

Supreme Court of Florida

FRIDAY, SEPTEMBER 11, 2020

CASE NO.: SC20-985

REPRESENTATIVE GERALDINE F. THOMPSON, ETC. vs. GOVERNOR RON DESANTIS, ET AL.

Petitioner(s)

Respondent(s)

Before the Court is an amended petition for writ of quo warranto and writ of mandamus. We issued to the Governor an order to show cause on Tuesday, September 8, 2020. Having considered the Governor's response and Petitioner's reply, we grant the amended petition for writ of mandamus.

The essentials of this case are straightforward. The resignation of former Justice Robert Luck created a vacancy in office; the constitution gave the Governor sixty days from January 23, 2020, to fill the vacancy by making an appointment from a list of certified nominees; and, at the time of the appointment, the appointee necessarily needed to be constitutionally eligible for the office being filled. Not having been a member of the Florida Bar for ten years, Judge Renatha Francis was constitutionally ineligible for the office of justice of the supreme court on the expiration of the constitution's sixty-day deadline. And Judge Francis remains constitutionally ineligible now. Art. V, §§ 8, 11, Fla. Const.

The constitution's sixty-day deadline to fill this vacancy in office expired many months ago. Yet the Governor has not satisfied his legal obligation to fill the vacancy by making a constitutionally valid appointment. This is true if one views the Governor as having made a null appointment on May 26 (because Judge Francis was and is constitutionally ineligible). It is also true if, as the Governor belatedly suggests in his response to the amended petition, the May 26 "appointment" was a mere "announcement" and not an appointment at all.¹ Either approach leads to the same conclusion: the Governor has not complied with the constitution's clear commands.

The constitution's ten-year Bar membership requirement and sixty-day appointment deadline are bright-line textual mandates that impose rules rather than standards and prioritize certainty over discretion. To some, enforcing rules like these might seem needlessly formalistic when the result is to preclude the appointment of an otherwise qualified candidate. But "formalism," as Justice Scalia observed, "is what makes a government a government of laws and not of men."

1. We note the inconsistency with the Governor's assertion, in response to the initial petition in this case, that "Governor DeSantis completed his legal duty by appointing Judge Francis ... to the Florida Supreme Court on May 26, 2020."

Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 25 (rev. ed. 2018).

In these circumstances, the constitution and directly on-point precedent dictate the remedy. We hold that the constitution requires the Governor immediately to appoint and commission a constitutionally eligible nominee from among the seven remaining candidates already certified by the judicial nominating commission. *See Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009). We reject the Governor's suggestion that this remedy somehow intrudes on the judicial nominating commission's constitutional prerogatives by "taking a red pen" to the JNC's certified list. The JNC itself made the decision to nominate a constitutionally ineligible candidate, and it is responsible for the consequences of that decision.

The Governor must fully comply with this order no later than noon on Monday, September 14, 2020. Because we believe the Governor will do so, we grant the amended petition for a writ of mandamus but withhold issuance of the writ. No motion for rehearing or clarification will be entertained by this Court.

It is so ordered.

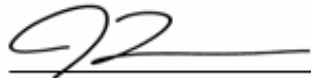
CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.
COURIEL, J., recused.

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A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



dl

Served:

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