

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
GENERAL CIVIL DIVISION

THE SCHOOL BOARD OF
HILLSBOROUGH COUNTY, FLORIDA,
Petitioner,

CASE NO.: 24-CA-5947

vs.

DIVISION: D

HILLSBOROUGH COUNTY,
FLORIDA, by and through its BOARD OF
COUNTY COMMISSIONERS, and

CRAIG LATIMER, in his capacity as
the HILLSBOROUGH COUNTY
SUPERVISOR OF ELECTIONS,
Respondents.

ORDER GRANTING EMERGENCY PETITION FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on Petitioner Hillsborough County School Board (the School Board)'s July 23, 2024 Emergency Petition for Writ of Mandamus seeking a writ to compel Respondents Board of County Commissioners for Hillsborough County, Florida (the Commission) "to take all action necessary to cause to be placed upon the ballot of the November 5, 2024 general election an ad valorem millage referendum as the School Board has lawfully directed in Resolution 24-SB-1, which was transmitted to the Commission on April 10, 2024." Given the short time between the filing of the Petition and the deadline to place the referendum on the November 2024 ballot, the Court has treated the Petition as an emergency and granted the School Board's filing deadline requests to ensure that due process is afforded. The Court having reviewed the Petition, Responses, Reply, and being otherwise duly advised, finds as follows:

On April 2, 2024, the School Board adopted Resolution 24-SB-1, seeking an ad valorem operating millage pursuant to section 1011.73, Florida Statutes (2022). The Resolution sets the millage election to occur on November 5, 2024, the date of the next general election. The Resolution also “directs the Hillsborough County Commissioners to direct the Hillsborough County Supervisor of Elections” to place the measure on the general election ballot for 2024. The School Board transmitted the Resolution to the Commissioners on April 10, 2024. The Commission placed the Resolution on the agenda, for the first time, for its regularly scheduled meeting on June 20, 2024, over two months after the School Board transferred the Resolution. Consideration of the Resolution was delayed until July 17, 2024, approximately one month after it was first placed on the agenda. At the July 17 meeting, approximately three months after the School Board transmitted the Resolution, the Commission set the referendum on the ballot for the November 2026 general election.

Mandamus is the mechanism by which officials can be compelled to perform lawful, ministerial duties. *See Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 2d DCA 1993). “A ministerial duty or act is one where there is no room for the exercise of discretion, and the performance being required is directed by law.” *Polley v. Gardner*, 98 So. 3d 648, 649 (Fla.1st DCA 2012) (internal citations omitted).

The School Board alleges that the Commission has a ministerial duty under section 1011.73 to include the millage referendum on the ballot for the general election specified by the School Board. Sections 1011.73(2) and (3) state:

(2) Millage authorized not to exceed 4 years.—The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve an ad valorem tax millage as authorized under s. 1011.71(9). Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier. If any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

(3) Holding elections.—All school district millage elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this chapter. A referendum under this part shall be held only at a general election, as defined in s. 97.021.

As the Nineteenth Circuit states in its 2020 opinion, “Section 1011.73 is a statute that deals with the authority of the School Board, not that of the County Commissioners.” *School Bd. of Indian River Cnty. v. Bd. of Cnty. Comm’rs of Indian River Cnty.*, Case No. 2020-CA-000330 (Fla. 19th Jud. Cir. June 03, 2020). From a purely textual standpoint, this Court agrees with the Nineteenth Circuit—the relevant statute deals with the authority of the school board, not another governing body. “The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve . . . Such election may be held at any time . . .” §1011.73(2), Fla. Stat. The first sentence begins with a power and duty of the school board. The second sentence does not specify a power or duty of another governing body. The only logical, textual

interpretation is that the district school board has the authority to set the date for the vote on its resolution.

This Court also notes that in 2022, after the *Indian River County* decision was published, the Florida Legislature amended section 1011.73(3) to add the requirement that “[a] referendum under this part shall be held only at a general election, as defined in s.97.021.” § 1011.73(3), Fla. Stat.¹ The core issue in *Indian River County* was whether the school board could direct the county commissioners to put its referendum on the primary ballot or whether the county commissioners could choose to put the referendum on the ballot for the general election in November. Notably, the Nineteenth Circuit found that under section 1011.73 (2020), “the commissioners have no discretion to choose a different date, but must perform the ministerial act of calling for an election as directed by the School Board, including the date requested.” Given that the Legislature amended the statute after the *Indian River County* decision was made, and given that the amendment directly addresses the holding in that case, this Court cannot overlook the fact that the balance of section 1011.73(2) and (3) were left unaltered, meaning that the Nineteenth Circuit’s determination that commissions lack discretion to select the date of an election has effectively been upheld by the Legislature.

¹ In 2022, the Legislature added the requirement that “[a] referendum under this part shall be held only at a general election,” to subsection (3) but did not remove the phrase “at any time,” from subsection (2).

When interpreting a statute, it is generally understood that a specific clause controls when related to a more general clause. Additionally, from a pragmatic standpoint, now that section 1011.73 requires the referendum to be put on the ballot only during a general election, there is *one day* per general election year on which the referendum could possibly be voted. The only way to interpret the phrase “at any time” in context is that there is no limitation on which *general election year* a referendum may appear on the ballot. To say that a school board cannot choose the year in which they direct a referendum to be put on the ballot would directly conflict with the enumerated purpose of the statute.

The Commission argues that this reading of section 1011.73(2) and (3) would mean that, within this statutory framework, the commissioner would be “simply a rubber stamp with no discretion whatsoever to do anything.” Regardless of the Petitioner’s or Respondents’ feelings on the subject, the fact that there is only one day per year on which the referendum can be voted means that there is no discretion as to the date that the vote takes place in any given year—the vote can only take place on the date of the general election.

The Commission also cites several opinions that address section 212.055, Florida Statutes, which governs sales taxes levied by the school board. Notably absent from section 212.055 is the phrase “[t]he district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election. . . .” §1011.73(2), Fla. Stat. Since the wording of section 212.055 is distinguishable from that found in section 1011.73(2), the Court must

understand the process for putting a sales tax on the ballot under section 212.055 to be distinguishable from the process for putting an ad valorem tax millage under section 1011.73(2). The Commission thus has a ministerial duty to call for an election on the date identified in Resolution 24-SB-1.

The School Board also argues in the alternative that this Court should grant certiorari relief if it finds that mandamus is not the appropriate writ in this case. The Court finds that mandamus is the appropriate writ in this case. *Assuming arguendo* that certiorari was the appropriate writ, the Commission's application of section 212.055 to an ad valorem tax would be a departure from the essential requirements of the law.

Finally, Respondent Supervisor of Elections has filed a motion to be dismissed from the suit for failure to state a cause of action against the Supervisor of Elections. The School Board included the Supervisor of Elections as a respondent because of the "looming deadlines" and argues that "full relief will likely require the Court to instruct the Supervisor of Elections, directly, to place the School Board's referendum on the general election ballot." The School Board has not alleged that the Supervisor of Elections has failed or refused to perform a ministerial duty in relation to Petition, so dismissal is required. Given the time sensitive nature of this Emergency Petition, however, the Court will note that the Supervisor of Elections does have a ministerial duty to place the referendum on the general election ballot once directed to do so, on the date identified in Resolution 24-SB-1.

It is therefore ORDERED AND ADJUDGED that:

1. The Emergency Petition for Writ of Mandamus is GRANTED.
2. Respondent County Commissioners of Hillsborough County, Florida, must meet no later than August 13, 2024, for the purpose of adopting a resolution causing to be placed on the November 5, 2024 general election ballot the proposition contained within Hillsborough County School Board Resolution 24-SB-1, duly passed and approved April 2, 2024, and as further requested by the Hillsborough County School board via correspondence to the Board of County Commissioners of Hillsborough County, Florida, dated April 10, 2024.
3. Immediately upon adoption of the Resolution, the Board of County Commissioners of Hillsborough County, Florida, shall cause certified copies of the Resolution to be delivered to the Supervisor of Elections for Hillsborough County and to the Hillsborough County School Board.
4. Respondent Supervisor of Elections' motion to be dismissed from the suit is GRANTED and the Supervisor is hereby DISMISSED from the case.

ORDERED on the date imprinted with the Judge's signature.

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EMILY A. PEACOCK, Circuit Court Judge

Copies to:
Petitioner
Respondent
Additional copy(ies) provided electronically through JAWS