

BROWARD COUNTY CHARTER REVIEW COMMISSION

MEMORANDUM NO. 2017-022

TO: Thomas McDonald, Chair
Members of the Charter Review Commission

CC: Carlos Verney, Executive Director
Madison Cerniglia, Assistant Executive Director

FROM: Samuel S. Goren, General Counsel *SSG*
David N. Tolces, Assistant General Counsel *DNT*
Michael D. Cirullo, Jr., Assistant General Counsel *MDC*
Jacob G. Horowitz, Assistant General Counsel *JGH*

DATE: November 20, 2017

RE: Broward County Charter Review Commission (“CRC”) / Revising Method of Selection of Circuit Court and County Court Judges

Pursuant to your request, we have researched the issue of whether the Broward County Charter can provide for the method of selection of circuit and county court judges. Currently all circuit court and county court judges in Broward County are elected. Following a review of relevant Florida Statutes, and case law, it is our legal opinion that the method for providing an alternate selection or retention of circuit court and county court judges **is specifically reserved** to the procedures delineated in Section 105.036, *Fla.Stat.*

Section 97.0115, Fla. Stat., provides that “[a]ll matters set forth in chapters 97-105 are preempted to the state except as otherwise specifically authorized by state or federal law.” Specifically, Section 105.036, Fla. Stat., provides the statutory method revising the selection of circuit or county court judges, and reads as follows:

105.036 Initiative for method of selection for circuit or county court judges; procedures for placement on ballot.—

(1) Subsequent to the general election in the year 2000, a local option for merit selection and retention or the election of circuit or county court judges may be placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State for circuit court judges or the county supervisor of elections for county court judges. The ballot shall provide for a vote on the method for selection of judges not currently used for filling judicial offices in the county or circuit.

(2) Certification of ballot position for the method of selection of circuit court judges shall be issued when the Secretary of State has received a verification certificate from each supervisor of elections in a circuit indicating that the requisite number of valid signatures of electors in the circuit has been submitted

and verified by the supervisor or supervisors of that circuit. Certification of ballot position for the method of selection of county court judges shall be issued when the supervisor of elections in a county indicates that the requisite number of signatures of electors in the county has been submitted to and verified by the supervisor. Each signature shall be dated when made and shall be valid for a period of 2 years following such date, provided all requirements of law are complied with.

(3) The sponsor of an initiative for merit selection and retention or election of circuit or county court judges must register as a political committee pursuant to s. 106.03.

(4) The Secretary of State shall adopt rules pursuant to ss. 120.536(1) and 120.54 prescribing the style and requirements of the circuit court and county court forms for collection of signatures.

(5) No later than 5 p.m. 151 days prior to the general election at which the proposed judicial selection initiative is to be voted on, the sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee or filing of the undue burden oath required by s. 99.097. Verification must be completed at least 91 days prior to the general election. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked and the number of signatures verified as valid and as being of registered electors of the applicable county or circuit. This certificate must be immediately transmitted to the Secretary of State for petitions related to the method of selection of circuit court judges. The supervisor must retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the committee that circulated the petition is no longer seeking to obtain ballot position as determined by the Division of Elections for circuit court petitions or by the supervisor of elections for county court petitions.

(6) Upon a determination by the Secretary of State for circuit court petitions or by the supervisor of elections for county court petitions that the requisite number of valid signatures has been obtained, a certification of ballot position must be issued for the proposed method of selection of judges. A request to exercise a local option to change the method for selection of circuit or county court judges is deemed filed with the Secretary of State for circuit court judges or the supervisor of elections for county court judges upon the date of the receipt of a certificate or certificates indicating the petition has been signed by the constitutionally required number of electors.

(7) Within 10 days after each general election for which an initiative to change the method of selection of circuit or county court judges was placed on the ballot in any circuit or county in the state, the Secretary of State must notify the Chief Justice of the Supreme Court of Florida of the changed method for selection of judges for any circuit or county where the initiative passed.

(8) The Department of State shall have the authority to promulgate rules in accordance with ss. 120.536(1) and 120.54 to carry out the provisions of this section.

Pursuant to the statutory authority in this statute, the Florida Secretary of State promulgated Rule 1S-2.046, entitled “Initiative Process for Method of Selection for Circuit Court or County Court Judges,” and developed Initiative Forms to be used for collecting signatures by the political action committee promoting the initiative.

As the alternate selection of circuit or county court judges is a matter set forth in Chapter 105, Fla. Stat., this matter is preempted to the state. Further, a standard tenet of statutory construction is, that when a statute is clear, courts will **not** look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning **must** control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See, State v. Burris*, 875 So.2d 408, 410 (Fla. 2004) (citation omitted). In addition, the specific process identified in Section 105.036, Fla.Stat., would seem to fall under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another. *See, Devin v. City of Hollywood*, 351 So.2d 1022, 1025 (Fla. 4th DCA 1976).

In reviewing this matter, this office also conferred with the Broward County Attorney’s Office, who conducted its own legal analysis. The Broward County Attorney has advised us that he agrees with the conclusions set forth in this memorandum.

In conclusion, based upon the above principals of preemption and statutory construction, and our legal review and research contained herein, we conclude that the method for providing an alternate method of selection of circuit court and county court judges is to be made as outlined in Section 105.036, *Fla.Stat.* Any other process to change the manner of selection or retention of circuit and county court judges, including through a proposed charter amendment forwarded by the Charter Review Commission, would be inconsistent with state law.

If you have any further questions, please contact our office.

SSG:DNT:dnt