

IN THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

JAMES E. SHIRK,

Plaintiff,

vs.

BUDDY JOHNSON, Supervisor
of Elections, Hillsborough County,
Florida, in his official capacity,

Defendant.

RECEIVED AND FILED

JUL 07 2008

CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL Case No:

08 - 015176

DIVISION J

Judge James D Arnold

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiff brings this action to enjoin the placement on the November 2008 general election ballot of an amendment to the Hillsborough County Charter proposed by citizen petition. The proposed charter amendment cannot lawfully be submitted to Florida voters because: (1) the petition form signed by the citizens of Hillsborough County limited the placement of the charter amendment to the November 2006 general election; and (2) the proposed ballot title and summary language are misleading as to the true effect of the proposed amendment.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to Article V, section 5(b) of the Florida Constitution and section 26.012, Florida Statutes.

3. This Court has jurisdiction to grant declaratory relief pursuant to Article V, section 5(b) of the Florida Constitution and section 86.011, Florida Statutes and to grant injunctive relief pursuant to Article V, section 5(b) of the Florida Constitution, section 26.012(3), Florida Statutes and Florida Rule of Civil Procedure 1.610.

4. Venue is proper in Hillsborough County pursuant to section 47.011, Florida Statutes because the Supervisor of Elections Office is located in Hillsborough County, Florida and the cause of action accrued in Hillsborough County, Florida.

PARTIES

5. The Plaintiff, James E. Shirk, is a citizen of the State of Florida and is a registered voter in Hillsborough County, Florida. The Plaintiff signed the charter amendment which seeks to amend Article V of the Hillsborough County Charter.

6. The Defendant, Buddy Johnson, is the Supervisor of Elections for Hillsborough County, Florida and is sued in his official capacity. The Defendant Buddy Johnson is the constitutional officer charged with administering elections within Hillsborough County, Florida. He is joined as a necessary and indispensable party for the purposes of relief sought by this action.

7. The Plaintiff has standing to seek declaratory relief pursuant to Chapter 86, Florida Statutes and Section 101.161(1), Florida Statutes and as an elector of Hillsborough County and petition signer, he has an interest and direct stake in the controversies raised in this complaint.

FACTS

8. Section 8.03 of the Hillsborough County Charter sets forth the requirements for amending the County Charter by citizen initiative, stating:

The power to propose amendments to this Charter by initiative is vested in the people:

(1) The power may be invoked by filing with the supervisor of elections a petition containing a copy of the proposed Charter amendment. Each petition must be circulated in each numbered board district and must be signed by a number of electors in each of one-half of districts 1 through 4 and of the county as a whole equal to eight (8) per cent of the votes cast in each of such districts and the county as a whole in the last preceding election in which a president or presidential electors were chosen. The address of each signer, and date of each signature, must appear on

the petition. Each petition shall embrace but one subject and matter properly connected therewith. A date certain must be designated to and certified by the supervisor of elections as the beginning date of any petition drive, and said drive shall terminate six (6) months after the date. In the event sufficient signatures are not acquired during that six-month period, the petition drive shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition.

(2) The petition shall be filed with the supervisor of elections who shall, within a period of not more than thirty (30) days, determine whether the petition contains the required valid signatures. The supervisor shall be paid the sum specified by general law by the persons or committee seeking verification.

(a) If it is determined that the petition does not contain the required signatures, the supervisor shall so certify to the board of county commissioners and the petition drive 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.

(b) If it is determined that the petition has the required signatures, the supervisor shall so certify to the board of county commissioners and place the amendment on the ballot.

(3) All other procedures shall be as provided by general law for constitutional amendments with the supervisor of elections performing the duties of the secretary of state.

9. Upon certification of the citizen initiative by the Supervisor of Elections, Section 8.04 of the Hillsborough County Charter requires the initiative amendment to be voted on at the next regular general election.

10. In accordance with the Charter, in April 2006, Taking Back Hillsborough County Political Committee, Inc., a registered Florida political committee, submitted a charter amendment petition to Defendant Buddy Johnson for approval. The charter amendment sought to amend Article V of the Hillsborough County Charter by, among other things, replacing the appointed County Administrator with a nonpartisan, elected County Mayor. On April 11, 2006, Defendant Buddy Johnson approved the charter amendment petition, and it was designated Charter Amendment

Petition 06-5. Thereafter, Taking Back Hillsborough County Political Committee, Inc. began circulating for signature by County electors Charter Amendment Petition 06-5. A true and exact copy of such petition is attached hereto as Exhibit A and incorporated herein by reference.

11. Charter Amendment Petition 06-5 begins with the following statement: "I am a registered voter of Florida and hereby petition the Supervisor of Elections Hillsborough County to place the following amendment to the Hillsborough County Charter on the ballot in the next general election." The petition then provides space for an elector to fill out his or her name, address, voter registration number and signature.

12. Plaintiff signed the petition form for the County Mayor Amendment with the belief that it would be on the November 2006 general election ballot.

13. Taking Back Hillsborough County Political Committee, Inc. did not collect sufficient signatures on Charter Amendment Petition 06-5 to place the charter amendment on the ballot for the November 2006 general election. However, it continued to collect signatures on Charter Amendment Petition 06-5.

14. On October 31, 2006, Supervisor Johnson certified that Taking Back Hillsborough County Political Committee, Inc. had submitted the required number of signatures to place Charter Amendment Petition 06-5 on the ballot for the November 2008 general election. A true and exact copy of such certification is attached hereto as Exhibit B and incorporated herein by reference.

15. Section 101.161(1), Florida Statutes requires any public measure that is to be voted on by the public to include a ballot title and summary. The ballot summary must not exceed 75 words and must fairly inform the voter of the chief purpose of the amendment. §101.161(1), Fla. Stat. (2007).

16. The ballot title for the charter amendment certified by Defendant Buddy Johnson is "Replacing the Current Appointed Administrator with a Nonpartisan Elected County Mayor."

17. The ballot summary for the charter amendment certified by Defendant Buddy Johnson is: "Shall the Hillsborough County Charter be revised to replace the office of an appointed County Administrator for a nonpartisan elected County Mayor; limited to two consecutive terms; specifying executive functions, powers and duties; specifying that the County Mayor will not be a member of the Board."

18. The charter amendment seeks to amend Article V of the Hillsborough County Charter by replacing the current County Administrator with a nonpartisan elected County Mayor. The charter amendment states that "[t]he non-partisan primary and general election of the County Mayor shall be held in even number years, beginning with the general election held in the year 2008."

19. In addition to replacing the county administrator with an elected nonpartisan county mayor, the charter amendment also removes the work experience and educational requirements placed upon the county administrator. While the county administrator was required to hold a masters degree in public administration, management or related field and have three years of executive or management experience in public administration, the county mayor is not subject to any educational or work experience requirements.

20. The charter amendment also seeks to change section 5.01 of Article V of the Hillsborough County Charter. While section 5.01 currently authorizes the County Administrator to appoint Assistant County Administrators with Board consent and approval, the charter amendment seeks to grant this authority exclusively to the County Mayor without the need for Board consent or approval.

21. Similarly, the charter amendment seeks to change section 5.04 of Article V of the Hillsborough County Charter to expand the powers of the new County Mayor beyond the powers of the existing County Administrator. Currently, section 5.04 is entitled "Political Activity by Administrator" and does not contain any of the duties or powers of the County Administrator. The charter amendment seeks to change section 5.04 to "Duties" and enumerates the powers and duties of the County Mayor.

22. Among the powers and duties listed in the charter amendment's section 5.04 is: "Be responsible for the execution of all contracts and legal documents." Presently, the County Administrator's power to execute contracts is limited by the requirement that the County Administrator "obtain the approval of the Board of County Commissioners."

COUNT I

(Petition form invalid for November 4, 2008 election)

23. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.

24. In signing Charter Amendment Petition 06-05, electors were specifically requesting that the initiative be placed "on the ballot in the next general election" in November 2006.

25. Charter Amendment Petition 06-5 by its own language restricts the placement of the initiative solely to the November 2006 general election ballot.

26. Because electors signed the petition with the intention of placing it solely on the November 2006 general election ballot, the charter amendment is null and void and may not be lawfully placed on the ballot for the November 2008 general election. See Eight Is Enough In Pinellas v. Ruggles, 678 So. 2d 898 (Fla. 2d DCA 1996)(holding that the Supervisor of Elections properly removed from the ballot an initiative that contained self-limiting language that limited the

placement of the initiative on a specific ballot).

27. Plaintiff will suffer immediate and irreparable harm if the charter amendment is placed on the ballot for the November 2008 general election. Plaintiff has no adequate remedy at law, and it is in the public interest to ensure that Hillsborough County voters are not asked to vote on an unlawful amendment to the Hillsborough County Charter.

COUNT II

(Ballot title and summary are misleading)

28. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.

29. The ballot title and summary language of the charter amendment is misleading as to the true effect of the charter amendment in violation of Section 101.161(1), Florida Statutes.

30. The ballot title and summary fail to inform the voter that the true effect of the charter amendment is to expand the powers of the County Mayor, move such powers into the Charter, and remove powers from the Board of County Commissioners.

31. The ballot title and summary also fail to inform the voter that implementation of the amendment as written is impossible since the vote for the amendment is to occur at the same election the amendment calls for a vote on the County Mayor.

30. For this reason, the charter amendment may not lawfully be placed on the ballot for the 2008 general election.

31. Plaintiff will suffer immediate and irreparable harm if the charter amendment is placed on the ballot for the November 2008 general election.

32. Plaintiff has no adequate remedy at law, and it is in the public interest to ensure that Hillsborough County voters are accurately informed as to the true effect of the proposed amendment

to the Hillsborough County Charter.


WHEREFORE, the Court is respectfully requested to assert and assume jurisdiction and enter judgment as follows:

1. Declaring that the charter amendment is invalid;
2. Declaring that the ballot title and ballot summary language accompanying the charter amendment do not accurately inform Hillsborough County voters of the true effect of the proposed amendment in violation of Section 101.161(1), Florida Statutes;
3. Enjoining Defendant Buddy Johnson and all persons and entities acting under his direction or in concert with him, from placing the charter amendment on the ballot for the November 2008 general election;
4. Granting such other relief as would be just and equitable.

Respectfully submitted,

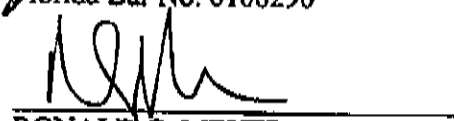
MEYER AND BROOKS, P.A.
2544 Blairstone Pines Drive
Post Office Box 1547
Tallahassee, Florida 32302
(850) 878-5212

By:



JENNIFER S. BLOHM
Florida Bar No. 0106290

By:



RONALD G. MEYER
Florida Bar No. 0148248

ATTORNEYS FOR PLAINTIFF

VERIFICATION

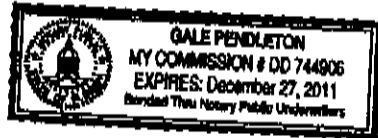
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

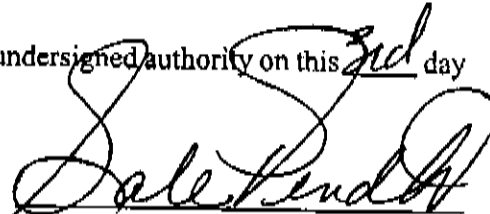
The undersigned verifies that the allegations of the foregoing complaint are true and correct to the best of his knowledge and belief.



JAMES E. SHIRK

SWORN TO AND SUBSCRIBED, before me, the undersigned authority on this 3rd day of July, 2008.





Notary Public
My Commission Expires: 12/27/11

CHARTER AMENDMENT PETITION FORM

s. 104.185(1) - A person who knowingly signs a petition or petitions for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
s. 104.185(2) - A person who signs another person's name or a fictitious name in any petition to secure ballot position for a candidate, a minor political party, or an issue commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

I am a registered voter of Florida and hereby petition the Supervisor of Elections Hillsborough County to place the following amendment to the Hillsborough County Charter on the ballot in the next general election.

NAME _____ STREET ADDRESS _____
Please Print Name as it Appears on Voter I.D. card

CITY _____ ZIP _____ COUNTY _____

IS THIS A CHANGE OF ADDRESS FOR VOTER REGISTRATION Yes No

Email Address: _____ (optional)

VOTER REGISTRATION NUMBER _____ DATE OF BIRTH ____ / ____ / ____

X _____ DATE _____
SIGNATURE OF REGISTERED VOTER DATE SIGNED

BALLOT TITLE: REPLACING THE CURRENT APPOINTED ADMINISTRATOR WITH A NONPARTISAN ELECTED COUNTY MAYOR.

BALLOT SUMMARY: Shall the Hillsborough County Charter be revised to replace the office of an appointed County Administrator for a nonpartisan elected County Mayor; limited to two consecutive terms; specifying executive functions, powers and duties; specifying that the County Mayor will not be a member of the Board.

This amendment shall take effect upon passage by the voters.

Note: Language stricken to current language in the charter being deleted and language underlined is new language that is proposed to add to the charter.

FULL TEXT OF PROPOSED AMENDMENT:

BE IT ENACTED BY THE CITIZENS OF HILLSBOROUGH COUNTY THAT:

ARTICLE V OF THE HILLSBOROUGH COUNTY CHARTER IS HEREBY AMENDED BY THE CHANGES AND ADDITIONS OF THE FOLLOWING TO READ:

V. Executive Branch: ~~Elected County Mayor Administrator~~

Section 5.01. ~~Elected County Mayor Administrator~~

The executive responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the an elected County Mayor administrator. ~~The Executive Branch shall be composed of an elected County Mayor, the officers and employees of the administrative offices and executive divisions established by this Charter or created by the Board. One or more assistant county administrators may be appointed by the County Mayor administrator with the advice and consent of the board and shall serve at the pleasure of the County Mayor administrator.~~

(FULL TEXT OF PROPOSED AMENDMENT CONTINUED ON THE OTHER SIDE)

RETURN TO: Taking Back Hillsborough County Political Committee, Inc. • 315 Plant Avenue - Tampa, Florida 33606

Serial Number: 06-5
Dated Approved: 4/11/06

Exhibit
A

Section 5.02. Administrative Organization.

All functions of the executive branch shall be allotted among not more than ten divisions or offices. Each division or office shall be administered by a division or office head in accordance with the administrative code. Each division or office head shall be appointed by the County Mayor administrator with the advice and consent of the board and shall serve at the pleasure of the County Mayor administrator. Each division or office head shall report to and be responsible to the County Mayor administrator or designated assistant county administrator. The County Mayor administrator may, as allowed by ordinance, require one division or office to undertake a task of another division or office on a temporary basis ~~or until the board provides otherwise.~~

Section 5.03. County Mayor Administrator Qualifications, Election, Appointment, Term of Office; Compensation.

(1) The County Mayor administrator shall be a full-time position combining both the duties of ceremonial head and operational head of the county. ~~Officer who holds a masters degree in public administration, management, or related field shall have three years of executive or management experience in public administration.~~ The County Mayor county administrator shall be elected at large and shall not be a member of the board of county commissioners. The term of office shall be for a term of four years not to exceed two consecutive terms and will commence on the second Tuesday of January in the year following the election, appointed by an affirmative vote of not less than five members of the board of county commissioners and may be removed at any time by an affirmative vote of not less than five members of the board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than fifteen (15) days apart and no more than twenty-eight (28) days apart. The County Mayor shall be administrator need not be a registered voter and a resident of the county at the time of election to office and throughout the term of office, appointment, but shall within a reasonable time become and remain whole in office a resident of the county. The non-partisan primary and general election of the County Mayor shall be held in even number years, beginning with the general election held in the year 2008. The County Mayor administrator shall not engage in any other business or occupation.

(2) The compensation of the Mayor administrator shall be fixed by the board of county commissioners by ordinance at a level which is commensurate with the requirements of the position. ~~The county administrator's compensation, including severance pay, may be set by contract if allowed by and pursuant to ordinance.~~

(3) The office of County Mayor administrator shall be deemed vacant if the incumbent: takes up residence outside the county; is by death, illness, resignation, refusal of the Mayor to serve, removal, or other casualty or reason unable to continue to perform the duties of his office; or resigns, or is removed by the board of county commissioners in the manner prescribed in Section 5.03(4). A vacancy in the office shall be filled in accordance with state law, the same manner as the original appointment. ~~The board of county commissioners may appoint an interim administrator in the case of vacancy, temporary absence, or disability of the present administrator until a successor has been appointed and qualified or the administrator returns.~~

Section 5.04. Political Activity by Administrator Duties. The County Mayor shall have the following powers and duties:

(1) Manage the operation of all elements of County government under the jurisdiction of the Board, consistent with the policies, ordinances and resolutions enacted by the Board;

(2) Be responsible for the execution of all contracts and legal documents, but may delegate this authority;

(3) Appoint and dismiss heads of County departments and divisions, which appointments shall be subject to confirmation by the Board;

(4) Assure the faithful execution of all ordinances, resolutions and orders of the Board and all laws of the State which are subject to enforcement by the County Mayor or by officers who are subject under this Charter to the Mayor's discretion and supervision;

(5) Present annually at a time designated by the Board, a "State of the County" message, setting forth programs and recommendations to the Board;

(6) Supervise the daily activities of employees;

(7) Serve as the chief administrative official of the county, official representative and ceremonial dignitary for the government of Hillsborough County with prerogative to issue proclamations; and,

(8) Carry out other powers and duties as required by this Charter or may be prescribed by the Board.

~~The county administrator shall not hold any political office nor take part in any political activity other than voting.~~

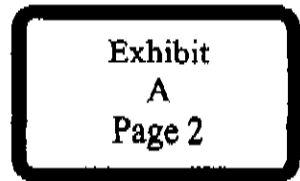
Section 5.05. Performance Bond

~~The county administrator shall be required to post a performance bond in accordance with general law~~

Name of paid petition circulator _____

Address _____

Serial Number: <u>06-5</u>
Dated Approved: <u>4/11/06</u>





Buddy Johnson
SUPERVISOR OF ELECTIONS
HILLSBOROUGH COUNTY

October 31, 2006

The Honorable Jim Norman, Chairman
Board of County Commissioners
601 E. Kennedy Blvd., 2nd Floor
Tampa, FL 33602

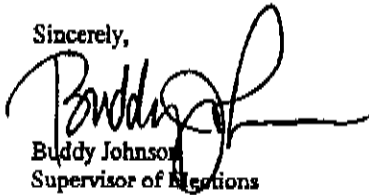
Dear Commissioner Norman:

In compliance with section 8.03 of the Hillsborough County Home Rule Charter, I am notifying you that Taking Back Hillsborough County Political Committee, Inc. has submitted the required number of signatures of qualified voters for the Replacing the Current Appointed Administrator with a Nonpartisan Elected County Mayor Initiative and the Providing County Mayor With Veto Power, Providing Board Power to Override With Two-Thirds Vote Initiative to be placed on the ballot. Copies of the Initiative Petition Certifications are attached.

These initiatives will be placed on the General Election Ballot for the 2008 General Election.

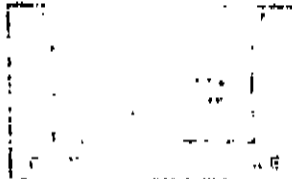
If you have any questions, do not hesitate to contact me at (813) 272-5850.

Sincerely,



Buddy Johnson
Supervisor of Elections

Enclosures



County Center
601 E. Kennedy Blvd., 16th Floor
Tampa, Florida 33602
Telephone: (813) 272-5850
Fax: (813) 272-7043
www.votehillsborough.org

Exhibit
B



INITIATIVE PETITION CERTIFICATION

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

October 31, 2006

Buddy Johnson
SUPERVISOR OF ELECTIONS
HILLSBOROUGH COUNTY

I, Buddy Johnson, Supervisor of Elections of Hillsborough County, Florida, do hereby certify that there were 47,823 signatures processed for the petition:

Ballot Title: REPLACING THE CURRENT APPOINTED ADMINISTRATOR WITH A NONPARTISAN ELECTED COUNTY MAYOR

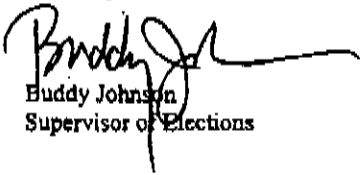
Serial Number: 06-5

Of the total number processed, 39,166 were verified as registered electors in Hillsborough County, Florida.

In compliance with section 8.03 of the Hillsborough County Home Rule Charter, I hereby notify the Board of County Commissioners that Taking Back Hillsborough County Political Committee, Inc. has submitted the required number of signatures of qualified voters for the Replacing the Current Appointed Administrator with a Nonpartisan Elected County Mayor Initiative to be placed on the ballot.

This initiative will be placed on the General Election Ballot for the 2008 General Election.

Sincerely,


Buddy Johnson
Supervisor of Elections

**W
F
C
V**

County Center
601 E. Kennedy Blvd., 16th Floor
Tampa, Florida 33602
Telephone: (813) 272-5850
Fax: (813) 272-7043
www.votehillsborough.org

Exhibit
B
Page 2

Date : 10-31-2006
Time : 13:50:06

Petition : 2006 REPLACE ADMIN/ELECT MAYOR

Contact : 06-5
Address :

Phone :

Party :
Needed # :

Total Processed	47823	100.00%
Total Valid	39166	81.90%
Total Invalid	8657	18.10%
Not Registered	5596	11.70%
Illegible	73	0.15%
Invalid District	0	0.00%
Purged	17	0.04%
Unidentified	9	0.02%
Signature Differs	147	0.31%
Not Signed	1	0.00%
Deceased	8	0.02%
Previously Signed	1775	3.71%
Not In County	39	0.08%
No Sig On File	0	0.00%
Wrong Party	0	0.00%
Invalid Address	0	0.00%
Deleted	972	2.03%
Invalid Date	2	0.00%
Notary Problem	0	0.00%
No Date	1	0.00%
No Addr or Precinct	2	0.00%
No DOB or VoterID#	15	0.03%

CO01	COUNTY COMMISSION - 1	7299
CO02	COUNTY COMMISSION - 2	12649
CO03	COUNTY COMMISSION - 3	8920
CO04	COUNTY COMMISSION - 4	10298