

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2018-CA-004630  
DIVISION: CV-C

BRENDA PRIESTLY JACKSON,

Plaintiff,

vs.

RICK SCOTT, in his official capacity  
as the Governor of the State of Florida, et al.,

Defendants.

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**CITY OF JACKSONVILLE'S MOTION FOR LEAVE TO INTERVENE**

Pursuant to Rule 1.230, Florida Rules of Civil Procedure, the City of Jacksonville ("City"), by and through its undersigned counsel, hereby moves for leave to intervene as a full party defendant in the above-styled litigation, and states:

1. On July 13, 2018, Plaintiff, Brenda Priestly Jackson ("Plaintiff"), filed the above-styled lawsuit against Defendants, Governor Rick Scott ("Governor"), in his official capacity, and City Councilmember Terrance Freeman ("Councilmember Freeman"), in his individual capacity, alleging two counts for declaratory and injunctive relief: (1) for an order declaring the Governor's appointment of Councilmember Freeman to temporarily fill the City Council District 10 vacancy as unlawful; and (2) to permanently enjoin Councilmember Freeman from continuing to perform the duties of the District 10 City Council representative. See Petition for Declaratory and Injunctive Relief ("Petition").

2. Plaintiff claims that Councilmember Freeman should be disqualified because he was not a resident of District 10 at the time that he was appointed by the Governor on July 10,

2018 in violation of Section 5.04 of the City's Charter ("Charter"), and therefore he was not qualified to fill the temporary vacancy. See Petition at ¶ 26. However, the City contends the controlling law clearly establishes that City Councilmembers' terms in office do not commence until they have sworn the required oath, among other things (this is true even when the date of residency is the same date as the Governor's appointment, as is the fact in this case). See Tappy v. State ex rel. Byington, 82 So.2d 161 (Fla. 1955). As such, application of City laws, policies and procedures will be a critical component of this litigation.

3. While Plaintiff purports to bring her allegations against Councilmember Freeman in his individual capacity, by alleging that he assumed his mantle as an active member of the City Council immediately upon appointment, Plaintiff has actually sued Councilmember Freeman as an active, sitting member of the City Council in his official capacity.

4. Additionally, adjudicating the issues raised in this lawsuit necessarily requires an application and defense of the City's Charter and Ordinance Code provisions relating to the qualifications, mechanisms and procedural requirements for installation, oaths, ethics and employment of the City's elected legislative branch representatives. The City, itself, has an important governmental interest in participating in discussions, analysis and arguments over the application of its own laws. For example, under Section 5.07 of the City's Charter, it is the City Council which is specifically empowered to and has the specific and exclusive jurisdiction to judge Councilmembers' qualifications, bringing into question this Court's jurisdiction to even hear Plaintiff's claims in the first instance. This issue alone raises a separation of powers argument, for the articulation of which the City is best suited. See Harden v. Garrett, 483 So.2d 409 (Fla. 1985).

5. Finally, as is made clear in Plaintiff's lawsuit, Councilmember Freeman is fully participating in all City Council business as the District 10 representative. The validity of his involvement, discussions, meetings, and votes is directly at issue in this case. The City, itself, should be allowed to participate in litigation directly challenging the integrity of such official actions.

6. Thus, the City has a direct and vital interest in the underlying facts of this lawsuit, the proper application of its Charter and laws, and the outcome of this matter.

### MEMORANDUM OF LAW

Leave to intervene shall be given freely when justice so requires and should be liberally allowed. National Wildlife Fed'n Inc. v. J.T. Glisson, 531 So. 2d 996, 997 (Fla. 1st DCA 1988).

In determining whether to grant a motion for leave to intervene, the trial court must first determine if the intervenor's interest entitles it to intervene:

[T]he interest which will entitled a person to intervene...must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of the litigation.

Southern Comfort Grill, Inc. v. Hanks Const., LLC, 162 So. 3d 144, 145 (Fla. 4th DCA 2015) (quoting Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992)). If the party's interest in the litigation is of a direct and immediate character, the Court then must determine whether to permit intervention by considering factors such as "the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance." Id.

As explained herein, the City's interest in this litigation is of a direct and immediate character. Judicial determinations made in this litigation regarding application of the City's Charter and Ordinance Code may substantially impact the City. See Metropolitan Dade County v. Outrigger Club, Inc., 314 So. 2d 153 (Fla. 3 rd DCA 1975) (allowing the county's intervention in lawsuit between private party and the City of North Miami over entitlement to tie into and utilize sewer lines because of the county's certain authority and control over the sewage lines in question). This Motion is not made for purposes of delay, and does not pose any unfair prejudice to the current parties in this litigation.

**WHEREFORE**, the City of Jacksonville respectfully requests the entry of an Order granting this Motion for Leave to Intervene, designating the City as a full party defendant, specifying a time in which the City must plead, and ordering that the City may plead without being subordinate to the main action and may test the propriety of other parties' pleadings.

Dated: July 17, 2018.

**OFFICE OF GENERAL COUNSEL**

*/s/ Jason R. Teal*

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ATTORNEYS FOR THE CITY OF JACKSONVILLE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of July, 2018, a true and correct copy of the foregoing was filed with the Clerk of Court via the Florida Courts e-Filing Portal, which will send notice of electronic filing to the following:

*/s/ Jason R. Teal*  
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Deputy General Counsel