IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-1213

Advisory Opinion to the Governor
Re: Appointment or Election of Judges

By the Request of the Governor Pursuant to Article IV,
Section 1(c), Florida Constitution

BRIEF OF MARTHA J. COOK

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INTRODUCTION

The Governor has requested an advisory opinion concerning the judicial vacancy that has been created by Judge Florence Foster's retirement from judicial service on May 30, 2002. At the time of her retirement, three candidates had qualified to run for Judge Foster's seat and their election campaigns were underway. The Governor asks whether, under these circumstances, he should exercise his power of appointment to fill the vacancy as contemplated by Article V, Section 11(b) of the Florida Constitution or allow the people to fill the vacancy through the judicial electoral process that is already underway and is contemplated by Article V, Section 10(b) of the Florida Constitution.

This brief, submitted on behalf of Martha Cook, one of the three qualified candidates already campaigning for Judge Foster's now vacant seat, urges this Court to reaffirm its long-standing precedent holding that the right of the people to choose takes precedence over the Governor's power to appoint. This Court should reject any suggestion that the power of appointment can be used to pre-empt an election campaign already underway. Candidate Cook respectfully asks this Court to advise the Governor that he should not, under the unique circumstances of this case, exercise his power of appointment.

STATEMENT OF THE CASE AND FACTS

Judge Florence Foster's seat as a Hillsborough County circuit judge, Group 30, is up for election this year. Three candidates for the seat qualified by the May 17, 2002 qualifying date deadline: Martha Cook, Carlos Pazos and Ken Whalen. Each candidate paid $5,200 to qualify. Thereafter, each candidate began to incur campaign expenses, enter into contracts for campaign events, raise money through their committees, and otherwise conduct their judicial campaigns. The primary is scheduled for September with the general election to follow in November.

On May 30, 2002, Judge Foster's seat became vacant when this Court declared Judge Foster to be involuntarily retired from judicial service. On May 31, 2001, the Governor sought an advisory opinion from this Court regarding whether he should fill the judicial vacancy under his Article V appointment power where candidates have qualified for election to the seat prior to its vacancy.

The Governor's letter anticipates that the vacancy "most likely" could be filled by appointment in September, 2002. Assuming that the Governor's optimistic prediction holds true, and adding the usual 60 day period it would take for the appointee to wind down his or her law practice before assuming the bench, the new judge could be serving by November, 2002. This appointed judge would then run for re-election during the 2004 general election cycle. Art. V, § 11(b), Fla. Const.

If Judge Foster's now vacant seat is filled by the election, the winner of the election would take office for a six-year term beginning on January 7, 2003. Art. V, § 10(b), Fla. Const. Thus, the appointment process may shorten the period of vacancy by two months or less.

On May 31, 2002, this Court determined that the Governor's request is within the purview of Article IV, Section 1(c) of the Florida Constitution and invited all interested parties to file a brief on or before June 10. This brief, filed on behalf of candidate Martha Cook, responds to the Court's request.

SUMMARY OF THE ARGUMENT

This Court has long held that the right of the people to vote for circuit judge is paramount and must prevail when there is a choice between filling a seat by election or by appointment. The election process is already underway with three qualified candidates actively campaigning for Judge Foster's newly vacated judicial seat. No authority permits the Governor to preempt a constitutionally-authorized judicial election by appointment once the election process has begun. Such a holding would require a remarkable reversal of cherished constitutional principles favoring election over appointment when election is reasonably possible.

The 1996 Amendment to Article V, Section 11(b) of the Florida Constitution does not alter this long-standing preference for elections over appointment. The Amendment simply extends the term of a temporary judicial appointment by one year. The extension solved what had once been a difficult problem of finding a judicial appointee willing to give up his or her practice for what may be only a few months on the bench. Nothing in the language of the Amendment evidences a shift to a constitutional preference for appointed versus elected judges when a vacancy occurs. To the contrary, Florida voters have consistently rejected attempts to trim their power to elect their circuit judges.

Even if the 1996 Amendment signaled a shift in the balance between judicial elections and judicial appointment, there is no authority to suggest that the

Governor's power of appointment can trump an election process once it is underway. As one federal appeals court has noted (and as this Court's decisions have implicitly acknowledged) serious constitutional problems would be raised by an attempt to halt an ongoing election.

Moreover, there is no good practical reason to strike a balance in favor of the exercise of the power of appointment in this case. Clearly there is enough time for the election to take place -- it is already underway. Waiting for the election to conclude would likely extend the period of judicial vacancy by no more than a month or two – a small price to pay for preserving the right of the people to vote. Moreover, allowing the election to proceed will avoid the chilling effect on future elections that will certainly result if this election is cancelled. By favoring appointment over election under these facts, future candidates will know that attainment of an elected judicial seat may be whimsically contingent upon whether or not the incumbent judge remains seated until the term's expiration. Few if any judicial candidates will be willing to undertake the rigors and expense of a judicial campaign knowing that the election could be stopped if the incumbent judge's seat is vacated for any reason including illness, death, or resignation.

Candidate Cook respectfully urges this Court to advise the Governor not to fill Judge Foster's vacancy by appointment.

ARGUMENT

The Governor should be advised to defer to the electoral process that is already underway. As shown below, this Court's long-standing precedents hold that the Constitution favors election over appointment whenever an election is reasonably possible. This brief opens with a discussion of these cases. We then address lower court and administrative precedent suggesting that this balance in favor of elections was shifted by a 1996 constitutional amendment. We prove that the Amendment did not change this balance; indeed, the Amendment could not constitutionally be interpreted to permit the cancellation of an existing election. Finally, we demonstrate that, under the unique facts of this case, any balance must be struck in favor of holding the election as scheduled.

I. THIS COURT'S PRECEDENT MANDATES AN ELECTION UNDER THESE FACTS.

This Court has uniformly read the Florida Constitution to conclude that the right to election is paramount when judicial vacancies can be reasonably filled through the elective process. In *Spector v. Glisson*, 305 So. 2d 777 (Fla. 1975), this Court confronted an election year vacancy and discussed in detail the Court's historical view that, first and foremost, Article V provides for the election of judges, with the Governor's appointive powers being "subordinate and supplementary thereto." *Id*. at 781. This Court's decision leaves no doubt about the primacy of the electoral process:

> *Sub judice* an opportunity is immediately available for the voice of the people to be heard in the intervening elections which can now be employed to exercise the elective process without a forced intervening appointment until another election occurs 2 years hence for the subsequent remaining 2 years of the term of Justice Ervin from which he retires, which latter course would be an illogical one to follow in light of all the opinions and expressions of this Court over the years on the priority of the elective process.

Id. at 782.

Thus, the court construed Section 11(a) of Article V to permit the use of the Governor's appointment power only when the elective process is not available. According to this Court:

> It is clear that § 11(a) of new Art. V was provided in order to fill by prompt appointment those vacancies which occur at time and in situations where there is a need for someone to fill an interim judgeship so that the business of the courts can continue and will not suffer by lack of an incumbent judge, *but only in those instances where the elective process is not available*. Section 11(a) does not contemplate a strained application which would give priority to the appointive power over the paramount elective process when there is a known vacancy to occur in conjunction with and reasonably before a judicial election; the elective machinery should be allowed to function to provide the successor.

Id. at 783. (emphasis added).

Of course, this is precisely the scenario presented by Judge Foster's retirement. A vacancy has occurred in conjunction with and reasonably before a judicial election in Hillsborough County. Because there is adequate time to hold an election (in fact, the election is under way) *Spector* requires this vacancy to be filled by the voters.

Post-*Spector* decisions of this Court touching on the same "appointment vs.

election" issue require the same outcome. In *Judicial Nominating Commission, Ninth Circuit v. Graham*, 424 So.2d 10 (Fla. 1982), this Court reaffirmed the importance and primacy of the electoral process. The court's holding left no room for ambiguity:

> . . . the constitution mandates an election when there is sufficient time to afford the electorate an opportunity to fill a judicial vacancy.

Id. at 10.

The *Graham* Court suggested the date of the first primary as a bright line threshold for approving the Governor's exercise of appointment to fill election year judicial vacancies. *Id.* at. 12. So long as the vacancy occurs prior to the first primary, there is enough time to hold the election:

> In summary, if the vacancy is known in sufficient time to schedule a special election during the already scheduled primary and general election dates, then a special election should be held. On the other hand, if an irrevocable communication of an impending vacancy is presented to the governor at the time of or after the first primary, then we have held there is insufficient time to use the primary and general election process during that year and the governor is authorized to use the merit selection [appointment] process for a term ending in January following the general election two years later.

Id. (relying on *In re Advisory Opinion to the Governor, Request of September 6, 1974,* 301 So. 2d 4 (Fla. 1974)). *See also In re Advisory Opinion to the Governor,* 600 So. 2d 460, 463 (Fla. 1992) (reaffirming the principle that the constitution mandates an election when there is sufficient time).

Of course, as Spector and *Graham* indicate, there is another interest in play –

the desire to fill vacant seats to allow court business to continue uninterrupted. *Id.* at 783. Thus, the power of appointment should be utilized when the vacancy occurs so far in advance of the election that court business might suffer by the extended vacancy. *Graham,* 424 So. 2d at 12; *Spector,* 305 So. 2d 777 (Fla. 1974).

This case is easy in that regard because it fits precisely within the window where an election must be held. Clearly there is time for an election; the candidates have already qualified and the election is underway. Nor will the election result in an extended vacancy. At the earliest, the Governor suggests that an appointment could be made by September. Assuming 60 days for the appointee to wind up his or her practice, it is unlikely that the appointee would be in judicial service until November, 2002. The elected candidate would be prepared to serve on January 7, 2003. Thus, at most, the appointment process would reduce the net vacancy by no more than two months. No Florida authority (or extraordinary facts) suggest that the two month additional vacancy that may result from waiting for the election requires the cancellation of the election in favor of appointment. *See Spector,* 305 So. 2d at 784 (declining to permit a vacancy to be filled by appointment when no emergency compels the exercise of the Governor's power of appointment).

Put simply, this Court's unambiguous authority compels the Court to advise the Governor that he should not exercise his power of appointment. Any other holding would be unprecedented, and, as shown below, would raise constitutional

issues.

II. THE 1996 CONSTITUTIONAL AMENDMENT DOES NOT SHIFT THE BALANCE AWAY FROM ELECTIONS.

In 1996 the Florida voters approved an amendment to the Constitution which lengthened the interim term of the Governor's judicial appointees. Prior to 1996, when the Governor exercised his appointment power to fill a vacancy, the Governor's appointee served only until the next regularly scheduled election. This abbreviated term made it difficult for the Governor to attract a candidate willing to close his or her practice for what might be a judicial term of only a few months.[1] *See Graham,* 424 So. 2d at 12.

The 1996 Amendment solved this problem by lengthening the term of the Governor's appointee by at least one year. Under the 1996 Amendment, the appointee serves until the next election held at least a year after the appointment. Article V, Section 11(b). By extending the term of the appointment, the Amendment makes it easier to find a qualified candidate to fill the vacancy.

As indicated by the Governor's letter seeking an advisory opinion, the First District Court of Appeal has read the 1996 Amendment to somehow shift the balance away from elections and in favor of appointments. In *Pincket v. Harris*, 765 So. 2d 284 (Fla. 1st DCA 2000) a Tenth Circuit vacancy occurred on June 29th of election year 2000 -- after the Secretary of State's April publication of notice of the coming election for the seat, but before the statutory qualifying period

[1] The normal term for a circuit judge is six years. Art. V, § 10(a), Fla. Const.

commenced in mid-July of that year. *Id.* at 285. When the Governor initiated the appointment process for the election year vacancy, the circuit judicial nominating commission asked the Attorney General for an opinion addressing whether the vacancy should be filled by appointment or election. *Id.*

On July 9, 2000, the Attorney General issued an Opinion concluding that the Governor must fill the vacancy by appointment, finding in essence that the term-lengthening language of the 1996 Amendment to Article V struck a new constitutional balance in favor of appointment over election regardless of the timing of the vacancy. *See* Op. Att'y Gen. Fla. 2000-41, 2000 WL 972869 (2000) at *3. Subsequently, on July 17, 2000, Pincket filed qualifying papers for the vacant seat with the Division of Elections. *Id.* He was erroneously qualified that day, but notified of the error the next day by the Secretary of State's office and advised that no election would be held as the Governor had already declared to fill the vacancy by appointment. *Id.* Pincket then asked the circuit court to reinstate his qualification as a candidate, to require that the election be held, or alternatively, to restrain the Governor from making the appointment. *Id.* The circuit court adopted the reasoning of the Attorney General's Opinion and rejected Pincket's claims for relief.

The First District affirmed, finding that in the context of that case, the 1996 constitutional amendment to the Governor's Article V appointment power permitted the Governor to make a judicial appointment to fill the vacancy before

the election qualifying process had begun.

We respectfully suggest that *Pincket* and the AGO opinion are wrongly decided. To begin with, nothing in the language of the 1996 Amendment or its history suggests that the Amendment was intended to extend the authority of the Governor to fill judicial appointments during election years or otherwise override established precedent in this Court favoring elections over appointment. Indeed, no Florida voter would have reasonably thought that an amendment that merely extends temporary terms for an additional year would be interpreted to dramatically alter the balance between the appointment and elective process. Quite to the contrary, Florida voters have made it clear that they do not wish to give up their power to elect circuit judges.[2]

The only authority allegedly to the contrary cited by the Attorney General and *Pincket* comes from dicta appearing in this Court's *Graham* decision discussed above. In *Graham*, this Court expressed concern about extended judicial vacancies while waiting for an election. In this context, the Court then discussed the problem of filling judicial vacancies by appointment when the appointee's term of office is too brief to cause a qualified candidate to give up an established legal practice. This Court observed that one of the remedies suggested for this problem was the solution later offered by the 1996 Amendment – extend the appointee's term for

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[2] As recently as the 2000 election, Florida voters voted 69.1% to 30.9% against appointing circuit judges.

another year. The court notes that such an amendment would "avoid this temporary loss of judicial manpower." 424 So. 2d at 12.

Relying on this Court's discussion of the problems posed by extended judicial vacancies and the solution offered by an amendment lengthening the appointment term, the Attorney General and the First District then leapt to an unwarranted conclusion. Each surmised that *Graham* was recommending a radical departure from this Court's past precedent which had historically given priority to elections. Each then concluded that the 1996 Amendment fulfilled this recommendation by shifting the balance in favor of appointment.

Too much is being read into the *Graham* dicta. It was no departure at all from past precedent for this Court to acknowledge in *Graham* that the appointment process should be used to avoid a long vacancy. No case had ever suggested that a seat should go unfilled while waiting for an election to take place long in the future. Cleary, the Governor may appoint in situations where waiting for an election might significantly lengthen the vacancy.[3] No constitutional amendment was needed to confirm this appropriate use of the appointment process.

The more likely purpose of this Court's dicta in *Graham* was to acknowledge that finding a qualified judicial appointment for a short period is difficult. This is the problem that required fixing and was fixed by the 1996 Amendment

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[3] As discussed below, this is not a problem in this case. At most, the additional vacancy period that would result from waiting for the election would be two months, assuming the Governor can meet his very optimistic time frame for appointment.

lengthening the term of judicial appointees. Nothing about the Amendment suggests a preference for appointment when, as in this case, holding the election does not materially slow down the filling of the vacancy. Certainly nothing about the Amendment suggests than an ongoing judicial election should be cancelled as a result of an intervening vacancy.

The broad construction proposed by *Pincket* and the Attorney General also overlooks this Court's history of always construing these constitutional provisions in favor of a construction which enhances the elective process. *See Republican State Executive Committee v. Graham*, 388 So. 2d 556, 558 (Fla. 1989) ("If two equally reasonable constructions might be found, this Court in the past has chosen the one which enhances the elective process by providing voters with the greater choice in exercising their democratic rights"). Thus, this Court must construe the 1996 Amendment narrowly to simply extend an appointee's term in office – not broadly to favor appointment over elections.

As a practical matter, this case does not present the situation feared by *Graham* where waiting for an election would unduly extend the judicial vacancy. If the Governor appoints, at the earliest we may have a judge working on the bench by November, 2002. If the people are allowed to choose, a new judge will be on the bench by January, 2003, a difference of two months or less. There is nothing in the Governor's letter that suggests an emergency need to fill what will at most be a two month additional vacancy. The election should proceed.

III. THE ELECTION SHOULD BE HELD AS A MATTER OF LAW.

There is another equally important reason to advise the Governor that he should not exercise his power of appointment. Here, the election process is already underway. We have found no precedent supporting the Governor's right to pre-empt an election that is already underway. Canceling the election would raise serious state and federal constitutional questions.

As a threshold matter, no constitutional provision gives the Governor the right to cancel an election.[4] The Governor's only limited authority over elections appears in Article VI, Section 5(a) of the Florida Constitution under which the Governor is authorized to only suspend or delay an election in an emergency. There is no suggestion that an emergency exists requiring the suspension or delay of the judicial election in question, much less its cancellation.

There are also federal constitutional issues. One federal circuit court of appeals has made it clear that state voters are not to be deprived of an election of a judge in favor of appointment where state law does not support such action by its officials. In *Duncan v. Poythress*, 657 F.2d 691 (5th Cir. 1981), the Fifth Circuit squarely rejected an attempt by state officials to fill by appointment a vacated

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[4] Where the date of an election is fixed by statute, the provision is regarded as mandatory and the election officials have no authority to change the date or cancel the election. *See Stephens v. People*, 89 Ill. 337 (Ill. 1878); *State ex. rel Maffett v. Turnbull,* 3 N.W. 2d 674 (Minn. 1942)*; State ex. rel. Stipp v. Colliver*, 243 S.W. 2d 344 (Mo. 1951); *Kinney v. House*, 10 So. 2d 167 (Ala. 1942); *Simpson v. Teftler*, 5 S.W. 2d 350 (Ark. 1928); *Robinson v. McCown*, 88 S.E. 807 (S.C. 1916).

Georgia Supreme Court seat in lieu of holding a special election as prescribed by Georgia law. The court held that the Fourteenth Amendment protects against disenfranchisement of the state electorate, and observed that "the federal courts have not hesitated to interfere when state actions have jeopardized the integrity of the electoral process." *Id.* at 702. In finding federal constitutional due process protection for state voters' rights to an election, the court reasoned:

> If the Georgia officials denied the Georgia electorate the right granted by state statute to choose a replacement for Justice Bowles, then we are faced with 'patent and fundamental unfairness' in the electoral process (citation omitted). The Georgia voters are not asking the federal courts to count ballots or otherwise 'enter into the details of the administration of an election' (citation omitted). Their request is far more simple and more basic: they ask for the election itself, as required by Georgia law.

Id. at 702.

The court's holding is clear. It is unconstitutional to disenfranchise voters who have been given the right to vote for a judge:

> It is fundamentally unfair and constitutionally impermissible for public officials to disenfranchise voters in violation of state law so that they may fill the seats of government through the power of appointment. We therefore hold that such action violates the due process guarantees of the fourteenth amendment.

Id. at 704.[5] Hillsborough voters thus appear to have a federally protected right to their election of a candidate to fill Judge Foster's vacancy, as well as a state constitutional right to elect her replacement.

We do not suggest that Duncan compels Florida to elect circuit judges. But *Duncan* strongly suggests that once the right to elect judges is granted by Constitution or statute, there are federal constitutional issues that arise if this right is wrongfully taken away. *Duncan* is strong support for what we believe the law of Florida already is – any ambiguity concerning the 1996 Amendment must be resolved in favor of the right to vote.

There are practical reasons for favoring the right to vote as well. Any other result may adversely impact the quality of future elections. Here, three judicial candidates have already qualified and begun their campaigns for the now vacant seat of Judge Foster. The right to campaign for office is an important right that

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[5] *See also Brooks v. State Bd. of Elections*, 848 F. Supp. 1548 (S.D. Ga. 1995). In *Brooks,* the Court addressed whether it was empowered to modify the Georgia judicial election process by expanding the Governor's appointment power over various judicial positions. In *Brooks*, plaintiffs had sued Georgia for Voting Rights violations, alleging that the system for electing judges was racially discriminatory. When both parties presented a settlement agreement to the Court whereby the Governor would agree to appoint certain judges and would appoint a set number of African American judges, the Court rejected the agreement, claiming that the right of qualified individuals to campaign for elected office is protected by the Georgia Constitution. The Court held: "the [settlement agreement] would impermissibly alter the balance of power embodied in the current system regarding judicial elections by transferring power from the electorate and qualified potential candidates to the Governor . . ." *Id.* at 1569.

must be protected.[6] If the Court advises the Governor to fill the vacancy by appointment at this juncture, the cancellation of the election will have a chilling effect on future judicial campaigns potentially devastating to the judicial elective process. Few if any candidates will be willing to invest in a rigorous judicial campaign if the elective process can be terminated by the Governor's appointment powers whenever a vacancy in the elective seat occurs before the expiration of the incumbent's term.

For example, in Hillsborough County, several candidates are running to fill the seat of retiring Judge Evans. What if Judge Evans' seat were to become vacant due to illness, death or resignation between now and the primary? Would the Governor be empowered by the 1996 Amendment to terminate this election and fulfill the seat by appointment? Candidates in this and future elections should know that the election process cannot be subject to cancellation based on the

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[6] *See Barry v. District of Columbia Bd of Elections & Ethics,* 448 F. Supp. 1249, 1253 (D.C. 1978) (holding that the statute requiring plaintiff to resign his current position as Governor prior to running for another office deprived dampered the "vigor and vitality of elections for the District's highest offices" and "threaten[ed] the full and free political participation of a substantial number of leading elected officials."); *Morial v. Judiciary Commission*, 565 F. 2d 295, 300-301 (5th Cir. 1977) (holding that when a candidate is forced to resign from his current position prior to running for another position, the burden "weighs upon the exercise of an important, if not constitutionally 'fundamental' right.); *Magill v. Lynch*, 560 F. 2d 22, 27 (1st Cir. 1977*)* (*citing Mancuso v. Taft*, 476 F. 2d 187, 196, 198-200 (1st Cir. 1973) (political candidacy is a fundamental interest which can be trenched upon only if less restrictive alternatives are not available).

whims of fate.[7]

Judicial campaigns are already the exception rather than the rule in Hillsborough County. Since 1998, 17 judicial vacancies have been filled by the Governor compared with only two seats being filled by election. There are only three contested races for circuit judge in the current 2002 elections. This Court should continue to choose a construction of the amended constitutional language that promotes rather than constricts the elective process. *See Republican State Executive Comm. v. Graham*, 388 So. 2d 556, 558 (Fla. 1989) ("If two equally reasonable constructions might be found, this Court in the past has chosen the one which enhances the elective process by providing voters with the greater choice in exercising their democratic rights").

One practical solution is to adopt the qualifying date deadline as a bright line cut-off for the Governor's appointment authority during election years if candidates have qualified. Where candidates have already qualified and the election process is underway, the election should be held. This is precisely the balancing process the Court has utilized in the past where election is favored if there is an earlier, reasonably intervening election process available. *See, e.g., Graham,* 424 So. 2d at 11-12. The longer the vacancy occurs prior to qualifying,

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[7] Indeed, although such a result is politically improbable, if you take *Pincket's* holding to its logical extreme, the Governor could exercise his appointment powers even if the vacancy occurred on the very eve of the primary or even after the primary or general election had taken place. This cannot be what the voters approved in 1996.

the more the balance shifts to filling the vacancy by appointment.

Under this proposed bright line rule, judicial candidates could be certain that if they qualify and begin their campaigns, one of them will assume the bench regardless of any intervening vacancies in the seat. The people's constitutional right to elect their judges would thus be protected and promoted. This bright line rule would also acknowledge constitutional concerns that judicial vacancies be filled quickly by shifting the balance toward appointment for earlier occurring election year vacancies.[8] Finally, the Court's adoption of this bright line rule will promote certainty among candidates that a qualified candidate will assume a vacant judicial seat if elected by the people, regardless of the status of the incumbent's seat after the qualification date has passed.

The people's right to choose their circuit judges as granted by Article V, Section 10(b) should be honored. The scheduled election should proceed.

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[8] As applied to this matter, an additional month of vacancy will occur because the legislature moved the qualifying date back to mid-May for this election year only. This is a *de minimus* price for Hillsborough county citizenry to pay in return for assuring the people's constitutional right to elect a judge where, as here, three candidates are already actively campaigning.

CONCLUSION

For all the foregoing reasons, Candidate Cook respectfully suggests that the Court advise the Governor not to appoint to fill the vacancy in Judge Foster's seat.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: **Hon. Jeb Bush,** Governor, The Capitol, PL-05, Tallahassee, FL 32399-0001, **Hon. Katherine Harris**, Secretary of State, The Capitol, PL-02, Tallahassee, FL 32399-0250, **Hon. Manuel Menendez, Jr.,** Chief Judge, Hillsborough County Courthouse, 419 North Pierce Street, Room 214-F, Tampa, FL 33602-3549, **Kenneth C. Whalen, Esq.**, 9280 Bay Plaza Blvd, Suite 714, Tampa, FL 33619, **Carlos A. Pazos, Esq.**, 2701 North Himes Avenue, Tampa, FL 33607-6015, **Jeanne T. Tate, Esq.**, Judicial Nominating Commission, 418 Platt Street West, Suite B, Tampa, FL 33606.

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CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Candidate Martha J. Cook, certifies that this Brief is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

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