

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

PROTECT ST. PETE BEACH ADVOCACY GROUP, a Florida not-for profit corporation;
RUTA ANNE HANCE, an individual;
LEANNE ELIZABETH FARIS, an individual;
JODY POWELL, an individual; CHARLES BOH and CONNIE BOH, individuals; LISA ROBINSON, an individual; HARRY METZ, an individual; EDWARD BARTON TEELE, an individual; and WILLIAM RODRIGUES, an individual,

Plaintiffs,

Case No. 24-000041-CI

v.

CITY OF ST. PETE BEACH, a political subdivision of the State of Florida; KAREN MARRIOTT; NICK FILTZ; BETTY RZEWNICKI; and RICHARD LORENZEN,

Defendants.

**AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND FOR WRIT OF QUO WARRANTO**

Plaintiffs Protect St. Pete Beach Advocacy Group (“Protect St. Pete Beach”) and St. Pete Beach registered voters Ruta Anne Hance, Leanne Elizabeth Faris, Jody Powell, Charles Boh and Connie Boh, Lisa Robinson, Harry Metz, Edward Barton Teele, and William Rodrigues (“Individual Plaintiffs”), by and through undersigned counsel, file this Amended Complaint for Declaratory Judgment and Injunctive Relief and for Writ of Quo Warranto against the City of St. Pete Beach (“City”), a municipal corporation, and Karen Marriott, Nick Filtz, Betty Rzewnicki, and Richard Lorenzen, and in support thereof state as follows:

BACKGROUND

At the St. Pete Beach City Commission meeting on December 12, 2023, two members of the City Commission (“Commission”), Mark Grill and Chris Marone, announced they were resigning as of December 31, 2023 because they did not want to comply with the new requirement under Fla. Stat. § 112.3144(1)(d) to submit financial disclosures under Form 6. The City held a special meeting on December 18, 2023 where two other commissioners, Ward Friszolowski and Chris Graus, announced their impending resignations for the same reason.

The City’s Charter (“Charter”) requires the remaining members of the Commission to call a special election within fifteen days when there are simultaneous vacancies of two or more commissioners. Section 3.06(d), Charter. However, the City Attorney deemed compliance with this provision an “impracticability” and evaded the Charter’s mandate for a timely special election by devising a plan for the Commissioners to hand-select appointed commissioners through a “staggered” process, thereby bypassing the democratic process. The City Attorney admitted to the Commission that the result would be an appointed Commission in the place of an elected Commission and may be subject to a legal challenge. The appointees for District 1 and 3 would serve until the March 2024 general election, and the appointees for District 2 and 4 would serve until a special election to be scheduled for August 2024.

Even if the vacancies were not simultaneous, no authority exists under the Charter to allow the Commission to appoint instead of elect Commission seats 2 and 4, even in the interim. Moreover, a five-member Commission that includes only one elected member and

otherwise consists of unelected appointees does not comply with the Florida Constitution, which requires all municipal legislative bodies to be “elective.”

In the backdrop of this political chaos, the City Commission is scheduled to vote on several critical issues for the City before and soon after the scheduled regular election on March 19, 2024, including a major conditional use permit for the Sirata Resort on February 21, 2024, another large resort development, appointment of a new city manager, and a vote on beach nourishment strategy.

Municipal commissions are democratically elected to represent the will of the people they represent. Fla. Const. art. VIII, § 2 provides that “[e]ach municipal legislative body shall be elective.” Implementing a staggered process that results in the appointment of four out of five commissioners because of the alleged “impracticability” of calling a timely special election violates fundamental rights guaranteed by state and local laws. While the resigning commissioners may have had their reasons to resign in protest of the new financial disclosure requirements, the consequence should not be to deprive the citizens of St. Pete Beach of a democratically elected representative commission, especially on the cusp of upcoming controversial votes.

THE PARTIES, JURISDICTION, VENUE, AND STANDING

1. This is an action for declaratory relief and for writ of quo warranto to enforce the terms of the Florida Constitution and the City of St. Pete Beach Charter, and to enjoin commissioners unlawfully appointed from serving on the City of St. Pete Beach Commission.

2. Plaintiff Protect St. Pete Beach is a Florida not-for-profit corporation.

3. Plaintiff Ruta Anne Hance is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 1, and a property owner at 7711 Coquina Way, St. Pete Beach, FL 33706.

4. Plaintiff Leanne Elizabeth Faris is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 1, and a property owner at 645 78th Avenue, St. Pete Beach, FL 33706.

5. Plaintiff Jody Powell is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 2, and a property owner at 5930 Bahama Way N., St. Pete Beach, FL 33706.

6. Plaintiffs Charles Boh and Connie Boh are citizens and taxpayers, residents of St. Pete Beach, registered voters in District 2, and property owners at 426 55th Ave, St. Pete Beach, FL 33706.

7. Plaintiff Lisa Robinson is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 2, and a property owner at 7100 Boca Ciega Drive, St. Pete Beach, FL 33706. Robinson was the only applicant who timely submitted an application for the District 2 seat. After she submitted it, the Commission reopened the application process and appointed another candidate instead.

8. Plaintiff Harry Metz is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 3, and a property owner at 490 Belle Point Drive, St. Pete Beach, FL 33706.

9. Plaintiff Edward Barton Teele is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 4, and a property owner at 2871 Alton Drive, St. Pete Beach, FL 33706.

10. William Rodrigues is a citizen and taxpayer, a St. Pete Beach resident, a registered voter in District 4, and a property owner at 351 S. Julia Circle, St. Pete Beach, FL 33706.

11. Plaintiff Protect St. Pete Beach is a non-profit based in St. Pete Beach composed of residents and property owners in close proximity to the Sirata Beach Resort and TradeWinds Island Resorts. Its goal is to ensure development projects on St. Pete Beach's infrastructure are improvements that beautify the community for the mutual benefit of residents and visitors alike, without increasing traffic, congestion, demands on infrastructure, or threatening wildlife and natural resources.

12. St. Pete Beach residents make up Protect St. Pete Beach. Some have lived in the City for several decades, raised children, owned businesses, served on city boards and committees and others are new to the community. Membership is open to residents of St. Pete Beach who live in close vicinity to Gulf Boulevard between 60th and 52nd Avenues who are directly impacted by the potential transformation of the beauty, hotelscape and infrastructure on Gulf Boulevard. Protect St. Pete Beach has actively participated in public meetings regarding the Sirata development approval by lodging objections and presenting expert testimony and personal observations from its members. Protect St. Pete Beach has widespread support for its efforts throughout the St. Pete Beach community.

13. Protect St. Pete Beach will be impacted because an unelected Commission which does not represent the will of the people will cast the deciding vote on the Sirata and TradeWinds projects, both which are highly controversial decisions highly relevant to Protect St. Pete Beach's mission.

14. Defendant City is now, and was at all times mentioned in this complaint, a municipal corporation organized and existing under the laws of the State of Florida situated in Pinellas County. Defendants Karen Marriott (District 1), Nick Filtz (District 2), Betty Rzewnicki (District 3), and Richard Lorenzen (District 4) were unlawfully appointed to the Commission and currently serve on the Commission.

15. Venue is proper in this court pursuant to Fla. Stat. § 47.011 because the cause of action accrued in Pinellas County, Florida.

FACTUAL ALLEGATIONS

16. Fla. Const. art. VIII, § 2 states that “[e]ach municipal legislative body shall be elective.”

17. Fla. Stat. § 101.002(3) states:

Any person who is a duly registered elector pursuant to this code and who resides within the boundaries of a municipality is qualified to participate in all municipal elections, the provisions of special acts or local charters notwithstanding.

18. Sec. 38-2, St. Pete Beach Code of Ordinances states:

All persons qualified to vote as electors of this state, under the constitution and the statutes of the state, who reside within the corporate limits of the city and who are duly registered with the supervisor of elections of the county and of the city shall be qualified electors of the city.

19. Legislative text must be construed to be consistent with the fundamental constitutional rights that are involved. *Reform Party of Fla. v. Black*, 885 So. 2d 303, 311 (Fla. 2004). The United States Supreme Court and Florida Supreme Court hold, with respect to the right to vote, “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must

live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Id.* at 311 (citing *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).

20. The Florida Election Code, chapters 97-106, governs the conduct of a municipality’s election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision may conflict with or exempt a municipality from any provision in the Florida Election Code that expressly applies to municipalities. Fla. Stat. § 100.3605(1).

21. Fla. Stat. § 166.031(6) provides:

Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office.

20. The legislative and governing body of a municipality may make no change to a municipal charter provision which affects the method established therein or filling vacancies in elective municipal office without referendum approval as provided in Section 166.031. *Lionel LaGrow*, Fla. Atty. Gen. Op. 075-158, June 3, 1975, *interpreting* Fla. Stat. § 166.021(1) (municipalities “may exercise any power for municipal purposes, except when expressly prohibited by law.”); *see* Fla. Stat. § 166.021(4) (nothing in Ch. 166, *id.*, is to be construed as permitting any changes in a special law or municipal charter which affect certain subject matters enumerated therein, including “the terms of elected officers and *the manner of their election*” without referendum approval as provided in s. 166.031).

21. The City adopted its Charter by Ordinance No. 266 on January 13, 1976 and referendum on March 2, 1976.

22. A City cannot authorize the amendment of the charter other than as provided in Fla. Stat. § 166.031. *Mr. Bruce R. Conroy*, Fla. Atty. Gen. Op. 93-23 (1993).

23. A city cannot disregard its own charter. *City of Miami v. Martinez-Esteve*, 125 So. 3d 295, 299 (Fla. 3d DCA 2013) (explaining that a city is obligated to comply with its own charter provisions).

24. Section 3.06 of the City Charter (bolding added) provides:

(a) Vacancies. The office of a commissioner shall become vacant upon his death, **resignation**, or forfeiture of his office.

* * *

(c) Filling of vacancies. A vacancy on the commission shall be filled in one of the following ways:

(1) If there is less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the commission, by a majority vote of the remaining members shall choose a successor to serve until the newly elected commissioner is qualified. **If one year remains in the term of the vacated seat at the time of the next election, that seat shall be filled by election for the remaining term;**

(2) If there are more than six (6) months remaining in the unexpired term and **no regular city election is scheduled within six (6) months**, the commission shall fill the vacancy on an interim basis as provided in subsection (1), and shall schedule a special election to be held not sooner than sixty (60) days, nor more than one (1) year following the occurrence of the vacancy.

(d) Extraordinary vacancies. In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election to fill all commission positions. **Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida.**

25. Section 3.02 of the Charter provides in part:

(b) There shall be four (4) commissioners who shall be qualified electors of the city, shall reside in the district represented and shall be elected only by the district represented.

(c) Election for the office of commissioner from Districts 1 and 3 shall be held in even-numbered years, and elections for the office of commissioner from Districts 2 and 4 shall be held in odd-numbered years, in the manner prescribed by this charter and general Florida Law and shall be for a two-year term.

26. The City's next regular election was scheduled for March 19, 2024 for Commission Districts 1 and 3.

**RESIGNATION ANNOUNCEMENTS
AND VACANCY-FILLING PROCEDURE**

27. As of December 12, 2023, the City's elected officials were: (1) Mayor Adrian Petrilu; (2) Commissioner Chris Graus (District 1); (3) Vice-Mayor Mark Grill (District 2); (4) Commissioner Ward Friszolowski (District 3); and (5) Commissioner Chris Marone (District 4).

28. At the December 12, 2023, Commission meeting, Vice Mayor Mark Grill announced his resignation from the District 2 Commission seat effective as of December 31, 2023. Grill explained that he was resigning based on his refusal to submit the financial disclosure required under Form 6, as recently mandated by state law for City elected officials under SB 774.

29. About twenty minutes later, Commissioner Chris Marone also announced that he was resigning from the District 4 Commission seat effective December 31, 2023 due to the new financial disclosure requirements under Form 6.

30. On December 18, 2023, the Commission convened a special meeting. During this meeting, Commissioner Friszolowski and Commissioner Graus announced their resignations due to their objection to filing Form 6.

31. Vice Mayor Grill modified his resignation date to be "effective no later than December 30."

32. Commissioner Friszolowski said, “I’ll resign effective today” if Betty Rzewnicki steps into his seat. Ms. Rzewnicki is the sole candidate for the District 3 election in March 2024.

33. Commissioner Graus did not state an effective date for his resignation.

34. The City Attorney explained that to deal with this unprecedented situation, “what we have actively done is try to arrange for the staggering of resignations between now and December 30” so that the remaining commissioners can appoint the successor to the seat.

35. The City Attorney stated the City could not have a special election before August 2024 because they are aligned with the Supervisor of Elections schedule, and with technology required, it is “trickier than it used to be.” The City Attorney deemed a special election an “impracticability.”

36. While a city in Florida may delegate to the county Supervisor of Elections its responsibility to administer municipal elections, nothing in Florida law requires it to do so. A city may administer its own municipal elections, with or without the assistance of contracted vendors. Upon information and belief, a contracted vendor could conduct a special election for a city like St. Pete Beach upon short notice and at a reasonable cost of less than \$20,000.

37. The City Attorney admitted that the proposed appointment process would be unprecedented because the Commission will become “an appointed commission rather than an elected commission.” He then stated that the City is on the cusp of several major decisions in the upcoming weeks, including hiring a city manager, voting on major developments, and decisions on beach renourishment.

38. During the December 18 meeting, neither the City Attorney nor the Commission confirmed the sequence for when the Commissioners would officially resign or when the vacant seats would be filled.

39. On December 18, 2023 at 3:45 pm, the City’s “public meetings” email list sent the following notice (“Exhibit “A”) to its subscribers:

The City of St. Pete Beach has a vacancy on the City Commission all District seats (Districts 1 – 4).

Interested candidates must:

1. Submit a letter of interest; and
2. Submit a resume (or Curriculum vitae); and

The City Commission intends to interview candidates in the Commission Chambers at special meetings scheduled for December 21, 2023, 7:30 am. December 26, 2023, 2:00 pm, December 27, 2023, 7:30 am, December 20, 2023, 7:30 am and December 29, 2023, 7:30 am

If interested, please provide the documents listed above by

5:00 p.m. on December 20, 2023:

40. As of December 21, 2023, Lisa Robinson had submitted the sole application for District 2.

41. At the December 21, 2023 special commission meeting, commissioners discussed which seat to appoint first and who would resign first.

42. There was only one application for District 2, and Commissioner Friszolowski said he wanted more applications.

43. At the same meeting, Commissioner Marone (District 4) resigned, effectively immediately. He left the dais.

44. The remaining commissioners interviewed several applicants for District 4. Commissioner Grill asked one of the candidates, Joe Muholland, about his political contributions and links to Mayor Petrila. The Commission appointed Rich Lorenzen to the District 4 seat to serve until the August election. The Commission then voted to extend the application times for Districts 1 through 3.

45. At the December 26, 2023 meeting Commissioner Graus (District 1) resigned. The Commission interviewed applicants and appointed Karen Marriott at the same meeting.

46. At the December 27, 2023 meeting, Vice Mayor Mark Grill (District 2) resigned. The Commission interviewed applicants and appointed Nick Filtz at the same meeting. The Commission asked applicants whether they had made any political donations or were involved in advocacy groups. Commissioner Grill, after resigning, made public comment at the hearing regarding the appointees' political contribution information.

47. At the December 28, 2023 meeting, Commissioner Friszolowski decided he would not resign until December 30. He wanted Betty Rzewnicki to be appointed but she had not received confirmation from her employer yet. There were eight other applicants for District 3 present. The meeting was postponed to January 9, 2024.

48. At the January 9, 2023 meeting, the Commission, consisting of the Mayor and three unlawfully appointed commissioners, appointed Betty Rzewnicki to the District 3 seat. The Commission also adopted Resolution No. 2023-26, which scheduled a special election for August 20, 2024, for the election of commissioners in Districts 2 and 4. The resolution ensures that unelected commissioners will hold the commission seats in Districts

2 and 4 for nearly eight months while the Commission makes critical decisions that affect all of the City's residents.

49. On January 16, 2024, Lisa Reich, a candidate for District 1, withdrew from the March 19, 2024 election. Soon after, the City announced that there would be no March 19, 2024 General Election, since Marriott and Rzewnicki were the only candidates who qualified for election in Districts 1 and 3 respectively.

I. COUNT I: Declaratory Relief That Appointment Process Conflicts with Florida Constitution and City Charter by Bypassing Special Election to be called in Fifteen Days.

50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

51. Plaintiffs are uncertain as to their rights and a judicial declaration is required to resolve this dispute. "Any person whose rights and status are affected by a municipal ordinance or who is in doubt as to his rights and status thereunder may obtain a declaration of his rights and status." *City of Miami v. Franklin Leslie, Inc.*, 179 So. 2d 622, 624 (Fla. 3d DCA 1965); *see also Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 369 (Fla. 1955) (declaratory judgment action lies where, "it is perfectly obvious from this record, that the basic objective of the proceeding was to eliminate the chaos that existed throughout the entire municipal government").

52. A current controversy exists between the parties as to whether Defendant City violated Fla. Const. art. VIII, § 2 and City of St. Pete Beach Charter Section 3.06 by appointing a Commission where an elected Commission is mandated.

53. Controversy exists as to whether the announcements by the four Commissioners of their upcoming vacancies at the December 18, 2023 meeting, and the solicitation of four vacant seats by the City Clerk to the Community qualifies as

“simultaneous vacancies” under Charter Section 3.06(d) (“Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida”).

54. Controversy exists regarding the Commission’s authority to knowingly evade the Charter’s requirement for a timely special election on the basis of “impracticability.”

55. Injury is impeding because Individual Plaintiffs have been deprived their right to vote in a municipal election, and as a result, will be impacted by the decisions of an unelected body. Most notably, and as explained by the City Attorney, the City is on the cusp of several major decisions in the upcoming weeks, including hiring a city manager, voting on major developments, and decisions on beach renourishment. Protect St. Pete Beach is also injured because it is an opponent of two developments scheduled for votes in January and February by the appointed Commission — the Sirata major conditional use permit and the TradeWinds resort expansion.

56. This action presents an actual, present, bona fide dispute which requires a judicial declaration as to the legality of bypassing the special election process required by Charter 3.06(d), thereby depriving Plaintiffs’ right to vote and depriving the City’s residents of an elected body.

57. Plaintiffs have no adequate remedy at law and will suffer adverse impacts and harm by being deprived of their fundamental right to vote and by being subject to an unelected Commission.

WHEREFORE, Plaintiffs respectfully requests judgment against all Defendants as follows:

- a. An order declaring the invalidity of the appointments for Commissioners to Districts 1, 2, 3, and 4 because the resignations of the incumbent commissioners created “simultaneous” vacancies that could not be filled by appointment per the plain language of the Charter.
- b. An order declaring that the City must follow Charter Section 3.06(d) and announce a Special Election within fifteen days.
- c. An order declaring any action taken by the Commission with the vote of one or more unlawfully appointed commissioners is null and void and of no force or effect.
- d. An order enjoining the City from conducting any further Commission meetings until a Special Election is held and an elected Commission has been seated.
- e. An order granting such supplemental relief based on a declaratory judgment as may be necessary or proper.
- f. An order awarding costs, attorneys’ fees, and any other relief this court deems just and appropriate.

II. COUNT II: Declaratory Judgment That Even Without Simultaneous Vacancies, Commissioners for District 2 And 4 Cannot Be Appointed.

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

59. Even if the Court finds that the vacancies as described herein were not “simultaneous” under Charter Section 3.06(d), Plaintiffs remain uncertain as to their rights

under Section 3.06(c) to elect Commissioners in Districts 2 and 4. A judicial declaration is required to resolve this dispute.

60. Current controversy exists because Charter Section 3.06 provides no process by which Commissioners in Districts 2 and 4 may be appointed. There are more than six months remaining in the terms of Districts 2 and 4 and more than six months before the next city election for Districts 2 and 4, thus these seats are not subject to the appointment process under Section 3.06(c)(1). (“If there is less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the commission, by a majority vote of the remaining members shall choose a successor to serve until the newly elected commissioner is qualified”). There was a regular city election scheduled for March 19, 2024, so Section 3.06(c)(2) does not apply. (“If there are more than six (6) months remaining in the unexpired term and **no regular city election is scheduled within six (6) months**, the commission shall fill the vacancy on an interim basis as provided in subsection (1)”).

61. Because one year remains in the term of the vacated seat at the time of the next election (District 2 and 4), that seat shall be filled by election for the remaining term. Section 3.06(c)(1).

62. The Charter provides no authority for District 2 and 4 Commission seats to be appointed. Usually, the courts in construing a statute may not insert words or phrases in the statute or supply an omission that to all appearances was not in the minds of the legislators when the law was enacted. *Rebich v. Burdine’s & Liberty Mut. Ins. Co.*, 417 So. 2d 284, 285 (Fla. 1st DCA 1982) (citing *Armstrong v. Edgewater*, 157 So. 2d 422 (Fla. 1963)). When there is doubt as to the legislative intent, the doubt should be resolved against

the power of the court to supply missing words. *In Re: Estate of Jeffcott*, 186 So. 2d 80, 84 (Fla. 2d DCA 1966).

63. Injury is impeding because Individual Plaintiffs have been deprived their right to vote in a municipal special election, and as a result, will be impacted by the decisions of an unelected body. Most notably, and as explained by the City Attorney, the City is on the cusp of several major decisions in the upcoming weeks, including hiring a city manager, voting on major developments, and decisions on beach renourishment.

64. Protect St. Pete Beach is also injured because it is a vigorous opponent of two developments scheduled for votes in January and February: the Sirata major conditional use permit and the TradeWinds resort expansion. Protect St. Pete Beach will be harmed by a newly seated unelected commission considering these matters.

65. Plaintiffs have no adequate remedy at law and will suffer adverse impacts and harm by being deprived of their fundamental right to vote and by being subject to an unelected Commission.

66. This action presents an actual, present, bona fide dispute which requires a judicial declaration as to whether the appointment of District 2 and 4 Commissioners violates Section 3.06(c) of the Charter.

WHEREFORE, Plaintiffs respectfully request judgment against all Defendants as follows:

- a. An order declaring the invalidity of the appointments for Commissioners to Districts 2 and 4 in violation of Section 3.06 of the Charter.
- b. An order declaring that the City must follow Charter Section 3.06(c)(1) and elect Commissioners in District 2 and 4.

- c. An order declaring any action taken by the Commission with the vote of one or more unlawfully appointed commissioners is null and void and of no force or effect.
- d. An order enjoining the City from conducting any further Commission meetings until a Special Election is held and an elected Commission has been seated.
- e. An order granting such supplemental relief based on a declaratory judgment as may be necessary or proper.
- f. An order awarding costs, attorneys' fees, and any other relief this court deems just and appropriate.

III. COUNT III: Quo Warranto challenging the right of Marriott, Filtz, Rzewnicki, and Lorenzen to hold the office of City Commissioner.

67. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

68. Plaintiffs seek a writ of quo warranto to challenge the right of Marriott, Filtz, Rzewnicki, and Lorenzen to hold the office of City Commissioner.

69. Quo warranto is an available remedy to contest the right of an individual to hold a public office. *State ex rel. Bruce v. Kiesling*, 632 So. 2d 601, 603 (Fla. 1994).

70. The City's Charter requires the remaining members of the Commission to call a special election within fifteen days when there are simultaneous vacancies of two or more commissioners.

71. Rather than call a special election, the four commissioners who resigned purposefully staggered their resignations in a maneuver to evade Section 3.06(d) of the Charter, deny the City's voters the right to elect their representatives on the Commission,

and thus to disenfranchise the City's voters. As the City Attorney explained: "what we have actively done is try to arrange for the staggering of resignations between now and December 30" so that the remaining commissioners can appoint four members of the five-member Commission.

72. The simultaneous announcement of multiple commissioners' resignations, followed by the City Clerk's simultaneous solicitation of applications to fill four vacant seats on the Commission, created "simultaneous vacancies" under Charter Section 3.06(d) ("Should two (2) or more vacancies occur simultaneously, on the commission, the remaining members shall, within fifteen (15) days, call a special election to fill the vacant commission positions; such election shall be held in the manner prescribed by the laws of the State of Florida").

73. These vacancies should have been filled by election, notwithstanding the commissioners' purposeful maneuvers to avoid an election and to assume the power of selecting a governing body for the City.

74. Granting quo warranto is consistent with the public good and promotes the public interest because it gives effect to the substance rather than the form of the proceeding and allows the City's voters to elect their representatives on the Commission, as the Charter provides.

75. Plaintiffs are entitled to a determination that Marriott, Filtz, Rzewnicki, and Lorenzen were not validly appointed to the Commission and do not lawfully hold the commission seats to which the Commission purported to appoint them. Plaintiffs are therefore entitled to a judgment of ouster against Marriott, Filtz, Rzewnicki, and Lorenzen.

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment against all Defendants and:

- a. Issue a writ of quo warranto pursuant to Florida Rule of Civil Procedure 1.630(d)(3).
- b. Conclude that Marriott, Filtz, Rzewnicki, and Lorenzen were not validly appointed to the Commission and do not lawfully hold the commission seats to which the Commission purported to appoint them.
- c. Enter a judgment of ouster that removes Marriott, Filtz, Rzewnicki, and Lorenzen from the seats to which the Commission purported to appoint them.
- d. Award costs, attorneys' fees, and any other relief this court deems just and appropriate.

IV. COUNT IV: Quo Warranto challenging the right of Filtz and Lorenzen to hold the office of City Commissioner.

76. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

77. Plaintiffs seek a writ of quo warranto to challenge the right of Filtz and Lorenzen to hold the office of City Commissioner.

78. Quo warranto is an available remedy to contest the right of an individual to hold a public office. *State ex rel. Bruce v. Kiesling*, 632 So. 2d 601, 603 (Fla. 1994).

79. The City's Charter requires that, if one year remains in the term of a vacated seat at the time of the next election, that seat shall be filled by election for the remaining term. This provision controls in the specific circumstance of a vacancy that leaves one year

in the term of the vacated seat at the time of the next election, and provides no process by which commissioners may be appointed.

80. Commissioners Grill and Marone resigned from their seats in Districts 2 and 4 in December 2023. Because those seats were not scheduled to appear on the ballot again until March 2025, one year remained in the term of those vacated seats at the time of the March 2024 election.

81. Because one year remained in the term of the vacated seats in Districts 2 and 4 at the time of the next election, the Charter entitled the City's voters to elect their commissioners in Districts 2 and 4 and did not provide for the appointment of those commissioners. The Commission, however, purported to appoint the commissioners in Districts 2 and 4.

82. Granting quo warranto is consistent with the public good and promotes the public interest because it gives effect to the Charter provision that governs resignations that create a vacancy that continues for one year after the next election. Quo warranto will enable the City's voters to elect their representatives on the Commission, as the Charter provides.

83. Plaintiffs are entitled to a determination that Filtz and Lorenzen were not validly appointed to the Commission and do not lawfully hold the commission seats to which the Commission purported to appoint them. Plaintiffs are therefore entitled to a judgment of ouster against Filtz and Lorenzen.

WHEREFORE, Plaintiffs respectfully request judgment against all Defendants as follows:

- a. Issue a writ of quo warranto pursuant to Florida Rule of Civil Procedure 1.630(d)(3).
- b. Conclude that Filtz and Lorenzen were not validly appointed to the Commission and do not lawfully hold the commission seats to which the Commission purported to appoint them.
- c. Enter a judgment of ouster that removes Filtz and Lorenzen from the seats to which the Commission purported to appoint them.
- d. Award costs, attorneys' fees, and any other relief this court deems just and appropriate.

V. COUNT V: Declaratory Judgment that the Commission's composition violates the constitutional requirement that municipal legislative bodies be "elective."

84. Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 of this Complaint.

85. Fla. Const. art. VIII, § 2 provides that "[e]ach municipal legislative body shall be elective."

86. Four of the five members of the Commission were appointed to their seats and were never elected to the Commission. A Commission that, with a single exception, consists entirely of unelected members is not an elective municipal legislative body within the contemplation of Florida's Constitution. If the City's appointment process complied with the requirements of Section 3.06 of the City Charter, then Section 3.06 is unconstitutional as applied by permitting a supermajority appointed commission, thereby circumventing the constitutional requirement for a municipal legislative body to be elective.

87. Absent judicial relief, an unelected Commission that does not represent the will of the people will cast the deciding vote on the Sirata and TradeWinds projects, both which are highly controversial decisions and highly relevant to Protect St. Pete Beach's mission.

88. Plaintiffs are uncertain as to their rights and a judicial declaration is required to resolve this dispute. "Any person whose rights and status are affected by a municipal ordinance or who is in doubt as to his rights and status thereunder may obtain a declaration of his rights and status." *City of Miami v. Franklin Leslie, Inc.*, 179 So. 2d 622, 624 (Fla. 3d DCA 1965).

89. A current controversy exists between the parties as to whether the current composition of the Commission, which includes only one elected member, complies with the constitutional requirement that all municipal legislative bodies be elective.

90. Injury is impeding because Individual Plaintiffs have been deprived their right to vote in a municipal election, and as a result, will be impacted by the decisions of an unelected body. Most notably, and as explained by the City Attorney, the City is on the cusp of several major decisions in the upcoming weeks, including hiring a city manager, voting on major developments, and decisions on beach renourishment. Protect St. Pete Beach is also injured because it is an opponent of two developments scheduled for votes in January and February by the appointed Commission — the Sirata major conditional use permit and the TradeWinds resort expansion.

91. This action presents an actual, present, bona fide dispute which requires a judicial declaration as to the legality of a municipal legislative body that includes a single elected member and otherwise consists solely of members whom the voters never elected.

92. Plaintiffs have no adequate remedy at law and will suffer adverse impacts and harm by being deprived of their fundamental right to vote and by being subject to an unelected Commission.

WHEREFORE, Plaintiffs respectfully requests judgment against all Defendants as follows:

- a. An order declaring that the Commission's composition violates Fla. Const. art. VIII, § 2.
- b. An order declaring the invalidity of the appointments for Commissioners to Districts 1, 2, 3, and 4.
- b. An order declaring that the City must provide for the election of Commissioners to Districts 1, 2, 3, and 4.
- c. An order declaring any action taken by the Commission with the vote of one or more unlawfully appointed commissioners is null and void and of no force or effect.
- g. An order enjoining the City from conducting any further Commission meetings until a Special Election is held and an elected Commission has been seated.
- h. An order granting such supplemental relief based on a declaratory judgment as may be necessary or proper.
- i. An order awarding costs, attorneys' fees, and any other relief this court deems just and appropriate.

Respectfully submitted,

/s/ Andy Bardos

Andy Bardos (FBN 822671)
Ashley H. Lukis (FBN 106391)
GRAYROBINSON, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32301
Telephone: 850-577-9090
andy.bardos@gray-robinson.com
ashley.lukis@gray-robinson.com

/s/ Jane Graham, Esq.

Jane Graham, Esq.
FBN 68889
jane@sunshinecitylaw.com
jane@jcgrahamlaw.com
Sunshine City Law
737 Main Street, Suite 100
Safety Harbor, Florida 34695
(727) 291-9526

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that, on February 3, 2024, the foregoing document was furnished by email to Andrew W.J. Dickman, P.O. Box 111868, Naples, Florida 34108-0132, cityattorney@stpetebeach.org, service@dickmanlawfirm.org.

/s/ Jane Graham, Esq.

Jane Graham, Esq.