IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 18-023224 CA 30

WILLIAM DOUGLAS MUIR, an individual,

Plaintiff,

vs.

CITY OF MIAMI, a Florida municipal corporation, *Et al*.,

Defendants,

and

MIAMI FREEDOM PARK, LLC,

Intervenor-Defendant.

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MIAMI FREEDOM PARK LLC'S RESPONSE
IN OPPOSITION TO COMPLAINT FOR WRIT OF MANDAMUS

Intervenor-Defendant Miami Freedom Park, LLC ("MFP"), by and through undersigned counsel, hereby responds to the Complaint for Writ of Mandamus ("Complaint") filed by Plaintiff William Douglas Muir ("Muir" or "Plaintiff") and incorporated into the Alternative Writ issued by this Court on July 24, 2018 (the "Alternative Writ"), and, in opposition thereto, states as follows:

INTRODUCTION

Muir's grievance appears to be that the Miami City Commission ("City Commission") approved resolutions submitting a proposed charter amendment to the electorate and he is dissatisfied with the merits of the proposed amendment and the process that led up to the approval of the resolutions. His Complaint for Mandamus thus seeks to prevent the electorate from voting on the proposed charter amendment by compelling the City of Miami ("City") to follow a different process, of his own choosing, that does not apply to proposed charter amendments. Before Muir's allegations can even be entertained, his Complaint must be denied, and the Alternative Writ quashed, because he fails to demonstrate a legally cognizable injury related to the proposed charter amendment that gives him standing to challenge the City's actions.

Even if Muir did have standing, section 6.03 of the Miami-Dade Home Rule Charter (which is never once mentioned by Muir in his Complaint) exclusively governs the process to submit a charter amendment to the City's electorate.[1] The City complied with section 6.03 when the City Commission, acting in its discretionary, legislative capacity, approved the appropriate resolutions that were necessary to submit the proposed charter amendment to the electorate. Neither the

[1] *See City of Miami v. Miami Ass'n of Firefighters, Local 587*, 744 So. 2d 555, 556 (Fla. 3d DCA 1999).

City nor County Charter contain any additional requirements that must be performed. Because the City followed the only procedures that were required, Muir cannot use mandamus to engraft additional requirements to the charter amendment process. Put another way, he cannot use mandamus, which can only seek enforcement of a mandatory obligation, to establish a right to a process that isn't even applicable.[2] And absent a clear legal right, the doctrine of separation of powers further prevents this Court from interfering with the City Commission's legislative decision to approve the Resolutions.

To distill matters even further, the operative factual allegations contained in Muir's Complaint only establish that:

1. The City Commission exercised its legislative discretion to approve two resolutions;

2. The resolutions (i) direct the City Attorney to draft ballot language, and (ii) approve submitting a proposed charter amendment to the electorate;

3. The resolutions do not approve a lease, no lease has been finalized, and the ultimate approval of any lease will require more process before the City Commission (i.e., a 4/5ths vote); and

4. The City followed the required procedures for submitting a proposed charter amendment to the electorate when it approved the resolutions during an open public meeting.

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[2] *See, e.g., Miami-Dade Cty. Bd. of Cty. Com'rs v. An Accountable Miami-Dade,* 208 So. 3d 724, 731 (Fla. 3d DCA 2016), *review denied sub nom. An Accountable Miami-Dade v. Miami-Dade Cty. Bd. of Cty. Com'rs*, SC17-317, 2017 WL 2559138 (Fla. June 13, 2017).

When the bedrock legal principles governing judicial standing, mandamus, and separation of powers are applied to these facts, Muir's Complaint for Mandamus must be denied, and the Alternative Writ must be quashed.

FACTUAL BACKGROUND AND UNDISPUTED FACTS

I. The Parties

A. The City

Defendant City of Miami is a municipal corporation in Miami-Dade County, Florida. (Compl. ¶ 3).

B. Miami Freedom Park, LLC

Intervenor-Defendant Miami Freedom Park, LLC, is a limited liability corporation that seeks to enter into a proposed lease with the City of Miami to bring major league soccer to the City of Miami. (*See, e.g.*, Compl. ¶¶ 12 ("Demand" hyperlink), 17-18).[3]

C. Plaintiff William Douglas Muir

Plaintiff William Douglas Muir alleges that he is a resident of Miami and that he brings his Complaint "on behalf himself and the public." (Compl. ¶ 1). He does

[3] Plaintiff Muir failed to comply with the requirement to attach relevant portions of the record to his Complaint under rule 1.630(b), Fla. R. Civ. P. Instead, he chose to include "hyperlinks" and video content. Citations to factual allegations found in the hyperlinks will cite to the paragraph of the Complaint containing the hyperlink.

not allege that he owns any property in the City of Miami or that he is a registered voter in the City of Miami. He also does not allege that he currently seeks a lease to develop any property in the City of Miami, including the property that is the subject of the proposed lease between the City and MFP. He only alleges that he brings this action on behalf of the public. *Id*.

II. The Proposed Lease

MFP proposes a lease between MFP and the City of Miami to bring major league soccer to the City of Miami and build a new soccer stadium and public park (the "Proposed Lease"). As a part of the Proposed Lease, MFP also proposes to build a technology hub, art and entertainment spaces, food and beverage venues and a hotel and conference center on the property commonly known as Melreese Country Club and owned by the City (the "Property"). (Compl. ¶ 18). The Proposed Lease has not been approved by the City Commission. (*See, e.g.*, Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)). Moreover, before the Proposed Lease can be considered by the City Commission, the electorate of the City of Miami must vote to amend the City Charter. *Id.* If the City's electorate votes to amend its Charter to allow the City Commission to waive competitive bidding, by a subsequent 4/5ths vote, only then can the City Commission consider and approve the Proposed Lease. *See id.*

III. The Resolutions and Proposed Charter Amendment

Through his Complaint for Mandamus, Muir challenges two resolutions, RE. 9 and RE. 10 (the "Resolutions"). (Compl. ¶¶ 18 ("RE. 9 and RE. 10" hyperlink), 23). The Resolutions do not approve any lease agreements. *Id.*

RE. 9 is a resolution of the City of Miami Commission directing the City Attorney to prepare an amendment to the Charter of the City of Miami for consideration at the referendum special election scheduled for November 6, 2018, proposing, upon approval of the electorate, to amend section 29-B of the Charter to authorize the City Commission, by a 4/5ths vote, to waive competitive bidding and to negotiate and execute a ground lease and master development agreement with MFP (the "Drafting Resolution"). (Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)). The Drafting Resolution does not approve a lease. *Id.*

RE. 10 is a resolution of the Miami City Commission approving, setting forth, and submitting to the electorate a proposed charter amendment, amending section 29-B of the Charter of the City of Miami, authorizing the City Commission to waive competitive bidding by a 4/5ths affirmative vote to negotiate and execute a ground lease and master development agreement between the City of Miami and MFP (the "Charter Amendment Resolution"). (Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)). The Charter Amendment Resolution does not approve a lease. *Id.*

IV. The Public Meeting and Public Comments

On July 12, 2018, the City Commission held a duly-noticed public meeting to consider the Resolutions (the "Public Meeting"). (*See, e.g.,* Compl. ¶¶ 21, 28). During the Public Meeting, the City Commission opened a public comment section related to the Resolutions (the "Public Comments"). Approximately 100 individuals from the public spoke for over two hours during the Public Comments. (Compl. ¶¶ 12 ("Demand" hyperlink), 37 ("Transcript" hyperlink)). Muir appeared and spoke during the Public Comments. *Id*. Despite the Resolutions indicating that the City Attorney would be directed to draft language to waive competitive bidding (Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)), he complained that the ballot language was misleading because the ballot language does not say they would be waiving competitive bidding (Compl. ¶¶ 12 ("Demand" hyperlink), 37 ("Transcript" hyperlink)). Muir asked the Commission to put the Proposed Lease out for bid and asked the Commission to amend the ballot language. (Compl. ¶¶ 12 ("Demand" hyperlink), 37 ("Transcript" hyperlink)). Muir also spoke in the abstract about hypothetical bidders for the lease but did not present any evidence that he personally wanted to, or was able to, bid on a lease for the Property. *Id.* Muir did not introduce any evidence that he would be personally harmed by the Resolutions. Significantly,

Muir also did not allege that he failed to receive notice for the public meeting which he attended. *Id.*

V. Muir's Complaint for Writ of Mandamus

On July 18, 2018, and without waiting for the conclusion of the second portion of the Public Meeting on the Resolutions or the vote of the City Commission, Muir filed his Complaint for Writ of Mandamus. Muir alleges that the City violated its Charter because the City Commission was required to comply with section 29-A of the City's Charter before approving the Resolutions. (Compl. ¶¶ 19, 24). The only stated relief that Muir seeks is that the "court should exercise its discretion to grant this writ to order defendant Commissioners to allow public comment in response to the personal appearance of the Mas groups and to comply with the terms of its Charter." (Compl. at p. 14 (Wherefore clause)).

VI. The City Commission's Approval of the Resolutions

After receiving public comments, the City held the second portion of the Public Meeting on July 18, 2018.[4] Following debate, the City Commission approved the Resolutions. The Resolutions approved by the City Commission did not approve a lease. The Resolutions only initiated the process to submit the proposed charter amendment to the electorate. (*See* Compl. ¶ 18).

[4] The Public Meeting was continued to a Special Meeting on July 18, 2018. (Compl. ¶¶ 12 ("Demand" hyperlink), 37 ("Transcript" hyperlink)).

LEGAL ARGUMENT

I. Muir Lacks the Requisite Standing to Challenge the City's Resolution Submitting the Charter Amendment to the Electorate

Standing is a threshold matter which must be resolved before reaching the merits of a case. *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). To demonstrate standing to seek a writ of mandamus challenging government action, a plaintiff must demonstrate a "special injury" different than the injury suffered by the general public. *See id.*; *Centrust Sav. Bank v. City of Miami*, 491 So. 2d 576, 577 (Fla. 3d DCA 1986) (finding that plaintiff lacked standing to seek writ of mandamus because plaintiff failed to claim that it suffered a special injury); *Smith v. City Of Fort Myers*, 944 So. 2d 1092, 1096 (Fla. 2d DCA 2006) (finding that a citizen lacked standing to challenge the legality of city's transfer of a park to county where citizen failed to allege a special injury from City's action); *Alachua Cty. v. Scharps*, 855 So. 2d 195, 198–99 (Fla. 1st DCA 2003) (holding a taxpayer with no "special injury" lacked standing to challenge a resolution passed by a county which directed that a referendum be placed on a general election ballot, because no exception to the "special injury" rule applied); *accord*, *Sch. Bd. of Volusia Cty. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) ("The requirement that a taxpayer seeking standing allege a 'special injury' or a 'constitutional challenge' is consistent with long established precedent."); *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d

154, 155 (Fla. 1985) ("It has long been the rule in Florida that, in the absence of a constitutional challenge, a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district." (citations and quotations omitted)); *Henry L. Doherty & Co. v. Joachim*, 200 So. 238, 240 (1941) (stating that a mere increase in taxes does not confer standing on a taxpayer seeking to challenge a government expenditure); *Rickman v. Whitehurst*, 74 So. 205, 207 (1917) (requiring that taxpayer suffer special injury before standing is conveyed).

Here, Muir completely fails to allege and/or demonstrate that he has suffered any injury, let alone an injury that is different from any member of the public. He does not allege that he is a registered voter or that he seeks to competitively bid on a lease to bring major league soccer to the City of Miami. Acknowledging his lack of special injury, Muir alleges that he brings "this action on behalf of himself and the public." (Compl. ¶ 1). While his self-proclaimed status as the defender of public rights may be viewed by some as a virtuous pursuit, the judicial consensus remains that this Court is bound by the law of Florida's Supreme Court which has repeatedly held that a Plaintiff must demonstrate a special injury before the Court can consider the merits of his challenge. *See, e.g., Solares*, 166 So. 3d at 888 (recognizing that "[b]efore a court can consider whether an action is illegal, the court must be

presented with a justiciable case or controversy between parties who have standing" and "[a]s judges sitting on a District Court of Appeal, '[w]e are bound to follow the case law set forth by the Florida Supreme Court.'"); *Kneapler v. City of Miami*, 173 So. 3d 1002, 1004 (Fla. 3d DCA 2015) (affirming trial court's "correct legal determination" that "[t]o have standing to challenge the validity of a resolution passed by a municipality directing a referendum to be placed on the general election ballot, a plaintiff must allege that he has suffered or will suffer a special injury which is distinct from that suffered by others in the district." (Citation omitted).). Consequently, the Alternative Writ must be quashed, and Muir's Complaint denied for lack of standing. *See id.*

To the extent Muir seeks to remedy his failure to demonstrate standing by relying on the City's Charter, the Third District has already opined that "[u]nlike the taxing and spending provisions of the Constitution, a city charter cannot expand or contract the principle of standing which ultimately sounds in the express separation of powers provision of Article II, Section 3 of the Florida Constitution." *Solares*, 166 So. 3d at 889.[5] To find otherwise would "reduce standing to a nullity." *See id.*

[5] In *Herbits*, the Third District noted an exception to the standing rule when legislation provides a cause of action and standing to private citizens. *Herbits v. City of Miami*, 207 So. 3d 274 (Fla. 3d DCA 2016). The court in *Herbits* discussed Miami-Dade County's Home Rule Charter, and the unique power granted to the electors under the Florida Constitution of 1885 related to claims for a violation of the Miami-Dade County Citizens' Bill of Rights. *Herbits*, 207 So. 3d at 283. Here,

Moreover, Muir's Complaint for Mandamus does not, and cannot, establish any injury related to a violation of the City's Charter because the City and MFP have not entered into any final, unconditional binding lease terms that would result in any injury to Muir. *See Herbits*, 207 So. 3d at 282–83 (finding that the plaintiff lacked standing to challenge alleged violation of section 29-A of the City's Charter because the court was "unable to determine that the City and Flagstone are bound to a definitive lease (or leases) as opposed to an agreement that remains subject to as-

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Muir does not raise those claims. Muir alleges that the City must comply with section 29-A of the Charter. When the Third District in *Herbits* applied the special injury rule to alleged violations of section 29-A of the City's Charter—the same section Muir raises here—it found that the plaintiff did not have standing because the plaintiff failed to demonstrate a special injury. *See Herbits*, 207 So. 3d at 283. Moreover, the City's Charter has not been granted the same authority under the Florida Constitution that Miami-Dade's Charter enjoys. Unlike the Miami-Dade County Bill of Rights, which attempted to give substantive rights, the City Charter cannot expand the principles of standing for residents in the City of Miami that contravene principles of judicial standing. *See id.; Solares*, 166 So. 3d at 889. Any other conclusion would violate the Florida Constitution's separation of powers provision and result in an unconstitutional encroachment on the Florida Supreme Court's authority to determine procedural matters of standing. *See* Art. V., § 2(a), Fla. Const. (1968); *Avila South Condo. Ass'n. Inc. v. Kappa Corp.*, 347 So. 2d 599, 608 (Fla. 1977); *Rogers & Ford Cont. Corp. v. Carlandia Corp.*, 626 So. 2d 1350, 1352 (Fla. 1993). And even if Muir could ignore this Court's long-standing judicial principles of standing, where, as here, the allegations relate to possible and prospective violations, even Miami-Dade's Citizen's Bill of Rights does not provide the requisite standing. *See Herbits*, 207 So. 3d at 284 ("We conclude that the Miami-Dade Citizens' Bill of Rights provides remedies for truth in government violations, but not for the possible and prospective ordinance violations alleged in the complaint.").

yet-unfulfilled conditions."); *see also Florida League of Cities v. Smith*, 607 So. 2d 397, 401 (Fla. 1992) ("The plain language of the repealer indicates that the harm petitioners fear is not even real. In order to grant petitioner's request, we would be required to create a controversy and then resolve it, thereby establishing the "clear" and "certain" legal right in the same opinion in which mandamus would be granted. This we may not do."). While Muir may be disappointed with the process governing charter amendments and the City's legislative decision to propose a charter amendment to the electorate, his remedy is at the polls, not the courts.[6] *See e.g. Herbits*, 207 So. 3d at 284; *Paul v. Blake*, 376 So. 2d 256, 259 (Fla. 3d DCA 1979). On all fronts, the Complaint fails for lack of standing and must be denied.

II. Muir Fails to State a Cause of Action for Mandamus Because the City Complied with the Exclusive Legal Requirements to Propose a Charter Amendment to the Electorate

A. Mandamus is Only Available to Compel the Performance of a Clear Legal Duty

Mandamus is a proceeding to enforce a clear legal right to the performance of a clear legal duty. *See, e.g., Heath v. Becktell*, 327 So. 2d 3 (Fla. 1976). The legal duty that a plaintiff seeks to compel must be ministerial, rather than discretionary.

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[6] This is a good time to highlight the irony of Muir's Complaint. He alleges that the City is depriving the public from a legal right to competitive bidding (*see e.g.*, Compl. ¶ 49), yet at the same time he seeks to deprive the public from the right to vote on the proposed charter amendment (Compl. ¶ 48).

See An Accountable Miami-Dade, 208 So. 3d at 731. A duty is ministerial when there is no room for the exercise of discretion and the performance required is directed by law. *See Key Biscayne Gateway Partners, LTD v. Vill. of Key Biscayne*, 172 So. 3d 499 (Fla. 3d DCA 2015) ("In these circumstances, mandamus will not lie because the Village's decision to approve the site plan involves quasi-judicial fact finding and quasi-judicial discretion."); *An Accountable Miami-Dade*, 208 So. 3d at 731; *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (citing *Solomon v. Sanitarians' Registration Bd*., 155 So. 2d 353 (Fla. 1963). Once a discretionary act has been exercised, mandamus is not available to mandate the doing or undoing of the discretionary act. *See e.g., Mathews v. Crews*, 132 So. 3d 776, 778 (Fla. 2014) ("It is well-settled that mandamus is neither the appropriate vehicle to seek review of an allegedly erroneous decision by another court, nor is it the proper vehicle to mandate the doing or undoing of a discretionary act."); *Migliore v. City of Lauderhill*, 415 So. 2d 62, 63 (Fla. 4th DCA 1982), approved, 431 So. 2d 986 (Fla. 1983).

It is well settled that mandamus is available only to "enforce an established legal right ... not to establish that right." *An Accountable Miami-Dade*, 208 So. 3d at 731; *accord Fla. League of Cities*, 607 So. 2d at 401 ("Mandamus may not be used to establish the existence of such a right, but only to enforce a right already

clearly and certainly established in the law."). This is because mandamus is intended to accomplish the limited function of compelling officials to perform lawful duties and "not to redress every grievance or disagreement." *Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 3d DCA 1993); *accord City of Coral Gables v. State ex rel. Worley*, 44 So. 2d 298, 300 (Fla. 1950) ("It is well established that mandamus is … not used to enforce or determine equitable rights.").

Here, Muir seeks to compel the City to follow the requirements of section 29-A of the Charter prior to proposing a charter amendment and to compel the City to designate the Proposed Lease as a "Unified Development Project." But because the City has complied with every required legal duty to propose a charter amendment to the electorate and the decision to designate a project as a "Unified Development Project" is a discretionary act, mandamus must be denied.

B. Mandamus is not Available to Compel the City to Comply with Section 29-A of the Charter Because Miami-Dade's Home Rule Amendment and Charter Provide the Exclusive Requirements for Submitting a Charter Amendment to the Electorate

Under section 6.03 of Miami-Dade County's Home Rule Charter ("County Charter"), a municipality is only required to draft a proposed charter amendment and adopt a resolution proposing the amendment to the electors. More specifically, the Miami-Dade Charter provides the following procedures:

> Except as provided in Section 6.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

Section 6.03 is the exclusive procedure to amend a municipal charter in Miami-Dade County and no limiting provisions may be engrafted on it. *City of Miami v. Miami Ass'n of Firefighters, Local 587*, 744 So. 2d 555, 556 (Fla. 3d DCA 1999) ("As the Home Rule Amendment makes the foregoing procedure *exclusive*, no limiting provisions may be engrafted on it."); *see Miami Heat Ltd. Partnership v. Leahy*, 682 So. 2d 198 (Fla. 3d DCA), *appeal dismissed*, 686 So. 2d 576 (Fla. 1996), (finding that the Miami-Dade Charter reigned supreme and denying an attempt by Dade County ordinance to impose a single subject requirement on the exclusive provisions of the Miami-Dade Home Rule Charter relating to the procedure for initiating referenda on ordinances).

C. The City Complied with its Clear Legal Duty to Follow the Requirements of the Miami-Dade Home Rule Charter Prior to Submitting a Proposed Charter Amendment to the Electorate

It is undisputed from the plain language of the Resolutions and the Public Meeting that the City Commission approved the Drafting Resolution directing the City Attorney to draft ballot language for consideration at the referendum special election scheduled for November 6, 2018. (Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)). It is also undisputed that the City Commission approved the Charter Amendment Resolution submitting to the electorate a proposed charter amendment. *Id*. The City and County Charters are deafening silent as to any additional procedures required to propose a charter amendment to the electorate. Therefore, on the face of the Complaint and Resolutions attached and incorporated therein, the City has complied with its legal duties to submit the proposed charter amendment to the electorate. *See* § 6.03, Miami-Dade Charter.

Muir seeks to use mandamus to engraft additional requirements of section 29-A to the charter amendment process. Because section 6.03 of the Miami-Dade Home Rule Charter is the exclusive authority governing charter amendments, Muir does not have a clear legal right to the procedures under section 29-A of the Charter and, thus, his Complaint must be denied. *See e.g., Miami Ass'n of Firefighters*, 744 So. 2d at 556; *An Accountable Miami-Dade*, 208 So. 3d at 731 ("Mandamus is available

only to enforce an established right . . . not to establish that right" (internal citations and quotations omitted)).

D. Muir Cannot Use Mandamus to Compel the City Commission to Exercise its Discretion to Identify a Unified Development Project Under Section 29-A

As clarified above, section 29-A does not apply to proposed charter amendments and, thus, the City does not have a ministerial duty to comply with section 29-A. Since no violation of the City's Charter has occurred, we are left wondering what Muir actually seeks to compel the City to do.[7] To the extent that Muir seeks to compel the City Commission to determine that the Proposed Lease is

[7] While Muir's Complaint is far from a model of clarity, he appears to incorrectly allege that both sections 29-A and 29-B prohibit the City from even looking at the Proposed Lease without using the competitive bidding process of section 29-A of the Charter. (Compl. ¶ 26-27, 29). Muir even goes so far as to allege that amendment of section 29-B "does nothing to remove the requirements to adhere to 29-A." (Compl. ¶ 44). Section 29-A, however, relates to the City's decision to procure "contracts" for services, not a lease of City property. And based on the clear and unambiguous text of section 29-B of the Charter (which governs "City-owned property sale or lease"), the City's electorate can, and has, authorized the lease of City property without competitive bidding and without complying with section 29-A. Indeed, the Charter provision that the City seeks to amend, if the electorate votes to approve it, states that "[n]otwithstanding anything herein to the contrary, the City commission, by a 4/5 ths affirmative vote, may….." and is followed by a number examples where the City Commission was authorized to waive competitive bidding and approve a lease. *See* City of Miami Charter § 29-B (a)-(d).

a "Unified Development Project" under section 29-A, mandamus is also unavailable.[8]

As Muir concedes in paragraph 26 of the Complaint, the decision to seek a "Unified Development Project" is discretionary and left to the City Commission. The discretionary act is apparent from the clear and unambiguous language of section 29-A, and is fatal to Muir's Complaint:

> A unified development project shall mean where an interest in real property is owned or is to be acquired by the city, is to be used for the development of improvements, and as to **which the city commission <u>determines</u>** that for the development of said improvements it is most advantageous to the city to procure from a private person….

City Charter § 29-A (emphasis added).

As demonstrated by the Resolutions attached to the Complaint, the City does not seek to procure a contract for services or lease the property as a "Unified Development Project" under section 29-A of the Charter. (Compl. ¶ 18 ("RE. 9 and RE. 10" hyperlink)). To the contrary, the only determination that the City Commission made was to exercise its legislative discretion to submit a charter amendment to the electorate. *Id.* Because the City Commission has not determined

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[8] To the extent that Muir also argues that the City has violated section 29-A(b) of the Charter, the Proposed Lease has not been executed and thus, no violation has occurred. *See* City Charter § 29-A(b) ("Except as otherwise provided in this section, there shall be no…leasehold…unless there has been prior public notice and a prior opportunity given to the public to compete…"). Mandamus cannot be used to prevent an alleged future harm. *See, e.g., Rechler*, 674 So. 2d at 790.

that the City should seek a "Unified Development Project," and because Muir fails to identify a ministerial duty to comply with the procedures of 29-A, Muir cannot use mandamus to mandate the doing, or undoing, of the City Commission's discretionary act. *See Mathews*, 132 So. 3d at 778; *Migliore*, 415 So. 2d at 63. And mandamus is not a proper remedy to direct the City to act in a specific manner. *See Hunter v. Solomon*, 75 So. 2d 803, 806 (Fla. 1954) ("Mandamus in proper cases may be used to compel a public agency to exercise a discretion vested in it *but generally it cannot be used to direct the public agency to act only in a certain manner*." (emphasis supplied)). Consequently, the Complaint must be denied.

III. The Doctrine of Separation of Powers Prevents the Court From Interfering with the City Commission's Legislative Decision to Submit a Proposed Charter Amendment to the Electorate

Once it is clarified that the City properly exercised its legislative discretion, and assuming for arguments' sake that Muir has standing (he does not), this Court must consider whether it can issue mandamus to interfere with the City Commission's legislative decision to approve a resolution that presents a proposed charter amendment to the electors. As explained by the Florida Supreme Court in *Trianon Park Condo. Assoc., Inc. v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985) the doctrine of separation of powers prevents it:

> Under the constitutional doctrine of separation of powers, the judicial branch must not interfere with the discretionary functions of the

> legislative and executive branches of government absent a violation of constitutional or statutory rights.

To hold otherwise, the Court reasoned, "would require the judicial branch to second guess the political and police power decisions of the other branches of government and would violate the separation of powers doctrine." *Trianon*, 468 So. 2d at 918.

Muir's Complaint for Mandamus effectively asks this Court to interfere with the City Commission's legislative decision to approve a resolution and present a charter amendment to the electorate. But Muir has not demonstrated that a constitutional or statutory right has been violated. Nor can he establish that the City Commission's decision to approve the Resolutions was not legislative or discretionary. Consequently, the doctrine of separation of powers operates to bar Muir's Complaint for Mandamus. *See Trianon*, 468 So. 2d at 918; *An Accountable Miami-Dade*, 208 So. 3d at 731 ("Mandamus is available only to enforce an established right . . . not to establish that right" (internal citations and quotations omitted)); *Herbits*, 207 So. 3d at 285 (finding that the "process does not, however, mean that a court should enjoin or otherwise interfere with a process that is inherently legislative. To the contrary, courts traditionally give deference to the legislative process and the differences of opinion that emerge as a Commission makes its decisions."); *see also Detournay v. City of Coral Gables*, 127 So. 3d 869,

873 (Fla. 3d DCA 2013) ("a writ of mandamus *cannot issue* against a city on behalf of a private party to require the city to enforce its building and zoning laws against *another* private party" (emphasis supplied)); *Alexander v. City of Coral Gables*, 745 So. 2d 1004, 1005 (Fla. 3d DCA 1999) (holding that mandamus does not lie to compel a city to enforce its zoning regulations, because the decision whether to enforce is discretionary); *Centrust Sav. Bank*, 491 So. 2d at 577 (holding that a writ of mandamus does not lie to compel a city to enforce its building code against third parties and that plaintiff lacked standing because it made no claim "that it has suffered a special injury, apart from the injury suffered by any member of the general public, as a result of these alleged building code violations"); *RHS Corp. v. City of Boynton Beach*, 736 So. 2d 1211, 1213 (Fla. 4th DCA 1999) (holding that mandamus does not lie to compel a city to enforce its zoning regulations, because the decision whether to enforce is discretionary, rather than ministerial).

IV. Muir Cannot Use Mandamus to Prevent the Public from Voting on the Proposed Charter Amendment

The Resolutions at the core of Muir's grievances were approved by the City Commission and the proposed ballot language to amend the City's Charter is scheduled for special election on November 6, 2018. (*See* Compl. ¶ 18). As the Third District stated over a half-century ago, this Court's role in the statutorily defined referendum process is limited:

> This referendum, involving as it does not only an election process of the City of Coral Gables, but also an exercise of legislative power by the electors, should not be impeded or prevented by a court except where it is made to appear that the proceeding is inapplicable under the law or is in violation of the law. McQuillin, ibid, s 16.68, pp. 249-250. No such showing of illegality of the referendum proceeding having been made in the trial court, the preliminary and permanent injunctions restraining the progress of the referendum were improvidently entered. The judgment is reversed, and the cause is remanded to the circuit court with direction to enter an order dismissing the complaint

City of Coral Gables v. Carmichael, 256 So. 2d 404, 411 (Fla. 3d DCA 1972).

Only when a municipal charter amendment is unconstitutional in its entirety may it be precluded from placement on the ballot. *See e.g.*, *Barnes v. City of Miami*, 47 So. 2d 3, 6 (Fla. 1950) ("[W]hatever may be the extend of the City's power under the initiative provision of its charter, **the authority of the City to submit the proposed issue to the electors must be sustained**, whether under the view that the provision is unlimited in its aspect or whether on the ground that the matter proposed is legislative in character." (emphasis added)); *Citizens For Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1147 (Fla. 2d DCA 2006) (finding that only "[i]f the opponent of a proposed amendment 'in good faith questions the constitutionality of the ordinance in its entirety and on its face[,] the court may properly consider that question in advance of an election concerning its approval.'"). Muir's attempt to use a mandamus action to disrupt this process and "preclude" the public from voting on the proposed charter amendment must be rejected. *See id.*

V. The Single Subject Rule Does Not Apply to Municipal Charter Amendments

While Muir only seeks mandamus to comply with the City Charter, his Complaint alleges that the proposed charter amendment is vague because it violates Section 166.041, Florida Statutes, commonly known as the "single subject rule."[9] (Compl. ¶¶ 23, 34). It is well established, however, that the "single-subject rule" does not apply to municipal charter amendments in Miami-Dade County, which are controlled exclusively by Miami-Dade County's Home Rule Charter. *See Miami Ass'n of Firefighters, Local 587*, 744 So. 2d at 556 ("As Section [6.03 of the Home Rule Amendment] does not contain a single subject requirement, and as it governs the procedure for the adoption of the proposed amendment, the trial court went astray (in an otherwise well-formulated order) when it imposed the single subject requirement."); *Miami Heat Ltd. P'ship*, 682 So. 2d at 202 ("We agree with the intervenor that the Home Rule Charter provides the only method for initiating referenda on ordinances and does not impose a single subject requirement."). Any attempt by Muir to argue otherwise must be rejected. *See id.*

[9] While Muir has not sought any relief related to these allegations, MFP responds in an abundance of caution.

VI. Muir's Complaint Must be Denied Because it is Clear from the Face of the Complaint that the Public was Provided an Opportunity to Comment During the Public Meeting

Muir asks this Court to "order defendant Commissioners to allow public comment in response to the personal appearance of the Mas group." (Compl. at p. 14 (Wherefore clause)). On the face of the Complaint and the video and transcript hyperlinks provided therein, it is evident that the public was allowed to comment during the Public Meeting. (Compl. ¶ 12). Indeed, approximately 100 members of the public commented. The opportunity to comment occurred prior to the City Commission's decision to approve the Resolutions. (Compl. ¶ 28). Muir himself appeared and spoke before the Commission. (Compl. ¶ 12). Consequently, Muir and the public received all the opportunity to appear and be heard that they were entitled to receive. *See* § 286.0114(2), Fla. Stat. ("The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.").

Muir also alleges that the City "fails to provide due public notice pursuant to Fla. Stat. 125.001."[10] Muir, however, appeared at the duly-noticed Public Meeting

[10] It is unclear why Muir's Complaint cites to section 286.011, Fla. Stat., *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969), and

and, thus, he received all the process he was due and the alleged failure to provide notice has been waived. *See Carillon Cmty. Residential v. Seminole Cty.*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010); *see also City of Jacksonville v. Huffman*, 764 So. 2d 695, 697 (Fla. 1st DCA 2000) (holding that a contestant waives a challenge to procedural due process when the contestant appears at the hearing and noting that "[t]he defense of waiver will only be denied if the party was unable to fully prepare for and present objections at the hearing or was otherwise prejudiced by the defective notice"); *Schumacher v. Town of Jupiter*, 643 So. 2d 8 (Fla. 4th DCA 1994); *Malley v. Clay Cty. Zoning Comm'n*, 255 So. 2d 555 (Fla. 1st DCA 1969).

CONCLUSION

For the foregoing reasons, Muir's Complaint for Writ of Mandamus must be denied, with prejudice, the Alternative Writ quashed, and the City and MFP should be awarded all other relief that this Court deems equitable and just, including an award of costs and attorney's fees for their defense of this action.

City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971), when it is clear from the Complaint that the meeting was open to the public, public comments were permitted, and Muir commented at the Public Meeting.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2018, a true and correct copy of the foregoing was furnished via electronic delivery to:

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