

**IN THE SIXTH JUDICIAL CIRCUIT COURT
IN AND FOR PINELLAS COUNTY, FLORIDA**

SAVE THE GARDEN, BROOKS GIBBS,
KELLY MYER, JESSICA ANDUJAR,
TONATIUH TELLO, JILL GIBBS,
WILLIAM MATHIS, and JANICE BASLER,

Plaintiffs,

Case No. _____

v.

CITY OF CLEARWATER,

Defendant.

_____ /

COMPLAINT

1. The Clearwater City Charter grants the People the right of initiative: to propose and vote on ordinances the City Council refuses to adopt. The Charter lays out initiative sponsors' obligations in collecting and submitting petitions, as well as the City Clerk's duties to process submitted petitions.

2. Plaintiffs attempted to exercise their right of initiative, filing their initiative with the City Clerk, circulating petitions, and submitting over 8,000 signatures for verification so that their proposal could go before the voters at the August 2026 primary election.

3. But the City Clerk failed to fulfil her duties. She rejected valid petitions, failed to give Plaintiffs the required notice as to why she rejected petitions, and gave Plaintiffs incorrect information about the rules they had to follow, severely hindering Plaintiffs' petitioning efforts.

4. As a result of the Clerk's illegal actions, on April 22, 2026, she certified that Plaintiffs' initiative effort had *not* attained the required number of signatures. A month later, the City Council ratified her decision. Plaintiffs bring suit to rectify the City's failures and vindicate their direct-democracy rights under the City Charter.

JURISDICTION, VENUE, AND PARTIES

5. This Court has jurisdiction under Fla. Const. Art. V, § 5(b) and Fla. Stat. §§ 26.012(2)–(3).

6. Venue is proper pursuant to Fla. Stat. § 47.011.

7. Plaintiff Save the Garden is an unincorporated association formed to propose and advance the Clearwater citizens’ initiative titled “Voter Approval Required for the Vacation of Public Right-of-Way in the Downtown.”

8. Plaintiffs Brooks Gibbs, Kelly Myer, Jessica Andujar, Tonatiuh “Tony” Tello, Jill Gibbs, William Mathis, and Janice Basler are Clearwater voters who together constitute the petitioners’ committee for the Save the Garden initiative.

9. Defendant City of Clearwater is a Florida municipality.

FACTUAL ALLEGATIONS

A. Clearwater Charter Provisions Governing Initiatives

10. Section 6.01 of the Clearwater City Charter grants the People the right to initiate ordinances, providing in relevant part that “[t]he voters of the city shall have power to propose ordinances to the council, and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election”

11. Section 6.04 lays out how an initiative effort starts:

Any five voters may commence initiative . . . proceedings by filing with the city clerk . . . an affidavit stating they will constitute the petitioners’ committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses, specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.^[1]

¹ Here and in other Charter quotations, references to “referendum” and “recall”—other forms of direct democracy the Charter provides for—are omitted.

12. After the petitioners' committee affidavit is filed, the Clerk then issues blank petition forms, and petition circulation begins. Charter § 6.04.

13. Section 6.05(a)–(c) lays out the requirements for initiative petitions themselves:

a. Section 6.05(a) provides the number of required petitions: “[P]etitions must be signed by voters of the city equal in number to at least ten percent of the total number of voters registered to vote in the last regular city election.”

b. Section 6.05(b) lays out the petition format, including that “[p]etitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed”

c. Section 6.05(c) requires each petition paper to have attached to it, when filed, an affidavit executed by the circulator.

14. Section 6.06 lays out the City Clerk's duties once the petitions are submitted:

Within 20 days after the initiative . . . petition is filed, the city clerk . . . shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is insufficient and shall promptly send a copy of the certificate to the petitioner's committee by registered mail. Grounds for insufficiency are only those specified in section 6.05 hereof.

15. If the Clerk finds the petition insufficient, the sponsors have the right to supplement their petition with additional signatures within 10 days of receiving the certificate of insufficiency:

A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend with the city clerk . . . within two working days after receiving the copy of the city clerk's certificate and files a supplementary petition within ten days after receiving the copy of such certificate. The supplementary petition shall comply with the requirements of subsections (b) and (c) of section 6.05 hereof and within five days after it is filed the city clerk . . . shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioner's committee by registered mail as in the case of an original petition.

16. If the amended petition is still deemed insufficient, the petitioner’s committee has the right to request a review by the City Council. Charter § 6.06(b).

17. If deemed sufficient, the initiative must be submitted to the voters at an election between 90 and 150 days from the date the petition is deemed sufficient. Charter § 6.08(b).

18. In the last regular Clearwater election, there were 70,675 registered voters. An initiative petition therefore must be signed by at least 7,067 voters to be sufficient.

B. The Save the Garden Initiative

19. On June 13, 2025, Plaintiffs Brooks Gibbs, Jessica Andujar, Kelly Myer, Tonatiuh Tello, and Jill Gibbs began the Save the Garden initiative by submitting to the Clerk the affidavit required by Charter Section 6.04. The initiative and affidavit are attached as **Exhibit 1**.

20. The Clerk then “issue[d] the appropriate petition blanks to the petitioners’ committee” under Charter Section 6.04. The petition blank is attached as **Exhibit 2**.

21. Over the next months, Save the Garden and its supporters collected thousands of signatures from Clearwater voters.

22. Several months into petition collection, on October 7, 2025, the Clerk informed Plaintiff Myer that one of the five petitioners’ committee members, Plaintiff Andujar, was not a registered Clearwater voter.

23. The same day, Save the Garden added two additional Clearwater voters—Plaintiffs Mathis and Basler—to the petitioners’ committee by filing affidavits with the Clerk.

24. By the next day, Plaintiff Andujar had submitted a voter registration application, which was accepted. She was added to the voter rolls on October 8.

25. On October 23, 2025, the City Clerk suggested to Plaintiff Myer by email that *only* the members of the petitioners’ committee could collect and circulate petitions; *i.e.*, that other

supporters could not circulate petitions and collect signatures.

26. The Clerk's suggestion were legally incorrect. The Charter does not require a petition circulator to be a member of the petitioners' committee.

27. But relying on the Clerk's information, the committee members proceeded to circulate petitions by themselves (or ensured volunteers collected signatures only in the presence of a committee member) after that point.

28. This severely limited the pace of petition collection. With just seven individuals circulating petitions, Save the Garden could only gather a limited number of signatures.

29. Faced with an impossible task—collecting 7,067 signatures with just five circulators—Save the Garden eventually decided in early December 2026 to ignore the Clerk's instructions, and relied on additional supporters to circulate petitions.

30. On March 17, 2026, Save the Garden submitted 8,051 signatures to the Clerk.

31. On April 2, the Clerk issued a certificate finding the petition insufficient (**Exhibit 3**), which Save the Garden received by certified mail on April 7.

32. Exercising their right to amend the petition under Charter Section 6.06(a), Save the Garden filed a supplementary petition with 701 additional petition signatures on April 17.

33. On April 22, the Clerk issued an amended certificate still finding the petition insufficient (**Exhibit 4**).

34. On May 21, the City Council approved the Clerk's finding that the petition had an insufficient number of signatures.

C. The Clerk's Illegal Rejection of Valid Signatures

35. The Clerk illegally rejected valid signatures.

1. Inactive Voters

36. Florida law provides that a voter is designated as “inactive” after they fail to respond to an “address confirmation final notice” within 30 days, or if the notice is returned as undeliverable. Fla. Stat. § 98.065(4)(d).

37. An inactive voter remains registered and eligible to vote. An inactive voter is only removed from the rolls if they do not update their registration information, request a mail ballot, or vote by the second general election after being placed on the inactive list. *Id.*

38. Voters who are not on the “inactive” list are on the “active” list of voters.

39. The Charter makes no distinction between active and inactive voters. Section 6.01 provides that “[t]he *voters* of the city shall of the power to propose ordinances” (emphasis added). Section 6.05(a) provides that petitions “must be signed by *voters* of the city equal in number to” the required threshold (emphasis added). Thus, any voter—active or inactive—can sign an initiative petition.

40. Even though the Charter makes no distinction between active and inactive voters, the Clerk verified Save the Garden’s petition using only the list of *active* voters.

41. Clearwater has over 15,000 registered voters designated as inactive. The Clerk simply ignored all of them when verifying signatures, and rejected signatures of inactive voters.

2. Signatures Collected Before October 7, 2025

42. The Clerk rejected 4,306 signatures because they “were collected prior to the Petitioner’s Committee being comprised of five voters on October 7, 2025.”

43. Charter Section 6.04 provides that “[a]ny five voters may commence initiative . . . proceedings by filing . . . an affidavit stating they will constitute the petitioners’ committee”

44. Charter Section 6.06(a), laying out the Clerk’s duties in reviewing a petition,

provides that the “[g]rounds for insufficiency are only those specified in section 6.05 hereof.”

45. The Clerk’s rejection of the 4,306 signatures for violating a requirement *not* specified in Section 6.05 was therefore contrary to the Charter and unlawful.

46. Additionally, the Charter’s requirement that the petitioners’ committee members be voters unduly burdens Plaintiffs’ First Amendment-protected speech and associational rights, by limiting Plaintiffs’ ability to band together with others to advance their initiative.

3. Petitions Circulated with Full Text of the Proposed Ordinance

47. Charter Section 6.059(b) requires petitions to “contain or have attached thereto throughout their circulation the full text of the ordinance proposed”

48. Additionally, each petition circulator must swear on each petition page “that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.” Charter § 6.05(c).

49. While the Charter requires the proposed ordinance full text to be contained in or attached to petitions “throughout their circulation,” it does *not* require the full text to be attached to the petitions *after* circulation, when they are submitted to the Clerk.

50. Nevertheless, the Clerk found the petition insufficient because “[t]he petitions submitted [] did not contain the full text of the proposed ordinance or have attached hereto the proposed ordinance.”

51. But—as each petition circulator swore to under oath—each petition form submitted *did* have attached to it the full text of the proposed ordinance *throughout its circulation*, as the Charter requires.

52. The Clerk’s rejection of the petition for not having attached to it the full text was therefore contrary to the Charter, unlawful, and erroneous.

D. The Clerk's Rejection of Other Valid Signatures

53. The Clerk also rejected a number of valid signatures for unlawful reasons:
- a. The Clerk rejected a signature if the voter listed a City of Clearwater address that did not match the address on their voter record (i.e., a voter who had moved and had not yet updated their voting address).
 - b. Similarly, the Clerk rejected a signature if the voter listed their street address on their voter record, but omitted an apartment number.
 - c. The Clerk also rejected a signature if a voter wrote down their address, but had a minor mistake in their house number. For example, the Clerk rejected the signature of a 79-year-old voter whose address is "3062 Eastland Boulevard" but who wrote down "3206 Eastland Boulevard."
 - d. The Clerk rejected the signatures of voters whose handwriting she misread, even if they were legible. For example, she misread the surname of one voter as "Rech" when their surname is "Reeb," and rejected the address of another because she misread a "7" in their address as a "2".

54. Charter Section 6.05(b) requires only that the voter write their address on the petition, and an address mismatch, omitted apartment number, or minor mistake in a house number is not a reason for invalidating a signature.

55. Similarly, the Clerk misreading a voter's handwriting is not a valid reason for invalidating a signature.

E. The Clerk's Insufficient Certificate

56. Charter Section 6.06(a) requires the Clerk to "complete a certificate as to [the petition's] sufficiency, specifying, if it is insufficient, the particulars wherein it is insufficient"

57. The Clerk’s certificate, however, failed to specify the particulars:
- a. The certificate failed to specify that she rejected signatures because voters were designated as inactive, or how many she rejected for that reason;²
 - b. The certificate failed to specify that she rejected signatures because of a mismatched address;
 - c. The certificate failed to specify that she rejected signatures because of an omitted apartment number, minor mistake in a house number, or misread handwriting.

58. Because the Clerk’s certificate failed to specify the particulars wherein the petition was insufficient, the certificate was contrary to the Charter and unlawful.

CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgment Violation of Clearwater Charter

59. Plaintiffs reallege and reincorporate by reference all prior paragraphs.

60. Pursuant to Section 86.011, Florida Statutes, this Court may render a declaratory judgment on whether the City has the power or right to (1) reject Plaintiffs’ petition signatures for the reasons outlined above and (2) issue a certificate of insufficiency without detailing particulars, as outlined above.

61. Likewise, the Court may render a declaratory judgment on whether Plaintiffs have

² Indeed, Plaintiffs only learned that the Clerk had rejected inactive-status voters’ signatures after submitting a public records request for the list of voters the Clerk used to verify their petition. Because the filename of the list was “ActiveVoterData03252026.xlsx,” Plaintiffs *deduced* that the list contained only active voters, and that therefore the Clerk had failed to count signatures of inactive voters.

the right to have their petition signatures verified, receive a certificate of insufficiency that details particulars, and submit a supplementary petition after receiving a lawful certificate of insufficiency.

62. There is an immediate, substantial, and actual justiciable controversy between Plaintiffs and the City.

63. Plaintiffs are uncertain as to whether the City has any legal right to engage in the conduct described above.

64. Plaintiffs allege the City's actions described above are unlawful, and they are interested in the invalidity of those actions.

65. The City claims that its actions are lawful.

66. The City will not voluntarily cease the actions Plaintiffs allege are unlawful.

67. Pursuant to Section 86.011, Florida Statutes, this Court should resolve all uncertainties regarding the City's right to engage in the conduct described above.

COUNT TWO

Undue Burden on Associational Rights Violation of the First Amendment

68. Plaintiffs reallege and reincorporate by reference paragraphs 1–58.

69. Plaintiffs have a First Amendment right to speak, associate, and act collectively with others to advance political ideas and circulate initiative petitions.

70. The government has no significant state or public interest in curtailing debate and discussion of a ballot measure, including by limiting an initiative petitioners' committee to just voters.

71. The Clearwater Charter's ban on non-voters being members of an initiative petitioners' committee unduly burdens free speech and association, operating as a denial of

Plaintiffs' First Amendment rights in violation of 42 U.S.C. § 1983.

72. By limiting Plaintiffs' ability to band together with others—including non-voters—to advance citizen initiatives, the Charter unduly burdens Plaintiffs' First Amendment right to associate with others.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare as unlawful under the Clearwater City Charter and/or erroneous the City's (1) rejection of inactive voters' signatures, (2) rejection of signatures collected before the petitioners' committee was comprised of five voters, (3) rejection of petition forms on the basis that they did not have attached the full text of the proposed ordinance, (4) rejection of signatures with a mismatched address, missing apartment number, minor mistake in an address, or handwriting that the Clerk misread; and (5) failure to provide a certificate specifying the particulars wherein the petition was insufficient.
- B. Declare as unconstitutional in violation of the First Amendment the Charter's prohibition on non-voters being members of a petitioners' committee and the City's rejection of signatures collected before the petitioners' committee was comprised of five voters;
- C. Order the City to accept as valid (1) inactive voters' signatures, (2) the signatures of voters collected before the petitioners' committee was comprised of five voters, (3) petition forms submitted to the Clerk without the full text of the proposed ordinance when submitted, but which bear a completed circulator's affidavit, (4) signatures with a mismatched address, missing apartment number, minor mistake in an address, or handwriting that the Clerk misread;
- D. Order the City to (1) issue a corrected certificate as to the petition's sufficiency, (2) permit

Plaintiffs to file a supplementary petition thereafter pursuant to Charter Section 6.06(a), and (3) if the petition is sufficient, submit the proposed ordinance to the voters by the deadline provided in Charter Section 6.08 as if the Clerk had issued a valid certificate initially;

- E. Award Plaintiffs' reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
- F. Award Plaintiffs' costs;
- G. Retain jurisdiction to grant supplemental relief as necessary and proper under Fla. Stat. § 86.061; and
- H. Grant any such other relief the Court deems appropriate.

Respectfully submitted May 22, 2026,

/s/ Nicholas L.V. Warren
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