Mullen v. Bal Harbour Village, No. 3D17-1144, 2018 WL 1403752 (Fla. 3d DCA Mar. 21, 2018)

Third DCA Asks Legislature to Codify Method for Addressing Presumptively Invalid Petitions

In *Mullen v. Bal Harbour Village*, Lynne Mullen, Beth Berkowitz, and Good Government for Bal Harbour ("Appellants") submitted two signed petitions to amend the Village Charter to the Village Clerk. The first petition sought to require a vote of at least 60% of Village electors to approve the sale, lease, or disposal of property owned by the Village. The second petition sought to add a new section to the Charter to require a vote of 60% of Village electors to approve certain, defined commercial development within the Village. Both petitions were submitted to the Miami-Dade County Supervisor of Elections ("Supervisor"), who deemed them insufficient because the petitions were not submitted with a circular affidavit, a document required by the Village Clerk.

Appellants then filed a two-count complaint seeking a declaration that the petitions met the requirements of the Florida Statutes and that the petitions should be submitted to the Supervisor for signature verification without the circular affidavit. The trial court held that the second petition was illegal per Section 163.3167(8)(a), Florida Statutes, which prohibits local government referenda pertaining to development orders.

On appeal, the Appellants argued that even though the second petition is illegal, the Village should have submitted both petitions to the Supervisor for signature verification. The Supervisor deemed the petitions insufficient before ever verifying the signatures. The Third DCA held that there is a statutory gap on when and how a municipality should address petitions that appear to its officials as presumptively invalid and called for the Legislature to address the process for denying invalid charter petitions.