

Shepard, Smith,
Kohlmyer & Hand, P.A.

Memo

To: Orange County Charter Review Commission

From: Cliff Shepard; Shepard, Smith, Kohlmyer & Hand, P.A.

Date: May 30, 2019

Re: Status of Orange County's Constitutional Officer Duties

Orange County's charter provisions adopted in 2016 ("2016 Amendments") are now enforceable, and the duties of Orange County's former constitutional officers should now rest with functionally identical non-partisan charter offices. However, a lawsuit challenging the 2016 Amendments is ongoing, and Florida voters' approval of 2018's Amendment 10 may impose a new obligation to recreate the constitutional offices beginning in 2021. Because of these issues, the Supervisor of Elections plans to conduct partisan elections for the County officers absent a court order to the contrary.

Legal Background

In 2014, Orange County voters approved a charter amendment which provided for nonpartisan elections and term limits for constitutional officers. Specifically, the amendment established nonpartisan elections and a term limit of four consecutive 4-year terms for the positions of (1) Clerk of the Circuit Court, (2) Comptroller, (3) Property Appraiser, (4) Sheriff, (5) Supervisor of Elections, and (6) Tax Collector.¹

Rick Singh, Scott Randolph, and Jerry Demings—all of whom held constitutional offices at that time—sued the County arguing that the charter amendment and its authorizing ballot measure were illegal on several grounds. The trial court upheld the ballot measure and the language imposing the term limits. However, the court struck down the provisions requiring nonpartisan elections, holding that Florida's election code—which preempts

¹ These positions are described as "constitutional officers" because their existence and duties are laid out by Articles V and VIII of the Florida Constitution.

county ordinances regarding elections—requires that county constitutional officers be elected on a partisan basis.²

In 2016, while an appeal challenging the decision on the 2014 Amendments was pending, a Charter Review Commission question to abolish the constitutional offices and replace them with nonpartisan “charter offices” with identical names and duties was approved by the voters.³ The new amendments were again challenged, and after an initial stay of their enforcement was vacated,⁴ the trial court declined to issue a new injunction that would prevent the amendments from going into effect.⁵ The case is still pending, but there has been little activity since 2017.

While that case languished, Florida voters approved an amendment to the Florida constitution prohibiting counties from abolishing constitutional offices. See Florida Amendment 10 (2018). Specifically, Amendment 10 changed Article VIII of the Florida Constitution so that now it reads as follows (emphasis added):

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. Unless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

(g) SELECTION AND DUTIES OF COUNTY OFFICERS. —

(1) Except as provided in this subsection, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 5, 2021, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2020.

² See Attachment A (Order on Motions for Summary Judgment, *Jerry L. Demings, et al. v. Orange County, Fla.*, Orange County Case No. 2014-CA-010858-O (Fla. 9th Jud. Cir. June 16, 2016)).

³ See Attachment B (Orange County 2016 Charter Review Commission Final Report).

⁴ See *Orange Cty., Fla. v. Fla. Ass’n for Constitutional Officers*, 229 So. 3d 867 (Fla. 5th DCA 2017).

⁵ See Attachment C (Judge Bob LeBlanc’s order reserving ruling on Plaintiff’s Ex Parte Motion for Temporary Injunction).

(2) For Miami-Dade County and Broward County, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 7, 2025, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2024.

Importantly, the Amendment eliminated the following clause: “any county officer may be chosen in another manner therein specified, or *any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.*”

While it is clear that a county may no longer abolish its constitutional offices, the new language is silent on how to address counties who had already abolished one or more of those offices. If read as if it were a new provision, Article VIII Section (1)(d) would appear to compel counties to create constitutional offices. (“There shall be elected by the electors of each county, for terms of four years, [the constitutional offices].”) However, that language already existed when the same section authorized counties to abolish constitutional offices, suggesting that that old language does not impose a new command to create the offices.

Volusia County sued to contend that the amendment does not require the recreation of those already-abolished offices. A Leon County judge disagreed, holding that the law obligates all Counties to elect constitutional officers moving forward.⁶ The judge partially based his decision on the language put to Florida’s voters on the ballot. Volusia County’s appeal of that ruling is pending before the First District Court of Appeals.

In April of 2019, the Florida Supreme Court finally issued its ruling on Orange County’s 2014 amendments, holding that Florida election code prohibits nonpartisan elections for county constitutional officers.⁷ The Court worded its decision to apply specifically to constitutional officers, and therefore did not specifically eliminate the possibility of nonpartisan elections for charter officers holding constitutional officers’ duties. By approving the Fifth District Court of Appeals’ intervening decision in its entirety, the Supreme Court also allowed the term limit provision to stand.

Moving Forward

As of now, Orange County’s 2016 amendments are active and enforceable. The County’s officials carrying out the duties of the constitutional officers are currently nonpartisan charter officers and are subject to the charter’s term limits.

⁶ See Attachment D (Final Summary Judgment for Defendants, *Cnty. of Volusia v. Ron DeSantis*, Leon County Case No. 2018-CA-002646 (Fla. 2d Jud. Cir. Mar. 21, 2019)).

⁷ See Attachment E (*Orange Cnty., Fla. v. Rick Singh, et al.*, 2019 Fla. LEXIS 607, No. SC18-79 (Fla. April 18, 2019)). The Court had initially ruled in favor of the County, but that ruling came in the last few days before Justices Pariente, Lewis and Quince were required to retire by law. Each of the three retiring justices had voted to reinstate Orange County’s ordinance. That ruling was then withdrawn and replaced by a Court with three new justices.

Notwithstanding this current legal status, I spoke to legal counsel for the Supervisor of Elections as to how that office plans to proceed. I was advised that in the absence of a lawsuit or court order the office has no intention of conducting non-partisan elections for any of the former constitutional/currently charter officers because the office believes the 2019 Florida Supreme Court opinion in *Singh* stands for the proposition that the Counties are preempted on all issues regarding the election of these positions, including the partisanship question, and that 1) it makes no difference whether the positions are constitutional or charter offices; and 2) any issue of charter vs. constitutional was removed by the passage of Amendment 10 to the Florida Constitution in 2018.

While we would disagree that the opinion in *Singh* is conclusive on the matter, we do agree that a lawsuit challenging the 2016 amendments as preempted would likely result in a holding that charter officers must also be elected on a partisan basis. We similarly disagree that Amendment 10's effect is conclusive but agree that the likely end result will be a requirement to re-establish county constitutional offices by January 5, 2021. Because of the holding in *Singh*, the reestablishment of constitutional offices will automatically mean partisan elections beginning in 2020.

ATTACHMENT A

Order on Motions for Summary Judgment, *Jerry
L. Demings, et al. v. Orange
County, Fla.*, Orange County Case No. 2014-
CA-010858-O (Fla. 9th Jud. Cir. June 16, 2016)

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

**Jerry L. Demings, Sheriff of
Orange County; Rick Singh,
Orange County Property Appraiser;
Scott Randolph, Orange County
Tax Collector; Rick Singh,
individually; and Scott Randolph,
individually;**

CASE NO.: 2014-CA-010858-O

Plaintiffs,

v.

**Orange County, Florida; and
Bill Cowles, Orange County
Supervisor of Elections;**

Defendants.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on the following motions: "Plaintiffs' Motion for Summary Judgment and Memorandum of Law" (Pls.' Mot. Summ. J.), filed on September 25, 2015; "Orange County, Florida's Memorandum in Opposition to Plaintiffs' Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment in Favor of Orange County and Memorandum of Law" (Cross Mot. Summ. J.), filed on November 10, 2015; and "Plaintiffs' Omnibus Reply to Orange County's Motion for Summary Judgment, Memorandum in Opposition to Plaintiffs' Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment" (Pls.' Reply), filed on November 24, 2015. After hearing arguments on April 18, 2016, and May 26, 2016, the Court finds as follows:

A. Facts

In 2014, the Orange County Board of County Commissioners debated whether they should pass an ordinance asking county electors to vote on whether the Orange County Charter should be amended to change the elections for county constitutional officers to nonpartisan elections and to impose term limits on those officers. During the hearings regarding these proposals, several county commissioners discussed whether the provisions should be separated into two separate ordinances—one for the term limits provisions and one for the nonpartisan elections provisions. Ultimately, the Board voted to include both in one ordinance, and on August 19, 2014, the Board enacted Ordinance No. 2014-21, which states, in its entirety:

AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.

BE IT ORDAINED BY THE BOARD OF
COUNTY COMMISSIONERS OF ORANGE
COUNTY, FLORIDA:

Section 1. Charter Amendment. Section 703 of the
Orange County Charter is amended to read as follows:

Sec. 703. County officers.

A. The charter offices of property appraiser, tax collector and sheriff formerly created by this section 703 are abolished. The functions and duties of each of these respective charter offices are transferred to the property appraiser, tax collector, and sheriff, as county officers under Article VIII, Section 1(d) of the Florida Constitution and each of these offices is hereby reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

This subsection A. shall take effect on January 8, 1997. The holders of the former charter offices of property appraiser, tax collector and sheriff as of the effective date shall be retained and shall constitute the initial county officers serving as property appraiser, tax collector and sheriff, as those offices are reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72-461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of non-partisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.

C. Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment

or be required to state the party of which the candidate is a member. All county constitutional office candidates' names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

Section 2. Referendum Called. Pursuant to its authority and duty under Article VII of the Orange County Charter, the Board of County Commissioners calls a referendum on the amendment to the charter set forth in Section 1. The referendum shall be held at the countywide election to be held on November 4, 2014. The ballot title and ballot summary for the referendum shall be as follows:

**CHARTER AMENDMENT PROVIDING FOR
TERM LIMITS AND NON-PARTISAN
ELECTIONS FOR COUNTY
CONSTITUTIONAL OFFICERS**

For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers

to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

_____ Yes

_____ No

Section 3. Severability. If any section, subsection, sentence, clause, or provision of this ordinance or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provision or application of this ordinance, and to this end the provisions of this ordinance are declared severable.

Section 4. Effective Date. This ordinance shall take effect pursuant to general law. However, the amendment to the Orange County Charter in Section 1 shall take effect only if and when approved by a majority of the electors voting in the referendum called by the Board in Section 2.

(Am. Compl. Ex. 1.) Orange County voters passed the Ordinance.

Plaintiffs filed suit against Orange County and the Orange County Supervisor of Elections seeking a declaratory judgment that the Ordinance and resulting amendment are unconstitutional under the Florida Constitution and violate Florida Statutes and Orange County Charter provisions. Plaintiffs allege that the ballot title and summary are defective, that the Ordinance violates the single subject rule, and that it infringes on the constitutional officers' independent status. Plaintiffs also seek injunctive relief, asking the Court to prohibit Orange "County and the Orange County

Supervisor of Elections from enforcing any changes to the Charter pending the resolution of the litigation on the substantive issues” (Am. Compl. at 29.) Before the Court are the parties’ cross motions for summary judgment.

B. Standard of Review

“Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law.” *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); Fla. R. Civ. P. 1.510(c). Determining whether there are genuine issues of material fact is a question of law for the court, and the court may find that such issues exist, even when both parties move for summary judgment. *Daniel Laurent, Inc. v. Coral Television Corp.*, 431 So. 2d 1047, 1048 (Fla. 3d DCA 1983).

C. Discussion

1. Count I Ballot Summary Defects

Plaintiffs argue that Ordinance No. 2014-21’s ballot title and summary violate Florida Statute section 101.161(1) (2014), which states, “The ballot summary of the . . . public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.” The ballot title and summary state:

CHARTER AMENDMENT PROVIDING FOR
TERM LIMITS AND NON-PARTISAN
ELECTIONS FOR COUNTY CONSTITUTIONAL
OFFICERS

For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers

to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

(Am. Compl. Ex. 1.)

The ballot title and summary are read together to determine if they properly inform the voter. *O'Connell v. Martin Cnty.*, 84 So. 3d 463, 465 (Fla. 4th DCA 2012). "While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment." *Id.* The court should first consider whether the proposed amendment's chief purpose is fairly conveyed in the title and summary. *Id.* Then, the court should consider whether the title and summary are misleading. *Id.* The proposed ballot summary and title must be "clearly and conclusively defective" to violate section 101.161(1). *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982). Voters should have notice of what they are voting on. *Id.* at 155. These principles "are applicable to proposed amendments to county charters." *Elected Cnty. Mayor Pol. Comm., Inc. v. Shirk*, 989 So. 2d 1267, 1273 (Fla. 2d DCA 2008).

In *Askew*, the ballot summary was misleading because it appeared to impose limitations on lobbying, but was in fact a loosening of lobbying restrictions. *Askew*, 421 So. 2d at 155-56. "The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. A proposed amendment cannot fly under false colors . . ." *Id.* at 156. Ballot summaries also violate section 101.161(1) if they appear to create new rights or protections, but the "actual effect is to reduce or eliminate rights or protections already in existence." *Harris v. Moore*, 752 So. 2d 1241, 1243 (Fla. 4th DCA 2000). The ballot summary does not need to include what was in place before, so long as there is no affirmative misrepresentation of the amendment's chief purpose. *Id.* In *Harris v. Moore*, the ballot summary was not misleading, as it informed the voters of the proposed change to the county government structure, and omitting that the change was "an important change in the present form of government [was] not misleading." *Id.*

Plaintiffs argue that Ordinance No. 2014-21's ballot title and summary are misleading because they do not explain that the proposed amendment will change when the constitutional officers are elected—from the general election to the primary election. But a title and summary are not misleading if they do not contain every detail regarding the proposed change. *See Advisory Op. to Attorney Gen. Re: Fla. Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008) (rejecting argument that ballot summary and title were misleading because they did not contain details of petition process being voted upon, as the proposed amendment would “not conflict with or restrict any existing rights . . .”).

Plaintiffs also argue that it was not explained that the current process is partisan and that there are no term limits. In *Advisory Opinion to Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991), the Supreme Court of Florida held that the ballot summary complied with section 101.161. The chief purpose of the proposed amendment before the court was term limits, and the ballot title and summary identified the offices affected and stated that an incumbent who held the office for the previous eight years could not run again. *Id.* Although the summary did not state that currently there were no term limits, this did not render the summary misleading, especially because it did not conceal “a conflict with an existing provision.” *Id.*

Here, the ballot summary states that nonpartisan elections and term limits are being established, which expressly states the Ordinance's chief purpose. Just as in the case discussed above, term limits and nonpartisan elections did not exist for these offices before the Ordinance was enacted. Because there was no conflict with an existing provision, and the ballot title and summary specifically state that the Ordinance would establish term limits and nonpartisan elections, it does not violate section 101.161 for failing to explain the previous state of affairs. Additionally, the word “establish” used in the Ordinance informs the voter that these provisions did not exist in the past.

See Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (holding ballot summary misleading when it said amendment “establishes” a right that currently existed).

Plaintiffs argue that the summary does not explain that the voters will be giving up their right to know the candidates’ political parties and that the candidates’ party affiliations will no longer appear on the ballot. The summary clearly states that the elections will be nonpartisan, however, and thus the voter that wants the elections to be nonpartisan will be unconcerned about no longer knowing the candidates’ political parties.

Plaintiffs also argue that the summary does not inform voters that the term limits will be locally-imposed, will be applied to current constitutional officers, and that the “change eliminates voter’s right to re-elect constitutional officers.” (Am. Compl. ¶ 83.) Plaintiffs complain that the summary does not explain that terms commenced before 2015 are not counted toward the term limits, and instead, the “summary erroneously informs voters that the term limits proposed are ‘four consecutive full 4-year terms.’” (*Id.* at ¶ 84.)

In *Abramowitz v. Glasser*, 656 So. 2d 1332, 1332-33 (Fla. 4th DCA 1995), a term limits amendment to a city charter was challenged under section 101.161. The opponents to the amendment argued that it was misleading because it neglected to mention an exception to the term limits. *Id.* at 1333. The Fourth District rejected this argument. *Id.* at 1334. Ballot summaries are not invalidated when they “accurately set forth the substance of the proposal to be voted on, or omit[] only exceptions which were narrower than the general proposal.” *Id.* at 1333. “Term limits . . . is a general concept, and voters who are interested are either for or against limits.” *Id.* at 1334.

Here, the Ordinance’s ballot title and summary specifically include the phrase “term limits.” (Am. Compl. Ex. 1.) The summary expressly states that the amendment will establish term limits for the listed constitutional offices. Just as in *Abramowitz*, not every detail regarding the Ordinance and its effects were contained in the title and summary. Also just as in *Abramowitz*, the title and summary

clearly state that the Ordinance is about term limits. Because the ballot title and summary clearly informed the voters that they were voting on term limits, they were not misleading.

The ballot title and summary told the voters that a “yes” vote will create nonpartisan elections and term limits for the enumerated offices, which was the Ordinance’s chief purpose. Thus, the title and summary did not misstate the chief purpose of the amendment, and the word “establish” contained in the summary informed the voters that these were changes to the status quo. The ballot summary and title complied with section 101.161(1), and therefore summary judgment is granted for Orange County on Count I.

2. Count II Single Subject Violation

a. Whether the single subject rule applies

Although Plaintiffs argue that Ordinance No. 2014-21 violates Florida law because it addresses more than one subject, Orange County contends that the single subject rule does not apply. This presents the Court with a question of first impression: whether a charter county must comply with the single subject rule in Florida Statute section 125.67 when the charter amendment is proposed via an ordinance, rather than by the charter review commission? The Court holds that the answer is no, unless the county’s charter imposes such a requirement.

The single subject rule is found in the Florida Constitution, Article III, section 6, which states that statutes “shall embrace but one subject and matter properly connected therewith” Florida Statute section 125.67 uses the same language to apply the single subject rule to county ordinances. Both the Orange County Charter and the Florida Constitution give charter counties powers of local self-government, so long as those powers are not inconsistent with general law. Specifically, the Orange County Charter, in article I, section 103, states, “Unless provided to the contrary in this Charter, Orange County shall have all powers of local self-government not

inconsistent with general law” Article VIII, section 1(g), of the Florida Constitution, gives charter counties “all powers of local self-government not inconsistent with general law The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.”

In *Charter Review Commission of Orange County v. Scott*, 647 So. 2d 835, 835-36 (Fla. 1994), the following question was certified to the Supreme Court of Florida as being one of great public importance: “Whether ballot questions containing county charter revisions proposed by a charter review commission are subject to a single subject rule?” In answering no to the certified question, the court noted the single subject rule in Article III, section 6, and Florida Statute section 125.67, but then stated, “Neither the constitution nor Florida Statutes applies the rule to proposed amendments to county charters.” *Id.* at 836-37. Although the court “has on occasion in some of our older cases applied a general single-subject requirement to ballot questions in the absence of constitutional or statutory authority[,] . . . we have never applied the rule to proposed revisions to county charters.” *Id.* at 837.

The Supreme Court compared the state constitution revision process to Orange County’s Charter Review Commission. *Id.* Although there are four ways to propose changes to the Florida constitution, only one—through a petition initiative—is “subject to the single-subject rule.” *Id.* The process to change the Florida Constitution through the Constitution Revision Commission provides “adequate safeguards to protect against logrolling and deception[,]” and thus the single subject rule does not apply to changes proposed through that process. *Id.* Proposed changes to Orange County’s charter through the Charter Review Commission follow the same procedures “that reduce the danger of logrolling and diminish the possibility of deception.” *Id.* As the charter does not contain a single subject rule, and there are safeguards to prevent the harm that the rule is designed to prevent, the Supreme Court “decline[d] to impose a single-subject requirement on this process.” *Id.*

Shulmister v. Larkins, 856 So. 2d 1149, 1150 (Fla. 4th DCA 2003), concerned amendments proposed through an initiative petition, and the Fourth District held that the city charter's single subject rule did not apply to those amendments. The city charter stated, "Every proposed ordinance or resolution . . . shall not contain more than one subject." *Id.* at 1151 (quoting the city charter). Because the provision stated that it applied only to ordinances or resolutions, the court held that there was no single subject rule for petitions to amend the city charter. *Id.* The court cited *Scott*, stating, "Neither the Florida Constitution nor Florida Statutes applies the single-subject rule to proposed amendments to county or city charters. Therefore, any limitation must be found within the city charter itself." *Id.* (citation omitted).

The Fifth District used this same phrase in *Seminole County v. City of Winter Springs*, 935 So. 2d 521, 528 n.5 (Fla. 5th DCA 2006). In *Seminole County*, the court disagreed with the trial court's conclusion that a charter amendment violated the single subject rule. *Id.* at 522. In that case, the county charter itself contained the single subject rule. *Id.* at 528.

Scott, *Shulmister*, and *Seminole County* all have one thing in common: all require the charter itself to impose the single subject rule upon amendments to it. In *Scott*, because the Orange County charter did not require amendments proposed by the Charter Review Commission to have a single subject, the Supreme Court "decline[d] to impose" such a rule. *Scott*, 647 So. 2d at 837. In *Shulmister*, because the charter imposed the single subject rule only on ordinances and resolutions, the court declined to impose it on a petition to amend the charter. *Shulmister*, 856 So. 2d at 1151. And in *Seminole County*, the Fifth District noted that the county charter did impose the single subject rule on proposed charter amendments while stating that the Florida Constitution and statutes do not do so. *Seminole County*, 935 So. 2d at 528. Plaintiffs correctly point out that the *Scott*, *Shulmister*, and *Seminole County* decisions did not hold that section 125.67, Florida Statutes, does not apply to an ordinance passed by Orange County to amend its Charter. Those decisions did not hold to the contrary, either.

Plaintiffs also attempt to distinguish *Scott* by pointing to the Supreme Court's discussion of the safeguards inherent in proposed charter amendments from the Charter Review Commission. But those same safeguards exist when the Legislature proposes amendments to the Florida Constitution. In *Advisory Opinion to Attorney General Regarding Independent Nonpartisan Commission to Apportion Legislative & Congressional Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006), the Supreme Court of Florida stated that the single subject rule is imposed on citizen petitions to amend the state constitution because the petitions are lacking the "same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes (i.e., constitutional amendments proposed by the Legislature . . .)." Here, the Board of County Commissioners is similarly situated to the Florida Legislature, and it provided opportunities for public hearings and debate on Ordinance No. 2014-21. The safeguards discussed in the Advisory Opinion to the Attorney General existed here, and therefore this attempt to distinguish *Scott* fails.

Plaintiffs rely on Orange County Charter Section 207(1), which states that the Board of County Commissioners has the power and duty to adopt or enact "in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county" (Pls.' Reply 23.) Plaintiffs argue that an ordinance, to be enacted in accordance with general law, must have a single subject, as Florida Statute section 125.67 mandates.

The Orange County Charter allows three entities to place proposed amendments to it on the ballot: the citizens, through a petition initiative; the Board of County Commissioners; and the Charter Review Commission. Orange County, Fla. Charter art. VI, § 601, art. VII, §§ 701, 702(B).

The Charter section regarding the Charter Review Commission's ability to propose amendments requires the following of those proposals:

- they may only be placed on the ballot at general election;

- a report of the proposal must have been delivered to the clerk of the board of county commissioners on or before the last day for qualifying for election to county office;
- a report that includes an analysis and financial impact statement of the estimated change in any revenues or costs resulting from the proposal must be prepared;
- the ballot language must contain a summary of the analysis or financial impact statement; and
- at least four public hearings prior to presenting the proposal to the public must be held.

§ 702(B)(C). Regarding a citizens petition to amend the Charter, the petition must be approved by the Supervisor of Elections and signed by a certain percentage of county electors within a specified time period. §§ 601(A), 602. When the Board proposes amending the Charter, the Charter only requires a majority vote of the board to make the proposal, and the proposal must be subject to a referendum of the general electorate, at any primary, general or special election. § 701. None of these sections require that a proposed Charter amendment comply with the single subject rule.

Additionally, Florida Statutes regarding county governance indicate that the single subject rule does not apply to an ordinance proposing amendments to a county charter. Florida Statute section 125.82 permits the board of county commissioners to propose a charter to the county's electors via an ordinance. An ordinance proposing that a county become a charter county would necessarily include many subjects, such as the powers given to the county's legislative and executive branches, among other things. The Florida Legislature could not have intended to grant the county this right, but then have it rendered ineffective by applying the single subject rule to such an ordinance. *See generally Agency for Health Care Admin. v. Estate of Johnson*, 743 So. 2d 83, 86-87 (Fla. 3d DCA 1999) (courts have duty to construe statutes to give "a field of operation to all rather than

construe one statute as being meaningless [C]ourts must attempt to harmonize and reconcile two different statutes to preserve the force and effect of each.”).

An “ordinance” contemplated under section 125.67 is akin to a law enacted by the Legislature, and neither require voter approval. Section 125.67 is identical to Article III, section 6 of the Florida Constitution, except “ordinance” replaced “law.” An “ordinance” contemplated under section 125.82 is akin to a joint resolution from the Legislature proposing an amendment to the Florida Constitution, and both require voter approval. The single subject rule does not apply to the Legislature’s joint resolutions. *Scott*, 647 So. 2d at 837. Therefore, the single subject rule is inapplicable in this case because an ordinance proposing an amendment to a county charter is akin to an ordinance under section 125.82 and a joint resolution proposing a constitutional amendment.

If the County wanted to impose a single subject rule upon proposed amendments to the Charter, it would have done so expressly, as it did with other requirements in sections 601, 602, 701, and 702. Agreeing with Plaintiffs that the language regarding enacting ordinances in accordance with general law requires a single subject would impose an additional requirement on proposed charter amendments not expressed in the sections regarding proposing charter amendments. This would be contrary to the statutory construction principle that specific provisions govern over general provisions. *See Murray v. Mariner Health*, 994 So. 2d 1051, 1061 (Fla. 2008) (“where two statutory provisions are in conflict, the specific provision controls the general provision.”), *superseded by statute on different grounds as stated in Castellanos v. Next Door Co.*, 41 Fla. L. Weekly S197 (Fla. Apr. 28, 2016). That same principle requires that Florida Statute section 125.82 control over section 125.67.

For all the foregoing reasons, even though the Board used an ordinance as the vehicle for proposing the Charter amendment, the Court finds that the single subject rule does not apply to Ordinance No. 2014-21.¹

b. Whether Ordinance No. 2014-21 violates the single subject rule

Even if the single subject rule does apply to Ordinance No. 2014-21, the Court finds that the Ordinance does not violate it. Plaintiffs argue that Ordinance No. 2014-21 contravenes the single subject rule because it encompasses two separate subjects: term limits on county constitutional officers and nonpartisan elections for those officers. Orange County argues that there is but one subject: either amending the Orange County Charter, or amending the Orange County Charter regarding election of county constitutional officers.

Regularly-enacted ordinances are presumed valid. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Invs., LLC*, 64 So. 3d 716, 719 (Fla. 3d DCA 2011). They “are presumed to be constitutional, and all reasonable doubts regarding the . . . ordinance must be resolved in favor of constitutionality.” *State v. Hanna*, 901 So. 2d 201, 204 (Fla. 5th DCA 2005).

Franklin v. State, 887 So. 2d 1063 (Fla. 2004), sets forth the framework for considering a constitutional challenge to a statute based on an alleged violation of the single subject rule. Although *Franklin* was concerned with the single subject rule found in Article III, section 6 of the Florida

¹ Pursuant to sections 207, 210, and 701 of the Charter, the Board could have used a resolution, rather than an ordinance, to propose the amendment to the Charter. There is no contention that a resolution would have provided more due process than an ordinance. To the contrary, it appears that using an ordinance to propose the Charter amendment provided more notice and opportunities to be heard than a resolution would have provided. If the proposed amendment had been promulgated by the Board as a resolution, then there would have been no argument regarding the single subject rule. Applying the single subject rule to invalidate an action of the Board because it was designated as an “ordinance” rather than a “resolution” would exalt form over substance. See *Plantation Residents’ Ass’n v. Sch. Bd. of Broward Cnty.*, 424 So. 2d 879, 881 (Fla. 1st DCA 1982) (refusing to impose on hearing officers a standard of reversal of a school board decision that “would exalt form over substance.”)

Constitution, the constitutional language is identical to the statutory language, with the statute simply substituting the word “ordinance” for “law.” § 125.67, Fla. Stat. (2014); Art. III, § 6, Fla. Const.²

The single subject rule requires three things: “First, each law shall ‘embrace’ only ‘one subject.’ Second, the law may include any matter that is ‘properly connected’ with the subject. The third requirement, related to the first, is that the subject shall be ‘briefly expressed in the title.’” *Franklin v. State*, 887 So. 2d at 1072 (quoting Art. III, § 6). The single subject rule also has three purposes: preventing two unrelated matters from being in one act, also known as logrolling legislation; preventing unintentional adoption of laws, either by surprise or fraud, due to the titles not providing clues as to what the laws encompass; and three, giving citizens notice and an opportunity to be heard regarding the proposed laws’ subjects. *Id.*

In reviewing laws under the single subject rule, “the standard of review is highly deferential.” *Id.* at 1073. Courts construe the rule liberally, instead of imposing a strict construction that is unnecessary to accomplish the law’s purpose. *Id.* Constitutionality is presumed, and a violation must exist beyond a reasonable doubt. *Id.*

i. Single subject and title

The first inquiry in the analysis of whether a law violates the single subject rule is determining the law’s single subject. *Id.* at 1074. The court first looks to the law’s title. *Id.* Because the rule states that the single subject “shall be briefly expressed in the title,” the court considers the law’s short title. *Id.* at 1075. The *Franklin* court described the short title as “the language immediately following the customary phrase ‘an act relating to’ and preceding the indexing of the act’s provisions.” *Id.* Even though the subject can be found in the short title, “the title of an act may be general,” provided that the generality is not used to hide incongruent legislation. *Id.* at 1076. “[I]f the

² Article III, section 6, states, “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

Legislature's short title is suspect for being overly broad, a court should look to the remainder of the act and the history of the legislative process to determine if the act actually contains a single subject or violates the constitution by encompassing more than one subject." *Id.* at 1076-77.

Applying *Franklin*, the Court first reviews the title of Ordinance No. 2014-21:

AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.

(Am. Compl. Ex. 1.) Under *Franklin*, looking to "the language immediately following the customary phrase 'an act relating to' and preceding the indexing of the act's provisions[.]" to determine the short title, the Ordinance's short title and subject is "an amendment to the Orange County Charter." *Franklin v. State*, 887 So. 2d at 1075.

Because this subject is so broad, under *Franklin*, the Court looks "beyond the short title to determine whether the act encompassed a single subject that was briefly stated in the title." *Id.* at 1076. Specifically, the court looks to "the remainder of the act and the history of the legislative process" *Id.* at 1076-77.

In considering the remainder of the Ordinance, the entire Ordinance relates to county constitutional officers. Regarding the legislative process, Plaintiffs point out that when the commissioners first considered term limits and nonpartisan elections, several considered them as two different ideas, even putting them forth as two separate ordinances. Eventually, however, a majority of the commissioners changed their minds and put both the term limits and nonpartisan elections provisions into Ordinance No. 2014-21.

Orange County suggests two different subjects for the Ordinance, either that it is an amendment to the Orange County Charter, which, as discussed above, is too broad, or that it is “an amendment to the Orange County Charter dealing with the election of constitutional officers.” (Cross Mot. Summ. J. 17.) As all of the provisions in the Ordinance do relate to the election of constitutional officers, this is the subject of the Ordinance.³ Plaintiffs point out that “an amendment to the Orange County Charter dealing with the election of constitutional officers” is not in the title of the Ordinance. (Pls.’ Reply 14.)

Although the Ordinance’s title does not use this exact phrasing, the long title does state the following regarding the Ordinance:

- it is a proposed amendment to the Charter;
- the amendment provides term limits and nonpartisan elections for county constitutional officers;
- these changes do not affect the officers’ constitutional status;
- it provides the ballot title and summary for the referendum;
- it conditions the Charter amendment’s effectiveness on voter approval; and
- it provides for other related matters, severability, and effective dates.

³ The purpose of a statute is different from the subject of the statute. *See Franklin v. State*, 887 So. 2d at 1078, *quoting Gibson v. State*, 16 Fla. 291, 299 (1877) (“The single subject clause contained in article III, section 6 ‘refers to the subject-matter of the legislation, and not to a single purpose or end sought to be accomplished.’”).

Under *Franklin*, the court gives substantial deference to the legislature's title choice, and "length alone will not invalidate an act under the single subject clause." *Franklin v. State*, 887 So. 2d at 1074. Although the legislature is not required to index the act's provisions in the title, doing so "does tend to further one of the purposes of the single subject provision—notice to the public and the Legislature." *Id.* at 1076. The full title must be worded so that a person of average intelligence will not be misled regarding the scope of the act, will be provided with sufficient notice, and will cause the person to review the act itself. *Id.*

The requirement in section 125.67 is that the single subject be briefly expressed in the title. Although the exact phrasing, "an amendment to the Orange County Charter dealing with the election of constitutional officers" is not in the Ordinance's title, the title does list the provisions it contains, which mostly pertain to the election of constitutional officers. The title fulfills the purpose of the single subject rule, as it tells the voters that they are deciding whether to impose term limits on the county constitutional officers and whether the elections for those officers should be nonpartisan. Keeping this purpose in mind, Plaintiffs cannot demonstrate beyond a reasonable doubt that the title of the Ordinance does not contain a brief expression of its single subject of amending the Charter regarding the election of county constitutional officers. Due to this, and the large amount of deference given to the legislature regarding its choice of titles, the Court finds that the title does contain a brief expression of the Ordinance's single subject.

ii. Proper connection to single subject

Now that the Ordinance's single subject of "an amendment to the Orange County Charter dealing with the election of constitutional officers" has been determined, *Franklin* states that the next step is considering whether all the provisions are properly connected to that single subject. *Franklin v. State*, 887 So. 2d at 1077.

A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2)

if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.

Id. at 1078.

Applying *Franklin* to the case at bar, the Ordinance's single subject is amending the Charter regarding the election of constitutional officers, and the connection between that subject and term limits for those officers and nonpartisan elections is natural or logical.

Plaintiffs argue that imposing term limits does not deal with elections of constitutional officers. Instead, Plaintiffs contend that the "two subjects are only tangentially related in that they both have something broadly to do with elected county constitutional officers." (Pls.' Mot. Summ. J. 34.) Plaintiffs state that the term limits provisions preclude an incumbent who serves four consecutive four year terms from seeking a fifth consecutive term, and the nonpartisan provisions eliminate the existing cycle in which constitutional officers are elected and establishes a new process for candidates running for the position of county constitutional officer. The Court finds that both issues are properly connected to the election of constitutional officers, however, because both have a natural or logical connection to the election of those officers. The nonpartisan provisions are logically connected to the election of the constitutional officers as it deals with the election itself, and the term limits provisions have a natural or logical connection to the election because it determines whether a candidate is qualified to be elected.

In *Franklin*, the single subject of the act at issue was sentencing. *Franklin v. State*, 887 So. 2d at 1080. The Supreme Court of Florida held that the act did not violate the single subject rule, even though it contained a provision changing the definition of armed burglary to include a railroad vehicle. *Id.* at 1081-82. The provision had a natural or logical connection to sentencing because its effect was to impose a harsher sentence on one that commits a crime against a person inside a railroad vehicle. *Id.* Although the connection between term limits and elections may seem

attenuated, there appears to be more of a connection between term limits and elections than there is between adding “railroad vehicles” to the definition of armed burglary and sentencing.

Additionally, returning to the standard of review, violations of the single subject rule must be demonstrated beyond a reasonable doubt. It is not beyond a reasonable doubt that term limits for constitutional officers are not logically or naturally connected to the elections of those officers.

Plaintiffs also argue that the Ordinance constitutes impermissible logrolling of legislation, which would demonstrate that there is not a proper connection between term limits and the election of constitutional officers.

Logrolling occurs when a piece of legislation has unrelated provisions in an attempt to get an unpopular provision passed along with the popular provision. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm’n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006). As noted above, preventing logrolling is one of the purposes of the single-subject rule. *Franklin v. State*, 887 So. 2d at 1072. The courts also use the “logically or naturally connected” factor in considering whether the legislation constitutes logrolling. *Advisory Op. to Attorney Gen.*, 926 So. 2d at 1226 (quoting *Advisory Op. to Attorney Gen. Re: Fla.’s Amendment to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002)). A proposed amendment meets this test when it “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.” *Id.* at 1225 (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

In the advisory opinion regarding a constitutional amendment to apportion legislative and congressional districts, the proposed amendment violated the single subject rule because it contained new standards for apportioning the districts, along with creating a redistricting commission. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm’n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d at 1226. Voters that only agreed with one provision had to

vote for both to see the one provision they supported be enacted. *Id.* “Thus, a voter would be forced to vote in the ‘all or nothing’ fashion that the single subject requirement safeguards against.” *Id.* The same conclusion was reached in *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). The proposed constitutional amendment in that case contained many different classifications that would be protected from discrimination, and the court held that putting all of them into one amendment violates the purpose of the single subject rule because it would “[r]equir[e] voters to choose which classifications they feel most strongly about, and then requir[e] them to cast an all or nothing vote on the classifications listed in the amendment” *Id.* See also *Advisory Op. to the Attorney Gen. Re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (proposed amendment violated single subject rule and was logrolling legislation because it “forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an ‘all or nothing’ manner.”).

Plaintiffs argue that Ordinance No. 2014-21 constitutes improper logrolling because it forces voters into an all-or-nothing position. During the first hearings on the term limits and nonpartisan provisions, several County Commissioners stated that some voters could favor term limits, but not nonpartisan elections, and vice versa. Orange County argues that there is no logrolling because the dominant plan or scheme of the ordinance was to give voters a referendum dealing with a proposed charter amendment changing election criteria for constitutional officers, and each part of the Ordinance has a natural connection to the objective of putting that question to the voters.

The cases discussed above are distinguishable in that they involve citizen petitions to amend the Florida Constitution. The standard of review for violations of the single subject rule in such cases is stricter than in cases involving review of statutes passed by the legislature. *Franklin v. State*, 887 So. 2d at 1077. “The use of the phrase ‘properly connected’ in article III, section 6 is broader than the phrase ‘directly connected’ required by article XI, section 3 of the Florida Constitution,

which authorizes changes in our constitution by citizen initiative petition.” *Id.* It is more appropriate to take a broader view of statutes proceeding through the legislative process because those will go through debate and public hearing. *Id.* Constitutional amendments proposed via citizen petition do not go through this process. *Id.* The court demands strict compliance with the single subject rule in reviewing citizen petitions to amend the constitution because, most importantly, the constitution “‘is the basic document that controls our governmental functions, including the adoption of any laws by the legislature.’” *Id.* (quoting *Fine v. Firestone*, 448 So. 2d 984, 988-89 (Fla. 1984)).

The amendment to the Orange County Charter embodied in Ordinance No. 2014-21 was proposed by the Board of County Commissioners after debate and public hearings. Therefore strict compliance with the single subject rule as noted in the *Advisory Opinions* cases does not apply here. Instead, the standard of review enunciated in *Franklin* is more appropriate, as that case also involved laws coming from a legislative body, just as here, the proposed amendment comes from Orange County’s legislative body—the Board of County Commissioners.

Both the term limits and nonpartisan provisions have a natural or logical connection to the Ordinance’s subject. Also, Plaintiffs did not cite, and the Court did not find, a case invalidating a law under the single subject rule that put voters in an all-or-nothing position that was not a citizens’ petition case. Because the cases that do support Plaintiffs’ position involve a strict application of the single subject rule, and in this circumstance the rule should be applied broadly, Plaintiffs do not demonstrate beyond a reasonable doubt that Ordinance No. 2014-21 constitutes logrolling and violates the single subject rule.

Under *Franklin*, there are two ways to satisfy the proper connection test of the single subject rule: (1) there is a natural or logical connection to that single subject, discussed above, “or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.” *Franklin v.*

State, 887 So. 2d at 1078. When determining (2), “the court may consider the citation name, the full title, the preamble, and the provisions in the body of the act.” *Franklin v. State*, 887 So. 2d at 1072. Because there is an “or” separating the two factors, even if the Ordinance fails the natural or logical connection prong, the provision still could have a proper connection to the single subject if there is a reasonable explanation for how it is necessary to the subject or if there is a reasonable explanation for how the provision tends to make effective or promote the purposes included in the subject. The nonpartisan elections provisions are connected to the single subject of amending the Charter regarding the election of county constitutional officers, as they specifically deal with those elections. Thus, the Court must consider whether the term limits provisions are also connected to that single subject.

First, there appears to be a reasonable explanation for how term limits are necessary to amending the Charter regarding the election of county constitutional officers. Term limits determine who qualifies to be a county constitutional officer, and determining whether one qualifies for the office is necessary to the election of the person for that office.

Second, there seems to be a reasonable explanation for how the term limits provisions tend to make effective or promote the objects and purposes of the proposed amendment regarding the election of constitutional officers. As discussed in Part C.1., *supra*, one purpose of the Ordinance was to create term limits. The term limits provisions do this. Therefore, Ordinance No. 2014-21 does satisfy the single subject rule because there is a reasonable explanation of how the provisions are necessary to the Ordinance’s subject or tend to make effective or promote the objects and purposes of the subject.

Therefore, even if the single subject rule did apply, Plaintiffs did not establish beyond a reasonable doubt that Ordinance No. 2014-21 violates it. Plaintiffs’ motion for summary judgment on Count II is denied, and Orange County’s motion for summary judgment on Count II is granted.

3. Count III Independent Status

In Count III of the Amended Complaint, Plaintiffs allege that Ordinance No. 2014-21 is inherently conflicting because it states that the constitutional officers will be governed by the Charter, instead of the Florida Constitution, but then states that establishing term limits and nonpartisan elections does not imply any Board authority over the constitutional officers. Plaintiffs contend that the Ordinance interferes with the constitutional officers' independence by changing the elections to nonpartisan ones, which alters the timing and method for selecting them, and imposing term limits. They also argue that the ordinance is ambiguous, which undermines its validity, because it contains the sentence stating that it does not imply Board authority over the constitutional officers, which prevents the ordinance from specifically and permissibly stating that it is governing the method by which the officers are selected. Plaintiffs assert that the Florida Constitution limits the areas in which the Charter may govern county officers, and this makes it clear that the Florida Constitution and Statutes govern constitutional officers, not an alternative provision in the Charter. They argue that Florida's Election Code preempts all matters to the state.

Orange County asserts that Plaintiffs did not plead preemption or conflict with Florida law. Orange County relies on *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561 (Fla. 1988). In that case, the plaintiff was permitted to proceed on an unpled claim that was disclosed to the defendant twelve days before trial. *Id.* at 562. The court held that the plaintiff was precluded from recovering on that unpled claim. *Id.*

Here, the Amended Complaint alleges that the Ordinance alters the timing and method for selecting constitutional officers and that the Florida Constitution limits the areas in which the Charter may govern county officers. Thus, Plaintiffs did sufficiently plead that the Ordinance conflicts with the Florida Constitution regarding the timing and method of electing county constitutional officers. Additionally, Plaintiffs' arguments are fully set forth in their motion for

summary judgment, and Orange County replied to those arguments in its response to the motion and its own motion for summary judgment. These documents were filed more than four months before the April hearing on the summary judgment motions. Therefore, Orange County had sufficient notice of Plaintiffs' arguments and adequate time to respond to them (and did respond to them). The Court rejects Orange County's arguments that the preemption and conflict contentions were not plead.

a. Term limits and nonpartisan elections

In *Telli v. Broward County*, 94 So. 3d 504, 513 (Fla. 2012), the Supreme Court of Florida expressly receded from *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), in which it held that a charter could not impose term limits on constitutional officers. In the *Telli* case, the Supreme Court was reviewing a charter amendment imposing term limits on county commissioners. *Id.* at 505. The term limits opponents "argu[ed] that the term limits were unconstitutional under the Florida Constitution." *Id.* In holding that the term limits were constitutional, the Supreme Court receded from *Cook*, stating that it was wrongly decided. *Id.* at 513. Instead, the Supreme Court agreed with Justice Anstead's dissent in *Cook*. *Id.* at 512. Justice Anstead's dissent stated that the Florida Constitution contains broad language "'intend[ing] to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers . . .'" *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Because general law regarding elected county officers did not conflict with the charter's term limits and the broad grant of authority to charter counties, there was "no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing." *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Restrictions on home rule power must be

expressed, not implied, because “[i]nterpreting Florida’s Constitution to find implied restrictions on powers otherwise authorized is unsound in principle.” *Id.* at 513.

Telli specifically permits charter counties to impose term limits upon their constitutional officers and did not find a conflict with Florida’s constitution or statutes. *Id.* Thus, the term limits provisions in the Ordinance are valid. Additionally, *Telli* dictates that a restriction on making county constitutional officers nonpartisan must be expressly stated. Under *Telli*, restrictions on a charter county’s home rule power must be expressed, not implied. *Id.* Plaintiffs have not provided the Court with an express restriction on charter counties making their constitutional officers nonpartisan. Instead, Plaintiffs’ arguments rest on implying this restriction from various constitutional provisions, statutes, cases, Charter provisions, and advisory opinions. This is not sufficient to prohibit Orange County electors from choosing to make their county constitutional officers nonpartisan. As noted in *Telli*, under the constitution, Orange County voters can choose “any manner”⁴ to select such officers. Plaintiffs concede that the voters can make those offices appointive offices. Thus, the voters can surely take the less undemocratic step of making those offices nonpartisan elective offices, as there is no express prohibition against a charter county doing so. *See id.* at 512-13; *Cook*, 823 So. 2d at 95-96 (Anstead, J., dissenting); *see also* Art. I, § 1, Fla. Const.; Op. Att’y Gen. Fla. 00-02 (2000). Therefore, the Court finds that the first sentence of Section 1.C of the Ordinance is valid.

b. Procedure for nonpartisan elections

The constitution mandates that elections be regulated by law. *See* Art. VI, § 1, Fla. Const. The Legislature has enacted a plethora of statutes pursuant to that mandate, including provisions regarding nonpartisan elections. *See, e.g.,* §§ 97.021(21), 105.031, 105.041, 105.051, 105.10, Fla. Stat. (2014).

⁴ Florida law recognizes several manners which are used to select state and local officials, including appointment, nonpartisan election, partisan election, and merit retention.

In *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010), the Florida Supreme Court held “that the Florida Election Code does not preempt the field of elections law” *Id.* at 883. The case involved a county charter amendment regarding several elections issues, such as paper ballots and certifying election results. *Id.* at 884-85.

After *Browning*, as pointed out by Orange County in its motion for summary judgment, Florida Statute section 97.0115 was enacted. Section 97.0115 states, “All matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” Thus, the Florida Legislature overruled *Browning* by expressly preempting local election laws. Allen Winsor, *Sarasota Alliance for Fair Elections, Inc. v. Browning*, *The Implied End to Implied Preemption*, 41 Stetson L. Rev. 499, 514-15 (2012).

Orange County argues that the Florida Election Code does not expressly require constitutional officers’ elections to be nonpartisan, and thus charter counties can exercise their discretion in this area. As explained above, the Court agrees that Orange County is authorized to make the county constitutional offices nonpartisan elective offices. The Court disagrees, however, that Orange County may regulate the nonpartisan elections for such offices because those matters are preempted to the Legislature. *See Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014); *Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 314 (Fla. 2008). This renders Section 1.C, except the first sentence, of the Ordinance unconstitutional.

4. Severability

Because the Court has found certain provisions of Ordinance No. 2014-21 unconstitutional, the Court must address whether the unconstitutional provisions can be severed from the rest of the Ordinance.

“When a part of a statute is declared unconstitutional
the remainder of the act will be permitted to stand

provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.”

Ray v. Mortham, 742 So. 2d 1276, 1281 (Fla. 1999) (quoting *Smith v. Department of Ins.*, 507 So. 2d 1080, 1089 (Fla. 1987)).

The party challenging the validity of the legislation has the burden of demonstrating that it is not severable and thus subject to complete invalidation. *Ray v. Mortham*, 742 So. 2d at 1281. “When the valid sections can accomplish the legislature’s intent without the invalid portions, the statute is severable.” *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 31-32 (Fla. 1st DCA 2008).

a. Nonpartisan elections provisions

The Court has determined that only the first sentence of Section 1.C survives the Florida Election Code’s preemption. The second factor under *Ray v. Mortham* is whether the legislative purpose of making the county constitutional offices nonpartisan elective offices can be accomplished independently of the invalid provisions of Section 1.C. Florida’s Election Code does contain procedures for nonpartisan elections, but these procedures are directed towards candidates for judicial office, school boards, and multicounty offices. For example, Florida Statute section 105.031(1) sets forth the time for qualifying. It contains specific deadlines for candidates for judicial office and school board members to qualify, but it does not set forth qualifying deadlines for candidates for nonpartisan offices other than judicial and school board positions. § 105.031(1). *See also* §§ 105.041, .051.

Without the invalid provisions, there is no method to hold the nonpartisan election, as the Election Code does not provide for the nonpartisan election of county constitutional officers.

Therefore, the purpose of the valid provision cannot be accomplished without the unconstitutional provisions of Section 1.C. Because this second factor under *Ray v. Mortham* cannot be met, the invalid provisions are not severable, and Section 1.C in its entirety is invalid.⁵

b. Term limits provisions

Since all provisions regarding nonpartisan elections are invalid, the Court now turns to whether those provisions are severable from the remaining provisions. Plaintiffs concede that the first and fourth factors of the severability analysis are met. That leaves the second and third factors: whether the legislative purpose expressed in the valid provisions can be accomplished independently of the invalid provisions, and whether “the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other.” *Ray v. Mortham*, 742 So. 2d at 1281.

Plaintiffs argue that the Ordinance’s legislative purpose was to let the voters decide whether to impose term limits on the offices and whether the offices should be nonpartisan. Because the issues were intentionally combined into one ballot question, one cannot determine whether the legislative purpose is satisfied if the nonpartisan provisions are severed or whether the term limits provisions would have passed without the nonpartisan provisions.

If severance would result in a statute that is contrary to legislative intent, then severance is not permitted. *State v. Catalano*, 104 So. 3d 1069, 1080-81 (Fla. 2012) (severability would not be applied where it would expand the statute’s scope beyond what the legislature intended); *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d at 32-33 (statute could not be severed because severing provisions would make revocations permanent, and legislature intended to give board discretion regarding allowing those with revoked licenses to reapply); *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773-74 (Fla. 2005) (severance would prohibit candidates from withdrawing after a certain

⁵ This necessarily requires the Court to find that the words “non-partisan elections and” in Section 1.B are invalid.

date, which is contrary to legislative intent to allow discretion to permit withdrawal after time period; thus, statute was not severable). Here, severing the nonpartisan provisions from the term limits provisions would not result in a Charter amendment contrary to the purpose of imposing term limits upon county constitutional officers. Thus, the second factor weighs in favor of severability.

The third factor is whether “the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other.” *Ray v. Mortham*, 742 So. 2d at 1281. Orange County argues that “the party challenging severability may not invoke the single subject rule to argue that a particular piece of legislation is not severable, because severability would necessarily require a violation of the single subject rule.” (Orange Cnty. Br. 8-9.) Orange County relies on *Ray v. Mortham*, where the appellants argued that because the amendment did not violate the single subject rule, it was not subject to severability. *Ray v. Mortham*, 742 So. 2d at 1282. The court rejected that argument, as satisfying the single subject rule does not mean the provisions are so dependent on each other that the statute’s purpose cannot be accomplished without all of the provisions. *Id.*

Plaintiffs carry the burden to demonstrate that the nonpartisan provisions are not severable. To support their argument against severability, they rely on comments made by county commissioners at prior hearings that some voters could support term limits but not support nonpartisan elections, and vice versa. The Court finds that the county commissioners’ opinions expressed before they voted to put the term limits provisions and nonpartisan elections provisions into one ordinance are not sufficient for Plaintiffs to meet their burden regarding severability. Thus, Plaintiffs fail to demonstrate that the third factor precludes severability.

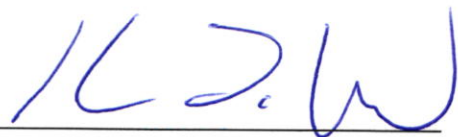
The term limits provisions are not preempted by the Election Code and those provisions can be implemented independent of the invalid provisions of the Ordinance. Orange County voters knew that the Ordinance’s provisions were subject to severability, as its title specifically states that it

provides for severability. Severing the nonpartisan provisions from the term limits provisions would not be contrary to legislative intent, and the term limits provisions can accomplish one of the Ordinance's goals. Additionally, the Orange County Charter, Article I, Section 110, provides for severability of any subsection of the Charter held to be invalid. Thus, the Court finds that the nonpartisan provisions are severable from the term limits provisions. *See Ray*, 742 So. 2d at 1283; *Vill. of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 600-01 (Fla. 4th DCA 2006).

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Orange County's Motion for Summary Judgment as to Count I and Count II is **GRANTED** and Plaintiffs' Motion for Summary Judgment as to Count I and Count II is **DENIED**.
2. The parties' Motions for Summary Judgment as to Count III are **GRANTED IN PART** and **DENIED IN PART**. Section 1.C. and the words "non-partisan elections and" in Section 1.B are **INVALID** and are **SEVERED** from Ordinance No. 2014-21. The other challenged provisions of that Ordinance are **VALID**.
3. The parties shall submit a proposed final judgment consistent with this Order.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 16 day of June, 2016.



KEITH F. WHITE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Eric D. Dunlap, Esq.**, Orange County Sheriff's Office, Legal Services Section, 2500 W. Colonial Drive, Orlando, FL 32804, Eric.Dunlap@ocfl.net; **Michael E. Marder, Esq.**, Greenspoon Marder PA, 201 E. Pine Street, Suite 500, Orlando, FL 32801, Michael.Marder@gmlaw.com; **Mark Herron, Esq.**, and **Gigi Rollini, Esq.**, Messer Caparello, P.A., 2618 Centennial Place, Tallahassee, FL 32308, mherron@lawfla.com, grollini@lawfla.com; **Scott Randolph, Esq.**, 701 Delaney Park Drive, Orlando, FL 32806-1321, randolphscott007@gmail.com; **William C. Turner, Jr., Assistant County Attorney**, and **Edward Chew, Assistant County Attorney**, Orange County Attorney's Office, 201 S. Rosalind Avenue, Third Floor, Orlando, FL 32801, WilliamChip.Turner@ocfl.net, edward.chew@ocfl.net; **Nick Shannin, Esq.**, 119 W. Kaley Street, Orlando, FL 32806, nshannin@ocfelections.com; on this 16 day of June, 2016.


Judicial Assistant

ATTACHMENT B

Orange County 2016 Charter Review
Commission Final Report

ORANGE COUNTY

2016 CHARTER REVIEW COMMISSION

FINAL REPORT

THE FINAL REPORT OF THE ORANGE COUNTY 2016 CHARTER REVIEW COMMISSION PROPOSING TO AMEND THE ORANGE COUNTY CHARTER TO: REFORM THE CHARTER'S INITIATIVE PETITION PROCESS; CHANGE COUNTY CONSTITUTIONAL OFFICERS TO CHARTER OFFICERS AND PROVIDE FOR NONPARTISAN ELECTIONS AND TERM LIMITS; AND PRESERVE TERM LIMITS AND NONPARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL AND CHARTER OFFICERS.

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SECTION I

INTRODUCTION

This is the final report of the Orange County 2016 Charter Review Commission (“2016 CRC” or “CRC”). The 2016 CRC is an independent commission of 15 Orange County citizens empowered to conduct a comprehensive study of all aspects of Orange County’s government. The CRC is authorized to place proposed amendments and revisions to the Orange County Charter (“Charter”) on the 2016 general election ballot. Such proposed amendments do not require approval from the Board of County Commissioners.

The 2016 CRC conducted a comprehensive review of the Charter, and has chosen to place 3 prospective Charter amendments on the ballot for consideration by Orange County voters. The 2016 CRC reached this decision after holding numerous public hearings and after receiving testimony from county officials, staff, constitutional officers, representatives of community organizations, members of the public and other interested parties.

This report contains a summary of the approach followed and actions taken by the 2016 CRC, a discussion of the various potential Charter amendment concepts that were presented to the CRC, a discussion of the CRC’s evaluation and decision regarding the various Charter amendment concepts, the text of the 3 proposed Charter amendments, as well as descriptions of proposals that are not being placed on the ballot.

SECTION II

SUMMARY OF CRC ACTIONS

February 12, 2015 Business Meeting: The 2016 CRC convened, pursuant to Resolution of the Board of County Commissioners No. 2015-M-02, which formally created the 2016 CRC on January 25, 2015. None of the appointed members were elected officials. Mayor Teresa Jacobs welcomed the members and thanked them for their commitment in serving on the commission. The 2016 CRC elected Commissioner Kevin Shaughnessy as its Chair, and as its Vice Chair, Commissioner Eddie Fernandez. Comptroller Martha Haynie outlined the administrative functions regarding CRC budget, staffing and office space, explanation of minutes of full Commission meetings, and information about historical records of the Charter Review Commission. Assistant County Attorney Kate Latorre presented an overview of the Florida Sunshine Law and Code of Ethics as they apply to the CRC and its members. Chair Shaughnessy then presented an overview of legal counsel selection. A CRC general counsel work group was formed. Ms. Foglesong presented information regarding the hiring process of the Administrative Assistant position. An Administrative Assistant Work Group was formed.

March 12, 2015 Business Meeting: Chair Shaughnessy presented an update on the progress made to date to hire a staff person for the CRC; the work group will conduct interviews and hire the assistant prior to the April meeting. Chair Shaughnessy discussed inviting public elected officials to speak. A schedule for future CRC meetings and public hearings was reviewed and approved. The CRC chose the Vose Law Firm as the 2016 CRC General Counsel. (A contract was signed on April 6, 2015.)

April 9, 2015 Business Meeting: Chair Shaughnessy introduced CRC General Counsel Wade Vose and announced that Anissa Mercado had been selected as the 2016 CRC Administrative Assistant. Chair Shaughnessy requested a presentation regarding the Tax Collector's Office Feasibility Task Force. Three (3) work groups were appointed to consider various proposals: CRC Issues, Initiative Petitions and Constitutional Officer/Charter Officers. Invited speakers included: Town of Windermere Mayor Gary Bruhn and Orange County Tax Collector Scott Randolph.

May 14, 2015 Public Hearing: This meeting was the first of six (6) public hearings. Several work groups presented reports on their activities to date. General Counsel Vose presented the Florida Association of Counties Chart of Florida's 20 County Charters and provided information on the single-subject rule applicable to County Charters. A work group was appointed to consider Expansion of the Number of County Commission Districts. Invited speakers included: Commissioner Pete Clarke and Comptroller Martha Haynie.

June 9, 2015 Public Hearing: This meeting was the second of six (6) public hearings. Several work groups presented reports on their activities to date. Chair Shaughnessy explained that, when bringing a recommendation to the full CRC, work groups should consider economic impact, all affected Charter sections, and the rationale behind the proposal. He directed that all materials be provided one week in advance of the meeting. Invited speakers included: Supervisor of Elections Bill Cowles, Clerk of Court Tiffany Moore Russell, Commissioner Victoria Siplin, and Paul Rosenthal, member of the 2012 Tax Collector's Feasibility Task Force.

July 9, 2015 Business Meeting: Several work groups presented reports on their activities to date. Two (2) work groups were appointed: Sales Tax for Infrastructure and Tourist Development Tax Procedures/Priorities.

August 13, 2015 Public Hearing: This meeting was the third of six (6) public hearings. Several work groups presented reports on their activities to date. The CRC voted to allow CRC members to appear at work group meetings by phone, but determined that the work group member is allowed to listen only and not to participate in the meeting. The CRC adopted Robert Rules of Order for procedures at meetings of the full CRC and work groups. It also agreed that, when there are 6 members of a work group or an even number of members present, 50 percent would constitute a quorum. Chair Shaughnessy discussed public comment concerns relative to land use issue controls under the Charter and annexation issues in preservation districts. The invited speaker was Commissioner Jennifer Thompson.

September 10, 2015 Public Hearing: This meeting was the fourth of 6 public hearings. Several work groups presented reports on their activities to date. General Counsel Vose presented his research on whether the County Charter can be used to effect Comprehensive Plan regulations or make changes to that process. He indicated that a County Charter can impose stricter Comprehensive Plan approval limitations. Based upon the request of Supervisor of Elections Bill Cowles that the Charter be amended to align with revised Florida election law, the CRC voted to place on the ballot an amendment to Section 605 of the County Charter as follows: "In the event that more than 2 candidates, including write-in candidates, have qualified for any single office under the chartered government, an election shall be held at the time of the primary election and, providing no candidate receives a majority of the votes, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election." Invited speakers included: County Mayor Teresa Jacobs and Commissioner S. Scott Boyd.

October 8, 2015 Business Meeting: Several CRC work groups presented reports on their activities to date. The invited speaker was Sheriff Jerry Demings.

November 12, 2015 Public Hearing: This meeting was the fifth of 6 public hearings. Chair Shaughnessy announced that Charter Review Commissioner Gail Cosby resigned from the CRC due to work constraints. Several work groups presented reports on their activities to date. The CRC voted against accepting the recommendation of the Expansion of County Commission Work Group to amend Sections 202, 203 and 204 of the Orange County Charter to add two (2) single member commission districts. The CRC voted against a request for the Expansion of the County Commission Work Group to remain in existence to address some of the concerns raised by the public and the members of the CRC and voted against the work group bringing back a motion on the expansion of county commission districts that might be acceptable to the full CRC. The CRC established a work group to study the rural service boundary and other issues brought by the Lake Pickett Group. The invited speaker was Commissioner Ted Edwards.

December 10, 2015 Public Hearing: This meeting was the sixth of 6 public hearings. Several work groups presented reports on their activities to date. Chair Shaughnessy welcomed new member Sandra D. St. Amand, replacing Gail Cosby. The invited speaker was Commissioner Bryan Nelson.

January 14, 2016 Business Meeting: Several work groups presented reports on their activities to date. No actions were taken by the CRC.

February 11, 2016 Business Meeting: Several work groups presented reports on their activities to date. The CRC voted to accept the final report and recommendations of the Initiative Petitions Work Group and place those recommendations on the November 2016 ballot.

February 23, 2016 Business Meeting: Several work groups presented reports on their activities to date. The CRC voted to accept the final report and recommendations of the Tourist Development Tax Procedure/Priority Work Group and place those recommendations on the November 2016 ballot.

March 31, 2016 Business Meeting: The Ballot Summary and Initiative Petitions Work Groups presented reports on their activities to date. The CRC voted to accept the final report and recommendation of the Protection of the Rural Boundary Work Group to make no Charter changes. The CRC deferred action for one month on the Constitutional/Charter Officers Work Group final report and recommendations until a ruling is made on the pending lawsuit, *Demings v Orange County* 2014-CA-01858-O, which challenges a 2014 charter amendment imposing term limits and nonpartisan elections on County Constitutional Officers.

April 28, 2016 Business Meeting: The Ballot Summary Work Group presented a report on activities to date. Member Jose Fernandez presented an alternate proposal on expanding the number of commission districts. The CRC voted against his request to rescind its earlier actions not to expand the number of commission districts. In follow up to the CRC's request at its last regular meeting, General Counsel Vose summarized his April 19, 2016, memorandum regarding the pending litigation in *Demings v Orange County*, 2014-CA-010858-O (Fla. 9th Cir. Ct 2014). General Counsel provided the CRC with potential actions the CRC could take to preserve the substance of the 2014 Charter Amendment providing for nonpartisan elections and term limits for county officers. The CRC directed the Constitutional/Charter Officer Work Group to reconvene to discuss any updates in the pending litigation.

May 26, 2016 Business Meeting: The Ballot Summary Work Group presented a report on activities to date. Chair Shaughnessy referred to the expansion of the County Commission proposal considered during the meeting of April 28th; in particular, the motion to rescind the CRC's prior action concerning the expansion of the County Commission along with consideration of an alternative proposal, indicating the opportunity for public comment did not take place. Therefore, Member Jose Fernandez reiterated his proposal to the CRC prior to taking public comment. The CRC voted against his request to rescind its earlier actions not to expand the number of commission districts. The CRC reviewed the first draft of the CRC Final Report and made additional suggested changes. A work group was appointed to consider public outreach opportunities. Chair Shaughnessy stated that discussion regarding rescinding the proposed Tourist Development Tax Amendment would be placed on the Agenda for the June 9th CRC meeting.

June 9, 2016 Business Meeting: The CRC voted to place on the ballot a charter amendment making the offices of the Clerk of Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector into elected charter officers. The CRC directed General Counsel Vose and the Ballot Summary Work Group to reconvene to further discuss drafting language that will preserve any charter provisions specifying nonpartisan elections or term limits. Chair Shaughnessy noted there are many speaking opportunities in regards to outreach once the CRC has completed the final report. The CRC voted against rescinding their prior action to place the Tourist Development Tax amendment on the November 2016 ballot. The CRC reviewed the second draft of the CRC Final Report and made additional suggested changes.

June 21, 2016 Business Meeting: The Ballot Summary Work Group presented a report on activities to date. The CRC voted to place on the ballot a charter amendment preserving any charter provisions specifying nonpartisan elections or term limits. The CRC voted to rescind its prior action to place the Tourist Development Tax amendment on the November 2016 ballot. The CRC voted against a revised Tourist Development Tax amendment. The CRC accepted the CRC Final Report with changes reflecting actions taken by the CRC.

Proposed Charter Changes: Throughout the term of its work, the 2016 CRC compiled a list of all proposed Charter amendment ideas or concepts, regardless of their source, for discussion and evaluation. The sections of the Charter potentially affected by the various suggestions for change were identified. Various committees were established to consider the proposed changes. All parties were urged to put their suggestions/ideas in writing. CRC Administrative Assistant Mercado kept a running tally of all ideas and concepts.

Public Hearings: Following the practice of prior CRCs, public hearings were held at locations throughout Orange County, with one in each Commission District. Public hearings were scheduled to give citizens an opportunity to address the CRC with their concerns in their “backyards.” Opportunities for public comment were also offered at all CRC meetings. Section 702 of the Charter requires that no less than four (4) public hearings be held prior to placing proposed Charter revisions and amendments on the ballot. The public hearings in the 6 Commission Districts fulfilled this requirement. Attached as Appendix A is a table of the 2016 CRC Meetings and Public Hearings held during this CRC cycle.

From February 12, 2015, through June 21, 2016, the 2016 CRC held a total of 84 meetings, including 13 regular monthly business/full CRC meetings, 65 work group meetings, and 6 designated and advertised public hearings.

SECTION III

PROPOSED CHARTER AMENDMENT CONCEPTS

The 2016 CRC heard from elected officials and members of the public who recommended or suggested a variety of charter amendment concepts. Concepts were assigned to interested CRC members for further research and evaluation. This section of the Final Report contains a summary of each of those proposals along with the final action taken on each measure by the 2016 CRC.

A. Article II – Legislative Branch: Board of County Commissioners Proposals

1. Sec. 202 – Commission Districts Expansion of County Commission Districts

Proposal Summary: A proposal reviewed by the 2016 CRC was to expand the number of County Commissioner Districts from six (6) to eight (8) to accommodate increases in Orange County's population. The work group agreed to research the issue and reviewed multiple alternatives. The work group's recommendation was to increase the Orange County Commission from seven (7) members to nine (9) members, with eight (8) Commissioners elected in single-member districts, plus a Mayor elected countywide, with the seats to be implemented for the 2018 election.

Final Action – Rejected

The CRC voted against the work group recommendation to place a question on the ballot to increase the number of county commission districts.

2. Sec. 202 – Commission Districts Expansion of County Commission Districts

Proposal Summary: Commissioner J. Fernandez proposed in April and May 2016 to expand the number of County Commissioner Districts from six (6) to eight (8) to accommodate increases in Orange County's population. His recommendation was to increase the Orange County Commission from seven (7) members to nine (9) members, with eight (8) Commissioners (increased from six) elected in single-member districts, plus a Mayor elected countywide. Specifically, he proposed that the two (2) additional single-member districts be drawn by the 2021 Redistricting Advisory Committee. The Orange County Board of County Commissioners would then approve a redistricting plan for all eight (8) single member districts by December 2021. The new commissioners

would be elected in the County's 2022 election cycle with one (1) of the two (2) commissioners elected to an initial two-year term to stagger the new commission seat elections.

Final Action – Not Considered

The CRC voted against Member J. Fernandez's request to rescind the CRC's prior action concerning expansion of county commission districts and consideration of his alternative proposal.

**3. Sec. 207 – Powers and Duties
Protection of the Rural Boundary and Urban Focus Amendment**

Proposal Summary: A member of the public proposed that the Charter be amended to impose stricter Comprehensive Plan approval requirements. Based upon its study, the work group recommended no changes to Sec. 207.

Final Action – Accepted

The CRC voted in favor of the work group recommendation to take no further action on the proposed amendment. The CRC agreed to transmit a recommendation to the Mayor that she explore designating a staff member to serve as a Coordinator for Pine Hills, empowered to directly coordinate with County Department Heads on behalf of Pine Hills.

**4. Sec. 209 – Meetings
Meetings of the Board; the Right to Be Heard and the Right to Public Input; Reservation of Citizen Rights**

Proposal Summary: Two (2) members of the public proposed that the Charter be amended to impose a requirement for a specified number of evening Board of County Commission (BCC) meetings and to protect citizens' rights by amending the Charter to impose a requirement for a County Public Advocate. County Administrator and County staff presented to the CRC Issues Work Group regarding the processes and avenues currently in place for members of the public to provide input to the BCC and receive information regarding BCC actions.

Final Action – None Taken

No CRC member sponsored this issue. Therefore no changes to this section of the Charter were drafted or considered.

B. Article VI – Initiative, Referendum and Recall Proposals

5. Sec. 601 – Initiative and Referendum / Sec. 602 – Procedure for Initiative and Referendum / Sec. 603 – Limitation

Proposal Summary: The Initiative Petitions Work Group recommended reforming the charter initiative process. The reforms included: providing a single subject requirement; legal review; Comptroller-prepared financial impact statement; public hearing requirements; equal percentages of signatures from all commission districts; disclosure of gatherer's paid/volunteer status; requiring gatherer's affidavit and badge; adding a signature withdrawal process; deadlines and other procedural reforms; and protecting successful amendments for one year.

Final Action – Approved

The CRC voted to accept the work group recommendation to place on the ballot changes to Sections 601 and 602 of the Orange County Charter (and a corresponding change to Section 603 of the Charter) relating to initiative petitions, the adoption by the County Commission of an ordinance to carry out the intent of the recommended changes, and a codification of existing laws and procedures.

6. Sec. 605 – Nonpartisan Elections

Proposal Summary: Supervisor of Elections Cowles recommended that the Charter be amended to align with current County practice that if there are two (2) candidates for a Charter office, including write-in candidates, an election be held at the time of the primary election, and, if no candidate receives a majority of the votes, the two (2) candidates receiving the most votes be placed on the ballot for the general election.

Final Action – Approved, however later withdrawn

The CRC voted to place on the ballot changes to Section 605 of the Orange County Charter relating to write-in candidates for Charter officer elections. However, Supervisor of Elections Cowles later recommended that this proposal be withdrawn in light of pending litigation in *Demings v. Orange County*, 2014-CA-010858-O (Fla. 9th Cir. Ct. 2014).

C. **Article VII – General Provisions Proposals**

7. **Sec. 703 – County Officers, Sec. 706 – Legal Actions Involving County, Sec. 709 – Uniform Budget Procedures / Sec. 712 – Audits of County Officers**

Proposal Summary: The work group considered Commissioner S. Scott Boyd's request for a Charter amendment to limit all County Constitutional Officers to a maximum of eight (8) years, or two (2) full four-year terms. Further studied was County Mayor Teresa Jacob's proposed charter amendment to convert the Clerk of Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector to charter officers. The work group considered the independence of constitutional officers, feasibility of an independent Tax Collector, and audit authority/enforcement powers of the Orange County Comptroller.

Based upon its study, the work group originally recommended in March 2016 making no changes to the language of Sections 703, county officers, which establishes a limit of four consecutive 4-year terms for constitutional officers; and further, recommended to take no action on changing the status of the constitutional officers.

Further, the work group recommended making no changes to the language of Section 712, Audits of County Officers. This recommendation is based upon the Florida Constitution in Article V, Section 16, Article VIII, Section 1(d), and the Section 712 of the Charter, as amended in 1996. The work group concluded that the authority of the Comptroller to audit the BCC comes from the state constitution, and the authority to audit constitutional officers comes from the current county charter.

During consideration of the work group recommendation, the full CRC remanded this proposed Charter amendment for review of the pending litigation in *Demings v. Orange County*, 2014-CA-010858-O (Fla. 9th Cir. Ct. 2014), in order to provide the CRC with an assessment of the status of the case, and to determine whether any potential action of the CRC could be taken to preserve the substance of the 2014 Charter amendment providing for nonpartisan elections and term limits for County officers, in the event Orange County was not successful in its defense of that Charter Amendment.

Based upon its study, the CRC decided to place on the ballot a proposed charter amendment making the Clerk of Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector into non-partisan, elected charter officers subject to term limits of four consecutive

4-year terms, abolishing their status as constitutional officers, and specifying they are not subject to county commission or mayoral authority and shall have all the rights and privileges of their corresponding constitutional officers except as expressly provided by Charter.

In addition, the CRC voted to place on the ballot a proposed charter amendment that would serve to revive any provision in the Orange County Charter specifying term limits or nonpartisan elections for county constitutional or charter officers, in the event the provision is or has ever been rendered unenforceable by court action, and a later court action or legislative enactment renders that provision lawful and enforceable.

Final Action – Accepted

The CRC voted to place on the ballot changes to Sections 703, 706 and 709 of the Orange County Charter relating to changing the status of the constitutional officers. The CRC also voted to place on the ballot a charter provision that would preserve provisions for term limits and nonpartisan elections in the event they are rendered unenforceable and later changes in law make them enforceable again.

8. Sec. 713 – Tourist Development Tax Procedures / Priorities

Proposal Summary: The work group researched options to define and create a fair and competitive program for the award of some Tourist Development Tax funds.

Final Action – Approved, however later withdrawn

The CRC voted to accept the work group recommendation to place on the ballot changes to create new Section 713 in the Orange County Charter to establish a competitive, performance-based process for awarding unencumbered tourist development tax in accordance with the authorized uses of the revenue as stated in the Local Option Tourist Development Act (Section 125.0104, Florida Statutes) and Orange County Code. However, the CRC later rescinded this action. After the action was rescinded, Commissioner E. Fernandez proposed a revised and pared down version of the previously approved Tourist Development Tax amendment. The CRC voted against the revised proposal.

D. Article VIII – Citizen Review Board Proposals

9. Sec. 801 – Citizen Review Board

Proposal Summary: The work group reviewed materials relating to the Citizen Review Board that formerly existed under the Orange County Charter. After discussion, the work group recommended taking no action on reestablishing a Citizens Review Board relating to the Sheriff's Office. The work group recommended providing information on Sheriffs' Citizens Advisory Committees to the 2018 Constitutional Revision Commission to explore an amendment to the Florida Constitution to allow charter counties the authority to create a Sheriff's Citizens Review Board or a Sheriff's Citizens Advisory Committee, providing a copy of the Orange County Sheriff's General Order (G.O.20.1.13). The work group recommended that the 2020 Charter Review Commission evaluate the then-current status of the Sheriff's Citizens Advisory Committee.

Final Action – Approved

The CRC voted to accept the Constitutional/Charter Officers Work Group recommendation to take no action on the Citizens Advisory Board and agreed to include in this Final Report a recommendation that the 2020 Charter Review Commission look at Orange County Sheriff's General Order (G.O.20.1.13) to ensure its continued existence and to transmit a recommendation to the 2018 Constitutional Revision Commission that it explore an amendment to the Florida Constitution to allow charter counties the authority to create a Sheriff's Citizens Review Board or a Sheriff's Citizens Advisory Committee, and providing a copy of the Orange County Sheriff's General Order (G.O.20.1.13).

SECTION IV
AMENDMENTS APPROVED BY THE 2016 CHARTER
REVIEW COMMISSION TO BE VOTED ON THE
2016 GENERAL ELECTION

QUESTION #1

A. Introduction

This Charter amendment would provide substantive changes in the initiative petition process, as well as certain administrative and procedural changes, in order to provide a clear and concise guide for petitioners to follow in seeking to amend the Charter and adopt, amend, or repeal ordinances.

B. Ballot Proposal: The ballot title and question for Question #1 are as follows:

REFORMING INITIATIVE PROCESS TO
PROVIDE CLARITY, ACCOUNTABILITY, AND
TRANSPARENCY, AND ENSURE EQUAL
TREATMENT OF VOTERS

Reforming the charter initiative process by providing single subject, legal review, Comptroller-prepared financial impact statement, and public hearing requirements; ensuring equal percentage of signatures from all commission districts rather than only the majority of the districts; enhancing disclosure of gatherer's paid/volunteer status, requiring gatherer's affidavit and badge, adding signature withdrawal process, deadlines and other procedural reforms; and protecting successful amendments for one year. Comptroller estimated financial impact: \$7,000 per proposed ballot question.

_____ Yes
_____ No

C. Text Revisions: Sections 601, 602, and 603 of the Orange County Charter are amended to read as follows:

ARTICLE VI. - INITIATIVE, REFERENDUM AND RECALL

Sec. 601. - Initiative and referendum.

The power to propose amendment or repeal of this Charter, or to propose enactment, amendment or repeal of any county ordinance by initiative is reserved to the people of the county.

~~Strikethrough~~ = deleted language
Underline = added language

- A. *Charter.* A petition seeking to amend or repeal the Charter of Orange County shall be signed by ten (10) percent of the county electors in each commission district ~~a majority of the commission districts~~ as of January 1 of the year in which the petition is initiated. No less than 75% of the minimum number of required signatures shall be on petition forms approved by the supervisor of elections containing the comptroller's financial impact statement pursuant to Section 602 E. 3.
- B. *Ordinance.* A petition seeking to enact, amend or repeal an ordinance shall be signed by seven (7) percent of the county electors in each commission district as of January 1 of the year in which petition is initiated. No less than 75% of the minimum number of required signatures shall be on petition forms approved by the supervisor of elections containing the comptroller's financial impact statement pursuant to Section 602 E. 3.

Sec. 602. - Procedure for initiative and referendum.

A. *Initiation and Overview of Process*

The sponsor of an initiative petition shall register as a political committee as required by general law, and shall, prior to obtaining any signatures, submit the text of the proposed petition to the supervisor of elections, with the form on which signatures will be affixed, and shall obtain the approval of the supervisor of elections of such form. The style and requirements of such form may be specified by ordinance. Concurrent with this submission, the sponsor of an initiative petition shall prepare and submit translations of the ballot title and ballot summary into those languages required by law for placement on the ballot. Within fifteen (15) days after the aforementioned submittals, the supervisor of elections shall render a determination on the form on which signatures will be affixed. Each initiative petition shall embrace but one subject and matter directly connected therewith. The beginning date of any petition drive shall commence upon the date of approval by the supervisor of elections of the form on which signatures will be affixed, and said drive shall terminate one hundred eighty (180) days after that date. In the event sufficient signatures are not ~~acquired~~ submitted during that one-hundred-eighty-day period, the petition drive shall be rendered null and void and none of the signatures may be carried over onto another ~~identical or similar~~ petition. If sufficient signatures are ~~obtained~~ submitted during that one-hundred-eighty-day (180) period, ~~the sponsor shall submit signed and dated forms to the supervisor of elections who shall within thirty (30) days thereafter~~ the sponsor shall submit signed and dated forms to the supervisor of elections who shall within thirty (30) days thereafter verify the signatures thereon and submit a written report to the board.

B. *Form of Petition*

The form on which signatures will be affixed shall contain the ballot title, ballot summary, and full text of the charter or ordinance change proposed. Such form shall also contain an affidavit to be completed by a petition gatherer, signed and verified by the petition gatherer under penalty of perjury pursuant to Section 92.525(1) (c), Fla. Stat., for each petition gathered by that petition gatherer. Such affidavit shall specify the name and address of the petition gatherer who gathered the petition, whether the petition gatherer was a paid petition gatherer or a volunteer petition gatherer, and if paid, whether paid on an hourly basis, a per-signature basis, or some other basis therein described. Such affidavit shall also specify that the petition was signed in the petition gatherer's presence, that the petition signer had sufficient time to read the petition language, and that the petition gatherer believes the signature on the petition to be the genuine signature of the petition signer.

C. *Petition Gathering*

As used in this Charter, "petition gatherer" means any individual who gathers signatures in person for a county initiative petition. A petition gatherer gathering signatures for a county initiative petition who is not being paid to do so shall display a badge that states the words "VOLUNTEER GATHERER", in a form and manner specified by ordinance. A petition gatherer gathering signatures for a county initiative petition who is being paid to do so shall display a badge that states the words "PAID GATHERER", in a form and manner specified by ordinance. The petition gatherer shall sign and verify under penalty of perjury pursuant to Section 92.525(1) (c), Fla. Stat. the affidavit required on the petition form for each petition gathered by the petition gatherer. Petitions signed by an elector but not gathered by a petition gatherer shall not be required to have a completed petition gatherer's affidavit, but such petitions shall be submitted by the sponsor to the supervisor of elections with an accompanying statement signed and verified under penalty of perjury pursuant to Section 92.525(1)(c), Fla. Stat., averring that such accompanying petitions were submitted by the signing elector directly to the sponsor and were not collected by a petition gatherer, and stating the month during which such petitions were received by the sponsor.

D. *Submission of Signed Petitions Gathered by Petition Gatherers; Verification of Requisite Signatures*

The sponsor shall submit all signed petitions gathered by petition gatherers during a month or otherwise received by the sponsor during such month to the supervisor of elections for signature verification no later than the fifth day of the following month. The supervisor of elections shall verify the validity of signatures for each signed petition submitted within

thirty (30) days after submittal to the supervisor of elections. No signature shall be valid unless handwritten and submitted on a paper petition form completed and submitted in a manner consistent with this section. The supervisor of elections shall post a running tally of the number of signatures verified for each initiative petition on the supervisor of elections' website for public view. Otherwise valid signatures not timely submitted to the supervisor of elections shall not be counted towards the total number of signatures required under Section 601.

E. *Legal Review, Financial Impact; Public Hearing*

1. *One Percent Threshold.* Upon verification by the supervisor of elections that a petition has been signed by at least one (1) percent of the county electors in each commission district, the supervisor of elections shall so notify the board, the comptroller and the Legal Review Panel.
2. *Legal Review Panel.* The Legal Review Panel shall be a panel of three (3) persons licensed to practice law in the state of Florida who have demonstrated experience in Florida local government law, and who shall be selected on a bi-annual basis through the county's procurement process applicable to legal services. The Legal Review Panel shall meet and render a determination, within twenty (20) days after notification pursuant to Section 602 E. 1. by the supervisor of elections, whether the proposed initiative petition, including ballot title, ballot summary, proposal language, and ballot language translations, embraces but one subject and matter directly connected therewith, and is not inconsistent with the Florida Constitution, general law, or the restrictions of the Charter. If at least two (2) members of the Legal Review Panel determine that the proposed initiative petition embraces but one subject and matter directly connected therewith, and is not inconsistent with the Florida Constitution, general law, or the restrictions of the Charter, then the Legal Review Panel shall render a written opinion setting forth its determination and the reasons therefor, and shall so notify the board, the supervisor of elections, and the sponsor of the petition. If at least two (2) members of the Legal Review Panel determine that the proposed initiative petition does not embrace but one subject and matter directly connected therewith, or is inconsistent with the Florida Constitution, general law, or the restrictions of the Charter, then the Legal Review Panel shall render a written opinion setting forth its determination and the reasons therefor, and shall so notify the board, the supervisor of elections, and the sponsor of the petition. In such case, the petition drive shall thereafter terminate, and none of the signatures acquired in such a petition drive may be carried over onto another petition.

3. Financial Impact Statement. Within twenty (20) days after notification pursuant to Section 602 E. 1. by the supervisor of elections, the comptroller shall prepare and transmit to the board, supervisor of elections, and the sponsor of the petition, a financial impact statement, not exceeding seventy-five (75) words, including the estimated increase or decrease in any revenues or costs to the county or local governments or to the citizens resulting from the approval of the proposed initiative petition. The comptroller shall also prepare translations of the financial impact statement into those languages required by law for placement on the ballot. Upon receipt of the financial impact statement, the sponsor of the petition shall prepare and submit to the supervisor of elections for review and approval a revised petition form containing the financial impact statement, which statement shall be separately contained and placed immediately following the ballot summary. The supervisor of elections shall, within fifteen (15) days after submittal of the revised petition form containing the financial impact statement, render a determination on the form of the revised petition.

4. Public Hearing. Within sixty (60) days after notification of legality by the Legal Review Panel, the board shall hold a public hearing on the petition, at which the sponsor of the initiative petition, the board, and the public may comment on the petition.

F. Termination of Petition Drive by Sponsor; Withdrawal of Signature by Petition Signer

A sponsor of an initiative petition may terminate a petition drive by filing with the supervisor of elections a completed initiative termination form promulgated by the supervisor of elections. Prior to final verification of sufficient signatures for an initiative petition by the supervisor of elections, a petition signer may withdraw his or her signature by filing with the supervisor of elections a completed signature withdrawal form adequately identifying the petition signer and petition drive, promulgated by the supervisor of elections and available to print from the supervisor of elections' website.

G. Referendum

A. ~~1.~~ 1. ~~Charter. Within thirty (30) days a~~ After the requisite number of ~~names~~ signatures have been verified by the supervisor of elections and reported to the board, the board shall, by resolution, call a referendum shall be held on the question of the adoption of the proposed petition ~~to be held~~ at the next primary, or general ~~or special~~ election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the supervisor of elections.

The comptroller's financial impact statement shall be separately contained and placed on the ballot immediately following the corresponding ballot summary. If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1 of the succeeding year. A charter amendment adopted by initiative may not be amended or repealed for a period of one (1) year after its effective date.

- B.——2. Ordinance. Within thirty (30) days after the requisite number of ~~names~~ signatures have been verified by the supervisor of elections and reported to the board, the board shall notice and hold a public hearing on the proposed petition according to law and vote on it. If the board fails to adopt the proposed petition, the board shall so notify the supervisor of elections, and it shall, by resolution, call a referendum shall be held on the question of the adoption of the proposed petition ~~to be held~~ at the next primary, or general ~~or~~ special election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the supervisor of elections. The comptroller's financial impact statement shall be separately contained and placed on the ballot immediately following the corresponding ballot summary. If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be declared by resolution of the board to be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1, of the succeeding year. The board shall not amend or repeal an ordinance adopted by initiative for a period of one (1) year after the effective date of such ordinance.
- C.——3. The initiative power shall not be restricted, except as provided by general law and this Charter.
4. Charter amendments and ordinances by initiative appearing on the ballot shall be numbered using alphabet lettering and placed in the following order: first, charter amendments proposed by the Charter review commission; next, charter amendments proposed by the board; next, charter amendments proposed by initiative petition; and last, ordinances by initiative. In each case, the article and section of the charter or code of ordinances being created or amended shall be stated along with the title.

Sec. 603. - Limitation.

- A. The power to enact, amend or repeal an ordinance by initiative shall not include ordinances relating to administrative or judicial functions of county government, including but not limited to, county budget, debt obligations, capital improvement programs, salaries of county officers and employees and the levy and collection of taxes.
- B. The power to amend this charter by initiative, or to enact, amend or repeal an ordinance by initiative, shall not extend to the regulation of employer wages, benefits or hours of work, the encumbrance or allocation of tax revenues for any purpose not then authorized by law, or the encumbrance or allocation of tax revenues conditioned upon a prospective change in Florida law.
- ~~C. Notwithstanding any other provision of this charter, the board is prohibited from calling a referendum on the question of the adoption of any proposed charter amendment or ordinance by initiative which, in the determination of the board, is wholly or partially violative of the limitations of this section or Florida law.~~
- DC. Notwithstanding any other provision of this charter, the board is prohibited from declaring enacted any ordinance by initiative which, in the determination of the board, is wholly or partially violative of the limitations of this section or Florida law.

D. Financial Analysis and Impact:

Based on information provided by the Supervisor of Elections Office, the Comptroller's Office expects no additional cost related to the responsibilities of that office. The cost on the proposed amendment is related to the legal panel that will be required to review petition questions. The cost to complete a request for proposal process to choose attorneys is estimated to be approximately \$700. The cost to engage the anticipated legal panel is estimated to be approximately \$6,300.

QUESTION #2

A. Introduction:

This charter amendment would change all six (6) county constitutional officers (Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of the Circuit Court, and Comptroller) into nonpartisan, elected charter officers subject to term limits, while also providing that these charter officers will not be subject to the authority of the County Commission or County Mayor and will have all the rights and privileges of their corresponding constitutional officers, except as expressly provided in the Orange County Charter.

B. Ballot Proposal: The ballot title and summary for Question #2 are as follows:

CHANGING COUNTY CONSTITUTIONAL
OFFICERS TO CHARTER OFFICERS AND
PROVIDING FOR NONPARTISAN
ELECTIONS AND TERM LIMITS

Amending the Orange County Charter to make the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of Circuit Court, and Comptroller into nonpartisan, elected charter officers subject to term limits of four consecutive 4-year terms, abolishing their status as constitutional officers, and specifying they are not subject to county commission or mayoral authority and shall have all rights and privileges of corresponding constitutional officers, except as expressly provided by charter. No financial impact.

_____ Yes
_____ No

C. Text Revisions: Sections 703, 706, and 709 of the Orange County Charter are amended to read as follows:

Sec. 703. - County officers.

- A. The offices of the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court, created pursuant to Article VIII, Section 1(d) of the Florida Constitution, and the office of the Comptroller, created pursuant to Chapter 72-461, Laws of Florida, are hereby abolished and all duties prescribed by the Constitution, general law and Chapter 72-461, Laws of Florida, for each office are hereby respectively transferred to the office of the Sheriff, office of the Tax Collector, office of the Property Appraiser, office of the Supervisor of Elections, office of the Clerk

~~Strikethrough~~ = deleted language
Underline = added language

of the Circuit Court, and office of the Comptroller. These offices shall have terms of four (4) years commencing on the dates provided by law for their corresponding county constitutional offices, and shall be nonpartisan, elective charter offices.

B. Except as expressly set forth in this Charter or otherwise provided by law, these offices shall not be subject to the authority of the board of county commissioners or the county mayor. These offices shall have all rights and privileges of their corresponding county constitutional offices, and shall be unaffected by this charter, save and except for any provision of this Charter that expressly identifies one or more of these offices as being affected by that provision.

C. This section shall become effective on January 4, 2017. The office holders of the former county constitutional offices of Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of the Circuit Court, and Comptroller, as of the effective date shall be retained and shall respectively constitute the initial holders of the county charter offices of the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of the Circuit Court and Comptroller and shall hold these offices until expiration of their terms.

D. Any charter officer specified in Section 703(A) who has held the same office or its corresponding county constitutional office, in aggregate, for the preceding four (4) consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

~~A. The charter offices of property appraiser, tax collector and sheriff formerly created by this section 703 are abolished. The functions and duties of each of these respective charter offices are transferred to the property appraiser, tax collector, and sheriff, as county officers under Article VIII, Section 1(d) of the Florida Constitution and each of these offices is hereby reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.~~

~~This subsection A. shall take effect on January 8, 1997. The holders of the former charter offices of property appraiser, tax collector and sheriff as of the effective date shall be retained and shall constitute the initial county officers serving as property appraiser, tax collector and sheriff, as those offices are reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.~~

~~B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72-461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of nonpartisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.~~

~~C. Elections for all county constitutional offices shall be nonpartisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional office candidates' names shall be placed on the ballot without reference to political party affiliation.~~

~~In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.~~

~~D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.~~

Sec. 706. - Legal actions involving county.

In any legal actions by or against the county, the county as a corporate body, shall be the party named, and shall appear and participate in the cause on behalf of the division, officer or employee in such cause, other than constitutional officers or charter officers created by Section 703 and their employees, where such legal action involves matters within the scope of said department's, officer's, or employee's responsibilities.

Sec. 709. - Uniform budget procedure.

All county divisions, offices, agencies and boards shall operate under a unified and uniform budget system. No officer or employee of the county shall be compensated by fees, and all fees collected by any division, office, agency or board shall be deposited in the county treasury.

The charter offices created by Section 703 are exempt from the provisions of this section.

D. Financial Analysis and Impact:

The Comptroller's Office estimates that this charter amendment will have no financial impact.

QUESTION #3

A. Introduction:

This charter amendment would serve to revive any provision in the Orange County Charter specifying term limits or nonpartisan elections for county constitutional or charter officers, in the event the provision is or has ever been rendered unenforceable by court action, and a later court action or legislative enactment renders that provision lawful and enforceable.

B. Ballot Proposal: The ballot title and summary for Question #3 are as follows:

PRESERVING TERM LIMITS AND
NONPARTISAN ELECTIONS FOR COUNTY
CONSTITUTIONAL AND CHARTER
OFFICERS

Amending the Orange County Charter to provide that if any charter provision specifying term limits or nonpartisan elections for county constitutional or charter officers is or has ever been rendered unenforceable by court action for any reason, and a later court action or legislative enactment renders such provision lawful and enforceable, then such provision shall be immediately revived and enforced to the extent permitted by law. No financial impact.

_____ Yes
_____ No

C. Text Revisions: Section 713 of the Orange County Charter is hereby created to read as follows:

Sec. 713 – Preservation of Term Limits and Nonpartisan Elections for Constitutional and County Charter Officers

In the event any provision of this charter specifying term limits or nonpartisan elections for county constitutional or charter officers is or has ever been rendered unenforceable by court action for any reason, and a later court action or legislative enactment renders such provision lawful and enforceable, then such provision shall be immediately revived and enforced to the extent permitted by law.

D. Financial Analysis and Impact:

The Comptroller's Office estimates that this charter amendment will have no financial impact.

~~Strikethrough~~ = deleted language
Underline = added language

General Provisions Concerning Report and Proposed Charter Amendments

If any section, subsection, sentence, clause, or provision of this report or of any of the proposed charter amendments set forth herein, or the application thereof to any person or circumstance, is held invalid for any reason, the invalidity shall not affect any other provision or application of this report or the proposed charter amendments, and the remainder of the report and each proposed charter amendment set forth herein shall remain in full force and effect. To this end the provisions of this report and each of the proposed charter amendments set forth herein are declared severable.

SECTION V

SPANISH TRANSLATION OF BALLOT QUESTIONS

TRADUCCIÓN AL ESPAÑOL DE PREGUNTAS DE VOTACIÓN

PREGUNTA #1

A. Introducción

Esta enmienda a la Carta Orgánica aportaría cambios en el proceso de peticiones de iniciativas, al igual que ciertos cambios administrativos y de procedimiento a fin de proveer una guía clara y concisa a seguir al intentar enmendar la Carta Orgánica y adoptar, enmendar o revocar ordenanzas.

B. Propuesta de votación: El título y la pregunta de la papeleta para la Pregunta #1 son como sigue:

MODIFICANDO EL PROCESO DE
INICIATIVAS PARA PROVEER CLARIDAD,
RESPONSABILIDAD Y TRANSPARENCIA, Y
ASEGURAR LA IGUALDAD DE TRATO PARA
LOS VOTANTES

Modificando el proceso de iniciativa de la carta orgánica al proveer un tema único, revisión legal, estado de cuenta del impacto económico preparado por la contraloría, y requisitos para la audiencia pública; asegurando un porcentaje igualitario de firmas de todos los distritos de la comisión en lugar de una simple mayoría de distritos; mejorando la divulgación del estatus pagado/voluntario del recolector, requiriendo affidavit y credenciales del recolector, agregando un proceso para el retiro de firmas, fechas límites y otras reformas de procedimientos; y protegiendo las enmiendas exitosas por un año. Impacto económico estimado de la Contraloría: \$7,000 por pregunta de votación propuesta.

_____ Sí
_____ No

PREGUNTA #2

A. Introducción:

Esta enmienda a la Carta Orgánica cambiaría a los seis funcionarios constitucionales del Condado (Sherif, Recaudador de Impuestos, Tasador de Propiedades, Supervisor de Elecciones, Secretario/a del Tribunal de Circuito y Contralor) a funcionarios electos, no partidarios, de la Carta Orgánica sujetos a límites de mandato, a la vez que provee que dichos funcionarios de la Carta Orgánica no estarán sujetos a la autoridad de la Comisión del Condado o del Alcalde del Condado y que tendrán todos los derechos y privilegios de los funcionarios constitucionales correspondientes, a excepción de lo que se dispone expresamente en la Carta Orgánica.

B. Propuesta de votación: El título y el resumen de la papeleta para la Pregunta #2 son como sigue:

CAMBIANDO A LOS FUNCIONARIOS
CONSTITUCIONALES DEL CONDADO A
FUNCIONARIOS DE LA CARTA ORGÁNICA
Y OFRECIENDO ELECCIONES NO
PARTIDARIAS Y LÍMITES DE MANDATOS

Enmendando la Carta Orgánica del Condado de Orange para hacer que el Sherif, Recaudador de Impuestos, Tasador de Propiedades, Supervisor de Elecciones, Secretario/a del Tribunal de Circuito y Contralor sean funcionarios electos no partidarios sujetos a límites de mandatos de cuatro términos consecutivos de 4 años, eliminando su estatus como funcionarios constitucionales y especificando que no están sujetos a la Comisión del Condado ni a la autoridad del Alcalde, y que tendrán todos los derechos y privilegios de los funcionarios constitucionales correspondientes, a excepción de lo que se dispone expresamente en la Carta Orgánica. No tiene impacto económico.

_____ Sí
_____ No

Pregunta #3

A. Introducción:

Esta enmienda a la Carta Orgánica tendría el propósito de reestablecer cualquier provisión en la Carta Orgánica del Condado de Orange especificando límites de mandato o elecciones no partidarias para funcionarios constitucionales o de la Carta Orgánica del condado, en el caso de que la provisión sea o alguna vez haya sido considerada inaplicable por acción de la corte, y una acción posterior de la corte o acto legislativo determine que dicha provisión es legal y aplicable.

B. Propuesta de votación: El título y el resumen de la papeleta para la Pregunta #3 son como sigue:

PRESERVANDO LOS LÍMITES DE
MANDATO Y ELECCIONES NO
PARTIDARIAS PARA LOS FUNCIONARIOS
CONSTITUCIONALES Y DE LA CARTA
ORGÁNICA DEL CONDADO

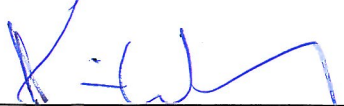
Modificando la Carta Orgánica del Condado de Orange para que en el caso de que cualquier provisión de la Carta Orgánica especificando los términos de mandato o elecciones no partidarias para los funcionarios constitucionales o de la Carta Orgánica del condado sea o alguna vez haya sido considerada inaplicable por acción de la corte por cualquier motivo, y una acción posterior de la corte o acto legislativo determine la validación y legalización de tal provisión, entonces tal provisión debe reestablecerse y aplicarse inmediatamente en la medida en que lo permita la ley. No tiene impacto económico.

_____ Sí
_____ No


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CONCLUSION


Approved and resolved by the 2016 Orange County Charter Review Commission on this 21st of June 2016



Kevin Shaughnessy, Chairman


Eddie Fernandez, Vice Chairman


Fred Brummer



Maribel Gomez Cordero

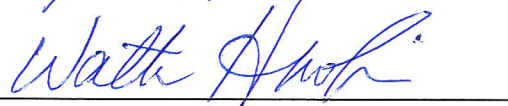

Edward DeAguilera


Pat DiVecchio

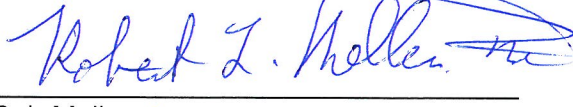

Stina D'Uva



Jose Fernandez


Doug Gondera

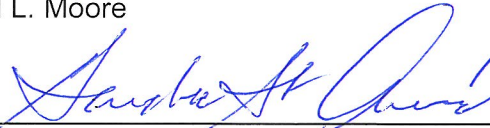

Walter Hawkins


Matthew Klein

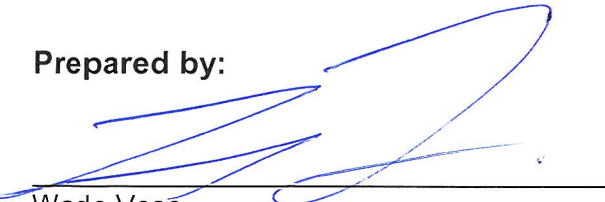

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CRC Administrative Assistant

APPENDIX A
TABLE OF CRC REGULAR & SPECIAL MEETINGS AND PUBLIC HEARINGS

DATE	LOCATION OF MEETING	SPEAKERS	TYPE
02/12/2015	BCC Chambers	Orange County Mayor Teresa Jacobs, Orange County Comptroller Martha Haynie, Orange County Assistant County Attorney Kate Latorre, Trini Quiroz, Todd Catella	Business Meeting
02/13/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	General Counsel RFP Work Group Meeting
02/17/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Administrative Assistant Work Group Meeting
02/19/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Administrative Assistant Work Group Meeting
03/11/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	General Counsel RFP Work Group Meeting
03/12/2015	BCC Chambers	General Counsel Wade Vose, Christopher Carmody, Doug Head, Trini Quiroz, Nelson Betancourt	Business Meeting
04/02/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Administrative Assistant Work Group Meeting
04/09/2015	BCC Chambers	Town of Windermere Mayor Gary Bruhn, Orange County Tax Collector Scott Randolph, Trini Quiroz, Linda O'Keefe, Bill Barnett, Emmett O'Dell, Nelson Betancourt, Dana Gowen, Doug Head, Chadwick Hardee	Business Meeting
04/30/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Initiative Petitions Work Group Meeting
05/07/2015	Comptroller's 4th Floor Conf. Room	Orange County Comptroller Martha Haynie	Constitutional/Charter Officers Work Group Meeting
05/14/2015	Englewood Neighborhood Center (Orlando)	Orange County District 3 Commissioner Pete Clarke, Nelson Betancourt, Judy Martin, Susan Perry, Chadwick Hardee, Cynthia Ellenberg, Trini Quiroz, June Schumann, Todd Catella	Public Hearing District 3
05/28/2015	Comptroller's 4th Floor Conf. Room	Orange County Comptroller Martha Haynie, Orange County Director of County Audit Carl Smith, Orange County Deputy Director of County Audit Chris Dawkins, Doug Head, Trini Quiroz, Linda O'Keefe	Constitutional/Charter Officers Work Group Meeting
05/28/2015	Comptroller's 4th Floor Conf. Room	Orange County Supervisor of Elections Bill Cowles, Trini Quiroz, Jeff Jonassen, Linda O'Keefe, Mike Ketchum, Todd Catella, Bernadine Golote, Cynthia Ellenburg	Initiative Petitions Work Group Meeting
06/02/2015	Comptroller's 4th Floor Conf. Room	Trini Quiroz, Doug Head, Emmet O'Dell	CRC Issues Work Group Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
06/04/2015	Comptroller's 4th Floor Conf. Room	Emmet O'Dell	Expansion of County Commission Work Group Meeting
06/09/2015	Memorial Middle School (Orlando)	Orange County Supervisor of Elections Bill Cowles, Orange County Clerk of Courts Tiffany Moore Russell, Orange County District 6 Commissioner Victoria P. Siplin, Member of the 2012 Tax Collector's Office Feasibility Task Force Paul Rosenthal, Barbara Seidenberg, Nick Shannin, Trini Quiroz, Bertina Busch, Kenneth Dwyer, Todd Catella, Doug Head	Public Hearing District 6
06/23/2015	Comptroller's 4th Floor Conf. Room	Orange County District 1 Commissioner Scott Boyd, Orange County Tax Collector Scott Randolph, R. J. Muller, Frank Capria	Constitutional/Charter Officers Work Group Meeting
06/25/2015	Comptroller's 4th Floor Conf. Room	Doug Head, Trini Quiroz	Expansion of County Commission Work Group Meeting
06/25/2015	Comptroller's 4th Floor Conf. Room	Orange County Supervisor of Elections Bill Cowles, Trini Quiroz, Jim Callahan, Doug Head, Mike Ketchum, Bill Barnett, Chadwick Hardee, Linda O'Keefe, Todd Catella	Initiative Petitions Work Group Meeting
07/09/2015	BCC Chambers	Trini Quiroz, R.J. Mueller, Bertina Busch, Noel Busch, Bill Barnett, Linda O'Keefe, Kelli McNair-Lee, Tom Tillison, Todd Catella	Business Meeting
07/14/2015	Comptroller's 4th Floor Conf. Room	Earnest DeLoach	Constitutional/Charter Officers Work Group Meeting
07/16/2015	Comptroller's 4th Floor Conf. Room	Doug Head, Trini Quiroz	Expansion of County Commission Work Group Meeting
07/21/2015	Comptroller's 4th Floor Conf. Room	Nick Shannin, Michelle Levy, Todd Catella, Bill Barnett, Linda O'Keefe, Terry Harow [Phonetic]	Initiative Petitions Work Group Meeting
07/30/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Sales Tax for Infrastructure Work Group Meeting
07/30/2015	Comptroller's 4th Floor Conf. Room	Orange County Senior Assistant County Attorney Lila McHenry, Orange County Chief Deputy Comptroller Peggy McGarrity	Tourist Development Tax Procedure/Priorities Work Group Meeting
08/13/2015	Meadow Woods Recreation Center (Orlando)	Orange County District 4 Commissioner Jennifer Thompson, David Siegel, Steve Micciche, Jimmy Hester, Judy Martin, Linda O'Keefe, June Schumann, Frank Caprio, Chadwick Hardee, Trini Quiroz, Bill Barnett, Emily Bonilla, Orange County Supervisor of Elections Bill Cowles	Public Hearing District 4
08/18/2015	Comptroller's 4th Floor Conf. Room.	Tom Wilkes, Farlin Harlequin [Phonetic], Doug Head, David Siegal	Constitutional/Charter Officers Work Group Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
08/20/2015	Comptroller's 4th Floor Conf. Room	David Siegel, Lorraine Tuliano	Expansion of County Commission Work Group Meeting
08/20/2015	Comptroller's 4th Floor Conf. Room	Nick Shannin, Terry Falco [Phonetic], Lorraine Tuliano, John Lina, David Siegel, Linda O'Keefe	Initiative Petitions Work Group Meeting
08/27/2015	Comptroller's 4th Floor Conf. Room	2016 Charter Review Commission Chair Kevin Shaughnessy, Trini Quiroz	Expansion of County Commission Work Group Meeting
08/27/2015	Comptroller's 4th Floor Conf. Room	Orange County Supervisor of Elections Bill Cowles, Mike Ketchum, Bill Barnett, David Siegel, Linda O'Keefe	Initiative Petitions Work Group Meeting
09/01/2015	Comptroller's 4th Floor Conf. Room	Orange County Assistant County Attorney Kate Latorre, Orange County Deputy County Administrator Eric Gassman, Orange County Senior Assistant County Attorney Lila McHenry, Orange County Manager of Fiscal & Business Services Fred Winterkamp	Tourist Development Tax Procedure/Priorities Work Group Meeting
09/10/2015	Dr. Phillips High School (Orlando)	Orange County Mayor Teresa Jacobs, Orange County District 1 Commissioner Scott Boyd, Town of Windermere Mayor Gary Bruhn, Trini Quiroz, Barbara Seidenberg, Linda O'Keefe, Cynthia Ellenberg, Judy Martin, Mike Ketchum, Todd Catella	Public Hearing District 1
09/22/2015	Comptroller's 4th Floor Conf. Room	Orange County Supervisor of Elections Bill Cowles, David Siegel, Earnest DeLoach	Constitutional/Charter Officers Work Group Meeting
09/24/2015	Comptroller's 4th Floor Conf. Room	Orange County Assistant County Administrator Jim Harrison, Orange County Deputy Director Public Works Joe Kunkel, David Siegel, Nelson Betancourt	Sales Tax for Infrastructure Work Group Meeting
09/24/2015	Comptroller's 4th Floor Conf. Room	Trini Quiroz, Lorraine Tuliano, Nelson Betancourt	Expansion of County Commission Work Group Meeting
09/24/2015	Comptroller's 4th Floor Conf. Room	Mike Ketchum, Michelle Levy, Orange County Supervisor of Elections Bill Cowles, Cynthia Ellenberg, Todd Catella	Initiative Petitions Work Group Meeting
10/01/2015	Comptroller's 4th Floor Conf. Room	Todd Catella, Nick Shannin, Bill Barnett, Terri Falbo, Linda O'Keefe	Initiative Petitions Work Group Meeting
10/06/2015	Comptroller's 4th Floor Conf. Room	Orange County Deputy County Administrator Eric Gassman, Orange County Senior Assistant County Attorney Lila McHenry, Orange County Manager of Fiscal & Business Services Fred Winterkamp, 2016 Charter Review Commission Chair Kevin Shaughnessy, Rich Maladecki, Melanie Becker, Angel de la Portilla, Flora Maria Garcia, Oscar Anderson, Harris Rosen	Tourist Development Tax Procedure/Priorities Work Group Meeting

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Underline = added language

DATE	LOCATION OF MEETING	SPEAKERS	TYPE
10/08/2015	BCC Chambers	Orange County Sheriff Jerry Demings, Trini Quiroz, Dexter Rambo, Nelson Betancourt, Jean Sandor, Melinda Poole, David Siegel, Tom Glover, Doug Head	Business Meeting
10/20/2015	Comptroller's 4th Floor Conf. Room	Ann Hellmuth, Orange County Supervisor of Elections Bill Cowles, Orange County Tax Collector Scott Randolph, Doug Head, Trini Quiroz, Angel de la Portilla, Orange County Property Appraiser Rich Singh	Constitutional/Charter Officers Work Group Meeting
10/22/2015	Comptroller's 4th Floor Conf. Room	Linda O'Keefe, John Lina, Bill Barnett, Orange County Supervisor of Elections Bill Cowles, Lorraine Tuliano, Todd Catella	Initiative Petitions Work Group Meeting
10/22/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Sales Tax for Infrastructure Work Group Meeting
11/03/2015	Comptroller's 4th Floor Conf. Room	Orange County Deputy County Administrator Eric Gassman, Orange County Administrator Ajit Lalchandani, Orange County Attorney Jeff Newton, Orange County Assistant County Administrator Chris Testerman, Trini Quiroz, David Siegel, Tom Glover, Umut Kocaman [Phonetic], Cathy Glover	CRC Issues Work Group Meeting
11/03/2015	Comptroller's 4th Floor Conf. Room	Trini Quiroz, Michelle Levy, Mike Ketchum, Bill Barnett, Linda O'Keefe, Debra Sumner [Phonetic]	Initiative Petitions Work Group Meeting
11/10/2015	Comptroller's 4th Floor Conf. Room	Trini Quiroz, David Siegel	Expansion of County Commission Work Group Meeting
11/12/2015	University High School, (Orlando)	Orange County District 5 Commissioner Ted Edwards, Orange County Property Appraiser Rick Singh, Trini Quiroz, Doug Head, Todd Catella, Kelly Semrad, Tom Narut, Bobby Beagles, Todd Catella, John Pardo, Jennifer Rey, Richard Andrade, David Siegel, Emily Bonilla, Tom Glover, Elizabeth Hester, William Lutz, Ariel Horner, John Lina, Jimmy Hester, Umut Kocaman, Kelly Semrad, Marie Martinez, Maria Bolton-Joubert, Daisy Morales, John Pardo, Trini Quiroz, Bobby Beagles	Public Hearing District 5
11/17/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Constitutional/Charter Officers Work Group Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
11/17/2015	Comptroller's 4th Floor Conf. Room	Orange County Assistant County Attorney Kate Latorre, Orange County Deputy County Administrator Eric Gassman, Orange County Senior Assistant County Attorney Lila McHenry, Orange County Manager of Fiscal & Business Services Fred Winterkamp Flora Maria Garcia, Angel de la Portilla, Glenn Santile [Phonetic], Beck Roper [Phonetic], Sarah Siegel	Tourist Development Tax Procedure/Priorities Work Group Meeting
11/19/2015	Comptroller's 4th Floor Conf. Room	Not Applicable	Initiative Petitions Work Group Meeting
12/01/2015	Comptroller's 4th Floor Conf. Room	Orange County Manager of Neighborhood Preservation and Revitalization Division – Neighborhood Services Lavon Williams, Orange County Executive Director of the Pine Hills Neighborhood Improvement District Michelle Owens, David Siegel, Steve Healy, Bobby Beagles, Bill Lutz, Emily Bonilla, Umut Kocaman, John Lina, Susan McCune, Ken Dwyer, Tim Haberkamp	Protection of the Rural Boundary Work Group Meeting
12/07/2015	Comptroller's 4th Floor Conf. Room	Bill Barnett, Linda O'Keefe, Todd Catella, Nick Shannin	Initiative Petitions Work Group Meeting
12/10/2015	Wekiva High School, (Orlando)	Orange County District 2 Commissioner Bryan Nelson, RJ Mueller, David Siegel, Noel Busch	Public Hearing District 2
12/15/2015	Comptroller's 4th Floor Conf. Room	Orange County Mayor Teresa Jacobs, Orange County Clerk of Courts Tiffany Moore Russell, Orange County Tax Collector Scott Randolph, Usher Larry Brown, Nick Shannin, Eric Dunlap, Trini Quiroz, Orange County Deputy Director of County Audit Chris Dawkins, Orange County Chief Deputy Comptroller Peggy McGarrity, Earnest DeLoach, Orange County Property Appraiser Rick Singh	Constitutional/Charter Officers Work Group Meeting
12/15/2015	Comptroller's 4th Floor Conf. Room	Bill Barnett, Nick Shannin, Trini Quiroz, Linda O'Keefe	Initiative Petitions Work Group Meeting
12/17/2015	Comptroller's 4th Floor Conf. Room	Orange County Deputy County Administrator Eric Gassman, Orange County Senior Assistant County Attorney Lila McHenry, Orange County Manager of Fiscal & Business Services Fred Winterkamp, Beverly Weisberg [Phonetic], Elizabeth Mopten [Phonetic], Trini Quiroz, Devin Dominguez [Phonetic], Vicky Landon, Harris Rosen	Tourist Development Tax Procedure/Priorities Work Group Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
01/08/2016	Comptroller's 4th Floor Conf. Room	Orange County Assistant Comptroller Carol Foglesong, Frank Caprio, Mike Ketchum	Initiative Petitions Work Group Meeting
01/12/2016	Comptroller's 4th Floor Conf. Room	Orange County AICP, Chief Planner Greg Golgowski, Orange County AICP, Project Manager Susan McCune, Dwight Saathoff, Emily Bonilla, Maria Martinez, Umut Kocaman, David Siegel, Bob [Inaudible], RJ Mueller, Bill Lutz, Julie Kendrick [Phonetic], Dan O'Keefe, Kathy Hattaway [Phonetic], Kathy Glover	Protection of the Rural Boundary Work Group Meeting
01/12/2016	BCC Chambers	Orange County Clerk of Court Tiffany Moore Russell, Orange County Comptroller Martha Haynie, Orange County Property Appraiser Rick Singh, Orange County Sherriff Jerry Demings, Orange County Supervisor of Elections Bill Cowles, Orange County Tax Collector Scott Randolph, Trini Quiroz, Lorraine Tuliano, Katharine Marsh, Tiffany Namy [Phonetic], Usher Larry Brown, Nick Shannin, Bob Olsen,	Constitutional/Charter Officers Work Group Meeting
01/14/2016	Comptroller's 4th Floor Conf. Room	Orange County Assistant Comptroller Carol Foglesong, Bill Barnett, Frank Caprio	Initiative Petitions Work Group Meeting
01/14/2016	BCC Chambers	Trini Quiroz, Kenneth Dwyer, Kelly Semrad, Thomas Glover, Emily Bonilla, Frank Caprio	Business Meeting
01/21/2016	Comptroller's 4th Floor Conf. Room	Orange County Assistant Comptroller Carol Foglesong, Bill Barnett	Initiative Petitions Work Group Meeting
01/26/2016	Comptroller's 4th Floor Conf. Room	Not Applicable	Tourist Development Tax Procedure/Priorities Work Group Meeting
02/02/2016	Comptroller's 4th Floor Conf. Room	Not Applicable	Constitutional/Charter Officers Work Group Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
02/09/2016	Comptroller's 4th Floor Conf. Room	Orange County Deputy Clerk of the BCC Katie Smith, Ronald Brooke, Dwight Saathoff, William Lutz, Bob Tearadin [Phonetic], Vivian Monaco, Julie Kendrick [Phonetic], David Axel, Randy Fitzgerald, Cathy Haddaway [Phonetic], Wayne Rich, RJ Mueller, Larry Simmons, Maria Martinez, David Siegel, Emily Bonilla, Ken Dwyer, Umut Kocaman, Kelly Semrad, Dr. [Inaudible], Dan O'Keefe, Jimmy Hester, John Lina	Protection of the Rural Boundary Work Group Meeting
02/11/2016	Comptroller's 4th Floor Conf. Room	Sarah Siegel	Tourist Development Tax Procedure/Priorities Work Group Meeting
02/11/2016	BCC Chambers	Ann Helmuth, Michelle Levy, Richard Maladecki, Emmet O'Dell, Timothy Murray, Ali Ahmed, Sophia Glover, Trini Quiroz, Diane Jones, Elizabeth Van Dyke, Mike Ketchum, Jay Leonard, Frank Caprio, Tom Tillison, Linda O'Keefe, Dave Hathaway, Jose Boscan, Deborah Sumner, Bill Barnett, Craig Swygert, Kenneth Dwyer, Barbara Seidenberg, Karen Climer, Gene Cloud, Emily Bonilla, David Siegel, Mark Wylie, Robert Agrusa, Scott Merritt, Doug Head, Maria Bolton-Joubert, RJ Mueller, Jimmy Hester, David Bottomley, Thomas Glover, Kelly Semrad, Umut Kocaman, Tom Narvt, Cheryl Coats, Ariel Horner	Business Meeting
02/23/2016	Comptroller's 4th Floor Conf. Room	Andrianna Sekula, Ken Dwyer, Trini Quiroz, Kelly Semrad	Protection of the Rural Boundary Work Group Meeting
02/23/2016	BCC Chambers	Harris Rosen, Kevin Craig, City of Apopka Mayor Joe Kilsheimer, Angel de la Portilla, Maria Triscari, Robert Agrusa, Trini Quiroz, Orange County Comptroller Martha Haynie, RJ Mueller, Kelly Semrad, Tom Glover	Business Meeting
02/24/2016	Comptroller's 4th Floor Conf. Room	Not Applicable	Ballot Summary Work Group Meeting
03/02/2016	Comptroller's 4th Floor Conf. Room	Trini Quiroz	Sunshine Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
03/09/2016	Comptroller's 4th Floor Conf. Room	Brenda Alston [Phonetic], Doug Head, David Bottomley	Ballot Summary Work Group Meeting
03/21/2016	Comptroller's 4th Floor Conf. Room	Linda O'Keefe	Initiative Petitions Work Group Meeting
03/31/2016	BCC Chambers	Orange County Comptroller Martha Haynie, Orange County Tax Collector Scott Randolph, Nancy Oesch, Florida House of Representative Rene Plasencia, Jeff Schnellmann, Vivien Monaco, Bob Carrigan, Max Perlman, David Axel, Chuck O'Neal, Kathy Hattaway, Daisy Morales, Kelly Semrad, Linda Stewart, John Fauth, Kenneth Dwyer, William Lutz, David Siegel, Miranda Fitzgerald, Julie Kendig, Elizabeth Hester, Trini Quiroz, Orlando Evora, Emily Bonilla, Robert Agrusa, Jimmy Hester, Jenny Olson, Tom Narut, Wayne Rich, Dave Lundberg, Marjorie Halt, Umut Kocaman, Drew Abel, Adrianna Sekula, Eric Cress, Steven Robertson, Ariel Horner, Maria Bolton-Joubert, Julie Whitley, Maria Martinez, Sean Snaith	Business Meeting
04/05/2016	Comptroller's 4th Floor Conf. Room	Michelle Levy	Ballot Summary Work Group Meeting
04/05/2016	Comptroller's 4th Floor Conf. Room	David Bottomley	Initiative Petitions Work Group Meeting
04/19/2016	Comptroller's 4th Floor Conf. Room	Nick Shannin, Earnest DeLoach, Linda O'Keefe	Constitutional/Charter Officers Work Group Meeting
04/28/2016	BCC Chambers	Orange County Comptroller Martha Haynie, Orange County Clerk of Court Tiffany Moore Russell, Doug Head, Gus Martinez, Tom Wilkes, David Siegel, Trini Quiroz, Jimmy Colon, Nick Shannin, Thomas Glover, Frank Caprio, Linda O'Keefe, Bill Barnett,	Business Meeting
05/10/2016	Comptroller's 4th Floor Conf. Room	Orange County Assistant Comptroller Fiscal Division Barry Skinner	Ballot Summary Work Group Meeting
05/10/2016	Comptroller's 4th Floor Conf. Room	Nick Shannin, Thea Webster	Constitutional/Charter Officers Work Group Meeting
05/26/2016	BCC Chambers	Trini Quiroz, Doug Head, Kevin Craig, Angel de la Portilla	Business Meeting

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DATE	LOCATION OF MEETING	SPEAKERS	TYPE
06/09/2016	BCC Chambers	David Rankin, Elizabeth Van Dyke, Derek Silver, Orange County Supervisor of Elections Bill Cowles, Nick Shannin, Orange County Comptroller Martha Haynie, Paul Wean, Carol Johnson, Doug Head, Earnest DeLoach, Bill Barnett, Cynthia Ellenburg, Robert Paymayesh, Lui Damiani, Caleb Spencer, Orange County Mayor Teresa Jacobs, Orange County Property Appraiser Rick Singh, Orange County District 1 Commissioner Scott Boyd, Chris Carmody, Kevin Craig, Robert Agrusa, Angel de la Portilla, Phil Caronia, Harris Rosen	Business Meeting
06/15/2016	Comptroller's 4th Floor Conf. Room	Michelle Levy, Nick Shannin, Usher Larry Brown, Eric Dunlap, Matt Klein	Ballot Summary Work Group Meeting
06/21/2016	BCC Chambers	Nick Shannin, Angel de la Portilla, Trini Quiroz, Michelle Levy, Mike Ketchum, John Pardo, Bernadine Galote, Linda O'Keefe, Bill Barnett, Emily Bonilla	Business Meeting

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**APPENDIX B
CRC 2016 WORK GROUPS**

Charter Section (s)	Work Group Name	Committee Members
209	CRC Issues	Chair Walter Hawkins, Pat DiVecchio, Maribel Gomez Cordero, Cheryl Moore, Kevin Shaughnessy
601-603	Initiative Petitions	Chair Robert Mellen, Fred Brummer, Gail Cosby, Stina D'Uva, Maribel Gomez Cordero, Matt Klein
702, 703, 706, 709, 712, & 801	Constitutional/Charter Officers	Chair Mikaela Nix, Fred Brummer, Edward DeAguilera, Pat DiVecchio, Eddie Fernandez, Jose Fernandez, Maribel Gomez Cordero, Doug Gondera
202 & 203	Expansion of County Commission	Chair Jose Fernandez, Edward DeAguilera, Pat DiVecchio, Eddie Fernandez, Maribel Gomez Cordero
N/A	Sales Tax for Infrastructure	Chair Fred Brummer, Doug Gondera, Kevin Shaughnessy
N/A	Tourist Development Tax Procedure/Priorities	Chair Maribel Gomez Cordero, Fred Brummer, Walter Hawkins, Mikaela Nix
N/A	Ballot Summary	Chair Kevin Shaughnessy, Fred Brummer, Robert Mellen, Mikaela Nix
207	Protection of the Rural Boundary	Chair Doug Gondera, Pat DiVecchio, Cheryl Moore
N/A	General Counsel RFP	Chair Matt Klein, Eddie Fernandez, Walter Hawkins, Cheryl Moore, Mikaela Nix
N/A	Administrative Assistant	Chair Kevin Shaughnessy, Pat DiVecchio, Eddie Fernandez
N/A	Final Report	N/A
N/A	Outreach	Stina D'Uva, Eddie Fernandez, Matt Klein, Rob Mellen, Cheryl Moore, Kevin Shaughnessy,

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ATTACHMENT C

Order reserving ruling on Plaintiff's Ex Parte Motion for
Temporary Injunction

IN THE CIRCUIT COURT OF THE 9TH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.:2016-CA-011202

FLORIDA ASSOCIATION FOR
CONSTITUTIONAL OFFICERS, INC.,

Plaintiffs,
v.

ORANGE COUNTY, FLORIDA;
AND BILL COWLES, ORANGE
COUNTY SUPERVISOR OF
ELECTIONS,


Defendant.
_____ /

ORDER

The Court has reviewed Plaintiff's Ex Parte Emergency Motion for Temporary Injunction
and finds as follows:

1. The Court will RESERVE ruling on Plaintiff's Ex Parte Emergency Motion for
Temporary Injunction, pending a response by the Defendants.

DONE AND ORDERED on this 5th day of Dec, 2017.



Bob LeBlanc
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this
5 day of December, 2017 by using the Florida Courts E-Filing Portal System.

Accordingly, a copy of the foregoing is being served via electronic filing to Gigi Rollini, Esq., at grollini@lawfla.com, Mark Herron, Esq., at mherron@lawfla.com, April Bentley, Esq., at abentley@lawfla.com, Jeffrey Newton, Esq., at jeffrey.newton@ocfl.net, William Turner, Esq., at williamchip.turner@ocfl.net, and Nicholas Shannin, Esq., at nshannin@ocfelections.com.



Cindy Brown, Judicial Assistant to Judge Bob LeBlanc

ATTACHMENT D

Final Summary Judgment for Defendants,
Cnty. of Volusia v. Ron DeSantis,
Leon County Case No. 2018-CA-002646 (Fla. 2d Jud.
Cir. Mar. 21, 2019)

Filing # 86695764 E-Filed 03/20/2019 02:09:07 PM

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

COUNTY OF VOLUSIA, a political
subdivision of the State of Florida, and
a public body corporate and politic,
PHILIP T. FLEUCHAUS, and
T. WAYNE BAILEY,

CASE NO.: 2018 CA 002646

Plaintiffs,

v.

RON DESANTIS, Governor of the
State of Florida, and LAUREL M. LEE,
Secretary of State of the State of Florida,

Defendants.

_____ /

FINAL SUMMARY JUDGMENT FOR DEFENDANTS

This matter was heard on cross-motions for summary judgment filed by Plaintiffs and Intervenor-Defendant, Florida Association of Court Clerks, Inc. ("FACC"). Intervenor-Defendant Florida Tax Collectors Association, Inc. joined in FACC's motion for summary judgment. The parties stipulated that there were no material facts in dispute.

The dispute involves interpretation of an amendment to Article VIII, Section 1(d) of the Florida Constitution adopted by the voters in 2018 ("Amendment 10"). The pertinent portion of the amendment reads as follows:

E-Filed and E-Served
by SB on MAR 20 2019

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; ~~except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. Unless~~ When not otherwise provided by county charter or special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

* * * * *

(g) SELECTION AND DUTIES OF COUNTY OFFICERS.—

(1) Except as provided in this subsection, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 5, 2021, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2020.

(2) For Miami-Dade County and Broward County, the amendment to Section 1 of this article, relating to the selection and duties of county officers, shall take effect January 7, 2025, but shall govern with respect to the qualifying for and the holding of the primary and general elections for county constitutional officers in 2024.

Prior to adoption of Amendment 10, the Constitution allowed counties to abolish constitutional county offices, transfer the duties of such offices, or change the method of selection of the officers by adoption or amendment of a charter or by

special law approved by vote of the electors of the county. A number of counties, including Volusia, made such changes prior to the adoption of Amendment 10. The issue in this case is how Amendment 10 applies to those counties that made changes. Plaintiffs contend Amendment 10 does not apply retroactively and does not override article VIII, section 1(c), which provides that the Volusia charter shall be “amended or repealed only upon vote of the electors of the county in a special election called for that purpose.” Intervenors respond that Amendment 10 is not a retroactive act and that, even if it were, the language of the act itself and the ballot summary clearly evince voter intent that it apply to all counties, including those that had made changes pursuant to the pre-amendment law.¹

The Florida Supreme Court has defined a retroactive or retrospective act as follows:

A statute does not operate “retrospectively” merely because it is applied in a case arising from conduct antedating the statute’s enactment Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment.

Memorial Hospital-West Volusia, Inc. v. News-Journal Corp., 784 So.2d 438, 440 (Fla. 2001). I find that Amendment 10 is not retroactive. It operates prospectively,

¹ Amendment 10 allows counties to change the duties of the clerk of the circuit court by special law approved by vote of the electors. Plaintiffs and FACC informed the Court that because the duties of the Volusia County Clerk had been changed by special law approved by a vote of the electors, those changes would not be affected by Amendment 10.

requiring counties to comply with constitutional provisions setting forth the duties and manner of selection of constitutional officers, and removing any charter provisions to the contrary, as of the effective date of Amendment 10. The Amendment attaches no new legal consequences to changes made by counties pursuant to the earlier language.

I further find that, even if Amendment 10 were interpreted to be retroactive, the language of the Amendment itself and of the ballot summary reflect a clear voter intent that the Amendment apply to all counties, including those that made changes pursuant to the pre-amendment law.

The ballot summary for a proposed constitutional amendment is an appropriate source for determining voter intent. *In Re Advisory Opinion*, 750 So.2d 610 (Fla. 1999). The relevant portion of the ballot summary for Amendment 10 stated:

Ensures election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court *in all counties*; removes county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices.

(emphasis added).

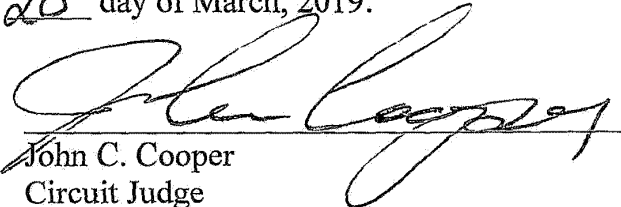
The Florida Supreme Court engaged in a pre-election review of proposed Amendment 10 in *County of Volusia v. Detzner*, 253 So.3d 507 (Fla. 2018). The court expressly declined to address whether the amendment applies retroactively as being premature. However, the court did hold that the ballot summary was not

misleading. I do not believe that such a conclusion could have been reached in light of the summary's reference to "all counties" if the Amendment did not apply to counties that had changed their charters.

For the foregoing reasons it is

ORDERED AND ADJUDGED that the motion for summary judgment filed by Plaintiffs is DENIED and the motion for summary judgment filed by FACC and joined by Intervenor-Florida Tax Collectors Association, Inc., is GRANTED. Accordingly, FINAL JUDGMENT is hereby entered for Defendants.

DONE AND ENTERED this 28th day of March, 2019.


John C. Cooper
Circuit Judge

Copies to all Counsel of Record

ACTIVE 42140568v2

ATTACHMENT E

*Orange Cnty., Fla. v. Rick Singh, et al.,
2019 Fla. LEXIS 607, No. SC18-79
(Fla. April 18, 2019)*

Supreme Court of Florida

No. SC18-79

ORANGE COUNTY, FLORIDA,
Petitioner,

vs.

RICK SINGH, etc., et al.,
Respondents.

April 18, 2019

PER CURIAM.

Respondents' Joint Motion to Recall Mandate is hereby granted. The opinion of this Court dated January 4, 2019, is hereby withdrawn, and this opinion is substituted in its place. *See* § 43.44, Fla. Stat. (2018) ("An appellate court may, as the circumstances and justice of the case may require, reconsider, revise, reform, or modify its own opinions and orders for the purpose of making the same accord with law and justice."); Fla. R. Jud. Admin. 2.205(b)(5). In light of the substituted opinion, we hereby deny Respondents' Joint Motion for Clarification.

We have for review the Fifth District Court of Appeal's decision in *Orange County v. Singh*, 230 So. 3d 639 (Fla. 5th DCA 2017), which affirmed a trial court

judgment invalidating an Orange County ordinance.¹ Because home-rule counties may not enact ordinances on subjects preempted to the State and inconsistent with general law,² we approve the decision of the Fifth District.

I. Background

The underlying background was discussed in the Fifth District’s opinion as follows:

On August 19, 2014, the Orange County Board of Commissioners enacted an ordinance proposing an amendment to the Orange County Charter to provide for term limits and nonpartisan elections for six county constitutional officers—clerk of the circuit court, comptroller, property appraiser, sheriff, supervisor of elections, and tax collector. The ordinance provided for the following ballot question to be presented for further approval:

**CHARTER AMENDMENT PROVIDING FOR TERM
LIMITS AND NON-PARTISAN ELECTIONS FOR
COUNTY CONSTITUTIONAL OFFICERS**

For the purpose of establishing term limits and nonpartisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

_____ Yes

_____ No

1. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

2. Article VIII, section 1(g) of the Florida Constitution provides that “[t]he governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.”

The ballot question appeared on the November 4, 2014[,] ballot and was approved by the majority of Orange County voters. As a result, the relevant portions of section 703 of the Orange County Charter were amended (as underlined) to read:

B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72–461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of nonpartisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.

C. Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional office candidates’ names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

Prior to the November 4, 2014 election, three Orange County constitutional officers—the sheriff, property appraiser, and tax collector (collectively “Appellees”)—filed a suit for declaratory and

injunctive relief against Orange County, challenging the underlying county ordinance as well as the ballot title and summary. After the election, in ruling on competing summary judgment motions, the trial court upheld the portion of the charter amendment providing for term limits, but struck down that portion providing for nonpartisan elections. The trial court concluded that Orange County was prohibited from regulating nonpartisan elections for county constitutional officers because that subject matter was preempted to the Legislature.

Singh, 230 So. 3d at 640-41 (footnote omitted).

On appeal, the Fifth District affirmed the trial court’s judgment. *Id.* at 640. The Fifth District held that section 97.0115, Florida Statutes, expressly preempts the Orange County ordinance requiring nonpartisan elections for county constitutional officers. *Id.* at 641-42. The Fifth District reasoned that the Legislature regulates elections generally through the Florida Election Code and “enacted section 97.0115, which expressly provides that all matters set forth in the Florida Election Code were preempted” to the Legislature. *Id.* at 642. The Fifth District further reasoned that chapter 105, Florida Statutes, “set forth provisions and procedures specific to nonpartisan elections,” and “chapter 105 did not authorize counties to hold nonpartisan elections for the county constitutional officers that are the subject of the charter amendment at issue.” *Id.*

II. The Florida Election Code

Article VI, section 1 of the Florida Constitution provides that “[r]egistration and elections shall, and political party functions may, be regulated by law[.]” *See*

Grapeland Heights Civic Ass’n v. City of Miami, 267 So. 2d 321, 324 (Fla. 1972) (“[I]t necessarily follows that ‘law’ *in our constitution* means an enactment by the State Legislature . . .—not by a City Commission or any other political body.”). The Legislature regulates elections through the Florida Election Code, which encompasses chapters 97-106, Florida Statutes (2018).³ Importantly, the Florida Election Code contains express language of preemption as section 97.0115 states that “[a]ll matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” The Florida Election Code further explains that the Secretary of State, as “the chief election officer of the state,” is to “[o]btain and maintain uniformity in the interpretation and implementation of the election laws.” § 97.012(1), Fla. Stat. (2018).

The Florida Election Code generally contemplates partisan elections.⁴ In other words, candidates nominated by political parties in the primary election are to appear on the general election ballot for most offices. *See* § 101.151(2)(c), Fla. Stat. (2018) (“Each nominee of a political party chosen in a primary shall appear on the general election ballot in the same numbered group or district as on the

3. Section 97.011, Florida Statutes (2018), provides “[c]hapters 97-106 inclusive shall be known and may be cited as ‘The Florida Election Code.’ ”

4. In construing the Florida Election Code, it is necessary to read all provisions in *pari materia*. *Palm Beach Cty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1290 n.22 (Fla. 2000).

primary election ballot.”). In fact, section 97.021(29) (emphasis added), defines a “[p]rimary election” as “an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, *county*, or district office.”

Specifically, section 100.051 provides that “[t]he supervisor of elections of each county shall print on ballots to be used in the county at the next general election the names of candidates who have been nominated by a political party and the candidates who have otherwise obtained a position on the general election ballot in compliance with the requirements of this code.” In addition to the candidates nominated by political parties, no-party affiliation candidates, minor political party candidates, and spaces for write-in candidates may be listed on the general election ballot and may compete for the same offices as the major political party candidates in compliance with the Florida Election Code. § 99.0955, Fla. Stat. (2018); § 99.096, Fla. Stat. (2018); § 99.061(4)(b), Fla. Stat. (2018).

Regarding qualifying for nomination or election to county offices in particular, section 99.061(2) (emphasis added) provides that “each person seeking to qualify for nomination or election to a county office . . . shall file his or her qualification papers with, and pay the qualifying fee, which shall consist of the filing fee and election assessment, *and party assessment*, if any has been levied, to, the supervisor of elections of the county, or shall qualify by the petition process

pursuant to s. 99.095.” The same subsection also states that “the supervisor of elections shall remit to the secretary of the state executive committee of *the political party to which the candidate belongs* the amount of the filing fee, two-thirds of which shall be used to promote *the candidacy of candidates for county offices* and the candidacy of members of the Legislature.” *Id.* (emphasis added).

Regarding timing, section 100.031, Florida Statutes (2018), provides that “[a] general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year.” Section 100.061, Florida Statutes (2018), states that “a primary election for nomination of candidates of political parties shall be held on the Tuesday 10 weeks prior to the general election.” Further, section 100.041(1), Florida Statutes (2018) (emphasis added), lists the following offices, including several county constitutional offices, that are to be chosen at the general election after a primary election:

State senators shall be elected for terms of 4 years, those from odd-numbered districts in each year the number of which is a multiple of 4 and those from even-numbered districts in each even-numbered year the number of which is not a multiple of 4. Members of the House of Representatives shall be elected for terms of 2 years in each even-numbered year. *In each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.* The Governor and the administrative officers of the executive branch of the state shall be elected for terms of 4 years in each even-numbered year the number of which is not a multiple of 4. The terms of state offices other than the terms of members of the Legislature shall begin on the first Tuesday after the first Monday in January after said election. The

term of office of each member of the Legislature shall begin upon election.

See also § 98.015(1), Fla. Stat. (2018) (“A supervisor of elections shall be elected in each county at the general election in each year the number of which is a multiple of four for a 4-year term commencing on the first Tuesday after the first Monday in January succeeding his or her election.”).

However, while the Florida Election Code contemplates elections for most offices to include candidates nominated by political parties, it also specifies that elections for certain offices must be nonpartisan. Pursuant to section 97.021(22), Florida Statutes (2018), “ ‘Nonpartisan office’ means an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.” Then, chapter 105, entitled “Nonpartisan Elections,” provides that judicial officers and school board members are nonpartisan offices. Candidates for judicial offices (or those seeking retention) are “prohibited from campaigning or qualifying for such [offices] based on party affiliation.” § 105.011(2), Fla. Stat. (2018). Furthermore, section 105.09(1), Florida Statutes (2018), states that “[n]o political party or partisan political organization shall endorse, support, or assist any candidate in a campaign for election to judicial office.” Section 105.035(1), Florida Statutes (2018), also explains that “[a] person seeking to qualify for election to the office of circuit judge or county court judge or the office of school board member may qualify for

election to such office by means of the petitioning process prescribed in this section.” And section 105.041(3)-(4), Florida Statutes (2018), states that “[n]o reference to political party affiliation shall appear on any ballot with respect to any nonpartisan office or candidate,” while “[s]pace shall be made available on the general election ballot” for write-in candidates for circuit and county court judge as well as school board members.

Regarding timing of the nonpartisan elections, section 105.051(1)(b), Florida Statutes (2018), provides that elections for judicial officers and school board members are to be conducted during the primary election with the possibility of a run-off during the general election:

If two or more candidates, neither of whom is a write-in candidate, qualify for such an office, the names of those candidates shall be placed on the ballot at the primary election. If any candidate for such office receives a majority of the votes cast for such office in the primary election, the name of the candidate who receives such majority shall not appear on any other ballot unless a write-in candidate has qualified for such office. An unopposed candidate shall be deemed to have voted for himself or herself at the general election. If no candidate for such office receives a majority of the votes cast for such office in the primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

Additionally, the nonpartisan chapter of the Florida Election Code, chapter 105, specifies that the retention elections of appellate judges are to take place during the general election. § 105.051(2), Fla. Stat. (2018).

Notably, chapter 105 does not include any county constitutional officers as nonpartisan. The specific references to the county constitutional officers in the Florida Election Code are in its more general provisions in which candidates nominated by political parties may appear on the general ballot. Moreover, although the Florida Election Code expressly allows for municipal elections to vary from its requirements pursuant to an ordinance or charter so long as the variance does not conflict with “any provision in the Florida Election Code that expressly applies to municipalities,” § 100.3605(1), Florida Statutes (2018), there is no similar allowance for county elections.

III. The Orange County Ordinance is Expressly Preempted and in Conflict

Orange County contends that the ordinance at issue in this case is not expressly preempted by or in conflict with the Florida Election Code. We disagree.

In *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008), this Court explained the following standards regarding whether a county ordinance is preempted by or in conflict with a statute:

Pursuant to our Constitution, chartered counties have broad powers of self-government. *See* art. VIII, § 1(g), Fla. Const. Indeed,

under article VIII, section 1(g) of the Florida Constitution, chartered counties have the broad authority to “enact county ordinances not inconsistent with general law.” *See also* David G. Tucker, *A Primer on Counties and Municipalities, Part I*, Fla. B.J., Mar. 2007, at 49. However, there are two ways that a county ordinance can be inconsistent with state law and therefore unconstitutional. First, a county cannot legislate in a field if the subject area has been preempted to the State. *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006). “Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.” *Id.* (quoting *Phantom of Clearwater[, Inc. v. Pinellas County]*, 894 So. 2d [1011], 1018 [(Fla. 2d DCA 2005)]). Second, in a field where both the State and local government can legislate concurrently, a county cannot enact an ordinance that directly conflicts with a state statute. *See Tallahassee Mem’l Reg’l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996). Local “ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute.” *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993); *Hillsborough County v. Fla. Rest. Ass’n*, 603 So. 2d 587, 591 (Fla. 2d DCA 1992) (“If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.”); *see also Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972) (“A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.”).

There is conflict between a local ordinance and a state statute when the local ordinance cannot coexist with the state statute. *See City of Hollywood*, 934 So. 2d at 1246; *see also State ex rel. Dade County v. Brautigam*, 224 So. 2d 688, 692 (Fla. 1969) (explaining that “inconsistent” as used in article VIII, section 6(f) of the Florida Constitution “means contradictory in the sense of legislative provisions which cannot coexist”). Stated otherwise, “[t]he test for conflict is whether ‘in order to comply with one provision, a violation of the other is required.’ ” *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637, 649 (Fla. 2d DCA 2007) (quoting *Phantom of Clearwater*, 894 So. 2d at 1020), *review granted*, No. SC07-2074 (Fla. Nov. 29, 2007).

In this case, the Florida Election Code expressly preempts the Orange County ordinance requiring nonpartisan elections for its county constitutional officers. Section 97.0115 provides that “[a]ll matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law.” As explained above, the Florida Election Code contemplates partisan elections for most offices, and it does not specifically authorize otherwise for county constitutional officers. Furthermore, article VIII, section 1(d) of the Florida Constitution does not expressly label the election of county constitutional officers as “partisan” or “nonpartisan.” Therefore, this constitutional provision is not an exception to the preemption language contained in section 97.0115.

The Florida Election Code contains detailed provisions specific to county constitutional officers and county elections, provisions that are within the portions of the code providing for partisan elections. Section 100.041 states that “[i]n each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.” *See also* § 100.031, Fla. Stat. (“A general election shall be held in each county . . . to choose a successor to each elective . . . county . . . officer . . .”); § 98.015 (1), Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election . . .”). Further, section 100.051 expressly provides that candidates listed

on the general election ballot are “candidates who have been nominated by a political party *and* the candidates who have otherwise obtained a position on the general election ballot in compliance with the requirements of this code.”

(Emphasis added.)

In contrast, the Orange County ordinance provides as follows:

Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All county constitutional offices candidates’ names shall be placed on the ballot without reference to party affiliation.

Singh, 230 So. 3d at 640-41 (quoting amended charter).

The portion of the ordinance that requires elections for county constitutional officers to be held during the primary election conflicts with section 100.041, which requires county constitutional officers to appear on the general election ballot. It also conflicts with section 98.015, Florida Statutes, which separately addresses the election of the supervisor of elections. *See* § 98.015, Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election . . .”).

Even if the portion of the Orange County ordinance that requires such an election to be held during the primary election is severed, a glaring and unconstitutional conflict remains. The Orange County ordinance prohibits a candidate for county constitutional office from being referenced on the ballot by party or seeking nomination by a party during the primary election. However, the

Florida Election Code expressly provides for nomination of candidates for county office by their respective political parties during the primary election. *See* § 99.061(2), Fla. Stat. (candidates for county offices may qualify for nomination or election by filing the qualifying papers and paying “the filing fee and election assessment, and party assessment”); § 97.021(29), Fla. Stat. (defining “[p]rimary election” as “an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office”); § 100.051, Fla. Stat. (explaining that candidates listed on the general election ballot include those “candidates who have been nominated by a political party”); *see also* § 100.031, Fla. Stat. (“A general election shall be held in each county . . . to choose a successor to each elective . . . county . . . officer”); § 100.041(1), Fla. Stat. (“In each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of 4.”); § 98.015(1), Fla. Stat. (“A supervisor of elections shall be elected in each county at the general election”). Therefore, by banning a candidate for county constitutional office from running by party or seeking nomination by party, the ordinance directly conflicts with the Florida Election Code. And this Court has explained that a local

government “cannot forbid what the legislature has expressly licensed, authorized or required.” *Rinzler*, 262 So. 2d at 668.

Accordingly, because the Orange County ordinance prohibits candidates from running based on their party affiliation or seeking the nomination of their party during the primary election, which is expressly provided for in the Florida Election Code, the ordinance directly conflicts with the Florida Election Code. It also conflicts with the Florida Election Code’s requirement that the candidates for county constitutional officers appear on the general election ballot.

IV. Conclusion

As explained above, the Florida Election Code expressly preempts the Orange County ordinance, an ordinance that is in direct conflict with the Florida Election Code regarding whether candidates nominated by major political parties in the primary election may appear on the general election ballot for county constitutional officers. Therefore, we approve the decision of the Fifth District, which held that the Florida Election Code preempts the Orange County ordinance requiring nonpartisan elections for county constitutional officers.⁵

It is so ordered.

5. As we approve the Fifth District’s decision concluding the ordinance is expressly preempted, we also approve the Fifth District’s decision affirming the remaining issues presented by Respondents regarding standing, the single-subject rule, and the ballot title and summary.

CANADY, C.J., and POLSTON, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ.,
concur.
LABARGA, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,
IF FILED, DETERMINED.

LABARGA, J., dissenting.

In *Orange County v. Singh*, 44 Fla. L. Weekly S102 (Fla. Jan. 4, 2019), this Court held that the Florida Election Code does not expressly preempt the home rule authority of Orange County to determine that its constitutional officers be elected in a general election without partisan affiliation.⁶ I concurred in that decision, and I continue to agree with the analysis and conclusion reached by the earlier majority. Accordingly, I dissent from the current majority's holding that the nonpartisan-election portion of the Orange County ordinance is preempted by the Florida Election Code and to the decision of the majority to recall the mandate issued in this case.

Application for Review of the Decision of the District Court of Appeal –
Constitutional Construction/Direct Conflict of Decisions

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(Orange County)

6. We further determined a portion of the ordinance that was inconsistent with the Florida Election Code law was severable, such that the remainder could stand. *Singh*, 44 Fla. L. Weekly at S104.

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