IN THE SUPREME COURT OF FLORIDA

GREGG LERMAN,

Petitioner,

Case No. SC16-_____

v.

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

Respondents. /

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, respectfully submits this nonroutine petition requesting the Court to issue a writ of quo warranto to the Respondent, Governor Rick Scott, to show by what authority he has endeavored to fill a vacancy, created by the Resign to Run statute, in the office of county court judge, in Group 11 of the Fifteenth Judicial Circuit, through an appointment, and to the Respondent, Secretary of State Ken Detzner, to show by what authority he has determined that the election for Palm Beach County Judge, Group 11, is not legally authorized.

BASIS FOR INVOKING JURISDICTION

Article V, section 3(b)(8) of the Florida Constitution grants the Florida Supreme Court jurisdiction to issue writs of quo warranto to state officers and

agencies. Both Governor Scott and Secretary Detzner are "state officers" pursuant to art. V, sec. 3(b)(8). *See Whiley v. Scott*, 79 So.3d 702, 705 (Fla. 2011); *State. Ex rel. Shevin v. Stone*, 279 So.2d 17, 19 n.1 (Fla. 1972).

Quo warranto is the "proper means for inquiring into whether a particular individual has improperly exercised a power or right derived from the State." *Whiley v. Scott*, 79 So.3d at 707 (citing *See Fla. House of Reps. v. Crist*, 999 So.2d 601, 607 (Fla.2008)). *See Martinez v. Martinez*, 545 So.2d 1338, 1339 (Fla. 1989) ("Testing the governor's power to call special sessions through quo warranto proceedings is therefore appropriate."). Since quo warranto may be used to enforce a public right, standing to seek such a remedy is endowed to citizens and taxpayers without requiring a showing of any real personal interest. *See Whiley v. Scott*, 79 So.3d at 706 n.4; *Martinez v. Martinez*, 545 So.2d at 1339.

The Petitioner, Gregg Lerman, resides within the territorial jurisdiction of the Fifteenth Judicial Circuit, Palm Beach County, is a citizen and a taxpayer. Through the instant petition, Mr. Lerman seeks to enforce the right of the public to decide who will serve in Group 11 of the county court in the Fifteenth Judicial Circuit, as well as the public's right to run for that office.

> [I]t is well settled that when the enforcement of a public right is sought, the people are the real party to the cause. The relator need not show that he has any real or personal interest in it. It is enough that he is a citizen and interested in having the law upheld, but this, like all other rules of law has its limitations.

State ex rel. Pooser v. Wester, 170 So. 736, 738, 126 Fla. 49, 52-53 (Fla. 1936). The public's right to run for public office is fundamental to our system of government. *Treiman v. Malmquist*, 342 So.2d 972, 975 (Fla. 1977). This right is enshrined in art. I, sec. 1 of Florida's Constitution, stating "[a]ll political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." *Treiman v. Malmquist*, 342 So.2d at 975 ("The right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable disqualifications to run.").

The issue presented herein is whether the Governor has the power and authority to unilaterally fill a judicial vacancy created through the procedure mandated by Florida Statute § 99.012, requiring a public officer to submit a letter of resignation ten (10) days prior to the commencement of the statutory qualification period when the statute specifies the vacancy is 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.").

This Court is the exclusive province for regulation of judicial conduct and the ultimate arbiter of the authority conveyed by Florida's Constitution. The issue presented herein requires an immediate resolution given that the election is

scheduled to occur on August 30, 2016 and Governor Scott has already convened the Judicial Nominating Commission (JNC) for the Fifteenth Judicial Circuit to submit names to him from which to appoint the replacement county court judge for Group 11.

The issue in this matter is one of great public importance and requires the reconciling of conflicting provisions of Florida's Constitution, long-standing precedent of this Court and a determination of whether Florida Statute § 99.012(3)(f)1 is meaningless when applied to judicial vacancies. The significance of this Court's resolution of the issue presented herein will have a great impact beyond the parties *sub judice*. There are no facts in dispute in this controversy. The factual basis set forth in the petition is comprised of documents memorializing official acts and directives that are matters of public record. An appendix to the petition contains all the Court needs to resolve the issues presented herein.

For the foregoing reasons, the Petitioner respectfully requests this Court exercise its discretionary jurisdiction and issue a writ of quo warranto to decide the case on its merits.

STATEMENT OF FACTS

The controversy at issue arose when the Honorable Laura Johnson, then a county court Judge elected to Group 11,[1] Fifteenth Judicial Circuit, submitted her

[1] Judge Johnson has since qualified without opposition for a seat on the circuit court.

letter of resignation on April 18, 2016, to Palm Beach County Supervisor of Elections, Ms. Susan Bucher, pursuant to F.S. § 99.012. (App. A, Judge Johnson's Letter of Resignation)

> This letter is my irrevocable resignation from the office I presently hold as Palm Beach County Judge, Group 11.
>
> 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.

Id.

Judge Johnson had first been elected to the county court, in Group 11 in 2002, when the Honorable Jeffrey Colbath, then a county court Judge in Group 11, resigned from his seat to run for the Circuit Court. After receiving Judge Johnson's letter of resignation, Supervisor Bucher followed the dictates of Florida Statute § 99.012(3)(f)1 and treated Group 11 as if the seat was now subject to election.

Supervisor Bucher's decision was solidly in compliance with a prior advisory opinion by the Florida Division of Elections on the same factual scenario presented herein. In Division of Elections Advisory Opinion 90-27, the Honorable Horace Andrews, Pinellas county court, requested the Florida Division of Elections to issue an advisory opinion on whether his potential resignation under the Resign to Run law, on July 1, 1990, but effective January 7, 1991, will trigger an election or gubernatorial appointment to fill the vacancy caused by Resign to Run.

> The Division of Elections responded the vacancy shall be filled by election.
>
> The Resign-to-Run Law requires an elected or appointed officer to irrevocably resign when seeking an elected office which runs concurrently, or any part runs concurrently, with the term of office he presently holds. Section 99.012(2), Fla. Stat. A county court judge is an officer for the purposes of the Resign-to-Run Law. Op. Att‘y Gen. Fla. 72-183 (May 31, 1972).
>
> Section 99.012(2), Florida Statutes, provides that when an officer resigns pursuant to the Resign-to-Run Law, the resignation creates a vacancy in office, "thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public office were otherwise scheduled to expire." **Therefore, it is our interpretation, that if you resign pursuant to the Resign-to- Run Law, the vacancy in office will be filled by election**.

(App. at B; DE 90-27 – June 5, 1990 (emphasis added).)

The conflict arose when, in derogation of all law to the contrary, Secretary Detzner issued a letter to Supervisor Bucher on May 2, 2016, asserting that ”[t]here is no legally authorized election to be held for Palm Beach county court Judge, Group 11, during the 2016 election cycle.” (App. C, Sec.’s Letter to Supervisor Bucher) Furthermore, Secretary Detzner’s letter confirmed that the Governor had “initiated the judicial nominating commission process,” signifying the Governor’s intent to fill the seat in Group 11 through an appointment. It is this decision to appoint a successor to the county court that lacks authority.

Florida law requires the qualification period for judicial candidates to run between noon of the 120th day and noon of the 116th day before the primary

election. § 105.031(1), Florida Statutes (2016). Consequently, in 2016, the qualification period began at noon on May 2, through noon on May 6. Mr. Gregg Lerman is over the age of 18, under seventy (70) years of age, and has been a member of the Florida Bar since 1985.[2] (App. D) On May 3, 2016, Lerman submitted to the Palm Beach County Supervisor of Elections the items required to qualify by Florida Statute § 105.031(5)(a).[3] (App. E) In response, Supervisor Bucher designated Lerman as qualified in Group 11. (App. F) Another person, Mr. Thomas R. Baker, also qualified in Group 11.[4] Pursuant to Florida Statute § 105.051(1)(b),"[i]f two or more candidates, neither of whom is a write-in candidate, qualify for such an office, the names of those candidates shall be placed on the ballot at the primary election."

ARGUMENT

The Resign to Run statute creates an artificial vacancy that does not trigger the Governor's power of appointment. In addition to this Court's precedence

[2] Article 5, § 8 of Florida's Constitution sets forth the eligibility requirements for the position of county court judge. Specifically, a person is eligible if the person 1) is an elector of the state; 2) resides in the territorial jurisdiction of the court; 3) is a member of the Florida Bar for at least five (5) years; and 4) is under seventy (70) years of age.

[3] In order to qualify for judicial office, Florida Statute § 105.031(5)(a) mandates that candidates pay a fee equivalent to four (4) percent of the annual salary for the office sought, subscribe to a "candidate's oath," a "loyalty oath" required by F.S. § 876.05, a completed form for the appointment of campaign treasurer required by F.S. § 106.021, a "statement of candidate for judicial office" and a full and public disclosure of financial interests.

[4] See http://www.pbcelections.org/OfficeCandidate.aspx?eid=140&oid=206&cid=2761

acknowledging a vacancy created by compliance with the Resign to Run statute is an exception to the Governor's appointment powers, as will be discussed more fully below, the resignation letter mandated by § 99.012 should be viewed as a beginning of the election process for the seat being vacated.

Florida's Resign to Run statute precludes a person holding an elective office from running for a different elective office, where the terms of the presently-held and prospective offices would run concurrently. Specifically, "[n]o person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other." § 99.012(2), Florida Statutes (2016). "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." § 99.012(3)(f)1, Florida Statutes (2016) (emphasis added). "The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office" the office holder / candidate intends to seek. § 92.012(3)(c), Florida Statutes (2016).

The resignation tendered in compliance with § 99.012(3) must be effective "no later than the earlier of the following dates: 1. The date the officer would take office, if elected; or 2. The date the officer's successor is required to take office." § 99.012(3)(d), Florida Statutes (2016). In the instant case, the two potential effective

dates of resignation required by the statute are the same, leaving no actual physical vacancy in office. (App. A, Judge Johnson's Letter of Resignation)

Overview of Florida Law Regarding Filling Judicial Vacancies by Elections

This Court has repeatedly stated that **the election of judges is the preferred method of filling actual vacancies in judicial offices**. *See Advisory Opinion to Governor re Appointment or Election of Judges*, 983 So.2d 526, 528 (Fla. 2008). Florida's constitution mandates that "[t]he election of county court judges shall be preserved [. . .] The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court." Art. V, sec. 10(b)(2), Florida Constitution.

The Governor's Power of Appointment

The Governor of the State of Florida is endowed with certain powers to fill vacancies in office. The Governor's general appointment powers[5] are intended to fill physical vacancies in office for the remainder of its unexpired term, whereas the provision establishing the Governor's power to fill judicial vacancies sets a different

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[5] When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

Art. IV, sec. 1(f), Florida Constitution.

interim term duration.

> The governor shall fill each vacancy on a circuit court or on a county court, *wherein the judges are elected by a majority vote of the electors*, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

Art. V, sec. 11(b), Florida Constitution (emphasis added). The inclusion of the words "wherein the judges are elected by a majority vote of the electors" after the provision enumerating the Governor's appointment authority should be viewed as subordinating the appointment power to the electoral process.

The appointment power enumerated by article V, sec. 11(b) conflicts with article V, sec. 10(b)(1)-(2), addressing judicial elections, which "specifically provides that the election of circuit and county court judges 'shall be preserved.'" See *Advisory Opinion to Governor re Appointment or Election of Judges*, 983 So.2d 526, 528 (Fla. 2008). This Court has consistently held that the conflict between article V, sec. 11(b) and 10(b)(1)-(2) "must be resolved by a construction which gives effect to the clear will of the voters that circuit and county judges be selected by election." *Id*.

The Evolution of the Law on Determining Election vs Appointment

In *Spector v. Glisson*, 305 So.2d 777, 782-83 (Fla. 1974),[6] this Court addressed whether a judicial vacancy should be filled by appointment, pursuant to art. V, sec. 11, or through the electoral process.

> It is clear that s 11(a) of new Art. V was provided in order to fill by prompt appointment those vacancies which occur at times and in situations where there is a need for someone to fill an interim judgeship so that the business of the courts can continue and will not suffer by lack of an incumbent judge, but only in those instances where the elective process is not available. Section 11(a) does not contemplate a strained application which would give priority to the appointive power over the paramount elective process when there is a known vacancy to occur in conjunction with and reasonably before a judicial election; the elective machinery should be allowed to function to provide the successor.

Spector v. Glisson, 305 So.2d 777, 783 (Fla. 1974).

Much like the facts at present, in *Spector*, an incumbent judge resigned in February, effective at the end of his term, midnight on the last day, January 6. The judge's seat was subject to a qualifying period and election, already scheduled to occur in September, well-after the resignation letter. This Court held that the seat should be filled by election, in recognition that Florida law generally favors the elective process:

> Interim appointments need only be made when there is no earlier, reasonably intervening elective process available. As between the

[6] The holding in *Spector v. Glisson* has been receded from in part by *Advisory Opinion to Governor Re Judicial Vacancy Due to Mandatory Retirement*, 940 So.2d 1090 (Fla. 2006), as to *Spector*'s application to merit retention judges.

> appointive power on the one hand and the power of the people to elect on the other, the policy of the law is to afford the people priority, if reasonably possible [. . .] If such policy is to be modified, let the people speak.

Spector v. Glisson, 305 So.2d at 784. *See Trotti v. Detzner*, 147 So.3d 641, 644-45 (Fla. 1st DCA 2014) (recognizing the holding in *Spector* still applies to "situations in which a judge resigns effective at a future date and no interim vacancy will exist."); *In re Advisory Opinion to the Governor*, 600 So.2d 460, 462 (Fla. 1992) ("The rationale of *Spector* applies to a situation where a sitting judge unequivocally resigns effective at a future date. When a letter of resignation to be effective at a later date is received and accepted by you, a vacancy in that office occurs and actuates the process to fill it.").

In *Judicial Nominating Com'n, Ninth Circuit v. Graham*, 424 So.2d 10 (Fla. 1982), the Court addressed a circumstance where three (3) judicial vacancies occurred within a short period of time in the Ninth Judicial Circuit. Two (2) of the vacancies (Judge Keating and Judge Kirkland) occurred in the Circuit Court, upon the deaths of the respective Judges in August of 1982. The third vacancy was created by a county court Judge's resignation (Judge Stroker) to run for one of the now vacant Circuit Court seats. In response, the Governor called for a special election, which prompted the Ninth Circuit's JNC to sue the Governor to initiate the appointment process.

> Governor Graham ordered special elections to fill these vacancies. October 5, 1982, the date of the second primary, was set as the date for the first nonpartisan special judicial election, and November 2, 1982, the date of the general election, was set for the second or runoff nonpartisan judicial election. September 3, 1982, was set as the last day for qualifying for the vacancy created by Judge Kirkland's death, and September 7, 1982, was set as the last day for qualifying for the vacancies created by Judge Keating's death and Judge Stroker's resignation.

Id. at 11.

At the time, article V, sec. 11(b) set forth that the duration of the Governor's appointment was "*for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election.*" *Id*. This Court specified that the purpose of article V, sec. 11 was to only permit the Governor to make appointments until the next viable election, so as to avoid the expense and difficulty of calling for a special election.

> These constitutional provisions provide for the use of the merit selection process, but only for a term which ends in January of the year following the next primary and general election. *The purpose underlying article V, section 11, is to provide for the election process at the next available primary and general election.*

Id. (emphasis added).

This Court in *Judicial Nominating Com'n, Ninth Circuit v. Graham,* cited its prior cases of *Spector v. Glisson,* 305 So.2d 777 (Fla.1974), and *In re Advisory Opinion to the Governor, Request of September 6, 1974,* 301 So.2d 4 (Fla.1974), as yielding the following rule of law.

> [I]f the vacancy is known in sufficient time to schedule a special election during the already scheduled primary and general election dates, then a special election should be held. On the other hand, if an irrevocable communication of an impending vacancy is presented to the governor at the time of or after the first primary, then we have held there is insufficient time to use the primary and general election process during that year and the governor is authorized to use the merit selection process for a term ending in January following the general election two years later.

Judicial Nominating Com'n, Ninth Circuit v. Graham, 424 So.2d at 12. The reason for the Court's preference for gubernatorial appointment, where communication of an impending vacancy was presented "at the time of or after the first primary," *id*., was the fact that the timing of the vacancy made it impossible to practically afford the electorate an opportunity to fill the vacancy in the immediate election. *See In re Advisory Opinion to the Governor, Request of September 6, 1974*, 301 So.2d 4 (Fla. 1974).

In an advisory opinion to the Governor, in the matter of *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460 (Fla. 1992), the Court clarified that where a judge resigned in advance of the already scheduled election for the resigning judge's seat, the Governor had the power to make an interim appointment, filling the physical vacancy until the term for the person who won the scheduled election could commence his/her term. In *In re Advisory Op. to the Gov. (Judicial Vacancies)*, circuit court Judge Fuller submitted a resignation letter to the Governor, which was accepted on March 10, 1992, specifying a resignation's

effective date as July 31, 1992. *Id*. at 461. The Governor asked the Court if he had the power and authority to "appoint a judge for the period of August 1, 1992 through the date the vacancy created by the resignation of Judge Fuller is filled by an elected judge, (January 5, 1993)?" *Id*. at 462.

This Court in *In re Advisory Op. to the Gov. (Judicial Vacancies)* answered the above question so as to make clear its intent that the Governor's appointment power should not be used to supplant the elective process; thus, any appointment made by the Governor should be limited in duration to the commencement of the term of the newly elected judge. *Id*. at 463. As indicated above, this Court in *In re Advisory Op. to the Gov. (Judicial Vacancies)* also restated that the rationale in *Spector v. Glisson* still applied to situations where a vacancy in office occurred to be effective at a later date, allowing an election to fill the vacancy. *See Id*. at 462 ("The rationale of *Spector* applies to a situation where a sitting judge unequivocally resigns effective at a future date.").

In *Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations*, 928 So.2d 1218 (Fla. 2006), the Court clarified its earlier pronouncements on when a vacancy is created in the judiciary. The facts in *Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations* involved a judge who tendered his resignation letter on April 5, 2006, but with a future effective date of resignation as May 31, 2006. *Id*. at 1219. The judge's term

was otherwise scheduled to expire on January 2, 2007. *Id*. Since the judge's "seat would have been up for election this year had he not tendered his resignation, the Department of State sent out the statutory notice of general election for this vacancy on April 12, 2006. The qualifying period for this seat is from May 8, 2006, through May 12, 2006. *Id*. In other words, a physical vacancy was set to occur after the close of the qualifying period, but prior to the expiration of the judge's term.

The Court in *Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations* recognized that the effective date for determining when a judicial "vacancy" occurs when the governor receives and accepts a judge's the resignation. If the electoral process has already begun, then the vacancy should be filled by election. If the electoral process has not begun, the vacancy should be filled by gubernatorial appointment. *Id*. at 1220; see also *Advisory Opinion to the Governor (Judicial Vacancies),* 600 So.2d 460, 462 (Fla.1992) ("When a letter of resignation to be effective at a later date is received and accepted by you, a vacancy in that office occurs and actuates the process to fill it.").

Consequently, the question of whether a judicial vacancy should be filled by gubernatorial appointment or an election can hinge upon whether the election process has begun. This Court has held the "election process" commences when the statutory qualification period commences. *Advisory Opinion to Governor re*

Appointment or Election of Judges, 983 So.2d 526, 529 (Fla. 2008) ("our precedent establishes "the statutory qualifying period as the start of the election process.").

> We have interpreted the interplay between article V, section 11(b), and article V, section 10(b), by holding that when a vacancy occurs in the county or circuit courts before the qualifying period for the seat commences, the vacancy should be filled by appointment, but once the election process begins, such a vacancy should be filled by election. *Advisory Opinion to Governor re Sheriff & Judicial Vacancies Due to Resignations*, 928 So.2d 1218, 1220 (Fla.2006) (*Sheriff & Judicial Vacancies*); *Appointment or Election of Judges 2008,* 983 So.2d at 528. In order to promote consistency in the process of filling judicial vacancies, we identified the beginning of the statutory qualifying period as a fixed point to mark the commencement of the election process.

In re Advisory Opinion to Governor re Judicial Vacancy Due to Resignation, 42 So.3d 795, 797 (Fla. 2010).

The Exception Under The Resign To Run Statute

After the passage of the Resign to Run statute, this Court in *Holley v. Adams*, 238 So.2d 401 (Fla. 1970), reviewed a challenge to the constitutionality of the statute, including as to whether the new law conflicted with the Governor's appointment powers under Florida's Constitution.

> The statute does not violate the appointive powers of the Governor. With regard to elective offices the resignation is effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify, or the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earlier. With regard to elective offices the resignation creates a vacancy in the office thereby permitting persons to qualify as candidates for nomination and election in the same manner as if the terms of such public offices were otherwise scheduled to expire. **The vacancy would occur as of the effective date of the**

> **resignation and, in the event no one qualified for election to the office, the vacancy would then be filled by the Governor.**

Holley v. Adams, 238 So.2d at 407 (emphasis added).

As discussed above, the appointment power of the Governor pursuant to Art. V, sec. 11 has its limitations. For example, the Court directly addressed the issue of whether a vacancy created by a judge's resignation under the Resign to Run statute would be required to be filled by "gubernatorial appointment as are other vacancies [. . .] or should such vacancy be filled by a general election in 1970?" *In re Advisory Opinion to Governor*, 239 So.2d 247, 248 (Fla. 1970). The Court answered the question by finding that a resignation tendered in cadence with the Resign to Run statute does not result in a vacancy in office.

> Under the quoted statute a successor to Judge Dekle will take office simultaneously with the effectiveness of his resignation. Hence, no vacancy occurs to activate the constitutional executive power of appointment. '**Vacancy' in the sense used in this statute means the same as the ending of a term.** When a term ends the office becomes 'vacant' to the extent that it must be filled by election, or, if no one seeks the office by election, then by executive appointment. Here, the statute ends the tenure of the incumbent holder of the office but it also provides for the election of a successor, who succeeds to the office at the precise moment that the resignation of the incumbent takes effect. Therefore, the circuit judgeship currently held by Judge Hal Dekle should be filled at the 1970 general election rather than by executive appointment.

In re Advisory Opinion to Governor, 239 So.2d at 249-50.

At the time this Court issued its opinion in *In re Advisory Opinion to Governor*, 239 So.2d 247 (Fla. 1970), Florida's Constitution required the Governor

to "fill vacancies in state and county offices." *Id*. at 248. Specifically, Article V, section 14 of Florida's 1968 Constitution provided "[w]hen the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy." *Id*. at 248. In addition to Art. V, sec. 14, Art. IV, sec. 1(f) also addressed judicial vacancies, where it stated: "[w]hen not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election." *In re Advisory Opinion to Governor*, 239 So.2d at 249.

Plainly, the state of the constitution at the time of *In re Advisory Opinion to Governor* still called for the governor to appoint judges to fill the unexpired term of a judge who resigned. A resignation under the Resign to Run statute was viewed by this Court as an exception, not triggering the Governor's appointment powers.

> In answer to your second inquiry you are advised that a successor to Judge Hal Dekle should be elected at the general election in 1970. This is so because no actual vacancy in the office ever occurs within the contemplation of the constitutional provisions heretofore cited. This happens because Judge Dekle's surrender of the office under Laws of Florida (1970) Ch. 70-80 takes effect simultaneously with the election of his successor at the general election 1970.

In re Advisory Opinion to Governor, 239 So.2d at 249 (emphasis added).

In *In re Advisory Opinion to Governor*, 276 So.2d 25 (Fla. 1973), the Court reiterated that "resignations under Fla. Stat. s 99.012, F.S.A. (Resign to Run Law) or under similar circumstances do not create a vacancy which activates the duties of the commissions or empower the Governor to make direct appointments." *Id*. at 30.

In *Spector v. Glisson*, as previously discussed, this Court agreed that a "vacancy" created under the Resign to Run statute was an exception to the Governor's appointment powers.

> The appointive power has its restrictions, as in the instance of our 'resign to run' law which makes express provision for an interim choice of a successor by election to be effective on the first Tuesday after the first Monday in January of the year following such election. The same application of the elective process is routinely applied in respect to incumbent judges who choose not to stand for reelection (and is being exercised in choices of successor judges in this same September election without being questioned). Their successors are perennially selected at the election preceding the end of that term.

Spector v. Glisson, 305 So.2d at 782-83.

While this Court's opinion in *Spector v. Glisson* may have been limited, its holding still applies to situations where "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." *Trotti v. Detzner*, 147 So.3d at 643 (Fla. 1st DCA 2014) (citing *See Pincket v. Harris*, 765 So.2d 284, 287 (Fla. 1st DCA 2000) (citing *In re Advisory Op. to the Gov. (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992)).

There will be no interim vacancy as a result of Judge Johnson's resignation. The letter of resignation submitted by Judge Johnson, in compliance with F.S. § 99.012, specifically gave an effective date of 1) the date on which she will take office if elected as Circuit Judge, 15th Judicial Circuit Group 3; or (2) the date her successor as Palm Beach County Judge, Group 11 will take office. In other words, the case the Secretary Detzner's letter relies upon most, *Trotti v. Detzner,* is inapplicable to the facts presented herein.

As noted above, the Florida Division of Elections issued an advisory opinion on whether a county court judge's potential resignation under the Resign to Run law, to be submitted on July 1, 1990, but effective January 7, 1991, would trigger an election or gubernatorial appointment to fill the vacancy. The Division of Elections responded the vacancy shall be filled by election. (App. at B; DE 90-27 – June 5, 1990 (emphasis added).)

The timing of the resignation letter required by §99.012(3)(c) is no accident. The ten (10) day buffer period prior to qualification affords those with supervisory authority over elections to take note the relevant seat will be filled by the coming election. In other words, compliance with § 99.012(3)(c) initiates the electoral process.

This Court's adherence to the precedent set by *Spector v. Glisson*, *Holley v. Adams* and *In re Advisory Opinion to Governor,* inescapably leads to the conclusion

that Palm Beach County's county court seat in Group 11 continues to be subject to an election, not a gubernatorial appointment. Multiple individuals have both legally and properly qualified for Group 11, in cadence with the public's right to run for that office. The public's right to choose who should fill the seat in Group 11 through an election should not be abridged by the Governor's attempt to fill the same position through an appointment.

> We feel that 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.

Spector v. Glisson, 305 So.2d at 782.

NATURE OF THE RELIEF SOUGHT

The Petitioner respectfully requests that this court issue a writ of quo warranto directing the Respondents to show by what authority they intend to fill the seat in Group 11 of the Fifteenth Judicial Circuit by an appointment. If the Court determines that this action is without authority, as the Petitioner argued herein, the Petitioner

requests that the Court direct the Respondents to cease the appointment process and facilitate the filling of the seat through an election.

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 9th day of May 2016.

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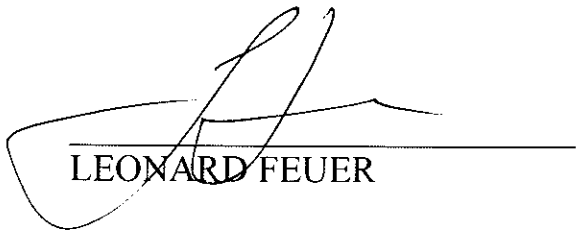
CERTIFICATE OF COMPLIANCE

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



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