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.
_____/

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.
_____/

ORDER DENYING MOTION FOR LEAVE TO AMEND

THIS CAUSE having come before the Court on Petitioner/Defendant, Michael Kurth, and Defendant, Jupiter Residents to KEEP Palm Beach County Firefighters' (the "PAC"), Motion for Leave to Amend, 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:

FINDINGS OF FACT AND LEGAL ANALYSIS

In general, a court should liberally grant leave to amend the pleadings when sought at or before the hearing on a motion for summary judgment. Quality Roof Services, Inc. v. Intervest National Bank, 21 So. 3d 883 (Fla. 4th DCA 2009). However, "amendment(s) should be allowed until the privilege to do so has been abused or the opposing party is prejudiced, ***or the amendment is futile***." Burgess v. N. Broward Hosp. Dist., 126 So. 3d 430, 436 (Fla. 4th DCA 2013). "Leave to amend . . . is futile when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment." Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007) *citing* Hall v. United Ins. Co. of Am., 367 F. 3d 1255, 1263 (11th Cir. 2004). Upon review of the requested amendment by Kurth and the PAC, the Court finds that it would be futile.

A. The Court finds the amendment to be futile because the proposed ballot language conflicts with Florida Statute sections 166.031 § 125.01 and Article VI, Section 5 of the Florida Constitution and is therefore invalid.

"Amendments to a [municipal] 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 that the ballot language in the proposed amended petition for writ of mandamus and the proposed Charter amendment are invalid because it conflicts with Florida law. The plain and unambiguous language of the proposed charter amended clearly seeks to make the creation of a Town fire rescue department only by elector referendum, which can only be amended by future elector referendum. This clearly violates the plain language of Florida Statute section 166.031, which permits amendments to its charter by the governing body of the municipality by ordinance or by the electors pursuant to a petition and vote. Fla. Stat. s. 166.031(1). *See* Gaines v. City of Orlando, 450 So. 2d 1174, 1179, 1182 (Fla. 5th DCA 1984)

Further, the Court finds the proposed amendment also conflicts with Article VI, Section 5 of the Florida Constitution, because 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).

Because the proposed amended mandamus petition would be immediately subject to summary judgment, the amendment is futile and the Motion for Leave to Amend is **DENIED**. Burgess, 126 So. 3d at 436; Cockrell, 510 F.3d at 1310.

B. The Court finds the amendment to be futile because the Writ of Mandamus does not state a prima facie case for relief because the actions required of the Town by Florida Statute section 166.031 are discretionary and would be subject to summary judgment even as amended.

In addition, even if the ballot language and Charter amendment were valid, the Court still finds that the proposed amended petition for writ of mandamus fails to state a prima facie case for relief. *See* Fla. R. Civ. P. 1.630(d). Mandamus is only appropriate where necessary to enforce an "established legal right" by compelling a person in an official capacity to perform an "indisputable ministerial duty required by law." Bd. of Comm'rs Broward Cnty. Fla. v. Parrish, 154 So. 3d 412, 417 (Fla. 4th DCA 2014). For a duty to be indisputably ministerial, it is imposed expressly by law and involves ***no discretion*** in its exercise. Mullen v. Bal Harbour Village, 241 So. 3d 949, 956 n.11 (Fla. 3d DCA 2018). A party cannot use a writ of mandamus to compel exercise of discretionary powers in a given manner. Bd. of Comm'rs Broward Cnty., 154 So. 3d at 417. *Citing* Dep't of Children & Family Servs. v. Burton, 802 So. 2d 467, 469 (Fla. 2d DCA 2001). The petitioning party must show a "clear and certain" legal right to performance of the act requested. Fla. League of Cities v. Smith, 607 So. 2d 397, 401 (Fla. 1992). If there is any doubt regarding the petitioner's entitlement to performance of the requested act, or ***if the act contains an element of discretion***, the request for writ of mandamus must be denied. State ex rel. Bergin v. Dunne, 71 So. 2d 746, 749 (Fla. 1954). Central to mandamus relief is the ministerial character of the compelled action—a situation arising where there "is ***no room*** for the exercise of [the respondent's] discretion . . ." (emphasis) Bd. of Comm'rs Broward Cnty., 154 So. 3d at 417. Although the person or entity acting in there official capacity may have discretion, it still has an obligation to exercise its discretion reasonably.

Here, Kurth and the PAC rely upon section 166.031(1) for their argument that the Town has a ministerial duty to put their proposed Charter amendment on the ballot for the November 5, 2024 Presidential Election, which they assert is the "next general election held within the municipality." The Court need not decide whether the November 5, 2024 Presidential Election is appropriate for this municipal Charter amendment, however, because section 166.031(1) does not give rise to a ministerial,

non-discretionary duty requiring the Town to put the amendment on the ballot for this specific election.

Under the plain language of section 166.031(1), a 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*** (emphasis) at a special election called for such purpose." When interpreting and applying a statute, "a court is bound by the plain language meaning of the text." United Auto. Ins. Co. v. Lauderhill Med. Ctr., *LLC*, 350 So. 3d 754, 756 (Fla. 4th DCA 2022). A court is to presume that a legislature says in a statute what is means and means what is says there. Id *citing* MRI Assocs. of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co., 334 So. 3d 577, 583 (Fla. 2021). A Court is required to give effect "to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." Id.

The Legislature's use of the word "or" in this statute vests the Town with the discretion to choose between two alternatives: (1) the next general election held within the municipality or (2) a special election called for such purpose. *See* Piper Aircraft Corp. v. Schwendemann, 564 So. 2d 546, 548–49 (Fla. 3d DCA 1990). Clearly, the plain reading of section 166.031(1) grants the municipality with the discretion to elect when to put the language on the ballot, either the next general election or at a special election, both alternatives being equally sufficient.

While Kurth and the PAC request a writ of mandamus specifically requiring the Town to submit a proposed Charter amendment for placement on the ballot for the November 5, 2024 Presidential Election, the Town has no indisputable, non-discretionary duty imposed expressly by law to submit the amendment for a vote at this specific election. The Town has discretion under the statute regarding ***when*** to put proposed amendments to a vote, and it cannot be forced ***by writ of mandamus*** to exercise this discretion in a given manner. Bd. of Comm'rs Broward Cnty., 154 So. 3d at 417.

Kurth and the PAC cite to Sterling v. Brevard Cnty., 776 So. 2d 281, 285 (Fla. 5th DCA 2000) in support of their request that the Court "use its inherent equity power to order the Town and Supervisor of Elections to recognize a specific election,

instead of calling a special election which is also identified in the statute." The Court finds that Sterling is distinguishable from the facts in this case.

In Sterling, the Brevard County Charter Review Commission ("CRC") submitted a proposed charter amendment to the County Commission ("Commission") under the procedures outlined in the county's charter. Id. at 282. Due to confusion regarding the number of votes needed to authorize submission of proposed amendments under the county's bylaws, the Commission challenged the legality of the CRC's vote approving the amendments and refused to enact them or place them on the ballot. Id. at 282–83. The CRC filed a complaint that included a request for "emergency declaratory relief under Chapter 86 concerning the legality of the action taken." Id. The CRC later amended its complaint to request a declaration that the Commission should have either adopted the proposed amendments or placed them on the ballot. Id. at 284. In addition, because the county's municipal general election passed during the pendency of the case, the CRC requested "an order commanding the . . . Commission to call a special election if necessary." Id.

In reversing the trial court's grant of summary judgment for the Commission, the Fifth District Court of Appeal found that the CRC's vote was valid and that the controversy was not moot simply because the general election had passed. Id. The Fifth District also stated that courts have the inherent power to order an election, citing to Williams v. Keyes, 186 So. 250 (1938), which found that where a commission failed to perform its nondiscretionary duty to schedule a referendum election on a proposed charter amendment, the court had the power to do so. Sterling, 776 So. 2d at 285. The Fifth District remanded back to the trial court, directing it to issue injunctive relief requiring the Commission to adopt some or all of the proposed amendments or place them on the ballot in the next general election or at a special election, whichever comes first. Id.

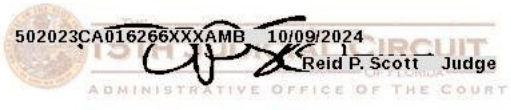
Unlike in Sterling, which involved proposed amendments submitted under the specific provisions of the Brevard County Charter, Kurth and the PAC seek to amend the Town's Charter under section 166.031, which gives the Town two alternatives for ***when*** to put valid proposed Charter amendments to vote. Fla. Stat. s. 166.031(1). The proponents of the charter amendments in Sterling also requested declaratory and

injunctive relief, including an order commanding the Commission to call a special election if needed. No such request has been made in this case; in fact, Kurth and the PAC have unequivocally confirmed that they are not requesting a special election. The Fifth District Court ultimately directed the trial court to issue injunctive relief, ***not a writ of mandamus***—the standard for which requires a ministerial, non-discretionary duty imposed expressly by law. Section 166.031(1) gives the Town alternatives as to when to put the referendum to a vote. It does not give rise to a non-discretionary, ministerial duty to put the proposed amendment specifically on the ballot for the November 5, 2024 Presidential Election. Because the Court finds the requested amendment does not change the effect of the language of section 166.031, the amendment is futile and the request for leave to amend must be denied, because the discretion as to when to put the referendum on the ballot rests with the Town. Burgess, 126 So. 3d at 436; Cockrell, 510 F.3d at 1310.

Finally, the proposed amendment is futile because the SOE, like the Town, has no legal duty to put the proposed Charter amendment on the ballot for the November 2024 Presidential Election. There is no "Florida statute governing the obligations of a county supervisor of elections upon receipt of municipal petitions." Mullen, 241 So. 3d at 957. Accordingly, because there is no ministerial, non-discretionary duty imposed expressly by law requiring the SOE to put the proposed amendment on the ballot in November, the SOE cannot be ordered to do so by writ of mandamus. Bd. of Comm'rs Broward Cnty., 154 So. 3d at 417.

It is hereby **ORDERED AND ADJUDGED** that the Motion for Leave to Amend is **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.



502023CA016266XXXAMB 10/09/2024
Reid P. Scott
Judge

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