IN THE SUPREME COURT OF FLORIDA

LEAGUE OF WOMEN VOTERS FLORIDA, COMMON CAUSE, PAMELA GOODMAN, DEIRDRE MACNAB, and LIZA McCLENAGHAN,

Petitioners,

v. Case No.: SC17-___

HON. RICK SCOTT, in His Official Capacity as Governor of Florida,

Respondent.

PETITION FOR WRIT OF QUO WARRANTO

THE MILLS FIRM, P.A.

John S. Mills
Thomas D. Hall
Courtney Brewer
Andrew D. Manko
325 North Calhoun Street
Tallahassee, Florida 32301

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES, CONSTITUTIONAL PROVISIONS, AND RULES OF COURT

SECONDARY SOURCES

PETITION FOR WRIT OF QUO WARRANTO

This petition seeks final resolution of a constitutional question that has plagued this State for decades: When a judicial seat opens on a Florida appellate court due to an expired term coinciding with the election of a new governor, whom does our Constitution authorize to appoint the successor, the outgoing governor or the newly elected governor?

This Court has previously advised that appellate vacancies may be filled by the governor only "upon the expiration of the term of the judge or justice." *Advisory Op. to the Governor re Judicial Vacancy Due to Mandatory Ret.*, 940 So. 2d 1090, 1093 (Fla. 2006) ("*Mandatory Retirement*"). The terms of appellate judges and justices expire on "the first Tuesday after the first Monday in January following the general election," which is the same day (every four years) that a new gubernatorial term starts. *See* art. V, § 10(a), Fla. Const. (judicial terms begun by retention); art. V, § 11(a), Fla. Const. (judicial terms begun by appointment); art. IV, § 5(a), Fla. Const. (gubernatorial terms).

Applying the foregoing rules to the calendar reveals that in the January following each gubernatorial election, the newly elected (or reelected) governor's term always begins the same day the terms expire for any sitting justices of this Court or judges of the district courts of appeal (collectively, "appellate judges") whose terms expire following that election. Applying these facts to this Court's

advisory opinion in *Mandatory Retirement* should make clear that the outgoing governor does not get to appoint successor justices or judges on the way out of office, especially since an attempt to amend the constitution to authorize the outgoing governor to make appointments was rejected by the people of Florida less than three years ago. Nonetheless, Respondent Governor Rick Scott, who is prohibited from seeking a third consecutive term by article IV, section 5(b) of the Florida Constitution, has publicly announced his intention to appoint the replacements for three justices of this Court whose terms are set to expire January 8, 2019, even though that will be the day his successor's term begins.

League of Women Voters Florida, Common Cause, Pamela Goodman, Deirdre Macnab, and Liza McClenaghan petition this Court for a writ of quo warranto to prohibit these or any similar intended judicial appointments as beyond Respondent's authority. As a matter of constitutional law, these judicial terms do not expire to create vacancies until Governor Scott's successor will have taken office. A prompt, final decision on this pure question of constitutional law would not only avoid the disruption that would result from any post hoc challenge to appointments made by Governor Scott or his successor, but would also clarify for the electorate and potential candidates the scope of what is at stake in the 2018 election. It also would preempt cynical complaints by anyone dissatisfied with the decision that the case was contaminated by political considerations. Accordingly,

Petitioners request the Court decide this petition in the first instance and not transfer it.

I. NATURE OF THE RELIEF SOUGHT.

Petitioners seek a writ of quo warranto to prevent Governor Scott from appointing the successor to any justice or appellate judge whose final term expires in January 2019. "Quo warranto is the proper method to test the 'exercise of some right or privilege' " claimed by the governor. *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989) (quoting *Winter v. Mack*, 194 So. 225, 228 (Fla. 1940)) (quo warranto appropriate writ to test extent of governor's authority to call for special legislative session); *see also Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011) (using quo warranto to determine Governor Scott's authority to issue executive orders). Indeed, this Court recently issued a writ of quo warranto to curtail Governor Scott's "power of appointment in the context of judicial vacancies" and prohibit him from making a judicial appointment beyond his authority. *Lerman v. Scott*, No. SC16-783, 2016 WL 3127708, at *1 (Fla. June 3, 2016).

Petitioners have standing to seek this relief. This Court has long recognized both that "[i]n quo warranto proceedings seeking the enforcement of a public right, the people are the real party to the action and the person bringing suit need not show that he has any real or personal interest in it" and that "the public right" at issue is "the right to have the governor perform his duties and exercise his powers

in a constitutional manner." *Martinez*, 545 So. 2d at 1339 & n.3 (internal quotation marks and citation omitted); *see also Whiley*, 79 So. 3d at 706 n.4 ("[W]hen bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers.")

Not only are Petitioners Pamela Goodman, Deirdre Macnab, and Liza McClenaghan Florida citizens and taxpayers, but they and the petitioner organizations, which are collectively comprised of thousands more Florida citizens and taxpayers, have a substantial interest in this issue. League of Women Voters is a nonpartisan political organization that actively promotes open government responsive to the people of the state. The League attempts to accomplish its goals and positions through the constitutional amendment process, the legislative process, and the courts. Since Common Cause established Common Cause Florida in 1976, it has represented its members in litigation in matters related to redistricting, open government, ethics, and campaign finance. These organizations' dedication to keep all branches of the government accountable to the people make them ideally suited to enforce the constitutional provisions and democratic principles at stake.

II. BASIS FOR INVOKING THIS COURT'S JURISDICTION.

This Court has jurisdiction to issue writs of quo warranto to the Governor as a state officer pursuant to article V, section 3(b)(8) of the Florida Constitution.

E.g., *Whiley*, 79 So. 3d at 707. While this Court's jurisdiction is discretionary and concurrent with other courts, specific considerations in this case warrant immediate review by this Court, instead of a transfer to circuit court followed by an appeal to a district court. *See Fla. House of Reps. v. Crist*, 999 So. 2d 601, 608 (Fla. 2008) (finding that "importance and immediacy of the issue justifies our deciding this matter now rather than transferring it for resolution in a declaratory judgment action"); *cf. Harvard v. Singletary*, 733 So. 2d 1020, 1021-22 (Fla. 1999) (transferring original writ petition to circuit court because it implicated substantial issues of disputed facts, affected a large number of cases, and presented no reason for this Court to resolve the legal issues in the first instance).

For one, no material facts are in controversy. *Chiles v. Phelps*, 714 So. 2d 453, 457 n.6 (Fla. 1998). The constitutional question presented does not turn on any specific facts. Although the urgent need for resolution of this question was created by the specific fact that Governor Scott announced his intention to appoint the successors to three justices whose terms end in January 2019 and are not eligible for retention due to their age, that fact is not subject to reasonable dispute and, in any event, does not affect the constitutional analysis. The answer must be the same whether the vacancy is created by the expiration of a district court of appeal judge's term or the term of a justice of this Court. It should be the same regardless of how the appellate judge's term started or why it is ending. And it

should be the same regardless of the identity of the specific appellate judge or specific governor. As there will be no need for any fact-finding or weighing of evidence, a trial court would be in no better position to resolve the issues.

Indeed, this Court is in a far better position to resolve this petition in the first instance. Given the clarity of the law on the issue between this Court's decision in *Mandatory Retirement* and the plain language of the constitutional provisions governing gubernatorial and judicial terms, there is no need for this Court to require development of the legal analysis in the lower tribunals. *See Lerman*, 2016 WL 3127708, at *1 (deciding question involving gubernatorial authority to make judicial appointments where it was based on prior decision of this Court and straightforward review of subsequent amendments to constitution).

Moreover, given the important question of Florida constitutional law at issue, which is capable of repetition any year a new governor takes office, "this case would in all likelihood ultimately be decided by this Court. Interests of judicial economy favor an immediate resolution." *Chiles*, 714 So. 2d at 457 n.6. Unless this Court were to transfer the petition to circuit court and the district court of appeal took the unusual step of summarily affirming such an important issue without opinion, there can be no question that the lower court's construction of the relevant constitutional provisions affecting state officers would create additional grounds for this Court's review down the road. Art. V, § (3)(b)(3), Fla. Const.

Because this Court is the ultimate arbiter of the meaning of Florida's constitutional provisions, review by this Court should be a question of when, not if.

Although the general election is over a year away, there is simply not time for this case to work its way through the circuit court to the district court and back to this Court for final resolution. *See Crist*, 999 So. 2d at 608 (concluding that "importance and immediacy" of the issue justified immediate decision by this Court rather than transferring case to circuit court). The importance of deciding this issue before Governor Scott attempts to make the subject appointments cannot be overstated. Not only would that invite a constitutional crisis, especially if his successor makes different appointments, but it would disrupt the functioning of this Court and any district court on which a similar vacancy might arise as a result of a judge choosing not to file for retention or being ineligible to do so.

While review in the circuit court, district court of appeal, and this Court might conceivably be concluded before January 2019, there are ample practical reasons why the issue should be resolved far earlier. The qualifying period for governor is June 18-22, 2018, and media reports indicate that at least eighteen candidates are already campaigning and "more potential candidates are giving the race a look." George Bennett, *Too Early? 2018 Florida Governor's Race Is Well Underway*, Palm Beach Post (May 29, 2017), http://postonpolitics.blog.palmbeachpost.com/2017/05/29/too-early-2018-florida-

governors-race-is-well-underway/ (last visited June 8, 2017). Potential candidates and, more importantly, the voting public need to know what is at stake as soon as possible because the appointment of three justices to this Court is no small matter.

The presidential election demonstrated that candidates often make promises of prospective appointments and even release short lists identifying whom they might appoint. As the field of candidates gets narrowed down by attrition and primaries and the likely identity of the next governor becomes more clear, the risk of perceptions of political contamination may arise. Resolving this case early would deter, or at least undermine, any suggestion by hyper-partisans unhappy with the final result that the case was resolved based on the result of how it might shape the courts, instead of on the merits. Though they would not be legally sufficient bases for disqualification, it does not take much imagination to envision cynical complaints that the four remaining justices had one eye on who would join them as colleagues going forward or that the three retiring justices had an eye on who would succeed them.

And that leads to the final reason review by the lower courts should be avoided, and it is much more than the fact that the legal issue raised in this petition applies equally to vacancies resulting from district court judges whose terms may expire following the 2018 general election. The three vacancies on this Court that Governor Scott intends to fill will leave the Court with justices who resided in four

of the five district courts of appeal when appointed, which means applicants for two of the vacancies may reside anywhere in the state. Art. V, § 3(a), Fla. Const. Every circuit and district court judge in Florida save the few who may be ineligible or resolutely disinterested in seeking higher judicial office is a potential applicant for these vacancies and would, therefore, have a stake in determining which governor makes the appointment. That is a very real conflict of interest that simply does not exist for any member of this Court. Appellate judges should not choose which governor may appoint them to the State's highest court.

III. STATEMENT OF THE FACTS.

Since Florida adopted the merit appointment and retention plan in 1976, all Florida appellate judges begin their tenure on the appellate bench the same way – being appointed by the Governor. Art. V, § 11(a), Fla. Const.; *see generally* Joseph W. Little, *An Overview of the Historical Development of the Judicial Article of the Florida Constitution*, 19 Stetson L. Rev. 1 (1989). Therefore, every appellate judge's initial term commences as a result of appointment by the governor, while all subsequent terms commence as a result of the people's vote.

Once appointed, an appellate judge begins an initial "term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment." Art. V, § 11(a), Fla. Const. Thus, for example, any appellate judge appointed on or after November

2, 2015 (one day less than one year prior to the 2016 general election) but no later than November 6, 2017 (one year prior to the 2018 general election) is serving an initial term that will end January 8, 2019.

An appellate judge wishing to continue beyond that initial term or any subsequent term "may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term." Art. V, § 10(a), Fla. Const. An appellate judge that is retained by the electorate serves a six-year term that "shall commence on the first Tuesday after the first Monday in January following the general election." *Id.*

Absent death, removal, or resignation, an appellate judge's final term (regardless of whether it is the first term begun by appointment or a subsequent six-year term begun by retention) ends and creates a vacancy subject to gubernatorial appointment in one of two ways: the judge either "is ineligible or fails to qualify for retention"[1] or qualifies but loses the retention vote. *Id.* In either event, "a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge." *Id.* Thus, for example, vacancies subject to gubernatorial appointment will be created upon the expiration of the current term

[1] This could occur, for example, because the judge has turned 70, no longer resides in the territorial jurisdiction of his or her court, fails to timely submit qualifying paperwork to the Secretary of State, is no longer a member of The Florida Bar, or simply declines to run for retention. *See generally* art. V, § 8, Fla. Const. (providing these and other requirement for eligibility for judicial office).

of any and all appellate judges who (1) are serving a term that expires following the 2018 general election and (2) are not retained by the voters, whether it is because they were not eligible, chose not to run, or ran and lost.

While the specific facts that led to this petition are not relevant to the merits of the issue presented as explained in the prior section, they demonstrate that there is, in fact, a current controversy as to how the issue should be resolved. At least three vacancies will be created on this Court in 2019 because there are three justices whose current terms commenced following the 2012 general election but will be ineligible for retention in the 2018 general election due to their age. In an unmistakable reference to these vacancies, Governor Scott announced at a press conference held on December 16, 2016: "I'll appoint three more justices the morning I finish my term." *12/16/16 Press Conference on Florida Supreme Court Appointment*, The Florida Channel, http://thefloridachannel.org/videos/121616-press-conference-florida-supreme-court-appointment/ (last visited June 8, 2017) (Governor Scott's quoted statement can be found starting at 8:14).

Having been re-elected in the 2014 general election, Governor Scott is ineligible to serve a third consecutive term. Art. IV, § 5(b), Fla. Const. His successor's term will therefore start on January 8, 2019. *See id.* § 5(a) (stating that a governor's term begins "on the first Tuesday after the first Monday in January"

of the year following his or her election). Thus, the question of whether he may appoint three justices to this Court the morning he finishes his term is ripe.

IV. ARGUMENT.

The Florida Constitution prohibits a governor from making a prospective appointment of an appellate judge to an existing seat before that seat becomes vacant. *Mandatory Retirement*, 940 So. 2d at 1091. Thus, the controlling issue is whether Governor Scott will be in office at the time the judicial offices become vacant. Article V, section 10(a) of the Florida Constitution establishes both the length of a retained justice's term and the appropriate start date for measuring it:

> If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election.

Equally clear is the constitution's direction as to what occurs in the case of a justice who subsequently does not or cannot qualify for retention: "a vacancy shall exist in that office upon the expiration of the term being served by the justice." *Id.*

Consistent with that plain language, this Court advised then-Governor Jeb Bush as to the scope of the term "vacancy" with regard to the judicial vacancy that was going to arise as a result of the mandatory retirement of First District Court of Appeal Judge Richard Ervin III. *Mandatory Retirement*, 940 So. 2d at 1094. Governor Bush conceded that no "physical vacancy" could occur until the

expiration of Judge Ervin's term, but sought this Court's advisory opinion as to when a "constitutional vacancy" occurs to allow the appointment of Judge Ervin's successor. *Id.* at 1091. This Court unanimously concluded that the "definition for when a vacancy occurs with regard to merit retention judges is clear and unambiguous – a vacancy exists upon the expiration of the term of the judge or justice." *Id.* at 1093 (citing Art. V, § 10(a), Fla. Const.). Thus, no vacancy, constitutional or physical, occurs until that expiration date. *Id.*

The terms of the three justices to whom Governor Scott was referring (and any other appellate judge who would otherwise be up for retention in the 2018 general election but does not qualify by choice or ineligibility or who qualified but loses) do not expire until January 8, 2019, which begs the question of what specific time on that day they expire to create vacancies subject to appointment. Though Governor Scott has not, to Petitioners' knowledge, publicly explained why he believes he has the right to make appointments for terms that do not expire until the day his successor takes office, a supporter has asserted the Governor's "power to make 'midnight' appointments," an apparent suggestion that Governor Scott intends to make the appointments the minute the clock strikes midnight the evening of January 7, 2019, marking the beginning of the last day of the expiring judicial terms. Gray Rohrer, *Florida Supreme Court Appointments Could Bring Chaos*, Orlando Sentinel, http://www.orlandosentinel.com/news/politics/os-florida-

supreme-court-question-20161230-story.html (December 30, 2016) (last visited June 8, 2017). But Governor Scott lacks authority to make "midnight appointments" because (A) the expiring judicial terms run through the last second of the evening of January 8, 2019, by which time his successor will have begun his or her term or, alternatively, (B) if the vacancies occurred earlier in the day, his successor's term still will have already begun by that time.

A. The Judicial Terms Do Not Expire Until After January 8, 2019, Has Concluded.

The judicial vacancies at issue do not occur until **after** the expiration of a justice's term, and the terms at issue here do not expire until January 8, 2019. *See State ex rel. Landis v. Bird*, 163 So. 248, 256 (Fla. 1935) (noting that judge's six-year term had commenced on June 24, 1929, and "extended to June 24, 1935"). "The general rule for computing the time within which a thing must be done is to count the time by excluding the day on which the initial act occurred and include the corresponding future day." *Carter v. Cerezo*, 495 So. 2d 202, 203 (Fla. 5th DCA 1986). Recognizing that the last day of an appellate judge's term is the same date in January six years later is therefore required by the plain meaning of the language used,[2] which must control the analysis:

[2] Any room for doubt is removed by Article V, Section 11(a) of the constitution, which provides that upon appointment, an appellate judge begins an initial "term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of

> The words and terms of a Constitution are to be interpreted in their most usual and obvious meaning, unless the text suggests that they have been used in a technical sense. The presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who have adopted them.

Butterworth v. Caggiano, 605 So. 2d 56, 58 (Fla. 1992) (quoting *City of Jacksonville v. Cont'l Can Co.,* 151 So. 488, 489-90 (Fla. 1933)).

Thus, a term of six years ends on the same day of the same month six years later and not one minute earlier. For instance, in the statute of limitations context, a lawsuit claiming negligence must be commenced within four years of when the cause of action accrues. § 95.11(3)(a), Fla. Stat. (2016). Accordingly, a complaint filed on April 4, 2003, for an injury arising from a claim that accrued on April 3, 1999, was filed "one day beyond the four year statute of limitations." *Williams v. Albertson's, Inc.*, 879 So. 2d 657, 658 (Fla. 5th DCA 2004).

Just as a complaint filed on the day the statute of limitations expires is timely, so too will outgoing appellate judges remain in office throughout the day their term expires. Ample cases establish that when a period of time expires on a date or something must be done on a given date, the period runs until the moment the twenty-four hour day has ended. *Blanton v. State ex rel. Miller*, 24 So. 2d 232,

---

appointment." Any interpretation of the six-year term defined by Section 10(a) to include the first day such that the term would end a day earlier would yield the absurd result that the seat of a newly appointed judge who lost his or her first retention vote is vacant the last day the judge is still in office.

232 (Fla. 1945); *Fowler v. Gartner*, 89 So. 3d 1047, 1048 (Fla. 3d DCA 2012); *Ludwig v. Glover*, 357 So. 2d 233, 238 (Fla. 1st DCA 1978); *Moorey v. Eytchison & Hoppes, Inc.*, 338 So. 3d 558, 560 & n.3 (Fla. 2d DCA 1976); *see also* 55 Fla. Jur. 2d *Time* § 6 (2017) ("[T]he term 'day' means the standard calendar period of 24 consecutive hours ending at 12:00 a.m.; thus, 'Sunday' is the period between midnight Saturday to midnight the next day."); Fla. R. Jud. Admin. 2.514(a)(4) (defining "last day" for electronic filing to mean "at midnight").

Thus, for example, when a contract requires payment by June 1, there can be no default until the clock strikes midnight on June 2. *Fowler*, 89 So. 3d at 1048-49. This principle is equally true with regard to time periods set out in the constitution. *See, e.g., State ex rel. Thompson v. Davis*, 169 So. 199, 205 (Fla. 1936) (concluding that "[t]he constitutional limitation of sixty days for a regular session of the Legislature expired at midnight" of the sixtieth day).

In sum, there will be no judicial vacancy to be filled until the clock strikes midnight, which will be the beginning of the second day of the new governor's term.

B. Even If the Terms Expired Earlier on January 8, 2019, Governor Scott's Successor's Term Still Will Have Already Begun.

Even if Governor Scott could come up with an argument that the judicial terms at issue expire earlier in the day on January 8, 2019, he still would lack authority to make the appointments. Governor Scott's authority ceases once his

successor's term begins. Because gubernatorial terms similarly begin "on the first Tuesday after the first Monday in January of the succeeding year" after the general election, art. IV, § 5(a), Fla. Const., that day will be January 8, 2019. This constitutional provision, which expressly governs gubernatorial terms, provides no basis to conclude that the successor's term does not start until some particular time or event on that day. Thus, at worst, the end of the outgoing judicial terms will exactly coincide with the beginning of the new governor's term.

Though gubernatorial terms may traditionally be viewed as commencing upon the oath of office being administered, nothing in article IV, section 5 – again, the only constitutional provision governing gubernatorial terms – requires that as a constitutional starting point. But even if it were, that should make no difference for at least two reasons.

First, as a practical matter, any attempt at a "midnight appointment" just as January 8 is beginning could be countered by the successor. Indeed, at least two past governors were apparently sworn in at midnight specifically to prevent their predecessors from purporting to make midnight appointments. *See* James C. Clark, *Past Inaugurals Have Been Time for Dirty Deals*, Orlando Sentinel (Jan. 6, 1991), http://articles.orlandosentinel.com/1991-01-06/news/9101040758_1_florida-governors-oath-bob-martinez (last visited June 8, 2017) (noting that Governors Martinez and Chiles both assumed office with midnight swearings-in).

Second, the patent purpose behind the constitutional scheme for filling judicial vacancies would be frustrated by interpreting any ambiguity to allow this question to be decided by a race to see whether the incoming governor gets sworn in closer to midnight than Governor Scott attempts to fill a vacancy. The architects of the merit selection and retention plan could not have intended a framework designed to encourage appointments based on merit instead of patronage to guarantee that a governor would be able to appoint the replacement for a judge he or she had just appointed, but the electorate concluded was unfit at his or her first retention election.

Indeed, attempting to make appointments to shape the judiciary on his way out of office would run directly contrary to the core principle of this State that political power is inherent in the people. Although in this instance Governor Scott is term limited, consider a future first-term governor who is unseated as the result, at least in part, of the electorate preferring another candidate's competing views of the kind of jurists that should be appointed to the judiciary. If recent retention elections and attempts to amend Article V have taught us anything, it is that politicians and partisans view the appointment and retention process as a core

political issue. How absurd it would be to allow the very person who was defeated to nonetheless be able to make the appointments anyway.[3]

Not only did the citizens of Florida adopt that policy long ago when they adopted the merit appointment and retention plan in 1976, but they recently reaffirmed this policy by overwhelmingly rejecting a 2014 proposed amendment to allow the outgoing governor to fill vacancies that occur after the governor leaves office. Moreover, the ballot summary made it plain that the proposers understood no governor can fill vacancies that occur after he or she leaves office:

> Proposing an amendment to the State Constitution requiring the Governor to prospectively fill vacancies in a judicial office to which election for retention applies resulting from the justice's or judge's reaching the mandatory retirement age, or failure to qualify for a retention election; and allowing prospective appointments if a justice or judge is not retained at an election. Currently, the Governor may not fill an expected vacancy until the current justice's or judge's term expires.

Fla. Dep't of State, Div. of Elections, "Prospective Appointment of Certain Judicial Vacancies," http://dos.elections.myflorida.com/

---

[3] At least one defeated governor threatened to do just that. *See* Donna O'Neal, *Who Gets to Fill Seat on Court? Clash May Be On Way for Chiles, Martinez*, Orl. Sentinel (Nov. 9, 1990), http://articles.orlandosentinel.com/1990-11-09/news/9011090456_1_court-justice-ehrlich-supreme-court (reporting that after his defeat, Governor Bob Martinez planned to fill the vacancy created by the mandatory retirement of Justice Raymond Ehrlich, whose term expired on the same day Chiles would be sworn in) (last visited June 8, 2017). The last thing those who drafted and adopted the merit appointment and retention plan could have desired was that judicial appointments might be used as political bargaining chips a defeated governor could use for back-room deals on the way out of office.

initiatives/initdetail.asp?account=10&seqnum=91 (last visited June 8, 2017). Over 52 percent of the voters rejected the amendment, meaning it failed by 12 percentage points. *Id.*

Although there may be many reasons voters rejected the amendment, there can be no doubt one reason was that a newly-elected governor is not only more accountable, but also better represents the will of the people who just voted than someone elected four years ago. *See, e.g.* Paula Dockery, *Amendment 3 Confusing, Divisive, Unnecessary*, Fla. Today (Oct. 16, 2014 2:41 p.m.), http://www.floridatoday.com/story/opinion/columnists/syndicated/2014/10/16/paula-dockery-amendment-confusing-divisive-unnecessary/17364495/ ("Regardless of who is governor, the incoming governor should have the responsibility of judicial appointments and should be held accountable for his or her choices. How can you hold someone accountable who has left office?") (last visited June 8, 2017). Accountability is a cornerstone of democracy and government in Florida: "Our system of government is premised on the belief that every public officer and employee should be accountable … ." *Reynolds v. State*, 576 So. 2d 1300, 1302 (Fla. 1991).

In sum, if any ambiguity existed in our constitutional scheme, it should be resolved in favor of allowing the incoming governor, who best represents the will

of the people, to fill judicial vacancies arising the same day he or she is set to take office.

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction, issue the writ, and prohibit Respondent from filling any judicial vacancies on Florida's appellate courts that occur due to terms expiring in January 2019.

Respectfully submitted,

THE MILLS FIRM, P.A.

/s/ Thomas D. Hall
John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Thomas D. Hall
Florida Bar No. 0310751
thall@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901
cbrewer@mills-appeals.com
Andrew D. Manko
Florida Bar No. 18853
amanko@mills-appeals.com
service@mills-appeals.com (secondary)
The Bowen House
325 North Calhoun Street
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished to Daniel Nordby, General Counsel, Executive Office of the Governor, 400 South Monroe Street, Suite 209, Tallahassee, Florida 32399, daniel.nordby@eog.myflorida.com, counsel for Respondent, by e-mail and U.S. mail on June 14, 2017.

/s/ Thomas D. Hall
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.100(*l*).

/s/ Thomas D. Hall
Attorney