

CASE NO.: SC20-985

Supreme Court of Florida

HON. GERALDINE F. THOMPSON,

Petitioner,

v.

HON. RON DESANTIS,

in his official capacity as Governor of Florida,

and **DANIEL E. NORDBY,**

in his official capacity as Chair of the
Florida Supreme Court Nominating Commission.

Respondents.

GOVERNOR'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE WHY PETITIONER'S AMENDED PETITION SHOULD NOT BE GRANTED

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INDEX TO GOVERNOR DESANTIS' APPENDIX

Pursuant to Florida Rule of Appellate Procedure 9.220, Governor DeSantis provides the following appendix in support of his Response to the Court's Order to Show Cause:

Description	Pages
Supreme Court Appointments Announcement	3-12

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on this 9th day of September, 2020, the foregoing was filed electronically via the Florida Court's E-Filing Portal, which will send a copy of this filing to all counsel of record.

/s/ James W. Uthmeier
Deputy General Counsel

Supreme Court Appts. Announcement – 5.26.20

Gov. DeSantis: [00:01](#) Good afternoon. It's great to be back in South Florida. Uh, 16 months ago I appointed two South Floridians to the Florida Supreme court justice Barbara Lagoa and justice Bobby Luck. Uh, they were very good picks and I think the best evidence of that is that they now sit on a superior court, the 11th circuit court of appeals. And so we appreciated their service. It was effective, uh, but brief, but because it was so effective, uh, they were promoted, uh, by the president and now, uh, left two more vacancies for the Florida Supreme court. And this process began in earnest in December when Bobby and Barbara took their places on the 11th circuit. The judicial nominating commission produced a heck of a slate of very, very great candidates. And we were going through the vetting process in my office once we had the certified list. Uh, but the state of emergency with the Coronavirus, uh, prompted us to delay the selections. I was not in a position to spend hours and hours reading, uh, these opinions and other writing, uh, given all that we were dealing with at the time. Uh, but particularly over the last several days, I've had a little bit more time to do it over the weekend. Um, and I'm happy today and very pleased to announce the appointments of two more South Floridians, judge Renatha Francis and John Couriel as the next justices for the Florida Supreme court.

Gov. DeSantis: [01:37](#) Now I've been in office about 16 months and since taking office, I've had the privilege to make five appointments to the Florida Supreme court. Four of those five appointments have come from South Florida. Uh, two of the appointments have been women. Uh, three of the appointments have been Hispanic. Judge Francis will be the first Caribbean American to sit on the Florida Supreme court and she may be the first Caribbean American to sit on any state Supreme court. We've researched it. We haven't been able to find anyone. Maybe other folks can look at that and see, but it is quite possible. But certainly in Florida, judge Francis was born in Jamaica and immigrated to the US after, as an adult, after having run two businesses in Jamaica and serving as the primary caregiver to a younger sibling. I think she'll say a little bit more about her background. Uh, but I think it's extraordinary what she's been able to accomplish. Um, her understanding of the constitution reminds me of another famous Caribbean American, Alexander Hamilton. Hamilton was born and raised in the British West Indies. He Rose from obscure circumstances to be the greatest treasury secretary in American history as well as one of the main authors of the Federalist papers and Hamilton articulated what judge Francis deeply understands that the judiciary lacks authority to indulge its legislative preferences that courts cannot exercise its personal will but merely apply a legal

judgment. And judge Francis has demonstrated a strong commitment to the rule of law as well as to the judicial craft, her years of experience prior to becoming a County and then circuit judge was spent as serving as an attorney for the judicial branch such as the first DCA in Tallahassee. And so I think through that experience as well as her exemplary experience on the bench, uh, she is well equipped to be able to be a great justice on this Florida Supreme court. Judge Francis is married to her husband, Philip, who's here. She has two children and many of you may see one that's very, very young, about a month old. Uh, so we, we have a two month old at home and so we kind of understand and feel what she's going through. She is on maternity leave from her, her judgeship, and um, I think her ascension to the court when, when, uh, in September is going to be something that we're all looking very forward to, very much forward to. So judge Francis, uh, your story's inspirational. Um, thank you for your willingness to serve and congratulations.

Gov. DeSantis:

[04:25](#)

John Couriel was the son of Cuban exiles. His father escaped the tyranny of Fidel Castro via operation Pedro Pon in 1961 John replaces a daughter of Cuban exiles, judge Barbara Lagoa, uh, on the Florida Supreme court. And one of the things I really appreciated about Barbara, uh, was how the rule of law was just ingrained in her as being something very important. And I see the exact same worldview out of John given the family's experience. People like John and his, particularly our Cuban American community, they understand the importance of having a society based on the rule of law rather than based on the whim of an individual dictator. And so when you go through that, when families have that personal experience about what can happen when law gets superseded, you produce people like Barbara Lagoa and John Couriel out who understand the importance of upholding the constitution and upholding the rule of law for all Floridians and so that we can maintain a free society. Um, John's parents had they not escaped Cuba. John's one of the talented, most talented lawyers I've ever been around. But had they not escaped Cuba, he may be driving a taxi cab or something. Not that there's anything wrong with that. Um, but you would not have been able to realize your potential in other fields. It would have been what the government told you to do. So his parents leave a totalitarian society come here without any advantages. But they had freedom. And so what has happened, John graduated from Harvard university as an undergrad, Harvard law school. He was an assistant us attorney right here in Miami at one of the most high profile US attorney's offices in the country, the Southern district of Florida. He has been an adjunct professor at Florida international university and a very, very high profile and well

compensated private litigator. Um, he is giving up a lot of money to be able to serve. And I think that that says a lot about John, about his character and about how important the rule of law is that he'd be willing to do it. But I do think one of the things John brings, he, he instinctly understands the proper role of the judiciary. He understands the structural limitations in the constitution, all those things that you would want. Uh, but I think because he said such extensive business experience, he's bringing a perspective on the court that may not be there, um, in, in, in abundance right now. And they're all great judges. But I think John brings something additional, which will be very, very good going forward. He also has a list of very, very strong recommendations. He was recommended by one of the outgoing Supreme court justices. Justice Bobby luck is also highly recommended by Senator Tom cotton. Uh, judge Roy Altman down here in the Southern district as well as former governor Jeb Bush. So he's joined by his wife` Rebecca and their two kids. And so John, want to thank you for being willing to serve. You're putting your money where your mouth is, uh, by giving up a lot of, a lot of remuneration in the private sector. Uh, but you, you have the, uh, ability to, to do a great job. So congratulations to you and your family. And with that, I'm going to let the, uh, the two new, uh, justices come up and say a few words.

Renatha Francis:

[08:04](#)

Thank you so much governor. Um, I'm incredibly honored and humbled by this appointment and the confidence that you've shown in giving me this tremendous opportunity to serve the people of our great state of Florida. From very humble beginnings to standing before you all today, I am truly the epitome of the American dream. I grew up in the Island nation of Jamaica, the daughter to a single mom who never finished high school and who herself was only a small farmer's daughter. But none of that mattered because what my mom had and what she imparted to her two daughters was grit, determination and hard work. And those values inculcated early and often were reflected in me when I began my first profession as the governor mentioned as a small business owner in my late teens and early twenties. And for those of you who are curious, um, I operated a bar and a trucking company. I did that for about five years. So, and I did that all while attending college full time, eventually graduating with high honors and being a surrogate parent to a much younger sibling. As a student of history growing up I was and remain in all of the United States constitution. It's freedoms, it's respect for the rule of law. And I wanted to be a part of that story. And so like generations before me, this young immigrant girl set out to find her place in this shining city on the Hill. When I embarked on my second

preferred profession in the law, never did I imagine that my journey would lead me here standing before all of you. And so I'm truly grateful. But more than that, I'm humbled that I get to be a part of this American experiment and to serve at the highest level of our state judiciary. The Florida Supreme court protects the people's Liberty. And part of doing that is respecting the limited role that judges play in our constitutional system of government. As judges, we exercise neither force nor will, but merely judgment. And so we apply the law as written by the people's duly elected representatives. This timeless principle in a civil society promotes predictability, uniformity, and it provides a framework for and restraints on the polity, um, checking arbitrariness and the potential abuses of power. If history teaches us anything, it's that as simple and enduring as this principle is, it's evaded the vast majority of humanity until this American experiment. In our great country and our great state. We're governed by the rule of law, not of men. I want to close by thanking some very important people, um, in my life without whom none of this would have been possible to my mentors and my colleagues, you have supported me tirelessly and in the process amazed me with your generosity, dedication and kindness to the Florida Supreme court JNC, thank you for all the hard work you do while juggling personal and professional commitments and for giving me the opportunity really of a lifetime. To the former governor now Senator Rick Scott for giving me my very first appointment to the bench and to my friends and colleagues for your calls, your texts. I, I truly feel the love a special thank you to my family, mom, for all the sacrifices you made to make sure that my sister and I had everything we needed even if it wasn't everything that we wanted for your love and your continued support. Thank you to my husband Phillip, who's unwavering support and believe in me, sustains me. You're a true partner in every sense of the word. And it's been quite a journey so far. So, and I cannot imagine doing this without you by my side. I love you. Most of all. Thank you for my two precious boys, Joshua and Matthew, who is also fussy. Um, Josh, we're a wonderful little boy. You're a great big brother. You are. And Matthew, you're a wonderful baby. Eventually, one day you're going to see this. You're a wonderful baby, but dear Lord, please let mom and dad sleep. And again to governor Ron DeSantis. Thank you again for this honor and this opportunity to serve our great state. I'm truly humbled. Thank you. Thank you everyone.

John Couriel:

[13:23](#)

Governor DeSantis, Lieutenant governor Nunez, mayor Gimenez, judge Francis. It's such an honor to stand here with you. Uh, I'm profoundly grateful today. I'm grateful for the trust that governor DeSantis has placed in me by inviting me to serve

on the highest court of our state. Uh, you've heard it said that Alexander Hamilton said courts have neither force nor will, but merely judgment and sometimes a good audience. Uh, governor, my prayer today is that your judgment, uh, will have been good and that my judgment will not let you down. I am grateful to the people of the state of Florida who welcomed my parents to our country 60 years ago when they and their parents sought justice, a better life and most of all freedom. This state and this country shared all those things with my family. There is no better way to be grateful for something than to share it. And so today in committing myself to this work, I also give thanks to the people I am blessed to serve with whom I am honored to share my best efforts. I am grateful to my parents who made the most of the opportunities available only here only to Americans. For my father and for his parents, that meant sacrifice. I now a father myself find inconceivable. He like 14,000 other children from Cuba and untold millions from other places, parted ways with his parents, trusting in the goodness of this country. Coming here as an unaccompanied child. He spent six years in the care of good people who owed him nothing, but who were Americans. My mother too came from Cuba. Her parents took whatever work they could find, did it well and without complaint so that she and her siblings would know what is possible in this country. Today, they do and while none of my grandparents are physically here to celebrate once more, how their sacrifice has been rewarded. I know they see it. [Speech in Spanish]. I'm grateful to the many teachers I've had to, my colleagues at the us attorney's office for the Southern district of Florida, for my partners at Kobre and Kim, the lawyers who trained me at Davis Polk and Wardwell, the honorable John D. Bates of the us district court for the district of Columbia and the many judges, adversaries and educators who made me better than I would have otherwise been. Thank you. Most of all, I am grateful to my wife, Rebecca, who blesses me every day with compassion and love and to our children, Jonas and Eden who make us happy. You make me want to be better than I am and to live up to the trust that has been placed in me today. Thank you all.

Gov. DeSantis:

[17:24](#)

Well, it's really an honor to be able to bring these two great nominees are actually appointments now at this point and I think it's a credit for a number of things. One to South Florida. Every time we're doing this, you have so many great candidates that come out of Southern Florida and I think that that's a testament to a lot of the great talent that we have here. I also look at somebody like judge Francis who immigrated to this country and started a second career. The law is her second career. She's already been a County and a circuit court judge.

She grew up single mom, like they said in Jamaica, was running these businesses, taking care of a sibling and then comes here, works really hard and ends up on the Supreme court. So Caribbean Americans should know in Florida, the sky's the limit. But really anyone that comes here has an opportunity to make the most of their God given talents and judge Francis is very much emblematic of that. I know she's going to serve very well. And then you know, now justice Couriel out, if you look any time, uh, you know, there's um, issues with, you know, people standing up for freedom and democracy and rule of law. You just look to the Cuban American community here in South Florida, time and time again, uh, the people that are produced have the dedication to freedom, uh, democratic self government and the constitution. And I think John really exemplifies that and for him to give up the type of money he's making is not a lot of people would do that. I can tell you that. I'm not going to say exactly how much, but if you research his application, I think you probably be able to find out as well. It's quite a bit, quite a bit of money, but the willingness to serve and the willingness to bring a really top flight intellect in service of the public and in service of the public's liberties is something that I think is admirable. So we're excited today to be able to do this here. And I look forward to them serving very well into the future. We are all, you can ask them some questions if it's out of bounds. I'm not gonna tell them not to answer, but you know, if you want to ask them or I'll take some questions as well. Yes ma'am.

Reporter: [19:27](#)

Couple of questions for you. One, your reaction to Judge Hinkle's decision yesterday and two, there was a twitter conversation about the RNC possibly moving to Florida.

Gov. DeSantis: [19:41](#)

So, um, well the, the one, the case we knew it was going to happen, that was obvious from the beginning. It'll go to 11th circuit and we'll see how it shakes out there. Um, in terms of the RNC, Florida would love to have the RNC Heck, I'm a Republican. I, it'd be good for us to have the DNC in terms of the, uh, in terms of the economic impact when you talk about major events like that. So my posture on all this is we should try to get it done as best we can in accordance with whatever, whatever safety requirements. But you know, his government will be talking about the safety restrictions, the president's government. So if he's going to do a convention, obviously he's going to want to abide by whatever they're saying. So if we can get that done and do it in a way that's safe, uh, that would be a huge economic impact for the state of Florida. We, we lost out on, went with, with the pandemic coming and we lost out on some of our traditional events that we normally do. Some of the

golf tournaments, tennis, we had WrestleMania scheduled for April, which people don't realize is hundreds of millions of dollars of economic activity. So I think that that would be great. And so Florida, just like I've said to many people, Florida wants to work with you. If you're a business, if you're a sports team, if you have some of these events we want to work with you to get to yes. I can't guarantee every single idea is going to necessarily be something that we're going to be able to do, particularly like tomorrow. But as you look in the summer and stuff, we definitely want to work. So the doors open. We want to have the conversation, whether it's RNC, DNC, whatever, because I think it would be good for the people of Florida.

Reporter: [21:16](#)

So on the judge's decision?

Gov. DeSantis: [21:16](#)

So I said, no, it'll go to 11th circuit. We knew this was going to happen. I mean, it was obvious from the beginning of how this shook out. No other court in the country has held this even the ninth circuit. So, um, I think we'll go and then we'll see. Um, uh, you know, we'll see what happens. But I think that there's obviously good grounds.

Gov. DeSantis: [21:32](#)

[Followup to RNC question]

Gov. DeSantis: [21:39](#)

I have not spoken with the president specifically on that, but um, I have, we've let the folks at the white house know that we want to work with them and we think that would be a good thing to do. So. So he knows that. And I know the key people in his administration and his campaign know that.

Reporter: [21:54](#)

Have you given any thought to where it [RNC] would be?

Gov. DeSantis: [21:59](#)

Well maybe Carlos has a great idea. You know, it's, I think it's a lot of it is we obviously have a number of areas in our state that could do it. Obviously Miami could do it, Orlando could do it, Tampa could do it, Jacksonville could do it. You may even have some other places that that could do it. And I think it's just a matter of whether they, um, you know, they want to do it, but these are things that go in. I mean, and the good thing about it is they've already raised a lot of money for this already thinking I was going to be in North Carolina. So if you have a Florida committee, if it ends up in Florida, a lot of that work in terms of raising the funds has already been done. And so it would kind of be a plug and play thing. So we would want any of the local communities that were interested in doing it to work with them. I'm not going to say that I'm going to choose Orlando over Miami cause it's really not my decision. My decision as governor is to just kind of say we work, we want to work with you guys.

We'd like to have, uh, we'd like to have these things here in Florida.

Reporter: [22:50](#)

[Question regarding Miami re-opening and longterm care facilities]

Gov. DeSantis: [23:08](#)

So, uh, with the reopening, what we did was, and this is over three weeks ago now, we did the phase one and we left Southeast Florida out of that. Initially they were trending good. But we've talking with Carlos and talking with other counties. So we did the other 64 counties. And I think if you look at what's happened since that started, um, when they have cases, it's almost always a prison, a longterm care facility or we're actually sending people into migrant communities, migrant workers, and they live in tight quarters so it can spread a little bit more there. But their positivity rate in terms of of I do a hundred cases usually have a hundred tests. It's like one or two will test because it's very low. But even Southeast Florida has really plunged now. Um, I think Broward and Palm beach and Miami is now about 10% and then the tests that come in are almost always under that. Um, but then you look at the hospitals, we, we've had so much hospital space this whole time. There was never any danger of being overwhelmed since we went into phase one. No change in that. In fact, uh, people that are in hospitals now, the increase has been because of the elective surgeries, which we think is important because people do need to get those. So the indicators are, um, you know, we haven't seen a major overflow into hospitals or anything like that. And so we're, we're very methodical about it. And I've also done it particularly with Southeast Florida to empower the local officials, the County level. And I know some municipalities are doing things. Um, but I think that those local solutions are probably better. I said from the beginning of this, and a lot of people criticized me, but the virus was never going to impact this state uniformly. We just have, it's too diverse. I think if you've ever seen that graph of the number of people that came from New York city, when they fled at the height of the epidemic, where was the number one spot they went? Southern Florida, now they didn't necessarily go to the Florida panhandle. They didn't necessarily go, um, to North central Florida or some of those other places. And so there were just unique challenges. And I felt that having, you know, Miami Dade be able to do things in Broward in certain ways without imposing that on those other counties as the way to go. And I think that that's proven to be good. But Miami, if you look at it, they were over 500 cases a day at the beginning of April. Now, unless it's a data dump, a lot of these cases are prison at the prison, at the homestead. So, so they've definitely seen a decline in the, um,

in the virulence of this here. And that's because they've done a lot of hard work. But I think that the mayor did a major plan when he, I mean, it was so extensive, probably more than a lot of States have done in terms of what they did in terms of their plan. So we're supporting, you know, what they're doing and I want them to be able to be empowered to make these decisions.

Reporter: [25:55](#)

[Question regarding the flexibility of the CARES act funds]

Gov. DeSantis: [26:07](#)

No, I think, I think CARES act should be flexible. We've worked with the treasury on that. They have, if you look at their guidance, gotten more flexible as the weeks have gone on. So for example, we can use CARES act money to pay the salaries for all the first responders, all the healthcare stuff. So if you look at our budget, there's a lot of things that we can use that for and I think they're going to continue to be a little bit more, um, more understanding on that, that, I mean, actually in Florida, we're, um, just for the state share, uh, we're between, I think 4.5 and 5 billion places like Miami Dade have gotten some money directly. We do have some money for all the counties and cities that didn't get it direct. We will then use with local government, but that is going to be a little bit different because mayor Gimenez he can spend the money if he goes a foul, the cares act, they come after him for all the other locals who didn't qualify. If they misspend it, they take it out of the state. So we're working on some guidelines and to make sure that um, you know, if some city is using it who didn't already qualify for it, that they're not spending it in a way that a year from now someone's going to come take 500 million out of it out of the state treasury because we're ultimately responsible for that portion. The ones that got it directly, like Miami Dade and Broward and Jacksonville, they are responsible for how they spend it. But I think if you had flexibility, more flexibility on that, that would be a really, really good thing. You know, we're, we've dedicated a lot of money to things like testing. But I mean I've been saying this and now you actually are starting to see some media reported, but the testing capacity we have exceeds the demand for people taking the tests. We do usually 50% capacity at our drive-through sites. Now our CB more in Broward, we'll usually have, you know, 80 90% the Miami sites, you're usually around 50 and I have some like the panhandle, they have like 50 people in a day will come through those sites. And so, so we identified a lot of things for that and obviously we're going to continue to test, but the fact of the matter is we haven't been able to test as many people as we thought would want to get tested and we're not going to force you to go through a drive through site. I mean if you're, unless you're a

first responder working in a longterm care facility, um, if you're just a member of the general public, it's really your choice about whether you want to go in, but we're not, you don't need to even have symptoms if you want to go into these sites. Going to these sites, it's very, very good. We're also doing more serological testing and I think that that's a good expense to be able to try to identify. Exactly. Carlos did this here with the university of Miami and they were able to identify the number of the prevalence, which means the fatality rate was much lower. What was the fatality rate based off how you guys calculated it? Okay, so 0.14 Remember, when the world health organization, I think in February they said the fatality rate would be 3.4% so that means a hundred cases, 3.4 would be fatalities. When you look at the seroprevalence like what Miami and mayor Gimenez did 0.14 that is a whole different ball game. Seasonal influenza's about 0.1. Um, we're going to do seroprevalence in every other part of the state to be able to get a handle on it. But I think what you're seeing in the CDC actually in their guidance last week, they put out a really important document where they estimate the infection fatality rate nationwide if you include the asymptomatic carriers to be 0.26. Again, a vast cry from the 3.4 and if you really look it, if it weren't for some of the nursing home policies in some of these other States where they were sending the sick residents back, forcing them back into the nursing homes, that that's counted for thousands and thousands of excessive deaths. Had they not done that, you would have fewer deaths nationwide. And I think that that, that number would be even more powerful. So we, um, you know, the bottom line is on this money, the testing is important, uh, and both seroprevalence and the diagnostic. I think we've really, really ramped it up. I mean, if you look in the last week, we had days last week where we got 75,000 test results back. That's more than some States have tested this whole time. Uh, we got, uh, yesterday, I think we got 45,000 back earlier last week we got 55,000 results back. Yesterday we got for today's report, I think 20,000 results back. Uh, when we were at the beginning of this epidemic. I mean, we were getting eight, nine, maybe 10,000 a day. So work twice, uh, of what we were doing, uh, which I think is really, really important. So, but I hope everyone will, give these great, new justices a round of applause, not necessarily the media but everyone else, and we want to thank them for their willingness to serve. So thank you guys.