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Attorneys At Law

October 14, 2024

VIA FEDEX & EMAIL

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Subject: CONFIDENTIAL SETTLEMENT COMMUNICATION
Lowe v. City of Palm Coast, Case No. 2024 CA 000488

Dear Ms. Crews:

I am writing in regard to the above lawsuit challenging the ballot referendum to remove Article VI 3(e) of the City of Palm Coast City Charter. As explained below, we feel it is in the City's best interest to put this matter to bed as quickly and efficiently as possible by entering into a stipulated final judgment directing the Supervisor of Elections to remove the ballot measure from the ballot and the Flagler County Canvassing Board to not tally or certify any votes that might be cast for or against the charter amendment. A proposed Joint Stipulation for Final Judgment and Stipulated Final Judgment are enclosed for your consideration.

At least three of five members of the City Council (Danko, Gambaro, Pontieri) have openly expressed their concerns about the misleading ballot summary language and voted to withdraw the Amendment from the ballot, albeit on separate votes. No action has been taken, however, because the City Attorney advised the counsel that only an order from the court would be sufficient now that the ballots have been printed and mailed. At least one member of City Council has also expressed concerns about the costs to the City to defend the lawsuit. All of these concerns can be easily addressed by entering into a stipulated final judgment in advance of the election.

The City Attorney also advised the City Council that this is past the "point of no return" and nothing can be done even if a majority decided it did not want to move forward with the charter amendment. This is not true. The Flagler County Commission faced a similar issue with a referendum in 2010. After adopting a resolution approving a referendum for a Local Economic Investment Initiative on June 7, 2010, the County Commission decided to change course and cancel the referendum. This decision was made on October 4, 2010 after ballots had been finalized and printed. I have enclosed

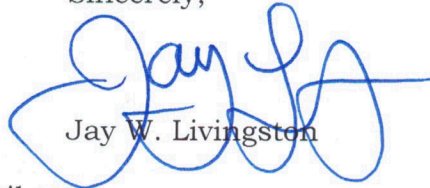
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records of this action provided to me by the County Attorney's office. As you can see, the Supervisor of Elections put a notice that the referendum was removed from the ballot in each voting booth and included the notice with absentee ballots when they were mailed. These remedial measures were approved by the Assistant General Counsel of the Florida Department of State. The same measures can be taken in this case if the parties stipulate to cancel the proposed charter amendment. This has been confirmed by the current Supervisor of Elections.

I do not have the benefit of the City's response to the lawsuit at the time of writing this letter, but regardless of any defenses that might be raised, we are confident in the merits of the case. If a majority of City's electors vote to approve the proposed amendment, they will eliminate their right to vote on future contracts and bonds of the City regardless of the repayment period or total cost. However, there is no mention that this will be the effect of the amendment nor any way to deduce it from the ballot summary, which begs the question if an approval of the amendment will actually reflect the will of the voters. This alone is sufficient to invalidate the ballot summary and the amendment itself.

Please advise at your earliest convenience if the City is willing to enter into a stipulation. In the meantime, we will be working to schedule a hearing on the temporary injunction due to the short timeframe until the election.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay W. Livingston", written over a printed name.

Jay W. Livingston

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