

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

TOWN OF KENNETH CITY, FLORIDA,  
a municipal corporation of the State of Florida,

Plaintiff,

vs.

Case No. 09-003116CI  
Division 13

TERESA A. ZEMAITIS, in her capacity  
as mayoral candidate for the Town of  
Kenneth City,

Defendant.

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**DEFENDANT TERESA A. ZEMAITIS' FIRST AMENDED ANSWER TO VERIFIED  
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

The Defendant, TERESA A. ZEMAITIS, by and through her undersigned counsel,  
pursuant to Florida Rule of Civil Procedure 1.190(a), hereby amends her answers to each  
enumerated allegation of the Plaintiff Town of Kenneth City's Verified Complaint for  
Declaratory Judgment and Injunctive Relief as follows:

**FACTS COMMON TO ALL COUNTS**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. The Defendant is without knowledge of and therefore denies the conclusions by Town Attorney Paul Marino concerning the Town Charter's preclusion of the Defendant from serving as mayor of Kenneth City unless she resigned from her position as an employee of the Pinellas County School Board, but the remaining allegations are admitted.

13. Denied.

14. The Defendant is without knowledge of and therefore denies the allegation that the Charter Review Commission "met weekly over the next several months and thoroughly reviewed each and every section of the Town Charter," but the remaining allegations are admitted.

15. Admitted.

16. The Defendant is without knowledge of and therefore denies the allegations in the last sentence of the paragraph concerning the amount of time spent reviewing the charter or that anyone at any time mentioned Article IV, Section 4.01(d) of the Town Charter, but the remaining allegations are admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

COUNT I - DECLARATORY JUDGMENT

21. The Defendant re-alleges and incorporates herein the answers contained in paragraphs 1 through 20 above.

22. Denied.

23. Denied.

24. Admitted.

25. Admitted.

COUNT II - TEMPORARY INJUNCTIVE RELIEF

26. The Defendant re-alleges and incorporates herein the answers contained in paragraphs 1 through 20 above.

27. Admitted.

28. Admitted.

29. Denied.

30. Admitted.

31. Admitted.

32. Admitted.

33. Denied.

34. Admitted.

35. Admitted.

36. Denied.

37. Admitted.

38. Admitted.

39. The Defendant is without knowledge of and therefore denies the allegation that counsel for the Plaintiff “is aware of no costs or damages that might be sustained by the Defendant in this case should this court enter an incorrect temporary injunction against the Town Clerk in this matter,” but the remaining allegations are admitted.

40. Admitted.

#### **FIRST AFFIRMATIVE DEFENSE**

To the extent that Section 4.01(d) of the Charter of Kenneth City purports to prohibit an employee of the Pinellas County School Board from serving as mayor of the Town of Kenneth City, the provision of Section 4.01(d) prohibiting the mayor of Kenneth City from holding “public employment during the term” does not serve a valid or important municipal purpose and is not reasonably or rationally related to a valid or important municipal purpose, and therefore Section 4.01(d) violates the due process and equal protection provisions of the Florida Constitution and the United States Constitution on its face and as applied to the Defendant and is invalid and unenforceable.

#### **SECOND AFFIRMATIVE DEFENSE**

To the extent that Section 4.01(d) of the Charter of Kenneth City purports to prohibit an employee of the Pinellas County School Board from serving as mayor of the Town of Kenneth City, the provision of Section 4.01(d) prohibiting the mayor of Kenneth City from holding “public employment during the term” is vague and overbroad on its face and as applied and violates the Defendant’s rights under the First and Fourteenth Amendments of the United States Constitution and Article I, Sections 2 and 4, of the Florida Constitution to run and campaign for the office of mayor of Kenneth City and to serve as mayor of Kenneth City, and therefore Section

4.01(d) violates the free speech protections of the Florida Constitution and the United States Constitution on its face and as applied to the Defendant and is invalid and unenforceable.

**THIRD AFFIRMATIVE DEFENSE**

To the extent that Section 4.01(d) of the Charter of Kenneth City purports to prohibit an employee of the Pinellas County School Board from serving as mayor of the Town of Kenneth City, the Town of Kenneth City does not have standing to request the Court to enforce the provision of Section 4.01(d) prohibiting the mayor of Kenneth City from holding “public employment during the term” against the Defendant, as the Defendant is not an employee of the Town of Kenneth City.

WHEREFORE, the Defendant requests this Honorable Court to enter a Final Judgment for the Defendant as authorized by Section 86.011, Florida Statutes, finding and providing that:

- (1) The provision of Section 4.01(d) of the Town Charter of Kenneth City prohibiting the mayor of Kenneth City from holding “public employment during the term” does not serve a valid or important municipal purpose and is not reasonably or rationally related to a valid or important municipal purpose, and therefore Section 4.01(d) violates the due process and equal protection protections of the Florida Constitution and the United States Constitution on its face and as applied to the Defendant.
- (2) The same provision of Section 4.01(d) is vague and overbroad and violates the Defendant’s free speech rights protected by the First and Fourteenth Amendments of the United States Constitution and Article I, Sections 2 and 4, of the Florida Constitution.
- (3) The Town of Kenneth City does not have standing to request enforcement of the same provision of Section 4.01(d) against the Defendant as the Defendant is not an employee of

the Town of Kenneth City.

(4) This same provision of Section 4.01(d) is invalid and unenforceable against the Defendant.

(5) The Defendant, upon being elected to the office of Mayor of Kenneth City and duly certified by the Pinellas County Canvassing Board, shall be administered the oath of office by the Town Clerk of Kenneth City and shall be permitted to discharge the duties of the office of Mayor during the term to which she is elected notwithstanding her employment by the Pinellas County School Board.

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to Thomas P. Scarritt, Jr., Scarritt Law Group, P.A., 1405 West Swann Avenue, Tampa, FL 33606. this \_\_\_\_\_ day of February, 2009.

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