

IN THE SUPREME COURT OF FLORIDA

GREGG LERMAN,

Petitioner,

Case No. SC16-783

v.

RICK SCOTT, as Governor of the State  
of Florida and KEN DETZNER, as  
Secretary of State of the State of Florida,

Respondents. /

**MOTION TO INVOKE THE COURT'S ALL WRITS JURISDICTION  
TO MAINTAIN THE STATUS QUO PENDING REVIEW OF  
THE PETITION FOR WRIT OF QUO WARRANTO**

The Petitioner, Gregg Lerman (“Lerman”), an individual who has qualified for the office of Judge of the county court, Group 11, in the Fifteenth Judicial Circuit (“Group 11”), respectfully moves this Court to issue a Constitutional writ or other order having the effect of maintaining the status quo in Group 11, pending the Court’s review of the merits of the cause of action in the instant matter.

**BASIS FOR INVOKING JURISDICTION**

Article V, section 3(b)(7) of the Florida Constitution grants the Florida Supreme Court jurisdiction to issue all writs necessary to the complete exercise of its jurisdiction. This Court has utilized the constitutional all writs provision to preserve jurisdiction “that has already been invoked or *protecting jurisdiction that likely will be invoked in the future.*” *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010)

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(emphasis added). *See Petit v. Adams*, 211 So. 2d 565, 566 (Fla.1968) (providing that the Florida Supreme Court may use its all writs authority if necessary to preserve the status quo and protect this Court's ability to completely exercise jurisdiction at a future time).

## **STATEMENT OF FACTS**

The Petitioner has filed a Petition for Writ of Quo Warranto (“the Petition”) in the above-styled cause. The Petition filed on May 9, 2016 seeks this Court’s review over whether Governor Rick Scott has the power and authority to unilaterally fill a judicial vacancy created through the procedure mandated by Florida Statute § 99.012, the Resign to Run statute, requiring a public officer to submit a letter of resignation ten days prior to the commencement of the statutory qualification period, whereas the statute requires the vacancy to be filled by an immediate election. *See* Florida Statute § 99.012(3)(f)1 (“With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.”).

On May 10, 2016, this Court requested the Respondents to file responses to the petition on or before May 25, 2016. As noted in the Petition, the Respondent, Governor Rick Scott, has convened the Judicial Nominating Commission for the Fifteenth Judicial Circuit (“JNC”). On May 10, 2016 the JNC published a schedule

for thirty-nine interviews of applicants seeking judicial appointments, including an appointment for the county court seat in Group 11.<sup>1</sup> **All thirty-nine interviews are scheduled to occur on May 19, 2016.** (Notice from the JNC, attached as Exhibit A)

Article V, section 11 of Florida's Constitution specifies that the JNC shall nominate between three and six people to the Governor, *see* art. V sec. 11(b), within thirty days from the vacancy. *See* art. V, sec. 11(c), Florida's Constitution. Typically, the Governor can make an appointment at any time "within sixty days after the nominations have been certified." *Id* (emphasis added).

The letter of resignation submitted by Judge Laura Johnson, pursuant to Florida Statute § 99.012, specifies that there will be no actual vacancy in Group 11 until the date Judge Johnson begins her term as a judge on the circuit court.<sup>2</sup>

Pursuant to the provisions of Section 99.012(3), Florida Statutes, this resignation shall take effect on the earlier of the following dates: (1) the date on which I will take office if elected as Circuit Judge, 15th Judicial Circuit Group 3, the office for which I am now running; or (2) the date my successor as Palm Beach County Judge, Group 11 will take office.

(Amended App. A, Judge Johnson's Letter of Resignation)

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<sup>1</sup>See the Florida Bar, <https://www.floridabar.org/TFB/TFBPublic.nsf/WNewsReleases/3EB4F5AF2808483B85257FAF006EEE2F?OpenDocument> (last visited May 12, 2016)

<sup>2</sup> Judge Johnson has qualified without opposition for Group 3 of the circuit court in the Fifteenth Judicial Circuit. See Florida Department of State, Division of Elections, <http://dos.elections.myflorida.com/candidates/canlist.asp> (last visited May 12, 2016)

The State of Florida's position on the proper mechanism to fill a judicial vacancy created by compliance with the Resign to Run statute has traditionally been in conformity with the statute's express mandate; the vacancy is to be filled by election. *See* § 99.012(3)(f)1, Florida Statutes (2016). Among the authorities cited in support of the Petition is an advisory opinion from Florida's Secretary of State, Division of Elections, addressing the identical factual scenario presented *sub judice*. Specifically, Division of Elections Advisory Opinion 90-27 stated that if a county court judge resigned, pursuant to Florida Statute § 99.012, it was the Division's interpretation "the vacancy in office will be filled by election." (Amended App. at B-1; DE 90-27 – June 5, 1990) (emphasis added).

As additional precedent supporting the Petition, in 2002, in response to receiving Judge Jeffrey Colbath's May 1, 2002 letter of resignation, filed in compliance with the Resign to Run statute, Florida's Secretary of State, Division of Elections issued the following conclusion in its memorandum.

Per our discussions today, pursuant to Section 99.012, Florida Statutes, Judge Colbath's attached resignation creates a vacancy in his current county court judicial office that is to be filled by election in the Fall of 2002. Therefore, you should accept qualifying papers for his current county court seat during the May 13-May 17, 2002 judicial qualifying period.

(Amended App. at A-2 – A-4, B; DE 90-27 – June 5, 1990)

## **ARGUMENT**

Whether the seat in Group 11 is filled by election or a gubernatorial appointment is the gravamen of the controversy *sub judice*. It is the Governor's very claim of authority to make an appointment in Group 11 that is the beating heart of the Petitioner's cause of action. The purpose of the petition filed herein would be greatly frustrated, and its outcome threatened, if the Governor made an appointment to fill the seat in Group 11 during this Court's review of the merits of the petition.

The Petitioner seeks only to maintain the status quo while this Court reviews the merits of the cause set forth in the petition. Judge Johnson remains in the position of County Court Judge in Group 11, and shall remain in that office until the date she begins her term as Circuit Court Judge, or the date her successor in Group 11 takes office. The granting of the relief sought herein will not result in prejudice to the Respondents, nor harm the interests of the people of the Fifteenth Judicial Circuit. Indeed, by maintaining the status quo, this Court will be preserving the rights of the people of the Fifteenth Judicial Circuit while it considers the merits of the Petition.

### **NATURE OF THE RELIEF SOUGHT**

The Petitioner respectfully requests that this Court invoke its all writs jurisdiction to enjoin the Governor from making an appointment to the seat in Group 1, pending this Court's review of the merits of the Petition. In the alternative, the Petitioner requests this Court to order the JNC for the Fifteenth Judicial Circuit to

withhold the submission of its nominees to the Governor for appointment to the seat in Group 11, pending this Court's review of the merits of the Petition.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by email and U.S. Mail to Governor Rick Scott (rick.scott@eog.myflorida.com), Executive Office of the Governor, 400 S. Monroe Street, Room 209, Tallahassee, Florida 32399; Office of the General Counsel (william.spicola@eog.myflorida.com), Executive Office of the Governor, 400 S. Monroe Street, Room 209, Tallahassee, Florida 32399; Secretary Ken Detzner (SecretaryofState@DOS.MyFlorida.com), R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399; and Office of the General Counsel (dos.generalcounsel@dos.myflorida.com), Florida Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399, this 12th day of May 2016.

s/ Leonard Feuer  
LEONARD FEUER  
Florida Bar No.: 501751  
Email: lfeuer@feuerlawfirm.com  
LEONARD FEUER, P.A.  
1601 Forum Place  
Suite 610  
West Palm Beach, FL 33401  
Telephone: (561) 659-1360

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this petition complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

s/ Leonard Feuer  
LEONARD FEUER

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## FIFTEENTH CIRCUIT JUDICIAL NOMINATING COMMISSION ANNOUNCES INTERVIEW SCHEDULE

FOR IMMEDIATE RELEASE

**May 10, 2016**

CONTACT: Gregor J. Schwinghammer, Jr.,

**Fifteenth Circuit Judicial Nominating Commission**

TELEPHONE: (561) 650-0595

The Fifteenth Circuit Judicial Nominating Commission will be conducting interviews on May 19, 2016, to fill two judicial vacancies: One circuit court vacancy created by the retirement of Judge John Phillips, and one county court vacancy created by the resignation of Judge Laura Johnson. These vacancies are in addition to the vacancy created by the resignation of Judge Amy Smith, for which the JNC already has accepted applications.

The interviews will take place at the Administrative Office for the Court, 5th Floor, Main Courthouse (Please note that this is not the library conference room that the JNC has used in the past. From the elevators on the Fifth Floor, use the phone on the sliding glass doors that say "Chief Judge, Court Administrator, Administrative Office of the Court" and dial the extension listed. You will be escorted to the lobby and the conference room).

Below is a list of applicants and the vacancies for which they have applied. All circuit court applicants are being considered together for both circuit court vacancies.

APPLICANT	POSITION SOUGHT	INTERVIEW TIME
1 Kummerlen, Gregory	Circuit/County	8:00 – 8:10
2 Lewert, Tina	Circuit	8:12 – 8:22
3 Marcus, Andrew	Circuit	8:24 – 8:34
4 Marcus, Ilana	Circuit/County	8:36 – 8:46
5 Maryuma, Joseph	Circuit/County	8:48 – 8:58
6 Middleton, Jean Marie	Circuit/County	9:00 – 9:10
7 Miller, Steven	County	9:12 – 9:22
8 Minton, Bill	Circuit/County	9:24 – 9:34
9 Mouring, C. Annelies	Circuit/County	9:36 – 9:46
10 Osofsky, Marshall	Circuit/County	9:48 – 9:58
	BREAK	10:00 – 10:10
11 Rachel, Michael	Circuit/County	10:12 – 10:22
12 Richstone, Jill Estey	Circuit/County	10:24 – 10:34
13 Rowe, Cymonie	Circuit	10:36 – 10:46
14 Santino, Dana	County	10:48 – 10:58
15 Shullman, Sarah	Circuit/County	11:00 – 11:10

16	Small, Joseph D.	Circuit/County	11:12 – 11:22
17	Solomon, Donna Greenspan	Circuit	11:24 – 11:34
18	St. Juste, Alcolya	Circuit/County	11:36 – 11:46
19	Sutton, Destinie	Circuit/County	11:48 – 11:58

#### LUNCH

20	Valuntas, Richard	Circuit/County	1:00 – 1:10
21	Walsh, Kevin	Circuit/County	1:12 – 1:22
22	Weiss, Judge Dahlia	Circuit	1:24 – 1:34
23	Williams, Maxine	Circuit/County	1:36 – 1:46
24	Willis, Sarah	Circuit/County	1:48 – 1:58
25	Zubkoff, Jeremy	Circuit/County	2:00 – 2:10
26	Alijewicz, Sara	Circuit/County	2:12 – 2:22
27	Barone, Jo Ann	Circuit/County	2:24 – 2:34
28	Bell, Carolyn	Circuit	2:36 – 2:46
29	Berkowitz, Elizabeth	Circuit/County	2:48 – 2:58

#### BREAK

30	Casper, Melanie	Circuit/County	3:00 – 3:10
31	Chapman, William	Circuit/County	3:12 – 3:22
32	Comiter, Lloyd	County	3:24 – 3:34
33	Cortvriend, Sarah	Circuit/County	3:36 – 3:46
34	Delgado, Luis	Circuit/County	3:48 – 3:58
35	Garrison, Judge Edward	Circuit	4:00 – 4:10
36	Gillman, Paige	County	4:12 – 4:22
37	Greenberg, Mark	Circuit	4:24 – 4:34
38	Hamel, Mark	Circuit/County	4:36 – 4:46
39	Herman, Ron	Circuit/County	4:48 – 4:58

#### EXECUTIVE SESSION

5:00 –Completion

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EDITORS: Please note The Florida Bar is not an association and "Association" is not part of our name. Proper reference is "The Florida Bar." Local bar organizations are properly termed "associations."

[Revised: 05-10-2016]