

**IN THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT  
STATE OF FLORIDA**

**STACY OSTOLAZA,**

Petitioner,

v.

Case No.: 2D22-0046

**KAREN E. RUSHING,**

in Her Official Capacity as  
Clerk of Court and Comptroller,  
Sarasota County,

Respondent.

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**PETITION FOR WRIT OF *QUO WARRANTO***

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## **PETITION FOR WRIT OF *QUO WARRANTO***

Pursuant to Art. V, § 4(b)(3), Fla. Const. and Fla. R. App. P. 9.100 and 9.030, the Petitioner, Stacy Ostolaza (“Petitioner”), seeks the issuance of a writ of *quo warranto* directing Karen E. Rushing, in her official capacity as Clerk of the Circuit Court and County Comptroller of Sarasota County (the “Respondent”), to demonstrate her authority and legal basis for the unauthorized suspension of driver’s licenses for nonpayment of court costs, fines, and fees assessed for violations of noncriminal municipal and county ordinances. If Respondent is not able to demonstrate her authority, Petitioner requests the Court to enter such orders as will provide relief, including orders entered under the Court’s all writs authority.

Contrary to statutory authority, Respondent has and continues to suspend driver’s licenses for nonpayment of fines, fees, and court costs associated with noncriminal municipal and county ordinance violations. Florida law is clear that such suspensions are only permissible with respect to nonpayment associated with criminal violations. Therefore, because Respondent’s license suspensions explicitly contravene her statutory authority, this Court should issue a writ of *quo warranto* to Respondent, requiring her to justify her actions in suspending driver’s licenses for



nonpayment of court fines, fees, and costs assessed for violations of municipal and county ordinances.

## **PARTIES**

### **A. STACY OSTOLAZA**

Petitioner Stacy Ostolaza resides in Sarasota County, Florida. As a citizen of the state of Florida residing in Sarasota County, he has standing to request issuance of a writ of *quo warranto* in order to enforce the public right to have Respondent exercise her powers in a manner that does not violate Florida statutes. See *Martinez v. Martinez*, 545 So. 2d 1338, 1339 & n. 3 (Fla. 1989). In *quo warranto* proceedings seeking enforcement of a public right, the people are the real party in the action and the person bringing the writ “need not show that he has any real or personal interest in it.” *State ex rel. Pooser v. Wester*, 170 So. 736, 738 (1936).

Although his standing as a citizen and taxpayer is sufficient under Florida law, Petitioner also has a real and personal interest in this action. In October 2017, Petitioner was issued a civil citation for open container, a noncriminal offense. He pled no contest to the charge in November 2017. The court ordered he pay \$293 for court costs, fees, and fines. Petitioner didn’t pay the fine. The Clerk notified the Department of Highway Safety and Motor Vehicles (“DHSMV”) to suspend Petitioner’s driver’s license for failure

to pay the courts costs, fine, and fees assessed for the municipal ordinance citation. Petitioner cannot afford to pay the court costs, fines, and fees that were assessed for the municipal ordinance citation. He is currently unemployed and is the primary caregiver for his father, who is battling cancer.

**B. CLERK OF COURT KAREN E. RUSHING**

Respondent Karen E. Rushing, in her official capacity as Clerk of the Circuit Court and County Comptroller of Sarasota County, Florida. The Clerk of Court position is provided for in Article V, Section 16 of the Florida Constitution.

As Clerk of the Circuit Court and County Comptroller for Sarasota County, Respondent has the power to suspend driver's licenses under the limited circumstances provided for by Florida statutory law, specifically, § 322.245(1), Fla. Stat. (2021). However, as further described below, Respondent exceeded her authority in suspending Petitioner's license for nonpayment of court costs, fines, and fees that were assessed for a violation of a noncriminal municipal ordinance, and continues to exceed her authority.

As the Clerk of the Circuit Court and County Comptroller for Sarasota County, Respondent is responsible for ensuring that her actions are consistent with the laws of the State of Florida.

### **BASIS FOR INVOKING JURISDICTION OF THE COURT**

This Court has original jurisdiction over this matter pursuant to Article V, Section 4(b)(3) of the Florida Constitution, and Rules 9.030(b)(3) and 9.100(a) of the Florida Rules of Appellate Procedure, which authorize the District Courts of Appeal to issue writs of *quo warranto* to state officers, including Clerks of Court. Specifically, Petitioner asks for a writ of *quo warranto* directing the Respondent to demonstrate the authority for her suspension of driver's licenses for the nonpayment of fines, fees and court costs associated with violations of noncriminal municipal and county ordinances.

This Court is the proper venue for this action pursuant to Fla. Stat. § 47.011 because Respondent is located in Sarasota County, Florida, the cause of action asserted herein arose in Sarasota County, Florida, and Respondent exceeded her authorization to suspend driver's licenses in this county.

### **NATURE OF RELIEF SOUGHT**

Petitioner seeks the issuance of a writ of *quo warranto* to Respondent, requiring her to justify her actions in suspending driver's licenses for nonpayment of court fines, fees, and costs assessed for violations of municipal and county ordinances.

## **FACTS ON WHICH PETITION RELIES**

Petitioner resides in Sarasota County. He is a veteran of the U.S. Army who was honorably discharged after 12 years of service, including time spent serving abroad. Petitioner is actively looking for work but is currently unemployed. He is the primary caregiver for his father, who is battling prostate cancer. He has applied for social security disability income but was denied.

In October 2017, Petitioner was issued a civil citation for open container. (Ex. 1). He pled no contest to the charge in November 2017. (Ex. 2). The court ordered he pay \$293 for court costs, fees, and fines. (Ex. 3). Petitioner did not pay the fine. The Clerk notified the DHSMV to suspend Petitioner's driver's license for failure to pay the courts costs, fines, and fees assessed for the municipal ordinance citation. (Ex. 4, at 2). Petitioner cannot afford to pay the court costs, fines, and fees that were assessed for the municipal ordinance citation.

On August 9, 2019, the Marion County Court issued an *en banc* decision in *State v. Cummings* (Case Nos. 422012MO0374; 422016MO2150; 422016MO4116) by County Court Judges McCune, Ritterhoff Williams, and Landt "in the interests of resolving the interests of public importance that were presented by Defendant's motions." (Ex. 5, at

1.) In *Cummings*, the defendant challenged the suspension of his driver's license for failure to pay costs and fines assessed under Florida Statutes § 322.245 in three ordinance violation cases, as "a municipal ordinance violation is not a 'crime' under Florida law, and financial obligations assessed for municipal ordinance violations are not 'financial obligations for [a] criminal offense.'" *Id.* at ¶ 2. The Court granted Defendant's motions to correct the illegal sentences contained in the judgments pursuant to Fla. R. Crim. P. 3.800(a). After hearing argument, the Court agreed that "suspension of Cummings's driver's license for failure to pay financial obligations for municipal ordinance violations was in error, not authorized by Florida law, and should be stricken from the Judgments." *Id.* at ¶ 4.

Accordingly, the Marion County Clerk of Court worked with the DHSMV to lift the approximately 1,600 driver's license suspensions entered by the Court as a result of unpaid costs and fines in ordinance violation cases. *Id.* at ¶ 5. The DHSMV, upon receiving the order in *State v. Cummings*, took steps to address license suspensions imposed in error in ordinance cases from other Florida counties, including amending the Uniform Traffic Citation Manual to reflect that suspensions for municipal and county ordinance violations "may lack sufficient legal authority" (Ex. 6, at 2), and sending letters

to the Clerks of Court in counties with active license suspensions on ordinance violation cases.

Rushing received one such letter. (Ex. 7). At the time of the DHSMV's correspondence, Sarasota County had 1,786 active driver's license suspensions on municipal or county ordinance cases.<sup>1</sup> In response to the letter, the Respondent agreed to lift only 21 suspensions, specifically, those "based upon municipal or county ordinances that did not contain language that incorporated misdemeanor statutes by reference." (Ex. 8). Respondent refused to lift the suspensions of the remaining cases, and continued her practice of suspending driver's licenses for unpaid fees and costs associated ordinance violation cases. Between November 2, 2019, and March 17, 2021, 102 additional licenses were suspended in these cases.

Counsel for Petitioner corresponded with Respondent on April 20, 2021, again requesting that she lift all driver's license suspensions associated with nonpayment of fees, fines, and court costs for municipal or county ordinance violations and agree not to issue any further suspensions on such grounds in the future. (Ex. 9). Respondent responded on June 25, 2021, declining this request. (Ex. 10).

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<sup>1</sup> DHSMV has provided Petitioner's Counsel with a list of municipal ordinance cases for which Respondent has issued license suspensions via public records requests.

Of these 1,883 driver's license suspensions initiated in Sarasota County for failure to pay costs and fines on ordinance violation cases between July 2006 and March 2021, 1,303 were for open container violations, 195 were for lodging or camping violations, 140 were for violations of park rules, 109 were for solicitation or obstruction of traffic violations, 60 were for public urination, 17 were for possession of a designer drug, and 14 were for littering.<sup>2</sup> These violations are those that tend to disproportionately impact persons experiencing poverty. Carson Whitelemons, Ashley Thomas & Sara Couture, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices*, Fines and Fees Justice Center, at 24 (Oct. 2019), <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf>. Of those whose licenses were suspended in Sarasota County because they were unable to pay their fees and fines, 588 had an address listed as "homeless" or "transient," used an address for a homeless shelter (Salvation Army Center of Hope) or a homeless day center (Resurrection House), or had no address listed.

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<sup>2</sup> The lists provided by the DHSMV contained only case numbers and dates the suspensions were issued. Counsel for Petitioner has used records publicly available on the Sarasota Clerk of Court online court records database to determine the impact on homeless individuals and the specific municipal ordinances at issue in these cases, which will be detailed below.

## **LEGAL STANDARD FOR ISSUANCE OF WRITS OF QUO WARRANTO**

A writ of *quo warranto*, defined as “by what authority,” is the “means for inquiring into whether a particular individual has improperly exercised a power or right derived from the State.” *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011). The elements of an action seeking a writ of *quo warranto* are “(1) A Florida official, government agency or other alleged recipient of a power or right that is derived from the State of Florida; (2) has exercised that power or right; (3) but such use is or will be legally improper; (4) and therefore, the court should exercise its discretion to grant this discretionary writ.” 21 Fla. Prac., Elements of an Action, *Elements of the Prima Facie Case for a Writ of Quo Warranto* §1703:1 (2021-2022 ed.) (citing, among others, *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011); *Florida Ass'n of Professional Lobbyists, Inc. v. Division of Legislative Information Services*, 7 So. 3d 511 (Fla. 2009); *Florida House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008); *Martinez v. Martinez*, 545 So. 2d 1338 (Fla. 1989)).

An action seeking the issuance of a writ of *quo warranto* “to question the authority for the exercise of rights, privileges[,] and powers derived from the state can be brought by any person.” *Macnamara v. Kissimmee River Valley Sportsmans' Ass'n*, 648 So. 2d 155, 164 (Fla. 2d DCA 1994). When the petitioner seeks the enforcement of a public right in *quo warranto*



proceedings, the individual bringing suit also need not have a real or personal interest. *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936).

If the petitioner states a prima facie ground for relief, the Court will issue the writ of *quo warranto*. Fla. R. Civ. P. 1.630(d)(3). The writ commands the defendant to grant the relief requested or to answer the allegations in the petition by justifying the authority in question. At that point, the petitioner must serve the petition and the writ on the respondent. *Id.*

## **ARGUMENT**

### **A. The Legal Basis and Impacts of Driver's License Suspensions for Nonpayment of Court Fees, Costs, and Fines**

A driver's license is a constitutionally protected property interest, and cannot be taken away without the procedural due process required by the Fourteenth Amendment. *Dixon v. Love*, 431 U.S. 105, 112 (1977); *Bell v. Burson*, 402 U.S. 535, 539 (1971). The Florida legislature has provided a statutory framework governing, among other things, the circumstances under which the suspension of a person's driver's license is permitted. See § 322.245(1), Florida Statute (2021).

As originally conceived, the practice of suspending a person's driver's license was seen as promoting the goal of highway safety. See Jon Carnegie

& Robert Eger, III, *Reasons for Driver License Suspension, Recidivism, and Crash Involvement among Drivers with Suspended/Revoked Licenses*, NATIONAL HIGHWAY TRANSPORTATION AND SAFETY ADMINISTRATION, at 1 (Jan. 2009), [https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/811092\\_driver-license.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/811092_driver-license.pdf). Suspensions were typically issued for driving under the influence, reckless driving, repeated speeding tickets, and other driving-related offenses. *Id.*

More recently, suspension began to be used, not as a safety measure, but as a fundraising tactic. Suspensions were issued for nonpayment of fees, fines, and court costs related to violations, which had nothing to do with highway safety or even driving. Florida began suspending licenses for failure to appear in court, failure to pay child support, and myriad other reasons. *Id.* at 23.

Many states, including Florida, now use license suspensions as a coercive means of collecting fines and fees. See *Kansas v. Glover*, 140 S.Ct. 1183, 1192 (2020) (citing Brief for Fines and Fees Justice Center, *et al.* as *Amici Curiae* at 7). In 2017, 1.1 million suspension notices were sent to Florida drivers because of overdue court debt. Whitelemons *et. al.*, *supra*, at 3. That is one out of every fifteen drivers in just one year. *Id.* Between 2015

and 2017, more than 3.5 million suspension notices were issued for unpaid court debt. *Id.*

Studies show that license suspension for nonpayment of fees, fines, and court costs primarily impacts the poor. Obviously, people living in poverty “have fewer resources available to divert to paying court debt” than those with means. Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-by-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt*, Legal Aid Justice Center, at 3 (2017), <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>. And people who cannot immediately pay their fines and fees are subject to significant additional penalties – collection fees, interest, nonpayment fees, payment plan set-up fees, probation fees, and warrant fees, to name a few – that rapidly multiply already unmanageable burdens into impossible sums. Alexis Harris *et al.*, *Monetary Sanctions in the Criminal Justice System*, A Report to the Laura and John Arnold Foundation, at 14 (April 2017), <https://finesandfeesjusticecenter.org/articles/monetary-sanctions-criminal-justice-system/>.

Black Americans – who are more likely than white Americans to live in poverty – are also more likely to have their licenses suspended for nonpayment of fines, fees and court costs. See Salas & Ciolfi, *supra*, at 3 (citing studies documenting disproportionate effect on black Americans in

California, Virginia, and Wisconsin). Florida suspends the licenses of its black citizens at a rate 1.5 times higher than the general population. See *Kansas v. Glover*, Brief amicus curiae of the Fines and Fees Justice Center, 2019 WL 4302286, at \*10.

A person's ability or inability to pay fines, fees and court costs has nothing to do with his or her ability to drive safely. A California Department of Motor Vehicles study found that drivers with licenses suspended for non-driving related reasons “have relatively low traffic risks that are not much higher than the validly-licensed group.” Michael Gerbers & David DeYoung, *An Examination of the Characteristics and Traffic Risk of Drivers Suspended/Revoked for Different Reasons*, California Department of Motor Vehicles, at vii (Nov. 2002), <https://www.dmv.ca.gov/portal/file/an-examination-of-the-characteristics-and-traffic-risk-of-drivers-suspended-revoked-for-different-reasons/>. A follow-up study commissioned by the American Association of Motor Vehicle Administrators confirmed this result, finding that “[l]ess than 1 percent (0.09%) of drivers suspended for nondriving reasons ... are involved in a crash while their driver's license is suspended.” Carnegie & Eger, *supra*, at 23.

Perhaps because there is no correlation between the ability to pay and driver safety, and because of the disproportionate impact of license-for-

payment laws on poor and Black communities, support for such systems is dwindling. In the past several years, Virginia, Mississippi, Idaho, Montana, Texas, Maine, California, and the District of Columbia have enacted legislative reforms to tackle debt-based license suspension. Whitelemons *et al.*, *supra*, at 4-5. Legislation passed in Texas and signed into law in 2019 will result in roughly 650,000 drivers' licenses being reinstated, an additional 500,000 people will become eligible for license reinstatement, and Texas will relieve \$2.5 billion in debt. Whitelemons *et al.*, *supra*, at 4-5. Support for reform is nonpartisan and ranges across the political spectrum from Koch Industries and the American Legislative Exchange Council (ALEC) to the American Civil Liberties Union (ACLU) and the Southern Poverty Law Center. *Id.*

Given the disproportionate impact of license-for-payment laws, it is essential that statutory schemes, such as Florida's, which still provide for the suspension of driver's licenses for nonpayment of fees, fines, and court costs, be carefully considered and enforced in accordance with their terms. As described below, Florida law authorizes suspension only with respect to nonpayment of fines, fees, and court costs for criminal violations. Because Respondent has and continues to suspend driver's licenses for noncriminal

municipal and county ordinances, she has exceeded her authority and a writ of *quo warranto* is warranted.

**B. Florida Law Does Not Authorize the Suspension of Driver's Licenses for the Nonpayment of Court Costs for Ordinance Violations**

Chapter 322, Florida Statutes (2020) provides detailed laws regarding Florida driver's licenses. Section 322.245(1), Florida Statute (2021), provides for suspension of driver's licenses "upon failure of [a] person charged with [a] specified offense under *chapter 316*, ["Uniform Traffic Control,"] *chapter 320*, ["Motor Vehicle Licenses,"] or [*chapter 322*, "Driver Licenses"] to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in *chapter 61* or *failure to pay any financial obligation in any other criminal case.*" (Emphasis added.)

Crimes are defined as limited to felonies and misdemeanors. § 775.08(4), Fla. Stat. (2020). Municipal and county ordinance violations are specifically excluded from the definitions of misdemeanors and noncriminal violations. § 775.08(2), Fla. Stat. (2021). The Florida Supreme Court has held that ordinance violations are not crimes as defined by state statute. See *Thomas v. State*, 614 So. 2d 468, 472 (Fla. 1993) (holding full custodial arrest not authorized for violation of municipal ordinance for riding bicycle without bell); see also *Nelson v. State*, 268 So. 3d 837 (Fla. 2d DCA 2019)

(full custodial arrest not authorized for violation of municipal ordinance for staying in park after hours); *Pridgen v. City of Auburndale*, 430 So. 2d 967 (Fla. 2d DCA 1983) (sentence of 6 months of probation not authorized for municipal ordinance violation as it is not a criminal violation; ordinance not identified); Fla. Att'y Gen. Op. 2009-29, 2009 WL 1708959, at \*1 (stating that section 775.08(2) cautions that the term “misdemeanor” shall not mean a conviction for *any municipal or county ordinance*, “thus, precluding the application of a misdemeanor charge to a violation of any municipal or county ordinance.”)

Respondent has issued driver’s license suspension notices for 43 separate ordinance violations in four localities. Respondent has suspended 1,587 licenses based on Sarasota Municipal Ordinances, including open container violations (Sarasota City Code § 5-21), campfire and camping (Sarasota City Code §§ 10-7, 34-17, 34-40 (2005)), outdoor lodging violations (Sarasota City Code §§ 10-10, 34-41), littering violations (Sarasota City Code §§ 10-9, 30-2), possession of glass container violations (Sarasota City Code § 10-12), public urination/defecation violations (Sarasota City Code § 21-93, 30-12 (2007) (renumbered as § 21-93)), solicitation and pedestrian violations (Sarasota City Code §§ 23-1, 23-2, 23-7, 23-8, 30-3, 33-174), park rules violations (Sarasota City Code §§ 22-24, 22-25). None

of these violations are misdemeanors under state law. See *generally*, Title XLVI, Fla. Stat. (2021). Respondent has suspended 156 driver's licenses based on Sarasota County Ordinances, including open container violations (Sarasota County Code §§ 6-83, 6-113), solicitation and pedestrian violations (Sarasota County Ordinance No. 83-046, Sarasota County Code §§ 90-33(15), 98-11), parks rules violations (Sarasota County Code §§ 90-33, 90-34), unlawful deposit of waste violations (Sarasota County Code § 106-1), and regulation of designer drug violations (Sarasota City Code § 62-351). None of these violations are misdemeanors under state law. See *generally*, Title XLVI, Fla. Stat. (2021). Respondent has suspended 16 driver's licenses based on North Port Municipal Ordinances, including open container violations (Code of the City of North Port, Florida § 6-28), solicitation violations (Code of the City of North Port, Florida § 54-2 (repealed Oct. 11, 2005), and camping violations (Code of the City of North Port, Florida § 46-148). None of these violations are misdemeanors under state law. See *generally*, Title XLVI, Fla. Stat. (2021). Respondent has suspended 24 driver's licenses based on Venice Municipal Ordinances, including open container (Code of Ordinances, City of Venice, Florida §§ 6-5 (2003) (renumbered as § 86-474), 86-474 (2013), 6-40, 46-62(11)) and camping violations (Code of Ordinances, City of Venice, Florida § 46-62(8)). None of



these violations are misdemeanors under state law. *See generally*, Title XLVI, Fla. Stat. (2021).

Because Respondent may only suspend a driver's license for a license holder's failure to pay financial obligations associated with a criminal offense, and because, by statutory definition, a violation of a municipal or county ordinance is not a "criminal offense" under Florida law, Respondent lacks the authority to suspend driver's licenses for nonpayment of fees, fines and court costs associated with municipal or county ordinances.

### **CONCLUSION**

For the reasons stated above, Petitioner respectfully requests that the Court issue the writ and prohibit the Respondent from suspending driver's licenses for nonpayment of court costs, fines, and fees associated with municipal and county ordinance violations.

### **CERTIFICATE OF COMPLIANCE WITH RULE 9.045**

I certify that this petition complies with the font (Arial 14-point) and word-count requirements. This filing contains 3,565 words (including sections permitted to be excluded), which is within the 13,000 word-limit prescribed in Fla. R. App. P. 9.100(g).

Dated: January 6, 2022

Respectfully submitted,

/s/ Chelsea Dunn

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