IN THE SUPREME COURT FOR THE STATE OF FLORIDA

DENNY JONES,

Petitioner,

v. Case No.: _____

KENNETH DETZNER in his official capacity as Florida Secretary of State,

Respondent.
_____/

PETITION FOR WRIT OF QUO WARRANTO

Petitioner, Denny Jones, a Florida citizen and taxpayer, respectfully petitions this Court for a Writ of Quo Warranto directed to Respondent, Kenneth Detzner, in his capacity as Florida Secretary of State, and alleges as follows:

I. BASIS FOR INVOKING JURISDICTION

This Court has authority to issue a Writ of Quo Warranto under Article V, Section 3(b)(8), Florida Constitution, and Rule 9.030(a)(3), Florida Rules of Appellate Procedure. This Petition is properly filed as an original action in this Court, because Respondent is a state officer whom Petitioner claims is exercising his executive powers contrary to the Florida Constitution and Florida Law, specifically the Florida Election Code,[1] Pursuant to Article V, section 3(b)(7),

[1] The Florida Election Code is comprised of Chapters 97-107 of the Florida Statutes. All statutes to which Petitioner refers are 2012 edition.

Florida Constitution, this Court may "issue . . . all writs necessary to the complete exercise of its jurisdiction" and, pursuant to Article V, section 3(b)(8), this Court may "issue writs of . . . quo warranto to state officers and state agencies." Fla. R. App. P. 9.030(a)(3). The Secretary of State is a state officer pursuant to Article IV, section 6, Florida Constitution. The Department of State is a state agency and the Secretary of State is the head of the Department of State. Petitioner contends Respondent has acted outside his executive authority by: determining that R. Fred Lewis, Barbara J. Pariente, and Peggy A. Quince (collectively, "Justices"), the three Justices scheduled for merit retention election in 2012 , qualified for placement on the 2012 general election ballot for merit retention;[2] certifying their names and merit retention questions for appearance on the 2012 general election ballot for merit retention; and, authorizing their names and merit retention questions to be printed on the 2012 general election ballot for merit retention. Furthermore, Respondent exceeded his executive authority when he indicated an intention to authorize the tabulation of the votes cast in the general election on November 6, 2012, in response to the ballot retention questions regarding the Justices' election by merit retention, and to certify the election results of each of the three Justices.

[2] Article V, Section 10(a) provides that when a justice or judge qualifies for retention, a question shall be placed on the general election ballot to read substantially as follows: "Shall Justice (or Judge) (name of justice or judge) of the (name of the court) be retained in office?"

As this Court has held, an original jurisdiction proceeding is appropriate when "the functions of government would be adversely affected absent an immediate determination by this Court," where there are no material facts at issue and where the constitutional issue would ultimately reach the Supreme Court. Chiles v. Phelps, 714 So. 2d 453, 457 n.6 (Fla. 1988)) (citing Dickinson v. Stone, 351 So. 2d 268 (Fla. 1971)). See e.g. Allen v. Butterworth, 756 So. 2d 52, 55 (Fla. 2000); Moreau v. Lewis, 648 So. 2d 124, 125-26 n.4 (Fla. 1995). This Court has held that quo warranto is an appropriate means of enforcing a public right of having the Governor or other public officials exercise their powers in a constitutional manner. See Whiley v. Scott, 79 So. 3d 702, 705 (2011); Fla. House of Reps. v. Crist, 999 So. 2d 601, 607 (Fla. 2008); Martinez v. Martinez, 545 So. 2d 1338, 1339 n.3 (Fla. 1989). See also State ex. re. Butterworth v. Kenny, 714 So. 2d 404, 406 (Fla. 1998)(examining the authority of capital collateral counsel to represent inmates in post-conviction proceedings); State ex re. Merrill v. Gerow, 85 So. 144, 145 (1020) (quo warranto is a proper means to challenge a public officer's attempt to exercise some right or privilege derived from the State); cf. Phelps, 714 So. 2d at 456 ("members of the public seeking enforcement of a public right may obtain relief through a quo warranto"). These criteria for quo warranto relief are met by Petitioner.

II. PARTIES

A. Denny Jones.

Petitioner Denny Jones is a citizen and taxpayer of the State of Florida. Petitioner resides at 3473 Scenic Highway 98, Destin, Florida, 32541-4725. As a citizen and taxpayer, he has standing to request issuance of a writ of quo warranto in order to enforce the public right to have Secretary Detzner exercise his powers in a manner that does not violate the Florida Constitution and Florida Law. Martinez v. Martinez, 545 So. 2d 1338, 1339 & n.3 (Fla. 1989). In quo warranto proceedings seeking the enforcement of a public right, the people are the real party in the action and the person bringing the suit "need not show that he has any real or personal interest in it." State ex. Rel Pooser v. Wester, 170 So. 736, 737 (Fla. 1936). Individual members of the public have standing as citizens and taxpayers in a quo warranto proceeding. Chiles v. Phelps, 714 So. 2d 453, 456 (Fla. 1998).

B. Secretary of State Kenneth Detzner.

Respondent Kenneth Detzner is the Secretary of State for the State of Florida. Under Article IV, Section 6 of the Florida Constitution, the Secretary of State is a state officer. As Secretary of State, Detzner is the chief election officer for the State of Florida and is responsible for general supervision and administration of the elections laws. §§ 15.13 and 97.012, Fla. Stat. Specifically,

he is responsible for determining whether judicial candidates have qualified for the 2012 general election ballot for merit retention, for certifying the candidates and their merit retention questions for placement on the 2012 general election ballot, for authorizing the printing of the names and retention questions of judicial candidates on the 2012 general election ballot, for administering tabulation of votes case, and for certifying the election results within 14 days following the election, by and through the Florida Election Canvassing Commission. §§105.031, 105.041, 105.051, 102.0711 and 102.121, Fla. Stat

C. Justices R. Fred Lewis, Barbara J. Pariente and Peggy A. Quince are not interested parties to this action.

Pursuant to this Court's decision in State ex. rel. Taylor v. Gray, 25 So. 2d 492 (Fla. 1946), candidates who have never lawfully qualified are not interested parties in an action regarding failure by the state officer to adhere to the Florida Constitution or Florida law in making a determination of qualification.

> While relief by way of mandamus may be withheld by a court in a proper case where the interest of third persons not before the court are involved, such course will never be pursued unless it appear by the pleadings that interests of such persons are real and substantial, not unreal and imaginary. State ex. Rel. McKinnon v. Wolfe, 58 Fla. 523, 50 So. 511; Bigham v. State ex rel. Ocala Brick & Tile Co., 115 Fla. 852, 156 So. 246; State ex rel. Harrington v. City of Pompano, 136 Fla. 730, 188 So. 610. As previously stated, the alternative writ alleges that the said Henry M. Jones has not paid his qualifying fee within the time required by law, and yet despite that fact the Secretary of State intends to certify him to the County Commissioners of Dade County as being in all respects a duly qualified candidate. If these allegations are true, then there is at least a prima facie showing that

> the said Henry M. Jones has never duly qualified as a candidate and hence does not have such a substantial interest in the controversy as to entitle him to be brought into the proceedings.

Id. at 494-95 (emphasis added). Like Henry M. Jones in State ex. rel. Taylor, 25 So. 2d 492, Justices R. Fred Lewis, Barbara J. Pariente, and Peggy A. Quince have each failed to meet the qualification requirements under Section 105.031, Florida Statutes, as shown below, yet the Secretary of State has certified them as having qualified to appear and has authorized their merit retention questions to be printed on the 2012 general election ballot for merit retention. Because of the prima facie showing herein by Petitioner, the Justices are not interested parties in a quo warranto action directed at the Secretary of State to answer under what authority he has determined, contrary to the mandates of Article V, Section 10(a), Florida Constitution, and Section 105.031, Florida Statutes, that they qualified, under the holding of State ex. rel. Taylor.

III. STATEMENT OF FACTS ON WHICH PETITIONER RELIES

Justices of the Florida Supreme Court are the highest judicial officers of the State. They are subject to constitutionally mandated merit retention elections every six years. Art. V, §§ 3 and 10, Fla. Const. Under the Florida Constitution, unless Justices satisfy the requisite qualification and eligibility requirements to appear on the general election ballot for merit retention, vacancies for their seats will be created. Art. V, § 10(a), Fla. Const. Whenever vacancies occur, Justices of

the Florida Supreme Court are appointed by the Governor from a list of from three to six nominees submitted to the Governor by the Judicial Nominating Commission. Art. V, § 11, Fla. Const. Merit retention and its provisions for appointment by nomination from the Judicial Nominating Commission ("JNC") were adopted in 1976 through a constitutional referendum. Art. V, § 10, Fla. Const.

In 2012, the aforementioned Justices of the Florida Supreme Court are serving the last year of their six year terms and as such are subject to merit retention in the November 6 general election. There is no dispute that each of the three Justices meet the constitutional eligibility requirements announced in Article V, Section 8, Florida Constitution. Each of them, however, failed to meet the mandatory qualification requirements for placement on the 2012 general election ballot for merit retention. Art. V, § 10(a), Fla. Const.; § 105.031, Fla. Stat. As a result, the Secretary of State has acted in derogation of the law by determining each of the three Justices qualified to appear on the 2012 general election ballot for merit retention, by certifying the name and retention question for each of the three Justices to appear on 2012 general election ballot, by authorizing the printing of the name and retention question of each of the three Justices on the 2012 general election ballot, and by demonstrating an intention to tabulate the votes cast on November 6, 2012, in response to each of the three Justices' merit retention

question and to certify the results. §§ 105.031, 105.041, and 105.051, Fla. Stat.

As the head of the Department of State, a member of the Governor's cabinet and a State officer, the Secretary of State is subject to a writ of quo warranto from this Court. Art. IV, § 6, Fla. Const. Pursuant to Section 15.13, Florida Statutes, the Secretary of State is responsible for general administration and enforcement of Florida's election laws. Section 97.012, Florida Statutes, also identifies him as the chief election officer, holding myriad responsibilities appurtenant to that office, including the duty to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws."

If any Justice decides he or she wishes to seek retention, that Justice must meet the qualification and eligibility requirements mandated by Article V, Sections 8 and 10, Florida Constitution, and must qualify under Chapter 105, Florida Statutes, the chapter of the Florida Election Code applicable to judicial merit retention elections. Pursuant to Section 105.031, Florida Statutes, to be qualified for placement on the 2012 general election ballot for merit retention, in the most recent qualification period, all judicial candidates were required to file certain items of documentation ("candidate qualifying documents") with the Secretary of State during the qualifying period between noon on Monday, April 16, 2012, and noon on Friday, April 20, 2012. § 105.031(1), Fla. Stat. See also Florida Department of State, Division of Elections, 2012 Qualifying Information,

http://election.dos.state.fl.us/candidate/Qualifying-info.shtml (last visited on November 5, 2012);[3] App. 1-2. Notwithstanding the statutory qualifying dates referenced above, the Secretary of State may, by law, accept and hold qualifying papers submitted up to fourteen (14) days prior to the beginning of the qualifying period, to be filed and processed during the qualifying period with all other general election candidates' qualifying campaign documents (hereinafter referred to as "pre-qualifying period."); § 105.031(6), Fla. Stat.; App. 130-33. For the 2012 calendar year, the Secretary was authorized by law to begin accepting candidates' qualifying campaign documents as early as Monday, April 2, 2012. § 105.031(6), Fla. Stat.; see Florida Department of State, Division of Elections, 2012 Qualifying Information, http://election.dos.state.fl.us/ candidate/Qualifying-info.shtml (last visited on October 31, 2012); App. 1-2.

The candidate qualifying documents required to be submitted to the Secretary by each Justice candidate before the end of the qualifying period in order for the Justices to qualify for placement on the 2012 general election ballot for merit retention are defined in Section 105.031(5)(a), Florida Statutes. Each of the three Justices were constrained to comply with Section 105.031(5)(a), Florida

[3] Although filings by judicial candidates are submitted to the Department of State, Division of Elections, for ease of reference and since the Secretary is the head of the Department of State, "Secretary of State" or "Secretary" will be utilized throughout the Petition to refer to the Secretary of State, Department of State or Division of Elections.

Statutes, by submitting those required documents between noon on April 16, 2012, and noon on April 20, 2012, subject to the provisions in Section 105.031(6), Florida Statutes which expand the time during which qualifying campaign documents can be submitted to and held by the Secretary of State prior to the start of qualifying. As shown, Section 105.031(6), Florida Statutes, expanded those dates to include April 2 through April 16, 2012.

Each of the three Justices identified in this Petition delayed the preparation, notarization, and submitting of their required candidate qualifying documents until minutes before the termination of the five day qualifying period, as evidenced by their sworn testimony and the file stamps on their respective qualifying campaign documents. See App. 3-91. The file stamp on documents filed April 20, 2012, by Peggy A. Quince is 11:18 a.m.; R. Fred Lewis' file stamp for documents filed on April 20, 2012, is 11:31 a.m.; Barbara J. Pariente's file stamp for documents filed on April 20, 2012, is 11:54 a.m. Id. Significantly, it is undisputed that, but for an employee of the Secretary of State contacting the Florida Supreme Court during working hours, at approximately 10:30 a.m. on April 20, 2012, to notify the Justices that their candidate qualifying documents had not been filed, the qualifying period would have expired without the Justices submitting documents, since, pursuant to the Justices' official duties, they were scheduled to hear oral arguments during that eleventh-hour in which their campaign filings occurred. Id.;

App. 226-329.

As discussed, infra, the Justices' failure to meet the mandatory statutory qualification requirements should have resulted in the Secretary of State declaring each of the three Justices "not qualified" for placement on the 2012 general election ballot, after the close of the qualifying period. The Secretary of State violated his constitutional and official duties when he determined each of the three Justices "qualified" to appear on the ballot, because each of them was "not qualified" at the time of filing their documents, as shown by the following:

1. In violation of Section 105.031(5)(a), Florida Statutes, each of the three Justices failed to submit, during either the pre-qualifying period or qualifying period, the "completed form for the appointment of campaign treasurer and designation of campaign depository for candidate, required for all judicial candidates, as provided by [Section 106.021, Florida Statutes]."[4] (App. 3-91);

2. Justice Pariente failed to file required documentation as part of

[4] Each of the three Justices also failed to adhere to the requirements of Section 105.031(5)(a)4, Florida Statutes, by failing to submit the "statement of candidate for judicial office" "within 10 days after filing the appointment of campaign treasurer and designation of campaign depository," although this item is not considered a "qualifying item." Nonetheless, the violation of Section 105.031(5)(a)4, Florida Statutes, if it occurs no less than ten (10) days after the qualifying period ends, is a separate basis upon which the Secretary should have reversed the "qualified" determination regarding the Justices' placement on the 2012 general election ballot to "not qualified."

the mandatory full and public disclosure of financial interests pursuant to Article II, Section 8, Florida Constitution, in violation of Section 105.031(5)(a)(5), Florida Statutes.[5] (App. 17-81);

3. Verified documents submitted by Justices' Lewis and Pariente after the close of the qualifying period raised serious questions as to whether the oath accompanying their originally submitted full and public disclosure of financial interests violated Section § 105.031(5)(a)(5), Florida Statutes or other Florida laws. (App. 3-81); and,

4. In violation of the mandatory preconditions set out in Section 105.031(5(b), Florida Statutes, for contact of judicial candidates by the Secretary of State on April 20, 2012, regarding qualifying document deficiencies, which can only be initiated with candidates who submitted qualifying documents during the statutory pre-qualifying period or prior to the last day of the qualifying period, the Secretary contacted the Justices to inform them of their qualifying deficiencies and deadline, even though on that date none of the

[5] In the event the Secretary argues that Section 112.3145, Florida Statutes, controls the content of the full and public disclosure of financial interests for purposes of the Justices' qualifying, the missing information and documentation violates the requirements of Section 112.3145, Florida Statutes, as well, and requires the same result – a determination by the Secretary that the Justices have "not qualified" for placement on the 2012 general ballot.

Justices had qualifying documents on file with the Secretary in conformance with the requirements of Section 105.031, Florida Statutes. (App. 226-329).

IV. NATURE OF RELIEF SOUGHT

Petitioner seeks issuance of a writ of quo warranto to require the Secretary of State to demonstrate the authority for violating his constitutional and official duty to identify and certify as qualified only those judicial retention candidates who have met the qualification requirements under Article V, Section 10, Florida Constitution, and Section 105.031, Florida Statutes, for appearance on the 2012 general election ballot for merit retention. If the Court finds that no such authority exists, Petitioner contends that the Secretary's decision to qualify each Justice for the 2012 general election ballot for merit retention and to certify each Justice and their merit retention question for appearance on the 2012 general election ballot for merit retention be reversed. Further, Petitioner contends that the Secretary's apparent intention to tabulate the votes cast regarding retention of each Justice and their merit retention question in the 2012 general election, and to certify the results of the election on each Justice and their merit retention question on the 2012 general election must be restrained, prospectively if required. If the Court finds no authority exists for the Secretary of State's actions to qualify the candidates, to certify them for appearance on the ballot, or tabulate the votes in their respective

elections, Petitioner seeks a stay, or alternatively, a writ from this Court to prohibit the certification of the election of these Justices by the Secretary of State or any State body or Officer. Should the Court not reach the merits of the issues raised in this Petition prior to the scheduled certification of the elections regarding each of the three Justices, and the Court finds that Petitioner has alleged a prima facie case, Petitioner requests the stay against certification of the election, prospectively.

Quo warranto is an appropriate and adequate remedy in this situation. It is "the proper method to test the exercise of some right or privilege, the peculiar powers of which are derived from the State." Martinez, 545 So. 2d at 1339. Petitioner requests a writ of quo warranto directing the Secretary of State to demonstrate his authority to identify the Justices as qualified when they failed to meet the statutory requirements for qualifying; his authority to refuse to exercise his executive power to disqualify the Justices upon disclosure of verified facts from the candidates themselves calling for reversal of the "qualified" determination; and his authority to assist the Justices in facially meeting the statutory deadline to submit their candidate qualifying documents when the statutory preconditions permitting the Secretary to initiate contact with candidates had not been met. Further, Petitioner requests this Court to direct the Secretary to demonstrate his authority to authorize the tabulation of the votes cast in response to each of the Justices' merit retention questions on the 2012 general election ballot

and to move to have those results certified within fourteen (14) days from the date of the election for such actions, in light of the allegations within this Petition.

Finally, in light of the statutory deadlines to tabulate the votes and certify the elections, Petitioner requests this Court to use its authority under Article V, Section (3)(b)(7), Florida Constitution, and Rule 9.100(h), Florida Rule of Appellate Procedure, to stay the tabulation of votes and certification of the elections of the Justices and issue a show cause order, as the Petition "demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal." Rule 9.100(h), Fla. R. App. P.

V. ARGUMENT

A. Judicial Merit Retention Statutory Qualifying Requirements and Deadline

Section 105.031(5)(a), Florida Statutes, sets out the items that must be filed in order for a judicial candidate to be qualified for placement on the 2012 general election ballot and reads in pertinent part:

> 105.031 **Qualification; filing fee; candidate's oath; items required to be filed.—**
>
> (5) *Items required to be filed.*
>
> (a) In order for a candidate for judicial office or the office of school board member to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. Except for candidates for retention to judicial office, a properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by subsection (3) or, in lieu thereof, the copy of the notice of obtaining ballot position pursuant to s. 105.035. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by subsection (4), which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.

3. The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.[6] In

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[6] Section 106.021(1)(a), Florida Statute, titled, "Campaign treasurers; deputies; primary and secondary depositories," reads in pertinent part:

> (1) (a) …Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office…. No person shall accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to

> addition, each candidate for judicial office, including an incumbent judge, shall file a statement with the qualifying officer, within 10 days after filing the appointment of campaign treasurer and designation of campaign depository, stating that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct. Such statement shall be in substantially the following form:
>
> Statement of Candidate for Judicial Office
> I, (name of candidate) , a judicial candidate, have received, read, and understand the requirements of the Florida Code of Judicial Conduct.
> (Signature of candidate)
> (Date)
>
> 5. The full and public disclosure of financial interests required by s. 8, Art. II of the State Constitution or the statement of financial interests required by s. 112.3145, whichever is applicable. A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

App. 130-33. Moreover, Sections 105.031(1) and (6), Florida Statutes, set the time for qualifying and "pre-qualifying" periods. Sections 105.031(1) and (6) provide:

> (1) *Time of qualifying.* --Except for candidates for judicial office, nonpartisan candidates for multicounty office shall qualify with the Division of Elections of the Department of State and nonpartisan candidates for countywide or less than countywide office shall qualify with the supervisor of elections. Candidates for judicial office other than the office of county court judge shall qualify with the Division of Elections of the Department of State, and candidates for the office of county court judge shall qualify with the supervisor of elections of the county. Candidates for judicial office shall qualify no earlier than noon of the 120th day, and no later than noon of the 116th day, before

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> qualify or with whom such political committee is required to register pursuant to s. 106.03….

App.138-41. (emphasis added).

> the primary election. Candidates for the office of school board member shall qualify no earlier than noon of the 71st day, and no later than noon of the 67th day, before the primary election. Filing shall be on forms provided for that purpose by the Division of Elections and furnished by the appropriate qualifying officer. Any person other than a write-in candidate who qualifies within the time prescribed in this subsection shall be entitled to have his or her name printed on the ballot.
>
> (6) Notwithstanding the qualifying period prescribed in this section, a filing officer may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

Id.

B. The Secretary of State acted in derogation of the law because he determined that each of the three Justices qualified for the 2012 general election ballot for merit retention although each had failed to meet the mandatory qualifying requirements of Section 105.031, Florida Statutes.

1. **Each of the three Justices failed to file required items for qualifying under Section 105.031(5)(a), Florida Statutes, during the pre-qualifying or qualifying period pursuant to Sections 105.031(1) and (6), Florida Statutes.**

Section 105.031(5)(a)(1), Florida Statutes, does not apply to Justices for merit retention. However, the remaining four items in Section 105.031(5)(a), Florida Statutes, are applicable and were required to be filed by each of the three Justices in order to qualify for the 2012 general election for merit retention. On January 12, 2012, each of the three Justices filed an appointment of campaign

treasurer and designation of campaign depository for candidate,[7] statement of candidate for judicial office,[8] and statement of candidate,[9] and statement of candidate for judicial office. Although the Justices submitted the three referenced documents to the Secretary on January 12, 2012, as they were required to do for the purpose of collecting and disbursing campaign funds,[10] they did not file an original completed form for the appointment of campaign treasurer and designation of campaign depository for candidate during either the pre-qualifying or qualifying period, nor did they file within 10 days an original completed statement of candidate for judicial office, as required by Section 105.031(5)(a)4, Florida Statutes. See App. 3-91.

Section 105.031(5)(a)4, Florida Statutes, is plain and unambiguous, and it

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[7] Each of the three Justices used Form DS-DE 9 to provide the referenced information. See generally Rule 1S-2.0001(5)(a), Fla. Admin. C. ("Rulemaking Authority 20.05(1)(e), 20.10(3), 97.012(1), 99.061(10), 103.022 FS. Law Implemented 20.05(1)(b), 99.061, 99.095, 103.022, 105.031(1), 105.035 FS"). See generally discussion of rulemaking and Forms, infra.

[8] Each of the three Justices used Form DS-DE 83 to provide the referenced information. The filing of this Form is not required by Section 105.031, Florida Statutes or Section 106.021, Florida Statutes. See §§ 105.031 and 106.021, Fla. Stat.

[9] Each of the three Justices used Form DS-DE 84 to provide the referenced information. The filing of this particular Form is not required, the statement of candidate for judicial candidate may be submitted by judicial candidates in substantially the form provided in Section 105.031(5)(a)4, Florida Statutes, but Form DS-DE 84 meets the statutory requirements. § 105.031(5)(a)4, Fla. Sta.

[10] Section 106.021(a), Florida Statutes.

requires that during the pre-qualifying period or qualifying period, judicial candidates must submit "the completed form for appointment of campaign treasurer and designation of campaign depository for candidate," and, within ten days of filing the completed appointment document, each judicial candidate must submit a statement of candidate for judicial office.[11] Moreover, the 2012 State Qualifying Handbook published by the Department of State interprets that it is necessary to file the appointment of campaign treasurer and designation of campaign depository for candidate during either the pre-qualifying period or qualifying period, and similarly advises 2012 merit retention candidates seeking to qualify. The section of the 2012 State Qualifying Handbook which is germane to this case is found on pages 10-11 of the Handbook and provides:

> **Qualifying Dates and Location**
>
> Noon, April 16 - Noon, April 20, 2012
>
> Florida Department of State, Division of Elections, R. A Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250
>
> *(Section 105.031, Fla. Stat.)*
>
> Notwithstanding the qualifying dates stated above, the qualifying office may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

[11] Section 105.031(5)(a) does not require judicial candidates to file "a statement of candidate" in order to qualify for placement on the ballot.

(Section 105.031 (6), *Fla. Stat.)*

Qualifying Requirements

The following items must be received by the Division of Elections **no later than noon, April 20, 2012:**

1. Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository. If you do not anticipate collecting or expending funds in connection with your candidacy, this form is still required to be filed; however, the campaign account does not have to be physically opened.

2. Form DS-DE 26,[12] Judicial Office Candidate Oath.

3. Form 6,[13] Full and Public Disclosure of Financial Interests for the

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[12] Form DS-9 and Form DS-DE 26 were incorporated by reference into Rule 1S-2.0001(5)(a)1, Florida Administrative Code. App. 169-191. Code. Rule 1S-2.0001, Florida Administrative Code, sets out requirements for candidate qualifying papers. Rule 1S-2.0001(7), Florida Administrative Code, mandates the use of the Forms incorporated by reference into the Rule after the effective date of the Rule for qualifying (January 1, 2012). Id. The issue of whether the Rule is applicable and the Form is required for judicial candidates seeking to qualify is a question of law. Petitioner's challenge to the sufficiency of the candidate qualifying documents filed by each of the three Justices under the requirements of Section 105.031, Florida Statutes, is neither premised on nor undermined by the application of Rule 1S-2.001, Florida Administrative Code, to judicial candidates.

[13] CE Form 6 was incorporated by reference into Rule 34-8.002(a), Florida Administrative Code. App. 172-73. Rule 34-8.002, Florida Administrative Code, sets out requirements for filing the Form, as the full and public disclosure of financial interests and its effective date is January 1, 2012. Id. The issue of whether the Rule is applicable and the Form is required to for judicial candidates seeking to qualify is a question of law. Petitioner's challenge to the sufficiency of the candidate qualifying documents filed by each of the three Justices under the requirements of Section 105.031, Florida Statutes, is neither premised on nor undermined by the application of Rule 34-8.002, Florida Administrative Code, to judicial candidates.

> year 2011 (and any other forms applicable as identified on Form 6[14]). A public officer who has filed the full and public disclosure or statement of financial interests for the year 2011 with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.
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> 4. Form DS-DE 96, Affidavit of Intention must be filed at the time of qualifying if you anticipate receiving no contributions or making no expenditures in connection with your campaign.
>
> *(Sections 105.031 and 105.08, Fla. Stat.)*

App. 92-109.[15] Since all three of the Justices failed to file the required documents under Section 105.041(5)(a)4, Florida Statutes, during either the pre-qualifying or qualifying period, the Secretary of State should have determined them "not qualified" after the close of the qualifying period.

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[14] Other forms applicable and required as part of CE Form 6 may include, without limitation: federal income tax return, W-2s, schedules and attachments.

[15] The text of the *Handbook* properly reflects that judicial candidates are not permitted to file a copy of the required completed form for the appointment of campaign treasurer and designation of campaign depository for candidate or Form DS-DE 9, if the original Form DS-DE 9 was filed with the Division of Elections. See App. 92-109. The Legislature did not grant to the Secretary the right to institute rulemaking to implement the purpose of Section 105.031, Florida Statutes. As a result, any rulemaking through authority granted under Section 106.022, Florida Statutes, done to implement the purpose of Section 106.021, Florida Statutes, cannot be read to affect any provision in Section 105.031, Florida Statutes, and to read it as doing so would be contrary to the mandate of Section 105.10, Florida Statutes. Additionally, Section 106.021, Florida Statutes, is neither cited as the rulemaking authority nor the law implemented in the Rule with Form DS-DE 9 incorporated by reference. R. 1S-2.001, Fla. Admin. C. Finally, even if the Rule and Form DS-DE 9 are applicable, the filing of the Form outside the pre-qualifying and qualifying periods without refiling an original of the completed Form during either the pre-qualifying or qualifying period is contrary to the mandates of the Rule, if the Form was filed for purposes of qualifying. See fn. 17.

There is no interpretation necessary beyond reading the express language of Sections 105.031 and 106.021, Florida Statutes, because the text is plain and unambiguous. This Court, in Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984), discussed the issue of statutory interpretation and when construction was necessary, finding as follows:

> Florida case law contains a plethora of rules and extrinsic aids to guide courts in their efforts to discern legislative intent from ambiguously worded statutes. However,
>
> > when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.
>
> A.R. Douglass, Inc. v. McR ainey, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931). See also Carson v. Miller, 370 So.2d 10 (Fla. 1979); Ross v. Gore, 48 So.2d 412 (Fla. 1950). It has also been accurately stated that courts of this state are
>
> > without power to construe an unambiguous statute in a way which would extend, modify, or *limit*, its express terms or its *reasonable and obvious implications*. To do so would be an abrogation of legislative power. American Bankers Life Assurance Company of Florida v. Williams, 212 So.2d 777, 778 (Fla. 1st DCA 1968) (emphasis added).

The Auld Court went further and stated that, "a departure from the letter of the statute…'is sanctioned by the courts only when there are cogent reasons for believing that the letter [of the law] does not accurately disclose the [legislative] intent.' State ex rel. Hanbury v. Tunnicliffe, 98 Fla. 731, 735, 124 So. 279, 281

(1929)." Id. (emphasis added). Any reading of Section 105.031, Florida Statures, or Section 106.021, Florida Statutes, other than one which is necessarily derived from the text of the two statutes, is unnecessary, and likewise no interpretation is necessary beyond the plain meaning of the statutes on their face. Id.

It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give effect to all statutory provisions and construe related statutory provisions in harmony with one another. See Young v. Progressive S.E. Ins. Co., 753 So. 2d 80, 84 (Fla. 2000) (quoting from Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992)). Here, Section 105.031(5)(a)4, Florida Statutes, says that "the completed form for the appointment of campaign treasurer and designation of campaign depository for candidate required by [Section 106.021, Florida Statutes" is a mandatory item for qualifying under Section 105.031, Florida Statutes. And, Sections 105.031(1) and (6), Florida Statutes, mandate that all qualifying documents for merit retention listed in §105.031(5)(a) must have original duly acknowledged signatures, except the full and public disclosure of financials interests when certain conditions are met, and all qualifying documents must be submitted to the Secretary of State for filing during either the pre-qualifying or qualifying period. Since each of the three Justices failed to submit the required "completed form for the appointment of campaign treasurer and designation of

campaign depository for candidate," during either the qualifying or pre-qualifying period pursuant to Sections 105.031(1), (5)(a)4 and (6), Florida Statutes, the Secretary was mandated to determine, after the close of the qualifying period, that they had "not qualified" for placement on the general election ballot.

As shown, the Secretary cannot rely on any justification for "interpretation" of the election statutes, because none is required. Nor may the Secretary rely on executive discretion or rulemaking authority, because none is applicable to the statutory duties at issue here. The Secretary's authority to institute rulemaking must be explicitly granted by the Legislature and for Section 105.031, Florida Statutes, the state Legislature has not done so.[16] Fla. Const. Art. II, § 3 (2012);[17] see also Ch. 105, Fla. Stat. Moreover, the Secretary is constrained to resolve conflicts between sections of Chapter 105, Florida Statutes, and any provisions of the Florida Election Code, by Section 105.10, Florida Statutes. Section 105.10, Florida Statutes, states: "[i]f any provision of this chapter is in conflict with any other provision of this code, the provision of this chapter shall prevail." This is a

[16] Section 105.036, Florida Statutes, is the only section of Chapter 105, Florida Statutes, where the Legislature has authorized rulemaking. Had the Legislature intended to grant the Secretary authority for rulemaking to implement the purpose of Section 105.031, Florida Statutes, it would have done so through specific authorization.

[17] Article II, Section 3, Florida Constitution, provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

non-discretionary mandate. As a result, any perceived "conflict" regarding the content of and time for filing all candidate qualifying documents, including the completed form for the appointment of campaign treasurer and designation of campaign depository for candidate with verified signature between any Rule created by the Secretary under his rulemaking authority in Section 106.22, Florida Statutes, or any other statute, and Sections 105.031(1), (5)(a)4, and (6), Florida Statutes, and Section 106.021(a), Florida Statutes, is resolved by Section 105.10, Florida Statutes. [18]

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[18] Chapter 106, Florida Statutes, addresses campaign financing. Petitioner takes no position on the issue of the Justices seeking to finance their candidacies in advance of qualifying, except Petitioner objects to any argument by the Secretary of State that the necessity of filing any forms, including a certificate of active opposition, Forms DS-DE 9, DS-DE 83 or DS-DE 84, as a precondition to receiving contributions or making expenditures, according to Section 106.021(a), Florida Statutes, relieved the Justices from the mandatory qualification requirements identified in Section 105.031, Florida Statutes, including, without limitation, the form of the filings (original or copy), the contents of the filings (e.g. verified signature), and the timing of the filing (during the pre-qualifying and qualifying periods or outside those periods), because that position is contrary to the plain language of Sections 105.031 and 105.10, Florida Statutes.

Further, if the Secretary argues that he is authorized by Rule to set general requirements for candidate qualifying papers pursuant to the authority granted to him by the Legislature in Section 97.012, Florida Statutes, the requirements set by the applicable Rule – Rule IS-2.0001, Florida Administrative Code – have been ignored by the Secretary in his evaluation as to whether the Justices met the qualifying requirements of Section 105.031, Florida Statutes. Rule IS-2.0001(4), Florida Administrative Code, provides:

> [q]ualifying papers shall be deemed filed by the qualifying office upon the date of actual receipt by the qualifying office, except those

"The legislature intended … that only candidates complying with all statutory procedures have their names printed on the ballot." Op. Att'y Gen. Fla. 74-251 (1974). Indeed, it would be wholly illogical for the legislature to have intended that a statutory requirement not be enforced." Id. According to the Secretary, his obligation is to determine whether statutory requirements have been met by candidates attempting to qualify, not to attempt to predict how a court might rule if confronted with varying levels of statutory noncompliance.[19]

> qualifying papers accepted and held during the 14-day period before the beginning of the qualifying period to be processed and filed during the qualifying period pursuant to Section 99.061(8), F.S. The qualifying papers that are received and held during the 14-day period before the beginning of the qualifying period shall not be deemed filed until the beginning of the qualifying period.

App. 169-71. Section 105.031(6) contains the same language regarding the 14-day period before the beginning of qualifying. So, if this Rule is found, as a matter of law, to apply to qualifying documents submitted by judicial retention candidates, the conclusion already reached regarding the time periods in which qualifying documents must be submitted to the Secretary through reading the plain language of Section 105.031(1) and (6), Florida Statutes, that the Justices failed to file the completed form for the appointment of campaign treasurer and designation of campaign depository for candidate within the pre-qualifying or qualifying periods and should have caused the Secretary to determine them "not qualified" is further supported.

[19] The Secretary of State has argued regularly and with success, in the context of partisan candidate qualifying under Section 99.061, Florida Statutes, that "substantial" compliance is inapplicable as an exception to the plain terms of that statute, which has many of the same provisions for qualifying as those applicable to nonpartisan candidates under Section 105.031, Florida Statutes. Moreover, the Secretary has pointed out that the judicially-created doctrine of substantial compliance was overturned by the Florida Legislature in 2011. See Ch. 2011-40, §

Therefore, since Sections 105.031(1) and (6) mandates for all candidate qualifying documents to be filed within the pre-qualifying or qualifying period, the Forms filed by the Justices on January 12, 2012, cannot serve to support the Secretary of State's determination that the Justices lawfully "qualified" during one of those periods, as required. The Secretary was required to determine, after the close of the qualifying period, that the Justices "do not qualify" for appearance on the 2012 general election ballot, and his failure to do so is answerable in quo warranto.

2. The Secretary of State determined Justice Pariente had qualified even though she failed to submit certain required documents in support of her full and public disclosure of financial interests.

Each judicial candidate must submit a full and public disclosure of financial interests as required by Article II, Section 8, Florida Constitution, [20] pursuant to

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14 Laws of Florida. The new statutory language explicitly dictates the particular determinations that must be made in order to certify a candidate as qualified. Id.; § 99.061(7)(c), Fla. Stat. When a candidate fails to comply with the qualifying statute, the Secretary is required to find him "not qualified." App. 124-27. See e.g. Weeks v. Detzner, No. 2012-CA-1858 (Fla. 2d Cir. Ct. July 30, 2012), The Secretary of State's Motion for Summary Judgment; Moon v. Detzner, No. 2102-CA-1811 (Fla. 2d Cir. Ct.), The Division's Motion for Summary Judgment. In this case, the Secretary may not rely on a less stringent standard for candidates qualifying under Section 105.031, Florida Statutes, in light of the mandate of the Legislature in Section 97.012, Florida Statutes, that rulemaking be effectuated so that internal policies and practices reflect consistent interpretations across the Florida Election Code.

[20] Article II, Section 8(i), Florida Constitution, provides:
(i) Schedule -- On the effective date of this amendment and until changed by law:

Section 105.031(5)(a)5,[21] in order to qualify for the 2012 general election ballot. In

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> (1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $ 1,000 and its value together with one of the following:
>
> a. A copy of the person's most recent federal income tax return; or
>
> b. A sworn statement which identifies each separate source and amount of income which exceeds $ 1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.
>
> (2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to subsection (i)(1).

App. 111-12.

[21] The text of Section 105.031, Florida Statutes, requires that a full and public disclosure must be filed as required by, either, Article II, Section 8, Florida Constitution, or Section 112.3145, Florida Statutes, whichever is applicable. The rulemaking authority granted to the Commission on Ethics under Section 112.3144(7), Florida Statutes, and Section 112.322(9), Florida Statutes, does not authorize the Executive Branch, by and through the Commission on Ethics, to pass rules inconsistent with any provision of the Florida Election Code. This is generally understood in rulemaking, but the issue is directly addressed by the Legislature in Section 112.322(9), Florida Statutes.

Section 112.322(9), Florida Statutes, provides, "[t]he commission [on ethics] is authorized to make such rules not inconsistent with law as are necessary to carry out the duties and authority conferred upon the commission by s. 8, Art. II of the State Constitution or by this part…." (Emphasis added). Moreover, Rule 34-8.002(a), Florida Administrative Code, provides: "[a] candidate for elective office specified in Rule 34-8.003, F.A.C., or otherwise specified by law must file this information prior to or at the time he or she qualifies.", and (2) "…[e]xcept for disclosures as part of a candidate qualifying papers, full and public disclosure under this rule must be filed no later than 5:00 p.m. on the due date." The Commission's authority for creating CE Form 6 also relies on Section 112.322(9),

support of the required full and public disclosure of financial interests, when a candidate utilizes CE Form 6, the candidate has the option to respond to the income query by making a choice, as follows:

> You may EITHER (1) file a complete copy of your 2011 federal income tax return, including all W-2's, schedules, and attachments, OR (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D. below.

App. 23-77. Justice Pariente opted to use CE Form 6 and selected, as follows: "I elect to file a copy of my 2011federal income tax return and all W2's, schedules and attachments. [If you check this box and attach a copy of your 2011 tax return, you need not complete the remainder of Part D.]." Id. (emphasis added). Justice Pariente failed, however, to include any W-2's along with her 2011 federal income tax return when she submitted her campaign documents on April 20, 2012. Id. Moreover, if it was an option to fill in the remainder of Part D – the "Income" section of CE Form 6 – though the text of the Form seems to indicate it is not an option, she likewise failed to complete any of the remainder of Part D. As a

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Florida Statutes." In light of the specific preclusion in Section 112.322(9), Florida Statutes, the provision relied on by the Commission on Ethics in creating CE Form 6, and the language of Section 105.031, Florida Statutes, no legitimate argument can be made that would permit Justices Lewis or Pariente to circumvent the content and timing requirements for the full and public disclosure of financial interests as a mandatory item for qualifying through the submission of either the Justice Lewis-created "Amended" CE Form 6 created by Justice Lewis independently (App. 13-16.) or the CE Form 6X created by the Commission on Ethics.

result, Justice Pariente did not fulfill the requisite statutory qualification requirements under Section 105.031(5), Florida Statutes. This deficiency was clear and facially observable by the Secretary and should have resulted in a "not qualified" determination at the close of the qualifying period or decertification of the "qualified" determination after Justice Pariente submitted CE Form 6X on June 7, 2012, discussed more fully infra. The Secretary's violation of and failure to exercise his duties under the Florida Election Code applicable to Justice Pariente's qualification for merit retention is answerable in quo warranto.[22]

3. Verified documents submitted by Justices Lewis and Pariente, in their capacity as candidates, raised facial issues regarding whether their original candidate qualifying documents were void *ab initio*.

On April 27, 2012, Justice Lewis submitted CE Form 6, on which he typed at the top of the Form "Amended," ostensibly to substitute for the full and public disclosure of financial interests required under Article II, Section 8, Florida Constitution, that he originally submitted on April 20, 2012, for qualifying pursuant to Section 105.031(5)(a)(5), Florida Statutes. App. 13-16. The substitutions to his disclosures in his original CE Form 6 in Justice Lewis' post-

[22] If this Court determines, as a matter of law, that the precedent on the binding nature of rulemaking and Forms created during authorized rulemaking to candidates required to file such forms for qualifying or for any other statutory purpose, the Justice Quince's facially incomplete Form DS-DE 26 submitted on April 20, 2012 provides another basis for the Secretary of State to have determined Justice Quince "not qualified." See App. 82-91.

deadline “Amended” Form are as follows:

- Part A – Net Worth
  - Substituted by increasing from $3,079,00 to $3,305,810.72

- Part B – Income
  - Substituted an account location from Wakulla Bank to Centennial Bank for $4,441.70 balance
  - Substituted Subtotal by decreasing from $2,943,546.65 to $2,942,867.69
  - Substituted IRA Account value at Centennial Bank by increasing from $236,323.08 to $245,323.08 .
  - Substituted IRA Account Subtotal by decreasing from $317,981.89 to $316,981.89
  - Substituted Life Insurance value by decreasing from $146,957.36 to $146,057.36.

- Part C – Liabilities
  - Substituted liabilities by decreasing from $118,678.73 to $105,360.57

- Part D – Income
  - Substituted two account from Wakulla Bank to Centennial Bank
  - Substituted Subtotal by decreasing from $160,505.00 to $158,819.76.
  - Substituted Total Assets by increasing from $3,287,888.00 to $3,411,171.29.
  - Substituted Total Liabilities by decreasing from $118,678.73 to $105,360.57.
  - Substituted Net Worth by increasing from $3,079,000.00 to $3,305,810.72.

App. . Similarly, Justice Pariente submitted CE Form 6X on June 7, 2012, evidently in an effort to provide information (source and amount of W-2 income) which had been missing from the original CE Form 6 she submitted in the final

minutes before the qualifying deadline, and, like Justice Lewis, to substitute or replace inaccurate information that had been provided in that original last-minute Form, as discussed, supra. The "corrections" to her CE Form 6 are as follows:

- Part A – Net Worth
  - Substituted to change the net worth date from December, 2011 to December 31, 2012.
  - Substituted Net Worth by increasing from $3,295,785 to $3,574,341.

- Part B – Assets
  - Substituted aggregate value of household items increasing from $200,000 to $275,007.
  - Substituted asset values by increasing from $3,295,785 to $3,299,335.
  - Substituted all cash accounts
    - Substituted Fidelity Investments account by adding it and inserting the $16,474
    - Substituted Enterprise Bank and Trust account by moving from investment account to cash account and increasing the value from $118,000 to $129,762.
    - Substituted United Nation Bank account by increasing from $20,000 to $10,000.
  - Substituted investment accounts
    - Substituted Enterprise Bank and Trust by moving to cash accounts.
    - Substituted Fidelity Investments by decreasing from $785,434 to $768,961.
  - Substituted pension/retirement accounts
    - Substituted Fidelity Investments by increasing from $623,892, to $623,893.
    - Substituted Enterprise Bank & Trust by increasing from $136,464 to $136,880.
  - Substituted limited partnership interests value by increasing from $10,996 to $12,364.
  - Substituted total assets valued at over $1,000 by increasing from $3,295,785 to $3,299,334.

- Part D – Income
    - Inserted $180,481 in place of a blank on the previous CE Form 6.

App. 78-91. Justice Lewis and Justice Pariente each made twelve substantive "amendments" to information that was required prior to qualifying, through their respective post-deadline submissions.

Post-deadline substitution of required information through the filing of inaccurate "place-holders" during the statutory qualifying period is impermissible, however, under Section 105.031, Florida Statutes. See also n.11, infra. According to Section 105.031, Florida Statutes, all qualifying documents must be submitted during the pre-qualifying or qualifying period to support qualification. See State ex rel. Vining v. Gray 17 So. 2d 228, 230 (Fla. 1944). The submission by Justice Lewis of his "Amended" CE Form 6 strongly indicates that the original Form 6 filed at 11:31 a.m. on April 20, 2012, did not meet the applicable constitutional and statutory requirements to support qualifying. Art. II, § 8, Fla. Const.; § 112.3145, Fla. Stat; § 105.031, Fla. Stat. Likewise, Justice Pariente's submission of her Form 6X strongly indicates that the original Form 6 filed at 11:54 a.m. on April 20, 2012, did not meet the applicable constitutional and statutory requirements to support qualifying. Id. In fact, the submission by Justice Pariente of her Form 6X goes even further because, by the subsequent verified submission, she proved that information constitutionally and statutorily required had not been provided during

the qualifying period. See discussion in Section V.B.2. Deficiencies in qualifying cannot be corrected, unless they are corrected prior to the end of qualifying. State ex. rel. Taylor, 25 So. 2d at 496. To illustrate, during this same qualifying period, a judicial candidate in Lee County, Florida was determined by the Secretary to be "not qualified" for what is arguably a dramatically less egregious statutory deficiency. App. 175-202. Judge Lee Ann Schreiber filed all of her candidate qualifying documents and fee on April 4, 2012, only two days into the pre-qualifying period and 12 days in advance of the start of qualifying. Id. . She was not called by the Secretary prior to the end of the qualifying period, although she met the statutory preconditions for contact and assistance from the Secretary under Section 105.031(5)(b), Florida Statutes. Id. Instead, she was notified of the deficiency by a letter from the Secretary dated May 24, 2012, thirty-four days after the qualifying period had ended. Id. Judge Schreiber's deficiency, according to the Secretary, was that she underpaid her qualifying fee by $9.00. Id. Apparently, Judge Schreiber transposed the last two dollar figures on her fee check (she wrote the check for $5,678.12, instead of $5,687.12. Id. Judge Schreiber could not substitute her underpayment with a full payment after the close of the qualifying period nor was she given the option to do so by the Secretary because it would violate the clear and unambiguous language of Section 105.031, Florida Statutes. See also State ex. rel. Taylor, 25 So. 2d at 496; State ex rel. Vining v. Gray, 17 So.

2d at 230.[23] Treating the documents submitted by Justices Lewis and Pariente differently is not only fundamentally unfair, it is a violation of Section 105.031, Florida Statutes.

The Secretary of State may not rely on CE Form 6X as an additional requirement for qualifying promulgated through administrative "rulemaking," for the purpose of amending the full and public disclosure of financial interests, pursuant to Section 112.3145(9).[24] It is unnecessary for Petitioner to address or dispute whether rulemaking was authorized by the Legislature to facilitate amending the full and public disclosure of financial interests by candidates and public officials under Section 112.3145, Florida Statutes, or to address or dispute that CE Form 6X was properly created during the rulemaking process to facilitate

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[23] Another judicial candidate, Nancy Gaglio, was determined to "not qualify" because her candidate qualifying documents, though otherwise appearing complete, were stamp filed at 12:19 p.m. on April 20, 2012, nineteen minutes after the end of the qualifying period. App. 202-25.

[24] Section 112.3145(9), Florida Statutes, "The commission shall adopt rules and forms specifying how a state officer, local officer, or specified state employee may amend his or her statement of financial interests to report information that was not included on the form as originally filed. If the amendment is the subject of a complaint filed under this part, the commission and the proper disciplinary official or body shall consider as a mitigating factor when considering appropriate disciplinary action the fact that the amendment was filed before any complaint or other inquiry or proceeding, while recognizing that the public was deprived of access to information to which it was entitled.

the requirements of Section 112.3145, Florida Statutes, for two reasons.[25] First, for separation of powers reasons, Article II, Section 8, Florida Constitution, controls what information is required from the Justices for full and public disclosure of financial interests for purposes of qualifying under Section 105.031, Florida Statutes, not Section 112.3145, Florida Statutes. Second, even if the Justices used Form 6 created by the Secretary through its rulemaking to implement Section 112.3145, Florida Statutes, and Article II, Section, Florida Constitution,[26] to the extent that any text or interpretation of text in Section 112.3145, Florida Statutes, or instructions applicable to CE Form 6 by Rule is contrary to the requirements for judicial candidates to qualify pursuant to Section 105.031, Florida Statutes, however, they are improper and overridden by Section 105.031, Florida Statutes, as mandated under Section 105.10, Florida Statutes. See supra. Even if the rulemaking was authorized and the CE Form 6X was properly created, neither the rulemaking nor the Form can create an exception or modify what is required for judicial candidates to qualify under Section 105.031, Florida Statutes. Id. Thus,

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[25] Rulemaking authority for CE Form 6X in Rule 34-8.009, Florida Administrative Code, is identified as Sections 112.3144(6), (7), 112.3147, 112.322(9), Florida Statutes, and the law implemented is Section 112.3144(7), Florida Statutes, not Article II, Section 8, Florida Constitution.

[26] Rulemaking authority for CE Form 6 in Rule 34-8.002, Florida Administrative Code, is identified as Article II, Section 8, Florida Constitution, Sections 112.3144, 112.3147, 112.322(9), Florida Statutes, and the laws implemented are Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

the only reading giving full effect to both statutes, if Section 112.3145, Florida Statutes, applies to judicial candidates, is that the duty and right to amend the full and public disclosure of financial interests under Section 112.3145, Florida Statutes, is suspended during qualifying by judicial candidates, *i.e.* the constitutionally required full and public disclosure of financial interested under Article II, Section 8, Florida Constitution, like statutorily required items submitted for qualifying, must be complete and submitted prior to the end of qualifying.[27] Any other reading of the applicable Statutes and Rules would give no effect to Section 105.031(5)(a)5, Florida Statutes, and such an interpretation would be in direct violation of Section 105.10. Florida Statutes, mandating that "[i]f any provision of this chapter [Chapter 105] is in conflict with any other provision of this code [Florida Election Code], the provision of this chapter shall prevail. § 105.10, Fla. Stat.

According to the Secretary, his obligation is to determine whether statutory requirements have been met by candidates attempting to qualify, not to attempt to predict how a court might rule if confronted with varying levels of statutory noncompliance. As a result, the Secretary of State is required to reject the efforts

[27] Section 112.3145(8), Florida Statutes, "A public officer who has filed a disclosure for any calendar or fiscal year shall not be required to file a second disclosure for the same year or any part thereof, notwithstanding any requirement of this act, except that any public officer who qualifies as a candidate for public office shall file a copy of the disclosure with the officer before whom he or she qualifies as a candidate at the time of qualification."

by Justices Lewis and Pariente to substantially replace their full and public disclosures of financial interests with new forms and information after the qualifying deadline, and he should reverse the "qualified" determination for Justices Lewis and Pariente, as well, based on that information.

Even if the Secretary is only required to reject the "Amended" CE Form 6 submitted by Justice Lewis and the CE Form 6X submitted by Justice Pariente for the purposes for which the Justices submitted them, – i.e., replacing information in their original filings – the Secretary must not ignore the deficiencies in the original candidate qualifying documents submitted by those two Justices, as brought to his attention by the Justices, themselves. Clearly, the submission by Justice Lewis of his "Amended" CE Form 6 and the submission by Justice Pariente of CE Form 6X informs the Secretary of State of apparent deficiencies in the "original" CE Forms 6 submitted by both Justices in support of qualifying. Such information must not be ignored by the Secretary. §§ 15.13, 97.012 and 105.031, Fla. Stat. Further, whether the Secretary has only a ministerial duty to accept judicial candidate qualifying documents and has no authority to inquire into the accuracy of the documents, is immaterial to a circumstance where, as here, the judicial candidate himself informs the Secretary of a deficiency in his originally-filed qualifying

documents.[28] For example, if the Secretary did not notice that a judicial candidate underpaid his qualifying fee, but after the end of qualifying, the candidate provided a replacement check for the full amount of the qualifying fee, the Secretary is required to disqualify the candidate because, at the end of qualifying, the entire amount of the fee had not been paid. § 105.031(5)(a)1, Florida Statutes. Likewise, if the Secretary did not notice that a judicial candidate had submitted a copy of the judicial loyalty oath, Form DS-DE 26, instead of an original, as required, and the candidate after the end of qualifying transmitted the original to the Secretary, the Secretary is required to disqualify the candidate. § 105.031(5)(a)2, Fla. Stat.; see also IS-2.0001(3)(a), Fla. Admin. C.

Per the Secretary, he is without authority to assess relative fulfillment of the

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[28] The Secretary has regularly announced that his duty is a ministerial one, but that position is supported only in Section 99.061(7)(c), Florida Statutes, for purposes of determining whether partisan candidates are qualified. There is no similar restriction in Section 105.031, Florida Statutes. Certainly, if all of the provisions related to administrative or judicial review of the sufficiency of candidates' statutory qualifications elsewhere in the election code were intended to apply to merit retention election candidates, those provisions could have been included in Section 105.031, Florida Statutes. "There is a presumption that the legislature, in enacting a statute, acted with full knowledge of existing statutes relating to the same subject." Tamiami Trail Tours, Inc. v. Lee, 142 Fla. 68, 72 (1940).

It should not be presumed an accident that the implementing legislation of Florida Constitution article V, section 10, unlike comparable statutes applicable to partisan election candidates, does not relegate the Secretary of State to a ministerial function of checking papers for "facial" defects nor afford him authority to augment or lessen requirements by rule.

statutory requirements by assigning degrees of "substantial compliance" with the qualification statutes, as he has argued in many cases. It is the same here: the Justices have constructively informed the Secretary of the material deficiencies on each of their original CE Forms 6. As a result, the Secretary of State is required to take action to either disqualify Justices Lewis and Pariente from the 2012 general election ballot for merit retention or seek a judicial determination as to whether the documents support them qualifying under Section 105.031, Florida Statutes, in light of the subsequent filings by both candidates. For the Secretary of State to ignore verified information submitted by the candidates themselves that raises questions as to both the validity of the original attestation submitted and the substituted financial information is an abrogation of his duty to administer the election laws of Florida, §§ 15.13 and 97.012, Fla. Stat., and he should be made to answer under what authority he is permitted to do so.

4. The Secretary of State affirmatively made contact with the Justices to inform them that they had not submitted the necessary documentation to qualify, even though neither of the two pre-conditions for such communication was met.

The Secretary of State is not permitted to contact candidates during the qualifying period regarding deficiencies in their qualifying documents unless certain conditions precedent are met. § 105.031(5)(b), Fla. Stat. Section 105.031(5)(b) provides: "If the filing officer receives qualifying papers that do not include all items as required by paragraph [§105.031](a) prior to the last day of

qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying." Had the Secretary of State adhered to the provisions of Section 105.031(5)(b), Florida Statutes, the issues of law raised herein by Petitioner would not have arisen.

The entire controversy regarding the lawful qualifying of each of the three Justices emanates from § 105.031(5)(b), Fla. Stat. because, but for the actions of the Secretary of State in contacting the Justices without lawful authority to do so, the time for qualifying would almost certainly have lapsed, since the deadline occurred while the Justices were scheduled to hear oral argument in the Legislation Reapportionment case, *In Re: Joint Resolution of Legislative Apportionment case,* No. SC12-460. App. 227-28. In fact, the Florida Supreme Court, including Justices Lewis, Pariente, and Quince, issued an order on April 13, 2012, for oral argument in that case, and scheduled the argument, to run from 10:00 a.m. to 12:00 p.m. on April 20, 2012. *Id.* It is undisputed that as of 11:00 a.m. on April 20, 2012, oral arguments were underway as scheduled, and none of the three Justices was mindful of the deadline for qualifying or of the fact that candidate qualifying documents were due from them to the Secretary of State by noon on that day. [29]

[29] A Public Records Requests was submitted to the Secretary of State on September 13, 2012, requesting:

See App. 226-329.[30]

Although each of the three Justices had filed an appointment of campaign treasurer and designation of campaign depository for candidate on January 12, 2012, each of the them failed to file any of the mandatory candidate qualifying documents within the pre-qualifying or qualifying periods, prior to 11:00 a.m. on April 20, 2012, the last day of qualifying. See supra. The plain text of Section 105.031, Florida Statutes, is understood to reference the pre-qualifying period and qualifying period, exclusively, and addresses only activities transpiring and documents submitted during these periods. Incorporating by reference the

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> … a copy of any reports, communications or information associated with personnel of the Department of State, Division of Elections making contact on April 20, 2012 with the campaigns of Justices Lewis, Pariente and Quice, the Justices themselves, or any person associated with the campaigns of the Justices. On this issue, we seek the identity, position and contact information for the person making the contact, as well as any reports, communications or information created, received or otherwise in the possession of the Secretary of State or Department of State, Division of Elections about the occurrences on April 20, 2012 and any follow-up on the issue of the contact initiated by the Division of Elections.

The Secretary did not respond until October 22, 2012, and only after a threat of filing a complaint. The response was "the Department of State has no responsive documents."

[30] See Transcripts of sworn testimony from Elizabeth Goodner, State Courts Administrator for the State of Florida; Thomas Hall, Clerk of Court for the Florida Supreme Court; Brenda Williams, Judicial Assistant to Justice Barbara J. Pariente; Gail Posey, Staff Attorney to Barbara J. Pariente; and R. Fred Lewis, Barbara J. Pariente and Peggy A. Quince, Justices of the Florida Supreme Court.

analysis regarding the submissions made by the Justices in January, discussed supra, since each of the three Justices had failed to submit any qualifying papers prior to the last day of qualifying, neither of the preconditions were met and contact by the Secretary was improper.

Absent those preconditions, the Secretary of State was precluded from affirmatively contacting the Justices regarding any deficiencies related to their qualifying or candidate qualifying documents. § 105.031(5)(b), Fla. Stat. Because Section 105.031(5)(b) specifically addresses under what circumstances the Secretary of State shall contact judicial candidates during the qualifying period, it is clear that the Florida Legislature made a deliberate choice not to authorize contact during the qualifying period without certain conditions being met. See Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla. 1996) (recognizing that in the context of statutory construction "the mention of one thing implies the exclusion of another."). And, the sworn testimony and undisputed evidence reveals that, but for the communication from the Secretary to the Justices, by and through employees of the State of Florida and agents of the Justices' campaigns, the Justices would have let the time for qualifying expire without submitting their requisite candidate qualifying documents under Section 105.031, Florida Statutes. App. 226-329.

The statutory violations committed by the Secretary of State and the

undisputed facts about its affect cannot be ignored, and the Secretary should be made to answer under what authority he has failed to exercise his authority in finding the Justices "not qualified" for placement on the 2012 general election ballot for merit retention. To do otherwise is to evade his responsibility to administer and enforce the Florida Election Code, and is answerable in quo warranto. See §§ 15.13 and 97.012, Fla. Stat.

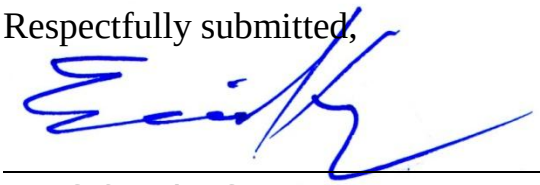
CONCLUSION AND PRAYER FOR RELIEF

The Secretary of State has violated his duty to uphold the Florida Constitution and enforce Florida Law, specifically the Florida Election Code, with regard to whether Justices' Lewis, Pariente, and Quince qualified for the 2012 general election ballot for merit retention. Under the Florida Election Code, it was the duty of the Secretary to determine that each of the three Justices had failed to meet the mandatory constitutional and statutory qualification requirements, to refuse to certify or revoke certification for each of the three Justices for appearance on the 2012 general election ballot for merit retention, and to refuse to authorize the printing of each of the three Justices' merit retention questions on the 2012 general election ballot. The Secretary is further violating his official duty by demonstrating an intention to authorize tabulation of the votes and certification of the elections of each of the three Justices, when they did not lawfully qualify to appear on the 2012 general election ballot for merit retention. For these reasons,

Petitioner asks this Court to grant his request for a Writ of Quo Warranto. Petitioner also respectfully requests this Court to issue an alternative writ to preclude the tabulation of the votes and certification of the elections of the Justices and to issue a show cause order to the Secretary regarding why such a writ should not be immediately issued.

Dated, this 5th day of November, 2012.

Respectfully submitted,



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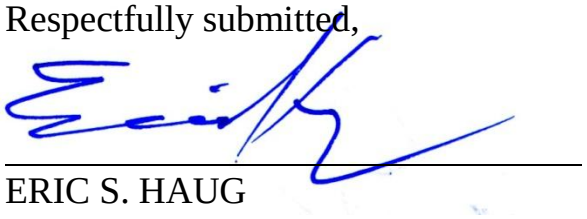
CERTIFICATE OF COMPLIANCE
WITH RULE 9.210(a)(2), Fla. R. App. P.

I hereby certify that this brief complies with the formatting requirements set forth in Rule 9.210(a)(2), Fla. R. App. P. This brief was computer-generated, using one-inch margins and Microsoft Word Times New Roman 14-point font.

Respectfully submitted,



ERIC S. HAUG

Dated: November 5, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **Petition for Writ of Quo Warranto** was served on Defendants by electronic mail and hand-delivery to:

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Florida Department of State
R.A. Gray Building
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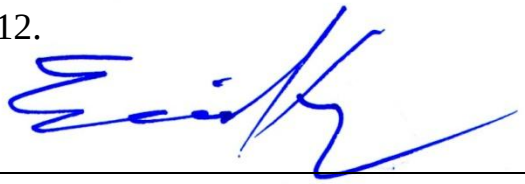
DATED, this 5th day of November, 2012.



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