

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION AA  
CASE NO. 50-2018-CA-001408-CAXX-MB

SIDNEY F. DINERSTEIN, a Palm Beach  
Gardens registered voter and qualified elector,  
Plaintiff

vs.

SUSAN BUCHER, in her official capacity as  
Supervisor of Elections for Palm Beach County,  
THE CITY OF PALM BEACH GARDENS, and  
PATRICIA SNIDER, in her capacity as City Clerk  
for Palm Beach Gardens,  
Respondents.

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**FINAL JUDGMENT DISMISSING PETITION AS TO COUNT 1;  
GRANTING PETITION, IN PART, AS TO COUNTS 2 AND 3; AND  
DENYING PETITION AS TO COUNTS 4, 5, AND 6**

**THIS CAUSE** came before the Court upon the expedited hearing on Petitioner's Emergency Petition For Declaratory Relief, Injunctive Relief And For a Writ Of Mandamus Directing Respondents To Remove Proposed Ordinances Nos. 26, 27, 28, and 29 From Special Election Ballot (March 13, 2018) and to Embargo and Not to Canvass the Election ("Petition"). The expedited hearing was held on February 28, 2018. The Court has considered the Petition, Petitioner's Trial Brief, Defendant Palm Beach Gardens' ("City") and Patricia Snider's Motion for Summary Judgment and Memorandum of Law,<sup>1</sup> argument of counsel and the evidence presented at the expedited hearing, and is otherwise fully advised.

In Count 1, Petitioner seeks to enjoin the referendum currently scheduled to take place in Palm Beach Gardens, Florida on March 13, 2018. In Counts 2-5, Petitioner seeks to invalidate

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<sup>1</sup> Given the expedited briefing and hearing schedule, the Court treats the Motion for Summary Judgment as a responsive pleading.

each of the four ballot questions that are to be voted upon. In Count 6, Petitioner seeks the issuance of a writ of mandamus against Respondents Susan Bucher and Patricia Snider in their official capacities. Each count will be addressed separately below.

During the hearing, Petitioner moved to amend the Petition to conform to the evidence as provided in Florida Rule of Civil Procedure 1.190(b); specifically, to include his argument that the ballot summaries violate the single-subject rule. Respondents objected. The Court will allow Petitioner to amend the Petition to conform to this argument. This was not an evidentiary issue, but rather a legal argument that was first raised in Petitioner’s trial brief and which differed slightly from the framing of the legal arguments in the Petition. The Court would generally liberally allow a first amended Petition pursuant to Florida Rule of Civil Procedure 1.190(a). Given the compressed timeframe that made such an amendment impractical, the fact that Respondents were on notice of this argument in Petitioner’s trial brief and were well-prepared to substantively defend against it, and the fact that the single-subject rule argument closely relates to the arguments raised in the original Petition, the Court grants Petitioner’s motion to amend. The Court will substantively address the single-subject rule argument in section 2 below.

**1. Count 1 – Declaratory Judgment to Enjoin the March 13, 2018 Election**

Petitioner seeks to enjoin the March 13, 2018 election on the grounds that the election is invalid under section 26-7 of the City’s Code of Ordinances. The Court finds that Count 1 must be dismissed because Petitioner has not established the requisite standing. *See School Bd. v. Volusia Cty. v. Clayton*, 691 So. 2d 1066 (Fla. 1997) (requiring an allegation of a “special injury” or a “constitutional challenge” to establish standing). Even if Petitioner properly alleged standing, the Court would nevertheless deny the requested relief. Section 26-7 of the City’s Code of Ordinances provides that, “whenever possible,” an “issue election” “shall be held in conjunction

with a regular state, county or city election.” It was undisputed that the second Tuesday of March is the regular date for municipal elections in Palm Beach County. As the City is a municipality within Palm Beach County, the Court finds that the pending March 13, 2018 election is a regular election, rather than a special election as alleged by Petitioner. Accordingly, Petitioner is not entitled to injunctive or declaratory relief.

**2. Count 2 – Declaratory Judgment Regarding Ordinance No. 26, 2017 (Ballot Question No. 1)**

Petitioner argued that the title of the ballot question—City of Palm Beach Gardens Referendum Question No. 1—violates section 166.041(2), Florida Statutes because it is insufficiently descriptive. That statute pertains to the underlying ordinances rather than the actual ballot title and summary. The Court finds that the ballot title satisfies the requirements of section 101.161(1), Florida Statutes, which simply requires the title to “consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.” There was no evidence put forth that a numerical identifier (i.e. City of Palm Beach Gardens Referendum Question No. 1) is not how the measure is commonly referred to or spoken of. The Court finds that this is not a basis to invalidate the ballot question.

Petitioner also argues that the ballot summary for Ballot Question No. 2 renders the question invalid because it fails to communicate to or advise the voter of what changes an affirmative vote will cause to the City Charter. The ballot summary is as follows:

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO ADOPT AND IMPLEMENT THE RECOMMENDATIONS OF THE CHARTER REVIEW COMMITTEE IN ORDER TO ELIMINATE INTERNAL INCONSISTENCIES, CONFLICTS WITH STATE LAW, CONFLICTS WITH THE COUNCIL-MANAGER FORM OF GOVERNMENT, AND TO REORGANIZE THE CHARTER TO CONFORM WITH COMMONLY ACCEPTED CONSTITUTIONAL CONSTRUCTION AND FORMATTING, AS SET FORTH IN EXHIBIT “A” OF ORDINANCE 26, 2017.

As a preliminary matter, the Court disagrees with Petitioner’s argument that Ballot Question No. 1 violates the single subject rule. No single-subject requirement is imposed on ballot referendums such as the one in this case. *See Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984); *Charter Review Com’n of Orange Cty. v. Scott*, 647 So. 2d 835 (1994). Rather, the Court need only consider whether the ballot summary is “clear and unambiguous.” *See* § 101.161(1), Fla. Stat. (2017). To conform to this requirement, the ballot summary must state the “chief purpose” of the proposed amendment. *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000). In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect. *Id.*; *see also Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (“The ballot summary should tell the voter the legal effect of the amendment.”). “The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment.” *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (stating that “the ballot must give the voter fair notice of the decision he must make.”).

Ballot Question No. 2 covers a wide variety of changes to the City’s Charter, which are listed in Paragraph 32 of the Petition and detailed in Ordinance 26, which was entered into evidence at the hearing. Petitioner argues that the ballot summary fails to adequately describe these changes. The City argues in turn that multi-faceted charter amendments are permissible.

As noted supra, the single-subject rule is inapplicable to the instant case. In *Charter Review Com’n of Orange Cty. v. Scott*, 647 So. 2d 835 (1994), the Court found that a ballot summary which created a citizen review board and also changed the sheriff, property appraiser, and tax collector to elected charter offices was permissible because “[t]he title and text of [the question]

are straightforward and clear and sufficiently apprise the voters ... of the substance of the proposed revision to their charter.” Thus, a multi-faceted ballot question is clearly permissible, but it must still adhere to the requirement of being clear and unambiguous.

Ballot Question No. 1 vaguely describes four different categories of changes to be made to the City Charter. While “the summary is not required to explain every detail or ramification of the proposed amendment,” it “must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots.” *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992). The Court finds that the ballot summary for Ballot Question No. 1 does not give voters adequate notice as to what they are deciding, and therefore fails to clearly state its chief purpose.

The Court makes no finding as to whether it is possible to re-draft the ballot summary to state the chief purpose of the charter amendments contained within Ordinance 26. However, the City implied at the hearing that a more detailed explanation of the various changes would not fit within the 75-word ballot summary limitation. If the City cannot fit the ballot summary into the requisite 75 words, then the reason appears clear: the ballot question covers too many changes if the electorate cannot be adequately advised of the “true meaning, and ramifications” of the amendments within that limit. Accordingly, the Court finds that Ballot Question No. 1 is invalid and that any votes cast on this question in the pending election shall be deemed void.

**3. Count 3 – Declaratory Judgment Regarding Ordinance No. 27, 2017 (Ballot Question No. 2)**

Petitioner argues that the ballot title for Ballot Question No. 2 renders the question invalid, which the Court rejects for the reasons set forth in section 2, *supra*.

Petitioner also argues that the ballot summary for Ballot Question No. 2 renders the question invalid. The ballot summary is as follows:

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO PROVIDE FOR TERM LIMITS FOR CITY COUNCIL MEMBERS WHICH SHALL BE EFFECTIVE RETROACTIVELY FOR ALL SITTING COUNCIL MEMBERS; PROVIDING THAT NO PERSON MAY SERVE MORE THAN THREE (3) CONSECUTIVE FULL TERMS.

Petitioner argues that this summary fails to state its chief purpose and is misleading because it fails to inform the voters of the current term limit of two consecutive terms.

“[T]he ballot must give the voter fair notice of the decision he must make.” *Askew v. Firestone*, 421 So. 2d at 155. In *Askew*, the Court found ballot language invalid based on a similar omission of current law:

As it stands, subsection 8(e) precludes lobbying a former body or agency for two years after an affected person leaves office. **The ballot summary neglects to advise the public that there is presently a complete two-year ban on lobbying** before one's agency and, while it does require the filing of financial disclosure before anyone may appear before *any* agency for the two years after leaving office, the amendment's chief effect is to abolish the present two-year total prohibition. Although the summary indicates that the amendment is a restriction on one's lobbying activities, the amendment actually gives incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before their former agencies which is presently precluded. **The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.**

*Id.* at 155-56 (emphasis added). Similarly, proposed amendments cannot “fly under false colors,” and ballot questions cannot “hide the ball” to obtain necessary voter approval. *Miami-Dade Cnty. v. Village of Pinecrest*, 994 So. 2d 456, 458 (Fla. 3d DCA 2008) (citing *Armstrong*, 773 So. 2d at 16).

The Court finds that the chief purpose of Ballot Question No. 2 is to increase the term limit from two to three, and that purpose is not communicated in the ballot summary. By omitting any reference to the current two-term limit, the ballot summary implies the non-existence of a term limit. *See Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (holding that summary was misleading because the summary stated that it “establishes” a right that already existed). The

failure to communicate that the amendment’s effect is to **increase**—rather than **create**—a term limit, renders the summary so misleading that it must be invalidated.<sup>2</sup> Accordingly, the Court finds that Ballot Question No. 2 is invalid and that any votes cast on this question in the pending election shall be deemed void.

**4. Count 4 – Declaratory Judgment Regarding Ordinance No. 28, 2017 (Ballot Question No. 3)**

Petitioner argues that the ballot title for Ballot Question No. 3 renders the question invalid, which the Court rejects for the reasons set forth in section 2, *supra*.

Petitioner also argues that the ballot summary for Ballot Question No. 3 renders the question invalid. The ballot summary is as follows:

THE CURRENT CHARTER DOES NOT SPECIFY THE MINIMUM TIME THAT A TERM LIMITED COUNCIL MEMBER MUST BE OUT OF OFFICE BEFORE RUNNING FOR COUNCIL AGAIN. SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO ESTABLISH THAT TERM LIMITED COUNCIL MEMBERS MUST BE OUT OF OFFICE FOR THREE YEARS PRIOR TO BEING RE-ELECTED, SUCH THAT THEY MAY NOT RUN FOR CITY COUNCIL AGAIN UNTIL THE SECOND REGULARLY SCHEDULED CITY MUNICIPAL ELECTION FOLLOWING THAT MEMBER LEAVING OFFICE.

Petitioner argues that this summary is misleading because he claims the current ordinance unambiguously created a lifetime ban on council members running after serving two consecutive terms.

To determine whether this ballot summary is misleading, it must be compared to the relevant charter language currently in effect. Article IV, Section 4-1 of the City Charter currently reads as follows:

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<sup>2</sup> While the Court recognizes that voters must necessarily educate themselves about issues before entering the voting booth, *see Hill v. Milander*, 72 So. 2d 796 (Fla. 1954), this fact cannot be used to justify a misleading ballot summary. The Legislature requires a “clear and unambiguous” ballot summary precisely to ensure that voters understand exactly what they are voting upon.

No individual shall be elected to the office of council member for more than two (2) consecutive full terms. Service in a term of office which commenced prior to the effective date of any term limit enacted on council members will be credited against any term limitation approved by the Palm Beach Gardens' electorate.

The City argues that the Charter is currently ambiguous because, although it is clear that a council member cannot be elected to a third consecutive term, it is not clear whether the council member could run again after “sitting out” at least one election. The Fourth District Court of Appeal’s opinion in *Levy v. Woods*, 195 So. 3d 1161 (Fla. 4th DCA 2016) did not definitively resolve this question, as it only determined that Levy was ineligible to run for the March 2016 term based upon his prior consecutive terms in office.

The Court finds that the City Charter is arguably ambiguous. While the intent of previous referendum may have been to create a permanent prohibition on council members from running for office after serving two consecutive terms, there is room for interpretation of the current language whereby a council member could attempt to run for a non-consecutive term. Without passing on the merits of such a potential issue, the Court recognizes that the City has an interest in avoiding such litigation by amending the City Charter. Given the potential ambiguity of the current term limit, the Court finds that the ballot summary is not misleading. The Court finds that the ballot summary for Ballot Question No. 3 is valid.

**5. Count 5 – Declaratory Judgment Regarding Ordinance No. 29, 2017 (Ballot Question No. 4)**

Petitioner argues that the ballot title renders Ballot Question No. 4 invalid, which the Court rejects for the reasons set forth in section 2, *supra*.

Petitioner also argues that the ballot summary renders Ballot Question No. 4 invalid. The ballot summary is as follows:

SHALL THE PALM BEACH GARDENS CHARTER BE AMENDED TO CHANGE THE METHOD OF ELECTION FROM MAJORITY VOTE TO



PLURALITY VOTE, SUCH THAT THE CITY COUNCIL CANDIDATE WHO RECEIVES THE HIGHEST NUMBER OF VOTES FOR A PARTICULAR COUNCIL SEAT SHALL BE DEEMED TO BE ELECTED.

Petitioner argues that the language does not fairly inform the voter of the chief purpose of the amendment, which Petitioner argues is to eliminate a run-off election. Petitioner also argues that the language misleads the public because the public is left to guess the definitions of “majority” versus “plurality.”

The Court finds that the ballot summary is clear and unambiguous and does not mislead the public. The summary explains the definition of a plurality vote, and the Court is confident that the voting public understands the term “majority” in this context. The chief purpose of this amendment is to change from a majority vote to a plurality vote, which is expressly stated in the summary. Although an ideal ballot summary may have stated that the consequence of changing from majority to plurality vote is to avoid a run-off election, the City is not required to draft a perfect ballot summary. *See, e.g., Miami Dolphins, Ltd. v. Metro. Dade Cty.*, 394 So. 2d 981 (Fla. 1981) (finding that although a “more dispositive choice of words” could have been used, the ballot language was not misleading). Moreover, the Court is sympathetic to the City’s argument that a longer ballot summary that attempts to address all possible consequences of an amendment can ultimately become unclear. The Court finds that the ballot summary for Ballot Question No. 4 is valid.

**6. Count 6 - Emergency Petition for Writ of Mandamus**

This Count is largely duplicative of the previous counts, but seeks the issuance of a writ of mandamus directed to Susan Bucher, in her capacity as Supervisor of Elections of Palm Beach County, and Patricia Snider, in her capacity of City Clerk of Palm Beach Gardens, and in her capacity of the Supervisor of Elections for Palm Beach Gardens.

The Petition is moot insofar as it requests the removal of the invalid ballot questions from the ballot, as the ballots have already been printed. *See Smith v. American Airlines, Inc.*, 606 So. 2d 618, 622 n3 (Fla. 1992) (noting that “[b]ecause of the shortness of time, it may be that it will be impossible to remove Proposition 7 from all of the ballots.”) To the extent that the Petition seeks to disqualify Ordinances 26, 27, 28, and 29 from the ballot, the Court finds that this relief was adequately sought in the other Counts, therefore mandamus relief is unnecessary. *See Parsons v. Wenneit*, 625 So. 2d 945 (Fla. 4th DCA 1993) (noting requirement that there be no other adequate remedy at law to obtain mandamus relief).

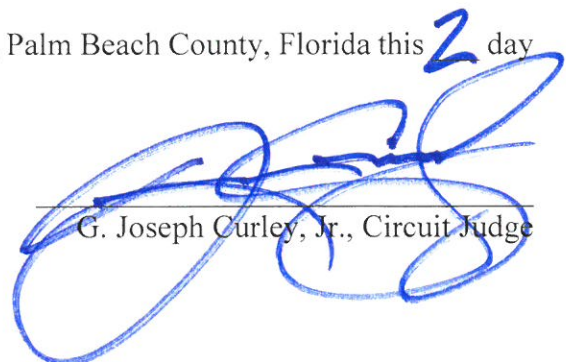
Accordingly, it is

**ORDERED** that Emergency Petition For Declaratory Relief, Injunctive Relief And For a Writ Of Mandamus Directing Respondents To Remove Proposed Ordinances Nos. 26, 27, 28, and 29 From Special Election Ballot (March 13, 2018) and to Embargo and Not to Canvass the Election is **GRANTED** in part and **DENIED** in part as follows:

1. The Petition is **DISMISSED** as to Count 1 for lack of standing.
2. The Petition is **DENIED** as to Counts 4, 5, and 6.
3. The Petition is **GRANTED** as to Count 2 and Count 3 to the extent that the Court finds Ballot Questions No. 1 and No. 2 are invalid, but **DENIED** to the extent that Petitioner requests injunctive relief. Any votes on Ballot Questions No. 1 and No. 2 shall be deemed void.

**DONE AND ORDERED**, in West Palm Beach, Palm Beach County, Florida this <sup>2</sup> day of March 2018.

**Service list attached**

  
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G. Joseph Curley, Jr., Circuit Judge

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