

IN THE SUPREME COURT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., et al.,

Petitioners,

v.

Case No.: SC18-1573

HON. RICK SCOTT, in His Official
Capacity as Governor of Florida,
Et al.,

Respondents.

**BRIEF OF AMICUS CURIAE
TJ REDDICK BAR ASSOCIATION IN SUPPORT OF THE PETITIONER'S
EMERGENCY SUPPLEMENTAL PETITION FOR WRIT OF QUO
WARRANTO AND FOR CONSTITUTIONAL WRIT**

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS

On November 12, 1982, a group of social engineers formed the T.J. Reddick Bar Association because Blacks were not being afforded equal access into law firms as attorneys or partners, court appointments in civil or criminal cases, appointments to judgeships, or respect as attorneys in Broward County, Florida. The group included attorneys W. George Allen, Alcee L. Hastings, Benjamin F. Lampkin, Jr., Henry Latimer, Raleigh R. Rawls, James Brown, William Hutchinson, Jr., Zebedee Wright, and Thomas J. Reddick, Jr. Today, the Association has broadened its purpose TO also includes promoting the professional excellence of Black lawyers in Broward County, increasing the enrollment of minority students in college and law school, and promoting the general welfare of all citizens in Broward County. The Association not only provides legal-advice clinics, its members also mentor law students attending local law schools. Based on the mission of the Association, the Association has an interest in the process for the nomination and appointment of members of The Florida Bar to serve as justices on the Florida Supreme Court.

SUMMARY OF THE ARGUMENT

This Court should extend the date for submission of applications to the Florida Supreme Court Judicial Nominating Commission because the development of significant recent interpretations of the governing law as to the authority of the appointing authority to replace justices of this Court when there is no vacancy and the determination as to when certain actions trigger a "vacancy" on this Court.

The TJ Reddick Bar Association seeks to provide additional sources of support as to why the changes resulting from this Court's order issued on October 15, 2018, impact the potential pool of applicants. The TJ Reddick Bar Association supports the arguments raised in the Emergency Supplemental Petition for Writ of Quo Warranto and for Constitutional Writ filed on October 26, 2018.

ARGUMENT

THE DEADLINE FOR SUBMITTING APPLICATIONS SHOULD BE EXTENDED UNTIL JANUARY 8, 2019

Since Governor Scott took office, not one African American has been appointed to any appellate state court in Florida. There has been ten appointments to the First District Court of Appeal, six appointments to the Second District Court of Appeal, five appointments (in addition to the two currently pending) to the Third District Court of Appeal, four appointments to the Fourth District Court of Appeal, and seven appointments to the Fifth District Court of Appeal.^{1 2} There has also been a single vacancy on the Florida Supreme Court during Governor Scott's tenure. Given this history over the course of almost eight years, there appeared to be a clear signal that Governor Rick Scott, if allowed to fill the three vacancies on the Florida Supreme Court, would not select any African American members of The Florida Bar. This perception is described in footnote 5 of the Emergency Supplemental Petition for Writ of Quo Warranto and for Constitutional Writ.

In an article written by Josh Salman and Emily Le Coz in December 2016, *Race and Politics Influence Judicial Decisions*, the authors wrote that "Scott has

¹ This data is collected from the websites of the First District Court of Appeal, the Second District Court of Appeal, the Third District Court of Appeal, the Fourth District Court of Appeal, and the Fifth District Court of Appeal.

²

The list of names can be found at https://ballotpedia.org/Judges_appointed_by_Rick_Scott.

appointed fewer black judges than his predecessors, making the bench whiter and more conservative.”³ In *Lack of Black Judges on 10th Judicial Circuit’s Bench Raises Concern*, published in the Ledger in August 2013, Tenth Judicial Circuit Chief Judge William Bruce Smith is quoted saying, “I’m embarrassed that we don’t have an African-American judge on the bench.” A local lawyer expressed his impression regarding the dearth of African American jurists, “The problem we have now is with Gov. Scott.” “We are sending up names of qualified black lawyers, but he’s overlooking them. And he’s not just doing it here in the 10th Circuit, he’s doing it across the state.”⁴

In an editorial published in the Sun Sentinel on September 22, 2014, the editorial board wrote that, "Florida's courts are experiencing a disturbing trend: For the first time in at least a quarter-century, the proportion of black judges has dropped, from a high of 7 percent to 6.5 percent."⁵ "To date, Gov. Scott has

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Salman, Josh, and Emily Le Coz. “Race and Politics Influence Judicial Decisions.” *Bias on the Bench* | *Sarasota Herald-Tribune Media Group* | *Politics*, 3 Nov. 2018, projects.heraldtribune.com/bias/politics/

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Schottelkottethe, Suzie. “Lack of Black Judges on 10th Judicial Circuit's Bench Raises Concern.” *The Ledger*, The Ledger, 19 Aug. 2013, www.theledger.com/news/20130818/lack-of-black-judges-on-10th-judicial-circuits-bench-raises-concern

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Sun Sentinel Editorial Board. “Troubling Decline of Black Judges in Florida Courts.” *Sun-Sentinel.com*, 22 Sept. 2014, www.sun-sentinel.com/opinion/editorials/fl-editorial-black-judges-20140922-story.html

appointed fewer black judges than any of his recent predecessors. Of the governor's 159 judicial appointments, nine were black. He has picked only three to serve on circuit courts." Id. Days earlier, in an article in the Tampa Bay Times, the headline of Steve Bousquet's story read, "Florida Gov. Rick Scott appointing fewer black judges than predecessors."⁶ Thus, for more than five consecutive years, news outlets have informed many African American lawyers that Governor Rick Scott has not found many Black lawyers "qualified." " Statewide, 84 percent of judges are white, 9 percent are Hispanic and 6.6 percent are black, according to data from the court system.

When Scott took office in 2011, the percentage of black judges was 6.9 percent. " wrote Bousquet. Bousquet compared Governor Scott's appointment rates of African American with the appointment rates of his immediate two predecessors, both also Republicans:

"During the same 44-month time frame as Scott, former Gov. Crist appointed 12 African-American judges, including James Perry to the Florida Supreme Court when Crist was a Republican. " ... "Former Gov. Bush had appointed 22 black judges up to this point in his tenure. ... In direct comparison, Scott has appointed black attorneys to judgeships 5.7 percent of the time. Crist's overall record was 8.3 percent and Bush's was 10 percent. "

Thus, after more than five years of seeing articles describing the dearth of African

⁶Bousquet, Steve. "Florida Gov. Rick Scott Appointing Fewer Black Judges than Predecessors." *Tampa Bay, Florida News*, 15 Sept. 2014, www.tampabay.com/news/politics/stateroundup/florida-gov-rick-scott-seldom-appoints-black-judges/2197473

Americans appointed to the bench by Governor Rick Scott, it is certainly probable that many highly qualified African American members of The Florida Bar would not seek appointment to the bench, yet less this Court, if Governor Scott was the appointing authority. Where this Court's order, issued after the close of the applicant period, ruled that Governor Scott will not be appointing the three new justices to this Court, this is a significant change which warrants extending the application deadline until at least January 8, 2019, when the new governor takes office.

Michele Jawando and Allie Anderson, writing for the Center for American Progress, indicated that state courts handle more than 95 percent of all court cases but also set forth disturbing statistical data reflecting the scarcity of people of color on the bench.⁷ While the article made specific reference to appellate courts in Texas and Alabama, Florida's Third and Fifth District Courts of Appeal lost their only African American judges with the retirement of Judges Emerson Thompson and Melvia Green ten years ago. Judge Thompson was the only African American judge ever to serve on the Fifth District Court of Appeal and Judge Green was the only African American woman to serve on the Third District Court of Appeal. As

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Jawando, Michele L., and Allie Anderson. "Racial and Gender Diversity Sorely Lacking in America's Courts." *Center for American Progress*, 15 Sept. 2016, www.americanprogress.org/issues/courts/news/2016/09/15/144287/racial-and-gender-diversity-sorely-lacking-in-americas-courts/

so eloquently stated by Jawando and Anderson, "diversity is important because of the need for broader perspectives that can be brought to bear on the real-world issues facing judges in complex cases."

The Washington State Minority and Justice Commission noted that the recruitment process for [employees] at the state courts must be handled "fairly and consistently to avoid the appearance of favoritism, bias, or inaccessibility. Inconsistency can hamper outreach efforts and therefore, impact the quality of the applicant pool."⁸ It is generally accepted that an organization that has a reputation for having a strong commitment to diversity will find it easier to attract more diverse candidates. *Id.* The corollary is that an organization which has a reputation for excluding diverse candidates will find it more difficult to attract more diverse candidates.

Amicus is aware of African American lawyers who are more likely to apply if the deadline is extended. Amicus do not foresee any prejudice to any applicant if the deadline is extended. Where the issue of whether Governor Scott was authorized to call for the nominations by the JNC when there is no "vacancy" remains pending, this should certainly allow this Court to extend the time period

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Willert, Sheryl J., and Antoinette M. Davis. *Building a Diverse Court: A Guide to Recruitment and Retention*.
www.courts.wa.gov/committee/pdf/WaMJCCCompleteManual0403.pdf

for submission of the applications until at least January 8, 2019. While many interviews will have been completed by the time oral argument are held, the current group of applicants would not need to be re-interviewed. The members of the judicial nominating commission will not change between now and January 8, 2019.

Conclusion

Based on the foregoing reasons, this Court should order the Florida Supreme Court Judicial Nominating Commission to accept new applications at least through January 8, 2019.

CONCLUSION

For the foregoing reasons, this Court should order the Florida Supreme Court Judicial Nominating Commission to extend the deadline for submission of applications until at least January 8, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the Amicus Brief on Behalf of the TJ Reddick Bar Association, prepared in Times New Roman 14 point type font, has been served by email on November 3, 2018, to:

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