2018 WL 4922702 (Fla.Cir.Ct.) (Trial Order)
Circuit Court of Florida.
Eleventh Judicial Circuit
Miami-Dade County

Joe CAROLLO, individually and as a Commissioner of the City of Miami, Plaintiff,
v.
Francis X. SUAREZ, individually and in his capacity as Mayor of the City of Miami; The City of Miami, a Florida municipal corporation; Todd Hannon, in his capacity as Clerk of the City of Miami; Miamians for an Independent and Accountable Mayors Initiative, Inc., a political committee organized under the laws of the State of Florida; and Christina White, solely as a relief defendant in her capacity as Supervisor of Elections of Miami-Dade County, Florida, Defendants.

No. 2018-29893 CA 01.
October 6, 2018.

Order Granting Summary Final Judgment

Benedict P Kuehne <ben.kuehne@kuehnelaw.com>, <efiling@kuehnelaw.com>, <bkuehne@bellsouth.net>.

Curtis Miner <curt@colson.com>, <claudiav@colson.com>, <eservice@colson.com>.

Jennifer S Blohm <jblohm@meyerbrookslaw.com>, <daldrich@meyerbrookslaw.com>.

John Arrastia <jarrastia@gjb-law.com>, <hgray@gjb-law.com>, <jzamora@gjb-law.com>.

Jesus M. Suarez <jsuarez@gjb-law.com>, <ecastellanos@gjb-law.com>, <jzamora@gjb-law.com>.

Raquel Rodriguez <rrodriguez@mcdonaldhopkins.com>.

Darci Cohen <dcohen@gjb-law.com>.

Lazaro Pascual Fields <laz@colson.com>.

Marcos Daniel Jimenez <mdj@mdjlegal.com>, <kvasquez@leoncosgrove.com>.

Victoria Mendez, Esq. <vmendez@miamigov.com>.

Jennifer S. Blohm, Esq. <jblohm@meyerbrookslaw.com>.

Abigail Price-Williams, Esq. <apwl@miamidade.gov>.

Oren Rosenthal <orosent@miamidade.gov>, <dmh@miamidade.gov>.

Raquel A Rodriguez <rrodriguez@mcdonaldhopkins.com>, <ldiaz@mcdonaldhopkins.com>.

Mario M. Ruiz <aromero@mcdonaldhopkins.com>, <mruiz@mcdonaldhopkins.com>.

Christine M Dimitriou <cdimitriou@mcdonaldhopkins.com>, <ldiaz@mcdonaldhopkins.com>, <aromero@mcdonaldhopkins.com>.

Roberto Martinez <bob@colson.com>, <kayla@colson.com>.

Francisco Maderal <Frank@colson.com>.

Lazaro Fields <Laz@colson.com>.

Marcos D Jimenez <Mjimenez@mwe.com>.

Michael B Valdes <mbv@miamidade.gov>.

Miguel M. dela O, Judge.

***1 THIS CAUSE** came before the Court on October 5, 2018, on Defendant Mayor Francis X. Suarez's Motion to Dismiss; Defendant Strong Miami's Motion for Judgment on the Pleadings (or to Dismiss); Defendant Strong Miami's Renewed Motion to Dismiss; Defendants the City of Miami and Todd Harmon's Motion to Dismiss with Prejudice, or in the Alternative, Motion for Summary Judgment; and Plaintiff, City of Miami Commissioner Joe Carollo's ("Commissioner Carollo"), Motion for Summary Judgment as to Counts I and IV.

The essence of the matter before the Court is that Commissioner Carollo opposes changing the governing structure of the City of Miami to a strong mayor form of government In his role as a City Commissioner he argued against the issue being presented to, and decided by, the voters in the form of a ballot referendum. Having lost that vote, he now asks this Court to declare the referendum unlawful for a variety of reasons, none of which have merit The question of how the City of Miami government should be structured is at its core a political one. Therefore, Commissioner Carollo must rely on his powers of persuasion to convince the citizens of Miami as to the folly of a strong mayor form of government, if it is indeed folly, because this Court cannot provide the relief he seeks.

THE COURT has reviewed the pleadings, the relevant motions and responses, the relevant portions of the record, and heard argument of counsel. The Court **GRANTS** summary final judgment [1] in favor of the Defendants and against Plaintiff for the reasons set forth below.

I. BACKGROUND.

On August 14, 2018, the City of Miami Commission ("Commission") adopted a resolution directing that a ballot referendum be placed on the November 6, 2018 general election ballot asking the City of Miami voters if they wish to amend the City's charter to change the governing structure of the City to one with a strong mayor.

This case began on September 4, 2018, when Commissioner Carollo filed an Emergency Complaint for Declaratory and Injunctive Relief and Petition for Emergency Writ of Mandamus. The Complaint seeks to enjoin the ballot referendum scheduled for the November 6, 2018 general election ballot It names as defendants Miami Mayor Francis Suarez ("Suarez"), the City of Miami ("City"), City of Miami Clerk Todd Hannon ("Hannon"), Miamians for an Independent and Accountable Mayor's Initiative, Inc. ("Strong Miami"), and Supervisor of Elections Christina White.

II. UNDISPUTED FACTS.

The following undisputed facts are taken from Commissioner Carollo's Complaint, and equally support a dismissal with prejudice as they do summary judgment. The sole fact not alleged in the Complaint, but otherwise undisputed, is the existence of the August 6, 2018 Commission resolution described below.

A. THE COMMISSION PROPOSED A CHARTER AMENDMENT.

***2** Under Section 2-112 of the Miami City Code of Ordinances, a charter amendment can be proposed in one of two methods. The Commission may adopt a resolution, at any time, directing the City Attorney to draft a proposed amendment to the City charter. § 2-112(a). Or, within 120 days after the certification of a petition by ten percent of the qualified electors of the City of Miami, the City Attorney is required to draft an amendment without necessity of action by the Commission. *Id.*

It is undisputed that on April 16, 2018, a citizen's committee proposed to amend the city charter by petition for a Strong Mayor-Commission Form of Government ("Charter Amendment"). Their effort culminated in the certification of 19,880 signed petitions by July 30, 2018, which exceeded the 10% threshold required for a petition-based amendment under Section 2-112.

Based on that certification (and without further action of the Commission) the City Attorney would have been required by City of Miami Ordinance Section 2-112 to draft a charter amendment within 120 days (*i.e.*, November 27, 2018), which may have occurred after the upcoming general election. Commissioner Carollo does not allege that the City Attorney ever acted on her own pursuant to the petition certification. Instead, a "first" special meeting of the Commission was called on August 6, 2018. This meeting was not required by the certified petition process. *See* § 2-112.

At this first special meeting, the Commission chose not to wait for the petition process and risk missing the general election, which would have required the City to pay for a special election. Instead, the Commission chose to pass its own resolution, Resolution 4615, directing the City Attorney to draft the proposed Charter Amendment in time for the general election scheduled November 6, 2018. This first resolution acknowledges the petition, but states that "the City Commission wishes to submit the … proposed amendments to the electorate, for approval or disapproval,… on November 6, 2018" (the general election date) and "direct[s]" the City Attorney to prepare a draft amendment in time for that election.

B. THE MIAMI CITY COMMISSION PLACED THE CHARIER AMENDMENT ON THE BALLOT.

On August 14, 2018, the Commission adopted a second resolution directing the Charter Amendment be placed on the November 6, 2018 general election ballot for consideration. As with the first resolution, the second resolution acknowledged the existence of the petition, among other things, but again made it clear that:

> the *City Commission wishes* to submit the above-mentioned proposed amendments to the electorate, for approval or disapproval, at a Special Election to be held on November 6, 2018

(emphasis added). The resolution set forth the proposed Charter Amendment and summary ballot language.

C. BALLOT LANGUAGE.

The August 14, 2018 resolution to amend the charter included the following ballot summary:

Change to Strong Mayor-Commission Form of Government

Shall the Miami Charter be amended to change to a strong mayor-commission form of government; replace city manager with the mayor, mayor scives as nonvoting, non-member commission chair, grant mayor power to appoint and remove city attorney, city clerk, police and fire chief, department directors and employees; change filling mayoral vacancy and pay formula; adopt state recall procedure; provide other mayoral and commission powers and changes and make effective immediately?

Yes

No

D. THERE ARE NO LEGALLY RELEVANT DISPUTED FACTS.

***3** These undisputed facts are sufficient for this Court to rule on the pending motions. To be sure, Commissioner Carollo disagrees with the Court's conclusion that no legally relevant disputed facts exist. Commissioner Carollo sought to take dozens of depositions, and subpoenaed in excess of 30 witnesses to the October 5, 2018 hearing, all of which this Court deemed unnecessary. When pressed to proffer what discovery Commissioner Carollo needed to either support his motion for summary judgment, or defeat the Defendants' motions, Commissioner Carollo's counsel spoke generally about seeking to prove that the Defendants engaged in an effort to deceive and deprive of their due process rights the voters and other City Commissioners. In short, Commissioner Carollo would have this Court evaluate and disapprove of tactics and rhetoric surrounding the campaign to change the City's governing structure. But courts are ill-suited for such a role, and have historically shunned wading into such murky political waters. *See* *Johnson v. State*, 660 So. 2d 637, 646 (Fla. 1995) (the Florida Constitution "forecloses the courts of this state from attempting to resolve questions that are essentially political in nature. Rather, political questions—as opposed to legal questions—fall within the exclusive domain of the legislative and executive branches"). Because these issues are irrelevant to the determination this Court must make, no discovery is necessary.

Moreover, because the legal conclusions it has reached are dispositive of all the claims in the Complaint, the Court also finds it unnecessary to consider the factual allegations regarding whether or not any of the petition circulators were registered Miami-Dade County electors.

III. STANDARD FOR SUMMARY JUDGMENT.

Florida Rule of Civil Procedure 1.510 provides that a movant is entitled to summary judgment when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment serves to avoid the expense and delay of unnecessary trials. *See* *Nat'l Airlines, Inc. v. Florida Equip. Co.*, 71 So. 2d 741, 744 (Fla. 1954); *Petruska v. Smartparks–Silver Springs, Inc.*, 914 So. 2d 502, 503 (Fla. 5th DCA 2005) ("The great benefit derived from summary judgment is that it puts an end to useless and costly litigation where there is no genuine issue of material fact to present to a jury."). The competing motions before this Court present pure issues of law for the Court to resolve.

IV. CONCLUSIONS OF LAW

Commissioner Carollo seeks to enjoin the City from holding an election on a referendum to amend its City Charter to adopt a strong mayor form of government.

> The law is well-settled that a court of equity as a general rule will not restrain the holding of an election because a free election in a democracy is a political matter to be determined by the electorate and not the courts. *City of Deland v. Fearington*, 108 Fla. 498, 146 So. 573 (1933); *Joughin v. Parks*, 107 Fla. 833, 143 So. 145 (1932); *Dulaney v. City of Miami Beach*, 96 So. 2d 550 (Fla. 3d DCA 1957). Limited exceptions to this rule have been recognized but only on the narrowest of grounds. One such exception is where the election is being held in violation of an applicable legislative enactment *City of Miami Beach v. Herman*, 346 So. 2d 122 (Fla. 3d DCA 1977). Another is where the ballot question on a referendum is misleading and deprives the voter of an opportunity to know and to be on notice as to the proposition on which he is to cast his vote. *Hill v. Milander*, 72 So. 2d 796 (Fla. 1954).

Metro. Dade County v. Shiver, 365 So. 2d 210, 212 (Fla. 3d DCA 1978), *aff'd sub nom.*, *Miami Dolphins, Ltd v. Metro. Dade County*, 394 So. 2d 981 (Fla. 1981). Commissioner Carollo has not established any facts that would entitle him to the extraordinary relief he seeks.

A. COUNT I FAILS AS A MATTER OF LAW.

Commissioner Carollo challenges the 75 word ballot summary of the Charter Amendment pursuant to Florida Statute section 101.161. "The issue of whether the ballot language describing a proposed constitutional amendment is deficient presents a pure question of law...." *Dep't of State v. Fla. Greyhound Assoc.*, 2018 WL 4275358, *3 (Fla., Sep. 7, 2018). Courts "must exercise extreme caution and restraint" before removing a ballot amendment from voters. *Id.*; *see also Cty. of Volusia v. Detzner*, 2018 WL 4272435, *2 (Fla., Sept 7, 2018) (citations omitted). "In order for a court to interfere with the right of the people to vote on a proposed … amendment, the record must show that the proposal is clearly and conclusively defective." *Greyhound*, at *3 (citations omitted).

***4** Section 101.161(1) requires that a public measure "submitted to the vote of the people include a title 'not exceeding 15 words in length, by which the measure is commonly referred to,' and a ballot summary that explains 'the chief purpose of the measure' in no more than seventy-five words." *Cty. of Volusia*, at *2 (citing Fla. Stat § 101.161). "In assessing conformity with these requirements, [the courts] consider two questions: (1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." *Id.* Here, the answer to the first question is clearly "yes," and just as clearly "no" to the second.

Both the ballot title and summary fairly inform the voter of the "chief purpose" of the Charter Amendment — the creation of a strong mayor-commission form of government. Each refers to and explains that the Charter Amendment changes the City of Miami to a "strong mayor-commission form of government." Importantly, the Court "presumes that the average voter has a certain amount of common understanding and knowledge," and "[b]ecause of this, ballot language is not required to explain every detail or ramification of the proposed amendment" *Greyhound*, at 3 (citations omitted). The ballot summary at issue provides numerous examples of the ways in which the Office of Mayor is made stronger: *e.g.*, it replaces the city manager, it is granted the authority to appoint and remove city attorney, city clerk, police and fire chief, department directors and employees.

Nor can it fairly be said that the ballot summary misleads the public. All of the Charter Amendment's enactments are part-and-parcel of a strong-mayor form of government The law requires only that the ballot summary allow a voter "to draw a common-sense conclusion" and "give[] the voter fair notice of the decision he must make." *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 703 (Fla. 2010) (citations omitted). The items Commissioner Carollo alleges are misleading are implementing details consistent with a stronger mayor with more authority and responsibility. The mayor's compensation, pay structure, authority to appoint city officials, etc., are details necessarily conveyed by the amendment's chief purpose – a form of government where the mayor, not the manager, has more authority and responsibility.

Commissioner Carollo argues that the ballot summary's reference to a change in the "pay formula" for the Mayor is misleading because there is no pay formula now, and therefore nothing to change. This claim misses the mark. First, there is in fact a pay formula now, it is whatever manner and amount the Mayor is currently paid. Commissioner Carollo's counsel stated at the hearing that the Mayor's salary is set at the discretion of the Commission. That is a pay formula. It may be purely discretionary, but a discretionary formula is no less a formula. Indeed, the pay formula in the Charter Amendment also calls for the Commission to set the Mayor's salary at its discretion – but changes the current formula by setting a floor for the Mayor's salary and thus constraining the Commission's unbridled discretion.

Second, setting the Mayor's salary is hardly the "chief purpose" of the Charter Amendment. As such, Commissioner Carollo's complaint about the reference to a pay formula in the ballot summary cannot be a basis for invalidating it. *See Harris v. Moore*, 752 So. 2d 1241, 1244 (Fla. 4th DCA 2000) ("We have also considered and reject the contention that the summary is invalid because of confusion associated with the election date for selecting nine, rather than the initial seven, commissioners. Any such uncertainty does not impact the 'chief purpose' of the provision, and is insufficient to support invalidating the ballot summary.").

***5** Plaintiff's litany of objections to the ballot language are ancillary in nature compared to the Charter Amendment's chief purpose. This Court finds that the ballot measure titled "Change to Strong Mayor-Commission Form of Government" identifies the change from the current form of government to that of a strong mayor. The title is clear, complete, and fully embraces the "chief purpose" and discloses the "true effect" of the Charter Amendment. The summary, in turn, explains the essential details of the proposed changes to the City's governing structure in the required 75 words. The ballot summary meets the requirement of Section 101.161 and, therefore, the Court enters Final Judgment as to Count I of the Complaint in favor of the Defendants.

B. MIAMI-DADE COUNTY ORDINANCE 12-23 DOES NOT INVALIDATE THE CHARTER AMENDMENT.

Commissioner Carollo is not entitled to relief under Counts II, III and V of the Complaint because they are based on Miami-Dade County Ordinance 12-23, which (1) does not apply to a City of Miami petition as a matter of law, (2) even if it did, the Commission bypassed the petition process, and (3) even assuming the facts alleged by Commissioner Carrollo are true, Strong Miami and Mayor Suarez cannot, through words or actions, make Ordinance 12-23 applicable to a petition circulated for the purpose of amending the City's charter.

1. COUNTY ORDINANCE 12-23 DOES NOT APPLY TO PETITIONS TO AMEND THE CITY CHARTER.

Commissioner Carollo complains the petition process used by Strong Miami failed to conform with the requirements of Miami-Dade County Ordinance 12-23, which requires, among other things, (1) that petitions contain the titles and texts in English, Spanish and Creole of the proposed ordinance or charter provisions, and (2) that petition circulators be registered Miami-Dade County electors. Neither of these requirements is included in the City's Charter.

Although Miami-Dade County has the authority to adopt ordinances applicable to municipalities like the City of Miami, it did not do so here. The text of County Ordinance 12-23 does not refer to municipal elections or municipalities. When a county ordinance applies to municipal governments it explicitly states as much. *See*, *e.g.*, Miami-Dade Cty. Ord. 2-11.1 (specifying that county code of ethics "shall also constitute a minimum standard of ethical conduct and behavior for all municipal officials and officers"). Yet, Ordinance 12-23 does the opposite. Ordinance 12-23 by its express terms applies only to county petitions pursuant to "Article 8" of the County charter which relates to *county* initiatives, referendums, and recalls.

The only County law applicable to this case is Miami-Dade County Charter Section 6.03 which allows an amendment to a municipal charter to be proposed by "adopt[ing] a resolution … *or* after the certification of a petition," as previously discussed, and *without* any restriction on the process of gathering the petitions. Simply stated, nothing in the County charter imposes the restrictions on the petition gathering process which Commissioner Carollo asks this Court to apply. [2]

***6** Commissioner Carollo's position that Ordinance 12-23 applies because the City Attorney thought it did is unsupported by any legal principle. The City Attorney's opinion is just that, an opinion, it does not have the force of law and Commissioner Carollo has provided no legal authority to suggest otherwise. Statutes mean what *courts* determine they mean. *See Lee Cty. v. Barnett Banks, Inc.*, 711 So. 2d 34, 34 (Fla. 2d DCA 2000).

Nor does the doctrine of estoppel apply here. Strong Miami's voluntary use of Ordinance 12-23 as a guide, whether for transparency or political expedience, does not make Ordinance 12-23 applicable where it clearly is not. *See University of South Florida College of Nursing v. State, Dep't of Health*, 812 So. 2d 572, 574 (Fla. 2d DCA 2002) (a procuring agency exempt from

competitive processes is not bound by statutory competitive procurement procedures and bid protest provisions because of its voluntary use of a competitive selection format). Even if the doctrine of estoppel were otherwise available, it is unavailable against a government or governmental process for a mistake of law. *See Dolphin Outdoor Advertising v. Dept. of Trans.*, 582 So. 2d 709, 710 (Fla. 1st DCA 1991) (estoppel does not apply to governments for misstatements of law). Courts apply the law, not what someone mistakenly thinks is the law.

Finally, Commissioner Carollo's allegation that the voters and City Commissioners were misled by either Strong Miami or Mayor Suarez into believing that the proposed Charier Amendment could be challenged in court for compliance with Ordinance 12-23 is yet another attempt to insert this Court into a political dispute. This Court cannot, and will not, be the watchdog for accuracy in politics. There are literally no standards for this Court to apply in such a situation. If Mayor Suarez was relying on the City Attorney, does that count as "misleading the voters and the City Commissioners"? How does the Court determine if he misspoke or intentionally misled? And is there a difference? Also, how does the Court go about determining whether voters or politicians relied on the alleged misstatements? The remedy for Commissioner Carollo's complaint about the process and any attendant political maneuverings is to be found in the political arena, not here.

Accordingly, County Ordinance 12-23 does not apply and Defendants are entitled to summary final judgment as to Counts II and III.

2. ORDINANCE 12-23 IS ALSO INAPPLICABLE BECAUSE THE COMMISSION RENDERED THE PETITION PROCESS MOOT.

The Commission has the independent authority to adopt a resolution placing a charter amendment on the ballot for voter approval. Even if Ordinance 12-23 applies, which this Court concludes it does not, the fact the Commission placed the proposed Charter Amendment on the November 6, 2018 general election ballot moots any application or relevance of Ordinance 12-23.

The existence of a voter petition supporting the Charter Amendment does not change the analysis. Although City of Miami voters may cause a proposed charter amendment to be drafted for the ballot without any resolution by the Commission, that is not what ultimately occurred. Rather, the Commission took it upon itself, on August 6, 2018, to call for a special meeting and direct the drafting of the Charter Amendment by resolution (which it had the independent authority to do under Section 2-112). [3] Then, on August 14, 2018, the Commission voted to submit the Charter Amendment to the voters by separate resolution. The Commission's choice to invoke this method of amending the City's charter as allowed for in City Code Section 2-112 moots Commissioner Carollo's allegations regarding the petition process.

3. THE COURT DOES NOT REACH THE CONSTITUTIONALITY OF ORDINANCE 12-23.

***7** Even if the Court were to find that Ordinance 12-23 applies to City of Miami charter initiatives, which this Court does not find, the registered elector requirement for petition circulators is arguably an unconstitutional restraint on core political speech as applied. *See* *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). [4] However,

[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality … unless such adjudication is unavoidable.

Spector Motor Serv. v. McLaughlin, 323 U.S. 101, 105 (1944); *see Burton v. United States*, 192 U.S. 283, 295 (1905) ("It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."). The Court, therefore, does not address the constitutionality of Ordinance 12-23's requirements for circulators because it is not necessary to the determination of the controversy before it

C. APPLICATION OF THE LEGISLATIVE ACTION DOCTRINE.

The City argues that the Commission's resolution is a "legislative action" because it resulted in the formulation of public policy – whether the City of Miami should have a Strong Mayor-Commission form of government. *See D.R. Horton, Inc.—Jacksonville v. Peyton*, 959 So. 2d 390, 393 (Fla. 1st DCA 2007) ("A legislative action by a local governing body is one that results in the *formulation* of a general rule of policy."). When a municipal commission makes a general policy determination, that is a legislative act subject to virtually no judicial review. *See Bd. of Cty. Comm'rs of Brevard Cty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) ("[I]n deference to the policymaking function of a [city commission] when acting in a legislative capacity, its actions will be sustained as long as they are fairly debatable."). In this case, the City argues that the Commission's act of passing its own resolution and placing the proposed Charter Amendment on the ballot is a "fairly debatable" [5] legislative act which is not subject to further review by this Court.

***8** The City may well be correct. Commissioner Carollo did not address the legislative action case law in his briefings. He did not argue why the Commission's independent action in directing the City Attorney to draft ballot referendum language does not qualify as a "legislative action," nor how it fails the "fairly debatable" standard under that case law.

However, this Court has significant doubts that placing a referendum before the voters is a legislative act. None of the cases cited by City concern a legislative body's decision to place a referendum on the ballot. The Commission's action does not actually set any policy, it leaves it to the voters (as it must) whether to fundamentally change Miami's governing structure. It is clearly a legislative act when the Commission adopts rules concerning the placement of referendums before the voters, but less clearly so when it passes a resolution to place a particular referendum before the voters. *Cf. Bd. of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) (drawing distinction between "[e]nactments of original zoning ordinances [which] have always been considered legislative" and specific rezoning decisions which are viewed as quasi-judicial or administrative actions).

Although not dispositive, Chapter 166 draws this exact distinction between ordinances, which are legislative action, and resolutions, which are not:

> (a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.
>
> (b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

§ 166.041, Fla. Stat. (2017).

Consequently, because this Court harbors doubts that the Commission's decision to place the Charter Amendment before the voters is a legislative act subject to the lowest standard of review, the Court does not base its decision on the legislative act doctrine.

D. COUNT IV FAILS AS A MATTER OF LAW.

In Count IV, Commissioner Carollo challenges the proposed Charter Amendment on constitutional grounds (*i.e.*, the First Amendment of the U.S. Constitution and Article 1 of the Florida Constitution).

The parties agree there is no single-subject requirement for proposed municipal charter amendments under Florida law. *See Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 836–37 (Fla. 1994) ("Neither the constitution nor Florida Statutes applies the [single subject] rule to proposed amendments to county charters."); *Shulmister v. Larkins*, 856 So. 2d 1149, 1151 (Fla. 4th DCA 2003) ("Neither the Florida Constitution nor Florida Statutes applies the single-subject rule to proposed amendments to county or city charters.").

Having no basis under Florida statutory law to challenge the inclusion of various provisions amending the City's charter to effectuate a strong mayor form of government, Commissioner Carollo turns instead to the U.S. and Florida Constitutions' freedom of speech provisions. He relies exclusively on a recent Leon County Circuit Court decision, which is now the subject of a direct appeal to the Florida Supreme Court. *See Anstead v. Detzner*, Case No. 2018-CA-1925 (Fla. 2d Cir. Ct., Sept. 5, 2018). The Leon County case involved a proposed Constitutional Amendment, not a charter amendment The issues bundled together in the Leon County lawsuit are remarkably different than the single-question of a strong-mayor form of government here. For instance, in the Leon County case, the structure of state university boards was combined with death benefits for military survivors; prohibiting offshore drilling was combined with prohibiting electronic cigarettes; and, regulating alien inheritance was combined with high-speed transportation.

***9** The proposed Charter Amendment before this Court concerns a single, delineated subject. The items in the referendum and ballot questions are logically and naturally related to each other. Therefore, even if the Florida Supreme Court were to find, for the first time, that voters have a First Amendment right to not have issues bundled in referendums, the decision would likely have no application here. Nevertheless, this Court can only rule on the law as it stands today. Today, Commissioner Carollo has no binding legal precedent to support his claim. Accordingly, Defendants are entitled to summary final judgment as to Count IV.

E. THE PETITION FOR WRIT FOR MANDAMUS IS LEGALLY INSUFFICIENT AND MOOT.

Commissioner Carollo's petition for writ of mandamus fails as a matter of law. The mandamus petition is predicated on the application of Ordinance 12-23. Because 12-23 does not apply to the City of Miami, Count V fails.

It is also moot because the Commission caused the proposed Charter Amendment to be placed on the November ballot, not citizen petitions. Defendants are entitled to summary final judgment as to Count V.

V. CONCLUSION.

WHEREFORE, it is **ORDERED AND ADJUDGED** that Defendant Mayor Francis X. Suarez's Motion to Dismiss; Defendant Strong Miami's Motion for Judgment on the Pleadings (or to Dismiss); Defendant Strong Miami's Renewed Motion to Dismiss; Defendants the City of Miami and Todd Hannon's Motion to Dismiss or for Summary Judgment are all treated as motions for summary judgment and **GRANTED as to all claims**. It is further

ORDERED AND ADJUDGED that Plaintiff Joe Carollo's Motion for Summary Judgment as to Counts I and IV is **DENIED**. It is further

ORDERED, ADJUDGED AND DECREED that **FINAL JUDGMENT** is hereby entered in favor of Defendants and that Plaintiff Joe Carollo take nothing by this action and that Defendants Francis X. Suarez, The City of Miami, Todd Hannon, in his capacity as the Clerk of the City of Miami, Miamians For An Independent and Accountable Mayors Initiative, and Christina White, in her capacity as Supervisor of Elections of Miami-Dade County, Florida, shall go hence without day.

DONE AND ORDERED in chambers, at Miami-Dade County, Florida, this 6th day of October, 2018.

<<signature>>

Miguel M. de la O

CIRCUIT JUDGE

Electronic Service List:

Benedict P Kuehne <ben.kuehne@kuehnelaw.com>, <efiling@kuehnelaw.com>, <bkuehne@bellsouth.net>

Curtis Miner <curt@colson.com>, <claudiav@colson.com>, <eservice@colson.com>

Jennifer S Blohm <jblohm@meyerbrookslaw.com>, <daldrich@meyerbrookslaw.com>

John Arrastia <jarrastia@gjb-law.com>, <hgray@gjb-law.com>, <jzamora@gjb-law.com>

Jesus M. Suarez <jsuarez@gjb-law.com>, <ecastellanos@gjb-law.com>, <jzamora@gjb-law.com>

Raquel Rodriguez <rrodriguez@mcdonaldhopkins.com>

Darci Cohen <dcohen@gjb-law.com>

Lazaro Pascual Fields <laz@colson.com>

Marcos Daniel Jimenez <mdj@mdjlegal.com>, <kvasquez@leoncosgrove.com>

Victoria Mendez, Esq. <vmendez@miamigov.com>

Jennifer S. Blohm, Esq. <jblohm@meyerbrookslaw.com>

Abigail Price-Williams, Esq. <apwl@miamidade.gov>

Oren Rosenthal <orosent@miamidade.gov>, <dmh@miamidade.gov>

Raquel A Rodriguez <rrodriguez@mcdonaldhopkins.com>, <ldiaz@mcdonaldhopkins.com>

Mario M. Ruiz <aromero@mcdonaldhopkins.com>, <mruiz@mcdonaldhopkins.com>

Christine M Dimitriou <cdimitriou@mcdonaldhopkins.com>, <ldiaz@mcdonaldhopkins.com>, <aromero@mcdonaldhopkins.com>

Roberto Martinez <bob@colson.com>, <kayla@colson.com>

Francisco Maderal <Frank@colson.com>

Lazaro Fields <Laz@colson.com>

Marcos D Jimenez <Mjimenez@mwe.com>

Michael B Valdes <mbv@miamidade.gov>

Mailing Service List:

Francis X (Mayor of the City of Miami) Suarez, 3500 Pan American Drive, Miami, FL 33133

***10** The City of Miami, 3500 Pan American Drive, Miami, FL 33133

Todd (Clerk of the City of Miami) Hannon, 3500 Pan American Drive, Miami, FL 33133

Footnotes

1 Plaintiff and Defendants consented to the Court treating the pending motions to dismiss and for judgment on the pleadings as motions for summary judgment under Florida Rule of Civil Procedure 1.510.

2 Under the Florida Constitution, the only way in which a county may alter how a municipality amends its own charter is by a provision in the county's own charter. Fla. Const., Art. VIII, Sec. 6(e), n.3 (preserving Dade County Home Rule under Art. VIII, Sec. 11(1)(g), Fla. Const. 1885)("The electors of Dade County, Florida are granted the power to adopt, revise and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the government body. This *charter.* … (g) Shall provide the method by which each municipal corporation in Dade County shall have the power to make, amend, repeal its own charter. Upon adoption of *this home rule charter* by the electors this method shall be *exclusive* and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.") (emphasis supplied)).

3 Although Commissioner Carollo argues that he did not include the existence of this resolution in the four-comers of his complaint, nowhere does he dispute this tact set forth by the Defendants. Moreover, it has been submitted in support of the City's Motion and the Court takes judicial notice of it for purposes of summary judgment

4 In *Buckley*, the Supreme Court invalidated a Colorado law requiring initiative petition circulators to be Colorado registered voters because the requirement "produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer.*" *Id.* at 194 (citing *Meyer v. Grant*, 486 U.S. 414, 422 (1988) (striking Colorado's prohibition of payment for the circulation of ballot-initiative petitions because petition circulation is "core political speech"). Since *Buckley*, courts have consistently struck down laws and regulations requiring petition circulators, gatherers, or witnesses to be registered electors, or even residents. *See*, *e.g.*, *Lerman v. Board of Elections of the City of New York*, 232 F.3d 135, 148 (2d Cir. 2000) (striking down requirement that witnesses to petition signatures be residents in the political subdivision); *Krislov v. Rednour*, 226 F.3d 851, 863-865 (7th Cir. 2000) (invalidating Illinois' requirement that signature gatherers be voters in political subdivision)..

5 This is the lowest standard of review: "where reasonable persons could differ as to the propriety the [] action, it should be affirmed." *Payne v. City of Miami*, 52 So. 3d 707, 712 (Fla. 3d OCA 2010).