

IN THE CIRCUIT COURT OF THE 11<sup>th</sup> JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 20-20643-CA (05)

GUSTAVO TELLEZ,

Plaintiff,

vs.

VILLAGE OF KEY BISCAZYNE,

Defendant.

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**MOTION TO DISMISS**

The Village of Key Biscayne (the “Village”) hereby moves to dismiss the Complaint filed by plaintiff Gustavo Tellez (“Plaintiff”). As grounds for dismissal, the Village states:

**I. INTRODUCTION**

Plaintiff seeks to invalidate the Village’s November 3, 2020 bond referendum (“Bond Referendum”<sup>1</sup>), which asked voters whether the Village should be authorized to issue \$100 million in bonds for the purpose of “financing costs of improvements relating to mitigating the effects of sea level rise and flooding, protecting the Village's beaches and shoreline, and hardening infrastructure to the effects of hurricanes.”<sup>2</sup> The Court should dismiss Plaintiff’s Complaint, which does not state a cause of action for a number of reasons. *See Miami Beach Homeowners Ass'n, Inc. v. Dade Cty. Elections Bd.*, 522 So. 2d 922, 922 (Fla. 3d DCA 1988)(holding that “[t]he trial judge [] correctly dismissed the instant attempt to invalidate the result of the election” where plaintiff failed to state a cause of action. (citation omitted)). First, the Court lacks jurisdiction over

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<sup>1</sup> The Bond Referendum was approved by voters on November 3, 2020.

<sup>2</sup> *See* Compl. Exhibit A.

Plaintiff's claims. In addition, Plaintiff has failed to state a legally sufficient cause of action as to any of his three claims.

As discussed in detail below, and based upon the allegations in the Complaint and the exhibits, the Bond Referendum: (1) complies with Section 4.03 of the Village Charter; (2) complies with Section 5.03 of the Village Charter; and (3) complies with sections 101.161(1) and 100.341 of the Florida Statutes.

## II. BACKGROUND

On June 30, 2020, the Key Biscayne Village Council passed Resolution 2020-45. That Resolution included five related subjects: (1) a bond referendum election regarding the issuance of general obligation bonds by the Village; (2) a special election to be held on November 3, 2020; (3) the Bond Referendum ballot language; (4) notice of the election; and (5) an effective date after approval by the electorate. Compl. Exhibit A. Section 2 of Resolution 2020-45, titled as "Intent to Issue Bonds," contains the following language:

Subject to a referendum provided for herein and pursuant to subsequent proceedings of the Village, the Village intends to **authorize the issuance** of general obligation bonds in an aggregate principal amount not exceeding \$100,000,000, issuable as tax-exempt and/or taxable bonds, in one or more series, maturing at such time or times not exceeding thirty (30) years from their date or dates of issuance and bearing interest at a rate or rates not exceeding the legal maximum rate of interest, in each case as shall be determined by ordinance or resolution of the Village prior to the time of sale thereof (the "Bonds"). Such Bonds, **if issued**, shall pledge the full faith and credit of the Village and be payable from ad valorem taxes levied by the Village without limit as to rate or amount on all taxable property within the Village. The Bonds **will be issued** for the purpose of providing funds to finance costs of the Project.

*Id.* (emphasis added).

Section 6 of Resolution 2020-45, titled as “Notice of Election,” contains a sample Bond Referendum ballot. It provides that the November 3, 2020 ballot would be styled as follows:

**Bond Referendum To Issue General Obligation Bonds**

Shall the Village issue general obligation bonds not exceeding \$100 million in one or more series maturing not later than thirty years from their issuance dates, bearing interest not exceeding the maximum rate allowable by law, payable from ad valorem taxes levied by the Village, to:

- Mitigate effects of sea level rise and flooding;
- Protect Village beaches and shoreline; and
- Harden infrastructure to the effects of hurricanes?

Shall the above described proposal be adopted?

For Bonds

Against Bonds

*Id.*

Section 8 of Resolution 2020-45, titled as “Effectiveness of Approval,” contains the following language:

That the public measure submitted by referendum as provided for in Sections 2 and 4 above shall become effective if the majority of the qualified electors voting on the measure vote for its adoption, and it shall be considered approved effective upon certification of the election results. If a majority of the votes cast by qualified electors of the Village at the Referendum approves the ballot question concerning the Project, the Village **shall be authorized to issue the Bonds in the manner provided herein**. The Bonds **may be issued** all at one time or in part from time to time as the Village may in its discretion thereafter determine by subsequent ordinance or resolution.

*Id.* (emphasis added).

Plaintiff filed his Complaint on September 25, 2020. The Complaint asserts three claims against the Village. In Count I, Plaintiff alleges that the Bond Referendum violates Section 4.03 of the Village Charter (the Charter requires an ordinance to borrow money). In Count II, Plaintiff asserts that the Bond Referendum violates Section 5.03 of the Village Charter (improper

referendum language). And in Count III, Plaintiff alleges that the Bond Referendum fails to provide voters with sufficient notice of its contents.

Plaintiff requests that the Court enter a declaratory judgment finding that the Bond Referendum is illegal and void. For the reasons that follow, however, Plaintiff fails to state a cause of action as to all three of his claims, and the Complaint should be dismissed with prejudice.

### **III. ARGUMENT**

#### **A. The Court Lacks Jurisdiction Over This Action**

As a preliminary matter, the Village notes that the Court lacks jurisdiction to even consider the merits of this case. Plaintiff brings this action under section 100.321, Florida Statutes. Compl. ¶ 1. However, section 100.321 clearly provides that “[n]o suit shall be brought to test the validity of any bond referendum unless the suit shall be instituted **within 60 days after** the declaration of the results of the referendum.” (emphasis added). This action should be dismissed as premature under section 100.321, since Plaintiff initiated this action before the electorate even voted on the Bond Referendum on November 3, 2020. Assuming *arguendo* that the Court disagrees, however, this case should also be dismissed on the merits for the reasons discussed below.

#### **B. Count I Should Be Dismissed Because The Bond Referendum Complies With The Village Charter And Does Not Authorize The Actual Borrowing Of Money**

In Count I, Plaintiff incorrectly alleges that the Bond Referendum violates the Village Charter, and should be nullified, because it improperly authorizes the borrowing of money. Plaintiff, however, ignores the language in the Bond Referendum. The plain language of the Bond Referendum simply “authorized” the issuance of bonds and makes clear that money can only be borrowed **if, and only if**, the Village **adopts an ordinance to do so**, all in accordance with the Village Charter. The Village has not borrowed a penny as a result of the approval of the Bond

Referendum, and cannot do so without subsequent action of the Village Council. Count I, therefore, fails to state a cause of action.

The Village passed and adopted Resolution 2020-45 on June 30, 2020. Compl. Exhibit A. That Resolution addresses five related subjects, none of which approve the actual borrowing of money: (1) a bond referendum election regarding the issuance of general obligation bonds by the Village; (2) a special election to be held on November 3, 2020; (3) the Bond Referendum ballot language; (4) notice of the election; and (5) an effective date after approval by the electorate. *Id.*

Section 4.03 of the Village Charter provides that “those acts of the Village Council shall be by **ordinance** which . . . [a]uthorize the **borrowing** of money.”<sup>3</sup> Compl. ¶ 17(emphasis added). However, Resolution 2020-45’s language makes clear that it did not authorize the borrowing of *any* money. Instead, it provides that, **if** the Bond Referendum were passed, **the Village must take subsequent action** to ultimately issue bonds and **borrow money** by a **subsequent ordinance**.

Resolution 2020-45 contains no language establishing that it authorized the borrowing of any money. To the contrary, Section 2 of Resolution 2020-45 explicitly recognizes that, in the event the electorate passed the Bond Referendum, further proceedings would be required before the Village could borrow any money and issue any bonds:

Subject to a referendum provided for herein and **pursuant to subsequent proceedings of the Village**, the Village intends to authorize the issuance of general obligation bonds in an aggregate principal amount not exceeding \$100,000,000, issuable as tax-exempt and/or taxable bonds, in one or more series, maturing at such time or times not exceeding thirty (30) years from their date or dates of issuance and bearing interest at a rate or rates not exceeding the legal maximum rate of interest, **in each case** as shall be determined by ordinance or resolution of the Village prior to the time of sale thereof (the "Bonds").

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<sup>3</sup> *Also available at*  
[https://library.municode.com/fl/key\\_biscayne/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTI\\_VLE\\_S4.03ACREOR](https://library.municode.com/fl/key_biscayne/codes/code_of_ordinances?nodeId=PTICH_ARTI_VLE_S4.03ACREOR)

Compl. Exhibit A (emphasis added). Thus, Section 2 makes clear that the Village may only issue bonds “pursuant to subsequent proceedings of the Village.” *Id.* One of the required “subsequent proceedings” is the Village’s adoption of an ordinance authorizing the issuance of bonds, since Section 4.03 of the Village Charter requires an ordinance allowing for “the borrowing of money.”

Plaintiff’s Complaint entirely ignores Section 2 and instead relies on a portion of Section 8 of Resolution 2020-45. Section 8 provides that “[i]f a majority of the votes cast by qualified electors of the Village at the Referendum approves the ballot question concerning the Project, the Village shall be authorized to issue the Bonds **in the manner provided herein.**” *Id.* (emphasis added). As a result, Section 8 clearly establishes that the Village may **only** issue bonds in the manner provided by the entirety of Resolution 2020-45.

Section 8 also provides that “[t]he Bonds may be issued all at one time or in part from time to time as the Village may in its discretion thereafter determine **by subsequent ordinance or resolution.**” *Id.* (emphasis added). This provision clearly recognizes that the Village may only issue bonds pursuant to a subsequent ordinance. Such language ensures compliance with the Village Charter, as well as the statutory requirements for the issuance of a bond. *See* Fla. Stat. § 166.121(1) (“Bonds issued under this part **shall be authorized by resolution or ordinance** of the governing body and, if required by the State Constitution, by affirmative vote of the electors of the municipality. (emphasis added)); *see also* Fla. Stat. § 100.281 (“Should a majority of the votes cast in a bond referendum be in favor of the issuance of bonds, then the issuance of said bonds is deemed authorized in accordance with s. 12, Art. VII of the State Constitution.”).

Accordingly, Plaintiff’s assertion that the Bond Referendum violates Section 4.03 of the Village Charter is wholly without merit. The Village, therefore, respectfully requests that the

Court dismiss Count I with prejudice for failure to state a cause of action. *See Miami Beach*, 522 So. 2d at 922 (holding that “[t]he trial judge [] correctly dismissed the instant attempt to invalidate the result of the election” where plaintiff failed to state a cause of action. (citation omitted)).

**C. Count II Should Be Dismissed Because The Bond Referendum Language, As A Matter Of Law, Gives The Voters Fair Notice Of The Question And Satisfies The Applicable Bond Requirements**

In Count II, Plaintiff wrongly alleges that the Bond Referendum language is illegal, and should be invalidated, because it does not satisfy Section 5.03 of the Village Charter. Specifically, Plaintiff contends that the Bond Referendum violates Section 5.03 because it does not contain the words “Yes” and “No” when asking voters if they support the measure. In fact, the Bond Referendum asked voters whether they were “For Bond” or “Against Bonds.”

As set forth below, however, Section 5.03 is inapplicable in this case. The Bond Referendum’s language is instead governed by – and complies with – section 100.341, Florida Statutes. However, even if Section 5.03 were to apply, the Bond Referend language nonetheless satisfies Section 5.03 because it allows voters to clearly understand what they are voting for. Plaintiff therefore fails to state a cause of action in Count II.

**(1) The Bond Referendum Language Satisfies Section 5.03 Of The Village Charter Because It Provides Fair Notice Of Exactly What A Voter Is Being Asked To Decide**

As a matter of law, the Bond Referendum complies with Section 5.03’s requirements. There can be no question that asking a voter to vote “For Bonds” or “Against Bonds” communicates the clear question being presented. In fact, the Florida Supreme Court has examined this precise issue and held that the words “For Bonds” and “Against Bonds” are interchangeable with the words “Yes” and “No.”

In *State v. Special Tax Sch. Dist. No. 1 of Dade Cty.*, 86 So. 2d 419, 419 (Fla. 1956), a special tax school district adopted a resolution calling for a bond referendum. *Id.* The bond referendum ballot asked voters to vote on the measure by selecting “Yes” or “No”; however, the relevant statute required that bond referenda ask voters whether they are “For Bonds” or “Against Bonds.” *Id.* at 420. The Florida Supreme Court held that the ballot’s failure to include the “For Bonds” and “Against Bonds” language had no impact on whether the ballot ultimately satisfied the statute. *Id.* The Court reasoned that “[t]he test as to legality of the ballot is **whether or not the voters were afforded an opportunity to express themselves fairly and did in fact exercise the privilege.**” *Id.* (emphasis added).

Similarly, in *Metro. Dade Cty. v. Shiver*, 365 So. 2d 210, 211 (Fla. 3d DCA 1978), the county “enacted an ordinance subject to voter approval imposing a certain tourist development tax,” and the county subsequently held a referendum on the ordinance. The referendum asked voters whether they were “FOR THE TOURIST ROOM TAX” or “AGAINST THE TOURIST ROOM TAX.” *Id.* at 212 (emphasis in original). However, the relevant Florida statute required the ballot to ask voters if they were “FOR the Tourist Development Tax” or “AGAINST the Tourist Development Tax.” *Id.* (emphasis in original). Although the ballot language deviated from the statutorily required language, the Third DCA held that the ballot language nonetheless complied with the statutory requirements. *Id.* The court found that “[t]he fact that the term ‘room’ is used on the ballot, rather than the term ‘development’ as used in the statute, does not significantly alter the statutory ballot language.” *Id.* Thus, the court rejected the plaintiff’s “highly technical and ultimately unconvincing reason to remove this referendum from the ballot based on this slight variation in ballot language.” *Id.* at 213.



In this case, there can be no doubt that the Bond Referendum language affords voters “an opportunity to express themselves fairly.” *Id.* As the Florida Supreme Court has previously explained, the words “Yes” and “No” are functionally equivalent to the words “For Bonds” and “Against Bonds.” Thus, a voter seeking to vote in favor of the Bond Referendum would have a meaningful opportunity to cast a ballot in favor of the measure, irrespective of whether the ballot contained the word “Yes” or “For Bonds.” Similarly, a voter opposed to the Bond Referendum would have a meaningful opportunity to vote against the measure, irrespective of whether the ballot contained the word “No” or “Against Bonds.”

Accordingly, the Bond Referendum satisfies Section 5.03 because its language clearly communicates to voters the question presented and therefore affords voters “an opportunity to express themselves fairly.” *Special Tax Sch. Dist. No. 1 of Dade Cty.*, 86 So. 2d at 419; *see also Advisory Opinion to Atty. Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 903 (Fla. 2000) (The purpose of statute with similar language to Section 5.03 “is to ensure that voters have fair notice of the content of the amendment and can cast an intelligent and informed ballot.” (citation and quotation omitted)).

Like the court in *Shiver*, this Court should reject Plaintiff’s “highly technical and ultimately unconvincing reason to remove this referendum from the ballot based on this slight variation in ballot language.” *Shiver*, 365 So. 2d at 212.

**(2) Section 5.03 Of The Village Charter Does Not Apply**

Relying on section 100.311, Florida Statutes, the Complaint mistakenly asserts that “Florida laws require that any bond referendum needs to conform with the requirements of the

Village Charter.” Compl. ¶ 23. Plaintiff’s assertion is simply incorrect, and Plaintiff misconstrues the relevant statutory provisions.

Section 100.311, Florida Statutes provides that:

No section of this code controlling or regulating bond referenda shall be deemed to repeal or modify any provision **contained in any local law relating to bond referenda** held by any municipality, but ss. 100.201-100.351 shall be deemed additional and supplementary to any such local law.

Fla. Stat. § 100.311 (emphasis added). The text of section 100.311 makes clear that it only applies where there is a local law specifically “*relating to bond referenda . . .*” *Id.* (emphasis added.) In other words, section 100.311 provides that section 100.341’s bond referenda requirements may not apply only **if a municipality has its own local law that specifically governs bond referenda**. The Village does not have such a law.

Contrary to Plaintiff’s assertions, Section 5.03 of the Village Charter is not a local law specifically relating to bond referenda. Section 5.03 provides that:

A charter amendment, ordinance or other ballot issue to be voted on by the electors shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: ‘Shall the above described [amendment/ordinance/proposal] be adopted?’ Immediately below such question shall appear, in the following order, the word ‘YES and also the word ‘NO.’

Compl. ¶ 24.<sup>4</sup> Section 5.03 makes **no mention of bond referenda**. Thus, Section 5.03 is not a local law “relating” to bond referenda as contemplated by section 100.311, Florida Statutes.

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<sup>4</sup> Also available at [https://library.municode.com/fl/key\\_biscayne/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTV\\_EL\\_S5.03FOBA](https://library.municode.com/fl/key_biscayne/codes/code_of_ordinances?nodeId=PTICH_ARTV_EL_S5.03FOBA)

Since the Village has no local law “relating to bond referenda,” section 100.341 – not Section 5.03 of the Village Charter – governs the Bond Referendum language requirements in this case. *See Kessler v. City of Winter Park*, 696 So. 2d 761, 762 (Fla. 1997) (“In a bond issue referendum, an issuing authority is required to follow the requirements provided in section 100.341, Florida Statutes.”). And, as discussed below, the Bond Referendum language unequivocally satisfies section 100.341’s requirements.

**(3) The Bond Referendum Satisfies Section 100.341**

As noted above, section 100.341 governs the Bond Referendum’s language requirements.

Section 100.341 provides that:

The ballots used in bond referenda shall include a printed description of the issuance of bonds to be voted on as prescribed by the authority calling the referendum. A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots **in connection with the question ‘For Bonds’ and ‘Against Bonds.’**

Fla. Stat. § 100.341 (emphasis added). The Bond Referendum in this case clearly satisfies section 100.341’s requirements because it explicitly asks voters whether they are “For Bonds” or “Against Bonds.”

The Bond Referendum contains the following language:

Shall the Village issue general obligation bonds not exceeding \$100 million in one or more series maturing not later than thirty years from their issuance dates, bearing interest not exceeding the maximum rate allowable by law, payable from ad valorem taxes levied by the Village, to:

- Mitigate effects of sea level rise and flooding;
- Protect Village beaches and shoreline; and
- Harden infrastructure to the effects of hurricanes?

Shall the above described proposal be adopted?

Compl. Exhibit B. The Bond Referendum then asks voters to select whether they are “For Bonds” or “Against Bonds.” *Id.* Thus, there can be no doubt that the Bond Referendum, on its face, satisfies section 100.341’s requirements.

Accordingly, the Village respectfully request that the Court dismiss Count II with prejudice. *See Miami Beach*, 522 So. 2d at 922 (holding that “[t]he trial judge [] correctly dismissed the instant attempt to invalidate the result of the election” where plaintiff failed to state a cause of action. (citation omitted)).

**D. Count III Should Be Dismissed Because The Bond Referendum Language, As A Matter Of Law, Provides Voters With Fair Notice Of Its Contents**

In Count III, Plaintiff wrongly alleges that the Bond Referendum language “violates clear Florida law by confusing and misleading voters and otherwise failing to provide fair notice as to the matter upon which their votes will be cast.” Compl. ¶ 30. While Plaintiff claims Count III arises under “Florida law,” it is not entirely clear as to which statutory provision Count III relies upon. However, regardless of which Florida statute Plaintiff relies upon, the Bond Referendum language complies with Florida law because (1) it communicates to the voter the clear question being presented; and (2) the Village has provided the public with sufficient information of the projects its wishes to fund.

**(1) The Bond Referendum Satisfies Section 100.341**

Plaintiff mistakenly alleges that the Bond Referendum does not provide “adequate information on the projects’ being funded by a general obligation bond” because Resolution 2020-45 did not outline each project that the bonds would fund. Compl. ¶ 32. This allegation relies upon section 100.341, Florida Statutes, which provides that:

The ballots used in bond referenda shall include a printed description of the issuance of bonds to be voted on as prescribed by the authority calling the referendum. A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots in connection with the question ‘For Bonds’ and ‘Against Bonds.’

Fla. Stat. § 100.341.

Binding Florida Supreme Court precedent refutes Plaintiff’s allegation in Count III. In *Grapeland Heights Civic Ass'n v. City of Miami*, 267 So. 2d 321, 325 (Fla. 1972), the Florida Supreme Court explicitly stated that there is “**no requirement . . . that the City must expressly include each capital project in its resolution**” authorizing a bond referendum. *Id.* at 324 (emphasis added). Thus, the Village was under no requirement to outline each project in Resolution 2020-45.

Additionally, there can be no doubt that that the Village provided sufficient information to the public to inform them of the Bond Referendum’s purpose. The Complaint includes a link to the Village website at Paragraph 33, and it is clear that this publicly available website outlines the projects that it wishes to fund through the issuance of bonds. Case law supports the use of publicly available information prior to the vote to be considered by the voter. *See Grapeland Heights*, 267 So. 2d at 324 (“The public media, utilizing various means of communication and fulfilling its public trust to inform and to report events and community concerns, fully advised the voters on all different aspects of the bond issue.”); *Kessler*, 696 So. 2d 761, 762 (Fla. 1997)(“[W]e agree with the trial court’s final judgment stating that the City was not required to include these details in the ballot proposition because the City had conducted a full public discussion of the matter, followed by the City’s purchase option contract, which was public record.”); *Winterfield v. Town of Palm Beach*, 455 So. 2d 359, 363 (Fla. 1984)(holding that public was adequately informed of bond

referendum issues based upon “public record[s]” and “leaflets prepared by the town explaining the referendum.”).

The website contains an overview explaining that such bonds would fund the following three projects:

Projects within this program will reduce flooding through a Complete Streets approach. A Complete Streets approach for the Village will ensure **all elements of a roadway are fully utilized to mitigate flooding**. The elements of a roadway improvement for this program include, but are not limited to, travel lanes, swales, medians, roadway elevations, pedestrian and bike facilities, and street lighting.

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These projects are oriented towards **preserving a healthy and wider beach to protect our valuable real estate and community assets**. Projects will place sand on the beach, restore and enhance the dunes (a critical element of shoreline protection), and the long-term solution, an offshore submerged structure that serves as the first line of defense to our shoreline and preserves the sand we place on the beach.

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As part of this program these projects will focus largely on underground utility infrastructure, including power and telecommunications. **The undergrounding - or elevating - of key components of utility infrastructure is intended to improve the reliability and security of these utilities**. The hardening of structures that support the electrical components of the grid, such as transformers, switchgear, capacitor banks, etc., are included in this program.

(emphasis in original).<sup>5</sup> The website then provides further details about each of the three projects. In addition, the website contains links to four virtual town hall meetings explaining the purpose of the Bond Referendum and detailing the projects the Village wishes to fund.<sup>6</sup>

To be clear, Plaintiff does **not** claim that the Village website insufficiently informs voters of the projects it wishes to fund. Instead, Plaintiff contends that the public was not adequately informed because the projects outlined on the Village’s website were not also detailed in Resolution 2020-45. *See* Compl. ¶¶ 34-36. As noted above, however, the Village was not required to outline such projects in Resolution 2020-45, and the Village may inform the public with the information on its publicly available website. *Grapeland Heights*, 267 So. 2d at 324; *Kessler*, 696 So. 2d at 762; *Winterfield*, 455 So. 2d at 363.

**(2) The Bond Referendum Language Satisfies Section 101.161(1)**

Count III also relies upon section 101.161(1), Florida Statutes,<sup>7</sup> which in relevant part provides that a ballot summary “shall be printed in clear and unambiguous language” and must contain “an explanatory statement, not exceeding 75 words in length, [stating] the chief purpose of the measure.” Plaintiff alleges that the Bond Referendum violates this requirement. As a matter of law, the language of the Bond Referendum complies with Section 101.161(1).

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<sup>5</sup> Available at <https://www.vkbresilience.org/projects>. The Court may consider the Village’s website because Plaintiff cites to the website in his Complaint. Compl. ¶ 33; *Grove Isle Ass’n, Inc. v. Grove Isle Assocs., LLLP*, 137 So. 3d 1081, 1089 (Fla. 3d DCA 2014)(The “four corners” of a complaint includes “any attached or incorporated exhibits.”).

<sup>6</sup> Available at <https://www.vkbresilience.org/presentations>

<sup>7</sup> This statutory provision is relevant here because “[t]he laws governing the holding of general elections are applicable to bond referenda, except as provided in ss. 100.201-100.351.” Fla. Stat. § 100.221.

The Florida Supreme Court has interpreted Section 101.161(1) to require that the ballot title and summary “be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.” *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010)(citation and quotation omitted). The ballot title and summary, however, “need not explain every detail or ramification” of the proposal. *Id.*

In essence, a section 101.161(1) analysis considers whether referendum language is facially clear and unambiguous. Thus, section 101.161(1) issues generally only arise “because of defective ballot language where the proposal itself failed to specify exactly what was being changed, thereby confusing voters.” *People Against Tax Revenue Mismanagement, Inc. v. Cty. of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991)(citation omitted).

To determine whether a ballot title and summary complies with Section 101.161(1), a court considers two questions: “first, whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment, and second, whether the language of the title and summary, as written, misleads the public.” *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 808 (Fla. 2018) (citations and quotation marks omitted). A ballot summary and title’s chief purpose is its “main effect.” *Fla. Dep’t of State v. Fla. State Conference of Naacp Branches*, 43 So. 3d 662, 667 (Fla. 2010). This analysis is viewed through the lens of “a reasonable voter.” *People Against Tax Revenue Mismanagement, Inc. v. Cty. of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991).

Here, the Bond Referendum plainly complies with section 101.161(1)’s requirements. As required by section 101.161(1), the Bond Referendum clearly and unambiguously explains its chief purpose in less than 75 words. In plain language, the Bond Referendum asks voters whether they support the issuance of bonds to (1) “[m]itigate effects of sea level rise and flooding”; (2)



“[p]rotect Village beaches and shoreline”; and (3) “[h]arden infrastructure to the effects of hurricanes.”

To the extent Plaintiff alleges the Bond Referendum violates section 101.161(1) because it does not outline every project that the bonds will fund, Plaintiff’s allegation is unsupported by the law. Section 101.161(1) does not require ballot language to “explain every detail or ramification.” *Roberts*, 43 So. 3d at 659. Nor could it, since section 101.161(1) only allows for a **maximum** of 75 words. As the Third DCA has explained:

Under our system of free elections, the voter must acquaint himself with the details of a proposed [issue] on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, **it is no function of the ballot question to provide him with that needed education.** What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

*Shiver*, 365 So. 2d at 213 (emphasis added). As noted above, the Bond Referendum language clearly provides voters with fair notice of the question they must decide. Thus, there can be no doubt that the Bond Referendum complies with section 101.161(1).

Accordingly, for the reasons set forth above, Plaintiff has failed to state a cause of action in Count III. The Village, therefore, respectfully requests that the Court dismiss Count III with prejudice. *See Miami Beach*, 522 So. 2d at 922 (holding that “[t]he trial judge [] correctly dismissed the instant attempt to invalidate the result of the election” where plaintiff failed to state a cause of action. (citation omitted)).

### E. CONCLUSION

For the foregoing reasons, the Complaint fails to state a cause of action and should be dismissed. Count I fails to allege that the Bond Referendum violates Section 4.03 of the Village Charter. Count II fails to allege that the Bond Referendum violates Section 5.03 of the Village

Charter. And Count III fails to allege that the Bond Referendum violates either section 101.161(1) or 100.341. Accordingly, the Village respectfully requests that the Court dismiss the Complaint with prejudice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel listed on the attached service list, this 7th day of December, 2020.

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