

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

CASE NO. 502023CA016631XXXXMB

TOWN OF JUPITER,

Plaintiff,

v.

JUPITER RESIDENTS TO KEEP PALM  
BEACH COUNTY FIREFIGHTERS, a Florida Political Action  
Committee; RYAN SWEENEY, a natural person and  
Chairman of Jupiter Residents to KEEP Palm Beach  
County Firefighters; and MICHAEL KURTH, a  
natural person and representative of Jupiter Residents  
to KEEP Palm Beach County Firefighters,

Defendants.

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**AMENDED COMPLAINT<sup>1</sup>**

Plaintiff, TOWN OF JUPITER ("Town"), by and through its undersigned counsel, sues JUPITER RESIDENTS TO KEEP PALM BEACH COUNTY FIREFIGHTERS, a Political Action Committee; RYAN SWEENEY, a natural person and Chairman of Jupiter Residents to KEEP Palm Beach County Firefighters; and MICHAEL KURTH, a natural person and representative of Jupiter Residents to KEEP Palm Beach County Firefighters and alleges:

**PARTIES, JURISDICTION AND VENUE**

1. The Town was and is a municipal corporation of the State of Florida.
2. Jupiter Residents to KEEP Palm Beach County Firefighters (the "PAC"), is a political action committee, formed on September 28, 2023 and existing under the laws

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<sup>1</sup> Amended only to correct an inadvertent error in paragraph 30, *infra*.

of Florida. The PAC has an address of 6671 W. Indiantown Road, Suite 50 PMB 147, Jupiter, Florida 33458.

3. Ryan Sweeney (“Sweeney”), is a natural person over 18 years old, is *sui juris*, and at all material times, was a citizen of Palm Beach County, Florida.

4. Michael Kurth (“Kurth”), is a natural person over 18 years old, is *sui juris*, and at all material times, was a citizen of Palm Beach County, Florida, and a resident of the Town of Jupiter, Florida.

5. This Court has jurisdiction pursuant to Chapter 86, Florida Statutes.

6. Venue is proper in Palm Beach County, Florida as the parties are located in and this cause of action accrued in Palm Beach County, Florida.

7. All conditions precedent to the maintenance of the suit have been performed, excused, or waived.

### **GENERAL ALLEGATIONS**

8. This action arises out of Defendants’ unconstitutional and illegal use of the referendum process to amend the Town’s Charter to prohibit the duly elected Town Council from establishing or operating a Town fire rescue department or providing fire protection and emergency medical services until and unless the majority of electors vote in a future referendum petition to allow the Council to do so. Defendants omit telling the voters that voting “yes” on the proposal would take away a right the Town Charter already gives the Town Council to create new departments in the Town—on recommendation of the Town Manager, including a Fire Rescue Department, and would effectively repeal the Town Council’s lawful vote to terminate its agreement with Palm Beach County (the “County”) and to create the Jupiter Fire Rescue Department (“JFRD”).

**The Town's Prior Reliance on the County  
to Provide Fire Rescue and EMS Services**

9. The Town has for many years received fire-rescue and emergency medical services within the Town's boundaries from Palm Beach County Fire Rescue ("PBCFR") through the Town's participation in Jupiter Municipal Services Taxing Unit ("Jupiter MSTU") specially created by the County for the Town and as set forth in an interlocal agreement.

10. The County is the second largest county by area in the State of Florida, spanning from Lake Okeechobee and the agricultural areas in the west to the ocean and urban communities in the east; south to Broward County and north to Martin County.

11. Effective October 1, 2013, the Town and the County entered a ten-year interlocal agreement for fire protection and emergency medical services (the "2013 Agreement").

12. The 2013 Agreement expired on September 30, 2023.

13. The Town attempted to "negotiate" the terms of a new interlocal agreement with the County beginning in the spring of 2022, more than one year prior to the end of the 2013 Agreement.

14. It quickly became clear to the Town Council that the County sought to use the negotiations as an opportunity to extract significantly greater tax revenue from the Town's residents and businesses—not to support services directed at the Town, but to subsidize services that PBCFR provides throughout the County through the countywide fire rescue taxing unit. At the same time, the County offered the Town no new services or increase in service levels (response times).

15. Prior agreements between the Town and the County, such as the 2013 Agreement, allocated fire rescue and EMS costs to the Town's residents and businesses based on the "actual costs" tied to the services those residents and businesses received.

16. In 2022, the County notified the Town they did not wish to renew the 2013 Agreement at the then current, actual cost rate. The County instead proposed to calculate the Town's costs based on participation in the **countywide** fire rescue taxing unit. Town residents and businesses would effectively subsidize services PBCFR provides throughout the County, more than doubling the taxes to be paid by the Town's residents and businesses over the term of the new interlocal agreement. Again, the County could not and did not identify any new services or increase in service levels to be provided to the Town's residents and businesses by participating in the countywide taxing unit.

17. The Town Council, which exercises the governing authority of the Town acting through four elected councilmembers and the mayor, acted promptly to investigate the Town's options even while attempting to negotiate the best deal for its residents and businesses from the County.

18. At public meetings in May and June 2022, the Town Council authorized the Town Manager to engage the Center for Public Safety Management ("CPSM"), the public safety consulting provider for the International City/County Management Association<sup>2</sup>, to comprehensively analyze a fiscally responsible delivery of fire rescue and EMS services to the Town's residents and businesses and to make recommendations.

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<sup>2</sup> The International City/County Management Association is the leading organization of local government professionals, with more than 11,000 members. See <https://icma.org/>.

19. The Town Council thereafter heard presentations from both CPSM and PBCFR over the course of multiple public hearings.

20. A Special Town Council Meeting on November 1, 2022, a roundtable session brought together the Town's Director of Finance, the CPSM, and the Council to discuss CPSM's initial report. Options presented by CPSM to the Town included remaining with PBCFR, entering into an agreement with one of the Town's neighboring municipalities, Tequesta or Palm Beach Gardens, or creating an independent Jupiter fire rescue department to serve the Town's residents and businesses.

21. CPSM appeared again at the Town Council's January 17, 2023 public meeting to present its Fire and EMS Sustainability and Feasibility Study. The Council once again discussed its options, including creating a Town fire department.

22. Based on CPSM data and the County's anticipated costs under the new interlocal agreement, it was estimated that Jupiter residents and businesses would save between \$50 and \$70 million by creating a Jupiter fire rescue and EMS department as opposed to remaining with PBCFR. Mindful of the Town's home rule authority, the creation of the JFRD would also give the Town Council—not the County Commission—control over the Town's budgeting for fire rescue and EMS services to serve the Town's residents and businesses. Those findings were subsequently presented at the Town Council's August 15, 2023 public meeting.

23. PBCFR presented its case to remain as the Town's vendor of fire rescue and EMS at two public meetings of the Town Council in December 2022, including to detail the evolution of their services and its new cost methodology.

24. The Town Council held multiple public meetings from November 2022 to August 2023, to publicly consider a new interlocal agreement with the County and whether to participate in the County's countywide fire rescue taxing unit to finance the County's provision of fire rescue services to the Town's residents and businesses.

25. Despite numerous opportunities, the County failed to present any information, data, or studies to contradict CPSM's thorough analysis of the costs of creating a JFRD.

26. In fact, during the many public meetings when the Town Council considered the new interlocal agreement and fiscally responsible alternatives presented by CPSM for delivery of fire rescue and EMS to the Town's residents and businesses, the only "member of the public" to offer comments to the Town Council was Jeffrey L. Newsome, the President of the County's fire union, Professional Firefighters/Paramedics of Palm Beach County, Local 2928, I.A.F.F., Inc. (the "County Fire Union"). Mr. Newsome, advocating on behalf of the County Fire Union warned the Council of the purported dire consequences to the Town if the Council elected to create the JFRD.

27. Not one Jupiter resident commented during the Council's multiple public meetings on the 2023 Agreement or the Town's creation of its own fire rescue department.

28. While CPSM was performing its analyses and updating the Town Council, the Town Council vainly continued to negotiate a new interlocal agreement with the County in advance of the expiration of the 2023 Agreement. Because of the time required to create its own fire rescue department or to contract with neighboring municipalities, the Town Council ultimately voted 3-2 to accept a new agreement with the County. A majority of the Council members nevertheless remained concerned about the substantial increase

in costs to the Town's taxpaying residents and businesses with no explanation from the County of the new services or increased service levels that would result from the increased revenue the County would receive from Jupiter's residents and businesses.

29. The Town Council approved the new Interlocal Agreement for Fire Protection and Emergency Medical Services with the County (the "2023 Agreement") at a public meeting on April 18, 2023. The 2023 Agreement has a 10-year term and requires the Town to provide the County with three years advance notice of termination.

### **The Town Determines to Create Its Own Fire Rescue Department**

30. On August 15, 2023, at a public meeting and following CPSM's third presentation, the Town Council voted to direct the Town Manager to give the County three years notice of its intention to terminate the Agreement. The Council (including the Mayor) voted 3-1 in favor of termination.<sup>3</sup> Councilor Cameron May, who is employed by the County's Fire Rescue Department and the First Vice President of the County Fire Union, dissented.

31. This notice triggered the 2023 Agreement's termination provisions and provides three years of continued fire rescue and EMS from PBCFR while the Town Council budgets for, recruits, and otherwise takes such responsible actions as are necessary to establish the JFRD.

32. The option to create the JFRD is directly authorized by Article V, Section 9 of the Town Charter, which permits the Town Council, on recommendation of the Town Manager, to "combine, delete, modify or establish" departments within the Town.

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<sup>3</sup> Former councilor Cheryl Schneider had resigned her seat and moved to Port St. Lucie prior to the vote, leaving four councilors on the Town Council.

33. Upon receipt of the notice of termination from the Town Manager, PBCFR raised no objection to the process by which the Town terminated the 2023 Agreement.

34. Accordingly, since the proper termination of the 2023 Agreement, the Town Council has now budgeted and expended funds towards the creation of its JFRD, taken steps to hire a Fire Chief, and welcomed numerous inquiries from firefighters interested in working for the new JFRD.

**Defendants Seek to Amend the Town Charter by Referendum**

35. In September 2023, members of the County Fire Union and others who claim to be residents of Jupiter formed the PAC and began to solicit signatures for a petition to prohibit the Town from creating its own fire department. The petition included the following Ballot Question (the referendum question and title) and Proposed Charter Amendment:

**Ballot Proposal:** The ballot title and summary for the Town Charter amendment are set below, and shall be followed by the words “yes” and “no”:

PROHIBITING FIRE RESCUE DEPARTMENT AND CONTINUING CURRENT FIRE PROVIDER UNTIL FUTURE VOTER APPROVAL IS RECEIVED

Shall the Town of Jupiter’s Charter be amended to prohibit the establishment or operation of a town fire rescue department or provision of such services and to provide for the continued inclusion of town boundaries within the associated Palm Beach County municipal services taxing unit for fire rescue and emergency medical services for Jupiter, until the town’s voters approve the creation and operation of a town fire rescue department at a future referendum?

Yes  
 No

**Full Text of the Town of Jupiter Charter Amendment** (words added are underlined and words removed are struckthrough):

**ARTICLE IV. - MUNICIPAL POWERS**

**Section 3. – Town Fire Rescue Department.~~Reserved.~~**

The town may not establish or operate a town fire rescue department or provide fire protection and emergency medical services. The Jupiter Municipal Services Taxing Unit, a special taxing district created by the Palm Beach County Commission that lies within the boundaries of the town, as they may be amended from time to time, is authorized to continue within the boundaries of the town. This section becomes effective immediately upon approval by a majority vote of the qualified electors voting in a referendum and certification by the Palm Beach County Supervisor of Elections or other appropriate officer or entity.

After this section takes effect, it will be repealed upon the approval by a majority vote of the electors voting in a referendum on whether the town should establish a town fire rescue department and provide fire rescue and emergency medical services.

36. The PAC submitted signed petitions to the Town, which the Town forwarded to the Palm Beach County Supervisor of Elections (SOE). The SOE's sole responsibility is to certify that a sufficient number of signatures from Jupiter electors have been obtained and to confirm that the Jupiter electors' signatures match the signatures on their voter registration cards.

37. On November 17, 2023, the Supervisor of Elections certified that at least 10% of the qualified electors from the previous election had signed the petition, as required by Section 166.031(1), Florida Statutes. Notably, the SOE's certification states **"I am only certifying that the signatures match the signatures we have on file and that the electors reside within the municipal limits. I am not certifying the validity or legal sufficiency of the petitions."** (emphasis added).

38. The SOE leaves the responsibility for determining the validity and legal sufficiency of the petitions to the attorney for the municipality. At a public meeting on November 21, 2023, the Jupiter Town Attorney advised the Town Council that he was of the opinion that the ballot question and the proposed charter amendment were legally insufficient and recommended that the Town Council not deliver the Ballot Question and Proposed Charter Amendment to the SOE to be placed before the voters at a special election to be held in March 2024. The Town Council declined to call for a Special Election at the same time as the Presidential Primary solely for a referendum on the Ballot Question and Proposed Charter Amendment. The Town Attorney also advised that the Town Council should not present the legally insufficient Ballot Question and Proposed Charter Amendment to the SOE for placement on the ballot of the Town's 2025 general election when there will be an election for two councilors and the mayor.

39. The Town contends that Ballot Question and Proposed Charter Amendment are invalid under the Town of Jupiter Charter, Florida Statutes, and Florida Constitution for, including but not limited to, the following reasons:

a. **The Ballot Question Fails to Provide Fair Notice to the Town's Voters.** The referendum question and title do not fairly inform the voters of the Ballot Question's chief purpose or effect, as is required by Section 101.161, Florida Statutes. The chief purpose of the Ballot Question is to repeal the Town Council's lawful decision to create the JFRD and to curtail the Town Council's governing authority which arises pursuant to the Town Charter, to establish a Town fire rescue department. That chief purpose is nowhere stated in the Ballot Question, but is clearly a trojan horse with the intent of misleading voters. This is not lawful. See *Wadhams v. Bd. of County Comm'rs*, 567 So.2d 414, 416 (Fla.1990) (holding voters were misled when not advised that the chief purpose of the county charter amendment was to curtail Charter Review Board's presently-existing unfettered right to meet).

b. **The Proposed Charter Amendment Purports to Unlawfully Expand the Referendum Power in Violation of the Florida Constitution.** The Proposed Charter Amendment violates Article 6, section 5 of the Florida Constitution, which permits only those referenda "as provided by law." The phrase "as provided by law" means as passed "by an act of the legislature." *Broward County v. Plantation Imports, Inc.*, 419 So.2d 1145, 1148 (Fla. 4th DCA 1982). It is for the Florida Legislature, not the voters, to say what shall or shall not be done by referendum. Yet that is precisely what the PAC proposes here: in addition to usurping the Town Council's governing authority by purporting to prevent the Town Council from establishing or operating a fire rescue

department to provide fire rescue and EMS services to its residents and businesses, the Charter Amendment provides that **after** this charter amendment takes effect this amendment can only be repealed “**upon the approval by a majority vote of the electors voting in a referendum** on whether the town should establish a town fire rescue department and provide fire rescue and emergency medical services.” (emphasis added). The voters have no power, by referendum, “to enact a charter amendment conferring upon itself the power to restrict action by the [] council by making the council's action subject to referendum.” *Holzendorf v. Bell*, 606 So. 2d 645, 648 (Fla. 1st DCA 1992).

c. **The Proposed Charter Amendment Improperly Seeks to Limit the Town’s Home Rule Authority.** The Proposed Charter Amendment is unconstitutional and unlawful because it would restrict broad home rule authority conferred upon the Town pursuant to Chapter 166, Florida Statutes and the Florida Constitution, and Article I of the Town Charter. Specifically, it purports to restrict the Town Council’s home rule authority to elect not to subject its residents to taxation by the countywide MSTU, to “combine, delete, modify or establish” departments within the Town, and, more specifically, to create a fire rescue department that provides its residents and businesses with fire rescue and emergency medical services in the Town in a fiscally responsible manner.

d. **The Proposed Charter Amendment Impermissibly Contradicts the Town Charter.** Adoption of the Proposed Charter Amendment would render meaningless the authority given by Article V, Section 9 of the Town Charter to the Town Council, on recommendation of the Town Manager, to create departments within the Town—including a Fire Rescue Department. Permitting citizens to create or delete departments of the Town, such as Police, Utilities, Planning & Zoning and Building, by

referenda is an unprecedented departure from the Town Charter that would render the Council-Manager form of government meaningless. Yet here Defendants propose to add a conflicting Charter provision that would give the power to create a Fire Rescue Department entirely to the voters, while presumably retaining Article V, Section 9. The conflict is clear and unmistakable.

40. For the foregoing reasons, the Town believes that the petition containing the Ballot Question and Proposed Charter Amendment cannot legally be put to the voters and, specifically, cannot be placed on the ballot for the next general election in the Town in March 2025.

41. Defendants disagree. On December 1, 2023, Kurth filed a Petition for Writ of Mandamus against the Town on behalf of the PAC in *Michael Kurth v. Town of Jupiter, Fla.*, Case No. 502023CA016266XXXXAMB-AH (15<sup>th</sup> Jud. Cir. in and for Palm Beach Cnty., Fla.). The Petition for Mandamus asserts that the Town Council must place the Ballot Question and Proposed Charter Amendment to a vote of the electorate at the next general election, which Kurth asserts is in March 2024.

42. Although the Town's voting precincts will be open in March 2024 to accommodate the Presidential Preference Primary, no general election will occur then. The next general election in the Town is in March 2025.

### **COUNT I**

#### **DECLARATORY JUDGMENT AS TO VALIDITY OF BALLOT QUESTION AND PROPOSED CHARTER AMENDMENT**

43. The Town re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 42.

44. This is an action for declaratory judgment pursuant to Chapter 86, Florida Statutes, regarding the legality of the Ballot Question and the Proposed Charter Amendment submitted by petition to the Town.

45. The Town has an interest herein and is in doubt as to the legality of the Ballot Question, the Proposed Charter Amendment, and the Town's rights under these circumstances. The Town requests a judicial declaration on these issues and rights.

46. A bona fide, actual, present, and practical need for a declaration exists with respect to the legality of the Ballot Question and Proposed Charter Amendment as well as the Town's rights.

47. There is an actual, present, ascertained, or ascertainable state of facts or present controversy as to a state of facts with respect to the Ballot Question and Proposed Charter Amendment. The Town in good faith believes that the Ballot Question and Proposed Charter Amendment are invalid under the Town Charter, Florida Statutes, and Florida Constitution. Defendants disagree and Kurth, on behalf of himself and the PAC, has sought a writ of mandamus to compel the Town to act on the petition.

48. The legality of the Ballot Question and Proposed Charter Amendment as well as the Town's rights are dependent upon the facts or the law applicable to the facts.

49. Defendants and the Town have actual, present, adverse, and antagonistic interests in the declaration sought by the Town.

50. All antagonistic and adverse interests are before the Court by proper process, and the relief sought by the Town is not legal advice or an exercise of curiosity.

WHEREFORE, the Town of Jupiter requests that this Court grant the following relief:

- a. Declare that the Ballot Proposal and the Proposed Charter Amendment are facially invalid pursuant to the Town Charter, Florida Statutes, and the Florida Constitution;
- b. Enjoin Defendants from taking further action with respect to the Ballot Question and Proposed Charter Amendment;
- c. Award the Town the costs for this action;
- d. Grant supplemental relief as necessary and proper; and
- e. Grant such other relief as this Court deems just and proper.

## COUNT II

### ALTERNATIVE DECLARATORY JUDGEMENT AS TO NEXT GENERAL ELECTION DATE

51. The Town re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 42.

52. Only if this Court finds that either the Ballot Question or Proposed Charter Amendment are valid, the Town requests a judicial declaration pursuant to Chapter 86, Florida Statutes that the next general election in the Town is in March 2025.

53. The Town has an interest herein and is in doubt as to the date of the next general election. Section 166.031(1), Florida Statutes provides, in part, that “[t]he governing body of the municipality shall place the proposed amendment contained in the ... petition to a vote of the electors **at the next general election held within the municipality** or at a special election called for such purpose.” (emphasis added).

54. A bona fide, actual, present, and practical need for a declaration exists with respect to when the Town’s next general election is relative to the petition, assuming that petition includes a valid Ballot Question and Proposed Charter Amendment.

55. There is an actual, present, ascertained, or ascertainable state of facts or present controversy as to a state of facts with respect to the next general election. The Town in good faith believes that the next general election will be held in March 2025 when municipal offices are up for election, while the PAC asserts that the March 2024 Presidential Preference Primary qualifies as a “general election held within the [Town].”

56. The Town’s rights are dependent upon the facts or the law applicable to the facts.

57. Defendants and the Town have actual, present, adverse, and antagonistic interests in the declaration sought by the Town.

58. All antagonistic and adverse interests are before the Court by proper process, and the relief sought by the Town is not legal advice or an exercise of curiosity.

WHEREFORE, the Town of Jupiter requests that this Court grant the following relief:

- a. Declare that the next general election in the Town will occur in March 2025;
- b. Award the Town the costs for this action;
- c. Grant supplemental relief as necessary and proper; and
- d. Grant such other relief as this Court deems just and proper.

DATED: December 15, 2023

Respectfully submitted,

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