

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

ALAN LOWE,

CIRCUIT CIVIL DIVISION
CASE NO.: 2024 CA 000488

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.

_____ /

**DEFENDANT SUPERVISOR OF ELECTION'S RESPONSE TO PLAINTIFF'S
MOTION FOR TEMPORARY INJUNCTION AND REQUEST FOR EXPEDITED
HEARING**

Defendant, Kaiti Lenhart, in her official capacity as Supervisor of Elections of Flagler County ("SOE"), by and through her undersigned counsel, hereby files her Response to Plaintiff's Motion for Temporary Injunction and Request for Expedited Hearing, and states:

The SOE must maintain impartiality in election matters and therefore takes no position on the Plaintiff's request for a preliminary injunction or the underlying merits of the cause of action. However, the SOE wishes to amplify the need for a speedy resolution of this matter.

The Flagler County Canvassing Board will begin canvassing vote by mail ballots ("VBM's) on October 16, 2024, after its original meeting for that purpose was delayed due to Hurricane Milton. Additional meetings for canvassing VBM's are scheduled for October 21st, 25th, 30th, and on Election Day, November 5, 2024. In addition, early voting runs from October 21st through November 2nd. If the Charter Amendment is to be removed, the sooner such removal is ordered, the more time the SOE will have to prepare notices and train poll workers.

A speedy resolution of this matter will also help avoid potential confusion by the voting public. For example, if the Charter Amendment is ordered removed from the ballot after 7 p.m. on Election Day, the unofficial results of the Charter Amendment referendum will have already been made public. In this situation, voters who are not closely following this lawsuit may not understand the reason their votes were not ultimately counted.

The SOE notes for the Court's edification that the absolute deadline by which the Charter Amendment could be removed from the ballot by this Court is when the Canvassing Board certifies the results of the election on November 15, 2024, assuming no recount is ordered. After the results are certified, the only way to challenge the referendum under Florida law, absent a constitutional or federal claim, is pursuant to a contest of election under Section 102.168, Florida Statutes. Although the certification of the election provides a clear deadline, the SOE urges the Court to decide this matter as soon as practicable within the Court's resources. If ordered to remove the referendum from the ballot prior to certification of the election, the SOE can program ballot tabulators to exclude the referendum from the vote tabulation.

In sum, the interests of the SOE in conducting an orderly election, the interests of the Canvassing Board in certifying the results, and the interests of the public in understanding the outcome of the referendum will all be served by granting the Plaintiff's request for an expedited hearing.

Respectfully submitted,

Sean S. Moylan Digitally signed by Sean S. Moylan
Date: 2024.10.15 12:25:54 -04'00'

Sean S. Moylan
smoylan@flaglercounty.gov
Fla. Bar. No.: 0076251
Sarah Spector
sspector@flaglercounty.gov

Fla. Bar. No.: 654221
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110
(386) 313-4005
ATTORNEYS FOR DEFENDANT
Honorable Kaiti Lenhart, Supervisor of
Elections of Flagler County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by means of the Florida e-portal system, this 15th day of October 2024, to Douglas N. Burnett, Esq. at sjlgservice@gmail.com, Alex Nunchuck, Esq. at anunchuck@sjlawgoup.com, Jay W. Livingston, Esq. at lslawinfo@gmail.com, and Rachael M. Crews, Esq. at rachael.crews@gray-robinson.com, mariah.richardson@gray-robinson.com, and jamal.wilson@gray-robinson.com.

Sean S. Moylan Digitally signed by Sean S. Moylan
Date: 2024.10.15 12:26:16 -04'00'

Sean S. Moylan
smoylan@flaglercounty.gov
Fla. Bar. No.: 0076251
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110
(386) 313-4005