

IN THE SUPREME COURT OF FLORIDA

HONORABLE GERALDINE F. THOMPSON,
in her Official Capacity as a
Representative for District 44
in the Florida House of
Representatives, and as an
Individual,

CASE NO. SC20-985

Petitioner,

vs.

HONORABLE RON DESANTIS, in his
Official Capacity of Governor
of Florida, and DANIEL E. NORDBY,
in his Official Capacity as Chair
of the Florida Supreme Court
Nominating Commission,

Respondents.

_____ /

**AMENDED EMERGENCY PETITION FOR WRIT OF QUO WARRANTO
AND WRIT OF MANDAMUS**

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RECEIVED, 08/31/2020 02:05:32 PM, Clerk, Supreme Court

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NATURE OF AMENDMENT

Representative Thompson amends her original Emergency Petition for Writ of Quo Warranto and Writ of Mandamus to affirmatively state that she is seeking the remedy that this Court found correct and appropriate in the decision entered on August 27, 2020. Based on this Court's decision, her claims for relief against the Florida Supreme Court Judicial Nominating Commission ("the JNC") are also removed.

STATEMENT OF CASE AND FACTS

Representative Thompson re-alleges and incorporates by reference the Statement of Case and Facts included in the Emergency Petition for Writ of Quo Warranto and Writ of Mandamus she filed on July 13, 2020. The following additional facts are also relevant to this Amended Petition.

On August 27, 2020, this Court issued an opinion denying Representative Thompson's Emergency Petition for Writ of Quo Warranto and Writ of Mandamus. However, in doing so, the Court explicitly held that the Governor exceeded his constitutional authority by appointing Judge Renatha Francis to fill a vacancy on the Florida Supreme Court. *Thompson v. DeSantis*, Case No. SC20-985, slip op. at 1 (Fla. Aug. 27, 2020). Despite that holding, the Court chose to deny the petition based on its conclusion that the

remedy Representative Thompson sought is legally unavailable. *Id.* at 2. All five Justices participating in this case concluded that the only correct and legally available remedy for the constitutional violation in this case would be to require the Governor to appoint one of the 7 individuals that remain on the list certified by the JNC to the Governor on January 23, 2020 *Id.* at 2, 14 (majority opinion); *Id.* at 30 (Polston, J., concurring in result).

Contemporaneous with the filing of this Amended Petition, Representative Thompson has filed a Motion for Rehearing or, in the Alternative, Motion for Leave to Amend Emergency Petition for Writ of Quo Warranto and Writ of Mandamus.

JURISDICTION

This Court has jurisdiction to issue writs of quo warranto and mandamus pursuant to Article V, Section 3(b)(8) of the Florida Constitution, and Rule 9.030(a)(3), Florida Rules of Appellate Procedure. "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 v. Scott*, 232 So.3d 264, 265 (Fla. 2017).

The Governor of Florida is a state officer subject to quo warranto jurisdiction. See e.g. *League of Women Voters v. Scott*, 257 So.3d 900 (Fla. 2018). As outlined below, the Governor has clear and indisputable legal duties. As a result, the Governor is also subject to mandamus jurisdiction. See *Pleus v. Crist*, 14 So.3d 941, 945 (Fla. 2009).

This Court's authority to issue writs of quo warranto and mandamus is discretionary and concurrent with other courts in Florida. However, the specific considerations present in this case warrant an immediate review and decision by this Court. See *Fla. House of Reps v. Crist*, 999 So.2d 601, 608 (Fla. 2008).

As of this date, there has been a vacancy on the Florida Supreme Court for more than nine months. This Court has repeatedly held as follows:

[V]acancies in judicial office are to be avoided whenever possible. We are confident that the framers of Article V of the Florida Constitution intended that the nominating and appointment process would be conducted in a way as to avoid or at least minimize the time that vacancies exist.

Pleus, 14 So.3d at 946 (internal quotations omitted) (citing *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla. 1992)). The continued existence of a vacancy on the Florida Supreme Court since November 2019 adversely affects the function of government and requires that this Court make an immediate determination on the issues in this petition. See *Chiles v. Phelps*, 714 So.2d 453, 457 (Fla. 1998).

STANDING

The Petitioner is a Florida citizen and taxpayer. She is also an elected Representative for District 44 in the Florida House of Representatives. As a result, she has a legal right to seek quo warranto and mandamus relief from this Court. See *Whiley v. Scott*, 79 So.3d 702, 706 n.4 (Fla. 2011); *Pleus*, 14 So.3d at 945.

ARGUMENT

GOVERNOR DESANTIS EXCEEDED HIS AUTHORITY BY APPOINTING JUDGE RENATHA FRANCIS TO THE FLORIDA SUPREME COURT.

A. This Court Should Issue a Writ of Quo Warranto

Here, the plain and unambiguous language of Article V establishes that Governor DeSantis lacked the authority to appoint Judge Francis on May 26, 2020. Therefore, this Court should issue a writ of quo warranto establishing that Governor DeSantis exceeded the limits of his authority by appointing Circuit Judge Renatha Francis to the Florida Supreme Court.

First, pursuant to Article V, Section 3 of the Florida Constitution, "the supreme court shall consist of seven justices." Here, it is undisputed that there were two vacancies on the Florida Supreme Court for more than six months from November 22, 2019, through May 26, 2020.

Pursuant to Article V, Section 8 of the Florida Constitution, "[n]o person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida." Here, it is undisputed that Judge Francis had not been a member of The Florida Bar for the 10 preceding years on May 26,

2020, the day she was appointed by Governor DeSantis. She will not meet that requirement until September 24, 2020. (Appendix H).¹

Pursuant to Article V, Section 11(a), the Governor has the authority to fill vacancies on the Florida Supreme Court. Pursuant to Article V, Section 11(c) and (d), nominations for vacancies on the Florida Supreme Court must be made by the JNC within 60 days of the occurrence of a vacancy. Pursuant to Article V, Section 11(c), “[t]he governor shall make the appointment within sixty days after the nominations have been certified to the governor.”

Here, the JNC certified the names of the 9 nominees for the 2 vacancies on the Florida Supreme Court to Governor DeSantis on January 23, 2020. (Appendix G). Thus, pursuant to Article V, Section 11(c), Governor DeSantis had until March 23, 2020, to appoint two individuals to fill the vacancies on the Supreme Court.

Governor DeSantis did not comply with the mandatory 60-day requirement of Article V, Section 11(c). See *Pleus*, 14 So.3d 941, 945 (“The plain language of article V, Section 11(c), mandates that the Governor, upon receipt of the certified list of nominees from a judicial nominating commission, make an appointment from that list within sixty days to fill the judicial vacancy.”).

¹ References to the Appendix refer to the Appendix filed with Representative Thompson’s original Petition.

Instead, Governor DeSantis appointed Judge Francis on May 26, 2020, more than 4 months after he received the certified list.

However, on May 26, 2020, it is beyond dispute that Judge Francis did not meet the eligibility requirements of Article V, Section 8 of the Florida Constitution to be a justice on the Florida Supreme Court. On that date, she had not been a member of The Florida Bar for the preceding ten years.

Therefore, as this Court concluded on August 27, 2020, Governor DeSantis lacked the legal authority to appoint Judge Francis to that position. *Thompson, supra*, slip op. at 1. Governor DeSantis has no authority to further delay the appointment of an individual to fill the vacancy created by Justice Luck because he is already well beyond the 60-day time limit that expired on March 23, 2020.

Accordingly, this Court should issue a writ of quo warranto declaring that Governor DeSantis exceeded his constitutional authority by appointing Judge Francis to the Florida Supreme Court on May 26, 2020. As part of the writ, this Court should order Governor DeSantis to immediately appoint one of the 7 constitutionally qualified individuals included on the list of nominees certified to him by the JNC on January 23, 2020. (Appendix G).

B. In the Alternative, this Court Should Issue a Writ of Mandamus.

As previously asserted, Judge Francis is not constitutionally qualified to be a justice on the Florida Supreme Court until September 24, 2020. Governor DeSantis was required to appoint a constitutionally qualified nominee no later than March 23, 2020.

Since that deadline has long since passed, this Court should issue a writ of mandamus that instructs Governor DeSantis to immediately appoint one of the 7 constitutionally qualified nominees certified to him by the JNC on January 23, 2020. Pursuant to *Pleus, supra*, Governor DeSantis would then have completed his clear and indisputable duties under the Florida Constitution. See *Thompson, supra*, slip op. at 30-31 (Polston, J., concurring in result).

CONCLUSION

For the aforementioned reasons, this Court should issue a writ of quo warranto, a writ of mandamus, or both. This Court should order Governor DeSantis to immediately appoint to the Florida Supreme Court one of the 7 constitutionally-qualified individuals certified to him by the JNC on January 23, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Amended Petition has been furnished by e-service to Joseph W. Jacquot, General Counsel, Executive Office of the Governor, joe.jacquot@eog.myflorida.com, counsel for Respondent Ron DeSantis, Respondent Daniel Nordby, in his capacity as Chair of Respondent Florida Supreme Court Judicial Nominating Commission, dnordby@shutts.com, and Commissioner Jesse Panuccio, jpanuccio@bsfllp.com, on this 31st day of August, 2020.

/s/ William R. Ponall _____
WILLIAM R. PONALL
Florida Bar No. 421634

/s/ Lisabeth J. Fryer _____
LISABETH J. FRYER
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DESIGNATION OF EMAIL ADDRESSES

Attorney William R. Ponall hereby designates bponall@PonallLaw.com as his primary address and ponallb@criminaldefenselaw.com as his secondary email address.

Attorney Lisabeth J. Fryer designates lisabeth@lisabethfryer.law as her primary email address and trinaise@lisabethfryer.law as her secondary email address.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Amended Petition is submitted in Courier New 12-point font and thereby complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

/s/ William R. Ponall

WILLIAM R. PONALL
Florida Bar No. 421634

/s/ Lisabeth J. Fryer

LISABETH J. FRYER
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