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IN THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

JAMES T. GOLDEN,

Petitioner-Appellant,

v.

JAMES SATCHER, in his official capacity as Manatee County Supervisor of Elections,

Respondent-Appellee.

Case No. 2D2024-1593
L.T. No. 2024-CA-980

On Appeal from the Twelfth Judicial Circuit Court, Manatee County

INITIAL BRIEF OF PETITIONER-APPELLANT JAMES T. GOLDEN

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STATEMENT OF CASE AND FACTS

This case concerns the People's right to fill a vacancy on the Manatee County School Board at the 2024 general election. The issue in this appeal is if the Florida Supreme Court meant what it said when it ruled that, when an elected official submits a resignation more than 28 months before their end of their term, the ensuing vacancy must be filled by the voters at the next general election—whether or not the resignation's effective date is less than 28 months before the end of the term.

The Florida Constitution and Statutes require that, when a vacancy arises in elective office such as school board and "the remainder of the term" of the office is 28 months or longer, then the vacancy must be filled at the next general election. Fla. Const. Art. IV, § 1(f), Art. VI, § 5(a); Fla. Stat. §§ 100.031, 100.111(1)(a). But if the "remainder of the term" is less than 28 months, the Governor has the power to fill the vacancy, and that appointee serves out the full remainder of the term. Fla. Const. Art. IV, § 1(f).

Interpreting Article IV, Section 1(f), the Florida Supreme Court has ruled that, when an officer resigns but makes their resignation

effective at a later date, "the remainder of the term should be calculated from the date of the resignation letter, not its effective date." *Advisory Op. to Governor re Sheriff & Jud. Vacancies Due to Resignations*, 928 So.2d 1218, 1221 (Fla. 2006).

In this case, the incumbent member of the Manatee County School Board for District 5 resigned with more than 28 months remaining in his term, but made his resignation effective at a later date. App'x at 6 ¶¶ 20–21. Pursuant to Sections 99.061 and 100.111(1)(b) of the Florida Statutes, the qualifying period for the constitutionally required election ran from June 10 to 14, 2024. During that period, Petitioner-Appellant Rev. James T. Golden sought to qualify for the election, attempting to submit all paperwork necessary for him to qualify under law. App'x at 7 ¶¶ 28–30.

Respondent-Appellee James Satcher, the Manatee County Supervisor of Elections, refused to hold the election required by the Constitution and refused to qualify candidates for that election, including Rev. Golden. App'x at 6 ¶¶ 23–25. On the final day of the qualifying period, June 14, 2024, Rev. Golden petitioned the circuit court below for a writ of mandamus, seeking to compel the Supervisor to perform his mandatory constitutional and statutory duties to hold

an election, qualify Rev. Golden as a candidate for the election, and place his name on the ballot. App'x at 3–32 (Petition). The circuit court dismissed the petition with prejudice on July 3, 2024, finding that the petition did not state a facially sufficient cause for relief. App'x at 49–52 (Order). The circuit court reasoned that a *statutory* change that occurred after the Florida Supreme Court's opinion in *Sheriff and Judicial Vacancies Due to Resignations* rendered the Supreme Court's interpretation of the Florida Constitution obsolete. App'x at 50–51.

Rev. Golden appealed to this Court on July 9, 2024. He moved to expedite this appeal on July 12, 2024; the Court granted that motion and set a briefing schedule on July 18, 2024.

SUMMARY OF THE ARGUMENT

When an elected official like a school board member resigns with more than 28 months remaining in their term, the Florida Constitution requires the vacancy to be filled at the next general election. The Constitution and Statutes outline the non-discretionary duties of the county supervisors of elections in these circumstances, which ensure that the People can exercise their right to fill such a vacancy. Nothing in the Florida Statutes, including Section 99.012

(the "Resign-to-Run Law"), obviates the constitutional mandate to hold an election to fill the vacancy.

In this case, the Supervisor has an indisputable, ministerial duty to hold an election for Manatee County School Board District 5 and to qualify candidates for that election. The Supervisor's mandatory and non-discretionary duty to hold an election to fill this type of vacancy is imposed by the Florida Constitution and Statutes. In dismissing Rev. Golden's petition for mandamus relief, the circuit court erroneously relied on the Resign-to-Run Law and ignored the constitutional requirements to determine that an election is *not* required by law.

Rev. Golden has a clear legal right to compel the Supervisor to perform his duties. As a taxpayer and citizen, Rev. Golden has a clear legal right to request that the Supervisor perform his duties. *Pleus v. Crist*, 14 So.3d 941, 945 (Fla. 2009); *Chiles v. Phelps*, 714 So.2d 453, 456 (Fla. 1998). Rev. Golden also has a right as a prospective candidate to have the opportunity to run in the constitutionally required election and have his name printed on the ballot. Fla. Const. Art. IV, § 1(f), Art. VI, § 5(a); Fla. Stat. §§ 100.031, 100.111(1)(a), (b); App'x at 6–7; Fla. Stat. §§ 101.2512(2), 100.051, 105.031(1),

105.051(1)(b).

Rev. Golden has no adequate remedies at law; no legal remedies can cure the constitutional violation alleged here. Mandamus relief is a well established remedy to resolve the violations of law and failures by the executive branch to perform a ministerial duty. *See, e.g.*, *Young v. Lamar*, 115 So.3d 1132, 1133–34 (Fla. 1st DCA 2013); *Bd. of Trs. of the City Supplemental Pension Fund for Fireman & Policeman in City of Miami Beach v. Mendelssohn*, 601 So.2d 594, 595 (Fla. 3d DCA 1992).

This case is not moot, because the relief Rev. Golden seeks can still be granted. Rev. Golden seeks mandamus commanding the Supervisor to hold an election in the 2024 election cycle and qualify Rev. Golden as a candidate, which can still be accomplished, because only a November general election is required by the Constitution. Fla. Const. Art. VI, § 5(a), Art. IV § 1(f); Fla. Stat. § 100.111. And even if this case were moot, two well-established exceptions to mootness doctrine would apply.

STANDARD OF REVIEW

A trial court's dismissal of a mandamus petition as facially insufficient is reviewed de novo. *Anthony v. State*, 277 So.3d 223, 225

(Fla. 2d DCA 2019); *Asay v. State*, 210 So.3d 1, 22 (Fla. 2016). To show entitlement to a writ of mandamus, a petitioner "must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him." *Hatten v. State*, 561 So.2d 562, 563 (Fla. 1990); *see also Anthony*, 277 So.3d at 225. If the petition is facially adequate, the circuit court must issue an alternative writ of mandamus, ordering the respondent to show cause why the requested relief should not be granted. *Moore v. Ake*, 693 So.2d 697, 698 (Fla. 2d DCA 1997); *S.J. v. Thomas*, 233 So.3d 490, 495 (Fla. 1st DCA 2017).

ARGUMENT

I. The Supervisor has an indisputable, ministerial duty to hold an election and qualify candidates to fill the vacancy.

As discussed in detail below, the Florida Constitution and Statutes require the instant vacancy on the Manatee County School Board to be filled by the voters at the upcoming general election. Fla. Const. Art. IV, § 1(f), Art. VI, § 5(a); Fla. Stat. §§ 100.031, 100.111(1)(a). The name of each candidate who qualified for office in accordance with state law must be placed on the ballot in that election. Fla. Stat. §§ 100.051, 100.111(1)(b), 105.031(1),

105.051(1)(b). As the official responsible for administering elections pursuant to the Florida Constitution and Statutes, the Supervisor has the duty to carry out these mandates. Fla. Const. Art. VIII, § 1(d).

a. The Constitution imposes these duties.

The Florida Constitution and Statutes impose a mandatory, non-discretionary duty on supervisors of elections to hold an election to fill a vacancy like this one. First, the Constitution: Under Article VI, Section 5(a), "[a] general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year . . . to fill each vacancy in elective office for the unexpired portion of the term," unless the Constitution provides for another method of filling the vacancy ("except as provided herein").

Article IV, Section 1(f) of the Florida Constitution provides one of those narrow exceptions in which a vacancy may *not* be filled at the next general election: "the governor shall fill by appointment any vacancy in state or county office . . . for the remainder of the term of an elective office if less than twenty-eight months." But if "the remainder of the term" is *more* than 28 months, the governor can appoint an interim successor only "until the first Tuesday after the first Monday following the next general election"—when an election

can be held pursuant to Article VI, Section 5(a). In other words, if a vacancy occurs in an elective office with more than 28 months to go before the end of the office's term, the supervisor must hold an election concurrent with the next regular general election to fill the vacancy for the final 24 months of the term.

What does the Constitution require when, as here, the officer resigns but makes their resignation effective at a later date? The Florida Supreme Court has answered that question multiple times, each time giving the same answer. Most recently, the Supreme Court unanimously held that "the remainder of the term should be calculated from the date of the resignation letter, not its effective date." *Sheriff & Jud. Vacancies*, 928 So.2d at 1221. Indeed, the Court in *Sheriff and Judicial Vacancies* stressed that its earlier holding that "a vacancy occurs '[w]hen a letter of resignation to be effective at a later date is received and accepted'"—given in the context of filling judicial vacancies under Article V, Section 11—applies equally to filling non-judicial vacancies under Article IV, Section 1(f). 928 So. 2d at 1221 (quoting *Advisory Op. to Governor (Jud. Vacancies)*, 600 So.2d 460, 462 (Fla. 1992)).

Another constitutional provision is relevant to this question:

Article X, Section 3, which provides that "[v]acancy in office shall occur upon . . . resignation," among other triggering events. In the very first case construing this provision after the 1968 Constitution was ratified, the Supreme Court held unequivocally that when an officer submits a resignation to take effect in the future, "a vacancy has been created, albeit to take effect *in futuro*." *Spector v. Glisson*, 305 So.2d 777, 780 (Fla. 1974). The Court went on:

> We have historically since the earliest days of our statehood resolved as the public policy of this State that interpretations of the constitution, absent clear provision otherwise, should always be resolved in favor of retention in the people of the power and opportunity to select officials of the people's choice, and that vacancies in elective offices should be filled by the people at the earliest practical date.

Id. at 781 (citations omitted). Thus,

> it necessarily follows from this consistent view and steadfast public policy of this State as expressed above, that if the elective process is available, and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office by vote of the people at the earliest possible date. Thus the elective process retains that primacy which has historically been accorded to it consistent with the retention of all powers in the people, either directly or through their elected representatives in their Legislature, which are not delegated, and also consistent with the priority of the

> elective process over appointive powers except where explicitly otherwise provided. We thereby continue the basic premise of our democratic form of government, that it is a "government of the people, by the people and for the people."

Id. at 782.

In *Spector*, the consequence of the vacancy "occurring" when the officer (there, Justice Ervin) submitted his resignation was to require the vacancy be filled by election under Article V. Applying *Spector* to this case, the school board vacancy "occurred" when the incumbent submitted his resignation on May 30, 2024.[1] App'x at 18. Since that was more than 28 months before the end of the term, the vacancy must be filled by election under Article IV, Section 1(f).

b. The Florida Statutes impose these duties as well.

The Florida Statutes impose these same duties as well. Section 100.031 repeats the mandate of Article VI, Section 5(a) to hold a "general election in each county . . . , except as provided in the State

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[1] The petition contains two scrivener's errors in the date the resignation was submitted. *See* App'x at 6 ¶ 20 (May 31, 2024), 10 n.1 (May 21, 2024). As the resignation letter (an exhibit attached to the petition) itself reflects, the resignation is dated May 30, 2024 and was received by the Supervisor's office on that date. *Id.* at 18. In any event, the petition plainly alleges the resignation was submitted more than 28 months before the incumbent's term ends.

Constitution, to fill each vacancy in elective office for the unexpired portion of the term." Section 100.111(1)(a) and (b) spell out the duty clearly:

> (a) If any vacancy occurs in any office which is required to be filled pursuant to s. l(f), Art. IV of the State Constitution and the remainder of the term of such office is 28 months or longer, then at the next general election a person shall be elected to fill the unexpired portion of such term, commencing on the first Tuesday after the first Monday following such general election.
>
> (b) If such a vacancy occurs prior to the first day set by law for qualifying for election to office at such general election, any person seeking nomination or election to the unexpired portion of the term shall qualify within the time prescribed by law for qualifying for other offices to be filled by election at such general election.

The law also requires supervisors to print on the ballot the name of each candidate who qualifies for office in accordance with state law. Fla. Stat. § 101.2512(2), 100.051, 105.031(1), 105.051(1)(b).

c. The Resign-to-Run Law does not void the Constitution's mandates.

In dismissing Rev. Golden's petition, the circuit court reasoned that the Resign-to-Run Law, Fla. Stat. § 99.012(3), precludes relief. App'x at 50. The argument goes like this: The incumbent school board member submitted his resignation to run for another office

under the Resign-to-Run Law. Pursuant to the Resign-to-Run Law, the resignation was irrevocable and was effective in November 2024. App'x at 6 ¶ 21; *see* Fla. Stat. § 99.012(3)(d). The Resign-to-Run Law further provides that "[t]he office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation." Fla. Stat. § 99.012(3)(f). Therefore, under the "clear and unambiguous" "plain meaning" of Section 99.012, "the vacancy occurs less than 28 months from the end of [the incumbent's] term" and so must be filled by gubernatorial appointment. App'x at 50. The circuit court found *Sheriff and Judicial Vacancies* inapposite because "§ 99.012 was amended after that opinion to add the instructive subsection referenced above, and thus Petitioner's reliance on it is unfounded." App'x at 50–51.

The circuit court's reasoning has several fatal errors. ***First***, Section 99.012 was *not* amended to add the "instructive subsection" providing when the office is "deemed vacant." That language has been in the Resign-to-Run Law since 1991—fifteen years before *Sheriff and Judicial Vacancies*. Laws of Fla. ch. 91-107, § 31, at 898 (amending Fla. Stat. § 99.012(3)(f)2. (1989)).

Granted, there was another part of the Resign-to-Run Law that

did change after *Sheriff and Judicial Vacancies*, but *that* change has no impact on the constitutional question at issue in this case. At the time the Supreme Court decided *Sheriff and Judicial Vacancies*, the Resign-to-Run Law contained this subsequently repealed provision: "With regard to an elective office, the resignation creates a vacancy in office to be filled by election." Fla. Stat. § 99.012(3)(f)1. (2005). The Legislature repealed it in 2021. Laws of Fla. ch. 2021-11, § 11, at 11. That provision, which dates to 1970, went beyond the Constitution's mandate, requiring vacancies triggered by resign-to-run to be filled by election in *all* circumstances—whether or not the vacancy was one the *Constitution* required to be filled by election. *See In re Advisory Op. to Governor*, 239 So. 2d 247, 250 (Fla. 1970) ("[T]he statute ends the tenure of the incumbent holder of the office but it also provides for the election of a successor . . . .") (interpreting Laws of Fla. ch. 70-80, § 1, at 195–96 (amending Fla. Stat. § 99.012 (1969))).

So for example, say a state senator passed away in July 2018, and their four-year term was not up until November 2020. Pursuant to Section 100.101, Florida Statutes, a special election was called for December 2018 to fill the Senate seat; the candidate qualifying period was set for August. A school board member whose term was up in

November 2020 decided to run in that special election for Senate. Pursuant to the Resign-to-Run Law, the school board member resigned in August 2018 to run in the special election. Because less than 28 months remained in the school board member's term, Article IV, Section 1(f) did not require the vacancy on the school board to be filled in the next general election in November 2018. But under the Resign-to-Run Law, because the school board seat was "an elective office, the resignation create[d] a vacancy in office to be filled by an election," so a special election was also required to be held to fill the school board seat.

Thus, the 1970 Legislature opted to expand the circumstances in which vacancies are filled by election beyond the constitutional minimum, and then the 2021 Legislature decided to repeal that expansion. That does not—and cannot—mean the law now prohibits an election when the Constitution requires one. Rather, the Resign-to-Run Law is now silent on whether a resign-to-run vacancy must be filled by election, defaulting to the rule found in the Constitution or elsewhere in the statutes.

Second, returning to Section 99.012(3)(f)'s "deemed vacant" provision which the circuit court relied on below, when the office is

"deemed vacant" says nothing about how to calculate the "remainder of the term" under Article IV, Section 1(f). Indeed, the "clear and unambiguous" "plain meaning" of Section 99.012(3)(f) is just the unremarkable affirmation that an office will not be vacant until the incumbent leaves it on the effective date of their resignation. Section 99.012(3)(f) sheds no light on the key legal question at all.

Third, and obviously, a statute cannot preempt the Constitution. As discussed above, Article X, Section 3 provides that "[v]acancy in office shall occur upon . . . resignation of the incumbent." Interpreting that directive, the Supreme Court definitively held that a resignation effective at a later date means "a vacancy has been created, albeit to take effect *in futuro*." *Spector*, 305 So.2d at 780.[2] In fact, the *Spector* Court explicitly held that Article X, Section 3's "constitutional provision controls and also takes

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[2] This is not to say that Section 99.012(3)(f) is unconstitutional. "[A] statute should be construed so as not to conflict with the constitution," and "a court may place a saving construction on the statute when this does not effectively rewrite the statute." *Fla. Dep't of Child. & Fams. v. F.L.*, 880 So.2d 602, 607 (Fla. 2004). Section 99.012(3)(f) is easily construed consistent with Article X, Section 3 and Article IV, Section 1(f), because when an office is "deemed vacant" does not speak to when "vacancy shall occur" or from what event the "remainder of the term" is calculated.

precedence over statutes such as Fla. Stat. § 114.01 providing that an office shall be 'deemed vacant' in cases there enumerated, one being 'resignation.'" *Id.* at 779. "The provisions of Ch. 100"—and Section 99.012—"with regard to the filling of vacancies are supplementary only to the controlling constitutional requirement." *Id.*

The Supreme Court reiterated *Spector*'s holding in *Sheriff and Judicial Vacancies*, and applied it to a situation where an election would be required under Article IV, Section 1(f)—the same situation as in the instant case. 928 So.2d at 1221. While the Court noted that its "conclusion is consistent with the resign-to-run law," which at that time provided that "the resignation creates a vacancy in office to be filled by election," the Court's holding applying Article IV, Section 1(f)'s mandate stands on its own. *Id.* at 1222 (quoting Fla. Stat. § 99.012(3)(f)1. (2005)). While the Resign-to-Run Law has been amended since *Spector* and *Sheriff and Judicial Vacancies*, the relevant constitutional provisions have not. Statutory changes cannot influence, control, or preempt the Constitution's vacancy-filling rules.

*   *   *

Thus, the Supervisor has a duty to hold an election to fill the instant school board vacancy. Rev. Golden's petition states a facially sufficient claim as to the Supervisor's clear legal duties to hold an election, qualify Rev. Golden as a candidate for the election, and place his name on the ballot. App'x at 4–9, 12–15.

II. Rev. Golden has a clear legal right to compel the Supervisor to perform his duties.

Given the Supervisor's clear legal duties described above, "Petitioner, as a citizen and taxpayer, has a clear legal right to request that the [Supervisor] carry out that duty." *Pleus*, 14 So.3d at 945; *see also Chiles*, 714 So.2d at 456 (finding that "citizens and taxpayers" have standing "to challenge alleged unconstitutional acts of the executive branch"). Rev. Golden is a resident and voter of Manatee County School Board District 5, and a prospective candidate in the election the Supervisor is required to hold. App'x at 3 ¶ 5. As a resident and voter, he has a constitutional right to elect a school board member in this circumstance; as a prospective candidate, he has a right to have the opportunity to run in the constitutionally required election. Fla. Const. Art. IV, § 1(f), Art. VI, § 5(a); Fla. Stat. §§ 100.031, 100.111(1)(a). Because Rev. Golden did everything in his

power to qualify, frustrated only by the Supervisor's refusal to accept his qualifying paperwork, he should be deemed to have qualified, and he has a right to have his name printed on the ballot. App'x at 6–7 ¶¶ 22–31; Fla. Stat. §§ 101.2512(2), 100.051, 100.111(1)(b), 105.031(1), 105.051(1)(b). Rev. Golden's petition states a facially sufficient claim as to his clear legal right to have the opportunity to vote and run in the required election, to be qualified for the election, and to have his name placed on the ballot. App'x at 3–8, 15–16.

III. Rev. Golden has no adequate remedies at law.

Rev. Golden's petition also states a facially sufficient claim as to the last element for mandamus relief: he has no adequate remedy at law. App'x at 9, 16. Florida courts have long recognized mandamus relief as an appropriate remedy to resolve violations of the law and matters where the executive branch has failed to perform a ministerial duty imposed by law. *See, e.g.*, *Young*, 115 So.3d at 1133–34; *Mendelssohn*, 601 So.2d at 595. Legal remedies (i.e., money damages) are unavailable to cure the constitutional violation at issue here.

IV. This case is not moot.

a. A determination on the merits will have actual effect and afford relief.

"[A]n issue [i]s moot" only "when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Casiano v. State*, 310 So.3d 910, 913 (Fla. 2021) (cleaned up). The issue in this case is whether Rev. Golden's petition is facially adequate. This issue remains live today, because the circuit court can still afford the relief Rev. Golden seeks: mandamus commanding the Supervisor "to hold an election for District 5 in the 2024 election cycle" and "to qualify Petitioner as a candidate for the District 5 election and place his name on the ballot." App'x at 9.

Crucially, Rev. Golden seeks what the Constitution commands: "an election for District 5 *in the 2024 election cycle*." *Id.* (emphasis added). While the Legislature has opted, in the ordinary course, to set up a primary and general election scheme for school board races, Fla. Stat. § 105.051(1)(b), the Constitution requires only that the election happen *at the general election in November*:

> A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and

> county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term.

Fla. Const. Art. VI, § 5(a); *see also id.* Art. IV, § 1(f) (providing gubernatorial appointee to fill vacancy will serve only "until the first Tuesday after the first Monday following the next general election").[3]

The Supervisor's failure to follow the Constitution and plan for a school board election in time to put the contest on August primary ballot pursuant to Section 105.051 does not mean that a school board member cannot be elected at the November *general election* pursuant to Article VI, Section 5(a), Article IV, Section 1(f), and

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[3] Even without looking to the Constitution, it is unclear whether the Florida Statutes themselves apply 105.051(1)(b)'s primary-election requirement to an election held to fill a vacancy under Article IV, Section 1(f). Section 100.111, Florida Statutes, provides:

> If any vacancy occurs in any office which is required to be filled pursuant to s. 1(f), Art. IV of the State Constitution and the remainder of the term of such office is 28 months or longer, then *at the next general election* a person shall be elected to fill the unexpired portion of such term . . . .

(Emphasis added).

Section 100.111.[4] And there is ample time for both this Court and the circuit court on remand to rule in order to hold an election at the November general election. The Supervisor will not even have all the candidate names and contests he must place on the general election ballot until, at the earliest, August 29—the date the Elections Canvassing Commission certifies the primary election returns. Fla. Stat. § 102.111(2). The Supervisor cannot credibly claim he is completely unable to place Rev. Golden's name on the general election ballot until that date. A "judicial determination" from this

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[4] Indeed, the statutes provide for holding an election in situations such as this. Under Section 100.111(5), the Department of State can "provide for the conduct of orderly elections" "[i]n the event of unforeseeable circumstances not contemplated in these general election laws concerning the calling and holding of special primary elections and special elections resulting from court order or other unpredictable circumstances." A supervisor's failure to follow the law, and a court order requiring an election as a result, are such unpredictable circumstances.

Here, an orderly response to comply with a court order might be to elect a school board member by plurality vote on November 5, or to hold a primary election on November 5 and a runoff (if needed) a few weeks after, as many municipalities across the state do. *See Dates for Local Elections*, Fla. Dep't of State, https://dos.elections.myflorida.com/calendar/ (select "2023" or "2022" and click "List Election Dates"). It would be well within the circuit court's discretion to determine that such a schedule complied with its mandate and Rev. Golden's request "to hold an election for District 5 in the 2024 election cycle." App'x at 9.

Court on whether Rev. Golden is entitled to the relief he seeks will thus have "actual effect," *Godwin v. State*, 593 So.2d 211, 212 (Fla. 1992).

Further, that this dispute is not moot is underscored by the fact that, absent a determination from this Court, the same petitioner will shortly begin to relitigate the same issue in the same circuit court. Should the Governor appoint someone to fill the vacancy and that appointee purport to hold office past "the first Tuesday after the first Monday following the next general election," Rev. Golden is committed to taking every legal action available to him—including filing a new lawsuit seeking mandamus, quo warranto, declaratory, or other equitable relief—to vindicate his constitutional right to be represented by an elected school board member. This is the opposite of a moot case.

b. Even if the case were moot, exceptions to the mootness doctrine would apply.

Even if the passage of time rendered the case moot (for example, if the Court waited until after the November election to render a decision), two related mootness exceptions would apply. ***First***, "it is well settled that mootness does not destroy an appellate court's

jurisdiction” to decide “questions [that] . . . are likely to recur” in future cases. *Godwin*, 593 So.2d at 212 (emphasis added); *see, e.g.*, *Dorsey v. State*, 868 So.2d 1192, 1194 n.2 (Fla. 2003) (case was not moot even though party had died, because the issue was “likely to recur and therefore should be resolved for benefit of bench and bar”).

Here, it is a virtual certainty that the issues presented in this case will recur. There are hundreds of elected offices across Florida for which vacancy-filling is governed by Article IV, Section 1(f); the Second District alone is home to over one hundred.[5] Whenever one of those offices is vacated in a manner similar to this case, the legal issues presented here will recur. And while vacancies in those offices may not result in disputes between the litigants in *this* case, the

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[5] Each of the District’s six counties has five constitutional officers, at least five school board members, and at least five county commissioners. Fla. Const. Art. VIII, § 1(d)–(e), Art. IX, § 4(a). Hillsborough, Pinellas, and Manatee Counties each have seven county commissioners. Hillsborough Cnty. Charter § 4.02; Pinellas Cnty. Charter § 3.01; *Board of County Commissioners*, Manatee Cnty., https://www.mymanatee.org/government/board_of_county_commissioners. Hillsborough and Pinellas each have seven school board members. *Board Members*, Hillsborough Cnty. Public Schs., https://www.hillsboroughschools.org/Page/8833; *School Board*, Pinellas Cnty. Schs, https://www.pcsb.org/domain/608. Pasco and DeSoto elect their superintendents. *Superintendents*, Fla. Dep’t of Educ., https://www.fldoe.org/accountability/data-sys/school-dis-data/superintendents.stml.

recurring issue need only be likely to recur—not necessarily recur between the same parties. *Enter. Leasing Co. v. Jones*, 789 So.2d 964, 965–66 (Fla. 2001).

Second, courts may resolve moot questions that are merely "*capable* of repetition" but also "evad[e] review." *N.W. v. State*, 767 So. 2d 446, 447 (Fla. 2006) (emphasis added); *State v. Matthews*, 891 So. 2d 479, 483–84 (Fla. 2004) (identifying these two separate mootness exceptions and concluding that the issue before the Court fell within both exceptions). That exception "applies when (1) the challenged action was too short-lived to be completely litigated in time, and (2) there is a reasonable chance that the same party will face the same action again." *Rhody v. McNeil*, 344 So.3d 530, 532–33 (Fla. 1st DCA 2022). Thus, for example, challenges to "periods of supervision or community control" fall within the exception because they "may expire before a case may be reviewed." *N.W.*, 767 So.2d at 447.

Here, the time for litigating this issue is similarly abbreviated. The candidate qualifying period for state and county offices ends in mid-June before the election. A prospective candidate (or voter) in Rev. Golden's position will never know that their supervisor of elections will fail to hold an election—and thus a ripe dispute will not

arise—until that qualifying period (especially if the supervisor waits until the middle of the qualifying period to inform the public that he will not hold an election, as Supervisor Satcher did here, App'x at 40–42). At that point, the primary election is less than ten weeks away, and the general election is less than 21 weeks away. Fla. Stat. §§ 99.061, 100.031, 100.061.

CONCLUSION

The Florida Constitution begins with the declaration that "[a]ll political power is inherent in the people." Fla. Const. Art. I, § 1. Mindful of that charge, the Framers enshrined in the Constitution rules to ensure that, whenever possible, vacancies in elected office would be filled by the People at the next upcoming general election. This Court should adhere to the Constitution's commands, reverse the order below, and remand with instructions to issue the alternative writ in mandamus pursuant to Fla. R. Civ. P. 1.630(d) so that the People can as quickly as possible exercise their constitutional right to elect their representative to the Manatee County School Board.

CERTIFICATE OF SERVICE

I certify that the foregoing document was emailed to counsel for all parties via the e-Filing Portal on July 23, 2024.

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 5,415 words and complies with the applicable font and word-count limit requirements of Fla. R. App. P. 9.045 and 9.210(a)(2).

Respectfully submitted July 23, 2024,

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