

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA**

GAINESVILLE REGIONAL UTILITIES
AUTHORITY,

Petitioner,

v.

Case No. 1D2025-2846

L.T. Case No. 24-CA-2932

CITY OF GAINESVILLE, FLORIDA, a
municipal subdivision of the State of
Florida, and KIM A. BARTON, in her
official capacity as the Supervisor of
Elections for Alachua County, Florida,

Respondents.

CITY OF GAINESVILLE'S AND ALACHUA COUNTY SUPERVISOR
OF ELECTION'S RESPONSE TO EMERGENCY PETITION FOR
CONSTITUTIONAL WRIT TO PREVENT DISSOLUTION OF
PETITIONER ON NOVEMBER 6, 2025

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INTRODUCTION

Appellant Gainesville Regional Utility Authority concedes that it is seeking extraordinary relief. That is an extraordinary understatement. “The writ of injunction ‘is an extraordinary, not an ordinary, everyday writ, and it should never be granted lightly, but cautiously and sparingly.’” *Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1075 (Fla. 1st DCA 2022) (quoting *Godwin v. Phifer*, 41 So. 597, 602 (Fla. 1906)). There is risk of it being “turned into an instrument of oppression and injury,” so “great care should be exercised in awarding it.” *Savage v. Parker*, 43 So. 507, 507 (Fla. 1907).

This is not such a case. The Authority cannot meet the standard for a writ of injunction. The appeal for which it seeks this extraordinary relief lacks any likelihood of success and thus there is no basis for what is essentially a stay for the sake of preserving jurisdiction that does not need to be preserved.

The appeal is one of a final judgment invalidating an ordinance enacted by the Gainesville City Commission in 2024. On June 12, 2025—after the final judgment in the related appeal (Case No. 1D2025-1364) was entered—the elected Commissioners, exercising

their constitutional home-rule power, enacted a new ordinance proposing an amendment to the City's Charter. This ordinance scheduled an election for November 4, 2025.

Yet it was not until October 29, 2025—a mere week ago—that the Authority, in a different lawsuit than the one underlying this appeal over the 2024 ordinance, sought an injunction from the trial court to pause the 2025 ordinance. The trial court denied the injunction—a ruling the Authority did not suggest to the trial court needed to be quickly reduced to writing and which the Authority has not appealed. And yesterday, the voters overwhelmingly approved the Charter amendment.

Now, having been denied an injunction from the trial court in the 2025 litigation, the Authority asks this Court to exercise its “rarely” used power to issue an appellate “writ of injunction,” *Gainesville Reg'l Utilities Auth. v. City of Gainesville*, 416 So. 3d 1284, 1285 (Fla. 1st DCA 2025), to prevent the duly-enacted 2025 ordinance from taking effect and to deny the will of the voters. This Court should decline the invitation.

The Authority claims that the writ is necessary to preserve this Court's jurisdiction to decide the related appeal over the 2024

ordinance. But the Authority lacks standing to pursue that appeal in the first place. The trial court invalidated the 2024 ordinance. Whether the Authority wins the appeal, that ordinance is not going to take effect—meaning, under firmly established precedent, the Authority lacks standing even to pursue the appeal. *See Gen. Dev. Utils., Inc. v. Fla. Pub. Serv. Comm’n, Div. of Admin. Hearings*, 385 So. 2d 1050, 1051 (Fla. 1st DCA 1980).

The Authority’s appeal is also doomed because the Authority never notified the Attorney General of the constitutional challenges it is now raising—a barrier to this Court’s consideration of them. *See Lee Mem’l Health Sys. v. Progressive Select Ins.*, 260 So. 3d 1038, 1042 (Fla. 2018). And because the Authority has not shown, and cannot show, any likelihood of success on its appeal, it cannot meet the standard for injunctive relief.

No one should feel sorry for the Authority. The Authority had remedies to prevent its dissolution. The Authority had since June 12 to file a lawsuit challenging the 2025 ordinance, to seek an injunction or a merits determination from the trial court on the validity of the 2025 ordinance, and to seek this Court’s intervention sooner to stop the 2025 ordinance from taking effect. The Authority also had the

opportunity to agree to expedite the appeal—a suggestion the City made months ago, and the Authority opposed. Having failed to timely or fully pursue its remedies, including an expeditious resolution of the very appeal the Authority is now trying desperately to preserve, the Authority is in no position to impose an emergency on the City, on the Supervisor, and on this Court, one day before the election results are scheduled to be certified. *See Byrd*, 339 So. 3d at 1073 (“This procedural dilatoriness under the circumstances highlights an extant misunderstanding about the limited role of a temporary injunction.”).

Nor can the Authority establish a “significant and immediate need for the writ,” *Gainesville Reg’l Utilities Auth.*, 416 So. 3d at 1285, given the availability of alternative remedies and the Authority’s lack of standing here. The Authority’s request to nullify a duly enacted municipal ordinance that is not even the subject of the appeal should be denied.

STATEMENT OF THE CASE AND FACTS

It is important to clarify what the related appeal is about, and what it is not.

The appeal involves the validity of a 2024 ordinance proposing to amend the City of Gainesville’s Charter. For more than a century, the City has owned and operated its own local public utilities, known as the Gainesville Regional Utilities (“GRU”), providing electric, natural gas, telecommunications, water, and wastewater services to customers in Gainesville, the University of Florida, and nearby sections of Alachua County.

In 2023, the Florida Legislature passed a special act amending the City’s Charter to create a new unelected entity, the Authority, and to place that entity in charge of managing the City-owned GRU. *See* Ch. 2023-348, Laws of Fla. The special act added a new provision to the City Charter, creating the Authority as a “unit of city government” to manage and operate the GRU. But the special act did not alter or amend the City’s longstanding power—under both the text of the Charter itself and the City’s broad constitutional and statutory home-rule powers—to amend its own Charter.

In accordance with the Charter’s amendment procedures, in 2024, the Gainesville City Commission unanimously approved a Charter amendment deleting the portion of the Charter creating the Authority and returning control of the GRU to the City. The Authority

then sued to block the Charter amendment from the November 2024 ballot. As relevant here, the Authority argued that (1) the City lacked the power to propose the amendment, and (2) the ballot summary was misleading. The trial court allowed the amendment to go to the voters but enjoined the amendment from becoming effective until the conclusion of the litigation. The amendment passed by an overwhelming 73 percent.

After the election, the parties filed competing summary-judgment motions. The trial court issued its summary-judgment order on May 9, finding that the City has authority to amend the Charter but concluding that the ballot language was misleading, thus rendering the 2024 ordinance and proposed Charter amendment invalid. The trial court entered a final judgment on May 19.

Despite winning the case and succeeding in getting the 2024 ordinance invalidated, on June 2, the Authority appealed the final judgment “as to Count I [the City’s power to amend] only.” In its appeal, the Authority raised a few arguments, most of them unpreserved, for why the City supposedly lacks the ability to amend its own Charter.

Meanwhile, because the Authority ultimately managed to invalidate the Charter amendment, the City moved ahead with a new proposal, using revised ballot language, to appear on a special November 2025 election ballot. The Gainesville City Commission approved this new ordinance on June 12, after the final judgment on appeal here. Yet it was not until August 27 that the Authority filed a lawsuit challenging the new 2025 ordinance.

The trial court expedited the new litigation and considered two requests from the Authority to stop the election and prevent the 2025 ordinance from becoming effective. First, on October 10, the trial court denied the Authority's "motion for statutory suspension of municipal ordinance," correctly finding that the text of the "municipal suspension" statute cited by the Authority did not apply. The Authority did not appeal or otherwise challenge that ruling in this Court.

Then, after a hearing on October 29, the trial court denied the Authority's motion for a temporary injunction. The Authority did not request a written order to appeal, seek a stay of the trial court's order, or otherwise try to challenge the denial of the temporary injunction in this Court. The trial court had also previously denied a stay

pending appeal of the final judgment here, in August, which the Authority waited almost two months to bring to this Court's attention. In the related appeal, the Authority's appellate stay motion remains pending.

The special election on the new 2025 ordinance took place yesterday. It passed by an even greater margin than the 2024 ordinance, with more than 75% support.

ARGUMENT

The Authority's argument is that the injunctive writ is necessary to preserve this Court's jurisdiction to decide the related appeal. But the Authority's appeal lacks merit, which is relevant to its quest for injunctive relief. For one thing, the Authority has no standing to pursue the appeal. For another, it failed to preserve its appeal, both by failing to notify the Attorney General of its constitutional claims and by failing to argue in the trial court the specific issues it is raising on appeal. Finally, even if none of that were true, the Authority cannot demonstrate its entitlement to this most extraordinary relief, both because of its own litigation choices and because this Court lacks the power in this procedural posture to invalidate a municipal ordinance that is not the subject of the appeal.

The Authority lacks standing.

What was once commonly known as a constitutional writ of injunction is now usually known as a temporary injunction. *Byrd*, 339 So. 3d at 1073 & 1075. Its purpose is to maintain the status quo without giving a party a remedy. *Id.* at 1073. That does not mean, though, that when considering such extraordinary relief, a court would ignore the underlying merits that show a party is done for on appeal. *Cf. id.* (“Even though our immediate task is to consider whether the circuit court erroneously vacated the automatic stay, we cannot do so while turning a blind eye to the obvious and fatal flaw in the underlying injunction.”); *St. Paul Title Ins. Corp. v. Davis*, 392 So. 2d 1304, 1305 (Fla. 1980) (explaining that constitutional all writs provision cannot confer added appellate jurisdiction or used as an independent basis for jurisdiction).

Quite the opposite. After all, when an appellate court issues a writ of injunction, then like a stay, there must still be some showing of a likelihood of success on the merits to show why jurisdiction needs to be preserved. *See Savage*, 43 So. at 507 (stating that there should be a “clear case” made by a temporary injunction request); *Cohen v. L’Engle*, 5 So. 235, 239 (Fla. 1888) (tying the need for

supporting facts to entitlement to an appellate writ of injunction, stating, “[i]f the appellant is entitled to an injunction, the same facts, we think, would be a good equitable plea to the action at law”). *Cf. Harper v. City of Key Colony Beach*, Case No. 3D25-0381, 2025 WL 2656266, at *1 (Fla. 3d DCA Sept. 17, 2025) (noting that Article V, section 5(b), of the Florida Constitution authorizes “all writs” as a vehicle to protect jurisdiction, usually by way of stay). And as we demonstrated in our response to the Authority’s recent motion to this Court for a stay pending appeal, no grounds for an injunctive pause exist.

Here, the notice of appeal, with the trial court’s final judgment, shows that the Authority’s appeal is going nowhere because the Authority lacks standing. It lacks standing because it *won* in the trial court. No matter which way this Court rules on the Authority’s appeal, the 2024 ordinance the Authority is challenging on appeal will not be taking effect.

“It is a long standing rule that a judgment or decree wholly in favor of a party may not be appealed by him, for he is not aggrieved thereby.” *Gen. Dev. Utils.*, 385 So. 2d at 1051. “An appeal of a wholly favorable judgment must be dismissed.” *Fla. Dep’t of Env’m’tl*

Protection v. Fla. Reemployment Assistance Appeals Comm’n, 123 So. 3d 1154, 1154 (Fla. 1st DCA 2012); *see also Dep’t of Rev., on behalf of Marquez v. Lopez*, 252 So. 3d 823, 824 (Fla. 1st DCA 2018); *Dep’t of Health v. Fresenius Med. Care Holdings, Inc.*, 935 So. 2d 636, 637 (Fla. 1st DCA 2006).

In *Fla. Dep’t of Env’t Protection*, the Department sought a review of an Unemployment Appeals Commission order. In the underlying case, a former Department employee was found to be eligible for benefits from the Unemployment Compensation Trust Fund that the Department then had to pay back to the Fund. The Department challenged that determination at the Unemployment Appeals Commission. There, the Commission ruled against the Department on the issue of the employee’s entitlement to benefits. However, the Department ultimately won the case because the Commission agreed with the Department that the Department did not have to reimburse the Fund for those benefits. The Department appealed to this Court.

This Court dismissed the Department’s appeal for lack of standing because the Department had obtained a wholly favorable judgment. It had not won on all the issues it raised, but at the end

of the day, it had won the case: it avoided the ultimate outcome against it, which was having to reimburse the Fund.

The same is true here. The Authority may not have won on the issue it raised about whether the City was allowed to amend its own charter; however, it did win on its issue of whether the City's ballot language was misleading. Thus, just as in *Fla. Dep't of Env't Protection*, at the end of the day, the Authority won the case and obtained the ultimate outcome it sought: the 2024 ordinance could and would not be enforced. Therefore, when the Authority appealed that final judgment, which was a wholly favorable judgment, it did so without standing.

The Authority's appeal cannot succeed.

Standing is not the only impediment to this Court's exercise of jurisdiction over the Authority's appeal. The Authority also failed to preserve its appeal for this Court's review, in two ways.

First, the Authority failed to provide notice to the Attorney General of its constitutional challenge to the 2024 ordinance. But Florida Rule of Civil Procedure 1.071 *requires* such notice. And the failure to provide it precludes this Court from considering the Authority's claims on appeal. *See Lee Mem'l Health Sys.*, 260 So. 3d

at 1042; *Shelton v. Bank of N.Y. Mellon*, 203 So. 3d 1003, 1005 (Fla. 2d DCA 2016).

Second, the Authority's initial brief raises a host of arguments centered on principles of preemption that were never raised in the trial court. (The Authority's motion for summary judgment barely even included the word "preemption.") Those arguments therefore provide no basis for this Court to overturn the trial court's judgment. *See Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999) ("[I]f a claim is not raised in the trial court, it will not be considered on appeal."); *Rosier v. State*, 276 So. 3d 403, 410 (Fla. 1st DCA 2019) (Winokur, J., concurring) ("Our precedent requires that an argument for reversal be specifically preserved in the trial court . . . in order for th[e] appellate court . . . to consider it. Otherwise, the argument is waived. General or vague references to an issue will not suffice." (quotation omitted)).

Put simply, there is no reason for this Court to entertain an "extraordinary" writ to aid in the exercise of jurisdiction over an appeal that fails before it ever gets off the ground. Because the Authority's appeal will not succeed, there is no basis for injunctive relief.

The writ is neither equitable nor legally appropriate.

Setting aside the merits of the appeal, the Authority still has failed to meet the high bar necessary to obtain the “extraordinary” and “rarely” issued writ it is seeking. The Authority’s “procedural dilatoriness” forecloses such relief. *Byrd*, 339 So. 3d at 1073.

Indeed, the Authority has known since June that this ordinance was enacted and this amendment to the Charter would be placed before voters on November 4. Yet the Authority dragged its feet. The Authority opposed expediting the appeal. The Authority waited until August 27 to file a new lawsuit to challenge the 2025 ordinance. And the Authority did not seek a temporary injunction from the trial court until last week. The Authority has therefore waived any right to obtain injunctive appellate relief now. *Cf. Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1131 (finding waiver of ability to pursue certain arguments based on litigation conduct, delay, and totality of the circumstances).

This Court also lacks jurisdiction to give the Authority such relief. While this Court can certainly act to preserve its own jurisdiction, this Court remains confined to the record, pleadings, and procedural posture in which issues are presented to it.

Here, the Authority is asking this Court, through motions practice in the related appeal over the 2024 ordinance, to postpone the effectiveness of a different ordinance, duly enacted by the elected Commissioners of the City of Gainesville in accordance with their constitutional home-rule authority, that was not challenged in the underlying litigation or overturned in the final judgment under review. *See Ill. Union Ins. v. McGinley*, 401 So. 3d 572, 575 (Fla. 2d DCA 2025) (“[T]he boundaries of a court’s jurisdiction are limited by the pleadings in the action.”); *see also City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (“In Florida, a municipality is given broad authority to enact ordinances under its municipal home rule powers.”). This exceeds the bounds of this Court’s procedural power to merely maintain the status quo. The Authority has cited no constitutional, statutory, or case-based precedent that would allow this Court to “toll the effectiveness” of an election and a municipal ordinance through its ancillary all-writs power.

CONCLUSION

This Court should deny the Authority's "emergency" petition for a "constitutional writ."

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this response complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.100(j). This brief contains 2,996 words.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts e-Filing Portal on all counsel in the Service List below, in accordance with Florida Rule of General Practice & Judicial Administration 2.516(b)(1), on this 5th day of November 2025.

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