

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

JENNIFER MCCOY PARKER,
and LINDA C. HEIN,

Plaintiffs,

v.

Case No.:

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida, and TRAVIS PALLADENO,
in his official capacity as Mayor for the
City of Madeira Beach,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, JENNIFER MCCOY PARKER (“PARKER”) and LINDA C. HEIN (“HEIN”) (collectively hereinafter “PLAINTIFFS”), by and through their undersigned counsel, and pursuant to Florida Statutes Chapter 86, file this Complaint for Declaratory Judgment against Defendants, THE CITY OF MADEIRA BEACH, a municipal government of the State of Florida (hereinafter “City”), and TRAVIS PALLADENO, in his official capacity as Mayor for the City of Madeira Beach, (“PALLADENO”) (hereinafter collectively “Defendants”), and in support thereof state:

Jurisdiction and Venue

1. This is an action for Declaratory Relief over which this court has subject matter jurisdiction pursuant to Chapter 86, Florida Statutes.

2. Venue is proper in Pinellas County pursuant to Florida Statutes § 47.011, because all of the parties are located in Pinellas County, and because the cause of action accrued in Pinellas County, Florida. § 47.011, Fla. Stat. Ann.

Parties and Standing

3. Plaintiff, JENNIFER PARKER, is a resident, citizen, taxpayer, and legally qualified elector of the City. PARKER'S residence is located at 423 150th Ave. #1501, Madeira Beach, FL 33708.

4. Plaintiff, LINDA C. HEIN, is a resident, citizen, taxpayer, and legally qualified elector of the City. HEIN'S residence is located at 401 150th Ave. #221, Madeira Beach, FL 33708.

5. Defendant, TRAVIS PALLADENO, is the lawfully elected Mayor of the City of Madeira Beach and is sued herein in his official capacity.

6. Defendant, CITY OF MADEIRA BEACH, is an incorporated municipality located within Pinellas County, Florida, which operates under a City Charter (the "Charter").

7. Moreover, the City Commission, the governing authority for the CITY, has five members, including PALLADENO, as mayor (the "Commission").

8. PLAINTIFFS, as residents, citizens, qualified voters, and taxpayers in the CITY have an interest and direct stake in the controversies raised in this Complaint for Declaratory Relief, and have standing to seek declaratory relief pursuant to Chapter 86, Florida Statutes.

General Allegations

9. PLAINTIFFS seek a Declaratory Judgment finding that the CITY violated Florida Statutes §101.161(1), when it used a false, deceptive and misleading ballot summary language for the Referendum scheduled for March 15, 2016, which seeks public approval of proposed Charter Amendment 2015-06.

10. Florida Statutes § 101.161(1), provides in relevant part:

The ballot summary of the amendment or other public measure shall be an **explanatory statement**, not exceeding 75 words in length, **of the chief purpose of the measure. . . .** The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla. Stat. Ann. (**emphasis supplied**).

11. The statutory language in Section 101.161(1) requiring an “*explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure*” is often referred to as the “ballot summary”.

12. On June 9, 2015, the CITY adopted Ordinance No. 2015-06, entitled:

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA AMENDING SECTION 1.7 OF THE CITY CHARTER TO REQUIRE A FOUR-FIFTHS VOTE BY THE CITY COMMISSION FOR THE SALE OR CONVEYANCE OF REAL PROPERTY POSSESSED BY THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A copy of Ordinance No. 2015-06 is attached hereto as **Exhibit “1.”**

13. The purpose of Ordinance 2015-06 is to amend Section 1.7 of the CITY’S Charter (“the “Charter Amendment”).

14. Ordinance 2015-06 was approved by the Commission.

15. On August 11, 2015, the CITY approved Resolution 2015-27 (the “Resolution”) which established the wording of the substance of the amendment and ballot title for the Charter Amendment adopting Ordinance 2015-06, and to comply with Florida Statutes § 101.161(1). A true and correct copy of the Resolution is attached hereto as **Exhibit 2.**

16. The CITY published notice of the Charter Referendum to be held in the municipal election scheduled for March 15, 2016 (the “Referendum”). A true and correct copy of the Charter Referendum is attached here to as **Exhibit 3.**

17. Section 1.7 of the Charter currently reads as follows:

Limitation on exercise of powers.

The sole and exclusive limitation on the exercise of powers of the City shall be that prior to the sale of any real property possessed by the City or prior to a conveyance by whatever means of an interest in lands possessed by the City which conveyance is for a term to exceed ten (10) years, the issue shall be submitted to a referendum vote of the electors of the City, at an election to be called by the Board of Commissioners of said City, and a majority of the votes cast shall be in favor thereof; and then and only then may the property be conveyed; provided, however, that the City shall have the power to convey public utility easements without submitting the same to a referendum vote of the electors of the City.

18. Section 1.7 of the proposed Charter Amendment states¹:

Supermajority vote required for sale of real property.

A super majority (4/5ths vote) by the Board of Commissioners shall be required prior to the sale of any real property possessed by the City or prior to a conveyance by whatever means of an interest in lands possessed by the City which conveyance is for a term to exceed ten (10) years. Only a simple majority (3/5ths vote) is necessary to convey public utility easements

19. The proposed Charter Amendment authorized by Ordinance 2015-06 revokes the right of voters, by referendum, to approve all sales or conveyances of CITY property that exceed ten years.

20. In place of the voter referendum, the CITY substituted a provision that required a “super majority” vote of the Commission to approve all such sales or conveyances.

21. The Charter Amendment, based on the supporting Ordinance 2015-06 and the Resolution, is a “public measure” referred to in Florida Statutes § 101.161(1), and thus is required to comply with the statute.

¹ This actual language of the proposed Charter Amendment does not appear anywhere in the public record. The only reference to the proposed Charter Amendment language must be gleaned from the underline and strikethrough version in Ordinance 2015-06 (*See Exhibit 1*).

22. The first sentence of the existing Charter begins by proclaiming and advising voters of “*the sole and exclusive limitation on the exercise of power of the City . . .*” Despite the clear intention of the Charter Amendment to eliminate this crucial and “exclusive” limitation on CITY power exercised by the voters, the Commission fails to even mention, much less provide an explanatory statement, to voters notifying them that a voter who approved the Charter Amendment would lose his or her right to vote in a referendum to approve the sale or conveyance of City property.

23. Rather, the ballot summary, appearing in the Sample Ballot provided to the CITY’S voters, states:

Super Majority Vote Required for Sale of Real Property

Shall the City Charter, pursuant to Ordinance 2015-06, be amended to require a super majority vote by the Board of Commissioners prior to the sale of any real property possessed by the City and a simple majority vote prior to the conveyance of public utility easements?

A true and correct copy of the Sample Ballot is attached hereto as **Exhibit 4**.

24. The ballot summary is false, deceptive and misleading and in violation of Florida Statutes § 101.161(1), because it fails to convey the “chief purpose” of the Charter Amendment - that is, to substitute the authority of the Commission to sell or convey CITY property for the now existing right of approval of the sale or conveyance by voter referendum.

25. Not only does the Sample Ballot fail to advise voters that their current right to approve the sales or conveyances of CITY property by voter referendum would be extinguished upon adoption of the Charter Amendment, the Ballot Summary does not even advise voters of *which* Charter provision is proposed to be amended.

26. Furthermore, neither the Referendum notice, Ordinance 2015-06, nor Resolution 2015-27 even mention, or attempt to advise the voters, that a vote to approve the Charter

Amendment would eliminate the voters' then-existing right to approve or disapprove the CITY'S sale or lease of CITY property.

27. The ballot summary fails to disclose that the "chief purpose" of the Charter Amendment is to eliminate the voters' rights to approve sales or conveyances of CITY property without a referendum. Furthermore, it entices voters to support the Charter Amendment because it misleads the voter into thinking that he or she would be voting to *add* protection against the sale or conveyance of CITY property, when, in fact, the vote to approve would eliminate the protections and limitations already in existence.

28. A ballot summary is not permitted to "fly under false colors" by, for example, telling voters that certain rights are being protected, when in fact, those rights are being eliminated nor to "hide the ball" by, for example, failing to disclose material issues of importance to the voters, as to the proposed amendment's true effect under Florida law.

29. Florida courts have a long history of judicial review of false, deceptive and misleading ballot summaries and repeatedly strike down ballot summaries which are misleading and inaccurate.

30. Ballot summaries require disclosure of the truth and that voters shall not be misled or deceived when presented with a ballot summary within the confines and sanctity of the voting booth.

31. As the Ballot Summary appearing in the Sample Ballot purports to *add* an additional obligation of the CITY in order for the CITY to sell or convey CITY property, i.e. a super majority vote, but in fact actually *revokes* the authority of the voters to approve such sales or conveyances, it is false, deceptive and misleading in violation of Florida Statutes § 101.161(1).

32. Plaintiffs are entitled to the relief requested herein because they are in doubt as to whether the Sample Ballot and Ballot Summary are in compliance with Florida Statutes § 101.161(1). *See* § 101.161(1), Fla. Stat. Ann.

33. Pursuant to Section 101.161(1), this Court can construe, as a matter of law, the Sample Ballot and Ballot Summary, as well as the Charter, Ordinance 2016-05, and City Resolution 2015-27 in the context of review under Chapter 86 Fla. Stat.

34. Plaintiffs have no other adequate remedy.

35. For the reasons set forth above, Plaintiffs seek a Declaratory Judgment finding that City of Madeira Beach Referendum on the Charter Amendment to be held on March 15, 2016 is invalid and *void ab initio* because the Ballot Summary fails to comply with Florida Statutes § 101.161(1).

36. All conditions precedent to the accrual of this action have been met, waived, or satisfied.

WHEREFORE, Plaintiffs, respectfully request that this Honorable Court enter a Declaratory Judgment (a) finding that the Ballot Summary is false, misleading and deceptive, and fails to advise the voters, among other issues, of the chief purpose of the Charter Amendment and therefore violates Section 101.161(1), *Fla. Stat.*; (2) declaring that Ordinance 2015-06 and the Charter Amendment are null and void *ab initio*, and stricken, and shall be and is of no force or effect; (3) awarding all costs incurred by Plaintiffs in this action; and (4) granting all further relief deemed necessary by the Court.

Dated: March 8, 2016

Respectfully Submitted,

/s/Kenneth L. Weiss
Kenneth L. Weiss, Esq.

FBN: 0159021
kweiss1@tampabay.rr.com
11085 - 9th Street E.
Treasure Island, FL 33706
Telephone: 727-415-3672
Attorneys for Plaintiffs

and

/s/Timothy W. Weber
Timothy W. Weber, Esq.
FBN: 086789
timothy.weber@webercrabb.com
lisa.willis@webercrabb.com
Weber, Crabb & Wein, P.A.
Wittner Centre Office Building
5999 Central Avenue, #203
St. Petersburg, FL 33710
Phone No. (727) 828-9919
Fax No. (727) 828-9924
Attorneys for Plaintiffs