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

PROTECT ST. PETE BEACH ADVOCACY GROUP, *et al.*,

*Plaintiffs*,

v. CASE NO.: 24-000041-CI

CITY OF ST. PETE BEACH, *et al*., Section 20

*Defendants*.
_____/

**FINAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS AND INTERVENOR**

This case comes before the Court on (1) Plaintiffs' Motion for Summary Judgment (Doc. 79), (2) Defendants' Motion for Summary Judgment on Liability (Doc. 81), and (3) and Intervenor CP St. Pete, LLC's Motion for Summary Judgment (Doc. 76). The Court has considered the motions, the opposing and reply memoranda (*see* Docs. 79-81, 83-88, 90), the evidence tendered by the parties and Intervenor, and the argument of counsel at a hearing on May 13, 2024.

**Background and Procedural History**

1. Defendant City of St. Pete Beach (the "City") is a municipality in Pinellas County governed by a five-member City Commission, the City's legislative body. In December 2023, four members decided to resign because of a new statute requiring municipal legislators to make an annual full and public disclosure of financial interests on Form 6 beginning on January 1, 2024.

2. The City's Charter provides for filling vacant Commission seats by interim appointment until an election or directly by election, depending on the circumstances. After considerable discussion, and with the advice of counsel, the commissioners concluded that

interim appointments until elections in March and August 2024 were both necessary to enable City government to function and authorized by the Charter. On four different dates in late December, one commissioner surrendered office and the remaining four appointed a new commissioner to serve until the elections.

3. Plaintiffs sued the City and the four appointed commissioners (the "Commissioners" and, with the City, "Defendants") challenging the Commissioners' right to hold office. The Court allowed Intervenor—a developer granted a conditional use permit by the Commission—to intervene. After expedited discovery, the parties filed cross-motions for summary judgment that were briefed and heard on an expedited basis. The case boils down to a single issue: whether the Commissioners have the right to hold office under the Charter, which, in Plaintiffs' view, does not authorize interim appointments when multiple vacancies "occur simultaneously." The Court grants final summary judgment to Defendants and Intervenor, primarily because Plaintiffs lack standing and, on the merits, because the vacancies did not occur simultaneously.

## Undisputed Facts

Based upon the parties' Stipulation of Undisputed Facts for Purposes of Cross-Motions for Summary Judgment on Liability (Doc. 78), and the other evidence submitted by the parties and Intervenor, the Court finds that there is no genuine dispute as to the following facts.

### *The City's Government*

4. Under the Charter, the legislative powers of the City are exercised by a five-member Commission, consisting of four commissioners and one mayor-commissioner. (Doc. 80, Ex. 5 §3.01). The four commissioners represent separate districts—Districts 1, 2, 3, and 4—and each is elected by the members of that district. (*Id.* § 3.02). The commissioners are

elected for two-year terms, and the mayor-commissioner is elected for a three year term. (*Id.* §§ 3.02(c), 3.03(a)).

5. Regular elections for Districts 1 and 3 are held in even-numbered years and regular elections for Districts 2 and 4 in odd-numbered years. (Doc. 80, Ex. 5 § 3.02(c)). As of December 2023, the next election for Districts 1 and 3 was scheduled for March 19, 2024 and the next election for Districts 2 and 4 was scheduled for March 19, 2025. (Doc. 78 ¶ 2).

6. The City does not hold its own elections. (Doc. 80, Ex. 1 ¶ 8). Since 1999, those have been conducted by the Pinellas County Supervisor of Elections (the "Supervisor"). (*Id*.).

7. Section 3.06 of the Charter addresses vacancies in the office of commissioner:

> Sec. 3.06. - Vacancies; forfeiture of office; filling of vacancies.
>
> (a) *Vacancies*. The office of a commissioner **shall become vacant** upon his death, **resignation**, or forfeiture of his office.
>
> * * * *
>
> (c) *Filling of vacancies*. A vacancy on the commission shall be filled in one of the following ways:
>
> (1) **If there is less than six (6) months remaining in the unexpired term or if there are less than six (6) months before the next regular city election, the commission, by a majority vote of the remaining members shall choose a successor to serve until the newly elected commissioner is qualified.** If one year remains in the term of the vacated seat at the time of the next election, that seat shall be filled by election for the remaining term;
>
> (2) **If there are more than six (6) months remaining in the unexpired term and no regular city election is scheduled within six (6) months, the commission shall fill the vacancy on an interim basis as provided in subsection (1),** and shall schedule a special election to be held not sooner than sixty (60) days, nor more than one (1) year following the occurrence of the vacancy.
>
> (d) *Extraordinary vacancies*. In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election to fill all commission positions. **Should two (2) or more vacancies occur simultaneously**, on the commission, the remaining members shall, **within fifteen (15) days, call a special election to fill the vacant commission positions**; such election shall be held in the manner prescribed by the laws of the State of Florida.

(Doc. 80, § 5 § 3.06) (emphasis added).

*The Resignations and Appointments*

8. At a Commission meeting on December 12, 2023, Mr. Grill stated that "I'm announcing my resignation for District 2 … effective December 31, 2023" based on concerns about the Form-6 requirement. (Doc. 78, Ex. A-3 at 1-9). No other commissioners announced resignations. They did, however, express their own concerns about Form 6, and Mr. Marone (District 4) stated that he would resign unless advised by the City Attorney by December 31 that there was "workaround" for the Form 6 requirement.[1] (*Id.* at 14; *see also id.* at 10-14).

9. The City Attorney discussed the Form 6 requirement and the possibilities more than one commissioner would resign, a special election would have to be called under Section 3.06(d) of the Charter, and the Commission might lack a quorum to conduct government. (Doc. 78, Ex. A-3 at 17-30). The City Attorney agreed to consult with the Commission on Ethics and others about the new law and to work with the City Clerk on the Supervisor's ability to conduct an election. (*See id.* at 19, 21, 25). The Commission agreed to reconvene on December 18. (*Id.* at 29-30).

10. After the meeting, the City Attorney consulted with the Florida Commission on Ethics, the Florida League of Cities, the Florida Association of Counties, the Florida Senate President's office, and the City's lobbyist about the new law and determined that "nothing's going to happen between now and when this law goes into effect." (Doc. 78, Ex. B-3 at 3-4).

[1] Plaintiffs argue that Mr. Marone "announced that he was resigning … effective December 31, 2023." (Doc. 79 at 4, ¶ 3). The evidence, however, conclusively establishes otherwise. As described above, Mr. Marone stated his decision about resignation was contingent on further advice from the City Attorney. (Doc. 78, Ex. A-3 at 14) ("So by 12/31, if the City Attorney Andrew, if you tell me there's nothing you can do. You have to fill it out by you know, Jan 1, then you'll have my resignation."). As stated in Paragraph 17, there is no genuine dispute that Mr. Marone did not announce his resignation until December 21, 2023.

11. The City Clerk contacted the Supervisor's Election Administrator to find out if the Supervisor could hold a special election or, alternatively, if Districts 2 and 4 could be added to the March 2024 election for Districts 1 and 3. (Doc. 80, Ex. 1 ¶ 2, 6). The Supervisor was unable to conduct a special election before August 20, 2024, a date on the Supervisor's regulation election calendar, and it was too late to qualify District 2 and 4 candidates for the March 19, 2024 election. (*See id.* ¶¶ 3-4, 6-7 & Ex. A). The earliest the Supervisor could hold an election was March 19, 2024 for Districts 1 and 3 and August 20, 2024 for Districts 2 and 4. (*See also* Doc. 78 ¶ 4).

12. The Clerk also asked whether the City could conduct its own special election. The Administrator responded that it was not recommended and that, to the Administrator's knowledge, no local government in Pinellas County conducts its own elections. (Doc. 80, Ex. 1 & ¶ 5).

13. The Commission met again on December 18, 2024. The City Attorney reported on his consultations about the new law and, consistent with them, advised that any commissioners not prepared to file Form 6 would need to resign on or before December 30, 2023. (Doc. 78, Ex. B-3 at 2-3). Mr. Graus (District 1) stated that "I am going to resign" because "I will not fill out Form 6." (*Id.* at 31). No other commissioner announced a resignation.[2]

[2] Plaintiffs argue Mr. Friszlowski (District 3) announced his resignation on December 18. (Doc. 79 at 5, ¶ 5). That rests on an incomplete quote and leaves out vital context. Mr. Friszlowski was not standing for re-election in March 2024, and Commissioner Rzewnicki was the only candidate to qualify for election. (Doc. 78, Ex.B-3 at 13-16). So, Mr. Friszlowski said "And for me, *not that I want to*, but I'll resign effective today so that *if you see fit*. So, *it's not up to me at this point in time, but its for you* we can consider appointing [Ms. Rzewnicki]. She could step in immediately. Then one at a time, this could be solved. So that's basically what I am proposing for today. I don't know if I just need to say it." (*Id.* at 16-17) (emphasis added). The City Attorney responded "no, let's just wait and hear how we do this." (*Id.* at 17). As stated in Paragraph 20, there is no genuine dispute that Mr. Friszlowski did not announce his resignation until December 30.

14. The City Attorney reported that because the Supervisor declined to conduct a special election before the upcoming elections in March and August, it was an "impossibility to have a special election before August." (Doc. 78, Ex. B-3 at 5). He informed the commissioners that they could go "to the vendors who run the electronic ballot box machines" but advised against it because "state laws … are a lot more complicated now." (*Id.* at 4). He also highlighted that the Commission could not act without a quorum of three commissioners present. (*Id.* at 7).

15. The commissioners agreed that (a) any resignations should be timed so no two would occur simultaneously and (b) new commissioners should be appointed until the March and August 2024 elections. (Doc. 78 at 5-7, 14-16, 21-23). The intent was to "make sure the city's got a functioning form of government" until the elections. (*Id.*; *see also id.* at 23).

16. The Charter does not establish a process for selecting interim appointees. The Commission agreed the Clerk should notify the public so interested residents could apply for interim appointment. (*Id.* at 31-37; *see also* Doc. 78, Ex. G). Accordingly, the Clerk directed an email to a City email list seeking applicants. (Doc. 78, Ex. G). Plaintiffs contend this email is evidence that multiple vacancies existed on December 18 because the email referred to "vacancies" in multiple districts. It is not such evidence because when the vacancies "occur[red]" under Section 3.06(d) of the Charter (a) is a question of law for the Court, not a question of fact[3] and (b) is determined by what the prior commissioners said and did, not what others said (and there is no evidence any of the prior commissioners saw or approved the text of the email before it was sent).

17. The Commission met again on December 21, 2023. Mr. Marone (District 4)—who stated on December 12 he would resign if not advised about a workaround—stated

[3] *See Storm Damage Solutions, LLC v. Indian Harbour Ins. Co.*, 2022 WL 18932730, at *3 n.4 (N.D. Fla. Sept. 27, 2022); *Estate of Murray v. Delta Health Group*, 30 So. 3d 576, 578 (Fla. 2d DCA 2010).

"I'm going to go ahead and officially announce my resignation as District 4 Commissioner." (Doc. 78, Ex. C-3 at 19). He surrendered office at the same meeting. (*Id.* at 20). The remaining four commissioners then interviewed three applicants and appointed Defendant Richard Lorenzen to the office of District 4 Commissioner until the August 20, 2024 election. (*Id.* at 23-52, 66-67; Doc. 78 ¶ 14).

18. At a Commission meeting on December 26, 2023, Mr. Graus (District 1), who announced his resignation on December 18, surrendered office. (Doc. 78, Ex. D-3 at 6-7). The remaining four commissioners interviewed two applicants and appointed Defendant Karen Marriott to the office of District 1 Commissioner until the March 19, 2024 election. (*Id.* at 14-36, 54-55; Doc. 78 ¶ 15) Ms. Marriott was one of the two candidates who qualified to run in that election. (*Doc.* 78 ¶ 20). On January 16, 2024, the other candidate withdrew, and Ms. Marriott was "declared elected" as District 1 Commissioner. (*Id.*; Doc. 80, Ex. 6 § 38-11(a)).

19. At a Commission meeting on December 27, 2023, Mr. Grill (District 2), who announced his resignation on December 12, surrendered office. (Doc. 78, Ex. E-3 at 5-6). The remaining four commissioners interviewed three applicants and appointed Defendant Nick Filtz to District 2 Commissioner until the August 20, 2024 election. (*Id.* at 74-75; Doc. 78 ¶ 16).

20. On December 30, 2023, Mr. Friszolwski (District 3) both announced his resignation and surrendered office. (Doc. 80, Ex. 7) The remaining members of the Commission appointed Defendant Betty Rznewnicki—the only candidate who qualified to run for election to District 3 in March 2024—to the office of Commissioner for District 3. (Doc. 78 at 17, 21).

**Plaintiffs' Claims and the Summary Judgment Issues**

21. Plaintiffs are nine "citizen[s], resident[s], and taxpayer[s]" of the City and one advocacy group. (Doc. 7 ¶¶ 2-13). None of them claim the right to hold the office of

Commissioner. (*See id.*). And each of them has stipulated that they have not sustained any "special injury that differs in kind and degree from that sustained by other members of the community." (Doc. 78 ¶ 5). Their Amended Complaint asserts five counts—two for a writ of quo warranto and three for a declaratory judgment—challenging the right of the Commissioners to hold office.

22. Two counts challenge the right of all four Commissioners to hold office. In Count III for quo warranto, "Plaintiffs … challenge the right of Marriott, Filtz, Rzewnicki, and Lorenzen to hold the office of City Commissioner" (Doc. 7 ¶¶ 68), seeking a judgment that the Commissioners "were not validly appointed" and ousting them from office. (*Id.* Count III). Count I for declaratory judgment seeks the same relief through a judgment invalidating both the appointments and any decisions the Commission has made since the appointments. (*Id.* Count I). Both counts assert the appointments contravened Section 3.06(d) of the Charter because the vacancies created by the resignations "occur[ed] simultaneously." (Doc. 7 ¶¶ 52-54, 70-73).

23. Counts II and IV challenge the right of the Commissioners for Districts 2 and 4 to hold office through quo warranto and declaratory relief identical to that in Counts I and III, alleging that Section 3.06(c) of the Charter did not authorize the District 2 and 4 appointments. (Doc. 7 ¶¶ 60-62, 79-81). Count V seeks an order declaring that the appointments invalid under article VIII, section 2(b)'s requirement that municipal governing bodies be "elective." (*Id.* Count V).

**Conclusions of Law**

24. Defendants and Intervenor moved for summary judgment on all five counts of the Amended Complaint. (Docs. 76, 81). In both their opposition papers and at the hearing, Plaintiffs defended only the theory alleged in Counts I and III that Commission vacancies "occurred

simultaneously" and failed to respond to Defendant's and Intervenor's motions on Counts II, IV, and V. (Doc. 84). Plaintiffs have thus abandoned those three counts, although they are addressed briefly below. *See Rasmussen v. Collier Cty. Pub. Co.*, 946 So. 2d 567, 568 n.1 (Fla. 2d DCA 2006); *see also US Iron FLA LLC v. GMA Garnett (USA) Corp.*, 660 F. Supp. 3d 1212, 1228 (N.D. Fla. 2023). Consistent with that, Plaintiffs moved for summary judgment only on the theory in Counts I and III that vacancies "occur[ed] simultaneously."[4] (Doc. 81 at 13-22). Thus, only Counts I and III remain for decision, although the remaining counts are addressed briefly below.

*Standing*

25. As a matter of law, a plaintiff lacks standing to seek a writ of quo warranto or a declaratory judgment challenging the right of a public official to hold office unless the plaintiff claims title to the office and the Attorney General has declined to bring the suit. *Butterworth v. Epsey*, 523 So. 2d 1278, 1278 (Fla. 2d DCA 1988); *Tobler v. Beckett*, 297 So. 2d 59, 61-62 (Fla. 2d DCA 1974); *see also Hall v. Cooks*, 346 So. 3d 183, 188-89 (Fla. 1st DCA 2022). Plaintiffs' claims are incontestably a challenge to the Commissioners' right to hold office, and Plaintiffs do not claim title to the office of Commissioner. They thus lack standing.

26. Analysis begins with Count III for quo warranto, in which Plaintiffs "challenge the right of [the Commissioners] to hold … office." (Doc. 7 ¶ 68). Section 80.01, Florida Statutes, expressly restricts standing to pursue that kind of claim by providing that "any person *claiming title to an office* which is exercised by another has the right," upon refusal by the Attorney General, to seek a writ of quo warranto determining "*the right of the claimant to*

[4] In a footnote in their summary judgment motion, Plaintiffs asserted the appointments contravened article VIII, section 2(b) but made no argument, made no effort to interpret the provision in light of its text, context, and history, and cited no authorities interpreting the provision. (Doc. 81 n.4). When, in opposition, Defendants contested the claim (Doc. 85 at n.2), Plaintiffs offered no reply.

*office*." (Emphasis added). Under the statute, a quo warranto petition that challenges an officeholder's right to office may only be brought by a person claiming title the office upon refusal by the Attorney General. *See State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1936); *Hall*, 346 So. 3d at 188-89; *Fouts v. Boulay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001); *Epsey*, 297 So. 2d at 1278.

27. The Second District's decision in *Epsey* is controlling. There, individuals sought a writ of quo warranto challenging a school board official's right to hold office. 297 So. 2d at 1278. After the trial court dismissed their complaint, the individuals appealed. *Id.* The Second District affirmed based on section 80.01, holding that "appellants are not entitled to bring the suit unless they claim entitlement to the office." *Id.* (also citing *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1938)). Because they did not, they had no standing. *Id.*; *see also Hall*, 346 So. 3d at 189 (explaining that "only the Attorney General or a person claiming title to the office … has standing"); *Tobler*, 297 So. 2d at 61 (holding that quo warranto "may be instituted only by the Attorney General of Florida, or by a person claiming title to the office.").

28. The Second District has also squarely held that litigants cannot avoid section 80.01 with a claim for declaratory judgment. In *Tobler*, the petitioner "attack[ed] the validity" of a city's municipal court by seeking a writ of quo warranto against its municipal judges and a "declaratory judgment that the city was without a municipal court or judicial power." 297 So. 2d at 60, 61. The Second District affirmed a summary judgment that the petitioner lacked standing. *Id.* at 61, 62. He could not proceed in quo warranto because he was "not claiming entitlement to the office and did not request the attorney general to file an action." *Id.* at 61 & n.3. And for the same reason, his request for a judgment declaring the municipal court invalid was "without

merit" because it "would be, in effect, to allow indirectly, by collateral attack, what cannot be accomplished directly." *Id.*[5]

29. Plaintiffs do not allege and have not presented evidence that they claim title to office or that the Attorney General refused to sue on their behalf. In addition, Plaintiffs have not argued that *Epsey* and *Tobler* are distinguishable. (*See* Doc. 84 at 8-12). Nor could they. Count III for quo warranto is titled "Quo Warranto challenging the right of [the Commissioners] to hold office" and alleges that Plaintiffs "challenge the right of [the Commissioners] to hold the office of City Commissioner." (Doc. 7 ¶ 68 & title). Count I seeks the same result through a judgment declaring the Commissioners' appointments to office invalid, declaring any action the Commission has taken invalid, and enjoining the Commission from meeting until all five commissioners are elected. (Doc. 7 at 15). As a matter of law, Plaintiffs lack standing to pursue those claims.

30. Plaintiffs' argument that more recent decisions show they have standing lacks merit because none of decisions they cite involved a challenge to an officeholder's right to office to which section 80.01 applies or, for that matter, even mentioned the statute. The three quo warranto cases Plaintiffs feature most prominently make the point clear. In *Thompson v. DeSantis*, 301 So. 3d 180 (Fla. 2020), the petitioner challenged the authority of a judicial nominating commission and the Governor to nominate and appoint an ineligible candidate to the supreme court, not the candidate's right to the office of justice: The candidate was not commissioned and never held office and, unlike Plaintiffs here, the petitioner did not seek the

[5] *Tobler* is consistent with longstanding authority that one cannot avoid section 80.01 by challenging an officeholder's title through other means. *See also Penn v. Pensacola-Escambia Govt'l Ctr. Auth.*, 311 So. 2d 97, 101 (Fla. 1975) (party cannot assert "a direct attack upon the right to hold office" in bond validation); *McSween v. State Live Stock Sanitary Bd. of Fla.*, 122 So. 239, 244 (Fla. 1929) (injunction unavailable because quo warranto is "the exclusive method of determining the right to hold … a public office").

candidate's ouster (there was no officer to oust), to invalidate her official acts (she had not taken any), or to enjoin the court from hearing cases (she was not a sitting justice). *See id.* at 183-84 & n.3. In *Fla. Dep't of Corrections v. Holt*, 373 So. 3d 969 (Fla. 2d DCA 2023), the petitioner challenged a public defender's authority to appear in civil cases, not her right to office. And *Macnamara v. Kissimme River Valley Sportsmans' Ass'n.*, 648 So. 2d 155 (Fla. 2d DCA 1994), was a challenge to a private riparian owner's authority to fence off public lands, not an official's right to office.

31. While citizens and taxpayers have may have standing in other quo warranto cases, this case is a challenge to the right of public officials to hold office. Section 80.01 applies, and *Epsey* and *Tobler* are binding precedents. Plaintiffs lack standing as a matter of law.

32. Separately, Plaintiffs lack standing on Count I for declaratory judgment because they present no actual controversy. The Second District's decision in *Smith v. Pinellas Park*, 336 So. 2d 1255 (Fla. 2d DCA 1976), controls. There, "residents, taxpayers, freeholders, and electors" sued for a declaration invaliding a city ordinance on the theory that they were entitled to a referendum on the measure under the city charter and were denied the right to vote. *See id.* Although the court had "serious doubts" the ordinance was valid, it affirmed the dismissal of the complaint because the plaintiffs had "no real, immediate legal interest in … a declaration nor a present, bona fide practical need therefor." *Id.* "Along with those similarly situated, [plaintiffs] would appear to be relegated to their remedies at the polls at the next ensuing election." *Id.*

33. As in *Smith*, Count I asserts that interim appointments until the elections in March and August 2024 denied them a right to vote under the Charter. (Doc. 7 ¶ 55). But Plaintiffs have stipulated that they have no injury different from any other member of the community. (Doc. 78 ¶ 5). And they have failed to respond to Defendants' argument that *Smith* controls. Under *Smith*,

plaintiffs remedy is the next election, the first of which (Districts 1 and 3) has already been held and the second of which (Districts 2 and 4) is rapidly approaching.

*Merits of Counts I and III under the Charter*

34. Counts I and III allege that the prior commissioners could not make interim appointments until the March and August 2024 elections because the vacant seats could only be filled by election under Charter Section 3.06(d). Section 3.06 contains three relevant provisions:

- Under Section 3.06(c)(1), the remaining commissioners may make an interim appointment *if* "there is less than six (6) months remaining in the unexpired term" *or* "less than six months before the next regular election." (Doc. 80, Ex. 5).

- Under Section 3.06(c)(2), the remaining commissioners may make an interim appointment if "there are more than six (6) months remaining in the unexpired term" *and* "no regular city election is scheduled in the next six months," but the commission must 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." (*Id.*)

- Under Section 3.06(d), "**[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." (*Id.*) (emphasis added).

35. Plaintiffs have abandoned their claims in Counts II and IV that the appointments for Districts 2 and 4 contravened Section 3.06(c) (*see supra* ¶ 24), and Plaintiffs have never alleged the appointments for Districts 1 and 3 contravened Section 3.06(c). (*See generally* Doc. 7). Plaintiffs' sole claim in Counts I and III is that the vacancies created by the prior commissioners' resignations had to be filled by special election under Section 3.06(d) because they "occur[red] simultaneously." As a matter of law, the vacancies did not "occur simultaneously" and Section 3.06(d) did not prohibit appointments pending the March and August 2024 elections in any event.

36. Municipal charters are interpreted according to principles of statutory construction. *See Liebman v. City of Miami*, 279 So. 3d 747, 751 n.4 (Fla. 3d DCA 2019)

(quotation omitted). Under the "supremacy-of-the-text principle," "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.*, 308 So. 3d 942, 946 (Fla. 2020) (quotation omitted). Undefined terms in the Charter should be given their "usual, ordinary, and commonly accepted meaning," *City of Tallahassee v. Fla. Police Benevolent Ass'n.*, 375 So. 3d 178, 183 (Fla. 2023). Dictionary definitions are often "the best evidence" of ordinary meaning. *Conage v. United States*, 346 So. 3d 594, 599 (Fla. 2022).

37. To determine whether vacancies occurred simultaneously, one must know when a vacancy occurs. Section 3.06(a) of the Charter answers that question by providing "[T]he office of a commissioner **shall become vacant** upon his death, **resignation**, or forfeiture of his office." (Emphasis added). Because Section 3.06(a) states that the office becomes vacant upon a "resignation," a vacancy "occur[s]" under Section 3.06(d) when there has been a "resignation."

38. The Charter does not define "resignation." Plaintiffs have not taken a position on what the term means, but their argument implies an officeholder's announcement that he intends to surrender office at a future date. (*See* Doc. 79 at 13-16). Defendants argue that in Section 3.06, "resignation" is most reasonably understood as the surrender of office. (Doc. 81 at 20-21; Doc. 85 at 23-26). Both interpretations find support in dictionaries.[6] But as used in Section 3.06, it is the most reasonable to read "resignation" as the surrender of office because that identifies with certainty a fixed point when a vacancy happens, which is central to how Section 3.06 operates. *See Ham*, 308 So. 3d at 946 (holding that the "goal" is to "arrive at a fair reading" to "a reasonable reader"). Section 3.06(a) identifies *when* a vacancy happens by reference to fixed points like death, forfeiture, or resignation; Section 3.06(c) fills vacant seats based on *the time*

[6] *See Resign, Resignation*, MERRIAM-WEBSTER DICTIONARY, bit.ly/4dn8QBE (last accessed May 1, 2024); *Resign, Resignation*, COLLINS DICTIONARY, bit.ly/3Uo63Q9 (last accessed May 1, 2024); *Resign, Resignation*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2018).

left in a term of office measured from the point *when* the vacancy happens; and Section 3.06(d) requires calling a special election *when* vacancies "occur" *at the same point in time*. A reader would understand "resignation" to clearly identify an event triggering the operation of Sections 3.06(c) and (d). That points to the surrender of office, which is readily identified and not subject to interpretation.

39. In the context of resignations by municipal commissioners, looking to when a commissioner announced an intention to leave office does not identify a vacancy with certainty. *First*, it requires determining whether a statement qualifies as a resignation when the statement might be ambiguous. Some might interpret a commissioner's oral statement that "I am planning to step down in July" as a statement of the commissioner's attitude, while others might hear it as an announced intention to leave office. *Second*, commissioners can change their plans. Suppose the next week our hypothetical commissioner said, "I'll stay on until the end of my term." Plaintiffs' interpretation does not clearly answer whether there was a vacancy after the first statement about retiring or, if so, whether it ceased to exist later. Because the operative provisions of Section 3.06 depend on knowing with certainty *when* a resignation occurs, Plaintiffs reading is not reasonable.

40. Plaintiffs cite cases applying constitutional and statutory provisions, not at issue here, where officers like judges are deemed to resign when they tender a resignation letter and the Governor accepts it. *See Adv. Op. to Gov. re Sheriff and Jud. Vacancies*, 928 So. 2d 1218, 1220 (Fla. 2006); *Adv. Op. to Gov. (Judicial Vacancies)*, 600 So. 2d 460, 462 (Fla. 1992). That only underscores why "resignation" in Section 3.06 is different because it shows how the formality of a judicial resignation clearly identifies when a vacancy occurs. *See, e.g., Sheriff and Jud. Vacancies*, 928 So. 2d at 1221 (clarifying "resignation" so Governor "may select the

appropriate date"); *Spector v. Glisson*, 305 So. 2d 777, 780 (Fla. 1974) (discussing resignation letter that "left no way out for withdrawal"); *Scott v. Trotti*, 230 So. 3d 340, 342 (Fla. 1st DCA 2018) (discussing "bright-line rule"). A judge can tell the whole courthouse she is quitting, but she has not "resigned" until the Governor gets her letter. Likewise, when the judge sends the letter, there is no doubt what it means. None of that is true when city commissioners talk about potentially quitting at a meeting.[7] In that context, the best reading of "resignation" is the surrender of office.

41. Under Section 3.06(d), the question is whether the vacancies created by the resignations "occur[red] simultaneously." The parties agree "simultaneously" means "at the same time." But they differ over the meaning of "occur," with Plaintiffs arguing it means "to exist or be present" and Defendants arguing it means "to happen." (Doc. 81 at 20; Doc. 84 at 5). When a resignation is defined as a surrender of office, however, the vacancies neither happened nor existed at the same time. The prior commissioners' each surrendered office on a different date: District 4 on December 21, 2024, District 1 on December 26, District 2 on December 27, and District 3 on December 30. (*See supra* ¶¶ 17-20). The four commissioners remaining on December 21, 26, and 27 appointed a replacement for the commissioner that surrendered office, with the final appointment for District 3 being made on January 9, 2024. (*Id.*). Two or more vacancies did not exist at any time. As a matter of law, Section 3.06(d) did not require calling a special election.

[7] At the hearing, Plaintiffs emphasized that Defendants characterized statements by commissioners as sufficiently formal and irrevocable to constitute an announcement of a resignation. That misconstrues Defendants' position. Defendants have argued throughout that the better reading of "resignation" is the date an official surrenders office. (Doc. 81 at 20-21; Doc. 85 at 23-26). They also made an alternative argument based on the authorities Plaintiffs cited about judges' resignations that the vacancies did not "occur simultaneously." (Doc. 85 at 13-21).That was not a concession that the commissioners' statements were "irrevocable" in the legal sense or that "resignation" should not be interpreted as the surrender of office.

42. Even accepting Plaintiffs treatment of a "resignation" as an announcement an official intends to leave office, Section 3.06(d) remains inapplicable because the resignations did not happen at the same time. Section 3.06(a) defines vacancies—the things that must "occur simultaneously"—by reference to the specific events of death, resignation, or forfeiture of office. When used with reference to events like those, "occur" is ordinarily understood to mean "to happen."[8] *See, e.g.*, *S.H. v. Dep't of Child. and Fam's.*, 328 So. 3d 30, 31 (Fla. 5th DCA 2021) (using "occur" and "happen" as synonyms); *Graham v. Langley*, 683 So. 3d 1147, 1148 (Fla. 5th DCA 1996) (same). "Accidents occur" means they happen. "Mistakes occur" means they happen. Likewise, deaths, resignations, or forfeitures—and thus vacancies—occur when they happen.

43. Plaintiffs' interpretation of "occur" as "to exist or be present" is not consistent with the ordinary meaning of the term, as the dictionaries Plaintiffs rely upon cite show. They give as examples of this usage "[t]his bird occurs in New England," "[m]inerals occur naturally," and "[v]iolence of some type seems to occur in every society."[9] But Section 3.06 doesn't address scientific observations or abstract ideas. It addresses specific events: "vacancies," which occur upon a "death, resignation, or forfeiture" and thus occur when they happen.

44. This is confirmed by the usage of "occur" in the context of Section 3.06. For example, Section 3.06(c)(2) provides that when some vacant seats are filled by appointment, the City must "schedule a special election to be held not … more than one (1) year following the *occurrence of the vacancy*." (Emphasis added). The one-year clock plainly starts running when

[8] *See also See Occur*, CAMBRIDGE DICTIONARY, bit.ly/3JPdV8u (last accessed May 5, 2024) (examples of "occur" as "happen"; "If any of these symptoms occur …, consult your doctor" and "Evolution occurs as a result of adaptation"); *Occur*, MERRIAM-WEBSTER DICTIONARY, bit.ly/3xWjyPx (last accessed May 5, 2024) (example of "occur" as "happen"; "The accident occurred at 5 p.m.").

[9] *Occur*, MERRIAM-WEBSTER DICTIONARY, *supra*; *Occur*, CAMBRIDGE DICTIONARY, *supra*.

the vacancy *happens*; it would make no sense for the clock to run from any point it exists or is present. Conversely, when Sections 3.06(c) and (d) refer to the existing condition of an office being vacant, they do not say the "vacancy occurs" or the "occurrence of the vacancy" and instead use expressions like "the vacated seat" or the "vacant commission positions." The context shows that vacancies "occur" when they happen, not whenever they exist or are present.

45. Accordingly, however one defines "resignation," the vacancies here did not "occur simultaneously" because they did not happen at the same time. *See, e.g.*, *Rimmer v. Tesla*, 201 So. 2d 573, 576-77 (deaths "occurred otherwise than simultaneously" when separated in time); *Valdea Co. LLC v. Am. Seating Co.*, 2014 WL 11633700, at *5 (S.D. Fla. May 19, 2014) ("[E]vents that occur at about the same time do not occur simultaneously."). The prior commissioners announced their resignations on different dates: December 12, December 18, December 21, and December 30. (*See supra* ¶¶ 8, 13, 17, 20). Under any interpretation, Section 3.06(d) does not apply.

46. Finally, even if Section 3.06(d) did apply and the City was required to "call a special election" within 15 days, the City was neither required to hold the special election within 15 days nor forbidden from making interim appointments until that election. To "call" an election means to "proclaim[] that an election will take place at a particular time," not to hold it.[10] Here, an election for Districts 1 and 3 was scheduled for March 19, 2024, and the City announced a special election for Districts 2 and 4 on August 20, 2024, the earliest the Supervisor would conduct it. Nothing in Section 3.06(d) precluded the prior commissioners from making interim appointments under Section 3.06(c) until then, and nothing about the appointments

[10] 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).

conflicts with Section 3.06(d)'s requirement that the City "call a special election" to fill vacancies that occur simultaneously.

47. Plaintiffs argue that "if the elective process is available …, it should be utilized." (Doc. 84 at 7) (quotation omitted). Resorting to that policy consideration is unwarranted because Section 3.06(d)'s meaning is clear. *See Conage v. United States*, 346 So. 3d 594, 597 (Fla. 2022). Even if it was not, however, an election for Districts 1 and 3 has already happened, and Plaintiffs produce no evidence that the "elective process" is "available" for Districts 2 and 4 before the Supervisor conducts that election in August 2024. Doubts should be resolved in favor of sustaining the appointments because "[v]acancies in office are to be avoided whenever possible," *Adv. Op. to Gov.*, 600 So. 2d 460, 462 (Fla. 1992), in the interests of government continuing to function.

*Counts II, IV, and V*

48. Plaintiffs abandoned their claims in Counts II and IV that the appointments of the Commissioners for Districts 2 and 4 contravened Section 3.06(c) of the Charter and in Count V that all appointments contravened article VIII, section 2(b) of the constitution. (*See supra* ¶ 24). Had they not done so, however, the Court would still grant summary judgment to Defendants and Intervenor. Plaintiffs lack standing because Counts II, IV, and V are just as much a challenge to the Commissioners title to office as Counts I and III. (*See supra* ¶¶ 25-33).

49. Those counts also fail on the merits. Briefly stated, and as Defendants argue, the appointments of the District 2 and 4 Commissioners were proper under Section 3.06(c)(2) because (a) the term "regular city election" means a regular election for the District involved and (b) it is undisputed that there were more than six months remaining in the District 2 and 4 commissioners and that the regular city election for those Districts was more than six months

away. (Doc. 81 at 21-23). And on Count V, the text, context, and history of article VIII, section 2(b) permit interim appointments pending an upcoming election, even on the unusual facts of this case. (*Id.* at 23-26).

*Mootness and De Facto Officer*

50. The standing and merits issues dispose of this case in Defendants' and Intervenor's favor. In addition, however, Defendants and Intervenor are entitled to partial summary judgment on Counts I and III to the extent they (a) challenge the Commissioners for Districts 1 and 3 and (b) seek declaratory relief regarding past actions of the Commission.[11]

51. With respect to the Commissioners for Districts 1 and 3, Plaintiffs' claims are moot. "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). A decision with respect to Districts 1 and 3 can have no actual effect because the March 2024 election was cancelled for lack of opposition and Commissioners Marriott and Rznewicki were sworn into elected terms on March 26, 2024. A writ of quo warranto or a judgment declaring the invalidity of their appointments has no purpose, beyond the rendition of an advisory opinion, to serve. *See McGraw v. DeSantis*, 358 So. 3d 1279, 1280 (Fla. 5th DCA 2023); *Fla. Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, 465 (Fla. 1st DCA 2017).

52. Plaintiffs assert a live controversy remains because they seek to invalidate actions by the Commission before March 26, 2024, but the only action they identify is the approval of Intervenor's conditional use permit. Plaintiffs cannot challenge the conditional use permit in this

[11] Plaintiffs' prayers for an injunction against future commission meetings and a declaration that the City must follow its Charter (effectively a mandatory injunction) are not ripe because they are supplemental relief available only upon motion *if and after* the Court grants Plaintiffs declaratory relief, which it is not granting. *See* § 86.061, Fla. Stat.; *Alvarez-Sowles v. Pasco Cty.*, --- So. 3d ---, 2024 WL 171894, at *7 (Fla. 2d DCA Jan. 17, 2024).

case; as a matter of law, that is a quasi-judicial decision that is reviewable, if at all, only by way of certiorari.[12] *See Park of Com. Assocs. v. City of Delray Beach*, 636 So. 2d 12, 15 (Fla. 1994); *Lee Cty. v. Sunbelt Equities II, Ltd. P'ship*, 619 So. 2d 996, 1001 (Fla. 2d DCA 1993). Indeed, Plaintiff Protect St. Pete Beach Advocacy Group has already filed a petition for a writ of certiorari challenging the decision making the argument about the Charter it makes here. (Doc. 89, Ex. 1).

53. Plaintiffs' claims are also barred by the *de facto* officer doctrine to the extent they seek to upend past Commission decisions. "[T]he 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 Kane v. Robbins*, 556 So. 2d 1381, 1385 (Fla. 1989). The Commissioners have held office under color of title and in view of the public such that the doctrine bars Plaintiffs' claims regarding past acts. *See Kane*, 556 So. 2d at 1385 (holding that acts of unconstitutionally elected school board members were valid under the *de facto* officer doctrine); *Hall*, 346 So. 3d at 189 (holding that vote by mayor who was not qualified to serve was valid under the *de facto* officer doctrine). Plaintiffs' assertion that the doctrine does not apply because they timely filed suit challenging the Commissioners' right to hold office is not supported by the decisions that they cite.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

A. Plaintiffs' Motion for Summary Judgment (Doc. 79) is DENIED;

B. Defendants' Motion for Summary Judgment on Liability (Doc. 81) and Intervenor's Motion for Summary Judgment (Doc. 76) are GRANTED; and

[12] The issue is not capable of repetition yet evading review lacks merit because Plaintiffs have failed to show "a reasonable expectation" they will "be subjected to the same action again." *Morris Publ'g Grp., LLC v. State*, 136 So. 3d 770, 776 (Fla. 1st DCA 2014) (quotation omitted).

C. Final judgment is rendered in favor of Defendants and Intervenor and against Plaintiffs. Plaintiffs shall take nothing by this action and go hence without day.

Michael F. Andrews
Circuit Court Judge

Copies to all counsel of record