

BREVARD COUNTY CHARTER REVIEW COMMISSION

AGENDA

April 21, 2022

2725 Judge Fran Jamieson Way, 1st Floor, Building C Viera, FL 32940

Commission Room, 3:00 P.M.

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Minutes
- E. Reports:
 - 1. Chairman
 - 2. CRC Staff
 - a. Cost of Three Member Attorney Panel
 - b. History of Three Member Attorney Panel
 - 3. CRC Attorney/Other Members
 - a. Time for Recall
 - b. Can the County Commission Re-Word a Proposal by the Charter Review Commission
 - c. Who May Contest a Finding of the 3 Member Attorney Panel
 - d. Control of School Board Agenda Items
- F. Proposals
 - 1. **Charter Cap- Public Hearing #3**
Public Comment
 - 2. **Recall School Board Member -Public Hearing #2**
Public Comment
 - 3. **Full Time Commissioner-Public Hearing #2**
Public Comment

4. **Revise Citizen Process-Public Hearing #2**

Public Comment

5. **Repeal of Three Attorney Panel-Public Hearing # 2**

Public Comment

6. **Right to Clean Water-Public Hearing # 1**

Public Comment

7. **Repeal of Article 8 and Section 8.1 of the Charter -Public Hearing # 1**

Public Comment

8. **Amend Section 2.7 – Vacancies and Suspensions-Informational Hearing**

Public Comment

G. Unfinished Business

1. Blaise Trettis: Motion to change “ten (10)” in Rule 17. Charter Amendments to “eight (8)”.
2. Blaise Trettis: Motion to delete from Rule 16 of the Rules of Procedure Brevard County Charter Review Commission the words with the following strike through:

“Rule 16. Rule Amendments: These rules and policies shall be the by-laws of the Commission and may be amended by an affirmative vote of eight (8) of the members of the Commission ~~with at least one member appointed by each Commissioner present.~~”
3. Future Meeting Schedule

H. New Business

1. Blaise Trettis:

Motion for Commission attorney Paul Gougelman to seek Attorney General Opinion from Florida Attorney General Ashley Moody on whether Proposal to Amend Brevard County Charter to Add Recall of School Board Members is violative of Article VIII, section 1(g) of the Florida Constitution which provides that, “ Counties operating under county charters shall have all powers of local self-

government not inconsistent with general law, or with special law approved by vote of the electors.

I. Public Comment

J. Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify Melissa Brandt no later than 48 hours prior to the meeting at (321) 301-4438.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC DEVICES and CELL PHONES REMAIN OFF while the meeting is in session.

Pursuant to 286.0105, Florida Statutes, the County hereby advises the public that if a person decides to appeal any decision made by the Charter Review Commission with respect to any matter considered at its meeting or hearing, he or she will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the County for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

CHARTER REVIEW COMMISSION MEETING

Thursday, March 24, 2022

1:00 p.m.

Brevard County Government Center

2725 Judge Fran Jamieson Way, 1st Floor
Viera, Florida 32940

A. Call to Order

Mike Haridopolos: If the clerk would please call the roll

B. Pledge of Allegiance

Mike Haridopolos:

Start with the Pledge of Allegiance. Bob White lead us in the Pledge of Allegiance.
Please rise.

I pledge allegiance to the flag of the United States of America, and to the Republic for
which it stands, one Nation, under God indivisible with Liberty and Justice for all.

Mike Haridopolos: Thank you if you would call the roll:

C. Roll Call:

Melissa Brandt:

Robin Fisher (District I) - Present
Kendall Moore (District I)- Present
Marcia Newell (District I)- Present
Mike Haridopolos (District II)- Present
Marie Rogerson (District II)- Present
Blaise Trettis (District II)- Present
Bob White (District III)- Present
Matt Nye(District III)-Absent
Gabriel Jenkins-Kierstein (District III)-Present
Tom Jenkins (District IV)- Present
Cole Oliver (District IV)- Present
Sue Schmitt (District IV)-Present
Jordin Chandler (District V)- Present
Vic Luebker (District V)- Present
Dave Neuman (District V)- Present

Staff Members Present- Melissa Brandt, Jim Liesenfelt, Assistant County Manager,
Attorney Paul Gougelman

Melissa Brandt: -We have a quorum.

Mike Haridopolos: Fantastic, thank you very much.

D. Approval of Minutes from February 17, 2022 Meeting

Mike Haridopolos: Also, at this time, if you have your cell phone with you, please turn it on silent that would be much appreciated. And with that, we have the minutes before us. Does anyone object to approving those minutes? Motion to approve made by (inaudible), seconded by Mr. Jenkins. So, move those minutes are adopted. We also have reports, and we have a person first talking about the CRC with County Commission salaries, budgets, and populations. If you want to go ahead and get started on that.

E. Reports:

1. Chairman
2. CRC Staff Person and CRC Attorney
 - a. Memo-County Commission salaries, budgets, and populations

Jim Liesenfelt: Thank you Mr. Chair. So, we have updated the agenda to match what is in the Rules of Procedure, so the Commission asked us at the last meeting for the difference of all the County Commissioner's salaries throughout the state, comparing charter versus non-charter, the budget of each of the counties and then the population. So, in your package there is a memo and then on the back up, you have the sheets there. I will highlight, or let you know if the highlights the charter counties that do not follow state statute for setting salaries, they are in the blue and that data we obtained by actually calling the counties and confirming. So that is your information in there. I apologize, you also asked the last time the County Commissioners received a raise under the Charter. We could not find at this point where they have received a raise. We recall they did vote for a raise and then shortly rescinded it. But that would have been a number of years ago, but they are at the same salary as when the Charter began.

Mike Haridopolos: All right are there any questions?

Sue Schmitt: Mr. Chairman?

Mike Haridopolos: Ms. Schmitt.

Sue Schmitt: I was the one who had asked for that information and I really want to say thank you to the staff because I guess that I figured that the Florida Association of County Commissioners would just have that right at their fingertips, and that was not the case. They spent a lot of time gathering the information and I want to thank them very much. And it was 1994 since the County Commissioners have had any increase. I will be bringing something back to this board, maybe the next meeting.

Mike Haridopolos: Okay, thank you very much.

Jim Liesenfelt: Excuse me Mr. Chair, we also have one more report.

Mike Haridopolos: Report B

Jim Liesenfelt: Yes, thank you very much, the three- person review panel selection, we put it out for procurement and we, the selection committee met last week. They recommended awarding to the three firms which is: Nabors, Giblin and Nickerson, Grey Robinson and Civforge Law. The protest period concludes on Friday at 5:00 pm and then after that we will begin negotiations with them, and those will be your three-panel attorney's. One from each of the firms.

Mike Haridopolos: Thank you so much. Are there any questions?

Bob White: How much did we pay the last panel?

Mike Haridopolos: Did you hear that question? How much was the last panel?

Jim Liesenfelt: I apologize, I should have that in front of me, I will get you the information.

Mike Haridopolos: Other questions on those two items? All right with that said, we are going to move to our proposals, we have hearing number two on the Charter Cap.

Blaise Trettis: Mr. Chair there is reports on the agenda, # 2 under Commission Attorney. As you are going in order- E-2. CRC Attorney.

Mike Haridopolos: Okay, do you want to go ahead?

b. Memo-Recall School Board Members-

Paul Gougelman: Yes, I will be brief. The opinion is lengthy, and I will be happy to answer any questions on it. I will tell you, just to update a little bit. One of the questions we could not come to a complete answer on, and that is: In the event of a recall election, who pays for the recall? Well the statute is very clear that the petitioners that are seeking the recall pay for the petition review, but then when it is actually placed on the ballot the statute is silent in that regard. I did contact the Supervisor of Elections, she in turn contacted the County Attorney's office. The County Attorney's office has reported back as of a couple of days ago that they could not find anything in the statutes that talked about who has the responsibility for paying for that. My guess relying on four years of local government experience is that more likely than not, the jurisdiction that has the person being recalled is probably going to end of paying for that. What authority do I have for that? Nothing. I have no authority for that, but I would suspect that is how it would be handled. The Supervisor of Elections, by the way did not know the answer to it because since she has served as our Supervisor of Elections, we have had no recall elections in Brevard County. I think which probably says something for the stability of our government.

Another point, Mr. Moore had asked for an opinion on whether or not the CRC recommendations can be changed by the County Commission, once the proposals have been passed on. That is still under review at this point and an opinion will be forthcoming. I will be happy to answer any questions.

Mike Haridopolos: Thank you Mr. Gougelman. Other questions? Mr. White for a question.

Bob White: Yes, I am just wondering when you say the jurisdiction does that mean if it were a school board recall, that the school board would pay for it?

Paul Gougelman: I would think.

Bob White: Okay.

Mike Haridopolos: Mr. Trettis for a question.

Blaise Trettis: Well I will get to a question. Are you in your entire memorandum now? In the memorandum Attorney Mr. Gougelman makes the opinion it's a close call on the recall of school board members but he is of the opinion it is not consistent with the general law. I wanted to point out a couple of things about Attorney Gougelman's opinion. First of all, thankfully he does cite some charter provisions in other counties about recalling other constitutional officers. And those counties do provide for the recall of constitutional officers such as sheriff, appraisers, tax collector. What is not included in the memo is there is two counties that specifically provide in the charter for the recall of school board members and that is in the city of Jacksonville, that's the same as Duvall County, and their charter at 15.01, it says: "any officer elected in any government or school board election may be removed from office in the following manner". So that Charter specifically applies for the recall of school board members. And then in Sarasota County, in section 6.3 recall. The procedures for the recall procedure is set forth in general law, the procedures set forth for the recall of other elected officers, including but not limited to the sheriff, supervisor of elections, property appraiser, and clerk of the circuit court is the same as those of recall of County Commissioner". That "is not limited to" would also include school board member. I wanted to point out that in other county charters, the recall of school board members is specifically provided for. I also wanted to point out that the Attorney Gougelman makes a lot to do with a 1971 Attorney General Opinion. That has some really broad language about county charter not having really much authority in the matter of school board operations. But if you look at that decision with the Attorney General opined on was really internal administration of the school board such as the charter provide for the purchasing of materials, supplies and equipment of operation of school system in a department of central purchasing established under the county charter can people be hired through the county wide hiring system. Those are the specific questions asked and I don't agree with the general language in there that it applies to the recall of school board members. And also, that was in 1971, but in 1973, the legislature passed the Municipal Home Rule Power Act which dictates the local government should be allowed to act if not clearly directed to by statute. And the third thing I wanted to point out is that Attorney Gougelman points to a provision in 100.361. which says that in support of the position of recall needs to be statewide and the charter in his opinion should not be amended as it would not be consistent with state law to do that. But that section reads quote, " It is the intent of the legislature that the recall procedure provided in this Act shall be uniform statewide. Therefore, all municipal charters and special law provisions which are contrary to this Act are hereby repealed to the extent of this conflict. This was in the recall of county commission and city council member law which passed in 74. What the

attorney Gougelman relied on, this passage I just read has to be there because it repeals anything that proceeded it regarding recall elections and county commissioners and city commissioners. That is what it talks about in uniformity and repeal. So, I wanted to point these things out, I think there is plenty of time for me to file a written memorandum that further explains this in writing but I just wanted to say those things today at today's meeting. Thank you.

Sue Schmitt: I wonder where our Chairman has gone?

Kendall Moore: Mr. Trettis, the Chairman did have to step out, so I will take the gavel here for a few minutes until he returns. Ms. Schmitt.

Sue Schmitt: Were you finished Blaise?

Blaise Trettis: Yes

Sue Schmitt: Okay, I want to thank Paul. For those of you that have not seen it, Paul Gougelman is the attorney for this board and he did a nineteen page (I counted them Paul), (laughter), memo to this board and going through, in particular the school board issue that he stated: "State law, Attorney General and the Courts as to why this item, as far as single member districts, and also as far as the recall is not correct. And that in fact, the only thing that the County Commission, I did mention this, and asked the question when we were here the last month, as to why this was even in the County Commission Charter because the County Commission has nothing to do with the School Board. The only thing they do is collect impact fees for them which they are permitted to do. Then I did have a very brief discussion, as to why is this even part of the County Commission Charter, of one elected body telling another elected body what to do. And under Florida law, and I think he was very specific in what he laid out as far as Attorney General, State law, and the court cases that have taken place, as to why really this section, Section 8 should not even be part of the County Charter. That the way that you would have to go and get what you are looking for, if you are on one side, would be to go to the State legislative delegation, in fact this last meeting, or group of the legislature- Representative Fine did take a piece of legislation on single member districts. I know he is a smart man, and I know at that point he had to know that the single member district that is already in the Charter was not legal or correct, or he would not have taken that in, but it did not pass the legislature at this year. So, to me, if you want something like that to occur, whether it be the school board or some other group, is to go to the state delegation in Brevard County and then ask one of them or all of them to take your issue in. I think you may have a lot of people supporting you at that point, but to me I am basing my information on what Mr. Gougelman wrote. And anyone that wants a copy of the nineteen pages, it is public information so. Thank you.

Blaise Trettis: Mr. Chair

Kendall Moore: Mr. Chairman, we are still on item E-2 b. for comments. Mr. Trettis.

Blaise Trettis: Thank you. Mr. Gougelman you know when you put in your memorandum, I think you said the same terminology for both recall of county constitutional officers like tax collector, property appraiser, sheriff. You said it was a close call, but in your opinion that

would be inconsistent with state law. And then also you said that for the recall of school board members, then again you said it was a close call, but in your opinion that it was not consistent with state law. I just want to ask you about your terminology of close call. Could that mean that a court may decide that it is consistent with state law or inconsistent with state law in your opinion that either of those things could happen if it were litigated in court?

Paul Gougelman: Yes

Blaise Trettis: Thank you.

Vick Luebker: Mr. Chair.

Mike Haridopolos: Sure

Vic Luebker: Quick question. This goes back to the same thing Blaise brought up a minute ago. That is what I have circled here as well. One word that I have circled. Item 11 in section a. "The intent of the legislature was that the recall procedures", that is what I have circled, procedures "provided in this act shall be unified statewide". I read that as the process of recall, not the office holder or the office itself, am I wrong?

Paul Gougelman: I think certainly the court could interpret it that way. Yeah, as I say in the memo, I think this is a close call. Unfortunately, in the law as we all know there are not many things that are black and white. A lot of them are grey, and it cause all of us a great amount of consternation. I think this is one of the areas, the issues that fits right in the grey. It is very grey, and as the gentleman Mr. Trettis points out if this were in court, could a circuit court or an appellate court determine to the contrary? Absolutely. Now should they? Of course, not because it is my opinion. (laughter) But I think he is absolutely correct that they certainly could.

Vick Luebker: So, it is fair to say that the word procedures could be the process, not the office itself?

Paul Gougelman: It could be interpreted to be process, you are right.

Vick Luebker: Thank you, I appreciate it.

Mike Haridopolos: Mr. White for a question.

Bob White: Well what a surprise that two attorneys have come up with a different conclusion.(laughter) So with regards to whether or not one opinion is right and one opinion is wrong, it seems to me that is one of the reasons we are here. Is to try to weigh these arguments out and to come up with a solution. And I rather doubt that every opinion on this board is going to be the same. I don't know what the whole end point of this is going to end up being, but certainly it is not to try to decide today whether or not we even continue with this, with this discussion. Am I correct?

Mike Haridopolos: That is correct

Bob White: Okay, so I think we plow on.

Mike Haridopolos: Any other questions on E- number 3? One thing I would ask the staff to do then, because we don't know for sure who would actually be paying for the election. I think it would be interesting to ask the Supervisor of Elections what a special election does cost? Or at least give us their latest figure on that number. As we know there is off year elections in cities, that maybe would give us an approximate number so at least people can go eyes wide open with what a special election might be versus if they chose to have a recall election during the next general election or primary, whatever it might be. I think that might be helpful just for more information sake.

Cole Oliver: Mr. Chair, to add to that I think it may also play into the later discussion we have on a proposed charter amendment as to whether it is a single district member or county wide election because that greatly increases the cost of an election to do a county wide election versus the single district.

Mike Haridopolos: I couldn't agree more. I think just that general cost for an election, special election is important county wide or by an individual district is a very good question, so we will get that information for us. We are only on reading two today. I think one of the things I would still like to discuss as a group is do we have a voter-ama on all the bills, or all the proposals in one day at the end, or once it reaches number three or third hearing we schedule a vote for the next meeting. I think that is something we should discuss as we go along because the number of proposals are increasing, uh by the hour.(laughter) Blaise if we give it another hour, you might give us a couple more so let me know. (laughter) So with that in mind, I think it's just we want to make sure, before we get into actual proposals, anything on process that people want to get into today? I know later today we are going to have a vote on moving from ten to eight or not, and I think also a provision was added about the all five districts voting for a particular proposal, I think that is coming later. Anything else with process before we get into the public comments on the different agenda items starting with F.

Blaise Trettis: Mr. Chair

Mike Haridopolos: Yes

Blaise Trettis: I happen to overhear Mr. White say that he had to leave today at 2:30, so after hearing that I ask the Chair's permission to do the vote from ten to eight in rule Seventeen before 2:30?

Mike Haridopolos: I think there is going to be some extensive debate on that. That is the only issue. We will do our best to get there. I don't think there will be doubt about that, but I will open that up to the committee. Would you all like to move to that agenda item now, or proceed to it in due course. Anyone have a preference? I know yours, Bobs of course.

Robin Fisher: Due Course

Mike Haridopolos: Great, all those that would like to see that later in the agenda say aye-yes (no response) all those that want to go right to that item now say yes. **Yes -vote carries to go to the item G-4 on the agenda now.** Okay, we will go to that item now. This is in unfinished business. It is section G and it's on the motion to change from ten to eight. Why don't we open up? Blaise this is your item. Why don't you go ahead and kind

of promote your idea, and then you can answer questions from it, and then we will allow debate for it.

G-4 from Unfinished Business

Blaise Trettis: I believe that I do not have to restate the motion because it was made at the last meeting, and it was tabled, so that is my understanding of procedure of how that would work. But the motion was made, and the motion is to change from ten commissioners to eight. The number that would be needed to pass a proposal to amend the Charter Review Commission in rule seventeen. And the reason I have made this motion is because I had a chance to look at some of the other Charters of the State, and I found that at least four counties, and there is nineteen Charter counties. At least four of them I should say only four of them because there is nineteen Charter counties, only four of them require more than a majority vote to pass a proposal. That would be Ocseola County with two thirds, Hillsborough County with two thirds, Wakulla, ten or more, Broward two thirds. So, the majority of Charters do not require a supermajority for a proposal to pass. I am of the opinion that Brevard County Charter should also not require a supermajority, and I think that there is also an argument to be made that it has to be eight and can't be ten no matter what because the Charter as it exists now does not contain a supermajority vote so silence is a majority. You look at all these counties that don't have a supermajority, there Charters are silent. It is just if it is voted in, so if you, and the other thing is this is not a procedural matter Even though this ten-vote requirement is in the Commission's Rule of Procedure, it is not a procedural matter. There's nothing more substantive than the vote requirement that a Charter amendment must have to pass. It is really the essence, the core function, fundamental function of what this committee even exists to do, which is decide whether or not to pass proposals to go to the voters. So, it is silent now, and I submit that silence means its majority and if it is going to be anything more than a majority then it needs to be in the Charter just like it is in Hillsborough, Osceola, Wakulla and Broward's Charter. But it not being in the Charter it is eight. Which leads to the scenario that if let's say that on the Charter Cap Amendment if eight people voted it's approval, eight or nine, then the Chair would be in a big decision to make there is nothing in the Charter that says it requires ten votes. So, do I send it to the Board of County Commissioners saying that it has passed and to take-action on it pursuant to the Charter. Or does the Chair say well what do I do now because there is these rules of procedure which say it takes ten and it got eight or nine. It is a bad predicament to be in for the Chair. But then you follow it up with the Chair decides no I am not going to send it to the County Commission because the rule of procedure says it takes ten votes. Then a Commissioner makes a motion for the Chair to forward the proposal to the Board of County Commissioners as passed, and that motion gets eight or nine votes let's say. Now you have a motion for the Chair to do that. So, it is a real quagmire that is avoidable by changing the Rules of Procedure to from eight to ten. Then I submit if that is not done, it is still eight because the Charter doesn't say it is a supermajority. The Rules of Procedure isn't procedural, it is substantive. So, for those reasons that is why I make this motion and that is all I have to argue.

Mike Haridopolos: Thank you, while we are on this subject as well, you have new business where you want to also remove at least one member appointed by each Commissioner. So, you want to further erode that number from ten....

Blaise Trettis: No, that is on a different rule. That is in rule sixteen where right now it says eight members, but at least one member has to be present from each commission district. So that is a different proposal which I have not made a motion for.

Mike Haridopolos: Okay, I just want to make sure you are on the same page. Okay, all right so I think what is being proposed, just so we are all clear is that Mr. Trettis is saying that in general if nothing is done, it could be as simple as eight people voting in the affirmative to send it off to the County Commission. Under our rules currently we have it as ten. I think what it pretty much calls for then is: Is it the will of the Committee to stay at eight, have a vote up or down, or is it the will of the committee to stay at ten? So, I think that is really the debate that is on hand here because what is being implied is that it is eight regardless of the vote. And I think we had kind of adopted earlier in our meetings at ten, at least accepted that ruling at ten. I think what I will do is just open this discussion up, see where it goes. I don't, also Mr. Moore talked about the idea of leaving it at least nine because that is that sixty percent threshold which is used for the Florida Constitution. So, I am open again to what the commission, or committee would like to do, and then we can have an up or down vote when we get there. Mr. Jenkins.

Tom Jenkins: I would just like to comment how the County Charter is very similar on a local level to the United States Constitution, and the State of Florida Constitution. And I think that anytime you propose changes to that, they certainly need to be aware that it is well thought at, and the other point that I wanted to make is supermajority votes are very common on matters of extreme importance, and to me the County Charter is a matter of extreme importance, and I do think there is a case to be made for a supermajority vote.

Bob White: Mr. Chairman?

Mike Haridopolos: Mr. White.

Bob White: I think it is clear that we are not the ultimate decision makers on these proposals, that ultimate decision maker is going to be the people of Brevard County that chose to vote on whether or not an amendment needs to be passed, and so I think that anything that we do that erodes the ability of the people to weigh in on these decisions is contrary to the whole idea behind what the Charter County is supposed to be. So, I agree with Mr. Trettis that to require a supermajority on this body, will do nothing but prevent the voters to have that opportunity to speak their peace on the proposal, so they either get to vote on a proposal, or they don't, based on a majority or a supermajority on this board, so it just seems to me that a supermajority prevents the voters of Brevard County from having the opportunity to make their opinions known. I think that is the ultimate choice that we have as a body is, what are we passing on to the voters, and how many votes should it take? I am in favor of a simple majority.

Mike Haridopolos: Other comments, Mr. Moore

Kendall Moore: I will defer to Mr. Trettis first, I think Mr. Trettis

Mike Haridopolos: Mr. Trettis

Blaise Trettis: Thank you. I was on this committee recently, it was a district court of appeal workload committee and when it came down to the very end for a vote for the matters that needed to be voted on, the Chair announced that he wasn't going to vote, that he was a neutral person and surprised everyone. At the very end he said he wasn't going to vote. I was just curious Mr. Chair Haridopolos, are you going to vote, because it makes a difference on whether it is fourteen or fifteen people who will be voting?

Mike Haridopolos: I consider myself an equal member of the group, so, I am not going to abstain on everything.

Blaise Trettis: Okay, thank you.

Mike Haridopolos: Mr. Moore.

Kendall Moore: Mr. Chairman I was going to joke with our Public Defender it became clear after the first comment why he wanted to change the agenda and have it done now, he has a good supporter in Mr. White. But if you would allow, Mr. Chairman, I do have a couple of comments for the Attorney, or questions I guess for the attorney.

Mike Haridopolos: Whatever time we need to take to make sure this is right.

Kendal Moore: Paul, Blaise raised the question as to whether or not a ten- vote requirement in our procedure was in some way a violation of the Charter because it was stated there versus the Charter. Any thoughts or ideas relative to this committee's ability to establish a majority, or threshold that would be above the fifty percent plus one?

Paul Gougelman: Mr. Chairman I have not had a chance to research this issue, so my comments are kind of extemporaneous. I think the question is, a good question is where did the ten-vote requirement come from? And the answer to that is that it goes back to the original Charter Commission. The members of that Charter Commission, in adopting their rules decided that they wanted to go with the ten, they had a fifteen- member commission just like this one. They decided they wanted to go with the ten- vote rule. Their reasoning at the time was they felt that if something couldn't garner ten of the fifteen votes, then its chances of moving forward in the process with the voters was probably not a, not a good chance. The, as I recall, and I am thinking back thirty years now, the rules were reviewed and actually drafted by the Charter Commission attorney, and those were adopted. So, at the time, the attorney who was Allen Watts, by the way who is deceased. Mr. Watts finding was that this was appropriate for the rules of consideration and for the rules of procedure. Other than that, I can't give you a lot on this, because I have not researched this issue.

Kendall Moore: Mr. Chairman, I would tend to agree, and I would say to what was referenced earlier about the multiple legal opinions. There are some pretty brilliant lawyers on this committee, but there is one that we pay to represent us. I don't think that any of us that sit up here, it is not our professional liability insurance that is on the line of giving legal opinions here. So, I think many opinions on this may vary, but I think I will agree with Sue's earlier comment about listening to the council that we have paid to help

us. But in relation to this issue, all due respect to Mr. Trettis. I stated it on the record previously. I have served here previously as well. I do believe that it is not historically unique that higher percentages are required for changes to things like constitutions. I think Tom brought it up in his earlier comment. Our former Senate President referenced it, in terms of the State Constitution and sixty percent, and I think there has been much discussion around the State, and other states. I mean even at the time when there was such highlights as how do pregnant pigs end up in constitutions? It is because it was made extremely easy, or easier for constitutions to be changed. We are not changing the code, we are looking at what is the functional equivalent of this County's Constitution. So, on that one basis I do not think there is a problem with an enhanced threshold. Number two I said at the last meeting relative to, yes there are fifteen members, but these fifteen members are appointed by County Commissioners. So, each of the five County Commissioners appoints three people. I think that one that appointed me sits in this audience today. So, we are here having been appointed by members of this County Commission, and I think the functional equivalent to three County Commissioners, which would be a majority in that context, would equal nine of us. And so that is at least the nine, and as Paul referenced when this ten-vote rule was ultimately created, they went with the nine plus one as an enhanced standard to say: Hey look, we are not just going to go with a simple majority to make it out of this posture that we would ultimately need the ten versus that. And then last but not least, Mr. Trettis, it is my fault not yours, had I known that both this proposal and the one that you referenced to come relative to not requiring a member being present from each commission district, if I had known that changing the number of votes needing to change the rules was going to be used for this purpose to ultimately water down how the process would work, I would have lodged my dissent at that point. And, so that is not your failure, that is mine. I wish I had spoken up at that time, but I certainly am opposed to reducing the number to eight versus ten. Thank you, Mr. Chairman.

Mike Haridopolos: Mr. Fisher.

Bob White: Just a question for my fellow commissioner down there, are you suggesting then that the County Commission then that established the ten- rule versus the eight or even the nine rule didn't trust the voters of Brevard County to be able to make a decision on something as important as their own Charter?

Kendal Moore: Not at all Mr. White. I don't think we are talking about the voters decision, we are talking about what this body sends forward to the voters. So, let me give you the two rationales: One, I stated why I think changing the Charter, like changing any Constitution heightened thresholds would work. But the second part, and I know Mr. Chairman you said, and Mr. Trettis said that it's a separate item, but let me include the second part of that which was ensuring that at least one member representing that County commission district is present. As much as we love Brevard, we are one whole, things in Mims and Micco are different. Things barrier island, beachside and main land are different. And to the degree that three members of this board represent a County Commissioner that is defined by a specific geographical district, I believe that second rule does ensure the fact that all geographic areas of the County are at least heard on anything and everything that would go forward to the voters. So, I don't think that takes anything away from the

voters, and in fact, this ten-vote requirement, I think has existed, I think Mr. Gougelman would know far better than I would, but at least the last two times I was here, the board, this committee functioned on that ten-vote minimum. So, I don't think that that in anyway reduces, you know what I mean, the voices of the people. If it reduced the voice of the people, you could wipe out this, make it one vote and say let's just send everything forward for that particular purpose. I think that clearly the people still have plenty of opportunity to speak, but an enhanced threshold for this committee is not inappropriate.

Bob White: But you certainly do agree though,

Mike Haridopolos: Mr. White, could we...we will get into debate later. Let's just let folks get their opinion out, then we will go back and forth for questions. Mr. Fisher.

Robin Fisher: I will ask Mr. Gougelman, how did the first original committee members get to the ten-vote rule? And there are so many things in our County that take supermajority vote and usually it is stuff that has major impact on the community. Far as I know from a voters standpoint, most of the voters will not see this item until the day it is on the agenda. They have not vetted the issue, they have not spent as much time talking about it as we have. And so, they are going to depend on this board to be putting something forward that really is in the best interest of the County. I think if you are not able to get ten out of fifteen members on this board to move something forward, then more than likely it is not going to be in the best interest of the County, and I think most voters are going to depend on us bringing something forward that could make sense.

Mike Haridopolos: Others in the discussion. Mr. Trettis.

Blaise Trettis: Okay, if that was the intent of the original rule that the original Charter members thought that if a proposal couldn't get ten votes, then it wasn't likely to get anywhere with the voters then I think that is a really faulty logic because I am very confident that if my Charter Cap proposal got one vote of this commission, and went to the public, it would get the same seventy three percent or higher percentage that it got in 2008. So, that is the first thing I would like to point out. The second thing is that it seems like some commissioners think that the existing Charter should be given some type of reverence, and it should be a very high hurdle to change it. Well we have heard from our attorney that Article Eight on single district school board member elections is contrary to law, and we haven't discussed that much, but I think it is going to be a lot more than a close call when it comes to that opinion. So, what I am saying is that this Charter is, it wasn't written by Thomas Jefferson. It should be changed when it needs to be changed, and I think there are things that definitely need to be changed. I don't give it the same reverence of a supermajority vote to change like others do. And then the finally to Mr. Moore's point about three commission districts. I personally just don't agree with that whole philosophy that we need representation for votes from each district. As a matter of fact, this Commission voted to change the procedural rules, I think our second meeting, to eliminate those residence requirements in the procedural rules, so we have already made that decision. But assuming it is somehow important that eight votes would be from three districts: three votes, three votes, two votes. That is eight. You have your three residential districts in that manner. Two out of three is a supermajority, so any way you slice it, eight is the number that I submit should be all that is required to pass. Thank you.

Mike Haridopolos: Others who haven't been heard yet. Ms. Rogerson.

Marie Rogerson: So, this particular proposal is one that has kind of troubled me. And so, I did some research about how people do change the Florida Constitution, and how we change our National Constitution and all these things. And my resulting, it is my opinion is that there is no set bar. We are comparing apples and oranges most of the time. Especially here when we talk about a supermajority required to change our Charter. Right now, that is not required of the voters. We are not elected people. They pass it by a simple majority. To me, if they can pass it by a simple majority, it makes sense that the standard for this process should be the same for them and for us, to me. The County Commissioners have a higher bar to change something, and if a voter does it by petition to change the Charter it's actually a much lower bar, it is five percent. So, there is no standard bar at the moment for changing our Charter in the County. I don't think there is a right or wrong thing. It is just a personal preference. To me, I like it when things are the same. The same bar for people to vote on it that it is here since we are not an elected body. So, that is just my personal opinion.

Mike Haridopolos: All right, others that have not been heard yet. Mr. Oliver.

Cole Oliver: You know, I would echo Mr. Jenkins comments that I view our Charter as our version of the Constitution, and I believe that two-thirds is a proper level just as it is in the Constitution for the legislature to change, so that is where I stand,

Mike Haridopolos: Others in comment or debate. Ms. Schmitt.

Sue Schmitt: I guess I am kind of giving away my old age here. But I happened to be on the board in 1994 when it went to the voters. And which means, that the County Commission at that time sent that wording to the voters in Brevard County. The voters chose to pass it and become a Charter County. I believe it was done for a reason. And each board since that time, and there has been a lot, trust me I am up on that wall like ten times or something (laughter) It really, people could depend on it. Because they voted for it, and to me that makes a difference.

Mike Haridopolos: Mr. Fisher, I know that you had something.

Robin Fisher: Paul, one question for you. Did you say that you are not positive yet that if a decision is made here and it gets to the County Commission, can they reverse it, or support it or?

Paul Gougelman: We still have got that issue under research and we will be coming forward with an opinion on that soon.

Robin Fisher: Mr. Chair, I think it would be, for me I wouldn't be very comfortable voting on any changes until that question has been asked.

Mike Haridopolos: That is taken under advisement and we will come up, we have a motion on the table as you know we can table that, or not, but I think other people have opinions. Mr. Neuman.

Dave Neuman: I think I made part of my opinion known last time, but something that I had thought about during this whole discussion as well is kind of the utilitarian use of what you can do with, instead of a ten- person majority, eight. I believe, Ms. Schmitt had pointed out very accurately why was the School Board in the County Charter when the State has it. And because of that, you have these questions as to how certain things got in there, well I believe at that time it was under Brevard review, but now I think we have the opportunity to clean certain things like that up by using this process. And usually using a ten- person board, you know you wouldn't be able to get that down on to the people in order to vote that or to clean up some proposals. On top of that I have also had the privilege of talking to tens of thousands of the voters here in Brevard and they are always wanting to be involved in the process. They are always wanting to be involved and have an opinion and be heard and go out there and vote for certain things. I generally trust everyone on this council, I don't think that we are going to pass something absolutely ridiculous or crazy, but I do think we would be able to send something down there even with a simple majority that makes sense, that is rational, that is something that at least should be considered by the voters because if a simple majority of this council says oh hey we are going to go down and say do you guys have an opinion on this, I think they would appreciate that opportunity on this instead of saying it was short by one vote, it only got nine instead of ten. Now the voters do not get to have an opinion on that, they have to wait six years, or Ms. Rogerson put together how the petition process would work, which I have gone through a petition process, very difficult for a voter to actually get something, whether it is involving the School Board, whether it is involving the ability to speak, things of that nature in front of the voters through referendum process. So, from a utility prospective, I think it could help us, change some things, get more voters opportunity to see things, and again I trust the people on this board so I think a simple majority is A-Okay.

Mike Haridopolos: Mr. White.

Bob White: I may be shooting myself in the foot here, by even asking this question, but Commissioner Schmitt down there: When the county Commission voted to send the idea of a Charter to the voters, was a supermajority required? Were the four votes required of the five- member board to make that happen or was it just a simple majority decision?

Sue Schmitt: On the County Commission?

Bob White: Yea, you said that the County Commission voted to send it.

Sue Schmitt: It was a simple majority by the County Commission to place that on the ballot.

Bob White: Did you say simple or super?

Sue Schmitt: Simple.

Bob White: So, three out of five?

Sue Schmitt: Now the Commissioners themselves were not simple(laughter). Okay because I was

Bob White: That is not what I was implying.

Sue Schmitt: I mean we have to have a little levity Bob.

Bob White: I know, I am smiling.

Sue Schmitt: But

Bob White: But it did not require a supermajority of the County Commission to send the idea of a Charter to the voters

Sue Schmitt: Not at that time, because you did not have the Charter yet.

Bob White: Okay, I was just asking. So, three out of five could do it.

Mike Haridopolos: Other comments on the issue. All right, let me just add a couple of things. One is as was mentioned by Mr. Moore. I have lived through this on both sides of the issue. When I was first elected to the legislature they passed the train initiative. This was the idea that you would have to build a train constitutionally etc., and because of this and the pregnant pig issue, we in the legislature decided to have a higher threshold to place something before the voters in the Florida Constitution. The same thing held true of course, this would be the equivalent of course on the local level of having the supermajority. I think the other thing that a lot of people have talked about, not on the legislature, but representing bodies is having a higher threshold when you want to raise taxes. Where everyone is for having that higher threshold when you want to raise taxes. One of the things I am always concerned about when you mess with the United States Constitution or the Florida Constitution or even a local Charter is the unintended consequences. And I know that there are a few proposals that are coming here that would be very expensive if they should pass. And I think that is one of the things, a higher threshold is always of importance. And so almost be careful what you ask for. I think the other part of it is we are having this discussion, actually as we speak, in the United States Supreme Court hearings right now talking about are you a strict constructionist or are you not? And so, what we are talking about here is when we lower the threshold, that you are making it easier to change a fundamental document, so I want us to kind of be wary of that, or on the other side, you are optimistic about it. So, it is something to do. I think based on Mr. Fisher's question, which I think is a fair one. The last thing I want to do is change the rules of procedure and then find out later that the County Commission is going to sink it based on the fact we didn't have a supermajority or whatever it might be. Considering we have no votes today, of consequence, meaning we are not voting today to send it off to the County Commission, I would think that the logical thing to do would be to table this motion because we are not voting. And I want to, as I said in day one, and I think we all agreed with it, we want people to have a very informed decision when it comes to their ultimate decision. And so, we should do the same in this process, so if it is okay with the committee, I would like to entertain Mr. Fisher's motion that we table this issue until we find out more clarity from the legal side because I don't want to send whatever we send, if it is just an eight person majority in the end, and get them all nuked, and we all wasted half of our summer. So, do I have a second on that?

Cole Oliver: I will second that.

Mike Haridopolos: Okay, Mr. Oliver seconded that. So, all those in favor say aye: Opposed say Nay: The Ayes have it. Blaise we are going to take up your other issue on rule sixteen, we could take it up, I imagine that we are going to table that as well. Considering we are having this bigger discussion, so let's show that tabled. I know you have to leave Mr. White as well at two thirty. I want to be conscious of that so we can get as much of this meeting to move forward as possible.

F. Proposals:

F1.- (Charter Cap Public Hearing # 2)

Mike Haridopolos: So, let's move back to item F. which is the Charter Cap. We are in Public Hearing number two and requesting public comment on the Charter Cap hearing number two. So, we have Sandra Sullivan here who has asked to speak on the Charter Cap. Ms. Sullivan welcome. And we have been giving people, what is it, three minutes (inaudible)

Sandra Sullivan: Sandra Sullivan South Patrick Shores. So, I have attended the County Commissioner meetings for over three years and one of the concerns I have is the number of tax increases we are having related to the tax cap, Charter cap rather. I think they want to do away with this so they can address essentially higher taxes on property assessment on property taxes. A year ago, they looked at, in the budget review committee as an example, that they had a lot of growth. They needed to fund that growth and they were looking at bonds for utilities. A year went by and we just had a utility increase, eight percent for most residents, thirteen percent in some other areas over each year for the next five years. So, when we are looking at the future with a lot of inflation coming, there is a lot of pressure to do away with the Charter Cap, but I think there is some inequity here because I think there is a lot of pressure coming from the developers to not pay their share of impact fees. Impact fees have not been increased, some of them have not been increased since 2000, and some of them 2008. In 2016 we had an impact fee study for example transportation that recommended sixty-six percent increase. That was not passed, and at that time development had exceeded the boom prior to the crash. And so, I think prior to consideration of a Charter Cap, we should be addressing the impact fees and looking at where the County stands financially, prior to putting the burden on the residents of Brevard to pay for growth. Thank you.

Mike Haridopolos: Thank you, are there questions? All right, seeing there are no questions we have, there is no one else here on the Charter Cap unless you would like to be heard before we go to the next item. Anyone else on the Charter Cap? Okay, thank you. All right let's move to the second item, and that is the recall of school board members.

F-2-(Recall School Board Member Public Hearing #1)

Mike Haridopolos: This is our first official public hearing, we have two more to follow. I have about fifteen cards on that. And so, we are going to allocate two minutes for each person, and after each person is done speaking if anyone on the commission would like to ask a question of the presenter that would be of course welcome as well. So, let's start with Katy Delaney from Cocoa, Florida.

Katy Delaney- I apologize for my speed reading. Good Afternoon committee members. I am here in favor of updating the County Charter to include school board members to the list of elected officials that are eligible for recall in Brevard County. We are currently dealing with many issues within our district due to poor leadership and decision making. Due to time allowed I would like to focus on three of these many issues. The first is finances. Right now, our school board has a debt consolidation loan that will total 512.7 million dollars. They are mismanaging our funds. Second, according to the district there are more than fifty percent of our students are below grade level in math across the board, regardless of race, age and gender. And reading is not much better. Thirdly, I want to bring to your attention and to the State Attorney, Phil Archer's attention the fact that BPS is currently in violation of Florida State Statute 847.102, 847.001, 1006.3. With each violation a third- degree felony is appropriate. .They are currently distributing sexually explicit content to our children of ages eleven and up. Two out of the five school board members don't see an issue with rape, pedophilia, explicit sexual acts being described to our children in Brevard. They should all be removed immediately, and held accountable for endangering our children. Parents and taxpayers, need a pathway to remove harmful or neglectful people from the school board. If recall is not an option, I am calling on Phil Archer and Sheriff Ivey to prosecute these people to the fullest extent of the law. Thank you.

Mike Haridopolos: Are there questions? Also, if you wish, what we did in the last meeting is I know you had more remarks to make. If you share those with Melissa, she will share those with the committee whatever you have typed out because I know there is limited time otherwise. So, feel free, and that goes for everyone of course here, we only have so much time, so if you have your talks, or presentation, feel free to share those with our staff and those would be disseminated, not just to us, but it could be done publicly.

Katy Delaney: Thank you.

Mike Haridopolos: Thank you so much. All right, Amy Kneessy. Welcome.

Amy Kneessy: I prepared for three minutes also, so I will talk fast. Hi, I am Amy Kneessy, I was the School Board representative from 2004 until 2016. And my goal was to go off and be a private citizen and never be heard from again. But last year, I filed a First Amendment lawsuit and led the charge against Brevard Public Schools, and so I am here today to tell you why, and why I believe the recall needs to be added to the County Charter, and I want you to know exactly what has changed. Just to first start off, let me explain how school board meetings now start off across the street. At the beginning of every school board meeting, and prior to public comment the Chairman reads a statement that all audience members are subject to arrest, up to six months in jail and a five

thousand dollar fine if the Chairman deems them out of order and has them removed. That is the welcome all audience members get. Then when it comes time to speak, you are told that your comments can be addressed to and only the Chairman. And get this, you may not address, state the name of or even look at the other school board members or you will be immediately stopped from speaking. Your comments cannot be, and I quote” personally directed, abusive, obscene or irrelevant, and the Chairman is the final judge. So, as I am looking at you today, I would be called out of order. One example I can give you is that counts as a violation is the Chairman found the words liberal left as being offensive and stopped the speaker from continuing. The audience also has special rules: they are not allowed to make any noise or sound, and if they do the Chairman will clear the board room. And yes, this did happen, two people were allowed, the Chairman cleared the boardroom. The board went back into meeting, locked the door, and none of the audience members were allowed to return. So, they had a meeting without the public present because of a few audience members. The public policy on speaking was changed to discouraged people from signing up. If there is ten people or less.

Mike Haridopolos: I have a question: can you go on for a minute please?

Amy Kneessy: Pardon?

Mike Haridopolos: Can you please go on for one minute please?

Amy Kneessy: Okay, if there are less than ten people the speakers get three minutes, if there is more than ten but less than twenty you get two, if more than twenty speakers show up, than all speakers only get one minute. If you are not on topic you are moved to the end of the meeting, and for a period of time the board actually had the cameras turned off so people watching from home could no longer see. I am going to jump to the end because I wrote down comments that board members have made at meetings. These are the things they have said: I wish we don't have to have any public comment at our meetings; I don't have time to do my job and listen to the public; these meetings are for us and not the public; and my personal favorite that I will close with: If someone wants to talk to me they need to call, email or set up an appointment. That is the attitude, that is why I am not a private citizen anymore, that is why I have hired the institute for free speech out of Washington DC that is representing me and several others. We can't wait four years. That is why I am here, advocating for a recall because it has become that bad now across the street.

Mike Haridopolos: Thank you. Are there questions?

Gabriel Jacobs-Kierstein: So how long has this been going on?

Amy Kneessy: Since January of last year.

Gabriel Jacobs-Kierstein: Are your particular concerns with one member or the group as a whole?

Amy Kneessy: It is the group as a whole. The group as a whole voted to approve their new policy.

Gabriel Jacobs-Kierstein: Okay.

Amy Kneessy: This is not an attack as some have led to believe, that this is an attack against one particular board member. No.

Gabriel Jacobs-Kierstein: Have you, because you are obviously very experienced, you have been around this for a long time. Do you think that there is any motives on the part of the board, or if there are, what those might be?

Amy Kneessy: I think the motive was made very clear even as recently as Tuesday night's board meeting. They do not want parental input. One board member Tuesday night, they were trying to figure out a way to give other people more time that got pushed to the end. One board member suggestion was, well let's allow employees to have this, and another person said, well let's allow students. Not one of the five board members ever used the word parents. Parents are not welcome, parents are not included, and as you can see from the comments, we are told very clearly, if you want to speak to us...and I think one of them said: This is not the place to speak to us. We don't have time.

Gabriel Jacobs-Kierstein: Okay, and you said that you filed suit, right?

Amy Kneessy: Yes, the suit was filed last September. We have been to court for an injunction and we are headed to mediation but the case is ongoing. Our case has led to several not only in this state but across the United States.

Gabriel Jacobs-Kierstein: Okay, all right so do you know what the case name is by any chance?

Amy Kneessy: I don't have it here in front of me. If you want to contact me.

Mike Haridopolos: If you don't mind, why don't you share that with Melissa when you get (inaudible)

Amy Kneessy: And actually, you can google Institute for Free Speech, there is a link with a website with all of the court documents on there with our case.

Gabriel Jacobs-Kierstein: Okay thank you. And I am assuming a lot of what you brought up today is going to be contained with-in the documents right?

Amy Kneessy: Yes, it is.

Gabriel Jacobs-Kierstein: Thank you ma'am.

Mike Haridopolos: Thank you. Other questions? Mr. White for a question.

Bob White: Yea, just very quickly, is there a phone number or an email that we can get ahold of you directly?

Amy Kneessy: How about if I, well I have no secrets. It's Amy Kneessy, but my phone number is 321-720-0123.

Bob White: Thank you very much.

Mike Haridopolos: Mr. Neuman for a question.

Dave Neuman: In relation to the, you said that there were new rules that were put in that was voted on by the entire board. I am remembering that they had limited public discussion back in October if I recall?

Amy Kneessy: Correct.

Dave Neuman: Is that after that, or are those the rules you are referring to?

Amy Kneessy: Those are the rules.

Dave Neuman: Okay, I don't know if this is Chairman I am going to kind of lean on you.

Mike Haridopolos: Okay.

Dave Neuman: Does this board, are we able to send any kind of or discuss having a free speech motion? I am seeing a different issue here rather than a recall. I am not trying to hijack your issue. But to me it seems that you have not been given the opportunity to speak, be heard in a way that is consistent with the meeting. I am a former City Clerk and.

Amy Kneessy: I was told the only legal recourse because there isn't a recall for school boards that we could access, we either had to wait for a new election, or we had to file in Federal Court. And I found the best law firm in the Country, which is out in Washington DC.

Dave Neuman: I guess the question I am getting at is: Is it possible, I don't know if this is something I could ask the attorney to look into. Are we able to entertain a proposal that would allow for public comment to take place in the same way that the rest of the meeting is taken care of? So, if there is an agenda item, say F1 or F2, are they able to have Public Comment at that level, just like they are at F1 or F2, is that something we could send to the voters? Are we able to ask them to look into that?

Mike Haridopolos: We can look at anything we want.

Dave Neuman: Okay. (laughter)

Amy Kneessy: We can take any and everything, but I mean I didn't have time on here, but they have even limited the number of people in the board room. There is a large room behind the board room that when I was on the board, we opened up for people to participate. That is no longer allowed, the doors are locked and people are kept outside.

Dave Neuman: I am a former elected City Clerk. I have stayed late into the night for many meetings. I get it. I definitely personally concerned on that.

Amy Kneessy: It is just as new policies that board members said during the meetings, we will not stay late any longer.

Dave Neuman: Okay.

Amy Kneessy: Anybody else?

Mike Haridopolos: Thanks, Ms. Kneessy great to see you. All right next we have Chris Bird. Welcome Ms. Bird.

Chris Bird: Thank you. Good afternoon. I just want to express my gratitude for the opportunity of giving tax paying citizens to address their grievances through updating of the Charter to allow for elected school board members to be recalled. When any elected official is in non-compliance with the law, what other remedy is there? Citizens should not have to wait out that school board member's term to vote them out. The only fair remedy is clear, a timely ability to recall that school board member. Thank you.

Mike Haridopolos: Thank you Ms. Bird. Other questions for her? Thank you. Crystal Kazy. Welcome.

Crystal Kazy: Thank you. Good afternoon committee, and good afternoon Chairman. Thank you for having us today, and I would like to say thank you all very much for considering the recall of school board members due to the non-compliance with State laws, and in addition to prior comments, I would like to say in agreement that your citizens voices need to be heard. And in several cases as has already been presented to you, we have not been given the opportunity for our voices to be heard. So, it is very important that your constituents have a voice, and it is not in any way, shape or form, watered down or diluted in any way, shape or form. That these issues are brought to light so that your citizens have the opportunity to vote on them. So, thank you very much for your consideration and for your time to consider the recall of the school board members for BPS. Thank you.

Mike Haridopolos: Thank you, any questions? We have Sara Mirsky. Welcome.

Sara Mirsky: Thank you. Good afternoon Chairman Haridopolos and members of the County Charter Review. I am Sara Mirsky. Wife, mother, registered voter, tax payer and constituent of Brevard County. A group of us have been deeply in contact with our Brevard delegation, and they have advised that because we are a Charter County, it is written within the County's authority to make this amendment to include school board members. I am speaking in favor of adding school board members to be able to be added to be recalled. This is not a Democrat or Republican issue. This is a bi-partisan issue. When school board members do not follow the law, or have broken their corporate fiduciary responsibility, or go against their oath of office to uphold the Constitution of the United States, the voters of Brevard County should be able to recall said school board members. An example of recalling school board members is what the voters of San Francisco California did. They recently recalled three school board members, and San Francisco has a different political landscape than Brevard County, however, the Brevard Public School Board recently enacted a public input policy that goes against our First Amendment Constitutional rights. That is why the three school board members from San Fran were recalled. The BPS board is also currently going against a Florida State Statute by having explicit materials in their school libraries. I actually appreciate the fact that a recall process can be difficult, and has a timeframe and has to go through checks and balances. All we are asking is that we be given the opportunity to do this. The voters, tax payers and constituents should be able to recall school board members in Brevard County. Please add school board members to be able to be recalled to the Brevard County Charter. Thank you for your time.

Mike Haridopolos: Thank you very much, any questions? Thank you for your time.

Sara Mirsky: Thank you.

Mike Haridopolos: Diana, your name is

Diana Haines: Haines, sorry I write like a doctor or a lawyer whichever (laughter).

Mike Haridopolos: Thanks for joining us.

Diana Haines: Thank you. I am not here to educate you, but I would like to read something into the public record. It is the word malfeasance. The definition, misconduct or wrong doing especially by a public official. Evil doing, the doing of that which ought not be done. Wrongful conduct, especially official misconduct. Violation of public trust, or obligations specifically the doing of an act which positively is unlawful or wrongful in contradiction of malfeasance. So, it is the doing of an act which a person ought not to do. An illegal act or doing of what a person ought not to do. That is malfeasance. Official misconduct could be violating the lawful and legal executive order of our Great Governor, put in place by banning mask mandates in schools. That might be malfeasance. Evil doing could be the failure to protect our children from early sexualization, sexual abuse or sexual deviation. That might be malfeasance. The violation of public trust or obligation could be the misappropriation of school board tax payer funds to pursue frivolous and vindictive lawsuits, or create lawsuits as might be a result of the wrong doing. All of that may be malfeasance. We the taxpayers, have a right to take public officials and call them to task and remove them if they fail to do their due diligence or follow the wishes of the taxpayers and the law. Our school board is violating the public trust, and the laws on so many levels that we are entitled to have the right to remove these individuals. We shouldn't have to endure their illegal activities or anything for the total of four years without having avenues to remove them. And that is all I have to say.

Mike Haridopolos: Thank you so much.

Diana Haines: Thank you very much, thank you.

Mike Haridopolos: Kerry Takacs

Kerry Takacs: Hi, I am here today before you to ask that you seriously consider adding a recall option to the County Charter. It is incredulous that there is no path for parents and taxpayers to recall school board members. My biggest concern other than our First Amendment rights being violated by our present board, are the sexually explicit material available in schools. As of today, our schools continue to carry pornographic material in their libraries. This was brought to light as recently as Tuesday at our last school board meeting. Concerns coming from parents and taxpayers alike, have not only been ignored, but met with animosity from some of our school board members. References to some of the children having access to Tik Tok on their own time are used to justify having the material in our libraries. It is against Florida Statute 847.12 to do this. It prohibits an adult knowingly distributing to a minor pornographic material. Additionally, yesterday a teacher from Stone Middle School here in Brevard was arrested for five counts of distributing harmful material to minors, as well as an unlawful use of a two-way communication device. So, not only is pornography present in our schools right now, but we have teachers distributing it to students. This while one of our school board members has

vocally defended the explicit material in question despite concerns voiced by their constituents. It is imperative that parents and taxpayers have a path to rectify the blatant misrepresentation from their board members. Waiting three more years for the next election is three years too long when it comes to the well being of our children. Thank you all for your time.

Mike Haridopolos: Thank you so much, seeing there are no questions. Thank you. All right, Pamela Castellana.

Pamela Castellana: You get closer every time. Castellana, but you get close. Good afternoon, I actually have fifteen copies so you do not have to make them.

Mike Haridopolos: Thank you.

Pamela Castellana: So, I was recently accused of being rude to the members of the board in February. What is rude is intentionally misleading the public which Mr. Trettis appears to be doing. I am not opposed to the concept of recalling school board members, go on the record. His excuse for ignoring all present State Statutes is as follows: The school board's face mask requirement was voided only because Governor Ron DeSantis and the Florida legislature passed a bill in special session in November 2021 which prohibits a district school board from requiring a student to wear a face mask. If Governor DeSantis were not the Governor of Florida, the Brevard County Public School Student's could have had to wear face masks in schools indefinitely as students are now ordered to do in states like California and New York. At the February meeting, I gave Mr. Trettis the benefit of the doubt that he was simply ignorant of the facts and had not taken the time to glance at the minutes of the school board meetings. So, I presented those facts as followed: The mask policy as approved by the School Board last year was never indefinite. On October 4th, the Brevard School Board set metrics in place giving the Superintendent the power to rescind the policy when Brevard County's positive case rate reached fifty out of one hundred thousand cases. That allowance was approved by three of the board members: Misty Belford, Cheryl McDougall and Jennifer Jenkins. The threshold was reached two weeks later and the opt out was added well in advance of DeSantis's overreach. Trettis has neither withdrawn or edited his request or his rationale for it. I can now only assume malicious intent at this point rather than ignorance. To say this is not politically motivated is demonstratively untrue. On June 30, 2020 County Commissioner Bryan Lober asked for a mask mandate for our entire county. Yet I don't see any attacks on the County Commission's ability to serve their term. And finally, even Mr. Luebker agrees with me, miraculously enough. He recently posted on social media under one of his alias's that we don't recall people based on just their party or a vote. It takes malfeasance, it's a very high bar. Not just passing a local ordinance but recall, and I have a screen shot of that post as well as evidence connecting his alias to Mr. Luebker.

Mike Haridopolos: Okay, thank you Ms. Castellana.

Pamela Castellana: Any questions?

Mike Haridopolos: Mr. Trettis for a question.

Blaise Trettis: You do know that Mr. Lober could be recalled according to Florida State Law, don't you?

Pamela Castellana: Yes, I do.

Blaise Trettis: Okay, so the voters already have that ability to recall him for his decision, but they do not have the ability to recall school board members.

Pamela Castellana: I don't have a problem with having the ability to recall the school board member. My problem is that your entire premise of it is based on a misstatement of the facts. You claimed that they would still have masks today if not for the Governor's executive order and that is not true. A parental opt out was put in place well before the executive order was approved by law.

Blaise Trettis: Okay, well that was just one reason. The other reasons are matters such as the transgender policy of the public- school system here in Brevard County, which allows K-12 grades to use the same bathrooms, locker rooms and shower with children of the opposite sex. Do you approve of that policy?

Pamela Castellana: That is not the policy I am addressing in my statement. I will be happy to address that with you at the next meeting.

Blaise Trettis: Well that is one of the reasons why this proposal is submitted so do you approve of that policy?

Pamela Castellana: My disapproval of you is that you are misrepresenting the facts on the mask policy.

Blaise Trettis: If I am wrong (inaudible as both parties speaking at once)

Mike Haridopolos: Mr. Trettis hold on, let's do one at a time please finish your comment, and once he starts talking, let him respond.

Pamela Castellana: Do you agree that you were misrepresenting the facts of the mask mandate Mr. Trettis?

Blaise Trettis: I may have been wrong on the facts, and if I am I was wrong on the facts. If you are right on the facts, then you are right. I don't know the facts, I guess speak for themselves. So, if I was wrong, I was wrong. I don't have any problems saying I was wrong on the facts, if I am wrong on the facts. But that is just a little part of why this proposal was made by me okay? The School Board did order mandatory mask wearing. The timeline, when it went away when it didn't, is not all that important to me quite frankly because they ordered it against the Governor's Executive Order. That is what is important to me.

Pamela Castellana: May I respond?

Mike Haridopolos: Yes

Pamela Castellana: Actually, it may not be important to you, but it is important to many, many, voters in our County. In fact, there were no surprise on Jennifer's stance on mask mandates. Her entire campaign was run on that, and if I finish my statement: a recall is

and should be a high bar. Mrs. Jenkins won her election on her stance on the need for mask mandate as the only life saving strategy available to our school board was widely known. She had stated in public debates, interviews with the newspaper and even conservative radio talk show host Bill Mick. And Mrs. Jenkins won that election with 54.6 percent of the vote to her opponent 45.4 percent. That was the recall that mattered. I served as her campaign manager and we even had a State Representative had his wife tell us that is why she voted for her. So, I understand it is not important to you, but it is important to some of the voters, and the reality is you misrepresented those facts as they stand. And I presented them to you a month ago, and you have not edited them so you continually are misrepresenting those facts. That is what I want on public record.

Mike Haridopolos: Thank you. Mr. Trettis do you want finish up, or?

Blaise Trettis: No sir.

Mike Haridopolos: Mr. White for a question.

Bob White: Yes, Mr. Trettis asked you a simple yes or no question, and I was just wondering if you will answer that.

Pamela Castellana: No, I don't want to answer that question, thank you. (laughter)

Bob White: You said that you included it in your, your

Pamela Castellana: No, I did not include any comment on the transgender of the (inaudible- Ms. Castellana and Mr. White both speaking at same time).

Bob White: Why did you tell Mr. Trettis that it was in your report?

Pamela Castellana: I didn't say it was in my report, in fact I said I would comment next month. It is on record what I said, would you read it back?

Mike Haridopolos: Let's just like we did a minute ago, let's let one person talk and then the other. Okay. Mr. White for your question

Bob White: He asked you a yes or no question, and it was my understanding that your response was I addressed that in this report that I am leaving behind.

Pamela Castellana: That is actually a mis-understanding. What I said was that I did not address that today, I will be happy to address that at the next meeting. And I believe we have words being transcribed here that could be read back.

Bob White: It is a simple yes or no.

Pamela Castellana: You can badger me all you want

Bob White: You are badgering everyone on this, you are badgering everybody up here.

Mike Haridopolos: Okay, okay, thanks for your time. Great to see you.

Pamela Castellana: Thank you Mr. Haridopolos.

Mike Haridopolos: All right, Karen Colby.

Vic Luebker: Mr. Speaker?

Mike Haridopolos: Yes.

Vic Luebker: I just want to say, correct me if I am wrong, but it was my understanding when you put this forward you had very strict rationale: malfeasance, failure to do your job, or the commission of a felony. I don't see how masks are that big of an issue and why we are having that discussion. We are talking about recalling somebody it is because they did something big, and that is my understanding where you were coming from on this. Am I wrong?

Blaise Trettis: The proposal actually does include malfeasance, but the second grounds is the up to three votes by a school board or school board members. The reason I put that in there is because the Statute that the recall proposal is patterned after is very vague. It has reasons like drunkenness, incompetence, misfeasance. If you look at the litigation under the existing recall statute, that is usually where the litigation is, and that is usually where it is stricken down, because those are so vague and undefined. But what is incompetence? What is misfeasance? So, they are stricken down. So, what I wanted to do was make it perfectly clear that here is a transcript of the motion that was made and the vote by the school member. So, if people want to remove a school board member because they, in fact want children of all ages to use the same bathroom, showers and locker rooms, they will have the opportunity to do that because there is a motion in the record, and the school board members vote on it. That is why I did it the way I wrote it.

Mike Haridopolos: Thank you, we have Karen Colby- Welcome.

Karen Colby: Hello, I am Karen Colby, I am beachside district three for School Board. About the recall petitions and all of that. We are not given any other recourse. I know someone else said that, except for to change the Charter. Back in 1865 the colonists were not allowed to choose representatives in Parliament in London. They passed laws on which they were taxed. This led to taxation without representative (inaudible) and the Boston Tea Party in reference to the Stamp Act Congress. So, in 1765 they declared that the English Crown was not going to be able to represent them anymore without them having their own representation over in England. These were the colonists, so that started basically the Revolutionary War. In other Charter Counties these call for the removal of school board members, it affords a remedy. We don't have a remedy. A remedy is needed in an untenable situation. I would emphasize that this is not a direct attack at any one individual. This is about our rights to use the First Amendment and say that we insist that these individuals follow Florida Law. Our Governor said that they are not to mandate children to masks, which they did. Other states are trying to mandate vaccinations. We need to stop this now, so that we can remove anybody that tries to mandate vaccinations. This is a right that the taxpayers have because we fund the private schools and the public schools get money from our taxes. If we don't have the right to stand up and say something, it's taxation without representation and that is tyranny.

Mike Haridopolos: Thank you Ms. Colby. Any questions? Thank you so much for your time.

Karen Colby: Thank you.

Mike Haridopolos: All right, Jonathon from West Melbourne. His handwriting is very unique, so it is Maikisch. He must have left. All right Michelle Barrineau. Welcome.

Michelle Barrineau: Thank you, this has been my first time here, this has been a very interesting experience. I am a Brevard County resident. Mother of a Brevard County School attending child. I don't think recalls are necessary. We have a mechanism for deciding who serves on the School Board, it is called an election. It's ironic because I heard several quotes here today. I am very sorry Mr. White had to leave. Talking about the sanctity of the vote. He said the reason that you didn't need a supermajority for the Commission because the people are "people of Brevard County that choose to vote." Okay, another gentleman over here said, I am sorry, you said, "people could depend on it because they voted for it." And then another person said that "the voters were involved in the process because they wanted to be heard." I came out, I voted for my school board member. She happened to win. Now, people who are in a very vocal minority who are not happy with that feel that they are living in a tyranny. I am sorry, elections have consequences. There is a winner and there is a loser. Throughout our Country, recall measures tend to fail. Only 5.5 percent of recall measures are successful. In the process of going through a recall, there is an extensive amount of resources being wasted. You have heard people talking about their problems in our schools. Let's focus on fixing those problems. Let's not run for the same office every year, okay that is a waste of time. I have heard people talking about who is going to pay for the recall election. Whether it is going to be the School Board or somebody else. I can tell you who is going to pay. I know the answer. I am going to pay, you are going to pay, you are going to pay, we're all going to pay. The taxpayers are paying for it. We already paid for an election, there was a result, let's live with it. I don't want to be involved in a never-ending process of the same people trying to fight for their job. I didn't come prepared to talk about the freedom of speech issue that I heard someone talking about, I would love for someone to ask me a question because I was at most of the Board meetings and can give you a different viewpoint of what actually happened in that room.

Mike Haridopolos: Are there questions? Mr. Luebker, go ahead.

Vic Luebker: I will give you an opportunity.

Michelle Barrineau: Thank you so much. (laughter) This gentleman asked what motivated

Vic Luebker: Let me ask my question first, appreciate it.

Michelle Barrineau: Please.

Vic Luebker: You say you are opposed to recall. So that is everybody? All offices?

Michelle Barrineau: I think either everyone elected should be recalled or nobody should be recalled, and why is our Governor not allowed to be recalled?

Vic Luebker: So, you are opposed to recall?

Michelle Barrineau: I think it should be consistent.

Vic Luebker: That it should be everybody, or nobody?

Michelle Barrineau: To be honest, I am inclined not to recall because there already is a mechanism in place. If somebody breaks the law, they will more than likely be arrested and there is a

Vic Luebker: That is one of the mechanisms for recall.

Michelle Barrineau: Absolutely, well it's not a, well

Vic Luebker: It is.

Michelle Barrineau: Well its removal from the job, it's not a voter recall. There is a difference, right?

Vic Luebker: That is also a mechanism for recall.

Michelle Barrineau: Right, but asking the voters to come back in and change their vote, that is a whole separate thing.

Vic Luebker: Why shouldn't voters have final say and accountability on who their elected representation is?

Michelle Barrineau: They should. They did. They came to the polls. I went to the polls and I voted. Now you are saying it doesn't count because ten people in the room who are loud didn't like it?

Vic Luebker: That is not what I am saying. Going to the polls and voting for someone, you are voting on policy, you are voting on politics. They haven't done anything wrong up until that point. There was no malfeasance, there was no not showing up to do their job, there was no felony committed. Once those things happen, the voters still have to have a mechanism, accountability

Michelle Barrineau: And they do. You can remove an elected official for malfeasance. That is written in the law. There is a mechanism.

Vic Luebker: (inaudible)

Vic Luebker: Mr. Chair, I am good.

Mike Haridopolos: Again, so, finish your thought. I just wanted to make sure it is one person talking.

Michelle Barrineau: I am sorry.

Mike Haridopolos: Finish your thoughts please.

Michelle Barrineau: So, I was at the School Board meetings, and that gentleman asked what the motivation was for cutting the time down from three minutes. Having the person address the comments. It was the safety of everybody in that room. That was the most unpleasant environment I have ever been in. My husband didn't want me to go to the next one because he thought there were going to be shootings. I have never seen such ranker and venom. And that few little discourses that we have seen here that have gotten

heater, that is a drop in the bucket as to what was happening in those School Board meetings. The Chair did the right thing by trying to calm everyone down and attend to the business of the School Board meeting. That was the function. It wasn't for people to get up there and scream at each other. And, in terms of removing people's First Amendment rights, everybody has three minutes. Guess what, there was one meeting where there were about three hundred people there. Not wanting to work late is one thing, not wanting to never leave the building is another. Everyone got treated equally, everyone's time got cut equally. Everyone had a chance to get up to the microphone and speak. I am sorry it was one minute instead of three minutes, come back to the next meeting. Write an email. I have written tons of emails to the Board. I get responses back. No one's freedom of speech is being removed here. Everyone is being treated equally. You have a chance to speak. You don't have a chance to yell, call names, threaten and disrupt the room. You need to be respectful correct? So, all of those things that I heard, I was at many of those board meetings and that is not what I saw. I saw a board doing its job at an incredibly difficult heated situation, and I applaud them for showing up because it was scary. It was scary in that room. Thank you.

Marie Rogerson: Mr. Chair, I have a question.

Mike Haridopolos: Ms. Rogerson for a question.

Marie Rogerson: Thank you for coming in and speaking today. You in your comments addressed members of our board by name. People who address our School Board are not allowed to do that. Do you believe that is correct?

Michelle Barrineau: I don't believe it is a reason to recall somebody.

Marie Rogerson: But we weren't talking recall right, we were just talking about freedom of speech? So, I am just curious on your thoughts on that matter?

Michelle Barrineau: Yea, I could see being able to call people by name, I don't have an issue with that.

Marie Rogerson: Okay, so you agree that the School Board is violating that part of that?

Michelle Barrineau: I don't think they are violating, I think they made a judgement call that I disagree with, I don't think there is a law anywhere that says you have to be allowed to call someone by name. Is that? I mean.

Marie Rogerson: I would argue that is part of the First Amendment, but

Michelle Barrineau: You could say the gentleman three people to the left, and everyone knows who you are talking about.

Marie Rogerson: Yea, but they even stop you from doing that at the School Board.

Michelle Barrineau: Honestly, do I consider that a limitation on my freedom of speech? Yes, it is my opinion. I have freedom of speech just as anyone else in this room does.

Mike Haridopolos: Isn't this great that everyone gets to talk here. This is fantastic. (laughter) yea.

Michelle Barrineau: It is freedom of speech, and I fully support it. You know I don't have a strong feeling on that. I can see how it might be construed as interrupting somebody's freedom of speech. But again, the whole point of this Commission here is not to decide how the School Board functions. It is whether or not you have the legal ability to allow for recall. And I don't think that someone not letting someone else use their name is reason to undo an election and to cost us, two hundred to two hundred fifty thousand dollars because I checked with the Board of Elections on what it would cost. That is a waste of money, and I could promise you that what is going to happen is if we go down this path is we are going to spend all of our time re-running elections, and we have important work to do in this County, and we need to focus on it. We may not agree on everything, but let's at least try to get some stuff done and let's try to be civil to each other. Everyone has a chance to speak, I will listen. I don't have to agree with you. And you know what? If you came out and you voted for somebody else and they won, you won this time, and I have to suck it up for four years until I get another chance. That is the way this works.

Mike Haridopolos: Thank you so much.

Michelle Barrineau: Thank you.

Mike Haridopolos: All right we have Sandra Sullivan, our last speaker on this issue unless someone would like to sign up on a card there.

Cole Oliver: Mr. Chair? Before she goes, can I just ask a quick procedural question.

Mike Haridopolos: Sure.

Cole Oliver: For Mr. Trettis on how this would function. The reason I am asking is, malfeasance is the one ground that your petition so far has brought forward for the recall. Who defines that malfeasance? Does a court have to define it before it goes to the voters for the recall, or is it simply the approximately four and a half thousand voters that have to sign the petition, assuming that we remain a multi-district School Board, because I believe there are about four hundred fifty thousand registered voters.

Blaise Trettis: I believe that malfeasance has to be described in the petition. So that is how that works, it has to be particularly described. But, that was the only grounds in the Florida Statute, I thought that had some definitiveness to it. You know, I define malfeasance as a public official acting against the law basically. So, that is why I left that one in.

Cole Oliver: As we have seen sitting here. A lot of people have different views of the law and what would count as malfeasance. So, what I am concerned about is what happens when a petition comes in and there is an injunction put in place to say that what they are grounds for isn't really malfeasance under the law. Then it gets into an argument of the interpretation of the law. Does it go to the voters before that? Or are we left in limbo after that vote? I am just trying to understand the proposal.

Blaise Trettis: What I have seen from just doing a little bit of research, is that the elected official who is the subject of the recall effort files a lawsuit and makes all of the arguments that you are making and the courts decide. Which I think is another good reason to limit

the number of grounds for recall. But again, I really don't think there is going to be any argument to be made by someone to challenge a recall effort when it is a transcript of a motion that was made, and their vote on it. And it does allow the public to remove recall elected officials or school board members for the decisions they make. And I think that should be allowed. Especially when it is mask mandates, vaccine mandates, transgender policy like here in Brevard Public Schools.

Cole Oliver: Still having my concern is that one person's idea of malfeasance on the petition's side, may not meet the court's standard level of malfeasance as it is in case law. I was just trying to get some clarity of how we would get there, what the procedure would be. Is there a halt putting on the County of going through the expense of a special election to find out that the motion that was put forward, that is not actually malfeasance under the law? So, I am just trying to get my hands around that expense, when it is incurred, who decides what is malfeasance.

Blaise Trettis: What has happened from what I have seen is a lawsuit is filed by the person who is being challenged by recall and the courts will make the decision.

Cole Oliver: Can a court make a decision now on Writ of Mandamus function if an elected official is refusing to do their duty or act not in accordance with the law? Can a court issue a Writ of Mandamus to force that elected official to do their job?

Blaise Trettis: I personally, Mr. Gougelman might have a different opinion, my personal opinion that would be extremely limited because elected officials have great discretion in their decision making, and I really think it would just be incredibly rare circumstance where an elected official has to do something according to the law and they are not doing it.

Cole Oliver: Thank you.

Mike Haridopolos: Thank you. Ms. Sullivan. Welcome.

Sandra Sullivan: Yea, good afternoon. Sandra Sullivan, South Patrick Shores. I thought it was very relevant by the D2 rep here that there are other Charters here in Florida that have the ability to recall school board members. I would like to compare and contrast to term limits. Here in Brevard County, seventy seven percent of voters voted for term limits, but previously other, some of the other Charters that are in existence, they had put it in their Charter and it was deemed unconstitutional for a while. It went to a higher court and it got resolved and it was deemed constitutional to have term limits. So, there is a process. I am a parent, I was a parent of three BPS students when I was going to those meetings. They changed the policy that in my opinion, limited my First Amendment Speech. Anything that is not an agenda item, you are only permitted one minute. So, as a parent who has an exceptional student with a disability, and I have an issue and I need to go to that meeting, and I need to convey and make them aware I am very unlimited to that one minute. If I send emails and I don't get responses, which I can say is most of the time, that is my recourse to go to that public meeting and to speak. So, I am in agreement, we have some issues in the school board responding to the parental issues and having that option. Even if it is later challenged, but it is already on a couple Charters

in other counties and so I don't see it as a very heavy risk for Brevard County to consider this. Thank you.

Mike Haridopolos: Thank you. All right that concludes our comments on the School Board Members. This was just hearing number one(laughter). So, you have two more opportunities there. I do have a question for the sponsor, I think to get at Mr. Oliver's questions, and I was reading through Mr. Gougelman's twenty-page memo. I want to get a better feel on the amount of time you think it might take to get that recall process, because as you know there is enough signatures, then the person who is under the recall is in a situation where they can write a comment, and then once those are completed then you have another thirty days to get to fifteen percent. And the reason why I ask, I am just trying again to gauge the financial impact, the pragmatic impact. How long do you think that might take, and the reason why is if the voters approve this recall election, which I happen to think it might, would you just make the recall election just the next scheduled general election? Because of that timeframe. We have of course special elections, I was elected by special elections because the Senate back in the day because of the passing of Howard Futch. I am just trying to understand what you think the timeline would be. Would it be ninety days, would it be one hundred twenty days? Just a threat of a recall I know as a formed elected would be a very big strain and maybe change my opinion on some things, but give me a feel for that. I think that would help the discussions as we go forward so we can tailor this proposal in a way that I think might work. So, if you could take a shot at that, and maybe Mr. Oliver does as well. Mr. Trettis.

Blaise Trettis: I added it up to one hundred sixty to one hundred ninety days from beginning to end.

Cole Oliver: Mr. Trettis, did you coordinate with Supervisor of Elections on the timeline it would take to conduct a special election? The reason I ask is because I have worked with her through a number of elections and there is often a lot of work that goes on before election day. I mean it can be three, four, five months of work to get the ballots prepared, printed, mailed on timely manner to meet the Florida Statutes, especially as they continue to evolve over the last couple of legislative sessions. So, I would ask all of us, or maybe the City Attorney to ask her how long that timeframe is that she would need the ballot to be on a special election. What is her timeframe? And again, I would really want to know what the cost of one of these elections is, just so the County is aware of the cost of such elections should we decide to incur that cost.

Blaise Trettis: To answer is that this proposal would require the Supervisor of Elections to do nothing that the Supervisor of Elections isn't already required to do because it was patterned after state law for the recall of County Commissioners and City Commissioners. So, if there ever had been a recall prior to today of a County Commissioner or City Commissioner in Brevard County, the Supervisor of Elections has to comply with it. So, I did not work with her, there was no reason to. It is set in law.

Mike Haridopolos: Mr. Fisher.

Robin Fisher: Paul, I saw a memo from, I think legal council of the School Board that was making reference to State Statute 1001.32 as whether or not we as a County had control

over the School Board matters, or whether we could recall them, or even put this in place. Does that, are you aware of that, or had any conversations with the School Board Council?

Paul Gougelman: I know the School Board Council, but I don't know what their position would be with regard to this. I really don't. And as indicated in my memorandum, I think the key thing that I leaned on was the Attorney General Opinion.

Robin Fisher: Okay. He makes reference in Statute 1001.32, "governing, the governing and the management control, and operation, administration and supervision of the district school board system and counties are not given any authority in this theme whatsoever". We have no authority. And under Chapter 1001 State Board of Education is really in charge of this issue and determine the laws and rules.

Paul Gougelman: I think that is generally true as going back to that Attorney General Opinion from 1971. That's kind of the theory under which that they were operating. And the theory basically is, is that counties are dealt with, counties and cities are dealt with under a totally different Article of the Constitution than schools. It is just like two different worlds, if you will.

Robin Fisher: Okay.

Mike Haridopolos: Other questions on this issue? One final one Mr. Gougelman, I should know this but is it required that a school board member gets a four-year term? Is it possible for us to say that part of the Charter Review Commission to say that our school board members can be under a two-year instead of a four-year term?

Paul Gougelman: Again, I haven't researched that question, but I think the law requires four-year terms, I believe.

Mike Haridopolos: Okay I think that is the case too, but if you wouldn't mind finding out for sure that would be wonderful.

Paul Gougelman: We will check it.

Mike Haridopolos: All right, I am sorry. Dave, Mr. Neuman.

Dave Neuman: I also want to ask Mr. Gougelman on the speech issue, because that came up on here. Would you know if this body or the County can actually talk about public comment versus the non-agenda item versus the agenda item? I think it was no less than three individuals had talked about that today. Are we able to make a proposal that would be constitutional for that?

Paul Gougelman: What kind of proposal would it be?

Dave Neuman: That non-agenda items would be treated in the same manner as agenda items when it comes to speaking, I guess seen at the meetings. Because I guess at one point they turned off the camera for those folks too.

Paul Gougelman: For County or School Board?

Dave Neuman: School Board

Paul Gougelman: Oh, School Board. Well, I think probably not, and the reason that I say that is I think Mr. Trettis has pointed out in his to repeal the provision in the Charter regarding single member districts. I think basically, I think there is great question as to whether or not the County, through its Charter could enforce regulations against the School Board.

Dave Neuman: Okay. Thank you.

Marie Rogerson: Mr. Chair I just have a quick question since we are talking about the recall and the fact that it could if enacted lead to a special election for a school board member. I think it is applicable to look at what just happened in Palm Bay because the literally just had a special election. They had a counsel member that resigned in August and ended up holding a special election in March. It is not, it's a pretty tight timeframe. Obviously recall process is different because you have to have time for a petition and things, but that puts some kind of timeframe on it. I know when they discussed it, they estimated it would cost them, and I don't know what it ended up costing them, but they estimated that it would cost them two hundred and four-five thousand dollars to run their special election. So that is a, Palm Bay is our largest city, it is not the size of an entire school board district, but that is a point of reference for us as well. Something we can look at as we are talking about the costs that this would have.

Mike Haridopolos: Good Point. All right we are on item number three, full time commissioner. Ms. Sullivan, you are the person who sent this into us. Why don't you take three minutes if you don't mind to present your idea and then from there we will ask questions if necessary, and if not, we will move on to number four, the citizen process.

F-3 (Full Time Commissioner Public Hearing #1)

Sandra Sullivan: Sandra Sullivan. It is not so much that they are a full time Commissioner. It is that they don't have a full-time position in addition to being a Commissioner. And the reason for this, is having attended the meetings for three years, and I look at some of the decision making and analyzing why did things happen the way they did. So, let me give you an example. The topic that has been discussed more than any other topic over the last three years is Solid Waste running out of space at Sarno dump. So, this conversation has had a lot of meetings, and we get to May of 2021 and we are going to run out of dump space this summer. And then they authorize the construction of a new site out on One Ninety-Two. And then nine months goes by and we have the budget review meeting recently and it is like, how are we going to pay for this? We need a study. Nine months after we are starting construction. So, it is crisis management. Some of the comments that have been made over time, at one Brevard Commissioner meeting it was stated that three of our Commissioners do not do regular staff briefings. I was pretty shocked by that. Looking at some of the meetings I attend, there are a number of Commissioners that do not regularly attend the boards that they are assigned to attend. When you have a Commissioner, who has a business on the side, or say consults, or is a realtor or some job that gives them flexibility that he can meet the demands of what the County needs. But when you have a Commissioner that has full

time employment, they don't necessarily have the time. We are a growing County. Our budget is 1.8 Billion dollars and we are growing very quickly. I think with the growth of the County, we have to consider making changes. I think what we need right now, we need people on our Commission that have the ability to have the flexibility to give the Commission the time it needs to perform their duties. I think this relates directly back to the discussion that you are having about remuneration for those Commissioners, and if there is a commitment that they do not have another full- time commitment, I think the tax payers might be more amenable to considering a, you know an increase in their remuneration. But otherwise, I think you would have a hard time with that, and we are going into an inflationary period so I think there will be some objections to that anyway. That is getting off base, but I just wanted to communicate the reasons I attend those Commission meetings, I think more than any other citizen other than the staff members and the Commissioners themselves. Is there any questions?

Mike Haridopolos: Thank you Ms. Sullivan, are there any questions? Yes.

Gabriel Jenkins-Kirstein: Ms. Sullivan, so you are okay with part-time? I just want to make sure that I am following that.

Sandra Sullivan: Absolutely, it is very reasonable for them to have other interests.

Gabriel Jenkins-Kiersten: And with that being said, are you setting a time-limit on that like maybe twenty hours, or thirty hours. I mean what is your thought?

Sandra Sullivan: No definition on that because the general intent is that they being a commissioned board member that they give the time that it necessitates and adjust their schedule accordingly to meet their commitments.

Gabriel Jenkins-Kirstein: Okay, and if this proposal were passed, would you be a proponent for an increase of wages, considering that they could not have another income?

Sandra Sullivan: Considering that I am running, that is a tough question. Here is my general feeling just stepping aside as a candidate. If you want to attract really good people, you want to pay a fair compensation otherwise we get candidates running that don't have a business background, or management background, or even have served on boards or what not. You want to attract good candidates that have the experience that you like to see. It is in many respects like running a business from the monetary understanding, profit and loss and balance sheets and the financial side of it. Having the experience, you know if I was to go out in the private sector and have a job, I would be over six digits. I am not pursuing, and didn't even know this was going to be covered. Monetarily, the pay is not what is motivating me, it is the issues that I am concerned with. But not everybody, while I have the luxury to be able to accept and live on a lower pay, there is some people that you know, have commitments and mortgages and what not that they need to me. So, it does eliminate, it limits more to the people to the people who have monetary resources to run. There are pros and cons. I have no energy one way or the other. I would be happy with the fifty-eight. Just speaking hypothetically to, I think it would be more motivating to the voters end of it, it would be more palatable to them if

they knew they were getting someone who is not just looking at this as a part time endeavor.

Gabriel Jenkins- Kiersten: Well, thank you for your response and your insight on that. But it sounds like to me that you couldn't say one way or the other, is that?

Mike Haridopolos: Could you mark that as undecided on that one?

Gabriel Jenkins-Kirstein: You are getting the political experience in, I will put it that way.

Sandra Sullivan: Let me put it to you this way. I have invested as a volunteer over three years of attending County Commissioner meetings on a regular basis. Obviously, money doesn't drive me. That has been volunteering to my community. So, this wasn't even on the table when I put my name in to run, so you know, I don't have any energy. You know from the perspective would it be nice to be paid more, absolutely who wouldn't say that? So, but you know I am here to my commitment to the community, and I love Brevard and I want to make it better. And, then it gets into I sound political, but that is the truth. I have been doing this already for three years as a volunteer.

Gabriel Jenkins-Kiersten: Thank you ma'am.

Mike Haridopolos: Any questions.

Vic Luebker: Yes, I have a quick question. Sandra let me ask you this: So, let's say that somebody is running for County Commission. You talked about the need for experience, business experience and all that. Life experience. Are they now supposed to give up that full- time business or that job because they are a County Commissioner? How does that impact their ability to do what a lot of people would say is a thankless job because they get their teeth kicked in all the time by the public. You know why would you want to say you can't have a full-time job? I don't, I am not following.

Sandra Sullivan: Because the County is getting to a size. We now have 1.8 billion-dollar budget. We have a very much growing County, and you know I have talked with some of the Commissioners and you know they go I don't even have time to read the details on the agenda. If they don't have time because they have a full- time endeavor to attend the boards. For example, TPO, that is a required board to sit on. I go to those meetings, and not very often, there might be one Commissioner there, or maybe two and that knowledge is important to the decision making that they make up on the dais. The other boards that they sit one, the staff briefings are very important so in one County Commissioner meeting, as I said, it was stated on the dais that three County Commissioners do not attend staff briefings. That knowledge of the staff who run the day to day affairs, that is like being a manager of a company and saying that you are not going to listen to the heads of your department because you don't have time because you have another full- time job. All I am saying is that they can have jobs outside of being a Commissioner, just as long as it is not a full- time position. There is a lot of flexibility with that, I think to find other opportunities, just not on a full- time basis.

Vic Luebker: Thank you.

Kendall Moore: I do have one for you Ms. Sullivan. This is a popular one today, And I will put on the record, and I think Sue and Marcia will chuckle when I say this. Many moons ago when I ran for the County Commission it was a pretty hot issue. I think the piece of mail said from my opponent: Someone with a wife, two beautiful kids and a full-time practice, surely doesn't have time for you. I think that was the way the mail read at that time. And Gabriel and Vic actually asked two of the three questions. One, what constitutes full time, two how do you feel about the compensation? But number three kind of going back to Vic's point, and I certainly for my own personal protection, am not suggesting that you are correct in saying that Commissioners are not adequately informed, don't attend board meetings, don't attend staff briefings and not talking with constituents. But will full time fix that? I could argue that potentially people who don't have full time employment could still fall into the category of those four things that you mentioned, how will not having a full- time job remedy what you pointed out as being the concerns?

Sandra Sullivan: Well when you look at those Commissioners that potentially have those full-time jobs, and you look at them perhaps having that issue more than others, of course there is one Commissioner who is not working full time that is not attending staff briefings, so that could certainly be the case. But as the position we are in right now with the size of our Commission. At least if we start from the starting place and at least there is an expectation that you don't have a full- time job, and I would say that would be defined as, if you own your own practice, you have the ability to hire people to come in and do the functions that you are doing, that is not what I am talking about. Because that is not a full- time job. I am talking about when you have a position, I guess forty hours a week is considered a full time position, so, you know you have a position that requires that amount of hours per week then you don't have that time to put into the County Commission because your commitment is to another entity, whereas if you own your own practice, that is up to you how you are going to manage that. So, I guess that would be the distinction. Being a business owner is different than being a commitment to another entity for that time.

Kendall Moore: Got it. Thank you, Ms. Sullivan. Thank you, Mr. Chairman.

Mike Haridopolos: Do you want to speak on this Sue?

Sue Schmitt: Well since I am the only one up here who was one of those, besides this one, I would like to address that. And, to me, the answer is: there are a lot of people who are here who I would have to agree that less government is better government right now today. We see that in a lot of other areas, and a Commissioner has the right if they want to be there full time fine. If they don't want to be there full time, and they don't have to attend briefings. I would say that if you do your homework, and you read what the agendas are then you would know what you should be doing, or have an opinion on, and the staff, believe it or not does have other things to do like roads, and parks, and SCATS and all kinds of things. So, I would say if you want to be a full time Commissioner you certainly can, it is your option. But Commissioners are not just in that office eight hours a day, they just aren't. You are working, if you do the job properly, you are out doing things

on Saturdays, Sundays, evenings. And, it is truly beyond a full-time job even if you have another job. I would just recommend if you haven't been there you don't know.

Mike Haridopolos: Next we have one additional speaker on this item, it is Karen Colby.

Karen Colby: Hi Karen Colby, beachside, Indian Harbor Beach. I would like to talk about the full time versus part time on the County Commission. When we elect a person to the position, I don't remember having any requirements based on the hours that they are allowed to work outside of their potential elected position. This would lead down a slippery slope of people wanting to come apply to run for this position potentially not get it, and then be able to sue because you made them give up their business, their real estate company, their catering business, their bar. I mean I am not a business person, I am not an academic. I was just a regular hourly employee. I want people who work full time. I want people that have jobs. I want people who know what is going on in the world. I want people who are paying four dollars for gas. I don't want somebody who has come from another Country who gets maybe other funding who can afford to live here, that I don't get to have the say so whether I can have my Commissioner up there twenty hours a week, forty hours a week, or one hundred and twenty hours. It doesn't matter, I didn't elect him, her, she, them, they, it whatever to work a set schedule. I want them at the meetings unless there is a personal opinion, I mean a personal issue, or if they are sick. But, I don't think that we should require anybody to put in forty hours a week on the clock or not run. I mean we would be limiting ourselves to the most talented people from this County. We have the people with the most experience that have gained the instruction to make their own companies. We are listening to a person from another Country who is also a dual resident who wanted a hundred and twenty thousand dollar a year job from the County Commission to work full time as a consultant and got told no. Now they are running for office. I apologize to anybody I offended. But that is the truth of the statement. And, I support our current County Commissioners, all of them. Thank you. Any questions, sorry.

Mike Haridopolos: See none. Thank you so much.

Karen Colby: Thank you.

Mike Haridopolos: Mr. Gougelman.

Paul Gougelman: Yes Mr. Chairman just going back to the item on school board terms. I did check it and State Statute does require four- year terms.

Mike Haridopolos: Thought so, thank you. All right on that item three, we are concluded on that so we have completed hearing one on item three. We are now on item number four is also by Mrs. Sullivan. Mrs. Sullivan, why don't you take three minutes to present that for us, and we will go from there.

F4.- (Citizen Review Process- Public Hearing #1)

Sandra Sullivan: Good afternoon again, Sandra Sullivan. So, in attending these meetings, so I will tell a story. So, I was a Mom, three kids taking care of my kids and

organic art. Life was bliss, I pinched myself everyday when I got up. Live in a beautiful place. And I find out I live on top, that there is a lot of cancer in my community. I think most people know me as that lady that dug up all the stuff in her back yard, and I did all that research what was formerly the defense site. One of the first places I went to was our County Commissioners for help. Unfortunately, did not get the help I needed. I tried to get items on an agenda and was not able to get items on the agenda. There is really no process that I can find to bring an issue that is of importance to a community and have a citizen driven process to putting something on an agenda. If a Commissioner doesn't want to meet with you and talk to you about something, doesn't have to. Just to be clear on that last item, just as a side jack, I wasn't saying that a Commissioner had to spend x number of hours in the office. Not about a Commissioner being full time, but about not having a full- time commitment. But on this, the way it works right now, which is really not clearly defined in the Charter. It is called Speak Up Brevard. And, once a year in December this form is open on the County website, but most people don't know about it. Even me who attends so many meetings because it is not written in the Charter that this is Speak Out Brevard where you go to and put in a proposal to bring it to the County Commission. So, there is a disconnect there, there is no way to know how that process works, and I sent email to my Commissioner and did not get a response back on that, on how that process works. But December is a bad month for people. I got three kids, I am preparing for Christmas and gifts, and you got school kids coming off of school. I tried to fill that form out, you know, but I had so many commitments in December. It is a hard month and then I went, I will do it December thirty first after five o'clock. I sat down at my computer, it's closed. It closed at five o'clock. Not at midnight, it closed, and the last minute I was going to push it out there it was closed and gone at five o'clock. It said, see you next year. So, if that process, it's just a form. It is not going to cost the County more money. If that form was available at any time with some criteria to have to put it on there, like you have to have so many petitions or supporters or whatever, but just some criteria that the public can bring something to the Commission. Thank you.

Mike Haridopolos: Any questions? All right, see no questions. We are going to go to item number five. Mr. Trettis, I believe that this is your proposal, why don't you go ahead please.

Blaise Trettis: This is a proposal to appeal from the Charter a panel of three attorney's who review Charter proposals by citizen petition and by Charter Review Commission. What is in the Charter now is if either by petition or the Charter Review Commission a proposal passes the Commission, it gets enough signatures on the petition process. It is then forwarded to the Board of County Commissioners who then pursuant to the Charter are then responsible for hiring three attorney's or retired judges, or a combination thereof to review the proposed amendment to opine, like Mr. Gougelman has been asked, to through a memorandum already whether a proposal is not consistent with State law, or special law approved by the voters. The difficulty or objection that I have to this part of the Charter, first of all, there is no other provision like this in any Charter, County Charter in the state of Florida. This is the only one of its type. It is unique to Brevard County. But the objection to it, first of all, conflict of interest. The Board of County Commissioners get to decide who to hire as these attorney's. So, the County Commissioners will be able to

hire attorneys who very likely will decide the matter, could decide the matter, be influenced to decide the matter in the manner that the County Commission would like them to decide. For example, my Charter Cap Amendment proposal. At least four out of the five County Commissioners are against that proposal. Yet those County Commissioners would decide which lawyers to hire to opine on it's, whether it is consistent with Florida law or not. So, there is a conflict of interest that is there. And then secondly, the way the wording is in the three-attorney panel is that the County Commission could actually, I think could have complete decision making whether or not in their view the proposal goes to the voters because if at least two out of the three attorneys opine that it is not inconsistent with Florida law or special law than it shall go to the voters. However, there is case law which I am sure the County Commissioners know about, or the County Attorney will advise them of which holds the word shall in certain circumstances can mean may, be discretionary, and the County Commissioners would be able to rely on that case law. Perhaps the County Attorney's opinion to say, well it's up to you. Even though it says shall, you can interpret to be may and its your decision to send it to the voters. On the other hand, the Charter doesn't say that if only one of the attorneys says that it is not consistent with general law, it does not say that it does not go, the proposal does not go to the voters, but it is only an inference there. There is no specific language that says that and the County Commissioners could say well it's only an inference. It only has one vote, we want it to go because we think it might pass, so they could take that position. So, in my opinion it is a conflict of interest to have this. Brevard County is the only County Charter that contains this provision. It is subject to abuse, you know I believe and to me it is government by a three-panel group of lawyers, not government by the people. We have Mr. Gougelman to answer these questions. The same question that this three-attorney panel would be asked to opine on, we have Mr. Gougelman to ask. I don't think the attorney's opinion would be that much different unless there were that conflict of interest. But I also want to point out that, you know, what if we wanted to hire two or three more lawyers instead of, we just wanted to hire two or three more lawyers to get opinions like Mr. Gougelman has provided? Well in Charter provision 2.9.3.1, oh excuse me that is not the right one. In the very beginning the Charter says that the Charter Commission shall be funded by the Board of County Commissioners, so I think we have the authority to hire our own lawyers if we wanted to, if we wanted to. So, I think this is a really undemocratic procedure that we have in the Brevard County Charter. I don't see any usefulness for it. I think it could be subject to abuse, and that is why I filed my proposal to repeal it.

Mike Haridopolos: Thank you. One question I have, is you mentioned in your comments that we are the only County that has this three- judge provision. Has it ever been challenged in the courts?

Blaise Trettis: You could only be challenged here, because we are the only ones that have it, and it has not.

Mike Haridopolos: Is that accurate Mr. Gougelman?

Paul Gougelman: I don't know.

Mike Haridopolos: I think that is as mentioned no other County has it. What would be the procedure for us to challenge that ahead of time if we chose to?

Paul Gougelman: Challenge the provision in the Charter? You would probably need to get some kind of declaratory ruling from a court, but I am not even sure if you would have standing to do that so

Mike Haridopolos: Because you are in a catch twenty-two, here right? If we pass this, the three-judge panel says (inaudible) and you are out of business. So, I think we might want to explore if this is an idea that our group wants to look at more closely. Clearly there would have to be some type of challenge. We would like to know who would give that legal standing. Would it be a citizen of Brevard County, would it be a group of folks that are assembled today? Because if we are the only County in the state that has it, if this is like a consideration we want to take up. I think that definitive answer needs to be given or we are just wasting our time.

Blaise Trettis: I might suggest that it be delayed until there is a proposal approved by the Charter Commission and the County Commission says we are not going to send it to the voters even though two of the three lawyers got it. I understand that my proposal is prospective only and it changes it in the future. I understand that, but to me it seems like it would be a lot of waste of time and money to challenge something that we might not even need to challenge because for all I know maybe no proposals will even pass here, so.

Mike Haridopolos: Yea, again it is catch twenty-two here. I think it is a serious proposal. To me it does stymie the whole reason why we are here potentially. Where two judges, or two lawyers could decide all the time we put in was worthless. So, if we could just explore that Mr. Gougelman. That might not be a bad idea, just so we understand if we have that option. Because I don't want to spend my summer doing this and just have two lawyers tell me never mind.

Paul Gougelman: So, I get the thrust of where you are going correctly if you could repeat that?

Mike Haridopolos: What I would like to see is that in your opinion how would you challenge this provision in our Charter? Without having to go through the process we are potentially going through because if our goal is because we are citizens of the County, two thirds, half whatever we decide, eight or ten think it is good idea, and then two lawyers say otherwise. They can do that to not just one item, they might not like this entire thing and make this whole group irrelevant. I don't think that is the intention of the voters, that is why they voted for this many years ago. Mr. Jenkins.

Tom Jenkins: You might remember, one of the law firms we interviewed commented about their experience in Orange County where the County Commission did not put something on, and the Charter Review Commission actually took the County Commission to court and I think they prevailed, I am not sure.

Mike Haridopolos: Yes, that is why I would like to look into the history Mr. Gougelman. To see if that is the kind of case we have. If that is okay with everyone else, is that okay great. So, we are on

Kendall Moore: Mr. Chairman I do have one question on that topic. Paul, let me ask you a question, not based on the legal side but you have served on this committee before. What, were you there previously when this three- panel group of attorneys was added?

Paul Gougelman: I don't recall to be honest with you. I don't think I was. I served on the original Charter Commission, and I served on the Charter Review Commission as well, much as this body, and I don't think that this proposal had been put into effect at that point.

Kendall Moore: Mr. Chairman, I would also be interested in the history. When did it come about you know, when how and the like. And then the last question, Mr. Trettis on your concern of the County Commission having the choice. Let's assume that for the basis of my question that the three-attorney panel had merit. I have at least heard it stated before that making those decisions rather than going to the single attorney, you get the three-panel attorney like you said assessing legality, constitutionality and the like for the threshold to get on the ballot. Let's assume that it was something that was important, when it was at least argued to me when I was hear the last time if it was, handled incorrectly could be of magnanimous cost if you put forth something that had some constitutional or legal challenges. Let's assume that it is a viable thing to do, because if conflict is your concern would you feel better if this body was the choice for those three attorneys if that process actually had merit? Would that solve your concern relative to conflict?

Blaise Trettis: No, I think we already have the ability to hire additional lawyers. I think if we want more than Mr. Gougelman's opinion then I think we can hire other lawyers ourselves. Like in the example of this recall petition, you know a close call, I don't think an experienced other good lawyer would come to any different conclusion. The courts could either way on that, I think. I will make certainly an argument that it is consistent with general law, and I could put that in writing, but I think we have the ability to hire additional lawyers if we want to, so I don't think the Charter needs to be changed in anyway. This just needs to be repealed in my opinion.

Kendall Moore: But I was asking very specific to the conflict issue because you raised a concern that the people who actually choose them could make a choice that impacts the opinion of based on who is paying the bill and who they represent, and so that was my question. So, you would still feel the same way? You would like to see the lawyers go whether it is chosen by this body, or the County Commission?

Blaise Trettis: Yes, because like I said, we can already hire more lawyers if we would like.

Kendall Moore: Thank you Mr. Chairman.

Mike Haridopolos: Thank you. Are there any other comments on item number five? Now that it has completed its first hearing. Mr. Gougelman you have got some more homework.

Paul Gougelman: I do.

Mike Haridopolos: If the staff could work on the history on that side, it might save us some money too.

Sandra Sullivan: I put a card in.

Mike Haridopolos: Oh, I am sorry. Ms. Sullivan, give a comment on that. Welcome back.

Sandra Sullivan: Sandra Sullivan, yea so just as an example of a potential conflict of interest, I have talked to some staff and they would like to see the Charter Cap removed for the reasons I discussed earlier. So, in talking to other Counties about what they have in their Charter, I would like to give an example to compare and contrast. I spoke to Sarasota County, and they actually took it a step, you know they don't have the three attorneys, but their Charter Review is not appointed by the Commission, by the County Commissioners. They are elected. I just wanted to put it out there because we are reinforcing that this is a body who reflects the will of the people to allow the voters to have an opportunity to vote on things that are important to them, and so I thought it was kind of interesting to compare and contrast what Sarasota is doing. Thank you.

Mike Haridopolos: So, we have completed the five items that were placed before us. I also wanted to bring to everyone's attention we have received a couple of more proposals that would not be considered reading number one, but what we have done in the past, maybe to our dismay, we brought these issues up so they people can quickly present them, which I believe the sponsor of the first one which is Michael Myjak is he here? Michael come on up if you don't mind. We will give you three minutes much like we did everyone else. We will do the same Blaise for yours that has been introduced. We are not going to have a big comment on it, but at least introduce the idea so that when we do our reading between this meeting and the next, people have a better concept of what they are going to be handling, in the quote, first reading. So, Mr. Myjak thanks so much for being here, and taking the time to put forth your proposal.

F-6 (Right to Clean Water- Information-Introduction)

My name is Michael Myjak, and I represent myself and my colleagues on the Indian River Lagoon Roundtable. That is IRLroundtable.org. We are an organization, non-partisan, non-affiliated, grass roots people that explore environmental issues that have significant adverse effects on our Indian River Lagoon Estuary. Today we are here to propose the right to clean water a Charter amendment. Out of shared desire to save the Indian river Lagoon, a natural wonder, which in years past has had much income to our area. Our Florida Constitution charges the citizens of Brevard County with the power and responsibility to protect our business, visitors and economy from legalized harm. Can you imagine water, the source of our life on Earth having no such protections? The right to clean water must be spelled out in our Charter for the benefit of us all and to protect us all from harm if we are to have a legal basis for a right to clean water. The right to clean

water, unifies and amplifies the voices of all citizens. The right to clean water is a home rule issue. Declaring the right to clean water, we the people of Brevard County can ensure legal accountability will be added to our State's water protection efforts. When Florida fails to protect our water and environment, it is up to local jurisdiction to step up and protect our communities. While we may have mastered the process of permitting, we have yet to ponder the process of preservation, protection enhancements and restoration with equal intensity. Please don't make the mistake that Indian preservist, Shri Paka Vala warned against when he said that Dharma lives in the hearts of public men. When it dies there, no constitution, no amendment can save it. With a right to clean water amendment, our grandchildren may one day reap the reward of the seeds that we sow. Once again, we may see our waters teeming with fish and wildlife, once again. A draft amendment has been provided to you in your packet, It is loaded with options, it can be considered and customized any way you see fit. As you review and discuss the proposed Charter Amendment for Brevard County, consider our lagoon and our waters, our Estuary. The right to clean water, (one sentence). Because our water should flow, exist in their natural form, be free of pollution and maintain a healthy ecosystem to provide a prosperous habitat for generations to come. Thank you.

Mike Haridopolos: Thank you sir. We will be taking that up the next meeting, we look forward to seeing you then. All right, Mr. Trettis, we have one more item, yours. It would be number seven I believe in our potential items. And if you could take that up, that would be great.

F-7 (Repeal Article 8 School Board of Brevard County)

Blaise Trettis: I have filed a proposal to repeal Article Eight, School Board of Brevard County in 8.1 election of school board members from the Brevard County Charter. This idea just came to me at the last meeting when Mr. Gougelman to my impression was expressing some doubt on sort of the lawfulness of Article Eight in the Brevard County Charter. So, I did some research after that, and what I found is that this became part of the Charter in 1998, when the voters voted for it by fifty eight percent, the single member election district by residents area. But, I looked at some statutes, and my position is that this Charter Amendment was contrary to law, both when it was adopted in 1998, and it is today contrary to law because the statutes have been renumbered over the years, but both in 1998 and in today the statutes say that single member voting districts for residents area by school board members can only be created by two ways: First of all the School Board can pass a resolution, and then it goes to the voters for a vote. Secondly, there is a petition process where I think it is like ten percent of the electorate can sign petitions and it goes to the voters. But there is not in Florida law, any ability to create single member school board district elections by Charter Amendment. I think it has been contrary to law all these years, and I guess fortunate that there haven't been any legal challenges, but I think that the problem with it still being in the Charter is that it really subjects our school board elections to legal challenges to probably a loosing candidate, or someone who really doesn't really like the winning candidate. That can be done, I believe it is called Petition for writ of quo warranto, is the technical term for the challenge. And I

think that elections in the School Board of Brevard County are really vulnerable to what could be and may be a successful legal challenge. I believe that this uncertainty, and I think likely contrary to law, Article Eight should be remedied by its repeal. It is very easy, if the School Board thinks otherwise and they want to get this into the Charter, all they have to do is vote for it, and it's on the ballot. The petition process is always very difficult, but all it takes is a School Board vote to put this on the ballot if they want to do that. But I think in the memo, the twenty-page memo that attorney Gougelman submitted addresses this in two different places, which I think I have included in my proposal, I think. Which is Mr. Gougelman which I think is also of the opinion that this was done contrary to Florida Statue when it was done. And then on a final note, I am personally in favor of district-wide election of School Board members which every elector through the County gets to vote on every School Board race. I personally don't know why anyone would oppose that because the voter gets to vote on every member of the School Board, and by State law every School Board member represents the entire district, not their residence area, that is in State law. So, if a candidate says well we want single member districts so we can focus on our schools, my schools. I have actually heard them call it. It is not their schools, they represent the entire district, and with this district wide School Board elections would do, would allow the voters to vote in every race, and really control the composition of the School Board. So that is why I am in favor of it personally. But that is beyond, aside the legal argument which was done contrary to law. That's all.

Mike Haridopolos: All right we will take that up in our next meeting. Thank you so much. Anybody else? All right we are now in G. Section G which is revision of future meeting schedule. Does everyone have their meeting schedules in front of them? Of course, today is the 24th of March. Our next scheduled meeting is on the 7th of April, and I think the question I have is when do we want to take up the actual final vote after the three hearings have been held? Do we want to do this on one day at the end of our schedule, or would we like to take it up the meeting following the three hearing dates? Mr. Trettis.

Blaise Trettis: My preference is to not wait until the end, but to take each one up as they come up when they are ready for a vote. And there is a reason why especially in the recall of school board election proposal, and that is I believe to try to get an Attorney General Opinion to weigh in on the matter, I think that needs to be done before that can be pursued. So that is like a real reason why it should be done in that case, and also putting them all at the end, I don't know what everyone's schedule would be, but maybe it would be in the Summer when everyone is on vacation, and I think a lot more people would be likely to miss one meeting at the end. So, I would prefer they are voted on as they are ready to be voted on after three public comments.

Vic Luebker: Mr. Chair, I agree. I think if we try to do it all in one big super vote, we may open up Pandora's box for all of the discussions to go around and around all over again as well.

Mike Haridopolos: Okay. Other opinions? Anyone have a counter opinion of that? All right, so with that said: let's just be clear on these things, for example on one of our items that has already had two meetings

Kendall Moore: I did just think of one. I don't have a counter to Mr. Trettis, but we do have two pending issues that are going to resolve how many votes it is going to take, which has to be resolved before you are going to vote on any issue, so we may get to that meeting after the third hearing before we fully resolve the eight versus ten, you know the two outstanding procedural issues that came up this morning. I am not opposed to what Mr. Trettis and Mr. Luebker have stated, but we certainly can't get there without resolving the other two procedural issues.

G.1-Revision of future meeting schedule

Mike Haridopolos: And I couldn't agree more. Our next meeting is scheduled for the 7th of April. I would hope that our legal team would give us some information before that meeting. We have approximately two weeks before that, but I anticipate that coming before us, so with that said, again I am in no rush to vote. What we can do if you wish is maybe we schedule the meeting on the vote I should say, whether it be eight or ten on the 12th of May for our first item, or any items that are eligible on that date. Would that work for everyone? So, let's put that in, it's the 12th of May, we will vote. Of course, making sure we have our other issues kind of settled. So, we would have that vote on the 12th of May on the School Board issue, and technically if we are moving forward, there is a chance that the others could also be voted on that day if the things fall in line. Other thing I wanted to talk about is I know for a fact I will not be here on the 7th of April, and I will not be here on the 2nd or 30th of June. So, and it sounds like each of our votes might be important on a lot of these dates. So, one is letting that be known, I am happy to turn over the reigns as Chair to Mr. Moore, but if we want to adjust dates, I am also open to that, or add dates, whatever we would like to do. It is something maybe we start sending in dates that , our availability to our team this week, so we can find some dates that for sure work. So that we can have additional meetings, and if not, it might just mean we have a crowded schedule as we get into July and August. So, put those dates into the staff. We will see if we can't find dates that work for hopefully everyone because again, I think the votes will really matter. But I guess the first pending question is, I won't be here on the 7th of April. What is the will as far as having the vote should we get the information from Mr. Gougelman on the eight versus ten? I am not sure if other people are going to miss the meeting on the 7th of April either.

Dave Neuman: I would also have a conflict on the 7th and 8th of April.

Mike Haridopolos: Okay, so we are down to thirteen.

Blaise Trettis: Could we just do it on the 21st, the next meeting? April 21st instead of the 7th?

Mike Haridopolos: You mean the vote on the eight versus ten?

Blaise Trettis: Yeah., yes.

Mike Haridopolos: I think that works. Is everyone still good for the 21st of April so we can have the vote on that date? Plus, we will have plenty of information by that point as well. Do we want to have a meeting on the 7th of April, to get those meetings in place?

Blaise Trettis: No

Mike Haridopolos: Okay, lets cancel the 7th of April meeting then. And then as far as the 2nd and 30th of June, at this point, lets just put that in question, and the staff will get the rest of the information from the committee back, as far as their availability. I can literally say I am gone almost the entire month of June. So hopefully either late May, or early July might be a meeting date that works for you. We have a pretty big gap there between the 30th of June, and the 21st of July. But again, just send in dates the best you can. Obviously, some of these important votes you want to make sure we have everyone, or at least close to everyone for those bigger votes. All right, any other question on that scheduling issue?

G. 3 – Fiscal Analysis Direction

Mike Haridopolos: All right, fiscal analysis direction. Do we have anything on that. Yes Jim?

Jim Liesenfelt: Yes, thanks Mr. Chair. As we have discussed before. The Charter requires a fiscal analysis of any amendments that are passed. (in audible) we could go out for procurement similar to the attorneys, or we can use our internal accounting, auditing contract with RSM, there fee is \$200-\$275 dollars per hour. We also have an auditing, external auditing contract with Cherry Baekert, there is no standing task order in there, and then we also have our financial advisor contract with PFM financial advisors, and their charge is \$175-\$200 dollars per hour for the task orders. So, we are looking for directions as how the board would like us to obtain somebody to conduct the financial analysis for you.

Mike Haridopolos: I put it at two points. Do we want to make that request once we actually think these, once they are actually voted on and passed, or do we want to get that fiscal analysis before we have our final vote? I mean it is an obvious answer, but I am opening it.

Cole Oliver: I mean I would prefer to know the fiscal impact of what we are voting on is before we vote on the final vote, but that is just my opinion.

Mike Haridopolos: I agree, and then the second part of course, is who would do the work? Anybody have a preference? You want to leave that to staff?

Gabriel Jenkins-Kiersten: I would defer to staff on that.

Mike Haridopolos: Okay let's defer to staff on that. Anyone have an objection on that? Whoever you all feel most comfortable with. Feel free to use.

G. 4- Motion to change Rule 17 “ten” to “eight

Mike Haridopolos: We have temporarily passed, we have until the 21st of April, I guess it is next time the motion to change from ten to eight on rule 17.

H. 1- Motion to delete wording from Rule 16

Also, we are going to, we have tabled the new business. Which is the motion to delete to delete Rule 16, and dealing “with at least one member appointed by each Commissioner present.” So, we will refer that to April 21st as well.

H. 2 - Motion for Commission attorney Paul Gougelman to seek Attorney General Opinion from Florida Attorney General Ashley Moody

Mike Haridopolos: And I believe Mr. Trettis you had one more item on referring an item to our Attorney General Ashley Moody.

Blaise Trettis: I will not make that motion today.

Mike Haridopolos: Okay

I. Public Comment

Mike Haridopolos: All right we have a couple of people who would like to make public comments. We will allocate like we have all day a couple of minutes each. We have first from Viera, Robert Burns. You are recognized for two minutes. Welcome Mr. Burns.

Robert Burns: Hi Mr. Chairman. I am sorry I am late, I had a few agenda items I wanted to address. But I was helping someone look for a chair so I was caught up. The first item I wanted to talk about is this full- time Commissioner. I don't think anyone running for office every ran and said; Hey I am going to work twenty hours. And I don't think any Commissioner that you would ask right now would say that they only work twenty hours. However, the Commissioner from District Two, made a change, or proposed a change that was passed to the public records. And the way that they calculate public records cost is based off of not forty hours per week, but twenty hours per week, which is essentially double the cost of public records request. Because that Commissioner at that time, argued that the position is a part time job. So that has, like I said increased the cost of public records by one hundred percent at least, because they also use their benefits as part of the calculations as well. I think that has led to further obstruction of our transparency for public records and it makes me want to bring forth a proposal that maybe that is something that can be addressed in the Charter. Instead of just board policy or administrative order, on the cost of public records. I am running out of time. The other things was, in regard to the recall election, we just had a long legislative session, and not one of our representatives from our Brevard delegation brought this up. I think they would have had the support had they brought it up. We do have a special session coming up, I believe or potentially for the homeowners insurance. I would solicit that our delegation bring forward that issue and then we won't even have to worry about it as far as the Charter is concerned. However, I think that what we are proposing at our Charter level is going to make the same mistake that we think that the State has made. There are several offices in Brevard County that cannot be recalled. Public Defender is one of them, State Attorney, Sheriff, Property Appraiser, Tax Collector. So, there is a lot of elected officials that cannot be recalled currently the way it sits. So instead of just saying we should only have school board members, we should just any elected official in Brevard County should be able to be recalled under the same guidance and statutes that we currently have for Commissioners and City Council. So that would be how I would like to see it go forward, instead of just saying school board, anybody.

Mike Haridopolos: Great. And as you know the next meeting which is now the 21st of April we invite you to testify again, and that would be great.

Robert Burns: Sure, thank you.

Mike Haridopolos: Thank you so much. All right we have Katy Delany also on Public Comments. Welcome back.

Katie Delaney: I just wanted to comment on some of the things that were spoken about today. I have personally been to every school board meeting and every workshop since March of last year. So, I was right there in all the mess that was spoken about. Never once did I feel in jeopardy of my safety. But what I did feel was that we were being totally disrespected as tax payers and as parents. These are our children, they are not wards' of the State, they are not wards' of the school and the thing that I love about this meeting and you people sitting up here is that I get to address all of you and there is communication between us. And that is not happening at the School Board. Communication has halted. The other thing was the cost of the special session, or special election. The school district, like I mentioned has a consolidated debt loan right now that is going to total five hundred and twelve million dollars from the past two decades, I was told it was from like the 2008 era and then added funds going forward. It was all consolidated into this mega loan. One hundred forty-four million of that is going to be interest. So, I understand where you are coming from about asking for two hundred and fifty thousand dollars, but these people are mismanaging our tax dollars by the hundreds of millions, hundreds of millions. And what are my children's mental health worth? When we have boys going into girls bathrooms. And I am not talking about transgender children. I am talking about boys in boy clothing going into girls restrooms, and it is happening. You know, what about those girls' safety? What about the male teacher that is in the restroom and a female walks in, and you know sees everything? What about the safety for that teacher? This is so much bigger than masks. Masks are irrelevant at this point. It is everything else. I just implore all of you to please look beyond what we see in the media. Please investigate some of this stuff for yourselves. I would be happy to speak to any of you about my experiences that I have seen.

Mike Haridopolos: Thank you Ms. Delaney.

Katie Delaney: Thank you

Mike Haridopolos: Are there any questions for Ms. Delaney? Thanks again for your time, we appreciate you coming forward. All right we are at the end of the public comments. Are there any other items someone on the board would like to comment on? The only thing I would add and to build on what Ms. Delaney said. As you know I served on the legislature for a long time, and if we had the time, we always took the time, or even when we didn't like their opinion. I remember there was a school, we were at a meeting at the King Center on Education. My wife was worried about my safety. I don't know if anyone else was, but that is what you do as an elected official. You take it because you are, I hope because I have not been to these meetings, and I don't pretend to know the answer, but rule one in Florida politics is at least is: We are the Sunshine State, and you should be accessible, and its one of the things that a lot of us who were in office take pride with. So, I hope that, I know there is a lot of emotional things going on right now for obvious reasons, but one of the things that really stands out and it is a very good election policy by the way, is be accessible and take the slings and arrows because just like there is people for you, there is people against you. That is part of the business of being in politics, so hopefully that will start to change as we get out of this difficult time with Covid etc., but it is an interesting time to say the least. I really appreciate everyone's time and patience today. I think we made a lot of ground. And I think with the good work of our staff, and Mr. Gougelman we can make sure all of these technical

issues get taken care of, so however we choose to vote it is an informed decision and it is one that when the voters have the final say that they will feel confident that we did our homework in this process.

J. Adjournment

Mike Haridopolos: So, with no other business we will have our Vice Chair, Mr. Moore rise, and we are adjourned. 3:58 pm.

Do NOT add a school board recall measure to our Brevard County Charter

- They are unnecessary. We already have a mechanism in place for removing School Board members who are guilty of malfeasance. The Governor can remove them. Any other reason for a recall is partisan political retribution.
- Recalls waste resources. Recalls cost \$\$\$ that comes out of our county budget.
- They weaken our democracy. School board members are elected officials. Voters decide who should have these roles for 4 years. Recalls undo voters actions at the ballot box.
- They are disruptive. Instead of doing the job they were elected to do, the board member must campaign for their job...again. Elections are every 4 years for a reason.
- They usually fail. 89% of recall measures never make the ballot. A further 9.3% are defeated at the ballot box. Only 5.5% of recall attempts are successful.

Do we really want to create a never ending, tax Dollar wasting cycle where elected officials never truly win their seats and are always at risk of political retribution from the other side?

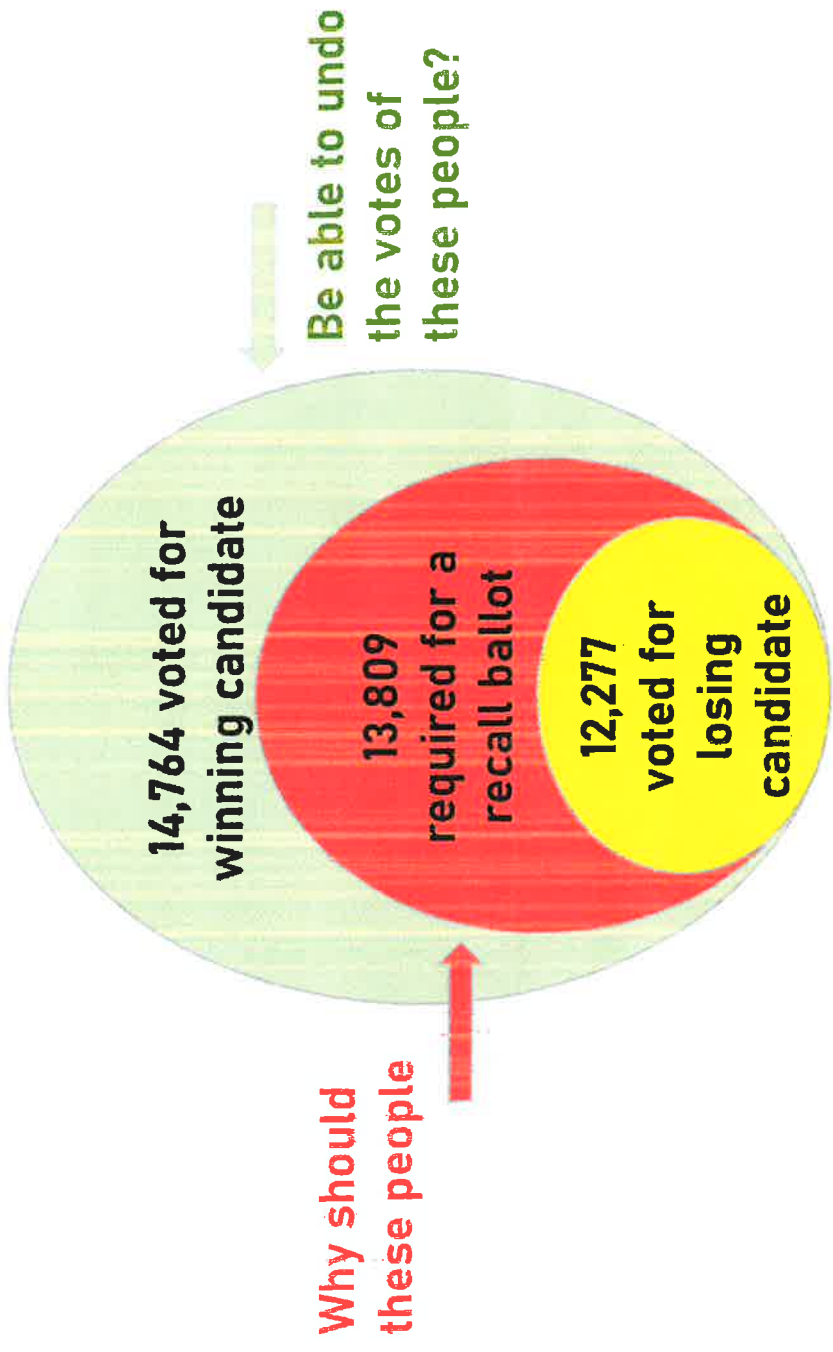
School Board recalls are bad for Brevard!

Be involved in the process be heard!

"People of Brevard county that choose to vote r-T not the voters"

"People could depend on it because they voted for it"

https://ballotpedia.org/Ballotpedia%27s_2021_Recall_Analysis



Why should these people



Be able to undo the votes of these people?

March 24 statement for Charter Review Committee
Pamela Castellana
321-536-6919
4735 Willow Bend Drive
Melbourne, FL 32935

I was recently accused of being "rude" to the members of this board in February. What's rude is intentionally misleading the public, which Mr. Trettis appears to be doing. His excuse for ignoring all precedent state statute is as follows:

"The school board's face mask requirement was voided only because Governor Ron DeSantis and the Florida Legislature passed a bill in special session in November 2021 which prohibits a district school board from requiring a student to wear a face mask. If Governor DeSantis were not the Governor of Florida, then Brevard County public school students could have had to wear face masks in school indefinitely as students are now ordered to do in states like California and New York"

At the February meeting I gave Mr. Trettis the benefit of the doubt that he was simply ignorant of the facts, and had not taken the time to glance at the minutes of the school board meetings. So I presented those facts as follows.

The mask policy as approved by the school board last year was never indefinite. On October 4 the Brevard School Board set metrics in place, giving the superintendent the power to rescind the policy when Brevard County's positive case rate reached 50 out of 100,000 cases. That allowance was approved by three of the board members, Misty Belford, Cheryl McDougal and Jennifer Jenkins. That threshold was reached two weeks later and the opt out was added well in advance of Desantis' overreach.

He has neither withdrawn nor edited his request and his rationale for it-I can only assume malicious intent rather than ignorance at this point.

To say this is not politically motivated is demonstrably untrue. On June 30, 2020 County Commissioner Bryan Lober asked for a mask mandate for our entire county, yet I don't see any attacks on the county commission's ability to serve their term.

And finally, even Mr. Luebker agrees with me, miraculously enough. He recently posted on social media under one of his aliases that "we don't recall people based on just their party or a vote. It takes malfeasance. It's a very high bar. Not just passing a local ordinance...recall is not a political club based on party politics or a vote you don't agree with, that's what elections are for" I've provided a screenshot of that post as well as evidence that Mr. Luebker is, indeed the alias involved.

Yes, a recall is and should be a high bar. When Mrs. Jenkins won her election, her stance on the need for a mask mandate as the only life saving strategy available to our school board was widely known. She had stated in in public debates, interviews with the newspaper and even conservative radio talk show host, Bill Mick. And Mrs. Jenkins won that election with 54.6% of the vote to her opponent's 45.4%. THAT was the "recall" that mattered. I served as her campaign manager and even a state representative's wife told our volunteer that Jennifer's mask stance was why she received her vote.

Additionally Mr. Trettis and Mr. White misstated the facts on recall in Florida and owe the citizen they berated at the time an apology. No, our governor cannot be recalled.

If our public defender believes that ignoring all state statute, setting a policy for one office and none others, is a good idea, lord have mercy on the people who need his services in court.

Mic

No worries I'm doing a story on it. Vluebker@gmail.com

8:50



Mic Brown



Mic Brown

Mar 4 · 🌐



So, we don't recall people based on just their party or a vote. It takes malfeasance. It's a very high bar. Not just passing a local ordinance on panhandling or line item budgets. It's about false police reports related to your public office or using taxpayer money for purchasing items for your personal use. Recall is not a political club based on party politics or a vote you don't agree with, that's what elections are for!

6:17

📶 49%

malfeasance



Dictionary

Definitions from [Oxford Languages](#) · [Learn more](#)

Search for a word



mal·fea·sance

/ˌmalfɛzəns/

noun **LAW**

wrongdoing, especially by a public official.



Home



Friends



Groups



Gaming



Notifications



Menu

Charter Commission Speech

Good Afternoon. My name is Amy Kneessy and I was the School Board District 3 Representative in Brevard from 2004-2016. I am here today advocating for adding school board member recall to our county charter because I think I can offer a very unique perspective. In less than five years I have gone from enjoying the life of a private citizen to leading the fight against the Brevard County School Board in a First Amendment lawsuit. My being here today has nothing to do with one specific board member but all the school board members. Let me describe to you how very much things have changed since I was on the Board:

First, at the beginning of the every school board meeting and prior to public comment the chairman reads a statement that all audience members are subject to arrest, up to 6 months in jail, and a \$5000 fine if the chairman deems them out of order and has them removed

Second, all comments must be addressed to and only the chairman. You may not address, state the name or even look at any other school board member or you will be immediately stopped from speaking. The comments can not be, and I quote “ personally directed, abusive, obscene, or irrelevant’ . The chairman is the final judge. To give you an example of what constitutes a violation, the chairman found the words “liberal left” offensive and would not allow the speaker to continue.

The audience also has special rules. They are not allowed to make any noise or sound. If they do, the chair will threaten to clear the board room. Not too long ago, the chairman cleared the boardroom after two audience members were deemed too loud. The board returned to their meeting but would not allow any of the public back in to watch.

In order to discourage public speakers, the amount of time given to speakers is limited when more people sign up to speak: if 10 or less then speakers get three minutes, 11-20 then speakers only get two minutes and if more than 20 people sign up, everyone's time is limited to one minute. If you want to address the board on a non-agenda item, you are automatically moved to the end of the agenda, only having one minute to speak. The board initially went so far as to turn the cameras off so that people watching by television could not see this part of the meeting.

The last issue is access to the board room. When the regular board room is full, the doors are locked and people are forced to wait outside. There is a large room that could be opened at the back of the board room to allow more access which was done many times in years past but now that is never offered.

Board members as a whole in Brevard have made it very clear that they do not want the public involved or participating in their meetings. Some of the comments made by Board members at meetings when discussing the policy include:

“ I wish we didn't have to have any public comment at our meetings”

“I don't have time to do my job and listen to the public”

“ These meetings are for us not the public”

And my personal favorite

“If someone wants to talk to me they should call, email, or set up an appointment”

We can't wait four years to make a change in a school board member anymore. The recall needs to be added to the county charter. The Brevard County School Board is accountable to the public, and if they choose not to listen and make themselves available to the public, the public needs to have an appropriate remedy it can seek.




BOARD OF COUNTY COMMISSIONERS

County Manager's Office
2725 Judge Fran Jamieson Way
Building C, Room 301, MS# 88
Viera, Florida 32940

Inter-Office Memo

TO: Charter Review Commission

FROM: James Liesenfelt, Assistant County Manager 

DATE: April 14, 2022

SUBJECT: Three Person Panel Review Cost

During the March 24, 2022 Charter Review Commission meeting it was requested that staff provide the cost of the Three Person Review panel from the previous Charter Review Commission.

The 2015-2016 Charter Review Commission did not recommend any Proposed Amendments to the Board of County Commissioners to be placed on the ballot; therefore, there was no cost information to provide.

The 2010 Charter Review Commission utilized the Three Person Panel Review from which staff has provided the information. The cost from each firm is listed below and invoices of the three firms are attached.

Cole, Cobb	\$15,500.24
Stenstrom, McIntosh, Colbert, Whigham & Partlow	\$ 7,437.91
Doran, Sims, Ansay & Kundid	\$ 4,780.00

Staff will be available at the meeting to answer any questions.

Thank you.



BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE
MEMORANDUM**

TO: Alphonso Jefferson, Budget Office Director
FROM: Marcia A. Day, Legal Office Administrator, County Attorney's Office *mad*
SUBJ: Charter Amendment Review Panel 2010
DATE: August 9, 2010

Please consider this memo as authorization to pay the following invoice(s) as Board related expenses. Please let me know if you have any questions.

DATE	INVOICE #	AMOUNT	COMPANY	DESCRIPTION
08/06/10	30364	\$540.00	Doran Sims Wolfe Ansay & Kundid	Professional services rendered
Total		\$540.00		

Attachment



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS/LLCs

POST OFFICE BOX 15110 • DAYTONA BEACH, FL 32115 • (386) 253-1111 • FAX (386) 253-4260

Brevard County Board of County Commissioners
c/o Marcia Day, Legal Office Admin
2725 Judge Fran Jamieson Way
Viera FL 32940

Page: 1
August 06, 2010
Account No: 9506000-001M
Statement No: 30364

Attn: Marcia Day

Charter Review

		Hours		
07/20/2010	CSA	Receipt and review email correspondence from Scott Knox regarding charter amendments; telephone conference with Scott Knox regarding charter review; review email correspondence transmitting four charter amendments.	0.50	
07/23/2010	CSA	Receipt and review email correspondence from Mr. Knox regarding approval; Preparation of e-mail correspondence to Mr. Knox regarding same; preparation of representation letter to Brevard County.	0.30	
07/26/2010	CSA	Examination of four proposed charter amendments and resolutions of Brevard County Charter Review Commission regarding same; examination of Article VII of existing Brevard County Charter pertaining to amendments to charter, process and review; review legal issues pertaining to Resolution No. 2010-002.	1.60	
07/30/2010	CSA	Receipt and review email correspondence from Allen Watts regarding legal review; receipt and review response from David Tolces; Preparation of e-mail correspondence to Scott Knox regarding status and procedural issues.	0.30	
		For Professional Services Rendered	2.70	540.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
CAROLYN STROUD ANSAY	2.70	\$200.00	\$540.00



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

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Brevard County Board of County Commissioners

Charter Review

Page: 2

August 06, 2010

Account No: 9506000-001M
Statement No: 30364

Total New Charges

540.00

TOTAL PAYMENT DUE

\$540.00

VENDOR# _____
PO# _____
DATE# 8/9/10
BY# _____

*for \$540.00
county attorney*

RECEIVED

AUG 09 2010

55520
Brevard County Attorney

Thank you for selecting our law firm to represent your interests.





BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE
MEMORANDUM**

TO: Alphonso Jefferson, Budget Office Director
FROM: Marcia A. Day, Legal Office Administrator, County Attorney's Office *Mad*
SUBJ: Charter Amendment Review Panel 2010
DATE: September 15, 2010

Please consider this memo as authorization to pay the following invoice(s) as Board related expenses. Please let me know if you have any questions.

DATE	INVOICE #	AMOUNT	COMPANY	DESCRIPTION
08/06/10	30540	\$4,240.00	Doran Sims Wolfe Ansay & Kundid	Professional services rendered
Total		\$4,240.00		

Attachment



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS/LLCs

POST OFFICE BOX 15110 • DAYTONA BEACH, FL 32115 • (386) 253-1111 • FAX (386) 253-4260

Brevard County Board of County Commissioners
c/o Marcia Day, Legal Office Admin
2725 Judge Fran Jamieson Way
Viera FL 32940

Page: 1
September 10, 2010
Account No: 9506000-001M
Statement No: 30540

Attn: Marcia Day

Charter Review

	Hours
08/04/2010 CSA Receipt and review email correspondence from Scott Knox and panel members regarding procedure and review; receipt and review email correspondence from Mr. Cloud regarding correspondence from Thomas Cloud and issues regarding same.	0.50
08/05/2010 CSA Review issues regarding CRC Resolution No. 2010-002; examination of research regarding same.	0.60
08/06/2010 CSA Legal research regarding proposed charter amendments; examination of legal authorities related to same; preparation of portions of legal review related to proposed charter amendments.	2.60
08/09/2010 CSA Examination of proposed charter amendments, general and special laws related to same, constitutional provisions and other relevant research in preparation for presenting opinion to Brevard County; preparation of portions of opinion letter.	2.60
08/11/2010 CSA Receipt and review email correspondence from Ms. Day regarding upcoming meeting; Preparation of e-mail correspondence to Ms. Day regarding same; examination of legal authorities regarding charter amendments proposed by charter review commission; preparation of additional portions of correspondence regarding same.	2.50



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS/LLCs

POST OFFICE BOX 15110 • DAYTONA BEACH, FL 32115 • (386) 253-1111 • FAX (386) 253-4260

Brevard County Board of County Commissioners

Page: 2
September 10, 2010
Account No: 9506000-001M
Statement No: 30540

Charter Review

		Hours	
08/18/2010			
CSA	Research regarding proposed charter amendments; finalized correspondence to Scott Knox regarding pending charter amendments.	1.70	
CSA	Receipt and review email correspondence regarding proposed language from Allen Watts; Receipt and review email correspondence and opinion letter from Lonnie Groot; receipt and review email correspondence from Thomas Cloud regarding proposed amendment.	0.90	
08/20/2010			
CSA	Receipt and review email correspondence from Ms. Day regarding upcoming Commission meeting and issues regarding same.	0.20	
08/25/2010			
CSA	Review, evaluation and analysis of file contents in preparation for meeting of Brevard County Commission regarding issues related to charter amendments.	1.60	
08/26/2010			
CSA	Prepared for and attended Brevard County Commission Meeting regarding approval of proposed charter amendments; return travel from Brevard County.	7.00	
08/30/2010			
CSA	Receipt and review email correspondence, Summons and Emergency Complaint and or Petition for Writ of Mandamus, Declaratory Judgment and Injunctive Relief (93 pages).	1.00	
	For Professional Services Rendered	21.20	4,240.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
CAROLYN STROUD ANSAY	21.20	\$200.00	\$4,240.00

Total New Charges

4,240.00



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS/LLCs

POST OFFICE BOX 15110 • DAYTONA BEACH, FL 32115 • (386) 253-1111 • FAX (386) 253-4260

Brevard County Board of County Commissioners

Charter Review

Page: 3

September 10, 2010

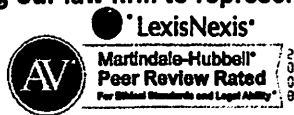
Account No: 9506000-001M

Statement No: 30540

Previous Balance	\$540.00
<u>Payments Received</u>	
Total Payments for 08/30/2010	-540.00
TOTAL PAYMENT DUE	<u>\$4,240.00</u>

VENDOR# _____
PO# _____
DATE# 9/15/10
BY# _____
for \$4,240.00 County attorney

Thank you for selecting our law firm to represent your interests.



STATEMENT

Doran Sims Wolfe Ansay & Kundid
Attorneys at Law

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS/LLCs

POST OFFICE BOX 15110 • DAYTONA BEACH, FL 32115 • (386) 253-1111 • FAX (386) 253-4260

Brevard County Board of County Commissioners

Page: 3

September 10, 2010

Account No: 9506000-001M

Statement No: 30540

Charter Review

Previous Balance	\$540.00
<u>Payments Received</u>	
Total Payments for 08/30/2010	-540.00
TOTAL PAYMENT DUE	<u>\$4,240.00</u>

Thank you for selecting our law firm to represent your interests.





STENSTROM, McINTOSH, COLBERT, WHIGHAM & PARTLOW, P.A.
ATTORNEYS AND COUNSELLORS AT LAW
1001 HEATHROW PARK LANE
SUITE 4001
LAKE MARY, FL 32746
TELEPHONE: 407-322-2171
FAX: 407-330-2379

Monday, September 20, 2010
Brevard County Charter Review
2725 Judge Fran Jamieson Way, Ste. C303
Melbourne, FL 32940
USA

INVOICE

Matter ID: G62257
Brevard County Charter Review - BCC

Invoice # 9302
Federal ID # 59-2043167

For Professional Services Rendered:

07/09/2010	LNG	Previous communications relating to representation, etc. (no charge)	0.00 hr	\$0.00
07/09/2010	LNG	Telephone conference with Attorney Allen Watts with regard to timing of meetings, etc.	0.20 hr	\$33.00
07/16/2010	LNG	Conference with Attorney Sandy Ambrose; review email communications and scan resolutions relating to proposed Charter amendments; emails to County Attorney Scott Knox	0.50 hr	\$82.50
07/18/2010	LNG	Emails from/to Attorney Paul Gogleman	0.10 hr	\$16.50
07/20/2010	LNG	Initial review of Gray-Harris legal opinion provided by Attorney Paul Gogleman	0.30 hr	\$49.50
07/25/2010	LNG	Continued initial analysis of resolutions approved by Charter Review Commission	1.60 hr	\$264.00
07/30/2010	LNG	Conference with Attorney Tom Cloud at Florida Municipal Attorney's Association conference at Amelia Island	0.30 hr	\$49.50
08/03/2010	LNG	Email from panel member Allen Watts; email from Attorney Tom Cloud; additional research and drafting	2.40 hr	\$396.00
08/04/2010	LNG	Emails from/to panel member Allen Watts; accomplish additional legal research and drafting	3.40 hr	\$561.00
08/05/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	4.80 hr	\$792.00
08/06/2010	LNG	Continuation of legal research and drafting	2.20 hr	\$363.00
08/07/2010	LNG	Continuation of legal research and drafting	1.40 hr	\$231.00
08/08/2010	LNG	Email from Attorney Paul Gogleman; emails to panel members; accomplish additional legal research and drafting	2.40 hr	\$396.00
08/10/2010	LNG	Emails from/to Attorney Thomas Spencer, etc., relative to City of Pinellas Park, et al. v. Deborah Clark, et. al.; continuation of legal research and drafting	1.90 hr	\$313.50
08/11/2010	LNG	Email from County Attorney Scott Knox to Ms. Carolyn Ansay; email from Ms. Marcia Day; conduct legal research and drafting	1.60 hr	\$264.00
08/12/2010	LNG	Initial draft of opinion for critique	3.60 hr	\$594.00
08/13/2010	LNG	Email from Ms. Terry Villeux; review legal report for Board of County Commissioners issued by panel member Allen Watts; additional legal research and drafting	3.60 hr	\$594.00
08/14/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	1.70 hr	\$280.50

Invoice # 9302
 Federal ID # 59-2043167

For Professional Services Rendered:

Date	Code	Description	Hours	Amount
08/15/2010	LNG	Continued drafting and legal research	1.10 hr	\$181.50
08/16/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	1.40 hr	\$231.00
08/17/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	2.00 hr	\$330.00
08/18/2010	LNG	Complete legal opinion report for Board of County Commissioners; emails to County Attorney Scott Knox; email from Mr. David Tolces; email from Ms. Jan Gordon relative to Space Coast League of Cities; review response to Watts report from Attorneys Monterey Campbell, Thomas Cloud, and Malcom Kirschenbaum; email from Mr. David Tolces	2.10 hr	\$346.50
08/19/2010	LNG	Email from Ms. Marcia Day	0.10 hr	\$16.50
08/25/2010	LNG	Email to panel member Mr. Allen Watts; review agenda of Board of County Commissioners; review report filed by Panel Member Carolyn Ansay	0.90 hr	\$148.50
08/26/2010	LNG	Attend meeting of Board of County Commissioners (portal to portal)	5.00 hr	\$825.00
08/30/2010	LNG	Email from Ms. Marcia Day; review Complaint filed in Circuit Court	0.30 hr	\$49.50
08/31/2010	LNG	Review Florida Today article relating to Complaint filed in Circuit Court (0.10 hours - no charge)	0.00 hr	\$0.00
09/02/2010	LNG	Review Florida Today article relating to Judicial decision (0.10 hours - no charge)	0.00 hr	\$0.00
Total Professional Services:				\$7,408.50

For Disbursements Incurred:

08/18/2010	UPS Charge - to Scott Knox, Esquire	\$29.41
Total Disbursements Incurred:		\$29.41

INVOICE SUMMARY

<u>Producer</u>	<u>Role</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
LONNIE GROOT	OF COUNSEL	\$165.00	44.90	\$7,408.50

VENDOR# _____
 PO# _____
 DATE# 9/22/10
 BY# _____
for \$7437.91 County attorney

For Professional Services:	44.90 Hours	\$7,408.50
For Disbursements Incurred:		\$29.41
Total Due:		\$7,437.91
Balance in Trust:		\$0.00
Balance in Retainer:		\$0.00

PLEASE REFERENCE MATTER ID NUMBER WITH PAYMENT
 BALANCES NOT PAID WITHIN 30 DAYS WILL ACCRUE INTEREST AT
 1.50% PER MONTH



Billing List Discount
Price Price

Original Charges

UPS No: 1ZA3601Y0196809727	Sender	Receiver	Freight	28.74	22.99
Pickup Date 08/16/2010	STENSTROM, MCINTOSH	FASSETT, ANTHONY & TAYLOR,	Fuel Surcharge	2.16	1.73
Service Level Next Day	1001 HEATHROW PARK LN	1325 WEST COLONIAL DRIVE			
Weight Letter	LAKE MARY	ORLANDO			
Zone 102	FL 32746	FL 32804			
Origin/Dest					
Payer Sender	FRANK C. WHIGHAM, ES	KATHY COOK, PARALEGA			
Bill Reference: W-52,067					
Bill Reference: 52067					
			Total	30.90	24.72

UPS No: 1ZA3601Y2496475714	Sender	Receiver	Freight	28.74	22.99
Pickup Date 08/16/2010	STENSTROM, MCINTOSH	THOMAS & RITA MURPHY	Residential Surcharge	2.65	2.65
Service Level Next Day	1001 HEATHROW PARK LN	2213 HARBOURSIDE DRIVE	Signature Fee	3.75	3.75
Weight Letter	LAKE MARY	LONG BOAT KEY	Fuel Surcharge	2.36	1.93
Zone 102	FL 32746	FL 34228			
Origin/Dest					
Payer Sender	FRANK C. WHIGHAM, ES				
Bill Reference: W-62,286					
Bill Reference: 62286					
			Total	37.50	31.32

UPS No: 1ZA3601Y0196722132	Sender	Receiver	Freight	34.19	27.35
Pickup Date 08/18/2010	STENSTROM, MCINTOSH	BREVARD COUNTY	Fuel Surcharge	2.57	2.06
Service Level Next Day	1001 HEATHROW PARK LN	2725 JUDGE FRAN JAMIESON W			
Weight 1 lbs	LAKE MARY	MELBOURNE			
Zone 102	FL 32746	FL 32940			
Origin/Dest					
Payer Sender		SCOTT L. KNOX, ESQUI			
Bill Reference: LNG					
Bill Reference: 62257					
- Carrier has audited this shipment and it has been reweighed from its tendered weight of LX			Total	36.76	29.41

Adjustments and Other Charges

UPS No: 1ZA3601Y2210000284	Sender	Receiver	Freight	-67.85	-67.85
Pickup Date 08/07/2010	STENSTROM MCINTOSH E	CHARLES SCHWABB			
Service Level					
Weight Letter	LAKE MARY	RICHFIELD			
Zone FL		OH			
Origin/Dest					
Payer	JAMES PARTLOW				
- WEIGHT CORRECTIO N ADJUSTMENT REQ UESTED BY WWE 08			Total	-67.85	-67.85

Invoice # 9302
 Federal ID # 59-2043167

For Professional Services Rendered:

Date	Initials	Description	Hours	Amount
08/15/2010	LNG	Continued drafting and legal research	1.10 hr	\$181.50
08/16/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	1.40 hr	\$231.00
08/17/2010	LNG	Continuation of drafting of legal report for Board of County Commissioners and continued legal research and drafting	2.00 hr	\$330.00
08/18/2010	LNG	Complete legal opinion report for Board of County Commissioners; emails to County Attorney Scott Knox; email from Mr. David Tolces; email from Ms. Jan Gordon relative to Space Coast League of Cities; review response to Watts report from Attorneys Monterey Campbell, Thomas Cloud, and Malcom Kirschenbaum; email from Mr. David Tolces	2.10 hr	\$346.50
08/19/2010	LNG	Email from Ms. Marcia Day	0.10 hr	\$16.50
08/25/2010	LNG	Email to panel member Mr. Allen Watts; review agenda of Board of County Commissioners; review report filed by Panel Member Carolyn Ansay	0.90 hr	\$148.50
08/26/2010	LNG	Attend meeting of Board of County Commissioners (portal to portal)	5.00 hr	\$825.00
08/30/2010	LNG	Email from Ms. Marcia Day; review Complaint filed in Circuit Court	0.30 hr	\$49.50
08/31/2010	LNG	Review Florida Today article relating to Complaint filed in Circuit Court (0.10 hours - no charge)	0.00 hr	\$0.00
09/02/2010	LNG	Review Florida Today article relating to Judicial decision (0.10 hours - no charge)	0.00 hr	\$0.00
Total Professional Services:				\$7,408.50

For Disbursements Incurred:

08/18/2010	UPS Charge - to Scott Knox, Esquire	\$29.41
Total Disbursements Incurred:		\$29.41

INVOICE SUMMARY

<u>Producer</u>	<u>Role</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
LONNIE GROOT	OF COUNSEL	\$165.00	44.90	\$7,408.50

For Professional Services:	44.90 Hours	\$7,408.50
For Disbursements Incurred:		\$29.41
Total Due:		\$7,437.91
Balance in Trust:	\$0.00	
Balance in Retainer:	\$0.00	

PLEASE REFERENCE MATTER ID NUMBER WITH PAYMENT
 BALANCES NOT PAID WITHIN 30 DAYS WILL ACCRUE INTEREST AT
 1.50% PER MONTH



BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE
MEMORANDUM**

TO: Alphonso Jefferson, Budget Office Director
FROM: Marcia A. Day, Legal Office Administrator, County Attorney's Office *MD*
SUBJ: Charter Amendment Review Panel 2010
DATE: September 21, 2010

Please consider this memo as authorization to pay the following invoice(s) as Board related expenses. Please let me know if you have any questions.

DATE	INVOICE #	AMOUNT	COMPANY	DESCRIPTION
09/20/10	71576	\$1,804.15	Cobb Cole	Professional services rendered
Total		\$1,804.15		

Attachment



Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

September 20, 2010

Bill Number 71576
File Number 033910 -000000000009

The enclosed bill is for services rendered for the period ending August 31, 2010. The breakdown of this bill by matter is as follows:

Legal Services

2010 Charter Review Panel	\$1,732.50
	<hr/>
Total for Legal Services	\$1,732.50

Expenses

2010 Charter Review Panel	\$71.65
	<hr/>
Total for Expenses	\$71.65

Total for This Bill	\$1,804.15
Previous Balance	\$13,696.09
Total Due	\$15,500.24

Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

September 20, 2010

Bill Number 71576

File Number 033910-000000000009

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

FOR PROFESSIONAL SERVICES

Re: 2010 Charter Review Panel

LEGAL SERVICES

Through August 31, 2010

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Time</u>
08/18/10	CAW	Reviewed Part I of independent review from L. Groot.	0.50 Hrs
08/19/10	CAW	Reviewed supplemental argument from counsel to Space Coast League.	0.30 Hrs
08/20/10	CAW	Reviewed Board of County Commissioners' agenda, Independent reviews by L. Groot and C. Ansay in preparation for Board of County Commissioners' meeting of August 26, 2010.	1.10 Hrs
08/25/10	CAW	Documentation of correspondence from third parties during review, with no response from CAW.	0.30 Hrs
08/26/10	CAW	Prepared for and attended Board of County Commissioners' meeting in response to questions from Commissioners and to issues asserted by League of Cities.	5.50 Hrs

The County of Brevard

TOTAL LEGAL SERVICES \$1,732.50

LEGAL SERVICES SUMMARY

C. Allen Watts	<u>7.70 Hrs</u>	225/hr	<u>\$1,732.50</u>
	7.70 Hrs		\$1,732.50

DISBURSEMENTS

Through August 31, 2010

MILEAGE

08/27/10	C. Allen Watts/Mileage to Viera on 8/26/10 to Board of County Commissioners meeting (161 miles @ \$.44.5)	71.65	
			\$71.65
		TOTAL DISBURSEMENTS	\$71.65

TOTAL FOR THIS INVOICE \$1,804.15

PREVIOUS INVOICES OUTSTANDING

71233	08/26/10	13,696.09
-------	----------	-----------

GRAND TOTAL DUE \$15,500.24

VENDOR# _____

PO# _____

DATE# 9/2/10

BY# [Signature]

for \$1804.15 county attorney

Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

September 15, 2010

Bill Number 71441
File Number 033910 -00000000009

The enclosed bill is for services rendered for the period ending August 31, 2010. The breakdown of this bill by matter is as follows:

Legal Services

2010 Charter Review Panel	\$1,732.50
Total for Legal Services	\$1,732.50

Expenses

2010 Charter Review Panel	\$80.50
Total for Expenses	\$80.50

Total for This Bill	\$1,813.00
Previous Balance	\$13,696.09
Total Due	\$15,509.09

RECEIVED

SEP 17 2010
56456
BREVARD COUNTY ATTORNEY

This has been revised

William M. Cobb
(1881-1939)
Thomas T. Cobb
(1916-2004)
W. Warren Cole, Jr.
(1926-2008)

Jonathan D. Kaney, Jr.
J. Lester Kaney
C. Allen Watts
Harold C. Hubka
Thomas S. Hart
Scott W. Cichon
Robert A. Merrell III
Bruce A. Hanna
John P. Ferguson
Rhoda Bess Goodson
Thomas J. Leek
Mark A. Watts
Heather Bond Vargas



Daytona Beach • DeLand

351 East New York Avenue
Suite 200

DeLand, Florida 32724
(386) 736-7700

Fax (386) 785-1549
CobbCole.com

October 21, 2010

Robert Taylor Bowling
Joshua J. Pope
Andrea M. Kurak
Elan R. Kaney
Kathryn D. Weston
Kelly Parsons Kwiatek
Michael J. Woods
Maja S. Sander
James A. Stowers
Katherine Hurst Miller
Michael O. Sznajstajler
Melissa B. Murphy

OF COUNSEL
Larry D. Marsh
Christopher N. Challis

RETIRED
Jay D. Bond, Jr.

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

Re: 2010 Charter Review Panel
Payment of Cobb Cole Invoice # 71576

Dear Mr. Knox:

Enclosed please find our check no: 133689 in the amount of \$13,696.09. This check represents a refund of an overpayment on our Invoice # 71576 (a copy of which is also enclosed). This invoice had a previous balance listed which had already been paid on September 28, 2010. The total amount owed was actually \$1,804.15.

Thank you for your payment, and please let us know if you have any questions.

Sincerely,

Laura Ramsey
Assistant to

C. Allen Watts
Allen.Watts@CobbCole.com
Fax (386) 944-7965

/lr
Enclosures

COBB COLE

Temp Board of County Commissioners

10/20/10

133689

73974

033910-009

Refund Overpayment

10/20/10

13,696.09

13,696.09

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND OR WHITE PAPER



POST OFFICE BOX 2491

DAYTONA BEACH, FLORIDA 32115-2491

EAST COAST COMMUNITY BANK
1240 W. GRANADA BLVD
ORLANDO BCH, FL 32174

63-1426/831

CHECK NO. 133689

133689

THIRTEEN THOUSAND SIX HUNDRED NINETY-SIX DOLLARS & NINE
CENTS.

DATE
10/20/10

AMOUNT
\$13,696.09

PAY
TO THE Board of County Commissioners
ORDER OF

GENERAL ACCOUNT
VOID AFTER 90 DAYS



SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈133689⑈ ⑆063114263⑆ 111004377⑈

Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

September 20, 2010

Bill Number 71576
File Number 033910 -000000000009

The enclosed bill is for services rendered for the period ending August 31, 2010. The breakdown of this bill by matter is as follows:

Legal Services

2010 Charter Review Panel	\$1,732.50
Total for Legal Services	\$1,732.50

Expenses

2010 Charter Review Panel	\$71.65
Total for Expenses	\$71.65

Total for This Bill	\$1,804.15
Previous Balance	\$13,696.09
Total Due	\$15,500.24

Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

September 20, 2010

Bill Number 71576

File Number 033910-000000000009

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

FOR PROFESSIONAL SERVICES

Re: 2010 Charter Review Panel

LEGAL SERVICES

Through August 31, 2010

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Time</u>
08/18/10	CAW	Reviewed Part I of independent review from L. Groot.	0.50 Hrs
08/19/10	CAW	Reviewed supplemental argument from counsel to Space Coast League.	0.30 Hrs
08/20/10	CAW	Reviewed Board of County Commissioners' agenda, Independent reviews by L. Groot and C. Ansay in preparation for Board of County Commissioners' meeting of September 26, 2010.	1.10 Hrs
08/25/10	CAW	Documentation of correspondence from third parties during review, with no response from CAW.	0.30 Hrs
08/26/10	CAW	Prepared for and attended Board of County Commissioners' meeting in response to questions from Commissioners and to issues asserted by League of Cities.	5.50 Hrs

The County of Brevard

TOTAL LEGAL SERVICES \$1,732.50

LEGAL SERVICES SUMMARY

C. Allen Watts	<u>7.70 Hrs</u>	225/hr	<u>\$1,732.50</u>
	7.70 Hrs		\$1,732.50

DISBURSEMENTS

Through August 31, 2010

MILEAGE

08/27/10	C. Allen Watts/Mileage to Viera on 8/26/10 to Board of County Commissioners meeting (161 miles @ \$.44.5)	71.65	
			\$71.65
		TOTAL DISBURSEMENTS	\$71.65

TOTAL FOR THIS INVOICE \$1,804.15

PREVIOUS INVOICES OUTSTANDING

71233	08/26/10	13,696.09
-------	----------	-----------

GRAND TOTAL DUE \$15,500.24



BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE
MEMORANDUM**

TO: Alphonso Jefferson, Budget Office Director
FROM: Marcia A. Day, Legal Office Administrator, County Attorney's Office *mad*
SUBJ: Charter Amendment Review Panel 2010
DATE: August 31, 2010

Please consider this memo as authorization to pay the following invoice(s) as Board related expenses. Please let me know if you have any questions.

DATE	INVOICE #	AMOUNT	COMPANY	DESCRIPTION
08/26/10	71233	\$13,696.09	Cobb Cole	Professional services rendered
Total		\$13,696.09		

Attachment



Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

August 26, 2010

Bill Number 71233
File Number 033910 -000000000009

The enclosed bill is for services rendered for the period ending August 15, 2010. The breakdown of this bill by matter is as follows:

Legal Services

2010 Charter Review Panel	\$12,690.00
	<hr/>
Total for Legal Services	\$12,690.00

Expenses

2010 Charter Review Panel	\$1,006.09
	<hr/>
Total for Expenses	\$1,006.09

Total for This Bill \$13,696.09

VENDOR# _____
PO# _____
DATE# 8/31/10
BY# _____

for \$13696.09 County attorney

RECEIVED

AUG 30 2010

Brevard County Attorney

56022

Cobb Cole
Post Office Box 2491
Daytona Beach, FL 32115-2491
Telephone (386)255-8171
Telecopier (386)258-5068
T.I.N. 59-3415054

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

August 26, 2010

Bill Number 71233
File Number 033910 -000000000009

The enclosed bill is for services rendered for the period ending August 15, 2010. The breakdown of this bill by matter is as follows:

Legal Services

2010 Charter Review Panel	\$12,690.00
	<hr/>
Total for Legal Services	\$12,690.00

Expenses

2010 Charter Review Panel	\$1,006.09
	<hr/>
Total for Expenses	\$1,006.09

Total for This Bill	\$13,696.09
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August 26, 2010

Bill Number 71233

File Number 033910-000000000009

The County of Brevard
c/o Scott L. Knox, Esquire
County Attorney
2725 Judge Fran Jamieson Way
Viera, FL 32940

FOR PROFESSIONAL SERVICES

Re: 2010 Charter Review Panel

LEGAL SERVICES

Through August 15, 2010

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Time</u>
07/06/10	CAW	Reviewed proposed amendments for legal committee review and schedule for final hearing.	0.30 Hrs
07/09/10	CAW	Conferred by telephone with D. Tolces regarding amendments passed; Calendar for panel review and ballot printing.	0.30 Hrs
07/12/10	CAW	Initial review of proposed charter amendments for single subject and constitutionality/conflicts; Conferred with JDK and forwarded Space Coast opinion, Bleakley opinion and notes to/from K. Spitzer regarding dual referendum issue; Prepared letter to S. Knox regarding convening panel; Researched standards for summary, single subject.	4.50 Hrs
07/13/10	JDK	Reviewed and analyzed material regarding charter preemption.	0.40 Hrs
07/15/10	JDK	Reviewed and analyzed memoranda and cases on charter preemption of municipal ordinance.	2.00 Hrs

The County of Brevard

Re: 2010 Charter Review Panel

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Time</u>
07/19/10	JDK	Reviewed and analyzed memoranda and opinions and prepared to create memorandum.	2.50 Hrs
07/20/10	JDK	Reviewed and analyzed applicability of Village of Lockport and related cases.	2.50 Hrs
07/27/10	JDK	Continued preparing memorandum on charter amendment.	3.00 Hrs
07/28/10	JDK	Read and analyzed case law and other material from electronic data base; Finalized memorandum on charter amendment.	3.00 Hrs
07/28/10	CAW	Legal research regarding equal protection issues in dual referenda or cross-voting cases; Reviewed draft memorandum from JDK.	2.90 Hrs
07/29/10	JDK	Read and analyzed case law and other material from electronic data base; Prepared, reviewed and responded to e-mails to CAW regarding equal protection.	3.50 Hrs
07/29/10	CAW	Continued research and drafting on memorandum regarding ballot summary dual referendum amendment; Reviewed Alachua materials, Space Coast League of Municipalities materials; Conferred by telephone with P. Gougelman; Reviewed Charter provisions regarding duty of legal review panel; Requested instructions from S. Knox; Conferred by telephone with D. Tolces regarding convening panel.	3.50 Hrs
07/30/10	JDK	Continued drafting legal memorandum on proposed amendment.	2.00 Hrs
07/31/10	JDK	Continued drafting legal memorandum on proposed amendment.	2.00 Hrs
08/03/10	CAW	Researched and commenced drafting of independent review of validity of charter amendments; Compared effect of changes to existing texts; Received and acknowledged additional authority from T. Cloud, Judge Campbell; Noted distinction.	5.60 Hrs
08/04/10	CAW	Drafted cover letter to S. Knox with statement of criteria for independent review as initial section; Analyzed for any misleading summaries.	5.40 Hrs
08/11/10	CAW	Legal research and drafting of independent review report regarding proposed charter amendments.	7.00 Hrs
08/12/10	CAW	Checked research and completed drafting of independent review; Transmitted review to County Attorney and members of Board of County Commissioners and other interested parties.	6.00 Hrs

The County of Brevard

TOTAL LEGAL SERVICES \$12,690.00

LEGAL SERVICES SUMMARY

Jonathan D. Kaney Jr.	20.90 Hrs	225/hr	\$4,702.50
C. Allen Watts	35.50 Hrs	225/hr	\$7,987.50
	56.40 Hrs		\$12,690.00

DISBURSEMENTS

Through August 15, 2010

POSTAGE

08/12/10	6.10	\$6.10
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CASELAW DATABASE

07/28/10 (E)	25.60	
07/28/10 (W)	501.89	\$527.49

CASELAW DATABASE

08/11/10 (E)	472.50	\$472.50
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TOTAL DISBURSEMENTS \$1,006.09

TOTAL FOR THIS INVOICE \$13,696.09




BOARD OF COUNTY COMMISSIONERS

County Manager's Office
2725 Judge Fran Jamieson Way
Building C, Room 301, MS# 88
Viera, Florida 32940

Inter-Office Memo

TO: Charter Review Commission

FROM: James Liesenfelt, Assistant County Manager 

DATE: April 14, 2022

SUBJECT: Three Person Review Panel History

At the March 24, 2022 Charter Review Commission meeting it was requested that staff provide the history of how the Three Person Review panel came into existence.

Staff was able to determine that Section 7.3.2.3 and 7.3.2.4. was placed on the ballot by the Board of County Commissioners in 2000 through Resolution 2002-268. A copy of both the Resolution and minutes from the September 13, 2000 Board meeting are attached. Please note that in Resolution 2000-268, Section 7.3.2.4 was labeled as subparagraph (c) in an apparent scrivener's error. This Charter Amendment passed with 57.34% of the vote.

Staff was able to determine that Section 7.4.1 was placed on the ballot by the Board of County Commissioners on July 23, 2002 through Resolution 2002-175. Please note that the Resolution noted the relevant section as 7.4A instead of 7.4.1. A copy of the Resolution is attached. This Charter Amendment passed with 61.96% of the vote.

Staff will be available at the meeting to answer any questions.

Thank you.

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CORRECTED
RESOLUTION 2000-268

9-13-00

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, CALLING A SPECIAL ELECTION ON NOVEMBER 7, 2000, ON THE QUESTION OF WHETHER SECTION 7.3.2 OF THE HOME RULE CHARTER FOR BREVARD COUNTY SHOULD BE AMENDED AND REWOED TO PROVIDE FOR REVIEW OF PETITION-INITIATED CHARTER AMENDMENTS FOR CONSISTENCY WITH GENERAL LAW AND THE FLORIDA CONSTITUTION PRIOR TO PLACEMENT ON THE BALLOT AND TO REDUCE THE NUMBER OF SIGNATURES REQUIRED TO PLACE A PETITION INITIATED CHARTER AMENDMENT ON THE BALLOT FROM 5% TO 4% OF THE ELECTORS IN EACH COUNTY COMMISSION DISTRICT; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR RESOLUTION. This resolution is adopted pursuant to the authority of the Board under Chapter 125, Florida Statutes, the Brevard County Home Rule Charter and any other applicable provision of law.

SECTION 2. SPECIAL ELECTION. A special election is hereby called and ordered to be held concurrently with the general election to be held on November 7, 2000, to determine whether to amend section 7.3.2 of the Home Rule Charter to provide for review of petition-initiated charter amendments for consistency with general law and the Florida constitution prior to placement on the ballot and to reduce the number of signatures required to place a petition initiated charter amendment on the ballot from 5% to 4% of the electors in each county commission district.

SECTION 3. NOTICE OF SPECIAL ELECTION. This resolution shall be published twice in full as part of the Notice of Special Election, together with a notice in substantially the form attached hereto as Exhibit "A," in *Florida Today*, a newspaper of general circulation in the County at intervals of at least seven (7) days, but not less than five (5) days nor more than thirty (30) days prior to the special election.

SECTION 4. PLACES OF VOTING, INSPECTORS, CLERKS. The polls will be open at the voting places on the date of such special election during the hours prescribed by law. All qualified electors shall be entitled and permitted to vote at such special election on the proposition provided below. The places of voting and the inspectors and clerk for the special election shall be those designated by the Supervisor of Elections of Brevard County.

SECTION 5. OFFICIAL BALLOT. Review of Amendments Proposed by Petition. The ballots to be used in the special election shall contain a statement of the description

SEP 13 2000

of the proposed amendment to the Home Rule Charter, and shall be in substantially the following form:

BALLOT
Brevard County, Florida

Caption: Amend Charter §7.3.2 by Changing Method for Enacting Charter Amendments by Petition

Ballot Summary: Shall section 7.3.2 of the Home Rule Charter for Brevard County be amended and substantially reworded to establish a procedure that requires a panel to review and determine whether any charter amendment proposed by petition is consistent with the Constitution, general laws and Charter; and to reduce the total number of signatures required to place a petition initiated charter amendment on the ballot from 5% to 4% of the electors in each county commission district?

_____ Yes

_____ No

SECTION 6. FULL TEXT OF AMENDMENT TO SECTION 7.3.2 OF THE CHARTER

Section 1. Section 7.3.2 of the Home Rule Charter for Brevard County is hereby amended and substantially reworded to read as follows:

"7.3.2. Amendment by petition. An Amendment to this Charter, not inconsistent with the State Constitution or with general law may be proposed by a petition signed by at least four percent (4%) of the electors from each County Commission District, in the manner set forth in subsections 7.3.2.1 through 7.3.2.4 below.

7.3.2.1 Each amendment shall embrace but one subject and matter directly connected therewith. The amendment shall not extend to existing budgets, existing debt obligations, existing capital improvement obligations, salaries of non-elected County officers and employees, the collection of taxes or rezoning of less than five per cent (5%) of the total land area of the County.

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SEP 1 9 2000

7.3.2.2 The sponsor of the measure shall register as a political committee as required by general law, and shall submit a petition setting forth the ballot title, substance and text of the proposed amendment to the Supervisor of Elections. The sponsor must then obtain the signatures on the petition of at least 1% of the electors from each County Commission district and then resubmit the signed petitions to the Supervisor of Elections for verification that the electors signing the petition are qualified voters. When the Supervisor of Elections has verified the signatures, the Supervisor shall report such verification to the Board of County Commissioners.

7.3.2.3 Once the signatures are verified, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.

(c) If at least two members of the panel find that the proposed amendment is consistent with the Florida Constitution, general law and this Charter, then such consistency shall be presumed and the petition shall be returned to the sponsor who must thereafter obtain enough signatures from electors in each county commission district to bring the total number of petition signatures to at least 4% of the qualified electors in each county commission district. The verification procedures for signatures on initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed.

Section 2. This amendment shall take effect upon approval of a majority of electors voting in said election.

SECTION 7. PAYMENT OF SPECIAL ELECTION EXPENSES. The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the special election and the Clerk of the Board of County Commissioners is hereby authorized and directed to disburse funds necessary to pay such expenses.

SECTION 8. VOTER REGISTRATION BOOKS. The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish to the inspectors and clerks

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SEP 13 2000

at each place where the votes are to be cast in such special election, applicable portions of the registration books or certified copies thereof showing the names of the qualified electors.

SECTION 9. ELECTION ADMINISTRATION. The special election shall be held and conducted in the manner prescribed by law and shall be as soon as practicable, be returned and canvassed in the manner prescribed by law. The result shall show the number of qualified electors who voted at such special election and the number of votes cast respectively for and against approval of the amendments. Upon certification in the manner prescribed by law, the results shall be recorded in the minutes of the Board of County Commissioners.

SECTION 10. ELECTION RESULTS. If the majority of the votes cast at such a special election shall be "Yes," the amendments shall pass.

SECTION 11. SEVERABILITY. In the event that any word, phrase, clause, sentence or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holding shall not affect any other word, clause, sentence or paragraph hereof.

SECTION 12. REPEALING CLAUSE. All resolutions or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

SECTION 13. EFFECTIVE DATE. This resolution shall take effect on the first day following its passage by the voters, shall be prospective in effect and no service in a term of office which commenced prior to the effective date of the Charter amendments recited herein will be counted against the limits established by those amendments.

DONE, AND ADOPTED In Regular Session of the Board of County Commissioners of Brevard County, Florida, this 13th day of September, 2000.

ATTEST:

A circular seal for Brevard County, Florida, featuring a central emblem and the text "BREVARD COUNTY FLORIDA" around the perimeter. The seal is partially obscured by a signature and the name of the clerk.
Sandy Crawford, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: Nancy Higgs
Nancy Higgs, Chairman
(as approved by the Board on 9/13/00)

SEP 13 2000

EXHIBIT "A"

**NOTICE OF SPECIAL ELECTION ON PROPOSED CHARTER
AMENDMENT CHANGING THE METHOD FOR ENACTING FUTURE
CHARTER AMENDMENTS BY INITIATED BY PETITION**

Notice is hereby given that a special election shall be held on November 7, 2000, at which a proposed charter amendment establishing a procedure for review of petition-initiated charter amendments to determine consistency with general law, the State Constitution and the County Charter, and reducing the number of signatures required to place a petition initiated charter amendment from 5% to 4%, as described in the following resolution number 2000-_____ adopted by the Board of County Commissioners of Brevard County, Florida, on the _____ day of _____, 2000 shall be submitted to the electors:

[RECITE RESOLUTION]

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September 13, 2000

**CONSIDERATION, RE: REQUEST FOR COMPREHENSIVE PLAN CONSISTENCY
REVIEW, RE: BUCCANEER GAS PIPELINE PROJECT (CONTINUED)**

Commissioner Carlson inquired if it is prudent for the Board to get an outside advisor and begin creating the agreement with Buccaneer; with Mr. Knox responding that is his recommendation. Mr. Knox noted he has no idea what questions to ask to determine whether there will be adverse impact from the construction of this pipeline; it is not something he has done before; and the Board needs someone to look at that issue to help it decide whether there will be any adverse impacts.

Commissioner O'Brien inquired if it would be prudent today to continue this item so the Board can hire a law firm, and then enter into negotiations; and stated if the Board agrees today they are in compliance with the Comprehensive Plan, Buccaneer can come in the morning with the site plan and pull permits, and the Board's ability to negotiate would be gone. Mr. Knox advised this is the Board's only chance.

Commissioner Voltz inquired about an incomplete statement on page 7 of the staff report; with Mr. Scott advising of the complete statement. Mr. Scott stated when the pipeline goes into some of the existing power plant facilities that are classified as a land use, it would be subject to County permitting and site plan review requirements.

Commissioner Scarborough stated he has met with representatives of Buccaneer, and they have met with the community; when he saw a copy of the Pasco County agreement, he realized there were safety concerns the Board had not discussed; he brought it up at the next meeting, and everyone agreed to the need to look at the Pasco County agreement; and that is how it evolved. He stated the Board needs to defer action because there are safety concerns.

Motion by Commissioner Scarborough, seconded by Commissioner Voltz, to continue the consideration of the request of Buccaneer Pipeline for Comprehensive Plan consistency review to October 17, 2000; and authorize the hiring of outside counsel and any other necessary experts to expedite the process of developing an agreement with Buccaneer Pipeline Company. Motion carried and ordered unanimously.

Commissioner Scarborough requested Mr. Knox report back at the next meeting on the hiring of the experts.

CONSIDERATION, RE: ADOPTION OF PROPOSED CHARTER AMENDMENTS

Maureen Rupe stated Section 7.3.2 states, "amendment to the Charter not inconsistent with the State Constitution or General Law may be proposed by a petition"; Section 7.3.3 requires the Board to cause any Charter amendment proposed under Section 7.3.1 or 7.3.2 to be submitted to the electors for their approval; if the Board looks at the petition of the Home Rule Charter Committee concerning changes to Sections 7.3.2 and 7.3.3, the lines "not inconsistent with the State Constitution or with General Law" is to be removed; the deletion removes the only section that gives the Board the authority to review Charter amendments against inconsistencies with

September 13, 2000

CONSIDERATION, RE: ADOPTION OF PROPOSED CHARTER AMENDMENTS
(CONTINUED)

the State Constitution or General Law; and the added sentence does not give the Board back the authority to review the inconsistency. She stated it is not illegal to make this proposal; but recommended adding, "removed Board Charter amendment review for consistency with State and General Law" to the ballot summary. She stated if the review process amendment the Board is putting on the ballot fails, and this one passes, then all the amendments after this by petition will automatically go to ballot with no review; and if they pass, it will probably be up to a member of the public to bring up a court case. She stated it appears they are taking away the Board's review.

County Attorney Scott Knox stated he does not agree with what Ms. Rupe is saying; and it says, "Since the Charter does not provide the Board or the petitioner with an avenue to determine whether proposed amendments are consistent with the State Constitution or General Law, the proposed amendment will be governed by Sections 1.3 and 1.6 of this Charter . . ." Ms. Rupe stated Sections 1.3 and 1.6 do not give authority to review; with Mr. Knox responding the amendment does not take it away because the Charter does not provide a mechanism now. Mr. Knox read aloud Section 1.6; stated what they have done is take it out of one sentence and put it in another; and if it takes effect, it will become part of the Charter, which cannot be construed in a manner that is inconsistent with General Law. Ms. Rupe inquired if the review process fails the ballot, will the Board still be able to review; with Mr. Knox responding yes, because it would be a requirement even if it was removed entirely. Ms. Rupe stated the petitioners think that by taking that out and inserting the other language, they have taken away from the Board the right to review any amendments by petition; with Mr. Knox responding if that was the intent, they should have said the Board shall have no authority to review proposed Charter amendments, but they did not say that.

Discussion ensued on the proposed amendment.

Barbara Jagrowski stated she is going to address the proposed amendment concerning the Commissioners' salaries. She stated the ballot summary says, "effective December 31, 1999, and to allow yearly, by ordinance, increases not to exceed the average percentage . . ." She stated the full text says, "on or before October 1 of 2001, and on or before October 1 of every even numbered year thereafter, the Board of County Commissioners may adopt an ordinance affixing the salary of Commissioners for the next two years"; and that is not consistent with what the ballot says. Chairman Higgs stated it is not consistent; with Mr. Knox advising the question is whether it is misleading. Ms. Jagrowski stated it is misleading; but she agrees with putting it on the ballot.

Discussion ensued on rejecting the amendment, putting it in with a change, ambiguous ballot summary, and changing the word "yearly" to "biannually."

Commissioner Carlson inquired if there is another interpretation that could be made for "yearly," in that the Board is just looking at the potential yearly increases, and then every two years the individual yearly increases are considered. Commissioner Voltz stated the Board does not know what the CPI is going to be every two years, so how could it be set ahead of time.

September 13, 2000

CONSIDERATION, RE: ADOPTION OF PROPOSED CHARTER AMENDMENTS
(CONTINUED)

Commissioner Carlson stated she is not talking about setting it ahead of time. Mr. Knox stated it could be read to say, "to allow yearly, by ordinance, increases not to exceed . . ."; and instead of actually adopting an ordinance every year, the Board can provide in the ordinance that there are yearly increases not to exceed a certain level. Mr. Knox stated the ordinance could provide for yearly increases; with Commissioner Carlson advising the Board would only set it every two years. Mr. Knox stated to make it clear it should be, "to allow yearly, by ordinance, . . ."; and that may be what was intended. Commissioner Scarborough stated to do that the Board has to reject the whole thing and then adopt its own amendment. Mr. Knox stated the Board can reject it, but it could probably be put under the heading of scrivener's error.

Discussion ensued on whether to reject the amendment and offer a substitute.

Mr. Knox stated it may be safer to reject and offer a substitute, because if it is read without the commas, it could be misleading, but with the commas, it is pretty clear.

Commissioner Carlson inquired if anyone has checked the original petition to make sure the commas are not there before the Board takes action; with Mr. Knox responding he will check during the next recess.

Commissioner Scarborough inquired if the Board rejects it, will it have to come back in the form of a resolution at the next meeting; with Mr. Knox responding no, the Board would just be changing the resolution to include the two commas because it is the same otherwise. Commissioner O'Brien stated he is surprised that 15,000 people signed it, but did not catch that. Ms. Jagrowski stated they only saw the summary, and did not see the second part.

Ms. Jagrowski inquired if there is a ballot number three concerning the panel to review to reduce the total number of signatures required on a petition from 5% to 4%. She stated that is also in the other ballot proposal, and there cannot be more than one item unless they are compatible. Mr. Knox stated it is the Commission-sponsored version of 7.3.2; and the intent was to make the amendment consistent with the other amendment, if they pass. Commissioner Carlson stated if the Commission version passes, there will be a panel to review petitions for consistency; but with the other one there is no review. Mr. Knox stated if they both passed with one version at 4% and the other at 5%, they would both be ineffective. Ms. Jagrowski suggested dropping the 5% since it is already being voted upon in the second amendment; with Mr. Knox responding the Board has to put the Committee version on.

The meeting recessed at 3:38 p.m. and reconvened at 3:57 p.m.

Mr. Knox stated he checked the ballot language on the petition, and it is exactly what the Board has before it; and after having read it again, the word "yearly" has to come out of it altogether. He stated if the Board talks about yearly increases, it conflicts with the provision that says there cannot be automatic increases because they are only set every two years; and the way to make the ballot summary read consistent with the amendment is to remove the word "yearly." Commissioner Voltz inquired if the Board has to reject it and do its own, or can it just remove

September 13, 2000

**CONSIDERATION, RE: ADOPTION OF PROPOSED CHARTER AMENDMENTS
(CONTINUED)**

the one word. Mr. Knox stated the Board has to reject their version of it, and remove the word in the Board's version. Chairman Higgs stated the text of the amendment talks about every two years; and inquired if the average percentage of employee increases and the Consumer Price Index are being calculated every two years. Mr. Knox stated that would be left to the Board when it adopts the ordinance. Commissioner Voltz stated the Board does not know what it is going to be; and inquired how the Board can set it two years in advance. Chairman Higgs inquired how would the Board allow for the average percentage increase as well as the CPI when it is being done in advance. Commissioner Voltz stated the Board could always come down when it actually sets the salary. Commissioner Carlson stated the Board already has its version of a salary amendment. Chairman Higgs stated the Board pulled it off because it thought it would have the other amendment. Commissioner Carlson stated the Supervisor of Elections may not know that because it is included in the expected amendments.

Motion by Commissioner Scarborough, to reject the Home Rule Charter Committee's proposed amendment relating to Commission salaries, and adopt Resolution for a referendum on Commission salaries, with the ballot summary language, "allow on even numbered years by ordinance."

Commissioner Voltz inquired if that substantially changes the intent; with Chairman Higgs responding it does not change the text at all. Mr. Knox inquired about the specific change; with Commissioner Scarborough responding he wants to strike "yearly" in the ballot language, and insert, "therefore on even numbered years." Commissioner Scarborough stated those are the words that were used, and to the greatest extent possible the electorate should be informed what could happen; and the intent is to move forward with what the Home Rule Charter Committee tried to bring forward in a legal fashion.

Commissioner Carlson inquired what is the legal basis to reject it; with Mr. Knox responding it is inconsistent with General Law because the ballot language does not apprise the voter of what the amendment does. Commissioner Carlson stated with the language change, the Board can consider an increase ever two years. Commissioner Scarborough stated he does not want to tamper with the Home Rule Charter Committee's thought, but the ballot language has to be consistent with what is being enacted. Commissioner Carlson inquired if the increase is reflective of the two years, or just the year it is made. Commissioner Scarborough stated the Committee did not address that. Chairman Higgs read, "shall not exceed the average increase in the salaries of County employees for the fiscal year just concluded or the percentage change of the CPI from the previous year, whichever is less." She noted there is some difficulty in that it talks about fiscal year and year. Commissioner Scarborough stated the Committee got the signatures, and the Board should bring this to a conclusion.

Chairman Higgs seconded the motion. Motion carried and ordered. Commissioners Scarborough, Higgs, Carlson and Voltz voted aye; Commissioner O'Brien voted nay. (See page for Resolution No. 2000-267.)

September 13, 2000

**CONSIDERATION, RE: ADOPTION OF PROPOSED CHARTER AMENDMENTS
(CONTINUED)**

Chairman Higgs stated the other proposed amendments are on the petitions and on the 4% to 5%.

Commissioner Scarborough stated fundamental to government is deferring to the higher law; any time he is given a decision and there is an inconsistency, he has to go to the higher law, so regardless of what the Charter says, if it is inconsistent with the higher law, he has to make his decision based on the higher law; and therefore nothing has to be written. He stated he has no problem with what is presented.

Motion by Commissioner Scarborough, seconded by Commissioner Voltz, to adopt Resolution calling for referendum to change the required number of petitions to be signed from 5% to 4% and require proposed amendments to be placed on the next Countywide election.

Commissioner Scarborough stated they have struck the words "not inconsistent with State Constitution or General Law"; but it does not need to be there because it is already part of the general legal concept. Commissioner Voltz stated it does not say on the ballot summary that is being removed, so somebody voting will not know what he or she is doing. Commissioner Scarborough stated it is irrelevant because the concept is still there. Commissioner Carlson stated Section 1.6 is included; with Commissioner Voltz advising the voters will not see it.

Commissioner O'Brien stated he hopes the public realizes if they vote in favor of this amendment, amendments can be put on any kind of election that is nearest to when the question is put out; originally it was in the General Election; he wants the most voices to be heard when there is a Charter amendment; and this allows a very small group of people who go to vote to start controlling the Charter.

Chairman Higgs called for a vote on the motion. Motion carried and ordered unanimously. (See page _____ for Resolution No. 2000-269.)

Chairman Higgs inquired if action is needed on the final amendment to establish the review panel.

Motion by Commissioner Carlson, seconded by Commissioner Voltz, to adopt a Resolution calling for referendum to provide for review of petition-initiated Charter amendments and reduce the number of signatures required to place a petition on the ballot from 5% to 4%. Motion carried and ordered unanimously. (See page _____ for Resolution No. 2000-268.)

RESOLUTION 2002-175

7-23-02

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, CALLING A SPECIAL ELECTION ON NOVEMBER 5, 2002, ON THE QUESTION OF WHETHER A NEW COUNTY, SHOULD BE CREATED TO PROVIDE FOR AN INDEPENDENT REVIEW OF THE CONSTITUTIONALITY AND VALIDITY OF PROPOSED CHARTER AMENDMENTS SPONSORED BY THE COUNTY COMMISSION AND CHARTER REVIEW COMMISSION PRIOR TO PLACEMENT OF SUCH PROPOSED CHARTER AMENDMENTS ON THE BALLOT; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR RESOLUTION. This resolution is adopted pursuant to the authority of the Board under Chapter 125, Florida Statutes, the Brevard County Home Rule Charter and any other applicable provision of law.

SECTION 2. SPECIAL ELECTION. A special election is hereby called and ordered to be held concurrently with the general election to be held on November 5, 2002, to determine whether to amend the Brevard County Home Rule Charter by adding a new section 7.4A to provide for an independent review of the constitutionality and validity of proposed charter amendments sponsored by the County Commission and Charter Review Commission prior to placement of such proposed amendments on the ballot.

SECTION 3. NOTICE OF SPECIAL ELECTION. This resolution shall be published once a week for four consecutive weeks in full as part of the Notice of Special Election, together with a notice in substantially the form attached hereto as Exhibit "A," in *Florida Today*, a newspaper of general circulation in the County with the first such publication occurring in the fifth week prior to the election provided that the first publication must be at least thirty days prior to the date set for the election.

SECTION 4. PLACES OF VOTING, INSPECTORS, CLERKS. The polls will be open at the voting places on the date of such special election during the hours prescribed by law. All qualified electors shall be entitled and permitted to vote at such special election on the proposition provided below. The places of voting and the inspectors and clerk for the special election shall be those designated by the Supervisor of Elections of Brevard County.

SECTION 5. OFFICIAL BALLOT. The ballots to be used in the special election shall contain a statement of the description of the proposed amendment to the Brevard County Home Rule Charter, and shall be in substantially the following form:

BALLOT
Brevard County, Florida

Caption: Independent Review of Proposed Charter Amendments

Ballot Summary: Shall a new section 7.4A of the Home Rule Charter for Brevard County be created to provide for the independent review of the constitutionality and validity of proposed charter amendments sponsored by the County Commission or Charter Review Commission prior to placing such proposed charter amendments on a referendum ballot?

_____ Yes
_____ No

SECTION 6. FULL TEXT OF PROPOSED NEW SECTION 7.4A OF THE CHARTER

Section 1. Section 7.4A of the Home Rule Charter for Brevard County is hereby created to read as follows:

"7.4A Independent Review of Proposed Charter Amendments.

(1) For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.

(2) If at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3 in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.

Section 2. This amendment shall take effect upon certification of election results indicating that a majority of the electors voting in the special election have voted for approval.

SECTION 7. PAYMENT OF SPECIAL ELECTION EXPENSES. The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the special election and the Clerk of the Board of County Commissioners is hereby authorized and directed to disburse funds necessary to pay such expenses.

SECTION 8. VOTER REGISTRATION BOOKS. The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish to the inspectors and clerks at each place where the votes are to be cast in such special election, applicable portions of the registration books or certified copies thereof showing the names of the qualified electors.

SECTION 9. ELECTION ADMINISTRATION. The special election shall be held and conducted in the manner prescribed by law and shall be as soon as practicable, be returned and canvassed in the manner prescribed by law. The result shall show the number of qualified electors who voted at such special election and the number of votes cast respectively for and against approval of the amendments. Upon certification in the manner prescribed by law, the results shall be recorded in the minutes of the Board of County Commissioners.

SECTION 10. ELECTION RESULTS. If the majority of the votes cast at such a special election shall be "Yes," the amendments shall pass.

SECTION 11. SEVERABILITY. In the event that any word, phrase, clause, sentence or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holding shall not affect any other word, clause, sentence or paragraph hereof.

SECTION 12. REPEALING CLAUSE. All resolutions or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

SECTION 13. EFFECTIVE DATE. This resolution shall take effect on the first day following its passage by the voters.

DONE, AND ADOPTED in Regular Session of the Board of County Commissioners of Brevard County, Florida, this 23 day of July, 2002.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 
Truman Scarborough, Chairman
(as approved by the Board on 7-23-02)

EXHIBIT "A"

NOTICE OF SPECIAL ELECTION ON AMENDING THE HOME RULE CHARTER OF BREVARD COUNTY, FLORIDA BY ESTABLISHING A PROCEDURE FOR CONDUCTING AN INDEPENDENT REVIEW OF THE CONSTITUTIONALITY AND VALIDITY OF CHARTER AMENDMENTS PROPOSED BY THE COUNTY COMMISSION AND CHARTER REVIEW COMMISSION PRIOR TO PLACEMENT OF SUCH AMENDMENTS ON THE BALLOT

Notice is hereby given that a special election shall be held on November 5, 2002, at which a proposed charter amendment establishing a procedure for conducting an independent review of the constitutionality and validity of charter amendments proposed by the county commission and charter review commission prior to placement of such amendments on the ballot, as described in the following resolution number 02- 175 adopted by the Board of County Commissioners of Brevard County, Florida, on the 23 day of July, 2002 shall be submitted to the electors:

[RECITE RESOLUTION]

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MEMORANDUM

TO: Chairman and Members of the Charter Review Commission (“CRC”)

FROM: Paul Gougelman, Charter Commission General Counsel

SUBJECT: Time For Recall

DATE: April 10, 2022

BACKGROUND/ISSUE: CRC Member Cole Oliver asked what is the timeline or timeframe for recall process?

SHORT ANSWER: Pursuant to Section 100.361, Florida Statutes, the Florida Recall Law, the process should take approximately 225+/- days from collection of the first signature on a recall petition to the date of the recall election.

ANALYSIS: The exact time is hard to predict due to two factors. First, Brevard’s current Supervisor of Elections has not needed to undertake a recall election, and consequently, she has nothing from which to determine the timeframe, except the statute. Second, Florida case law indicates that in the case of a recall election, it is not unusual for the person subject to a recall to file a lawsuit thereby delaying the entire process.

That having been said, the statute gives certain time milestones that assist in determining the timeframe for recall.

1st Petition – The recall committee has 30 days to collect all of the required signatures. §100.361(2)(b), Fla.Stat.

Verification of Signatures by Supervisor of Elections - The Supervisor of Elections has 30 days to verify the required signatures. §100.361(2)(g), Fla.Stat.

2nd Petition – The person subject to recall has 5 days to prepare a defensive statement which is placed on the second petition. §100.361(3)(a), Fla.Stat.

The clerk has 5 days to prepare the form of the second recall petition. §100.361(3)(b), Fla.Stat.

The recall committee has 60 days to collect all of the required signatures. §100.361(3)(c), Fla.Stat.

Verification of Signatures by Supervisor of Elections - The Supervisor of Elections has 30 days to verify the required signatures. §100.361(3)(e), Fla.Stat.

Upon verification of signatures on the second petition, the person subject to recall has 5 days to resign from office. If that person does not resign during that 5 day period, a recall election shall be scheduled by the chief judge of the judicial circuit. §100.361(4), Fla.Stat.

Recall Election – The recall election must be scheduled to be within 30 to 60 days. §100.361(4), Fla.Stat.

PRG/mb

Florida Recall Statute

100.361 Municipal recall.—

(1) APPLICATION; DEFINITION.—Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as “municipality,” may be removed from office by the electors of the municipality. When the official represents a district and is elected only by electors residing in that district, only electors from that district are eligible to sign the petition to recall that official and are entitled to vote in the recall election. When the official represents a district and is elected at-large by the electors of the municipality, all electors of the municipality are eligible to sign the petition to recall that official and are entitled to vote in the recall election. Where used in this section, the term “district” shall be construed to mean the area or region of a municipality from which a member of the governing body is elected by the electors from such area or region. Members may be removed from office pursuant to the procedures provided in this section. This method of removing members of the governing body of a municipality is in addition to any other method provided by state law.

(2) RECALL PETITION.—

(a) Petition content.—A petition shall contain the name of the person sought to be recalled and a statement of grounds for recall. The statement of grounds may not exceed 200 words, and the stated grounds are limited solely to those specified in paragraph (d). If more than one member of the governing body is sought to be recalled, whether such member is elected by the electors of a district or by the electors of the municipality at-large, a separate recall petition shall be prepared for each member sought to be recalled. Upon request, the content of a petition should be, but is not required to be, provided by the proponent in alternative formats.

(b) Requisite signatures.—

1. In a municipality or district of fewer than 500 electors, the petition shall be signed by at least 50 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

2. In a municipality or district of 500 or more but fewer than 2,000 registered electors, the petition shall be signed by at least 100 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

3. In a municipality or district of 2,000 or more but fewer than 5,000 registered electors, the petition shall be signed by at least 250 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

4. In a municipality or district of 5,000 or more but fewer than 10,000 registered electors, the petition shall be signed by at least 500 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

5. In a municipality or district of 10,000 or more but fewer than 25,000 registered electors, the petition shall be signed by at least 1,000 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

6. In a municipality or district of 25,000 or more registered electors, the petition shall be signed by at least 1,000 electors or by 5 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

All signatures shall be obtained, as provided in paragraph (e), within a period of 30 days, and all signed and dated petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition.

(c) Recall committee.—Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee. The recall committee and the officer being recalled are subject to the provisions of chapter 106.

(d) Grounds for recall.—The grounds for removal of elected municipal officials shall, for the purposes of this act, be limited to the following and must be contained in the petition:

1. Malfeasance;
2. Misfeasance;
3. Neglect of duty;
4. Drunkenness;
5. Incompetence;
6. Permanent inability to perform official duties; and
7. Conviction of a felony involving moral turpitude.

(e) Signature process.—Only electors of the municipality or district are eligible to sign the petition. Each elector signing a petition shall sign and date his or her name in ink or indelible pencil. Each petition shall contain appropriate lines for each elector's original signature, printed name, street address, city, county, voter registration number or date of birth, and date signed. The form shall also contain lines for an oath, to be executed by a witness who is to verify the fact that the witness saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

(f) Filing of signed petitions.—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the auditor or clerk of the municipality or charter county, or his or her equivalent, hereinafter referred to as "clerk." The petition may not be amended after it is filed with the clerk.

(g) Verification of signatures.—

1. Immediately after the filing of the petition forms, the clerk shall submit such forms to the county supervisor of elections. No more than 30 days after the date on which all petition forms are submitted to the supervisor by the clerk, the supervisor shall promptly verify the signatures in accordance with s. 99.097, and determine whether the requisite number of valid signatures has been obtained for the petition. The committee seeking verification of the signatures shall pay in advance to the supervisor the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less.

2. Upon filing with the clerk, the petition and all subsequent papers or forms required or permitted to be filed with the clerk in connection with this section must, upon request, be made available in alternative formats by the clerk.

3. If the supervisor determines that the petition does not contain the requisite number of verified and valid signatures, the clerk shall, upon receipt of such written determination, so certify to the governing body of the municipality or charter county and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4. If the supervisor determines that the petition has the requisite number of verified and valid signatures, then the procedures outlined in subsection (3) must be followed.

(3) RECALL PETITION AND DEFENSE.—

(a) Notice.—Upon receipt of a written determination that the requisite number of signatures has been obtained, the clerk shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the clerk a defensive statement of not more than 200 words.

(b) Content and preparation.—Within 5 days after the date of receipt of the defensive statement or after the last date a defensive statement could have been

filed, the clerk shall prepare a document entitled “Recall Petition and Defense.” The “Recall Petition and Defense” shall consist of the recall petition, including copies of the originally signed petitions and counterparts. The “Recall Petition and Defense” must contain lines which conform to the provisions of paragraph (2)(e), and the defensive statement or, if no defensive statement has been filed, a statement to that effect. The clerk shall make copies of the “Recall Petition and Defense” which are sufficient to carry the signatures of 30 percent of the registered electors. Immediately after preparing and making sufficient copies of the “Recall Petition and Defense,” the clerk shall deliver the copies to the person designated as chair of the committee and take his or her receipt therefor.

(c) Requisite signatures.—Upon receipt of the “Recall Petition and Defense,” the committee may circulate them to obtain the signatures of 15 percent of the electors. All signatures shall be obtained and all signed petition forms filed with the clerk no later than 60 days after delivery of the “Recall Petition and Defense” to the chair of the committee.

(d) Signed petitions; request for striking name.—The clerk shall assemble all signed petitions, check to see that each petition is properly verified by the oath of a witness, and submit such petitions to the county supervisor of elections. Any elector who signs a recall petition has the right to demand in writing that his or her name be stricken from the petition. A written demand signed by the elector shall be filed with the clerk, and, upon receipt of the demand, the clerk shall strike the name of the elector from the petition and place his or her initials to the side of the signature stricken. However, a signature may not be stricken after the clerk has delivered the “Recall Petition and Defense” to the supervisor for verification of the signatures.

(e) Verification of signatures.—Within 30 days after receipt of the signed “Recall Petition and Defense,” the supervisor shall determine the number of valid signatures, purge the names withdrawn, and certify whether 15 percent of the qualified electors of the municipality have signed the petitions. The supervisor shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(f) Reporting.—If the supervisor determines that the requisite number of signatures has not been obtained, the clerk shall, upon receipt of such written determination, certify such determination to the governing body and retain the petitions. The proceedings shall be terminated, and the petitions shall not again be used. If the supervisor determines that at least 15 percent of the qualified electors signed the petition, the clerk shall, immediately upon receipt of such written determination, serve notice of that determination upon the person sought to be recalled and deliver to the governing body a certificate as to the percentage of qualified electors who signed.

(4) RECALL ELECTION.—If the person designated in the petition files with the clerk, within 5 days after the last-mentioned notice, his or her written resignation, the clerk shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30

days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(5) **BALLOTS.**—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: “Shall be removed from the office of by recall?” Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

“ (name of person) should be removed from office.”

“ (name of person) should not be removed from office.”

(6) **FILLING OF VACANCIES; SPECIAL ELECTIONS.**—

(a) If an election is held for the recall of members elected only at-large, candidates to succeed them for the unexpired terms shall be voted upon at the same election and shall be elected in the same manner as provided by the appropriate law for the election of candidates at general elections. Candidates shall not be elected to succeed any particular member. If only one member is removed, the candidate receiving the highest number of votes shall be declared elected to fill the vacancy. If more than one member is removed, candidates equal in number to the number of members removed shall be declared elected to fill the vacancies; and, among the successful candidates, those receiving the greatest number of votes shall be declared elected for the longest terms. Cases of ties, and all other matters not herein specially provided for, shall be determined by the rules governing elections generally.

(b) If an election is held for the recall of members elected only from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the districts are located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period, for purposes of this section, shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled district municipal official shall reside in the district represented by the recalled official and qualify for office in the manner required by law. Each candidate receiving the highest number of votes for each office in the special district recall election shall be declared elected to fill the unexpired term of the recalled official. Candidates seeking election to fill a vacancy created by the removal of a municipal official shall be subject to the provisions of chapter 106.

(c) When an election is held for the recall of members of the governing body composed of both members elected at-large and from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election as provided in paragraph (b).

(d) However, in any recall election held pursuant to paragraph (b) or paragraph (c), if only one member is voted to be removed from office, the vacancy created by the recall shall be filled by the governing body according to the provisions of the appropriate law for filling vacancies.

(7) **EFFECT OF RESIGNATIONS.**—If the member of the governing body being recalled resigns from office prior to the recall election, the remaining members shall fill

the vacancy created according to the appropriate law for filling vacancies. If all of the members of the governing body are sought to be recalled and all of the members resign prior to the recall election, the recall election shall be canceled, and a special election shall be called to fill the unexpired terms of the resigning members. If all of the members of the governing body are sought to be recalled and any of the members resign prior to the recall election, the proceedings for the recall of members not resigning and the election of successors to fill the unexpired terms shall continue and have the same effect as though there had been no resignation.

(8) **WHEN PETITION MAY BE FILED.**—No petition to recall any member of the governing body of a municipality shall be filed until the member has served one-fourth of his or her term of office. No person removed by a recall, or resigning after a petition has been filed against him or her, shall be eligible to be appointed to the governing body within a period of 2 years after the date of such recall or resignation.

(9) **RETENTION OF PETITION.**—The clerk shall preserve in his or her office all papers comprising or connected with a petition for recall for a period of 2 years after they were filed.

(10) **OFFENSES RELATING TO PETITIONS.**—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the municipality. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition. Any person violating any of the provisions of this section commits a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

(11) **INTENT.**—It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict.

(12) **PROVISIONS APPLICABLE.**—The provisions of this act shall apply to cities and charter counties whether or not they have adopted recall provisions.



MEMORANDUM

TO: Chairman and Members of the Brevard
County Charter Review Commission

FROM: Paul Gougelman, General Counsel

SUBJECT: Can the County Commission Re-Word a
Proposal By the Charter Review Commission?

DATE: April 10, 2022

BACKGROUND/ISSUE: CRC Member Kendall Moore has asked whether the County Commission may change the recommendations of the CRC prior to placing a proposal on the ballot.

SHORT ANSWER: The County Commission cannot re-write a CRC charter proposal. The County Commission could refuse to place a CRC charter amendment proposal on the ballot if the 3 member attorney review panel finds that the proposal is inconsistent with general law or the Florida Constitution.

ANALYSIS: Highlighted charter language of relevance to Mr. Moore's question is as follows:

Sec. 7.4. - Charter review.

Not later than July 1 of the year 1997 and of every sixth year thereafter, the Board of County Commissioners shall appoint a Charter Review Commission to review the Charter of the County. Each Charter Review Commission shall consist of fifteen (15) persons, with not less than two (2) members residing in each Commission district. The Commission shall otherwise be appointed in the manner provided by law for the appointment of charter commissions in counties without charters. The Commission shall be funded by the Board of County Commissioners and shall be known as the "Brevard County Charter Review Commission." It shall, within one (1) year from the date of its first meeting, present to the Board of County Commissioners its recommendations for amendment of the Charter or its recommendation that no amendment is appropriate. If amendment is to be recommended, the Charter Commission shall conduct three

(3) public hearings, at intervals of not less than ten (10) days, immediately prior to the transmittal of its recommendations to the Board of County Commissioners. The Board of County Commissioners shall schedule a referendum on the proposed charter amendments concurrent with the next general election. The Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising education and information on the proposed amendments.

Sec. 7.4.1. - Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.

2. If at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.

In answering this question, reference is made to the rules of statutory interpretation. The rules of statutory interpretation are rules created by federal and state courts for interpreting statutes. These rules have been arrived at in literally thousands of court opinions since the inception of our country.

The rules of statutory interpretation are applicable to charter provisions, as well as statutes for the purpose of ascertaining the meaning of the provisions. Martinez v.

Hernandez, 227 So.3d 1257 (Fla. 3d DCA 2017)(ascertaining the meaning of the City of Hialeah Charter).¹

The starting point in interpreting any charter or statutory provisions is to look at the “plain meaning” of the wording. Spence-Jones v. Dunn, 118 So.2d 261, 262 (Fla. 3d DCA 2013). This is the so-called “plain meaning” rule of statutory interpretation.²

If the language is clear and unambiguous and conveys a definite meaning, there is no need to proceed further in application of the rules of statutory interpretation. GTC, Inc. v. Edgar, 967 So.2d 781, 785 (Fla. 2007).³ This concept was aggressively pursued by the late conservative Justice Antonin Scalia in his U.S. Supreme Court opinions.⁴

While the language in Sections 7.4. and 7.4.1 seem unambiguous,⁵ there are a few cases that have interpreted the word “shall” to mean “may”, and conversely, the word “may” to mean “shall.”⁶ For example, if reading “may” as permissive leads to an unreasonable result or one contrary to legislative intent, courts may look to the context in which “may” is used and the legislature’s intent to determine whether “may” should be read as a mandatory term, such as “shall.” Sloban v. Florida Board of Pharmacy, 982 So.2d 26 (Fla. 1st DCA 2008).

¹ The rules of statutory interpretation are also applicable to county and city ordinances, Great Outdoors Trading, Inc. v. City of High Springs, 550 So.2d 483, 485 (Fla. 1st DCA 1989), and to comprehensive plans. Katherine’s Bay, LLC v. Fagan, 52 So.3d 19 (Fla. 1st DCA 2010).

² The Florida Supreme Court has held from time immemorial that one must primarily determine the effect and purpose of statutes and rules of court by first examining the actual words used in the statute or rule and determine the plain meaning of those words. Holly v. Auld, 450 So.2d 217,219 (Fla. 1984)(citing A. R. Dougalss, Inc. v. McRainer, 137 So. 157 (Fla. 1931). Assuming that the plain meaning of the words used can be determined, one is bound to apply that plain meaning to resolve legal disputes that involve application of the statute or rule. Calabro v. State, 995 So.2d 307 (Fla. 2008); see also Niz-Chavez v. Garland, 141 S.Ct 1474 (2021).

³ See also Priority Medical Centers, LLC v. Allstate Insurance Co., 319 So.3d 724, 726 (Fla. 3d DCA 2021).

⁴ See 3 Sutherland on Statutory Construction §65A:10 (2022). This approach has been labelled as “the new textualism” by William Eskridge.

⁵ Based on its plain and ordinary meaning, the word shall in a statute usually has a mandatory connotation. State v. Dagostino, 303 So.3d 606 (Fla. 5th DCA 2020). The statutory word “may” when given its ordinary meaning denotes a permissive term, rather than the mandatory connotation of the word “shall.” Progressive Select Insurance Co. v. Florida Hospital Medical Center, 236 So.3d 1183 (Fla. 5th DCA), *approved*, 260 So.3d 219 (Fla. 2018).

⁶ “May” can be held to mean “shall” where the thing to be done is for the sake of justice or for the public benefit. Holtsclaw v. Holtsclaw, 496 S.E.2d 262 (Ga. 1998).

The word "shall" is generally mandatory. In other words, something *must* be done. However, as noted above, there are a handful of cases in which the word "shall" is interpreted to be directory, as opposed to mandatory. In other words, something *may* be done.⁷

The term "shall" is interpreted to be directory, as opposed to mandatory, or like the term "may," usually: (i) when it applies to an immaterial matter in which compliance is a matter of convenience rather than substance; or (ii) where the directions of a statute are given with a "view to the proper, orderly and prompt conduct of business merely, the provision may generally be regarded as directory".⁸ Additionally, when a legislative body uses the word "shall" to prescribe an action in a field of operation where it has no authority to act, it is permissive or directory.⁹

When the word "shall" deals with deprivation of a right, it is interpreted in its normal, mandatory use.¹⁰

Factors that indicate whether a statute is mandatory include: (1) the presence of negative words requiring that an act shall be done in no other manner or at no other time than that designated; or (2) a provision for a penalty or other consequence of non-compliance.¹¹

However, the key factor to consider is context of usage in an effort to ascertain the legislative intent of a provision.¹²

When examining Sections 7.4 and 7.4.1 the word "shall", not may is used. It is presumed that the body drafting these charter provisions understood the general usage of the words that they used.¹³ Thus, in deviating from the mandatory "shall" command of the charter, once the attorney review panel completes its review, the County is to place the proposal

⁷ See generally 48A Fla.Jur.2d *Statutes*, §137 (2022).

⁸ Reid v. Southern Development Co., 42 So. 206 (Fla. 1906); In re King, 463 B.R. 555, 556 (Bankr. S.D. 2011)(applying Florida law); City of St. Petersburg v. Remia, 41 So.3d 322 (Fla. 2d DCA 2010); see also Barber v. State, 207 So.3d 479 (Fla. 5th DCA 2016).

⁹ Walker v. Bentley, 660 So.2d 313 (Fla. 2d DCA 1995).

¹⁰ *Id.*

¹¹ Dees v. Marion-Florence Unified School Dist. No. 408.149 P.3d 1 (Kan.App. 2006).

¹² Shands Teaching Hospital and Clinics, Inc. v. Sidky, 936 So. 715 (Fla. 4th DCA 2006); 1A Sutherland Statutory Construction §25:4 n.11 (2021); see also 48A Fla.Jur.2d *Statutes*, §137 n.6 (2022)..

¹³ Stroemel v. Columba County, 930 So.2d 742 (Fla. 1st DCA 2006).

on the ballot. There is no language about the County Commission re-constructing the language or the proposal in the charter.¹⁴

Further, I am unable to conclude that these charter provisions deal with an immaterial matter or relate to some procedure which permits the County Commission to re-write the proposal. The language in Section 7.4.1 seems clear that “[i]f at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission **shall** place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose.”

Nevertheless, it is true that the wording of the Charter could always be clearer. For example, it could prohibit the County Commission from re-writing a proposal.

PRG/mb

Shall or May1.Mem

¹⁴ The only exception to this rule is one that has been judicially imposed in a circuit court decision which provides that if the proposal is counter to general law or the Florida Constitution, the County Commission may refuse to place the proposal on the ballot. Home Rule Charter Committee v. Brevard County, Case No. 05-2000-CA-12365-XXXX-XX, slip op. at 5, ¶¶G. (Fla. 18th Cir.Ct. Nov. 9, 2000); recorded in Official Records Book 4247, Page 1579, Public Records of Brevard County, Fla. The opinion dealt with a citizens’ petition to place a charter amendment on the ballot.



MEMORANDUM

TO: Chairman and Members of the Charter Review Commission (“CRC”)

FROM: Paul Gougelman, Charter Commission General Counsel
and John Quick, Asst. General Counsel

SUBJECT: Who May Contest A Finding of the 3-Member Attorney Panel

DATE: April 12, 2022

BACKGROUND/ISSUE: CRC Chairman Mike Haridopolos asked who has the ability to challenge a determination by Brevard County’s 3-Member independent review attorney panel for proposed charter amendments.

SHORT ANSWER: The individuals who may contest a determination of the 3-member review panel include the County Commission, the CRC, a resident or property owner who has a “special injury”, and possibly, the individual citizen who has proposed the amendment.

ANALYSIS: The first issue is with Section 7.4.1. of the Charter, which provides for review of CRC proposed charter amendments by an independent 3-attorney review panel. Section 7.4.1 provides:

Sec. 7.4.1. - Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.

2. If at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment



on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.

The problem is that the Charter does not provide what happens if the attorney review panel finds that a proposed amendment is inconsistent with the Florida Constitution, general law or the Charter. A second issue is that no methodology is provided to question the attorney review panel's decision.

That having been said, the Brevard County Charter sets up a mechanism by which the County Commission shall empanel a Charter Review Committee every six years in order to analyze and proposed potential charter amendments for consideration by electorate at large. Specifically, section 7.4 states that:

Not later than July 1 of the year 1997 and of every sixth year thereafter, the Board of County Commissioners shall appoint a Charter Review Commission to review the Charter of the County. Each Charter Review Commission shall consist of fifteen (15) persons, with not less than two (2) members residing in each Commission district. The Commission shall otherwise be appointed in the manner provided by law for the appointment of charter commissions in counties without charters. The Commission shall be funded by the Board of County Commissioners and shall be known as the "Brevard County Charter Review Commission." It shall, within one (1) year from the date of its first meeting, present to the Board of County Commissioners its recommendations for amendment of the Charter or its recommendation that no amendment is appropriate. If amendment is to be recommended, the Charter Commission shall conduct three (3) public hearings, at intervals of not less than ten (10) days, immediately prior to the transmittal of its recommendations to the Board of County Commissioners. The Board of County Commissioners shall schedule a referendum on the proposed charter amendments concurrent with the next general election. The Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising education and information on the proposed amendments.

Section 7.4.1 provides for review of the proposed amendment by an independent 3-member panel of attorneys which acts as a sort of gatekeeper procedure for a

determination as to the legality of any proposed amendment by the Charter Review Commission prior to its placement on the ballot.

With regard to who may challenge a determination by the independent review panel, pursuant to Florida law, not everyone has standing to bring suit to enforce charter provisions. Generally speaking, “[a] plaintiff must demonstrate the existence of an actual controversy between the plaintiff and the defendant in which plaintiff has a sufficient stake or cognizable interest which would be affected by the outcome of the litigation in order to satisfy the requirements of standing.” Liebman v. City of Miami, 279 So. 3d 747, 751 (Fla. 3d DCA 2019) (citations omitted).

More specifically, when the subject of the challenge is a governmental action, “the Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers.” *Id.* at 751-52 (citations omitted); see *also* Herbits v. City of Miami, 207 So. 3d 274, 281 (Fla. 3d DCA 2016) (same) (citing School Bd. of Volusia Cty. v. Clayton, 691 So. 2d 1066, 1068 (Fla. 1997)).

This standard is neither new nor limited to Florida. See, e.g., Yett v. Cook, 281 S.W. 837, 840 (Tex. 1926) (holding that a person lacks standing to bring a suit based merely upon him/her being a citizen and taxpayer). Accordingly, absent a “special injury” from an adverse determination by the independent review panel, standing will not lie to support a suit.

There appears to be four categories of people/entities which might look to challenge an adverse determination the independent review panel: (1) the County Commission; (2) the Charter Review Commission; (3) someone who proposed the amendment to the Charter Review Commission; and (4) a resident/property owner of Brevard County.

First, it would appear that the County Commission should have standing to pursue a claim against a ruling, since it has the duty under the Charter to schedule a referendum on potential charter amendments. As noted above, it is not clear from the Charter whether an adverse determination by the independent review panel would, in fact, bar the proposed amendment from being placed on the ballot.

Curiously, section 7.4.1 says nothing about what happens if the panel finds a proposed amendment to be inconsistent with other law. It addresses only what happens if a majority finds it is consistent, in which case the County Commission “shall” place it on the ballot. It does not necessarily follow that a finding of inconsistency requires the opposite (*i.e.*, that the proposed amendment *not* be placed on the ballot). Accordingly, this provision might

still mean that the County Commission at that point has the *option* not to submit it to the voters, but may still choose to do so.

Second, the Charter Review Commission should have standing to support such a suit. However, it should be noted that they would have to be funded by the County Commission to do so, and have some independent source of authority to engage in a suit. The Charter provides that once the CRC forwards its recommendation to the County, it remains a duly constituted board only “until the general election for purposes of conducting and supervising education and information on the proposed amendments.” No authority in the Charter provides for the CRC to remain constituted for filing lawsuits.¹

Third, it appears a much closer call whether someone who proposed the potentially violative charter amendment for consideration by the Charter Review Commission would have standing. There is no real guidance under the case law that we have been able to find. On the one hand, one can make a good faith argument that the proposing person/entity has a “special injury,” since the potential amendment they proposed has been rejected by the independent review panel. Alternatively, one can also see a viable argument that while such a person may have made a proposal, at the end of the day only the Charter Review Commission has the authority to actually move it forward under the current process. As a result, the proposer here would arguably be nothing more than an interested citizen or taxpayer. Under those circumstances, the proposer would not have standing necessary to support a suit. This could be a close call, but it seems more likely to me that a court would find the proposer to lack standing.

Fourth, under prevailing law, a mere taxpayer or citizen would not have standing to bring suit should the independent review panel reject a proposed amendment. Such a person would not have the necessary “special injury” required under the case law, and it is unlikely that any exceptions would apply (*i.e.*, a claim of violation of taxing and spending powers under the Constitution, or where legislation provides a cause of action and standing). In short, a taxpayer would have to demonstrate a “special injury” which usually

¹ The retainer agreement between our firm and the County (entered into on behalf of the Charter Review Commission) was approved by the County Commission. In section 5 of the retainer agreement, the County states that for “all Client [Charter Review Commission] litigation approved by a majority vote of the members of the Client [Charter Review Commission], the County shall compensate the Law Firm [Weiss Serota] at the rate of \$250.00 per hour.” See Retainer agreement dated October 25, 2021, at p. 2, §5. Accordingly, it is implied in the retainer agreement that the Charter Review Commission has the authority to bring suit on its own behalf. As a result, it appears they would have both the authority and standing to challenge an adverse amendment decision since the Charter Review Commission is tasked with creating and proposing charter amendments for consideration by the electorate.

Chairman and Members of the
Charter Review Commission
April 12, 2022
Page 5 of 5

means an injury different from the community as a whole or of significant difference in degree.

PRG/mb
Who can appeal1.mem



MEMORANDUM

TO: Chairman and Members of the Charter Review Commission (“CRC”)

FROM: Paul Gougelman, Charter Commission General Counsel

SUBJECT: Control of School Board Agenda Items

DATE: April 12, 2022

BACKGROUND/ISSUE: CRC Member David Neuman has asked whether the Charter could include provisions asked if the County has control over school board matters. For example, he asks whether the Charter include a proposal regulating non-agenda vs. agenda items requiring that they be in the same fashion at school board meetings.

SHORT ANSWER:

ANALYSIS: The Florida Constitution provides two very separate articles for governance of counties/ municipalities¹ and schools.² One article provides the general authority and powers of counties and municipalities. The other separate article provides the general authority and powers of counties and municipalities.

This constitutional separation of powers was explained at length by the Florida Attorney General in AGO 71-109. The Attorney General noted:

This dichotomy between county government and the operation and control of the state's free public school system in each county has now been formalized in the 1968 Constitution. Under §4 of Art. IX, State Const., the unit for the control, organization and administration of the school system is the "school district," which may consist of one or more counties. The members of the governing body of a school district have now become constitutional elective district officers, as have the superintendents of schools. See §§4 and 5, Art. IX, *ibid*. The implementing statute, Ch. 230, F. S.,^[3] has been amended to show the true status of these officers as district rather than county officers.

¹ Art. VIII, Fla. Const. of 1968.

² Art. IX, Fla. Const. of 1968.

³ Now Section 1001.31, *et seq.*, Fla.Stat.

In the light of this historical background, it seems clear that the "home rule" powers delegated to a county by Art. VIII of the 1968 State Const., as implemented by §125.65, F. S., 1969, would not include any power or authority with respect to the free public school system in this state. It is an indispensable element of all "home rule" constitutional provisions that the power to legislate locally shall be confined to local affairs. See 37 Am. Jur., Municipal Corporations, §106, p. 715. A "home rule" constitutional provision effects a redistribution of existing governmental powers but does not enlarge the functions of government. *Ibid.*, §105, p. 714. As noted above, the operation of the free public school system has never been a function of county government in this state; and it is now expressly dissociated from county government by the provisions of the 1968 Constitution referred to above.

Nor has the operation of the state's free public school system ever been considered a "local affair." Both the 1885 and 1968 Constitutions contemplate a "uniform system of free public schools" in this state. Section 1, Art. XII, State Const., 1885, and §1, Art. IX, State Const., 1968. Under the 1885 Constitution, the school property and the county school fund were said to be a "sacred constitutional trust" to be used for the establishment of a system of public free schools "upon principles that are of uniform operation throughout the State. . . ." *Blake v. City of Tampa, Fla.* 1934, 156 So. 97; 100. This decision is equally applicable under the 1968 State Constitution. See also *State ex rel. Moodie v. Bryan, Fla.* 1906, 39 So. 929, in which the provisions of former §25 of Art. III, State Const., 1885, authorizing special legislation as to "public schools" in this state, were said to refer only to institutions of higher learning and not to the system of free public schools in this state.

In these circumstances it is abundantly clear that a county government has nothing whatsoever to do with the administration of the free public school system in this' state, as provided for by Art. IX of the 1968 State Constitution, Ch. 230, F. S.,^[4] and other applicable provisions of law. Not being a function of county government, the delegation or "redistribution" of sovereign powers made by §1, Art. VIII, State Canst., 1968, was not intended to and did not confer upon the counties any "home rule" powers in this respect. It necessarily follows that a home rule charter' may not validly deal with this subject.

⁴ See Note 3, *supra*.

Because of this separation of authority and powers, the Attorney General ruled that county charters could not be amended to regulate the school board. This opinion remains in full force and effect.

Pursuant to Section 1001.33, Florida Statutes, all public schools conducted within the district shall be under the direction and control of the district school board.⁵ Pursuant to Section 1001.41, Florida Statutes,⁶ the School Board has, among other powers, the statutory power to set policies consistent with Florida law for the operation of the school system and to adopt rules implementing those powers.

Section 1001.42, Florida Statutes, provides a more complete list of powers and duties of the School Board, including control of finance, personnel, control of visitation at schools, requiring minutes to be kept and including what must be included in the Board minutes, control of school property, adoption of a school program, establishment, organization, and operation of schools, setting certain ethical standards, providing for the courses to be studied and instructional materials, providing for the health and welfare of students, providing for student transportation, providing for preparing plans and implementing them for locating, planning, constructing, sanitizing, insuring, maintaining, protecting, and condemning school property, retaining an internal auditor, and providing minimum requirements for records and reports.

In addition, the School Board has the power to adopt policies and procedures for daily business operation of the school board. §1001.43(10), Fla.Stat.⁷

⁵ **1001.33 Schools under control of district school board and district school superintendent.**—Except as otherwise provided by law, all public schools conducted within the district shall be under the direction and control of the district school board with the district school superintendent as executive officer.

⁶ **1001.41 General powers of district school board.**—The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

- (1) Determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.
- (2) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it to supplement those prescribed by the State Board of Education and the Commissioner of Education.

⁷ **1001.43 Supplemental powers and duties of district school board.**—The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

* * *

Given the recognition of the constitutional separation of authority and powers recognized by the Florida Attorney General and the specific and wide ranging powers delegated by the Legislature to school boards, I am unable to conclude that the County could exercise control over school board matters, including a proposal regulating non-agenda vs. agenda items requiring that they be in the same fashion at school board meetings.

PRG/mb

(10) DISTRICT SCHOOL BOARD GOVERNANCE AND OPERATIONS.—The district school board may adopt policies and procedures necessary for the daily business operation of the district school board, including, but not limited to, the provision of legal services for the district school board; conducting a district legislative program; district school board member participation at conferences, conventions, and workshops, including member compensation and reimbursement for expenses; district school board policy development, adoption, and repeal; district school board meeting procedures, including participation via telecommunications networks, use of technology at meetings, and presentations by nondistrict personnel; citizen communications with the district school board and with individual district school board members; collaboration with local government and other entities as required by law; and organization of the district school board, including special committees and advisory committees. Members of special committees and advisory committees may attend meetings in person or through the use of telecommunications networks such as telephonic and video conferencing.

Meeting Date
02/03/2022



AGENDA	
Section	
Item No.	Proposal #1

2021-2022

Charter Review Commission Agenda Report

SUBJECT: AMEND THE HOME RULE CHARTER OF BREVARD COUNTY TO MAKE IT EVEN MORE CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE BASELINE AMOUNT OF TAXATION IN THE FOLLOWING YEARS.

Petitioner:

Blaise Trettis

Requested Action:

Blaise Trettis, member of the 2021-22 Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1 (c) and section 2.9.3.1 (d) of the Brevard County Charter.

Summary Explanation & Background:

Add to Section 2.9.3.1 (c) and 2.9.3.1 (d) Limitations on growth in ad valorem tax revenues.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).

In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

Exhibits Attached: **See Attached Proposal**

Staff Contact: Melissa Brandt
Phone Number : 321-301-4438

Email:
melissa.brandt@brevardfl.gov

Department: Charter Review Commission

PROPOSAL TO AMEND BREVARD COUNTY CHARTER TO MAKE IT EVEN MORE CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE BASELINE AMOUNT OF TAXATION IN FOLLOWING YEARS.

Blaise Trettis, member of the 2021-22 Brevard County Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1.(c) and section 2.9.3.1.(d) of the Brevard County Charter:

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).

- (d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

1. ACTION OF BOARD OF COUNTY COMMISSIONERS NECESSITATING PROPOSAL

On July 23, 2019, a supermajority of the Board of County Commissioners (Board) approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter, commonly known as the Charter cap.

In the county's following fiscal year 2020-21, the Board of County Commissioners took the position that the excess ad valorem revenue of 2019-20 established the baseline for purposes of calculating the following year's budget, thereby causing the supermajority critical need/emergency finding of 2019-20 and its excess taxation in excess of the Charter cap to remain in place in perpetuity.

In December 2019, then Clerk of Court Scott Ellis sued the Board of County Commissioners seeking a court order which would prohibit the Board from using the 2019-20 critical need ad valorem tax revenue as the baseline revenue for fiscal year 2020-21. See Brevard County Circuit Court case number 05-2019-CA-058736-XXXX-XX.

The Circuit Court did not decide the merits of the case. The Circuit Court dismissed the lawsuit, ruling that Clerk of Court Scott Ellis did not have legal standing to sue the Board. Because of the dismissal on procedural grounds, the merits of the lawsuit was not decided.

2. ORIGIN OF THE LANGUAGE OF PROPOSAL

Though the lawsuit by former Clerk of Court Ellis was eventually dismissed, the Board of County Commissioners, through the County Attorney, argued the merits of the lawsuit in the Circuit Court. The Board argued that the Brevard County Charter does not prohibit the Board from using ad valorem tax revenue which exceeds the Charter cap as the baseline ad valorem revenue for the next fiscal year. The Board argued that for former Clerk of Court Ellis to prevail in the lawsuit, the wording of the Brevard County Charter would need to be amended by Charter amendment to add language to sections 2.9.3.1.(c) and 2.9.3.1.(d). In the lawsuit, the Board advised the Court of the language which the Board argued would be needed to be added to sections 2.9.3.1.(c) and 2.9.3.1.(d) to make it perfectly clear that the ad valorem tax revenue which exceeds the Charter cap amount cannot be used as the baseline ad valorem tax revenue amount for the following year. The Board argued as follows that this language would need to be added to the Charter:

“Lastly, as will be discussed *infra*, the Plaintiff has failed to plead any imminent and probable conduct warranting an injunction, as the Plaintiff has an alternative adequate remedy at law, namely a charter amendment . . . Thus, the Brevard County Charter is clear and precise as to what items shall be excluded from the anticipated revenue changes. Moreover, Section 2.9.3.1(d) of the Brevard County Charter contains no language stating that ad valorem tax revenues for the previous year must be reduced by any increase in revenues received over the Charter Cap as proposed by the

Plaintiff. More importantly, the Brevard County Charter does not state in the event the Charter Cap is exceeded under 2.9.3.1(c), the next year's calculation of the allowable increase shall use the revenues received in the prior year when there was no exceedance of the Charter Cap.”

See Board's Motion to Dismiss Plaintiff's Complaint filed February 19, 2020 at pgs. 5, 11.

The proposed amendment by Blaise Trettis to the Brevard County Charter seeks amendment of the Brevard County Charter as suggested by the Board using the language suggested by the Board of County Commissioners.

3. REASON FOR PROPOSAL

On November 4, 2008, the Brevard County Charter was amended by a vote of the people to impose limitation on the annual growth in ad valorem tax revenue. As amended, the Charter caps annual ad valorem tax increase at the lesser of three percent or the percentage change in the Consumer Price Index unless a supermajority of the Board of County Commissioners makes a finding – valid for a single budget year – that an emergency or critical need necessitates exceeding this limitation. In making this 2008 amendment to the Charter, the people of Brevard County intended that the critical need/emergency tax revenue which exceeds the Charter cap is to last for only one budget year and not become the baseline ad valorem tax revenue for following years. The language of the 2008 amended Charter reflects this intent in the following italicized language in section 2.9.3.1(c):

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. *The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.*

The excess tax revenue imposed by a supermajority of the Board is dependent on the finding of facts of the Board of critical need or emergency which necessitates the excess taxation. By the language of section (c), when the finding of facts of the Board expires at the end of a single budget year, the Board's authority under section (c) to exceed the Charter cap ad valorem revenue expires in the absence of another finding of fact by the Board of critical need or emergency.

On July 23, 2019, a supermajority of the Board of County Commissioners approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter.

Despite the intent of the 2008 Charter cap amendment to limit the excess critical need/emergency taxation to one budget year, in fiscal years 2020-21 and 2021-22, the Board disregarded the intent of the 2008 amendment to the Charter by making the 2019-20 excess critical need/emergency tax revenue the baseline ad valorem tax revenue.

The Board of County Commissioners, in its litigation against former Clerk of Court Scott Ellis, has argued that the Charter must be amended to make it clear that critical need/emergency excess ad valorem tax revenue lasts for only one budget year in the absence of another supermajority vote of the Board to impose ad valorem taxes which exceed the Charter cap. The Board, in the litigation, has stated what language should be added to the Charter to make the Charter perfectly clear that the excess critical need/emergency taxation can only last one budget year. The above proposal by Blaise Trettis to amend sections 2.9.3.1.(c) and 2.9.3.1.(d) accepts the Board's suggestion to amend the Charter and uses the language suggested by the Board to do so.

SERVICE OF PROPOSAL

This proposal was sent by e-mail on January 3, 2022, to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER: Proposal 2-Amended 03-31-2022

SUBJECT:

SECOND PROPOSAL TO AMEND BREVARD COUNTY CHARTER
TO ADD RECALL ELECTION OF SCHOOL BOARD MEMBERS

PETITIONER CONTACT:

Blaise Trettis (proponent), member of the 2021-2022 Charter Review Commission

REQUESTED ACTION:

RECALL ELECTION OF SCHOOL BOARD MEMBERS

SUMMARY EXPLANATION & BACKGROUND:

See Proposal Attached

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov

SECOND PROPOSAL TO AMEND BREVARD COUNTY CHARTER
TO ADD RECALL ELECTION OF SCHOOL BOARD MEMBERS

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes that the following RECALL ELECTION OF SCHOOL BOARD MEMBERS be added to the Brevard County Charter:

RECALL ELECTION OF SCHOOL BOARD MEMBERS

(1) APPLICATION; DEFINITION.— Any member of the school board may be removed from office by the electors of the school board district by recall election as provided herein. Where used in this section, the term “district” shall be construed to mean:

A) the district school board member residence area if the electors of Brevard County have voted for single-member school board representation within the residence area of the district in an election held in accordance with section 1001.362 (3)-(10) Florida Statutes (2021) or subsequently re-numbered statute; or

B) the district school board member residence area if the Brevard County Home Rule Charter provides that school board members shall be elected on a single-member representation basis in which school board members shall be elected only by the qualified electors who reside in the same school board residential area as the school board candidate;

C) the entirety of Brevard County as provided in section 1001.30 Florida Statutes (2021) and any subsequently re-numbered statute if election of school board members is by vote of the qualified electors of the entire district in a districtwide vote, which is a countywide vote, as provided in section 1001.361 Florida Statutes (2021) and any subsequently re-numbered statute.

(2) RECALL PETITION.—

(a) *Petition content.*—A petition shall contain the name of the school board member sought to be recalled and a statement of grounds for recall. The stated grounds for recall from office are limited solely to those specified in paragraph (d). If malfeasance is the stated ground for recall, then the statement of grounds may not exceed 200 words. If a vote or votes of the school board member sought to be recalled at a school board meeting or meetings is the stated ground for recall, then there is no numerical word limit to the statement of grounds. If more than one member of the school board is sought to be recalled, a separate recall petition shall be prepared for each member sought to be recalled.

(b) *Requisite signatures.*— The petition shall be signed by at least 5 percent of the total number of registered electors of the district as of the preceding general election. All

signatures shall be obtained as provided in paragraph (e) within a period of 30 days and all signed and dated petition forms shall be filed at the same time no later than 30 days after the date on which the first signature is obtained on the petition.

(c) *Recall committee.*—Electors of the district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee and this person shall act for the committee. The recall committee and the school board member sought to be recalled are subject to the provisions of chapter 106.

(d) *Grounds for recall.*—The grounds for removal of a school board member shall , be limited to the following and must be contained in the petition:

1. Malfeasance;

2. Not more than 3 votes by the school board member on a motion or motions made at a school board meeting or meetings whether the meeting or meetings were a regularly scheduled meeting, special meeting, an emergency meeting or any other designation of school board meeting. In the petition, the words of the motion or motions made at the school board meeting or meetings shall be stated word-for-word as is reasonably determinable. The petition shall not contain the preamble to the motion or motions if any preamble preceded the motion or motions. The petition shall state the school board member’s vote or votes on the motion or motions was yes or no.

(e) *Signature process.*—Only electors of the district are eligible to sign the petition. Each elector signing a petition shall sign and date his or her name in ink or indelible pencil. Each petition shall contain appropriate lines for each elector’s original signature, printed name, street address, city, county, voter registration number or date of birth, and date signed. The form shall also contain lines for an oath, to be executed by a witness who is to verify the fact that the witness saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

(f) *Filing of signed petitions.*—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the Brevard County Clerk of Court, hereinafter referred to as “clerk.” The petition may not be amended after it is filed with the clerk.

(g) *Verification of signatures.*—

1. Immediately after the filing of the petition forms, the clerk shall submit such forms to the county supervisor of elections. No more than 30 days after the date on which all

petition forms are submitted to the supervisor by the clerk, the supervisor shall promptly verify the signatures in accordance with section 99.097 Florida statutes, and determine whether the requisite number of valid signatures has been obtained for the petition. The committee seeking verification of the signatures shall pay in advance to the supervisor of elections the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less.

2. Upon filing with the clerk, the petition and all subsequent papers or forms required or permitted to be filed with the clerk in connection with this section must, upon request, be made available in alternative formats by the clerk.

3. If the supervisor of elections determines that the petition does not contain the requisite number of verified and valid signatures, the clerk shall, upon receipt of such written determination, so certify to the Brevard County Board of County Commissioners and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4. If the supervisor of elections determines that the petition has the requisite number of verified and valid signatures, then the procedures outlined in subsection (3) must be followed.

(3) RECALL PETITION AND DEFENSE.—

(a) *Notice.*—Upon receipt of a written determination that the requisite number of signatures has been obtained, the clerk shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the clerk a defensive statement of not more than 200 words.

(b) *Content and preparation.*—Within 5 days after the date of receipt of the defensive statement or after the last date a defensive statement could have been filed, the clerk shall prepare a document entitled Recall Petition and Defense. The Recall Petition and Defense shall consist of the recall petition, including copies of the originally signed petitions and counterparts. The Recall Petition and Defense must contain lines which conform to the provisions of paragraph (2)(e), and the defensive statement or, if no defensive statement has been filed, a statement to that effect. The clerk shall make copies of the Recall Petition and Defense which are sufficient to carry the signatures of 30 percent of the registered electors of the district. Immediately after preparing and making sufficient copies of the Recall Petition and Defense, the clerk shall deliver the copies to the person designated as chair of the committee and take his or her receipt therefor.

(c) *Requisite signatures.*—Upon receipt of the Recall Petition and Defense, the committee may circulate them to obtain the signatures of 15 percent of the electors of the

district. All signatures shall be obtained and all signed petition forms filed with the clerk no later than 60 days after delivery of the Recall Petition and Defense to the chair of the committee.

(d) *Signed petitions; request for striking name.*—The clerk shall assemble all signed petitions, check to see that each petition is properly verified by the oath of a witness, and submit such petitions to the county supervisor of elections. Any elector who signs a recall petition has the right to demand in writing that his or her name be stricken from the petition. A written demand signed by the elector shall be filed with the clerk, and, upon receipt of the demand, the clerk shall strike the name of the elector from the petition and place his or her initials to the side of the signature stricken. However, a signature may not be stricken after the clerk has delivered the Recall Petition and Defense to the supervisor of elections for verification of the signatures.

(e) *Verification of signatures.*—Within 30 days after receipt of the signed Recall Petition and Defense, the supervisor of elections shall determine the number of valid signatures, purge the names withdrawn, and certify whether 15 percent of the qualified electors of the district have signed the petitions. The supervisor of elections shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(f) *Reporting.*—If the supervisor of elections determines that the requisite number of signatures has not been obtained, the clerk shall, upon receipt of such written determination, certify such determination to the Brevard County Board of County Commissioners and retain the petitions. The proceedings shall be terminated, and the petitions shall not again be used. If the supervisor of elections determines that at least 15 percent of the qualified electors of the district signed the petition, the clerk shall, immediately upon receipt of such written determination, serve notice of that determination upon the person sought to be recalled and deliver to the Brevard County Board of County Commissioners a certificate as to the percentage of qualified electors of the district who signed.

(4) **RECALL ELECTION.**— The chief judge of the judicial circuit in which the district is located shall fix a day for holding a recall election for the removal of the school board member or school board members. Any such election shall be held not less than 30 days or more than 60 days after the clerk delivers to the Brevard County Board of County Commissioners the certificate as to the percentage of qualified electors of the district who signed the Recall Petition and Defense and at the same time as any other primary, general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(5) BALLOTS.—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: “Shall _____ be removed from the office of school board for Brevard County by recall?” Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

“ (name of person) should be removed from office.”

“ (name of person) should not be removed from office.”

(6) FILLING OF VACANCIES; SPECIAL ELECTIONS.—

(a) When a school board member is removed from office by recall election, the school board member’s term of office expires when the Brevard County Canvassing Board certifies the recall election results. When a school board member is removed from office by recall election, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for purposes of this section shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled school board member shall reside in the school board residence area represented by the recalled school board member and qualify for office in the manner required by law.

(7) If Article IX, section 4 of the Florida Constitution provides that school board members are elected in a nonpartisan election, then each school board candidate receiving the highest number of votes for each office in the special recall election shall be declared elected to fill the unexpired term of the recalled school board member. The school board candidate elected to office in the special recall election shall begin his or her term of office seven days after the Brevard County Canvassing Board certifies the recall election results. The term of office of the school board member elected in a special recall election expires on the same date as that of the school board member who was recalled from office by recall election.

(8) Candidates seeking election to fill a vacancy created by the removal of a school board member shall be subject to the provisions of chapter 106 Florida statutes.

(9) When a school board member is removed from office by recall election and Article IX, section 4 of the Florida Constitution provides that school board members are elected in a partisan election, candidates to succeed them for the unexpired terms shall be voted upon in a primary election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for the primary election shall be established by the chief judge of the

judicial circuit after consultation with the clerk. The general election following the primary election shall be conducted 4 weeks to the day after the primary election. Any candidate seeking election to fill the unexpired term of a recalled school board member shall reside in the single-member school board residence area represented by the recalled school board member and qualify for office in the manner prescribed by law. The school board candidate elected to office in the special recall election shall begin his or her term of office seven days after the Brevard County Canvassing Board certifies the recall election results. The term of office of the school board member elected in a special recall election expires on the same date as that of the school board member who was recalled from office by recall election.

(10) If Article IX, section 4 of the Florida Constitution provides that school board members are elected by partisan election, then the procedure of this subsection for partisan primary election and partisan general election of school board members to fill vacancies caused by the recall election and removal of school board members may only be done starting in 2024 with the primary election held for such school board candidates on or after the date of the presidential primary election in 2024.

(11) RETENTION OF PETITION.—The clerk shall preserve in his or her office all papers comprising or connected with a petition for recall for a period of 4 years after they were filed.

(12) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the district. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition.

1. REASON FOR PROPOSAL

Florida statutes do not provide for the recall election of school board members. Twenty-two states allow for the recall of school board members, but Florida does not. <https://news.ballotpedia.org/2021/08/04/22-states-allow-for-the-recall-of-school-board-members/>. However, since 1974 Florida statute section 100.361 has prescribed the procedure to be followed for the recall election of city council members, city mayor and county commissioners.

The above proposal to add recall election of school board members to the Brevard County Charter substantially tracks the language of section 100.361 Florida statutes. Proponent submits that the citizens of Brevard County should have the ability to recall and remove school board members from office. The need for procedure for recall of school board members became painfully clear in August 2021 when three Brevard County school board members voted to require every pre-K-12 student, employee, visitor, vendor, or other person to wear a face mask at all times while indoors on school property. This mandatory face mask policy of the Brevard

County School Board was done in defiance of Governor Ron DeSantis' executive order which prohibited this face mask policy.

Another reason for this proposal is the transgender policy of the Brevard County School Board which applies to school children in kindergarten through twelfth grade and which: 1) permits boys to dress as girls; 2) requires school employees, teachers, to call children, who say that they are transgender, pronouns and names that the child tells the teachers to call him or her. For example, a 9 year old girl by the name of Rebecca can order her teachers to refer to her as Johnathan and order her teachers to refer to her with pronoun he, him, his; 3) requires schools to make student identification badges which have the false name of the child; 4) requires schools to allow boys to use girls' restrooms, use the girls' locker rooms and girls' shower; 5) requires schools to allow girls to use boys' restrooms, use the boys' locker room and boys' shower; 6) requires teachers, school counselors, to not inform the child's parents or guardian that the student, while at school, is expressing interest in "transitioning" to the opposite sex and/or that the child dresses as the opposite sex, is called by a false name by teachers, and is trying to assume the identity, mannerisms, traits, of a child of the opposite sex. This part of the Brevard County School Board transgender policy violates the Parental Rights in Education law passed by the Florida Legislature in the 2022 legislative session and signed into law by Governor Ron DeSantis on March 28, 2022; 7) provides website information to children to "help" them to decide to "transition" to the opposite sex.

SERVICE OF PROPOSAL This proposal was sent by e-mail on March 31, 2022 to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.

Compare Results

Old File:

Agenda Item F-2- Recall School Board Member.pdf

6 pages (768 KB)
4/4/2022 1:54:52 PM

versus

New File:

second recall election of school board members proposal.pdf

7 pages (208 KB)
4/4/2022 1:55:21 PM

Total Changes

34

Text only comparison

Content

19 Replacements
10 Insertions
5 Deletions

Styling and Annotations

0 Styling
0 Annotations

[Go to First Change \(page 1\)](#)

SECOND PROPOSAL TO AMEND BREVARD COUNTY CHARTER
TO ADD RECALL ELECTION OF SCHOOL BOARD MEMBERS

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes that the following **RECALL ELECTION OF SCHOOL BOARD MEMBERS** be added to the Brevard County Charter:

RECALL ELECTION OF SCHOOL BOARD MEMBERS

(1) APPLICATION; DEFINITION.— Any member of the school board may be removed from office by the electors of the school board district by recall election as provided herein. Where used in this section, the term “district” shall be construed to mean:

A) the district school board member residence area if the electors of Brevard County have voted for single-member school board representation within the residence area of the district in an election held in accordance with section 1001.362 (3)-(10) Florida Statutes (2021) or subsequently re-numbered statute; or

B) the district school board member residence area if the Brevard County Home Rule Charter provides that school board members shall be elected on a single-member representation basis in which school board members shall be elected only by the qualified electors who reside in the same school board residential area as the school board candidate;

C) the entirety of Brevard County as provided in section 1001.30 Florida Statutes (2021) and any subsequently re-numbered statute if election of school board members is by vote of the qualified electors of the entire district in a districtwide vote, which is a countywide vote, as provided in section 1001.361 Florida Statutes (2021) and any subsequently re-numbered statute.

(2) RECALL PETITION.—

(a) *Petition content.*—A petition shall contain the name of the school board member sought to be recalled and a statement of grounds for recall. The stated grounds for recall from office are limited solely to those specified in paragraph (d). If malfeasance is the stated ground for recall, then the statement of grounds may not exceed 200 words. If a vote or votes of the school board member sought to be recalled at a school board meeting or meetings is the stated ground for recall, then there is no numerical word limit to the statement of grounds. If more than one member of the school board is sought to be recalled, a separate recall petition shall be prepared for each member sought to be recalled.

(b) *Requisite signatures.*— The petition shall be signed by at least 5 percent of the total number of registered electors of the district as of the preceding general election. All

signatures shall be obtained as provided in paragraph (e) within a period of 30 days and all signed and dated petition forms shall be filed at the same time no later than 30 days after the date on which the first signature is obtained on the petition.

(c) *Recall committee.*—Electors of the district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee and this person shall act for the committee. The recall committee and the school board member sought to be recalled are subject to the provisions of chapter 106.

(d) *Grounds for recall.*—The grounds for removal of a school board member shall , be limited to the following and must be contained in the petition:

1. Malfeasance;

2. Not more than 3 votes by the school board member on a motion or motions made at a school board meeting or meetings whether the meeting or meetings were a regularly scheduled meeting, special meeting, an emergency meeting or any other designation of school board meeting. In the petition, the words of the motion or motions made at the school board meeting or meetings shall be stated word-for-word as is reasonably determinable. The petition shall not contain the preamble to the motion or motions if any preamble preceded the motion or motions. The petition shall state the school board member’s vote or votes on the motion or motions was yes or no.

(e) *Signature process.*—Only electors of the district are eligible to sign the petition. Each elector signing a petition shall sign and date his or her name in ink or indelible pencil. Each petition shall contain appropriate lines for each elector’s original signature, printed name, street address, city, county, voter registration number or date of birth, and date signed. The form shall also contain lines for an oath, to be executed by a witness who is to verify the fact that the witness saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

(f) *Filing of signed petitions.*—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the Brevard County Clerk of Court, hereinafter referred to as “clerk.” The petition may not be amended after it is filed with the clerk.

(g) *Verification of signatures.*—

1. Immediately after the filing of the petition forms, the clerk shall submit such forms to the county supervisor of elections. No more than 30 days after the date on which all

petition forms are submitted to the supervisor by the clerk, the supervisor shall promptly verify the signatures in accordance with section 99.097 Florida statutes, and determine whether the requisite number of valid signatures has been obtained for the petition. The committee seeking verification of the signatures shall pay in advance to the supervisor of elections the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less.

2. Upon filing with the clerk, the petition and all subsequent papers or forms required or permitted to be filed with the clerk in connection with this section must, upon request, be made available in alternative formats by the clerk.

3. If the supervisor of elections determines that the petition does not contain the requisite number of verified and valid signatures, the clerk shall, upon receipt of such written determination, so certify to the Brevard County Board of County Commissioners and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4. If the supervisor of elections determines that the petition has the requisite number of verified and valid signatures, then the procedures outlined in subsection (3) must be followed.

(3) RECALL PETITION AND DEFENSE.—

(a) *Notice.*—Upon receipt of a written determination that the requisite number of signatures has been obtained, the clerk shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the clerk a defensive statement of not more than 200 words.

(b) *Content and preparation.*—Within 5 days after the date of receipt of the defensive statement or after the last date a defensive statement could have been filed, the clerk shall prepare a document entitled Recall Petition and Defense. The Recall Petition and Defense shall consist of the recall petition, including copies of the originally signed petitions and counterparts. The Recall Petition and Defense must contain lines which conform to the provisions of paragraph (2)(e), and the defensive statement or, if no defensive statement has been filed, a statement to that effect. The clerk shall make copies of the Recall Petition and Defense which are sufficient to carry the signatures of 30 percent of the registered electors of the district. Immediately after preparing and making sufficient copies of the Recall Petition and Defense, the clerk shall deliver the copies to the person designated as chair of the committee and take his or her receipt therefor.

(c) *Requisite signatures.*—Upon receipt of the Recall Petition and Defense, the committee may circulate them to obtain the signatures of 15 percent of the electors of the

district. All signatures shall be obtained and all signed petition forms filed with the clerk no later than 60 days after delivery of the Recall Petition and Defense to the chair of the committee.

(d) *Signed petitions; request for striking name.*—The clerk shall assemble all signed petitions, check to see that each petition is properly verified by the oath of a witness, and submit such petitions to the county supervisor of elections. Any elector who signs a recall petition has the right to demand in writing that his or her name be stricken from the petition. A written demand signed by the elector shall be filed with the clerk, and, upon receipt of the demand, the clerk shall strike the name of the elector from the petition and place his or her initials to the side of the signature stricken. However, a signature may not be stricken after the clerk has delivered the Recall Petition and Defense to the supervisor of elections for verification of the signatures.

(e) *Verification of signatures.*—Within 30 days after receipt of the signed Recall Petition and Defense, the supervisor of elections shall determine the number of valid signatures, purge the names withdrawn, and certify whether 15 percent of the qualified electors of the district have signed the petitions. The supervisor of elections shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(f) *Reporting.*—If the supervisor of elections determines that the requisite number of signatures has not been obtained, the clerk shall, upon receipt of such written determination, certify such determination to the Brevard County Board of County Commissioners and retain the petitions. The proceedings shall be terminated, and the petitions shall not again be used. If the supervisor of elections determines that at least 15 percent of the qualified electors of the district signed the petition, the clerk shall, immediately upon receipt of such written determination, serve notice of that determination upon the person sought to be recalled and deliver to the Brevard County Board of County Commissioners a certificate as to the percentage of qualified electors of the district who signed.

(4) **RECALL ELECTION.**— The chief judge of the judicial circuit in which the district is located shall fix a day for holding a recall election for the removal of the school board member or school board members. Any such election shall be held not less than 30 days or more than 60 days after the clerk delivers to the Brevard County Board of County Commissioners the certificate as to the percentage of qualified electors of the district who signed the Recall Petition and Defense and at the same time as any other primary, general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(5) BALLOTS.—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: “Shall _____ be removed from the office of school board for Brevard County by recall?” Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

“ (name of person) should be removed from office.”

“ (name of person) should not be removed from office.”

(6) FILLING OF VACANCIES; SPECIAL ELECTIONS.—

(a) When a school board member is removed from office by recall election, the school board member’s term of office expires when the Brevard County Canvassing Board certifies the recall election results. When a school board member is removed from office by recall election, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for purposes of this section shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled school board member shall reside in the school board residence area represented by the recalled school board member and qualify for office in the manner required by law.

(7) If Article IX, section 4 of the Florida Constitution provides that school board members are elected in a nonpartisan election, then each school board candidate receiving the highest number of votes for each office in the special recall election shall be declared elected to fill the unexpired term of the recalled school board member. The school board candidate elected to office in the special recall election shall begin his or her term of office seven days after the Brevard County Canvassing Board certifies the recall election results. The term of office of the school board member elected in a special recall election expires on the same date as that of the school board member who was recalled from office by recall election.

(8) Candidates seeking election to fill a vacancy created by the removal of a school board member shall be subject to the provisions of chapter 106 Florida statutes.

(9) When a school board member is removed from office by recall election and Article IX, section 4 of the Florida Constitution provides that school board members are elected in a partisan election, candidates to succeed them for the unexpired terms shall be voted upon in a primary election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for the primary election shall be established by the chief judge of the

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1. REASON FOR PROPOSAL

Florida statutes do not provide for the recall election of school board members. Twenty-two states allow for the recall of school board members, but Florida does not. <https://news.ballotpedia.org/2021/08/04/22-states-allow-for-the-recall-of-school-board-members/>. However, since 1974 Florida statute section 100.361 has prescribed the procedure to be followed for the recall election of city council members, city mayor and county commissioners.

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County School Board was done in defiance of Governor Ron DeSantis' executive order which prohibited this face mask policy.

Another reason for this proposal is the transgender policy of the Brevard County School Board which applies to school children in kindergarten through twelfth grade and which: 1) permits boys to dress as girls; 2) requires school employees, teachers, to call children, who say that they are transgender, pronouns and names that the child tells the teachers to call him or her. For example, a 9 year old girl by the name of Rebecca can order her teachers to refer to her as Johnathan and order her teachers to refer to her with pronoun he, him, his; 3) requires schools to make student identification badges which have the false name of the child; 4) requires schools to allow boys to use girls' restrooms, use the girls' locker rooms and girls' shower; 5) requires schools to allow girls to use boys' restrooms, use the boys' locker room and boys' shower; 6) requires teachers, school counselors, to not inform the child's parents or guardian that the student, while at school, is expressing interest in "transitioning" to the opposite sex and/or that the child dresses as the opposite sex, is called by a false name by teachers, and is trying to assume the identity, mannerisms, traits, of a child of the opposite sex. This part of the Brevard County School Board transgender policy violates the Parental Rights in Education law passed by the Florida Legislature in the 2022 legislative session and signed into law by Governor Ron DeSantis on March 28, 2022; 7) provides website information to children to "help" them to decide to "transition" to the opposite sex.

SERVICE OF PROPOSAL This proposal was sent by e-mail on March 31, 2022 to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE: February 16, 2022

AGENDA ITEM NUMBER:

SUBJECT:

Proposed Charter Amendment Fulltime Commissioner

PETITIONER CONTACT:

Sandra Sullivan

165 Dorset Lane, FL 32937

REQUESTED ACTION:

Charter amendment proposed to have a prohibition on Commissioner having any other full-time employment while serving on the county commission

SUMMARY EXPLANATION & BACKGROUND:

Our County has grown in size and is growing rapidly and I make the assertion that can no longer be effectively be managed on a part-time basis.

Having attended County Commissioner meetings for over three years, I am concened with some poor decisions due to some commissioners who are not adequately informed due to lack of time in duties:

1. Do not attend the appointed boards to be knowledgeable of issues, i.e. TPO
2. Do not attend staff briefings
3. Not talking with constituents

I would suggest this apply to all newly elected Commissioners and the current commissioners can remain part-time as commissioners for their term.

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE: 2/17/22

AGENDA ITEM NUMBER:

SUBJECT:

2.9.10 Citizens process for advising the County Commission

PETITIONER CONTACT:

Sandra Sullivan

165 Dorset Lane, FL 32937

REQUESTED ACTION:

Revise 2.9.10 to redefine Citizen Process for advising the County Commission

SUMMARY EXPLANATION & BACKGROUND:

The current language does not work as a process for Citizens advising the County Commission. Request an amendment to 2.9.10 that:

1) it is available all year as some issues are time sensitive; 2) a reference to source Speakup Brevard to where the process is; 3) and some condition, such as a number of petition signatures, that provides a process to bring an item to the agenda before the commission for a vote.

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

I have attended BOCC meetings for over 3 years and tried in innumerable ways to get important citizen issues on the agenda to no avail. The Charter item does not tell you where this information is found (an ordinance number would be best) or some other reference. I had difficulty finding out as D4 would not respond to email (which suggest another reason why this is needed).

The categories are limited and more importantly is the timeframe which is only allowed for the month of December.

There is one month a year in which to apply to Speak Up Brevard - December - the month when everyone is so busy with holiday, travel, kids off of school and so on. Is this by design? I tried to apply on December 31st, and the page said it had closed until next year.

It is also important to consider that there is no process to get something on the agenda.

This is the current text:

"2.9.10 Citizens process for advising the County Commission

The Board of County Commissioners shall develop procedures that will provide a mechanism for an individual, or an organized group of individuals to submit a formal written recommendation for the enhancement of the effectiveness and efficiency of County government to the County Commission on an annual basis. The County Commission's procedures shall include the following provisions:

- a. An annual filing date;
- b. The written recommendations shall be reviewed by the County Commission, and following the review, the County Commission shall vote to either accept the recommendation, accept the recommendation with revisions, or reject the recommendation; and,
- c. The County Commission's final vote and consideration of the recommendation shall occur no later than 120 days after receipt of the written recommendation. (Newly adopted 11-2-10)"



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov

PROPOSAL TO REPEAL FROM CHARTER THE PANEL OF THREE ATTORNEYS WHO
REVIEW CHARTER AMENDMENT PROPOSALS BY CITIZEN PETITION AND BY
CHARTER REVIEW COMMISSION

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes the following changes to sections 7.3.2 Amendment by petition; 7.3.2.2; 7.3.2.3; 7.3.2.4; 7.4 CHARTER REVIEW; 7.4.1 Independent review of proposed charter amendments; 7.4.2, in which strike-through of words constitutes the repeal of the words and underlined words are added words.

7.3.2 Amendment by petition

Amendments to this Charter may be proposed by a petition signed by at least four percent (4%) of the electors from each County Commission District, provided that any such amendment shall embrace but one subject and matter directly connected therewith and is not inconsistent with the Florida Constitution, general law, special law approved by vote of the electors, and this Charter. ~~in the manner set forth in subsections 7.3.2.1 through 7.3.2.4 below.~~³ The sponsor of an amendment shall, prior to obtaining signatures, submit the text of the proposed amendment to the Supervisor of Elections, with the proposed ballot summary and the form on which signature will be affixed. The procedures for initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed.

7.3.2.1

~~Each amendment shall embrace but one subject and matter directly connected therewith. The amendment shall not extend to existing budgets, existing debt obligations, existing capital improvement obligations, salaries of non-elected County officers and employees, the collection of taxes or rezoning of less than five per cent (5%) of the total land area of the County.~~

7.3.2.2

~~The sponsor of the measure shall register as a political committee as required by general law, and shall submit a petition setting forth the ballot title, substance and text of the proposed amendment to the Supervisor of Elections. The sponsor must then obtain the signatures on the petition of at least 1% of the electors from each County Commission district and then resubmit the signed petitions to the Supervisor of Elections for verification that the electors signing the petition are qualified voters. When the Supervisor of Elections has verified the signatures, the Supervisor shall report such verification to the Board of County Commissioners.~~

³ The wording of section 7.3.2 presented here is a combination of the amendment wording set forth in County Commission Corrected Resolutions 2000-268 and 2000-269, both of which received referendum approval. The precise language of the two resolutions as approved by the voters has been combined in this form by the editors in an attempt to preserve the actual text as well as the intent and meaning of the text in both approved amendments.

7.3.2.3

~~Once the signatures are verified, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.~~

7.3.2.4.⁴

~~If at least two members of the panel find that the proposed amendment is consistent with the Florida Constitution, general law and this Charter, then such consistency shall be presumed and the petition shall be returned to the sponsor who must thereafter obtain enough signatures from electors in each county commission district to bring the total number of petition signatures to at least 4% of the qualified electors in each county commission district. The verification procedures for signatures on initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed.~~

~~Since this charter does not provide the Board, or the Petitioner with an avenue to determine whether proposed amendments are consistent with the State Constitution or general law, the proposed amendment will be governed by Section 1.3 and Section 1.6 of this charter, and the proposed amendment will be placed on the ballot for approval or rejection. The sponsor of an amendment shall, prior to obtaining signatures, submit the text of the proposed amendment to the Supervisor of Elections, with the proposed ballot summary and the form on which signature will be affixed. The procedures for initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed. The power to amend this Charter by initiative shall not extend to existing budgets, existing debt obligations, existing capital improvement programs, salaries of non-elected County officers and employees, the collection of taxes, or the rezoning of less than five percent (5%) of the total land area of the County.~~

Section 7.4 Charter Review

Not later than July 1 of the year 1997 and of every sixth year thereafter, the Board of County Commissioners shall appoint a Charter Review Commission to review the Charter of the County. Each Charter Review Commission shall consist of fifteen (15) persons, with not less than two (2) members residing in each Commission district. The Commission shall otherwise be appointed in the manner provided by law for the appointment of charter commissions in counties without charters. The Commission shall be funded by the Board of County Commissioners and shall be known as the "Brevard County Charter Review Commission." It shall, within one (1) year from the date of its first meeting, present, in ballot-ready language, to the Board of County

⁴ The editors have renumbered this subsection from (c), which is the designation given to this paragraph in County Commission Resolution 2000-268, to 7.3.2.4, which is referenced at the end of the first sentence of section 7.3.2 in Corrected Resolution 2000-268. This change corrects an apparent scrivener's error in the text of the original Corrected Resolution 2000-268 in which it appears that sub-paragraph (c) should have been numbered as subsection 7.3.2.4.

~~Commissioners~~ Brevard County Supervisor of Elections for placement on the ballot its ~~recommendations~~ proposals for amendment of the Charter in which each proposal embraces one subject and matter directly connected therewith and is not inconsistent with the Florida Constitution, general law, special law approved by vote of the electorate, and this Charter its recommendation that no amendment is appropriate or shall inform the Supervisor of Elections that no proposals are made by the Charter Review Commission. If amendment is to be ~~recommended~~ proposed, the Charter Commission shall conduct three (3) public hearings, at intervals of not less than ten (10) days, immediately prior to the transmittal of its recommendations to the ~~Board of County Commissioners~~ Supervisor of Elections. The ~~Board of County Commissioners~~ Supervisor of Elections shall schedule a referendum on the proposed charter amendments concurrent with the next general election. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election. The Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising education and information on the proposed amendments.

~~7.4.1 Independent Review of Proposed Charter Amendments~~

~~1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.~~

~~2. If at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.~~

7.4.21 Analysis of fiscal impact of proposed charter amendment

The Charter Review Commission shall obtain an analysis of the fiscal impact of a proposed charter amendment prior to transmittal of the proposed charter amendment to the ~~County Commission~~ Supervisor of Elections. (Newly adopted 11-2-10)

REASON FOR PROPOSAL

The Brevard County Charter provides that proposed changes to the Charter by citizen petition and by the Charter Review Commission shall be reviewed by a combination of three practicing attorneys or by combination of three active or retired attorneys or retired judges to determine whether the proposal embraces one subject and is consistent with the Florida Constitution, general law, and the Charter. The Board of County Commissioners chooses this three attorney panel and pays the lawyers for their legal opinions. If at least two of the three attorneys opine that the proposal is consistent with the Florida Constitution, general law and the Charter, then the County Commission presumably allows the proposal to be put on the ballot for vote by the electorate. Although not explicitly stated in the Charter, there is the inference that the Board of County Commissioners will not put on the ballot a proposal which fails to get at least two attorneys' "approval" of the proposal.

Proponent submits that the three attorney panel is undemocratic and is rife with conflict of interest and subject to abuse of the Charter revision process by the Board of County Commissioners. Of the nineteen charter counties in Florida, Brevard County is the only one which has this undemocratic panel of attorneys. In the other eighteen charter counties, citizen petition proposals and charter review commission proposals go to the ballot after they get enough valid petitions signed or get enough passing votes of the charter review commission without having to be reviewed and approved by a panel of attorneys.

The conflict of interest that the three attorney panel can have is exemplified by the pending proposal before the Charter Review Commission of proposal 1, the "charter cap" language in the Charter. At least four Brevard County Commissioners are opposed to the proposal to change the charter cap language as proven by the Board's on-going lawsuit in Brevard Circuit Court against Clerk of Court Rachel Sadoff. The Board's position in the lawsuit is that a supermajority vote of the Board to exceed the charter cap ad valorem taxation amount results in perpetual taxation that exceeds the charter cap limitation. The proposal before the Charter Review Commission in proposal 1 is aligned completely with the Clerk of Court's position in her lawsuit against the Board.

The Board of County Commissioners has incentive, motive, to prevent the charter cap proposal from getting placed on the ballot – especially considering that the charter cap was approved by 73% of the electorate in 2008 and that its placement on the 2022 general election ballot will likely result in overwhelming passage. However, under the Charter language, it will be the Board of County Commissioners who will choose the three attorneys to opine whether the proposal will get their approval for placement on the ballot. These three lawyers will be paid by the Board and will know what result is wished by their employer, the Board of County Commissioners, in regard to proposal 1, the charter cap proposal. The conflict of interest of the Board and of the three lawyers is blatant. It would be likely that the three lawyers chosen for the three lawyer panel have been paid for legal work for the Board in the past and would like to continue the business arrangement. If a lawyer or lawyers chosen by the Board for the veto panel has not done legal work previously for the Board, then the lawyer or lawyers would likely want to start such a business arrangement with the Board. These financial, business, conflicts of interest hardly make the three attorney panel an "independent review" panel as it is called in the title to section 7.4.1.

The potential for abuse of fairness and public confidence in county government in this unseemly process is not mitigated by the wording of the Charter section 7.4.1.(2) which says that the Board “shall” place the proposal on the ballot if at least two lawyers approve the proposal. There is case law which holds that the word “shall” can be interpreted to mean “may” or be “discretionary” or “permissive”. See, for example, *Walker v. Bentley*, 678 So. 2d 1265 (Fla. 1996); *Rich v. Ryals*, 212 So. 2d 641 (Fla. 1968); *White v. Means*, 280 So. 2d 20 (Fla. 1st DCA 1973); *Lomelo v. Mayo*, 204 So. 2d 550 (Fla. 1st DCA 1967).

The Board of County Commissioners could rely on the above case law in deciding to not place a proposal on the ballot even when two or three lawyers approve the proposal, taking the position that the Board’s decision to place the proposal on the ballot is discretionary to the Board. If one were to doubt that the Board of County Commissioners would actually take the position that the word “shall” means “may” to keep a proposal from being placed on the ballot, then one should remember the great lengths that the Board took in 1999 to keep county commissioner term limits from being placed on the ballot. The history is described in Commission attorney Paul Gougelman’s January 22, 2022 memorandum on county commissioner term limits. In 1999, the Board of County Commissioners rejected a term limit ballot proposal after 16,000 signatures were gathered to place the issue before the voters. A Home Rule Charter Committee had to sue the Board in Circuit Court to force the issue to be placed on the ballot. The electorate approved the term limit proposal by 77%.

The language of section 7.4.1. infers that the Board of County Commissioners will not or cannot place a proposal on the ballot if only one or none of the three lawyers approved the proposal. However direct this inference is, it is only an inference. The section does not say that the Board of County Commissioners cannot place a proposal on the ballot when it gets approval of only one lawyer. Thus, when the Board of County Commissioners agrees with a proposal and wants the proposal on the ballot, the Board of County Commissioners could decide that the inference can be overcome by the Board’s decision to put the proposal on the ballot even though only one or none of three lawyers approves the proposal. Contrarily, if a proposal approved by just one lawyer is a proposal that the Board of County Commissioners does not want to go to the ballot, then the Board of County Commissioners could refuse to place the proposal on the ballot based on the inference in section 7.4.1. The result from all scenarios described above is that the Board of County Commissioners could act as the gatekeeper to the ballot of all proposals, allowing proposals of which it approves to go to the ballot but preventing proposals of which it disapproves from being placed on the ballot. As stated previously, none of the other 18 charter counties in Florida vests such authority in the Board of County Commissioners over Charter Review Commission and citizen petition proposals.

To prevent the Board of County Commissioners from having authority to decide which proposals are to be allowed to be placed on the ballot, proponent submits that the three attorney panel should be repealed in Brevard County’s Charter. Proponent submits that the proposals of the Charter Review Commission and by citizen petition should bypass the Board of County Commissioners entirely, as is done in the Sarasota County¹ Charter, and instead be given to the Brevard County Supervisor of Elections for placement on the ballot

¹ The Sarasota County Charter reads in relevant part at section 7.1: “Changes proposed under subsections (i), (ii), or (iii) shall be submitted to the voters at a special election to be held within sixty

Incorrect legal standard of review is in Charter. At sections 7.3.2.3; 7.3.2.4 and 7.4.1, the incorrect legal standard for permissible powers of charter self-government is included in the Charter. These three sections say that the three attorney panel is to determine if the proposed amendment “is consistent with the Florida Constitution, general law and this Charter.” Florida Constitution Article VIII, section 1(g) states the permissible scope of powers of county charter government: “Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.”

Proponent submits that the Charter’s incorrect standard of legal review to be applied by the three lawyer panel is good reason to repeal the incorrect sections of the Charter. Proponent submits that there is a meaningful difference between the incorrect legal standard “consistent with” in the Charter and the correct legal standard of “not inconsistent with” set forth in the Constitution. “Consistent with” means showing steady conformity in character; whereas “not inconsistent with” means compatible with another part or not containing incompatible elements. The erroneous legal standard should be deleted from the Charter. It is noteworthy that section 7.3.1. Amendment by the Board of County Commissioners is the only Charter amendment method which states correctly the legal standard of review set forth in Article VIII, section 1(g), Florida Constitution, in that it correctly has the “not inconsistent with” language.

Fallibility of attorneys’ opinions. The Charter language makes the opinions of the three attorneys prone to error because there is no level of confidence or level of certainty or burden of persuasion that must be met by the attorney. If the Charter said that the attorneys’ opinion must be substantiated, predicated, on clear and convincing weight of legal authority, then the attorneys’ opinion could be considered with a good degree of reliability. But the Charter does not contain any degree of certainty that the attorneys must have to reach their opinions. The result is that the attorneys have no legal standard to reach to come to their opinions, which leads to subjective opinion predicated on indefinite legal concepts. For example, it may be not difficult for an attorney to identify Florida statutes which conflict with a Charter amendment proposal. But when a Charter amendment proposal does not conflict with state law but instead is in addition to state statutes, then the legal analysis applied in this scenario is somewhat complex and prone to resulting subjective opinion of the lawyer. The proneness to error of the reviewing lawyer and the free reign in their opinions because of the absence of a standard of certainty in the Charter should result in the repeal of the three attorney panel from the Charter.

Charter Commission has authority to retain additional attorneys, if it chooses, making three attorney panel not needed. Section 7.4 CHARTER REVIEW states, in part,

(60) days after filing of the proposed changes with the Supervisor of Elections, and such changes if approved at the election by the majority vote, shall become a part of this Charter. Changes proposed under subsection (iv) and filed with the Supervisor of Elections shall be submitted to the voters at a referendum election to be held concurrently with the next countywide election, and such changes, if approved at the election by a majority vote, shall become a part of the Charter. (Amended 9/10/2002.)”

that: “The Commission shall be funded by the Board of County Commissioners and shall be known as the ‘Brevard County Charter Review Commission.’” Proponent submits that the above language in the Charter authorizes the Charter Review Commission to hire lawyers in addition to Commission lawyer Paul Gougelman to apply the correct legal analysis to a proposed amendment. This spending authority of the Commission renders obsolete the three attorney panel of lawyers chosen by the Board of County Commissioners. The Commission’s ability to hire additional lawyers negates the conflict of interest and abuse of process that exists in the three attorney panel of lawyers hired and chosen by the Board of County Commissioners. For this reason the three attorney panel in the Charter should be repealed.

SERVICE OF PROPOSAL. This proposal was sent by e-mail by Blaise Trettis on February 25, 2022, to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER: Proposal 6

SUBJECT:

Brevard County Charter Amendment-Right to Clean Water

PETITIONER CONTACT:

Michael Myjak, Indian River Lagoon Roundtable-mmyjak@yahoo.com

REQUESTED ACTION:

Recommended insertion in Article 5 of the Brevard County Charter, "Powers Reserved to the People,"
Section 5.7

SUMMARY EXPLANATION & BACKGROUND:

See Attached Executive Summary

Attachment I- Section 5.7

Attachment II-Does Brevard County have the legal authority to amend its charter to establish and enforce the right to clean water?

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Brevard County Charter Amendment - Right to Clean Water

Executive Summary

Brevard County residents and organizations respectfully request members of the Charter Review Commission (CRC) to consider amending the charter to ensure present and future generations are able to protect themselves and their interests from harm. The “Right to Clean Water” proposal creates a local cause of action for equitable (declaratory or injunctive) relief, which may include a “polluter pays” form of restorative relief. As the proposal’s ultimate design will depend on the will of the CRC members and public comments, [Attachment 1](#) is provided as a skeletal framework. [Attachment 2](#) provides the legal basis and argument that the County has the authority to enact this measure and that state preemption found in Fla. Stat. 403.412 (9)(a) does not apply.

This proposal starts off with the premise: **Brevard County has the power and duty to protect itself and its residents, businesses, visitors and economy from legalized harm.**

Legalized harm is caused by the action or inaction of federal and state governments, be it erratic definitions of health, harm, public interest, various scientific standards or environmental impact considerations or requirements; poor staffing, budgeting or resourcing decisions; substandard design or enforcement of basin action management plans or nutrient load limits; continued permitting of substandard or inappropriately located onsite septic systems; inappropriate use of fertilizers, herbicides; etc. Waters such as the Indian River Lagoon have suffered from and continue to be impacted by substandard but legal government harm. Missing from the current system is **the ability to effectively challenge such continued or planned harm**. We believe it is the people’s inherent right to question and stop such practices to better protect themselves, their families, their businesses, and their communities.

The problem isn’t a lack of strong environmental laws in Florida, nor is it due to a string of illegal pollution. The problem *set* is systemic and more like death by 1,000 papercuts, which is comprehensively difficult and expensive to remedy for large water bodies such as the Indian River Lagoon, much less to fully restore. To make sense of our hundreds-of-millions of taxpayer dollar investment, we must be able to establish a stopgap – a “do no (more) harm” mandate, and allow individuals, businesses and nonprofits to engage in the litigation to arrive at a better system. Courts will rule in equity, considering what’s possible, what harm is preventable, and declare certain actions or policies of inaction to be in violation of the Right to Clean Water. Courts may award declaratory or injunctive relief, to either prevent harm or, if sufficient evidence is presented, to restore waters to their condition just before the harm occurred. Outside of attorney’s fees and court costs (which can be awarded to prevailing plaintiffs), any money that changes hands will be applied (earmarked) directly to the restoration of waters. Courts have the power to ensure government agencies do what the law says they should do.

A no-cost, non-governmental solution to restore ecological balance for all to enjoy is a win-win opportunity. The only opponents to such a measure will be those who benefit and wish to continue to benefit from exacting harm on Brevard’s shared natural resources under the current system, and their banner will likely point to some property rights fear. This proposal only strikes at legalized “rights” to pollute or otherwise irresponsibly degrade waters, infringing on the rights and substantial interests of everyone else. This proposal provides Brevard County a way to pivot back to good while balancing all competing interests through courts of equity, justice and fairness.

Please consider this proposal and the hope it may bring those living, working and playing in Brevard County. It presents a chance for our leaders to show all other communities and states that it’s possible to have a thriving economy AND a thriving ecology, balanced for present and future generations, due to a small systemic tweak to establish and ensure a Right to Clean Water.

With esteem and anticipation,

(Please see a separate page for the current list of signatories.)

Recommended insertion in Article 5 of the Brevard County Charter, "Powers Reserved to the People,"

Section 5.7 - Right to Clean Water

5.7.1. To protect substantial individual, group, economic, and environmental interests, residents that live in and governmental and nongovernmental organizations that operate in Brevard County have the right to clean water against any form of governmental harm and to seek enforcement and equitable relief from a violation of this right in a court of competent jurisdiction. Attorney's fees and costs of litigation shall be awarded to prevailing plaintiffs.

5.7.2. Definitions

Clean water means waters that are free of further governmental harm. The intent of this Section is to achieve waters that are safe for fish and native wildlife and human recreation and, for public drinking water sources, for human consumption; that have sufficient habitats, water filtering, and nutrient cycling to support thriving populations and diverse communities of native fish and wildlife; that have natural flow regimes, to include recharging groundwater, as possible; and that have other intact ecological processes and functions that support healthy aquatic ecosystems, as pertinent to the waters at issue.

Governmental harm means any law, regulation, rule, policy, or permit that, by action or inaction, negatively affects the health or safety of humans, fish or wildlife by either the pollution or degradation of waters. Water pollution includes the introduction of pathogens, contaminants, or toxins into waters. Degradation of waters includes, but is not limited to, chemical, biological or physical stressors that contribute to unnatural water levels or nutrient loads; that remove, fragment or degrade habitat; that disturb vegetation or soil near shorelines; that introduce exotic or invasive species; that obstruct or divert natural flow; and that overexploit native species.

Waters includes the aquatic ecosystems of all naturally occurring water bodies in the jurisdiction of Brevard County whether fresh, brackish, saline, tidal, surface, ground, or underground, and, for the purpose of this Section, includes all natural tributaries and artificial conveyances which impact these water bodies, whether in or outside the jurisdiction of Brevard County.

5.7.3. Harm prohibited. It shall be unlawful and a violation of this Section for any governmental entity to harm or threaten to harm waters of Brevard County by action or inaction.

5.7.4. Authority. The right to clean water is created pursuant to the Florida Constitution, Article II, Section 7(a), and general laws found in Florida Statutes Chapters 120, 376, 403, and elsewhere, which allow for the questioning of agency decisions and which direct the abatement of water pollution; the conservation and protection of waters; the liability of responsible parties to fund costs of removal, containment, and abatement of pollution and, when feasible, the restoration of damaged waters to their pre-damaged condition; that responsible parties bear the costs and not the public; and the ability for any person, natural or corporate, or governmental agency or authority to enforce against and remedy violations of substantial rights to clean water. Brevard County finds this right, enforceable through civil action for equitable relief, to provide a responsible and fair balance of competing rights and interests to shared waters.

5.7.5. Severability and conflicts. This Section should be interpreted, to the greatest extent possible, to be in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

5.7.6. Effective date. This Section shall become effective upon passage, which is the date certified by the Supervisor of Elections, and shall not require further enabling legislation by the Brevard County Board of County Commissioners.

Does Brevard County have the legal authority to amend its charter to establish and enforce the right to clean water?

Brevard County has “all powers of self-government not inconsistent with general law” “in the common interest of the people of the county,” to include “all implied powers necessary or incident to carrying out such powers enumerated.”

- Florida Constitution, Article VIII, Section 1(g) - “CHARTER GOVERNMENT. Counties operating under county charters shall have **all powers of local self-government not inconsistent with general law**, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.”
- Florida Statutes Section 125.01 “Powers and duties.— (1) The legislative and governing body of a county shall have the power to carry on county government. **To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to...**(j) Establish and administer programs of...conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs. (k)1. Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs....(w) **Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law...**(3)(a) **The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated...**”

Is the right to clean water inconsistent or otherwise conflict with general law? No. In fact, it directly supports general law which contains a comprehensive scheme of water conservation and protection, as guided by constitutionally-established policy and clear statutory standards with robust amounts of legislative intent and guidance. State agencies may have the regulatory authority to control pollution and degradation of waters in accordance with legislation, but it is a legislative and chartered government function to determine standards of and enforcement measures against harm.

- Florida Constitution: Article II, Section 7(a) - “**It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.**”
- In Chapter 376:
 - “The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.”
 - “Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department’s satisfaction...”
 - “Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize cleanup costs and damages, any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of removal,

containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section..."

- "The Legislature finds that extensive damage to the state's natural resources is the likely result of a pollutant discharge and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. It is the state's goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their pre-discharge condition. In many instances, however, restoration is not technically feasible. In such instances, the state has the responsibility to its citizens to recover the cost of all damage to natural resources. To ensure that the public does not bear a substantial loss as a result of the destruction of natural resources, the procedures set out in this section shall be used to assess the cost of damage to such resources. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings."

- In Chapter 403:

- "The department [of Environmental Protection] shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to...[a]pprove and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement" and to "[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution."

- "The department shall adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration." Also, it is to "[i]ssue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings...Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary....Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state...Establish and administer a program for the restoration and preservation of bodies of water within the state...Perform any other act necessary to control and prohibit air and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established...The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment."

- "The pollution of the air and waters of this state constitutes a menace to public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

- It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

- It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

- It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality.

- It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

- The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to ensure conservation of natural resources; to ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure a continuing growth of the economy and industrial development.
- The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.
- It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state..."
- (This is a non-exhaustive list of legislative intent and state policy regarding the matter of harm caused by the pollution and degradation of Florida waters.)

Does general law restrict local governments from creating a cause of action? No. Though still novel, there is no constitutional or statutory language or judicial doctrine that restricts chartered counties from exercising their powers of self-government to create a more stringent standard against certain harm or a civil action to enforce it.

- [Orange County's Charter Amendment for the Right to Clean Water of 2020](#) for example.
- The existence of frustratingly narrow citizen causes of action (such as in Fla. Stat. 403.412) does not equate to a restriction against local governments from creating their own (more effective) causes of action.

Does general law preempt a local enactment of the right to clean water? No. Brevard County's right to clean water is able to "coexist" with the state's regulatory scheme of water protection and conservation without frustrating the purpose of relevant general laws.

- <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/>
- While the state cause of action in Fla. Stat. 403.412 enables suits against violations of "any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state," this proposal looks to the right to protect substantial interests from harms caused by substandard laws, regulations, rules, policies and permits. Two distinct matters at issue, both aimed to protect and conserve waters in accordance with general law..
- The only point of foreseeable "frustration" will likely be within governmental entities that may be liable for harming Brevard County waters. I.e., they may not be thrilled about having to better comply with general law.

Does the "rights of nature preemption" pertain? No. While it was designed and enacted in direct response to Orange County's Charter Amendment, it does not apply here.

- The "state preemption" at issue is found in [Fla. Stat. 403.412 \(9\)\(a\)](#) which reads: "*A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural*

environment that is not a person or political subdivision as defined in s. 1.01(8) or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in general law or specifically granted in the State Constitution.”

- As to the pertinent part (a person’s right TO clean water), by plain meaning, persons and political subdivisions already have the preexisting and enforceable “specific rights” related to the natural environment to expect:
 - The performance of government duties to specifically serve the public health and safety where the environment is concerned (see Fla. Stat. 381.006).
 - The performance of government duties to serve the general welfare and other interests of the people where the environment is concerned (see Fla. Stat. Title XXVIII and Chapter 403).
- Specific rights relating to the natural environment have been specifically granted in the State Constitution as noted above (see Florida Constitution Art II, Section 7a); the right to expect that the whole of state government would implement, enforce and comply with its clear mandates:
 - “It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.”
- Specific rights relating to the natural environment also exist in Fla. Stat. 403.412, the right to file suit against “any person, natural or corporate, or governmental agency or authority” that violates “any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.” See also Fla. Stat. 120.56 which is often used in environmental litigation (“Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.”).
- As can be observed, the word, “right,” can have multiple meanings depending on context. It is unclear which context was intended in this subsection, whether the “specific right” was to be substantive or procedural, whole or derivative, fundamental, positive or negative. Surely, it cannot be construed to mean all “specific rights relating to the natural environment,” as it would have catastrophic effects on Brevard County’s home rule authority to enact any measure pertaining to the natural environment (which, again, is vague enough to include anything that might impact anything not human-made). The Florida Supreme Court has said, “a statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision,” citing *Amente v. Newman*, 653 So.2d 1030, 1032 (Fla.1995) (“if possible, the courts should avoid a statutory interpretation which leads to an absurd result.”). So, if the absurdity is accounted for, what “specific rights relating to the natural environment” remain?
- The right to clean water is a measure of self-defense and protection against government harm. It, too, would be an absurd result to construe the preemption to restrict local government’s abilities and home rule powers to protect the substantial interests of its residents and businesses. As such an absurdity is unfortunately a current reality in Florida and yet to be fully challenged and resolved in the courts, if the CRC prefers to name this proposal “the right against government harm,” “civil action against government harm,” or “the ability of the people to protect themselves,” there are work-arounds.

Is the “rights of nature preemption” constitutional? Until it is challenged in court and determined otherwise, it is presumed to be constitutional. There are, however, multiple facial and as-applied problems that will likely render the preemption unconstitutional and eventually severed and removed from the statute.

- Florida’s Vagueness Doctrine. What is a right? What makes a right specific versus general? What relates and does not relate to the natural environment? As noted above, it is unclear what this apparent prohibition applies to, which is a problem.
- “A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement. Art. I, § 9, Fla. Const.; *Southeastern Fisheries*. As the United States Supreme Court has noted: “Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.

Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." *Wyche v. State*, 619 So. 2d 231 (1993).

- Here, it is unknown and inconceivable how or why this preemption solves a local inconsistency with the state constitution or state statute, or otherwise serves the public interest pursuant to state police powers to protect public health, safety and welfare. At issue is the local implementation of rights enforcement, outside of "regulatory" pollution control functions or processes, despite both pertaining to clean water. To carry through the state's presumed claim to "all things natural or environmental," it again meets the absurd assertion that people do not have rights to protect themselves, their families, their homes or their community from government harm.
- An excerpt from an article published in the Florida Bar Journal, linked above, relates: "Cases in which the courts have found express state preemption are rare. Taxation is one of the areas in which there has been an explicit finding of express preemption. Based on the constitutional protections afforded local governments, any ambiguity on the issue of express preemption should be resolved in favor of the local government. Such a presumption is consistent with the voters' intent to provide broad home rule powers to cities and charter counties so that they may protect the welfare of their citizens. Accordingly, Florida courts have usually bowed to the voters' intent that local governments should be able to act barring a clear directive by the state not to allow the action." Again, the only preemption that would bar Brevard County from amending its charter to provide for the creation and enforcement of the right to clean water, whether the right is granted to persons, political subdivisions, waters or other natural elements or systems – would prohibit the right to not be harmed, and would be unconscionable. All things considered, the preemption should be challenged and removed from Florida law.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER: Proposal 7

SUBJECT:

Proposal to Repeal Article 8. School Board of Brevard County and Section 8.1-Election of School Board Members

PETITIONER CONTACT:

Blaise Trettis (proponent)-member of the 2021-2022 Charter Review Commission

REQUESTED ACTION:

Proposes the Repeal of Article 8 School Board Member of Brevard County and repeal of Section 8.1-Election of School Board Members

SUMMARY EXPLANATION & BACKGROUND:

See Attached Entire Document

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov

**PROPOSAL TO REPEAL ARTICLE 8. SCHOOL BOARD OF BREVARD COUNTY
AND SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS**

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission proposes the repeal of ARTICLE 8. SCHOOL BOARD OF BREVARD COUNTY and repeal of SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS as indicated below by the stricken words:

**ARTICLE 8
SCHOOL BOARD OF BREVARD COUNTY**

SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS

~~Members of the School Board of Brevard County elected after January 1, 1999, shall be elected on a single member representation basis as follows: The school district shall be divided into school board residence areas, one for each seat on the school board, the areas together covering the entire school district and being as nearly equal in population as is practicable, as provided by general law. Each school board member shall reside in one residential area at the time of qualifying for office and shall continue to reside in the area for which the member was elected throughout the term of office as a qualification to hold the office. School board members shall be nominated and elected only by the qualified electors who reside in the same residential area as the member. All members shall be elected for four year terms, staggered. This provision shall not affect the members of the school board who are in office on January 1, 1999, who shall serve the remainder of their terms of office as if this provision had not been adopted. (Amd. 11-3-98)~~

1. REASON FOR PROPOSAL

Article 8. School Board of Brevard County and section 8.1. Election of School Board Members became part of the Brevard County Charter as a result of the vote of the electorate at the 1998 general election.

The question on the 1998 ballot and the vote result was as follows¹:

**PROPOSED CHARTER AMENDMENT NO. 4
SINGLE-MEMBER ELECTION OF SCHOOL BOARD MEMBERS**

Shall the Brevard County Charter be amended to provide that the school board members of Brevard County shall be elected to office from single-member residence areas by electors residing in each of those areas only?

YES
NO

County Charter Amendment 4 - Single-Member Election of School Board Members

Yes	80,304	58.51%
No	56,935	41.49%

¹ From email correspondence from Supervisor of Elections from March 15, 2022.

Proponent submits that the 1998 Article 8 amendment to the Charter was inconsistent with the Florida Constitution and general law and was consequentially legally invalid from its approval to today. Proponent submits that this invalid 1998 Charter amendment needs to be repealed so that school board elections in Brevard County will be conducted in accordance with section 1001.361 Florida Statute (2021) in which each qualified elector (i.e. registered voter) “shall be entitled to vote for one candidate from each district school board member residence area. The candidate from each district school board member residence area who receives the highest number of votes in the general election shall be elected to the district school board.” See s. 1001.361 Fla. Stat. (2021).

The 1998 Article 8 amendment to the Brevard County Charter was done contrary to Florida statutes. In 1998, section 230.10 Fla. Stat. (1998) provided that, “The election of members of the school board shall be by vote of the qualified electors of the entire district.” A school district is comprised of the entire county. See s. 230.061(1) Fla. Stat. (1998). Pursuant to Florida statutes, the school district (i.e. the entire county) can be divided into five single-member school board election residence areas if: 1) the school board adopts a formal resolution directing an election to place the proposition on the ballot or; 2) the electors of the school district petition to have the proposition placed on the ballot by getting not less than ten percent of the qualified electors to sign petitions for elections from single-member representation residence areas in which only electors of the residence area can vote for the school board candidates who reside in their residence area. See s. 230.105(3) Fla. Stat. (1998).

Florida statutes have never authorized Charter counties to create single-member school board elections by residence area by amendment of the county Charter. The two methods delineated above for creation of single-member school board election by residence area are the only methods authorized by Florida statutes.

The District School Boards statutes were re-numbered in an overhaul of the Florida statutes in the year 2002 when K-20 Governance was created in Chapter 1001 Florida statutes. See Ch. 2002-387, Laws of Fla. Although some technical language was added in this 2002 overhaul of K-20 Governance, the statutes were not substantively changed. The statute sections today which are substantively the same as the 1998 sections aforementioned are at s. 1001.34 Fla. Stat. (2021), s. 1001.36 Fla. Stat. (2021), s. 1001.361 Fla. Stat. (2021), s. 1001.362 Fla. Stat. (2021).

The 1998 Article 8 School Board of Brevard County amendment to the Charter was done contrary to Article VIII, section 1 (g) Florida Constitution, which reads in part: “(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.” The 1998 amendment to the Brevard Charter was also done contrary to s. 125.01 Fla. Stat. which provides that county government shall have the power to carry on county government to the extent not inconsistent with general or special law.

2. The Opinion of Brevard County Charter Review Commission Attorney Paul Gougelman.

Commission attorney Paul Gougelman, in his March 13, 2022 memorandum to the commission, has opined that Article 8 of the Brevard County Charter is not consistent with the Florida Constitution or general law. Attorney Gougelman’s opinion at paragraphs 5 and 6 at page 2, says:

“5) Per Ms. Schmitt: Article 8 of the Charter provides for school board members to be elected from single member districts. Is Article 8 legal? What can the County do and not do with regard to school board? ANSWER: More likely than not, were this issue submitted to a court of law, the court would find that the inclusion in the County Charter of language providing for the election of school board members from single-member districts is not consistent with the Florida Constitution or general law. See Analysis, Section II.D. and III., below.

6) Per Mr. Trettis: What is the effect of a local bill presented by State Rep. Fine regarding providing for single member school board electoral districts? ANSWER: The legislation did not pass the Florida Legislature. As a result, the Charter’s Article 8 providing for single-member School Board district elections appears inconsistent general law. See Analysis, Section II.D., below.”

3. Preemption by the Legislature of the Creation of Single-Member School Board Elections by Residence Area.

Proponent submits that the Florida Legislature has preempted Charter counties from creating single-member school board elections by residence area in the county Charter because the legislature’s statute specifically delineates the two ways in which single member school board elections by residence area can be created. See s. 230.105(3) Fla. Stat. (1998); s. 1001.362(3) Fla. Stat. (2021). Proponent submits that the legislature’s specificity in its single member school board election scheme and the legislature’s pervasiveness in this specific subject matter of the creation of single-member school board election by residence area is compelling evidence of the legislature’s intent to preempt from the counties the authority to create single-member school board elections by residence area and there are strong public policy reasons to find that the creation of single-member school board elections by residence area has been preempted by the legislature. See *Tallahassee Memorial Regional Medical Center v. Tallahassee Medical Center, Inc.* 681 So. 2d 826, 831 (Fla 1st DCA 1996), accord, *D’Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017). The public policy which is advanced by legislative preemption is the statewide uniformity that results from preemption. For example, s. 1001.362(3) Fla. Stat. (2021) requires that only a majority of a county’s electorate is needed to vote to create single-member school board elections by residence area. Conversely, a county Charter Charter could impose the requirement that 60% of the electorate must vote “yes” to create single-member school board elections by residence area – just as amendments to the Florida Constitution must attain 60% “yes” vote to pass. See Article XI, section 5 (e) Florida Constitution.

Judicial rules of statutory rules of construction support the argument that the legislature has preempted counties from creating, by charter amendment, single-member school board elections by residence area. It is a general principle of statutory construction that the mention of one thing implies the exclusion of another. The Latin phrase for this statutory rule of construction is *expressio unius est exclusio alterius*. See *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898 (Fla. 1996); *Thayer v. State*, 335 So. 2d 815 (1976); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952). Where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. *Thayer v. State, supra*. In other words, when a statute expressly describes a particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be excluded. *Gay v. Singletary*, 700 So. 2d 1220 (Fla. 1997).

Applying the above rule of statutory construction to s. 1001.362(3) Fla. Stat. (2021), proponent submits that the legislature intended to exclude Charter amendment as a means to create single-member school board elections by residence area as demonstrated by the legislature's specific enumeration in s. 1001.362(3) that resolution of the school board and citizen petition followed by majority vote of the electorate of the entire county are the two exclusive methods for creation of single-member school board election by residence area.

There is language in s. 1001.361 Fla. Stat. (2021) which arguably expressly preempts a county's authority to create single-member school board elections by residence area: "1001.361 **Election of board by districtwide vote.** Notwithstanding any provision of local law or any county charter (emphasis added), the election of members of the district school board shall be by vote of the qualified electors of the entire district in a nonpartisan election as provided in chapter 105."

Proponent submits that in the above language the legislature explicitly prevents county Charters from changing districtwide school board elections to single member elections by residence area as was done in the 1998 amendment to the Brevard County Charter in Article 8 of the Charter.

4. School Board Election Results are Subject to Successful Legal Challenge in Brevard County.

Proponent submits that section 8.1. of the Brevard County Charter makes school board election results subject to successful legal challenge in Brevard County. A school board candidate who loses election for school board, or any Brevard County registered voter, can file a well-founded lawsuit in Circuit Court challenging the winning candidate's lawful authority to assume office of school board on the grounds that the winning candidate was not elected by the electors of the entire district (i.e. the entire county). See s. 1001.361 Fla. Stat. (2021), s. 1001.30 Fla. Stat. (2021) "Each county shall constitute a school district and shall be known as the school district of _____ County, Florida." The losing candidate's lawsuit or the registered voter's lawsuit, likely a petition for writ of quo warranto, will argue that Article 8.1. of the Brevard County Charter which purportedly creates single-member school board elections by residence area, was unlawfully created in 1998; that it is inconsistent with Article VIII, section 1 (g) of the Florida Constitution and is inconsistent with s. 1001.362 (3) Fla. Stat. (2021). Proponent submits that the losing candidate, or registered voter, will likely prevail in their lawsuit; that the Circuit Court will rule that the winning candidate was not elected validly by law because he or she was not elected by the electorate of the entire school district, i.e., the entire county. Proponent submits that a new, district wide (i.e. countywide) election may be ordered by the Circuit Court at significant cost to the taxpayers of Brevard County. Proponent submits that this bad outcome should be avoided in future years by the repeal of Article 8 and Article 8, section 8.1. of the Brevard County Charter.

5. Argument for Districtwide (i.e., county-wide) Election of School Board Members

In addition to the legal argument above for repeal of Article 8 of the Charter, proponent submits that the electors of Brevard County should have the opportunity to re-visit the 1998 vote to create single-member school board elections by residence area. This is because of the nationwide focus on the importance of school boards in the modern era of face mask mandates by school boards like that of the Brevard School Board, the teaching of critical race theory in school, and transgender policy of the Brevard School Board which, from kindergarten through 12th grade: 1) permits boys to dress as girls; 2) requires all school employees to call

“transgender” boys pronouns “she, her, hers” and “transgender” girls to be called “he, him, his”; 3) requires all school employees to call K-12 students by the name that they want to be called. For example, 7 year old Johnathan must be called Rebecca if the child says so; 4) requires schools to issue identification badges which use this false name of the child; 5) forces schools to allow boys to use the girls’ toilets, girls’ locker rooms, and girls’ shower; 6) forces schools to allow girls to use the boys’ toilets, boys’ locker rooms, and boys’ showers; 7) requires all school employees to not inform the students’ parents or guardian that the student, while at school, assumes the identity, mannerism, dress, pronouns, of the opposite sex. This part of the Brevard Public School transgender policy violates the Parental Rights in Education Act passed by the 2022 Florida Legislature; 8) provide website information to students to help them to decide to “transition” to the opposite sex.

With the above policy decisions made by school boards, including the Brevard County School Board, proponent submits that the electors of Brevard County are likely to vote to repeal Article 8 of the Charter so that the electors can again vote in every school board residence area race to vote-out of office the school board members who have adopted the policies described above.

Repeal of Article 8 is also supported by s. 1001.363 Fla. Stat. (2021) which says, “Each district school board of each district shall represent the entire district. Each member of the district school board shall serve as the representative of the entire district, rather than as the representative of a district school board member residence area.” When the electors of Brevard County are informed of this districtwide representation required by Florida law, the electors are likely to vote for the repeal of Article 8.

Service of Proposal.

This proposal was sent by e-mail delivery on March 23, 2022, to the members of the 2021-22 Brevard County Charter Review Commission; commission attorney Paul R. Gougelman; Brevard County government employees Melissa Brandt and Jim Liesenfelt.



These guidelines were established to ensure the safety of every student is met, including our students who identify as or are perceived to be lesbian, gay, bisexual, transgender, or questioning (LGBTQ). We believe through these guidelines we can serve every student with excellence as the standard.

Gender Expression

External appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.


Gender Identity

One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.


Sexual Orientation

One's emotional, romantic, or sexual attraction to others.

LGBTQ+ Student/School Support

 Lisa Elam, Content Specialist,
Bullying and Harassment
Prevention

 Elam.lisa@brevardschools.org

 (321) 633-1000 Ext: 11526

Anti-Bullying Resources

speakouthotline.org
1-800-423-TIPS

24-Hour Information and Crisis Hotline

thetrevorproject.org
1-866-488-7386
Text: START to 678678

Sources of Strength Support

 Janean Knight, Resource Teacher,
Student Services

 Knight.Janean@brevardschools.org

LGBTQ+ District Guidance



Action 1: Dress Code

All students may dress and present in ways that are consistent with their gender identity and expression, while still abiding by the Brevard Public Schools dress code, including at any school sponsored events and functions. This includes dances, graduation, JROTC, etc. The full-dress code can be found in Board Policy 5511 or within the code of student conduct.



Action 2: Names and Pronouns

All students are to be referred to by the gender pronoun and name consistent with their gender identity in verbal and written communication, i.e., in class, at assemblies, on school ID badges, and all other unofficial documents such as honor roll certificates and yearbook. Only "official" documents must use a student's legal name. Official documents include registration, report cards, diploma, standardized tests, student cum files, ISP/s/S504 Plans, before and after school registration documents.



Action 3: Restrooms/Locker Rooms

All students are allowed to access locker rooms and restrooms that are consistent with their gender identity or be provided appropriate accommodations. If accommodations are desired, decisions should be student driven and with district support on a case-by-case basis.



Action 4: School Events and Functions

All students may bring same-gender dates to any school sponsored event or function. This includes dances, graduation, JROTC, etc. All students shall be allowed to participate in school traditions, however if the tradition includes gender separated components, then all students may participate in a manner consistent to their gender identity.



Action 5: Interscholastic Athletics

In accordance with the SB 1021. Section 1006.205 (Fairness in Women's Sports Act), interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by a public secondary school must be expressly designated based on the biological sex at birth of team members; a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth.

Action 6: Clubs



All students have the right to form and participate in a GSA (Gay-Straight Alliance) or any LGBTQ+ related organization, including student named and generated clubs, as they would with any other club.

Action 7: Confidentiality/Identity



All LGBTQ+ students have the right to decide when and to whom their gender identity and sexual orientation is shared. School mental health providers and trusted adults are encouraged to support students in determining a safe and affirming learning environment.

Action 8: Pride



All faculty, staff, and students are afforded the same rights and protections under district, state, and federal policy. It is imperative that students, school staff, and other adults feel safe, included, and empowered on our school campuses, and at school related events and functions.

*Action items are subject to change as determined by changes to statutes and law.

Non-Discrimination Policy

The School Board of Brevard County, Florida does not discriminate on the basis of race, color, national origin, sex (including sexual orientation, transgender status, or gender identity), disability (including HIV, AIDS, or sickle cell trait), pregnancy, marital status, age (except as authorized by law), religion, military status, ancestry, or genetic information or any other factor protected under applicable federal, state, or local law.

The district also provides equal access to its facilities to youth groups, as required by the Boy Scouts of America Equal Access Act. The School Board of Brevard County is in compliance with the Americans with Disabilities Act of 1990 (ADA) and the Amendment Act of 2008 (ADAA), the Florida Education Equity Act of 1984, Age Discrimination Act of 1967 and Section 504 of the Rehabilitation Act of 1973, Civil Rights Act of 1964 including: Title II, Title VI, and Title VII, United States Education Amendments of 1972 - Title IX, Age Discrimination in Employment Act (ADEA), and Individuals with Disabilities Act (IDEA).

Blaise Trettis

From: Carrie LeBeau
Sent: Tuesday, March 15, 2022 2:35 PM
To: Blaise Trettis
Subject: FW: records request

From: Records <records@votebrevard.gov>
Sent: Tuesday, March 15, 2022 2:34 PM
To: SOE <SOE@votebrevard.gov>; Carrie LeBeau <clebeau@pd18.net>
Cc: Records <records@votebrevard.gov>
Subject: RE: records request

Carrie,

I do not have actual ballots from that election, but this was the language that appeared on the 1998 General Election Ballot.

**PROPOSED CHARTER AMENDMENT NO. 4
SINGLE-MEMBER ELECTION OF SCHOOL BOARD MEMBERS**

Shall the Brevard County Charter be amended to provide that the school board members of Brevard County shall be elected to office from single-member residence areas by electors residing in each of those areas only?

YES
NO

And her were the results for that charter amendment.

County Charter Amendment 4 - Single-Member Election of School Board Members

Yes	80,304	58.51%
No	56,935	41.49%

Tim Bobanic, MFCEP

Director of IT and Election Systems
Brevard County Supervisor of Elections
(321) 633-2175 - Direct
(321) 633-2130 - Fax
tbobanic@votebrevard.gov

From: SOE <SOE@votebrevard.gov>
Sent: Tuesday, March 15, 2022 9:46 AM
To: Carrie LeBeau <clebeau@pd18.net>
Cc: Records <records@votebrevard.gov>
Subject: RE: records request

Your request has been received and will be responded to in a timely manner. Thank you.

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.10 Election of board by districtwide vote.--The election of members of the school board shall be by vote of the qualified electors of the entire district. Each candidate for school board member shall, at the time she or he qualifies, be a resident of the school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot of the general election shall be listed according to the school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each school board member residence area. The candidate from each school board member residence area who receives the highest number of votes in the general election shall be elected to the school board.

History.--s. 410, ch. 19355, 1939; CGL 1940 Supp. 892(73); s. 9, ch. 23726, 1947; s. 1, ch. 69-300; s. 2, ch. 88-334; s. 1223, ch. 95-147.

Select Year: 1998 ▼

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.061 School board member residence areas.--

(1) For the purpose of nominating and electing school board members, each district shall be divided into at least five district school board member residence areas, which shall be numbered one to five, inclusive, and which shall, as nearly as practicable, be equal in population.

(a) For those school districts, which have seven school board members, the district may be divided into five district school board member residence areas, with two school board members elected at large, or the district may be divided into seven district school board member residence areas. In the latter case, the residence areas shall be numbered one to seven inclusive and shall be equal in population as nearly as practicable.

(b) For those school districts which have seven school board members, the number of district school board member residence areas shall be determined by resolution passed by a majority vote of the district school board. No district school board shall be required to change the boundaries of the district school board member residence areas in accordance with the provisions of this act prior to July 1, 1981.

(2) The school board of any district may make any change which it deems necessary in the boundaries of any school board member residence area of the district at any meeting of the school board; provided that such changes shall be made only in odd-numbered years and provided further, that no change which would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he or she is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the school board, and shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.--s. 3, ch. 57-249; s. 1, ch. 59-232; ss. 10, 35, ch. 69-106; s. 1, ch. 69-300; ss. 1, 2, ch. 77-276; s. 1222, ch. 95-147.

Select Year:

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.105 **Alternate procedure for the election of district school board members to provide for single-member representation.--**

(1) This section shall be known and may be referred to as "The School District Local Option Single-Member Representation Law of 1984."

(2) District school board members shall be nominated and elected to office in accordance with the provisions of ss. 230.061 and 230.10, or as otherwise provided by law, unless a proposition calling for single-member representation within the residence areas of the district is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in subsection (3).

(a) If the school board is composed of five members, such proposition shall provide that the five members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member.

(b) If the school board is composed of seven members, at the option of the school board, such proposition shall provide that:

1. Five of the seven members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member, and two of the seven members shall be nominated and elected at large; or

2. All seven members shall reside one in each of seven residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member.

(c) All members shall be elected for 4-year terms, but such terms shall be staggered so that, alternately, one more or one less than half of the members elected from residence areas and, if applicable, one of the members elected at large from the entire district are elected every 2 years. Any member may be elected to an initial term of less than 4 years if necessary to achieve or maintain such system of staggered terms.

(3) A proposition calling for single-member representation within the residence areas of the district shall be submitted to the electors of the district at any primary, general, or otherwise-called special election, in either manner following:

(a) The district school board may adopt a formal resolution directing an election to be held to place the proposition on the ballot.

(b) The electors of the school district may petition to have the proposition placed on the ballot by presenting to the school board petitions signed by not less than 10 percent of the duly qualified electors residing within the school district. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the district as of the date the petitioning electors register as a political committee as provided in subsection (4).

(4) The electors petitioning to have the proposition placed on the ballot shall register as a political committee pursuant to s. 106.03, and a specific person shall be designated therein as chair of the committee to act for the committee.

(5)(a) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of five members shall include the wording: "As a registered elector of the school district of _____ County, Florida, I am petitioning for a referendum election to determine whether the five school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(b) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of seven members, none of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of _____ County, Florida, I am petitioning for a referendum election to determine whether the seven members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(c) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of seven members, two of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of _____ County, Florida, I am petitioning for a referendum election to determine whether five of the seven school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only, with the two remaining members being elected at large."

The petition shall also include space for the signature and address of the elector. Each signature obtained shall be dated when made and is valid for a period of 4 years following that date.

(6) Upon the filing of the petitions with the district school board by the chair of the committee, the school board shall submit the petitions to the supervisor of elections for verification of the signatures. Within a period of not more than 30 days, the supervisor of elections shall determine whether the petitions contain the required number of valid signatures. The supervisor of elections shall be paid by the committee seeking verification the sum of 10 cents for each name checked.

(7) If it is determined that the petitions have the required signatures, the supervisor of elections shall certify the petitions to the district school board, which shall adopt a resolution requesting that an election date be set to conform to the earliest primary, general, or otherwise-called special election that occurs not less than 30 days after certification of the petitions. If it is determined that the petitions do not contain the required signatures, the supervisor of elections shall so notify the district school board, which shall file the petitions without taking further action, and the matter shall be at an end. No additional names may be added to the petitions, and the petitions may not be used in any other proceeding.

(8) No special election may be called for the sole purpose of presenting the proposition to the vote of the electors.

(9) Any district adopting any of the propositions set forth in this section may thereafter return to the procedures otherwise provided by law by following the same procedure outlined in subsection (3).

(10) No school board member elected prior to or at the election which approves any revision as permitted herein shall be affected in his or her term of office. The resolution adopted by the school board under paragraph (3)(a) or subsection (7) which presents the proposed revision to the electorate for approval shall specify an orderly method and procedure for implementing the revision contemplated in the resolution.

History.--s. 1, ch. 84-113; s. 43, ch. 85-80; s. 1224, ch. 95-147; s. 2, ch. 97-190.

system must be managed, controlled, operated, administered, and supervised as follows:

(1) **DISTRICT SYSTEM.**—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) **DISTRICT SCHOOL BOARD.**—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.

(3) **DISTRICT SCHOOL SUPERINTENDENT.**—Responsibility for the administration and management of the schools and for the supervision of instruction in the district shall be vested in the district school superintendent as the secretary and executive officer of the district school board, as provided by law.

(4) **SCHOOL PRINCIPAL OR HEAD OF SCHOOL.** Responsibility for the administration of any school or schools at a given school center, for the supervision of instruction therein, and for providing leadership in the development or revision and implementation of a school improvement plan required by s. 1001.42(18) shall be delegated to the school principal or head of the school or schools in accordance with rules established by the district school board.

History.—s. 38, ch. 2002-387; s. 25, ch. 2004-41; s. 8, ch. 2008-108.

1001.33 Schools under control of district school board and district school superintendent.—Except as otherwise provided by law, all public schools conducted within the district shall be under the direction and control of the district school board with the district school superintendent as executive officer.

History.—s. 39, ch. 2002-387; s. 28, ch. 2003-391; s. 9, ch. 2006-74.

A. District School Boards

- 1001.34 Membership of district school board.
 1001.35 Term of office.
 1001.36 District school board member residence areas.
 1001.361 Election of board by districtwide vote.
 1001.362 Alternate procedure for the election of district school board members to provide for single-member representation.
 1001.363 District school board members to represent entire district.
 1001.364 Alternate procedure for election of district school board chair.
 1001.365 Votes by district school board chair and district school board members.
 1001.37 District school board members shall qualify.
 1001.371 Organization of district school board.
 1001.372 District school board meetings.

- 1001.38 Vacancies; how filled.
 1001.39 District school board members; travel expenses.
 1001.395 District school board members; compensation.
 1001.40 District school board to constitute a corporation.
 1001.41 General powers of district school board.
 1001.42 Powers and duties of district school board.
 1001.4205 Visitation of schools by an individual school board or charter school governing board member.
 1001.421 Gifts.
 1001.43 Supplemental powers and duties of district school board.
 1001.432 Inspirational message.
 1001.44 Career centers.
 1001.451 Regional consortium service organizations.
 1001.452 District and school advisory councils.
 1001.453 Direct-support organization; use of property; board of directors; audit.

1001.34 Membership of district school board.

(1) Each district school board shall be composed of not less than five members. Each member of the district school board shall be a qualified elector of the district in which she or he serves, shall be a resident of the district school board member residence area from which she or he is elected, and shall maintain said residency throughout her or his term of office.

(2) A district school board may modify the number of members on its board by adopting a resolution that establishes the total number of members on the board, which may not be less than five, and the number of members who shall be elected by residence areas or elected at large. The resolution must specify an orderly method and procedure for modifying the membership of the board, including staggering terms of additional members as necessary. If the resolution is adopted, the district school board shall submit to the electors for approval at a referendum held at the next primary or general election the question of whether the number of board members should be modified in accordance with the resolution adopted by the district school board. If the referendum is approved, election of additional school board members may occur at any primary, general, or otherwise-called special election.

History.—s. 41, ch. 2002-387; s. 15, ch. 2014-39.

1001.35 Term of office.—District school board members shall be elected at the general election in November for terms of 4 years.

History.—s. 42, ch. 2002-387.

1001.36 District school board member residence areas.—

(1) For the purpose of electing district school board members, each district shall be divided into at least five district school board member residence areas, which shall be numbered one to five, inclusive, and which shall, as nearly as practicable, be equal in population.

(a) For those school district school board divided into five district areas, with two district large, or the district school board member case, the residence seven inclusive and nearly as practicable.

(b) For those school district school board member determined by resolution of district school board.

(2) Any district school board member that it deems necessary school board member the district school board shall be made only in change that would affect any incumbent member during the term.

(3) Such changes resolutions spread upon school board, shall be of the circuit court, and in a newspaper published after the adoption of newspaper published the county courthouse certified copy of this the Department of State

History.—s. 43, ch. 2002-387.

1001.361 Election

Notwithstanding any charter, the election of board shall be by vote entire district in a not chapter 105. Each member shall, at the resident of the district area from which the candidate who qualifies on the ballot shall be school board member resides. Each qualified entitled to vote for school board member from each district school who receives the highest election shall be elected.

History.—s. 44, ch. 2002-387.

1001.362 Alternating district school board single-member representation

(1) This section shall be as "The School District Representation Law of

(2) District school to office in accordance 1001.36 and 1001.36

(a) For those school districts, which have seven district school board members, the district may be divided into five district school board member residence areas, with two district school board members elected at large, or the district may be divided into seven district school board member residence areas. In the latter case, the residence areas shall be numbered one to seven inclusive and shall be equal in population as nearly as practicable.

(b) For those school districts which have seven district school board members, the number of district school board member residence areas shall be determined by resolution passed by a majority vote of the district school board.

(2) Any district school board may make any change that it deems necessary in the boundaries of any district school board member residence area at any meeting of the district school board, provided that such changes shall be made only in odd-numbered years and that no change that would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he or she is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the district school board, shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.—s. 43, ch. 2002-387.

1001.361 Election of board by districtwide vote.

Notwithstanding any provision of local law or any county charter, the election of members of the district school board shall be by vote of the qualified electors of the entire district in a nonpartisan election as provided in chapter 105. Each candidate for district school board member shall, at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot shall be listed according to the district school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each district school board member residence area. The candidate from each district school board member residence area who receives the highest number of votes in the general election shall be elected to the district school board.

History.—s. 44, ch. 2002-387.

1001.362 Alternate procedure for the election of district school board members to provide for single-member representation.—

(1) This section shall be known and may be referred to as "The School District Local Option Single-Member Representation Law of 1984."

(2) District school board members shall be elected to office in accordance with the provisions of ss. 1001.36 and 1001.361, or as otherwise provided by

law, unless a proposition calling for single-member representation within the residence areas of the district is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in subsection (3).

(a) If the district school board is composed of five members, such proposition shall provide that the five members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member.

(b) If the district school board is composed of seven members, at the option of the school board, such proposition shall provide that:

1. Five of the seven members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member, and two of the seven members shall be elected at large; or

2. All seven members shall reside one in each of seven residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member.

(c) All members shall be elected for 4-year terms, but such terms shall be staggered so that, alternately, one more or one less than half of the members elected from residence areas and, if applicable, one of the members elected at large from the entire district are elected every 2 years. Any member may be elected to an initial term of less than 4 years if necessary to achieve or maintain such system of staggered terms.

(3) A proposition calling for single-member representation within the residence areas of the district shall be submitted to the electors of the district at any primary, general, or otherwise-called special election, in either manner following:

(a) The district school board may adopt a formal resolution directing an election to be held to place the proposition on the ballot.

(b) The electors of the school district may petition to have the proposition placed on the ballot by presenting to the school board petitions signed by not less than 10 percent of the duly qualified electors residing within the school district. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the district as of the date the petitioning electors register as a political committee as provided in subsection (4).

(4) The electors petitioning to have the proposition placed on the ballot shall register as a political committee pursuant to s. 106.03, and a specific person shall be designated therein as chair of the committee to act for the committee.

(5)(a) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of five



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE: April 21, 2022

AGENDA ITEM NUMBER: Open

SUBJECT:

Section 2.7 Vacancies and Suspensions

PETITIONER CONTACT:

Robert Burns (407) 810-3200

email: rwburns3rd@gmail.com

REQUESTED ACTION:

Proposal to amend Section 2.7 effectively removing Governor appointments for vacancies and replacing with a special election regardless of time remaining of vacant term

SUMMARY EXPLANATION & BACKGROUND:

The timely resignation by Bryan Lober has brought attention to the rare occasion of having to fill a vacancy on the County Commission. Because there is less than a year remaining in the term, the Charter calls for the vacancy to be filled by the Governor. The language in the Charter is faulty in that it states "shall" be filled by appointment of the Governor. The Brevard County Charter does not have the power to dictate what actions the Governor "shall" do. As has been acknowledged, it is the Governor's discretion of whether or not to fill a vacancy or let it remain vacant until the next scheduled election for the position. This practice leaves the citizens of the effected district without elected representation, and no guarantee to have any representation under these guidelines. To quote the Mayor of Palm Bay, Rob Medina when a similar situation presented itself in Palm Bay, "This is un-American."

When Palm Bay had a vacancy occur last year with the sudden resignation of Councilman Jeff Bailey, the Palm Bay City Council moved to appoint a member to fill the vacancy. The Palm Bay City Charter allows for Council to determine how a vacancy is

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2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

filled by ordinance. When the majority of the remaining council voted to appoint a member, there was much backlash from hundreds of members in the county demanding a special election in-leu-of an appointment. Arguments were made by hundreds of individuals during public comment as well as by elected officials calling it voter supression, stripping away the constitutional right to vote, corrupt, etc. The lobbying by the community proved effective and the decision was reversed allowing for a special election to fill the seat. Those outcires are notably silent now.

Those strong arguments apply to the County as well. The arguments may even be stronger in that unlike Palm Bay, Commissioners are single member distrctits while Palm Bay Councilmen are at-large. The citizens of District 2 no longer have a Commissioner representing them that they had the right to vote for. As decisions directly impacting them are being voted on such as taxes, it can be argued they now have taxation without representation due to no fault of their own.

The citizens of each district should have the right to choose who represents them, otheriwise we no longer have a democratic process but a political one. The Governor not being a resident of Brevard must rely on the input of other elected officials and advisors in order to make an appointment to the office should he even chose to do so. This process severely lacks transparency, does not allow for citizens to take place in the process, and allows for the perception political favors, special treatments, or inpropriety, etc.

Our Nation was founded on the premise that the people choose who represent them, not dictated who will represent them.

I propose that Section 2.7 be amended to remove the Governor appointment clause and state that any vacancy will be filled by special election if there are at least 90 days remaining in the term to allow for an election to occur. If less than 90 days, then qualified individuals can apply to be appointed to the Commission by the remaining Commissioners in the same ranking system as a County Board. If an appointment must occur, then at least it will come from those who have expressed the interest to serve, and voted on by actual elected officials of the community.

2021-2022 Brevard County Charter Review Proposals

Proposal #	Author	Submission Date	Date of Introduction	Meeting Schedule	Brief Description	Public Hearing Dates
1	Blaise Trettis	1/3/2022	1/6/2022	Meeting 1 2/17/2022 Meeting 2 03/24/2022 Meeting 3 04/21/2021	2.9.3.1 Supermajority Vote-Charter Cap	Public Hearing 1 02/17/2022 Public Hearing 2 03/24/2022 Public Hearing 3 04/21/2022
2	Blaise Trettis	2/3/2022	2/17/2022	Meeting 1 03/24/2022 Meeting 2 04/21/2022	New Section 8.2 Recall Election for School Board Members	Public Hearing 1 03/24/2022 Public Hearing 2 04/21/2022
3	Sandra Sullivan	2/16/2022	2/17/2022	Meeting 1 03/24/2022 Meeting 2 04/21/2022	Charter Amendment- Fulltime Commissioners	Public Hearing 1 03/24/2022 Public Hearing 2 04/21/2022
4	Sandra Sullivan	2/17/2022	2/17/2022	Meeting 1 03/24/2022 Meeting 2 04/21/2022	Revise 2.9.10 to redefine Citizen Process for advison the County Commission	Public Hearing 1 03/24/2022 Public Hearing 2 04/21/2022
5	Blaise Trettis	2/25/2022	3/24/2022	Meeting 1 03/24/2022 Meeting 2 04/21/2022	Repeal the Three Panel Attorneys who review Charter Amendment Proposals	Public Hearing 1 03/24/2022 Public Hearing 2 04/21/2022

2021-2022 Brevard County Charter Review Proposals

6	Michael Myjak	3/22/2022	3/24/2022	Meeting 1 04/21/2022	Right to Clean Water	Public Hearing 1 04/21/2022
7	Blaise Trettis	3/23/2022	3/24/2022	Meeting 1 04/21/2022	Repeal of Article 8 and Section 8.1	Public Hearing 1 04/21/2022
8	Robert Burns	4/6/2022	4/21/2022	Informational 04/21/2022	Amend Section 2.7 Vacancies and Suspensions	Public Hearing 1 05/12/2022

Rules of Procedure Brevard County Charter Review Commission

(As Amended September 23, 2021)

- Rule 1. Public Meeting
- Rule 2. Citizens Participation at Meetings
- Rule 3. Place of Meetings
- Rule 4. Call and Notice of Meetings
- Rule 5. Agenda for Regular Meetings
- Rule 6. Recording of Minutes
- Rule 7. Quorum
- Rule 8. Proxy Voting
- Rule 9. Voting Generally
- Rule 10. Official Rule of Order
- Rule 11. Duties of the Chairman
- Rule 12. Duties of the Vice-Chairman
- Rule 13. Duties of the CRC staff person
- Rule 14. Committees
- Rule 15. Policy on Publicity
- Rule 16. Rule Amendments
- Rule 17. Charter Amendments
- Rule 18. Absences
- Rule 19. Procedure for Presenting Charter Amendment Proposals

Rule 1. Public Meetings: All meetings of the Commission, including all meetings of its Committees, shall be open to the public.

Rule 2. Citizen Participation at Meetings: The Commission will allow public comment on all substantive agenda items. Under the agenda item of "Public Comment" any and all interested citizens shall be afforded an opportunity to comment on matters before the Commission or any Committees. The remarks of any citizen should be germane to the agenda or matters to come before the Commission. Each agenda shall include and prescribe a certain portion of the meeting at which "Public Comment" may be made. The Commission may impose reasonable limitations on time allotted to speakers. Each citizen addressing the Commission is asked to avoid being redundant. Citizen's comments will be limited to three (3) minutes in the interest of fairness to all citizens desiring to be heard. This requirement may be waived at the discretion of the Charter Review Commission by majority vote of members.

Rule 3. Place of Meetings: The location of meeting places for the Commission should be based on the following guidelines: Meeting places may be considered in any geographical areas of the county. The meetings of the Commission or Committees should be at a meeting place accessible to the public and large enough to accommodate not only the Commission or Committee, as the case may be, but also interested citizens.

Rule 4. Call and Notice of Meetings: Date, time and place of each regular meeting of the Commission shall be announced at the preceding regular or special meeting of the

Commission, and posted on public bulletin boards in accordance with Brevard County policy. The agenda of each regular or special meeting shall include the scheduling of the date of the next regular meeting. Special meetings may be called by the Chairman of the Commission, or by any ten (10) members of the Commission with at least one member from each district attending and require the ten (10) members of the Commission requesting a special meeting to do so in writing and filed with the CRC staff person. The CRC staff person shall be responsible for e-mailing and mailing a written notice of the date, time and place of meetings to members of the Commission. All such notices shall be mailed and emailed to the members of the Commission at their addresses noted on the *Commissioner Appointee Information Form* and kept by the CRC staff person. It shall be the responsibility of any member of the Commission to notify the CRC staff person of any change of address. The Chairman of each Committee shall be responsible through the CRC staff person, for giving sufficient written, e-mail, and telephone notice of Committee meetings. A written notice of special meetings of the entire Commission shall be given in the same manner as written notices of regular meetings, except that the written notice of a special meeting shall include the purpose for the call of such special meeting.

Rule 5. Agenda for Regular Meetings: The agenda for regular meetings of the Commission shall be generally as follows, subject to amendment or revision by the Commission Chairman:

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of Minutes of Previous Meeting
- V. Reports:
 - A. Chairman
 - B. CRC Staff Person
 - C. Other Members
- VI. Public Comment
- VII. Introduction of Guests and Their Presentations (if applicable)
- VIII. Reports of Committees
- IX. Unfinished Business
- X. New Business
- XI. Adjournment

Rule 6. Recording of Minutes: Meetings of the Commission shall be recorded on recording machines. The tapes of all such meetings shall be preserved as required by law. Failure to tape record a meeting shall not affect the validity of any proceeding. The CRC staff person shall be responsible for ensuring that a recording apparatus is available at each meeting of the Commission. The CRC staff shall further be responsible for the safeguarding of the tapes of such meetings. In addition to the tape recording of the meetings, the CRC staff shall take minutes of the proceedings of the Commission and the Chairman of each Committee or a person designated by such Chairman shall take minutes at all proceedings of the Committee meetings. All records of the Commission, including the tape recordings of meetings, shall be made available to the public during normal business hours. Minutes of all the Committee proceedings shall be filed with the CRC staff person at least once per month.

Rule 7. Quorum: A majority of the members of the Commission or Committee shall constitute a quorum.

Rule 8. Proxy Voting: No member of the Commission or any of its Committees shall have the power to vote by proxy. Only those members physically present shall be entitled to vote.

Rule 9. Voting Generally: Each member present shall vote, unless a conflict of interest exists, in which case said conflict shall be publicly stated prior to the vote and filed in writing with the CRC staff person, as provided by law.

Rule 10. Official Rules of Order: Except as otherwise provided in these Rules and Policies, Robert's Rules of Order Revised (11th Edition) shall apply in matters of procedural conflict for the Commission and Committees.

Rule 11. Duties of the Chairman: The Chairman shall:

- a. Preside at all meetings of the Commission
- b. Serve as speaker for functions and activities.
- c. Be charged with the responsibility of making appointments of all persons on committees.
- d. Call special meetings when necessary

Rule 12. Duties of the Vice-Chairman: The Vice-Chairman shall perform the duties of the Chairman in the Chairman's absence or inability to serve.

Rule 13. Duties of the CRC staff:

- a. Keep accurate minutes of all Commission proceedings.
- b. Be custodian of all records of the Commission.
- c. Keep an address and attendance roster.
- d. Prepare, dispatch, file, and otherwise process all correspondence approved by a Member of the Commission for the Commission as a whole.
- e. Make all minutes available to the public and open for inspection at all reasonable times. The attendance roster shall likewise be open for inspection by any member and by the public at any reasonable time.
- f. Provide for the reproduction or copying of such records as may be requested by the public on a reasonable period of time and at a rate consistent with Brevard County policy.
- g. Maintain accurate records showing the nature, purpose, and amount of all expenditures made on behalf of the Commission.
- h. Coordinate with the Office of the County Manager in connection with the proof and filing of all disbursement requests and other administrative requirements.
- i. Perform other duties as prescribed by the Chairman.

Rule 14. Committees: The Commission may establish Committees as it sees fit to plan and administer ministerial functions of the Commission, or to investigate and report to the full Commission on the studies of special departments or functions of the existing or proposed government, or for any other lawful purpose; provided that no Committee shall have any final authority vested by law in the full Commission.

Rule 15. Policy on Publicity: Every effort shall be made to ensure that the proceedings of the Commission are made available to the media with the goal of seeking maximum public participation in the review process. No attempt shall be made to inhibit the normal processes of the media. The Chairman of the Commission or designee shall be responsible for announcing the position of the Commission to the public and news media. Members of the Commission may make public or private statements of their personal feelings, attitudes, or beliefs at any time. In making such statements, however, members of the Commission shall on every occasion make an affirmative statement that they are speaking as an individual and not on behalf of the Commission as a whole.

Rule 16. Rule Amendments: These rules and policies shall be the by-laws of the Commission and may be amended by an affirmative vote of eight (8) of the members of the Commission with at least one member appointed by each Commissioner present.

Rule 17. Charter Amendments: For a charter amendment recommendation to be transmitted to the Board of County Commissioners for placement on the ballot for voter approval or denial, ten (10) members of the CRC must vote to approve it.

Rule 18. Absences: Absences may be excused by the Chair for good cause. The CRC may review and ratify or overrule the Chair's determination of good cause. If any member of the CRC is absent for three consecutive meetings without good cause. The CRC shall notify the County Commissioner who appointed the absent member and request the appointment of a replacement member.

Rule 19. Procedure for Presenting Charter Amendment Proposals: The procedure for presenting Charter Amendment Proposals shall be as follows:

- a. The member of the Commission, or a resident of Brevard County making the proposal shall introduce the proposal to the Commission.
- b. The members of the Commission shall discuss the proposal presented.
- c. The Commission shall hear any public comment regarding the proposal from any member of the public who has registered to speak with respect to the specific proposal.
- d. The Commission shall have further discussion regarding the proposal, if necessary.
- e. A member of the Commission may then make a motion concerning the proposal.

2021-2022 Charter Review Commission
Proposed Meeting Schedule for
04-21-2022

Date	Day	Time	Location	Proposals Due (10 days prior to meeting date)	Agenda Distributed
06-Jan-22	Thursday	5:00PM	Florida Room	27-Dec-21	
20-Jan-22	CANCELLED	CANCELLED	CANCELLED	10-Jan-22	
3-Feb-22	CANCELLED	CANCELLED	CANCELLED	24-Jan-22	
17-Feb-22	Thursday	3:00PM	Commission Chambers	7-Feb-22	
10-Mar-22	CANCELLED	CANCELLED	CANCELLED	28-Feb-22	
24-Mar-22	Thursday	1:00PM	Commission Chambers	14-Mar-22	
7-Apr-22	CANCELLED	CANCELLED	CANCELLED	28-Mar-22	
21-Apr-22	Thursday	3:00PM	Commission Chambers	11-Apr-22	
12-May-22	Thursday	5:00PM	Commission Chambers	2-May-22 12-May-22 Final date for proposal submissions	
23-June-22	Thursday	3:00 PM	Commission Chambers		
07-Jul-22	Thursday	3:00 PM	Commission Chambers		
21-Jul-22	Thursday	3:00PM	Commission Chambers		
4-Aug-22	Thursday	3:00PM	Florida Room		