IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

In Re: BRUCE D. CHILDERS,		
Plaintiff,		
vs.		Case No. 2024 CA 000816
ROBERT BENDER, Supervisor of Elections,		
Defendant.	/	

EMERGENCY MOTION FOR INJUNCTIVE RELIEF

COMES NOW the Petitioner, BRUCE CHILDERS (the "Petitioner"), by and through his undersigned attorneys, and moves this Court for an emergency mandatory injunction against the current Supervisor of Elections (the "Supervisor") to reinstate the Petitioner as a candidate for that office, as his office had originally done well prior to the deadline for candidate qualifications.

As grounds for this motion the Petitioner would show:

1. On Wednesday, June 12, 2024, the Petitioner filed all documents required and directed by the filing officers of the Supervisor of Elections.

Completion of all requirements, as required by §99.061, Fla. Stat., was verified by the two filing officers by the placement of their initials beside each document required showing that the filing requirements had been met as of June 12, 2024. A

true and accurate copy of the Supervisor of Elections 2024 "Qualifying Check List," an official document in the Supervisor's files, is attached as Exhibit "A."

- 2. After all of the documents required for candidate qualification were reviewed and approved by two officers of the Supervisor's office, the Petitioner was told that he was "done," that everything had been completed, and that nothing else was needed. The Supervisor of Elections then listed the Petitioner, Bruce Childers, on its website as a candidate for the position now held by Defendant Robert Bender, Supervisor of Elections. Petitioner's name remained there throughout the remainder of the qualifying period, which ended June 14, 2024, and neither the Supervisor, nor his employees or officers, contacted the Petitioner to say anything else was required.
- 3. The two filing officers who, through their "sign off" on Exhibit "A," verified that Mr. Childers had complied with each and every requirement of the Supervisor's office to qualify to run against their boss, were the Chief Deputy Supervisor, Sonya Daniel, and the Candidate Coordinator, Keelie Sekerka.
- 4. After and only after the dual certification by the filing officers was made, and the Petitioner was told he had completed the process, and that nothing else was required of him, did the Petitioner leave the offices of the Supervisor. He was within hours listed on the Supervisor's website as having been qualified as of June 12, 2024 two days before the qualification deadline. And a news release

was issued by the Supervisor's office stating that the Petitioner had qualified to run for office. The Supervisor's news release stating that Mr. Childers had qualified as a candidate for the position now held by the Defendant was published by the *Pensacola News Journal* the next day, June 13, 2024.

- 5. The dual verified checklist where two officers verified that the applicant had provided all required documents, the listing of the applicate as a candidate on the Supervisor of Elections' website, and the generation and dissemination of a press release, were all part of the policy and procedures of the office charged with the conduct of fair and open elections. See Exhibit "B."
- 6. Fla. Stat. § 99.061(7)(c) states, "In determining whether candidate is qualified, the filing officer *shall review* the qualifying papers to determine whether all items required by paragraph (a) have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified." (emphasis added). The filing officers through dual certifications attested to the fact that they had reviewed the qualifying papers, and found they had all been properly submitted.

On Tuesday, June 18, 2024, four days after the deadline for qualifying had passed, Petitioner received a call from Ms. Daniel of the Supervisor's office, saying that the Supervisor of Elections office was revoking his qualification because he had not "filed" all of the financial disclosure form, Form 6. That is

directly contrary to the dual certification found at the bottom of the Supervisor of Elections checklist. (See last item expressly addressing Form 6 on Exhibit "A" containing the initials of both Sonya Daniel and Keelie Sekerka showing that requirement had been met.)

7. It should be noted that the "Qualifying Information" form provided to candidates seeking to qualify provides for "Form 6 – Full and Public Disclosure of Financial Interest, 2023." See Exhibit C. The only place that the Petitioner had to electronically file that form was through the Electronic Financial Disclosure Management System ("EFDMS") maintained by the Division of Ethics. The Petitioner so filed that form, and it has been part of the records of the State of Florida from June 12, 2024, forward. The Supervisor's office required proof of the filing of that form with EFDMS, and that proof was provided in the form required by the Supervisor's office; i.e., the page one summary with a "watermark" that demonstrated that it had been filed. Those instructions are consistent with Fla. Stat. § 112.3144. It is the Commission on Ethics, not the Supervisor of Elections, who is charged with handling ethics complaints that may be based on elected officials voting on matters that these financial disclosures show to be a conflict of interest. The Commission on Ethics maintains those forms as public records available on request if the candidate is elected to office. It is not available to the

public before the candidate is elected to office, but remains on file for immediate access if the candidate wins the office.

- 8. Petitioner's wife, who was present with Petitioner throughout this process, expressly asked Deputy Supervisor of Elections, Sonya Daniel ("Ms. Daniel"), what was needed to fulfill the Form 6 requirements since this is a new process for candidates.
- 9. Ms. Daniel responded to the Petitioner and Petitioner's wife by drawing a square in the air with her fingers indicating one page, expressly stating: "All we need is the page with the watermark. That is sufficient." This was witnessed by the Petitioner, his wife, and their financial adviser who assisted them in the preparation of the four-page financial disclosure form, Form 6. The form is filed electronically with the Commission on Ethics, and the verification of receipt of the filing is accomplished through the placement of a "watermark" stating it was filed for "qualification purposes only." It will not be deemed a releasable public record filed by an office holder until (if and when) the candidate is elected. Thus, the Supervisor of Elections office knew where the document had been filed, and verified that it had been filed through obtaining a copy of the summary page containing the EFDMS's "watermark." The document was part of the records of the State of Florida from June 12, 2024, forward.

- 10. Because the campaign checking account had to be opened after the initial filing process, the Petitioner had to leave the Supervisor's office momentarily on June 12, 2024, to open a bank account and print the summary page of Form 6 as directed and required by the Supervisor's officers overseeing this process. Petitioner returned with the filing fee payment and copy of the Form 6 watermarked by the Division of Elections. Ms. Daniel verified payment and the Form 6 requirement, as evidenced by the dual certification that the Form 6 requirement had been met. See bottom of page one of Exhibit "A." Once again, those instructions are consistent with the mandates of Fla. Stat. § 112.3144 providing for a "verification or receipt of the filing with the officer before whom he or she qualifies." The website of the Commission on Ethics that maintains the EFDMS records of financial disclosures showed proof of completion of the entire report and a date stamp of June 12, 2024. Upon leaving, Petitioner asked Ms. Daniel if anything else was needed, to which Ms. Daniel responded something to the effect of, "...you're complete. You're all good."
- 11. When the Petitioner was told six days later that his qualification had been revoked for alleged non-compliance with Form 6, the Petitioner immediately requested a meeting with the Supervisor of Elections, Robert Bender. On the afternoon of June 18, 2024, Petitioner was granted a meeting with Ms. Daniel and an attorney from the County Attorney's office, not the Supervisor of Elections as

requested. No resolution was reached at the meeting, and the County Attorney indicated that she would look into the matter and render her recommendation later. The rescission of the Petitioner's qualified-to-run status was not reversed, requiring the bringing of this action.

Between Wednesday, June 12, 2024, when Petitioner filed his 12. paperwork, all of which was approved and dual certified, and the end of qualifying on Friday, June 14, 2024, no one from the Supervisor of Elections office called, texted, emailed, or otherwise communicated to the Petitioner that copies of pages two through four of Form 6 were needed by the Supervisor of Elections. That is a clear violation of Fla. Stat. § 99.061(7)(b) which mandates, in pertinent part, "... If the qualifying officer receives qualifying papers during the qualifying period prescribed in this section which do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying...." This statute further requires that "... The filing officer should make every effort to contact the candidate if there is a problem with the paperwork." Supervisor's Handbook on Candidate Qualifying, pg. 7. (emphasis added). The Handbook further states that the filing officer should document all efforts to contact the candidate and any conversations with the candidate. Id.

This did not occur, and public records productions by the Supervisor's office contains no documentation that it occurred. The filing officer reviewed all four pages of Form 6 on June 12, 2024, and asked only for a copy of page one showing that the records custodian for what might become (upon the candidates election) a public record had been filed with that custodian, the Commission on Ethics to whom the Division of Elections delegated that role. If the filing officer wished to reverse its direction to the Petitioner that the only page of Form 6 was page one to show the "watermark" verifying its filing, the filing officer had a statutory duty to notify Petitioner of the "missing" or incomplete items. Defendant failed or refused to perform the ministerial duty as required under Fla. Stat. § 99.061(7)(b). It is also important to note that the summary page with the Division of Ethics watermark was in the Supervisor's file, as requested, and the Supervisor had ready access to the full form from the agency that maintains these financial disclosure records. There are no financial requirements for running for public office, and thus the information on the financial disclosure has one and only one purpose – to provide a written record accessible to the public once a candidate is elected that would allow for an analysis of any conflict of interest questions – questions not within the jurisdiction of the Supervisor of Elections, but wholly within the jurisdiction of the Commission on Ethics where the record has remained since June 12, 2024.

13. It is important to note that on June 12, 2024, following the Petitioner's filing of required forms and payments, Petitioner's wife noticed that the Supervisor's office had listed an incorrect email address for the Petitioner on its website. Petitioner's wife texted Ms. Daniel to inform her of the mistake.

Ms. Daniel then texted Petitioner's wife back and told her that she would make the correction, which her assistant subsequently did. The two texted back and forth several times that evening. To make this change, the Supervisor's staff had to again access the Petitioner's file which contained only page one of the electronically filed Form 6 disclosures. Thus, the Supervisor's staff had ample opportunity to have notified Petitioner of any deficiency days prior to the qualification deadline, and yet failed to do so.

LEGAL REQUIREMENTS FOR INJUNCTIVE RELIEF

It is well-established principle that remedies in equity are warranted when four factors are present: "(1) a likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) public interest considerations." *Naegele Outdoor**Advertising Co., Inc. v. City of Jacksonville, 659 So.2d 1046, 1047 (Fla. 1995) at 1047. Petitioner satisfies all four factors. Absent the relief requested being granted, the current, non-elected Supervisor of Elections will be allowed, by his wrongful actions, to remain in office with the public being given no choice.

1. **Irreparable harm**. Petitioner has suffered and will continue to suffer irreparable harm absent an injunction reinstating his name as a qualified candidate for election.

Petitioner was wrongfully disqualified as a candidate for the office of Escambia County Supervisor of Elections after the deadline for candidate qualification had passed. Thus, he has been denied his right to run for this office, and the voters of Escambia County have been – absent the intervention of this Court – denied the right to any alternative to the Defendant, who was not elected (but appointed) to this critically important office.

Under these facts, Petitioner clearly faces irreparable harm absent the intervention of this Court. Leaving things as "status quo" means that the Defendant's after-the-fact disqualification of his only competition assures him four more years in a job that he was never elected to perform. Absent the granting of the relief requested, irreparable harm will occur to the public, as it will be deprived of the right to vote on this critically-important Constitutional office – one that is designed to promote – not subvert – election fairness and integrity. The public deserves having another candidate to consider for this important position – a choice that the Supervisor's decision to disqualify his only competitor has denied absent reversal by this Court.

Defendant has publicly stated that this disqualification was not his decision.

That is disingenuous, as the Defendant, Robert Bender, is in charge of the department, and all employees with the department work under his control and direction.

2. **No adequate remedy at law**. Depriving a candidate of the right to run for an office for which they are well qualified, and the public the right to elect its next Supervisor of Elections, cannot be compensated for with monetary damages, and no law provides for such damages. Thus, the Petitioner has no adequate remedy at law.

Only a remedy in equity in the form of a mandatory injunction is sufficient to address the harm caused in this case. There is no remedy in law adequate to mitigate the harm that will continue to be caused by the wrongful disqualification of the Petitioner other than the GRANTING of this emergency motion.

- 3. **Substantial likelihood of success on the merits**. Based on the facts and law discussed above, and evidence supporting these facts to be presented at the emergency hearing, the Petitioner is substantially likely to prevail on the merits.
- 4. **Public interest**. Public interest would not be disrupted or disserved in any way if the requested injunction were granted. Access to qualified candidates for election is in the public's best interest. The harm done by the Petitioner's disqualification extends to the public in that voters have been deprived of the

opportunity to choose to vote for the Petitioner because of his wrongful disqualification. The State has a compelling interest in advancing public policy that opens avenues for qualified individuals to run for office because doing so allows its citizen voters more of an opportunity to choose a candidate who is best suited to serve in office. Retroactive disqualification of candidates who follow the mandates and instructions of the Constitutional Officer charged with promoting and protecting free elections is detrimental to the public's interest in having choices when voting. Defendant's actions have deprived the public of that choice, and he has carried out to the public's detriment his own self-interest – not the interest of the public. If the Petitioner is reinstated as a qualified candidate, the public benefits by being allowed to choose between two candidates.

The 2024 Supervisor of Elections Handbook states on page 2 that, "Once a candidate is qualified to be on the ballot, their name cannot be removed from the ballot without a court order." The dual certification by the Supervisor of Elections office qualified Petitioner to be on the ballot. The retroactive action to rescinding of that qualification after the deadline for qualification effectively removes him from the ballot absent the intervention of this Honorable Court.

WHEREFORE, the Petitioner respectfully requests that this Court enter a mandatory injunction requiring the Supervisor of Elections to re-instate Bruce

Childers as a qualified candidate for the Office of Supervisor of Elections, and for the granting of such other and further relief as this Court finds just and proper.

/s/ Edward P. Fleming

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(850) 477-0660
(850) 477-4510 Fax
flemingservice@pensacolalaw.com
cat@pensacolalaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with this Clerk of Court on this 25th day of June, 2024 using the Florida E-Portal system which will send notification of such filing to the following:

Alison Perdue Rogers, Esquire
Florida Bar No. 100188

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/s/ Edward P. Fleming
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Robert D. Bender

Escambia County Supervisor of Elections

2024 Qualifying Check List

Supervisor of Elections Candidates

Qualifying begins Noon, June 10, 2024, and ends Noon, June 14, 2024. Qualifying Forms may be filed early - 1st day to file Qualifying Forms is May 27, 2024.

Candidate's Name: Bruce Chiders

Qualifying Fee or Petition Certification Letter (circle one)			
1 st Initials	2 nd Initials	Or check/mark on line if Candidate is a Write-In Candidate	
dund	KO	Make check payable to the Board of County Commissioners	
Amis	KG	Drawn on a Campaign Account	
ams	K5	Amount no less than \$9,735.48 for Partisan or \$6,490.32 for No Party	
SHAN	115	Signed by Treasurer or Deputy Treasurer	
CMIL	WO	Give receipt	

Appo	Appointment of Campaign Treasurer Filed (DS-DE 9)			
1st	2 nd			
Initials	Initials			
DIMA	115	If New Candidate - check initial filing - Form must be Rev. 09/23		
Ino	K5	Name & address provided		
and	165	Telephone & Email provided		
SMD	K5	Office provided		
Smo	KS	Party Affiliation Box Checked or Write in Party		
Lund	KS	Campaign Treasurer designated with Name, Telephone & Email		
CME	US	Campaign Treasurer address provided		
dus	VE	Primary Depository box checked		
dus	149	Primary Depository name & complete address provided		
AMD	KS	Candidate provided original signature & date		
Amo	15	Campaign Treasurer's Acceptance of Appointment Complete		
dun	45	Dated and Campaign Treasurer signed		

2023 Form 6, Full and Public Disclosure of Financial Interests		
1 st Igitials	2 nd Initials	*Electronic Financial Disclosure Management System – disclosure.floridaethics.gov
Sund	45	2023 Electronic Form Receipt Filed
Suns	45	Contains Candidate's Name

Candidate Oath - Candidate with "Party Affiliation" (DS-DE 301A)			
1 st	2 nd		
Initials	Initials		
amb.	K5	Form must be Rev. 10/23	
dus	K5	Under Oath of Candidate Section – Print Name as to appear on Ballot	
and	K5	Office provided & county of residence	
Cunt	K5	Statement of Party	
AMD	K5	Statement of Outstanding Fines, Fees, or Penalties – check yes or no	
and	K9	Candidate's Original Signature is Listed	
LMD	119	Phone and E-mail Provided	
and	Y9	Complete Address Provided	
Ams	49	Notarized properly with County, Date, Identification Provided, Stamp & Signature	
NA		Statement of Outstanding Fines, Fees, or Penalties if applicable, page 2	
Lind	W	Affidavit of Nickname, if applies	

1st	2 nd	
Initials	Initials	
	/	Form must be Rev. 10/23
		Under Oath of Candidate Section – Print Name as to appear on Ballot
	/	Office provided & county of residence
		Statement of Outstanding Fines, Fees, or Penalties – check yes or no
		Candidate's Original Signature is Listed
		Phone and E-mail Provided
/		Complete Address Provided
/		Notarized properly with County, Date, Identification Provided, Stamp & Signature
		Statement of Outstanding Fines, Fees, or Penalties if applicable, page 2
		Affidavit of Nickname, if applies

1 st	2 nd	
Initials	Initials	
		Form must be Rev. 10/23
		Under Oath of Candidate Section – Print Name
	,	Office provided & county of residence
		Statement of Outstanding Fines, Fees, or Penalties – check yes or no
		Candidate's Original Signature is Listed
		Phone and E-mail Provided
/		Complete Address Provided
		Notarized properly with County, Date, Identification Provided, Stamp & Signature
		Statement of Outstanding Fines, Fees, or Penalties if applicable, page 2
/		Affidavit of Nickname, if applies

State	Statement of Candidate (DS-DE 84)			
1 st	2 nd			
Initials	Initials	[2] [1] [2] [2] [2] [3] [4] [4] [4] [4] [4] [4] [4] [4] [4] [4		
SMD	16	If New Candidate - Form must be Rev. 5/11		
AMD	WS	Name of Candidate		
Sund	15	Office of Candidate		
SIND	S	Signature and Date		



Robert D. Bender

Supervisor of Elections

Supervisor of Elections Qualifying Information

Qualifying begins Noon, June 10, 2024, and ends Noon, June 14, 2024. Qualifying Forms may be filed early - 1st day to file Qualifying Forms is May 27, 2024.

Qualifying Forms may be filed early - 1st day to file Qualifying Forms is ividy 27, 2024.			
Qualifications	 Registered voter Resident of the county at the time of assuming office 		
Salary	\$162,258.00		
Qualifying Fee (If petitions were not met)	6% Partisan - \$9,735.48 4% No Party Affiliation - \$6,490.32		
Forms to get started All Candidates must file these forms (Already on file if pre-filed)	 Appointment of Campaign Treasurers & Designation of Campaign Depository (DS-DE 9) (REV 09/23) Statement of Candidate Form (DS-DE 84) 		
Forms to File for Party Affiliation Candidates	 Candidate Oath – State and Local Partisan Office (DS-DE 301A) Check "Candidate with party affiliation" box *Form 6 - Full and Public Disclosure of Financial Interests 2023 		
Forms to File for <u>No</u> Party Affiliation Candidates	 Candidate Oath – State and Local Partisan Office (DS-DE 301B) Check "Candidate with no party affiliation" box *Form 6 - Full and Public Disclosure of Financial Interests 2023 		
Qualifying Fee Information	 Must be paid with a campaign check drawn upon the campaign account Must be made payable to the Board of County Commissioners 		

If a condidate's check is returned by the bank for any reason, the Supervisor of Elections shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided...will disqualify the candidate. (Sections 99.061 and 99.092, F.S.)

Forms to File for

Write-In Candidates

and other information
(No Qualifying Fee is Required)

- Candidate Oath State and Local Partisan Office (DS-DE 301C)
 - o Check "Write-in candidate" box
- *Form 6 Full and Public Disclosure of Financial Interests 2023

A write-in candidate shall not be required to pay a filing fee, election assessment, or party assessment. A write-in candidate is not entitled to have his or her name printed on any ballot; however, a space for the write-in candidate's name to be written in must be provided on the general election ballot. (Section 99.061, (4) (b) F.S.)

Missing or Incomplete Information

If the filing officer receives qualifying papers during the qualifying period prescribed in this section which do not include all Items as required...prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying. (Section 99.061 (7) (b), F.S.)

^{*} Please note: (Amy questions regarding Form 6 should be directed to the Commission on Ethics, 1-850-488-7864, E-mail: disclosure@lea.state.fl.us) A public officer who has filed a financial disclosure statement for 2023 electronic financial disclosure management system(required) prior to qualifying for office will file the receipt of electronic filing with this office for qualifying.

General Information

Name:

Mr Bruce Barton Childers

Address:

2405 HALLMARK DR, PENSACOLA, FL 32503

County:

Escambia

Organization

Suborganization

N/A

CANDIDATE FOR

Position

Agency Name

Position sought or hel

Supervisor of Elections

Supervisor of Elections, Escambia Count

Supervisor of Elections, Escambla

Net Worth

My Net Worth as of December 31, 2023 was \$

Assets

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effect is \$

5

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

rescription of Asset	Value of Asset
405 Hallmark Drive Pensacola Florida	\$
100 Ft. Pickens Road, Pensacola Beach, Florida	\$ The control of the
07 Kenllworth, New Orleans, LA	\$1
SmartBank, Pensacola, Florida	options control with the control with
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Amazon	- Approximation and approximation of the control of
Exxon Mobile	\$
Carnival Corp	\$
ConocoPhillips	\$

Liabilitles		
LIABILITIES IN EXCESS OF \$1,00	D: .	
Name of Creditor	Address of Creditor	Amount of Liability
My Pensacola Credit Unio n	Reus Street, Pensacola, FL	.\$
JOINT AND SEVERAL LIABILITIE	S NOT REPORTED ABOVE:	
Name of Creditor	Address of Creditor	Almount of Liability
N/A		
		Section of the sectio
income. Or attach a complet	e and amount of income which exceeded \$1,000 during the ye copy of your 2023 federal income tax return, including all rity or account numbers before attaching your returns, as the website.	Was, schedules, and attachments.
I elect to file a copy of m	y 2023 federal Income tax return and all W2s, schedules, and	d attachments.
Name of Source of Income	TE SUBSTITUTE TO SUBSTITUTE SUBSTITUTE TO SUBSTITUTE SUBS	Amount
U.S. Department of Treasury	500 Pennsylvania Avenue, Washingtor	n, DC \$
		- Line -
SECONDARY SOURCES OF IN	COME (Major customers, clients, etc. of businesses owned b	Commission of the Commission of the Parish State Commission of the
Name of Business Entity	Name of Major Sources of Address of Source Business Income	Principal Business Activity of Source
N/A		
	k.	

Interests in Specified Businesses	Alle Andrews (1995) - Martine Andrews (1995) -		Park in a series with the
Business Entify #4			Property and the second
N/A			

Signature of Reporting Official or Candidate

Under the penalties of perjury, I declare that I have read the foregoing Formio and that the facts stated in it are true

Bruce Barton Childers

Digitally signed: 06/12/2024