant Cole and Recall Committee were one (1) day early than completion of one quarter of the Plaintiff's term of office when they started the recall process as May 21, 2020 was the date after the Plaintiff completed one quarter of his current term.

**The Initial Petition Requesting Resignation Or A Statement of Defense Transmittal
By The City Clerk Was Served At Her Direction By The Sebastian Police Department On
A Sunday**

29. On June 12, 2020, the City Clerk certified the Petition Document that was signed by Defendant Cole and witnessed by and in the presence of the Defendant City Clerk on May 29, 2020.

30. On Sunday, June 14, 2020, the Plaintiff was served by an officer of the Sebastian Police Department at 11:36 am. The envelope containing the notice of Petition Document taken within moments of service was documented with a photo identified as 20200614_113654.jpg.

31. The City Clerk failed to sign a proper certification of service and indeed left the certification blank and unsigned by her and Plaintiff as well as the Chief of Police and instead she or someone at her direction hand wrote in "Served by Sgt. Marcinik on 6/14/20".

32. Florida Statutes, s. 48.20 states,

Service or execution **on Sunday of any** writ, **process**, warrant, order, or judgment **is void** and the person serving or executing, or causing it to be served or executed, is liable to the party aggrieved for damages for so doing as if he or she had done it without any process, writ, warrant, order, or judgment. If affidavit is made by the person requesting service or execution that he or she has good reason to believe that any person liable to have any such writ, process, warrant, order, or judgment served on him or her intends to escape from this state under protection of Sunday, any officer furnished with an order authorizing service or execution by the trial court judge may serve or execute such writ, process, warrant, order, or judgment on Sunday, and it is as valid as if it had been done on any other day.

(emphasis added)

33. The City Clerk failed to request a Court Order authorizing service of the Petition Document on the Plaintiff contrary to the provision of s.48.20, Fla. Stats.

The City Clerk's Transmittal Of The Final Petition After Defensive Statement Demand A Resignation Reply Within Five Days Inclusive Of Weekend.

34. On August 4, 2020, the City Clerk had personally served the Plaintiff with the Final Petition Document (Round 2).

35. In her transmittal letter to the Plaintiff, the City Clerk expressed,

F.S.100.361(4) provides that within five days after service, you may resign from office. Please be advised that these are five calendar days, **including weekends**.

(emphasis added)

36. Florida law, both by Attorney General Opinion at AGO 94-37 and Chapter 120, Florida Statutes *inter alia* F.A.C. 28-106.103 provides a different day counting rule that all comport with the Florida Rules of Judicial Administration (previously the Rules of Civil Procedure) such that the day of service together with weekends and legal holidays are not counted where the period to act or respond is less than seven (7) days (Rule 2.514(a)(3), Fla. R. Jud. Admin.).

37. None of the sections contained in Chapter 100, Florida Statutes provide for a different counting method such that the Florida Legislature intended day counting to comport with the court rules on counting days per AGO 94-37.

The Campaign Reports Are Violative Of Chapter 106, Fla. Stats.

37. Even despite clear and convincing evidence that initiative signatures were not properly witness as alleged in paragraph 21, the Recall Committee including Cole and others involved with the Recall Committee committed widespread campaign financing violations during the petition signature processes.

38. The campaign financing reports are on file with the City Clerk.

39. The Recall Committee through Cole, and the named Treasure, Michael Goodfellow, have filed reports for campaign periods M3 – M6 at the time of the filing of this Complaint.

40. Nowhere contained in any report is there an expense entry for the printing of the petitions used for signatures under round 1 and round 2 nor is there any indication of an in-kind donation to cover the act of printing the petition cards including the defensive statement in round 2.

41. Equally as important, the former Chief of Police for the City of Sebastian, Michele Morris, has stated openly at a public meeting of the Sebastian City Council that she had personally paid for the City Park permit fee to allow the gathering of several tables to present petitions to sign and that permit fee for May 20 – 22, 2020 is not listed in any of the filed campaign reports.

42. There are other campaign finance violations where there is no indication within the campaign reports of donations or expenses as to any lending or use of tents and tables and coolers at the City Park ballot gathering from May 20 – 22, 2020 to collect signatures.

43. The Recall Committee is subject to the provisions of Chapter 106, Fla. Stats. pursuant to s. 100.361(2)(c), Fla. Stats.

The Recall Petitions Were Bundle Contrary To Florida’s Ballot Initiative Provisions And Charles Mauti Was Added To A Petition Recall Initiative Despite The Recall Committee Name Never Changed

44. Florida Statutes s. 100.371(3) mandates that no petition form that is circulated for signature may be bundled.

45. Upon information and belief, the Defendant Recall Committee had established tables containing all three (3) petitions of removal of Councilman Gilliams, Councilman Parris and Councilman Mauti and at various and sundry times during the signature gathering process would present all three petitions to a voter at the same time.

46. The recall petitions for signature did not identify the name of the proper committee and indeed, a separate committee to recall each candidate was required as a matter of law.

Chief Judge of This Circuit Has Set An Election Before The Five Day Period To Resign Rule

47. On August 6, 2020, Chief Circuit Judge Lawrence Mirman issued the date of the recall election based on the Petition Documents for September 9, 2020.

48. Florida Statutes, s. 100.361(4), in part states,

In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located **shall fix a day for holding a recall election** for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60

days **after the expiration of the 5-day period last-mentioned** and at the same time as any other general or special election held within the period.

49. In this matter, the Chief Judge of Circuit did not wait for the five (5) day resignation time frame, and the date calculation would set the election at September 12, 2020 such that the election is set for three (3) days earlier than provided by law. See Rule 2.514(a)(3), Fla. R. Jud. Admin.)

COUNT I: INJUNCTIVE RELIEF

(Against All Defendants)

50. Paragraph 1 through 49 are hereby re-alleged as fully as if they were set forth herein.

51. **Irreparable Harm.** The Petition Document which was submitted to the City Clerk by Defendant, Recall Committee purports to allege malfeasance on the part of the Plaintiff, but for the reasons previously cited, the Petition Document is legally insufficient as a matter of law and cannot serve as a lawful means of recalling or removing Plaintiff from his elected position as City Councilman. To do so would permit the City Clerk and Supervisor of Elections to be used by Defendant, Recall Committee to perpetrate a legal fraud upon both Plaintiff by acting upon an illegal position. If that occurs, Plaintiffs will suffer irreparable harm.

52. **No Adequate Remedy at Law.** There is no full, complete and adequate remedy available at law for Plaintiffs within the time constraints imposed by the requirements of section 100.361 (Municipal Recall), Fla. Stat.

53. **Clear Legal Right to Relief Requested/Likelihood of Success on the Merits.** Plaintiff is the office holder against whom Defendant, Recall Committee's Petition Document was submitted to the City Clerk, seeking to recall and remove Plaintiff from elected office, and as such

is the person at risk of suffering irreparable harm. Plaintiff has standing and a clear legal right to the relief requested. Moreover, Plaintiff has a substantial likelihood of success on the merits because, as explained above, the Petition Document is legally insufficient under section 100.361, Fla. Stat.

54. **Considerations of Public Interest.** Plaintiff is a public official in his capacity as a duly elected City Councilman of the City of Sebastian. In such capacity, Plaintiff was elected at-large by the residents and electors of the City and therefore represents all citizens in the City. His continued term in office, without question, is a matter of public interest.

WHEREFORE, Plaintiff requests judgment for an injunction both temporarily and permanently restraining Defendants, TRACEY COLE (hereafter “Cole”) as Chair of SEBASTIAN VOTERS AGAINST GILLIAMS AND PARRIS, a political committee (hereafter “Recall Committee”), JEANETTE WILLIAMS in her official capacity as TOWN CLERK of the City of Sebastian, Florida, (hereinafter “City Clerk”); and LESLIE ROSSWAY SWAN in her official capacity as SUPERVISOR OF ELECTIONS for INDIAN RIVER COUNTY, (hereinafter “Supervisor of Elections”, from proceeding with the scheduled requirements of section 100.361, Fla. Stat. until the Court has had an adequate opportunity to fully determine the legal sufficiency of the Petition Document, granting an award of costs incurred in pursuing this action, and such further relief this Court deems just and proper.

COUNT II: DECLARATORY RELIEF AS TO THE LEGAL INSUFFICIENCY OF THE PETITION DOCUMENT UNDER FLA. STAT. 100.361(2)(c), (d) and (e).

(Against All Defendants)

55. Paragraph 1 through 49 are hereby re-alleged as fully as if they were set forth herein.

56. This is an action seeking a declaratory judgment pursuant to section 86.011, Florida Statutes, to declare the rights, status and other equitable or legal relations between the parties.

57. Declaratory relief is proper under section 86.021, Florida Statutes, because a controversy exists as to whether, based upon the facts set forth in paragraph 11 through 49 of the Complaint, the Petition Document is legally sufficient due to its allegation of malfeasance in office under Fla. Stat. 100.361(2)(d)(3) and/or its failure to comply with the requirements of Fla. Stat. 100.361(2)(c), whether Plaintiff is legally subject to the recall petition and removal from his office as a City Councilman, and further whether the City Clerk and Supervisor of Elections are compelled to exercise the power, privilege and rights granted under s. 100.361, Fla. Stats.

58. There is a bona fide, actual, present, and practical controversy and need for a declaration of the parties' right as they pertain to the legal sufficiency of the Petition Document, as a matter of law, as well as the parties' need for speedy hearing and immediate determination of Plaintiffs rights as the elected City Councilman.

59. Defendant, Recall Committee, has an actual, present and adverse interest as to the facts and legal subject matter of this Complaint. Councilman Parris and Councilman Mauti may have an interest that is adverse to the Defendants. Moreover, declaratory relief is appropriate here because all of the adverse and antagonistic interests are before the Court.

60. Declaratory relief is appropriate here because such judgment will serve a useful purpose in clarifying and settling the legal and equitable relations between the parties as they relate to the Petition Document, and Defendant, Recall Committee's effort to remove Plaintiff as an elected City official.

61. Declaratory relief will terminate and afford relief of uncertainty, insecurity, and controversy concerning the parties' power, privileges and rights concerning the Petition Document and Defendant, Recall Committee's recall effort.

WHEREFORE, Plaintiff, prays this Court enter a declaratory judgment against Defendants, TRACEY COLE (hereafter "Cole") as Chair of SEBASTIAN VOTERS AGAINST GILLIAMS AND PARRIS, a political committee (hereafter "Recall Committee"), JEANETTE WILLIAMS in her official capacity as TOWN CLERK of the City of Sebastian, Florida, (hereinafter "City Clerk"); and LESLIE ROSSWAY SWAN in her official capacity as SUPERVISOR OF ELECTIONS for INDIAN RIVER COUNTY, (hereinafter "Supervisor of Elections", stating that:

(a) The Petition Document, as set forth in Exhibit 1 of the Complaint, is legally insufficient, as a matter of law, because it does not contain a legally sufficient and factually supported statement of grounds for recall, it fails to allege adequate facts supporting a prima facie charge of malfeasance, inclusive of citing to a non-existent section of Florida Statutes or that due to said fraud and irregularities in the signature collection process the Plaintiff is not legally subject to the recall petition and removal from his office;

(b) That Plaintiff has sufficient interest and right in the instant equity action to demand that the proceedings initiated under Defendant, Recall Committee's recall petition effort do not substantially depart from the statutory prescriptions set forth in section 100.361, Fla. Stat., as well as to insist that the Defendants, City Clerk and Supervisor of Elections do not perpetrate a legal fraud upon him by acting upon an illegal position instigated by the conduct of Defendant, Recall

Committee and its Chair and other officers and agents, in submitting the Petition Document and thereby initiating the subject recall petition proceedings;

(c) That the recall proceedings initiated by Defendant, Recall Committee , and based upon the Petition Document submitted to the City Clerk on May 29, 2020, be declared invalid as a matter of law, for those reasons contained in paragraphs 11 - 49 and further that the City Clerk shall so certify this Court's judgment to the governing body of the City of Sebastian and said judgment to the governing body of the City concerning the Petition Document;

(d) That the recall proceedings initiated by Defendant, Recall Committee , and based upon the Petition Document submitted to the City Clerk on July 29, 2020, be declared invalid as a matter of law for those reasons contained in paragraphs 11 - 49 and further that the City Clerk shall so certify this Court's judgment to the governing body of the City of Sebastian and said judgment to the governing body of the City concerning the Petition Document;

(e) That the Defendants are enjoined from any further action with respect to the Petition Document until further order of the Court, and further that the Petition Document shall not be used in any other proceedings;

(f) All other declarations necessary to the just resolution of this action.

(g) Plaintiff further demands an award of his costs incurred in pursuing this action, pursuant to section 86.081, Florida Statutes, and *Lamela v. City of Sunrise*, 423 So.2d 974 (Fla. 4th DCA 1983) and for all such other and further relief deemed just and proper, power, privilege and rights granted under section 100.361, Fla. Stat.

**COUNT IV ACTION PURSUANT TO FLA. STAT. 99.097 SEEKING
VERIFICATION OF SIGNATURES**

61. Plaintiff re-alleges and incorporates Paragraph 1 through 49 as if fully set forth herein.

62. This is an action against the Supervisor of Elections, seeking a verification of each petition submitted by Recall Committee pursuant to section 99.097(5), Florida Statutes.

63. The recall petition seeking to recall the Plaintiff as Councilman of the City of Sebastian was certified by the Supervisor of Elections on or about August 4, 2020.

64. The Plaintiff believes that pursuant to Fla. Stat. 99.097(2), Recall Committee submitted at least 15 percent more than the required number of signatures and thus required the Supervisor of Elections to use the random sampling method of verification in certifying the petition proscribed by Fla. Stat. 99.097(1)(a)(2).

65. The recall petition was served on the Plaintiff on August 4, 2020.

66. The Plaintiff hereby contests the results of the verification of signatures conducted by the Supervisor of Elections using the random sampling method and demands a check of each petition pursuant to Fla. Stat. 99.097 et seq.

67. The Plaintiff bases his right to contest the results of the verification due to irregularities in Recall Committee's signature collection process, including the suspicion of fraud, coercion, and violations of Fla. Stat. 100.361(e).

68. Plaintiff contends that if a resident's signature is in fact a forgery, or was the result of fraud, then such signatures are invalid and *void ab initio*. See *Browning v. Florida Hometown Democracy, Inc.*, 29 So.3d 1053 (Fla. 2010) (stating "that fraudulent signatures may not be used

to satisfy the mandatory signature requirements of article XI, section 3 because such false manifestations of assent are not the valid elector 'signatures' contemplated by our Constitution").

WHEREFORE, Plaintiff, DAMIEN H. GILLIAMS, requests an Order of this Court directing the Supervisor of Elections pursuant to Fla. Stat. 99.097(5) to perform a complete check of each petition submitted in support of recalling the Plaintiff, granting an award of his reasonable attorney fees and costs incurred in pursuing this action, and such further relief this Court deems just and proper.

DATED this 7th day of August 2020.

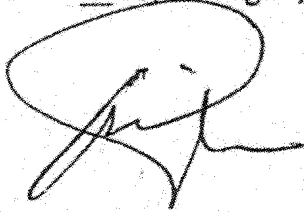
s/ Craig M. Rappel

Craig M. Rappel, Esq.
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Florida Bar No. 752428
Attorney for Damien H. Gilliams
Rappel Health Law Group, P.L.
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Suite 300
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Telephone: 772.778.8885

VERIFICATION

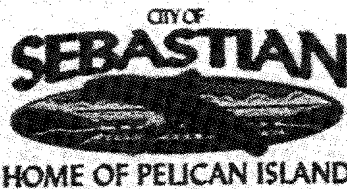
I, Damien H. Gilliams, very under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this 6 day of August, 2020.

A handwritten signature in black ink, appearing to read 'D. Gilliams', is written over a horizontal line. The signature is stylized and somewhat cursive.

Hon. Damien H. Gilliams,
Councilman at-Large of the City of Sebastian

EXHIBIT “1”



1225 Main Street, Sebastian, FL 32958
(772) 388-8215
jwilliams@cityofsebastian.org

June 12, 2020

The Honorable Damien Gilliams
Mid-Florida Real Estate, Inc.
1623 US Highway 1, Suite A-5
Sebastian, FL 32958

Dear Council Member Gilliams,

Please find enclosed a certified copy of the Petition to Recall you as a Council Member for the City of Sebastian in accordance with F.S. 100.361.

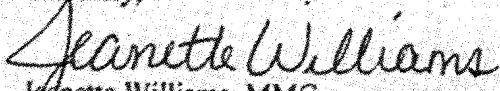
Leslie Swan, Indian River County Supervisor of Elections, has verified the requisite number of electors have signed the petition to initiate the recall process.

F.S. 100.361(3)(a) provides that within five days after service, you may file a defensive statement (or not) with my office. This defensive statement shall not be more than 200 words. Please be advised that these are five calendar days, including weekends.

If you choose not to file a statement, I am required to note your decision within the Recall Petition and Defense document.

Thank you for your attention to this matter.

Sincerely,


Jeanette Williams, MMC
City Clerk

Encl: Supervisor's Certified Verification
Certified Petition
F.S. 100.361



HOME OF PELICAN ISLAND

1225 Main Street, Sebastian, FL 32958
(772) 388-8215

I, Jeanette Williams, MMC, do hereby certify that the attached is a true and correct copy of the Petition to Recall Council Member Damien Gilliams signed by Tracey Cole, Recall Committee Chair.

The original document is kept on file in the City Clerk's Office, 1225 Main Street, Sebastian.

Signed and sealed this 12th day of June, 2020.

Jeanette Williams, MMC
City Clerk
City of Sebastian

PETITION TO RECALL COUNCIL MEMBER DAMIEN GILLIAMS

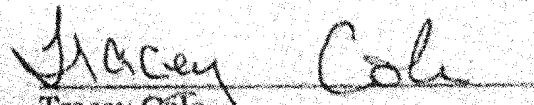
This petition is being circulated for the purpose of recalling Damien Gilliams, Council Member for the City of Sebastian, pursuant to section 100.361 – Municipal Recall, Florida Statutes, and per section 2.12 of the City of Sebastian Charter. We, the electors of the City of Sebastian, wish to recall Council Member Damien Gilliams based on Malfeasance (100.361(2) (c) (1)). Council Member Damien Gilliams, on Wednesday, April 22, 2020, conducted a "City Council Meeting," in secret, without public notice, public input, and the knowledge of the entire City Council or Charter Officers such as the City Manager, City Attorney, or City Clerk. Council Member Damien Gilliams through his signature, read and affirmed he understood the City Charter for the City of Sebastian, as well as, section 286.011 – Public meetings and records, Florida Statutes. Additionally, Council Member Damien Gilliams took an oath to uphold the Constitution of the State of Florida. Therefore, we feel he is unfit to continue as Council Member and wish to recall his elected position.

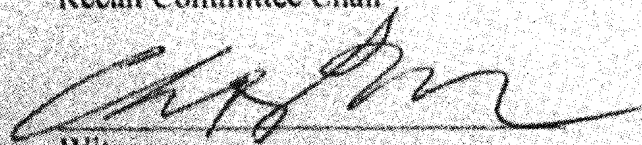

Tracey Cole
Recall Committee Chair

May 29, 2020

To The City Clerk:

I, Tracey Cole, Chair of the Committee to recall Damien Gilliams, hereby state that the Committee began to collect petition signatures on May 20, 2020 and stopped collecting signatures on May 28, 2020. No signatures were collected outside this time frame.


Tracey Cole
Recall Committee Chair


Witness

Leslie Rossway Swan
 Supervisor of Elections
 Petition Status Report

Indian River County, FL

Date 6/1/2020
 Time 04:55 PM

| Petition Id | Petition Short Description | District | Date Petition Opened | Petition Number | | | |
|--------------------|----------------------------|--------------|-----------------------------|---------------------|--------------|------------------------------------|----------------|
| 545 | Damien Gilliams | CTY 3 | 20-May-2020 | 545 | | | |
| Batch | Signatures Claimed | Sigs checked | <u>Unchecked Signatures</u> | Signatures Required | Valid Sigs | Rejected Sigs including Duplicates | Duplicate Sigs |
| 1 | 0 | 2,568 | 0 | | 2,471 | 97 | 7 |
| | 0 | 2,568 | 0 | 0 | 2,471 | 97 | 7 |
| Grand Total | 0 | 2,568 | 0 | 0 | 2,471 | 97 | 7 |

Congressional District

| Batch Number | 8 | Total |
|--------------|-------|-------|
| 1 | 2,471 | 2,471 |
| Total | 2,471 | 2,471 |

HOME OF PELICAN ISLAND
 CITY OF SEBASTIAN

CITY

CANDIDATE PETITION CERTIFICATION

STATE OF FLORIDA
Indian River County

Serial # 545

TITLE: Damien Gilliams

Batch Certification

| | |
|------------------|------|
| Valid Signatures | 2471 |
|------------------|------|

I hereby certify these valid verified signatures since the previous certification.

Leslie F. Swan

(Signed) Leslie Rossway Swan
Supervisor of Elections

Date: 6/12/20

Please provide a copy of the petition along with this form.

HOME OF PELICAN ISLAND

SEBASTIAN CITY COUNCIL MEMBER DAMIEN GILLIAMS
• FILING OF RECALL PETITION DEFENSIVE STATEMENT

WARNING

SEEK LEGAL ADVICE BEFORE SIGNING RECALL PETITIONS

FILED UNDER PROTEST SUBJECT TO FLORIDA STATUTES AND CONSTITUTION

What a travesty of justice when the remaining two members of the City Council continually attempt to stifle the duly elected replacements for their cohorts defeated in the last election, because of opposition to their perceived **"WE DON'T REALLY GIVE A DAMN WHAT THE CITIZENS WANT, WE KNOW WHAT'S BEST"** attitude.

This recall, seemingly perpetrated and orchestrated by Councilman Jim Hill and with general agreement of Mayor Ed Dodd, was designed to disparage, intimidate, silence and eliminate all opposition. But people in glass houses shouldn't throw stones, as they will all soon discover. I intend to provide the **"SUNSHINE"** they demand with a thorough investigation going back to when Hill and Dodd were first elected.

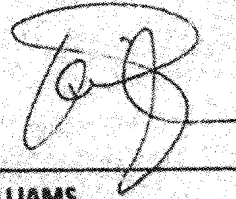
I represent all of us believing in honesty, integrity, equal opportunity, **ABSOLUTELY NO SPECIAL INTERESTS**, transparent governance, fiscal responsibility and environmental stewardship.

I am calling on Governor Ron DeSantis to put an end to this perpetual injustice and appoint a non-partisan, impartial person to conduct our Council meetings, while this plays out in the court of public opinion, so the business of **"WE THE PEOPLE"** can straightforwardly continue.

RECEIVED

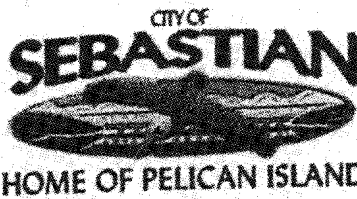
JUN 19 2020

City of Sebastian
City Clerk's Office



DAMIEN GILLIAMS
SEBASTIAN CITY COUNCIL MEMBER
Friday, June 19, 2020

[My Defensive Statement, between the lines above, contains exactly 200 words, as per FS§100.361(3)(a)]



1225 Main Street, Sebastian, FL 32958
(772) 388-8215
jwilliams@cityofsebastian.org

August 4, 2020

The Honorable Damien Gilliams
Mid-Florida Real Estate, Inc.
1623 US Highway 1, Suite A-5
Sebastian, FL 32958

Dear Council Member Gilliams,


Please find enclosed a certified copy of the Recall Petition and Defense document to recall you as a Council Member for the City of Sebastian in accordance with F.S.100.361.

Leslie Swan, Indian River County Supervisor of Elections, has verified the requisite number of electors have signed the petition to continue the recall process.

F.S.100.361(4) provides that within five days after service, you may resign from office. Please be advised that these are five calendar days, including weekends.

Thank you for your attention to this matter.

Sincerely,


Jeanette Williams, MMC
City Clerk

Encl: Supervisor's Certified Verification
Certified Petition
F.S.100.361



Leslie R. Swan
Supervisor of Elections
Indian River County

SUPERVISOR OF ELECTIONS
STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Petition Certification
To Recall City Council Member
Damien Gilliams

DATE: August 4, 2020

I, Leslie R. Swan, Supervisor of Elections of Indian River County, Florida, do hereby certify that 3,399 valid petitions were verified for the City of Sebastian to recall Council Member, Damien Gilliams.

Leslie R. Swan
Supervisor of Elections
Indian River County



Date 8/4/2020
 Time 02:59 PM

Leslie Rossway Swan
 Supervisor of Elections
 Petition Status Report

Indian River County, FL

| Petition Id | Petition Short Description | District | | Date Petition Opened | Petition Number | | | |
|--------------------|----------------------------|--------------------|---------------------|-----------------------------|---------------------|---------------------|------------------------------------|------------------|
| 550 | Damien Gilliams | CTY | 3 | 22-June-2020 | 550 | | | |
| | | Signatures Claimed | Sigs checked | <u>Unchecked Signatures</u> | Signatures Required | Valid Sigs | Rejected Sigs including Duplicates | Duplicate Sigs |
| Batch | 1 | 0 | 3,488 | 0 | | 3,399 | 89 | 16 |
| | | <u>0</u> | <u>3,488</u> | <u>0</u> | <u>0</u> | <u>3,399</u> | <u>89</u> | <u>16</u> |
| Grand Total | | <u><u>0</u></u> | <u><u>3,488</u></u> | <u><u>0</u></u> | <u><u>0</u></u> | <u><u>3,399</u></u> | <u><u>89</u></u> | <u><u>16</u></u> |

Congressional District

| Batch Number | 8 | Total |
|--------------|-------|-------|
| 1 | 3,398 | 3,398 |
| Total | 3,398 | 3,398 |

CITY OF SEBASTIAN PAGE 11

CANDIDATE PETITION CERTIFICATION

STATE OF FLORIDA
Indian River County


Serial # 550

TITLE: Damien Gilliams

Batch Certification

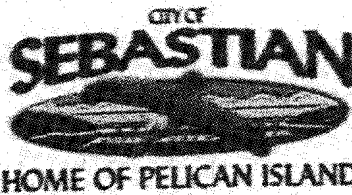
| | |
|---------------------|------|
| Valid Signatures | 3398 |
|---------------------|------|

I hereby certify these valid verified signatures since the previous certification.


(Signed) Leslie Rossway Swan
Supervisor of Elections

Date: 8/4/2020

Please provide a copy of the petition along with this form.



1225 Main Street, Sebastian, FL 32958
(772) 388-8215

I, Jeanette Williams, MMC, do hereby certify that the attached is a true and correct copy of the Recall Petition and Defense to Recall Council Member Damien Gilliams signed by Tracey Cole, Recall Committee Chair.

The original document is kept on file in the City Clerk's Office, 1225 Main Street, Sebastian.

Signed and sealed this 4th day of August, 2020.

A handwritten signature in cursive script that reads "Jeanette Williams".

Jeanette Williams, MMC
City Clerk
City of Sebastian

RECALL PETITION AND DEFENSE

PETITION TO RECALL COUNCIL MEMBER DAMIEN GILLIAMS

We the undersigned, registered and qualified electors of the City of Sebastian, Indian River County, Florida, pursuant to section 100.361, Florida Statutes, petition for the recall of Council Member Damien Gilliams, holding the office of Council Member in the City of Sebastian, Indian River County, State of Florida, and in support state as follows:

STATEMENT OF REASON FOR RECALL

This petition is being circulated for the purpose of recalling Damien Gilliams, Council Member for the City of Sebastian, pursuant to section 100.361 – Municipal Recall, Florida Statutes, and per section 2.12 of the City of Sebastian Charter. We, the electors of the City of Sebastian, wish to recall Council Member Damien Gilliams based on Malfeasance (100.361(2) (c) (1)). Council Member Damien Gilliams, on Wednesday, April 22, 2020, conducted a "City Council Meeting," in secret, without public notice, public input, and the knowledge of the entire City Council or Charter Officers such as the City Manager, City Attorney, or City Clerk. Council Member Damien Gilliams through his signature, read and affirmed he understood the City Charter for the City of Sebastian, as well as, section 286.011 – Public meetings and records, Florida Statutes. Additionally, Council Member Damien Gilliams took an oath to uphold the Constitution of the State of Florida. Therefore, we feel he is unfit to continue as Council Member and wish to recall his elected position.


Tracey Cole
Recall Committee Chair

DEFENSIVE STATEMENT OF COUNCIL MEMBER DAMIEN GILLIAMS

WARNING

SEEK LEGAL ADVICE BEFORE SIGNING RECALL PETITIONS

FILED UNDER PROTEST SUBJECT TO FLORIDA STATUTES AND CONSTITUTION

What a travesty of justice when the remaining two members of the City Council continually attempt to stifle the duly elected replacements for their cohorts defeated in the last election, because of opposition to their perceived "WE DONT REALLY GIVE A DAMN WHAT THE CITIZENS WANT, WE KNOW WHAT'S BEST" attitude.

This recall, seemingly perpetrated and orchestrated by Councilman Jim Hill and with general agreement of Mayor Ed Dodd, was designed to disparage, intimidate, silence and eliminate all opposition. But people in glass houses shouldn't throw stones, as they will all soon discover. I intend to provide the "SUNSHINE" they demand with a thorough investigation going back to when Hill and Dodd were first elected.


I represent all of us believing in honesty, integrity, equal opportunity, ABSOLUTELY NO SPECIAL INTERESTS, transparent governance, fiscal responsibility and environmental stewardship.

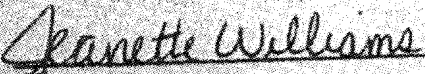
I am calling on Governor Ron DeSantis to put an end to this perpetual injustice and appoint a non-partisan, impartial person to conduct our Council meetings, while this plays out in the court of public opinion, so the business of "WE THE PEOPLE" can straightforwardly continue.

July 29, 2020

To The City Clerk:

I, Tracey Cole, Chair of the Committee to recall Damien Gilliams, hereby state that the Committee began to collect Recall Petition and Defense signatures on June 22, 2020 and stopped collecting signatures on July 28, 2020. No signatures were collected outside this time frame.


Tracey Cole
Recall Committee Chair


Skanette Williams
Witness

RECALL PETITION AND DEFENSE

PETITION TO RECALL COUNCIL MEMBER DAMIEN GILLIAMS

We the undersigned, registered and qualified electors of the City of Sebastian, Indian River County, Florida, pursuant to section 100.361, Florida Statutes, petition for the recall of Council Member Damien Gilliams, holding the office of Council Member in the City of Sebastian, Indian River County, State of Florida, and in support state as follows:

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DEFENSIVE STATEMENT OF COUNCIL MEMBER DAMIEN GILLIAMS

WARNING

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I am calling on Governor Ron DeSantis to put an end to this perpetual injustice and appoint a non-partisan, impartial person to conduct our Council meetings, while this plays out in the court of public opinion, so the business of "WE THE PEOPLE" can straightforwardly continue.

Each of the undersigned, for him or her state that:

- a. He or she has personally signed and read this petition;
b. He or she is a registered, qualified elector of the City of Sebastian, Indian River County, Florida;
c. His or her place of residence, the date of his or her signing and other identifying information is correctly written after his or her name.
d. The petitioners designate Tracey Cole as Chair of the Recall Committee.

Signature of Registered Elector

Printed Name

Street Address

Sebastian, FL
City

Indian River County
County

Voter Registration Number OR Date of Birth (MM/DD/YY)

Date Signed (MM/DD/YY)

OATH OF WITNESS

I, _____ witness the above person signing the Petition to Recall Council Member Damien Gilliams, that all of the signatures are the general signature of the person it purports to be, and that all of the petitions were signed in my presence on the date indicated.

Under penalties of perjury, I declare that I have read the foregoing Oath of Witness and that the facts stated in it are true.