

**IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

CARNELL STAPLES, DON MIZELL,
LYNNE HUBBARD, and CHARLES RIDLEY,

Petitioners,

vs.

No. 2021 CA _____

RON DESANTIS, in his official
capacity as Governor of Florida,

Respondent.

COMPLAINT FOR WRIT OF MANDAMUS

Petitioners, CARNELL STAPLES, DON MIZELL, LYNNE HUBBARD,
and CHARLES RIDLEY, sue Respondent, RON DESANTIS, in his official
capacity as Governor of Florida:

INTRODUCTION

1. This is an action seeking a writ of mandamus to remedy Governor DeSantis's violation of § 100.111(2), Fla. Stat. Petitioners contend that the Governor refuses to perform his statutory duty to fix the dates of special elections to fill three vacancies in majority-Black legislative districts, as the law requires. The vacancies arose over seventy-five days ago. The Governor has failed to call elections to fill them, threatening to leave the

constituents of these three districts without representation during the 2022 legislative session.

JURISDICTION AND VENUE

2. This Court has jurisdiction, including jurisdiction to issue a writ of mandamus under Article V, § 5(b), Fla. Const.; § 26.012(2)(c), Fla. Stat.; and Fla. R. Civ. P. 1.630.

3. Venue is proper pursuant to § 47.011, Fla. Stat.

PARTIES

4. Petitioner Carnell Staples is a Florida citizen and an elector in Senate District 33 and House District 94.

5. Petitioner Don Mizell is a Florida citizen and an elector in Senate District 33 and House District 94.

6. Petitioner Lynne Hubbard is a Florida citizen and an elector in House District 88.

7. Petitioner Charles Ridley is a Florida citizen and an elector in House District 88.

8. Respondent is the Governor of Florida. Under Florida law, the Governor must fix the date of elections when there is a vacancy in legislative office. §§ 100.101(2), 100.111(2), Fla. Stat.

FACTUAL ALLEGATIONS

I. Florida's Historical Practice of Prompt Special Elections

9. Since January 1, 1999, there have been 69 vacancies in congressional and legislative offices in Florida, each of which was required to be filled by election.

10. For the 65 vacancies arising between 1999 and 2020, it took, on average, 7.6 days for the Governor to call a special election after the vacancy arose.

11. In over 25 instances, the Governor took fewer than five days to call the election.

12. For example, Representative Danny Burgess resigned on January 24, 2019, after being appointed Executive Director of the Department of Veterans Affairs. Governor DeSantis issued an executive order calling a special election to fill Rep. Burgess's seat *the very same day*. Fla. Exec. Order No. 19-20 (Jan. 24, 2019), https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-20.pdf; News Service of Florida, *This Tampa Bay State Representative Now Leads Florida's Veterans Affairs*, Tampa Bay Times (Jan. 24, 2019), <https://www.tampabay.com/florida-politics/buzz/2019/01/24/this-tampa-bay-state-representative-now-leads-floridas-veterans-affairs/>.

13. The Governor's historical practice of promptly calling special elections extends to cases of prospective vacancies—when a legislator submits a resignation to be effective at a later date.

14. In at least 25 instances between 1999 and 2020, when a legislator submitted a resignation effective at a later date, the Governor called a special election, on average, 6.5 days after the resignation was submitted (not went into effect). In more than half of those cases, the Governor called an election within four days of the submission.

15. For example, on May 29, 2020, Senator Tom Lee resigned effective November 3, 2020, halfway through his four-year term. *Two days later*, Governor DeSantis called a special election to fill the expected vacancy. Quite sensibly, Governor DeSantis set the general election for November 3, 2020, so the district would experience no gap in representation. Fla. Exec. Order 20-136 (June 1, 2020), <https://files.floridados.gov/media/703166/executive-order-20-136.pdf>; Gary White, *Florida Sen. Tom Lee Resigning, Leaving Seat Open*, Lakeland Ledger (May 29, 2020), <https://www.theledger.com/story/news/local/2020/05/29/florida-sen-tom-lee-resigning-leaving-seat-open/112580230/>.

II. Florida's Resign-to-Run Law and Its Effect on Vacancies

16. In 1970, the Florida Legislature enacted the Resign-to-Run Law, requiring an officeholder to submit a resignation from their current office before qualifying as a candidate for another office, if the term of that second office would overlap with their current office. Ch. 70-80, § 1, Laws of Fla. (codified as amended at § 99.012, Fla. Stat.).

17. To qualify as a candidate for the second office, the officeholder must submit an irrevocable resignation, effective no later than the date they would take office if they were elected to that second office. § 99.012(3), (4), Fla. Stat.

18. The officeholder must submit the irrevocable resignation at least ten days prior to the start of candidate qualifying. § 99.012(3)(c), (4)(c), Fla. Stat.

19. Resign-to-run is designed to permit the Governor to set any cascading special elections for lower-office resign-to-run vacancies concurrent with the already-called special elections for the higher office (the office the lower officeholders are resigning to run for).

20. Consolidating special elections in this way reduces the costs of holding multiple special elections, encourages voter turnout, and minimizes the amount of time a given office is vacant.

21. For example, on April 21, 2017, Senator Frank Artiles resigned. Matthew Haag, *Florida State Senator Resigns After Using Racial Slur in Tirade*, New York Times (Apr. 21, 2017), <https://www.nytimes.com/2017/04/21/us/florida-senator-frank-artiles-resigns-racist-rant.html>.

22. Seventeen days later, Governor Scott called a special election to fill the Senate vacancy, with a primary on July 25, 2017, and a general on September 26. Fla. Exec. Order No. 17-147 (May 8, 2017), https://www.flgov.com/wp-content/uploads/orders/2017/EO_17-147.pdf.

23. On May 17, 2017, Representative Jose Felix Diaz submitted his irrevocable resignation, effective the date of the Senate special election, to run in that election. Letter from Jose Felix Diaz to Florida Division of Elections (May 17, 2017), <https://dos.elections.myflorida.com/campaign-docs/?account=69807>.

24. Five days later, Gov. Scott called a special election to fill that House of Representatives vacancy—with a special primary and general held concurrently with the Senate elections, on July 25 and September 26, 2017. Fla. Exec. Order No. 17-155 (May 22, 2017), https://www.flgov.com/wp-content/uploads/orders/2017/EO_17-155.pdf.

25. Rep. Diaz's successor was elected just as his resignation took effect, and House District 116 experienced no gap in representation. News

Service of Florida, *Perez Cruises to Win in Miami-Dade House Race*, *South Florida Sun-Sentinel* (Sep. 27, 2017), <https://www.sun-sentinel.com/news/politics/fl-reg-perez-miami-dade-seat-20170927-story.html>.

III. The Three Instant Vacancies and the Governor's Failure to Call Elections

26. On April 6, 2021, Congressman Alcee Hastings died after a long career of public service, leaving a vacancy in his majority-Black congressional district.

27. Governor DeSantis failed to call a special election to fill that vacancy for 30 days—longer than any Florida Governor has ever taken to call a special election in at least the past 22 years, and possibly ever in the history of the state.

28. Twenty-three days after Congressman Hastings died, a person who wished to run in that special election filed suit against the Governor, seeking to compel him to call an election and fulfill his duty under Article I, Section 2 of the U.S. Constitution and § 100.111(2) of the Florida Statutes. See *Dowling v. DeSantis*, No. 9:21-CV-80796-AMC (S.D. Fla. Apr. 29, 2021).

29. A week later, the Governor called a special election for Congressman Hastings' seat, setting the primary for November 2, 2021, and the general for January 11, 2022—more than nine months after

Congressman Hastings' death. Fla. Exec. Order No. 21-103 (May 6, 2021), <https://files.floridados.gov/media/704305/executive-order-21-103.pdf>.

30. Three legislators submitted irrevocable resignations to run in the congressional special election.

31. Representative Bobby DuBose (House District 94) submitted a resignation on July 27, 2021, effective January 11, 2022.

32. Representative Omari Hardy (House District 88) and Senator Perry Thurston (Senate District 33) submitted resignations on July 28, 2021, effective January 10, 2022.

33. Rep. DuBose, Rep. Hardy, and Sen. Thurston are all Black and all represent majority-Black districts.

34. The Governor has failed to call elections to fill the three vacancies.

35. The 2022 Legislative Session begins on January 11, and ends March 12, 2022.

36. Unless the Governor sets special elections very soon, Petitioners and other residents of HD 88, HD 94, and SD 33 will go without representation for the entire 2022 Legislative Session.

37. It is feasible to hold a special primary election on January 11, 2022, concurrently with the congressional special general election.

38. It is further possible to hold a special general election by February 15, 2022.

39. Three times in the past 21 years, a special general has been held 14 days after a special primary election. See Fla. Exec. Order 03-20 (Feb. 3, 2003), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2003/03-20.pdf>; Fla. Exec. Order 03-12 (Jan. 24, 2003), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2003/03-12.pdf>; Fla. Exec. Order 2000-86 (Mar. 21, 2000), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2000/00-86.pdf>; see also § 100.111(2), Fla. Stat. (“The dates fixed shall provide a minimum of 2 weeks between each election.”).

40. Fourteen times in the past 21 years, including as recently as 2011, a special general has been held 21 days after a special primary election. See, e.g., Fla. Exec. Order 10-274 (Dec. 15, 2010), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2010/10-274-election.pdf>; Fla. Exec. Order 10-272 (Dec. 15, 2010), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2010/10-272-election.pdf>; Fla. Exec. Order 10-54 (Feb. 22, 2010), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2010/10-54-election.pdf>; Fla. Exec. Order 09-179 (Aug. 5, 2009), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2009/09-179-election.pdf>.

LEGAL CLAIM

41. Petitioners have a clear legal right to have the Governor fix the dates of special elections for the three vacancies.

42. Petitioners have a right to be represented by a senator and a representative, elected by them. See Art. III, § 1, Fla. Const.

43. The Governor has a clear legal duty to fix the dates of the three elections.

44. The Governor's clear legal duty to fix the dates is ministerial and nondiscretionary in nature.

45. By failing to fix the dates of the elections for over seventy-five days, the Governor has failed to perform his mandatory duty under § 100.111(2), Fla. Stat.

46. Petitioners have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court grant the following requested relief:

- A. an alternative writ of mandamus ordering the Governor to show cause why mandamus should not issue in this matter;
- B. a writ of mandamus directing the Governor to perform his clear ministerial duty to fix the dates of a special primary election and a

special election for the three legislative districts within a reasonable time, not to exceed 7 days; with a special election fixed for no later than February 15, 2022;

C. an award of Petitioner's costs; and

D. any such other relief the Court deems appropriate.

ARGUMENT

Article III, Section 1 of the Florida Constitution mandates that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district.” Each resident of the state has the right to be represented by one senator and one representative. These legislators are their voice in the halls of the Capitol.

When a vacancy arises in legislative office, the people have the right to fill that vacancy in a special election. See § 100.101(2), Fla. Stat. The reason is obvious: no Floridian should be deprived of representation because of the death, resignation, or removal of their representatives.

But left to his own devices, the Governor would deprive the residents of Senate District 33, House District 88, and House District 94 of their constitutionally-protected voice in the Capitol. The Governor has failed to

perform his statutorily proscribed ministerial duty to fix the dates of special elections for those three districts, where Petitioners reside. The vacancies in these districts arose over seventy-five days ago. No other Governor in living memory has waited even half this long to schedule a special election.

The Governor's failure to call these elections violates § 100.111(2) of the Florida Statutes. Mandamus is the appropriate remedy to address this violation. See *Young v. Lamar*, 115 So. 3d 1132, 1133–34 (Fla. 1st DCA 2013) (finding mandamus “an appropriate remedy to correct” a violation of the law); *Valdes v. Galco Constr.*, 883 So. 2d 359, 361 (Fla. 1st DCA 2004) (granting mandamus to compel officer to issue an order “within a reasonable time, not to exceed 30 days”); *Fla. Caucus of Black State Legislators, Inc. v. Crosby*, 877 So. 2d 861, 864 (Fla. 1st DCA 2004) (finding mandamus appropriate to compel state department head to comply with statute providing that department “shall assist” certain persons and “shall ensure” documents are forwarded); *Kramp v. Fagan*, 568 So. 2d 479, 480 (Fla. 1st DCA 1990) (granting mandamus and directing lower court judge to dispose of a neglected motion within fifteen days); *AHF MCO of Fla., Inc. v. Exec. Office of the Governor*, No. 2018 CA 1648 (Fla. 2nd Jud. Cir. Sep. 5, 2018) (finding Governor had a statutory duty to produce certain records and issuing writ of mandamus commanding him to produce the records within ten days);

see also *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020) (Article V of the Florida Constitution “gives this Court discretionary jurisdiction to issue writs of mandamus and quo warranto to state officers”); *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019) (“The Governor is a state officer.”)

To show entitlement to a writ of mandamus,

a petitioner must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him. When a petitioner files a petition for mandamus, the court has the initial task of assessing the legal sufficiency of the allegations [I]f the petition is facially sufficient, the court must issue an alternative writ, i.e., an order directed to the respondent to show cause why the requested relief should not be granted.

S.J. v. Thomas, 233 So. 3d 490, 495 (Fla. 1st DCA 2017) (internal citations and quotation marks omitted), see also *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (quoting *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000)); *Moore v. Ake*, 693 So. 2d 697, 698 (Fla. 2d DCA 1997) (trial court must issue an alternative writ of mandamus if petition is facially adequate, even if petitioner has not served respondent with the complaint).

As demonstrated below, Petitioners have established all the above requirements, and an alternative writ of mandamus should issue directing the Governor to show cause why this Court should not grant the requested relief.

I. The Governor Has an Indisputable, Ministerial Duty to Fix Special Elections When There Is a Vacancy in Legislative Office.

The statutory commands are clear: “A special election or special primary election shall be held . . . [i]f a vacancy occurs in the office of state senator or member of the state house of representatives.” § 100.101, Fla. Stat. “Whenever there is a vacancy for which a special election is required pursuant to s. 100.101, the Governor, after consultation with the Secretary of State, shall fix the dates of a special primary election and a special election.” § 100.111(2), Fla. Stat.

The Governor’s duty to fix a special election after a vacancy arises is ministerial and nondiscretionary. See *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996) (“A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.”). A plain reading of the language of section 100.111(2) demonstrates the ministerial nature of this duty.

The statute provides, “the Governor . . . *shall* fix the dates of a special primary election and a special election.” § 100.111(2), Fla. Stat. (emphasis added). “Shall” is not discretionary. Rather, the plain meaning indicates the Legislature has bestowed upon the Governor a ministerial obligation.

Florida courts have repeatedly made clear that use of the word “shall” in a statute indicates that the duty is nondiscretionary. In *Florida Caucus of*

Black State Legislators v. Crosby, 877 So. 2d 861 (Fla. 1st DCA 2004), for example, petitioners sought a writ of mandamus compelling the Secretary of the Department of Corrections to comply with a statute mandating the agency do the following when a felony offender was about to be discharged from state supervision:

[A]n authorized agent of the department *shall* obtain from the Governor the necessary application and other forms required for the restoration of civil rights. The authorized agent *shall* assist the offender in completing these forms and *shall* ensure that the application and all necessary material are forwarded to the Governor before the offender is discharged from supervision.

877 So. 2d at 862 (quoting § 944.293, Fla. Stat. (2002)) (emphasis added). Writing for a unanimous panel, then-Judge Polston reasoned that, “[b]ecause the legislature chose to use the word ‘shall’ throughout section 944.293, the Department’s obligations are not discretionary.” *Id.* at 863. The court ruled that the writ should issue, requiring the Department of Corrections to comply with their mandatory, ministerial duties under the statute. *Id.* at 863. The same reasoning applies to the Governor’s duty to fix a special election under section 100.111(2).

It is well established that “[i]f the language of the statute is clear and unambiguous and conveys a clear and definite meaning, the statute should be given its plain meaning.” *Fla. Hosp. v. Agency for Health Care Admin.*,

823 So. 2d 844, 848 (Fla. 1st DCA 2002). Because the language in section 100.111(2) is nondiscretionary, the Governor is bound to follow its command. Accordingly, the Governor has an indisputable duty to fix special election dates for the three legislative vacancies. And given both the feasibility of holding a special election in time for Petitioners to have representation for at least *part* of the 2022 Session, and the constitutional imperative that no Floridian lack representation longer than necessary, the Governor has a duty to fix the election for the earliest date possible.

II. Petitioners Have a Clear Legal Right to Compel the Governor to Perform His Statutory Duty.

Petitioners are residents and voters of the three districts for which the Governor has failed to call special elections. In the absence of a special election called very soon, Petitioners will go without the representation to which they are entitled in the 2022 Legislative Session. Their voices, and the voices of their neighbors, will go unheard in the Capitol. Their votes will be denied, twice over. In the first instance, the Governor's failure to call special elections deprives Petitioners the right to vote on their legislators. In the second instance, the Governor's inexplicable inaction denies Petitioners a vote on the floor of the Florida House and Senate.

Given the Governor's clear legal duty, "Petitioner[s], as [] citizen[s] and taxpayer[s], ha[ve] a clear legal right to request that the Governor carry out

that duty.” *Pleus*, 14 So. 3d at 945. Individual members of the public have standing as citizens and taxpayers “to seek mandamus relief compelling the governor to comply” with his legal duties. *Thompson*, 301 So. 3d at 184; see also *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998) (finding that “citizens and taxpayers” have standing “to challenge alleged unconstitutional acts of the executive branch”). Moreover, as Petitioners live in the districts that would be left without representation, they also have a “direct and articulable stake in the outcome” of this litigation. *Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980).

III. Petitioners Have No Adequate Remedy at Law.

Petitioners have no other adequate remedy at law. Florida courts have recognized mandamus as an appropriate remedy to resolve violations of the law and matters where the executive branch has failed to perform a ministerial duty imposed by law. *Young*, 115 So. 3d at 1133–34 (“[T]he Commission . . . was required, at a very minimum, to process the petitioner’s complaint in accordance with the dictates of Florida Administrative Code Rule 34-5.002. Mandamus is an appropriate remedy to correct this error.”); *Bd. of Trs. of the City Supplemental Pension Fund for Firemen & Policemen in the City of Miami Beach v. Mendelson*, 601 So. 2d 594, 595 (Fla. 3d DCA

1992). As such, mandamus is the appropriate remedy to address the Governor's failure to fix special elections to fill these vacancies.

CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus compelling the Governor to fix special elections for these months-old vacancies, with a special general election as soon as possible.

Dated: October 15, 2021

Respectfully submitted,

/s/ Angelo Marino, Jr. _____

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