

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

50 2012 CA 005295 XXXXMR

SANDRA M. MEDLICOTT,

Plaintiff,

v.

Case No.

SUSAN BUCHER, in her official capacity
as the Supervisor of Elections of Palm Beach
County, Florida, and the BOARD OF COUNTY
COMMISSIONERS of PALM BEACH COUNTY,
FLORIDA,

Defendants.

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COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiff, Sandra M. Medlicott, by and through its undersigned counsel, brings this action for declaratory judgment pursuant to Chapter 86, Florida Statutes, and sues the defendants, Susan Bucher, in her official capacity as the Supervisor of Elections of Palm Beach County, Florida, and the Board of County Commissioners of Palm Beach County, Florida, and alleges:

1. The plaintiff resides in the City of Boca Raton, Palm Beach County, Florida and is a registered elector in Palm Beach County, Florida.

2. The defendant, Susan Bucher, is duly elected Supervisor of Elections of Palm Beach County, Florida (the "Supervisor"). Included among the Supervisor's official duties are preparing election ballots for submission to the electors of Palm Beach County, Florida and tabulating votes from elections for consideration by Palm Beach County's election canvassing board.

3. The defendant, the Board of County Commissioners of Palm Beach County, Florida (the "Board"), is the collegial body statutorily and constitutionally empowered to oversee the management of the county government of Palm Beach County, Florida. Included among the Board's official duties is authorizing the placement of public measures before the electors of Palm Beach County for their approval as provided in section 125.01(y), Florida Statutes.

4. On December 20, 2011, the Board adopted County Ordinance 2011-037 providing for a countywide referendum to be placed on the ballot of the November 6, 2012 general election for the purpose of determining whether slot machine gaming shall be authorized at licensed pari-mutuel facilities located within Palm Beach County, Florida.

5. The ballot title and the ballot question approved by County Ordinance 2011-037 for placement on the November 6, 2012 ballot state as follows:

SLOT MACHINES AT LICENSED PARI-MUTUEL FACILITIES LOCATED IN
PALM BEACH COUNTY

Shall slot machines be authorized within licensed pari-mutuel facilities in Palm Beach County subject to restrictions of state law? (SELECT ONE ONLY)

YES (TO AUTHORIZE) _____

NO (TO NOT AUTHORIZE) _____

6. The State of Florida regulates slot machine gaming at pari-mutuel facilities as provided in Chapter 551, Florida Statutes. In section 551.103, Florida Statutes, regulatory authority over slot machine gaming was assigned to the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (“DBPR”).

7. Section 551.102(4), Florida Statutes, defines those facilities that are eligible for slot machine gaming pursuant to Chapter 551 and provides as follows:

(4) “Eligible facility” means any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county; any licensed pari-mutuel facility located within a county as defined in s. 125.011, provided such facility has conducted live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required license fee, and meets the other requirements of this chapter; or any licensed pari-mutuel facility in any other county in which a majority of voters have approved slot machines at such facilities in a countywide referendum held pursuant to a statutory or constitutional authorization after the effective date of this section in the respective county, provided such facility has conducted a full schedule of live racing for 2 consecutive calendar years immediately preceding its application for a slot machine license, pays the required licensed fee, and meets the other requirements of this chapter.

8. The Agenda Item Summary presented to the Board for Agenda Item 4B, the agenda item that ultimately resulted in County Ordinance 2011-037, states that “Palm Beach County is authorized by the Florida Constitution and Section 125.01, Florida Statutes, to hold a referendum on slot machine gaming.”

9. In response to a question posed by Ken Lawson, Secretary of DBPR, the Florida Attorney General released AGO 2012-01 on January 12, 2102. In that opinion, Attorney General Pam Bondi disagreed with the conclusion of the Board that it possessed the requisite authority to hold a referendum on slot machine gaming, opining instead that “[t]he Department is not

authorized to issue a slot machine license to a pari-mutuel facility in a county which, pursuant to the third clause of section 551.102(4), Florida Statutes, holds a countywide referendum to approve such machines, absent a statutory or constitutional provision enacted after July 1, 2010, authorizing such referendum.”

10. There has been no statutory or constitutional provision enacted after July 1, 2010 authorizing a countywide referendum in Palm Beach County to approve slot machines.

11. On January 12, 2012, Secretary Lawson was quoted in an article in *The Miami Herald* that “[w]e intend to follow the guidance outlined in the opinion.”

12. On January 31, 2012, Governor Rick Scott was quoted in an article in *NewsHerald.com* about the licensing of slot machines at pari-mutuel facilities in another county that had recently passed a countywide referendum authorizing slot machine gaming in that county that “[w]e are not going to issue those licenses; we are going to follow her opinion.”

13. Section 101.161(1), Florida Statutes, provides in substantive part as follows:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, **a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot** after the list of candidates, followed by the word “yes” and also by the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

14. On account of the comments of the Governor and the Governor’s appointed Secretary of DBPR regarding the intended adherence of DBPR to the opinion announced in

AGO 2012-01, the plaintiff is uncertain as to whether the ballot language proposed by County Ordinance 2011-037 complies with section 101.161(1), Florida Statutes, that requires that the substance of each public measure shall be printed in clear and unambiguous language on the ballot. In particular, the plaintiff is uncertain whether the proposed referendum may be nothing more than a straw poll that cannot authorize slot machine gaming at pari-mutuel facilities in Palm Beach County, Florida.

15. The plaintiff is adversely affected if the election proves to be nothing more than a straw poll as the plaintiff (and other electors) will be misled as to the true impact of the referendum and will not be able to intelligently cast her vote. The ballot language in such a situation would not provide the plaintiff fair notice of the content and impact of the proposed measure and also would fail to adequately inform the voting public that their vote has no official effect and is nothing more than a nonbinding opinion or straw poll. The plaintiff and the rest of the voting public would essentially be kept in the dark as to whether the approval for slot machine gaming in Palm Beach County is not within the sole dominion and control of the citizens of Palm Beach County through the scheduled referendum, thereby causing further voter confusion.


WHEREFORE, the plaintiff respectfully requests that this Court enter a declaratory judgment holding, ordering and declaring:

(A) Whether the referendum to be submitted to the electors of Palm Beach County pursuant to County Ordinance 2001-037 fails to meet the requirements of section 101.161(1), Florida Statutes; and if so, to order the Supervisor to remove the referendum language from the November 6, 2012 ballot; or

(B) Whether the referendum to be submitted to the electors of Palm Beach County pursuant to County Ordinance 2001-037 meets the requirements of section 551.102(4), Florida Statutes; and if passed, whether the referendum would authorize licensed pari-mutuel facilities in Palm Beach County to become "eligible facilities" pursuant to Chapter 551, Florida Statutes.

Dated this 20th day of March, 2012.

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