

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO. 502011CA017953XXXXMB AO

TOWN OF GULF STREAM, et al.,

Plaintiffs,

v.

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,

Defendant.

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SHARON R. BOCK, in her Official Capacity  
as the Clerk and Comptroller of Palm Beach  
County, Florida,

Intervenor.

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**DEFENDANT PALM BEACH COUNTY'S RESPONSE**  
**TO PLAINTIFFS' MOTION FOR REHEARING**

The Defendant, Palm Beach County (the County), files this response to Plaintiffs' Motion for Rehearing, respectfully requesting this Honorable Court deny Plaintiffs' Motion, and as grounds states:

After three and one-half years of litigation, Plaintiffs' filing of a Complaint, an Amended Complaint, full discovery, ample briefings to this Court, a three day trial, and the issuance of a comprehensive eleven-page Final Judgment by this Court, Plaintiffs now request that this case be relitigated on the basis of new arguments and additional "legal authority" that the Plaintiff municipalities could have advanced at any time in the past. Plaintiffs' request should be denied,

as explained below.

Plaintiffs argue this Court's March 12, 2015, Final Judgment should be reheard for three reasons:

1) charters of certain of the Plaintiff municipalities, which charters were not introduced into evidence at trial and which have not been the focus of any of the Plaintiffs' arguments against a funding requirement to date, prohibit **municipal** initiatives or referenda by the voters regarding municipal budget or appropriation matters;

2) ballot language stating that the Inspector General would be funded by the County and "all other governmental entities subject to the authority of the Inspector General" did not adequately apprise voters that governmental entities such as the municipalities who approved the charter amendment, would be called upon to provide funding; and

3) a subtitle contained on page 6 of this Court's Final Judgment conflicts with contract law.

Not one of Plaintiffs' arguments presents a valid basis for granting rehearing in this case.

### **Prohibitions Contained in Municipal Charters Have No Relevance**

Should this Court determine to consider Plaintiffs' newly fashioned argument addressing the prohibition in certain municipal charters against voter initiatives or referenda regarding municipal budget or appropriation matters, such argument lacks merit for at least three reasons. First, the question of what a municipal charter allows or prohibits is irrelevant to the question of what a **county** charter allows or prohibits. This case does not concern a municipal initiative or referendum, it concerns a county referendum, thus, the highlighted language contained in

municipal charters is irrelevant. Municipal charter provisions which prohibit municipal voters from calling for a specific appropriation of municipal money are not implicated in this case, which concerns a county charter, approved by a majority of the electorate, which calls for the establishment of a program with countywide application.

Second, Plaintiffs' Amended Complaint at paragraphs ten through twelve refers to five Palm Beach County Charter Amendments which, through referendum vote, established programs with countywide application, including The Protection of Wells and Wellfields, for which municipalities must appropriate money in their budgets to pay permitting fees. Plaintiffs' suggestion that a countywide ordinance cannot create a program of countywide application which requires municipalities to appropriate money is contradicted by their own pleading. The Protection of Wells and Wellfields countywide ordinance created just such a program.

Finally, as this Court noted in its Final Judgment, section 166.241, Florida Statutes (2011), "does not vest the municipalities with unfettered discretion with respect to appropriations," and "each municipality's power to make a budget is not a purely discretionary function as its discretion may be modified or restricted by the electorate through its referendum powers." Final Judgment at pg. 4 (citations omitted).

Plaintiffs' first argument does not provide a valid basis for rehearing.

**The Municipalities Are Plainly "Governmental Entities Subject to the Authority of the Inspector General"**

The subject ballot language provided in pertinent part:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS  
COMMISSION AND INDEPENDENT INSPECTOR GENERAL

Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General **funded by** the County Commission and **all** other governmental entities subject to the authority of the Inspector General?

Plaintiffs' tortured reading of the clear, unambiguous language of the ballot question overwhelmingly approved by the electorate on November 2, 2010, lacks merit. Plaintiffs fail to highlight an operative word in the ballot language which advised the electorate which entities would fund the independent Inspector General: "**all** other governmental entities subject to the authority of the Inspector General."

- Are plaintiff municipalities "governmental entities"?

Yes.

- Are plaintiff municipalities "subject to the authority of the Inspector General"?

Yes, by an affirmative vote of the subject charter amendment, as the ballot question advised.

Thus, Plaintiff municipalities are plainly referenced as funders of the Inspector General in the ballot question approved by each municipality on November 2, 2010.

Plaintiffs' second argument does not provide a valid basis for rehearing.

### **Plaintiffs' Narrow Focus on a Subtitle Contained on Page 6 of the Final Judgment Misses the Mark**

Plaintiffs' third argument narrowly focuses on a few words in a subtitle contained within this Court's eleven-page Final Judgment, and in so doing, distorts the reasoning of this section of the Final Judgment. This Court reasoned:

In this case, the majority of voters from the thirty-eight municipalities who voted

on the ordinance used their referendum power and voted that the OIG should apply to their respective municipalities and that the municipalities should contribute to the funding of the program. The people are the municipalities and the officials who represent the people may not undermine the electorate process because they disagree with the vote of the people.

Final Judgment at pg. 6, ¶ 25 (citation omitted).

In short, Plaintiffs' narrow focus on the subtitle introducing this section of the Final Judgment misses the forest for the trees.

Plaintiffs' third argument does not present a valid basis for rehearing.

WHEREFORE, the County respectfully requests this Honorable Court deny Plaintiffs' Motion for Rehearing.

Respectfully submitted,

/s Philip Mugavero  
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and

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been served by email this 1st day of April, 2015, on counsel listed in the attached service list.

/s Philip Mugavero  
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