

SUPREME COURT OF LOUISIANA

DOCKET NO: 2020-C-01231

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**ARNOLD LOWTHER, ET AL**  
*Plaintiffs-Applicants*

**VERSUS**

**TOWN OF BASTROP, ET AL**  
*Defendants-Respondents*

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ON WRIT OF CERTIORARI AND/OR REVIEW

ORIGINAL BRIEF FILED ON BEHALF OF PLAINTIFFS/APPLICANTS,  
ARNOLD LOWTHER, ET AL

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Review the Ruling of  
SECOND CIRCUIT COURT OF APPEAL  
CIVIL DOCKET NO. CA 20-53586  
WILLIAMS, MOORE, AND STONE, JJ - JUDGES

On Appeal from the  
4<sup>TH</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF MOREHOUSE  
CIVIL DOCKET NO. 2008-333  
THE HONORABLE JUDGE ROBERT C. JOHNSON, PRESIDING

CIVIL MATTER

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**MAY IT PLEASE THE COURT:**

Applicants are 32 current or former firemen employed by the City of Bastrop in the classified service (collectively referred to as “Applicants” or “Firemen”) who urge this Court to reverse the Trial Court’s Judgment sustaining an Exception of No Cause of Action filed by Respondents, City of Bastrop, its Mayor and each member of its City Council (collectively referred to as “Respondents” or “City”).

The City has failed for over 10 years to pay these firemen the wages mandated by Louisiana Civil Service Law and protected by La. Const. Art. 6, § 14(A)(2)(e) – resulting in back pay collectively owed totaling \$1,673,805.91. Applicants filed a Petition for Writ of Mandamus to require Respondents to perform the ministerial function of making the appropriation necessary for the payment of these wages. The Trial Court sustained Respondents’ Exception of No Cause of Action before Applicants could have a trial on their request. The sole issue before this Court is whether Applicants have cause of action for a writ of mandamus to compel the City’s performance of this ministerial duty.<sup>1</sup>

**I. SUMMARY OF THE ARGUMENT**

This case involves a municipality and its officials’ statutory mandates (i.e. ministerial duty) to pay firemen the wages statutorily mandated and protected by Article 6, Section 14(2)(e) of the Louisiana Constitution. The sole basis for the Trial Court’s and Second Circuit’s determination that Applicants do not have a cause of action is because of the existence of the May 6, 2019 Judgment. Respectfully, the May 6, 2019 Judgment is a quintessential “red-herring” as to whether or not Applicants have stated a cause of action for a writ of mandamus. The Second Circuit and Trial Court’s analysis can be summarized as follows:

Applicants obtained a judgment, there has been no appropriation, so Applicants have no cause of action for a writ of mandamus.

*Lowther v. Town of Bastrop*, 53-586 (La. App. 2 Cir. 9/23/20); 303 So.3d 681. 686. Respectfully, this is incorrect, overly simplifies the analysis, and exclusively focuses on the procedural mechanisms of Louisiana Revised Statutes 13:5109 and ignores the substantive question of whether

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<sup>1</sup> A “ministerial duty” or “ministerial function” is “a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law”. *Hoag v. State*, 04-0227 (La. 12/1/04); 889 So.2d 809, 1024.

the appropriation of funds necessary for payment of statutorily mandated and Constitutionally protected firemen's wages is, in and of itself, a ministerial function.

Although this Court has never squarely addressed Revised Statutes 13:5109 in the context of statutorily mandated and Constitutionally protected firemen's wages, the Court has made it clear that even when a final monetary judgment has been rendered, a writ of mandamus is still appropriate if the court determines that the underlying basis for the monetary judgment is a ministerial duty. *Jazz Casino Co., L.L.C. v. Bridges*, 16-1663 (La. 5/3/17); 223 So.3d 488, 490 (the Court analyzed the underlying basis for the monetary judgment; distinguished a monetary judgment representing statutory mandates from one representing a tort or contract claim; and confirmed that in a circumstance involving the former, a writ of mandamus was appropriate), see also, *Hoag*, 889 So.2d at 1023.<sup>2</sup> Furthermore, the Fourth and Fifth Circuits have both confirmed that courts should evaluate the underlying basis for a monetary judgment to determine whether the appropriation is a ministerial function. *New Orleans Fire Fighters Pension and Relief Fund v. City of New Orleans*, 13-0873 (La. App. 4 Cir. 12/18/13); 131 So.3d 412, writ denied, 135 So.3d 623 (La. 3/21/14), see also, *Parish of St. Charles v. R.H. Creager, Inc.*, 10-180 (La. App. 5 Cir. 12/14/10); 55 So.3d 884, writ denied, 60 So.3d 1250 (La. 4/1/11).

With or without the May 6, 2019 Judgment, the Court is still presented with the same question – whether Respondents have a ministerial duty to appropriate the funds required to pay these firemen back wages owed and mandated by applicable law and protected by the Louisiana Constitution. In fact, absent the May 6, 2019 Judgment, the ministerial duty would not be definitively and clearly defined and it would still be necessary for the Bastrop City Council to appropriate funds necessary to satisfy Respondents' obligations to pay the back wages owed. In either scenario, Respondents' payment of back pay hinges on an appropriation by the City Council – which, in this instance is a ministerial function.

While the existence of the May 6, 2019 Judgment may implicate La. Const. Art. XII, § 10 and La. R.S. 13:5109, these provisions lead us to the same place we would be without the Judgment – to the conclusion that an appropriation is required before the wages owed these firemen can be

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<sup>2</sup> In *Hoag*, the Court analyzed “whether the act of appropriating funds to pay the judgment, as required by La. R.S. 13:5109(B), is purely a ministerial duty for which mandamus would be appropriate”. 889 So.2d at 1023. The Court concluded that it was not a ministerial duty under the facts of that case, as coroners do not have the same statutory mandates and Constitutional protections that exist for firemen. *Id.* at 1025-26.

paid. That conclusion brings the analysis to the real question – a question the Second Circuit failed to address – whether the appropriation of funds necessary for payment of statutorily mandated wages protected by La. Const. Art. 6, § 14(A)(2)(e), proven and quantified by the May 6<sup>th</sup> Judgment is, in and of itself, a ministerial function. In *Hoag v. State*, the Court applied this very analysis. *Hoag*, 889 So.2d at 1023. Specifically, the Court state stated:

While we recognize plaintiffs' entitlement to seek to execute on the *Hoag I* judgment, we **must** consider whether the act of appropriating funds to pay the judgment, as required by La. R.S. 13:5109(B), is a purely ministerial duty for which mandamus would be appropriate.

*Id* (emphasis added). Therefore, this Court has already expressly recognized on two separate occasions that when a writ of mandamus is sought after a monetary judgment has been rendered, courts are required to examine whether appropriation and payment of the underlying basis for the monetary judgment is a ministerial duty. *Id*, see also, *Jazz Casino*, 223 So.3d at 490. In this particular case, an examination of the Statutory mandates for payment of firemen's wages and Constitutional protections afforded firemen, demonstrate that appropriation and payment of the wages owed these Firemen is a ministerial duty and Applicants have stated a cause of action.

Under the circumstances of this case, the appropriation itself is a ministerial function. Moreover, there is nothing in the procedure for obtaining a writ of mandamus that precludes a writ of mandamus simply because the ministerial duty has been proven and quantified through ordinary proceedings. In fact, Louisiana Code of Civil Procedure expressly provides that “[a] writ of mandamus may be issued in **all cases** where the law provides no relief by ordinary means”. La. C.C.P. art. 3862, see also, *Jazz Casino*, 223 So.3d at 492. Simply put, this case falls within “all cases” and, as shown herein, the law provides no relief by ordinary means for Applicants to compel Respondents to make the required appropriation and pay the wages due these firemen. Furthermore, the very criteria for a writ of mandamus contemplates that the ministerial duty is one “proved to exist and imposed by law”. *Hoag*, 889 So.2d at 1024.

As shown below, Applicants have stated a cause of action and the Trial Court erred when it sustained Respondents' Exception. For the reasons expressed herein, Applicants respectfully urge the Court to reverse the Trial Court and remand the matter for trial.



## II. ASSIGNMENTS OF ERROR

1. The Trial Court committed legal error when it improperly sustained Respondents' Exception of No Cause of Action.
2. The Trial Court committed legal error when it failed to recognize that La. Const. Art. XII, § 10 and La. R.S. 13:5109 merely provide the procedural mechanisms for a municipality's payment of a judgment, they do not govern the circumstances when the appropriation itself is a ministerial function, which requires an examination of La. Const. Art. 6, § 14(A)(2)(e) and the applicable Revised Statutes.
3. The Trial Court committed legal error when it failed to properly apply the standards for consideration of an exception of no cause of action.
4. The Trial Court committed legal error when it failed to recognize that, under the circumstances presented in this case, the statutory mandates regarding firemen pay and La. Const. Art. 6, § 14(A)(2)(e) make the appropriation itself a ministerial function.
5. The Trial Court committed legal error when it failed to recognize that the statutory mandates to pay firemen (as confirmed by the Trial Court's prior Judgments) are ministerial duties and Appellant-firemen have properly stated a cause of action for a writ of mandamus.
6. The Trial Court committed legal error when it disregarded the numerous cases confirming that civil service employees have a cause of action to request a writ of mandamus if a public body fails to comply with the statutory mandates of Louisiana Civil Service Law.
7. The Trial Court committed legal error by dismissing Appellants' Petition for Writ of Mandamus with prejudice.

## III. STATEMENT OF THE CASE

Applicants are 32 current and former firemen with the City of Bastrop Fire Department. (R. 3, ¶ 2; R. 15, ¶ 2). These Firemen are or were civil service employees protected by Louisiana Civil Service Law. This suit was originally filed on May 5, 2008 because the City's pay practices regarding its firemen violated applicable law. Since that time, the suit was effectively bifurcated into three phases:

(1) Confirmation phase – During this phase, the Trial Court confirmed that the City's pay practices violated applicable law. This phase resulted in the November 13, 2014 Judgment, in which the Trial Court ordered the City to enact a uniform salary/plan scheme that complied with applicable law. (R. 3, ¶ 3; R. 15, ¶ 3). The City took no steps to remedy the failures confirmed by the November 13, 2014 Judgment, even after it became final.<sup>3</sup>

(2) Implementation phase – During this phase, the Trial Court implemented a pay plan that

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<sup>3</sup> The City ignoring this November 13, 2014 Judgment as long as it has is important for two reasons: (1) this is why the amounts in the May 6, 2019 Judgment are as high as they are and (2) it demonstrates that Respondents will continue to ignore their statutory mandate to pay the wages owed these firemen, as established by the May 6, 2019 Judgment, if a writ of mandamus is not issued.

complied with applicable law. This phase resulted in the December 19, 2016 Judgment, in which the Trial Court imposed a court-ordered pay plan. (R. 3, ¶ 5; R. 15, ¶ 5).<sup>4</sup>

(3) Calculation of mandated back pay phase – During this phase, on May 6, 2019, a trial was held where the Trial Court admitted a voluminous amount of evidence, including expert report/testimony, and rendered judgment in favor of each Applicant-fireman confirming the amount of back pay mandated by applicable law. (R. 3, ¶ 6; R. 15, ¶ 6; R. 6-12). The aggregate amount of the May 6, 2019 Judgment – representing Respondents’ failure to comply with their statutory pay obligations for over a 12-year period for 32 firemen – totals \$1,673,805.91. *Id.* The individual amount owed to each Applicant-fireman is specified in the May 6, 2019 Judgment. (R. 6-12).

The facts above are undisputed. The November 13, 2014 Judgment; December 19, 2016 Judgment and the May 6, 2019 Judgment are all final. The substance of the November 13, 2014 and December 19, 2016 Judgments were described in the Petition and admitted by Respondents in their Answer. (R. 3 ¶ 4-6; R. 15 ¶ 4-6). The May 6, 2019 Judgment was attached to the Petition. (R. 6-12).

After the May 6, 2019 Judgment became final, Applicants filed a Petition for Writ of Mandamus, that was amended on November 18, 2019,<sup>5</sup> requesting that the Trial Court order Respondents to comply with their ministerial duty to pay its firemen in accordance with applicable law, as reflected in the May 3<sup>rd</sup> Judgment, and make the appropriation necessary for such payment. (R. 2-13; 43-46). Respondents answered the original and amended Petition and filed an Exception of No Cause of Action. (R. 15-27; 55). In their Answer, Respondents admit the underlying facts in the Petition for Writ of Mandamus, including the admission that “[Respondents] have an obligation to pay firemen in accordance with the law”. (R. 15-17; 55. ¶ 8).<sup>6</sup>

On December 2, 2019, the Trial Court re-heard Respondent’s Exception of No Cause of

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<sup>4</sup> Even with a court mandated pay plan in place as of December 19, 2016, the City continued to take no action to comply with the Trial Court’s Judgments. Again, further demonstrating the need for a writ of mandamus to require Respondents to comply with the statutory mandates to pay firemen their Constitutionally protected wages.

<sup>5</sup> Applicants filed their Amended Petition after the initial November 8, 2019 hearing on the City’s exception, where the Trial Court sustained the Exception and granted Applicants ten days leave of court to amend their Petition. (R. 1; R. 49; R. 59-122).

<sup>6</sup> Respondents’ admission that they are obligated by applicable law to pay their firemen is not unique to Paragraph 8 of their Amended Answer. Respondents repeatedly make this admission, both in pleadings and in open court. (R. 88; 131; 133-134). Moreover, Respondents statutory obligations are clearly plead in Applicants’ Original and Amended Petitions. All of which support a determination that Respondents’ Exception of No Cause of Action should have been denied and the matter should proceed to Trial.

Action, in light of Applicants' Amended Petition. (R. 1; R. 123-150). The Trial Court sustained Respondents' Exception of No Cause Action in open court and signed a Judgment to that effect, dismissing Applicants' Petition for Writ of Mandamus, as Amended, with prejudice. (R. 56). Applicants timely appealed the December 2, 2019 Judgment to the Second Circuit Court of Appeal. (R. 51-54).

On September 23, 2020, the Second Circuit issued an opinion affirming the Trial Court. *Lowther v. Town of Bastrop*, 53,586 (La.App. 2 Cir. 09/23/20); 303 So. 3d 681. The Second Circuit summarizes its Ruling as follows:

This case falls squarely within the scope of La. Const. art. XII, § 10(C), and La. R.S. 13:5109(B)(2), and thus requires an appropriation of funds by the legislature or the political subdivision against which a judgment was rendered. Payment of a judgment is not [a] ministerial act. Appellants, as judgment creditors of the City of Bastrop, are required to use the statutory mechanisms provided by the legislature for executing a judgment against a political subdivision. Appellants must obtain an appropriation of funds by the city council.

*Lowther*, 303 So.3d at 697. The Second Circuit's Ruling is essentially that: "Applicants obtained a judgment, there has been no appropriation, so Applicants have no cause of action for a writ of mandamus". Respectfully, the Second Circuit's Ruling:

1. Failed to discuss or cite the cases discussed herein or Applicants' constitutionally protected right to wages and retirement benefits afforded by La. Const. Art. 6, § 14(A)(2)(e). 303 So.3d 681;
2. Included a "Factual Background and Procedural History" that omits critical facts. Specifically, the Ruling ignores and/or fails to note: (a) the allegations contained in the Petition, including the fact that Applicants' Petition expressly alleges that the appropriation itself, in this instance, is a ministerial duty; (b) the fact that the City's failure to comply with applicable law has been ongoing since 2005; and (c) the Judgment for back wages owed to these firemen totals \$1,673,805.91. *Id.* at 684-685; and
3. Omitted any reference to the legal issue that was before the Second Circuit on appeal – whether the appropriation itself, for the payment of firemen's statutorily mandated wages protected by La. Const. Art. 6, § 14(A)(2)(e), is a ministerial function and whether Applicants have a cause of action for a writ of mandamus for such an appropriation. 303 So.3d 681.

Following the Second Circuit's Ruling, Applicants filed an Application for Supervisory Writs, which this Court granted on January 26, 2021. Oral argument is scheduled for March 24, 2021 and Applicants now file this Brief urging the Court to reverse the Trial Court's Judgment sustaining the City's Exception of No Cause of Action, and remand the matter for trial.

#### IV. LAW AND ARGUMENT

The sole issue before this Court is whether Applicants have a cause of action for a writ of mandamus. Respectfully, and as this Court will conclude from its *de novo* review,<sup>7</sup> Applicants have stated a cause of action and the Trial Court's December 2<sup>nd</sup> Judgment is incorrect and must be reversed.

**A. The Trial Court Committed Legal Error when it Failed to Properly Apply the Appropriate Standards for Consideration of an Exception of No Cause of Action.**

“The peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition.” *Port City Glass & Pint, Inc.*, 266 So.3d at 522, see also, *Pesnell v. Sessions*, 51,871 (La. App. 2 Cir. 2/28/18), 246 So.3d 686; *Gipson v. Fortune*, 45,021 (La. App. 2 Cir. 1/27/10), 30 So.3d 1076, writ denied, 10-0432 (La. 4/30/10), 34 So.3d 298. “The exception is triable on the face of the petition; and, for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true.” *Id.*, see also, *Fink v. Bryant*, 01-0987 (La. 11/28/01), 801 So.2d 346. “No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action.” *Id.*, citing, La. C.C.P. art. 931.

“An exception of no cause of action should be granted **only** when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief.” *Id.* (emphasis added). “Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial.” *Id.*, citing, *Badeaux v. Southwest Computer Bureau, Inc.*, 05-0612 (La. 3/17/06), 929 So.2d 1211; *Stonecipher v. Caddo Par.*, 51,148 (La. App. 2 Cir. 4/7/17), 219 So.3d 1187, writ denied, 17-0972 (La. 10/9/17), 227 So.3d 830.

“The burden of showing that the plaintiff has stated no cause of action is upon the exceptor.” *Id.* “The public policy behind the burden is to afford the party his day in court to present his evidence.” *Id.*, citing, *City of New Orleans v. Board of Directors of La. State Museum*, 98-1170 (La. 3/2/99), 739 So.2d 748; *Villareal v. 6494 Homes, LLC*, 48,302 (La. App. 2 Cir. 8/7/13), 121 So.3d

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<sup>7</sup>“An appellate court reviews a trial court's ruling on an exception of no cause of action *de novo* because the exception raises a question of law and the lower court's decision is based only on the sufficiency of the petition.” *Port City Glass & Pint, Inc. v. Simmie Brooks*, 52-534 (La. App. 2 Cir. 2/27/19); 266 So.3d 516, 522 (internal citations omitted).

1246. Respectfully, the Trial Court disregarded the above criteria:

BY MR. GREEN: And essentially what - we can go through each paragraph, but essentially the allegations can be summarized as they have a - **defendants have a mandatory obligation, a ministerial duty to pay Bastrop firemen in accordance with Louisiana Civil Service Law.**

BY THE COURT: **They acknowledge that, that's not the question.** The question is whether or not they can be mandamus by a judgment creditor, in this case your clients, the petitioners in this mandamus action, to appropriate funds to pay your clients. That's the question before the court.

BY MR. GREEN: Well, with all due respect, the question that they've conceded is the only question for purposes of an Exception of No Cause.

(R. 133-134, emphasis added).

As shown more fully below, despite applicable law and jurisprudence to the contrary, the Trial Court:

- (1) disregarded the proper considerations for an exception of no cause of action, instead substituting its opinion on the "court's view" of what is "fair" to the municipality (R. 140);
- (2) focused on its speculation regarding the merits of Applicants' claim and Respondents' affirmative defenses (particularly allegations of the City's inability to pay) without affording Applicants an evidentiary hearing/trial on the merits to present evidence concerning these issues; and
- (3) fixated on the procedural mechanisms of La. R.S. 13:5109 without giving any consideration to the statutory mandates and Constitutional protections that make the appropriation itself a ministerial duty. (R. 138-139).

Accepting the allegations of the Petition as true, Respondents cannot satisfy their burden of proving that Applicants have not stated a cause of action. The contents of the Petition confirm Plaintiffs have stated a cause of action for the issuance of a writ of mandamus. Consider the following Paragraphs:

2.

Plaintiffs are either presently employed as regular employees in the classified service employed as firemen with the City of Bastrop or were so employed at times material hereto.

3.

Plaintiffs filed the above captioned suit because the City of Bastrop's ("City") pay practices violated applicable law.

5.

On December 19, 2016, the Court rendered Judgment in favor of Plaintiffs adopting Plaintiffs' proposed pay plan from January 1, 2005 through the indefinite future and awarding a monetary judgment for all amounts due Plaintiffs under said plan. The December 19, 2016 Court Ordered Pay Plan confirms how the City should have been paying its firemen during this period of time and into the future.

6.

On May 6, 2019, this case came before the Court for trial to determine the monetary amount the City owed each Plaintiff for the time in question, where the

Court rendered Judgment in favor of Plaintiffs and against the City "in the aggregate amount of \$1,673,805.91 for back pay Plaintiffs are entitled to for the period of time from May 3, 2005 through April 27, 2017, plus legal interest from the date of judicial demand and all costs." (Exhibit "A," May 6, 2019 Judgment). The May 6th Judgment individualizes the aggregate judgment amount for each of the 32 Plaintiffs.

8.

Plaintiffs show that a municipality and its public officials have a ministerial duty to pay the City's firemen in accordance with applicable law and/or to appropriate the funds necessary to pay its firemen as mandated by applicable law.

9.

The previous Judgments of this Court confirm that the City has failed to comply with this ministerial duty.

10.

The persons named as Defendants above, in their official capacity, are public officials with the City and each has a ministerial duty to direct the City to pay its firemen in accordance with applicable law, as set forth the Court's May 6, 2019 Judgment and/or to appropriate the funds necessary to pay its firemen as mandated by applicable law.

11.

Plaintiffs are entitled to a writ of mandamus from this Court ordering the City and the above named officials: (1) to pay each Plaintiff the amount owed by the City to satisfy the May 6, 2019 Judgment, representing the back pay and wages due each and/or (2) to appropriate the funds necessary and for the specific purpose of paying the City's firemen as mandated by the May 6, 2019 Judgment and applicable law; or show cause why Plaintiffs should not be paid the amount of back pay/wages due, as shown by the May 6, 2019 Judgment and/or why the Defendants should not be ordered to appropriate the funds necessary to pay its firemen as mandated by the May 6, 2019 Judgment and applicable law.

16.

Defendants have the obligations and statutory duties to appropriate and pay the wages owed to the City's firemen as mandated by applicable law and as memorialized in the May 6, 2019 Judgment. These obligations and statutory duties are ministerial functions.

(R. 3, 4, 43, 44).

Although the Second Circuit cited the relevant analysis for consideration of an exception of no cause of action, its opinion makes clear that it failed to perform an actual analysis of these allegations. *Lowther*, 303 So.3d 681. Neither the Trial Court nor the Second Circuit discuss the allegations contained in the Petition, nor do they analyze said allegations as mandated by the applicable law discussed above. *Id.* Further, neither provided any explanation of how the City purportedly satisfied its burden of proving that the allegations above do not state a cause, such that these Firemen should be denied their day in court.

This Court has previously affirmed the issuance of a writ of mandamus in a suit **after a final monetary judgment was rendered** based on a petition that "alleged that the refund of the overpaid

taxes [the underlying basis for the monetary judgment] is a statutorily-mandated duty enforceable by the judiciary...”. *Jazz Casino*, 223 So.3d at 490. Although the source of the statutory mandate is different, these Firemen, like the plaintiff in *Jazz Casino*, have stated a cause of action and, after a trial on the merits, the outcome in this case should be same as that in *Jazz Casino* – a writ of mandamus should be issued. *Id.*

In *Jazz Casino*, the public body likewise relied on La. Const. art. XII § 10(C) and La. R.S. 13:5109(B)(2) and made the same “there has been no appropriation” argument made by the City in this case. *Id.* at 495. This Court rejected that argument and concluded that there were statutory mandates for the refund of overpaid taxes and reinstated the trial court’s issuance of a writ of mandamus. *Id.* In rejecting the “there has been no appropriation” argument, the Court cited its decision in *Hoag* and found that such an argument properly existed “in the context of tort or contract-based claims”, but that “the mandatory nature” of the payment, as confirmed by the applicable Revised Statutes, “distinguishes [such a mandatory payment] from cases requiring a legislative appropriation for payment of a judgment, i.e. matters arising out of contract or tort.” *Id.* at 495-496. Further, the Court expressly provided as follows:

[Plaintiff] is not attempting to enforce a judgment against a public body that arose in tort or contract. Ultimately, at the heart of this dispute is whether the legislature must appropriate funds to satisfy Jazz’s tax refund judgment. A distinguishing characteristic of the funds sought by [Plaintiff] is that these funds belong to Jazz; whereas with a judgment in a tort or contract matter, the judgment creditor is attempting to collect funds the public body legally collected which have become public funds. Although collected from [Plaintiff] by the Secretary and held by the Stadium District and Hall Authority according to the Board’s now-final judgment, the Secretary and these entities were without legal authority to collect these taxes.

*Id.* at 497. Similarly, in this case these Firemen earned and acquired a vested property right in these statutorily mandated wages the moment they were earned.<sup>8</sup> And the City was without legal authority to withhold payment of these statutorily mandated and Constitutionally protected wages from these Firemen. The consequence of La. Const. Art. 6, § 14(A)(2)(e) is that these wages were owed these Firemen the moment they were earned, even if the City failed to expressly make an appropriation. As such, the Respondents lacked lawful authority to withhold payment of these statutorily mandated wages from these Firemen.

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<sup>8</sup> *New Orleans Firefighters Local 632 v. City of New Orleans*, 00-1921 (La. 5/25/01), 788 So.2d 1166, 1170, see also, *Picard v. Vermillion Parish School Bd.*, 98-1933 (La. App. 3 Cir. 6/23/99); 742 So.2d 589; *Kately v. Global Data Systems, Inc.*, 05-1227 (La. App. 3 Cir. 4/5/06); 926 So.2d 145, 148; La. Atty. Gen. Op. No. 14-0028 (2014).

Although Revised Statutes 47:1437 expressly contemplates the issuance of a writ of mandamus in circumstances regarding judgments for overpaid taxes, that does not distinguish *Jazz Casino* from this case, nor does it change the analysis, particularly at this stage of the proceedings. The fact that Revised Statutes 47:1437 expressly contemplates a writ of mandamus simply eliminates the requirement that a plaintiff in a “tax refund case” prove the requirements of Louisiana Code of Civil Procedure article 3862.

When a writ of mandamus is specifically provided as a remedy by statute, the general rules for a mandamus action do not apply; therefore, the petition is not required to show that relief is not available by ordinary means or that the delay involved in obtaining ordinary relief may cause injustice as required by La. C.C.P. art. 3862.

*Id.* at 497. Although these Firemen will be required to prove that they are entitled to the issuance of a writ of mandamus under Article 3862 at trial, these Firemen were improperly denied that opportunity when the Trial Court incorrectly sustained the City’s Exception of No Cause of Action.

Accepting the allegations in Applicants’ Petition as true, and affording every reasonable interpretation to the Petition’s language in favor of maintaining this suit, required that the City’s Exception be denied. The City failed to satisfy its burden of showing that Plaintiffs have not stated a cause of action. The Trial Court committed legal error when it sustained the Exception. At an absolute minimum, it cannot be said that it appears beyond doubt that Plaintiffs can prove no set of facts that would entitle them to relief. Applicants respectfully urge the Court to reverse the Trial Court and remand the matter for trial.

**B. The Trial Court Committed Legal Error when it Failed to Recognize that the Statutory Mandates to Appropriate the Funds to Pay Firemen Wages Owed and to Make Such Payment are Ministerial Functions and Applicants Have a Cause of Action for a Writ of Mandamus.**

A writ of mandamus is a writ directing a public officer to perform a ministerial duty required by law. La. C.C.P. arts. 3861 and 3863. “A writ of mandamus may be issued in **all cases** where the law provides no relief by ordinary means.” La. C.C.P. art. 3862 (emphasis added). “The function of a writ of mandamus is to provide a legal means to compel the performance of certain duties or acts.” *Lyons v. Bossier Parish Police Jury*, 262 So.2d 838, 839 (La. App. 2 Cir. 1972) There are two criteria for the issuance of a writ of mandamus:

- (1) the public officer must have a ministerial duty to take the action sought; and
- (2) relief may not be obtained by ordinary means.



*Id*, see also, La. C.C.P. art. 3862. Applicants will prove at trial that both of these criteria apply and they are entitled to a writ of mandamus. But, for purposes of the sole issue presently before the Court, Applicants have stated a cause of action; the Trial Court should be reversed and the matter should be remanded for trial.

**i. Respondents have a Clearly Defined Ministerial Duty to make an Appropriation to Pay the Statutorily Mandated and Constitutionally Protected Back Wages Owed these Firemen.**

First, it is undisputed that Respondents have a ministerial duty to comply with their statutory mandate to pay firemen’s wages protected by the Louisiana Constitution. “Ministerial duty” is defined as “a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law”. *Hoag*, 889 So.2d at 1024. Respondents have a duty and a clear legislative mandate to pay its firemen in accordance with the Louisiana Constitution and Louisiana Civil Service Law. This legislative mandate is contained in numerous Louisiana Revised Statutes (listed below) and in the Trial Court’s prior Judgments. (R. 3 ¶¶ 3, 5, 6) (R. 15 ¶¶ 3, 5, 6) (R. 6-12).

To determine the nature of the duty and whether the public body and its officials are subject to a writ of mandamus, courts “must look to the applicable statutes”. *Acadiana Bank v. Hayes*, 498 So.2d 275, 278 (La. App. 1 Cir. 1986).<sup>9</sup> This Court has also confirmed that an examination of the statute is required to determine whether the duty is “ministerial” or discretionary. *Lyons*, 262 So.2d at 840.<sup>10</sup> The specific Louisiana Revised Statutes containing the statutory mandates to pay firemen include the following:

1. La. R.S. 33:1969 – mandates that the City pays the same base pay to all firemen of the same rank;
2. La. R.S. 33:1992(A) – mandates that the City pay a specified minimum salary differential between ranks; and
3. La. R.S. 33:1992(B) – mandates that the City pay firemen annual longevity raises of two percent that includes both the fireman’s base salary and accumulated longevity.

Each of these Revised Statutes expresses its mandate by use of the word “shall” – Respondents have no discretion of whether or not to properly pay their firemen. Furthermore, the Trial Court has

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<sup>9</sup> In *Hayes*, the First Circuit examined the Statutes at issue and found that the official expressly had discretion to not take action requested, so mandamus in that case was not appropriate. *Id*. In this case, an examination of the applicable statutes lead to the inescapable conclusion that Respondents “shall” (i.e. are mandated to) pay their firemen in accordance with applicable law.

<sup>10</sup> In *Lyons*, this Court reversed a trial court sustaining an exception of no cause of action where the plaintiff sought a writ of mandamus to compel a public body to fund a city court as mandated by statute.

already rendered Judgment confirming that the City failed to comply with these statutory mandates and quantified the specific amounts owed. (R. 3 ¶¶ 3, 5, 6) (R. 15 ¶¶ 3, 5, 6) (R. 6-12).

Firemen have a right to the minimum wages, hours, working conditions, pension, retirements benefits and vacation or sick leave benefits mandated by Civil Service Law are protected by La. Const. Art. 6, § 14(A)(2)(e). This Constitutional safeguard protects civil service employees by preventing a municipality from shielding itself from these statutory mandates by simply refusing to adopt an ordinance appropriating the funds necessary to comply. Essentially, La. Const. Art. 6, § 14(A)(2)(e) creates a Constitutional exception for Louisiana laws related to payment of firemen’s “minimum wages” and “pension and retirement benefits” making them effective and binding on Respondents even without an ordinance appropriating funds necessary to comply with these ministerial duties. Either:

- (1) this Constitutional exception and these Statutory mandates related to firemen’s wages serve as a statutory *de facto* appropriation, such that a municipality cannot avoid its obligations to pay wages, retirement benefits and the other firemen’s benefits guaranteed by La. Const. Art. 6, § 14(A)(2)(e) by simply declining to make the appropriation; or
- (2) the appropriation for payment of amounts owed for firemen’s wages is, in and of itself, a ministerial function.

Not only does neither of the above conflict with La. Const. Art. XII, § 10 or La. R.S. 13:5109, they squarely reconcile the procedural mechanisms contained in the above provisions with La. Const. Art. 6, § 14(A)(2)(e) and the Statutory mandates to pay firemen’s wages discussed above.<sup>11</sup>

Notably, none of the cases relied on by the Trial Court or the Second Circuit involve these Constitutionally protected issues. These Revised Statutes are clear ministerial duties – to say otherwise would be equivalent of decreeing that municipalities can ignore the protections guaranteed by the Louisiana Constitution and have discretion to opt not to pay their civil service employees as mandated by Louisiana Civil Service Law – which cannot be the case. Moreover, there is no real dispute regarding the nature and source of the Respondents’ obligation:

BY THE COURT: .... You don’t deny do you and do you still maintain your position as counsel for the city that the city has both a constitutional and statutory obligation to pay these firemen?

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<sup>11</sup> “Under our long-standing rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter.” *La. Municipal Assoc. v. State of La.*, 04-0227 (La. 1/19/05); 893 So.2d 809, 837.

BY MR. PIERRE: What I maintained from the very outset... - Your Honor, is that **the city recognizes the responsibility it has to pay the firemen**. I've not waived on that not one time. My administration has not waived on that.

(R. 131, emphasis added). The Trial Court recognized that Respondents had a ministerial duty to properly pay their firemen. (R. 133-134) (emphasis added), see also, R. 55, ¶ 8). Unfortunately, the Trial Court failed to recognize that this ministerial duty and La. Const. Art. 6, § 14(A)(2)(e) make the appropriation itself a ministerial function.

**ii. There is No Way for Applicants to Obtain an Appropriation, which in this case is a “ministerial function”, by Ordinary Means.**

Applicants have absolutely no other legal mechanism to obtain payment of the funds the City is statutorily mandated to pay. This is evidenced by the fact that Applicants have already exhausted ordinary proceedings and have the May 6, 2019 Judgment confirming the amounts owed. There is absolutely no other action these firemen can take to prompt Respondents to perform the ministerial function of appropriating and paying the back wages owed as mandated by applicable law.

As noted above, the Court is mandated to treat the allegations in Plaintiffs' Petition for Writ of Mandamus as true. The contents of the Petition confirm Plaintiffs are entitled to a Writ of Mandamus. In particular, Applicants direct the Court's attention to Paragraphs 2, 3, 5, 6, 8, 9, 10, 11 and 16. (R. 2-12; 44-46). Accepting these Paragraphs as true demonstrates that the Trial Court erred when it sustained Respondents' Exception and should be reversed.

Not only is the Court required to accept all the paragraphs in the Petition of Mandamus, as Amended, as true, Respondents have actually admitted the majority of the facts in the Petition (Defendants admit Paragraphs 1 through 7). Respondents admit all the underlying facts and expressly acknowledge their duty and obligation to “pay firemen in accordance with the law”. R. 55, ¶ 8; R. 131). As shown above, the very statutory obligations to pay firemen in accordance with the law admitted by Respondents creates the ministerial duty that makes a writ of mandamus the appropriate remedy in this case.

Applicants have stated a cause of action and the Court is respectfully urged to reverse the December 2<sup>nd</sup> Judgment and remand the matter for trial.

**C. The Trial Court Committed Legal Error when it Disregarded Numerous Cases Confirming that Civil Service Employees have a Cause of Action to Request a Writ of Mandamus if a Public Body Fails to Comply with the Statutory Mandates of Louisiana Civil Service Law.**

The Trial Court committed legal error when it sustained Respondents' Exception of No Cause of Action and dismissed this matter with prejudice,<sup>12</sup> especially in light of the numerous cases where appellate courts throughout this State, including this Court, confirm the ability of civil service employees to assert a cause of action for a writ of mandamus when a public body and its officials have not complied with statutory mandates to properly pay civil service employees.

In *New Orleans Fire Fighters*, relying on the municipality's statutory mandate to pay firemen the items constitutionally protected by La. Const. Art. 6, § 14(A)(2)(e) (in that case, retirement benefits), the Fourth Circuit expressly rejected the argument that "the judiciary is without authority to issue a writ of mandamus in any matter to enforce a **money judgment** ... unless the money for payment of the judgment has been specifically allocated [or appropriated]" *Id.* at 423, emphasis added. The Fourth Circuit determined that the judiciary had constitutional authority under those circumstances to issue a mandamus. *New Orleans Fire Fighters*, 131 So.3d at 423.

*New Orleans Fire Fighters* involves facts strikingly similar to the present dispute, where the trial court issued a writ of mandamus against the City of New Orleans to require the city to pay amounts owed as part of firemen's retirement benefits. *Id.* at 415. Like the present case, the municipality was statutorily mandated to fund a payment for its firemen.<sup>13</sup> The Louisiana legislature imposed statutory mandates to pay firemen and, per La. Const. Art. 6, § 14(A)(2)(e), these laws are effective on a municipality even if said municipality fails to adopt an ordinance appropriating funds necessary to comply with said obligations.

*New Orleans Fire Fighters* confirms that where a city's compliance with Civil Service

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<sup>12</sup> As argued by Appellants at the December 2nd hearing, sustaining the exception of no cause of action (even if it were appropriate, which is vehemently denied) should be considered a "nonsuit" under the circumstances. *Alexander v. Town of Jeanerette*, 371 So.2d 1245, 1248 (La App. 3 Cir. 1979). The Second Circuit erred when it concluded Applicants' decorum after the Trial Court rejected Applicants' request was a waiver of the right to object to that portion of the Trial Court's ruling. Otherwise, unsuccessful litigants in every case, after entire hearing of arguing their positions would be required to again object after the ruling to each aspect of a court's ruling in order to preserve each issue for appeal. After the Trial Court ruled, Applicants expressly urged that the dismissal should be without prejudice, which the court rejected. Continued objection after Applicants' request was rejected, under the circumstances, seemed excessive.

<sup>13</sup> The only difference in *New Orleans Fire Fighters* is that the mandated payment related to firemen's retirement and here the mandated payment is proper payment of wages due. *Id.* at 414-16. This distinction does not change the analysis since both firemen wages and retirement benefits fall within the Constitutional protections of La. Const. Art. 6, § 14(A)(2)(e).

Statutes related to the minimum wages, hours, working conditions, pension, retirements benefits and vacation or sick leave benefits for firemen and municipal policemen requires an appropriation – the appropriation becomes a “ministerial function”. 131 So.3d at 424. “Once the legislature places the burden of paying salaries or other expenses of a state official on parish governing authorities, those bodies are generally obligated to pay these mandated expenses.” 131 So.3d at 422. Respondents have no discretion in this regard.<sup>14</sup> *New Orleans Fire Fighters* further held that the Louisiana Civil Service Law protecting firemen created “a clear legislative mandate.” *Id.* at 424. The Fourth Circuit, relying on La. Const. Art. 6, § 14(A)(2)(e), held:

Through [the statutes at issue benefitting firemen] the legislature placed the responsibility on the City of paying into the Fund which we conclude is a **clear legislative mandate ... compelling such funding.**

\* \* \* \* \*

We find that, because “the legislature has mandated the [City] to pay [into the Fund], we are simply interpreting and enforcing this statute, not legislating a judicial solution. **To hold otherwise would allow the City to altogether disregard its mandatory statutory funding obligations with the protection of the courts, under the guise that a court issued mandamus ordering such payment violates the separation of powers doctrine. Such a result would render meaningless both the statutory scheme for the Fund and the legislatively mandated mechanism for its funding.**

*Id.* (emphasis added). This Court denied writs<sup>15</sup> and favorably cited this case in *New Orleans Fire Fighters Pension and Relief Fund v. City of New Orleans*, 14-2224 (La. 2/13/15); 157 So.3d 581.

In *R.H. Creager*, the Fifth Circuit likewise concluded that, despite the fact that a monetary judgment had already been obtained, a writ of mandamus was nonetheless appropriate because the **payment of a final judgment under the circumstances of that case was a ministerial duty.**<sup>16</sup> 55 So.3d at 889. Specifically, the Fifth Circuit concluded:

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<sup>14</sup> This analysis aptly summarizes why this Court’s decision in *Hoag* does not support the City’s assertion that these Firemen have no cause of action. *Hoag*, 889 So.2d 1019. *Hoag* does not involve civil service employees or a municipality’s obligation to pay its firemen or fund firemen’s retirement in accordance with the State Constitution and Civil Service Law. Simply put, the coroner-plaintiffs in *Hoag* are not civil service employees and do not have the Constitutional protections afforded civil service employees. The Court performed same analysis in *Hoag* that Applicants are urging the Court to perform here (i.e. examine the underlying nature of the monetary judgment to determine whether a ministerial duty exists). The reason this case is different from *Hoag* is because the Statutory mandates for firemen’s wages and La. Const. Art. 6, § 14(A)(2)(e) lead to a different outcome. These Firemen have stated a cause of action and this matter should be remanded for trial.

<sup>15</sup> (La. 3/21/14); 135 So.3d 623.

<sup>16</sup> *R.H. Creager* involved an expropriation. And although La. R.S. 38:513(B) expressly provides for a writ of mandamus in expropriations by a levee board, the public body in *R.H. Creager, Inc.* was not a levee board and the Fifth Circuit expressly concluded that La. R.S. 38:513(B) did not apply to the Parish. Still, the Fifth Circuit examined the nature of the obligation represented by the judgment, determined payment of that judgment was a ministerial duty, and held that a writ of mandamus was appropriate. 55 So.3d at 889.

We believe the trial court erred in its reasoning by failing to consider that this matter does not involve a money judgment obtained against the Parish as the result of an action brought against the Parish in a tort or contract action. We find the fact that this matter results from an action taken pursuant to the Parish's power of eminent domain requires a different analysis and outcome.

*Id.* In this case, the Statutory mandates and Constitutional protections afforded firemen wages, likewise mandate a different analysis and outcome. This is not a tort case or a contract dispute. Respectfully, there is a difference between a judgment representing a municipality's obligation to pay of statutorily mandated wages owed firemen and a tort judgement – and the Second Circuit's Ruling makes absolutely no differentiation.<sup>17</sup> This Court has also differentiated between: (1) a monetary judgment rendered due to a statutory mandate; and (2) a monetary judgment rendered in a tort or contract dispute, confirming that writs of mandamus are appropriate in cases of the former. *Jazz Casino*, 223 So.3d at 497.

In *R.H. Creager*, the public body argued that “the judiciary is without authority to issue a writ of mandamus in any matter to enforce a money judgment against it unless the money for payment of the judgment has been specifically allocated”. *Id.* at 890. This is the same argument made the City and relied on by the Trial Court and Second Circuit. The Fifth Circuit also rejected this argument because, as the Fifth Circuit stated, “if we follow the reasoning of the Parish, the abuse and injustice is evident”. *Id.* at 891.

The Fifth Circuit saw that such a result would encourage public bodies to expropriate land, deprive people of their constitutional rights, be cast in judgment for the amount owed and “simply refuse to pay the judgment”. *Id.* The Fifth Circuit expressly held that “we find that payment of final judgments in expropriation cases is a ministerial duty and not a discretionary one”. *Id.* The Fifth Circuit examined the obligation represented by the judgment and, because the judgment represented an obligation that was a ministerial duty, the existence of the judgment did not prevent a writ of mandamus from being issued. *Id.*

The Trial Court and Second Circuit ruling in this case present the same abuse and injustice the Fifth Circuit sought to avoid. In addition to the statutory mandates for payment of firemen's wages and the Constitutional protections afforded by La. Const. Art. 6, § 14(A)(2)(e), firemen have

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<sup>17</sup> This Court has previously confirmed that the existence of a statutory duty to appropriate money (like in the present case) is important distinction and that a mandamus ordering an appropriation under those circumstances is not a violation of the separation of powers doctrine. *Perron v. Evangeline Parish Parish Police Jury*, 01-0603 (La. 10/16/01); 798 So.2d 67, 73.

a vested property right in the wages and benefits they earned during the period of more than a decade where the City failed to pay them as mandated by Louisiana Civil Service Law.<sup>18</sup> The moment these Firemen earned these statutorily mandated wages, these Firemen acquired a vested property right in those wages (i.e. that money belonged to these Firemen) and Respondents lacked a lawful basis to withhold payment.

In *New Orleans Fire Fighters*, the Fourth Circuit recognized the ministerial duty mandated by the applicable statute and issued a writ of mandamus ordering the City of New Orleans to pay \$17,524,359. *Id.* The City of New Orleans opposed the writ of mandamus based on the same arguments asserted by Respondents – all of which were properly rejected. *Id.* at 419-426. Simply put, the Louisiana legislature imposed statutory mandates to pay firemen and these laws are effective on a municipality even if said municipality fails to adopt an ordinance appropriating funds necessary to comply with said obligations. La. Const. Art. 6, § 14(A)(2)(e). *New Orleans Firefighters* confirms that when a city’s compliance with Civil Service Statutes related to the minimum wages, hours, working conditions, pension, retirements benefits and vacation or sick leave benefits for fireman and municipal policemen requires an appropriation – the appropriation becomes a “ministerial function”. 131 So.3d at 424 (emphasis added). “Once the legislature places the burden of paying salaries or other expenses of a state official on parish governing authorities, those bodies are generally obligated to pay these mandated expenses.” 131 So.3d at 422. Respondents have no discretion in this regard.

As noted above, *New Orleans Fire Fighters* is strikingly similar to the case presently before the Court. In fact, Respondents’ effort to distinguish *New Orleans Fire Fighters* only highlights the similarities:

BY MR. PIERRE:                   ...the Fourth Circuit case [*New Orleans Fire Fighters*] that case dealt with a trust that was already established **and a statute that created obligations on a city to contribute to that trust...**

BY THE COURT:                   Right. (R. 89, emphasis added).

BY MR. PIERRE:                   .... you don’t have discretion when it comes down to performing you[r] ministerial duty which is the classic definition of a ministerial duty that -

BY THE COURT:                   **To pay those employees.** (R. 90, emphasis added).

BY MR. PIERRE:                   ...going back to the Fourth Circuit case, when the court reviewed the law they reviewed the specific - specific funding provision under the

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<sup>18</sup> See Footnote # 8, *infra*.

revised statute. **The court made a decision that there was no discretion with the City of New Orleans. It was a formula that was in place. You have to pay this money by this statute.**

BY THE COURT: Right. (R. 91, emphasis added).

That is exactly what we have in the present case – a number of Revised Statutes create ministerial obligations for Respondents to pay firemen’s wages, there is a Judgment confirming and quantifying those obligations through a Court-ordered pay plan (i.e. a “formula”). As Counsel for Respondents put it, this is “the classic definition of a ministerial duty”. R. 90).

With all due respect to the Trial Court, once it was clear that there was no basis to distinguish *New Orleans Fire Fighters*, the Trial Court simply dismissed the decision by noting that a Fourth Circuit decision was not controlling on the court.

BY THE COURT: But that case - but that case [*New Orleans Fire Fighters*] didn’t involve a judgment.

BY MR. GREEN: Let me read. The Appellate Court in that case, in that case, Judge, also considered the same arguments that the - the City is relying on and that this court has apparently found compelling and the - the quote is, in that case, “The court considered the argument the ju- the judiciary is without authority [to issue a] mandamus in any matter to enforce a money judgment” sound familiar, “unless the money has been specifically allocated or appropriated”.

In response to that argument by the City the court said, “We ...find the wording of the expropriation laws and the Constitution set for by the legislature make payment of fair and just compensation,” exactly what these men and women are looking for, “mandatory and not discretionary. Accordingly we find the judiciary has a constitutional authority to issue a mandamus in this matter”.

THE COURT: **That is a Fourth Circuit case which does not control this Circuit.**

R. 102-103, emphasis added). Essentially, Applicants demonstrated at the hearing that *New Orleans Firefighters* was squarely on point and the Trial Court erroneously disregarded it.

In addition to *New Orleans Fire Fighters*, there are numerous cases confirming that civil service employees have a cause of action for a writ of mandamus when a municipality fails to comply with statutory mandates to pay civil service employees. For example, in *Ricca v City of Baton Rouge*, the First Circuit affirmed the trial court’s granting of a writ of mandamus to a civil service employee (a fireman) ordering the municipality to reinstate the civil service employee and pay back pay that was owed. *Ricca v City of Baton Rouge*, 450 So.2d 1032 (La. App. 1 Cir. 1984) **The First Circuit expressly held that the Statutes in Louisiana Civil Service Law “create mandatory duties on the appointing authority”.** *Id.* at 1034 (emphasis added). It is this same



body of Louisiana Civil Service Law that formed the basis for the Trial Court's May 6, 2019 Judgment.

The Third Circuit has also decided a similar case. *Fireman's Pension and Relief Fund v. Sudduth (Mayor of Lake Charles)* 276 So.2d 727 (La. App. 3 Cir. 1973). In *Sudduth*, the trial court granted a writ of mandamus against the Mayor of Lake Charles mandating the City, through its Mayor, to pay the firemen's retirement as mandated by the applicable law. *Id.* at 730-31. The Third Circuit found that writs of mandamus had successfully been obtained against the City of Lake Charles and its officials in prior years. *Id.* The Third Circuit confirmed that a writ of mandamus was the appropriate remedy to compel a city official to comply with statutory obligations. *Id.* at 733.<sup>19</sup>

In fact, this Court has previously confirmed that a civil service employee has a cause of action to seek a writ of mandamus to enforce a **judgment** for back pay owed. *State v. Rapides Parish School Board* 227 La. 290 (La. 1955). In *State*, this Court recognized a civil service employee's (a teacher) right to a writ of mandamus to enforce a judgment against a political subdivision (a school board) ordering the political subdivision to pay \$14,688.29 in back pay owed to the civil service employee.<sup>20</sup> Like Respondents in this case, the defendant school board also filed an exception of no cause of action in this case, which was denied. *Id.* at 297. **This Court held: "[the political subdivision's] obligation to [the civil service employee] in this respect was purely ministerial and it is well settled in civil service cases that compliance with such duty may be coerced by mandamus."** *Id.* at 296-97. The "duty" referred to by the Court in this quote is the political subdivision's duty to pay **back pay** and comply with the other applicable civil service laws. *Id.* at 297.

Additionally, in *State v. City of Alexandria* a civil service employee (police officer) was entitled to writ of mandamus against the City of Alexandria to enforce a judgment ordering that the City of Alexandria pay him the **back pay** he was owed. *State v. City of Alexandria* 12 So.2d 25 (La.

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<sup>19</sup> However, the Third Circuit remanded the case back to the trial court because the plaintiff did not name the City of Lake Charles as a defendant in the petition for writ of mandamus. *Id.* That is not an issue in this case. Applicant-firemen have named all the required parties as Defendants in their Petition. (R. 2-3).

<sup>20</sup> This Court after confirming that a writ of mandamus was the appropriate remedy and denying the defendant's exception of no cause of action (the same exception currently before the Court), the Court ultimately reversed on other grounds, by granting an exception of no right of action due to the much outdated rule that suits at that time by a married woman must be brought by her husband. The plaintiff in that case did not comply with this antiquated procedure. *Id.* at 298. The procedural grounds that caused the court to grant the exception of no right of action have nothing to do with this case.

App. 2 Cir. 1943) The court in *City of Alexandria* issued a Writ of Mandamus compelling a municipality to pay a civil service employee the back pay he was owed.

This Court has also confirmed that a plaintiff has a cause of action for a writ of mandamus against a public body when it fails to comply with a statutory mandate. *Lyons*, 262 So.2d 838. In *Lyons*, this Court reversed a trial court sustaining an exception of no cause of action where a city court judge sought to enforce a police jury's statutory obligation to fund the city court. *Id.* at 840. Furthermore, as discussed above, the Court has also established that a party is entitled to a writ of mandamus even after a monetary judgment has been rendered if that judgment represents an underlying statutory mandate. *Jazz Casino*, 223 So.3d 488, see also, *Hoag*, 889 So.2d at 1023.

**D. The Trial Court erred in its Analysis because the Authority it Relies on Does Not Support a Determination that the Petition Does Not State a Cause of Action.**

As shown above, the Trial Court and the Second Circuit erroneously relied on this Court's decision in *Newman Marchive*, 979 So.2d 1262. The Trial Court "predicated its ruling on [the *Newman Marchive* case]" stating that:

The court feels that this [*Newman Marchive* case] is not only applicable, that it's controlling and dispositive of the issue herein presented on the iss - - on the issue herein presented and therefore the court grants the defendants peremptory exception of no cause of - of action. That's the court's ruling on the exception of no cause of action.

R. 114-115).<sup>21</sup> With all due respect to the court below, *Newman Marchive* does not support its determination that Applicants failed to state a cause of action. This Court expressed its holding in *Newman Marchive* as follows:

we hold that LSA--R.S. 13:5109(B)(2) requires a specific appropriation or disbursement of funds to pay a particular judgment.

979 So.2d at 1264. *Newman Marchive* offers guidance on the procedural mechanisms required by Revised Statutes 13:5109(B)(2), but it does not address circumstances when the appropriation itself is a ministerial duty. In fact, in *Newman Marchive*, the plaintiff admitted "that the City's decision of whether to appropriate funds for the satisfaction of the judgment or claim against the City is **discretionary**." *Newman Marchive P'ship v. City of Shreveport*, 42-073 (La. App. 2 Cir. 3/21/07); 962 So.2d 1075, 1078 (emphasis added). Therefore, the question of whether the municipality had

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<sup>21</sup> Although the Trial Court stated these reasons at the November 8<sup>th</sup> hearing, the Trial Court made it clear at the December 2<sup>nd</sup> hearing (post Amended Petition, resulting in the December 2<sup>nd</sup> Judgment) that it sustained Respondents' Exception of No Cause of Action for the same reasons it stated on November 8<sup>th</sup>. (R. 141).

a ministerial duty to appropriate the funds was never before the Court. *Id.*, see also, 979 So.2d at 1264.

*Newman Marchive* does not support the Trial Court's determination that Applicants have not stated a cause of action for a writ of mandamus. Despite the fact that *Newman Marchive* did not involve a ministerial duty, the trial court still denied the defendant-municipality's exception of no cause of action and allowed the writ of mandamus to be decided on the merits. *Id.* at 1264, see also, 962 So.2d at 1076.<sup>22</sup>

Furthermore, the additional authority cited in the City's Opposition Brief previously filed with this Court likewise does not apply. (Opposition Brief, p. 11). In short, none of those cases involve a judgment rendered against a public body where the underlying obligation is a **statutorily mandated ministerial duty**. *Id.*, see also, *Jones v. Traylor*, 94-2520 (La. App. 4 Cir. 8/23/95); 660 So.2d 933 (plaintiff sought a writ of mandamus after obtaining a judgment in a **tort** suit); *Landry v. City of Erath*, 628 So.2d 1178 (La. App. 3 Cir. 1993) (plaintiff sought a writ of mandamus after obtaining a judgment in a **tort** suit); *State, Dept. of Trans. & Dev. v. Sugarland Ventures, Inc.*, 476 So.2d 970 (La. App. 1 Cir. 1985) (party sought a writ of mandamus after obtaining a judgment on a **contract** claim); *Fontenot v. State*, 358 So.2d 981 (La. App. 1 Cir. 1978) (the First Circuit's decision to recall a writ that ordered police jury to undergo a judgement debtor examination was reversed by this Court), rev'd by 355 So.2d 1324 (La. 1978).

Respectfully, neither *Newman Marchive*, nor any of the cases relied on by the City, address a municipality's statutory mandate to properly pay firemen or the protections regarding firemen's wages guaranteed by the Louisiana Constitution. Applicants have stated a cause of action. As such, they respectfully urge the Court to reverse the Trial Court and remand the matter for trial.

**E. The May 6, 2019 Judgment Does Not Impact Applicants' Ability to Obtain or Assert a Cause of Action for a Writ of Mandamus.**

The fact that Respondents' ministerial duty has already been proven and quantified by the May 6, 2019 Judgment only further demonstrates that issuance of a writ of mandamus is proper. The May 6, 2019 Judgment removes any question regarding the specific amounts due and action required for Respondents to comply with their statutory mandates to properly pay these firemen and

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<sup>22</sup> *Newman Marchive* was before the Second Circuit and this Court after a trial on the request for a writ of mandamus. *Id.* at 1264.

appropriate the funds to make such payment.

Respondents underlying obligation is the proper payment of wages owed these firemen – an appropriation would be required for said payment even if the May 6<sup>th</sup> Judgment did not exist. Simply put, the existence of the May 6, 2019 Judgment does not change the nature of the ministerial nature of said obligation or whether Applicants have a cause of action. To say otherwise would mean that Applicants are worse off because they quantified the amount of Respondents' ministerial duty through ordinary process. Stated another way, if the Court accepted Respondents' argument in this regard, it would be the equivalent of holding that Applicants had a cause of action for writ of mandamus but somehow lost it when they proved the ministerial duty by obtaining the May 6, 2019 Judgment. There is no support for such an argument. Furthermore, the same argument was made and failed in the numerous cases cited above, including: *Jazz Casino, New Orleans Fire Fighters R.H. Creager*. 223 So.3d at 495-96, see also, 131 So.3d at 423; 55 So.3d at 889.

In *New Orleans Fire Fighters*, the city asserted that “the judiciary is without authority to issue a writ of mandamus in any matter to enforce a money judgment ... unless the money for payment of the judgment has been specifically allocated [or appropriated].” 131 So.3d at 423. The Fourth Circuit rejected that argument holding that the laws at issue in that case were mandatory and not discretionary, giving the judiciary constitutional authority to issue a mandamus. *Id.*

This Court also expressly rejected this same argument in *Jazz Casino*. 223 So.3d at 495-96. The Court concluded that while such an argument may be appropriate in the context of a tort or contract claim, circumstances involving statutory mandates and “constitutional concerns involving the deprivation of property” [much like the vested property rights these Firemen acquired in their statutorily mandated wages] made the appropriation a ministerial duty. *Id.* at 497.<sup>23</sup> In *R.H. Creager*, the Fifth Circuit has also confirmed a writ of mandamus is appropriate, even though a final monetary judgment had already been rendered, because the monetary judgment represented a ministerial obligation. 55 So.3d at 891.

Applicants have stated a cause of action and are entitled to a trial on their Petition for Writ of Mandamus. For the reasons expressed herein, the Trial Court should be reversed and the matter should be remanded for trial.

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<sup>23</sup> Even prior to *Jazz Casino*, the Court has already made a clear that courts are required to examine the underlying basis for a monetary judgment to determine the appropriation is a ministerial duty. 889 So.2d at 1023.

**F. These Firemen have Stated a Cause of Action and are Entitled to a Trial on the Merits where the Trial Court will have an Opportunity to Admit and Weigh Evidence and Consider the Merits of the Request and any Affirmative Defenses asserted by Respondents.**

The Trial Court improperly weighed the merits without conducting a trial or admitting any evidence and simply speculated that a mandamus against the City would “bankrupt the City”. (R. 139-140). The Trial Court stated:

They’re [Respondents] not saying they’re not going to pay them [Applicants]. They’re saying that we have to look at our funds and then decide when we’re going to make the appropriation to pay it, but you can’t mandamus us or force us to say because if that were the case **you could basically bankrupt every city** because every judgment creditor would be allowed to come in there and say, if you got two million dollars in the till and I got a two million dollar judgment here, I want y’all [Respondents] to pay us the whole two million dollars out of the till. **Public agencies, public bodies should have the discretion to decide without going into bankruptcy how they go about paying these judgements.**

(R. 139, emphasis added). Respectfully, the Trial Court evaluated and ruled on the merits of Applicants’ request and Respondents’ affirmative defense of “inability to pay” without conducting a Trial or admitting any evidence.

Additionally, it must be noted Applicants are not attempting to “bankrupt” the City of Bastrop. In fact, the Petition contemplates the possibility that the entire Judgment may not be satisfied through a single appropriation. (R. 4, ¶ 12, 13; R. 44, ¶ 12). At an absolute minimum, Applicant-firemen are entitled a trial on their Petition for Writ of Mandamus. Applicants stated a cause of action and have the right to fully explore the merits of their request and Respondents’ affirmative defenses at trial. (R. 39-40; R. 69-75).

The Trial Court used the Exception of No Cause of Action to improperly rule on the “merits” because, as the Trial Court put it: **“I just don’t think it’s fair. That’s the court’s view”**. (R. 140, emphasis added). Respectfully, that is not the proper analysis for consideration of an exception of no cause of action. Consideration of the merits and the potential impact on the municipality is what a trial is for – not premature speculation by the Trial Court with no evidence.

## **V. CONCLUSION AND PRAYER FOR RELIEF**

Respondents have a duty and a clear legislative mandate to pay wages owed to firemen that are protected by the Louisiana Constitution and mandated by Louisiana Civil Service Law. The appropriation necessary for such payment is, in and of itself, a ministerial function. The implication of the Trial Court and Second Circuit decisions below is that these Firemen had a cause of action to



**VI. CERTIFICATION AND VERIFICATION AFFIDAVIT**


In compliance with Louisiana Supreme Court Rules, Rule X, Counsel for Applicant, submits the following certification and verification affidavit:

**STATE OF LOUISIANA**

**PARISH OF RAPIDES**

Aaron L. Green, attorney for Arnold Lowther, et al, Plaintiffs-Applicants, appeared before me, the undersigned Notary Public, and verified that all of the allegations appearing in the Application for Supervisory Writ, Writ of Certiorari and/or Review are true and correct, and certified that he has electronically mailed or mailed a paper copy of this opposition to the parties listed below by depositing same with the U.S. Postal Service, postage prepaid and properly addressed, this 20<sup>th</sup> day February, 2021:

<p>Hon. Robert C. Johnson  4<sup>th</sup> Judicial District Court  Morehouse Parish, Louisiana  Morehouse Parish Courthouse  100 East Madison  Bastrop, LA 71220</p> <p>Court of Appeal, Second Circuit  Clerk of Court  430 Fannin Street  Shreveport, LA 71101</p>	<p>J. Rodney Pierre  Pierre &amp; Pierre, LLC  702 Jackson Street  Monroe, LA 71201  Attorney for Town of Bastrop</p>
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Aaron L. Green

SWORN TO AND SUBSCRIBED before me, Notary, on this the 20<sup>th</sup> day of February, 2021.

  
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NOTARY PUBLIC

