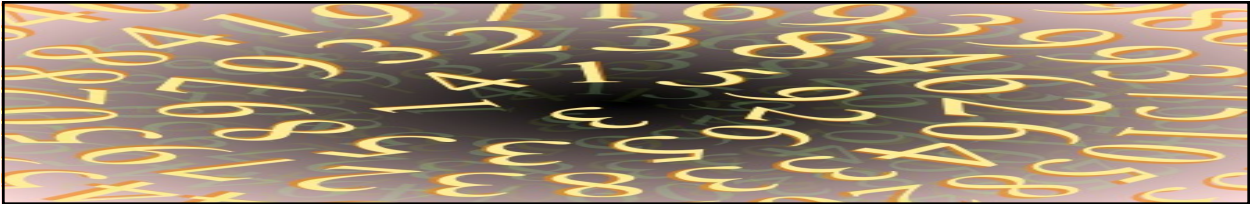


The Numbers

The Truth About The Number of Comprehensive Plan Amendments On Ballots Under Amendment 4



The developers and politicians who oppose Amendment 4 are using false scare tactics to keep you from upsetting their trading of favors by getting a veto over their comprehensive land use amendments.

One of those false scare tactics is that voters will be “forced” to vote on “hundreds” plan amendments on each ballot. They claim that Amendment 4 will fill each ballot with hundreds of separate amendments, leading to voter confusion and great expense.

That is without question not true.

First, Amendment 4 only requires a referendum on amendments that “guide and control future land development”, as that is the definition Amendment 4 provides for the “comprehensive land use plan” (not the entire comprehensive plan) for which amendments must go to referendum.

However, even if the Legislature and courts decide that Amendment 4, after it is adopted, applies to all comprehensive plan amendments, the numbers remain very manageable. On an election ballot every two years, voters can expect to see an average of about eight amendments based on statewide figures.

Indeed, under Amendment 4 we would hope that there would be fewer amendments than local governments have adopted far too liberally until now, once developers and local governments know that the voters will be having the final say.

Again, based on available data, the number of comprehensive plan amendments adopted by local governments are certainly not too many to place on local ballots, as will be required by Amendment 4.

Attached is a compilation of extensive data obtained from the Florida Department of Community Affairs (DCA), showing an annual average of 4.2 comprehensive plan amendments per city and county in Florida.

It is based on both large and small scale amendments filed with DCA during the years 2004 through 2008.

DCA provided the count of small scale amendments. For the large scale amendments, DCA provided its count of amendment “packages” filed with it by the local governments. A “package” is one or a group of amendment ordinances filed by a local government with DCA at the same time. We turned the DCA count of packages into a count of amendment ordinances by counting the number of ordinances in a sampling of 1,819 packages from a period of late 2004 through mid 2009 (showing 709 amendments).

Statewide, the data show an annual average of 2,024 amendments. It is interesting that the recent report from DCA shows 1,856 large scale amendments for the three years of 2007 through 2009, or 619 large scale amendments per year. This appears to be a reliable count by DCA of actual amendments, that is amendment ordinances, rather than amendment packages. If you add that number of 619 to the annual average of 972 small scale amendments in the attached chart for 2004 through 2008, you get a total statewide average of 1,591 amendments per year. This is not too far off from our calculation of 2,024 amendments per year statewide for 2004 through 2008. Maybe my higher number is from including the boom years 2004 through 2006, rather than the post-boom years of 2007 through 2009 most recently used by DCA.

The number of amendments also seems to be uniformly counted by local governments based on the number of amendment ordinances. These numbers from various jurisdictions generally support the statewide average of 4.2 per local government per year. The attached analysis based on counts from the Sarasota County Planning Department for instance, show an average of 6 amendments adopted per year.

The same sort of data is available by asking a county or city planning department for their list of its comprehensive plan amendments over a number of years, which most of them should have.

Inquiring of local governments as to the number of adopted amendments always disproves the numbers touted by the opposition. They have a mock ballot showing hundreds of amendments supposedly adopted by Orange City in 2005 when in fact, according to DCA, the actual number was one. Their previous example was the “tiny City of Carrabelle” which they said adopted 617 comprehensive plan amendments in 2006 when in fact DCA confirms that there were only two.

There are occasionally reports issued by DCA to the Florida Legislature that show higher numbers. That is explained by the following email exchange with Ray Eubanks, Plan Review Administrator for the agency, repeated in full at the end of this email.

Dan Lobeck to Ray Eubanks:

From what you described, DCA’s count of the number of what you refer to as “amendments”, which may also be on your list, reflects not the number of amendment ordinances but instead is the number of component parts within the

ordinances, based on the judgment of the DCA Community Planner who reviews the ordinance for DCA. You gave as an example that a change to an Objective and then to a Policy under that Objective might be counted as two separate “amendments”. Another example was that changes to the designations for two separate parcels on the same amendment to a FLUM might be counted as separate “amendments”. You stated that it has been up to each of your approximately 35 Community Planners to make their own judgments as to how that counting of “amendments” is done and that there is not consistency among those Planners as to how that count is made.

You stated that the counting of amendments in this manner has been done to demonstrate the Department’s work load to the Legislature and as a measure of the work load of each Community Planner for job performance evaluation. You acknowledged that these objectives do provide some inducement for some Community Planners to liberally count the number of “amendments” within each amendment ordinance.

If I’ve misunderstood our conversation in any way, please let me know.

Ray Eubanks, in response:

Dan, I believe you have correctly understood our conversation.

Mr. Eubanks also agreed that under Amendment 4, it would make no sense to break up an amendment ordinance into smaller parts for the ballot, as his plan examiners do for their counts. He explained that sometimes the various parts go together, such as a change in an Objective following a change in a related Policy. Although he acknowledged that some of his plan examiners in such an instance count the Objective change as one amendment and the Policy change as another, in reality the two changes are so interrelated that they must go together and could not be separated for a referendum.

The Amendment 4 opposition is doing the same thing to inflate their amendment count, but to a greater degree. When challenged, they explain that they break an amendment into hundreds of component parts for the ballot because that is required under “the single subject rule” of the Florida Constitution. However, that is clearly incorrect as a matter of law, for two reasons. First, the Florida Constitution specifically requires that an ordinance must comply with the single subject rule. Therefore, if it is lawful for an ordinance to include multiple changes (under the single subject of comprehensive planning) than it would be just as lawful for that ordinance to go to referendum in a single ballot question. Second, as the Florida Supreme Court ruled in the case, Charter Review Commission of Orange County v. Scott, 647 So.2d 835 (Fla. 1994), neither the Constitution nor the Florida Statutes apply the single subject rule to a local ballot issue, in that case an amendment to a County Charter. The Court held that although old court cases had applied the rule to bond issue referenda, it does not apply where the ballot measure was subject to local government analysis and public hear-

ings, because that reduces the risks which the single subject rule is intended to address. That court case is recited below in full.

With these statistics and other information, we can effectively counter the blatantly false assertion by the opponents of Amendment 4 that ballots will be cluttered with hundreds of comprehensive plan amendments.

The numbers, in fact, are very manageable.

Unlike the unmanageable development and land speculation which our local governments have allowed in the absence of the citizen control which will be provided by Amendment 4.

-- Daniel J. Lobeck. Esq.
Sarasota, Florida

647 So.2d 835

Supreme Court of Florida.
CHARTER REVIEW COMMISSION OF ORANGE COUNTY, Petitioner,
v
Ernie SCOTT, et al., Respondents.

No. 83010.
Dec. 22, 1994.

County sheriff, property appraiser, tax collector, and others filed suit for declaratory and injunctive relief concerning the constitutionality of the ballot question on proposed amendments to county charter. The Circuit Court, Orange County, [Lawrence R. Kirkwood](#), J., ruled that the ballot question was unconstitutional, and county charter review commission appealed. The District Court of Appeal, [627 So.2d 520](#), affirmed and certified a question. The Supreme Court, [Shaw](#), J., held that: (1) the single subject rule does not apply to ballot questions containing county charter revisions proposed by the charter review commission, and (2) the ballot question on whether to amend the county charter to create a citizen review board to investigate the use of force or abuse of power by sheriff's department employees and to make the county sheriff, property appraiser, and tax collector elected charter officers, rather than constitutional officers, was sufficient to apprise the voters of the substance of the proposed charter revision.

Certified question answered and decision quashed.

Single subject rule does not apply to ballot questions containing county charter revisions proposed by charter review commission; charter review commission must meet and conduct comprehensive study of any and/or all phases of county government,

commission must create offices and elect officers, commission must hold public hearings, and commission must submit to the electorate a report of proposed amendments.

Ballot question on whether to amend county charter to create citizen review board to investigate use of force or abuse of power by sheriff's employees and to make county sheriff, property appraiser, and tax collector elected charter officers, rather than constitutional officers, was sufficient to apprise voters of substance of proposed charter revision.

***835** [Mel R. Martinez](#) of Martinez & Dalton, P.A., [Robert W. Thielhelm, Jr.](#) of Baker & Hostetler, [Kevin W. Shaughnessy](#) of Akerman, Senterfitt & Eidson, P.A., and A. Bryant Applegate, Asst. County Atty., Orange County, Orlando, for petitioner.

[Debra Steinberg Nelson](#) of Debra Steinberg Nelson, P.A., [Alton G. Pitts](#) of Alton G. Pitts, P.A., J.J. Dahl, Staff Atty., Orlando, and [Phillip P. Quaschnick](#) of Powers, Quaschnick, Tischler & Evans, Tallahassee, for respondents.

[Robert A. Ginsburg](#), Dade County Atty. and Michael S. Davis, Asst. County Atty., Miami, amicus curiae for Metropolitan Dade County.

[SHAW](#), Justice.

We have for review the following certified question of great public importance:

***836** Whether ballot questions containing county charter revisions proposed by a charter review commission are subject to a single subject rule?

[Charter Review Commission of Orange County v. Scott, 627 So.2d 520, 524 \(Fla. 5th DCA 1993\)](#). We have jurisdiction. [Art. V, § 3\(b\)\(4\), Fla. Const.](#) We answer in the negative under the circumstances of this case and quash the decision of the district court.

The voters of Orange County on November 4, 1986, approved a charter form of county government pursuant to [article VIII, section 1\(c\), Florida Constitution](#). Section 702 of the charter required the Orange County Board of County Commissioners (the Board) to appoint a number of private citizens to serve as the Charter Review Commission (the Commission) to propose changes to the charter. Pursuant to this provision, a Commission was appointed, conducted numerous public hearings, and on July 30, 1992, issued a final report recommending changes to the charter to be proposed to the public through six ballot questions, including the following:

QUESTION # 1

CREATE CITIZEN REVIEW BOARD; CHANGE SHERIFF, PROPERTY APPRAISER AND TAX COLLECTOR TO ELECTED CHARTER OFFICES

Shall the Orange County Charter be revised to: (a) create a Citizen Review Board with subpoena power that would review and make recommendations regarding citizen complaints and departmental investigations of the use of force or abuse of power by employees of the Sheriff; and (b) make the Orange County Sheriff, Property Appraiser and Tax Collector elected charter officers subject to Charter provisions and abolish their current status as “constitutional officers”?

YES

NO

The sheriff, property appraiser, tax collector, and others (the respondents) filed suit challenging the constitutionality of Question # 1. The trial court, after holding a hearing and entertaining argument, found the question invalid and ordered it stricken from the ballot. The Board filed notice of appeal, which operated as an automatic stay of the trial court's order pursuant to [Florida Rule of Appellate Procedure 9.310\(b\)\(2\)](#). The election was held and the proposition approved. The district court subsequently affirmed the trial court's finding of invalidity, concluding that the question violated the single-subject rule, and certified the above question.

[\[1\]](#) The respondents contend that the district court opinion should be approved. The single-subject rule is well-established in Florida law, they argue, and must be applied to ballot questions proposing changes to county charters. We disagree.

The Florida Constitution and Florida Statutes impose a single-subject requirement in various situations. For instance, article III of the constitution contains a single-subject requirement for laws passed by the legislature,^{[FN1](#)} and article XI imposes a single-subject requirement for constitutional amendments proposed by initiative petition.^{[FN2](#)} [Section 125.67, Florida Statutes](#) (1991), applies the single-subject rule to county ordinances,^{[FN3](#)} and section 166.041(2) places a single-subject requirement on municipal ordinances.^{[FN4](#)} Neither ***837** the constitution nor Florida Statutes applies the rule to proposed amendments to county charters.

[FN1. Article III, section 6, Florida Constitution](#), provides in part:[SECTION 6](#). Laws.- Every law shall embrace but one subject and matter properly connected therewith....

[FN2. Article XI, section 3, Florida Constitution](#), provides in part:[SECTION 3](#). Initiative.- The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith.

[FN3. Section 125.67, Florida Statutes](#) (1991), provides in relevant part:125.67 Limitation on subject and matter embraced in ordinances; amendments; enacting clause.-

Every ordinance shall embrace but one subject and matter properly connected therewith....

[FN4. Section 166.041\(2\), Florida Statutes](#) (1991), provides in relevant part: Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith.

As pointed out by the district court below, this Court has on occasion in some of our older cases applied a general single-subject requirement to ballot questions in the absence of constitutional or statutory authority. See [State v. Dade County, 39 So.2d 807 \(Fla.1949\)](#) (general single-subject rule applied to ballot question concerning bond issue by county); [Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324 \(1924\)](#) (general single-subject rule applied to ballot question concerning bond issue by city). Even so, we have never applied the rule to proposed revisions to county charters.

Our state constitution revision process offers guidance in the present case. There are four ways that changes to our constitution may be proposed: through the legislature; through the Constitution Revision Commission; through a petition initiative; and through a Constitutional Convention. Art. XI, Fla. Const. Only proposals originating through a petition initiative are subject to the single-subject rule. *Id.*

The process for revising the Orange County Charter is analogous to the Constitution Revision Commission process for amending our state constitution. Under article XI, Florida Constitution, a thirty-seven member Constitution Revision Commission is required to convene, adopt rules of procedure, examine the constitution, hold public hearings, and prepare a report on proposed revisions. The report is published to the electorate prior to election. No single-subject requirement is imposed because this process embodies adequate safeguards to protect against logrolling and deception. See [Fine v. Firestone, 448 So.2d 984 \(Fla.1984\)](#).

Similarly, under the Orange County Charter, the Review Commission is required to convene and conduct a “comprehensive study of any and/or all phases of County government.” The Commission, which consists of eleven to fifteen private citizens appointed by the Board, must create offices and elect officers, must hold no less than four public hearings, and must submit to the electorate prior to election a report of proposed amendments or revisions. No single-subject requirement is imposed under the charter.

Thus, as with our state Constitution Revision Commission process, the Orange County Charter Review Commission process embodies a number of procedural safeguards that reduce the danger of logrolling and diminish the possibility of deception. At the same time, the Charter Review Commission process enables Orange County to avoid piecemeal changes to its organic law—an option essential to the proper and orderly function of government. See *generally* Art. XI, Fla. Const. We decline to impose a single-subject requirement on this process.

*The title and text of Question # 1 as set forth above are straightforward and clear and sufficiently apprise the voters of Orange County of the substance of the proposed revision to their charter as depicted in the present record.

838 Based on the foregoing, we answer the certified question in the negative and quash the decision of the district court.

It is so ordered.

GRIMES, C.J., and OVERTON, [KOGAN](#), [HARDING](#), [WELLS](#) and [ANSTEAD](#), JJ., concur.

From: Dan Lobeck [mailto:dlobeck@lobeckhanson.com]
Sent: Wednesday, October 07, 2009 3:26 PM
To: 'ray.eubanks@dca.state.fl.us'
Subject: Comp Plan Amendments

Ray:

Thank you again for your time.

As we discussed, this is to request that you email to me as soon as possible the list you have of the number of Comprehensive Plan amendment “packages” adopted by local governments during each of several years. You state that you use the term “package” to describe those amendments submitted to DCA at one time, either as transmitted or as adopted.

I am reviewing all of the Notices of Intent you have online (which you advise generally reflects those issued within about the last 60 days) to determine the number of amendments/ordinances in each of the packages addressed by those notices. Of the first 20 I have reviewed so far, each package has only one ordinance except for one with two and one with three.

From what you described, DCA’s count of the number of what you refer to as “amendments”, which may also be on your list, reflects not the number of amendment ordinances but instead is the number of component parts within the ordinances, based on the judgment of the DCA Community Planner who reviews the ordinance for DCA. You gave as an example that a change to an Objective and then to a Policy under that Objective might be counted as two separate “amendments”. Another example was that changes to the designations for two separate parcels on the same amendment to a FLUM might be counted as separate “amendments”. You stated that it has been up to each of your approximately 35 Community Planners to make their own judgments as to how that counting of “amendments” is done and that there is not con-

sistency among those Planners as to how that count is made.

You stated that the counting of amendments in this manner has been done to demonstrate the Department's work load to the Legislature and as a measure of the work load of each Community Planner for job performance evaluation. You acknowledged that these objectives do provide some inducement for some Community Planners to liberally count the number of "amendments" within each amendment ordinance.

If I've misunderstood our conversation in any way, please let me know.

Again, thank you very much for your courtesies in responding to my request for information.

-- Dan Lobeck

From: Ray.Eubanks@dca.state.fl.us [mailto:Ray.Eubanks@dca.state.fl.us]
Sent: Wednesday, October 07, 2009 3:38 PM
To: Dan Lobeck
Subject: Re: Comp Plan Amendments

Dan, I believe you have correctly understood our conversation. I have attached the data that you have requested along with the listing of those statutory exemptions from the normal twice per calendar year limitation. If you have any further questions please do not hesitate in contacting me.

Ray Eubanks
Plan Review Administrator
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