

MEMORANDUM

TO: Pinellas County Charter Review Commission

FROM: Kurt Spitzer 

DATE: February 17, 2010

RE: Non-Partisan Election of the Supervisor of Elections

The Charter Review Commission has identified the issue of the election of the Supervisor of Elections on a non-partisan basis for further discussion. This memorandum is intended to provide you with background information on that topic.

Currently, the Supervisor of Elections and other county constitutional officers in Pinellas County are elected on a partisan basis, with each (opposed) candidate competing in a primary election to be selected as the Democratic or Republican nominee for the general election. All non-charter counties follow this system and most county charters retain this system for electing the Supervisor and other county constitutional officers.

Requiring candidates to run in partisan contests may help to identify the candidate's political traits and characteristics. The importance and influence of the local political parties is more pronounced in partisan as opposed to non-partisan races.

The opposing view is that there is no "Republican" or "Democratic" way to "administer an election" and that party affiliation is a more important and relevant indicator of future job performance for candidates seeking office in the Legislature or Congress; the chief elections officer for the county should be as far removed from party politics as is possible; and, whether the candidate has been active within a local political party should be less of a factor in becoming a viable candidate.

Of the 20 counties in Florida where the voters have adopted charters, eight charters provide that the Supervisor of Elections is elected on a non-partisan basis, without regard party affiliation. Only one of those (Volusia) first abolished the constitutional office of the Supervisor of Elections and then transferred its duties and responsibilities to an elected charter office.

Similarly, there are three additional charters that provide that the constitutional officers are subject to recall procedures or residency requirements, without abolishing their constitutional status.

Some, such as the charters in Columbia and Polk counties, have included a savings clause stating that the intent of the voters in adopting the amendment for non-partisan elections is to exercise their right to choose the officer "in another manner" as authorized in the Florida

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Constitution. A sample (draft) statement of intent that could be included with an amendment concerning the Supervisor of Elections is attached.

There are differences in terms of the required filing fees for candidates for office and the disposition of the revenue when comparing partisan and non-partisan offices. Currently, in partisan elections at the county level, the filing fee is a total of six percent of the office's annual salary. An amount equal to one percentage point is remitted to the Election Commission's Trust Fund at the State of Florida. A total of five percentage points is remitted to the respective state political party's executive committee.

If the charter provided that the office was elected on a non-partisan basis, the total filing fee would be four percent of the Supervisor's annual salary. Of that amount, one percentage point would still go to the Election Commission's Trust Fund. However, the remaining three percentage points would go to the general revenue fund of the county.

Attached please find the following documents:

- A spreadsheet showing practices in charter counties concerning the non-partisan election of constitutional officers.
- A copy of a 2005 memorandum from Susan Churuti to the Charter Review Commission on this subject.

Please feel free to contact me if you have any questions.

enclosures

DRAFT

Intent and Savings Clause

It is the intent of the people of Pinellas County that the provisions of this amendment with respect to the non-partisan election of the Supervisor of Elections is an exercise of their constitutional prerogative to choose a county officer in another manner as provided in Article VIII, section 1(d) of the Constitution of Florida. This amendment shall not otherwise be construed to alter, transfer, diminish or abolish any of the powers or duties of the office of the Supervisor of Elections now or hereafter existing under the Constitution and general laws of Florida. If any part of this amendment shall be held invalid, then the remainder shall also be deemed to be invalid.

County Officers: Non-Partisan Elections

| <i>County</i> | <i>Year Adopted</i> | <i>Population 2008</i> | <i>CO Election Method</i> | <i>Other</i> |
|---------------|---------------------|------------------------|---------------------------|----------------------------------|
| Alachua | 1987 | 252,388 | no change | |
| Brevard | 1994 | 556,213 | no change | |
| Broward | 1975 | 1,758,494 | no change | rev. coll. & finance to manager |
| Charlotte | 1986 | 165,781 | no change | residency requirement |
| Clay | 1991 | 185,168 | no change | recall; finance moved to manager |
| Columbia | 2002 | 66,121 | nonpartisan | recall: (BCC nonpartisan) |
| Duval | 1968 | 904,971 | nonpartisan | "unitary" elections |
| Hillsborough | 1983 | 1,200,541 | no change | |
| Lee | 1996 | 623,725 | supervisor non-partisan | |
| Leon | 2002 | 274,892 | supervisor non-partisan | (BCC non-partisan) |

| <i>County</i> | <i>Year Adopted</i> | <i>Population 2008</i> | <i>CO Election Method</i> | <i>Other</i> |
|---------------|---------------------|------------------------|----------------------------------------------------|--------------------------------------------------|
| Miami-Dade | 1957 | 2,477,289 | appointed charter officers | (commission non-partisan) |
| Orange | 1986 | 1,114,979 | nonpartisan | recall |
| Osceola | 1992 | 273,709 | no change | finance moved to manager |
| Palm Beach | 1985 | 1,294,654 | Appraiser, Supervisor and Sheriff non- nonpartisan | |
| Pineellas | 1980 | 938,461 | no change | |
| Polk | 1998 | 585,733 | nonpartisan | recall |
| Sarasota | 1971 | 393,608 | no change | residency requirement |
| Seminole | 1989 | 426,413 | no change | |
| Volusia | 1971 | 510,750 | non-partisan | elected charter officers; rev coll & fin to mgr. |
| Wakulla | 2008 | 30,717 | no change | |

TO: Members, Pinellas County Charter Review Commission
The Honorable John Bryan
The Honorable James Coats
The Honorable Susan Latvala
The Honorable Jim Sebesta
Alan Bomstein
Karen Burns
Katie Cole
Ricardo Davis
Robert C. Decker
Roy Harrell
George Jirotko
Louis Kwall
Roger Wilson

FROM: Susan H. Churuti, County Attorney 

SUBJECT: Nonpartisan Election of Supervisor of Elections

DISTRIBUTION: The Honorable Ken Burke, Clerk of the Circuit Court
The Honorable Deborah Clark, Supervisor of Elections
The Honorable Diane Nelson, Tax Collector
The Honorable Jim Smith, Property Appraiser
Stephen M. Spratt, County Administrator

DATE: June 1, 2005

The purpose of this memorandum is to answer commonly asked questions about the procedure for making the Supervisor of Elections a nonpartisan office.

HOW CAN THE SUPERVISOR OF ELECTIONS OFFICE BE MADE NONPARTISAN?

There are two ways, by general law and by charter change. The first would make all Supervisors of Elections statewide nonpartisan. The second would require a local referendum.

WHAT ARE THE CURRENT CHARTER LIMITATIONS ON THE SUPERVISOR OF ELECTIONS?

There are three charter limitations in the Pinellas County Charter: Sections 2.06, 4.03, and 6.04.

The first two were adopted in 1980, with the original charter. The third was adopted in 1998, as recommended by the 1998 Charter Review Commission.

HOW HAVE OTHER COUNTIES TREATED THE ISSUE OF THE NONPARTISAN ELECTION OF CONSTITUTIONAL OFFICERS?

We have attached both the charter provisions relating to other counties and a digest of how other counties deal with this issue as Appendix A to this memorandum.

CAN THE CHARTER REVIEW COMMISSION MAKE THE SUPERVISOR OF ELECTIONS NONPARTISAN WITHOUT LEGISLATIVE ACTION?

Probably not. The legislature should act to remove the charter limitations previously discussed, at a minimum. A minority view is that the Charter Commission can put this item directly on the ballot. If this option is chosen, we would recommend a savings clause preserving the rest of the charter if this provision is ruled unconstitutional, such as that in the Polk county charter in Section 5.2.5. We would also recommend that you make a legislative finding that changing the office to nonpartisan does not effect the "status, duties, or responsibilities" of the office.

MUST THE CONSTITUTIONAL OFFICER STATUS OF THE SUPERVISOR OF ELECTIONS BE ABOLISHED IN ORDER TO MAKE THE OFFICE NONPARTISAN?

The conservative reading of the constitution and charter is that the constitutional status must be abolished; however, several counties have taken the action of making the Supervisor of Elections nonpartisan while preserving the constitutional status. Examples of language can be found in the Columbia, Leon, Polk, and Palm Beach county charters. Again, we would recommend a savings clause, and legislative finding.

CAN THE CHARTER REVIEW COMMISSION ABOLISH THE CONSTITUTIONALITY OF THE OFFICE OF THE SUPERVISOR OF ELECTIONS WITHOUT ABOLISHING THE CONSTITUTIONAL OFFICES OF THE OTHER FOUR CURRENT CONSTITUTIONAL OFFICERS?

Yes.

WHAT ARE THE OPTIONS FOR THE CHARTER COMMISSION ON MAKING THE SUPERVISOR OF ELECTIONS NONPARTISAN?

From least to most risk for being challenged and overturned, they are:

- 1) Do nothing;
- 2) Recommend a general statutory change to the legislature;
- 3) Ask the legislature to pass a special act charter change, removing the charter restrictions, abolishing the constitutional office, changing it to an elected charter office, and making it nonpartisan;
- 4) Ask the legislature to pass a special act charter change, remove the charter limitations, and make it nonpartisan; and
- 5) Bypass the legislature, put it directly on the ballot as a CRC-initiated charter change.

SHC:sme

Attachment

FAUSERS\ATTY\ATYKB06\WPDOCS\CHARTER AMENDMENTS\Charter 2005\SupvElectionsNonPartisan Draft3 053105.doc