

IN THE SUPREME COURT OF FLORIDA

HONORABLE GERALDINE F.
THOMPSON, in her Official Capacity
as a Senator for District 15 in the
Florida Senate, and as an Individual,

CASE NO.

Petitioner,

vs.

FLORIDA SIXTH DISTRICT COURT OF
APPEAL JUDICIAL NOMINATING
COMMISSION, and JEFFREY AARON, in
His Official Capacity as Chair of the
Florida Sixth District Court of Appeal
Judicial Nominating Commission,

Respondents.

EMERGENCY PETITION FOR WRIT OF QUO WARRANTO

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NATURE OF RELIEF SOUGHT

The Florida Sixth District Court of Appeal (“the Sixth DCA”) Judicial Nominating Commission (“the JNC”) exceeded the limits of its authority by certifying three nominees to Governor DeSantis who do not meet the constitutional requirements to hold the office of judge on the Sixth DCA. On the date the JNC certified Judge Stephen Everett, Florida State Representative Michael Beltran, and Attorney Jared Smith¹ as nominees, none of them resided in the territorial jurisdiction of the Sixth DCA. Based on that fact, the plain and unambiguous language of the Florida Constitution and the Uniform Rules of Procedure for DCA Judicial Nominating Commissions explicitly precluded the JNC from certifying Judge Everett, Representative Beltran, and Jared Smith as nominees. This Court should issue a writ of quo warranto reaching that conclusion

¹ The Petitioner’s challenge to these nominations is based solely on the requirements of the Florida Constitution. This petition does not address whether Judge Everett, Representative Beltran, or Jared Smith have the necessary experience, abilities, or qualifications to be considered for appointment as a judge on a Florida district court of appeal.

and should require the Governor to appoint individuals from the remaining list of constitutionally-eligible nominees.

PRELIMINARY STATEMENT

Nomination of Individuals Who Do Not Reside in the Territorial Jurisdiction of the Court for Which They Have Applied to Join is Contrary to the Goal of Geographical Representation.

In 2021, this Court created the new Sixth District Court of Appeal and redefined the existing boundaries of the First, Second, and Fifth districts. *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, 345 So.3d 703 (Fla. 2021). The Sixth DCA will be composed of the Ninth, Tenth, and Twentieth Judicial Circuits. Fla. Stat. § 35.044.

In reaching its decision to make these significant changes, the Court noted the importance of proportional geographic representation on the district courts of appeal. The Court sought to remedy what it found to be “the serious underrepresentation among district court judges of judges from within the Fourth Judicial Circuit. *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, 345 So.3d at 704.

Permitting individuals who reside outside the territorial jurisdiction of a district court of appeal to be nominated for positions on that court would violate the Florida Constitution and contradict this Court's stated goal of achieving proportional geographic representation. Given the number of objectively highly-qualified candidates the JNC chose not to nominate for the current vacancies on the Sixth DCA, it is disturbing that the JNC chose to ignore the clear requirements of its own rules and of the Florida Constitution.

STATEMENT OF CASE AND FACTS

On September 7, 2022, Governor DeSantis requested that Jeffrey Aaron, the Chair of the Sixth DCA JNC, convene the commission for the purpose of selecting and submitting nominees to the Governor for appointment to the Sixth DCA to fill the three vacancies that resulted from the reorganization of the Florida DCAs. (Appendix A). On that same day, the JNC issued a press release indicating that the commission was accepting applications to fill the three vacancies on the Sixth DCA. (Appendix B).

On September 26, 2022, the JNC issued a press release indicating that it had received 33 applications for the vacancies on the Sixth DCA. (Appendix C). Only 4 of the 33 applicants indicated that they did not reside within the territorial jurisdiction of the Sixth DCA. The remaining 29 applicants included numerous sitting judges and attorneys with extensive legal experience in various fields of the law.

On October 21, 2022, the JNC nominated 18 applicants for consideration by Governor DeSantis for appointment to the Sixth DCA. (Appendix D). Judge Everett, Representative Beltran, and Jared Smith were the only nominees who did not reside in the territorial jurisdiction of the Sixth DCA at the time they were nominated.

Judge Everett is currently a circuit court judge in the Second Judicial Circuit in Tallahassee. As a circuit court judge, he is constitutionally required to reside within the territorial boundaries of the Second Circuit. Representative Beltran and Jared Smith both reside in Hillsborough County. Hillsborough County is within the territorial jurisdiction of the Second DCA.

JURISDICTION

This Court has jurisdiction to issue writs of quo warranto 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).

Pursuant to Article V, Section 11(d), the JNC is a constitutional body. Like the Governor, the JNC exercises functions of the executive branch of government. *See In re Advisory Opinion to Governor*, 276 So.2d 25, 29-30 (Fla. 1973). As a result, the JNC is subject to quo warranto jurisdiction.

This Court’s authority to issue writs of quo warranto is discretionary and concurrent with other courts in Florida. However, the Governor has had the authority to appoint individuals to the Sixth DCA since the JNC made its nominations on October 21, 2022. The Governor is required to make the appointments no later than December 20, 2022. The importance and immediacy of the

issue supports this Court deciding the case. *See Fla. House of Reps v. Crist*, 999 So.2d 601, 608 (Fla. 2008).

STANDING

The Petitioner is a citizen and taxpayer of the State of Florida. She is also an elected Senator for District 15 in the Florida Senate. The Petitioner resides in Orange County, Florida, which is within the territorial jurisdiction of the Sixth DCA. As a result, she has a legal right to seek quo warranto relief from this Court. *See Whiley v. Scott*, 79 So.3d 702, 706 n.4 (Fla. 2011).

ARGUMENT

“The Florida Constitution is the paramount expression of the law by the people of this State.” *Florida Association of Realtors v. Orange County, Florida*, 2022 WL 15234476 (Fla. 5th DCA, Oct. 27, 2022). Thus, all branches of the Florida Government are required to strictly comply with its requirements.

“The interpretation of a constitutional provision involves a question of law. In interpreting constitutional language, this Court follows principles parallel to those of statutory interpretation.” *Advisory Opinion to Governor re Implementation of Amendment 4*,

The Voting Restoration Amendment, 288 So.3d 1070, 1078 (Fla. 2020) (internal citations and quotations omitted).

Therefore, this Court adheres to the “supremacy-of-text principle:” “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Id.* (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). The text of each provision of the Florida Constitution must be read *in pari materia* with the text of its other provisions “to ensure a consistent and logical meaning that gives effect to each provision.” *See Thompson v. DeSantis*, 301 So.3d 180, 185 (Fla. 2020).

THE SIXTH DCA JUDICIAL NOMINATING COMMISSION EXCEEDED ITS AUTHORITY BY CERTIFYING THREE NOMINEES WHO DO NOT MEET THE RESIDENCY REQUIREMENT OF THE FLORIDA CONSTITUTION.

The JNC exceeded the limits of its legal authority by certifying a list of nominees to Governor DeSantis that included nominees that are not constitutionally eligible to hold the position of Sixth DCA judge. The action of the JNC violated both the Florida

Constitution and the Uniform Rules for DCA Judicial Nominating Commissions.

Article V, Section 11(d) of the Florida Constitution created the Sixth DCA Judicial Nomination Commission by stating the following:

There shall be a separate nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

Art. V. Section 11(d), FLA. CONST.

The Florida Legislature established the composition of the JNCs and the terms of membership in Fla. Stat. § 43.291. In accordance with Article V, Section 11(d), the Florida district courts of appeal have established rules of procedure. In pertinent part, the relevant rules state as follows:

The commission shall require completion of the application for judicial nomination prescribed by the commission. The commission shall meet within a reasonable time after the deadline for applications to evaluate, classify, and list applicants as “most qualified” for further investigation and consideration. The list may be limited in number if agreed upon by 2/3 of the commissioner’s voting. No person shall be classified as “most qualified” until the commission affirmatively determines that **the applicant meets all legal requirements for that judicial office** and that the applicant appears from the materials then available to the commission to possess the personal qualities and attributes of character, experience, judicial temperament, and professional competence essential to that judicial office.

Section II, *Initial Screening*, Uniform Rules of Procedure for DCA Judicial Nominating Commissions (emphasis added).

No nominee shall be recommended to the governor for appointment **unless the commission finds that the nominee meets all constitutional and statutory requirements** and is fit for appointment to the particular judicial office after full and careful consideration . . .

Section V, *Standards and Qualifications; Criteria*, Uniform Rules of Procedure for DCA Judicial Nominating Commissions (emphasis added).

Upon conclusion of all investigation obtained by the commission, and after the “most qualified” applicants have been afforded the opportunity of a personal interview by the commission, the commission shall meet to evaluate the “most qualified” applicants. By majority vote, the commission shall select from the list of “most qualified” **applicants who meet all legal requirements for the judicial office** (no fewer than three and no more than six nominees for each vacancy in the judicial office). The names of such nominees selected to the commission shall be certified by the governor in alphabetical order . . .

Section VI, *Final Selection of Nominees*, Uniform Rules of Procedure for DCA Judicial Nominating Commissions (emphasis added).

Pursuant to Article V, Section 8 of the Florida Constitution, “[n]o person is eligible for the office of justice or judge of any court unless the person is an elector of the state and **resides in the territorial jurisdiction of the court.**” Judge Everett, Representative Beltran, and Jared Smith all resided outside the territorial jurisdiction of the Sixth DCA at the time they were nominated by the JNC.

In light of that fact, it is impossible to conclude that the JNC complied with Section II, V, and VI of its own rules, because Judge Everett, Representative Beltran, and Jared Smith fail to meet all the

constitutional requirements to be judges on the Sixth DCA. Thus, they were not “eligible” for that position. There is nothing in the Florida Constitution or the Uniform Rules of Procedure for DCA Judicial Nominating Commissions which provides the JNC with the authority to nominate an individual for potential appointment to a district court where that individual may become eligible for that position on some future date.

Governor DeSantis is constitutionally required to make an appointment within 60 days of the JNC certifying its list of nominees on October 21, 2022. See Article V, Section 11(c), FLA. CONST. The Governor, however, has the authority to appoint a nominee immediately after receiving the certified list from the JNC.

Given this fact, each certified nominee must be constitutionally eligible at the time of their nomination by the JNC. This conclusion is fully supported the plain language of both the Florida Constitution and the Uniform Rules of Procedure for DCA Judicial Nominating Commissions.

First, Article V, Section 8 of the Florida Constitution states that “[n]o person is **eligible** for the office of justice or judge of any

court unless the person is an elector of the state and **resides in the territorial jurisdiction of the court.**” “Eligible” means “fit and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status.” ELIGIBLE, Black's Law Dictionary, Bryan A. Garner (11th ed. 2019).² Thus, the language of the Florida Constitution indicates that an individual who does not reside within the territorial jurisdiction of the court (the Sixth DCA) is not eligible for the office and cannot be selected to serve in that office.

The various portions of the Uniform Rules of Procedure for DCA Judicial Nominating Commissions only permit an individual to be nominated if the individual (1) meets all legal requirements for that judicial office; (2) meets all constitutional and statutory requirements; and (3) meets all legal requirements for the judicial office. Importantly, the relevant rules are all written in the present tense. Thus, the JNC is required to determine that an individual is

² “This Court in construing constitutional language approved by the voters often looks to dictionary definitions of the terms because we recognize that, in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.” *Advisory Opinion to Governor re Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020).

qualified pursuant to the aforementioned requirements at the time the JNC makes its nominations, not if an individual might become qualified at some later date.

Justice Labarga cogently stated the basis for this conclusion in his concurring opinion in *Thompson v. DeSantis*, 301 So.3d 180 (Fla. 2020) (Labarga, J., specially concurring). In *Thompson*, Justice Labarga held that the Supreme Court JNC exceeded its authority by nominating an individual who was not constitutionally eligible to be a Supreme Court Justice at the time of the nomination. *Id.* at 188-189

Justice Labarga reasoned as follows:

A nominee must be constitutionally eligible at the time of nomination. The reason for this is clear: while the Governor has up to sixty days to fill the vacancy, the Governor does not have to utilize the entire time period. Each nominee must be immediately ready to fill the vacancy.

Id. at 189 (Labarga, J., specially concurring)

The issue in *Thompson* was whether the nominee met the constitutional requirement of being a member of The Florida Bar for at least 10 years prior to her nomination for consideration for the office of Supreme Court Justice. There is no legitimate basis to

conclude that Justice Labarga's reasoning from *Thompson* would not apply equally to the residency requirement at issue in this case.

This Court's decision in *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001), does not support a contrary conclusion. In *Miller*, this Court held that a candidate for election to judicial office needs to be a resident of the court's territorial jurisdiction at the time he or she assumes office, not at the time the oath of candidate is filed. However, in *Thompson*, this Court specifically limited the *Miller* decision to judicial elections, rather than the filling of a vacancy in a judicial office under Article V, Section 11. 301 So.3d at 186-187. Given that fact, *Miller* has no application to the issue in this case.

Even if this Court were to conclude that *Miller* has some potential application to the issue in this case, it should decline to follow it because it was wrongly decided based on the plain language of the Florida Constitution. In *Miller* itself, a majority of the Justices joined a concurrence of Justice Wells indicating that, if writing on a clean slate, he would hold that the residence requirement applies at the time of filing. *Miller*, 804 So.2d at 1247 (Wells, C.J., concurring); *See also Thompson*, 301 So.3d at 186-187.

That holding would support the conclusion that the residency requirement at issue in this case applies at the time the JNC makes its nominations.

In *Thompson*, this Court, in an opinion joined by 4 Justices, repeatedly noted that the decision in *Miller* was not based on a textual analysis of Article V, Section 8. 301 So.3d at 186. A textual analysis of Article V, Section 8, and of the Uniform Rules of Procedure for DCA Judicial Nominating Commissions, requires a different conclusion than the one reached in *Miller*.

This Court recently explained its approach to stare decisis. This Court held that, “[i]n a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with the law we are sworn to uphold, precedent normally must yield.” *State v. Poole*, 297 So.3d 487, 507 (Fla. 2020).

The *Miller* decision clearly conflicts with the Florida Constitution and the Uniform Rules of Procedure for DCA Judicial

Nominating Commissions. Therefore, in the event this Court finds that *Miller* has some application to judicial appointments, instead of only applying to judicial elections, this Court should recede from its decision in that case.

CONCLUSION

For the aforementioned reasons, this Court should issue a writ of quo warranto concluding that the JNC exceeded its legal authority by certifying Judge Everett, Representative Beltran, and Jared Smith as nominees. As a result, Governor DeSantis should be required to fill the vacancies on the Sixth DCA from the remaining list of 15 constitutionally-qualified nominees.

In a unanimous decision, this Court previously held that this is the appropriate remedy when a constitutionally ineligible candidate is nominated. “The JNC itself made the decision to nominate a constitutionally ineligible candidate, and it is responsible for the consequences of that decision.” *Thompson v. DeSantis*, Case No. SC20-985 (Fla. Sept. 11, 2020) (Order granting amended petition for writ of mandamus) (Appendix E).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition has been furnished by e-service to Jeffrey Aaron, in his official capacity as Chair of Respondent, the Sixth DCA Judicial Nominating Commission, jeff.aaron@gray-robinson.com, on this 17th day of November, 2022.

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

/s/ Lisabeth J. Fryer
LISABETH J. FRYER
Florida Bar No. 89035

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 Petition is submitted in Bookman Old Style 14-point font and complies with the font and word count requirements of Fla. R. App. P. 9.045(b).

/s/ William R. Ponall
WILLIAM R. PONALL
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STRICKEN