

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

**JON KLEIBER, MARK SERBIN,
JAMES TOLLERTON, DR. KENNETH
PFAHLER, GRETCHEN MISCIK,
MIREYA EAVEY and ED TAYLOR, individually**

Petitioners,

vs.

CASE NO. 2007-CA-012840 NC

**KATHY DENT, as Supervisor of Elections
for Sarasota County, Florida and SARASOTA
COUNTY, FLORIDA, a political subdivision of the
State of Florida,**

Respondents.

**ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR, IN THE
ALTERNATIVE, DECLARATORY AND INJUNCTIVE RELIEF**

THIS CAUSE is before the Court on a Petition for Writ of Mandamus or, in the Alternative, Declaratory and Injunctive Relief filed by the Petitioners on October 25, 2007. The Court has reviewed the file, heard the arguments of counsel for the Petitioners, the Respondents and Interveners, the Citizens for Sensible Growth, and is otherwise duly advised in the premises.

I.

The instant case concerns a proposed amendment to the Sarasota County Charter for which an election is set for November 6, 2007, although early ballots and absentee ballots will be cast prior to the November 6th election. The title and ballot summary of the proposed amendment in its entirety reads as follows:

SUPER MAJORITY VOTE REQUIRED TO
APPROVE CERTAIN INCREASES IN
LAND USE DENSITY OR INTENSITY

Whether the Charter should be amended to require that ordinances amending Sarasota County's Comprehensive Plan which increase allowable land use density or intensity be approved by a super majority vote of the Board of County Commissioners. "Super majority" means an affirmative vote of a majority plus one of the full membership of the Board of County Commissioners. Presently, the Board can approve such increases in land use density or intensity by a simple majority vote.

- YES, for the Charter Amendment
- NO, against the Charter Amendment

II.

First, the Court observes that if a decision by this Court to remove the proposed amendment from the ballot was reversed on appeal, it would be impossible to re-create a vote on the proposed amendment that would accurately reflect the vote that would have taken place November 6, 2007. This potential discrepancy raises the issue of voter disenfranchisement. If the Court's decision that the proposed amendment should remain on the ballot were reversed on appeal, the voting results regarding the proposed amendment could simply be stricken. Thus, the Petitioners have a viable post-election remedy, but those in favor of enacting the proposed amendment could be irreparably harmed if the proposed amendment were to be taken off the ballot.

The Court agrees with the Petitioners that the early voting process operates to facilitate voter participation in the actual election on November 6, 2007, and is not an early start to the actual election. As such, the timing of the filing of the Petition is not a bar to bringing the instant action. The Court, however, does express its concern with the

4th DCA 2000). The Court concurs with the Petitioners that the wording of the ballot title and summary is less than perfect; however, the Court concludes that the ballot language informs the voters of the chief purpose of the measure.

The phrase “simple majority” and the words “density” and “intensity” cannot be read in isolation. The first sentence of the ballot summary establishes that a super majority vote will be required to approve ordinances amending Sarasota County’s Comprehensive Plan which increase allowable land use density or intensity. The second sentence clearly defines a super majority vote as an affirmative vote of a majority plus one of *the full membership* of the Board of County Commissioners. (Emphasis added.) The third sentence describes the current requirement of a simple majority vote to approve increases in land use density or intensity. The Florida Supreme Court has determined that in reviewing proposed ballot measures, the proper analysis is two-pronged: (1) whether the ballot title and summary, in clear and unambiguous language, fairly informs the voter of the chief purpose of the measure, and (2) whether the language of the title and summary, as written, misleads the public. *See Advisory Op. to Att’y Gen. Re: Extending Existing Sales Tax to Non-Taxed Services where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471 (Fla. 2007). Read in its entirety, the result of approving the amendment is apparent: a more stringent standard is imposed to approve amendments to the Comprehensive Plan that create increases in land use density or intensity.

Furthermore, it is the duty of the voters “...to do their homework and educate themselves about the details of a proposal and about the pros and cons of adopting the proposal...”. *Smith v. Am. Airlines*, 606 So. 2d 618 (Fla. 1992). The public is fairly informed as to the chief purpose of the measure, and that the ballot title and summary are

timing of the Petitioners filing. On September 12, 2007, the Board of County Commissioners reviewed the proposed amendment that is at the heart of the dispute in the instant case, and enacted an ordinance ordering the proposed amendment be placed on the ballot for a special election. This created public notice of the terms of the proposed amendment. Moreover, notices of the Special Election were published in area newspapers on October 2, 2007 and October 26, 2007, early voting commenced on October 22, 2007 and the Petitioners filed their Petition for Writ of Mandamus on October 25, 2007.

III.

The Court next turns to whether the ballot summary is misleading or confusing. The Petitioners argue that the ballot summary is ambiguous on its face in several respects. First, the Petitioners argue that the phrase "simple majority" may lead some to conclude that currently only a quorum of County Commissioners need vote on an increase in land use density or intensity, thereby creating the potential for two votes to decide such an issue. This interpretation, they argue, is an erroneous statement because, in fact, a vote of two County Commissioners is insufficient to decide such an issue under Section 2.2A of the Sarasota County Charter. Second, the Petitioners argue that the words "density" and "intensity" are ambiguous because they are open to more than one interpretation. Third, the Petitioners argue that the phrase "certain increases" in the ballot title is at variance with the language in the ballot summary, and should instead have been termed "certain changes."

One seeking to remove a proposed constitutional amendment from a vote of the people faces a stringent standard of review. *See Harris v. Moore*, 752 So. 2d 1241 (Fla.

not misleading to the public. The ballot summary assumes knowledge of the voter regarding what the Sarasota Comprehensive Plan is; if the voter knows about the Sarasota Comprehensive Plan, as an educated voter should, then the voter knows about density and intensity. The Court, therefore, concludes that voters will not be confused as to the effect of voting in favor or against the proposed amendment, and that the proposed amendment complies with § 101.161(1), Fla. Stat. (2007) (requiring that "the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure"). *Cf. Wadhams, et al. v. Bd. of County Comm'r of Sarasota County*, 567 So. 2d 414, 415 (Fla. 1990) (striking proposed amendment notwithstanding affirmative vote from majority of the voters because the ballot did not contain a summary pursuant to §101.161(1)).

IV.

The Court finds it does not have jurisdiction to entertain the equal protection argument because it is not an actual case or controversy. In any event, the Court is not persuaded that two landowners, each with different land use designations, would be considered to be similarly situated.

It is, therefore,

ORDERED AND ADJUDGED that the Petitioners' Petition for Writ of Mandamus or, in the Alternative, Declaratory and Injunctive Relief is hereby **DENIED**.

DONE AND ORDERED in Chambers, in Sarasota, Sarasota County, Florida this 2nd day of November, 2007.


Debra Johnes Riva, Circuit Judge

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ORDER ON MOTION TO INTERVENE

This matter came for hearing on November 2, 2007, on the Motion to Intervene filed on October 29, 2007 by the Citizens for Sensible Growth, Inc. ("CISG"). The Court has considered the Motion to Intervene, heard argument of CISG and been otherwise advised in the premises.

Finding that CISG is a party in interest pursuant to Fla. R. Civ. P. 1.230 and that neither the Petitioners nor the Respondents object, it is hereby **ORDERED** and **ADJUDGED** that the Motion to Intervene is **GRANTED**.¹

DONE AND ORDERED in Chambers, in Sarasota, Sarasota County, Florida this
2nd day of November, 2007.


Debra Johnes Riva, Circuit Judge

¹ At the hearing, the Court permitted CIGS to submit memoranda and argument but as a result of the Order Denying Petition for Writ of Mandamus entered contemporaneously herewith, that will not be necessary.

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RE: Order - Kleiber v. Dent 2007-CA-012840NC

DATE: November 2, 2007

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