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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Fla. Gov. Defends Appointment Power In Judicial Challenges

By **Carolina Bolado**

Law360, Miami (May 24, 2016, 5:48 PM ET) -- Florida Gov. Rick Scott defended his judicial appointment power Monday and said the would-be judicial candidates challenging the cancellation of elections to replace retiring circuit court judges have no legal right to qualify for elections that by law cannot happen.

In responses to the four petitions **filed earlier this month** in the Florida Supreme Court, Scott and Secretary of State Ken Detzner said state law requires that he fill any judicial vacancies by appointment, so the petitioners do not have a right to qualify for an election that can't be held.

"Because the governor's convening of the judicial nominating commission and his anticipated appointment to fill the vacancy obviates an election for the seat, the secretary cannot qualify candidates as a matter of law," they said.

Attorneys Steve Pincket, Michael H. Lambert and Elizabeth M. Boyle — all of whom filed paperwork to run for judicial seats before the elections were canceled — asked the Florida Supreme Court to force Detzner to reinstate the elections for seats that are opening up in the Seventh, Tenth and Twelfth Judicial Circuit Courts.

In each instance, the sitting judge announced his resignation before the qualifying period for candidates but specifically said the resignation would be effective at the end of the year, just days before the end of the judicial term. By doing this, the judges sought to ensure appointed, as opposed to elected, successors.

The petitioners said the process of selecting judges cannot be manipulated this way to convert a position that can and should be filled by election into an appointment.

Pincket is requesting a writ of mandamus from the Supreme Court directing Detzner to accept Pincket's qualifying papers for an election in the Tenth Circuit, where Judge Olin Shinholser's resignation will leave an empty seat.

Judge Shinholser announced his resignation to Gov. Rick Scott in an April 1 letter but said his retirement will be effective as of Dec. 26, just days before the end of his term on Jan. 2, according to the petition. In the letter, he specifically stated that he wanted his successor to be appointed by the governor.

"While there are certainly debatable points as to the pros and cons of succession by appointment versus election, it is my belief based upon years of observation that the appointment process is superior to the election process in the judicial context," Judge Shinholser said in the letter.

Lambert, who is asking the Supreme Court to issue a writ of quo warranto to Scott to show by what authority he proposes to appoint a judge for the Seventh Circuit, was similarly dropped as a candidate for the seat opening in the upcoming resignation of Judge Joseph G. Will.

Boyle is seeking a chance to run for the seat being vacated by Judge Scott Brownell in the Twelfth Circuit.

In another petition, attorney Gregg Lerman asked the court to force an election to fill a Palm Beach County court spot open now that Judge Laura Johnson has resigned to run for a seat on the Fifteenth Judicial Circuit Court bench. The governor has already indicated that he will be filling the vacancy by appointment. Hopeful judicial candidate Thomas R. Baker has joined Lerman in that suit.

Detzner said Monday that the Florida Constitution says the governor must make an appointment to fill a judicial vacancy and that it does not make a distinction between types of vacancies.

Scott and Detzner are represented by Glenn Burhans Jr. and Bridget K. Smitha of Stearns Weaver Miller, Adam S. Tanenbaum and David A. Fugett of the Florida Department of State, and William N. Spicola and Benjamin J. Gibson of the Executive Office of the Governor.

The petitioners are represented by Philip J. Padovano of Brannock & Humphries.

The cases are Pincket v. Detzner, case number SC16-768, Lambert v. Scott et al., case number SC16-762, Boyle v. Detzner, case number SC16-756, and Lerman v. Scott et al., case number SC16-783, in the Supreme Court of Florida.

--Editing by Mark Lebetkin.

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