IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: _____

GUSTAVO TELLEZ,

Plaintiff,

vs.

VILLAGE OF KEY BISCAYNE,

Defendant.

COMPLAINT

Plaintiff GUSTAVO TELLEZ, by and through undersigned counsel, brings this Complaint against Defendant VILLAGE OF KEY BISCAYNE and in support thereof alleges the following upon information and belief:

INTRODUCTION

On November 3, 2020 voters in the Village of Key Biscayne will be casting their votes on a ballot measure that asks them to authorize the Village to borrow up to $100,000,000 through general obligation bonds without any clear understanding of what projects the $100,000,000 will be spent on.

Advocates for this unprecedented One Hundred Million Dollar "Blank Check" argued that the authorization would take advantage of interest rates "at an all-time low." While

advocates have conceded --after-the-fact-- that the interest rate cannot be locked-in until funding actually occurs, the Village Commission passed a resolution seeking voter authorization of a pre-approved line-of-credit secured with resident ad valorem taxes… for unknown projects… with unknown costs… at unknown interest rates and terms to be determined in the Village Council's sole discretion at a future unknown date.

This unprecedented action violates the express requirements of the Village Charter, as well as well-established Florida law that requires voters be provided with adequate information about the projects to be funded by the bonds being voted upon.

JURISDICTION AND VENUE

1. This is an action pursuant to Fla. Stat. §100.321 testing the validity of a bond referendum and seeking declaratory relief pursuant to Chapter 86 of Florida Statutes on whether such bond referendum complies with the requirements and procedures set forth in the VILLAGE OF KEY BISCAYNE Charter and Florida law.
2. Plaintiff GUSTAVO TELLEZ is a resident and taxpayer in the Village of Key Biscayne and is therefore authorized by Fla. Stat. §100.321 to bring this action.
3. Defendant VILLAGE OF KEY BISCAYNE is a municipality located in Miami-Dade County.
4. Venue appropriately lies in this Judicial Circuit pursuant to Fla. Stat. § 47.011 because events giving rise to this cause of action occurred in the Village of Key Biscayne in Miami-Dade County.
5. The dispute set forth herein involves a present, ascertainable set of facts and the rights, powers or privileges of the parties depend upon the facts stated and the law

applicable to the facts. The relief sought herein is not sought merely for the purpose of providing legal advice or to satisfy curiosity and there is a present and practical need for the declaration requested.

6. All conditions precedent to the bringing of this action have either been performed by Plaintiff or have otherwise occurred.

THE BOND REFERENDUM

7. At its June 30, 2020 meeting, the Key Biscayne Village Council began discussing a controversial plan involving: (i) authorizing the Village to issue general obligation bonds in the amount of ONE HUNDRED MILLION DOLLARS ($100,000,000); and (ii) excluding general obligation bonds from the borrowing limits of the Village as set forth in Section 4.10(b) of the Village Charter.

8. The exclusion of the general obligation bonds from the borrowing limits in Section 4.10(b) of the Village Charter is necessary because such borrowing limits would prevent the issuance of the $100,000,000 in general obligation bonds.

9. At the June 30, 2020 meeting, the Key Biscayne Village Council passed Resolution 2020-45 (attached as Exhibit A), which provides in pertinent part:

> 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.

10. However, the effort to exclude general obligation bonds from the borrowing limits in Section 4.10(b) of the Charter ultimately failed at the July 28, 2020 Village Council meeting.

11. Resolution 2020-45 approved the following ballot language for the referendum on November 3, 2020:

> ***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:*
>
> 1. *Mitigate effects of sea level rise and flooding;*
> 2. *Protect Village beaches and shoreline; and*
> 3. *Harden infrastructure to the effects of hurricanes?*
>
> *Shall the above described proposal be adopted?*
>
> *0* *For Bonds 232*
>
> *0* *Against Bonds 233*[1]

THE VILLAGE CHARTER

12. The Municipal Charter of the Village of Key Biscayne was adopted by the residents of the Village on June 18, 1991 and has been amended as part of two subsequent Charter Reviews in 2007 and 2012.

13. The purpose of a municipal charter has been described as "the basic document that defines the organization, powers, functions and essential procedures of the city government. It is comparable to the Constitution of the United States or a state's

[1] The actual ballot language is attached as Exhibit B.

constitution. The charter is, therefore, the most important legal document of any city."[2]

COUNT 1

THE REFERENDUM VIOLATES THE VILLAGE CHARTER BY AUTHORIZING "THE BORROWING OF MONEY" WITHOUT AN ORDINANCE

14. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 13 as if fully set forth herein.

15. The Village Charter sets forth the powers and functions of elected officials as well as the organization and procedures of the Village.

16. The Village Charter provides that certain actions must be "effected or authorized" by "ordinance."

17. One of the enumerated actions that require an ordinance is any action to "**Authorize the borrowing of money**":

> Section 4.03. - Action requiring an ordinance.
>
> In addition to other acts required by law or by specific provision of this Charter to be effected or authorized by ordinance, those acts of the Village Council shall be by ordinance which:
>
> 1. Adopt or amend an administrative regulation or establish, alter or abolish any Village office, department, board or agency;
> 2. Establish a rule or regulation the violation of which carries a penalty;
> 3. Levy taxes or appropriate funds;
> 4. Grant, renew or extend a franchise;
> 5. Set service or user charges for municipal services or grant administrative authority to set such charges;
> 6. **Authorize the borrowing of money**;

[2] National League of Cities website at https://www.nlc.org/resource/cities-101-charters

7. Convey or lease or authorize by administrative action the conveyance or lease of any lands of the Village;
8. Amend or repeal any ordinance previously adopted, except as otherwise provided in this Charter; or
9. Approve a Capital Project in excess of $500,000. When an ordinance authorizing a Capital Project in excess of $500,000 has been approved upon first reading, notice of the date and time of the second reading shall be provided ("Second Reading Notice"). The Second Reading Notice shall include a brief description of the Capital Project and its cost and shall be published in addition to and contemporaneously with notices regularly published for second readings. Each Village elector shall be sent a Second Reading Notice by postcard. Action taken by the Council on a Capital Project shall not be voided by the failure of an individual Village elector to receive a Second Reading Notice postcard.

18. Resolution 2020-45 provides at Section 8:

> 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**…. (emphasis added)

19. Resolution 2020-45 purports to "authorize the borrowing of money," which is an action that can only be done pursuant to an "ordinance" under the Village Charter.

RELIEF REQUESTED

WHEREFORE, Plaintiff request this Honorable Court enter Judgment declaring the Bond Referendum to be illegal and void, that the referendum be nullified, and the Court enter such other and further relief as it deems proper.

COUNT 2

THE REFERENDUM DOES NOT CONTAIN LANGUAGE EXPRESSLY REQUIRED BY THE VILLAGE CHARTER

20. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 13 as if fully set forth herein.

21. Fla. Stat. § 100.341 provides the Florida statutory requirements for a bond referendum:

> **100.341 Bond referendum ballot provides.**—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."

22. Fla. Stat. § 100.311 makes clear that the law of the municipality govnerns bond referendums and that § 100.341 is **"additional and supplementary to any such local law":**

> **100.311 Local law governs bond election held by municipalities.**—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**. (emphasis added).

23. As such, Florida laws require that any bond referendum needs to conform with the requirements of the Village Charter.

24. The Village Charter provides express language that must be included in any "ordinance or other ballot issue to be voted on by the electors":

> **Section 5.03. - Form of ballots.**
>
> 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."** (emphasis added)

25. The ballot measure fails to comply with the clear and unambiguous language expressly required by Section 5.03 of the Charter.

Relief Requested

WHEREFORE, Plaintiff requests this Honorable Court enter Judgment declaring the Bond Referendum to be illegal and void, that the referendum be nullified, and the Court enter such other and further relief as it deems proper.

COUNT 3

VOTERS DO NOT HAVE ENOUGH INFORMATION TO INTELLIGENTLY VOTE ON THE BOND REFERENDUM

26. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 13 as if fully set forth herein.

27. Florida law requires that ballot measures provide sufficient information to enable voters to intelligently cast their ballots. It is unlawful for a ballot measure to "fly under false colors" as to the measure's true effect.

28. In reviewing the language of a bond referendum, the court must look at ballot language "as such language would be construed by a reasonable voter." *People Against Tax Revenue Management, Inc. v. County of Leon*, 583 So. 2d 1373, 1375 (Fla. 1991). Under this objective standard, the ballot language is interpreted to mean what the average, reasonable voter in the community understood it to mean when voting.

29. To determine what the reasonable voter in Key Biscayne would have known and understood when voting, the court must look to the information that was available before the vote. *Dept't of Envtl. Prot. V. Millender*, 666 So. 2d 882, 885-86 (Fla. 1996) (indicating that, in the context of discerning voter knowledge, the court may "look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent." (quoting *Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1970).

30. Here, the ballot 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.

31. The bond referendum language is nothing more than a One Hundred Million Dollar "blank check" to the Village as there are no approved projects that would be funded by the bonds authorized by the Referendum.

32. In *Grapeland Heights Civic Ass'n v. City of Miami*, 267 So.2d 321, 324 (Fla. 1972), the Florida Supreme Court provided guidance on what constitutes "adequate information on the projects" being funded by a general obligation bond:

> It is also contended that the electors were not given adequate information on the projects. This argument is equally without merit. The 14-page

> proposal before the Commission was a public record, **spelling out in detail each project (park) by listing its location and estimated cost** (thus the precise total of $39,890,000). 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, including the specific projects in an illustrated color map diagram and description of the locations of the exact and only projects encompassed in the bond issue. (emphasis added).

33. The Village has put online a website at https://www.vkbresilience.org/ that purports to outline the projects that would be funded by the GO Bonds, including:

- *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.*
- *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.*
- *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.*

34. None of the projects articulated on the Village website are outlined in the Resolution that purports to authorize the Referendum, and appear to have been "grabbed from thin air" in order to backfill the missing information and convince voters to vote for the bond referendum.

35. As such, voters do not have the information required to intelligently cast a ballot on the bond referendum as required by Florida law. In fact, the Village website contains information about projects that have not been approved in connection with the bond referendum.

36. As a result, the Bond Referendum "flies under false colors" in violation of Florida law.

Relief Requested

WHEREFORE, Plaintiff requests this Honorable Court enter Judgment declaring the Bond Referendum to be illegal and void, that the referendum be nullified, and the Court enter such other and further relief as it deems proper.

CONCLUSION

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment against Defendant, awarding Plaintiff all appropriate relief, including the following:

(i) A declaration that the bond referendum is illegal and void because it fails to provide the details necessary for voters to make an intelligent decision;

(ii) A declaration that the Village must comply with the express requirements of the Village Charter;

(iii) Costs, including attorneys' fees, to the extent permitted by law; and

(iv) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/djw/
David J. Winker, Esq., B.C.S
Fla. Bar. No. 73148
David J. Winker, PA
2222 SW 17th St
Miami, Fl 33145
305-801-8700
dwinker@dwrlc.com

EXHIBIT A

RESOLUTION NO. 2020-45

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CALLING FOR A BOND REFERENDUM ELECTION REGARDING THE ISSUANCE OF GENERAL OBLIGATION BONDS BY THE VILLAGE IN AN AMOUNT NOT TO EXCEED $100,000,000 FOR THE PURPOSE OF FINANCING THE COSTS OF MITIGATING THE EFFECTS OF SEA LEVEL RISE AND FLOODING, PROTECTING THE VILLAGE'S BEACHES AND SHORELINE, AND HARDENING INFRASTRUCTURE TO THE EFFECTS OF HURRICANES; CALLING A SPECIAL ELECTION ON THE MATTER TO BE HELD ON NOVEMBER 3RD, 2020; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; PROVIDING NOTICE OF ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council (the "Village Council") of the Village of Key Biscayne, Florida (the "Village") wishes to seek approval of the electors for the issuance of general obligation bonds of the Village in an amount not to exceed $100,000,000 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 (the "Project"); and

WHEREAS, the Constitution of the State of Florida, Article VII, Section 12, as well as Florida Statutes 100.211, and 100.341 authorize and require a voter referendum for the approval of the issuance of general obligation bonds by a municipality; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and health, safety and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That the recitals set forth above are hereby adopted and confirmed.

Section 2. **Intent to Issue 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"). 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.

Section 3. **Election Called.** That a special election is hereby called, to be held on Tuesday, November 3, 2020, in conjunction with a county wide election, to present to the qualified electors of the Village of Key Biscayne, the ballot question provided in Section 4 of this Resolution.

Section 4. **Form of Ballot.** That the form of ballot for the referendum election provided for in Sections 2 and 3 of this Resolution shall be substantially 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"

Section 5. Balloting. That balloting shall be conducted between the hours of 7:00 a.m. until 7:00 p.m. on election day at the regular polling places for Village elections. Vote-by-mail ballots and early voting shall be provided as authorized by law. All qualified Village electors who are timely registered in accordance with law shall be entitled to vote. The Village Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County Supervisor of Elections.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Florida Statutes, in a newspaper of general circulation within the Village at least thirty (30) days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, September 27, 2020), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 11, 2020), and shall be in substantially the following form:

"NOTICE OF BOND REFERENDUM SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO. _____ ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE (THE "VILLAGE") A SPECIAL ELECTION HAS BEEN CALLED AND

ORDERED TO BE HELD WITHIN THE VILLAGE ON TUESDAY, NOVEMBER 3, 2020, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M. AT WHICH TIME THE FOLLOWING PROPOSAL SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE:

"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"

Polling place information and the full text of the proposed enabling Resolution is available at the Office of the Village Clerk located at: 88 West McIntyre Street, Key Biscayne, Florida 33149."

Section 7. Copies. That copies of this Resolution are on file at the offices of the Village Clerk located at: 88 West McIntyre Street, Key Biscayne, Florida 33149, and are available for public inspection during regular business hours.

Section 8. Effectiveness of Approval. 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.

Section 9. Effective Date of Resolution. That this Resolution shall be effective immediately upon its adoption.

PASSED and ADOPTED this 30th day of June, 2020.

MICHAEL W. DAVEY
MAYOR

ATTEST:

PETER J. KULPA
INTERIM VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

EXHIBIT B

Key Biscayne Referendum 1
Referendo 1 para Key Biscayne
Referandòm 1 Biscayne

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?

Referendo de bonos para emitir bonos de obligación general

¿Deberá el Municipio emitir bonos de obligación general por un monto que no supere los $100 millones en una o varias series, con vencimiento en un plazo máximo de treinta años desde sus fechas de emisión, que devenguen intereses a una tasa que no supere la tasa máxima permitida por la ley, pagaderos de los impuestos ad valórem recaudados por el Municipio, para:

- Mitigar los efectos del aumento del nivel del mar y las inundaciones;
- Proteger las playas y la costa del Municipio; y
- Reforzar la infraestructura ante los efectos de los huracanes?

¿Deberá adoptarse la propuesta descrita arriba?

Referandòm sou Bon Pou Emèt Bon Obligasyon Jeneral

Èske Minisipalite a dwe emèt bon obligasyon jeneral ki pa depase $100 milyon nan youn oswa plis seri ki ap rive a matirite pa pi ta pase trant ane apati dat emisyon yo, ki bay enterè ki pa depase pousantaj maksimòm lalwa pèmèt, ki peyab apati taks ad valorem Minisipalite a pran pou:

- Bese efè ogmantasyon nivo lanmè ak inondasyon;
- Pwoteje plaj ak rivaj Minisipalite a; ak
- Rafèmi enfrastrikti kont efè siklòn yo?

Èske yo ta dwe adopte pwopozisyon ki pi wo a?

- ⬭ For Bonds/A favor de los bonos/Pou Bon yo 232
- ⬭ Against Bonds/En contra de los bonos/Kont Bon yo 233