IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. CACE-22-016854

MARIE MURRAY MARTIN,

***Petitioner*,**

vs.

RODNEY GABRIEL VELEZ; BROWARD SUPERVISOR OF ELECTIONS AND CANVASSING BOARD, Joe Scott; BROWARD COUNTY SCHOOL BOARD, Chair Torey Alston,

Respondents.
_____/

RESPONDENT ROD VELEZ'S MOTION TO DISMISS AMENDED PETITION FOR *QUO WARRANTO* WITH PREJUDICE, WITH ALTERNATIVE ANSWER AND AFFIRMATIVE DEFENSES PURSUANT TO FLA. STAT. § 102.168(6)

Respondent Rod Velez, through his counsel, respectfully moves to dismiss Petitioner Marie Murray Martin's Amended Petition for Writ of *Quo Warranto* (the "Amended Petition") with prejudice. Additionally, without waiver of his argument that Petitioner has failed to state a cause of action for an election contest, and in an abundance of caution, Velez also files an answer and defenses to any possible election contest, as stated in Fla. Stat. § 102.168(6). In support, Respondent Velez states as follows:

MOTION TO DISMISS

I. INTRODUCTION

This case stems from the November 2022 General Election for Broward County School Board, District 1. Respondent, Rod Velez, defeated Petitioner, Marie Murray Martin, in the election by a tally of 30,735 votes (52.36%) to 27,959 votes (47.64%). **Exhibit A**. Petitioner admits in her Amended Petition for Writ of *Quo Warranto* ("Amended Petition") that she lost the election.

Petitioner now seeks a writ of *quo warranto* to prevent certification of the election (which has already happened), and to prevent Respondent from being sworn in as a member of the Broward County School Board (which has not yet happened), generally relating to Respondent's prior felony conviction from 1995.

Dating back to the summer of 2022, months prior to the election, Petitioner provided notice of Velez's felony conviction to the media, Supervisor of Elections, Broward County Attorney's Office, State Attorney's Office, Attorney General, and Florida Department of State, including the Office of Election Crimes and Security. Yet, she took no steps to bring an action in court related to Velez's qualifications until after she had soundly lost the election. Accordingly, Petitioner sat on her rights, setting in motion a plan to disenfranchise Broward County's voters in the event she lost the race, which she ultimately did by nearly five percent of the vote.

Principally, Petitioner's Amended Petition is framed as an alleged failure of Respondent to properly qualify before the election. In fact, Petitioner argues that Respondent violated Fla. Stat. § 104.011, which makes it a crime to willfully swear

or affirm falsely to an oath or affirmation in connection with voting or elections, due to Respondent's submission of his qualifying paperwork indicating he was qualified to hold office.

However, this case should be dismissed and Respondent should be permitted to take and hold office. Dismissal is appropriate for the following reasons:

First, this Court lacks jurisdiction to issue a writ of *quo warranto* because Petitioner lost her race for School Board, because Respondent has not yet been sworn into service on the School Board, and because the Attorney General has not refused to institute an action against Velez.

Second, the Amended Petition clearly seeks *quo warranto* and does not properly seek an election contest. But even if it did, the claim would fail to state a cause of action.

Third, neither *quo warranto* nor an election contest can lie because Respondent Velez is constitutionally eligible to hold office. It is undisputed that Velez has completed all terms of sentence within the meaning of Article VI, Section 4 of the Florida Constitution, as amended by Florida voters' enactment of Amendment 4 in 2018. It is also undisputed that Amendment 4 restored Velez's right to vote. But that is not all Amendment 4 did for Velez. As will be discussed at length herein, Amendment 4 also restored Velez's right to hold office. This is clear because principles of statutory and constitutional interpretation, as well as textual, legal, and historical analyses, all show conclusively that Amendment 4 restores a returning citizen's right to hold office upon his or her completion of all terms of sentence.

Fourth, equitable considerations and respect for the democratic process require that any doubts as to Velez's eligibility to hold office should be construed in favor of Velez. To hold otherwise would wrongly disenfranchise Broward County voters who made the choice to elect Velez by nearly five percentage points despite significant media attention paid to Velez's felony conviction in advance of the election.

Fifth, dismissal is appropriate because the Court should deem Velez eligible to hold office since he applied to the Florida Office of Executive Clemency for restoration of his civil rights in September 2022. As of March 2021, the process for restoration of civil rights became an "automatic" process for applicants whose right to vote was restored pursuant to Amendment 4, without the need for a hearing. Therefore, any possible ineligibility to hold office stemming from Velez's prior felony conviction will immediately terminate upon the "automatic" processing of Velez's application, thereby allowing Velez's service on the Broward County School Board. The Broward County electorate should not be disenfranchised based upon an "automatic" process not having completed.

Sixth, assuming *arguendo* that the Amended Petition sufficiently alleges an election contest, dismissal is appropriate because it is clear from the face of the pleading that the claim is barred by the doctrines of laches, estoppel, and waiver. "The general view, and that adopted in Florida, is that 'barring fraud, unfairness, disenfranchisement of voters, etc., it is too late to attack the validity of an election after the people have voted.'" *Levey v. Dijols*, 990 So. 2d 688, 694 (Fla. 4th DCA 2008). "[A]s a matter of public policy, '[an] aggrieved party cannot await the outcome of [an]

election and then assail preceding deficiencies which he [or she] might have complained of . . . before the election." *Shamburger v. Washington*, 332 So. 3d 1071, 1074 (Fla. 2d DCA 2021). As noted above, Petitioner has known about Velez's felony conviction for months and even notified the media and governmental figures alike, dating back for months before the election took place. Yet, rather than seeking judicial redress at a time when the Court could have fashioned some remedy before the election, Petitioner instead sat on her rights and only filed suit after she had soundly and decidedly lost the election. This clearly reflects an effort by Petitioner to lay in wait, playing both sides of the coin to her sole benefit. Either Petitioner would win the election, or else she would try to disenfranchise her own would-be constituents if she lost. Petitioner's scheme to challenge Respondent's qualifications only if she lost the election is an affront to the Broward County electorate who overwhelmingly chose somebody else to serve as their School Board member at the ballot box.

Accordingly, as will be discussed below, the Amended Petition fails to state a cause of action for a writ of *quo warranto* or any other relief and should be dismissed with prejudice.

II. STANDARD ON MOTION TO DISMISS

A motion to dismiss for failure to state a cause of action tests the legal sufficiency of a complaint, and the trial court must limit itself to the four corners of the petition, including any attached or incorporated exhibits, assuming the allegations in the petition to be true and construing all reasonable inferences

therefrom in favor of the non-moving party. *Fla Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006).

However, "Florida is a fact-pleading jurisdiction, not a notice-pleading jurisdiction." *Deloitte & Touche v. Gencor Indus., Inc.*, 929 So. 2d 678, 681 (Fla. 5th DCA 2006). "It is insufficient to plead opinions, theories, legal conclusions or argument." *Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999); *see also* Fla. R. Civ. P. 1.110(b) (requiring "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief").

These rules apply to self-represented litigants as well as attorneys. "[I]t is a mistake to hold a pro se litigant to a lesser standard than a reasonably competent attorney." *Kohn v. City of Miami Beach*, 611 So. 2d 538, 539 (Fla. 3d DCA 1992). "[A] party's self-representation does not relieve the party of the obligation to comply with any appropriate rules of civil procedure." *Id.* "[O]nce a party chooses to represent himself he cannot expect favored treatment from the court." *Id.* at n.1 (citing sources).

III. THERE IS NO JURISDICTION OR LEGAL BASIS TO ISSUE A WRIT OF *QUO WARRANTO*

A. There is No Jurisdiction to Issue a Writ of *Quo Warranto* Because Petitioner Lost the Election and Therefore Lacks Standing

First, this case should be dismissed *with prejudice* because Petitioner lacks standing and because *quo warranto* is not an available remedy where Petitioner was the losing candidate in her race for Broward County School Board. Florida law provides that a writ of *quo warranto* pursuant to Fla. Stat. § 80.01 is only available where the Petitioner proves that the Respondent was not in fact elected, but rather,

that the Petitioner was the candidate lawfully chosen by the voters for the office in dispute.

"*Quo warranto* is a writ of inquiry through which a court determines the validity of a party's claim that an individual is exercising a public office illegally." *Fouts v. Bolay*, 795 So. 2d 1116, 1117 (Fla. 5th DCA 2001) (citing *State ex rel. Bruce v. Kiesling,* 632 So. 2d 601 (Fla. 1994)). Writs of *quo warranto* may issue pursuant to Fla. Stat. § 80.01, which provides as follows:

> 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.

Id.

"[O]nly the Attorney General or a person claiming title to the office in question has standing to seek a writ of quo warranto." *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022), *reh'g denied* (Sept. 2, 2022) (citing Fla. Stat. § 80.01). Indeed, in *Butterworth v. Espey*, 523 So. 2d 1278, 1278 (Fla. 2d DCA 1988), the court explained that it was appropriate to dismiss the appellant petitioners' complaint where "[e]ven if, as those appellants argue, the Attorney General refused to bring the suit, those appellants are not entitled to bring the suit unless they claim entitlement to the office." *Id.*

"Section 80.01 of the Florida Statutes . . . authorizes the pursuit of *quo warranto* relief but has been construed to require the person filing the writ to 'not only to demonstrate by his allegations and proof that respondent was not elected, but that ***[petitioner] himself was the candidate lawfully chosen by the voters for the office in dispute***.'" *Fouts*, 795 So. 2d at 1117 (quoting *State ex rel. Clark v. Klingensmith,* 163 So. 704 (1935)) (emphasis added).

Here, the Amended Petition fails to allege any such facts. To the contrary, the Amended Petition makes clear that Respondent Velez received the most votes in a race for Broward County School Board, and that as a result, Petitioner was the losing candidate. Am. Pet. at 2. Accordingly, the Amended Petition should be dismissed.

B. *Quo Warranto* is Unavailable Where There is a Sufficient Remedy Available at Law

Additionally, the Amended Petition must be dismissed because the writ of *quo warranto* will not be issued where there is another ample and sufficient remedy provided by law for the relief sought. *See State ex rel. Gibbs v. Bloodworth*, 184 So. 1, 2 (Fla. 1938). Here, there are remedies available at law to challenge qualifications and eligibility in an election, so the Amended Petition should be dismissed.

C. *Quo Warranto* is Unavailable Where Respondent Velez Has Not Been Sworn Into Office, and the Court Cannot Enjoin a Candidate From Taking Office in a Writ of *Quo Warranto*

Dismissal is also appropriate because, even assuming *arguendo* that Petitioner had standing to pursue *quo warranto* (which she does not), no claim for *quo warranto* has ripened. This is because the Amended Petition alleges that Respondent Velez has not been sworn in as a member of the Broward County School Board. As a result,

there has been no usurpation of state power as contemplated in an action for a writ of *quo warranto*.

"*[Q]uo warranto* is 'to be invoked ***after*** entry into, or exercise of authority under [a public official's] appointment." *League of Women Voters of Florida v. Scott*, 232 So. 3d 264, 265 (Fla. 2017) (quoting *MacDonald v. Rehrer*, 22 Fla. 198, 206 (Fla. 1886)). Since *quo warranto* "is applicable the moment an office or franchise is usurped, an injunction will not lie to prevent the usurpation, even though the respondent has not yet entered upon the office or assumed to exercise its functions. In such case the party aggrieved should wait until an actual usurpation has occurred, and then seek his remedy in quo warranto." *League of Women Voters of Florida*, 232 So. 3d at 265 (Fla. 2017) (quoting *Swoope v. City of New Smyrna*, 125 So. 371, 372 (Fla. 1929) (quoting *MacDonald*, 22 Fla. at 205–06).

"An election should not be set aside unless a court finds substantial non-compliance with a statutory election procedure and also makes a factual determination that reasonable doubt exists as to whether a certified election expressed the will of the voters." *Fouts v. Bolay*, 795 So. 2d 1116, 1118 (Fla. 5th DCA 2001).

D. *Quo Warranto* is unavailable because the Attorney General Has Not Refused to Institute an Action

A writ of *quo warranto* is also inappropriate because the Amended Petition does not allege that the Attorney General has refused to institute an action against Velez. Fla. Stat. § 80.01 is clear that an action for *quo warranto* brought by someone other than the Attorney General is only appropriate "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 . . . ." Here, although the Amended Petition indicates that Petitioner contacted the Attorney General, there is no allegation that the Attorney General refused to institute an action. Accordingly, this case must be dismissed.

IV. THE AMENDED PETITION FAILS TO STATE AN ELECTION CONTEST CLAIM

Next, the Amended Petition should also be dismissed because it fails to state an election contest claim. The only mechanisms to contest an election are through the *quo warranto* procedure set forth at Fla. Stat. § 80.01 described above, and through the election contest provision set forth at Fla. Stat. § 102.168.

In this case, the Petitioner expressly seeks the remedy of a writ of *quo warranto*. The Petitioner has failed to properly plead a claim for an election contest. Since there is no common law right to contest the results of an election, this statutory election contest provision must be construed narrowly. *E.g.*, *Fullerton v. Florida Med. Ass'n, Inc.*, 938 So. 2d 587, 592 (Fla. 1st DCA 2006); *see, e.g., Leon v. Carollo*, 246 So. 3d 490, 492 (Fla. 3d DCA 2018).

"Generally, there is no inherent power in the courts of this state to determine election contests and the right to hold legislative office. The courts in this state are without jurisdiction to determine the right of one who has been elected to legislative office. . . . At common law, except for limited application of quo warranto, there was no right to contest in court any public election, because such a contest is political in

nature and therefore outside the judicial power." *McPherson v. Flynn*, 397 So. 2d 665, 667 (Fla. 1981) (citing sources). "Since there is no common law right to contest elections, any statutory grant must necessarily be construed to grant only such rights as are explicitly set out." *Id.* at 668 (citing *Pearson v. Taylor*, 32 So.2d 826 (Fla. 1947)).

Here, Petitioner fails to make out a claim for an election contest. The Amended Petition does not comply with the requirement in Fla. R. Civ. P. 1.110(f) that "[a]ll averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances . . . ." And, the pleading fails to set forth a "short and plan statement of the grounds upon which the court's jurisdiction depends" and a "short and plain statement of the ultimate facts showing that the pleader is entitled to relief." Fla. R. Civ. P. 1.110(b).

Moreover, the Amended Petition clearly seeks a writ of *quo warranto*, which is not an available remedy in an election contest case. Only a passing reference to the election contest statute is made. And because Petitioner only seeks *quo warranto*, any election contest she may later assert would be untimely, where such actions must be filed and the appropriate fees paid to the clerk of court within 10 days of certification. As discussed above, Petitioner is not held to a lesser standard in litigation than an attorney would be, and she must comply with all appropriate rules of civil procedure, including pleading requirements. *See Kohn*, 611 So. 2d at 539.

Next, even assuming that Petitioner sufficiently pleaded an election contest (which she did not), many of her arguments appear to relate to pre-election

qualification. It is true that Fla. Stat. § 102.168(3)(b) permits election challenges based upon the "ineligibility of the successful candidate for the nomination or office in dispute." However, here it appears that Petitioner frames this case as Respondent having misrepresented in his qualification paperwork that he is eligible to hold office, rather than a direct eligibility challenge itself; Petitioner even appears to argue for a perjury citation pursuant to Fla. Stat. § 104.011 related to the qualifying paperwork. Such a claim would not be actionable. "The law distinguishes between a candidate's constitutional eligibility for office, on the one hand, and, on the other, a constitutionally eligible candidate's taking the necessary, statutory steps to qualify to run for office." *Norman v. Ambler*, 46 So. 3d 178, 182 (Fla. 1st DCA 2010). To the extent that Petitioner challenges Velez's qualifications, it is well settled that "qualification issues . . . cannot be raised after an election has been held." *Leon v. Carollo*, 246 So. 3d 490, 493 (Fla. 3d DCA 2018).

Because strict compliance is required to bring an election contest, and because *pro se* litigants are not afforded greater latitude in procedural requirements, the Court should not provide a more generous reading of the pleading than it would a member of The Florida Bar in order to construe the pleading as bringing a valid election contest where the pleading clearly seeks *quo warranto* and appears to do so in large regard based upon alleged misrepresentations in filing paperwork occurring prior to the election.

V. RESPONDENT VELEZ IS ELIGIBILE TO SERVE AS A BROWARD COUNTY SCHOOL BOARD MEMBER BECAUSE AMENDMENT 4 RESTORES RETURNING CITIZENS' RIGHT TO HOLD OFFICE

Next, this case should be dismissed because, regardless of whether this case is framed as seeking *quo warranto*, an election challenge based upon constitutional eligibility, or otherwise, Respondent Velez is eligible to hold the office of a Broward County School Board member because Amendment 4 restores returning citizens' "voting rights," which includes the right to hold office.[1]

A. Amendment 4 Restores a Returning Citizen's Right to Hold Office

Respondent Velez is eligible to hold office as a result of Florida voters' 2018 passage of Amendment 4, which amended Article VI, Section 4 of the Florida Constitution. This is clear from a textual analysis of the constitutional provision, guided by well-established principles of statutory and constitutional interpretation, as well as historical and other legal considerations.

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[1] In her Amended Petition, Petitioner alleges that "[t]he only example of a similar case in Florida is the Tyrone Oliver case in December of 2019. . . . Oliver, also a felon without clemency, won a seat on the Ocala City Commission but was never sworn in." Am. Pet. at 7. However, Petitioner's contention that a felon without clemency has never been sworn into public office in Florida is incorrect. As discussed in a December 18, 2022 article in the Sun-Sentinel, "Kevin Crystal, 56, a councilman in DeFuniak Springs in the Panhandle and a real estate agent, was elected in 2019" and is currently serving in office as a DeFuniak Springs city councilman. "The state public clemency database lists "no record found" under Crystal's name, birthdate and inmate ID number." Steve Bousquet, *A shorthanded school board awaits Velez's fate*, Sun-Sentinel (Dec. 17, 2022), available at https://www.sun-sentinel.com/opinion/commentary/fl-op-col-rod-velez-felony-civil-rights-bousquet-20221217-zmr2dlnitngh5pfjmlfnddt6we-story.html.

Indeed, as will be discussed in much greater detail below, Amendment 4 not only requires that upon completion of all terms of sentence, "any disqualification from voting arising from felony conviction shall terminate," it also separately, independently, and expressly restores "voting rights."

The right to hold office is a voting right restored by Amendment 4, and this is clear from a textual analysis of Article VI, Section 4, consideration of Florida's executive clemency scheme, Florida Supreme Court case law addressing Amendment 4, and our country's tradition and history. *See, e.g., Randall v. Scott*, 610 F.3d 701, 711 (11th Cir. 2010) ("[T]he right to candidacy is linked to voters' rights").

Indeed, the United States Supreme Court and other courts have long recognized that "the rights of voters and the rights of candidates do not lend themselves to neat separation." *Democratic Executive Comm. of Florida v. Lee*, 915 F.3d 1312, 1324 (11th Cir. 2019) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)); *accord McLaughlin v. N. Carolina Bd. of Elections*, 850 F. Supp. 373, 382 (M.D.N.C. 1994), *aff'd,* 65 F.3d 1215 (4th Cir. 1995) ("the rights of voters and the rights of candidates to access to the ballots do not permit a neat separation"). Further, it is a truism that "laws that affect candidates always have at least some theoretical, correlative effect on voters." *Bullock*, 405 U.S. at 143.

B. Standards for Construction of Constitutional Provisions

"The rules which govern the construction of statutes are generally applicable to the construction of constitutional provisions." *Coastal Fla. Police Benev. Ass'n, Inc. v. Williams*, 838 So. 2d 543, 548 (Fla. 2003) (citing *State ex rel. McKay v. Keller,* 191

So. 542, 545 (1939)). "Accordingly, the basic rule requiring that the intent of the framers and adopters be given effect equally controls in construing constitutional provisions." *Coastal Fla. Police Benev. Ass'n*, 838 So. 2d at 548 (citing *State ex rel. Dade County v. Dickinson,* 230 So.2d 130, 135 (Fla. 1969)). "Furthermore, [the Florida Supreme Court has] consistently held that in order to determine intent we must give effect to the plain meaning of the words actually used in the Constitution . . . ." *Coastal Fla. Police Benev. Ass'n*, 838 So. 2d at 548.

The Florida Supreme Court has approved of the "supremacy-of-text principle": "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Advisory Opinion to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). "Where the language of the Constitution 'is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written,' as the 'constitutional language must be allowed to 'speak for itself.'" *Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla. 2019) (quoting *Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n*, 489 So. 2d 1118, 1119 (Fla. 1986).

However, "[c]onstitutional provisions should be provided 'a broader and more liberal construction' but not construed 'so as to defeat their underlying objectives.'" *Brinkmann v. Francois*, 184 So. 3d 504, 510 (Fla. 2016); *accord Coastal Fla. Police Benev. Ass'n*, 838 So. 2d at 548 (citing *Fla. Soc'y of Ophthalmology*, 489 So. 2d at 1119) ("constitutions 'receive a broader and more liberal construction than statutes'

and "should not be construed so as to defeat their underlying objectives"). Indeed, "every word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Advisory Opinion to Governor*, 288 So. 3d at 1078 (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69).

In that regard, constitutions are "not easily amended" and therefore "demand greater flexibility in interpretation than that required by legislatively enacted statutes. Consequently, courts are far less circumscribed in construing language in the area of constitutional interpretation than in the realm of statutory construction. When adjudicating constitutional issues, the principles, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of a provision." *Coastal Fla. Police Benev. Ass'n*, 838 So. 2d at 548.

Each sentence "must be read *in pari materia,* rather than as distinct and unrelated obligations. This principle of statutory construction is equally applicable to constitutional provisions. As [the Florida Supreme Court] stated in construing a different constitutional amendment, the provision should 'be construed as a whole in order to ascertain the general purpose and meaning of each part; each subsection, sentence, and clause must be read in light of the others to form a congruous whole.'" *Bush v. Holmes*, 919 So. 2d 392, 406–07 (Fla. 2006) (quoting *Dep't of Envtl. Prot. v. Millender,* 666 So. 2d 882, 886 (Fla. 1996)).

Finally, the Florida Supreme Court has explained in the context of interpretation of constitutional text that it "champions a strong public policy against judicial interference in the democratic process of elections." *Brinkmann*, 184 So. 3d at 510 (citing *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992)).

C. Amendment 4's Textual Construction Makes Clear that a Returning Citizen's Right to Hold Office is Restored Upon Completion of All Terms of Sentence

Every Florida Constitution since the state's very first territorial constitution enacted in 1838 has terminated the right of suffrage and to hold office of felons and/or those convicted of infamous crimes.

Here, a textual analysis of Article VI, Section 4 of the 1968 Florida Constitution, as amended by Amendment 4, makes clear that a returning citizen's right to hold office is restored upon the completion of all terms of sentence. This constitutional language (with Amendment 4's added language underlined) states, in pertinent part, as follows:

> SECTION 4. Disqualifications.—
>
> (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.
>
> (b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

Art. IV, § 4(a)-(b), Fla. Const.

In light of this constitutional text, it is clear that Amendment 4 not only restores a returning citizen's right to vote upon the completion of all terms of sentence, but it also restores broader "voting rights," which for the purpose of this constitutional provision includes the right to hold office.

Amendment 4 cannot simply restore a returning citizen's right to vote but nothing else, because that construction would render a substantial portion of the amendment as surplusage, adding nothing of substance to the text. Indeed, Amendment 4 requires that two separately identified things take place "upon completion of all terms of sentence including parole or probation":

1. The first is that "any disqualification from voting arising from felony conviction shall terminate . . . ."

   and

2. The second is that "voting rights shall be restored . . . ."

If Amendment 4 only restores the right to vote, then both of these requirements must be read as redundant of one another, despite the fact the text lists these requirements as two distinct things separated by the word "and."

"It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." *Conservation All. of St. Lucie Cnty. Inc. v. Fla. Dept. of Envtl. Prot.*, 144 So. 3d 622, 624 (Fla. 4th DCA 2014) (quoting *Hechtman v. Nations Title Ins. of N.Y.*, 840 So. 2d 993, 996 (Fla. 2003)).

Since neither of the two clauses can be read to constitute surplusage, it must be determined what other rights Amendment 4 restores. The answer is evident from the text of Article VI, Section 4. To wit, as compared to the first requirement which discusses "disqualification from voting," the second requirement is much broader in that it discusses the restoration of "voting rights," in the plural form.

This sentence's reference to "any disqualification from voting" is a clear and unequivocal reference to the immediately preceding sentence's language that "[n]o person convicted of a felony . . . shall be qualified to vote" and to subsection (b)'s provision that felons convicted of murder and felony sexual offenses shall not be "qualified to vote" until restoration of civil rights.

Therefore, Amendment 4's express requirement that "voting rights shall be restored," separate and apart from its requirement that "any disqualification from voting arising from felony conviction shall terminate," necessarily means that Amendment 4 restores multiple voting rights and not just the right to vote.

In order to determine what other voting rights are restored, one need only refer to the immediately preceding sentence, because there are only two things Article VI, Section 4 of the Florida Constitution prevents a felon from doing: being "qualified to vote or hold office." Since it is clear that Amendment 4's "disqualification from voting" language refers back to the "qualif[ication] to vote," (and also refers to subsection (b)'s use of the same language with regard to murder and felony sexual offenses), the amendment's language that "voting rights shall be restored" must include the requirement that "[n]o person convicted of a felony . . . shall . . . hold office."

This is the only reading that satisfies the requirement that Amendment 4 "be read *in pari materia,* rather than as distinct and unrelated obligations" in order "to form a congruous whole" with the rest of Article VI, Section 4. *See Bush*, 919 So. 2d at 406–07. And, this reading makes sense since "the right to stand for office is to some extent derivative from the right of the people to express their opinions by voting." *Nader v. Keith*, 385 F.3d 729, 737 (7th Cir. 2004).

Again, it must be recalled that "every word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Advisory Opinion to Governor*, 288 So. 3d at 1078 (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69). "[I]n construing constitutional language approved by the voters," the Florida Supreme Court has explained in an Amendment 4 case that it "often 'looks to dictionary definitions of the terms because we recognize that, 'in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.'" *Advisory Opinion to Governor*, 288 So. 3d at 1078.

The dictionary definition of "voting rights" supports Respondent's construction of Article VI, Section 4 as amended by Amendment 4. Indeed, Merriam-Webster defines "voting rights" as "*rights of participation in especially public elections*." Voting rights, *Merriam-Webster.com Legal Dictionary*, Merriam-Webster, https://www.merriam-webster.com/legal/voting%20rights. (last accessed Dec. 18, 2022). Participation in public elections extends not only to participant voters, but also

to participant candidates seeking to hold elected office. Indeed, longstanding Florida law explains that voters and candidates are both "participants" in elections. *See State ex rel. Hall v. Hildebrand*, 168 So. 531, 532 (Fla. 1936) ("The primary election laws of this state clearly require participants in primary elections, whether as voters or candidates, to specially register for that purpose); *see also Jones v. Schiller*, 345 So. 3d 406, 414 (Fla. 1st DCA 2022) (explaining that "the prospective candidate" at issue in *State ex rel. Hall v. Hildebrand* "had registered to participate in the general election").

Thus, in the context of Article VI, Section 4, "voting rights" must include both the right to vote and the right to hold office. *See Burdick v. Takushi*, 504 U.S. 428, 438 (1992) ("we minimized the extent to which voting rights cases are distinguishable from ballot access cases").

D. The Other Civil Rights Lost by Felons are Not Voting Rights

Further support for this reading of Article VI, Section 4 of the Florida Constitution comes from the fact that felons lose more of their civil rights than just their "voting rights," and only two of the civil rights that felons lose are even arguably "voting rights." Amendment 4 itself recognizes the distinction between "voting rights" and "civil rights." Whereas the amendment specifies that "*voting rights* [for eligible returning citizens] shall be restored upon completion of all terms of sentence including parole or probation," subsection (b) explains that "[n]o person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of *civil rights*."(emphasis added).

For instance, "[n]o person . . . who has been convicted . . . of . . . a felony . . . unless restored to civil rights, shall be qualified to serve as a juror." Fla. Stat. § 40.013(1). And, "[i]t is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been: . . . Convicted of a felony in the courts of this state." Fla. Stat. § 790.23(1)(a). Conversely, article IV, section 8 of the Florida Constitution gives the Governor, with the approval of two members of the Florida Cabinet, the ability to "restore civil rights," not just "voting rights," to a felon. To that end, the Rules of Executive Clemency promulgated by the Governor make clear that the Governor and Florida Cabinet may restore civil rights to felons, including the right to vote, hold office, serve on a jury, and possess a firearm. Rules of Executive Clemency, available at https://www.fcor.state.fl.us/docs/clemency/ clemency_rules.pdf (effective March 10, 2021), and reproduced at § 12:28. Executive clemency—Rules of executive clemency, 16 Fla. Prac., Sentencing § 12:28 (2022-2023 ed.).

Thus, the constitutional provision at issue in this case explicitly discusses two civil rights that are also voting rights (qualification to vote and hold office). *See, e.g., Randall*, 610 F.3d at 711 ("[T]he right to candidacy is linked to voters' rights"); *Ashley v. Wait*, 116 N.E. 961, 966 (Mass. 1917) ("The privilege of voting is so closely connected with the right to hold office that power to deprive of the former may well include the latter."). But the constitutional provision does not mention any other civil rights subject to clemency (jury service and firearm possession).

Since only two out of the four civil rights lost by felons relate to voting (qualification to vote or hold office), and since both of those rights are expressly discussed in Article VI, Section 4, it is clear that Amendment 4's requirement that "voting rights shall be restored," separate and apart from the termination of "any disqualification from voting arising from felony conviction shall terminate," must include the right to hold office.

E. The Florida Supreme Court's 2017 Decision to Approve Amendment 4 for Placement on the Ballot Makes Clear that the Amendment Restores More Rights than Just the Right to Vote

This is not a novel look at Amendment 4. In 2017, prior to Amendment 4 being approved by the voters, the Florida Supreme Court issued its opinion as to the validity of the proposed amendment pursuant to Article XI, Section 3 of the Florida Constitution. *Advisory Opinion to the Attorney Gen. Re: Voting Restoration Amendment*, 215 So. 3d 1202, 1202 (Fla. 2017).

In so doing, the Florida Supreme Court held that the proposed amendment met the necessary legal requirements and approved the amendment for placement on the ballot. *Id.* at 1209.

The Florida Supreme Court's 2017 decision makes clear that the amendment does not simply restore the right to vote, but rather, that it restores "voting rights," *plural*. Indeed, the Florida Supreme Court explained that the amendment would "permit[ ] the restoration of ***voting rights*** to Floridians with felony convictions, excluding those with murder and felony sex offenses, once they have completed all of the terms of their sentences." *Id.* at 1206 (emphasis added).

The Florida Supreme Court's reference to "voting rights" in the plural form was a deliberate turn of phrase. This is clear because the Court then went on to state that, if the amendment passed (as it later did), it would result in the Governor and Florida Cabinet "***still review[ing] the restoration of civil rights on a case-by-case basis, but only for those persons convicted of murder or felony sexual offenses, rather than for all felony offenders*** . . . ." *Id.* at 1206-07 (emphasis added). Specifically, the Florida Supreme Court explained as follows:

> As it currently stands, the Governor, with the approval of two members of the Florida Cabinet, may restore civil rights on a case-by-case basis. *See* art. IV, § 8, Fla. Const. If the proposed amendment passes, the Governor and the Florida Cabinet would still review the restoration of civil rights on a case-by-case basis, but only for those persons convicted of murder or felony sexual offenses, rather than for all felony offenders, which would reduce their current obligations in an insignificant way.

Id.

The Florida Supreme Court did *not* state that the amendment would restore only the right to vote. Rather, the Court clearly explained that the amendment would result in the Governor and Florida Cabinet reviewing the "restoration of civil rights" "***only for those persons convicted of murder or felony sexual offenses***." If Amendment 4 only resulted in the restoration of the right to vote but not any other civil rights, then the Florida Supreme Court would not have held that the amendment eliminates the need for the Governor and Florida Cabinet to review the restoration of "civil rights" for persons convicted of crimes other than felony sexual offenses and murder because it would still be necessary for those persons to petition for clemency for other rights, including the right to hold office.

The Florida Supreme Court also explained that the amendment's title—"Voting Restoration Amendment"—as well as its summary, "clearly and unambiguously inform the voters of the chief purpose of the proposed amendment" because "[r]ead together, the title and summary would reasonably lead voters to understand that the chief purpose of the amendment is to automatically restore voting rights to felony offenders, except those convicted of murder or felony sexual offenses, upon completion of all terms of their sentence." *Id.* at 1208 (emphasis added). The Court further explained that "[w]hile the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, ***they need not explain every detail or ramification of the proposed amendment***." *Id.* at 1206 (citing sources) (emphasis added). Accordingly, the Florida Supreme Court held that it was *clear to voters* that the amendment would lead to the restoration of "voting rights," *plural*, but that the language appearing on the ballot need not explain everything that would result from the amendment's passage. *See id.* An important correlative right enjoyed by voters is the right to run for and hold elected office. An example relevant to this case is that, pursuant to Florida law, "[e]ach member of the district school board shall be a qualified elector . . . ." Fla. Stat. § 1001.34.

Accordingly, the Florida Supreme Court's 2017 decision to permit the initiative that would become Amendment 4 on the ballot provides further substantial support for the proposition that Respondent Velez's right to hold office was among the "voting rights" restored upon Velez's completion of all terms of sentence within the meaning of Amendment 4. As such, the Amended Petition should be dismissed.

F. Our Nation's History and Tradition Makes Clear that the Right to Hold Office is Correlative to the Right to Vote and is Therefore a "Voting Right"

That the right to hold office is a voting right is "rooted in the Nation's history and tradition" and " is an essential component of 'ordered liberty.'" *Cf. Dobbs v. Jackson Women's Health Org.*, 213 L. Ed. 2d 545 (2022). The law is clear that *"the right to candidacy is linked to voters' rights." Randall*, 610 F.3d at 711; *accord Burdick*, 504 U.S. at 438 ("we minimized the extent to which voting rights cases are distinguishable from ballot access cases"). "In a representative form of government, it is essential that the courts protect a citizen's right to vote and his correlative right to be a candidate for public office." *Mirrington v. VanDeMark*, 51 Misc. 2d 305, 306 (N.Y. Sup. Ct. 1966). "The privilege of voting is so closely connected with the right to hold office that power to deprive of the former may well include the latter." *Ashley*, 116 N.E. at 966.

As discussed above, the United States Supreme Court has long recognized that "the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Bullock*, 405 U.S. at 143; *accord Democratic Executive Comm. of Florida*, 915 F.3d at 1324. "[V]oters can assert their preferences only through candidates or parties or both." *Anderson v. Celebrezze,* 460 U.S. 780, 787, (1983).

This is because the right to hold office is actually the right of access to the ballot, and is a correlative right to the right to vote. Nicole A. Gordon, *The*

Constitutional Right to Candidacy, 91 Political Science Quarterly 471, 471 (1976). As Chief Justice Rehnquist explained in his concurrence in *Cook v. Gralike*, 531 U.S. 510, 531 (2001), the United States Supreme Court's "ballot access cases based on First Amendment grounds have rarely distinguished between the rights of candidates and the rights of voters." "Ballot access restrictions tend to limit the field of candidates from which voters might choose, which dampens their associational rights as well as their right to effectively cast their vote." *Green v. Mortham*, 989 F. Supp. 1451, 1457 n.8 (M.D. Fla. 1998), *aff'd,* 155 F.3d 1332 (11th Cir. 1998); *cf. Joughin v. Parks*, 147 So. 273, 273 (Fla. 1933) (listing "[t]he right to vote or otherwise participate in an election, to be a member of a political party, to be a candidate for and hold office, petition, to execute governmental duties, and to encourage political theories that make for the betterment of the citizen" as " some of the most common political rights").

G. The Interconnectedness of the Right to Vote with the Right to Hold Office Has Been Understood Since this Country's Founding

This marriage of the right to vote and the right to hold office – collectively, *voting rights* – dates back to the founding of this country. "The makers of the Constitution recognized that the nexus between the voter and candidate was practical as well as theoretical, that the state could restrict the scope of the franchise by simply imposing severe qualifications for candidacy." Comment, *Durational Residence Requirements for Candidates*, 40 U. Chi. L. Rev. 357, 366 (1973).

"At the Constitutional Convention of 1787, James Wilson argued "agst. abridging the right of election in any shape. It was the same thing whether this were

done by disqualifying the objects or the persons chusing." Comment, *Durational Residence Requirements for Candidates*, 40 U. Chi. L. Rev. at 365 (citing 1 M. Farrand, Records of the Federal Convention 375 (1937 ed.)).

And, in 1788, James Madison wrote in Federalist No. 57, with respect to elected representatives, "Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession, is permitted to fetter the judgment or disappoint the inclination of the people." THE FEDERALIST PAPERS NO. 57 (James Madison) (Jacob E. Cooke ed., 1961).

Similarly too, Alexander Hamilton stressed that "the true principle of a republic is that the people should choose whom they please to govern them . . . This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed." 40 U. Chi. L. Rev. at 365, *supra* (citing J. Elliot, 2 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 257 (1836 ed.)).

And, a historical proposed amendment in New York in the early years of our republic "to restrict the term of office of years in any term of twelve years was attacked because '[t]he people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights." Gordon, *supra* (citing J. Elliot, 2 The Debates on the Federal Constitution 292-293 (Philadelphia, 1866 ed.)).

As explained in a University of Chicago Law Review Article addressing the history of the right to hold office, it is also clear that the right to vote and the right to hold office were in fact considered to be part of the very same right, and that the Fourteenth and Fifteenth Amendments declined to include an express reference to the right to "hold office" alongside the right to vote in order to prevent "the forces opposing the amendment more time in which to solidify opposition to the racial policies of the Radical Republicans":

> During the debates of the fourteenth and fifteenth amendments, the right to vote and the right to be a candidate were frequently treated not as distinct constitutional concepts, but rather as a single broad political right - "the right to vote and hold office.'" Although both the Senate and House versions of the fifteenth amendment originally contained a prohibition against denial or abridgement of the 'right to vote and hold office' on racial grounds, the final version returned from conference extended constitutional protection only to the franchise. This radical change was accepted by many Republicans only because, had they rejected it, action on the amendment would have been postponed until the next session of Congress, and postponement, in turn, would have given the forces opposing the amendment more time in which to solidify opposition to the racial policies of the Radical Republicans. Some Senators were undisturbed by the alteration because they thought that protection of the right to vote would effectively protect the right to hold office as well.
>
> Other senators were less optimistic about the deletion from the amendment of the "essential republican principle" of the right to hold office. Senator George F. Edmunds, for example, remarked: "If you give [a citizen] the right to have a voice in the government, that voice cannot have any live expression unless it enables him to choose ...the man who suits him for his representative, instead of confining him, as this amendment does, to a chosen aristocratic class." Black men were guaranteed the right to vote, but not the right to vote for black men. By removing the right to be a candidate from the scope of the fifteenth amendment, Congress enabled southern states to subvert the intent of the amendment by restricting to a class hostile to his interests the candidates for whom the black man could vote. Thus, at least some of the Radical Republicans were aware that the right to be a candidate is

> not less fundamental than the right to vote and that the one may not be subjected to harsh restriction if the other is to escape similarly harsh restriction.

40 U. Chi. L. Rev. at 366 (citing sources).[2]

Even still, the linkage of suffrage with the right to hold office persisted. Congress conditioned Confederate States' readmission to the Union upon the

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[2] Following the Civil War, and in response to the Reconstruction amendments to the United States Constitution which ended slavery, conferred equal protection, and extended the right of suffrage, Florida and other Southern states took steps to make it easier to disenfranchise newly freed citizens and prevent their participation in public office. For instance, the 1868 and 1885 Constitutions of Florida not only disenfranchised felons, they also excluded from suffrage and holding office persons convicted of petit larceny. *See, e.g., State v. Buckman*, 18 Fla. 267, 269 (Fla. 1881) (holding that "petty larceny" was an "infamous crime" that "did destroy [the] right to vote"). A 2009 article in the Journal of Southern History, edited and supported by Rice University, discusses an illustrative case of how petit larceny convictions were used to prevent black people from voting and holding office alike:

> In 1880 in Ocala, Florida, an African American man named Cuffie Washington tried to vote in the congressional election. When he entered the polling station, Democrats challenged his right to vote because, they said, he had stolen three oranges. Washington conceded that he had been convicted of such a crime about a month before the election. Such charges, he said, had become more frequent "because the election was close on hand." Like Washington, several other African American men in the county were disfranchised that day for having stolen a gold button, a case of oranges, hogs, oats, six fish (worth twelve cents), and a cowhide. Allen Green, one of the alleged hog thieves confirmed Washington's analysis, agreeing that petit larceny charges had increased prior to the election: "It was a pretty general thing to convict colored men in that precinct just before an election; they had more cases about election time than at any other time."

Pippa Holloway, *"A Chicken-Stealer Shall Lose His Vote": Disenfranchisement for Larceny in the South, 1874-1890*, Vol. 75 No. 4 The Journal of Southern History 931, 931 (2009) (citing *House Miscellaneous Documents*, 47 Cong. 1 Sess., No. 11: *Testimony in the Contested Election Case of Horatio Bisbee, Jr. vs. Jesse J. Finley, from the Second Congressional District of Florida* (Serial 2037, Washington, DC, 1881), 414-15.

conditions that they not restrict the elective franchise or right to hold office. *Oregon v. Mitchell*, 400 U.S. 112, 167 (1970) (discussing the readmission of Virginia, Mississippi, and Texas to the Union).

Substantial case law from across the United States in the century following Reconstruction refer to voting and holding office as two aspects of a single political right. *See, e.g., Levitt v. Attorney Gen.*, 179 A.2d 286, 291 (N.H. 1962) (discussing "[t]he right to elect and be elected into office"); *Presson v. Presson*, 147 P. 1081, 1083 (Nev. 1915) (discussing a Nevada law that "provides that certain things shall be essential to constitute 'legal residence' so as to confer the right of suffrage and to hold office); *Lansdon v. State Bd. of Canvassers*, 111 P. 133, 135 (Idaho 1910) (discussing a singular "right to vote and hold office"); *Mason v. State*, 50 N.E. 6, 8 (Ohio 1898) ("The right to vote and to hold office is not of necessity connected with citizenship. Neither is it a natural right, such as the right to personal security, personal liberty, or the right to acquire and enjoy property."); *Cheek v. Commonwealth*, 7 S.W. 403, 404 (Ky. 1888) (discussing, in the context of a Kentucky felon disenfranchisement scheme that required that persons found guilty of receiving a bribe for their vote be "excluded from office and suffrage," the singular "right to vote and to hold office," which the court also referred to as the "right of suffrage and to hold office"); *Barrell v. Tilton*, 119 U.S. 637, 642 (1887) (discussing a state statute that did not confer the "right to vote and hold office").

Consider Susan B. Anthony's speech, "Is it a Crime for a Citizen of the United States to Vote?", given after her arrest on charges of voting illegally in the 1872

presidential election. Repeatedly, this pioneer of women's suffrage linked the right to vote and to hold office as one right through historical, textual, legal, and societal contexts. As to the definition of what it means to be a citizen, Ms. Anthony explained that "Webster, Worcester and Bouvier all define citizen to be a person, in the United States, ***entitled to vote and hold office***." Susan B. Anthony, *Is it a Crime for a Citizen of the United States to Vote?* (1873) (transcript available at https://www.pbs.org/kenburns/not-for-ourselves-alone/is-it-a-crime-to-vote) (emphasis added).

As to the privileges and immunities of a citizen, Ms. Anthony explained that Supreme Court Justice Bushrod Washington (the nephew of President George Washington), in defining the privileges and immunities of the citizen "included all such privileges as were fundamental in their nature. And among them is ***the right to exercise the elective franchise, and to hold office***." *Id.* (emphasis added). Further, Ms. Anthony argued that,

> *If the fourteenth amendment does not secure to all citizens the right to vote, for what purpose was the grand old charter of the fathers lumbered with its unwieldy proportions?* The republican party, and Judges Howard and Bingham, who drafted the document, pretended it was to do something for black men; and ***if that something was not to secure them in their right to vote and hold office, what could it have been?*** For, by the thirteenth amendment, black men had become people, and hence were entitled to all the privileges and immunities of the government, precisely as were the women of the country, and foreign men not naturalized.

Susan B. Anthony, *supra* (emphasis added). She continued,

> those newly freed men were in possession of every possible right, privilege and immunity of the government, except that of suffrage, and hence, needed no constitutional amendment for any other purpose.

> What right, I ask you, has the Irishman the day after he receives his naturalization papers that he did not possess the day before, ***save the right to vote and hold office?***

Id. (emphasis added). Ms. Anthony made clear in her speech that "the right to vote and hold office" are, collectively, the right of "the ballot." *See id.*

Still today, voting and holding office are understood to be "linked." *See Randall*, 610 F.3d at 711 ("[T]he right to candidacy is linked to voters' rights"). Our law "minimize[s] the extent to which voting rights cases are distinguishable from ballot access cases." *See Burdick*, 504 U.S. at 438. And "ballot access cases based on First Amendment grounds have rarely distinguished between the rights of candidates and the rights of voters." *Cook*, 531 U.S. at 531 (2001) (Rehnquist, C.J., concurring).

Against this historical backdrop, there can be no legitimate dispute that the right to hold office is so intimately intertwined with the right to vote that they derive from the very same right, and are at the very minimum, derivative rights. This intertwining continues in American jurisprudence today. *See, e.g., Burdick*, 504 U.S. at 438; *Bullock*, 405 U.S. at 143; *Anderson,* 460 U.S. at 787; *Democratic Executive Comm. of Florida*, 915 F.3d at 1324; *Randall*, 610 F.3d at 711.

Thus, for these additional reasons, Amendment 4's restoration of "voting rights" clearly includes not only the right to qualify to vote but also to hold office. As a result, Respondent Velez is constitutionally eligible to hold office on the Broward County School Board.

VI. EVEN AS TO CONSTITUTIONAL ELIGIBILITY TO HOLD OFFICE, ANY DOUBTS SHOULD BE RESOLVED IN FAVOR OF A FREE EXPRESSION OF THE PEOPLE

Next, the Amended Petition should be dismissed because, even assuming *arguendo* that there were some doubt as to Velez's eligibility to hold office, those doubts should be construed in favor of a broader interpretation of eligibility. This includes any and all interpretations that resolve doubts on the claims and defenses made in this case in favor of upholding the will of Broward County voters (who are many of the very same voters who passed Amendment 4) in choosing Velez as their elected representative on the School Board.

"[T]he primary consideration in an election contest is whether the will of the people has been effected." *Boardman v. Esteva,* 323 So. 2d 259, 269 (Fla. 1975). "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Perez v. Marti*, 770 So. 2d 176, 178 (Fla. 3d DCA 2000) (quoting *Reynolds v. Sims,* 377 U.S. 533, 555 (1964)). "[A] vital consideration guiding the courts in determining whether an election should be voided is the reluctance to reach a decision which would result in the disfranchisement of the voters." *Fladell v. Palm Beach Cnty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000).

"[A]ny doubt as to the meaning of statutory terms should be resolved broadly in favor of ballot access." *Reform Party of Florida v. Black*, 885 So. 2d 303, 311 (Fla. 2004). To that end, "the law requires judges to resolve doubts about qualification of a

political candidate in favor of the candidate." *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) (citing *Ervin v. Collins,* 85 So. 2d 852 (Fla. 1956)).

"The Florida Supreme Court is equally committed to protecting the right of the voter to make decisions," even in the case of a challenge to constitutional eligibility. *See Perez,* 770 So. 2d at 178 (quoting *Ervin v. Collins,* 85 So. 2d 852, 858 (Fla. 1956)). In *Ervin*, the Florida Supreme Court explained that:

> ***Even if there were doubts or ambiguities as to [a candidate's] eligibility, they should be resolved in favor of a free expression of the people in relation to the challenged provision of the Constitution. It is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run. The lexicon of democracy condemns all attempts to restrict one's right to run for office.*** The Supreme Court of the United States has approved the support of fundamental questions of law with sound democratic precepts. Florida is committed to the general rule in this country that the right to hold office is a valuable one and should not be abridged except for unusual reason or by plain provision of law.

Perez, 770 So. 2d at 178 (quoting *Ervin,* 85 So. 2d at 858) (emphasis added).

As the First DCA agreed in *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994), "the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate."

Moreover, the Florida Supreme Court has explained in the context of interpretation of constitutional text that it "champions a strong public policy against judicial interference in the democratic process of elections." *Brinkmann*, 184 So. 3d at 510.

Accordingly, since there numerus arguments, including textual, historical, legal, and equitable arguments, in favor of Respondent Velez's constitutional

eligibility to hold office, this Court should resolve all doubts in favor of respecting the will of the voters of Broward County School Board District 1 who, despite significant media coverage prior to the election making clear that Velez had a prior felony conviction, still overwhelmingly elected Velez by a margin of nearly five percentage points.

VII. RESTORATION OF CIVIL RIGHTS IS NOW AN AUTOMATIC PROCESS WHEN A RETURNING CITIZEN COMPLETES THE TERMS OF HIS SENTENCE WITHIN THE MEANING OF AMENDMENT 4

Even assuming, *arguendo*, that the voters' passage of Amendment 4 does not restore the right to hold office for felons who have completed all terms of sentence, Velez should still be deemed eligible to hold office since the restoration of civil rights by the Governor and Florida Cabinet is now an "automatic" process when a returning citizen completes the terms of this sentence within the meaning of Amendment 4.

The Amended Petition indicates that Respondent Velez has applied for clemency. In fact, Velez is eligible for restoration of civil rights under Rule 9(a) of the Rules of Executive Clemency, and applied for clemency to the State's Office of Executive Clemency in September 2022. **Exhibit B**. This is consistent with the fact that Velez had previously registered to vote in 2020 after the enactment of Amendment 4. **Exhibit C**.

After the passage of Amendment 4, Florida's Rules of Executive Clemency were amended, effective March 10, 2021, to provide for the "Automatic Restoration of Civil Rights under Florida Law Without a Hearing for Felons Who Have Completed All Terms of Sentence Pursuant to Amendment 4 as Defined in § 98.0751(2)(a), Fla.

Stat." *See* https://www.fcor.state.fl.us/docs/clemency/ clemency_rules.pdf (effective March 10, 2021), and reproduced at § 12:28. Executive clemency—Rules of executive clemency, 16 Fla. Prac., Sentencing § 12:28 at ¶ 9 (2022-2023 ed.). This new clemency provision's eligibility criteria provides, in pertinent part, as follows:

> A person shall have his or her civil rights under Florida law immediately restored upon processing by automatic approval of the Clemency Board, including the right to vote, the right to serve on a jury, and the right to hold public office but excluding the specific authority to own, possess, or use firearms, without a hearing, if the following requirements are met:
>
> 1. The person has completed all terms of sentence under Amendment 4 as defined in § 98.0751(2)(a), Fla. Stat. (2020)—including any legal financial obligations—arising from his or her felony conviction or convictions;
>
> 2. The person has no outstanding detainers or pending criminal charges;
>
> 3. The person has paid all restitution pursuant to a court order or civil judgment and obligations pursuant to Chapter 960, Florida Statutes;
>
> 4. The person has never been convicted of one of the following crimes:
>
>   a. Murder as defined in § 98.0751(2)(c), Fla. Stat. (2020);
>
>   b. A felony sexual offense as defined in § 98.0751(2)(b), Fla. Stat. (2020);
>
>   c. Any offense committed in another jurisdiction or under Federal law which would constitute one of the foregoing offenses if committed within the criminal jurisdiction of Florida; and
>
> 5. The person must be a citizen of the United States; and if convicted in a court other than a Florida court, the person must be a legal resident of Florida.

Id. at ¶ 9(a).

Accordingly, it is expected that Respondent Velez will 'automatically' receive the restoration of his civil rights from the Florida Office of Executive Clemency. Any restoration of rights yet to take place is therefore an "automatic" act, and the Court should not disenfranchise a substantial number of Broward County voters who elected Velez simply because this "automatic" act has not yet taken place. Thus, the Court should deem Velez eligible to hold office.

VIII. ANY ELECTION CONTEST IS BARRED BY THE DOCTRINES OF LACHES, ESTOPPEL, AND WAIVER, WHERE PETITIONER SAT ON THIS CLAIM FOR MONTHS UNTIL AFTER THE ELECTION, WHEN SHE COULD HAVE FILED WELL BEFORE VOTERS ELECTED VELEZ

Next, Petitioner's claims seeking to override the will of the voters are barred by the doctrines of laches, estoppel, and waiver. "The general view, and that adopted in Florida, is that 'barring fraud, unfairness, disenfranchisement of voters, etc., it is too late to attack the validity of an election after the people have voted.'" *Levey v. Dijols*, 990 So. 2d 688, 694 (Fla. 4th DCA 2008) (quoting *Baker v. State ex rel. Caldwell,* 122 So. 2d 816, 826 (Fla. 2d DCA 1960).

"[A]s a matter of public policy, '[an] aggrieved party cannot await the outcome of [an] election and then assail preceding deficiencies which he [or she] might have complained of . . . before the election." *Shamburger*, 332 So. 3d at 1074 (quoting *Pearson v. Taylor*, 32 So. 2d 826, 827 (Fla. 1947) ("We have said that the constitution places a mandatory duty . . . to follow certain procedure as a necessary prerequisite to bringing about an election [and] the neglect to follow such procedure was fatal if raised before the election, yet the defect was cured by the election itself").

"In preserving elections in the face of post-election challenges to pre-election irregularities, this Court has found that a party is estopped from voiding an election where he was on notice of the irregularity before the election." *Levey*, 990 So. 2d at 694 (quoting *Winterfield v. Town of Palm Beach,* 455 So.2d 359 (Fla. 1984)).

"[A] substantial number of cases in Florida hold that remedies are available to challenge whether a candidate has properly 'qualified' to appear on a ballot, and to seek removal of that candidate's name from the ballot, BEFORE the election is held." *Levey*, 990 So. 2d at 694 (Fla. 4th DCA 2008) (citing sources). The Fourth DCA has written disapprovingly about election challenges that come "AFTER election officials had approved the candidate's choice of name for use on the ballot, AFTER the ballots for the [election] were printed, AFTER the [election] was held, and AFTER the electors had voted in sufficient number to place [the defendant] in the position of [prevailing order the plaintiff]."

First, "[t]he question of laches turns not merely upon the lapse of time, but also upon the nature and evidence of the rights involved and other relative circumstances occurring during the lapse of time." *Shirley v. Lake Butler Corp.*, 123 So. 2d 267, 271 (Fla. 2d DCA 1960) (citing *Geter v. Simmons*, 49 So. 131 (Fla. 1909); *Norton v. Jones*, 90 So. 854 (Fla. 1922)). "The test of laches is whether there has been a delay which has resulted in the injury, embarrassment, or *disadvantage of any person*, but particularly the persons against whom relief is sought." *City of Eustis v. Firster*, 113 So. 2d 260, 263 (Fla. 2d DCA 1959) (citing *Stephenson v. Stephenson*, 52 So. 2d 684 (Fla. 1951)) (emphasis added).

Second, "equitable estoppel embraces the notion that a party should not be permitted to profit by asserting rights against another when that party's own inequitable conduct has lulled the other into action or inaction detrimental to its position." *Nat'l Auto Serv. Centers, Inc. v. F/R 550, LLC*, 192 So. 3d 498, 512 (Fla. 2d DCA 2016). "In preserving elections in the face of post-election challenges to pre-election irregularities, this Court has found that a party is estopped from voiding an election where he was on notice of the irregularity before the election." *Levey*, 990 So. 2d at 694 (quoting *Winterfield v. Town of Palm Beach,* 455 So.2d 359 (Fla. 1984)).

And third, "[w]aiver is the intentional or voluntary relinquishment of a known right or conduct which warrants an inference of the relinquishment of a known right." *Aberdeen Golf & Country Club v. Bliss Const., Inc.*, 932 So. 2d 235, 244 (Fla. 4th DCA 2005) (quoting *Marine Envt'l Partners, Inc. v. Johnson,* 863 So.2d 423, 426 (Fla. 4th DCA 2003)). "[A] party may waive that right if the party has knowledge of the right yet takes action inconsistent with the right." *Aberdeen Golf & Country Club*, 932 So. 2d at 244 (quoting *Breckenridge v. Farber,* 640 So. 2d 208, 210 (Fla. 4th DCA 1994)).

The elements for laches, waiver, and estoppel are all present here. Instead of seeking judicial redress at a time when the Court could have fashioned some remedy before the election, Petitioner instead sat on her rights, only filing suit after she had lost the election by almost five points, despite the public being aware of Velez's past felony conviction.

This clearly reflects an effort by Petitioner to lay in wait, playing both sides of the coin to her sole benefit. Either she would win without having brought suit, or if

she lost (as she did), Petitioner would then seek to override the will of the voters and disenfranchise them, to the extreme disadvantage of both Velez and the voters of Broward County.

Indeed, the Amended Petition makes it clear that reporting by the media took place regarding Respondent Velez's felony conviction prior to the election, which reporting reflects Velez's belief that he is eligible to hold office. This includes a Sun-Sentinel article dated June 30, 2022, which is attached to the pleading as Appendix DA. Moreover, page 5 of the Amended Petition alleges that "[o]n August 17, 2022, the Petitioner filed a fraud complaint against Velez with the Florida State Department Division of Elections Office based on the felony conviction. Likewise, Petitioner complained about Respondent's candidacy to the Broward County Supervisor of Elections sometime prior to receiving a responsive email from the Broward County Attorney's office on September 7, 2022 advising Petitioner that "if you still question the legitimacy of Mr. Velez' eligibility as a candidate, we recommend that you consult with an attorney to determine the appropriate course of action." Am. Petition at Appendix E; *see also* Am. Petition at 4. Additionally, page 6 of the Amended Petition states that "on October 3, the Petitioner made an effort to notify the Respondent and sent the Respondent a certified letter asking for proof of his clemency." *See also* Am. Petition at Appendix I.

In other words, the pleading alleges that Petitioner notified the Sun-Sentinel, Supervisor of Elections Office, Broward County Attorney's Office, Florida Department of State Division of Elections, Broward County State Attorney's Office,

and Attorney General, all notwithstanding the fact that the Broward County Attorney's Office recommended that Petitioner "consult with an attorney to determine the appropriate course of action." Still, Petitioner never at any point filed a lawsuit prior to the election.

Accordingly, the doctrines of laches, estoppel, and waiver all independently bar Petitioner's suit, requiring dismissal.

IX. CONCLUSION

WHEREFORE, for the reasons discussed herein, Respondent Rodney Velez respectfully requests that the Amended Petition for *Quo Warranto* be dismissed with prejudice, entry of an order allowing him to go hence without day, deem Respondent eligible to hold office on the Broward County School Board, entry of an award of costs and attorney's fees if applicable, and any other relief that is just and proper.

ALTERNATIVE ANSWER AND DEFENSES PURSUANT TO FLA. STAT. § 102.168(6)

In an abundance of caution and to the extent the Court construes the Amended Petition as a contest of election, Respondent, Rod Velez, through his counsel, files this answer and affirmatives defenses to Petitioner's Amended Petition for Writ of *Quo Warranto* pursuant to Fla. Stat. § 102.168(6). Subsection (6) requires the filing of an answer and defenses within 10 days after the complaint was served. Accordingly, in an abundance of caution, Respondent Velez files this answer and affirmative defenses to the allegations in the Amended Petition, without waiving his ability to simultaneously file a motion to dismiss. *See, e.g., Shamburger*, 332 So. 3d 1071 (affirming trial court's order granting motion to dismiss election contest filed

pursuant to Fla. Stat. § 102.168); *Burns v. Tondreau*, 139 So. 3d 481 (Fla. 3d DCA 2014) (affirming, in part, trial court's granting of a motion to dismiss an election contest filed pursuant to Fla. Stat. § 102.168).

Further, Velez is unable to answer the Amended Petition in any fashion other than by a general denial with exceptions because the Amended Petition does not comply with the requirement in Fla. R. Civ. P. 1.110(f) that "[a]ll averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances . . . ."

Answer

1) As to the first paragraph of the Amended Petition: Respondent Velez admits that he has not received judicial clemency or executive pardon. Velez also admits that not all of his civil rights have been restored. However, Velez denies that he is ineligible to hold a seat on the Broward County School Board because his "voting rights," including the right to hold office, have been restored as a result of Velez completing all the terms of his sentence within the meaning of Article VI, Section 4 of the Florida Constitution, for the reasons discussed in Section V of the Motion to Dismiss above and incorporated herein by reference. Further, Respondent Velez denies the allegation that "without proof of clemency aka civil rights the Respondent should not be permitted to have his votes certified by the Broward Supervisor of Elections on November 18 at 3 p.m., hold office, nor be sworn in on November 22, 2022 at 8 a.m., according to the Florida Constitution. It is admitted that Respondent

Velez defeated Petitioner in the November 9, 2022 election for Broward County School Board, District 1, by a tally of 30,735 votes (52.36%) to 27,959 votes (47.64%). ***See* Exhibit A.**

2) As to the second paragraph of the Amended Petition: The allegations are admitted except that the charge took place in 1994.

3) As to the third paragraph of the Amended Petition: It is admitted that the first sentence of Article VI, Section 4 of the Florida Constitution is accurately quoted. Otherwise, the allegations are denied. Amendment 4's restoration of "voting rights" upon returning citizen's completion of all terms of sentence restores the right to hold office, for the reasons discussed in Section V of the Motion to Dismiss above and incorporated herein by reference.

4) As to the fourth paragraph of the Amended Petition: It is admitted that Respondent Velez has not received clemency from the Florida Office of Executive Clemency as of December 15, 2022. However, Respondent Velez applied to the Office of Executive Clemency for restoration of civil rights in September 2022. *See* **Exhibit B.**

5) As to the fifth paragraph of the Amended Petition: The allegations that Respondent Velez 'falsified' his candidate oath and "deceived the public at large" are denied. Respondent Velez believed that he was eligible to hold the office of Broward County School Board, District 1, which is consistent with the language of Article VI, Section 4 of the Florida Constitution as amended by Florida voters' passage of Amendment 4.

6) As to the sixth paragraph of the Amended Petition: The allegation that Respondent 'fabricated' his statement to the Sun-Sentinel which appeared in the June 30, 2022 article attached to the Amended Petition as Appendix DA is denied. As to the allegations regarding communications between attorneys and agents of the Broward County Supervisor of Elections, Respondent Velez lacks knowledge and therefore denies the allegations.

7) As to the seventh paragraph of the Amended Petition: The allegations are denied. Amendment 4's restoration of "voting rights" upon a returning citizen's completion of all terms of sentence restores the right to hold office, for the reasons discussed in Section V of the Motion to Dismiss above and incorporated herein by reference.

8) As to the eighth paragraph of the Amended Petition: It is admitted that Fla. Stat. § 104.011 is accurately quoted. However, it is denied that it has any applicability because Respondent Velez believed that he was eligible to hold the office of Broward County School Board, District 1, which is consistent with the language of Article VI, Section 4 of the Florida Constitution as amended by Florida voters' passage of Amendment 4.

9) As to the ninth paragraph of the Amended Petition: As to the actions taken by Petitioner, Respondent is without knowledge of these allegations and they are therefore denied. As to the allegations that Respondent acted "in complete defiance of the law" and "did not notify voters that he did not have his civil rights," the allegations are denied.

10) As to the tenth paragraph of the Amended Petition: Respondent is without knowledge of these allegations and they are therefore denied.

11) As to the eleventh paragraph of the Amended Petition: Respondent is without knowledge of these allegations and they are therefore denied.

12) As to the twelfth paragraph of the Amended Petition: Regarding the allegations about Tyrone Oliver, Respondent is without knowledge of these allegations and they are therefore denied.

13) As to the thirteenth paragraph of the Amended Petition: Denied.

14) As to the fourteenth paragraph of the Amended Petition: It is admitted that restoration of civil rights by the Governor and members of the Florida Cabinet may restore to an applicant all the rights of citizenship in the State of Florida enjoyed before the felony conviction, including the rights to vote and hold office, and to serve on a jury.

15) As to the fifteenth paragraph of the Amended Petition: It is generally admitted only that "[e]lections should be transparent, accountable, and have fair processes." Otherwise, the allegations in this paragraph are denied.

Affirmative Defenses

16) The Amended Petition fails to state a cause of action for *quo warranto*.

17) The Amended Petition fails to state a cause of action for an election contest.

18) No election contest claim was properly brought, and all appropriate fees paid to the clerk in connection therewith, within the time required to bring such a claim.

19) The Amended Petition fails to demonstrate subject matter jurisdiction over this case and the claims presented.

20) The Petitioner has failed to join indispensable parties.

21) The doctrine of laches precludes relief, including because she failed to bring this suit prior to the election despite her knowledge of the bases in support of this case, and instead only after losing seeks to overturn the will of the voters.

22) The doctrine of waiver precludes relief, including because she failed to bring this suit prior to the election despite her knowledge of the bases in support of this case, and instead only after losing seeks to overturn the will of the voters.

23) The doctrine of estoppel precludes relief, including because she failed to bring this suit prior to the election despite her knowledge of the bases in support of this case, and instead only after losing seeks to overturn the will of the voters.

24) Petitioner's claims are barred because she has sought a writ of *quo warranto* which is not a remedy available under the election contest statute.

25) Petitioner's claims are barred because Respondent Velez is eligible to hold office because he has completed all terms of sentence within the meaning of Article VI, Section 4 of the Florida Constitution, as amended by Florida voters' enactment of Amendment 4 in 2018, and therefore his voting rights (which includes the right to hold office) have been restored.

26) Petitioner's claims are barred because Respondent submitted an application for restoration of rights to the Office of Executive Clemency in September 2022 prior to the election, *see* **Exhibit A**, and under current rules, he is entitled to "automatic" restoration of rights, including of the right to hold office, due to his completion of all terms of sentence, within the meaning of Article VI, Section 4 of the Florida Constitution, as amended by Florida voters' enactment of Amendment 4 in 2018. As of March 2021, the process for restoration of civil rights became an "automatic" process for applicants whose right to vote was restored pursuant to Amendment 4, without the need for a hearing. Therefore, any possible ineligibility to hold office stemming from Velez's prior felony conviction will immediately terminate upon the "automatic" processing of Velez's application, thereby allowing Velez's service on the Broward County School Board. Accordingly, any restoration of rights yet to take place is a ministerial act, and the Court should deem Velez eligible to hold office so as not to disenfranchise the voters of Broward County who elected Velez simply because this "automatic" and ministerial act has not yet taken place.

27) This Court lacks jurisdiction to issue a writ of *quo warranto* because Petitioner lost her race for School Board.

28) This Court lacks jurisdiction to issue a writ of *quo warranto* because Respondent has not yet been sworn into service on the School Board.

29) Equitable considerations and respect for the democratic process require that any doubts as to Velez's eligibility to hold office should be construed in favor of Velez. To hold otherwise would disenfranchise Broward County voters who made the

choice to elect Velez by nearly five percentage points despite significant media attention paid to Velez's felony conviction in advance of the election.

30) Respondent complied or substantially complied with all requirements for candidate qualification.

31) The grievances about which the Petitioner complains are *de minimis* where the electorate had all relevant information available to them, and do not impact the outcome of the election.

32) Once Petitioner allowed the election to happen without seeking judicial intervention, the questions of Respondent's qualification and eligibility were exclusively the decision of Broward County voters within the geographic territory of School Board District 1.

33) The Petitioner has shown no inability to obtain relief at law, thereby precluding the claim for equitable relief.

34) Petitioner's purposeful and intentional decision to await the outcome of the election, and thereby attempt to void the will of the electorate, is unconstitutional and a violation of due process.

35) The Amended Petition does not state the elements necessary for an election contest.

36) The Petitioner is neither qualified nor eligible to hold office including because of her having failed to obtain a majority of the ballots cast during the election.

37) Respondent is not constitutionally ineligible for office, and therefore is not subject to a statutory contest claim.

38) The election was not affected by fraud, unfairness, or disenfranchisement, and therefore should be upheld.

WHEREFORE, for the reasons discussed herein, Respondent Rodney Velez respectfully requests entry of an order allowing him to go hence without day, deem Respondent eligible to hold office on the Broward County School Board, entry of an award of costs and attorney's fees if applicable, and any other relief that is just and proper.

Respectfully submitted,

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mike@mgottlieblaw.com

CERTIFICATE OF SERVICE

I certify that on December 19, 2022, a true and correct copy of this document was served by email through the State of Florida e-filing system to the following persons:

Marie Murray Martin
1313 North Park Avenue
Hollywood, Florida 33021
mariemartintgaz@gmail.com
Petitioner

Andrew J. Meyers, Esq.
Scott Andron, Esq.
Nathaniel A. Klitsberg, Esq.
Devona A. Reynolds Perez, Esq.
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nklitsberg@broward.org
dreynoldsperez@broward.org
Counsel for Respondents Broward County Canvassing Board and Joe Scott, in his official capacity as Broward County Supervisor of Elections

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Johnson, Anselmo, Murdoch,
Burke, Piper & Hochman, P.A.
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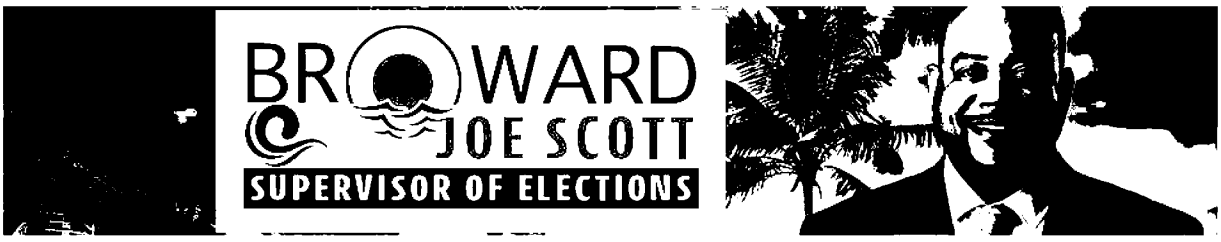
burke@jambg.com
cardona@jambg.com
Counsel for Respondent School Board

/s/ Marc A. Burton
Marc A. Burton, Esq.

EXHIBIT A

Select Language

Powered by Google Translate (https://translate.google.com)



2022 General Election

(Website last updated at: 11/18/2022 5:22:19 pm) **Election Date: 11/8/2022**

Registered Voters:	1,252,776	Precincts Reporting:	355 / 355
Ballots Counted:	600,976	Election Day:	Completely Reported
Voter Turnout:	47.97%	Early Votes:	Completely Reported
		Vote By Mail:	Completely Reported

RECOUNT RESULTS
(https://enr.electionsfl.org/BRO/3340/Summary/)
OFFICIAL RESULTS

EL45A
(https://www.browardvotes.gov/Portals/Broward/Documents/2022Elections/canvassboard/GeneralElection2022/EL45A.txt)

EL30A
(https://www.browardvotes.gov/Portals/Broward/Documents/2022Elections/canvassboard/GeneralElection2022/EL30A.txt)

EL52S
(https://www.browardvotes.gov/Portals/Broward/Documents/2022Elections/canvassboard/GeneralElection2022/EL52S.txt)

Summary Results (/BRO/3281/Summary) | Precinct Results (/BRO/3281/Precincts) | Reports (/BRO/3281/Reports) | Favorite Races (/BRO/3281/Summary/?favorites=1)

Change View
Vote Type View: Graphical

★ School Board District 1 (Vote For 1)

Participating Precincts Reporting: 48 / 48

Precinct Details (/BRO/3281/Precincts/47466)

Show Detailed View

Choice	Percent	Votes
Marie Murray Martin	47.64%	27,959
Rodney "Rod" Velez	52.36%	30,735
		58,694

EXHIBIT B

STATE OF FLORIDA
OFFICE OF EXECUTIVE CLEMENCY

Clemency Application

DIRECTIONS: All required court documents must be attached to this application. Please refer to the "Court Documents Section" below for a list of required court documents. Please print all information on the application clearly. Unreadable applications will be rejected.

RIGHT TO VOTE: Amendment 4 restores voting rights to felony offenders, except those convicted of murder or a felony sexual offense, upon completion of all terms of sentence including parole or probation. A clemency application is not required for the restoration of voting rights pursuant to Amendment 4.
For more information visit the Division of Elections at **https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/**

Check box(es) for the type(s) of clemency you are seeking:

☐ **Full Pardon (Includes Firearm Authority + Restoration of Civil Rights)**
(Eligible to apply 10 years after completion of all terms of sentence)

☐ **Pardon Without Firearm Authority (Includes Restoration of Civil Rights)**
(Eligible to apply 10 years after completion of all terms of sentence)

☐ **Specific Authority to Own, Possess, or Use Firearms (Firearm Authority Only)**
(Eligible to apply 8 years after completion of all terms of sentence)

☒ **Restoration of Civil Rights (Right to serve on a jury, hold public office, and vote)**
(Eligible to apply after completion of all terms of sentence other than any legal financial obligations)

☐ **Remission of Fine or Forfeiture**
(Eligible to apply after completion of all terms of sentence other than any legal financial obligations)

PERSONAL IDENTIFIERS SECTION

DIRECTIONS: All applicable personal identifiers must be completed, or the application will be rejected.

Name used when conviction(s) occurred: **Rodney Gabriel Velez**

Current Name: **Rodney Gabriel Velez** Sex: ☒ Male ☐ Female

Date of Birth: **08 / 05 / 1970** Race: **White** Social Security Number: [redacted]

U.S. Citizen? ☒ Yes ☐ No Alien Registration Number: _____

Home Address:	Street	City	County	State	Zip
	2522 N. 28th Ave.	**Hollywood**	**Broward**	**Florida**	**33020**

Mailing Address:	Street	City	County	State	Zip
	2522 N. 28th Ave.	**Hollywood**	**Broward**	**Florida**	**33020**

Home Telephone #: **None** Cellular Telephone #: **954-850-2501**

E-mail Address: **RodVelez954@gmail.com** Driver License Number: [redacted]

If previously incarcerated or placed on probation for a state or federal charge, list the DC # or Federal Reg #: **990750** **Case #94-21542CF10A**

CHARGES/CONVICTIONS SECTION

DIRECTIONS: List each felony conviction for which you are seeking clemency. If you require more space, attach a separate sheet of paper listing the additional convictions. Do not fill out a separate clemency application form to list the additional information. If requesting clemency for a felony charge for adjudication of guilt withheld, or a misdemeanor conviction or charge, list the same information noted above.

1. **Aggravated battery 784.045**
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Circle the court where you were last charged/convicted:

(STATE OF FLORIDA) FEDERAL OUT OF STATE or MILITARY

Date of completion for the last charge/conviction imposed: **08-22-1996**

COURT DOCUMENTS SECTION

DIRECTIONS: Section 940.04 of the Florida Statutes entitles you to obtain certified copies of various court documents from the applicable clerk of court free of charge. You **MUST ATTACH TO THIS APPLICATION** certified copies of court documents for **EACH** felony conviction, felony charge for adjudication of guilt withheld, or misdemeanor conviction or charge for which you are seeking clemency. The application will be rejected if the required court documents are not attached. Court documents include:

1. Certified copy of the charging instrument (indictment, information, or warrant with supporting affidavit)
2. Judgment and sentence that may include an order of community control or order of probation

Applicant or Attorney Signature_____ **Date** **09-19-2022**

Applicant or Attorney (required)

YOU DO NOT NEED AN ATTORNEY FOR THIS PROCESS. However, if you have chosen to be represented by an attorney for the clemency process, please provide the attorney name, address, and phone number.

Attorney Name Address Telephone Number

If you are seeking a Commutation of Sentence, submit a "Request for Review" Form. The "Request for Review" Form can be obtained by contacting this office at the address listed at the bottom of this application.

Mailing Address: Office of Executive Clemency, 4070 Esplanade Way, Tallahassee, FL 32399-2450

YOUR PRECINCT NUMBER *EL NUMERO DE SU RECINTO ELECTORAL* V012

YOUR POLLING LOCATION *SU CENTRO DE VOTACIÓN*

T. Y. Park
3300 N Park Rd, Hollywood, FL 33021

YOU ARE ELIGIBLE TO VOTE FOR A REPRESENTATIVE IN EACH DISTRICT LISTED
USTED TIENE EL DERECHO DE VOTAR POR UN REPRESENTANTE DE CADA DISTRITO ENUMERADO

US CONGRESS *CONGRESO DE LOS EEUU*	STATE SENATE *SENADO ESTATAL*	STATE HOUSE *CÁMARA ESTATAL*
25	37	101
COUNTY COMMISSION *COMISIÓN DEL CONDADO*	**SCHOOL BOARD** *JUNTA ESCOLAR*	**MUNICIPALITY** *MUNICIPIO*
6	1	Hollywood Dist 4

REGISTRATION NO. 127966460 *NO. DE INSCRIPCIÓN*

VOTER INFORMATION CARD, BROWARD COUNTY, FL
TARJETA DE INFORMACIÓN DEL ELECTOR, CONDADO DE BROWARD, FL

REGISTRATION NUMBER *NÚMERO DE INSCRIPCIÓN*	REGISTRATION DATE *FECHA DE INSCRIPCIÓN*	PRECINCT *RECINTO ELECTORAL*
127966460	Feb/03/2020	V012

Democratic Party

Rodney Gabriel Velez
2522 N 28Th Ave
Hollywood FL 33020

Aug/05/1970

Date Issued: 8/05/2022

Joe Scott, Supervisor of Elections

EXHIBIT C

127966460 Velez, Rodney Gabriel (Doc Images)

BRO 127966460

used for voter registration purposes: your FL DL#, FL ID#, SSN, where you registered to vote, and whether you declined to register or to update your voter registration record at a voter registration agency. Your signature can be viewed but not copied. (Section 97.0585, Fla. Stat.)

opposition in the General Election. If you do not indicate your party affiliation, you will be registered with no party affiliation. For a list of political parties, visit the Division of Elections' website at: dos.myflorida.com/elections

Race/Ethnicity: It is optional to list your race or ethnicity.

Boxes: Please check boxes (☑) where applicable.

Numbered rows 1 through 7 and 12 must be completed for a new registration.

This is: ☑ New Registration ☐ Record Update/Change (e.g., Address, Party Affiliation, Name, Signature) ☐ Request to Replace Voter Information Card

1	Are you a citizen of the United States of America? ☑ YES ☐ NO	OFFICIAL USE ONLY
2	☑ I affirm that I am not a convicted felon, or if I am, my right to vote has been restored.	
3	☑ I affirm that I have not been adjudicated mentally incapacitated with respect to voting or, if I have, my right to vote has been restored.	
4	Date of Birth (MM-DD-YYYY): 0 8 - 0 5 - 1 9 7 0	FVRS No:
5	Florida Driver License (FL DL) or Florida Identification (FL ID) Card Number: [redacted]	If no FL DL or FL ID, then provide: Last 4 digits of Social Security Number: [redacted] ☐ I have NONE of these numbers.

6	Last Name: Velez	First Name: Rodney	Middle Name: Gabriel	Name Suffix (Jr., Sr., I, II, etc.):	
7	Address Where You Live (legal residence-no P.O. Box): 2522 N 28th Ave	Apt/Lot/Unit:	City: Hollywood	County: Broward	Zip Code: 33020
8	Mailing Address (if different from above address):	Apt/Lot/Unit:	City:	State or Country:	Zip Code:
9	Address Where You Were Last Registered to Vote:	Apt/Lot/Unit:	City:	State:	Zip Code:
10	Former Name (if name is changed):	Gender: ☑ M ☐ F	State or Country of Birth: Florida	Telephone No: (optional): (954) 850-2501	

11 ☐ Email me SAMPLE BALLOTS if option is available in my county. (See Public Record Notice above) My email address is:

Party Affiliation (Check only one. If left blank, you will be registered without party affiliation)
- ☑ Florida Democratic Party
- ☐ Republican Party of Florida
- ☐ No party affiliation
- ☐ Minor party (print party name): _____

Race/Ethnicity (Check only one)
- ☐ American Indian/Alaskan Native
- ☐ Asian/Pacific Islander
- ☐ Black, not of Hispanic Origin
- ☑ Hispanic
- ☐ White, not of Hispanic Origin
- ☐ Multi-racial
- ☐ Other: _____

(Check only one if applicable)
- ☐ I am an active duty Uniformed Services or Merchant Marine member
- ☐ I am a spouse or a dependent of an active duty uniformed services or merchant marine member
- ☐ I am a U.S. citizen residing outside the U.S.

FEB - 3 2020

☐ I will need assistance with voting.

☐ I am interested in becoming a poll worker.

12 Oath: *I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true.*

SIGN MARK HERE → Rod Velez

Date: 01/29/2020

Scan Date = 02/18/2020