

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

Case No. 2016-020844-CA-01

An Accountable Miami-Dade,
Christian Ulvert, Trenise Bryant,
Michelle Davis, And Caroline Williams,

Petitioners,

Vs.

Miami-Dade County Board Of County
Commissioners, Carlos Gimenez, Solely In
His Official Capacity As Miami-Dade County
Mayor, And Christina White, Solely In Her Official
Capacity As Miami-Dade County Supervisor Of Elections,

Respondents.

**ORDER GRANTING PETITIONER'S FIRST AMENDED PETITION FOR WRIT
OF MANDAMUS**

THIS CAUSE is before the Court on the Petitioner's Amended Petition for Mandamus and Motion to Expedite. Upon reviewing the Petition, the Respondent's opposing response, governing law and being otherwise duly advised in the premises, this Court makes the following findings:

The question presented is:

Whether mandamus is the appropriate remedy to compel the Board of County Commissioners of Miami-Dade County, the Miami-Dade Mayor, and the Miami-Dade Supervisor of Elections to place the campaign finance reform initiative ordinance on the November 8, 2016 ballot due to the

named officials failure to “perform their mandatory, non-discretionary ministerial duty” or in the alternative for the Court to compel the adoption of the proposed ordinance since the Supervisor of Elections determined that the petition contains a sufficient number of signatures pursuant to the Home Rule Amendment and the Miami-Dade County Home Rule Charter”?

Mandamus is an extraordinary remedy. It is “defined as a remedy to command performance of a ministerial act that the person deprived has a right to demand, or a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform.” *Town of Manalapan v. Rechler*, 74 So. 2d at 789 (the appellate court affirmed the trial court’s granting mandamus where Manalapan appealed a writ of mandamus ordering Manalapan to process all public records request submitted by appellees in strict accordance with section 119.07). “A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Wright v. Frankel*, 965 So. 2d 365, 368 (Fla. 4th DCA 2007); *Town of Manalapan v. Rechler*, 74 So. 2d at 789; *Eichelberger v. Brueckheimer*, 613 So. 2d at 1373. Therefore, this Court accepts the proposition that the extraordinary writ of mandamus should only be used to enforce a right already clearly and certainly established in law. *Sancho v. Joanos*, 715 So. 2d 382, 385 (Fla. 1st DCA 1998). Likewise, a writ of mandamus is not available unless the Petitioner has no other adequate legal remedy. *Maler v. Barad*, 541 So. 2d 684 (Fla. 3d DCA 1989); *Della Valle v. Wheeler*, 209 So. 2d 250 (Fla. 4th DCA 1968).

Additionally, Florida Rule of Civil Procedure 1.630 provides that “If the complaint shows a prima facie case for relief, the court shall issue . . . an alternative writ in mandamus.” Fla. R. Civ. P. 1.630(d)(2); see also *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014). Once the alternative writ in mandamus is issued, the defendant shall respond to the writ as provided in Rule 1.140. Fla. R. Civ. P. 1.630(e). “A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law.” *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA

2014)(quoting *Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997))(emphasis added); *Holcomb v. Dep't of Corrections*, 609 So. 2d 751 (Fla. 1st DCA 1992).

Herein, Petitioners cite to two Fourth District Court appellate cases, *City of Boca Raton v. Siml*, 96 So. 3d 1140 (Fla. 4th DCA 2012) and *Wright v. Frankel*, 965 So. 2d at 365 (Fla. 4th DCA 2007), for the proposition that mandamus is the appropriate remedy to compel public officials to perform the ministerial duty of placing initiative petitions on the ballot. While acknowledging, the process for initiative petitions instituted by Palm Beach County's charter is distinguishable from Miami-Dade County's process, the cases are nonetheless instructive.

In *Wright v. Frankel*, petitioners sought to compel the named officials to place the initiative petitions on the ballot because of their failure to pass the initiative petitions or place the initiative petitions on the ballot pursuant to Palm Beach's charter. *Wright v. Frankel*, 965 So. 2d at 367. Palm Beach's charter, in section 6.01, specifically confers Palm Beach electors with the power of initiative. *Id.* at 369. The appellate court noted that the electorate followed the charter's procedures for "requiring the City Commission to either adopt their proposed ordinances or submit them to the electorate in a referendum election." *Id.* The Fourth District Court of Appeal held "that that a referendum on an ordinance proposed by initiative cannot be prevented 'unless it is demonstrated that the ordinance is unconstitutional in its entirety.'" *Id.* at 371. The appellate court addresses the electorate's right to a referendum under the charter and Florida's Constitution. *Id.* Unlike Miami-Dade's charter, Palm Beach's charter clearly indicates that the legal duty of the named officials regarding initiative petitions is purely ministerial. Additionally, *City of Boca Raton v. Siml*, the appellate court affirmed the trial court's granting mandamus compelling the city to process an initiative petition where the named official refused the initiative petition. *City of Boca Raton v. Siml*, 96 So. 3d 1141.

Additionally, In *Wilson v. Dade*, the Third District Appellate Court reversed an injunction preventing an initiative petition referendum election on a "millage roll back"

ordinance noting that “There is no issue, for example, as to the propriety of the form of the initiative petition, the manner in which it was circulated, nor of the validity or sufficiency of the numbers of voters who signed it.” *Wilson v. Dade*, 369 So. 2d 1002, 1003 (Fla. 3d DCA 1979).

In the instant case, the first stage of the process as outlined by *Miami-Dade County Home Rule Charter* §8.01(1) provides that “[t]he person proposing the initiatory petition shall submit the proposal, including proposed ballot language to the Clerk of the Circuit Court who shall . . . approve as to form a petition for circulation.” *Miami-Dade County Home Rule Charter* §8.01(1). It is undisputed that, Christian Ulvert-- on behalf of Accountable Miami- Dade-- submitted an initiative petition to the Clerk of Court on April 26, 2016. It is also undisputed that two days later, the Clerk of the Court approved the petition as to form. Thereafter, *Miami-Dade County Home Rule Charter* § 8.01(1) provides that “[a] public hearing shall be held on the proposal at the next Board of County Commissioner meeting [after] the Clerk approves the petition as to form.” Again, It is undisputed that the initiatory petition was placed on the May 17, 2016 Board of County Commission Agenda for public hearing. The Board approved the petition as to form at the May 17, 2016 commission meeting. This Court concludes and it is undisputed the petitioners have clearly complied with the first stage of the statute.

In the second stage of the process, the individuals circulating the petition have 120 days from the Clerk's approval as to form to obtain the signatures of at least four percent of the registered voters in Miami-Dade County with no more than 25 percent of the required signatures coming from any one County Commission district. *See* *Miami-Dade County Home Rule Charter* § 8.01(2). As of April 28, 2016, the total number of registered voters in Miami-Dade County was 1,277,890. Therefore, the petitioners were required to collect 51,116 signatures, with no more than 12,779 of those signatures coming from any one Commission district.

Additionally, the deadline for petitioners to obtain the necessary signatures was August 26, 2016. It is undisputed that petitioners filed in excess of 120,000 signed petitions with the Clerk of the Court on August 2, 2016. It was not until August 22, 2016 that the Board of County Commissioners ordered the Supervisor of elections to canvas the submitted petitions and complete the canvass by September 7, 2016. Although the signed petitions were submitted on August 2, 2016, the Board did not take up the review of the signed petitions until September 7, 2016. Apparently, the Board of County Commissioners was in its summer recess period and was unable to convene a quorum prior to the end of the summer recess. The Chairman of the Board made valiant efforts to convene a quorum prior to September 7, 2016 but was unsuccessful.

At the September 7, 2016 meeting, the Board of County Commissioners took on the third stage of the process as outlined by the *Miami-Dade County Home Rule Charter* of verifying the sufficiency of a petition before it is placed on a ballot and, if a petition is insufficient, to notify the petitioners. See *Miami-Dade County Home Rule Charter* § 8.01(3)-(4) (stating that a "sufficient" petition may be adopted by the Board or placed on the ballot, and the Board is responsible for notifying petitioners of an insufficient petition). It is undisputed that the petition had a sufficient number of valid signatures and the petition followed the process in the Home Rule Charter. However, the commission refused to adopt the petition essentially finding that the ballot language was legally insufficient.

The Petitioners seek to have this Court place the following ballot question on the ballot:

Ballot Title: INITIATORY ORDINANCE PETITION, REVISING
CAMPAIGN FINANCE CONTRIBUTION LIMITS AND TRUST FUND,
AND BANNING CERTAIN CONTRACTOR CONTRIBUTIONS

Ballot Summary: Should an ordinance be enacted addressing the appearance of ethical impropriety in county government; limiting

campaign contributions to \$250 per election per candidate to candidates for County officer; prohibiting large county contractors from making campaign contributions; amending the election campaign financing trust fund; repealing prior ordinances and resolutions in conflict; amending definition of gift; providing severability, code inclusion, and an effective date?

Under Florida Law, which is imposed on all referenda ballots including those raised by initiatory petitions by Article XI Section 5 of the Florida Constitution and FLA. STAT. § 101.161, a ballot question must: (1) contain a ballot title of no greater than 15 words; (2) contain a ballot question of 75 words or less; and (3) the ballot summary or ballot question must describe the "chief purpose of the measure" so that the voter "is provided fair notice of the content of the proposal so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." FLA. STAT. § 101.161(1). *See, e.g., Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000); *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982); *Wadhams v. Board of County Commissioners*, 567 So. 2d 414 (Fla. 1990). It is undisputed that the "ballot title" contains sixteen (16) rather than the fifteen (15) word limit proscribed by statute. However, this alone provides no rational basis to defeat the proposed initiative. Such a finding would seem unwarranted and punitive considering how easy it would be to correct the oversight. Additionally, this Court finds that the ballot measure contains a ballot question of 75 words or less and the ballot title and question adequately describe "the chief purpose of the measure" so that the voter "is provided fair notice of the content of the proposal so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot."

At yesterday's oral argument on Petitioner's Amended Mandamus Petition, the County attorney argued that in 2002, the voters of Miami-Dade County enacted the present ordinance because [T]hey did not want the Board of County Commissioners determining and/or controlling the language of the initiative petition that is ultimately placed on the ballot. The Court accepts this account of the legislative history of the

statute and concludes it was the intent of the voters in enacting the ordinance to vest the initiative power solely in the electorate and have the electorate adopt or reject it at the polls. The Board of County Commissioners has no room for the exercise of discretion. [I]t's performance is directed by law to either adopt the initiative petition or place it on the ballot. Finding the Board of County Commission has discretion or veto power over the language of the initiative petition would show a complete indifference to the Home rule Charter's empowerment of the voters. Because the initiative petition form was approved by the Clerk pursuant to section 8.01(1), and later approved by the Board of county commissioners on May 17, 2016, the named officials consequently had a ministerial duty to either adopt the initiative petition or place it on November's ballot. The Boards action in ordering the canvass of the signatures under County Charter 8.01(3) is merely ministerial, as is placement on the ballot if the Board does not adopt the ordinance.

To accept the respondent's position would mean that this Court would have to find that the definition of the word "form" as used in Section 8.01(3) is significantly different, significantly broader and more imposing than the definition of the word "form" as used in 8.01(1). There is no rational or legal reason to make such a finding. Therefore, it is

ORDERED AND ADJUDGED that there is no legitimate issue as to the propriety of the form of the initiative petition, the manner in which it was circulated, nor of the validity or sufficiency of the numbers of voters who signed it. Petitioners have clearly established a legal right to place the campaign finance reform initiative ordinance on the November 8, 2016 ballot pursuant Miami-Dade's Charter. This Court concludes mandamus is the appropriate remedy to compel the Board of County Commissioners of Miami-Dade County, the Miami-Dade Mayor, and the Miami-Dade Supervisor of Elections to place the campaign finance reform initiative ordinance on the November 8, 2016 ballot due to the named officials failure to "perform their mandatory, non-discretionary ministerial duty." This matter was first brought to this Court on September

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss and Response in Opposition to Motion for Preliminary Injunctive Relief was served by e-mail on September 7, 2016 to:

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8, 2016. The parties agree that an immediate ruling from the Court is essential to the proper administration of justice. Therefore, This Court directs the respondents to immediately, without delay, begin the process of placing the “campaign Finance Reform Initiative” on the November 8, 2016 ballot. The petitioners have no other adequate remedy available to them and the failure to place this matter on the November 8, 2016 ballot will silence the voice of voters as it relates to campaign finance reform in Miami-Dade County.

DONE AND ORDERED in chambers in Miami-Dade County, Florida, this 9th day of September, 2016



The Honorable William L. Thomas

William Thomas
Circuit Court Judge