IN THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

DIYONNE MCGRAW,

Petitioner,

v. Case No. 01-2021-CA-1717

RON DESANTIS, in his official capacity as Governor of the State of Florida,

Respondent.
_____/

GOVERNOR DESANTIS' MOTION TO DISMISS PETITION FOR WRIT OF QUO WARRANTO AND RESPONSE TO THE ORDER TO SHOW CAUSE

At issue in this case is whether Florida law authorizes Governor DeSantis to issue an executive order declaring that a vacancy exists due to a school board member's own failure to maintain the residence required of her by law. To be clear, it does. Yet Petitioner Diyonne McGraw asks this Court to turn the separation of powers clause on its head, invalidate the Governor's lawful executive action, and require the Governor to await a final judicial determination of vacancy contrary to the constitutional and statutory provisions governing vacancy in office.

The Court must dismiss McGraw's Petition for Writ of Quo Warranto as facially insufficient because it fails to include the most basic and fundamental factual allegation that her lawful residence was, in fact, in District 2 of the Alachua County School Board at the time the Governor declared the District 2 School Board seat vacant under Executive Order 21-147. Alternatively, the Court must deny the Petition on the merits because the Governor was legally *required* to declare the District 2 seat vacant pursuant to the plain language of article IV, section

1(a) of the Florida Constitution; article X, section 3 of the Florida Constitution; and sections 114.01(1)-(2) and 1001.34(1) of the Florida Statutes. The evidence presented to, and the findings of, the circuit court in *Banko, et al. v. McGraw, et al.*, No. 01-2021-CA-1594 (Fla. 8th Cir. Ct. June 15, 2021), where the court found a substantial likelihood of success on the merits as to McGraw's "failure to reside in the district," are consistent with and support the Governor's action in declaring the School Board District 2 seat vacant.[1]

BACKGROUND

In August of 2020, primary elections for the Alachua County School Board were held, and McGraw received a majority of the votes cast to represent District 2. McGraw was subsequently certified following the November 2020 general election as the successful District 2 candidate with the most votes by the Election Canvassing Board for Alachua County.

On June 9, 2021, Khanh-Lien Roberts Banko, the candidate who received the second highest number of votes in the November 2020 election, as well as three Alachua County registered voters, namely, Marlon Bruce, Thomas Cowart, and Richard McNeill, filed a Complaint for Emergency Declaratory and Injunctive Relief in the Eighth Judicial Circuit Court in and for Alachua County against McGraw, the Election Canvassing Board for Alachua County, Florida, and Kim A. Barton, in her capacity as Supervisor of Elections for Alachua County, Florida. *See* Plaintiffs' Complaint for Emergency Declaratory and Injunctive Relief, No. 01-2021-CA-1594. The *Banko* plaintiffs sought a declaration that McGraw's seat on the Alachua County School Board was vacant due to her non-residency, and also sought to have McGraw enjoined from taking further

[1] The Court may take judicial notice of Executive Order 21-147 and all filings and documents included in the record in the matter of *Banko, et al. v. McGraw, et al.*, No. 01-2021-CA-1594. *See* § 90.202(5)-(6), Fla. Stat. (noting that a court "may take judicial notice" of "[o]fficial actions of the . . . executive . . . department[] . . . of any state . . . of the United States" and "[r]ecords of any court of this state").

action as a member of the School Board. *Id.* at 1, 7-9. The complaint and its attached documentation alleged that McGraw was not a resident of District 2 and therefore did not qualify to hold a position on the School Board for District 2. *Id.* at 5. The specific factual allegations set forth in the *Banko* complaint included references to statements made by McGraw in legal documents filed in June of 2020 for the purpose of election qualification, as well as statements made to the media a year later in June of 2021, among others, wherein McGraw allegedly confirmed that her residence was outside of District 2. *Id*. at 2-4.

On June 11, 2021, the plaintiffs in the *Banko* case also filed a Verified Emergency Ex-Parte Motion for Injunctive Relief to immediately enjoin McGraw from taking any further action as a member of the School Board for District 2. *See* Plaintiffs' Verified Emergency Ex-Parte Motion for Injunctive Relief, No. 01-2021-CA-1594. In her response, McGraw did *not* contest the evidence and allegations that she was a resident of District 4 and not District 2. *See* McGraw's Response in Opposition to Plaintiffs' Verified Emergency Ex-Parte Motion for Injunctive Relief, No. 01-2021-CA-1594. Instead, McGraw argued there that the plaintiffs were seeking the wrong type of relief and that a writ of quo warranto was required to be filed against her by an aggrieved party—i.e., someone claiming better right to the office—with the consent of and on behalf of the Attorney General in order to challenge her qualifications. *Id.* at 9-15.

On June 15, 2021, the circuit court in the *Banko* case entered an order denying Plaintiffs' Verified Ex-Parte Motion for Injunctive Relief due to the availability of an adequate remedy at law—i.e., quo warranto—and insufficient evidence of irreparable injury. *See Banko, et al. v. McGraw, et al.*, No. 01-2021-CA-1594 (Fla. 8th Cir. Ct. June 15, 2021). Significantly, however, the court determined that Plaintiffs had a substantial likelihood of ultimate success on the merits due to "McGraw's failure to reside in the district for which she was elected" and that "the seat is

considered vacant" under section 114.01(g), Florida Statutes, due to McGraw's non-residency. *Id.* at 3.[2]

On June 17, 2021, two days after the court's ruling in *Banko*, and commensurate with his constitutional and statutory responsibilities, the Governor issued Executive Order 21-147 in which he declared that because McGraw failed to maintain residency in District 2, as required by law, a vacancy existed on the Alachua County School Board for District 2, and the vacancy would be filled in compliance with law. *See* Exec. Order No. 21-147, https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-147.pdf. Among other things, the Governor noted that the *Banko* court's "findings" following a hearing supported his conclusion that "a vacancy occurred" pursuant to article X, section 3 of the Florida Constitution and section 114.01(1)(g), Florida Statutes. *Id.*

On June 22, 2021, McGraw filed a Petition for a Writ of Quo Warranto naming the Governor as respondent, challenging the Governor's authority to declare the District 2 vacancy, and seeking constitutional determinations. *See* McGraw's Petition For Writ of Quo Warranto, No. 01-2021-CA-1717. Petitioner seeks to obtain the issuance of a common law writ of quo warranto to: (1) direct the Governor to explain by what authority he issued Executive Order 21-147; (2)

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[2] The court in *Banko* specifically stated as follows:

> As to the first prong, there appears to be a substantial likelihood of success on the merits as the statutory authority presented by the Plaintiffs supports their argument that if McGraw does not live in the school district which she represents, District 2, she is not entitled to hold the seat for that district; Under section 114.01 (g), by McGraw's failure to reside in the district for which she was elected, the seat is considered vacant; McGraw's failure to reside in District 2 violates Alachua County School Board Policy; and Article X, § 3, Florida Constitution, states that a vacancy occurs when the elected official fails to meet the residency requirement of their office.

Banko, et al. v. McGraw, et al., No. 01-2021-CA-1594, at 3-4 (Fla. 8th Cir. Ct. June 15, 2021).

determine whether the Governor's exercise of power through the Order to declare a vacancy on the Alachua County School Board, District 2, was an unconstitutional abuse of executive power; and (3) determine whether the issuance of the Order was an improper encroachment on the powers reserved to the judiciary in violation of article II, section 3 of the Florida Constitution. *Id.* at 4-5, 14.

The Governor appointed Mildred Russell to the Alachua County School Board to fill the vacant District 2 school board seat on August 18, 2021, in accordance with section 1001.38, Florida Statutes. *See* https://www.flgov.com/2021/08/18/governor-ron-desantis-appoints-mildred-russell-to-the-school-board-of-alachua-county/ (last visited Sept. 29, 2021).

ARGUMENT

I. The Petition Must Be Dismissed Because it is Facially Insufficient.

Article V, section 5(b) of the Florida Constitution authorizes circuit courts to issue writs of quo warranto. "Quo warranto is used to determine whether a state officer [such as the Governor] has improperly exercised a power or right derived from the State." *Israel v. Desantis*, 269 So. 3d 491, 494 (Fla. 2019) (alteration and citations omitted). However, the availability of this extraordinary writ to a litigant is neither automatic nor assumed. *See Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004) ("Since the nature of an extraordinary writ is not of absolute right, the granting of such writ lies within the discretion of the court."). Instead, the writ is subject to the formal procedural pleading requirements of the Florida Rules of Civil Procedure which impose minimum requirements that must be met in order for a valid claim for relief to be stated. *See* Fla. R. Civ. P. 1.630(a) ("This rule applies to actions for the issuance of writs of . . . quo warranto[.]").

Florida Rule of Civil Procedure 1.630 concerns the procedure for "Extraordinary Remedies" such as this action seeking common law quo warranto relief. Rule 1.630 states, in part,

that "[t]he initial pleading must be a complaint" and "[i]t must contain . . . the facts on which the plaintiff relies for relief." Fla. R. Civ. P. 1.630(b)(1). Rule 1.630 requires the initial pleading to set forth a request for the relief sought, and if desired, supporting argument and citations to authority. Fla. R. Civ. P. 1.630(b)(2)-(3). If the petition does not state a facially sufficient claim for relief, the trial court may dismiss it. *See Raghubir v. State*, No. SC18-838, 2018 WL 3159167, at *1 (Fla. June 27, 2018) (dismissing quo warranto petition as "facially insufficient"). The rule also provides that "[i]f the complaint shows a prima facie case for relief, the court must issue . . . a writ of quo warranto." Fla. R. Civ. P. 1.630(d)(3).

McGraw's petition must be dismissed as facially insufficient because McGraw *critically* fails to allege in her quo warranto petition that she was a legal resident of District 2 at the time she was removed from office—or at any other time for that matter.[3] That factual contingency is so fundamental to any argument that McGraw might endeavor to make that the Governor wrongfully declared the District 2 seat vacant that the absence of such a contention is glaring and cannot legally meet the standard for a claim for extraordinary relief. *See* Fla. R. Civ. P 1.630(b)(1), (d)(3) (requiring the pleading of sufficient facts to state a prima facie case for relief).

The Governor's Executive Order 21-147, which McGraw contests, is squarely concerned with the issue of McGraw's legal residency as it relates to the Alachua County School Board, District 2 seat. As referenced at the outset of the Executive Order, "Article X, Section 3, of the Florida Constitution, and section 114.01(1)(g), Florida Statutes, provide that a vacancy in office

[3] As the court in *Banko* noted, the plaintiffs in that case had a substantial likelihood of ultimate success on the merits due to "McGraw's failure to reside in the district for which she was elected" and that "the seat is considered vacant." *Banko, et al. v. McGraw, et al.*, No. 01-2021-CA-1594, at 3 (Fla. 8th Cir. Ct. June 15, 2021). Significantly, the court in *Banko* noted that "[d]espite having ample time to present evidence, neither party offered any additional evidence or testimony at the hearing [for emergency injunctive relief]" beyond that contained within the exhibits attached to the plaintiffs' Verified Emergency Ex-Parte Motion for Injunctive Relief. *Id*.

shall occur upon an officer's failure to maintain the residence required of him or her by law." The words "residence," "reside," and "residency" are used a total of five times in the Governor's Executive Order declaring the seat vacant. It would, therefore, seem eminently logical that McGraw would endeavor to address the residency issue in her Petition challenging the lawfulness of the Governor's declaration of a vacancy—but that is not the case.

McGraw's Petition for Writ of Quo warranto lacks even the most basic allegation of residency that would tend to support and underlie any legitimate granting of the sought-after relief. In her Petition, McGraw will only relate that: (1) she was the "successful candidate" in the November 2020 election; (2) she has "title" to hold the seat; (3) she is the "de facto holder" of the seat; (4) and she occupies "her District 2 seat." *See* McGraw's Petition For Writ of Quo Warranto, at 3, 10, 13, No. 01-2021-CA-1717. That is all. None of these contentions come close to stating that McGraw legally resided in District 2 throughout her term of office, and that because of that lawful residency, the District 2 seat was therefore wrongfully declared vacant. Nor do they otherwise call into question the evidence presented to or findings of the *Banko* court, which are entirely consistent with and support the Governor's declaration of said vacancy. As the lawful residency issue pervades the entire matter and underlies McGraw's grievance before this Court, the facts as pled in the petition are, by any measure, unfocused and insufficient to allege a facially sufficient claim for quo warranto relief. *Cf. Arnold v. State ex rel. Mallison*, 2 So. 2d 874, 878 (Fla. 1941) (requiring the allegation of "essential facts" in order to make out a prima facie case for mandamus).

In order to state a valid claim for relief under Rule 1.630, McGraw must be required to allege as part of her prima facie case that she resided in District 2 at all times material. In simplest terms, if McGraw is only willing to state "I was elected and the seat is mine" when the core of the

issue is, in fact, lack of legal residency and the occurrence of vacancy, then she falls far short of a legally sufficient pleading.

If McGraw is unable or unwilling to make the most fundamental and central factual allegation, particularly in light of a clear and unambiguous adverse finding by the *Banko* court that the plaintiffs in that case had a substantial likelihood of ultimate success on the merits regarding the residency issue, where due process and ample opportunity for presentation of evidence was afforded, McGraw's prima facie case fails, her effort to obtain extraordinary relief cannot stand, and her petition should be dismissed.

II. The Petition Must be Denied Because the Governor Lawfully Declared a Vacancy in the District 2 School Board Seat Pursuant to the Plain Language of the Constitutional and Statutory Provisions Governing Vacancy in Office.

If the court does not dismiss McGraw's petition due to facial insufficiency, the Governor's action in issuing Executive Order 21-147 must be upheld on the merits because it was fully authorized by, and consistent with, the Florida Constitution and the Florida Statutes.

Article X, section 3 of the Florida Constitution, entitled "Vacancy in office," provides in full:

> Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or *failure to maintain the residence required when elected or appointed*, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

(Emphasis added.) Section 114.01(1)(g), Florida Statutes, confirms that "[a] vacancy in office shall occur . . . [u]pon the officer's *failure to maintain the residence required* of him or her by law." (Emphasis added.) In turn, section 1001.34(1), Florida Statutes, states that "[e]ach member of the district school board . . . *shall be a resident of the district school board member residence area from which she or he is elected, and shall maintain said residency throughout her or his term*

of office." (Emphasis added.) These provisions, individually and collectively, indicate that residency is a central and fundamental requirement that must be met for any individual to lawfully serve on a school board.

Article IV, section 1(a) of the Florida Constitution provides that "[t]he supreme executive power shall be vested in [the] governor" and that "[t]he governor shall take care that the laws be faithfully executed." In turn, section 114.01(2), Florida Statutes, specifically directs the Governor to take action upon an officer's failure to maintain the residence required of him or her by law:

> With respect to paragraphs (b) and (f)-(k) of subsection (1), [including paragraph (g)'s statement that a vacancy in office *shall occur upon the officer's failure to maintain the residence required of him or her by law*], the Governor *shall file an executive order with the Secretary of State setting forth the facts which give rise to the vacancy*, and he or she *shall include in such order the title of the office, the name of the incumbent officer or person who held the office, and the date on which the vacancy in office occurred*. The office shall be considered vacant as of the date specified in the executive order or, in absence of such a date, as of the date the executive order is filed with the Secretary of State.

(Emphasis added.) The term "shall" frequently means "is required to." *Shall*, Black's Law Dictionary (11th ed. 2019); *see Allstate Ins. Co. v. Orthopedic Specialists*, 212 So. 3d 973, 978 (Fla. 2017) (term "shall" is ordinarily mandatory). Thus "[t]he traditional, commonly repeated rule is that *shall* is mandatory and *may* is permissive." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 112 (2012). Nothing within section 114.01(2) suggests that this Court should interpret the statutory term "shall" contrary to its ordinary, mandatory usage. Plainly, then, upon the Governor being made aware of McGraw's failure to maintain the residence required of her by law, Florida law required the Governor to issue an executive order declaring the District 2 School Board seat vacant.

Prior to the execution of Executive Order 21-147, the Governor was made aware of the *Banko* court's ruling regarding McGraw's residency and the evidentiary basis for that ruling.

Specifically, the evidence the *Banko* court relied upon in finding a substantial likelihood of success on the merits that McGraw failed to reside in District 2 included the following attachments to the *Banko* petitioners' Verified Emergency Ex-Parte Motion for Injunctive Relief: (1) "Exhibit A to the Motion, a 'Statement of Candidate' that does not reflect McGraw's address;" (2) "Exhibit B to the Motion, a Form 6 Financial Disclosure which reflects McGraw's mailing address as 4331 NW 21st Terrace, Gainesville, FL 32605" in District 4; (3) "Exhibit C to the Motion, a statement from TJ Pyche, Director of Communications and Outreach, which indicates 'Alachua County Supervisor of Elections responds to questions regarding candidate residency' and notes that the address on the Candidate Oath is located within District 4 of the Alachua County School Board and that the candidate qualified and was elected to serve in District 2;" (4) "Exhibit D to the Motion, a map which reflects the location of McGraw's residence in District 4;" and (5) the fact that "[t]he parties requested 90 minutes for an emergency hearing" and "[d]espite having ample time to present evidence, neither party offered any additional evidence or testimony at the hearing." *See Banko, et al. v. McGraw, et al.*, No. 01-2021-CA-1594, at 2-3 (Fla. 8th Cir. Ct. June 15, 2021). Against this backdrop, the *Banko* court's findings of fact, which were determined after full and fair due process was afforded McGraw, together with the evidence presented to the *Banko* court and the requirements of law, were sufficient facts giving rise to the vacancy for the Governor to exercise his authority to declare a District 2 vacancy. Indeed, the Governor's obligation to declare the vacancy could have arisen with far less evidentiary support; the *Banko* proceedings only further enhanced the lawfulness and soundness of the Governor's Executive Order 21-147.

In her Petition for Writ of Quo Warranto, McGraw takes issue with the Governor's reference in Executive Order 21-147 to the *Banko* court's finding of "a substantial likelihood of success of the merits" as a basis for a finding of no legal residency and a determination of vacancy

of office because that finding was at a preliminary stage of the litigation and "d[id] not decide any material points in controversy." McGraw's Petition For Writ of Quo Warranto, at 10, No. 01-2021-CA-1717. However, the issue of whether a temporary injunction decides any material points in controversy is of no moment. The plain language of article IV, section 1(a) of the Florida Constitution and article X, section 3 of the Florida Constitution, as well as sections 114.01(1)-(2) and section 1001.34(1) of the Florida Statutes, simply does not require the Governor to wait for a final judicial judgment of vacancy before issuing an executive order setting forth the facts that give rise to the vacancy under section 114.01(g) and declaring a vacancy pursuant to section 114.01(2).

McGraw relies on a non-binding Florida Attorney General opinion from 1973 in an effort to argue that an unconstitutional violation of separation of powers has occurred vis-à-vis the entry of Executive Order 21-147. *See* McGraw's Petition For Writ of Quo Warranto, at 8-9, No. 01-2021-CA-1717 (citing Op. Att'y Gen. Fla. 73-193 (1973)), http://www.myfloridalegal.com/histago.nsf/0/ACB4872185E320E58525875A0070D09B/$file/73-193.pdf. In Attorney General Opinion 73-193, the question presented for advisory opinion was whether a district hospital board member, who moved out of the district from which he was initially appointed to serve, and also changed his homestead status but not his voter registration, had violated then section 114.01(4), Florida Statutes, stating that "[e]very office shall be deemed vacant in the following cases" including namely "[b]y his ceasing to be an inhabitant of the state, district, county, town or city for which he shall have been elected or appointed." § 114.01(4), Fla. Stat. (1972). The Attorney General ultimately opined in relevant part:

> When considering generally the conditions under which an office becomes vacant (§114.01, F.S.), the law—and not administrative officials—determines whether a vacancy in law actually exists; and it is the happening of the specified condition (ceasing to be an inhabitant of, or removal of permanent residency from, the district from which elected) which enables the governor to declare a vacancy under the

> conditions prescribed in § 114.01, *supra*, and to appoint to fill such vacancy actually existent in law under § 114.04, *supra*.
> . . .
>
> These questions can be resolved only by the courts and, like the challenge to the incumbent's title and right to hold the office itself under the 1972 election, it is the judiciary, after considering all factors in the case, who must decide the issue of whether or not the district 3 hospital director's office is now vacant or his right to hold such office under his election thereto.

Op. Att'y Gen. Fla. 73-193, at 310, 312 (1973).

As an initial matter, Attorney General Opinion 73-193 is factually distinguishable. The 1973 Opinion contained a much more complex situation involving a qualified initial appointment to office, followed by removal of residence to another hospital district at the time of qualification and election, intertwined with multiple contracts for the purchase and sale of real property by the officeholder within and without the subject district. At the time of initial appointment, the officeholder claimed a homestead tax exemption on property in the district represented, but not in subsequent years, and all the while, the officeholder's voter registration was maintained in the district of initial appointment. *Id.* at 308-09. The issue of whether the non-residence was temporary or permanent was a central consideration. *Id*. at 309 (noting a need for a "determination of whether the incumbent board member's change of residence was temporary or permanent in nature").

That is not the case here, and there is no evidence to indicate the same situation—temporary versus permanent residency—is remotely presented as it concerns McGraw. Simply put, the evidence considered by the *Banko* court was straightforward and demonstrated that at least from the date of McGraw's signing under oath the Form 6 "Full and Public Disclosure of Financial Interests" on June 11, 2020, prior to the November 2020 school board election, McGraw claimed an address in District 4 at 4331 NW 21st Terrace, Gainesville, FL 32605. Based on that

straightforward and uncontroverted evidence, and as previously stated, the findings of the *Banko* court were that the Plaintiffs had a substantial likelihood of ultimate success on the merits due to "McGraw's failure to reside in the district for which she was elected" and that "the seat is considered vacant" under section 114.01(g), Florida Statutes, due to McGraw's non-residency.

In any event, this Court should decline to follow Attorney General Opinion 73-193 because it is inconsistent with the plain text of the current version of section 114.01, Florida Statutes. Specifically, section 114.01 describes circumstances where a felony "conviction," a "final adjudication," or the "rendition of a final judgment" is required for a vacancy in office to occur. *See* § 114.01(1)(j), Fla. Stat. ("A vacancy in office shall occur . . . [u]pon the conviction of the officer of a felony[.]"); § 114.01(1)(k), Fla. Stat. ("A vacancy in office shall occur . . . [u]pon final adjudication, in this state or in any other state, of the officer to be mentally incompetent."); § 114.01(l), Fla. Stat. ("A vacancy in office shall occur . . . [u]pon the rendition of a final judgment of a circuit court of this state declaring void the election or appointment of the incumbent to office."). Neither a felony "conviction" nor a "final adjudication" nor a "rendition of a final judgment" is required for a vacancy in office to occur pursuant to the plain language of section 114.01(1)(g), which was a basis for the declaration of vacancy cited in the Governor's Executive Order 21-147. *See* § 114.01(1)(g), Fla. Stat. ("A vacancy in office shall occur . . . [u]pon the officer's failure to maintain the residence required of him or her by law.").

This conclusion is buttressed by application of the negative implication canon (*expressio unius est exclusio alterius*). The negative implication canon provides that "the mention of one thing implies the exclusion of another." *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774, 781 (Fla. 2017) (citation omitted); *accord Expressio Unius Est Exclusio Alterius*, Black's Law Dictionary (11th ed. 2019). It would be extra-textual to graft a final-judicial-

judgment-of-vacancy prerequisite onto the plain language of section 114.01(1)(g), where a vacancy in office occurs "[u]pon the officer's failure to maintain the residence required of him or her by law," and it is the Governor's duty to set forth the facts that give rise to the vacancy and declare a vacancy pursuant to section 114.01(2). The Florida Legislature could very easily have included language requiring some sort of judicial prerequisite to the Governor declaring a vacancy under section 114.01(2)—just as was done in sections 114.01(1)(j)-(l)—if they had wished to do so, but they did not.

McGraw asks this Court to declare that Executive Order 21-147 violates the separation of powers under article II, section 3 of the Florida Constitution. *See* McGraw's Petition For Writ of Quo Warranto, at 10-11, 14, No. 01-2021-CA-1717. But such a declaration would turn the separation of powers on its head. *See Citizens for Strong Sch., Inc. v. Florida State Bd. of Educ.*, 232 So. 3d 1163, 1170 (Fla. 1st DCA 2017) ("[T]he Florida Constitution imposes a 'strict' separation of powers requirement that applies just as vigorously to the judicial branch as it does to the other two branches of government."). As just explained, the Florida Constitution and the Florida Statutes plainly authorized—indeed, required—the Governor to issue an executive order declaring that a vacancy exists due to McGraw's failure to maintain the residence required of her by law. This Court should reject McGraw's invitation to overrule the Governor's lawful exercise of executive power and thereby violate the separation of powers.

A governor's actions are presumptively taken in accordance with his or her official duties, and this presumption should be given great deference especially where the action is consistent with constitutional and statutory text. *See Kirk v. Baker*, 229 So. 2d 250, 252 (Fla. 1969). The Governor's actions in issuing Executive Order 21-147 were entirely proper and appropriate and complied with Florida law in all respects. As such, this Court should follow the plain text of article

IV, section 1(a) of the Florida Constitution, article X, section 3 of the Florida Constitution, and sections 114.01(1)-(2) and 1001.34(1) of the Florida Statutes, and deny McGraw's request for quo warranto relief.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Quo Warranto should be dismissed as facially insufficient or alternatively denied on the merits.

Respectfully submitted this 1st day of October, 2021.

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GOVERNOR

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed using the Florida Courts E-Filing Portal this 1st day of October, 2021, and will be electronically served to all counsels of record.

/s/ Mark A. Buckles
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