

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

CIVIL DIVISION:        AH

CASE NOS.                502023CA016266XXXXAMB  
                                  502023CA016631XXXXAMB

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

Petitioner,

v.

TOWN OF JUPITER, FLORIDA,

Respondent.

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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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## ORDER GRANTING TOWN OF JUPITER'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE having come before the Court on Respondent/Plaintiff, Town of Jupiter's ("Town"), Motion for Summary Judgment, and the Court having reviewed the parties' submissions, heard argument at a hearing on August 16, 2024, and being otherwise advised, the Court finds as follows

### LEGAL STANDARDS AND ANALYSIS

#### **A. Florida's Summary Judgment Standard**

Effective May 1, 2021, the Florida Supreme Court amended the Florida summary judgment standard to adopt the Federal standard set out in Federal Rule of Civil Procedure 56. Summary judgment is appropriate where the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record... or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fla. R. Civ. P. 1.510(c) (1). "The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard." Fla. R. Civ. P. 1.510(a).

The Florida Supreme Court issued its opinion in *In re Amendments to Fla. R. Civ. P. 1.510*, where the Court aligned Florida's summary judgment standard with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). No. SC20-1490 (effective May 1, 2021); Fla. R. Civ. P. 1.510 (2020). Rule 1.510 allows a party to move for a summary judgment in that party's favor as to all or any part of a claim with or without supporting affidavits.

Summary judgment is required where the record shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 1.510(c). The relevant inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” In re Amendments to Florida Rule of Civil Procedure 1.510, 309 So. 3d 192, 192 (Fla. 2020) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). The Court should enter summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 193 (citing Celotex 477 U.S. at 322). It is not enough for a party opposing summary judgment to “simply show that there is some metaphysical doubt as to the material facts.” *Id.* (quoting Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)).

The moving party bears the burden of showing the absence of any genuine dispute by pointing to the lack of evidence in support of the nonmoving party’s case. Celotex, 477 U.S. at 323. The nonmoving party may not defeat summary judgment by simply asserting conclusory allegations, but rather must specifically identify evidence showing that there is a genuine dispute of material fact. *Id.* at 324; Anderson, 477 U.S. at 248. They must go beyond the pleadings to establish that there is a genuine issue for trial. Celotex, 477 U.S. at 324. Rule 1.510 as amended requires the non-moving party to serve a response to the motion for summary along with supporting facts or record evidence. Meisels v. Dobrosky, 341 So. 3d 1131, 1135-36 (Fla. 4<sup>th</sup> DCA 2022). Failure to do so will permit the trial court to consider the facts as set for in the moving party’s motion as “undisputed for the purposes of the motion.” *Id.*

Where “the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine [dispute] for trial.” Matsushita, 475 at 587. Therefore, summary judgment is proper when the nonmoving party has failed to show evidence of an element essential to its case for which it will bear the burden of proof for at trial. Celotex, 477 U.S. at 322. “A mere scintilla of evidence

supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party. Walker v. Darby, 911 F. 2d 1573, 1577 (11<sup>th</sup> Cir. 1990). Any factual disputes will be resolved in the nonmoving party's favor when sufficient competent evidence supports the nonmoving party's version of the disputed facts. Pace v. Capobianco, 283 F. 3d 1275, 1276 (11<sup>th</sup> Cir. 2002). See Haves v. City of Miami, 52 F. 3d 918, 921 (11<sup>th</sup> Cir. 1995).

Inferences are permissible so long as they are reasonable. Bleers v. Wal-Mart Stores East, LP, 2021 WL 2106531 \*1 (M.D. Fla. 2021). Only reasonable inferences are viewed in the light most favorable to the nonmoving party. Id. An inference is not reasonable if it is no more than a guess or a possibility for such an inference is not based on the evidence but is pure conjecture and speculation. Gordon v. Target, 2008 WL 2557509 (S.D. Fla. 2008). "Speculation does not create a genuine issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." Cordoba v. Dillard's, Inc., 419 F. 3d 1169, 1181 (11<sup>th</sup> Cir. 2005); See also Glasscox v. City of Argo, 903 F.3d 1207, 1213 (11<sup>th</sup> Cir. 2018). Although a non-moving party to a summary judgment motion may set forth a genuine issue of material fact through "justifiable inferences" from facts presented to the trial court, the stacking of inferences is not permitted. Cohen v. Arvin, 878 So. 2d 403 (Fla. 4<sup>th</sup> DCA 2004).

A court should not consider either the weight of the evidence or the credibility of witnesses when ruling on a motion for summary judgment. Bernhardt v. Halikoytakis, 95 So. 3d 1006, 1008-09 (Fla. 2d DCA 2012). See Gracia v. Sec. First Ins., 347 So. 3d 479, 482 (Fla. 5<sup>th</sup> DCA 2022); See also Anderson, 477 U.S. at 248. In ruling on a motion for summary judgment, it is improper for the trial court to weigh an expert's testimony. Wolford v. Ostenbridge, 861 So. 2d 455, 457 (Fla. 2d DCA 2003) Citing Bradford v. Bernstein, 510 So. 2d 1204 (Fla. 4<sup>th</sup> DCA 1987); Torres v. Sullivan, 903 So. 2d 1064 (Fla. 2d DCA 2005).

## FINDINGS OF FACT

### **A. Brief Factual Background**

The Town of Jupiter, Florida (“Town”) is a municipality located in Palm Beach County. In accordance with the Florida Constitution and the Municipal Home Rule Powers Act, the Town enacted a Town Charter. The Town conducts municipal governance through a Town Council, which consists of four elected councilmembers and the mayor.

Mr. Kurth is a natural person, over 18 years old, and at all material times was a Town resident. Mr. Sweeney is a natural person over 18 years old, and at all materials times was a Town resident. Jupiter Residents to KEEP Palm Beach County Firefighters is a political action committee (“PAC”), formed on September 28, 2023, that exists under the laws of Florida. The PAC advanced an initiative to amend the Town’s Charter in accordance with Florida Statute section 166.031(1). Section 166.031(1) reads as follows:

*“The governing **body of a municipality may, by ordinance,** or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that a part describing the boundaries of the municipality. The governing body of the municipality **shall** place the proposed amendment contained in the ordinance or petition to a vote at the next general election held within the municipality **or** at a special election called for such purpose.”*

This citizen’s initiative contains a ballot proposal and proposed charter amendment. On December 1, 2023, Mr. Kurth, as an individual and on behalf of the

PAC, filed a Petition for Writ of Mandamus seeking to have this initiative presented to the Town's voters.

As an initial matter, the Court notes that while the Town cited to portions of the record and attached evidence in support of its statement of undisputed facts, Jupiter Residents to KEEP Palm Beach County Firefighters, Ryan Sweeney, and Michael Kurth (collectively, the "PAC") did not cite to any portions of the record or attach any evidence in response. Accordingly, under Florida Rule of Civil Procedure 1.510, Meisels, 341 So. 3d at 1135-36 and Celotex Corp., 477 U.S. at 324 and its progeny, the Court considers the Town's facts undisputed for purposes of its summary judgment motion.

## LAW AND ANALYSIS

### **A. The Court may consider legality and Constitutionality of the ballot proposal prior to the election**

The Fourth District Court of Appeal has stated that "when an initiative petition is presented requesting the presentation of a proposed ordinance to the electorate and a governmental agency in good faith questions the constitutionality of the ordinance in its entirety and on its face, the court may properly consider that question in advance of an election concerning its approval." West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Comm'rs of West Palm Beach, 448 So. 2d 1212, 1214 (Fla. 4th DCA 1984). "The rationale of that rule is that this type of question (as opposed to a political question) may be determined in advance of the election in order to preclude or forestall the possible expenditure of funds in a useless act should the ordinance ultimately be held unconstitutional." Id.

Similarly, trial courts are authorized to decide before an election whether a proposed amendment's ballot title and summary violate the ballot accuracy requirements of Florida Statutes section 101.161(1). *See* Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282, 1284 (Fla. 3d DCA 2013). The purpose of section 101.161(1) 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).

The Court therefore concludes that it is authorized to consider the pre-election challenges raised by the Town, which seeks a declaration that the PAC's proposed Charter amendment and associated ballot language are legally invalid. The Town asserts that the proposed amendment and ballot language should be rejected for three reasons: (1) the amendment's ballot title and summary violate the ballot accuracy requirements of section 101.161(1), (2) the amendment conflicts with Florida law, and (3) the amendment is barred by sovereign immunity and the Town's Charter. As explained below, the Court agrees **in part** and grants summary judgment for the Town.

**I. There is a genuine dispute as to whether the proposed Charter amendment's ballot title and summary violate the ballot accuracy requirements of section 101.161(1).**

The Court finds there is a genuine dispute as to whether the proposed Charter amendment's ballot title and summary violate the ballot accuracy requirements of section 101.161(1) for failing to inform voters of the true purpose and effect of the amendment. Because the Court finds there is a genuine issue in dispute, the Court DENIES the Town's Motion for Summary Judgment on this particular ground.

Pursuant to Section 101.161, Florida Statutes, when a constitutional amendment or other public measure is submitted to a vote, the ballot summary must be printed in "clear and unambiguous language" and include "an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." "Two questions must be asked in order to determine if the proposed language is defective: first, whether the ballot title and summary fairly inform the voter of the chief purpose of the public measure, and second, whether the language of the title and summary, as written, misleads the public." City of Riviera Beach v Riviera Beach Citizens Task Force, 87 So. 3d 18, 22 (Fla. 4th DCA 2012). Accordingly, a party seeking to invalidate a ballot title, ballot question, or ballot summary must show: (1) the proposed ballot language does not include "clear and unambiguous language" that "fairly inform the voters of the chief purpose of the amendment" or

(2) the language, as written, “will be affirmatively misleading to voters.” Advisory Op. to Att’y Gen. re Regulate Marijuana in Manner Similar to Alcohol to Establish Age, Licensing, & Other Restrictions, 320 So. 3d 652, 667-668 (Fla. 2021), quoting Advisory Op. to Att’y Gen. re. Use of Marijuana for Certain Med. Conditions, 132 So. 3d 768, 797 (Fla. 2014).

The Town argues that the proposed amendment originated with, and is pursued by, the Palm Beach County firefighter’s union, Professional Firefighters/Paramedics of Palm Beach County, Local 2928, I.A.F.F., Inc. The Town argues that the Union seeks to amend the Town’s Charter in response to the Town’s decision to terminate its contractual agreement with the County for fire and rescue services. The Town relies on a letter to Union members (submitted for record evidence), in which the Union articulated its position on the amendment. In that letter the Union stated that it wanted to avoid a “dangerous precedent” if other municipalities follow suit by severing ties with PBCFR, and to “send a message” throughout the County regarding the Union’s political strength. The Town also argued that the effect of the proposed Charter amendment will be an abrogation of existing rights and Charter provisions, including 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 prohibition on initiative referendums pertaining to the Town’s budget or appropriation of money, *id.* art. IX, § 1.

The Town argues that the ballot title and summary does not state the true purpose and effect of the proposed Charter amendment. Further, it asserts the ballot summary misleadingly suggests that the proposed amendment continues the Town’s inclusion within a municipal services taxing unit, but does not disclose that voting in favor of the amendment effectively revokes the Town’s current right to decide where to allocate funds for fire and rescue services and to choose any fire and rescue provider other than the County.

The PAC argues in opposition that the plain language of the ballot clearly and unambiguously explains the purpose of the ballot proposal. The stated purpose as argued by the PAC is to maintain the relationship with the Palm Beach County Fire

Rescue unless and until a referendum vote by the electors. Pursuant to section 166.031, this is one means by which a proposal may be put to a vote. The dispute lies in the contrast between the plain language of the ballot language and the stated underlying purpose the Town argues is the “chief” purpose and effect of the ballot proposal.

The Court finds that there remains a material issue in dispute as to this argument. The Court finds the Village of Pinecrest case to be distinguishable because it can be argued that the challenged ballot proposal plainly states the chief purpose of this initiative. Ethics Naples, 290 So. 2d at 1079. While the Town argues based on record evidence that the “chief” purpose of the initiative is for the Union to maintain a presence in the Town of Jupiter, the plain language in the proposal can be read in its entirety as maintaining the relationship between PBCFR and the Town unless and until removal by a referendum. Both can be argued to be the purpose and effect of the proposal. Thus, there remains issues in dispute that preclude an award of summary judgment as to this argument. Because there is a genuine dispute as to the “chief” purpose of the ballot proposal based upon the evidence before the Court, the Court must **DENY** the Town’s motion for Summary Judgement on this ground.

## **II. The proposed Charter amendment conflicts with Florida law.**

### **A. The proposed Charter amendments conflict with Florida Statute Sections 166.031(1) & 125.01**

In performing a pre-election evaluation, a trial court conducts a facial review, only focusing on the proposed language of the citizen initiative at issue. City of Naples v. Ethics Naples, Inc., 290 So. 3d 1072, 1076-1077 (Fla. 2d DCA 2020). The Town must demonstrate that the challenged citizen initiative poses a total and fatal conflict with applicable constitutional or statutory standards. Ogborn v. Zingle, 988 So. 2d 56, 59 (Fla. 1st DCA 2008). Individual or piecemeal challenges to a proposed citizen initiative do not meet this demonstration. Rivergate Rest. Corp. v. Metropolitan Dade Cty., 369 So. 2d 679, 683 (Fla. 3d DCA 1979).

“Amendments to a charter must be consistent with the Florida Constitution, general law, and special law.” Village of Wellington v. Palm Beach Cnty., 941 So. 2d 595, 599 (Fla. 4th DCA 2006). Where a proposed amendment conflicts with Florida law, it is “invalid” and “unconstitutional in its entirety” and cannot be adopted by a municipality. West Palm Beach Ass’n of Firefighters, Local Union 727 v. Bd. of City Comm’rs of West Palm Beach, 448 So. 2d 1212, 1214-15 (Fla. 4th DCA 1984); Mullen v. Bal Harbour Village, 241 So. 3d 949, 957 (Fla. 3d DCA 2018).

The Court finds the PAC’s proposed Charter amendment conflicts with Florida Statute section 166.031 because it purports to preclude repeal of the amendment except by future referendum passed by Town voters. *See* Gaines v. City of Orlando, 450 So. 2d 1174, 1179, 1182 (Fla. 5th DCA 1984).

The plain and unambiguous language of the proposed Charter amendment clearly prohibits future amendments *except* by future referendum. The proposed ballot language reads in part:

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

Further, the proposed amended text to the charter reads:

*“After this section takes effect, it will be repealed **upon the approval by a majority vote of the electors voting in a referendum . . .**”*

The Court finds the plain language to be clear and unambiguous. As written and proposed, the language of both the ballot and text clearly leave any future

amendment of the Town Charter to a future referendum (i.e. vote by the electors). This violates Florida Statute section 166.031(1) and Municipal Home Rule Powers Act, and is therefore invalid.

Moreover, the Court finds that the proposed Charter Amendment conflicts with Florida Statute section 125.01(1)(q), which authorizes counties to implement municipal services taxing units under certain conditions. Section 125.01(1)(q) states that a municipality may only be included in an MSTU by “consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.” The proposed Charter amendment—seeking to authorize the Town’s “continue[d]” inclusion in an MSTU unless and until a future referendum—conflicts with the statute.

## **B. Conflict with the Florida Constitution**

Further, the Court finds the proposed amendment also conflicts with Article VI, Section 5 of the Florida Constitution. 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.” *See Holzendorf v. Bell*, 606 So. 2d 645, 648 (Fla. 1st DCA 1992).

The Court disagrees with the PAC that the Town asserts “as applied” and “piecemeal” challenges to the proposed Charter amendment. The Town’s challenges are based on the language that appears on the face of the amendment. The cases cited by the PAC cautioning against piecemeal attack involved proposed amendments with several sections and challenges to only a portion of the amendment. *See, e.g., City of Naples v. Ethics Naples, Inc.*, 290 So. 3d 1072, 1078 (Fla. 2d DCA 2020). Unlike these cases, the Town challenges the proposed Charter amendment (which contains only one section) in its entirety and on its face, including on grounds that it conflicts with Florida law. Pursuant to binding Fourth District precedent, because the proposed Charter amendment conflicts with Florida

law, it is “invalid” and “unconstitutional in its entirety” and cannot be put to a vote. West Palm Beach Ass’n of Firefighters, 448 So. 2d at 1214–15.

### **III. The proposed Charter amendment is barred by sovereign immunity and the Town’s Charter.**

Sovereign immunity protects the sovereign from being sued without its consent. City of Ft. Lauderdale v. Isreal, 178 So. 3d 444, 446 (Fla. 4<sup>th</sup> DCA 1995). The Court finds that the proposed Charter amendment is barred by sovereign immunity and the Town’s Charter. It is well-established in Florida that where a local government allocates public resources based on financial and budgetary considerations, it is “quintessentially a discretionary, planning-level decision that is shielded by sovereign immunity.” Town of Gulf Stream, et al. v. Palm Beach Cnty., 206 So. 3d 721, 725–26 (Fla. 4th DCA 2016). Where governmental actions are deemed discretionary the government enjoys 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.; *see also* State ex rel. Keefe v. City of St. Petersburg, 145 So. 175, 175 (1933). A local government’s decision to allocate scarce public resources is a discretionary, policy-making decision. Dennis v. City of Tampa, 581 So. 2d 1345, 1351 (Fla. 2d DCA 1991). Consistent with these principles, the Town’s Charter gives the elected Town Council the authority to allocate public funds, Charter art. V, § 11, and prohibits initiative referendums pertaining to the Town’s budget, capital program, and appropriation of money, Id. art. IX, § 1.

It is undisputed that the Town Council’s decision to terminate its agreement with the County was based on a thorough financial analysis. This is a point that the PAC neither disputed in their papers nor in their oral argument. It is also undisputed that the Town ultimately concluded that allocating money toward a fire department would save Town residents and businesses between \$50 and \$70 million dollars, and would give the Town Council, not the County Commission, control over the Town’s budgeting for fire and rescue services. The Town Council’s decision to terminate was unquestionably a budgetary, planning-level decision that is shielded by sovereign immunity. Town of Gulf Stream, 206 So. 3d at 725–26.

On its face, the proposed Charter amendment seeks to authorize the Town's continued inclusion within a municipal services taxing unit (the funding mechanism used to administer and deliver fire and rescue services by PBCFR). The amendment therefore implicates the Town's budget by dictating where tax dollars are spent for fire and rescue services, and seeks to undo the Town Council's decision to terminate the Town's agreement with the County. Because the amendment seeks to impermissibly infringe upon the Town Council's authority over decisions regarding fiscal management of the Town's budget, it conflicts with—and is barred by—Florida law on sovereign immunity as well as the provisions of the Town's Charter. Id.; Charter art. IX, §§ 1, 11.

For these reasons, the Court grants the Town's Motion for Summary Judgment and declares the PAC's proposed Charter amendment and associated ballot language legally invalid.

It is hereby **ORDERED AND ADJUDGED** that the Town's Motion for Summary Judgment is **GRANTED**.

**DONE AND ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida.

502023CA016266XXXAMB 10/09/2024  
  
Reid P. Scott Judge  
ADMINISTRATIVE OFFICE OF THE COURT

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Reid P. Scott  
Judge