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, *et al*.,

Plaintiffs,

Case No. 24-000041-CI

v.

CITY OF ST. PETE BEACH, a political subdivision of the State of Florida, *et al*.,

Defendants,

and

CP ST. PETE, LLC,

Intervenor.
_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY

This case involves Plaintiffs' challenge to the manner in which the City of St. Pete Beach filled four vacancies on its city commission in December 2023. In short, the four vacancies were all filled by appointment while Plaintiffs contend that the St. Pete Beach City Charter requires the seats to have been filled by election.

Three parties (or groups of parties) have appeared before the Court on this matter: Plaintiffs, Protect St. Pete Beach Advocacy Group, a Florida not-for-profit corporation, Ruta Anne Hance, Leanne Elizabeth Faris, Jody Powell, Charles Boh, Connie Boh, Lisa Robinson, Harry Metz, Edward Barton Teele and Willian Rodriguez; Defendants, the City of St. Pete Beach and

current commissioners Karen Marriott, Nick Flitz, Betty Rzewnicki, and Richard Lorenzen, and one intervenor, CP St. Pete, LLC.[1]

All three parties agreed to abide by an expedited discovery and briefing schedule and all three have submitted motions for summary judgment as to liability only. These motions are the issue currently before the Court. The Court has read and is advised of these motions, the parties' responses to each other's motions, and their replies in support of their motions.

The Court held oral argument on Monday May 13, 2024 in Pinellas County. The Court took the issue under advisement and asked the parties to submit proposed Findings of Fact and Conclusions of Law by May 30, 2024. The Court has reviewed the parties' submissions and, having considered the summary judgement papers, oral argument on the parties' summary judgment motions, and the parties' proposed orders, now makes the following Findings of Fact and Conclusions of Law and **GRANTS** Plaintiffs' Motion for Summary Judgment as to Liability:

I. FINDINGS OF FACT

1. The St. Pete Beach City Commission has five members, the mayor and 4 elected city commissioners from single-member districts, districts 1-4.

2. As of December 18, 2023, the St. Pete Beach City Commission was composed of the following:

- Mayor Adrian Petrila;
- Commissioner Chris Graus (District 1);
- Vice-Mayor and Commissioner Mark Grill (District 2);
- Commissioner Ward Friszolowski (District 3); and

[1] CP St. Pete Beach, LLC, ("CP St. Pete") received a Conditional Use Permit ("CUP") during the period Plaintiffs allege the city commission was unlawfully constituted. The Court finds its arguments largely mirror those made by the Defendant City.

- Commissioner Chris Marone (District 4).

3. Districts 1 and 3 are elected for two-year terms in March of even-numbered years. A regular election for District 1 and 3 was scheduled for March 19, 2024.

4. Districts 2 and 4 are elected for two-year terms in March of odd-numbered years. A regular election for Districts 2 and 4 was scheduled for March 19, 2025.

5. In April 2023, the Florida Legislature passed SB 774 (2023). The law required local elected officials to fill out what is known as "Form 6"—a financial disclosure that is required of judges and legislators but is more detailed than the financial disclosures previously required of some local elected officials. The bill was signed into law by Governor DeSantis on May 11, 2023.

6. The Florida League of Cities ("FLC") began educating its members about the requirements of this law. On August 11, 2023, FLC held a presentation titled "Let the Sunshine In: Everything You Need to Know About Form 6." Commissioners Grill and Friszolowski attended this presentation. By the end of 2023, all four commissioners resigned from office to avoid complying with the new law and submitting a Form 6.

7. Qualifying for the March 2024 regular election for Districts 1 and 3 was held from November 6, 2023 to November 17, 2023.[2]

8. At the end of the qualifying period two candidates had qualified to run for District 1: Karen Marriott and Lisa Reich. Ms. Reich withdrew her candidacy on January 16, 2024, leaving Mrs. Marriott as the sole remaining candidate.

9. At the end of the qualifying period, only one candidate, Betty Rzenewnicki, qualified to run for the District 3 seat.

[2] The parties stipulated that qualifying was held from November 6, 2024 to November 17, 2024. The Court finds that this was a scrivener's error.

10. Beginning on December 12, 2023, the elected city commissioners began to announce their resignation (or their intent to resign). At the December 12, 2023 city commission meeting, Commissioner Grill announced his resignation due to his concerns over Form 6, stating: "I am announcing my resignation as commissioner for District 2 and vice mayor effective December 31st, 2023." At the same meeting, Commissioner Marone announced that he "will not be filling out Form 6."

11. At the December 18, 2023 city commission meeting, Commissioner Graus announced: "Just because I think it's going to be best, I'm going to resign . . . I will not fill out Form 6."

12. At the same meeting, Commissioner Friszolowski stated: "And for me, not that I want to, but I'll resign effective today."

13. During the December 18, 2023 meeting the Commission unanimously agreed to send out an announcement soliciting applications for all four seats.

14. The announcement that was ultimately approved on December 18, 2023 and sent to residents stated "[t]he City of St. Pete Beach has a vacancy on the City Commission all District seats (Districts 1-4). As provided in the City Charter, the City Commission shall appoint a successor as interim Commissioner for each District."

15. On December 21, 2023, after Commissioner Marone officially gave up his duties as commissioner and walked off the dais, the remaining commissioners appointed Richard Lorenzen to serve as interim commissioner for District 4. At this point, it is undisputed that three commissioners provided a formal, unequivocal, irrevocable, declaration that they would surrender office before year end. The Plaintiffs contend that these are simultaneous vacancies resulting in the public—not the commission—having the right to vote for who would fill the vacancies.

16. On December 26, 20223, after Commissioner Graus officially gave up his duties as commissioner and walked off the dais, the remaining commissioners appointed Karen Marriott to serve as interim commissioner for District 1.

17. On December 27, 2023, after Commissioner Grill officially gave up his duties as commissioner and walked off the dais, the remaining commissioners appointed Nick Flitz to serve as interim commissioner for District 2.

18. Commissioner Friszolowski officially gave up his duties as commissioner the evening of December 30, 2023. On January 9, 2024, the commission appointed Betty Rzewnicki to serve as interim commissioner for District 3.

19. Because only one candidate remained for the March 2024 election for Districts 1 and 3, Commissioners Rzewnicki and Marriott were deemed elected to two-year terms on March 26, 2024.

20. Plaintiffs promptly initiated this litigation before the final replacement-commissioner was appointed.

II. CONCLUSIONS OF LAW

Plaintiffs Have Standing

21. The City argues that Plaintiffs lack standing to bring this action. Because this is a threshold issue, it must be resolved before the merits can be addressed. *Ferreiro v. Philadelphia Indem. Ins. Co.*, 928 So.2d 374, 376 (Fla. 3d DCA 2006) ("The issue of standing is a threshold inquiry which must be made at the outset of the case before addressing [the merits].").

22. The City's argument as to standing is twofold. First, the City argues that because no Plaintiff asserts they have a superior claim to hold the office of city commissioner, Petitioners

lack standing to bring a petition for writ of *quo warranto*. Second, it asserts that there is no "justiciable controversy" and the Court lacks subject-matter jurisdiction.

23. With regard to its first argument, the City points to Section 80.01, Florida Statutes, and asserts that a *quo warranto* action challenging a person's title to office may only be brought by a person claiming to be the rightful titleholder, and only after that person has requested the Attorney General to act and the Attorney General declines to do so. That section states the following:

> 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, to file an action in the name of the state against the person exercising the office, setting up his or her own claim. The court shall determine the right of the claimant to the office, if the claimant so desires. No person shall be adjudged entitled to hold an office except upon full proof of the person's title to the office in any action of this character.

24. The City asks too much of this statute.[3] The statute's language is permissive, not mandatory—it provides only that a "person claiming title to an office which is exercised by another has the right . . . to file an action in the name of the state against the person exercising the office, setting up his or her own claim." Nothing in the statute declares that this is the only method of challenging a usurper's right to office.

25. Where, as here, there is no "runner up" or "next in line," there can be no person claiming superior title to a usurped office. Thus, under the City's reading, no appointment to fill a vacancy in a public office could ever be challenged because there no one could claim to be the rightful office holder. I find that the better reading of Section 80.01, Florida Statutes, is that it provides the exclusive means for a person claiming entitlement to an office wrongly held by

[3] Plaintiffs do not claim to be proceeding pursuant to Section 80.01, Florida Statutes. They have not asked the Attorney General to initiate any action on their behalf and they did not sue in the name of the state.

another to be adjudged the rightful office holder, *see* § 80.01, Fla. Stat. ("No person shall be adjudged entitled to hold an office except upon full proof of the person's title to the office in any action of this character."), but that it does not preclude challenges by residents or taxpayers through other means.

26. Evidence supporting this interpretation can be found elsewhere in Chapter 80, Florida Statutes. *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 199 (Fla. 2007) ("Related statutory provisions must be read together to achieve a consistent whole, and 'where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.'" (quoting *Woodham v. Blue Cross & Blue Shield, Inc.*, 829 So. 2d 891, 898 (Fla. 2002))). Section 80.04 discusses the effect of a judgment when an individual sues without the Attorney General's consent and the effect of a judgment obtained by the Attorney General on other individual claimants. § 80.04, Fla. Stat. ("When an individual institutes an action without the consent of the Attorney General . . . [t]he judgment is not a bar to any *quo warranto* by the state nor shall a judgment instituted by the Attorney General be a bar to actions by any claimant other than the parties thereto."). This language suggests that a petitioner is not **required** to obtain permission from the Attorney General to challenge a usurper's right to hold office where they do not seek to have the court declare them the rightful office holder. *See also* § 80.01, Fla. Stat. ("The court shall determine the right of the claimant to the office, *if the claimant so desires.* No person shall be adjudged entitled to hold an office except upon full proof of the person's title to the office in any action of this character." (emphasis added)).[4]

[4] *See* Alto Adams and George John Miller, *Origins and Current Florida Status of the Extraordinary Writs*, 4 U. Fla. L. Rev. 421 (Winter 1951) ("A judgment obtained in a *quo warranto* proceeding instituted without the consent of the attorney general is conclusive as between all parties to the action except the state. Thus, it does not bar the subsequent initiation of such proceedings by the state. Judgment rendered in a *quo warranto* action brought by the attorney general does not preclude filing of claims by nonparties.").

27. Moreover, the Court is aware of several cases where Florida courts have approved of individuals not claiming entitlement to an office to challenge the title of the person exercising the rights of that office.

28. As one example, in *State ex rel. Bruce v. Kiesling*, a nominee for the Public Service Commission brought a *quo warranto* petition challenging the Governor's selection from a list submitted by the Public Service Commission Nominating Council. 632 So. 2d 601, 602 (Fla. 1994).[5] Because the vacancy was filled by appointment and the Petitioner was one of several unselected nominees, he could not claim that he was entitled to hold the office, only that the governor's appointment was improper. The Florida Supreme Court nevertheless found that Petitioner had standing, and proceeded to rule against him on the merits.

29. Moreover, the Florida Supreme Court has held that "*quo warranto* is a remedial as well as a prerogative writ, and that this court will not refuse to extend its use on proper showing made."[6] *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936); *Id.* (explaining that this decision was based "on the theory that the law will not permit a wrong to go without a remedy"). In *Wester*, Petitioners brought a *quo warranto* action "as citizens, residents, and taxpayers" to challenge an election where "more than half the voters who participated in each election were not qualified and therefore voted illegally." *Id.* at 53.[7] The Court explained that *quo warranto* relief

[5] Specifically, the Nominating Council submitted two slates of nominees for two separate vacancies. The governor appointed a nominee from the list of candidates for the second vacancy to fill the first vacancy. *Id.* at 604 ("Bruce argues that the statutes treat each vacancy as a discrete and separate entity. He argues that the statute does not allow the Nominating Council to submit a single pool of nominees from which the Governor may make appointments at will. We disagree.").

[6] *See* Adams and Miller, *supra*, at 1053 & n.71 for a discussion of prerogative and remedial writs.

[7] *See also State v. Fernandez*, 143 So. 638, 641 (Fla. 1932).

> The authorities are not entirely harmonious, but the dominant current of late decisions is to the effect that the existence of a statutory method for testing the results of an election do not bar the remedy by *quo warranto* to try title or right to the product of the election. The remedy by contest is merely cumulative and not exclusive. . . .

may appropriately be "extended and employed for purposes other than for which it was originally conceived" and that under the circumstances present in that case "[i]t is absurd and ridiculous to contend that a candidate or a citizen has no right to relief in the face of such flagrant violation of the law."[8]

30. More recently, in *Boan v. Florida Fifth Dist. Court of Appeal Judicial Nominating Comm'n*, the Florida Supreme Court approved the use of *quo warranto* by citizens and taxpayers "to challenge a governor's alleged noncompliance with constitutional provisions regulating the judicial appointment process." 352 So. 3d 1249, 1252 (Fla. 2022) (citing *Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020)).

31. It appears as though controversy over who serves on the St. Pete Beach City Commission is nothing new. In *Bloomfield v. City of St. Petersburg Beach*,[9] the Florida Supreme Court considered a case in which two different factions of elected officials claimed to be the rightly elected commissioners. 82 So. 2d 364, 366 (Fla. 1955) ("the facts set forth in the complaint as well as the answer reveal a condition of municipal chaos and uncertainty"). Members of one group

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> Its first maxim is that equity will not suffer a right to be without a remedy. This principle was reincaranted in section 4 of the Declaration of Rights, Constitution of Florida. In a changing world marked by the ebb and flow of social and economic shifts, new conditions constantly arise which make it necessary, that no right be without a remedy, to extend the old and tried remedies. It is the function of courts to do this. It may be done by working old fields, but, when it becomes necessary, they should not hesitate to 'break new ground' to do so.

See also State v. Markle, 142 So. 822, 824 (Fla. 1932) ("Under the facts of this case, we know of no other recourse by which plaintiff in error may 'have remedy by due course of law,' and, if he was not the holder of an office, he was at least the holder of a 'liberty' or a quasi official right that he could test his claim or title to by *quo warranto*."); *Crist v. Florida Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008) (finding that organization of criminal defense attorneys had standing to challenge governor's appointments appointment to the Offices of Criminal Conflict and Civil Regional Counsel).

[8] *See also* Richard W. Ervin and Roy. T. Rhodes, *Quo Warranto* in Florida, 4 U. FLA. L. REV. 559, 564 (1951) (noting that in *Wester* "the Court emphatically defended the right of the relators, as citizens and taxpayers, to bring a proceeding in *quo warranto* to enforce public rights" and that "[s]ubsequent decisions have not altered this position."); *id.* at 570 ("As indicated by the more recent cases and the enactments of the Legislature, the rights and powers of individual citizens in *quo warranto* proceedings are continually on the increase, with the result that their opportunities for utilizing this remedy are now greater than at any other time in the history of our state.").

[9] Note that in 1994, the City of St. Petersburg Beach (Defendant) changed its name to the City of St. Pete Beach.

declared a member of the other group to be ineligible to hold office and appointed a replacement commissioner to fill the vacancy. The result of this contention was that the City had essentially two competing governments simultaneously. *Id.* ("the City of St. Petersburg Beach, like Noah's Ark, had two of everything; including city clerks, police chiefs, patrolmen, city attorneys, city judges and building inspectors."). Petitioners brought a declaratory judgment action and the respondents argued that quo warranto was the exclusive appropriate remedy. The Court rejected this argument, holding that because the issue before the Court was not "limited solely to trying title to an office" declaratory relief was appropriate:[10]

> In the matter of the propriety of employing the Declaratory Judgment Act it appears to us that the proceeding under this act was thoroughly justificable in the case at bar in order to bring an expeditious termination to the public confusion that resulted from the situation described above. While the matter of the right to an office was involved, 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. If the issue had been limited solely to trying title to an office, quo warranto would have been the remedy. In view of the record in this particular case, appellants cannot successfully dispute the appropriateness of the procedure followed.

32. The Court finds that the question of whether the commission had authority to fill vacancies when the entire commission resigned in December 2023 is an issue of great public importance. Residents of the City have challenged the filling of vacancies under these circumstances as outside the plain language of powers and limits on power in the City's Charter. The Court finds the Plaintiffs have standing to challenge these appointments. Otherwise there would be no remedy, even if these appointments were made without authority. As outlined above, Plaintiff have standing to seek a writ of quo warranto and declaratory relief. The Court in applying

[10] Moreover, Article V, § 2 of the Florida Constitution requires the Supreme Court to adopt rules implementing "a requirement that no cause shall be dismissed because an improper remedy has been sought." *See also* Art. 1, § 21 ("The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."); EXTRAORDINARY WRITS AND REMEDIES, CIVPRAC FL-CLE 25-1 ("[T]he availability of the writ to private individuals is subject to a case-by-case expansion, provided the facts warrant such an expansion, because the writ is remedial in nature." (citing *State ex rel. Pooser v. Wester,* 126 Fla. 49, 170 So. 736 (1936)).

Bloomfield, *Markle*, and *Christ*, *supra*, finds that equity will not suffer a right to be without a remedy.

The Claims and Defenses

33. Plaintiffs assert five claims against the City.

34. First, Plaintiffs seek declaratory relief holding that the City's process of appointing replacement-commissioners did not comply with the Florida Constitution or the City's Charter. Specifically, the Florida Constitution requires that "[e]ach municipal legislative body shall be elective." As the City's Attorney has stated on record, the process used to fill the vacancies created by outgoing commissioners resulted in a non-elective body. Additionally, the City Charter requires that when two or more vacancies occur "simultaneously," the City Commission is required to call a special election within 15 days.

35. Second, Plaintiffs seek declaratory relief holding that even without simultaneous vacancies, the vacancies created for districts 2 and 4 could not be filled by appointment. Commissioners in these districts are elected to two-year terms in odd-numbered years, and each of the outgoing-commissioners had more than six months remaining in their terms. A regular city election was scheduled for March 2023—less than six months after the vacancies were created. Under these circumstances, the City was required to hold a special election. Charter § 3.06(c)(2).

36. Third, Plaintiffs seek a writ of quo warranto challenging the authority of the individuals appointed as replacement-commissioners to hold office based on the provisions of the Florida Constitution and City Charter mentioned in Count I.

37. Similarly, Count IV seeks a writ of quo warranto challenging the authority of the replacement-commissioners for districts 2 and 4 to hold office based on the violations of the City Charter mentioned in Count II.

38. Fifth, and finally, Plaintiffs seek a declaratory judgment finding that the current composition of the City Commission violates the Florida Constitutional requirement that municipal bodies be elective.[11]

39. The City disputes that the City Charter required the seats to be filled by election. Additionally, the City's briefing relies heavily on its affirmative defenses. The City argues (1) that the Plaintiffs lack standing, (2) that Plaintiffs' claims are barred by the *de facto* officer doctrine, (3) that Plaintiffs' claims are not ripe (or are moot), (4) that Plaintiffs' claims "would have required the City to perform illegal and impossible acts."

The Controlling Law

40. This litigation involves two primary sources of law. First, Article VIII, Section 2 of the Florida Constitution provides that "[e]ach municipal legislative body shall be elective. Second, section 3.06 of the St. Pete Beach City Charter, titled "Vacancies; forfeiture of office; filling of vacancies" provides the mechanism for filling vacancies on the City Commission. That section states that:

> (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

[11] The City claimed in its papers and at oral argument that Plaintiffs had dropped multiple claims.

> 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.

41. Also relevant is Section 3.02(c) of the City Charter, which states:

> 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.

42. The parties read this language in very different ways. They agree that when a single vacancy occurs, Section 3.06(c) applies, and the remaining members of the commission can appoint an interim replacement. However, they disagree as to the meaning of the "extraordinary vacancies" provision.

43. According to Plaintiffs, where "two (2) or more vacancies occur simultaneously" Section 3.06(d) requires that an election be held to fill the vacant seats and the remaining commissioners have no authority to appoint interim replacements.[12]

44. The parties have focused much of their briefing on what it means to "resign" and what exactly the effect of a "resignation" is. They have also provided extensive briefing on the meaning of the words "occur" and "simultaneously." As discussed below, Plaintiffs argue that a resignation creates an immediate vacancy.

[12] The Intervenor argues that another provision of the city charter, Section 3.09, authorizes the appointment of interim commissioners. That section provides that the commission may appoint a City Clerk, a City Manager, a City Attorney, "and such other officials that they deem necessary." I reject the argument that this provision authorizes the appointment of interim commissioners and is instead limited to the appointment of city employees similar to those specifically enumerated.

When the Resignations Occurred

45. The City argues that the word "resign" should be given its ordinary meaning, which it says is "a formal notification of resigning," or "a formal statement of your intention to resign," which requires "a formal, unequivocal, irrevocable declaration of surrendering office."

46. Although the parties dispute what constitutes a resignation (and which of the commissioners' statements on which dates were sufficient to constitute a resignation).

47. At the latest, as acknowledged by the City in its Summary Judgment Response, the four resignations occurred at the following dates:

- Commissioner Graus (District 1)—December 18, 2023. *See* City's Resp. at 7-8 ("[The Parties] do not dispute that at the Commission meeting on December 18, 2023, Commissioner Graus *formally, unequivocally, and irrevocably*, announced his resignation." (emphasis added).
- Mark Grill (District 2)—December 12, 2023. *See id.* at 8. ("[The Parties] do not dispute that at the Commission meeting on December 18, 2023, Commissioner Gr[ill] *formally, unequivocally, and irrevocably*, announced his resignation." (emphasis added).
- Ward Frizlowski (District 3)—December 30, 2023. *See id.*
- Chris Marone (District 4)—December 21, 2023. *See id.* at 9 (Commissioner Marone "*formally, unequivocally, and irrevocably* announced his resignation on December 21, 2023." (emphasis added)).

48. Thus, I conclude that prior to the appointment of the first interim commissioner on December 21, 2023, at least three commissioners had resigned, that is, they submitted formal,

unequivocal, and irrevocable announcements that they were surrendering office by the end of the year.

49. Also, the City requested residents to apply to fill **all** vacancies on December 18, 2023.

Multiple Vacancies Occurred Simultaneously

50. The St. Pete Beach City Charter provides that a vacancy on the City Commission is created when a sitting City Commissioner resigns. Charter § 3.06(a) ("The office of a commissioner shall become vacant upon his death, resignation, or forfeiture of his office."). The Florida Constitution similarly provides that a vacancy in a state office is created upon incumbent officer's resignation. Art. X, § 3, Fla. Const. ("Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office . . .").

51. Courts have interpreted this provision of the Florida Constitution to mean that a vacancy is created when an official resigns, even when that resignation has a future effective date. *Spector v. Glisson*, 305 So. 2d 777, 780 (Fla. 1974) ("The fact that a vacancy has been created, albeit to take effect in futuro, is supported by and is the only conclusion which is consistent with the prior holdings of this Court."); *Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations*, 928 So. 2d 1218, 1220 (Fla. 2006) ("[W]e are of the opinion that if the sheriff were to tender his resignation in May, a vacancy would occur at that time. . . .").

52. Plaintiffs ask the Court to apply a similar interpretation here and find that a vacancy was created the moment each commissioner announced their formal, unequivocable, and irrevocable resignation. The City asks the Court to find that a resignation does not occur until the

office becomes physically vacant, i.e., the moment a commissioner physically leaves the dais and surrenders his or her official duties.

53. The Court finds the line of cases cited by Plaintiffs persuasive. Those cases interpret a nearly identical provision of the Florida Constitution.[13]

54. Thus, the Court concludes that vacancies were created, at the latest, when the commissioners announced their resignations on the dates identified above. *See supra* ¶ 46.

55. The parties then dispute what it means for vacancies to "occur simultaneously." They tend to agree that "simultaneously" means "at the same time." But Plaintiffs argue that "occur" means "to exist or be present in" while the City argues that it means "happen." In other words, Plaintiffs argue that two vacancies "occur simultaneously" if they exist at the same time—and that that happened here when multiple commissioners resigned before any vacancies were filled. The City argues that for vacancies to occur simultaneously, they must be created at the same time.

56. Here again, the Court finds that the Plaintiffs have the better argument. The City's preferred reading would mean Section 3.06(d) is limited in its applicability to a bizarre scenario when multiple commissioners submit a joint resignation or are simultaneously incapacitated in some kind of freak accident.[14] Under this interpretation, simultaneous vacancies would not occur

[13] *See* ¶ 50, *supra*; *compare* Charter § 3.06(a) ("The office of a commissioner shall become **vacant upon his death, resignation, or forfeiture of his office**.") *with* Art. X, § 3, Fla. Const. ("**Vacancy** in office shall occur upon the creation of an office, **upon the death, removal from office, or resignation** of the incumbent or the incumbent's succession to another **office** . . ."). Defendants ask the Court to rule that somehow a municipal vacancy is different than a vacancy created by a circuit court judge or a constitutional officer, such as a sheriff. But in light of there being no case law making such a distinction, the Court is guided by the *Spector v. Glisson* line of cases. The Court is guided in part by the fact that the language of the City Charter regarding vacancies closely mirrors that of the Florida Constitution. The Court declines the invitation of Defendants to draw a distinction between municipal governments and other elected officials.

[14] The City gives the examples of "two or more commissioners died in a single car accident or two or more commissioners accused of misconduct resigned at the same time to avoid an investigation." City's Reply at 7.

even if one commissioner were to resign, leave the dais, and then a second commissioner does the same thing a few moments later.

57. To summarize, a resignation creates an immediate vacancy. That vacancy occurs until it is filled by election or by appointment. Where a second vacancy is created before the first vacancy has been filled, there are simultaneous vacancies. When simultaneous vacancies occur on the commission, the remaining members have only one option: call an election to fill the vacancies.

The City's Affirmative Defenses do not Preclude Liability

58. The City argues that even if the city charter required the vacancies to be filled by election, several affirmative defenses preclude liability. It argues that Plaintiffs claims are moot or unripe, that the *de facto* officer doctrine excuses its conduct, and that holding an election would have been impossible. I find none of these defenses persuasive. They are addressed here in turn.

59. The City argues that Plaintiffs' claims are moot because Districts 1 and 3 have been filled by elections held in March 2024. But this ignores Plaintiffs' concern that the commissioners have been appointed without authority and in conflict with the plain language of the City's charter. The City warns that "Plaintiffs' claims will throw City government into tumult, leaving it unable to serve its citizens." Whether the Plaintiffs are entitled to a judgment declaring past actions by the commission to be invalid can be addressed at the remedy stage of this litigation. The Plaintiffs' claims are not moot.

60. The City next argues that any actions taken while the commission was improperly constituted are "immunized" by the *de facto* officer doctrine. *Treasure, Inc. v. State Beverage Dept.*, 238 So. 2d 580, 585 (Fla. 1970) ("Florida follows the general rule that . . . acts of a *de facto* officer are valid as to third persons and the public until title to such office is adjudicated

insufficient."). I find that the *de facto* officer doctrine is inapplicable for the reasons stated in *Treasure, Inc. v. State Beverage Dept.*:

> The public has a right to assume that officials apparently qualified and holding office do in fact properly occupy the position and have authority to exercise the powers of the office. But when a party to be affected by an official's act or decision holds actual knowledge that such official might not in fact legally occupy the office, and when the party makes a timely and direct attack on the authority and jurisdiction of the person attempting to exercise the powers of the office, there is no reliance by an innocent party and no reason to apply the rule.

Id.

61. Here, Plaintiffs timely challenge the appointment process. Their Complaint was filed January 3, 2024, less than two weeks after the first replacement commissioner was appointed and before the final replacement commissioner was appointed on January 9, 2024. The Intervenor was specifically on notice of Plaintiffs' challenge to the legitimacy of the interim commissioners' appointments prior to the approval of its CUP. Moreover, while the *de facto* officer doctrine may legitimize certain prior acts, it does not preclude adjudication as to who is the rightful office holder. It does not preclude, for example, a declaratory judgment that commissioners' appointment did not comply with the City Charter, nor would it preclude prospective affirmative relief. Whether the *de facto* officer doctrine "immunizes" prior acts of the commission will be determined at the remedy stage.

62. Finally, the City argues that it was excused from filling the commissioner vacancies by appointment because holding an election would have been impossible or illegal.[15] In arguing that holding an election would have been impossible, the City offers the following facts:

- Qualifying for the March 2024 election had closed when the City first learned of the possibility of multiple vacancies.

[15] The City's motion argues both that holding an election would have been impossible and illegal. But the City did not plead illegality as an affirmative defense and the Court will not consider it.

- Since 1999, the City has relied on the Pinellas County Supervisor of Elections to conduct its elections.
- After the December 12, 2023 city commission meeting, the City asked the Supervisor's office about the possibility of having a special election for Districts 2 and 4 in March 2023. The Supervisor informed the City that the deadline for adding races to the ballot was December 19, 2023 and that the next election would be in August 2024.
- The City asked the Supervisor's office about the possibility of holding a special election before August 2024. The Supervisor's office said it would not do so. The City then asked about conducting its own election and the Supervisor's office stated that this was not recommended and that it did not know of any other municipality in the district that did this.

63. While it appears the City did make some effort to hold an election before August 2024, it has failed to establish its impossibility affirmative defense.[16] First, the City did not contact an outside election vendor or make any further inquiry into the possibility of conducting an election itself. The Plaintiffs did contact a vendor who claims it could have conducted an election on short notice for around $20,000. The City quarrels with the Plaintiffs' vendor's qualifications and say that the vendor could not, in fact, have conducted a compliant election. But this is not sufficient. *Cf. Ellingham v. Florida Dept. of Children & Family Services*, 896 So. 2d 926, 927 (Fla. 1st DCA 2005) ("The party seeking to assert the affirmative defense has the burden of proof as to that defense.").

[16]The Court notes that the City's inquiry into whether an election could be conducted to fill the vacancies is an implicit admission that an election was required. Its determination that an election could not be held until August could not overcome the plain language of the City Charter which conferred the power to fill such vacancies with St. Pete Beach electors and not with the resigning commissioners or their improperly appointed replacements.

64. It is also not sufficient that the Supervisor would not conduct the election sooner or that the City had no prior experience in conducting elections itself. *Cf. Lewis v. Belknap,* 96 So. 2d 212, 213–14 (Fla. 1957) (the impossibility defense "refers to the nature of [the] thing to be done—not the ability of the party to perform what he has agreed to do."). Moreover, the Supervisor's office did not advise the City that conducting its own election would be impossible or illegal, only that it didn't recommend doing so. The commission and city attorney then declared conducting an election to be impractical, but they did so with no knowledge of the cost or possibility of conducting the City conducting its own election.[17]

65. Moreover, even if an election could not have been held before August 2024, that would not have authorized the City to proceed the way it did here—appointing interim commissioners despite the lack of authorization for doing so in the City Charter.

66. Accordingly, the Court finds that partial summary judgment on liability is **GRANTED** to Plaintiffs. Defendant's motion for summary judgment is **DENIED**. The Court notes that the Intervenor, CP St. Pete, LLC, is not a party and not entitled to judgment as a matter of law. As the Court has only granted partial summary judgment this is a non-final order. The Court retains jurisdiction to conduct further proceeds to determine the appropriate remedy. The parties will meet and confer to prepare a briefing schedule for the remedy phase within 7 days of this order and within 10 days will submit a proposed scheduling order.

DONE and ORDERED in Chambers in Clearwater, Pinellas County, Florida this _____ day of June 2024.

_____
Honorable Michael F. Andrews
Circuit Judge

[17] The City had six days between the announcement of the first two vacancies on December 12, 2023 and the deadline for submitting names to the Supervisor for inclusion on the March 2024 ballot. The City made no attempt at meeting this deadline.