

RESOLUTION NO. 2024-01

A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF WINDERMERE, FLORIDA, AUTHORIZING THE TOWN'S PARTICIPATION IN LITIGATION SEEKING A DECLARATION THAT THE PROVISIONS OF SUBSECTION 112.144(1)(d) OF THE FLORIDA STATUTES THAT REQUIRES MUNICIPAL ELECTED OFFICIALS TO FILE FORM 6 FINANCIAL DISCLOSURE FORMS IS UNCONSTITUTIONAL AND INVALID; PROVIDING AN EFFECTIVE DATE.

WHEREAS, since 1976, Article II, Section 8 of the Florida Constitution has required that all elected State constitutional officers file a full and public disclosure of their financial interests, which is done through a state-adopted form ("Form 6") that requires, among other things, the disclosure of the specific amounts of an official's net worth, income and asset values.

WHEREAS, historically, municipal elected officials have been required to make a limited financial disclosure that is done through a different state-adopted form ("Form 1") that requires, among other things, the disclosure of information related to sources of income, real property, intangible personal property liabilities and interests in specified businesses, but does not include the specific amounts of an official's net worth, income and asset values.

WHEREAS, the Mayor and all current elected members of the Town of Windermere (the "Town Elected Officials") were elected by the voters of the Town (or the members of the Town Council) subject to and in reliance upon Florida law that required them to annually file Form 1 (not Form 6) financial disclosures forms.

WHEREAS, although the State Legislature has the power in the Florida Constitution to require that additional public officers file a full and public disclosure of their financial interests, it must do so consistent with other constitutional limitations.

WHEREAS, in 1980, the voters of Florida amended the Florida Constitution by adopting Article 1, Section 23, the "Right to Privacy," which states that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."

WHEREAS, because the right of privacy is a fundamental right within Florida's constitution, the Florida Supreme Court has consistently required that any law intruding on the right is presumptively unconstitutional and must be justified by a "compelling state interest" which the law serves or protects through the "least restrictive means."

WHEREAS, the First Amendment to the United States Constitution, and Article 1, Section 4 of the Florida Constitution, protects the freedom of speech, which includes the right to choose what to say and what not to say, any impairment of which must be justified by a "compelling state interest" which the law serves or protects through the "least restrictive means."

WHEREAS, during the 2023 legislative session, Senate Bill 774 was passed and codified as Chapter 2023-09, Laws of Florida, amending Section 112.3144 of the Florida Statutes to change the financial disclosure requirements and now require that all elected municipal mayors and elected members of the governing board file a Form 6 financial disclosure, which is substantially more burdensome and personally intrusive than the Form 1.

WHEREAS, the imposition of the Form 6 disclosure requirements at the municipal level (a) represents an unwarranted intrusion into the privacy rights of municipal elected officials, most of which receive little or no compensation for their service, (b) unnecessarily risks the safety of such officials (making them targets of, among other things, burglary, identity theft and extortion), and (c) will deter many otherwise qualified and interested citizens from running for office.

WHEREAS, in fact, over 100 municipal elected officials resigned from office prior to December 31, 2023, as a result of the new disclosure requirements, disrupting the ability of some local governments to operate for lack of a quorum.

WHEREAS, the imposition of the intrusive Form 6 disclosure requirements at the municipal level is not the least restrictive means of serving the governmental interests of preventing abuse of the public trust, as demonstrated by, among other things, the lack of such requirements at the municipal level in other states and at the federal level (even the President of the United States and members of the U.S. Congress are not required to make such extensive disclosures).

WHEREAS, requiring that unpaid (or low paid) municipal elected officials disclose their precise net worth, income and assets does not serve (let alone constitute the least restrictive means of serving) any compelling interest – Form 1 disclosures constitutes sufficient transparency to inform the public of potential conflicts.

WHEREAS, the imposition of new financial disclosure requirements upon municipal elected officials who were elected without such requirements violates due process, is fundamentally unfair and violates fundamental constitutional rights.

WHEREAS, a group of municipalities and municipal elected officials filed two lawsuits, one in State Court and one in Federal Court, on February 15, 2024, seeking a declaration that the provisions of Section 112.3144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 financial disclosure forms are unconstitutional and invalid and should be enjoined (the “Lawsuits”).

WHEREAS, the Town of Windermere believes it is in the best interest of the citizens and residents of the Town to participate in the Lawsuits and urges other municipalities and their elected officials to also participate as plaintiffs.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA AS FOLLOWS:

Section 1: The foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2: The Town of Windermere hereby authorizes the participation of the Town, and individual Members of the Town Council who choose to participate as plaintiffs, in the Lawsuits.

Section 3: Weiss Serota Helfman Cole + Bierman, PL (the “Firm”) is hereby retained to represent the Town in the Lawsuits. The Firm will charge the Town a flat fee, inclusive of attorneys’ fees and costs, of \$10,000 to represent the Town and the individual elected officials who choose to participate as plaintiffs, for the Lawsuits in the trial court. The Town and elected officials recognize that such flat fee may be less than the actual attorneys’ fees and costs incurred, and that if the Town and elected officials prevail in the Lawsuits, the Firm may apply with the Court for its actual reasonable attorneys’ and costs from the defendants. The filing of any appeals will be authorized by separate resolution under the terms thereof. The Town and its elected officials also acknowledge that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Town further acknowledges that, from time to time, the Firm may be called upon by clients to represent them as to requests for various approvals and as to other matters with respect to or involving the Town. The Town hereby waives any potential conflict of interest in the Firm’s representation of those clients arising from its representation of the Town in the Lawsuit.

Section 4: The Town of Windermere invites and urges other local governments and elected officials to join the Town as plaintiffs in the Lawsuit and to coordinate their efforts with the Town.

Section 5: Town Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 6: This Resolution shall take effect immediately upon adoption.

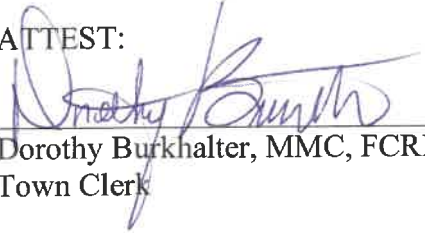
PASSED AND ADOPTED this 12th day of March, 2024.

TOWN OF WINDERMERE, FLORIDA

By: Town Council

By: 
Jim O'Brien, Mayor

ATTEST:


Dorothy Burkhalter, MMC, FCRM
Town Clerk

