The Supreme Court of South Carolina

The Honorable Joseph M. Strickland, Petitioner,

v.

Richland County Legislative Delegation (RCLD); Leon Howard, in his official capacity as Chairman of RCLD; Beth E. Bernstein, in her official capacity as Vice Chair of the RCLD; John L. Scott, Jr. in his official capacity as member of the RCLD; Richard A. "Dick" Harpootlian in his official capacity as member of the RCLD; Darrell Jackson in his official capacity as member of the RCLD; Mia S. McLeod in her official capacity as member of the RCLD; J. Thomas McElveen, III in his official capacity as member of the RCLD; Annie E. McDaniel in her official capacity as member of the RCLD; Jermaine Johnson, Sr. in his official capacity as member of the RCLD; Nathan Ballentine in his official capacity as member of the RCLD; Seth C. Rose in his official capacity as member of the RCLD; Christopher R. Hart in his official capacity as member of the RCLD; J. Todd Rutherford in his official capacity as member of the RCLD; Heather Bauer in her official capacity as member of the RCLD; Kambrell H. Garvin in his official capacity as member of the RCLD; Ivory T. Thigpen in his official capacity as member of the RCLD; Richland County; and the Judicial Merit Selection Commission, Respondents.

Appellate Case No. 2023-001130

ORDER

On April 30, 2021, the term of the Honorable Joseph M. Strickland (Petitioner) as the Richland County master-in-equity (Master) ended. Prior to the expiration of his term, Petitioner sought to be reappointed by the Governor, becoming the lone candidate for the position in Richland County. The South Carolina Judicial Merit

Selection Commission (JMSC) conducted the statutorily-required screening and found Petitioner to be qualified for reappointment in a report dated January 14, 2021. The JMSC then sent its report to the Richland County Legislative Delegation (RCLD), which according to law was required to submit to the Governor a qualified candidate for consideration for appointment. *See* S.C. Code Ann. § 2-19-110 (2005) (providing that after the JMSC submits its reports and recommendations on Master candidates to the appropriate county legislative delegations, "[t]he county legislative delegations *shall* then submit the name of a candidate to the Governor for consideration for appointment" (emphasis added)).

For whatever reason, the RCLD did not submit Petitioner's name to the Governor for reappointment. Thus, with only one qualified candidate running for the position and no action in opposition taken by the RCLD, Petitioner has continued to serve as the Richland County Master in holdover status. However, over two years later, on June 28, 2023, the Chairman of the RCLD sent a letter notifying the JMSC that the RCLD "did not agree to submit [Petitioner's] name to the Governor for consideration for appointment, and would like the opportunity to allow others to be screened." The Chairman requested that the JMSC announce the vacancy of Petitioner's seat as soon as possible so a successor could be appointed to fill the unexpired term ending on April 30, 2027. On July 3, 2023, the JMSC announced numerous judicial vacancies, including a "vacancy" in the office currently held by Petitioner and the acceptance of applications for that office until August 4, 2023.

Petitioner has filed a petition for a writ of mandamus asking this Court to order the RCLD to adhere to section 2-19-110 and the 2021 JMSC report and submit his name to the Governor for consideration as the sole candidate for the office of Richland County Master. Petitioner further requested this Court enjoin the JMSC from accepting or processing any applications for the office of Richland County Master until such time as the Governor has considered his candidacy as required by section 2-19-110.[1]

The members of the RCLD are not in agreement as to whether Petitioner's name should be submitted to the Governor for his consideration. Specifically, the RCLD is split as to the import of meaning of the word "shall" in section 2-19-110 and the duties set forth therein. The JMSC is caught in the middle of the dispute between Petitioner and the members of the RCLD who oppose Petitioner. The JMSC has

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[1] The South Carolina Senate has filed a petition to intervene in the matter and an associated return and reply. We grant the petition to intervene and accept the Senate's return and reply.

acted properly at all times, discharging in good faith its responsibility to receive and vet applications for judicial vacancies. On August 3, 2023, a majority of this Court enjoined JMSC in receiving and processing applications for the purported vacancy of the Richland County Master. We believed it was necessary to preserve the status quo until this Court could resolve the dispute between Petitioner and the divided RCLD. Today, we resolve the dispute.

This case presents a question of statutory interpretation. As we will explain, we find section 2-19-110 imposes a mandatory duty on the RCLD, and under the facts presented here, that duty is ministerial in nature. Accordingly, we grant a writ of mandamus and order the RCLD to submit Petitioner's name to the Governor for consideration.

I.

Section 2-19-110 is one statute among many setting forth the role and responsibilities of the JMSC. Section 2-19-110 provides:

> Upon a vacancy in the office of master-in-equity, candidates therefor shall submit an application to the [JMSC]. Upon completion of reports and recommendations, the [JMSC] shall submit such reports and recommendations on master-in-equity candidates to the appropriate county legislative delegations. *The county legislative delegations shall then submit the name of a candidate to the Governor for consideration for appointment*. Nothing shall prevent the Governor from rejecting the person nominated by the delegation. In this event, the delegation shall submit another name for consideration. No person found not qualified by the [JMSC] may be appointed to the office of master-in-equity.

(Emphasis added).

Of note, the word "shall" appears five times in section 2-19-110. Moreover, in Title 2, Chapter 19 of the South Carolina Code ("Election of Justices and Judges"), the legislature used the word "shall" sixty-three times. In determining legislative intent, the prevailing rule of statutory interpretation is that the "use of words such as *'shall'* or 'must' indicates the legislature's intent to enact a *mandatory* requirement." *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (emphasis added) (citation omitted). We acknowledge, however, that the legislature's use of the word "shall" can in limited circumstances be read as permissive instead because such a reading would effectuate the intent of the legislature. *See, e.g.*, *State v. Blair*, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981)

("The word 'shall' may be construed as permissive to effect legislative intent, particularly when the statute directs a court to determine certain matters."). The members of the RCLD who oppose Petitioner urge this Court to construe as permissive only the third "shall" in section 2-19-110—out of the five usages of that word in this section—essentially asking this Court to substitute the word "may" for "shall" in that one instance. *See* S.C. Code Ann. § 2-19-110 ("The county legislative delegations *shall* then submit the name of a candidate to the Governor for consideration for appointment." (emphasis added)). We refer to these members of the RCLD as Opposing Respondents. While we ultimately reject the position of the Opposing Respondents, we must admit their position has ostensible merit. This is so because of the longstanding practice—grounded in law—in the political discretion inherent to local legislative delegations in the selection of Masters.

II.

The law and practices governing the appointment of Masters has changed over time. Section 14-11-20 is the primary statute governing the appointment of Masters in the respective counties of South Carolina. *See generally* S.C. Code Ann. § 14-11-20 (2017) ("[M]asters-in-equity must be appointed by the Governor with the advice and consent of the General Assembly for a term of six years . . . ."). Section 14-11-20 was enacted over a hundred years ago and, unsurprisingly, has gone through multiple iterations. Then and now, section 14-11-20 set forth the final steps of the appointment process, i.e., the fact that the Governor appoints the Master. However, in the past, section 14-11-20 did not discuss the *first* steps of the appointment process, i.e., the nomination and application process. As we explain below, that has now changed.

Historically, before the creation of the JMSC, the process of selecting a Master began with the county legislative delegation, although that role was not set forth in any statute. The local legislative delegation had unfettered discretion to recommend its chosen candidate to the Governor for approval. Given the uncontested traditional role of the county legislative delegations and the lack of statutes governing the process, there was no room for a court to become involved—even tangentially—in the Master selection process.

However, when the JMSC was created in 1997, the legislature amended section 14-11-20 and enacted a series of additional new statutes that altered the role of county legislative delegations in the selection process for Masters. *See, e.g.*, S.C. Code Ann. §§ 2-19-110, 14-11-20. This formal codification of the county legislative delegations' new role in the selection process created the narrow possibility of judicial review in very limited circumstances vis-à-vis interpreting the requirements

of the new statutes. As every elementary school student is taught, the cornerstone of judicial power is statutory interpretation; statutory interpretation does not violate the separation of powers in any manner.

Discharging that judicial role here, we find that with respect to the role of county legislative delegations in selecting Masters, the legislature has spoken: the county legislative delegation is no longer the starting point in the process. Specifically, as the various statutes now stand, any licensed attorney who meets the residency, age, and experience criteria may apply to become a Master, and—as expressly amended from the prior version of section 14-11-20—the blessing of members of the county legislative delegation is no longer necessary for the initial application. *See id.* §§ 2-19-20(D) (2005), 2-19-110, 14-11-20. This significant, yet seemingly subtle, change is unambiguously confirmed in two ways. First, upon the creation of the JMSC, the legislature simultaneously enacted section 2-19-110, which—as described above—provides in part:

> Upon a vacancy in the office of master-in-equity, candidates therefor shall submit an application to the [JMSC]. Upon completion of reports and recommendations, the [JMSC] shall submit such reports and recommendations on master-in-equity candidates to the appropriate county legislative delegations. The county legislative delegations shall then submit the name of a candidate to the Governor for consideration for appointment. . . . . *No person found not qualified by the [JMSC] may be appointed to the office of master-in-equity*. . . .

(Emphasis added). Second, in amending section 14-11-20 at that same time, the legislature provided the new version of the statute should be construed "[p]ursuant to the provisions of Section 2-19-110," and reiterated that "[n]o person is eligible to hold the office of master-in-equity who . . . has not been found qualified by the [JMSC]." *Id.* § 14-11-20.

Thus, as it now stands, the JMSC may receive a single application or multiple applications for a vacant Master position. After all applications are received, the JMSC determines if the candidate(s) are qualified. *See id.* §§ 2-19-10(A) (2005), 2-19-20, 14-11-10 (2017), 14-11-20. The JMSC must then submit "reports and recommendations" of the Master candidates to the "appropriate county legislative delegations." *Id.* § 2-19-110. Again, a candidate may not be appointed as Master unless and until the JMSC has found the candidate qualified. *Id.* §§ 2-19-110, 14-11-20. From the candidate or candidates found qualified by JMSC, "[t]he county legislative delegations shall then submit the name of a candidate for consideration to the Governor for consideration for appointment." *Id.* § 2-19-110. As a result,

while a county legislative delegation retains authority over the selection of the ultimate candidate to recommend to the Governor, that authority has been expressly limited to recommending only a candidate found qualified by the JMSC. *See id.* §§ 2-19-110, 14-11-20; *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 152, 691 S.E.2d 473, 476 (2010) (per curiam) ("Only candidates found qualified by the [JMSC] may be submitted to the delegation to the Governor for consideration as appointee to the office [of Master].").

III.

As alluded to above, for Opposing Respondents to prevail, this Court must interpret the third "shall" in section 2-19-110 as permissive. *See* S.C. Code Ann. § 2-19-110 ("The county legislative delegations *shall* then submit the name of a candidate to the Governor for consideration for appointment. . . . . No person found not qualified by the [JMSC] may be appointed to the office of master-in-equity." (emphasis added)). Again, we do not dismiss Opposing Respondents' position lightly. Opposing Respondents present a good faith argument that the act of nomination under section 2-19-110 is a governmental or political function, and such discretionary actions are not subject to mandamus. *See Edwards v. State*, 383 S.C. 82, 96, 678 S.E.2d 412, 419–20 (2009) (explaining a writ of mandamus may issue against a governmental entity only for the performance of an act that is "neither political nor essentially governmental" (citation omitted)). While we are respectful of Opposing Respondents' understandable desire to maintain their traditional discretion in selecting the candidate for the Master's position to submit to the Governor, the legislature has spoken with unmistakable clarity in enacting Chapter 19 of Title 2 and amending section 14-11-20 so that it is tethered to section 2-19-110.

To obtain a writ of mandamus, a petitioner must show: (1) a duty of the respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy. *City of Rock Hill v. Thompson*, 349 S.C. 197, 199–200, 563 S.E.2d 101, 102 (2002). Therefore, "[w]hen the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy," a court must not issue a writ of mandamus. *Id.*

Insofar as the role of a county legislative delegation in recommending a qualified candidate for Master to the Governor, the legislature has altered and narrowed the historical discretion accorded local legislative delegations by mandating a duty to send the name of a JMSC-qualified candidate to the Governor for consideration. Section 2-19-110 clearly requires the RCLD (and all county legislative delegations) to submit the name of a qualified candidate to the Governor: "The county legislative

delegation shall then submit the name of a candidate to the Governor for consideration for appointment." Although not critical to our decision, the legislature's additional amendments to section 14-11-20 linking the two statutes closes the door completely on Opposing Respondents.

However, there is an additional feature that compels our conclusion that the third "shall" in section 2-19-110 is a mandatory directive. As mentioned above, the legislature used the word "shall" sixty-three times in the statutes governing the JMSC and the judicial selection process. For example, Chapter 19 of Title 2 uses the term "shall" to direct the General Assembly; the JMSC, its Chairman, and committees; county legislative delegations; and candidates for office to act or refrain from acting in a multitude of ways for the purpose of efficiently filling judicial offices. For Opposing Respondents to prevail, this Court must either cherry-pick the third "shall" in section 2-19-110 and construe the term as "may" (while leaving the other sixty-two references to "shall" intact, with its customary meaning) or hold the legislature intended its use of "shall" throughout Chapter 19 of Title 2 as permissive. The first option is a self-evident nonstarter, and the second option would lead to utter chaos.

Specifically, to consistently interpret "shall" as permissive would create discretion and uncertainty at virtually every stage in the process of filling judicial offices. For example, if the Governor rejected a qualified candidate, the RCLD could simply refuse to submit another name for consideration, leaving the office permanently vacant. *See* S.C. Code Ann. § 2-19-110 ("In [the event the Governor rejects a nomination], the delegation *shall* submit another name for consideration." (emphasis added)). Likewise, the JMSC could decline to present nominations for judicial office to the General Assembly. *See id.* § 2-19-80 (2005) ("The [JMSC] *shall* make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge division." (emphasis added)). Similarly, the JMSC could choose not to announce and publicize vacancies for office. *See id.* § 2-19-20(C) ("The [JMSC] *shall* announce and publicize vacancies and forthcoming vacancies in the administrative law judge division, on the family court, circuit court, court of appeals, and Supreme Court." (emphasis added)). Title 2 is replete with examples, but these three are sufficient to show that interpreting "shall" as permissive would lead to absurdities and total dysfunction in the process, a result the legislature surely did not intend. *See State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) (holding courts "must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent"). Further, the legislature clearly knew how to write discretion into

the process because it did so in express language for select circumstances. *See* S.C. Code Ann. § 2-19-80(B) ("Nothing shall prevent the General Assembly from rejecting all persons nominated."); *id.* § 2-19-110 ("Nothing shall prevent the Governor from rejecting the person nominated by the delegation.").

IV.

Typically, the selection of which JMSC-qualified candidate to nominate to the Governor for appointment would be an inherently political question in which the Court could not interfere. Here, however, the facts are unique: Petitioner was *the only* JMSC-qualified candidate who applied for the position of Richland County Master. The lack of any other qualified candidates strips the RCLD of any possible discretion and merely requires the RCLD to complete a ministerial task, that being to formally submit the only qualified candidate's name—Petitioner—to the Governor for his consideration. *See* S.C. Code Ann. § 2-19-110 ("The county legislative delegations *shall* then submit the name of a candidate to the Governor for consideration for appointment. . . . . No person found not qualified by the [JMSC] may be appointed to the office of master-in-equity." (emphasis added)).

Accordingly, we grant the petition for a writ of mandamus and order the Richland County Legislative Delegation, within ten days of the date of this order, to submit Petitioner's name as a candidate for the office of Richland County Master to the Governor for consideration. If the Governor does not approve the appointment of Petitioner, Petitioner may continue as Master in holdover status pending the appointment of a Master for Richland County as provided by law.

We additionally reaffirm the temporary injunction against the JMSC. We do so not because of any impropriety on the JMSC's part,[2] but rather because there is technically no vacancy for the position of Richland County Master unless and until the Governor declines to reappoint Petitioner. However, should the Governor reject Petitioner's candidacy, the office of Richland County Master would become vacant at that time. Thus, the JMSC would then become authorized to follow the ordinary procedure for filling a vacant Master position, including publicizing the vacancy and accepting applications from interested candidates.

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[2] The JMSC merely acquiesced in the request of the Chairman of the RCLD to announce a vacancy in this judicial position. As noted, JMSC has conducted itself in a professional manner and is simply caught in the middle of a disagreement among the members of the RCLD.

IT IS SO ORDERED.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
August 10, 2023