Filing # 209241460 E-Filed 10/21/2024 04:12:12 PM

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

ALAN LOWE,

Plaintiff, Case No. 2024-CA-000488

v.

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

Defendants.
_____/

DEFENDANT CITY OF PALM COAST'S ANSWER, MOTION TO STRIKE IMPROPER AFFIDAVIT AND COMPLAINT ALLEGATIONS, AND LEGAL MEMORANDUM IN OPPOSITION TO FIRST AMENDED COMPLAINT

Defendant City of Palm Coast (the "City") pursuant to Rule 1.140, *Fla. R. Civ. P.*, submits the following Answer, Motion to Strike Improper Affidavit and Allegations, and Legal Memorandum in Opposition to Plaintiff Alan Lowe's ("Plaintiff") First Amended Complaint ("FAC") as follows:

I. ANSWER

Jurisdiction and Venue

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied.

Parties

6. Admitted the Sample Ballot is an accurate copy. Otherwise, without knowledge and denied.

7. Admitted.

8. Admitted.

9. Without knowledge and denied.

10. Admitted.

11. Admitted Defendant Kaiti Lenhart as the Supervisor of Elections ("SOE") is an indispensable party.

Background

12. Admitted Plaintiff seeks declaratory and injunctive relief to remove Ordinance 2024-13 ("Charter Amendment") from the November 5, 2024, ballot and future ballots and to enjoin Defendants from tabulating, counting, releasing, or certifying the results of the Charter Amendment vote. Admitted Plaintiff requested an expedited hearing. Otherwise, denied.

13. Admitted the City directed staff to draft a proposed amendment at a public meeting on June 25, 2024. Admitted a version of the proposed amendment was read as an ordinance at a public meeting on July 2, 2024, and the language was amended for clarity at that meeting and approved by vote as amended. Admitted the proposed amendment had its second reading at a July 16, 2024, public meeting. In the interest of further clarity, the City again amended the

language and the City Council approved the amended language by a 5-0 vote on July 16, 2024. Admitted the City passed Ordinance 2024-13, which authorized the ballot measure's appearance on the November 5, 2024, election ballot. Admitted a correct copy of Ordinance 2024-13 is attached to Plaintiff's FAC. Otherwise, denied.

14. Admitted a correct copy of the sample ballet is attached to Plaintiff's FAC. Otherwise, denied.

15. Admitted Article VI 3(e) of the City Charter and the Charter Amendment Title and Summary are accurately set out save a typographical error in the ballot language: the word "limit" should be "limits." Otherwise, denied.

16. Admitted Article VI 3(e) and the Charter Amendment speak for themselves. Otherwise, denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied as phrased, and subject to motion to strike as set out below.

25. Denied.

26. The cases cited speak for themselves. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

27. Denied.

28. Denied.

29. Denied as phrased, and subject to motion to strike as set out below.

30. Denied as phrased, and subject to motion to strike as set out below.

Count I
(Violation of Section 101.161, Fla. Stat.)

31. The City realleges its answers as set out above.

32. Admitted.

33. Denied.

34. Denied.

35. Denied.

36. Admitted section 101.161 speaks for itself. Otherwise, denied.

37. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

38. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

39. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

40. Denied.

41. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

42. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

43. The case law cited speak for itself. This legal argument is improperly asserted in Plaintiff's FAC, which should only set out factual allegations; this legal argument should be made separately in a legal memorandum. Otherwise, denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

Count II
(Temporary Injunction)

48. The City realleges its answers as set out above.

49. Admitted Plaintiff seeks injunctive relief. Otherwise, denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. The case law cited speak for itself. Otherwise, denied.

57. Denied.

Count III
(Declaratory Relief)

58. The City realleges its answers as set out above.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

FIRST AFFIRMATIVE DEFENSE[1]
(Failure to Join Indispensable Party)

Plaintiff's FAC must be dismissed because he failed to name the Flagler County Canvassing Board ("Canvassing Board") – an indispensable party to his

[1] Failure to join an indispensable party may be asserted in a responsive pleading or in a motion to dismiss. Fla. R. Civ. P. 1.140(b)(7).

action. Plaintiff asks this Court to improperly order affirmative injunctive relief against a party not before it. Complete and final relief cannot be granted without the Canvassing Board as a party. *Green Emerald Homes, LLC v. 21st Mortg. Corp.*, 300 So. 3d 698, 705 (Fla. 2d DCA 2019) (an indispensable party is one who is essential to a suit such that no final decision can be rendered, and a complete and efficient determination is not possible without their joinder).

Plaintiff seeks to enjoin the tabulation and certification of the Charter Amendment referendum, but only the Canvassing Board can canvass ballots and certify election results. §§ 102.141(2)(a), 102.141(4)(b), 102.141(5); 102.151, Fla. Stat. This Court is without jurisdiction to issue an injunction against the Canvassing Board, which is not a party. An injunction must be limited in effect to the rights of parties before the Court. *Sheoah Highlands Inc. v. Daugherty*, 837 So. 2d 579, 583 (Fla. 5th DCA 2003). Without the Canvassing Board, complete relief is not possible. *Id.; Oakland Prop. Corp. v. Hogan*, 117 So. 846, 849 (Fla. 1928) (indispensable party must be joined if they are needed to effect a complete decree and final relief).

The City passed the proposed Charter Amendment on July 16, 2024. Plaintiff did not file his FAC seeking expedited relief until September 23, 2024 – over two months later. While Plaintiff requested an accelerated hearing in paragraph 12 of the FAC, he did not serve the City until September 30, 2024, and he did not seek expedited hearing times from the Court until October 15, 2024.

On October 1, 2024, the SOE filed its answer seeking dismissal of Plaintiff's FAC for failure to name the Canvassing Board as an indispensable party. Yet, Plaintiff has not sought to amend his complaint to bring this indispensable party before the Court. The election is a mere 15 days away, and the hearing in this matter is November 1, 2024 – just 4 days away from the election.

As set out by the SOE in its answer, Plaintiff's delay in bringing this action and its failure to name all indispensable parties has rendered much of Plaintiff's requested relief impossible. For example, Plaintiff has requested the Court order the Charter Amendment's removal from the ballot, which is now impossible. Ballots have already been printed and distributed to certain voters under statutory deadlines. The SOE mailed ballots to registered voters in foreign countries on September 20, 2024, and it mailed vote-by-mail ballots on September 27, 2024.

Because it is too late to reprint the ballots, this Court would have to order the Canvassing Board to ignore and not certify the election results. However, Plaintiff has inexcusably failed to bring the Canvassing Board before this Court to effectuate this relief.

Were this Court to agree with Plaintiff at the November 1, 2024, hearing, it would have to issue an immediate order, and even then, it would not be logistically possible to effectuate it. While the SOE ***might*** be able to create, print, circulate, mail, and post voter notices within 4 days advising them to ignore the ballot amendment, the Court has no jurisdiction to order the Canvassing Board not to tabulate or certify the results. And, as set out by the SOE, this Court cannot nullify

the election results if the amendment passes (at least not under Plaintiff's stated causes of action). Rather, any challenge after election certification must be brought under section 102.168, Fla. Stat.

These issues could have been avoided had Plaintiff filed a timelier action and brought all necessary parties before the Court.

II. MOTION TO STRIKE

The City, pursuant to Rule 1.140(f), *Fla. R. Civ. P.*, moves the Court to strike paragraphs 24, 29, and 30 of Plaintiff's FAC and paragraphs 4 through 8 of Plaintiff's Affidavit[2] ("Immaterial Allegations").

Whether the ballot title and summary are "clearly and conclusively defective" is a pure question of law for this Court. *Advisory Op. to Att'y Gen. re Amend. to Bar Govt. from Treating People Differently Based on Race in Public Ed.*, 778 So. 2d 888, 891 (Fla. 2000) (the court's role in deciding whether the ballot language is clearly and conclusively defective is strictly limited to the legal issues presented); *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000) (a court may declare a proposed amendment invalid only if the record shows it is clearly and conclusively defective, and the standard of review is a pure question of law reviewed de novo).

Plaintiff's Immaterial Allegations attempt to inject one-sided, impertinent facts into the Court's purely legal analysis. Specifically, Plaintiff alleges he and other citizens have expressed confusion regarding the ballot language. The City

[2] Attached as Exhibit B to his FAC

could easily gather citizens that would say the opposite, but the Court's decision is not to be made based on a public poll or any particular voter's subjective opinion. *Fl. Ed. Ass'n v. Fl. Dep't of State*, 48 So. 3d 694, 704 (Fla. 2010) (the court's test in determining the validity of the ballot title and summary is not what "some voters" might believe but rather whether the ballot title and summary provide voters with fair notice of the decision they must make).

Thus, at the upcoming ***non-evidentiary*** hearing, this Court should disregard any alleged facts or evidence as to what particular voters may believe and other immaterial facts outside the Court's legal analysis, which is confined to the ballot text.

Wherefore, the City respectfully requests this Court strike the Immaterial Allegations, refrain from hearing evidence or testimonials at the hearing, and decide this case as a pure matter of law.

III. LEGAL MEMORANDUM IN OPPOSITION TO PLAINTIFF'S FAC[3]

Argument Summary

Plaintiff falls woefully short of meeting his extraordinary burden to show the proposed amendment is "clearly and conclusively defective" as a matter of law. Courts must exercise extreme caution and restraint in interfering with the people's right to vote, and high deference is given to allowing the democratic process to

[3] Plaintiff did not file a memorandum of law in support of his requested relief. Rather, he cited law and made legal conclusions in the factual section of his FAC. Regardless, the City addresses Plaintiff's legal argument here.

take place. Florida law places minimal statutory requirements on ballot language. Stated simply, the ballot title and summary must contain clear and unambiguous language to fairly inform the voters of the amendment's chief purpose, and the language must not be affirmatively misleading. There is no requirement the summary set out all the amendment's details and ramifications, which is not possible given the 75-word statutory limit. Rather, the language is only meant to provide voters with fair notice of the issue. After that, it is the voter's duty to educate himself before entering the voting booth. Florida law makes clear ballot summaries need not be perfect. The fact language could have been drafted clearer or better is not the test. Rather, Plaintiff must show the language "clearly and conclusively" fails to provide the voters enough information to determine the amendment's chief purpose or the language "clearly and conclusively" misleads the voters.

The City's ballot summary easily meets Florida's minimal standards. The chief purpose of the amendment is to remove provision (3)(e) from the City's Charter, which limits the City's contracting abilities. That is exactly what the ballot summary says. Plaintiff's chief complaint is the summary does not actually cite the text of (3)(e), which details the current limitations on the City's contracting abilities. However, the City could not have included (3)(e)'s text without going over the 75-word limit. Importantly, in the summary, the City explicitly cited and referenced (3)(e) and explained it would be "removed." Case law establishes it is appropriate for ballot summaries to reference materials by which voters can educate

themselves about the amendment. Here, any voter would (or should) know to review City Charter provision (3)(e)[4] for additional details.

The summary does not affirmatively mislead voters or "hide the ball." Cases where courts have found summaries affirmatively misleading are conspicuous. These are situations where the summaries were purposefully and obviously drafted to deceive where, for example, the title and summary intentionally suggest the exact opposite of what the amendment would actually accomplish. Such cases are inapposite here.

Finally, as set out above, Plaintiff's complaint should be dismissed for failure to name the Flagler County Canvassing Board – an indispensable party this action.

Argument

A. Plaintiff Faces a High Legal Burden

For this Court to interfere with the people's right to vote on the proposed amendment, Plaintiff must show the proposal is "clearly and conclusively defective." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982); *Sancho v. Smith*, 830 So. 2d 856, 861 (Fla. 1st DCA 2002) (noting the clearly and conclusively defective standard is a high burden to meet). The Court must act with "extreme care, caution, and restraint" before it removes an amendment from the people's vote. *Id.* at 156. Infringing on the people's right to vote on an amendment is a power the Court should only use when the record is clear the ballot language would

[4] The City's Charter is publicly available online and at the City.

affirmatively mislead the public. *Advisory Op. to Att'y Gen. re Physician Shall Charge Same Fee for Same Health Care Serv. To Every Patient*, 880 So. 2d 659, 664 (Fla. 2004); *Advisory Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, (Fla. 2009) (this court has recognized it must exercise extreme caution and restraint before removing an amendment from the voters, and the court has no authority to inject itself into the process unless the law has been "clearly and conclusively" violated).

The law is well settled a court, as a general rule, will not restrain a free election, which is a political matter to be determined by the electorate and not the courts. The limited exceptions to this rule have been recognized only on "the narrowest of grounds." *Metro. Dade Cnty. V. Shiver*, 365 So. 2d 210, 212 (Fla. 3d DCA 1978).

This Court does not review the merits or wisdom of the proposed amendment; the Court's role is strictly limited to the legal issues presented. *Advisory Op. to Att'y Gen. re Treating People Differently*, 778 So. 2d at 891. Sovereignty resides in the people, and the electors have the right to approve or reject a proposed amendment limited only to those instances where there is an entire failure to comply with a plain and essential requirement of organic law in proposing the amendment. *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 795 (Fla. 2014). There is a strong public policy against courts interfering in the democratic processes of elections.

Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013).

B. Legal Standard

Section 101.161 provides in relevant 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 measure 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. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

§ 101.161(1), Fla. Stat.

To determine whether the City's ballot title and summary satisfy the requirements of section 101.161, Fla. Stat., this Court must consider two questions: (1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the amendment's chief purpose; and (2) whether the language, as written, misleads the pubic. *Advisory Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d at 184-185. A ballot summary must not be "affirmatively misleading." *Fl. Ed. Ass'n v. Fl. Dep't of State*, 48 So. 3d 694, 704 (Fla. 2010); *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 22 (Fla. 4th DCA 2012).

A ballot summary need not (and because of the statutory word limit, often cannot) explain at great and undue length the complete details of a proposed amendment, and some onus falls upon voters to educate themselves about the proposed amendment's substance. *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491, 498 (Fla. 2002). Even if a ballot summary could have been more carefully drafted to better explain an amendment's text, that does not require the proposed amendment be struck:

> It is true ... that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

Id. at 498 (quoting *Shiver*, 365 So. 2d at 213).

Section 101.161 requires the amendment's chief purpose be stated so voters will have notice of the issue and will not be misled regarding its purpose so they can cast intelligent and informed votes. But, it is unnecessary and impractical for the summary to explain every detail and ramification. *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab*, 818 So. 2d at 497; *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Matheson v. Miami-Dade Cnty.*, 187 So. 3d 221, 226 (Fla.

3d DCA 2015) (section 101.161 does not require excessive detail); *Miami Heat Ltd. P'ship v. Leahy*, 682 So. 2d 198, 203 (Fla. 3d DCA 1996) (ballot language adequately informed voters of proposed ordinance although the ballot summary did not contain the ordinance verbatim or explain it in complete terms or at great length). It is neither necessary nor practical that a proposed charter amendment's ballot summary explain every detail or ramification of the proposal. *Volusia Citizens Alliance v. Volusia Home Builders Ass'n*, 887 So. 2d 430, 431 (Fla. 5th DCA 2004).

In *Leahy*, the court observed that certain ordinance details and ramifications were either omitted or could have been better explained. However, that is not the test. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is not the function of the ballot summary to provide him with that education. Rather, the law simply requires the ballot give the voter fair notice of the question so he may intelligently inform himself and cast his vote. *Leahy*, 682 So. 2d at 203.

C. The Ballot Title and Summary Make Clear Article VI (3)(e) is Being Removed

Plaintiff claims the title and summary are misleading because the title reads the amendment will "update" Charter provisions relating to the City's contracting authority when the summary notes the amendment will "remove" Article VI (3)(e). First, the City Charter has other provisions relating to the City's contracting

authority outside of Article VI (3)(e). It would be inaccurate to say the amendment was removing all such provisions and not just (3)(e). Also, a ballot title and summary must be read together. *Advisory Op. to Att'y Gen. re Use of Marijuana*, 132 So. 3d at 804 (the ballot title and summary may not be read in isolation but must be read together in determining whether the ballot information properly informs the voter); *Advisory Op. to Att'y Gen. re Voluntary Universal Pre-K Educ.*, 824 So. 2d 161, 167 (Fla. 2002). The ballot summary reads, in relevant part, "Shall Article VI of the Charter be amended by removing provision (3)(e) related to fiscal Contracting Authority…" When read together, it is patently clear the amendment removes this provision.

D. The Ballot Title and Summary State the Amendment's Chief Purpose

The Charter Amendment's chief purpose is to remove Article VI (3)(e) from the City's Charter, which currently limits the City's contracting authority. This is exactly what the summary says. Plaintiff's complaint is that the summary does not recite provision 3(e)'s actual text, which specifically sets out the current limitations on the City's contracting authority. However, the law does not require that level of detail for summary purposes. Indeed, reciting 3(e)'s language in the summary would violate the 75-word statutory limit.

The summary specifically cites and references 3(e), which is all that is required, because it gives voters notice of the provision that is to be removed. The voters have all the information they need to educate themselves regarding the amendment's effects. *Hill v. Milander,* 72 So. 2d 796, 798 (Fla. 1954) (it is common

knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined and it is idle to argue the ballot summary must appear in great and undue length; one does not wait until he enters the election booth to decide how he is going to cast his ballot). In *Hill*, the court noted the ballot summary fittingly referenced related law provisions making the amendment's effect clear. Voters are required to do their homework and educate themselves about an amendment's details and the pros and cons of the same. *Advisory Op. to Att'y Gen. re Physician Shall Charge Same Fee*, 880 So. 2d at 665; *Shiver*, 365 So. 2d at 213 (if a voter does not educate himself on a proposed referendum before he enters the voting booth, it is no function of the ballot question to educate him). A ballot summary need not (and due to word limits, often cannot) explain all details, and some of the onus falls upon voters to educate themselves about the amendment. *Advisory Op. to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d at 186.

Referring voters to other materials or affected laws in a summary so the voter may educate himself is not only permissible but encouraged, especially considering the 75-word limit. *Advisory Op. to Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002) (referring voters to the amendment's definitions to better educate themselves and noting the court will presume the average voter has a certain amount of common understanding and knowledge). In *Let Miami Beach Decide*, the court criticized the ballot summary for failing to either provide

key information or to refer voters to outside material that would provide the information. *Let Miami Beach Decide*, 120 So. 3d at 1292; *see also Advisory Op. to Att'y Gen. re Treating People Differently*, 778 So. 2d at 898 (finding ballot summary invalid because it failed to reference or identify constitutional and statutory provisions that would be affected). Here, the ballot summary refers the voters to provision 3(e) which sets out all the details Plaintiff complains are not in the summary. In *Matheson*, the plaintiff alleged the County "hid the ball" because the summary did not list all the development approvals that would be required under the amendment. However, the court disagreed noting, like here, the summary referenced a County resolution that contained all those details. *Matheson*, 187 So. 3d at 226.

Because the ballot summary specifically directs the voters to (3)(e), there was no reason to copy and paste that provision into the summary. Plaintiff cannot show the summary "conclusively and clearly" misleads voters or hides the ball by not disclosing (3)(e) when the summary specifically cites (3)(e).

E. The Ballot Summary is Not Misleading by Mentioning the City's Existing Limitations to Enter Public Private Partnerships, Address Growth, and Respond to Emergencies

Inarguably, existing provision (3)(e) limits the City's current ability to enter certain contracts and to finance infrastructure and other costs, including those associated with growth and emergencies. There is absolutely nothing false or misleading about these statements. Even if this Court finds this language leans toward advocacy, justification, or political rhetoric, unless this Court additionally

finds the language to be false or misleading, it is of no consequence. Unnecessary or surplus language will not justify removal unless the language is also "clearly and conclusively" misleading. *Sancho*, 830 So. 2d at 863. In *Sancho*, the court explained an unnecessary statement – that is also false or misleading – might render a ballot summary invalid. For example, in *Evans v. Firestone,* 457 So.2d 1351 (Fla.1984), the court concluded a ballot summary was invalid, in part, because it contained a superfluous editorial comment. In *Sancho*, the plaintiff seized on *Evans*' language that a "ballot summary should tell the voter the legal effect of the amendment, and no more." But, the *Sancho* court held the superfluous language in *Sancho* was neither untrue nor misleading. *Sancho*, 830 So. 2d at 863 (upholding the summary, because while the summary could have been more concise, that is not the test of its constitutional validity).

Simply because the ballot summary might explain part of the reason for advancing the amendment does not make the language misleading political rhetoric or editorial comment. *Advisory Op. to Att'y Gen. re Patients' Right To Know About Adverse Med. Incidents*, 880 So. 2d 617, 622-623 (Fla. 2004) (finding although certain comments regarding medical malpractice, injury, and death may not have been necessary to the summary, they were not inaccurate or misleading).

Courts have only invalidated ballot title and summaries for inappropriate political rhetoric where they were otherwise affirmatively misleading. Again, simply because a ballot summary is not perfect or could have been better explained is not the test. *Shiver*, 365 So. 2d at 213 (just because the amendment could have been

better described is not the test); *Advisory Op. to Att'y Gen. re Right to Treatment*, 818 So. 2d at 498 (although a "perfectly drafted" summary might mention the provision in question, imperfection is not fatal); *City of Riviera Beach*, 87 So. 3d at 22 (while the ballot summary was not a model of clarity and could have been more artfully phrased, it stated the amendment's chief purpose and did not mislead).

The benign statements in this ballot summary, which are also perfectly true, do not rise to the level of improper political rhetoric – much less "clearly and conclusively" misleading language. *Advisory Op. to Att'y Gen. re Protect People from Second-Hand Smoke*, 814 So. 2d at 421 (finding the use of "hazards" and "protect" did not rise to the level of impermissible political rhetoric); *People Against Tax Revenue Mismanagement v. Cnty. of Leon*, 583 So. 2d 1373, 1376 (some questionable ballot language is not enough to invalidate an entire referendum). In *People Against Tax Revenue Mismanagement*, the court found identifying capital projects as "critical" did not render the ballot defective finding it was not reasonable to conclude voters would be so easily beguiled by a few arguably non-neutral words. *Id.*

Courts have only chosen to remove an amendment from the democratic process when the summary is obviously misleading. For example, in *Armstrong*, the court found a ballot summary was affirmatively misleading because the title suggested the amendment would promote rights related to cruel and unusual punishments when the amendment actually did the opposite and restricted those rights. *Armstrong*, 773 So. 2d at 16-17. Similarly, in *Advisory Op. to Att'y Gen. re*

Right of Citizens to Choose Health Care Providers, the court invalidated a ballot summary where it gave the illusory impression voters would have the right to choose health care providers when the amendment would have severely limited that ability. *Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 5663, 566 (Fla. 1998). No such affirmative trickery is at play in this matter.

Conclusion

Plaintiff's FAC should be dismissed for failure to name an indispensable party. Plaintiff has failed to meet his high burden to "clearly and conclusively" show the ballot summary is legally defective and should be taken away from the people's vote. The ballot summary states the amendment's chief purpose – to remove Article VI (3)(e) from the City Charter. The ballot title and summary do not affirmatively mislead the public. Wherefore, the City respectfully requests this Court deny Plaintiff's requested relief and allow the democratic process to move forward.

Dated this 21st day of October, 2024.

/s/ Rachael M. Crews
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Counsel for Defendant City of Palm Coast

CERTIFICATE OF SERVICE

I HEREBY CERTIFY I electronically filed the foregoing with the Clerk of the Court by using the eFiling Portal, which will electronically serve a copy of the foregoing to all registered participants this 21st day of October, 2024.

/s/ Rachael M. Crews
RACHAEL M. CREWS, ESQUIRE
Florida Bar No. 795321