IN THE SUPREME COURT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., COMMON CAUSE, PATRICIA M. BRIGHAM, JOANNE LYNCH AYE, and ELIZA McCLENAGHAN,

Petitioners,

v. Case No.: SC18-___

HON. RICK SCOTT, in His Official Capacity as Governor of Florida, FLORIDA SUPREME COURT JUDICIAL NOMINATING COMMISSION, and JASON L. UNGER, in His Official Capacity as Chair of the Florida Supreme Court Judicial Nominating Commission,

Respondents.

EMERGENCY PETITION FOR WRIT OF QUO WARRANTO

THE MILLS FIRM, P.A.

John S. Mills
Thomas D. Hall
Courtney Brewer
Jonathan Martin
325 North Calhoun Street
Tallahassee, Florida 32301

Counsel for Petitioners

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PETITION FOR WRIT OF QUO WARRANTO

Does the Governor have the authority to require and does a judicial nominating commission (a "JNC") have the authority to make nominations to fill an appellate court vacancy before the vacancy occurs? Because the Florida Constitution requires that the answer is that they have no such authority, last week's official actions by Respondents Governor Rick Scott, the Florida Supreme Court Judicial Nominating Commission (the "FSC JNC"), and Jason L. Unger as its chair exceeded their lawful authority, meriting a writ of quo warranto.

Governor Scott has already conceded to this Court that unless (1) a justice dies or retires early, (2) the governor-elect fails to take the oath before his term starts, or (3) the governor-elect cedes his authority to Governor Scott (none of which have happened), the governor elected this November will be the one with authority to fill the vacancies that will be created by the mandatory retirements of Justices Pariente, Lewis, and Quince. Nonetheless, Governor Scott has issued yet another press release wrongly claiming authority to make these appointments. More importantly for this Court's jurisdiction, he has now taken official action on that intent by directing the FSC JNC to make its nominations by November 10, 2018, nearly two months before the vacancies will occur. And the FSC JNC has officially acted by setting an October 8, 2018, deadline for applications to comply with Governor Scott's directive.

I. NATURE OF THE RELIEF SOUGHT.

Petitioners seek a writ of quo warranto to establish that Governor Scott may not require, and the FSC JNC may not make, nominations to fill the vacancies that will be created by the mandatory retirement of Justices Pariente, Lewis, and Quince until those vacancies occur, which will be on January 8 or 9, 2018, depending on how these justices' six-year terms are calculated. The FSC JNC is prohibited by the constitution and should now be prohibited by this Court from purporting to make nominations any earlier.

This is a time-sensitive matter, and Petitioners respectfully submit that a decision before October 8, 2018, which is the deadline for applications set by the FSC JNC, is necessary to avoid unfairness and undue burden to potential applicants. They further respectfully submit that a decision before the FSC JNC purports to make its nominations (Governor Scott has set a November 10, 2018, deadline for nominations) is necessary to avoid a potential constitutional crisis. But to be clear, the failure to decide this matter before those events would not render this petition moot.

II. BASIS FOR INVOKING THIS COURT'S JURISDICTION.

This Court has jurisdiction to issue writs of quo warranto to "state officers and state agencies." Art. V, § 3(b)(8), Fla. Const. "Quo warranto is used 'to determine whether a state officer or agency has improperly exercised a power or right derived from the State.' " *League of Women Voters of Fla. v. Scott*, 232 So. 3d 264, 265 (Fla. 2017) (hereinafter, "*League I*") (quoting *Fla. House of Reps. v. Crist*, 999 So. 2d 601, 607 (Fla. 2008)). The writ is available to determine whether government officials like Respondents have improperly exercised an official power or right, specifically including powers related to the judicial nominating and appointment process. *E.g.*, *Lerman v. Scott*, No. SC16-783, 2016 WL 3127708, at *1 (Fla. June 3, 2016); *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011).

"[W]hen bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers." *Whiley*, 79 So. 3d at 706 n.4. Not only are individual petitioners Patricia M. Brigham, Joanne Lynch Aye, and Eliza McClenaghan each Florida citizens and taxpayers, but they and the two petitioner organizations, which are collectively comprised of thousands more Florida citizens and taxpayers, have a substantial interest in this issue. Petitioner League of Women Voters of Florida, Inc., (the "League") is a nonpartisan political organization that actively promotes open government responsive to the people of

the state. The League attempts to accomplish its goals and positions through the constitutional amendment process, the legislative process, and the courts. Since Petitioner Common Cause established Common Cause Florida in 1976, it has represented its members in litigation in matters related to redistricting, open government, ethics, and campaign finance. These organizations' dedication to keep all branches of the government accountable to the people make them ideally suited to enforce the constitutional provisions and democratic principles at stake.

This Court appears to have already recognized that it would have quo warranto jurisdiction over this dispute once Governor Scott undertook "some action" beyond telling the press and public that he intends to fill the vacancies that will be created in January 2019 due to the mandatory retirement of three Justices. *League I*, 232 So. 3d at 265-66. As shown below, Governor Scott has now acted on his stated intention – notwithstanding that his own counsel conceded to this Court that he lacked the authority to do so.

While this Court's jurisdiction is discretionary and concurrent with other courts, specific considerations in this case warrant immediate review by this Court; the "importance and immediacy of the issue justifies [this Court] deciding this matter now rather than transferring it for resolution in a declaratory judgment action." *Fla. House of Reps.*, 999 So. 2d at 608. Indeed, this Court is in a far better position to resolve this petition in the first instance. Given the clarity of the law on

the issue between this Court's decision in *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090, 1093 (Fla. 2006) ("*Mandatory Retirement*"), the work the Court has already performed related to this issue in *League I*, and the plain language of the constitutional provisions at issue, there is no need for this Court to require development of the legal analysis in the lower tribunals. *See Lerman*, 2016 WL 3127708, at *1 (deciding question involving gubernatorial authority to make judicial appointments where it was based on prior decision of this Court and straightforward review of subsequent amendments to constitution).

Nor can these questions wait for lower courts to address them first. The FSC JNC has set a deadline of October 8, 2018, for applications, which is less than three weeks away. And the November 10, 2018, deadline Governor Scott purported to impose is less than eight weeks away. Moreover, given the important questions of Florida constitutional law at issue, which are capable of repetition any year a new governor takes office, "this case would in all likelihood ultimately be decided by this Court. Interests of judicial economy favor an immediate resolution." *Chiles v. Phelps*, 714 So. 2d 453, 457 n.6 (Fla. 1998).

In any event, review by the lower courts should be avoided because every circuit and district judge in Florida, save the few who may be ineligible or disinterested in seeking higher judicial office, is a potential applicant for these

vacancies and would, therefore, be confronted with the untenable conflict of having a direct stake in the outcome. That is a very real conflict of interest that simply does not exist for any member of this Court.[1] Judges should not choose which governor may appoint them to the State's highest court.

[1] In *League I*, all seven members of this Court demonstrated their view that they have no disqualifying conflict of interest in deciding the issue even though four will be helping determine the person who will select the colleagues with whom they will deliberate and decide cases for years to come and the other three will be helping determine the person who will appoint their successors.

III. STATEMENT OF THE FACTS.

When appellate judges and justices are first appointed, they serve an initial "term ending on the first Tuesday after the Monday in January of the year following the next general election occurring at least one year after the date of appointment." Art. V, § 11(a), Fla. Const. If retained at the general election preceding the expiration of that initial term, they begin a new six-year term "on the first Tuesday after the first Monday in January following the general election." *Id.*

Absent death, removal, or resignation, appellate judges' and justices' final terms (regardless of whether they are the first term begun by appointment or a subsequent six-year term begun by retention) end and create vacancies subject to gubernatorial appointment in one of two ways: the appellate judge or justice either "is ineligible or fails to qualify for retention"[2] or qualifies but loses the retention vote. *Id.* Thus, for example, vacancies will be created on our appellate courts upon the expiration of the current term of any appellate judges or justices who (1) are serving terms that expire in January 2019 and (2) are not retained by the voters, whether it is because they were not eligible, chose not to run, or ran and lost.

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[2] This could occur, for example, because the judge or justice has turned 70 (as in the case at hand), no longer resides in the territorial jurisdiction of his or her court, fails to timely submit qualifying paperwork to the Secretary of State, is no longer a member of The Florida Bar, or simply declines to run for retention. *See generally* art. V, § 8, Fla. Const. (providing these and other requirements for eligibility for judicial office).

Justices Pariente, Lewis, and Quince were last retained by the voters in the November 6, 2012, general election, leading Governor Scott to issue commissions for terms beginning January 8, 2013, which was the first Tuesday following the first Monday in January following that election. (App. 3-5.) While six years from January 8, 2013, is January 8, 2019, the commissions (erroneously, as explained below) stated that the terms would end a day earlier, on January 7, 2019. (*Id.*)

Having been re-elected in the 2014 general election, Governor Scott is serving his second consecutive four-year term, which began on January 6, 2015, the first Tuesday after the first Monday in January following that election. Art. IV, § 5(b), Fla. Const. Thus, that term will end at the conclusion of January 6, 2019.[3] Despite the technical vacancy that will occur in his office and assuming he has not abandoned his state duties for other opportunities, he will "continue in office until a successor qualifies." Art. II, § 5(b), Fla. Const.

The winner of this year's gubernatorial election[4] will serve a four-year term starting on January 8, 2019, because that is the first Tuesday following the first Monday of the January following the election. Art. IV, § 5(b), Fla. Const. At least

[3] It would be January 5, 2019, if one used the one-year-minus-one-day method Governor Scott used for calculating the end of the judicial terms in the commissions he issued.

[4] The major party nominees are Andrew Gillum and Ron DeSantis, so the incoming governor will be referenced hereinafter by the male pronoun.

the last three governors took their initial oath of office and filed it with the Secretary of State in either November or December, ensuring that they would assume authority – thus ending their predecessor's de jure authority under article II, section 5(b) – at the earliest possible moment. (App. 6-8.) Thus, as Chief Justice Canady observed during oral argument in *League I*, it is "overwhelmingly likely" that the next governor-elect will take office at midnight on January 8, 2019,[5] and it "would take a colossal miscarriage" for this not to occur. Gavel to Gavel Video Portal, *Archived Oral Argument of League I, SC17-1122*, (Nov. 1, 2017) (hereinafter "*League I OA*") at 8:43, 15:09 (available at https://wfsu.org/gavel2gavel/viewcase.php?eid=2462). Thus, the newly elected governor will assuredly assume power the moment the clock strikes midnight when Monday, January 7 turns to Tuesday, January 8.

Governor Scott, through his general counsel, repeatedly conceded to this Court during that oral argument that the three vacancies would occur no earlier than midnight on January 8 (unless the justices left office early) and that the winner of the 2018 gubernatorial election would have the authority to fill those vacancies (unless he fails to file the oath of office in advance or agrees to cede his

[5] Midnight, as used in this petition and common usage, is the first moment of the calendar day. For example, midnight on January 8, 2019, occurs during the night between January 7 and 8.

authority to Governor Scott). *League I OA* at 28:10, 29:50, 31:20, 32:17, 33:06, 33:27; 36:15.

This Court dismissed the petition in *League I*, however, based on its holding that "[a] party must wait until a government official has acted before seeking relief pursuant to quo warranto because a threatened exercise of power which is allegedly outside of that public official's authority may not ultimately occur." 232 So. 3d at 265; *see also id.* at 266 ("Until some action is taken by the Governor, the matter the League seeks to have resolved is not ripe, and this Court lacks jurisdiction to determine whether quo warranto relief is warranted."). It therefore dismissed the quo warranto petition because it was based merely on Governor Scott's statement during a press conference that he intended to fill the vacancies on this Court. *Id.*

Governor Scott has now acted. Specifically, on September 11, 2018, his general counsel conveyed the following directions to the FSC JNC:

> Governor Scott has directed me to request that you convene the Supreme Court Judicial Nominating Commission for the purpose of selecting and submitting to the Governor the names of highly qualified lawyers for appointment to the Florida Supreme Court. This appointment is to fill the vacancy created by the mandatory retirement of **Justices Barbara Pariente, R. Fred Lewis and Peggy Quince.** The Governor strongly prefers submission of the maximum number of nominees (six) for each of the vacancies.
>
> The Commission's deadline for completion of this undertaking is **Saturday, November 10, 2018.** The deadline is final as it includes

> the discretionary 30-day extension authorized by Article V, Section 11(c) of the Florida Constitution.

(App. 9.) In a press release, Governor Scott stated that he intends to allow the governor-elect to interview the nominees and that he has an "expectation … that he and the governor-elect … will agree on the selection of three justices." (App. 10.) But he made clear that he will purport to unilaterally make the appointments if the governor-elect does not agree to grant him veto power over the appointments, despite his previous concession to this Court that he will have no such authority. (*See id.* ("Governor Scott will not appoint any justice to the Florida Supreme Court until the governor-elect had has an opportunity to interview the nominees and review their references and qualifications.").)

The FSC JNC, through its chair (Respondent Jason Unger), has acted to comply with Governor Scott's directive to make its nominations by November 10, 2018. Specifically, on September 12, 2018, Mr. Unger formally began soliciting applications with the direction that they be submitted by October 8, 2018. (App. 12.)

IV. ARGUMENT.

While Petitioners have provided the reader the facts providing context for the question presented, the three dispositive facts in this case are that (1) Justices Pariente, Lewis, and Quince are currently serving six-year terms that began January 8, 2013, (2) those terms will not end until January 2019 and there is no reason to believe these justices will abandon their duties, and (3) the FSC JNC is nonetheless complying with Governor Scott's directive to complete its nominating process nearly two months before the vacancies will occur. The acts challenged by this petition are not statements of intent to the press,[6] but official actions by Governor Scott and the FSC JNC to produce nominations by November 10, 2018. Those actions are unauthorized because (A) the Florida Constitution prohibits nominations from being made other than during a thirty-day window, which can be increased to sixty days by the Governor, opening only when the vacancies occur and (B) such vacancies will not occur until January 9, 2019.

[6] To be sure, Governor Scott continues to try to mislead the public by insisting to the press that he has the right to make the appointments contrary to his concessions to this Court. Respectful of this Court's holding in *League I*, this petition is not directed to his statements to the press, but to challenging his official actions in purporting to set a November 10, 2018, deadline for nominations (and the FSC JNC's official actions complying with this purported deadline).

A. Governor Scott May Not Dictate How the FSC JNC Proceeds, and in Any Event the FSC JNC May Not Make Its Nominations Until the Vacancies Occur.

Governor Scott's attempt to require the FSC JNC to convene and, more importantly, to set a deadline for nominations is unquestionably beyond his authority, as this Court long ago held that the "Governor has no power to establish rules governing the operation of the" JNCs. *In re Advisory Op. to the Governor*, 276 So. 2d 25, 30-31 (Fla. 1973) ("*JNC Rules*"). In any event, the Florida Constitution, specifically "[a]rticle V, section 11(c), governs the time periods applicable to judicial nominating commissions in nominating judicial applicants to fill vacancies and to the governor in making judicial appointments." *Pleus v. Crist*, 14 So. 3d 941, 943 (Fla. 2009).

> The nominations shall be made **within thirty days from the occurrence of a vacancy** unless the period is extended by the governor for a time not to exceed thirty days.

Art. V, § 11(a), Fla. Const. (emphasis added). The question is whether the highlighted phrase means within the thirty- to sixty-day period that starts upon the occurrence of a vacancy or no later than the end of that period. Although the language may be susceptible to either interpretation in isolation, when considered in context, it must mean the former.

This Court considered a similar question in *Jeffries v. State*, 610 So. 2d 440 (Fla. 1992), when it construed section 775.084(1)(a)2, Florida Statutes (Supp.

1988), which at that time provided for a habitual offender sentence for an offense "committed within 5 years of the date of" either the conviction of the last prior felony or the release from a prison sentence imposed for a prior felony. This Court held that the plain language of this statute meant that the offense must be committed during the five-year period starting with either the prior conviction or the release from prison for a prior conviction and, therefore, could not apply to an offense committed in prison when it was committed more than five years after the prior conviction. *Id.* at 441. This Court reasoned:

> It is obvious that the plain meaning of the word "within" is "inside the limits or extent of in time, degree, or distance." *American Heritage Dictionary* 1387 (2d ed. 1985). "Within" means "during the time of." *Black's Law Dictionary* 1602 (6th ed. 1991).[7] In common usage, "within" simply is not synonymous with "no later than." The term "within" implies a measurement fixed both at its beginning and its end, whereas "no later than" implies only a fixed end.

Id. Applying this reasoning to article V, section 11(a), the nominations must be made within a thirty- to sixty-day period that does not commence until the vacancies occur in January 2019.

It is true, however, that after the Court decided *Jeffries*, it retreated from its reasoning that this is the only plain meaning of the term and held that "within" can mean "no later than" in some contexts. *Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1122-23 (Fla. 2008). There, the Court interpreted Florida Rule of

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[7] *Black's Law Dictionary* does not currently define the term.

Civil Procedure 1.525, which at the time provided that a motion to tax costs and attorneys' fees must be served "within 30 days after filing of the judgment." *Id.* at 1118-19. The Court reaffirmed that its interpretation of the word "within" in *Jeffries* was reasonable, but it noted that other authorities demonstrated that it could also mean "not later than." *Id.* at 1122-23.

The Court noted that *Webster's Collegiate Dictionary* had definitions supporting both interpretations and quoted the following statement by the Supreme Court of Iowa with approval:

> In fixing time, this word is fairly susceptible of different meanings … . It may be taken to fix both the beginning and end of the period of time in which a specified act must be done. In this sense "within" means "during."
>
> However, "within" frequently means "not beyond, not later than, any time before, before the expiration of." In this sense "within" fixes the end but not the beginning of the period of time.

Id. at 1122 (quoting *Iowa State Dep't of Health v. Hertko*, 282 N.W.2d 744, 751 (Iowa 1979)). Having found the word ambiguous, this Court in *Barco* held that to define the term in any given instance, one must look to the surrounding circumstances and purpose for the provision. *Id.*

A review of the patent purpose of article V, section 11(c) demonstrates that it should be interpreted to mean the period beginning with the occurrence of the vacancy. This Court has repeatedly explained that the purpose of this provision was for JNCs "to supplant, at least in part, the Governor's so-called 'patronage

committee' composed of political supporters to ensure that politics would not be the only criteria in the selection of judges, and to increase generally the efficiency of the judicial appointive process." *Pleus*, 14 So. 3d at 943 (quoting *JNC Rules*, 276 So. 2d at 29). "When the commission has completed its investigation and reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of his executive appointive power." *Id.* at 943-44 (quoting *JNC Rules*, 276 So. 2d at 30).

Where (as shown to be the case here in Part B below) a new governor will assume office at or after the same moment the vacancies occur, the new governor, not the departing governor, makes the appointments, as Governor Scott conceded in *League I*. In any event, that is what this Court's decision in *Mandatory Retirement* made clear. 940 So. 2d at 1093-94. Thus, it will be the new governor with the constitutional appointment power that is required to make the appointments within 60 days of when nominations are properly made and certified. Art. V, § 11(c), Fla. Const.; *Pleus*, 14 So. 3d at 943-44. To interpret section 11(b) to allow nominations before the vacancies occur would allow the JNC to infringe on the new governor's right to take up to 60 days to make the decision.

The facts here show just how absurd it would be to interpret this provision to allow nominations before a vacancy occurs. We are not facing a lone vacancy on a

lower court, but three vacancies on this state's highest court. If the FSC JNC makes its nominations before the November 10 deadline Governor Scott purported to impose, then the 60-day period could elapse before the new governor even takes office, a truly absurd result. And even if the FSC JNC takes the full time Governor Scott purported to allot and makes the nominations on November 10 (a Saturday), the deadline for the new governor to make the appointments will be January 9, 2019, his second day in office.

In this instance, moreover, the FSC JNC's duty is to act "in an advisory capacity to aid" the new governor who makes the appointments, not Governor Scott who will have departed by the time the vacancies occur. It must therefore be the new governor with the authority to decide whether and under what circumstances to extend the FSC JNC's deadline beyond 30 days to up to 60 days. And it is the new governor whose "politics" would be one, but "not … the only criteria in the selection." *Pleus*, 14 So. 3d at 943 (quoting *JNC Rules*, 276 So. 2d at 29) (emphasis omitted). Though the FSC JNC, of course, is duty-bound to nominate the most qualified applicants regardless of their political views or background, the FSC JNC cannot perform its advisory role without knowing the kinds of non-political characteristics the new governor intends to emphasize in choosing among nominees. Just as Governor Scott has had ample time to convey to the JNCs what he is looking for in nominees, so too must the JNCs be given the

opportunity to afford the same respect and consideration to the new governor before making nominations.

Any interpretation of article V, section 11(c) that would allow the nominations to be made before the vacancies occur would also cause undue and unfair hardship on potential applicants that could not have been intended by a process designed to encourage the most qualified people to apply. The November 10 deadline Governor Scott purported to impose has required the FSC JNC to set the deadline for applications well before the general election. This is unfair and untenable in any gubernatorial election year – this one most of all where three seats on this Court are at stake – because potential applicants should be able to know the identity of the governor making the appointments and, more importantly, what kind of characteristics he is looking for in making appointments so they can have a sense of whether they have any realistic chance of being appointed before undertaking the arduous and intrusive gauntlet of applying.[8]

The gubernatorial election aside, votes on constitutional amendments can also dramatically impact not just who might be interested in applying, but who is

[8] Judicial applications presently require applicants to divulge all kinds of details about their financial condition and history as well as their physical and mental health. Applicants are also required to recall, search for, and compile extensive information over the course of their legal careers, including details about prior trials, mediations, and appeals. (App. 13-35.) All of this necessarily requires tremendous time and effort.

even eligible to apply. Indeed, the upcoming election provides a clear example. The constitution currently provides, "No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served." Art. V, § 8, Fla. Const. That, of course, is the provision responsible for the three upcoming vacancies. But the Constitution Revision Commission has proposed raising the age to seventy-five (effective in July 2019), and this Court recently cleared that amendment, known as Amendment 6, to go on the ballot. *Dep't of State v. Hollander*, No. SC18-1366, 2018 WL 4275904 (Fla. Sept. 7, 2018) (summary ruling noting a full opinion will follow) (copy of Amendment 6 available at https://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-20.pdf). Whether this amendment passes will have an obvious impact on who is eligible to apply and whether their age, even if not technically disqualifying, would eliminate their prospects of being nominated or appointed as a practical matter.[9]

While the foregoing issues all strongly warrant the same interpretation of "within" as this Court applied in *Jeffries*, there is one potentially countervailing

[9] For example, take an applicant who will turn 70 in the first half of their term, maybe as soon as July 2019. At present, she would have a tough time getting nominated and appointed as she would be limited to only a few months of service. But if the amendment passes, she might be an ideal candidate for this Court because she would not only have all those years of experience and wisdom, but also the ability to serve for several years.

interest, and it does not withstand scrutiny. Allowing nominations before the vacancy might be argued to allow for the earliest possible appointment by the new governor, which – the argument would go – would minimize any disruption to the Court's business caused by three vacancies. But the same efficiencies can already be achieved without this interpretation.

First, while Petitioners interpret section 11(c) to prohibit nominations before the vacancies, nothing in the Florida Constitution prevents a JNC from starting its process before the vacancy, as Justice Cantero noted in his concurrence in *Mandatory Retirement*. 940 So. 2d at 1094. The FSC JNC has demonstrated its view that it can complete its task by setting the deadline for applications roughly 30 days before making its nominations. Thus, the constitution would not prohibit it, for example, from setting the deadline as December 8, 2018, which would allow prospective applicants to know the results of the election but still give the FSC JNC over 30 days to make the nominations on the day the vacancies occur.

Second, while the fact there will be three vacancies in January may not be ideal, there are ample mechanisms long in place that will allow the Court to fully function until the successors are appointed and qualify in due course.[10] *See*

[10] These mechanisms do not, however, appear sufficient to prevent a constitutional crisis and utter chaos should Governor Scott receive nominations while he is still in office and go through with his publicly stated intent to appoint the new justices. At that point, there would be three individuals with commissions

generally art. II, § 5(b), Fla. Const.; *id.* art. V, § 8; *id.* art. V, § 2(b); Fla. R. Jud. Admin. 2.205(a)(2)(B)(iii), (a)(4)(A); Fla. Sup. Ct. Manual Internal Operating P. § I.B.

Thus, unless Respondents are allowed to create a constitutional crisis by purporting to nominate and appoint three putative justices, the Court can continue to function at full staff until successors are properly nominated and appointed by the new governor. There is no reason to adopt an interpretation that would allow the FSC JNC to infringe on the new governor's authority by making nominations before the vacancies occur.

B. The Vacancies Will Not Occur Until January 9, 2019.

Though not necessary to decide whether the writ should issue, the Court ought to resolve one minor conflict raised in *League I* that impacts the specific remedy to be fashioned if the writ is granted – Do the three justices' terms expire as of midnight of January 8, 2019, or January 9, 2019? In other words, until which date should the FSC JNC be prohibited from making its nominations?

In *League I*, in the commissions he signed, and in his press releases, Governor Scott has expressed his view that the terms end January 7, 2019. In other words, Governor Scott appears to believe the vacancies will occur when the clock

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stating they are now justices, but their authority to serve will be immediately suspect and almost certainly challenged.

strikes midnight the evening of Monday, January 7, 2019, and the calendar turns from January 7 to 8. But that method of counting would produce a result that is one day shy of six years, is unsupported by the law, and ignores well established Florida law on how to count periods of time, specifically including six-year judicial terms no less. *See State ex rel. Landis*, 163 So. 248, 256 (Fla. 1935) (noting that judge's six-year term had commenced on June 24, 1929, and "extended to June 24, 1935"). "The general rule for computing the time within which a thing must be done is to count the time by excluding the day on which the initial act occurred and include the corresponding future day." *Carter v. Cerezo*, 495 So. 2d 202, 203 (Fla. 5th DCA 1986); *accord Blanton v. State ex rel. Miller*, 24 So. 2d 232, 232 (Fla. 1945) (recognizing the "rule that in computing duration of time – that is, the period **for which** a condition shall exist – the first day is excluded"); *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 9 (Fla. 2012) (explaining that constitutional construction follows "principles that parallel those of statutory interpretation").

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction, issue the writ, and prohibit the FSC JNC from making nominations for vacancies before they occur on January 9, 2019.

Respectfully submitted,

THE MILLS FIRM, P.A.

/s/ John S. Mills
John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Thomas D. Hall
Florida Bar No. 0310751
thall@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901
cbrewer@mills-appeals.com
Jonathan Martin
Florida Bar No. 117535
jmartin@mills-appeals.com
service@mills-appeals.com (secondary)
The Bowen House
325 North Calhoun Street
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished to Daniel Nordby, General Counsel, Executive Office of the Governor, 400 South Monroe Street, Suite 209, Tallahassee, Florida 32399, daniel.nordby@eog.myflorida.com, counsel for Respondent Rick Scott, and to Respondent Jason L. Unger, in his capacity as Chair of Respondent Florida Supreme Court Judicial Nominating Commission, Gray Robinson, 301 South Bronough Street, Suite 600, Tallahassee, Florida 32301, jason.unger@gray-robinson.com by e-mail and hand delivery on September 20, 2018.

/s/ John S. Mills
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.100(*l*).

/s/ John S. Mills
Attorney