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; LEANNE ELIZABETH FARIS; JODY POWELL; CHARLES BOH; CONNIE BOH; LISA ROBINSON; HARRY METZ; EDWARD BARTON TEELE; and WILLIAM RODRIGUES,

Plaintiffs,

V.

CASE NO. 24-000041-CI

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

Defendants;

and

CP ST. PETE, LLC

Intervenor;
_____/

INTERVENOR CP ST. PETE, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

COMES NOW Intervenor CP St. Pete, LLC ("CP St. Pete"), by and through its undersigned counsel and files this Reply in Support of its Motion for Summary Judgment and as grounds states:

CP St. Pete has received Plaintiffs' May 1, 2024 filing titled "Response in Opposition to Defendants' Motion for Summary Judgment" ("Plaintiff's Response"), which Plaintiffs characterize as an opposition to (1) Defendants' Motion for Summary Judgment and (2) the

Motion for Summary Judgment filed by CP St. Pete. However, in Plaintiffs' Response, Plaintiffs have failed to either address a single substantive argument made by CP St. Pete, or dispute a single factual assertion made by CP St. Pete. But ***pretending CP St. Pete does not exist is not a strategy for success***. Because Plaintiffs have essentially conceded CP St. Pete is entitled to summary judgment, the Court should now dismiss all of Plaintiffs' claims for the reasons set forth in CP St. Pete's Motion. Lloyd S. Meisels, P.A., v. Dobrofsky, 341 So. 3d 1131, 1134-36 (Fla. 4th DCA 2022) (recognizing that pursuant to rule 1.510(c)(5), the requirement of filing a response is mandatory, and if one is not filed, rule 1.510(e) "provides discretionary options for the trial court," including "grant[ing] summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it").[1] In any case, as set forth below, Plaintiffs' arguments are wrong for obvious reasons.

1. PLAINTIFFS' *QUO WARRANTO* STANDING ARGUMENT FAILS BECAUSE PLAINTIFFS HAVE NOT MADE A CONSTITUTIONAL *QUO WARRANTO* CLAIM CHALLENGING THE RIGHT OF AN OFFICEHOLDER TO HOLD OFFICE

Quo warranto proceedings challenging the right of a person to hold office (such as this case) are generally controlled by Fla. Stat. Ann. § 80.01, and under its plain language, only the Attorney General or the alleged person "rightfully entitled to the office" has standing to pursue such a *quo warranto* claim; ordinary "citizen and taxpayer" standing is inapplicable. This is settled law in Florida. Hall v. Cooks, 346 So. 3d 183, 188–89 (Fla. Dist. Ct. App. 2022), reh'g

[1] For example, Plaintiffs have not responded to CP St. Pete's Motion as it relates to Plaintiff's non-*quo warranto* claims (Counts I, II and V of the Amended Complaint). In CP St. Pete's Motion, CP St. Pete explains these claims fail *inter alia* because (1) Plaintiffs have neither a common-law nor a statutory right to challenge the Commissioners' appointments, and (2) Plaintiffs admit they have not sustained "special harm," and they therefore have no standing as a matter of law. As it is clear from Plaintiffs' response that Plaintiffs have now abandoned the non-*quo warranto* claims, the Court should now dismiss these claims without further inquiry.

denied (Sept. 2, 2022); McGhee v. City of Frostproof, 289 So. 2d 751, 752 (Fla. Dist. Ct. App. 1974); Tobler v. Beckett, 297 So. 2d 59, 61 (Fla. Dist. Ct. App. 1974).

The only applicable exception to this rule is where a plaintiff makes a *Constitutional quo warranto* claim in the Florida Supreme Court. Boan v. Florida Fifth Dist. Court of Appeal Judicial Nominating Comm'n, 352 So. 3d 1249, 1252 (Fla. 2022). This exception, that "citizen and taxpayer" standing applies to Constitutional challenges, stands to reason, because as to Constitutional claims, the Supreme Court has direct authority under Fla. Const. art. V, § 3 (b) (8) to issue writs of *quo warranto*. Boan, 352 So.3d at 1252. In this case, Plaintiffs have not made a Constitutional *quo warranto* claim, and Plaintiffs have not lodged their Complaint in the Supreme Court. Thus, the Constitutional "citizen and taxpayer" standing exception described in Boan does not apply.

Nevertheless, to establish standing, Plaintiffs rely on Boan and Thompson v. DeSantis, 301 So. 3d 180 (Fla. 2020). Like Boan, in Thompson, the Supreme Court explained that because the claim at issue was a Constitutional claim, the Supreme Court's authority to issue writs of *quo warranto* derived from Article V, section 3(b)(8) of the Constitution, and therefore, ordinary "citizen and taxpayer" standing applied. Thompson, 301 So. 3d at 184. In so doing, the Court relied upon the lengthy line of cases stating that "citizen and taxpayer" standing applied to Constitutional *quo warranto* challenges in the Supreme Court. Id. (Citing Whiley v. Scott, 79 So. 3d 702, 705 (Fla. 2011) (citizen and taxpayer standing applied to a *quo warranto* challenge asserting an executive order suspending certain agency rulemaking exceeded the governor's constitutional authority); and Pleus v. Crist, 14 So. 3d 941 (Fla. 2009) (petitioner had standing as a "citizen and taxpayer" to seek mandamus relief compelling the governor to comply with his constitutional duty to fill a judicial vacancy.)).

CP St. Pete does not dispute that litigants have "citizen and taxpayer" standing to lodge Constitutional *quo warranto* challenges in the Supreme Court. But this is not such a case – Plaintiffs have not made a Constitutional *quo warranto* claim and this case is not before the Supreme Court. The ***Constitution*** does not give *this* Court the right to issue writs of *quo warranto* as to Plaintiffs' claims; thus standing for *quo warranto* challenges to the right of officeholders to hold office is controlled by Fla. Stat. Ann. § 80.01, which is crystal clear that standing only exists for the Attorney General and the alleged person "rightfully entitled to the office." Hall, Supra; McGhee, Supra; Tobler, Supra. Because Plaintiffs are neither, they have no standing as a matter of law to dispute the rights of the Commissioners in this case to hold their offices, and as a result, Plaintiffs' *quo warranto* claims must be dismissed.[2] [3] [4]

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[2] For this same reason, Plaintiffs' reliance on Chiles v. Phelps, 714 So. 2d 453, 456 (Fla. 1998) ("we have recognized that members of the legislature have standing as citizens and taxpayers to challenge alleged unconstitutional acts of the executive branch"); and Martinez v. Martinez, 545 So. 2d 1338, 1339 (Fla. 1989) (plaintiff contended "Governor Martinez does not have the constitutional power to call more than one special session dealing with the same subject") is misplaced. Because these cases involved Constitutional *quo warranto* challenges in the Supreme Court, ordinary "citizen and taxpayer" standing applied. However, this is not such a case.

[3] Plaintiffs' reliance on Florida Dep't of Corr. v. Holt, 373 So. 3d 969, (Mem)–970 (Fla. Dist. Ct. App. 2023) (motion to prevent a public defender from representing a client in a case involving a civil lien); and Macnamara v. Kissimmee River Valley Sportsmans' Ass'n, 648 So. 2d 155, 164 (Fla. Dist. Ct. App. 1994) (challenging the ability of a riparian owner to fence-off a portion of state-owned land) is equally misplaced, because these cases did not involve challenges to the right of an officeholder to hold office. Because the *quo warranto* claims in Holt and McNamara were ***not*** controlled by Fla. Stat. Ann. § 80.01, "citizen and taxpayer" standing applied. However, unlike Holt and McNamara, the instant case is a direct challenge to the right of the Commissioners to hold office, and therefore, "citizen and taxpayer" standing does not apply. Hall, Supra; McGhee, Supra; Tobler, Supra

[4] As noted in CP St. Pete's Motion for Summary Judgment, even if *quo warranto* standing could exist (it cannot), the Court should not exercise its discretion to hear the *quo warranto* claims because Plaintiffs have another more adequate remedy, and the Court should not rule on the procedural decisions of the Commission. Plaintiffs have neither addressed nor contravened this. Accordingly, on this basis as well, the Court should dismiss the *quo warranto* claims.

2. PLAINTIFFS' ARGUMENT THAT THE COMMISSION HAD NO RIGHT TO APPOINT INTERIM COMMISSIONERS FAILS, BECAUSE IT IGNORES THE DISCRETIONARY AUTHORITY OF THE COMMISSION TO MAKE APPOINTMENTS UNDER SECTION 3.09 OF THE CHARTER

In Plaintiffs' Opposition, Plaintiffs (for the first time) have clarified that they do not challenge the Committee's conduct in (1) calling a special election for Districts 2 and 4 in August 2024, and (2) proceeding with a special election in March 2024 for Districts 1 and 3. Plaintiffs' only argument now appears to be that (according to them) because Section 3.6 (d) of the Charter applies, and Section 3.6 (c) does not, the City's appointment of interim Commissioners was illegal:

> The City tellingly argues that "[t]here were not two or more *resignations* that occurred at the same time." City's Motion at 21 (emphasis added). But it is not resignations—but rather vacancies—that must occur simultaneously to trigger section 3.06(d). ***For the reasons explained in Plaintiffs' Motion for Summary Judgment, multiple vacancies occurred simultaneously and the commission was without authority to appoint interim commissioners***.
>
> The City additionally argues that it satisfied the requirements of section 3.06(d) by calling for special elections in March and August 2024. The ***Plaintiffs acknowledge that the commission called for special elections***. *See* Stip. ¶¶ 22-23. ***What the Plaintiffs question***—what their quo warranto petition seeks to adjudicate—***is what authority the commission had to appoint interim commissioners***.
>
> The City cannot rely on section 3.06(c) for this authority. Section 3.06 states that "*A* vacancy on the commission shall be filled in one of the following [two] ways." (emphasis added). This section repeatedly refers to single vacancies by using singular nouns, i.e., "a vacancy," "the unexpired term," "chose a successor," "the newly elected commissioner" and "the occurrence of the vacancy." When multiple vacancies occur, section 3.06(c) no longer controls and the commissioner no longer has the authority to appoint interim commissioners. ***Instead, the extraordinary vacancies provision, section 3.06(d), controls and the only option is to "call a special election to fill the vacant commission positions***."

[Plaintiff's Brief, p. 6] (emphasis supplied except where indicated).

However, this argument fails because it (inexplicably) ignores the broad grant to the Commission of discretionary authority to make appointments in Section 3.09 of the Charter. Relevant here, Section 3.09 of the Charter states:

> **Sec. 3.09. - Commission appointments.**
>
> The city commission shall appoint but not be limited to the following offices:
>
> (a) City clerk,
> (b) City manager,
> (c) City attorney,
>
> ***and such other officials that they deem necessary; provided this power to appoint officials shall not be construed to authorize the city commission to make appointments of administrative officials or interfere with the powers granted to the city manager ...***

[Charter, § 3.09] Section 3.07 of the Charter, titled "Prohibitions," states in relevant part:

> (a) *Appointment and removals.* Neither the commission nor any of its members shall in any manner dictate the appointment or removal of any city ***administrative officers or employees*** whom the manager or any of his subordinates are empowered to appoint ...

[Charter, § 3.07 (a)] And, Section 3.06 states in relevant part:

> (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.

[Charter, § 3.06 (c) – (d)]

In construing these provisions, the Court must utilize accepted principles of statutory construction. Courts must give effect to every portion of a statute, and cannot deem any portion of a statute superfluous. See Todd v. Johnson, 965 So. 2d 255, 260 fn. 7 (Fla. Dist. Ct. App. 2007) ("Another rule of statutory construction counsels against deeming any portion of a statute superfluous."); Smith v. Rodriguez, 269 So. 3d 645, 647 (Fla. Dist. Ct. App. 2019) ("[I]t is a cardinal rule of statutory construction that the entire statute under consideration must be considered in determining legislative intent, and effect must be given to every part of the section and every part of the statute as a whole."); Barr v. Dep't of Health, Bd. of Dentistry, 954 So. 2d 668, 669 (Fla. Dist. Ct. App. 2007) ("The principles of statutory construction require reconciliation among seemingly disparate provisions of law in order to give effect to all parts of the law."). Courts also cannot give a statute a reading that would lead to an absurd result. M.D. v. State, 993 So. 2d 1061, 1063 (Fla. Dist. Ct. App. 2008) ("Another basic rule of statutory construction requires a court to avoid a literal interpretation that would result in an absurd or ridiculous conclusion.")

Moreover, in Florida, "*a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.*" Welch v. State, 337 So. 3d 517, 518 (Fla. Dist. Ct. App. 2022). Where there is an apparent conflict, the specific statute is "an exception to the general terms of the more comprehensive statute." Id.

Here, Section 3.09 of the Charter gives the Commission a broad grant of inherent discretionary authority to appoint "***such other officials that [the Commission] deem necessary***."[5] [Charter, § 3.09] The only exceptions to this broad power are for administrative officials. [Charter, §§ 3.07, 3.09] Thus, in ***all*** cases, except for administrative officials, the Charter sets forth a "general rule" that Commission has broad discretionary authority to make appointments.

In the face of that general grant of discretionary authority, Section 3.06 (c) announces two wrinkles. In circumstances set forth in Section 3.06 (c) (1) and (c) (2), that ***discretionary authority*** becomes a ***mandate***. If Section (c) (1) applies, the Commission "shall choose a successor to serve until the newly elected commissioner is qualified." If Section (c) (2) applies, "the commission shall fill the vacancy on an interim basis as provided in subsection (1)." In those two (2) instances, the Commission ***must*** fill the vacancy; in ***all*** other instances, the Commission has ***discretion*** to appoint officials "that they deem necessary."

Accordingly, the flaw in Plaintiffs' argument is they assume that because (according to them) Section 3.06 (d) does not specifically direct the Commission to appoint interim Commissioners, the Commission had no discretionary power to do so. They are wrong. The discretionary power to appoint officials the Commission "deem(s) necessary" is set forth in Section 3.09 of the Charter. The fact that the Charter does not make it mandatory in Section 3.06 (d) (as in Section 3.06 (c) (1) and (c) (2)) does not eliminate this broad inherent discretionary power. The Court simply cannot ignore the broad grant of discretionary power to make appointments in Section 3.09 of the Charter, which quite obviously authorizes the

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[5] See Murphy v. Luongo, 768 A.2d 814, 817 (N.J.Super.App. Div. 2001) (charter provision granting to a Mayor "such further appointing power with the advice and consent of council, *or otherwise*" "contemplates the inherent power to make temporary appointments.").

Commission to make interim appointments of Commission members, because to do so here would be to render it superfluous. It would also create an absurd result, as it would mean that the town of St. Pete Beach would effectively be without a government until an election could be held, a result that the Charter obviously did not intend.

The bottom line is that regardless of whether Section 3.06 (c) (1), Section 3.06 (c) (2), or Section 3.06 (d) of the Charter applied, it was absolutely appropriate for the Commission to make interim appointments until elections could be held. The Commission's exercise of its discretionary power to make the interim appointments for Districts 1 and 3 until the scheduled March 2024 election, and for Districts 2 and 4 until the special election scheduled for August 2024, was 100% appropriate and an authorized exercise of the Commission's discretionary power. At bottom, Plaintiff's argument that the Commission had no such authority fails, because Plaintiffs ask the Court to ignore the express authority granted to the Commission. Accordingly, regardless of which section of Section 3.06 applies, summary judgment should be granted as to all of Plaintiff's claims.

3. PLAINTIFFS' INTERPRETATION OF SECTION 3.06 OF THE CHARTER IS NOT CORRECT

Additionally, focusing on the sentence "Should two (2) or more vacancies occur simultaneously, on the commission" in Section 3.06 (d) of the Charter, Plaintiffs argue that the most plausible interpretation of the word "occur" is to "exist," and thereby argue "multiple vacancies existed at the same time," such that (according to them), Section 3.06 (d) applies. [Plaintiffs' Brief, p. 6] This argument fails, however, because it ignores the definition of "vacancies" in Section 3.06 (a), which provides "the office of a commissioner shall ***become vacant*** upon his … resignation … ." Plainly, the phrase "***become vacant***" means when an officer physically leaves his office, because an office would not "become vacant" if the officer

is still occupying his office (albeit with an intent to leave in the future). For example, in In re Advisory Opinion to the Governor, 158 So. 441, 442 (Fla. 1934), the Supreme Court explained:

> Under the Constitution and laws of this state, the Governor is authorized to grant a commission to fill a vacancy only when an office '***shall become vacant.***' When an officer tenders his resignation to take effect at a subsequent date, the office ***does not 'become vacant' until the date on which the resignation becomes effective***, though before such effective date of the resignation, the Governor may grant a commission to an appointed successor to be effective the day the resignation takes effect.

Here, it is undisputed that:

- The resignation of Commissioner Marone (District 4) became effective December 21, 2023 [See December 21, 2023 City Commission Meeting Transcript, ("12/21/23 Tr."), Intervenor MSJ, Ex. "1-C-3," p. 19.5-8];

- The resignation of Commissioner Grill (District 2) became effective December 27, 2023 [See December 27, 2023 City Commission Meeting Transcript, ("12/27/23 Tr."), Intervenor MSJ, Ex. "1-E-3" p. 5.24-6.3];

- The resignation of Commissioner Graus (District 1) became effective on December 26, 2023 [See December 26, 2023 City Commission Meeting Transcript ("12/26/23 Tr."), Intervenor MSJ, Ex. "1-D-3," p. 6.1-8]; and

- The resignation of Commissioner Friszowlowski (District 3) became effective on December 30, 2023. [See December 28, 2023 City Commission Meeting Transcript, ("12/28/23 Tr."), Intervenor MSJ, Ex. "1-F-3," p. 9.25-10.1]

After each resignation became effective, it is undisputed a new appointment was made prior to the next resignation. [See Statement of Undisputed Facts, Intervenor MSJ, Ex. "1," ¶¶ 14-17] Thus, even assuming *arguendo* that the vacancies need only to "exist" at the same time, no Commissioner ever resigned during any period in which there was another "existing" vacancy.

Plaintiffs' reading of Section 3.06 is incorrect for a different reason as well, as follows:

- Section 3.06 (c) (1) provides generally that under certain circumstances (a vacancy with less than six months or less than six months until the next election), the Commission shall appoint a Commissioner to fill the vacancy;

- Section 3.06 (c) (2) provides generally that under certain circumstances (a vacancy with more with no election scheduled within six months), the Commission shall appoint a

Commissioner to fill the vacancy, and schedule a special election to be held within sixty (60) days; and

- Section 3.06 (d) provides generally that if there are "simultaneous vacancies," a special election shall be "called" within fifteen days.

Accordingly, Sections 3.06 (c) and (d) clearly require that, for each individual Commissioner who "vacates" her office, an appointment must be made to fill the "vacancy" until the next election can be held (in accordance with Section 3.06 (c)), but under Section 3.06 (d) if the vacancies are "simultaneous," the special election must be called within fifteen days. In other words, the happenstance that a vacancy is "simultaneous" does not eliminate the applicability of Sections 3.06 (c), it only imposes a different requirement that a special election must in all cases be called within fifteen days.

For example, assume the following set of facts:

- Commissioners A and B vacate their office simultaneously;
- Commissioner A has less than six months remaining in his term (and his next designated election is in five months); and
- Commissioner B has one year remaining in his term and there is no scheduled election for his seat within that time.

In that example (which mirrors the facts of this case as alleged by Plaintiffs):

- Section 3.06 (c) (1) would apply to Commissioner A (because he has less than six months in his term), and therefore, the Commission must appoint a successor;
- Section 3.06 (c) (2) would apply to Commissioner B (because he has one year remaining in his term), and therefore, the Commission must appoint a successor, but
- Because the resignations were "simultaneous," Section 3.06 (d) requires the special election to be "called" within fifteen days, instead of the procedures in Section 3.06 (c).

Under Florida's statutory rules of construction, this is the only possible reading that can be given to Section 3.06 (c) and (d). Quite simply, it "is axiomatic that all parts of a statute must be read *together* in order to achieve a consistent whole. Where possible, courts must give effect

to *all* statutory provisions and construe related statutory provisions in harmony with one another." Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla.1992). Courts must "give effect to all parts of the statute to achieve a consistent whole and avoid an interpretation that would render a part of the statute meaningless." Coastal Creek Condo. Ass'n, Inc. v. Fla Tr. Services LLC, 275 So. 3d 836, 840 (Fla. Dist. Ct. App. 2019). Also, the "principles of statutory construction require reconciliation among seemingly disparate provisions of law in order to give effect to all parts of the law." Barr v. Dep't of Health, Bd. of Dentistry, 954 So. 2d 668, 669 (Fla. Dist. Ct. App. 2007).[6]

In light of these principles, Plaintiffs' argument cannot stand, because it assumes that when a resignation is "simultaneous," Section 3.06 (c) ceases to exist and becomes meaningless. For example, in the facts set forth above, although Section 3.06 (c) (1), on its face, would apply to Commissioner A, and Section 3.06 (c) (2) applies to Commissioner B, Plaintiffs contend the fact that the resignation is "simultaneous" renders Section 3.06 (c) superfluous, and only Section 3.06 (d) applies. In other words, according to Plaintiffs, an irreconcilable conflict arises between Section 3.06 (c) and (d), and in the event of a "simultaneous vacancy, the Court must choose Section 3.06 (d) over Section 3.06 (c).

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[6] On Page 6 of Plaintiffs' brief, Plaintiffs contend the statutory principal that the "specific controls the general" is applicable, and Plaintiffs argue that because Section 3.06 (c) references "a vacancy," while Section 3.06 (d) references "vacancies," "when multiple vacancies occur, section 3.06 (c) no longer controls, and the commissioner no longer has authority to appoint interim commissioners." This argument fails on many fronts. First, Section 3.06 (c) is just as "specific" as Section 3.06 (d), perhaps more so. Second, even where two "vacancies" occur at the same time, there would still be a "vacancy" as to each Commissioner with unique and different circumstances that need to be assessed individually. For example, in the fact pattern set forth above, Commissioner A has less than six months in his term, but Commissioner B has one year remaining. Reading the plain language of the provision, ***both*** Section 3.06 (c) and Section 3.06 (d) apply, and Plaintiffs' reading (which assumes a conflict) is therefore untenable.

Plaintiffs' suggested reading therefore directly contravenes settled principles of statutory construction, which require the Court to give effect to all provisions of a statute, and harmonize seemingly conflicting statutory provisions. The only way to do this is to rule that in cases where ***both*** Section 3.06 (c) and Section 3.06 (d) apply, the appointments must be made in accordance with Section 3.06 (c), but the special election must be as directed by Section 3.06 (d).

Applying the correct statutory interpretation, it is clear that the Commission properly appointed interim Commissioners pursuant to Section 3.06 (c), and properly called a special election under Section 3.06 (d). Because Plaintiffs' suggested reading runs afoul of accepted principles of statutory interpretation, summary judgment should be granted as to all Plaintiffs' claims for this reason as well.

4. PLAINTIFFS' RELIANCE ON *SPECTOR VS. GLISSON* AND ITS PROGENY IS MISPLACED BECAUSE THERE WAS NO AVAILABLE ELECTIVE PROCESS

Additionally, relying on Spector v. Glisson, 305 So.2d 777, 781 (Fla. 1974), and its progeny, Plaintiffs argue that in the event of a conflict between statutory provisions (which Plaintiffs argue exist in this case), Florida courts "strongly favor the interpretation that ensures the voting public has the opportunity to elect public officials." At the same time, however, Plaintiffs admit that the core holding in Spector is that "***if the elective process is available, and if it is not expressly precluded by the applicable language***, it should be utilized to fill any available office by vote of the people at the earliest possible date." [Plaintiffs' Brief, p. 7]

As CP St. Pete explained more fully in its response to Plaintiffs' Motion for Summary Judgment, the Spector line of cases is inapplicable for multiple reasons. Briefly stated, Spector involved a definition of "vacancy" that is different than that set forth in the Charter, and Spector dealt with a factual scenario where an official resigns, to take effect after an intervening election

is to take place. In that scenario, Spector found that the term "vacancy" should be interpreted to permit the public to vote on a successor in the scheduled intervening election.

But as noted in C.P. St. Pete's Opposition to Plaintiffs' Motion for Summary Judgment, this case presents a completely different factual scenario. First, in this case, there was (obviously) no scheduled intervening election between roughly December 12-18 (when the Commissioners first raised the issue of their resignations) and roughly December 21-30 (when the resignations occurred). Thus, even if Spector interpreted a "vacancy" definition similar to the Charter (it did not), Spector would be inapplicable.

Moreover, on its face, Spector applies only in a scenario where "the elective process is available, and if it is not expressly precluded by the applicable language." Here, in late December 2023, the next scheduled election for Districts 1 and 3 was in March 2024, and the next scheduled election for Districts 2 and 4 was in March 2025. It is undisputed that "Prior to December 18, 2023, the Supervisor of Elections advised that it would not hold a special election if one was necessary" [Statement of Undisputed Facts, Intervenor MSJ, Ex. "1," ¶¶ 4], and the earliest a special election could be held was August 2024. [Statement of Undisputed Facts, Intervenor MSJ, Ex. "1," ¶¶ 23] As a result, St. Pete was precluded from moving forward with a special election as a matter of law. Fla. Stat. Ann. § 100.151 provides:

> County commissioners or the governing authority of a municipality shall not call 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 can be available.

Thus, not only was the elective process ***unavailable*** during (at least) roughly the first quarter of 2024, but the municipality was precluded ***by statute*** from holding a special election

without the consent of the Supervisor of Elections.[7] Accordingly, Spector and its progeny have no applicability whatsoever.

5. PLAINTIFFS' RELIANCE ON *TREASURE, INC.* TO AVOID THE *DE FACTO* OFFICER DOCTRINE IS MISPLACED

Finally, relying on Treasure, Inc. v. State Beverage Dept., 238 So. 2d 580, 585 (Fla. 1970), Plaintiffs argue that because Plaintiffs filed their Complaint prior to the issuance of the Sirata Conditional Use Development Permit (the "Development Permit"), CP St. Pete could not have "reasonably relied" upon its belief that the Commission members properly occupied their offices. According to the Plaintiffs, based on Treasure, Inc., an exception to the *de facto* officer doctrine applies where any challenge is filed to the authority of a *de facto* officer.

Treasure, Inc. is inapplicable, however, because in that case, after the Beverage Department of Florida issued a show cause order to the plaintiff, and the Governor appointed a "Substitute Beverage Director" without a formal commission as required by the Constitution, plaintiff filed a "Suggestion of Lack of Jurisdiction and Authority," asserting the Substitute Beverage Director had no authority to hear the case, but the Substitute Beverage Director overruled the objection, heard the case, and issued a $1,000 fine. After the plaintiff appealed, the Beverage Department asserted a defense that the Substitute Beverage Director was a *de facto* officer, but the Supreme Court rejected that defense because the plaintiff – a direct party to the proceeding – objected to the involvement of the Substitute Beverage Director ***before*** the Substitute Beverage Director issued his ruling. The Supreme Court stated:

> [W]hen 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

[7] Because St. Pete was precluded as a matter of law from holding a rogue special election without the consent of the Supervisor of Elections, Plaintiffs assertion (without citation to authority) on Page 21 of its Brief that the St. Pete was required to do so because it was "not impossible" is meritless.

> 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.

Treasure, Inc. v. State Beverage Dept., 238 So. 2d 580, 585 (Fla. 1970). In other words, because the ***plaintiff*** in the beverage proceeding was challenging the ability of the Substitute Beverage Director to hear the case, the ***plaintiff*** was not relying on the Substitute Beverage Director being a *de facto* officer, and therefore, the doctrine did not apply.

By contrast, in this case, Plaintiffs' true motivation in pursuing these claims are to overturn the March 2024 Sirata Conditional Use Development Permit that was issued to CP St. Pete. However, ***Plaintiffs were not a party to that proceeding***. CP St. Pete ***was*** a party to that proceeding, it quite obviously relied upon the authority of the Commission to hold and rule upon its request for the Development Permit, and it was plainly justified in doing so.

Nevertheless, because Plaintiffs filed the instant case, Plaintiffs now contend that CP St. Pete was required to accept all of Plaintiffs' claims as true, and refuse to continue its pursuit of its Development Permit based solely on the Plaintiffs' view of the world. Plaintiffs cite to no case to assert that Plaintiffs' subjective belief about the authority of the Commission is imputed to CP St. Pete, or that all persons who become aware of Plaintiffs' claims are no longer entitled to rely upon acts of their municipal government. Quite obviously, Treasure, Inc. neither states nor implies as much.[8]

At the end of the day, Florida law is clear that a "de facto officer's acts are as valid and binding upon the public or upon third persons as those of an officer de jure." Kane v. Robbins, 556 So. 2d 1381, 1385 (Fla. 1989). Put simply, CP St. Pete had every right to appear before the

[8] Even if the Court could impute Plaintiffs' subjective beliefs regarding the authority of the Commission to CP St. Pete (despite their being no authority for this), whether CP St. Pete's reliance is justifiable would be, at a minimum, a question of fact. M/I Schottenstein Homes, Inc. v. Azam, 813 So. 2d 91, 92 (Fla. 2002).

Commission and believe it had authority to issue the Development Permit. Even if Plaintiffs had standing and their claims were otherwise meritorious (they are not), this Court cannot now void all of the intervening decisions of the Commission, including the Sirata Development Permit.

WHEREFORE, based on the foregoing, Intervenor CP St. Pete, LLC requests that this Court enter summary judgment as a matter of law against Plaintiffs as to all claims in Plaintiffs' Amended Complaint, and for such other relief as this Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the forgoing has been sent via Electronic Mail to Samuel J. Salario, Jr., samuel@lawsonhuckgonzalez.com, 1700 South MacDill Avenue, Suite 300, Tampa, Florida 33629, and Andy Bardos, andy.bardos@gray-robinson.com, 301 South Bronough Street, Suite 600, Tallahassee, Florida 32031.

By: */s/ George M. Vinci, Jr.*

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Dated: May 7, 2024