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M E M O R A N D U M

TO: Alachua County Charter Review Commission
FROM: Wade C. Vose, Esq., General Counsel
DATE: April 8, 2020
SUBJECT: Legal Analysis and Initial Ballot and Charter Language – Removal of Two Unconstitutional Provisions (Prohibiting Protections Based on Sexual Orientation, and Residency Requirement for Commissioner Qualifying)

Pursuant to the Charter Review Commission's request, this office has evaluated and prepared draft ballot and charter language for Proposals 20, 21, and 50, all of which were advanced for legal review at the CRC's January 29, 2020 meeting.

As you may recall, the County Attorney's Office ("CAO") prepared and submitted to the CRC a memorandum dated November 13, 2019, addressing two provisions in Section 2.2 of the Charter that that office believed were inconsistent with the Florida and U.S. Constitutions, respectively. The first is a requirement that a candidate for the office of county commissioner reside within the district from which the candidate seeks election at the time of qualifying to run for that office, rather than at the time of election. The second prohibits the board of county commissioners from adopting any ordinance creating classifications based upon sexual orientation, sexual preference, or similar characteristics, except as necessary to conform county ordinances to federal or state law.

As I previously advised the CRC, I have reviewed the CAO's November 13, 2019, memorandum in detail, and I agree with both its analysis and conclusions regarding the unconstitutionality of the identified provisions.

However, as we also discussed, I did express concerns about unintended consequences that may arise from implementing one of the CAO's recommendations as presented. Specifically, the CAO recommended, with respect to the provision prohibiting protections based on sexual orientation, that that section not only be deleted, but that the following sentence also be added: "The board of county commissioners shall have the authority to provide protections to all classifications of persons." At best, the addition of this sentence does not grant the board of county commissioners ("BOCC") any more authority than it would already possess as the governing body of the county. However, the broad phrasing of the added language could invite challenges by groups or individuals opposed to such protections, having the unintended effect of unnecessarily clouding the BOCC's otherwise clear authority in this regard. In the interests of accomplishing the intention of the proposed amendment, this is one of those instances where I would recommend that less is more.

We also discussed the possibility and desirability of combining the removal of both provisions into a single ballot question, a suggestion explicitly requested in Proposal 50. I advised at the time that

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my initial inclination was that I believed it was possible, but that I would have to wait and see if it would work out in practice in drafting the proposed ballot language. After doing so, I feel comfortable that the removal of both provisions can be accomplished in a single ballot question.

As a reminder, please recall that as a technical matter, county charter amendments proposed by a charter review commission are not subject to a statutory or constitutional single-subject requirement. *Charter Review Comm'n of Orange Cty. v. Scott*, 647 So.2d 835, 836-37 (Fla. 1994). Further, the Alachua County Charter imposes no single-subject requirement on CRC-proposed charter amendments. Nevertheless, as we have discussed, I have cautioned that any decision to propose a charter amendment encompassing multiple subjects ought to be done sparingly, with an eye to the polestars governing ballot referenda: ballot language clarity, and not “hiding the ball” from the voters.

However, in this instance, I believe the charter amendment draft provided at Exhibit “A” hereto would nevertheless fall squarely within even Florida’s stricter single subject requirements for Florida constitutional amendments by initiative petition, as the following amendment language evinces a “oneness of purpose” in removing the identified unconstitutional provisions of the Charter.

Exhibit “A”

QUESTION #X

Ballot Proposal: The ballot title and ballot summary for Question #X are as follows:

COUNTY CHARTER CLEANUP AMENDMENT
REMOVING UNCONSTITUTIONAL
PROVISIONS

Shall the Alachua County Charter be amended to remove two unconstitutional provisions, one unconstitutionally prohibiting protections based on sexual orientation, sexual preference, or similar characteristics, and another imposing unconstitutional residency requirements for county commissioner qualifying, from the Alachua County Charter?

___ Yes
___ No

Text Revisions: Upon approval of this question at referendum, the following portions of the Alachua County Charter are amended to read as follows:

Sec. 2.2. - Legislative branch.

(A) The county commission. The governing body of the county shall be a board of county commissioners composed of five (5) members serving staggered terms of four (4) years. There shall be one (1) commissioner for each of the five (5) county commission districts established pursuant to general law and they shall be elected on a countywide basis by the electors of the county. ~~Each candidate for the office of county commissioner shall reside within the district from which such candidate seeks election at the time of qualifying to run for that office, and d~~During the term of office each commissioner shall reside in the district from which such commissioner ran for office, provided that any commissioner who is removed from a district by redistricting may continue to serve during the balance of the term of office.

...

(D) Authority. The board of county commissioners shall exercise all legislative authority provided by this home rule charter in addition to all other powers and duties authorized by general law or special law approved by a vote of the electorate. ~~Provided, the board of county commissioners shall not adopt any ordinance creating classifications based upon sexual orientation, sexual~~

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~~preference, or similar characteristics, except as necessary to conform county ordinances to federal or state law.~~