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,

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.
_____/

CASE NO. SC20-985

PETITIONER'S REPLY TO RESPONSE OF GOVERNOR DESANTIS AND THE SUPREME COURT JUDICIAL NOMINATING COMMISSION TO EMERGENCY PETITION FOR WRIT OF QUO WARRANTO AND WRIT OF MANDAMUS

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I. REPRESENTATIVE THOMPSON HAS STANDING TO BRING THIS ACTION.

Governor DeSantis ("the Governor") and the Supreme Court Judicial Nominating Commission ("the JNC") contend that this Court lacks jurisdiction because Representative Thompson lacks standing to bring this action. Without any legal support for their position, the Respondents boldly seek to empower the executive branch with the unfettered authority to act without the people or the other branches of government acting as a constitutional check on that authority. This Court should quickly dispense with these arguments and address the merits of this case.

A. Citizen and Taxpayer Standing

Starting with its very first provision, the Florida Constitution confers substantial rights upon the citizens of Florida. Article I, Section 1 of the Florida Constitution prescribes that "[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." Art. I, § 1, Fla. Const.

Consistent with that pronouncement, this Court has held that individual members of the public have standing to bring a petition for quo warranto directed at the constitutionality of the action

of a state officer based solely on their status as Florida citizens and taxpayers. *See Whiley v. Scott*, 79 So.3d 702, 706 n.4 (Fla. 2011). "In quo warranto proceedings seeking the enforcement of a public right the people are the real party to the action . . ." *Martinez v. Martinez*, 545 So.2d 1338, 1339 (Fla. 1989). The right to have the governor perform his duties and exercise his powers in a constitutional manner is a public right. *Id.* at n.3

An individual pursuing such a petition as a Florida citizen and taxpayer is not required to show that he or she is personally affected by the action of the state officer in question. *Id.* at 1339. This Court first reached this conclusion in 1936 in *State ex. rel Pooser v. Wester,* 126 Fla. 49 (Fla. 1936). In *Pooser*, this Court held that the relator need not show that he has any real or personal interest in the dispute. "It is enough that he is a citizen and interested in having the law upheld . . ." *Id.* at 53.

This Court has consistently followed this rule ever since. *See e.g. Wiley, supra*; *Chiles v. Phelps*, 714 So.2d 453, 456 (Fla. 1998); *Fla. House of Reps. V. Martinez*, 555 So.2d 839, 843 (Fla. 1990); *Martinez v. Martinez*, 545 So.2d at 1339.

The Respondents concede that, under this Court's well-established precedent, Representative Thompson has standing as a Florida citizen and taxpayer. (Governor's Response at 15; JNC's

Response at 6-10). The Governor, however, asks this Court to recede from that precedent because it is contrary to this Court's 1917 decision in *Rickman v. Whitehurst*, 73 Fla. 152 (Fla. 1917).

In fact, *Rickman* has no application to this case. Unlike the petition currently before this Court, *Rickman* did not involve a challenge to the constitutionality of the action of a state officer. Instead, it involved an alleged violation of a Florida statute. *Id.* at 153. This Court has recognized that a taxpayer has standing if the taxpayer alleges a special injury **or** raises a constitutional challenge. *See School Board of Volusia County v. Clayton*, 691 So.2d 1066, 1068 (Fla. 1997).

More importantly, the Governor fails to note that he recently made virtually the same arguments regarding standing to this Court in his Response in Opposition to Petition for Writ of Quo Warranto in *Abramson v. DeSantis*, Case No. SC20-646. (*See* Appendix A at 15-19). Despite the Governor's argument, the Court chose to decide the case on its merits. *Abramson v. DeSantis*, 2020 WL 3464376 (Fla. June 25, 2020). That decision indicates that the Court rejected the Governor's arguments on standing.

The same standing arguments could have also been made in this Court by the Governor and the JNC in *League of Women Voters v. Scott*, Case No SC18-1573. There, several individuals and the League of Women Voters, a non-partisan political organization, filed a

petition for writ of quo warranto against Governor Rick Scott and the JNC as private citizens and taxpayers without alleging that they were specifically injured. (*See* Appendix B – Petition for Writ of Quo Warranto, *League of Women Voters v. Scott*).

Neither Governor Scott nor the JNC argued that the petitioners lacked standing to bring a petition for writ of quo warranto. However, this Court has an independent obligation to determine whether it has jurisdiction. *See Martinez v. Scanlan*, 582 So.32d 1167, 1171 n.2 (Fla. 1991).

This Court decided *League of Women Voters* on the merits. *League of Women Voters v. Scott*, 257 So.3d 900 (Fla. 2018). Its decision to do so indicates that it independently determined that the petitioners had standing to bring the action.

In *League of Women Voters*, the petitioners sought a writ of quo warranto indicating that Governor Scott lacked the authority to fill the vacancies created by the mandatory retirements of three Supreme Court Justices. *Id.* Here, Representative Thompson is seeking a writ of quo warranto indicating that the JNC lacked the authority to certify Judge Francis as a nominee for a vacancy on the Florida Supreme Court and that Governor DeSantis lacked the authority to appoint her to the Florida Supreme Court. Since the petitions in both cases seek similar relief, this Court's

conclusion that the petitioners in *League of Women Voters* had standing as citizens and taxpayers establishes that Representative Thompson has the same standing.

B. Standing as a Representative in the State House of Representatives

Separately, Representative Thompson also has standing based on her position as an elected member of the State House of Representatives. This Court has repeatedly recognized that it has jurisdiction to issue writs where members of one branch of government challenge the validity of actions taken by members of another branch. *See e.g. Chiles*, 714 So.2d at 456. Here, Representative Thompson, a member of the legislative branch, is challenging the actions of Governor DeSantis and the JNC, members of the executive branch.

C. Standing Based on Separation of Powers

Finally, pursuant to *Wiley*, *supra*, Representative Thompson has standing in this case because the issues raised in her petition concern the separation of powers required by the Florida Constitution. The separation of powers doctrine prohibits one branch from encroaching upon the powers of the other. *Wiley*, 79 So.3d at 208. Here, by taking actions which have allowed a vacancy on the Supreme Court to remain open for more than 8 months, the

JNC and Governor DeSantis have encroached on the powers of the judicial branch.

The Florida Constitution specifically requires that the Florida Supreme Court have seven justices. Art. V, § 3(a), Fla. Const. The Court has been operating without the required number of justices since November 2019. From November 2019 through May 2020, the Court operated with only five justices.

On May 26, 2020, more than two months after the actual deadline for Governor DeSantis to fill the two vacancies on the Court, Governor DeSantis appointed Justice Couriel. Since May 2020, the Court has been operating with only six justices. By operating with only six justices, the Court is working under a scenario where affirmance of lower court decisions is required any time the Court is equally divided 3-3. *See In re Mason's Estate*, 197 So. 842 (Fla. 1940).

Additionally, pursuant to Article V, Section 3(a) of the Florida Constitution, five justices constitute a quorum and the concurrence of four justices is necessary for the Court to render a decision. The possibility that the five justices needed for quorum and the four justices needed to render a decision could be unavailable is significantly increased while an unnecessary vacancy on the Court continues to exist. The danger of not having

the required quorum or justices necessary to render a decision is particularly concerning during the current health crisis.

Under these circumstances, a continued vacancy on the Court, long after the 60-day requirement for appointment elapsed in March 2020, continues to adversely affect the functions of government. Moreover, it is readily apparent that the actions of the JNC and Governor DeSantis have seriously infringed on the power of this Court to operate effectively. Given this serious separation of powers issue, Representative Thompson has standing and this Court has jurisdiction to address the merits of this case.

II. REPRESENTATIVE THOMPSON HAS PROPERLY STATED A CAUSE OF ACTION AGAINST THE SUPREME COURT JUDICIAL NOMINATING COMMISSION.

The JNC argues that, because the Emergency Petition for Writ of Quo Warranto and Writ of Mandamus names the Chair of the JNC as a respondent, Representative Thompson has not stated a cause of action against the full Supreme Court Judicial Nominating Commission. (JNC Response at 23-24). The JNC's argument is completely without merit.

The chairs and secretaries of state agencies and offices are regularly named as parties in lawsuits brought against the agencies and offices they represent in their official capacities. *See Kanner v. Frumkes, as Chairman, Eleventh Judicial Circuit Judicial Nominating Commission*, 353 So.2d 196 (Fla. 3d DCA 1977); *See also*

Bishop v. Conrad, Chair of the Florida Commission on Offender Review, 231 So.3d 601 (Fla. 1st DCA 2017); *Merritt v. Crosby, Secretary, Florida Department of Corrections, and David, Chair, Florida Parole Commission*, 893 So.2d 598 (Fla. 1st DCA 2005).

Here, Representative Thompson did not file suit against Daniel Nordby as an individual, but solely as a representative of the Supreme Court Judicial Nominating Commission in his official capacity as chair of that commission. Both the caption and the contents of the Emergency Petition for Writ of Quo Warranto and Writ of Mandamus clearly informed this Court and the parties that the petition was challenging the actions of the Supreme Court Judicial Nominating Commission. In its response, the JNC made arguments on behalf of the entire Supreme Court Judicial Nominating Commission. Thus, it is readily apparent that the JNC itself was on notice that the actions of the entire commission, not merely the actions of its chair, were being challenged.

III. THE RESPONDENTS IGNORE THE PLAIN LANGUAGE OF THE CONSTITUTION AND ERRONEOUSLY CONFLATE ELECTION LAW WITH THE LAW GOVERNING JUDICIAL APPOINTMENTS.

The JNC nominated and the Governor appointed a constitutionally unqualified candidate to the highest court in the State of Florida. These facts are not in dispute. The JNC and the Governor assert that the constitutionally dictated threshold

requirements for a Florida Supreme Court Justice do not apply at the time of nomination or appointment, but only at the time the Justice "assumes" office. (JNC's Response at 13; Governor's Response at 21).

A. *Mendez* Has No Application to this Case

In support, both Respondents present this Court's *Mendez* decision as binding authority that forecloses the necessity that an appointed Florida Supreme Court Justice must be a member of the Florida Bar for the ten preceding years. *Mendez v. Miller,* 804 So. 2d 1243 (Fla. 2001). However, the Respondents misapprehend *Mendez* and misapply its holding to the present facts. Because judicial election law invokes different constitutional provisions than judicial appointments, *Mendez* and all other authority provided by the Respondents is irrelevant.

It is important to review the issue *Mendez* encompassed and, more importantly, what it did not. In *Mendez*, an individual sought to be elected as county court judge outside of the county in which he resided. His opponent sued him in an effort to remove his name from the ballot because he lived outside of the jurisdiction at the time he signed the oath of candidate. This Court held that, in the context of elected office, a judicial candidate must reside in the territorial jurisdiction of the elected seat at the time he or she assumes office. *Id*. at 1247.

The *Mendez* holding is limited to candidates for election and provides no guidance in the context of a JNC nomination or a Governor's appointment of a Florida Supreme Court Justice. The Constitution dictates independent procedures and independent timeframes for elected judicial candidates as opposed to judicial vacancies filled by appointment.

Where a judicial candidate is elected to office, the start date for that individual "shall commence on the first Tuesday after the first Monday in January following the general election." Art. V, § 10 (a), Fla. Const. The Florida Constitution affixes an ascertainable start date for the elected term. This is clearly the date the newly elected judge "assumes" office under the Constitution. Where a judge is elected, the former judge continues to occupy the judicial seat until the new judge assumes office. Thus, the office is never vacant or unoccupied. In this context, it is clear that the constitutional thresholds for an elected judge must be met before he or she assumes public office.

Mendez has never been applied to situations involving judicial appointments, nor has any other case cited by the Respondents. In fact, no authority exists that justifies the actions of the JNC or the Governor in appointing a Florida Supreme Court Justice who does not meet the minimum constitutional

requirements.

It is improper to stretch the holding of *Mendez* to the current case. And wholly unnecessary. While the Florida Constitution provides a fixed date that an elected judge assumes his or her office, a different constitutional procedure is dictated for judicial appointments that hems in the time-period a seat is to remain vacant. In the context of judicial appointments, the Florida Constitution provides the JNC and Governor threshold requirements and timelines that are simple, straightforward, and do not require analysis beyond the plain language of the text.

When a Florida Supreme Court judicial vacancy occurs, the Florida Constitution dictates a process. The JNC must convene and nominate at least three, but not more than six candidates. The JNC must do this within 30 days unless the Governor extends the 30-day deadline by no more than an additional 30 days. Thereafter, the Governor "shall" make the appointment within 60 days after the list has been certified to the Governor. Art. V, § 11(a)-(d), Fla. Const. Additionally, "no person is eligible for the office of justice of the supreme court…unless the person is, and has been for the preceding ten years, a member of the bar of Florida." Art. V, § 8, Fla. Const.

This language gives clear, unambiguous guidance on precisely how and under what time constraints the JNC and Governor must

proceed. The Governor concedes the language in Article V, section 8 is "not ambiguous." (Governor's Response at 21). "Where the language of a statute or constitutional provision is plain and unambiguous, such language must be given effect according to the plain meaning of the words used."(*Mr. William C. Clark*, 1990 Fla. Op. Atty. Gen. 280 (1990) (citing *Thayer v. State*, 335 So.2d 815 (Fla. 1976)); *See also State ex. Rel. McKay v. Keller*, 191 So. 542 (Fla. 1939) (principles of construction applicable to statutes are also applicable to the Constitution).

Mendez is wholly inapplicable to this case. The JNC and the Governor's reliance upon it is misplaced and should be rejected.

B. The JNC Ignores the Rule of Law

The JNC acted illegally in nominating a constitutionally unqualified candidate to the Florida Supreme Court. It is not the business of the JNC to craft novel legal arguments to excuse straying from its constitutional mandates. The JNC is required to nominate candidates who are ready to take office immediately per the Constitution, case law, and the JNC's own rules.

The JNC argues that the Petitioner seeks to impose upon the Commission the requirement to create rules of procedure that would create additional substantive requirements for judicial candidates. This assertion is false.

The Commission has adopted rules of procedure that require "[n]o person shall be considered for further investigation and consideration who does not meet all legal requirements for the office to be filled," and "[n]o applicant shall be nominated to the Governor or to the Attorney General for appointment unless the Commission finds the applicant to be fit for appointment after full and careful consideration. The Commission's consideration of applicants for appointment shall include, but not necessarily be limited to, the following criteria…[a]pplicable constitutional and statutory criteria." Sections II and V, Supreme Court Nominating Commission Rules; *See also*, October 10, 2019, Judicial Nominating Commission Training, at the 2:07:00 mark, *available at* www.thefloridachannel.org/videos/10-21-19-judicial-nominating-commission-training/, last visited August 10, 2020. (at a JNC training seminar, in response to the prompt to "speak to the eligibility to be a judge in the Florida Constitution," the Chair of the Florida Supreme Court JNC stated, "[f]or the Supreme Court, ten years to admission to the Florida Bar, as well as the additional qualification that there must be at least one judge from each of the five districts.") (sic).

The JNC procedural rules are an acknowledgement and acceptance by the Commission of the threshold constitutional requirements for nominating judicial candidates. The Petitioner

does not seek to create any new rules; she seeks to enforce the rule of law.

The JNC must only nominate constitutionally qualified candidates. The purpose of the constitutional provisions setting deadlines, rather than fixing a date the appointed judge assumes the office, is to lessen the time an office remains vacant. The JNC's duty in this regard is to the public "so that the business of the courts can continue and will not suffer by lack of an incumbent judge." *Spector v. Glisson*, 305 So.2d 777 (Fla. 1974)(superseded by Constitutional Amendment on other grounds); *See also In re Advisory Opinion to the Governor*, 551 So.2d 1205 (Fla. 1989)(in its opinion regarding three judicial vacancies, this Court stated it was "aware of the public need to fill the judicial vacancies in a timely fashion"); *Pinkett v. Harris*, 765 So.2d 284 (Fla. 1st DCA 2000), and *In re Advisory Opinion to the Governor*, 192 So.2d 757 (Fla. 1966) (respectively holding that six and seven month judicial vacancies were too long to remain open for elections and must proceed as appointments).

Unfortunately, it appears the JNC forgot its independent responsibility to the people of Florida. The JNC also forgot its roots:

> One of the principal purposes behind the provision for a nominating commission in the

> appointive process was—not to replace the elective process—but to place the restraint upon the 'pork barrel' procedure of purely political appointments without an overriding consideration of qualification and ability. It was sometimes facetiously said in former years that the best qualification to become a judge was to be a friend of the Governor! The purpose of such nominating commission, then, was to eliminate that kind of selection which some people referred to as 'picking a judge merely because he was a friend or political supporter of the Governor' thereby providing this desirable restraint upon such appointment and assuring a 'merit selection' of judicial officers.

Spector, 305 So. 2d at 783.

It is well outside the legitimate concerns of the JNC to attempt to justify the nomination of a constitutionally unqualified candidate with novel arguments that contort the plain text of the Florida Constitution. If the JNC hopes to retain a modicum of independence in the process of judicial appointments, as it was designed to do at its inception, this will be the first and last time it places itself in a position to defend an illegal nomination to the highest Court in the State of Florida.

C. The Governor Distorts the Plain Language of the Florida Constitution

The Governor's constitutional duties in appointing a Justice to the Florida Supreme Court include two remarkably simple mandates: 1) a constitutionally qualified candidate; 2) appointment within 60 days of certification of the JNC list of

nominees. Art. V, § 8, Fla. Const. That triggering event occurred January 23, 2020. The vacant seat remains open to this day and the people of Florida have not had a fully operational Court for the better part of a year. With all due respect, in defending his failure to fill the vacancy, the Governor asserts some arguments that border on bizarre.

First, the Governor asserts that, since Judge Francis has not taken the necessary steps to become a Justice, i.e., taken her Oath of Office or received her commission from the Governor, she has yet to "assume" office and, therefore, she does not have to meet the eligibility requirements for office. (Governor's Response at 23-25). This reasoning misses the point. While a Justice must take an Oath of Office, this is a condition precedent to performing his or her duties, not a means of avoiding the appointment of an otherwise constitutionally unqualified candidate. Art. II, § 5(a) Fla. Const.

Additionally, as stated in the original Petition, there is no requirement that a Florida Supreme Court Justice receive a commission to complete his or her appointment. This perceived requirement is judge-made law unmoored by the Constitution or statute. (Petition at 23-25). Further, the failure to issue a commission does not extend the constitutional timeline to allow an

illegally appointed Florida Supreme Court candidate to ripen into a candidate who meets the minimum constitutional requirements for the office. Art. IV, § 1, Fla. Const.

The Governor requests that this Court deem that the term "appointment" means something other than "appointment." (Governor's Response at 27-29). The Governor provides a perfectly adequate definition of appointment, and then seeks to skirt the clear meaning of the word and the corresponding requirements of his office. Accepting the Governor's definition, he was required to select a person "to fill an office." (Governor's Response at 27). Based on this language, an "appointment" contemplates a position will be presently filled. The Governor was further required to fill that office within sixty days of the certification of the JNC's nominees. Art. V, § 11, Fla. Const.

In *League of Women Voters v. Scott*, this Court held that the language found in Article V, section 11 (c) providing the JNC must make its nominations "within thirty days from the occurrence of a vacancy" meant that the nominations must occur "no later than thirty days after the occurrence of a vacancy, and does not prohibit the JNC from acting before a vacancy occurs." 257 So. 3d 900 (Fla. 2018). The same logic holds true for the provision requiring that the Governor must appoint a fully qualified Justice to "fill an office" within sixty days. "Within sixty days"

undoubtedly means the office must be filled with a qualified candidate "no later than" sixty days after the occurrence of the certification of the JNC's nominations. Art. V, § 11(c), Fla. Const.

Pursuant to *League of Women Voters*, the Governor certainly could have appointed a qualified candidate before the sixtieth day. In this context, the Constitution provides deadlines, not start dates. Contrary to the Governor's assertion that "the Florida Constitution is silent as to when an appellate court's appointee's term begins," the answer is plain: the appointment can begin as soon as the JNC certifies at least three nominees per vacancy, but must not exceed sixty days from that date. (Governor's Response at 39). There is no reason to wander into the wilderness seeking guidance when the answer is grounded in the plain language of the Florida Constitution.

Nonetheless, the Governor, citing Article V, section 11(a), on judicial retention, claims that in terms of acceptable length of time a judicial seat can remain unfilled, "…the judicial appointee must assume the office prior to the date the term ends." (Governor's Response at 40). He then ambles to the conclusion that it would be perfectly legal to leave a judicial office without a judge for "three years and two days." (Governor's Response at 41).

While certainly a creative and unexpected position, this assertion is obviously not accurate. *See* Art. V, § 11(c); *Pleus v. Crist*, 14 So.3d 941, 946 (Fla. 2009) ("the framers of Article V . . . intended that the nomination and appointment process would be conducted in a way as to avoid or at least minimize the time that vacancies exist"); *Pinkett, supra*, *In re Advisory Opinion to the Governor, supra* (holding respectively that six and seven month judicial vacancies were too long).

Unambiguously, Article V, section 11(a) dictates the end of the term of the Governor's judicial appointment and the beginning of the electorate process in determining whether a Judge or Justice is retained by popular vote. No more, no less. The text of the provision makes that clear.

Only recently, it was clear to the Governor's counsel that vacancies were not to be strained to illogical lengths. Instead, Governor's counsel stated that his office sought a "fast turnaround, want to be respectful of the bench" and implored that it is "imperative that the JNC and Governor's Office work together to ensure that vacancies are being filled in an efficient and effective manner…it is the Governor's preference that if there is a vacancy that it should not exist for longer than it needs to exist. We should get well-qualified people onto the bench as soon as possible." October 21, 2019 Judicial Nominating Commission

Training, at the 5:07 mark, *available at* www.thefloridachannel.org/videos/10-21-19-judicial-nominating-commission-training/, last visited August 10, 2020.

Next, the Governor provides a multitude of examples where an otherwise constitutionally qualified appointee failed to fill the vacancy within the bright line sixty day constitutionally mandated time frame for appointment. (Governor's Response at 44-45). The Governor relies on the concept of "historical practice" as justification for this unconstitutional delay. "The historical practice of the political branches is, of course, irrelevant when the Constitution is clear." *Nat. Labor Relations Board v. Noel Canning*, 573 U.S. 513, 584 (2014). Here, historical practice is even less material because the candidate in question is not constitutionally qualified and could never have become constitutionally qualified under the mandates of Article V, section 11(c).

Finally, the Governor invokes the COVID19 crisis as the reason he was precluded from making a timely appointment to the seat left vacant by former Justice Luck's resignation. (Governor's Response at 47). The Governor's first Executive Order on COVID19, signed March 1, 2020, covers many issues, none of which include postponement of appointments for judicial vacancies. This is

likely because the Governor did not cease appointments to vacancies. Between the filing of the first Executive Order and the appointment of Judge Francis, the Governor appointed a dozen judges to vacancies. As of August 4, 2020, the Governor has appointed thirty judges since the signing of the First Executive Order. *See* Governor DeSantis 2020 Court Appointments, *available at* www.flgov.com/supreme-court2020/; www.flgov.com/circuit-and-county-courts-2020/; www.flgov.com/ district-courts-of-appeal-2020/, last visited August 7, 2020.

In doing so, the Governor acted in accordance with his constitutional duties, because there is no provision in the Florida Constitution that allows for an extension of the sixty-day mandate for appointment of judges. *See Pleus*, 14 So.3d at 945 (the Florida Constitution mandates that the Governor fill a judicial vacancy by making an appointment within 60 days of receiving a certified list of nominees from a judicial nominating commission).

In sum, the Petitioner agrees with the Governor's analysis that "a reasonable person would understand 'eligible for office' to mean one must meet certain requirements prior to assuming the office and exercising duties." (Governor's Response at 25). The process for filling the vacancy in question was corrupted by the JNC including an ineligible candidate on the list certified to the Governor. Thereafter, the Governor appointed an individual

unqualified to take office. The plain language of the Florida Constitution provides clear guidance to the Respondents, but not the ends they seek.

IV. REPRESENTATIVE THOMPSON IS SEEKING A CONSTITUTIONALLY APPROPRIATE REMEDY.

As previously asserted, the only appropriate and fair remedy in this case is to require the JNC to immediately certify a new list of nominees to Governor DeSantis from the original 31 individuals who applied for the vacancies. The Respondents argue that this remedy has no legal support.

However, in *In re Advisory Opinion to the Governor*, 551 So. 2d 1205 (Fla. 1989), this Court previously concluded that the Governor is not required to appoint a Florida Supreme Court Justice until the JNC has complied with its constitutional duties. As of today, the JNC has failed to do so, because it has not yet certified to the Governor a list of individuals which only includes "qualified" nominees.

The Respondents' aversion to this remedy is surprising. Governor DeSantis has publicly stated his interest in promoting diversity in the judiciary. The remedy sought by Representative Thompson is the only remedy which would permit the JNC and the Governor to consider the 6 fully-qualified African-American candidates for appointment to the Florida Supreme Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Reply 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, and to Respondent Daniel Nordby, in his official capacity as Chair of Respondent Florida Supreme Court Judicial Nominating Commission, Shutts & Bowen, 215 South Monroe Street, Suite 804, Tallahassee, Florida 32301, dnordby@shutts.com on this 12th day of August, 2020.

/s/ William R. Ponall
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DESIGNATION OF EMAIL ADDRESSES

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CERTIFICATE OF COMPLIANCE

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

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