



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

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June 9, 2006

Ms. Sue Cobb
Secretary of State
Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Cobb:

Pursuant to the authority vested in me by Article III, section (8)(a), of the Florida Constitution, I hereby transfer to you House Bill 113, which will become law without my signature on the 10th of June, 2006, enacted during the 108th Session of the Legislature of Florida, since statehood in 1845, during the Regular Session of 2006 and entitled:

An act relating to judges...

Despite my concerns about the constitutionality of portions of this bill, I am allowing it to become law because I believe that our state's judicial system needs additional judges. I am concerned that sections (3)(1)-(3) of the Bill may violate Article V, section 11(b) of the Florida Constitution. These sections purport to prohibit the Governor from filling the newly created vacancies by appointment. Article V, section 11(b) provides for the initial appointment by the Governor of judges to fill all circuit and county court vacancies and for elections to fill such offices for a term beginning *after* the appointed term. Under Article X, section 3 of the Florida Constitution, and as interpreted by Florida courts, a vacancy in office occurs when the Legislature creates new judgeships. Thus, House Bill 113 may constitute an invalid exercise of legislative authority and may infringe upon the constitutional executive appointment power.

After Florida's voters amended the state constitution in 1996 to extend the term of appointed judges beyond the next immediate primary and general election, courts consistently held that all judicial vacancies must be filled by appointment, creating an exception *only* when an existing seat had been vacated *after* the elective process for *that* seat already had begun. *Advisory Opinion to the Governor Re: Sheriff and Judicial Vacancies due to Resignations*, SC06-668, 2006 WL 1173133 (Fla. May 4, 2006); *Advisory Opinion to the Governor Re: Election or Appointment of Judges*, 824 So.2d 132, 136 (Fla. 2002); *Pinckett v. Harris*, 765 So.2d 284 (Fla. 1st DCA 2000). The extension of the appointive term beyond the next immediate primary and general election cycle has been construed to mean that in all other instances, judicial vacancies must be filled by appointment. *Pinckett*, 765 So. 2d at 288 ("the 1996 amendment



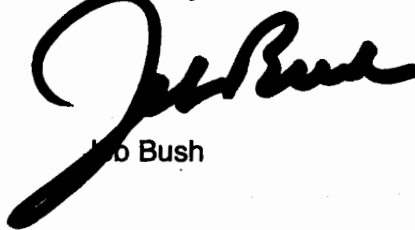
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supersedes these earlier cases and materials, and it is now the 'dominant law of the subject matter").

Florida's hybrid system of appointing circuit and county judges who are subject to election has worked well since 1996. When trial judges are appointed to fill a vacancy, they do not serve a full six-year term. They still must stand for election in the next primary and general election at least one year after their appointment. In this way, the Florida Constitution strikes a proper balance between filling vacancies by appointment and preserving the right of the people to elect their circuit and county judges.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is written in a cursive, flowing style with a large initial "J".

Jeb Bush