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IN THE CIRCUIT COURT OF 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,

v.

CASE NO.: 24-000041-CI

Section 20

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

Defendants.

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY

Defendants City of St. Pete Beach (the "City") and Karen Marriott, Nick Filtz, Betty Rzewnicki, and Richard Lorenzen (collectively, the "Commissioners") respectfully request a summary judgment, in whole or part, on whether Plaintiffs are entitled to any relief in this case.

INTRODUCTION

In December 2023, the City was confronted with a crisis that threatened to bring its government to a halt. The Legislature passed a law requiring local officials to make the onerous—as the Court doubtless knows—Form 6 financial disclosure. Across the state, local officials, often serving the public for little reward, began relinquishing their positions. The City was hit hard: Over

several days in December 2023, four members of the City's five-member City Commission (the "Commission") decided they were inclined to leave rather than comply with the new requirement.

If the City was stuck with only one commissioner, government would have been frozen in ice. With no quorum, the Commission can't make decisions on legislation, material contracts, material expenditures, or any of the other issues confronting local governments every day. The City explored a snap election, but the Pinellas County Supervisor of Elections (the "Supervisor")—who has conducted the City's elections since at least 1999—said it couldn't be done. Out of options, the four commissioners made the practical decision, in the interests of government continuing to function, to time their resignations so the resulting vacancies could be filled by appointment under the City's Charter (the "Charter") until elections could be held. An uncontested election for two vacancies was held in March; an election for the remaining two is set for August.

That was hardly out of the ordinary: Vacancies in elective office are filled on an interim basis by appointment all the time. The public benefitted from a stable government and nobody was hurt. Yet, Plaintiffs seek to upend the appointments, oust the Commissioners, and declare *every decision the Commission made* since the end of December invalid. They have no right to this: None of them are contestants for the office, so they have no standing. The claim is a shambles: The Commission's past decisions are immune from challenge, the dispute over two of the appointments has been rendered moot by an intervening election, and any claim as to the future is utterly speculative. The claim fails on the merits: The Charter authorizes exactly what happened, and if read as Plaintiffs read it, would have required the City to do both the illegal and the impossible.

The Court should put a stop to Plaintiffs' effort to deny the citizens of St. Pete Beach an orderly, functioning government. The City is entitled to summary judgment on liability.

STATEMENT OF UNDISPUTED FACTS

The City, Its Government, and Its Elections

The City is a municipality of roughly 9,000 residents in Pinellas County. Under the Charter, the Commission, consisting of four commissioners and one mayor-commissioner, exercises the City's legislative powers. (Charter § 3.01, Ex. 5 to 4/25/24 City Notice of Filing ("NOF")). The four commissioners each represent a separate district ("District")—Districts 1, 2, 3, and 4—and are elected solely by the members of that District. (*Id.* § 3.02). Commissioners are elected for two-year terms and the mayor-commissioner for a three-year term. (*Id.* §§ 3.02(c), 3.03(a)).

Regular elections for commissioners are held in even and odd years, with Districts 1 and 3 in even-numbered years and Districts 2 and 4 in odd-numbered years. (Charter § 3.02(c)). Under the City's Code of Ordinances, those elections occur in March, and candidates must qualify for election during two weeks in November the preceding year. (Code §§ 38-6(a), 38-7, Ex. 6 to NOF).

Section 3.06 of the Charter describes how the City fills vacancies that occur during the term of a commissioner's office. Under Section 3.06(a), "[t]he office of a commissioner shall become vacant upon his death, resignation, or forfeiture of his office." Section 3.06(c) and (d), in turn specifies the way vacancies are filled. Three provisions are relevant here.

Under Section 3.06(c)(1), a vacancy is filled by appointment by majority vote of the remaining commissioners if either (1) "there is less than (6) months remaining in the unexpired term" *or* (2) "there are less than six months before the next regular election." However, "[i]f 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." (*Id.*). Under Section 3.06(c)(2), the vacancy is filled through the same appointment process if "there are more than six (6) months remaining in the unexpired term *and* no regular city election is scheduled within six (6) months." (Emphasis added). In that

circumstance, the Commission must schedule a special election to be held not sooner than 60 days and not more than one year following the occurrence of the vacancy. (*Id.*). Finally, under Section 3.06(d), if "two (2) or more vacancies occur simultaneously" the remaining members "shall, within fifteen (15) days call a special election to fill the vacant commission positions.

The City does not conduct its own elections. (Declaration of Amber LaRowe ("LaRowe Decl.") ¶ 9 Ex. 1 to NOF). Since at least 1999, the City's elections have been conducted and assisted by the Supervisor. (*Id.*)

The Events of December 2023

In May 2023, the Governor signed into law Chapter 2023-49, Laws of Florida, titled "Ethics Requirements for Public Officials." Among other things, the law provided that beginning on January 1, 2024, "[e]lected members of the governing body of a municipality" must make the full and public disclosure of financial interests—the Form 6 filing—that they had previously not been required make. *See* Chapter 2023-49, Laws of Florida, § 3 (2023).

As the deadline neared, it became widely reported that members of city and town councils and commissions, surprised by the burden and risk of detailed public disclosure of their finances, began resigning from office in exceptional numbers.[1] Unfortunately, the City was not immune.

At a Commission meeting on December 12, 2023, the then-commissioner for District 2 began the meeting stating that "I am announcing my resignation as commissioner for District 2 … effective December 31st of 2023," and proceeded to explain his concerns with the new law.

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[1] *See* C.A. Bridges, *Will DeSantis replace dozens of local officials who resigned ahead of a new disclosure law?*, USA TODAY NETWORK-FLORIDA (Jan 4, 2024); Maya Washburn*, 'A chilling effect': Some fear new finance law may scare away candidates from local elections*, PALM BEACH POST (Dec. 23, 2023); Joel Englehardt, *Mass exodus leaves gaping holes on city councils in Palm Beach* County, STET NEWS (Dec. 20, 2023); Tracey McManus, *New Florida law pushes some small town officials to resign*, TAMPA BAY TIMES (Dec. 12, 2023).

(Stipulation of Undisputed Facts ("Stip."), Ex. A-2 at 1-9). Although other commissioners also expressed serious concerns, and the District 4 commissioner indicated he would resign unless he could get advice that compliance wasn't required, no other commissioners announced a resignation at that meeting. (*See* Stip., Ex. A-2 at 14, 17). The Commissioners and City Attorney also discussed how to address possible multiple resignations, the fact that the City does not conduct its own elections, and whether the Supervisor could conduct a special election for it. (*See id.* at 17-22).

At the time, the City had a regular election for Districts 1 and 3 scheduled for March 19, 2024. (Stip. ¶ 18). The qualifying period for that election ended nearly a month prior, on November 17, 2023. (*Id.* ¶ 19). There were two candidates who qualified to run for election for District 1 and only one candidate for who qualified for District 3. (*Id.* ¶¶ 20-21).

After the meeting, the City Clerk contacted the Supervisor's Election Administrator by email to ask whether the Supervisor could handle a special election for the City for one or more seats. (LaRowe Decl. ¶ 2, Ex. 1 to NOF). The Administrator responded on December 13, suggesting that the earliest would August 20, 2024, which was an election date on the Supervisor's established calendar for county elections. (*Id.* ¶ 3). Thereafter, the Clerk telephoned the Administrator to ask whether the Supervisor could conduct a special election for the City before August and was informed that August was, in fact, the earliest the Supervisor could do. (*Id.* ¶ 4).

Hitting that stumbling block, the Clerk then asked whether the City might conduct its own election before August 2024. (LaRowe Decl. ¶ 5). The Supervisor responded that it was not recommended that the City conduct its own election and that, to the Administrator's knowledge, no other municipality in Pinellas did so. (*Id.*).

Finally, the Clerk asked whether additional commission seats could be added to the March election for Districts 1 and 3. (*Id.* ¶ 6). The Administrator responded that the Supervisor's deadline

for ballot language for the March 19, 2024 election was December 19. Not seeing any way to get candidates for two additional seats qualified by then, the Clerk asked about extending the deadline. (*Id.*). The Administrator responded by email on December 15, 2023 stating that "we are unable to extend the ballot language deadline at this time." (*Id.*, Ex. B).

The Commission met again on December 18, 2024. The City Attorney advised commissioners that if they did not want to file Form 6, they would need to resign on or before December 30, 2023. (Stip., Ex. B-2 at 2-3). He discussed resignations in other municipalities and the Supervisor's position on a special election. (*Id.* at 5). Finally, he discussed Section 3.06(d) of the Charter and the fact that, if any vacancies occurred simultaneously, the City would have to call a special election, which it was not able to conduct itself. (*Id.* at 5-9).

The commissioners and the City Attorney also discussed timing any resignations commissioners who would refuse the Form 6 requirement such that no two vacancies would occur at the same time and the Commission could "make sure that the city's got a functioning form of government to keep the City running." (*See, e.g.*, Stip. Ex. B-2 at 21-23). The commissioner for District 1 announced he was resigning. (*Id.* at 31). No other commissioners did so.

On a Commission meeting on December 21, the commissioner for District 4 officially announced his resignation. (Stip., Ex. C-2 at 19). Without that commissioner's participation, the Commission interviewed candidates for appointment as the new commissioner for District 4 and voted to appoint the current Commissioner for that District. In similar fashion at a meeting on December 26, the commissioners interviewed candidates and voted to appoint the current Commissioner for District 1, without the participation of the outgoing commissioner for that district, who announced his resignation on December 18. (*Id.* at 6-7, 54-55). At a meeting on December 27, the same process was followed with District 2, with the outgoing commissioner,

who announced his resignation on December 12. (Stip., Ex. E-2 at 74-75). The commissioner for District 3 tendered a resignation letter on December 30, and the remaining commissioners appointed his replacement on January 9, 2024. (Stip. ¶ 17; NOF, Ex. 7).

The Commission continues Governing and Commissioners for Districts 1 and 3 are Elected

With the appointment of Commissioners who could keep the Commission running until the Supervisor conducted City elections for Districts 1 and 3 in March and Districts 2 and 4 in August, the Commission was able to make decisions about day-to-day government matters, large and small. (*See, e.g.*, Stip. ¶ 23). LaRowe Decl., Exs. C, D; NOF, Ex. 7). And the Commission would quickly become majority-elected with the March election for Districts 1 and 3.

As it happened, the appointed Commissioner for District 1 was also a candidate for election to District 1. (Stip. ¶ 20). On January 16, 2024, the other candidate for District 1 withdrew her candidacy, so the Commissioner for District 1 was deemed elected to that office. (Code § 38-11(a), Ex. __ to NOF). The appointed Commissioner for District 3 was also the sole candidate—running without opposition—for election to District 1, so her election was assured. (*See* Stip. ¶ 21). Those two commissioners began terms as elected Commissioners on March 26, 2024. (Stip. ¶ 22).

Plaintiffs' Claims

Plaintiffs are evidently concerned that the Commission will not honor their personal or political priorities. (*E.g.,* Am. Compl. ¶ 12). Rather than accept that the Commission needs a way to operate until a secure and reliable election can be conducted by the Supervisor, they filed a five-count broadside seeking to oust the Commissioners from office, declare their appointments illegal, and invalidate all the Commission's actions after the Commissioners taking office.

In summary, the Amended Complaint's five counts are as follows. In Count I, Plaintiffs seek a writ of quo warranto to oust the Commissioners from office, alleging that the vacancies of

the prior commissioners' offices occurred simultaneously that that the City was required to call a special election under Section 3(d) of the Charter. Count II seeks judgments declaring the Commissioners' appointments invalid on the same basis and that all decisions in which they participated are likewise invalid. Count III seeks a writ of quo warranto to oust the Commissioners for Districts 2 and 4 on the theory that their appointments violated Section 3(c) of the Charter. Count IV seeks a declaratory judgment on the same basis and the same declarations sought in Count II. Finally, Count V seeks a declaration that the Commissioners' appointments violated the requirement of article VIII, section 2 of the Florida Constitution that municipal legislative offices be "elective" and the same kind of declaratory relief as sought in Counts II and IV.

ARGUMENT

The City and the Commissioners are entitled to summary judgment for four reasons: (1) Plaintiffs have no standing, (2) their claims are barred by the *de facto* officer doctrine—which immunizes past decisions by the Commissioners—and are alternatively moot or unripe, (3) their claims fail as a matter of interpreting the plain text of the Charter and Florida Constitution, and (4) their claims would have required the City to perform illegal and impossible acts.

I. As a matter of law, Plaintiffs lack standing to pursue any of their claims.

Plaintiffs have no right to force the Court decide their political disagreement with the appointment of the Commissioners. They claim standing as citizens, taxpayers, registered voters, and an advocacy group (Am. Compl. ¶¶ 1-12), but as a matter of law, that is insufficient to confer standing to challenge an officeholder's title to office. And at all events, they fail to present a justiciable controversy to warrant a declaratory judgment.

To begin, each of Plaintiffs' claims hinges on the theory that the Commissioners have no title to office because their offices could not be filled by appointment. But under Florida law, a

challenge to a person's title to office may only be brought in quo warranto by a person claiming title to the office (which no Plaintiff has claimed) and only after they request the Attorney General to act (which no Plaintiff claims to have done) and after the Attorney General refuses to do so. *See* § 88.01, Fla. Stat. (2023); *Butterworth v. Epsey*, 523 So. 2d 1278, 1278 (Fla. 2d DCA 1988). Plaintiffs cannot end-run that limitation by seeking a declaratory judgment for the same thing. *See Tobler v. Beckett*, 297 So. 2d 59, 61-62 (Fla. 2d DCA 1974).

Start with Plaintiffs' quo warranto claims in Counts III and IV. At common law, "no person, however interested" could seek quo warranto challenging an officeholder's title to office "except through the Attorney General." *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1936). In 1872, however, the Legislature created a narrow exception. *See* § 80.01, Fla. Stat., Credits. The statute—titled "Quo warranto; refusal of Attorney General to institute"—provides that "any person *claiming title to an office* which is exercised by another has the right, *on refusal by the Attorney General* to commence an action in the name of the state upon the claimant's relation, or *on the Attorney General's refusal to file a petition* setting forth the claimant's name *as the person rightfully entitled to the office*." § 88.01, Fla. Stat. (emphasis added). As the statute makes clear, quo warranto standing is limited to plaintiffs claiming rightful title to the office and is not extended to plaintiffs who merely assert standing as residents, electors, or taypayers. *See Kasserman*, 179 So. at 411; *Hall v. Cooks*, 346 So. 3d 183, 188–89 (Fla. 1st DCA 2022).

The Second District has been clear that the statutory limitation on quo warranto standing means what it says. In *Epsey*, a group of individual plaintiffs and the Attorney General challenged the authority of a school board member to hold office. 523 So. 2d at 1278. After the trial court dismissed the individual plaintiffs' complaint, they appealed. *Id.* The Second District affirmed, holding that the individual plaintiffs were "not entitled to bring the suit *unless they claim*

entitlement to the office." *Id.* (emphasis added). Because none of the individual plaintiffs did claim entitlement to the office, the trial court was correct to dismiss their complaint. *See id.*

Similarly, the First District affirmed the dismissal of a quo warranto claim challenging a city's decision to remove a monument because the mayor, who voted in favor of the removal, was not entitled to hold office. *See Hall*, 346 So. 3d at 187. Although the plaintiffs argued they had "taxpayer, residency, and voter standing to pursue an inquiry in the nature of a quo warranto proceeding," the First District rejected the argument. *Id.* at 189 (cleaned up). "The trial court correctly held … that *only the Attorney General or a person claiming title to the office has standing to seek a writ of quo warranto*." *Id*. (emphasis added).

This case is not different in any way that matters. The Commissioners for Districts 1 and 3 have been elected without opposition, so no one can claim title to those offices. Furthermore, the individual Plaintiffs say only that they are taxpayers, citizens, voters, and residents of the City; they do not claim title to office. Plaintiff St. Pete Beach Advocacy Group is a non-profit, which cannot claim title to office. Since no Plaintiff is a person claiming title to the office of Commissioner—or to have requested that the Attorney General institute proceedings—no Plaintiff has standing to a writ of seek quo warranto.

For the same reasons, Plaintiffs don't have standing to seek the declaratory judgment in Counts I, II, and V, either. Quo warranto is "the exclusive method of determining the right to hold and exercise a public office." *MsSween v. State Live Stock Sanitary Board of Fla.*, 122 So. 239, 244 (Fla. 1929); *see also Penn v. Pensacola-Escambia Governmental Ctr. Auth.*, 311 So. 2d 97, 101 (Fla. 1975) (holding that bond validation action cannot be used to assert a "direct attack upon

the right to hold office" properly brought in quo warranto). So, Plaintiffs don't get to dodge section 80.01's requirement that they claim title to office by seeking a declaratory judgment.[2]

The Second District held exactly that in *Tobler*. There, the plaintiff sought relief from an arrest warrant setting a trial before a municipal court judge on an alleged violation of a municipal zoning ordinance. *See* 297 So. 2d at 60, 61. The plaintiff sought "to enjoin the exercise of the judicial power in the city and declaratory judgment that the city was without a municipal court or judicial power, or, in the alternative, … quo warranto …." *Id.* After the trial court granted summary judgment in favor of the defendants, the plaintiff appealed. *See id.*

The Second District affirmed the summary judgment. *Id.* at 62. It held that the plaintiff "challenge[d] the right of office of municipal judge." *Id.* at 61. But because the plaintiff was "not claiming title to the office and did not request the attorney general to file the action in his behalf," he lacked standing to seek a writ of quo warranto. *Id.* And although a writ of prohibition might have been available, *see id.*, a declaratory judgment was not. "[T]he appellant's attempt to such relief by … declaratory judgment is without merit, for the granting of such relief would be, in effect, to allow indirectly, by collateral attack, what cannot be accomplished directly." *Id.*

The Second District's holding is consistent with numerous Florida decisions holding that litigants cannot avoid the statutory limitations on quo warranto standing by dressing up a challenge to an officeholder's title to office in the disguise of another claim. *See, e.g.*, *Penn*, 311 So. 2d at 101 (bond validation); *McSween*, 122 So. at 241. 244 (injunctive relief). *Johnson v. Office of the State Attorney*, 987 So. 2d 206, 208 (Fla. 5th DCA 2008) (postconviction relief). There's good

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[2] Plaintiffs allege that Plaintiff Lisa Robinson applied to be appointed to the vacancy for District 2 but was not selected. (Am. Compl. ¶ 7). That is of no moment, however, because the theory Plaintiff Robinson asserts, like that of all Plaintiffs, is *not* that the wrong person was appointed; it is that no Commissioners should have been appointed at all.

reason for that. Government would be thrown into chaos if, at any moment, any person asserting any grievance about how an official secured office could hale the official into court:

> Offices are created for the benefit of the public, and *private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices* and in the apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed *until in some regular mode prescribed by law their title is investigated and determined.*

McSween, 122 So. at 244 (emphasis added) (citation omitted). The "regular mode prescribed by law" is a proceeding in quo warranto by the Attorney General or a claimant to office. As a matter of law, Plaintiffs lack standing to assert any of the claims in the Amended Complaint.

But even if Plaintiffs had standing to proceed in quo warranto, they have failed to present any "justiciable controversy" subject to a declaratory judgment. The Second District's decision in *Smith v. City of Pinellas Park*, 336 So. 2d 1255 (Fla. 2d DCA 1976), is on point. There, the city council passed an ordinance that stripped the city manager of authority under the city's charter to appoint and discharge chiefs of police and fire departments. *Id.* at 1255. A group of "residents, taxpayers, freeholders, and electors" sued, alleging that because the ordinance changed the form of government in the charter, they were denied a referendum in which they could vote on it. *Id.* at 1255-56. The trial court dismissed their complaint, and the plaintiffs appealed.

Although it had "serious doubts as to the validity of the ordinance," the Second District affirmed because there was "no justiciable controversy between appellants and the city." *Id.* at 1256. While the city manager and the police and fire chiefs might have a right to declaratory relief, the residents, taxpayers, freeholders, and electors did not, even though they had been denied a vote on the change in government. *See id.* It concluded that: "[A]ppellants have no real, immediate legal interest in such a declaration nor a present, bona fide practical need therefor. Along with those

similarly situated, they would appear to be relegated *to their remedies at the polls at the next ensuing election of the incumbent city council*." *Id.* (emphasis added).

So too here. A contestant for the elective office of Commissioner might have a right to the decree Plaintiffs seek, but Plaintiffs do not. Their remedy is through the political process.

II. Even if they had standing, the most Plaintiffs can obtain is a decision on the appointments of the Commissioners for Districts 2 and 4.

If accepted, Plaintiffs' claims will throw City government into tumult, leaving it unable to serve its citizens. But instead of accepting that the Commission had to operate by appointment until elections could be held in March (Districts 1 and 3) and August (Districts 2 and 4), Plaintiffs want to drastically alter the past, present, and future of City government by ousting the Commissioners, invalidating the appointments, and invalidating *every* action taken by the Commission with the vote of *any* of the Commissioners—meaning *all* actions taken by the Commission since the appointments.[3] They have no right to hobble City government like this.

A. Plaintiffs' declaratory judgment claims regarding past actions of the City Commission are barred by the *de facto* officer doctrine.

As to past actions of the Commission, Plaintiffs' claims are barred by the *de facto* officer doctrine, under which every action the Commission has taken or will take prior to judgment is valid as a matter of law. Under Florida law, "the acts of a *de facto* officer, exercising the duties of an office, are as valid and binding upon the public, or upon third persons, as those of an officer *de jure*." *Town of Kissimee City v. Cannon*, 7 So. 523, 524 (Fla. 1890) (quotation omitted); *see also Jarrett v. State*, 926 So. 2d 429, 432 (Fla. 2d DCA 2006) (quoting *Kane v. Robbins*, 556 So. 2d

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[3] Plaintiffs correctly limit their quo warranto claims in Counts III and IV to a judgment of ouster and seek no additional relief. *See West Flagler Assoc's, Ltd. v. DeSantis*, --- So. 3d ---, 2024 WL 1201592, at *2 (Fla. Mar. 21, 2024) ("[T]he writ of quo warranto is not a substitute for declaratory and injunctive relief.").

1381, 1385 (Fla. 1989)). The *de facto* officer doctrine immunizes official acts by government officials "until their title to office is judicially adjudged to be defective." *Farrell v. State*, 650 So. 2d 88, 89 (Fla. 4th DCA 1995); *see also State v. Johnson*, 16 So. 786, 791 (Fla. 1895) (same).

"A de facto officer is one who, while in actual possession of the office, is not holding such in a manner prescribed by law" but who does so "under color of title, in full view of the public, and under circumstances of reputation or acquiescence that would suggest no ineligibility." *Florida Bar v. Sibley*, 995 So. 2d 346, 351 (Fla. 2008) (quotation omitted). The rule is founded in the principle that people must rely on government to function: "The de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interests of the public and individuals, where those interests were involved in the official acts of persons exercising the duties of an office, without being lawful officers." *Sawyer v. State*, 113 So. 736, 744 (Fla. 1927) (quotation omitted).

From its earliest days, then, the *de facto* officer doctrine has been applied to immunize acts by officials who—like the Commissioners—allegedly assumed office invalidly. In *Cannon*, the Florida Supreme Court addressed a petition by a landowner who sought to have an assessment set aside because the assessor was not "a legally elected or appointed assessor of the town." 7 So. at 4-5. The court reversed a trial court's order denying a demurrer because, among other reasons, "the assessor held the office under color of title, and was recognized as successor by the board of aldermen of the town." *Id.* So, the assessment was immune from challenge because "the acts of a *de facto* officer … are as valid and binding on the public, as those of an officer *de jure*." *Id.*

Much more recently, in *Kane*, the supreme court held that local officials were protected by the *de facto* officer doctrine, even though their election was unconstitutional. There, the petitioners successfully challenged a law requiring nonpartisan elections for school board members as an invalid special law under article III, section 11(a)(1) of the Florida Constitution. 556 So. 2d at

1381-82. Even though the requirement of nonpartisan elections was unconstitutional, the court explained that "the validity of the acts of those school board members duly elected in nonpartisan elections cannot be doubted." *Id.* at 1385. The reason? "A de facto officer's acts are as valid and binding upon the public or upon those of third persons as those of an officer de jure." *Id.*

Two years ago, in *Hall*, the plaintiffs challenged a city's decision to remove a monument because its mayor—who voted in favor—wasn't qualified to be mayor because he didn't live in the city. *See* 346 So. 3d at 188, 189. The First District held that "the mayor was a *de facto* officer whose vote was valid." *Id.* at 189.

This case is no different. The City's Charter creates an office of Commissioner and provides for appointment or election of Commissioners, depending on the circumstances, when vacancies occur. The City determined that the appointment process applied, appointed commissioners accordingly, and the new Commissioners took and exercised the office of Commissioner openly. As in *Cannon*, *Kane*, and *Hall*, the Commissioners were *de facto* officers and their official acts are valid. *See also Tobler*, 297 So. 2d at 61 (holding that *de facto* officer doctrine protected a judge of a municipal court the municipality had no authority to create); *State ex rel. Booth v. Byington*, 168 So. 2d 164, 175 (Fla. 1st DCA 1964) (assuming judge held office in violation of the Florida Constitution and deeming his acts valid as a "de facto judge"). The City and the Commissioners are entitled to summary judgment as to the Commission's past acts.

B. Plaintiffs' quo warranto and declaratory judgment claims regarding the validity the Commissioners for Districts 1 and 3 are moot.

As to Plaintiffs claims for relief in the present—quo warranto and a declaration that the appointments are invalid—Plaintiffs' claims are moot as to the Commissioners for Districts 1 and 3. The outcome of the March election for Districts 1 and 3 was assured for lack of opposition long ago, and those Commissioners were sworn in as elected Commissioners on March 26. The

requested writ and declaration Plaintiffs seek will serve no purpose as to Districts 1 and 3, and the most Plaintiffs could ever be entitled to in this action is relief with respect to Districts 2 and 4.

As the Florida Supreme Court recently explained, "[t]he mootness doctrine is a corollary to the limitation on the exercise of judicial power to the decision of justiciable controversies." *Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021) (quotation omitted). "An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). Or, stated differently, "[a] case is moot when it presents no actual controversy or when the issue has ceased to exist," *id.*, or "where no practical result could be obtained." *Du Bose v. Meister*, 110 So. 2d 546, 547 (Fla. 1926).

As to the Commissioners for Districts 1 and 3, this case is moot. Count III seeks an order ousting the Commissioners from office. But by Plaintiffs' own standard, there's no longer a basis to oust the Commissioners for Districts 1 and 3: They've stood for election in precisely the way Plaintiffs say they were supposed to. *See, e.g., McGraw v. DeSantis*, 358 So. 2d 1279, 1280 (Fla. 5th DCA 2023) (holding quo warranto petition moot, reasoning that "[b]ecause McGraw has been reelected, no actual controversy remains here). For the same reason, a declaratory judgment that their appointments are invalid has no practical effect either. *See, e.g.*, *Florida Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, 465 (Fla. 1st DCA 2017) (holding declaratory judgment action was moot because "whether the ordinances were lawful when they were enacted need not be addressed given that the Legislature rendered the ordinances null and void"). The Supervisor's normal election calendar solved Plaintiffs problem for them, and the relief they seek is unnecessary.

"It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions …." *Merkle v. Guardianship of Jacoby*, 912 So. 2d 595, 599-600 (Fla. 2d DCA 2005). A writ of quo warranto or a judgment

declaring the invalidity of the elections of the Commissioners for Districts 1 and 3 are just such questions, and the City and Commissioners are entitled to a summary judgment on those claims.

C. Any claim for declaratory judgment with future effect is not ripe.

Insofar as Plaintiffs seek a declaration with future effect, Plaintiffs' claims are not ripe because they are hypothetical, speculative, and contingent. Since the March election at the latest, the Commission has had a quorum of three elected Commissioners which can and does make decisions with a majority of them being elected. As to the future, Plaintiffs' claims are contingent on hypothetical scenarios where that doesn't happen and the decision impairs Plaintiffs' interests.

The Declaratory Judgment Act limits a circuit court's jurisdiction to matters of "good faith dispute" involving "a bona fide, actual, present, and practical need" for a declaration of rights. *See Florida Carry*, 212 So. 3d at 462. Thus, it is well settled that declaratory relief is not available to provide a plaintiff what "amounts to an advisory opinion" that depends "on a hypothetical state of facts which have not arisen and are only contingent, uncertain, [and] rest in the future." *Santa Rosa Cty. v. Admin. Comm'n Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (quotation omitted). Although "one may seek a declaration of rights without an allegation of actual injury, a party must nonetheless make some showing of a real threat of immediate injury." *Guttenberg v. Smith & Wesson Corp.*, 357 So. 3d 690, 696 (Fla. 1st DCA 2023) (quoting *State v. Fla. Consumer Action Network*, 830 So. 2d 148, 152 (Fla. 1st DCA 2002)). A "general, speculative fear of harm that may possibly occur at some time in the indefinite future" doesn't cut the mustard. *Id.*

Yet, insofar as Plaintiffs seek declaratory relief as to the future, that is the most they can offer. Plaintiffs frame their threatened injury as follows:

> Injury is impending 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.

(Am. Compl. ¶¶ 55, 63, 90). But because the District 1 and 3 Commissioners are properly seated by Plaintiffs' own standard, it is purely speculative that Plaintiffs will be "impacted" as they allege. The Commission now has a quorum and a majority of elected members. There could be and are (1) decisions where a majority of the three elected Commissioners all vote the same way or (2) decisions where a quorum of elected Commissioners vote 2-1, such that the measure would have passed even if the votes of the Commissioners for Districts 2 and 4 are disregarded.

Plaintiffs will not be "impacted by the decisions of an unelected body" in either circumstance: Elected Commissioners—or a majority thereof—would have taken a vote and passed the measure. And to the extent the appointed Commissioners' votes mattered, there is no reason to believe that the vote would be one Plaintiffs care about—presumably, they're not paying attention to mine-run contracts for street-sweeping and the like—and no reason to think their claimed injury is anything more than speculation. Any declaration affecting the future would be an advisory opinion on a hypothetical set of facts. *See, e.g., Guttenberg*, 357 So. 2d at 697 (holding claim for declaration about the effect of a statute unripe where "it cannot be said that future harm or litigation is unavoidable because Appellants could decline to file their potential tort claims against Appellees or the later may decline to rely upon [the statute]"); *Smith*, 336 So. 2d at 1256.

Finally, Plaintiffs' prayers for supplemental relief, an injunction against future commission meetings, and a declaration that the City must follow its Charter—which is a mandatory injunction in disguise—do not make their declaratory judgment claims ripe. As a matter of law, these are all forms of supplemental relief that are not ripe for decision unless and until Plaintiffs win declaratory relief and must thereafter be raised by motion. *See* § 86.061, Fla. Stat.;

Alvarez-Sowles v. Pasco Cty., --- So. 3d ---, 2024 WL 171894, at *7 (Fla. 2d DCA Jan. 17, 2024); *City of Newberry v. Alachua Cty.*, 366 So. 3d 1176, 1179 (Fla. 1st DCA 2023). As to any claim for future relief, the City and the Commissioners are entitled to summary judgment.

III. As a matter of law, the Commissioners were properly appointed under Section 3.06 of the City's Charter and their appointments do not violate article VIII, section 2 of the Florida Constitution.

Plaintiffs assert three theories to support their claims that the appointments of the Commissioners were invalid. Two arise under the Charter: (1) that there were "simultaneous vacancies" all four Commission districts, which required a special election to be called within 15 days under Section 3.06(d) (Counts I and III); and (2) that the vacancies in Districts 2 and 4 had to be filled by election under Section 3.06(c)(1). Plaintiffs third theory is that the appointment of the Commissioners violated the requirement of article VIII, section 2 of the Florida Constitution that "each municipal legislative body shall be elective." None of these theories has merit.

A. The appointments did not violate Section 3.06 of the Charter.

Plaintiffs' two theories under the Charter hinge on the meaning of Section 3.06. City charters are interpreted in accord with ordinary principles of statutory construction. *See Liebman v. City of Miami*, 279 So. 3d 747, 751 n.4 (Fla. 3d DCA 2019) (quoting *Martinez v. Hernandez*, 227 So. 3d 1257, 1259 (Fla. 3d DCA 2017)). In that regard, Florida follows the "supremacy-of-the-text principle" under which "the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Ham v. Portfolio Recov. Assoc's., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quotation omitted). The "goal" is to "arrive at a fair reading" based on "how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." *Id.* (quotation omitted).

1. There were not "simultaneous vacancies" under Section 3.06(d), and the City complied with Section 3.06(d) in any event.

In Counts I and III, Plaintiffs assert that the appointments violated Section 3.06(d) of the Charter, which provides that that "[s]hould two 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…." (Emphasis added). They are wrong for two reasons.

First, the vacancies did not "occur simultaneously." "Simultaneously" is an adverb used to modify the verb "occur." To "occur" means to "happen" or to "come into existence." *See Occur*, MERRIAM-WEBSTER DICTIONARY, bit.ly/3xWjyPx (last accessed Apr. 25, 2024); *Occur*, CAMBRIDGE DICTIONARY, bit.ly/44f7GUW (last accessed Apr. 25, 2024). And "simultaneously" means "at the same time." *See Simultaneous*, MERRIAM-WEBSTER DICTIONARY, bit.ly/44jzGXC (last accessed Apr. 25, 2024); *Simultaneously*, CAMBRIDGE DICTIONARY, bit.ly/44nUInW (last accessed Apr. 25, 2024). So, in everyday English, to say that two or more events "occur simultaneously" is to say that they "happen at the same time."

The Commission vacancies did not happen at the same time. The vacancies were caused by "resignation" under Section 3.06(a) of the Charter. In the context of some vacancies in office, "resignation" refers to a formal notification that the official will leave the post on a specific date and the acceptance of that notification. *See, e.g.*, *Adv. Op. to Gov. re Sheriff and Jud. Vacancies Due to Resignation*, 928 So. 2d 1218, 1220 (Fla. 2006). In the context of the municipal legislative office of Commissioner described in Section 3.06—where notification is not necessary—"resignation" is more fairly understood to refer to leaving the position. *See Resignation*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "resignation" as the "act or instance of surrendering or relinquishing an office"). But in this case, whether "resignation" means the act of leaving or a

formal notification is academic because, on the undisputed facts, two or more commissioners did not give a formal notification or leave their post at the same time.

To that point, the Commissioners each notified the Commission that they were resigning on different dates: The Commissioner for District 1 announced on December 18, District 2 on December 12, District 4 on December 21, and District 3 on December 30. (*See supra* at 5-7). And they each departed the post on different dates as well: District 1 on December 26, District 2 on December 27, District 3 on December 30, and District 4 on December 21. (*See id*.). There were not two or more resignations that occurred simultaneously.

Second, even assuming that the vacancies were simultaneous, the City was not required to hold an election within 15 days (or on whatever other timetable Plaintiffs have in mind). To "call a special election" does not mean to hold it immediately. It means to "proclaim[] that an election will take place at a particular time." U.S. Election Assistance Comm'n., GLOSSARY OF ELECTION TERMINOLOGY at 16 (2021); *see also Call an election,* COLLINS DICTIONARY, bit.ly/44l1tqn (last accessed Apr. 25, 2024). Here, a regular election for Districts 1 and 3 was already scheduled for March 19, 2024—and the election for District 3 was uncontested—and the City promptly announced a special election for Districts 2 and 4 on August 20, 2024, which was the earliest time the Supervisor informed the City the Supervisor could hold an election. Although the election for Districts 1 and 3 may not have been a textbook "special election," Plaintiffs had an election for Districts 1 and 3 and will soon be having an election for Districts 2 and 4 very soon; they cannot claim any actual or imminent injury to justify the relief they seek. *See Smith*, 336 So. 2d at 1256.

2. The appointments for Districts 2 and 4 were proper.

In Counts II and IV, Plaintiffs contend that Section 3.06(c) did not permit appointments of Commissioners for Districts 2 and 4. Their interpretation is inconsistent and wrong. The

Commissioners for Districts 2 and 4 were properly appointed under Section 3.06(c)(2) because there were more than six months remaining in the terms of the prior commissioners for those districts and no regular city election for those Districts in the six months following their vacancies.

Analysis begins with understanding Plaintiffs' theory. Under Section 3.06(c)(1), the Commission may fill a vacancy by appointment if "[t]here is less than six months remaining in the unexpired term or if there are less than six (6) months before the next *regular city election*." Plaintiffs say this provision does not apply to the District 2 and 4 seats because "[t]here 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*." (Am. Compl. ¶¶ 60) (emphasis added); *see also id.* ¶¶ 80-81). Section 3.06(c)(2) provides that a vacancy may be filled by appointment "[i]f there are more than six (6) months remaining in the unexpired term and no *regular city election* is scheduled within six months." Plaintiffs say that this section does not apply because "[t]here was a regular city election scheduled for March 19, 2024." (*Id.*). That was the election for *Districts 1 and 3*.

There's a problem here: Plaintiffs want the term "regular city election" to mean different things in the same section of the Charter: They want it to refer to "election for the specific Districts involved" in (c)(1) and "any regular election" in (c)(2). But when a statute—or, as here, a Charter—uses the same term in two different places, the term is presumed to mean the same thing both places. *See Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000); *Nat'l Auto Serv. Ctrs., Inc. v. F/R/ 550, LLC*, 192 So. 3d 498, 507 (Fla. 2d DCA 2016). Plaintiffs don't get to pick and choose different meanings just because they want a theory to fit the law.

Plaintiffs were right the first time: "Regular city election" means a regular election for the District involved because that is the meaning plainly demonstrated by the text in its context. A regular election is just one that, under law, is "to be held on certain dates, usually on a recurring

basis." GLOSSARY OF ELECTION TERMINOLOGY at 85. So, it is a regularly scheduled election. And under the Charter, there are regularly scheduled elections established for each District—Districts 1 and 3 in even numbered years and Districts 2 and 4 in odd ones. Only residents of a District may vote for a candidate for Commission from that District. The context in which "regular city election" sits, then, shows that the term refers to the regular election for the District involved.

Moreover, reading the term "regular city election" to refer to any regularly scheduled election for commissioner, regardless of District, is inconsistent with the ordinary meaning of the term "regular … election." The regular elections for Districts 2 and 4 are in odd-numbered years because that is the regular schedule for election for commissioners from that District. To hold an election for Districts 2 and 4 in an even-numbered year, as Plaintiffs suggest, would turn a "regular election" into a "special election"—namely, an election not held on a regularly scheduled date. *See* GLOSSARY OF ELECTION TERMS at 88. But that is not what the text of the Charter says, and the Court should not rewrite the Charter to accommodate Plaintiffs' theory. *See Steiger v. State*, 328 So. 3d 926, 931 ("[W]e cannot rewrite the statute.")

When "regular city election" is properly understood as a regular election for the District involved, the appointments for Districts 2 and 4 were proper under Section 3.06(c)(2). It is undisputed both that (1) there were more than six months remaining in the unexpired term of the prior commissioners for those Districts, and (2) the regular city election for those Districts was not scheduled until March 2025, more than six months away. That is the end of the story.

B. The appointment of the Commissioners did not violate article VIII, section 2 of the Florida Constitution.

Plaintiffs' claim that the appointments violate article VIII, section 2's requirement that "each municipal legislative body shall be elective" (Count V) is baseless. The office of Commissioner is an "elective" office: It is filled by election unless there is a vacancy, and even

then, vacancies may be filled by election or appointment, depending on the timing of the vacancy. Nothing about that changes the "elective" character of the office.

Although Plaintiffs may surprise us, we have found no Florida case holding that the appointment of a municipal legislator upon a vacancy in office violates article VIII, section 2. That's not what the provision means. The Florida Constitution is interpreted according to the "supremacy-of-text principle," with the words of the provision, taken in context, being dispositive. *Planned Parenthood of Southwest and Central Fla.v. State*, --- So. 3d ---, 2024 WL 1363525, at *6 (Fla. Apr. 1, 2024) (quotation omitted). The question is how those who ratified the provision—here, voters at the time of the 1968 Constitution—understood those words when adopted. *See id.* (citing *City of Tallahassee v. Fla. Police Benevolent Ass'n., Inc.*, 375 So. 3d 178, 183 (Fla. 2023)).

There is no reason to think "each municipal legislative body shall be elective" meant anything different in 1968 than now: a legislature whose members are selected by election. *See Body, Elective*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2018) (defining "body" as "a group of individuals regarded as an entity" and "elective" as "filled or obtained by election"). The Commission qualifies: It is a body composed of five Commissioners who, by the terms of the Charter, are selected by election. The question is whether people understood the provision to foreclose the appointment of a municipal legislator for an interim period when a legislator dies, resigns, or otherwise is out of the job. The answer is plainly no.

Putting aside the realities—obvious in 1968 and now—that vacancies occur, government needs to function, and elections don't just happen, we know from the context of article VIII, section 2 that the ratifiers of the 1968 Constitution didn't think it banned appointment of municipal legislators during vacancies. *See Adv. Op. to Gov. re Implement. of Amt. 4*, 288 So. 3d 1070, 1079 (Fla. 2020) (looking to context to determine original meaning). Why? Because in the very same

Constitution, they voted to permit it. At ratification, Article IV, section 7 provided that the Governor could suspend "any elected municipal officer"—including an municipal legislator—indicted for a crime until they were acquitted "and the office *filled by appointment* for the period of suspension, *not to extend beyond the term*, unless those powers are vested elsewhere by law or the municipal charter." art. IV, § 7(c), Fla. Const. (1968) (emphasis added); *see also Johnson v. Johansen*, 338 So. 2d 1300, 1302-04 (Fla. 1st DCA 1976). Similarly, the same Constitution authorized the Governor to fill "*by appointment* any vacancy in … county office … for the remainder of *a term of elective office*." Art IV, § 1(f), Fla. Const. (1968) (emphasis added). The idea that the ratifiers thought "elective" really meant "no appointments for vacancies" is contradicted by the text of the document they adopted.

It is also contradicted by the historical evidence. *See Planned Parenthood*, 2024 WL 1363525, at *7 (looking to historical background to determine original meaning). Both before ratification and since, it's been commonplace for cities and towns to have "elective" legislatures where vacancies are filled by appointment, with no hint that citizens are denied an elective legislature. *See, e.g.*, *Frix v. State ex rel. Lautz*, 33 So. 2d 854 (Fla. 1947); *Jackson v. City of Tallahassee*, 256 So. 3d 736 (Fla. 1st DCA 2019); *Ruiz v. Farias*, 43 So. 3d 124, 127 (Fla. 3d DCA 2010); *Porter v. Craft*, 116 So. 2d 257 (Fla. 2d DCA 1959). Likewise, both before and after ratification, the Legislature authorized the Governor to fill vacancies in elective offices "by appointment until the same shall be filled by an election as provided by law." § 114.01, .04, Fla. Stat. (1967); *see also* § 114.01, .04, Fla. Stat. (1971). The ratifiers would have well understood that a temporary appointment to fill a vacancy in an "elective" municipal office does not change the office's character as "elective."

Count V telegraphs that Plaintiffs plan to end-run the settled understanding of an "elective" municipal legislature by complaining that in this case, the appointed Commissioners constitute a "supermajority." (Am. Compl. ¶ 86). First off, that challenge is now moot because of the election of Commissioners for Districts 1 and 3. (*See supra* Point II.B). More fundamentally, an exceptional case brought on by exceptional circumstances does not change the meaning of the unambiguous text. If "elective" means that the office is filled by election but vacancies can be filled on an interim basis, then that's what it means. *See Bostock v. Clayton Cty., Ga.*, 590 U.S. 644, 653 (2020) ("But the limits of the drafters' imagination supply no reason to ignore the law's demands."). And even if it were otherwise, the burden is on Plaintiffs to prove that this case is so far outside any reasonable understanding of the text that it is unconstitutional. They can't.

IV. As a matter of law, Plaintiffs' claims fail because their demand that the City conduct a special election that violates the Florida Election Code and would have been impossible for the City to perform.

Each of Plaintiffs' claims translates into a demand that the City was required to conduct a snap election, presumably before the election that just occurred in March and the one coming up in August. Because it would have been impossible to do that in compliance with Florida law, and the consequence would be a government that could not operate, the claims fail.

Indeed, "[t]he law does not require the performance of impossibilities as a condition to assertion of acknowledged rights, and if a statute requires performance of something which cannot be performed, the court may hold it inoperative." *Ivaran Lines, Inc. v. Waicman*, 461 So. 2d 123, 125 (Fla. 3d DCA 1984); *see also Rupp v. Dep't. of Health*, 963 So. 2d 790, 795-96 (Fla. 3d DCA 2007) (reversing agency discipline based on alleged obligation it would have been impossible to perform."). Here, the City depends on the Supervisor to conduct elections for it: It has done so since at least 1999. The City asked the Supervisor to conduct a special election; she said no. The

City asked the Supervisor to extend the ballot language deadline so Districts 2 and 4 could be placed on the ballot alongside Districts 1 and 3 in March; she said no. The City asked whether it could conduct its own special election, and the Supervisor said it was not recommended and that there is no local government in Pinellas County that does so. In the end, the soonest the Supervisor could conduct an election for Districts 2 and 4 was August 2024, and that's what the City did.

It would have been impossible for the City to conduct its own special election for Districts 2 and 4. To begin with, doing so would have placed the City in violation of the Florida Election Code, which preempts municipal election rules that conflict with provisions of the Code that expressly apply to municipalities. *See* § 100.3605(1) ("No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities."). One provision that expressly applies to municipalities *prohibits* "the governing authority of a municipality" from "call[ing] *any special election* until *notice is given to the supervisor of elections and his or her consent obtained* as to a date when the registration books are available." § 100.151, Fla. Stat. The City asked the Supervisor about conducting its own special election: The Supervisor said it wasn't recommended and no one else in Pinellas does it. There can be no genuine dispute that the City did not and could not have cleared this hurdle to conducting its own special election.

Moreover, the Florida Election Code contains express provisions from which municipalities cannot deviate concerning standards for voter qualifications, standards for voting hardware and software, information that must be provided to voters on the ballot, preelection testing of tabulating equipment, and requests for vote by mail ballots, among other things. *See, e.g.*, §§ 101.002(3), 101.015(4)(c), 101.031(1), 101.5612, 101.62(6), Fla. Stat. Further still, the City's election code adopts the Florida Election Code for City elections, meaning that *all* the

requirements of the Election Code presumptively apply, including its standards for voting systems, tabulation equipment, mail in ballots, overseas ballots, canvassing, provisional ballots, voter challenges, poll watchers, and other things. *See, e.g.*, §§ 100.032, 101.015, 101.017, 101.5603, 101.5614, 101.6102, 101.6104, 101.661-.6952, 101.012-.168, Fla. Stat. Compliance is easy with a county Supervisor of Elections whose job is to conduct a secure, reliable election in compliance with law. But there can be no dispute that a local government that doesn't conduct its own elections and hasn't in at least 25 years would have been able to pull this off on a fast-track basis.

Plaintiffs' own evidence proves it. In their pleading, Plaintiffs made the aggressive claim that "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." (Am. Compl. ¶ 36). But when it was time to ante up, the claim cratered. The City propounded interrogatories seeking the facts behind that allegation. Plaintiffs balked, provided none, and referred us to a Maryland company called TrueBallot, Inc. who prepared a proposal at Plaintiffs' request. (NOF, Ex. 2). So, we deposed the CEO. It turns out that TrueBallot has only conducted or assisted with seven government elections, has never conducted or assisted with an election in Florida, is not certified in Florida, has no idea what Florida's Election Code requires, has no idea if an election conducted by TrueBallot would comply with the Florida Election Code, and has no plans to find out. (*See* NOF, Ex. 4 at 18, 29, 30-33, 37-38). Plaintiffs haven't justified their allegation because they cannot.

Ultimately, it would neither have been legal nor possible for the City to conduct the snap election Plaintiffs demand. The City and the Commissioners are entitled to summary judgment.

CONCLUSION

The residents of St. Pete Beach are entitled to a functioning government until they can elect a Commission through a reliable, legal process. Two of the vacancies have already been filled by

election, and the other two will be filled shortly. Plaintiffs' have no standing, no claim, and no argument on the merits to contend otherwise. The Court should grant summary judgment.

Dated: April 25, 2024

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Florida Courts E-Portal, and a copy of said document has been served via the Florida Courts E-Portal on April 25, 2024 to all counsel of record.

/s/ Samuel J. Salario, Jr.
Attorney