

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

MICHAEL KURTH, a natural person, and on
Behalf of Jupiter Residents to KEEP Palm
Beach County Firefighters,

Petitioner,

v.

CASE NO: 502023CA016266XXXXAMB

TOWN OF JUPITER, FLORIDA,

Respondent.

_____ /

TOWN OF JUPITER,

Plaintiff,

v.

CASE NO: 502023CA016631XXXXAMB

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.

_____ /

TOWN OF JUPITER'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Town of Jupiter (the "Town"), moves for summary judgment on its Second Amended Complaint against Defendants, Jupiter Residents to KEEP Palm Beach County Firefighters, Ryan Sweeney, and Michael Kurth ("Defendants"), under Florida Rule of Civil Procedure 1.510.

INTRODUCTION

Under the Municipal Home Rule Powers Act, a municipality's electorate may, by petition signed by 10% of registered voters, submit a proposed amendment to the municipality's charter. § 166.031(1), Fla. Stat. If the required number of signatures are obtained supporting placement of the proposed amendment on the ballot, the municipality's governing body generally must submit the amendment to a vote at the next general election held within the municipality, or at a special election called for such purpose. *Id.* If, however, the municipality questions in good faith the legal validity of the amendment or its associated ballot title and summary, a court may consider those issues before the election. *See West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Com'rs of City of West Palm Beach*, 448 So. 2d 1212, 1214 (Fla. 4th DCA 1984). If the proposed amendment is found to be legally invalid, or if its ballot language violates the ballot accuracy requirements of section 101.161(1), the amendment must be rejected and cannot be put to a vote. *See id.*; *Miami-Dade Cnty. v. Village of Pinecrest*, 994 So. 2d 456, 458 (Fla. 3d DCA 2008).

Defendants' proposed ballot language and amendment to the Town's Charter (the "Ballot Question" and "Proposed Charter Amendment") are legally invalid and must be rejected. First, the Ballot Question violates the ballot accuracy requirements of section 101.161(1) because it fails to inform voters of the true purpose and effect of the amendment. Specifically, the Ballot Question misleadingly suggests that the amendment provides 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," but fails to notify voters that the actual purpose and effect of the

amendment is to abrogate existing rights in the Town's Charter and **require** the Town to use Palm Beach County Fire and Rescue ("PBCFR") in perpetuity. See *Miami-Dade Cnty.*, 994 So. 2d at 461. It also effectively asks voters to force the Town Council to continue entering into interlocal agreements with Palm Beach County (the "County"), yet impermissibly fails to disclose the terms of the agreements it seeks to pre-approve. See *Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013).

The Proposed Charter Amendment is no better, and is invalid because it conflicts with Florida law. See *Village of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 599 (Fla. 4th DCA 2006) ("Amendments to a [municipal] charter must be consistent with the Florida Constitution, general law, and special law."); *West Palm Beach Ass'n of Firefighters*, 448 So. 2d at 1214–15 (proposed initiative ordinance was unconstitutional in its entirety because it conflicted with Florida general law). It purports to preclude repeal of the amendment except by a future referendum, a clear conflict with both section 166.031 of the Municipal Home Rule Powers Act and the Florida Constitution that is fatal to the amendment. See *Gaines v. City of Orlando*, 450 So. 2d 1174, 1179 (Fla. 5th DCA 1984); *Holzendorf v. Bell*, 606 So. 2d 645, 648 (Fla. 1st DCA 1992). The proposed amendment also conflicts with section 125.01 because it provides for the Town's perpetual inclusion in a municipal services taxing unit ("MSTU"), contrary to the statutory requirement that the governing body of a municipality consent to inclusion in a MSTU by ordinance passed each year or for a term of years. See § 125.01(1)(q).

Finally, the Proposed Charter Amendment is invalid because discretionary decisions pertaining to the Town's budget—like the decision to permissibly terminate an

interlocal agreement based on financial and budgetary analysis and to allocate money toward a fire department instead—are protected by sovereign immunity and cannot be subject to referendum. *Town of Gulf Stream, et al. v. Palm Beach Cnty.*, 206 So. 3d 721, 725–26 (Fla. 4th DCA 2016). In recognition of this established principle, the Town’s Charter expressly **prohibits** initiative referendums pertaining to the Town’s budget and appropriation of money. The Proposed Charter Amendment, which forces the Town to continue paying the County for fire and rescue services and prohibits it from allocating money toward a fire department that would save Town residents and businesses tens of millions of dollars, is therefore barred by both sovereign immunity and the express provisions of the Town’s Charter.

UNDISPUTED FACTS

The Parties

The Town is a municipality located in Palm Beach County, Florida. SAC ¶ 1; Ans. ¶ 1. Jupiter Residents to KEEP Palm Beach County Firefighters (the “PAC”) is a political action committee formed on September 28, 2023. SAC ¶ 2; Ans. ¶ 2. Despite its name, the PAC was created by, and is managed by, the Palm Beach County firefighters’ union—Professional Firefighters/Paramedics of Palm Beach County, Local 2928, I.A.F.F., Inc. (the “Union”). The only identified members of the PAC are its “Chairman” Ryan Sweeney, an employee of the County and a member of the Union, and its “Treasurer” William Jones, a resident of Gainesville “listed on the paperwork of more than 85 political committees registered in Florida.”¹ [Exhibit B](#) at Interrogatories 2–4 (Excerpt from PAC’s Am. Resp.

¹ See Henderson, *Watchdog group: Nonprofits broke IRS laws, gave nearly \$3 million to Republican campaigns*, GAINESVILLE SUN (Feb. 28, 2021), attached as [Exhibit A](#).

to First Set of Interrog.). Michael Kurth, the named petitioner in the action initially brought against the Town, is married to an employee of PBCFR and was asked by the Union to represent the PAC in that action. [Exhibit C](#) at Request 3 (Excerpt from Kurth’s Resp. Req. Prod.); [Exhibit D](#) (Kurth Text Messages).

The Town’s Charter Grants Broad Authority to Its Town Council

The Town’s Charter was enacted in accordance with Florida’s Home Rule Powers Act, which gave municipalities “governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and . . . power for municipal purposes except as otherwise provided by law.”

Fla. Const. art. VIII, § 2(b); [Exhibit E](#) art. I, § 1 (Town Charter, cited as “Charter”). To that end, the Charter states the Town “shall have, hold, and possess the home rule powers granted unto municipalities by the Constitution of the State of Florida.” *Id.* art. IV, § 1.

The Charter provides for a broad grant of governing authority to the Town Council, which consists of four elected councilmembers and the mayor. *Id.* art. II, § 2. The Town Council is vested with “[a]ll powers of the [T]own . . . except as otherwise provided by law or in this Charter,” *id.* art. V, § 2, and has the express authority to “combine, delete, modify or establish . . . departments within the Town” and to designate “[a]ll public monies . . . deposited in the name of the Town,” *id.* art. V, §§ 9, 11. In addition, while the Charter permits submission of proposed amendments by initiative and referendum, it specifically prohibits petitions pertaining to the Town’s budget, capital program, or the appropriation of money, which remain within the broad purview of the Town Council. *Id.* art. IX, § 1.

The County Doubles Its Fees for Fire and Rescue Services

For many years, the Town has contracted with the County for fire and rescue services. [Exhibit F](#) ¶ 3 (F. Kitzerow Decl.). Those interlocal agreements were administered and delivered by PBCFR and funded by a MSTU created by the County. *Id.* ¶ 4. In 2013, the Town and County entered into a 10-year agreement for fire and protection services which was set to expire on September 30, 2023. SAC ¶ 10; Ans. ¶ 10. Through the MSTU, the 2013 agreement allocated fire and rescue costs to the Town’s residents and businesses based on the “actual costs” tied to the services those residents and businesses received. F. Kitzerow Decl. ¶ 5.

In 2022, the Town and County met to discuss a new interlocal agreement before the 2013 agreement expired. *Id.* ¶ 6; SAC ¶ 13; Ans. ¶ 13. During these discussions, it became clear that the County intended to extract significantly more tax revenue from the Town’s residents and businesses—not for the “actual costs” of services provided to the Town, but to subsidize services PBCFR provides to the rest of the county. F. Kitzerow Decl. ¶ 7. The County’s proposed agreement ***more than doubled*** the taxes to be paid by the Town’s residents and businesses over the term of the agreement, despite offering no new or improved services to the Town. *Id.* ¶ 8. The proposed agreement was for a 10-year term and, at the insistence of the County, required 36-months’ notice before the Town could terminate the agreement. *Id.* ¶ 9.

The Town Analyzes Its Options

Over the course of sixteen months in 2022 and 2023, the Town attempted to negotiate a fair agreement with County leadership. *Id.* ¶ 10. When it became apparent the County was not willing to compromise on its demands, the Town Council acted

promptly to investigate the Town’s options. *Id.* ¶ 11; SAC ¶ 17; Ans. ¶ 17. It voted unanimously to authorize the Town Manager to engage the Center for Public Safety Management (“CPSM”)—the public safety consulting provider for the International City/County Management Association—to analyze options for delivery of fire and services and to make recommendations. F. Kitzerow Decl. ¶ 12; SAC ¶ 18; Ans. ¶ 18. Options analyzed by CPSM included remaining with PBCFR, creating a special fire district, entering into an agreement with a neighboring municipality, and creating an independent fire rescue department to serve the Town. F. Kitzerow Decl. ¶ 13.

After a thorough analysis, CPSM published a comprehensive, 139-page study in January 2023 comparing continuing service with PBCFR to starting a Town fire department. [Exhibit G](#) (CPSM Study). The study showed that, even including start-up and financing costs, starting a fire department would result in the Town’s taxpayers paying significantly less in taxes related to fire rescue and emergency services² while receiving the same or better service. [Exhibit H](#) ¶ 4 (S. Reynolds Decl.). Based on CPSM’s data and the County’s anticipated fees under the new proposed interlocal agreement, it was estimated that Town residents and businesses would save between **\$50 and \$70 million** between 2027 and 2033 by creating a fire department instead of remaining with PBCFR. *Id.* ¶ 5. Creation of a fire and rescue department would also give the Town Council—not the County Commission—control over the Town’s budgeting for fire and rescue services. *Id.* ¶ 7.

² It was estimated that a homesteaded property valued at \$550,000 would pay \$951 to PBCFR for fire and rescue services during 2024. S. Reynolds Decl. ¶ 6. By contrast, in 2026—the first year of operation of the Town’s fire department—the same homesteaded property would pay \$533 for fire rescue services. *Id.*

In addition, while negotiations were in progress, PBCFR revealed significant accounting errors in its past and present calculations related to its arrangement with the Town. *Id.* ¶ 9. The Town engaged an auditing firm, Marcum LLP, to conduct an Agreed Upon Procedures audit (“AUP”) of the historical calculations and charges to the Town based on the agreement for fire rescue services provided by PBCFR. *Id.* ¶ 10. The results of the AUP showed that PBCFR’s accounting processes and controls were vague, often undefined, and at times non-existent. *Id.* ¶ 11.

The Town Council heard presentations from both CPSM and PBCFR at multiple public hearings. F. Kitzerow Decl. ¶ 14. During the multiple public meetings where the interlocal agreement and alternatives were discussed, the only “member of the public” to offer comments to the Town Council in support of keeping the interlocal agreement in place was Jeffrey Newsome. *Id.* ¶ 15. Newsome is the President of the Union, which has an interest in keeping the Town reliant upon the County (and therefore the Union) for fire and rescue services. *Id.* Newsome is not a resident of the Town,³ and no actual Town residents commented during the Council’s public meetings or expressed support for keeping the interlocal agreement with the County. *Id.* ¶ 16. Despite numerous opportunities at multiple public meetings, the County failed to present **any** information, data, or studies that contradicted CPSM’s analysis. SAC ¶ 25; Ans. ¶ 25.

Based on CPSM’s uncontradicted financial analysis, it was clear that creating a fire department would be the most financially beneficial for the Town’s residents and businesses, even considering the investment costs of starting the Town’s fire

³ According to Palm Beach County Property Appraiser records, Newsome has been a resident of Wellington since 2004. § 90.202(12).

department. S. Reynolds Decl. ¶ 8. But a fire department cannot be created overnight. Because of the time needed to create the fire department and with expiration of the 2013 interlocal agreement fast approaching, the Town Council ultimately voted 3-2 to accept a new agreement with the County as a means of continuing service while investigating viable alternatives. F. Kitzerow Decl. ¶ 17; SAC ¶ 28; Ans. ¶ 28.

The Town Decides to Create Its Own Fire Department

After the vote, a majority of the Town Council remained concerned about the substantial increase in costs to the Town's taxpaying residents and businesses with no new or improved services provided in return. F. Kitzerow Decl. ¶ 18. At a public meeting on August 15, 2023, after a third presentation from CPSM, the Town Council decided to take back control over its fire and rescue budget and voted 3-1 in favor of directing the Town Manager to give the County notice of its intention to terminate the agreement. *Id.* ¶ 19. Cameron May—an employee of PBCFR and the First Vice President of the Union—was the only councilmember who dissented. *Id.* ¶ 20. Therefore, under the agreement, PBCFR would continue to provide three years of fire and rescue services while the Town Council took actions to establish a fire department. SAC ¶ 31; Ans. ¶ 31.

After it was informed of the Town's decision, PBCFR did not object to the process by which the Town terminated the agreement. SAC ¶ 33; Ans. ¶ 33. The Town has since allocated and expended funds toward the creation of a fire department, hired a Fire Chief and a Deputy Fire Chief, and received numerous inquiries from qualified firefighters interested in working for the Town's fire department. F. Kitzerow Decl. ¶ 21.

The Union Seeks To Amend the Town's Charter

After the August 15 vote, the Union immediately took action to try to block the Town Council's decision. It retained a public relations firm, Public Concepts, LLC, to serve as a "campaign consultant." [Exhibit I](#) (Aug. 24, 2023 Email from Public Concepts to J. Newsome). In an August 24, 2023 email to the Union's President, Public Concepts outlined "immediate action items" including Councilman May "lead[ing] the public facing opposition effort," "developing messages and target lists for email and text outreach," and drafting a petition to amend the Town's Charter. *Id.* Public Concepts, the Union, and its attorneys then began the process of drafting a petition which would include a ballot question and proposed charter amendment to prevent the Town from terminating the interlocal agreement and starting its own fire department. *Id.* See also **Composite** [Exhibit J](#) (Emails Between J. Newsome, L. Donaldson, & Public Concepts).

In September 2023, the PAC was created to solicit signatures for the petition. [Exhibit K](#) (PAC Registration). The PAC/Union obtained the Town's Email List through a public records request, [Exhibit L](#) (Oct. 11 & 13, 2023 Emails Between R. Sweeney & Town), and launched a campaign to influence Town residents and solicit signatures using mass mailings written by Public Concepts, see, e.g., **Composite** [Exhibit M](#) (Emails with Public Concepts & Mass Mailings). Many residents responded by questioning the PAC's ties to the Union and voicing their disagreement with the PAC's/Union's inflammatory rhetoric and misinformation. See, e.g., **Composite** [Exhibit N](#) (Emails from Town Residents). In response to the misinformation campaign, the Town published factual statements addressing the Union's/PAC's claims. See, e.g., **Composite** [Exhibit O](#) (Town Statements).

Also, in a letter to Union members, Union leadership stated that the Town Council's decision to start its own fire department "poses a significant threat to the existence of our fire rescue services in the County's north end," and "has the potential to set a dangerous precedent . . . [i]f other cities follow suit." [Exhibit P](#) (Union Letter). After proclaiming the Union as a "political powerhouse," Union leaders urged members to "come together to preserve the future of Palm Beach County Fire Rescue (PBCFR) in Jupiter" by supporting the Union's effort to amend the Town's Charter. *Id.* This call to action included a clear message: "By joining forces and succeeding in this critical effort, we will send a resounding message to every elected official in Palm Beach County: Local 2928 stands strong and united, a force to be reckoned with!" *Id.*

The PAC/Union also hired canvassing companies to canvass the Town and solicit signatures, including Blitz Canvassing, LLC. [Exhibit Q](#) at Request 8 (Excerpt from PAC's Resp. Req. Prod.). Residents reported that canvass workers were either uninformed or not forthcoming about the petition, and were using questionable tactics to obtain signatures including making "misleading statements" about the petition's purpose.⁴ See, e.g., **Composite** [Exhibit R](#) (Emails from Town Residents). One resident also reported that, despite he and his brother declining to sign the PAC's/Union's petition, they were notified that their signatures had been forged and included in the petitions submitted to the Town. *Id.*

⁴ For example, one resident reported that she witnessed a canvass worker stop a woman and ask her to sign a petition to "save the fire station." Ex. Q. Another reported that his wife signed the petition only after being intimidated into doing so by a canvass worker who approached her outside their home. *Id.*

These efforts were funded almost entirely by the Union. A Campaign Treasurer's Report shows the Union contributed over \$214,370 in monetary and in-kind contributions of "canvassing" and "ground operations." [Exhibit S](#) (Campaign Treasurer's Report). Only two Jupiter residents and one West Palm Beach resident contributed (a total of \$40). *Id.*

In preparation to submit petitions to the Town, the Union's President arranged for media coverage and instructed its counsel to "be prepared to file a suit as fast as possible if needed" once the petitions were submitted. [Exhibit T](#) (Oct. 24, 2023 Emails Between J. Newsome & L. Donaldson). After the petitions were submitted, the Town forwarded the petitions to the Palm Beach County Supervisor of Elections ("SOE"). SAC ¶ 37; Ans. ¶ 37. The SOE's sole responsibility is to certify that a sufficient number of signatures from Town electors have been obtained and to confirm that the electors' signatures match the signatures on their voter registration cards. SAC ¶ 37; Ans. ¶ 37.

On November 17, 2023, the Supervisor of Elections certified that, of the petitions submitted, the signatures for at least 10% of the registered electors from the previous election could be matched with the signatures the SOE had on file. SAC ¶ 38; Ans. ¶ 38. The SOE specifically clarified, however, that "***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.***" SAC ¶ 38; Ans. ¶ 38 (emphasis added).

As the true purpose of the PAC's/Union's proposed amendment has become known, Town residents have expressed that they only signed a petition because they were misled as to the amendment's meaning and effect. See, e.g., **Composite** [Exhibit U](#) (Emails from Town Residents). Others have stated that they found the petition language

“ambiguous,” “confusing,” “hard to decipher,” and “written in lawyers terms,” and that they were unclear on how they were supposed to answer the Ballot Question. See, e.g., **Composite Exhibit V** (Emails and Comments from Town Residents).

Consistent with Chapter 83-498, Laws of Florida,⁵ and the Town’s Charter,⁶ the SOE confirmed that the next general election in which municipal issues will be voted on is in March 2025. **Exhibit X** (Feb. 23, 2024 Email from W. Link to T. Baird). In accordance with the Charter—which leaves determination of a proposed amendment’s validity to the Town Attorney—the Town Attorney analyzed the petition and opined that the proposed language was legally insufficient and unconstitutional on its face, and should not be submitted for placement on the ballot in March 2025. SAC ¶¶ 39; Ans. ¶¶ 39.

On December 1, 2023, the Union, through Kurth, sued the Town seeking an order requiring the Town to place the following language, *i.e.*, the Ballot Question and Proposed Charter Amendment, on the ballot at the next general election:

⁵ Chapter 83-498 provides for “uniform election dates for municipal elections” in the County, and states that “[a]ny election relating to a municipal office . . . shall be held on the second Tuesday of March of the calendar year.” **Exhibit W** (Ch. 83-498, Laws of Fla.).

⁶ The Charter states that “[t]he general election of the Town of Jupiter shall be held on the second Tuesday in March in each year in which a general election is required.” Charter art. II, § 5.

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.

Pet. for Writ of Mandamus at 8–9 12, Appx. A-6.

Two weeks later, the Town filed its own lawsuit seeking declaratory relief based on its good faith belief that that the Ballot Question and Proposed Charter Amendment are legally invalid and cannot be put to a vote. SAC ¶ 41.

ARGUMENT

I. The Ballot Question fails to inform voters of the true purpose and effect of the amendment in violation of section 101.161.

The Ballot Question violates the ballot accuracy requirements of section 101.161(1) because it fails to inform voters of the true purpose and effect of the Proposed Charter Amendment. Under section 101.161(1), whenever a constitutional amendment or other public measure is submitted to a vote of the people, a ballot summary must be printed in “clear and unambiguous language” and “shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.” In other words, “voters must be told, in clear and unambiguous language, what the primary effect will be

if the proposed Charter amendment is adopted.” *Miami-Dade Cnty.*, 994 So. 2d at 458. The purpose of this requirement is to “make certain that the electorate is advised of the true meaning, and ramifications, of an amendment” so that they are not misled about the decision they are asked to make. *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 807 (Fla. 2018); *City of Miami v. Staats*, 919 So. 2d 485, 487 (Fla. 3d DCA 2005).

In assessing a ballot title and summary, “the reviewing court should ask two questions: first, whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment, and second, whether the language of the title and summary, as written, misleads the public.” *Detzner*, 256 So. 3d at 808. “A ballot title and summary cannot either ‘fly under false colors’ or ‘hide the ball’ as to the amendment’s true effect.” *Id.* Where the title and summary do not inform voters of the true purpose and ramifications of the proposed amendment, courts are “required” to reject placement of the amendment on the ballot. *Let Miami Beach Decide*, 120 So. 3d at 1292 (striking ballot summary and amendment from ballot where amendment’s “true effect” differed from “apparent effect” suggested by summary); see also *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (striking ballot summary and proposed amendment from ballot where “summary . . . [did] not adequately reflect” the purpose of the proposed legislation).

Here, the Ballot Question is defective for two separate but related reasons: (1) it suggests that the Proposed Charter Amendment provides new rights while failing to disclose that the true effect of the amendment is a curtailment of existing rights, and (2) it effectively asks voters to approve future interlocal agreements in perpetuity without disclosing the terms of those agreements.

- 1. The Ballot Question misleadingly suggests that the proposed amendment continues inclusion of the Town within the MSTU, but effectively strips the Town of its right to choose any fire and rescue provider other than PBCFR.**

Oftentimes, a ballot summary is defective “not with what the summary says, but, rather, with what it does not say.” *Askew*, 421 So. 2d at 155–56. For example, in *Miami-Dade County v. Village of Pinecrest*, the Third District Court of Appeal considered a ballot summary and proposed amendment to Miami-Dade County’s Charter which sought to “preserve” the existing fire and rescue services provided by the county. 994 So. 2d at 458–59. The ballot title and summary read:

COUNTY CHARTER AMENDMENT CREATING UNIFORM
COUNTYWIDE FIRE AND RESCUE SERVICE AND PRESERVING
EXISTING CITY SERVICE

SHALL THE CHARTER BE AMENDED TO REQUIRE THAT THE BOARD OF COUNTY COMMISSIONERS PROVIDE A UNIFORM, COUNTYWIDE SYSTEM OF FIRE PROTECTION AND RESCUE SERVICES FOR ALL INCORPORATED AND UNINCORPORATED AREAS OF THE COUNTY WITH THE EXCEPTION OF THE CITIES OF MIAMI, MIAMI BEACH, HIALEAH, CORAL GABLES, AND KEY BISCAYNE WHICH MAY PROVIDE FOR FIRE AND RESCUE PROTECTION SERVICES WITHIN THOSE CITIES?

Id.

The Third District found that the ballot title and summary “flew under false colors” and “hid the ball” by falsely promising to create new rights for citizens while actually curtailing or eliminating existing rights. *Id.* at 458. Specifically, the court found that municipalities already received fire and rescue services from the county, although they had the right to provide fire and rescue services independent of the county if they wished. *Id.* at 459. The proposed amendment effectively revoked this right by mandating fire and rescue services by the county, a result that was not conveyed anywhere in the ballot title

and summary. *Id.* The ballot language was therefore “misleading, not only for what it falsely promises—the creation anew of something that already exists—but also what it fails to say, namely that it will reduce, rather than expand, the rights of the citizens of this County.” *Id.* at 461. And because the ballot title and summary failed to advise that the primary effect of the amendment would be abrogation of each municipality’s right to establish its own fire and rescue system, the Third District affirmed the trial court’s decision to strike the proposed amendment from the ballot. *Id.*

The Ballot Question suffers from the same defect. While the ballot summary is framed to suggest that the amendment simply provides 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,” the actual effect of the amendment is to **require** the Town to use PBCFR in perpetuity unless and until another referendum is passed amending the Town’s Charter to authorize the Town Council to terminate the relationship. The Ballot Question fails to inform voters of this true purpose, or that the proposed amendment results in an abrogation of existing rights and provisions in the Charter. If approved, the amendment would vitiate the Town Council’s home rule authority to act to protect the health, safety, and welfare of its citizens, Charter art. V, § 2, its right to “combine, delete, modify or establish . . . departments” within the Town, *id.* art. V, § 9, its right to designate public funds, *id.* art. V, § 11, and the express prohibition on initiative referendums pertaining to the Town’s budget or appropriation of money, *id.* art. IX, § 1. Nowhere in the Ballot Question is this abrogation of rights and Charter provisions disclosed to the Town’s voters.

The effect of this non-disclosure is also exacerbated by the fact that the Ballot Question is not written in “clear and unambiguous language,” as required by section 101.161(1). “[M]unicipal services taxing units” are not a matter of common knowledge and understanding, and the Ballot Question uses this technical terminology without explaining what an MSTU is, what it does, and how it will operate with respect to funds derived from the Town’s residents and businesses. Indeed, Town residents have already complained that the Ballot Question and Proposed Charter Amendment are “confusing,” “hard to decipher,” and “written in lawyers terms.” Ex. U. And because the Ballot Question is not written in language the average voter can understand, there is a high likelihood voters will be misled as to the amendment’s purpose and effect. *Detzner*, 256 So. 3d at 808 (courts should presume the average voter has only “a certain amount of common understanding and knowledge” when analyzing ballot language).

Like in *Miami-Dade County v. Village of Pinecrest*, the Ballot Question and Proposed Charter Amendment “fly under false colors” and “hide the ball” by purporting to provide new rights while actually taking away the Town’s right to select its fire and rescue provider based on the best interests of the Town. Despite this curtailment of rights and abrogation of Charter provisions, nowhere in the ballot summary are these true ramifications stated, rendering it fatally defective under section 101.161(1). *Miami-Dade Cnty.*, 994 So. 2d at 459; see also *Askew*, 421 So. 2d at 156 (proposed amendment was invalid because ballot summary was “misleading to the public concerning material changes to an existing constitutional provision”); *Wadhams v. Bd. of County Comm’rs*, 567 So. 2d 414, 416 (Fla. 1990) (voters were misled when not advised that actual effect of charter amendment was to curtail Charter Review Board’s unfettered right to meet).

2. The Ballot Question effectively asks Town residents to bind the Town to future interlocal agreements without disclosing the terms of those agreements.

In addition, the Ballot Question only references the Town’s continued inclusion in the MSTU—the funding mechanism to implement interlocal agreements between the Town and County—but fails to explain that the amendment, if passed, would require the Town to enter into future interlocal agreements with the County in perpetuity. Put differently, the Ballot Question asks voters to amend the Charter to **require** the Town Council to continue entering into a series of unknown and potentially unlimited interlocal agreements with the County. Such an amendment strips the Town Council of any ability to negotiate the agreements and binds it to agree to whatever terms the County demands—even if unfavorable to Town residents and businesses.

This request for unfettered approval of unknown contracts is not permitted, as voters must have notice of the material terms of the contracts they are asked to approve. In *Let Miami Beach Decide v. City of Miami Beach*, the Third District considered a similar issue concerning a ballot question which asked voters to approve leases of certain properties. 120 So. 3d at 1284. The final terms of the leases had not yet been negotiated, however, and “the lease approval question as written [did] not allow the voters to learn, much less approve, material terms.” *Id.* Ultimately, the court held that “[v]oters must be given notice of the material terms of the [contracts] they are being asked to approve,” and “[b]ecause the lease approval question fails to give voters this necessary information, by including such information or referring voters to records providing such information, it does not qualify as a proper ballot question” under section 101.161. *Id.* at 1292.

The Ballot Question similarly asks voters to bind the Town to future contracts without telling residents what terms the Town will be bound to. Despite the Proposed Charter Amendment's true effect of requiring the Town to continue its current relationship with the County by entering into a new interlocal agreement and continuing to enter into agreements in the future, the Ballot Question doesn't even mention interlocal agreements, let alone disclose the material terms it effectively asks residents to pre-approve. Absent disclosure of what material terms the Ballot Question is asking voters to sign off on, the summary "violates the requirement of ballot clarity and accuracy established by section 101.161" and must be rejected. *Id.*

II. The Proposed Charter Amendment conflicts with the Florida Statutes and Florida Constitution, rendering it unconstitutional in its entirety.

The PAC's/Union's Proposed Charter Amendment is also invalid because it conflicts with Florida law. See *Village of Wellington*, 941 So. 2d at 599 ("Amendments to a [municipal] charter must be consistent with the Florida Constitution, general law, and special law."); *West Palm Beach Ass'n of Firefighters*, 448 So. 2d at 1214–15 (proposed initiative ordinance was unconstitutional in its entirety because it conflicted with Florida general law). In particular, it (1) purports to preclude repeal of the amendment except by a future referendum in conflict with section 166.031 and the Florida Constitution, and (2) provides for the Town's perpetual inclusion in a MSTU in conflict with section 125.01.

1. The Proposed Charter Amendment impermissibly precludes repeal of the amendment except by a future referendum, in conflict with section 166.031 and the Florida Constitution.

The Proposed Charter Amendment purports to preclude repeal of the amendment except by future referendum passed by Town voters. See Pet. for Writ of Mandamus at Appx. A-6. Such a referendum requirement was considered—and rejected—in *Gaines v.*

City of Orlando because it conflicts with section 166.031 of the Municipal Home Rule Powers Act. 450 So. 2d at 1179.

In *Gaines*, the Fifth District considered a proposed amendment to the City of Orlando's charter which included language that the amendment "cannot be weakened or repealed except by a referendum election of the registered voters of the City of Orlando." *Id.* at 1176–77. The court noted that "[s]ection 166.031(1) provides that the governing body of a city or the electors by petition signed by ten percent of the electors, may amend the city charter," and section 166.031(3) further states that "[a] municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters." *Id.* at 1179 (emphasis in original). Accordingly, the court held that proposed amendments which purport to make amended provisions "**not** subject to repeal except by another referendum election of the registered voters of the City . . . conflict with the Municipal Home Rule Powers Act" and "would not be of any legal effect." *Id.* (emphasis in original). The Proposed Charter Amendment is similarly defective and is therefore unconstitutional in its entirety. *West Palm Beach Ass'n of Firefighters*, 448 So. 2d at 1214–15.

The Proposed Charter Amendment also conflicts with the Florida Constitution. Article 6, Section 5 of the Florida Constitution controls the manner in which referendum power may be granted. See *Archstone Palmetto Park, LLC v. Kennedy*, 132 So. 3d 347, 350 (Fla. 4th DCA 2014). That section provides that "referenda shall be held as provided by law," with the phrase "as provided by law" equating to "as passed by an act of the legislature." *Id.* Therefore, absent legislation or a charter provision giving the electorate

the right to impose a referendum requirement, “the electorate has no power, by initiative and referendum, to enact a charter amendment conferring upon itself the power to restrict action by the city council by making the council’s action subject to referendum.” *Holzendorf*, 606 So. 2d at 648.

There is no statute which gives the electorate the right to impose a future referendum on decisions related to fire and rescue services, the creation of a fire department, or appropriation of money to such a cause. The Town’s Charter likewise has no provision authorizing such a referendum. Quite the opposite, as the Charter specifically confers upon the Town Council the exclusive authority to “combine, delete, modify or establish . . . departments” within the Town and to designate Town funds, Charter art. V, §§ 9, 11, and specifically ***prohibits*** initiative referendums pertaining to the Town’s budget or appropriation of money, *id.* art. IX, § 1. Therefore, without authority from either the Legislature or the Charter, the electorate “has no power . . . to enact a charter amendment . . . to restrict action by the city council by making the council’s action subject to referendum.” *Holzendorf*, 606 So. 2d at 648.

2. The Proposed Charter Amendment impermissibly provides for the Town’s perpetual inclusion within a MSTU in conflict with section 125.01(1)(q).

The Proposed Charter Amendment also conflicts with section 125.01(1)(q), which authorizes counties to implement MSTUs under certain conditions. Section 125.01(1)(q) specifically states that a municipality may only be included in a MSTU by “***consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.***” (emphasis added).

Here, the Proposed Charter Amendment purports to broadly authorize the Town's inclusion in an MSTU in perpetuity. See Pet. for Writ of Mandamus at Appx. A-6. But because the Town can only be included in an MSTU by consent via ordinance passed by the Town Council each year or for a term of years, § 125.01(1)(q), the proposed amendment conflicts with Florida general law. As a result, the amendment is unconstitutional in its entirety and must be rejected. *West Palm Beach Ass'n of Firefighters*, 448 So. 2d at 1214–15.

III. The Proposed Charter Amendment is barred by sovereign immunity and expressly prohibited by the Town's Charter.

Finally, the Proposed Charter Amendment is invalid because discretionary decisions pertaining to the Town's budget are subject to sovereign immunity, and the Town Council cannot be forced to make such decisions through a referendum. See *Town of Gulf Stream*, 206 So. 3d at 725–26.

Where, as here, a local government allocates public resources based on budgetary considerations, it is “quintessentially a discretionary, planning-level decision that is shielded by sovereign immunity.” *Id.* For this reason, courts have recognized that initiative and referendum provisions in a municipality's charter “are generally inapplicable to matters of appropriation and fiscal management.” *Id.* This makes sense, because allowing the public to dictate matters of budget through initiative and referendum “would materially obstruct, if not entirely defeat, the purpose of having a budget system.” *State ex rel. Keefe v. City of St. Petersburg*, 145 So. 175, 175 (1933).⁷ Indeed, under section 166.241(2), “it

⁷ While sovereign immunity may be waived by interlocal agreement entered into under section 125.0101, the waiver is limited and extends only “with respect to payment.” *Town of Gulf Stream*, 206 So. 3d at 727. In other words, a municipality may not contract for the provision of services, not pay for the services provided, then claim immunity from a breach

is the ***governing body of a municipality—not the electorate—that has the power to adopt a budget.***” *Town of Gulf Stream*, 206 So. 3d at 727 (emphasis added).

The Town’s Charter follows this long-standing legal precedent by expressly giving the elected Town Council the authority to allocate public funds, Charter art. V, § 11, and prohibiting initiative referendums pertaining to the Town’s budget, capital program, and appropriation of money:

Any proposed ordinance may be submitted to the town council by petition signed by qualified voters of the town, equal in number to the percentage hereinafter required. ***Provided, however, that such power shall not extend to ordinances pertaining to*** the rezoning of property, the adoption or amendment of the Comprehensive Plan, or to ***the budget or capital program or any ordinance relating to the appropriation of money***, levy of taxes or salaries of elected or appointed Town officers or employees.

Id. art. IX, §1 (emphasis added).

The Town Council decided to terminate the interlocal agreement with the County based on thorough financial and budgetary analysis, and determined that allocating money toward its own fire department would save Town residents and businesses between \$50 and \$70 million dollars. The Proposed Charter Amendment would effectively undo that decision, shift power over the Town’s budget to the County, force the Town to remain in the MSTU, and require the Town to enter into interlocal agreements with the County in perpetuity regardless of their negative fiscal impact. Because the PAC’s/Union’s proposed amendment seeks to impermissibly infringe upon the Town Council’s ability to make decisions regarding fiscal management of the Town’s budget, it is barred by both

of contract lawsuit. No such waiver is at issue here, where the Town lawfully terminated its interlocal agreement in accordance with the agreement’s terms.

sovereign immunity and the Town's Charter and should be rejected. *Town of Gulf Stream*, 206 So. 3d at 725–26; Charter art. IX, § 1.

CONCLUSION

At its core, the PAC's/Union's Proposed Charter Amendment is an abuse of the referendum process. It is intended to thwart the discretionary policy decisions of the Town Council and impermissibly usurp its authority over the Town's budget and appropriation of money for fire and rescue services. The PAC/Union seek to manipulate the referendum process and amend the Town's Charter not for the benefit of the Town's residents and businesses, but for the Union's own self-interests. Because the Ballot Question and Proposed Charter Amendment are unclear and misleading on their face, conflict with Florida law, and are barred by sovereign immunity and the Town's Charter, they should be rejected and not placed on the ballot.

WHEREFORE, the Town requests an order (i) granting summary judgment in its favor on its Second Amended Complaint against Defendants and (ii) awarding all other relief deemed proper.

[Signature on following page.]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel on the attached Service List via the Florida Courts E-Filing Portal this 3rd day of July, 2024.

By: /s/ Travis J. Foels
Travis J. Foels

TOWN OF JUPITER V JUPITER RESIDENTS KEEP PBC FIREFIGHTERS
CASE NO. 502023CA016631XXXAMB
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