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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC14-1941
L.T. No: 2014-CA-001435
DCA: 1D14-3667

DAVID P. TROTTI,
Appellant/Petitioner,

v.

KEN DETZNER, SECRETARY OF STATE,
Appellee/Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

This cause initially came before the Circuit Court of Leon County Florida ("trial court") upon the Petitioner/Appellant, David P. Trotti's *Emergency Petition for Writ of Mandamus*. The petition, originally filed with the Florida Supreme Court (Case No. SC14-852), was subsequently transferred to the trial court. In said petition, David P. Trotti sought an order compelling the Secretary of State ("Secretary") to accept his qualifying paperwork to appear on the election ballot for the circuit judge seat in Group 12 of the Fourth Judicial Circuit. *Trotti v. Detzner*, Case No. 1D14-3467, Fla. App. LEXIS 14548, 2 (Fla. 1st DCA 2014).

The Honorable Donald Moran Jr.'s commission expires by operation of law on January 5, 2015. On March 26, 2014, the Judge Moran sent Governor Rick Scott a letter stating "[p]lease accept this letter as notice of my resignation in the Fourth Judicial Circuit effective the last day of my term in January 2015." *Id* at 2-3. Several days later, Judge Moran sent a follow up letter to the Governor, which read, in pertinent part, "[p]lease accept my apology for not putting a definitive resignation date on the letter I sent to you on March 26, 2014 that I inadvertently forgot to place in the letter. Please make my resignation effective January 2, 2015." *Id.* On April 10, 2014, Governor Scott sent Judge Moran a letter stating "[a]llow me this opportunity to accept your resignation as Judge of the Fourth Judicial Circuit Court, effective January 2, 2015." *Id*.

Prior to the statutory qualifying period, the Judicial Nominating Commission was not notified of the vacancy and the appointment process was never commenced. On April 29, 2014, during the qualifying period, the Petitioner filed his *Petition for Emergency Writ of Mandamus*, seeking a writ compelling the Secretary of State to accept his paperwork. The Secretary refused to accept the Appellant's papers.

On August 1, 2014, the trial court issued an *Order Denying Petitioner's Writ*. The trial court's basis for denying the writ was as follows.

> The Florida Supreme Court has, since Spector, limited Spector's holding to a specific set of facts in which "a judge resigns effective at a future date and no interim vacancy will exist" between the effective resignation date and the start of the new term. Pincket v. Harris, 765 at 287 (citing In re Advisory Op. to Gov (Judicial Vacancies), 600 So. 2d 460, 462 (Fla. 1992). In the instant case, an interim physical vacancy will occur between the effective date of Chief Judge Moran's resignation (January 2, 2015) and the commencement of the new term (January 5, 2015).

Id at 2.

Appellant timely appealed the lower tribunal's decision to the First District Court of Appeal (hereinafter "First DCA"). On September 17, 2014, the First DCA issued a "split decision". The majority held that because a resignation occurred prior to the qualifying period that an appointment should be made, stating *inter alia*, "the salient question to answer here is when the vacancy occurred in relation to the election process." *Id* at 5. The majority of the appellate court rejected Appellant's position that *Spector v Glisson*, issued by this Court in 1974,

is controlling in this scenario. *Id.* at 7-8 referencing *Spector v. Glisson*, 305 So. 2d at 784 (Fla. 1974). The court declined to examine whether a one-business day vacancy is an unreasonable vacancy and refused to employ the *Spector* analysis of whether there was an emergency or public business on January 5, 2014 that required an appointment over election stating as follows:

> "[w]e reject the appellant's arguments inviting an analysis of reasonableness of the vacancy, which as pointed out by the Secretary, would be arbitrary and cannot constitute a duty that can be compelled by mandamus...Here, the vacancy created by Judge Moran's resignation occurred before the qualifying period, and a physical vacancy will occur during his term such that vacancy must be filled by gubernatorial appointment. While the dissent may eschew a bright-line test, we cannot engage in a determination of what does or does not constitute an unreasonable vacancy warranting appointment. *Id.*

Trotti, Fla. App. LEXIS 14548 at 7 (Fla. 1st DCA 2014).

As dissenting Justice Padovano respectfully pointed out, the conclusion by the majority that the judicial vacancy created by resignation, tendered before the qualifying period for the general election, effective one day before the end of the term must be filled by appointment, is "contrary to the applicable case law and the controlling provisos of the Florida Constitution." *Id* at 10 (Padovano, J. dissenting). As the dissent also aptly points out, the difference between the case at bar and *Spector* was a difference in one day at the end of a judicial term; "[t]he question we should be asking ourselves is whether this is the kind of difference that should compel an exception to the rule in Spector." *Id.* at 13. The majority then misapplied *Spector*, relying on a "distinction without a difference." *Id.*

The Petitioner timely filed a *Motion for Rehearing and Rehearing En Banc and Motion for Certification of Conflict*. That motion was denied by order rendered on September 29, 2014. The *Notice of Invoking Discretionary Jurisdiction of the Supreme Court* followed on October 6, 2014.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction under Article V, Section (3)(b)(3) of the Florida Constitution, and Rule 9.120, Florida Rules of Appellate Procedure, to hear this case.

The Court should exercise its discretionary jurisdiction because the opinion rendered by the First DCA on September 17, 2014 expressly and directly conflicts with a decision of another appeals court or the Supreme Court, namely *Spector v. Glisson*. 305 So. 2d. 777 (1974).

The Court should further exercise its discretionary jurisdiction to hear this matter as the opinion of September 17, 2014 expressly construes Article V, sections 10 and 11of the Florida Constitution, misinterprets the plain meaning of Article V, section 11, and further interprets the constitutional provisions contrary to existing case law.

Finally, the Court should exercise its discretionary jurisdiction as the September 17, 2014 opinion expressly affects a class of constitutional officers insofar as the ruling impacts the duties, powers, and/or regulation of all circuit and county court judges in Florida.

ARGUMENT

I. THE FIRST DISTRICT COURT OF APPEAL'S DECISION IS IN CONFLICT WITH THIS COURT'S HOLDING IN *SPECTOR V. GLISSION*, 305 So. 2d 777 (Fla. 1974).

Article V, Section (3)(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) vests this Court with discretionary jurisdiction to review an express and direct "conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law."

The First DCA ruled that whenever a resignation is created prior to an election period the vacancy must be filled by appointment. This ruling is in direct conflict with *Spector v. Glisson*. 305 So. 2d 780 (Fla. 1974). In *Spector*, a vacancy did occur prior to the election period and the Court held that the general rule was "the appointment is to take effect when the resignation becomes operative." *Id.* citing *In Re Advisory Opinion*, 117 Fla. 773, 158 So. 2d 441 (1934) and *Tappy v. State*, 82 So. 2d 161 (Fla. 1955). However, the *Spector* Court found that mandamus was proper and the vacancy created would be filled by election as "there was no emergency or public business requiring an appointment." *Id* at 784.

The *Spector* Court held that when a resignation by a judicial officer happens, for a future date, and an intervening election is scheduled to occur, that the electoral process should take place unless there is an "emergency or public business" that necessitates an appointment. 305 So. 2d at 784 (Fla. 1974). The lower tribunal, in denying the petition for mandamus relief, relied on dicta within *Pincket v. Harris*, purporting to limit *Spector* to a strict, "no vacancy" standard. The majority of the First DCA then declined to engage in the "analysis" described in *Spector*. *Trotti*, Lexis 14548, 8 (Fla. 1st DCA 2014). The Appellant asserts that such analysis is required. In *Spector*, this court held that unless an emergency of public business necessitates an interim appointment, than an election should be held; there are no cases that clearly establish a rule that "no vacancy" may occur.[1] Therefore, the reliance on the dicta in *Pincket* is in direct conflict with *Spector*.

The First DCA opinion also directly conflicts with *Spector* in that the *Spector* Court stated that the filling of vacancies by the merit system of selection of judges is proper when resignations are made "in all good faith." *Spector,* 305 So. 2d at 784 (Fla. 1974). Judge Moran's resignation letters and the fact that Judge Moran's commission was due to expire by operation of law on January 5, 2015, are integral to the analysis of this cause. It is important for the Court to take jurisdiction to

[1] In dicta, the *Pincket* court suggested that *In re Advisory Opinion to the Governor,* limited *Spector* to factual situations where "no vacancy" may occur. *Pincket v. Harris,* 765 So. 2d 287 (Fla. 1st DCA 2000) citing 600 So. 2d 460 (Fla. 1992) . The Court stated "because no unreasonable vacancy should exist, it is your [the governor's] duty to appoint". *In re Advisory Opinion to the Governor,* 600 So. 2d 460 (Fla. 1992). Furthermore, there is no limiting language of *Spector* in the *Advisory Opinion* to the Governor.

review this matter, and determine the discrepancy of whether a resignation must be submitted in good faith, as *Spector* provides, or if efforts to circumvent Article V, section 10(b) is permissible as the First DCA seemingly allowed. *Id*. at 783.

The foregoing considered, this Court has discretionary jurisdiction over this matter because the opinion of the First DCA is in direct conflict with *Spector*.

II. THIS CASE INVOLVES AN INTERPRETATION OF THE FLORIDA CONSTITUTION

It is undeniable that the case at hand requires an interpretation of the Florida Constitution. The Florida Constitution, in Article V, section 10, provides for the election of Judicial Officers, while section 11 gives the Governor the power to appoint Judicial Officers. This case deals with the balancing of two competing sections. In *Spector*, this court stated,

> "[I]n the circumstances *sub judice* where the resignation is clearly unconditional and fixed with an intervening election making the elective process reasonably available, the vacancy in the office…should be filled by the intervening available elective machinery. To hold otherwise would frustrate the plain requirements of our constitution and the public policy of t he state for over 100 years."

Spector, 305 So. 2d, 783 (Fla. 1974).

The First DCA, however, sought to create a bright line rule and interpreted the provisions of the Florida Constitution differently. Article V, section (3)(b)(3) and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii) gives this Court

discretionary authority to review a decision called up on to "expressly construe a provision of the state or federal constitution."

The opinion of the majority deals with the interpretation of Article V of the Florida Constitution. When interpreting the interplay between Article V, section 10, and Article V, section 11, the First DCA held that "[d]eciding the election versus appointment question on the duration of the vacancy created rather than on the interplay between the vacancy and the commencement of the election process would result in inconsistent and confusing precedent. "[2] *Spector* makes clear that that Article V, section 11 is subordinate to Article V, section 10, and further states that whenever possible an election should occur in lieu of an appointment. 305 So. 2d, 781 (Fla. 1974). To the contrary, the opinion of the majority seemingly found that Article V section 11 appointment power takes precedence whenever a vacancy occurs prior to a qualifying period. The majority stated,

> "[i]f we interpret the case law as the dissent suggests and find that an election was required here when the election process has not yet begun, we would be nullifying the Governor's power appointment in Article V, section 11(b), of the Constitution in post-election process resignations and pre-election process resignations. Stated otherwise we would be allowing the limited exception created in *Spector* to swallow Article V, section 11(b), of the Constitution

Trotti, Fla. App. LEXIS 14548 at 7 (Fla. 1st DCA 2014).

[2] In a 2002 advisory opinion this court noted that Article V Section 10(b)(3) required a referendum in 2000 to be placed before the voters of each of Florida's counties concerning the method of selection of circuit and county judges. The majority of the voters chose to retain elections in lieu of a merit system. " In view of this conflict between sections of the Constitution we conclude that the conflict must be resolved by construction which gives in effect the clear will of the voters that circuit and county judges be selected by election." *Advisory Opinion to the Governor Re Appointment or Election of Judges*, 824 So. 2d. 132, 135 (Fla. 2002).

This interpretation is in direct conflict with *Spector*. Clearly this issue is one of construction and interpretation of the Florida Constitution and, as such, this Court has discretionary jurisdiction.

Furthermore, the majority opinion held that the vacancy created by Judge Moran's resignation must be filled by appointment. The opinion of the First DCA attempts to "explain, define or overtly expresses a view which eliminates some existing doubt as to a constitutional provision ...." *See Rojas v. State*, 288 So. 2d 234, 236 (Fla. 1974). In doing so, the opinion by the majority alters a constitutional interpretation and therefore this Court has the discretion to review this important matter.

III. THE COURT HAS DISCRETION TO DECIDE THIS DECISION AFFECTING A CLASS OF CONSTITUTIONAL OFFICERS

This Court has the discretion to review the decision of the First DCA because in determining the outcome, the appellate court ruled on an important issue that will impact, potentially, the entire judiciary. The interpretation of the case law, and the Florida Constitution, made by the majority herein, changes the election law for the entire class of judicial officers Article V, section 3(b)(3) and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iii) authorize this Court to review a decision that will "directly affect a class of constitutional or state officers." This, of course, includes judges. *Ludlow v. Brinkler*, 403 So. 2d 969.

The class affected does not necessarily require that a member, or members, of said class be a party to the case, as long as the decision will have an impact on the entire class. *Spradley v. State of Florida*, 293 So. 2d 697, 701 (Fla. 1974). The case at bar, regarding election or appointment of judges, is most certainly the type of decision that will impact the duties, powers, termination and/or regulation of this constitutional class. *Id*. Therefore, this Court has the ability to, and should, review the appellate Court's decision of vast importance.

Respectfully submitted,

HUNT, GREEN & JAMES and
David P. Trotti, P.A.

/S/ *Nick James*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief, was delivered by electronic mail pursuant to Fla. R. Judicial Admin., to the person(s) listed below on October 15, 2014.

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CERTIFICATE OF COMPLIANCE WITH RULE

I HEREBY CERTIFY that this Initial Brief of Appellant complies with the form requirements of Rule 9.100, Florida Rules of Appellate Procedure.

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