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August 20, 2019

Orange County Charter Review Commission and CRC Counsel

Dear Commissioners and Mr. Shepard:

I wish to clarify two issues which have arisen in the Rights of Nature subcommittee. First, whether a county charter revision proposed by the Orange County Charter Review Commission is subject to the single-subject rule. Second, whether language in a charter revision which creates a "remedy" would also confer standing to Orange County citizens independent of a "special injury."

The Florida Supreme Court appears to have established that ballot questions containing proposed county charter revisions by a charter review commission are not subject to a single-subject rule. In Charter Review Commission of Orange County v. Scott, 647 So. 2d 835 (Fla. 1994), the Florida Supreme Court addressed whether the Orange County Charter Review Commission's proposed charter amendments would be subject to the single-subject rule. The supreme court held that the single-subject rule did not apply under those circumstances. Specifically, the supreme court noted that neither the Florida Constitution nor any Florida statutes applied the single-subject rule to proposed amendments to county charters. Further, the Court noted that the Orange County Charter is analogous to the state constitution, and the state constitution only requires a single-subject when proposals originate through a citizens' petition initiative, but not through a constitutional revision commission proposal. The supreme court further noted that the Orange County charter at that time required the Review Commission to convene and conduct a "comprehensive study of any/or all phases of County government," but that the charter contained no single-subject requirement.

Currently, the Orange County Charter, Article VII, Section 702, which contains the charter review commission provisions, does not include any single-subject language.

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More recently, in Seminole County v. City of Winter Springs, 935 So. 2d 521 (Fla. 5<sup>th</sup> DCA 2006), the Fifth District cited Scott approvingly in Footnote 5, stating, "Neither the Florida Constitution nor the Florida Statutes applies a single-subject rule to propose amendments to county or city charters; therefore, any limitation must be found within the charter itself."

The current charter only contains the single-subject rule in Article VI, Section 602, which states the procedures for citizens' initiative petitions, and is separate from the CRC section.

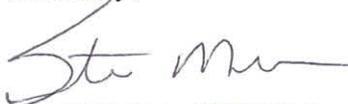
With respect to the standing issue, there appears to be one Florida case on point: Herbits v. City of Miami, 207 So. 3d 274 (Fla. 3rd DCA 2016). In Herbits, appellants, who were Miami-Dade County property owners near a large proposed development, argued that the City of Miami violated the Miami-Dade County charter and Citizen's Bill of Rights by concealing appraisal information from the public. The Miami-Dade Citizen's Bill of Rights provided, in relevant part, that "(N)o county or municipal official shall knowingly furnish false information on any public matter" It further provided the remedy that, "A citizen may bring a cause of action alleging a violation of this Article filed in the Dade County Circuit Court pursuant to its general equity jurisdiction and if successful, shall be entitled to recover costs and fixed by the Court."

The Herbits Court analyzed whether this charter language conferred standing to Miami-Dade citizens independent of any "special injury," and concluded that it did. The Herbits Court explained that while citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries other citizens and taxpayers, or unless the claim is based on a violation of a provision of the Constitution that governs the taxing and spending powers, there is an exception when legislation provides a cause of action and standing to private citizens. The Herbits Court held that such an exception did apply to the unique rights conferred through the Miami-Dade County Home Rule Charter and its Citizen's Bill of Rights.

I have attached these cases and I hope they are useful in clarifying that no single-subject rule exists, and that the proposed language currently in the rights of nature draft would confer standing to Orange County residents. I would ask that Mr. Shepard confirm this analysis is accurate, or provide clarification.

Thank you.

Sincerely,



STEVEN M. MEYERS

SMM/cg