

**IN THE SUPREME COURT OF FLORIDA**

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

Petitioners,

v.

Case No.: SC18-1573

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.

---

**PETITIONERS' RESPONSE TO GOVERNOR'S  
MOTION FOR REHEARING OR CLARIFICATION**

Petitioners League of Women Voters of Florida, Inc., Common Cause, Patricia M. Brigham, Joanne Lynch Aye, and Liza McClenaghan oppose the Governor's Motion for Rehearing or Clarification filed October 30, 2018. The two points the motion asserts this Court overlooked are that (1) the "scope of the gubernatorial *appointment* power" is not at issue in these proceedings and (2) the Court overlooked "another circumstance ... under which Governor Scott would have the authority to fill the vacancies in question: through appointments with the

RECEIVED, 10/31/2018 03:53:26 PM, Clerk, Supreme Court

concurrence of the governor-elect.” (Motion at 4-5 (emphasis in original).) Neither assertion has merit.

First, Petitioners’ petition initiating these proceedings is all about the scope of Governor Scott’s power to appoint justices. True, the only apparent actual legal disputes between the parties in light of Governor Scott’s counsel’s concession during oral argument in *League of Women Voters of Fla. v. Scott*, 232 So. 3d 264 (Fla. 2017), focused more directly on the nominating process that precedes any appointment. But the scope of the appointment power is not only intertwined with his role (or lack thereof) in the nominating process, but was also directly covered in the petition. Indeed, the petition specifically addressed Governor Scott’s assertion that he hoped to reach an agreement with his successor on the appointments as well as the issue of to which governor the Commission has a duty to act in an advisory capacity. (Petition at 10-11, 17-18.)

Second, not only did the Governor fail to raise in his response the argument he now advances that he has some “authority” to make “appointments with the concurrence of the governor-elect,” which is reason enough to deny the motion, but he still makes no actual legal argument as to why he believes he has such a right. He points to what he calls a “precedent” set by Governors Chiles and Bush in 1998 regarding a prior appointment following a mandatory retirement, but that is no legal argument. As Petitioners showed in replying to Governor Scott’s response,

not only does that historical event have no value as legal precedent, but it was an event that occurred during a time when there was uncertainty on the issue, uncertainty that this Court subsequently removed at Governor Bush's request in *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090, 1093 (Fla. 2006). (Petitioners' Reply at 10-14.)

In any event, Governor Scott still points to no provision in the Florida Constitution, no statute, and no case law for the remarkable suggestion that two different governors must share the power to appoint judges under certain circumstances. The exercise of solemn constitutional duties like this should not be fodder for back-room political dealing. While the person elected governor on November 6 is certainly free to consult with Governor Scott (or anyone else for that matter) as to how to exercise his appointment power, there is no legal requirement that he do so. Governor Scott's motion for rehearing is, at bottom, just the latest in a long line of attempts to further control the judicial nominating process and taint it with his partisan policy preferences. This latest attempt should be rejected as well.

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 the following by email on October 31, 2018:

*Counsel for Respondent, Gov. Rick Scott*    *Counsel for Respondent, Jason L. Unger*

Daniel E. Nordby  
Meredith L. Sasso  
John MacIver  
Alexis Lambert  
EXECUTIVE OFFICE  
OF THE GOVERNOR  
The Capitol, PL-05  
Tallahassee, Florida 32399-0001  
[Daniel.Nordby@eog.myflorida.com](mailto:Daniel.Nordby@eog.myflorida.com)  
[Meredith.Sasso@eog.myflorida.com](mailto:Meredith.Sasso@eog.myflorida.com)  
[John.MacIver@eog.myflorida.com](mailto:John.MacIver@eog.myflorida.com)  
[Alexis.Lambert@eog.myflorida.com](mailto:Alexis.Lambert@eog.myflorida.com)

George T. Levesque  
GRAYROBINSON, P.A.  
301 South Bronough Street  
Suite 600  
Tallahassee, Florida 32301  
[George.levesque@gray-robinson.com](mailto:George.levesque@gray-robinson.com)  
[Mari-jo.lewis-wilkinson@gray-robinson.com](mailto:Mari-jo.lewis-wilkinson@gray-robinson.com)  
[Teresa.barreiro@gray-robinson.com](mailto:Teresa.barreiro@gray-robinson.com)

*Counsel for Respondent, Florida  
Supreme Court Judicial Nominating  
Commission*

Raoul G. Cantero  
WHITE & CASE LLP  
Southeast Financial Center  
200 South Biscayne Boulevard  
Suite 4900  
Miami, Florida 33131-2352  
[Raoul.cantero@whitecase.com](mailto:Raoul.cantero@whitecase.com)

/s/ John S. Mills

Attorney