IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-1217
L.T. CASE NO.: 1D18-2387; 37 2018 CA 001039

DAVID P. TROTTI,

Petitioner,

v.

HONORABLE RICK SCOTT, et al.,

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

***Prior Litigation between the Parties*:** Four years ago, Petitioner David Trotti attempted to qualify for election to a vacancy on the Fourth Judicial Circuit Court. The First District, applying the language of the Florida Constitution and this Court's precedents, held the vacancy was to be filled by gubernatorial appointment—rather than election—because the vacancy occurred before the commencement of candidate qualifying period. *Trotti v. Detzner*, 147 So. 3d 641, 643-644 (Fla. 1st DCA 2014) (*Trotti I*). A dissenting opinion argued the vacancy should be filled by election. *Id*. at 645-646. Discretionary review was sought in this Court, which declined jurisdiction. *Trotti v. Detzner*, 157 So. 3d 1051 (Fla. 2014).

The Present Vacancy: On April 2, 2018, Fourth Judicial Circuit Judge Robert M. Foster tendered a letter of resignation to Governor Scott effective December 31, 2018, one week (four business days) before his term would expire on January 7, 2019. App. 6. On April 23, 2018, Governor Scott accepted Judge Foster's resignation. *Id*. One week later, on April 30, 2018, the statutory qualifying period for election of circuit court judges began. *Id*. On May 3, 2018, one day before the conclusion of the qualifying period, Petitioner delivered his qualifying paperwork to run for the seat held by Judge Foster. *Id*. The Division of Elections preliminarily determined Petitioner was a qualified candidate, but promptly

notified Petitioner that the judicial seat for which he sought to qualify was not a seat that would be filled by election. *Id*.

Procedural Background: Petitioner filed a complaint for declaratory judgment in the Second Judicial Circuit, seeking a declaration that the vacancy at issue must be filled by election, not appointment. *Id*. Petitioner also filed a motion for injunctive relief seeking to enjoin Governor Scott from filling the judicial vacancy by appointment and to enjoin Secretary Detzner from removing Petitioner from the ballot. *Id*. "Without distinguishing the facts in the instant case from the facts in *Trotti I*," the circuit court granted a preliminary injunction. *Id*. at 8.

Respondents immediately appealed the preliminary injunction to the First District, which reversed the circuit court's ruling. Specifically, the First District held the circuit court "erred in granting injunctive relief" because Petitioner "did not establish a substantial likelihood of success on the merits." *Id*. In so holding, the First District explained it was "error" for the circuit court to align itself with "non-binding unpublished concurring opinions" instead of *Trotti I*, which is "binding precedent that the circuit court was obligated to follow." *Id*. at 9. The First District noted that the circuit court "did not find *Trotti I* distinguishable from the instant case, and neither do we…" *Id*. at 9-10. The First District acknowledged the unpublished concurring opinions in *Pincket v. Detzner*, SC16-768 (Fla. June 3, 2016), but held the circuit court had erred in concluding that the "individual views

of justices in unpublished concurring opinions" had overruled *Trotti I.* App. at 11.

The First District also found that Petitioner had not established injunctive relief would serve the public interest, as the circuit court's preliminary injunction would prohibit the voters of the Fourth Judicial Circuit from "actually choosing Judge Foster's successor" for a period of six years. *Id*. at 12. In contrast, an individual appointed by the Governor after screening by the judicial nominating commission would face the voters in only two years. *Id*. at 13.

Petitioner now seeks discretionary review on the asserted basis that the First District's decision: 1) expressly construes the Florida Constitution; 2) expressly and directly conflicts with *Spector v. Glisson*, 305 So. 2d 777 (Fla. 1974); and (3) expressly affects a class of constitutional officers. Pet. Juris. Br. at 5.

SUMMARY OF THE ARGUMENT

This Court should deny review because the First District's decision reversing the circuit court's preliminary injunction does not provide a basis for discretionary review. First, the decision below does not expressly construe any provision of the Florida Constitution, but simply applies constitutional provisions that have *previously* been construed to the facts before it. Second, the First District's decision does not expressly and directly conflict with any decision of this Court or of any other district court, so this Court's review is not necessary to resolve irreconcilable holdings on the same issue of law. Third, the decision below

does not expressly affect the powers and duties of "judges" as a class of constitutional officers; instead, the underlying controversy and decision addresses the powers and duties of the Governor and Secretary of State—individual officers who are not members of any class.

Finally, to the extent this Court concludes that the decision below provides any basis for discretionary review, this Court should nevertheless decline review because the First District's thorough and well-reasoned opinion leaves no substantial doubt as to the questions it resolved. Accordingly, the district court's decision should remain undisturbed.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION.

A. The decision does not expressly construe the Florida Constitution.

This Court's jurisdiction over decisions that "expressly" construe a provision of the state constitution requires that the decision under review "explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." *Ogle v. Pepin*, 273 So. 2d 391, 392 (Fla. 1973) (quoting *Armstrong v. City of Tampa*, 106 So. 2d 407, 409 (Fla. 1958)). Jurisdiction "is not properly invoked" when the lower court decision merely "[a]ppl[ies] a constitutional provision to the facts before it." *Dykman v. State*, 294 So. 2d 633, 635 (Fla. 1973); *see also* Philip J. Padovano, Fla. App. Practice § 3:8 (2017 ed.)

(noting that "[m]any district court of appeal decisions involve an application of state or federal constitutional principles to the facts of the case. The application of constitutional principles, however, does not amount to a construction of the provision involved").

Here, the First District's decision did not expressly construe the Florida Constitution and therefore does not provide a basis for discretionary review by this Court. The decision merely applies constitutional provisions previously construed in *Trotti I* and other precedents to the facts before it, which neither the circuit court nor the district court below found to be distinguishable from *Trotti I*. App. 9. Because the circuit court was required to follow the binding precedent in *Trotti I*—yet failed to do so—the First District concluded that the circuit court erred in granting injunctive relief. App. 8.

With characteristic hyperbole, Petitioner claims that it is "hard to imagine" a clearer example of an opinion that expressly construes the Florida Constitution. Pet. Juris. Br. at 6. But his brief cites only four specific instances where the decision mentions the constitution. *Id*. And in *every one* of those instances, the decision merely *references* the Florida Constitution ancillary to applying established precedent to the facts before it. *See* App. 7 (quoting the holding of *Trotti I*, which referenced the constitution); App. 9 (noting *Trotti I* applied a rule "derived from the language of the Florida Constitution"); App. 12 (acknowledging

this Court's precedent construing the Florida Constitution in *In re Adv. Op. to the Gov. re Judicial Vacancy due to Resignation*, 42 So. 3d 795, 797 (Fla. 2010) (noting that this Court had identified the beginning of the statutory qualifying period as the "fixed point" to mark the commencement of the election process)).

None of these general references to the Florida Constitution purport to "explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." *Ogle*, 273 So. 2d at 392. Rather, the First District merely applied established precedent to the facts before it and concluded the circuit court erred in granting injunctive relief. Because Petitioner has not identified any instance where the First District's decision expressly construes the Florida Constitution, this Court lacks a basis for discretionary review.

B. The decision does not conflict with any other decision.

This Court's conflict jurisdiction exists to resolve irreconcilable holdings within Florida on the same question on law. *Wainwright v. Taylor*, 476 So. 2d 669, 670 (Fla. 1985); *see also* Art. V, § 3(b)(3) (providing discretionary jurisdiction of district court's decision that "expressly and directly conflicts" with a decision of another district court or of this Court "on the same question of law"). The express and direct conflict must exist "within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). Conflict jurisdiction may be found where the holdings of two decisions are "irreconcilable" or reach opposite

holdings on the same question of law on identical controlling facts. *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166 (Fla. 2006).

Here, the requisite conflict is absent because the First District's holding does not conflict with the sole case cited by Petitioner: *Spector v. Glisson*, 305 So. 2d 777 (Fla. 1974). In *Spector*, this Court addressed a resignation by Justice Ervin "coincident with the date for taking office by all elected officials … in January, 1975." *Id*. at 781. Under the circumstances presented by Justice Ervin's resignation, no interim vacancy would exist and this Court concluded that the election process rather than an interim appointment must be used to fill the office. *Id*. at 784; *see also id.* at 784 (finding election appropriate "since the present justice's tenure would continue until that effective date of January 6, 1975").

Petitioner argues that the decision below "plainly" conflicts with *Spector*. In support, he cites the concurring opinions in *Pincket* (which addressed *Trotti I*) and the analysis of the dissenting opinion in *Trotti I*. Pet. Juris. Br. 7, 8. But a jurisdictional basis for express and direct conflict must exist "within the four corners of the majority decision." *Reaves*, 485 So. 2d at 830. Petitioner disregards the actual decision below, which simply concludes the circuit court erred in disregarding binding precedent when granting injunctive relief. *Spector* did not address this question of law at all.

Moreover, even *Trotti I*—the binding precedent disregarded by the circuit

court—is not "irreconcilable" with *Spector* and did not reach an opposite holding on the same question of law on the same controlling facts. The majority opinion in *Trotti I* expressly distinguished *Spector*: Unlike Justice Ervin's resignation, the Fourth Circuit resignation *does* create an interim vacancy of several days' duration. Because a vacancy existed from the time the Governor accepted the resignation, the elective process is "expressly precluded by the applicable language" of the Florida Constitution. *Cf. Spector*, 305 So. 2d at 781. And amendments to the Florida Constitution in the nearly five decades since *Spector*, have made clear that the appointment process is complementary to the election process. *See*, *e.g.*, *Pincket v. Harris*, 765 So. 2d 284, 288 (Fla. 1st DCA 2000). *Spector* therefore does not address the precise question presented in *Trotti I*. As such, both *Trotti I* and the decision below are not "irreconcilable" with *Spector*; they address different facts and precedents, which dictate a different result.

C. The decision does not expressly affect a class of constitutional officers.

This Court also has discretionary jurisdiction to address decisions that "[d]irectly and . . . [e]xclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers." *Spradley v. State*, 293 So. 2d 697, 701–702 (Fla. 1974); Art. V, § 3(b)(3), Fla. Const. The First District's decision below provides no basis for discretionary review, as it does not expressly affect a class of constitutional officers.

Petitioner argues that the decision below affects the class of "judges" because their "conduct" is purportedly at issue. Pet. Juris. Br. 9. But the First District's decision did not address any duties or powers of judges *as a class*. The opinion merely concluded that the *particular* judge in this case erred by granting injunctive relief contrary to binding precedent.

Even Petitioner's underlying lawsuit does not present an issue affecting the powers or duties of judges as a class, who remain at liberty to resign at any time, for any reason. Instead, Petitioner seeks a declaration regarding the powers and duties of the Governor and Secretary of State *following* a judicial resignation. However, the Governor and the Secretary of State are individual officers, so the decision below cannot be said to affect a "class" of constitutional officers. *See* Padovano, Fla. App. Practice, § 3:9 (2017 ed.) ("The definition of a class also excludes a single state officer such as the governor ...") (*citing Larson v. Harrison*, 142 So. 2d 727 (Fla. 1962); *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41 (Fla. 1963) ("There is only one Secretary of State, not a class of Secretaries of State"). The First District's decision therefore provides no basis for discretionary review.

II. EVEN IF THIS COURT HAD DISCRETIONARY JURISDICTION, FURTHER REVIEW IS UNWARRANTED.

To the extent this Court concludes that the decision below provides any basis for discretionary review, review should nevertheless be declined. The First District's thorough and well-reasoned opinion leaves no doubt as to the questions it

resolved. The decision below correctly concluded that the circuit court erred in granting injunctive relief, as the lower court was required to follow the controlling and binding precedent of the district courts on the same issue of law. App. 10.

The result of the First District's decision is also correct under the language of the constitution and this Court's precedents. The Florida Constitution provides that vacancies in circuit court office are filled by gubernatorial appointment. Art. V, § 11(b), Fla. Const. A vacancy occurs at the time it is accepted by the Governor, even if effective later. *In re Advisory Op. to the Gov.*, 600 So. 2d 460, 462 (Fla. 1992). The beginning of the candidate qualifying period is the "fixed point" at which the election process is used to fill vacancies. *Adv. Op. to the Gov. re Judicial Vacancy due to Resignation*, 42 So. 3d at 797. And this is true even where a vacancy is accepted before the qualifying period for a future effective date after qualifying. *Advisory Op. to Gov. re Sheriff and Judicial Vacancies Due to Resignations*, 928 So. 2d 1218 (Fla. 2006). The First District's decision correctly resolved the dispute in this case on facts indistinguishable from *Trotti I* and should not be disturbed.

CONCLUSION

This Court should deny review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(d).

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