

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION

CITY OF NEWBERRY, FLORIDA,
CITY OF ARCHER, FLORIDA, and
CITY OF ALACHUA, FLORIDA,

CASE NO.: 01-2020-CA-2855

Plaintiffs,

DIVISION: K

vs.

ALACHUA COUNTY, FLORIDA, a
political subdivision of the State of
Florida, and the ALACHUA COUNTY
CHARTER REVIEW COMMISSION,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT ON
COUNT I OF THE AMENDED COMPLAINT**

THIS CAUSE CAME before the Court for hearing on December 14, 2020, on the Motions for Summary Judgment on Count I of the Amended Complaint, as filed by Defendant Alachua County, Florida and Defendant Alachua County Charter Review Commission, as well as the Motions for Summary Judgment on Count I of the Amended Complaint, as filed by Plaintiffs City of Alachua, City of Newberry, and City of Archer, and the Court, having heard argument of counsel, and being otherwise fully advised in the premises, hereby finds:

- 1) On October 15, 2020, Plaintiff City of Alachua filed its Amended Complaint for Declaratory Judgment and Injunctive Relief.
- 2) On October 23, 2020, Plaintiff City of Alachua filed a Motion for Summary Judgment on Count I of its Amended Complaint.
- 3) On October 26, 2020, Plaintiffs City of Archer and City of Newberry filed their Complaint for Declaratory Judgment and Injunctive Relief.

- 4) On October 30, 2020, Defendant Alachua County filed its Motion for Summary Judgment on Count I of the Amended Complaint, and on November 4, 2020, Defendant Alachua County Charter Review Commission filed its Motion for Summary Judgment on Count I of the Amended Complaint.
- 5) On December 3, 2020, Plaintiffs City of Archer and City of Newberry filed a Notice of Adopting Plaintiff City of Alachua's Motion for Summary Judgment on Count I.
- 6) There is no material question of fact before the Court, and the Court may grant a Motion for Summary Judgment. Fla. R. Civ. Pro. 1.510. The issue of whether a ballot title and summary are defective pursuant to Section 101.16(1), Florida Statutes is a pure question of law. See *Armstrong v. Harris*, 773 So.2d 7, 11 (Fla. 2000).
- 7) At issue in Count I of the Complaint is whether the ballot title and summary of the County's Charter Amendment establishing a County Growth Management Area comply with the requirements of section 101.161, Florida Statutes, as well as the relevant case law.
- 8) Section 101.16(1), Florida Statutes mandates that a ballot summary be provided in clear and unambiguous language and that the ballot summary be an explanatory statement of the chief purpose of the measure.
- 9) The ballot title and summary language on the ballot for the 2020 General Election read as follows:

**COUNTY CHARTER AMENDMENT
ESTABLISHING COUNTY GROWTH
MANAGEMENT AREA**

Shall the Alachua County Charter be amended, effective countywide, to establish a County Growth Management Area ("Area"), provide that the County's comprehensive plan and land development regulations will exclusively govern land development in the Area, whether inside or outside municipal boundaries, authorize implementing ordinances, provide for removal of lands from the Area, and provide that the charter

and implementing ordinances shall prevail over conflicting municipal ordinances?

____ Yes
____ No

10) The purpose of Section 101.16(1), Florida Statutes, is to ensure that the proposed amendment is accurately represented on the ballot. See *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 807 (Fla. 2018). Therefore, in assessing whether a ballot title and summary complies with this statute, the Court must determine whether the ballot title and summary “fairly inform the voter of the chief purpose of the amendment” and “whether the language of the title and summary, as written, misleads the public. *Id.*

11) A ballot title and summary will be upheld “if they state the chief purpose and are not ‘affirmatively misleading.’” *Andrews v. City of Jacksonville*, 250 So.3d 172, 174-75 (Fla. 1st DCA 2018) quoting *Fla. Educ. Ass’n v. Fla. Dep’t of State*, 48 So.3d 694, 704 (Fla. 2010).

12) In assessing whether a ballot title and summary complies with the law and states the chief purpose in a manner that is not affirmatively misleading, the Court must presume that the voters will acquaint themselves with a referendum. The ballot title and summary themselves are not required to provide the voters with every detail surrounding the referendum. *Miami Heat Ltd. P’ship v. Leahy*, 682 So.2d 198, 203 (Fla. 3d DCA 1996) (quoting *Metro. Dade Cty. v. Shiver*, 365 So.2d 210, 213 (Fla. 3d DCA 1978)).

13) Under the applicable legal framework, a court may declare a referendum invalid “only if the record shows that the proposal is clearly and conclusively defective.” *Fla. Educ. Ass’n*, 48 So.2d at 700-01. The ballot title and summary do not “have to contain every detail or ramification” of a referendum to successfully provide the voters with the requisite information necessary to survive challenge. *Andrews*, 250 So.3d at 176.

14) In the instant case, Plaintiffs take issue with the language of a referendum that establishes a County Growth Management Area, in which the County's comprehensive plan and land development regulations govern, regardless of whether parcels within the Growth Management Area are subsequently annexed into a municipality. Plaintiffs argue that the term "Growth Management" as it is used in the ballot title and summary is misleading or emotional or political rhetoric in violation of Florida law.

15) Plaintiffs' argument on this issue is not convincing and does not satisfy the burden placed on Plaintiffs when challenging a ballot title or summary. "Growth management" is a commonly used and understood term that does not evoke an emotional or political response. Beyond the scope of the ballot title and summary in question, "growth management" is a term used to describe the intended purpose of Florida's Community Planning Act, as contained in Chapter 163, Florida Statutes. The affidavit of Plaintiff City of Alachua's Director of Planning and Community Development, Kathy Winburn, supports this position through her references to and reliance upon the Community Planning Act. In addition to being a widely used and understood term as it relates to local planning, the term "growth management" has already been reviewed, scrutinized, and upheld. In *Advisory Opinion to the AG Re Fla. Growth Mgmt. Initiative*, 2 So. 3d 118 (Fla 2008), a constitutional amendment was being proposed that would impact how "Local Growth Management Plan Changes" could be accomplished. Despite the term "growth management" pervading that amendment and the ballot title and summary, the Court did not find its usage to be misleading or to constitute emotional or political rhetoric.

16) In this matter, Plaintiffs fail to show that the use of the term "growth management" in the ballot title and summary elicits an emotional or political response that may make the title and summary misleading. Plaintiff has not shown how use of the term "growth management"

renders the ballot title and summary clearly and conclusively defective or affirmatively misleading.

17) Instead, the language of the ballot title and summary clearly and accurately describes the chief purpose and effect of the Charter Amendment. The voter is informed that, if approved, the Charter Amendment creates a “County Growth Management Area” and then continues to inform the voters “that the County’s comprehensive plan and land development regulations will exclusively govern land development in the Area, whether inside or outside municipal boundaries.”

18) The language being challenged in this matter is similar to that used by Seminole County in the only appellate case directly relevant and on point to the issues before this Court. See *Seminole County v. City of Winter Springs*, 935 So.2d 521, 525-26 (Fla. 5th DCA 2006). In *Seminole County*, the court upheld a county charter amendment that created a “Rural Boundary and Rural Area.” 935 So.2d at 525-26. Like the Charter Amendment at issue here, the *Seminole County* charter amendment established an area with that name, and then the ballot summary specified that the future land use designations of the Seminole County comprehensive plan would apply to all lands, “incorporated or unincorporated,” within the Rural Area. *Id.* The Seminole County ballot summary further provided that “the Charter and implementing ordinances supersede conflicting municipal ordinances.” *Id.* The ballot summary in Seminole County never used the term “annexation” or any of its variations, and did not outline every potential ramification or impact of the charter amendment, if approved. Instead, it provided a summary of the effect. Additionally, the charter amendment in *Seminole County* did not contain reference to a map of the Rural Area, instead simply informing voters that such approval of the charter amendment would establish the Rural Area. *Id.* The Charter Amendment before this Court is similar in that it informed voters that

the County Growth Management Area would be established with an affirmative vote, but not specifically including reference to a map depicting the area. On challenge, *inter alia*, on the basis of Section 101.161, Fla. Stat., the court in *Seminole County* held that “the ballot summary fairly and accurately summarized the purpose and effect of the proposed charter amendment.” *Id.* at 528.

19) Similar to the ballot summary in *Seminole County*, the ballot summary in the case at bar clearly states the legal effect of the Charter Amendment, “that the County’s comprehensive plan and land development regulations will exclusively govern land development within the Area, whether inside or outside municipal boundaries”. This statement alone clearly informs the voter that the County would have the specified power within the Area, even if a portion of the Area was inside municipal boundaries (“whether inside or outside municipal boundaries”), to the exclusion of the municipality’s authority (“exclusively govern”) and the Charter Amendment further clarifies that “the charter and implementing ordinances shall prevail over conflicting municipal ordinances,” leaving no room for confusion by the voters.

20) Plaintiff’s argument that the ballot title and summary are misleading as it relates to the removal provision and/or fair notice on the legal effect, ramifications, or effect of the amendment are unpersuasive.

21) When reviewing a ballot title and summary, this Court must look at the language being challenged as it is written and presented to the voters; the court cannot evaluate the language based on alternative language proffered by Plaintiffs. As the First District Court of Appeal made clear in *Andrews*, “[t]he ballot summary [does not] have to contain every detail or ramification... to provide its chief purpose,” and “the omission of some details or ramifications of an ordinance is not the legal test.” *Andrews*, 250 So.3d at 174-76. Instead,

the challenger of the ballot title and summary must show them to be “clearly and conclusively defective”.

22) Based on the foregoing, Plaintiffs fail to show how the language of the Charter Amendment is “clearly and conclusively defective” as that standard is articulated in *Andrews*. 250 So.3d 172, 174-75 (Fla. 1st DCA 2018). Plaintiffs also fail to show how the language of the Charter Amendment is affirmatively misleading or constitutes improper emotional or political rhetoric.

23) The Charter Amendment meets all of the requirements of law in that it sets forth a clear and unambiguous statement of its purpose and effect and otherwise meets all of the requirements of the Florida Constitution and section 101.161, Florida Statutes.

Therefore, it is hereby,

ORDERED AND ADJUDGED that the Defendants’ Motions for Summary Judgment on Count I of Plaintiffs’ Amended Complaint are **GRANTED**, and Plaintiffs’ Motions for Summary Judgment on Count I of Plaintiffs’ Amended Complaint are **DENIED**.

DONE AND ORDERED in Chambers at the Alachua County Family & Civil Justice Center, Gainesville, Florida on Monday, February 1, 2021.

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Monica Brasington, Circuit Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Monday, February 1, 2021.

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