

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO.: 2024 CA 000488

ALAN LOWE,

Plaintiff,

vs.

CITY OF PALM COAST, a Florida
municipal corporation; and KAITI
LENHART, in her official capacity as
Supervisor of Elections of Flagler County

Defendants.

_____ /

PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION
AND REQUEST FOR EXPEDITED HEARING

Plaintiff, ALAN LOWE ("Plaintiff"), through his counsel, seeks entry of a temporary injunction with notice to the Defendants, the CITY OF PALM COAST, a Florida municipal corporation, and KAITI LENHART, in her official capacity as Supervisor of Elections of Flagler County, Florida, pursuant to Rule 1.610 of the Florida Rules of Civil Procedure.

Plaintiff seeks a temporary injunction, to be made permanent, that require the Defendants remove Ordinance 2024-13 ("Charter Amendment") from the November 5, 2024 City of Palm Coast election ballot and future election ballots, and that the City of Palm Coast and the Supervisor of Elections, and any other officials working under or in conjunction with any of them, be enjoined from tabulating, counting, releasing, or certifying the results of Charter Amendment, including the interim pending resolution of this action, and, ultimately, permanently into the future after entry of a subsequent permanent injunction.

Plaintiff also seeks a ruling that the Charter Amendment fails to satisfy the legal standards required of ballot language as set forth by Section 101.161, Florida Statutes and related Florida case law.

Plaintiff incorporates their First Amended Verified Complaint for Expedited Declaratory and Injunctive Relief, and all exhibits as if set forth in this motion. In support, Plaintiff states as follows:

1. The Florida Rules of General Practice and Judicial Administration require that challenges involving elections must be expedited as priority cases.:

(h) Duty to Expedite Priority Cases. Every judge has a duty to expedite priority cases to the extent reasonably possible. Priority cases are those cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise. Particular attention must be given to ... challenges involving lections and proposed constitutional amendments

Fla. R. Gen. Prac. & Jud. Admin. 2.215(h).

2. Plaintiff has standing as a registered voter of the City of Palm Coast to challenge the ballot language, and to seek enjoinder of an election alleged to be substantively illegal.

3. This is an election case, seeking declaratory and injunctive relief to remove the Charter Amendment from the November 5, 2025 City of Palm coast election ballot and all future election ballots, and to enjoin the Defendants from tabulating, counting, releasing, or certifying the results of the vote. The Charter Amendment is prohibited by Florida Statute 101.161.

4. The requested relief is necessary because the City of Palm Coast has submitted the Charter Amendment in violation of law. The Charter Amendment violates Florida Statute 101.161 because the title is misleading, and the ballot summary does not adequately inform the voter as to what they are voting on.

5. The language of Charter Amendment omits vital information and is unclear and misleading to voters. The ballot language starts with the false proposition that the City Council is currently unable to enter public private partnerships, respond to emergencies, or respond to growth by having future residents contribute to infrastructure costs (all of which are allowed provided they are under \$15,000,000.00 and for a term less than 36 months or approved by voter referendum).

6. Ballot language must be clear and unambiguous. The language of the Charter Amendment does not contain important information as to what it would do, and is therefore unclear and misleading to voters. For example, it makes no mention that the City already has the authority to enter into public-private partnerships or spend in times of emergencies but that contractual ability's limit is subject primarily to voter consent if it exceeds certain limits.

7. Temporary injunctive relief is necessary because the Charter Amendment is prohibited by Florida Statute 101.161 and is barred from being presented to the voter.

8. Injunctive relief is also necessary to remove the Charter Amendment from the ballot and prohibit from being tabulated, counted, released, or certified, because if the Charter Amendment is allowed to proceed, a misleading result will occur where voters are not adequately informed as to what they are voting on. The only remedy for a misleading ballot measure is removal from the ballot. *Florida Assn of Realtors v. Orange Cnty.*, 350 So. 3d 115, 131 (Fla. 5th DCA 2022).

9. Section 101.161(1), Florida Statutes, requires, in part:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measures shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection.

10. Implicit in this provision is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity.” *Detzner*, 256 So. 3d at 807 (citing sources) “What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.” *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)). “Simply put, the ballot must give the voter fair notice of the decision he must make.” *Askew*, 21 So. 2d at 155 (citing *Miami Dolphins, Ltd. V. Metropolitan Dade County*, 394 So. 2d 981 (Fla. 1981)). “A ballot title and summary cannot either ‘fly under false colors’ or ‘hide the ball’ as to the amendment’s true effect.” *Detzner*, 256 So. 3d at 808 (quoting *Armstrong*, 773 So. 2d at 16).

11. Florida law is clear that “the only remedy for a misleading ballot measure is its removal from the ballot” and that because “it is the only remedy available, ... the law requires we impose it.” *Florida Ass’n of Realtors*, 350 So. 3d at 130 (citing *Let Miami Beach Decide*, 120 So. 3d at 1292).

12. Here is a comparison between Article VI 3(e) and the Charter Amendment Summary:

CITY OF PALM COAST CHARTER

Article VI. Budget and appropriations

(3) Appropriation amendments during the fiscal year: [...] limitations to Council’s contracting authority.

(e) Limitations to Council’s Contracting Authority. Unless authorized by the electors of the City at a duly held referendum election, the Council shall not enter into lease purchase contracts or any other unfunded multiyear contracts, the repayment of which: extends in excess of 36 months; or exceeds \$15,000,000.00.

TITLE:

CHARTER AMENDMENT TO UPDATE PROVISIONS RELATED TO CITY COUNCIL’S CONTRACTING AUTHORITY.

SUMMARY:

Shall Article VI of the Charter be amended by removing provision (3)(e) related to fiscal Contracting Authority that limit the City’s ability to enter into public private partnerships, have the ability to address growth by having future residents contribute to infrastructure costs, respond to emergencies and use available financial

instruments including, but not limited to, bonds.

Yes

No

13. “In this analysis, we consider two questions: ‘(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public.’ *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 667 (Fla 2010) (citing sources).

14. The Charter Amendment fails both questions. The ballot title does not accurately reflect what the amendment would do, as it would not “update” but rather erase provisions, and the ballot summary language impermissibly flies under false colors and hides the ball because it fails to, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment, and because its language, as written, misleads the public.

15. The ballot language is biased and misleading both because of what it says and because of what it does not say. *See Florida Ass’n of Realtors*, 350 So. 3d at 129 (a ballot summary can be misleading and unlawful because of what it “does not say”); *See also skew*, 421 So. 2d at 156 (“The problem, therefore, lies not with what the summary says, but, rather, with what it does not say”). In that regard, Florida law is clear that “a ballot summary may be defective if it ‘omits material facts necessary to make the summary not misleading.’” *Florida Ass’n of Realtors*, 350 So. 3d at 129 (quoting *Advisory Op. to Att’y Gen.—Ltd. Pol. Terms in Certain Elective Offs.*, 592 So. 2d 225, 228 (Fla. 1991)). Although “Florida law does not require a ballot summary to explain every detail in the seventy-five-word limit ... it cannot mislead with what it does not say. “

Florida Ass'n of Realtors, 350 So. 3d at 129; *Wadhams v. Board of County Commissioners*, 567 So. 2d 414, 417 (Fla. 1990) (holding ballot question was invalid where it failed to explain that it would have the actual effect of superseding an existing charter provision).

16. The Florida Supreme Court has also explained that Section 101.161 prohibits “editorial comment” because “the ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth.” *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984).

17. When the City asks whether it should be able to address emergencies and citizen growth through future infrastructure costs, the City has put its thumb on the scale, and has engaged in unlawful editorial commentary that Section 101.161 prohibits. *See Evans*, 457 So. 2d at 1355.

18. The Charter Amendment language, as phrased, amounts to a leading question that suggests the City’s desired answer of “Yes.” As phrased, the Charter Amendment misleads voters into thinking that the City is unable to address public private partnerships, emergencies, growth, and resident contributions to infrastructure costs. The ballot summary hides the ball by failing to explain that Article VI 3(e) already permits the City to enter into lease purchase contracts or other unfunded multiyear contracts, but those in excess of 36 months or exceeding \$15,000,000.00 must be approved by referendum election. By drawing attention to **emergencies** and **future resident contribution to growth** while omitting **the pre-existing citizen referendum** required for **contracts exceeding \$15,000,000.00**, the Charter Amendment misleads voters away from the actual results such a vote would effect. Worse, the Charter Amendment, by using such language, is arguably drafted as a scare tactic to achieve the desired result.

19. A voter reading the Charter Amendment would incorrectly conclude that he or she is being asked whether the City should be allowed to address emergencies and citizen growth infrastructure, instead of whether he or she should waive her voting right to extensive City contracting.

20. Plaintiff is entitled to an injunction because they have a substantial likelihood of success on the merits of their claim that Charter Amendment violates Section 101.161

21. Plaintiff has a clear right in the subject matter

22. A voter has standing to challenge ballot language on a claim that the language fails to comply with Florida Statute 101.161. *City of Hialeah*, 963 So. 2d at 756 (Fla. 1st DCA 2002).

23. Plaintiff will be irreparably harmed by the Charter Amendment

24. A party suffers irreparable harm where a local government enacts an unconstitutional law. *Fla. Ass'n of Realtors*, 350 So. 3d at 130.

25. Plaintiff and other voters will be injured if forced to participate in a misleading and legally defective ballot, which does not adequately inform the voter as to what is being voted upon. *Id.*

26. The only remedy for a misleading ballot is removal. *Id.* Once the amendment has been voted upon, the damage cannot be undone.

27. There is no adequate remedy at law. Monetary damages cannot compensate for an election that takes place with misleading, unclear, and ambiguous language. *Id.*

28. Neither the City of Palm Coast nor any elections official is harmed in any meaningful or material way by the requested relief.

29. Meanwhile, there is a public interest in preventing an election on statutorily defective ballot language, and no public interest in conducting such an election.

30. The Fifth DCA spoke to this element in *Florida Association of Realtors*. In that case, the court removed a misleading question from the ballot, and explained that the public interest could only be served by doing so because “no public interest can be served by having the electorate vote on a misleading ballot measure.” The court specifically explained as follows:

Similarly, no public interest can be served by having the electorate vote on a misleading ballot measure. Our constitution already reflects this concern. It requires the Florida Supreme Court to render an advisory opinion on the validity of any proposed amendment to our constitution via initiative petition before it appears on the ballot. While we cannot, and do not, evaluate such a proposed amendment, we see no reason why the same principle should not apply here. Stated differently, there is no defensible reason to determine a ballot initiative is misleading, yet still have the electorate vote on it, only then informing them that we knew it was an unenforceable opinion poll all along. We recognize that the removal of the County’s ballot initiative is a significant remedy, and we do not exercise it lightly. But it is the only remedy available, and the law requires we impose it.

Id. (Citations removed).

31. Additionally, the fact that certain ballots have already been printed with the Charter Amendment in question does not undermine this motion or claims to relief. The Supervisor of Elections has stated that the procedure for circumstances such as this, were the Court to rule in Plaintiff’s favor, is to program tabulator machines to ignore or discontinue tabulating votes regarding the Charter Amendment, with as much notice to voters as is practicable, and to ***not*** certify the results of the Charter Amendment vote. *See* Supervisor of Election’s Answer to First Amended Verified Complaint for Expedited Declaratory and Injunctive Relief, filed October 1, 2024.

32. The undersigned has conferred with the Supervisor of Election’s Counsel, who agrees that for the benefit of the Election’s administration, the hearing should occur within the next two weeks.

CONCLUSION

WHEREFORE, the Plaintiff, Alan Lowe, with the concurrence of the Flagler County Supervisor of Elections that a hearing date should occur within the next two weeks, respectfully asks this Honorable Court for an expedited hearing on this motion on an emergency basis, and for a hearing to take place on or before Thursday, October 24, 2024, because determination is needed prior to Election day, November 5, 2024; and for a declaration, judgment, or order with the appropriate relief, holding:

1. The Defendants shall be required to remove the Charter Amendment from the November 5, 2024 City of Palm Coast ballot;
2. The Defendants shall be prohibited from tabulating, counting, releasing, or certifying the election results related to Charter Amendment;
3. The Defendants shall be prohibited from submitting Charter Amendment to the voters on any future City of Palm Coast Election Ballots;
4. The Charter Amendment violates section 161.101, Florida Statutes because it is unclear, ambiguous, and misleading, and because it omits necessary information, requiring its removal from the November 5, 2024 City of Palm Coast election ballot and any future election ballot;
5. The Charter Amendment cannot proceed or be counted or tabulated or considered valid, because it fails to explain its actual legal effect;
6. Any other relief the Court deems just and proper;

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 14th day of October, 2024, via e-mail and the eFiling Portal, which will electronically serve a copy of the foregoing to all registered participants.

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Respectfully submitted

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