

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 23-103

(Executive Order Revoking Suspension)

**WHEREAS**, Article IV, Section 7(c) of the Florida Constitution provides that “[b]y order of the Governor any elected municipal officer indicted for crime may be suspended from office until acquitted”; and

**WHEREAS**, Section 112.51, Florida Statutes, further provides the Governor with the power to suspend a municipal officer following an indictment or information for the commission of a state felony or misdemeanor, and the suspension “creates a temporary vacancy in such office during the suspension”; and

**WHEREAS**, by Executive Order 21-153, issued on July 7, 2021, Kristen Tieshia Fitzgerald was suspended from her position as a City Commissioner for the City of Lake Wales, Florida, Seat 4, following an Information filed against her for the charges of interference with the custody of a child and aggravated assault with a deadly weapon; and

**WHEREAS**, Article IV, Section 7(c) of the Florida Constitution provides that the office of a suspended municipal officer shall be “filled by appointment for the period of suspension, not to extend beyond the term, unless these powers are vested elsewhere by law or the municipal charter”; and

**WHEREAS**, Section 112.51(3), Florida Statutes, explains how a temporary vacancy resulting from the suspension of a municipal officer shall be filled:

Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of the suspension. Such temporary appointment shall be made in the

same manner and by the same authority by which a permanent vacancy in such office is filled as provided by law[;]

and

**WHEREAS**, the Charter of the City of Lake Wales, Florida, governs how permanent vacancies on the Lake Wales City Commission are filled, as follows:

*Filling of vacancies.* A vacancy of the commission shall be filled by majority vote of the remaining commission members. Should more than one year remain of the term of the office of the member whose seat was vacated, the remaining commissioners will, within 30 days of the vacancy, appoint an interim member to serve until the next available election. The remainder of the term will then be filled by the commission member chosen by the electorate for the remainder of the term.

§ 3.08, Charter; and

**WHEREAS**, at the time of her suspension, more than one year remained on the three-year term of office to which Kristen Tieshia Fitzgerald was elected, which term began on May 4, 2021; and

**WHEREAS**, within 30 days of the suspension of Kristen Tieshia Fitzgerald on July 7, 2021, the remaining members of the Lake Wales City Commission appointed Jack Hilligoss on August 3, 2021, to serve as interim commissioner for the seat left temporarily vacant by the suspension, until the temporary vacancy could be filled at the next available election; and

**WHEREAS**, the next available election for the City of Lake Wales was held on April 5, 2022; and

**WHEREAS**, interim commissioner Jack Hilligoss also decided to run for mayor at that next election and therefore would have also lost his interim commission seat effective the day of the election, pursuant to Section 3.05(b) of the Charter of the City of Lake Wales, Florida, which states, “a commissioner who runs for mayor shall lose his commission seat effective the day of election”; and

**WHEREAS**, during the April 5, 2022 election, Jack Hilligoss was elected mayor, and Daniel Krueger was elected to fill Seat 4 of the Lake Wales City Commission, the seat originally held by Kristen Tieshia Fitzgerald; and

**WHEREAS**, Daniel Krueger’s term as City Commissioner for the City of Lake Wales, Florida, Seat 4, began on May 3, 2022 and extended no further than the “remainder of the term” for which Kristen Tieshia Fitzgerald was originally elected and for which Jack Hilligoss was temporarily serving as an interim commissioner, pursuant to Sections 3.05(b) and 3.08(c) of the Charter of the City of Lake Wales, due to the temporary vacancy caused by the suspension of Kristen Tieshia Fitzgerald; and

**WHEREAS**, the election of Daniel Krueger to fill Seat 4 of the Lake Wales City Commission therefore remained a temporary appointment to such office for the period of the temporary vacancy caused by the suspension of Kristen Tieshia Fitzgerald, pursuant to Section 112.51(3), Florida Statutes, *see Slaton v. Pizzi*, 163 So. 3d 655, 659-60 (Fla. 3d DCA 2015) (recognizing the “conditional nature (and potentially temporary term)” of the officeholder who was elected to fill a temporary vacancy resulting from a suspension); and

**WHEREAS**, the office from which Kristen Tieshia Fitzgerald was suspended was never “vacant” in the legal or permanent sense, because a legal vacancy occurs following a “resignation” or “removal from office,” not following a mere suspension from office. § 3.08(a), Charter; *see also* § 114.01(1)(c), Fla. Stat. That is why Section 112.51(3), Florida Statutes, refers to the creation of a “temporary vacancy” during the period of suspension; and

**WHEREAS**, to the extent the Lake Wales Code of Ordinances purports to “creat[e] a vacancy” when a sitting commissioner decides to run for mayor, *see* § 8-39(d), Code of Ordinances, the nature of that vacancy is dependent on whether the sitting commissioner is the

permanent officeholder who must “resign to run” for mayor, *id.*, not merely a temporary appointment like that of interim commissioner Jack Hilligoss during the suspension of Kristen Tieshia Fitzgerald; and

**WHEREAS**, on October 21, 2022, Kristen Tieshia Fitzgerald was found not guilty of all charges against her, as evidenced by the attached Judgment filed in the Tenth Judicial Circuit, in and for Polk County, Florida, which is incorporated as if fully set forth in this Executive Order; and

**WHEREAS**, Article IV, section 7(c) of the Florida Constitution and section 112.51(6) of the Florida Statutes provide that the Governor shall revoke a suspension upon a municipal officer’s acquittal; and

**WHEREAS**, due to her acquittal and judgment of not guilty, pursuant to Article IV, Section 7(c) of the Florida Constitution and Section 112.51(6) of the Florida Statutes, the Governor must revoke the suspension of Kristen Tieshia Fitzgerald and restore her to office, and she is entitled to and must be paid full back pay and such other emoluments or allowances to which she would have been entitled for the full period of time of the suspension; and

**WHEREAS**, Kristen Tieshia Fitzgerald therefore has a constitutional and statutory right to be reinstated for the remainder of her original term of office.

**NOW THEREFORE, I, RON DESANTIS**, Governor of Florida, pursuant to Article IV, Section 7(c), Florida Constitution, and Section 112.51(6), Florida Statutes, issue this Executive Order:

Section 1. Executive Order 21-153, suspending Kristen Tieshia Fitzgerald is hereby revoked.

Section 2. Kristen Tieshia Fitzgerald shall be reinstated as City Commissioner for the City of Lake Wales, Florida, Seat 4.

Section 3. In accordance with Section 111.05, Florida Statutes, the City of Lake Wales, Florida, shall provide Kristen Tieshia Fitzgerald with full back pay and such other emoluments or allowances to which she would have been entitled for the full period of time of the suspension.



IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the State of Florida to be affixed at Tallahassee this 10th day of May, 2023.

  
\_\_\_\_\_  
RON DESANTIS, GOVERNOR

ATTEST:

  
\_\_\_\_\_  
SECRETARY OF STATE

FILED  
2023 MAY 10 AM 10:24  
CLERK OF THE STATE  
TALLAHASSEE, FL

IN THE CIRCUIT/COUNTY COURT OF THE TENTH JUDICIAL  
CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

NAME: KRISTEN TIESHIA YVONNE FITZGERALD

CASE NUMBER: 53-2021CF-004118-A000-XX

CHARGES: CT 1 AND 2

RECEIVED AND FILED

JUDGMENT

OCT 21 2022

STACY M. BUTTERFIELD, CLERK

HAVING BEEN FOUND

NOT GUILTY

BY  THE COURT WITHOUT A JURY  A JURY  REASON OF INSANITY

HAVING A DIRECTED JUDGMENT OF ACQUITTAL GRANTED TO/OFF THE ABOVE STYLED OFFENSE(S)

AS CHARGED IN THE

INFORMATION  INDICTMENT  AFFIDAVIT-COMPLAINT  CITATION

A LESSER INCLUDED OFFENSE THAN CHARGED IN THE  INFORMATION OR  INDICTMENT AND SAYING NOTHING IN BAR OF PRECLUSION WHY THE JUDGMENT OF THE LAW SHOULD NOT NOW BE PRONOUNCED, THE COURT HEREBY FINDS (AND ADJUDGES) THE DEFENDANT

GUILTY OF THE ABOVE STYLED OFFENSE(S) ON

AND WITHHOLDS ADJUDICATION ON

NOT GUILTY OF THE ABOVE STYLED OFFENSE(S) AND SAID DEFENDANT IS HEREBY ACQUITTED AND DISCHARGED

AND SENTENCE IS HEREBY DEFERRED

WHEREUPON, THE COURT HEREBY INFORMS THE DEFENDANT THAT HE/SHE HAS THE RIGHT TO APPEAL THIS JUDGMENT AND SENTENCE BY FILING A "NOTICE OF APPEAL" WITH THE CLERK OF COURTS.

DONE IN OPEN COURT THIS 21st DAY OF OCTOBER, 2022.

  
CIRCUIT/COUNTY JUDGE

I certify that a copy of this order has been furnished to the State Attorney and the Defense Attorney. this 3rd day of Nov 2022  
Stacy M. Butterfield, Clerk of Courts  
By Q. Bembas, Irwin  
Deputy Clerk