

IN THE SUPREME COURT OF FLORIDA

Case No. SC2026-_____

KEVIN EMAS,

Petitioner,

vs.

RON DeSANTIS,
as Governor of Florida,

Respondent.

**VERIFIED, TIME-SENSITIVE, NON-ROUTINE
PETITION FOR WRIT OF MANDAMUS**

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I. NATURE OF THE CASE AND RELIEF SOUGHT

This is an action seeking a writ of mandamus to remedy Respondent Governor DeSantis's violation of Article V, Section 11 of the Florida Constitution. The Governor has failed to perform his duty to fill a vacancy on the Third District Court of Appeal by the Constitution's deadline: the sixtieth day after the Judicial Nominating Commission (JNC) certified its nominations. The Governor's failure leaves the court without a full complement of judges and burdens the People of Florida who rely on a fully functioning judiciary for the efficient administration of justice.

Disturbingly, this is the second time *in less than a year* that the Governor has flouted his clear legal duty to appoint a judge by the 60-day deadline. *See Garcia v. DeSantis*, No. SC2025-959 (petition filed and response ordered July 3, 2025). Petitioner, the outgoing judge whose seat the Governor has illegally left unfilled, seeks a writ of mandamus to compel the Governor to perform his duty to make this appointment.

II. STATEMENT OF FACTS

On December 22, 2025, Petitioner, the Honorable Kevin Emas, resigned from the Third District Court of Appeal, effective March 31,

2026. App'x at A3. The Governor convened the JNC on January 21, 2026. App'x at A4. The JNC certified a list of six nominees on March 17, 2026. App'x at A5. The sixtieth day after March 17 was May 16, 2026. As May 16 fell on a Saturday, the next business day was May 18. The Governor failed to make an appointment by that date. To the best of Petitioner's knowledge, the Governor's failure is ongoing.¹

Petitioner Kevin Emas is a Florida citizen, a practicing attorney, and the judge whose resignation created the instant vacancy. Judge Emas served the people of Florida with dedication and integrity since his appointment to the County Court bench by Governor Lawton Chiles in 1996. In 2001, Governor Jeb Bush appointed him to the Circuit Court, and in 2010 Governor Charlie Crist appointed him to the Third District Court of Appeal. He served as Chief Judge of the Third District from 2019 to 2021.

As a practicing attorney and taxpayer, Judge Emas wants the court on which he sat for sixteen years to function with a full

¹ As of filing, the Governor has publicly announced no appointment, either on his judicial appointments webpage or otherwise. See *Judicial Appointments*, Executive Office of the Governor, <https://www.flgov.com/eog/info/judicial/appointments> (last visited June 30, 2026).

complement of judges, which would benefit him directly in the efficient and expeditious administration of civil and criminal justice. He would also like to see his seat filled by the constitutionally mandated deadline so that the court's functions are not harmed as a result of his resignation.

III. JURISDICTION

This Court has original jurisdiction to issue writs of mandamus to the Governor (a state officer) pursuant to Article V, Section 3(b)(8) of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(a)(3) and 9.100. *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020) (“It is undisputed that article V, section 3(b)(8) gives this Court discretionary jurisdiction to issue writs of mandamus and quo warranto to state officers.”); *see also Mayfield v. Sec’y, Fla. Dep’t of State*, 402 So. 3d 1002, 1005 (Fla. 2025).

The Governor has a clear and indisputable legal duty under Article V, Section 11(c) to make judicial appointments within 60 days of the JNC’s certification of nominees, and thus is subject to this Court’s mandamus jurisdiction. *See Pizzi v. Scott*, 160 So. 3d 897, at *1 (Fla. 2014) (table) (“A petitioner is entitled to relief under this Court’s authority to issue a writ of mandamus when: (1) the

petitioner establishes a clear legal right to the performance of the requested act, (2) the respondent has an indisputable legal duty to perform that act, and (3) no other adequate remedy exists.”); *accord Pleus v. Crist*, 14 So. 3d 941, 945–46 (Fla. 2009).

This Court’s authority to issue writs mandamus is discretionary and concurrent with other state courts. However, this case warrants an expedited decision by this Court since Judge Emas and District residents and litigants are being prejudiced by the illegal delay in filling the seat. The Governor’s repeated, recent failure to abide by the Constitution’s clear mandate also counsels in favor of this Court’s review.²

² Besides Governor DeSantis’s unconstitutional delay in appointing the seat at issue last year in *Garcia v. DeSantis*, he has engaged in a longer pattern of inexplicable delays in filling judicial vacancies. For example, the Governor waited four months to convene the JNC after a circuit judge passed away in 2023, and filled the seat *seven months* after the vacancy arose. Jeff Burlew, *From Forklift Operator to the Bench: Lance Neff Appointed 2nd Judicial Circuit Judge*, Tallahassee Democrat (Oct. 30, 2023) <https://www.tallahassee.com/story/news/2023/10/30/lance-neff-governor-ron-desantis-appointment-2nd-judicial-circuit-judge-kevin-carroll/71293962007/>; Jeff Burlew, *Three Months After Judge Kevin Carroll’s Death, DeSantis Has Not Moved on Appointment*, Tallahassee Democrat (June 30, 2023), <https://www.tallahassee.com/story/>

IV. ARGUMENT

A. The Governor has an indisputable, ministerial duty to make a judicial appointment within 60 days of the JNC's certification of nominees.

Article V, Section 11(a) and (c) of the Florida Constitution lays out a clear process for filling interim vacancies in judicial office:

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

That last sentence could not be clearer: once the JNC certifies its nominees to the Governor, the Governor *shall* make the

news/2023/06/30/months-after-judge-kevin-carrolls-death-no-appointment-from-desantis/70356500007/ (“The slow-walking of the appointment has not gone unnoticed by local attorneys or the court, which has had to reassign Carroll’s caseload to other judges.”).

appointment within 60 days. This duty is ministerial and nondiscretionary. As this Court said unequivocally—and unanimously—in *Pleus*, “the Governor is bound by the Florida Constitution to appoint a nominee from the JNC’s certified list, within sixty days of that certification. There is no exception to that mandate.” 14 So. 3d at 946. “[T]he constitution does not grant the Governor the discretion to refuse or postpone making an appointment to fill the vacancy” *Id.* Accordingly, the Governor has an indisputable duty to make an appointment to fill the instant vacancy by (at the latest) May 18, 2026.

B. Petitioner has a clear legal right to compel the Governor to perform his duty.

Judge Emas is a citizen, taxpayer, and practicing attorney of the judicial district in which the Governor has failed to make the appointment. He is also the retired judge whose seat the Governor is refusing to fill. The administration of justice on Judge Emas’s court is impaired as a result of the Governor’s inexplicable inaction. The Constitution was designed to minimize vacancies in judicial office so that these problems are avoided. *See Advisory Op. to Governor (Judicial Vacancies)*, 600 So. 2d 460, 462 (Fla. 1992) (“Vacancies in

office are to be avoided whenever possible. We are confident that the framers of article V intended that the nominating and appointment process would be conducted in such a way as to avoid or at least minimize the time that vacancies exist.”).

Given the Governor’s clear legal duty, “Petitioner, as a citizen and taxpayer, has a clear legal right to request that the Governor carry out that duty.” *Pleus*, 14 So. 3d at 945; *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”).

C. Petitioner has no adequate remedy at law.

Judge Emas has no other adequate remedy at law. Like the petitioner in *Pleus*—a citizen, taxpayer, and retiring judge who was entitled to mandamus relief to compel Governor Crist to fill his seat from the JNC’s certified list—Judge Emas lacks adequate legal remedies. 14 So. 3d at 945–46. Mandamus is thus the appropriate remedy to address the Governor’s unconstitutional failure to make an appointment to the instant vacancy by the Constitution’s deadline. *Cf. Mayfield*, 402 So. 3d at 1008.

V. CONCLUSION

For all these reasons, this Court should grant this Petition and issue a writ of mandamus directing the Governor to immediately make an appointment from the JNC's certified list of nominees.

Respectfully submitted June 30, 2026,

/s/ Nicholas L.V. Warren

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Attorneys for Petitioner Judge Kevin Emas

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Verified, Time-Sensitive, Non-Routine Petition for Writ of Mandamus and that the facts stated in it are true, except as to matters therein stated to be true on information or belief, which are true to the best of my knowledge and belief.

Executed June 30, 2026.

/s/ Kevin Emas
Kevin Emas

CERTIFICATE OF SERVICE

I certify that on June 30, 2026, this document has been furnished to Respondent Governor Ron DeSantis by email to David Axelman, General Counsel, Executive Office of the Governor, david.axelman@eog.myflorida.com.

/s/ Nicholas L.V. Warren
Nicholas L.V. Warren

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,463 words and complies with the applicable word-count and font requirements of Fla. R. App. P. 9.100(g) and 9.045(b).

/s/ Nicholas L.V. Warren
Nicholas L.V. Warren

Counsel for Petitioner