

SC20-985

IN THE SUPREME COURT OF FLORIDA

HONORABLE GERALDINE F. THOMPSON, in her Official Capacity as
Representative for District 44 in the Florida House of Representatives,
and as an individual,

Petitioner,

v.

HONORABLE RON DESANTIS, in his official capacity as Governor of Florida;
and DANIEL E. NORDBY, in his official capacity as Chair of the
Florida Supreme Court Judicial Nominating Commission,

Respondents.

**MOTION OF JESSE PANUCCIO,
COMMISSIONER,
SUPREME COURT JUDICIAL NOMINATING COMMISSION,
FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF
RESPONDENTS**

JESSE PANUCCIO (FBN 31401)
JPanuccio@bsflp.com
BOIES SCHILLER FLEXNER LLP
401 East Las Olas Blvd., Ste. 1200
Fort Lauderdale, FL 33301

RECEIVED, 08/13/2020 08:32:29 AM, Clerk, Supreme Court

**MOTOIN FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS**

The undersigned, pursuant to Fla. R. App. P. 9.370(a), respectfully moves to file an amicus brief in support of Respondents, and in support states:

1. Movant is a Commissioner on the Florida Supreme Court Judicial Nominating Commission and has served on the JNC for each of the last six nominations for open seats on this Court, including the nomination of Judge Francis on January 23, 2020. The Petition alleges that, in nominating Judge Francis, the JNC violated its rules and the Florida Constitution. In other words, the Petition levels the serious charge that JNC commissioners violated their oaths to “support, protect, and defend the Constitution ... of the State of Florida” and to “faith fully perform the duties of” the office. Art. II § 5(b), Fla. Const. *See* Robert Bolt, *A MAN FOR ALL SEASONS* (1962) (“When a man takes an oath, ... he’s holding his own self in his hands. Like water. And if he opens his fingers then—he needn’t hope to find himself again.”). Petitioner has also attacked the JNC as “a sham and a farce,”¹ and leveled still worse accusations about “JNC members.” Pet. App. 4. Movant therefore has an individual interest in answering these unfounded and scurrilous allegations.

¹ Jason Delgado, *Rep. Geraldine Thompson Calls Judicial Nominating Commission a “Sham” and a “Farce,”* FLORIDA POLITICS (July 27, 2020), <http://bitly.ws/9oWR>.

2. In particular, Movant’s amicus brief will assist this Court by addressing three issues. First, the brief explains how Petitioner’s attacks on the JNC members and Judge Francis are part of a long-running, baseless campaign to impugn the integrity of the JNC and the merit-selection system. The brief argues that this Court, which has for many years cautioned against incivility and unfounded criticism of judges and lawyers, should not permit itself to be used as a platform for such invective, especially at a televised oral argument. Second, the brief explains why Judge Francis’s nomination was fully consistent with the Florida Constitution, and thus why JNC commissioners satisfied their oaths in certifying the nomination. Third, the brief explains why the relief requested in the Petition—against non-parties—is unavailable. All of these explanations can assist the Court in the disposing of the case with dispatch and without oral argument.

3. Pursuant to Fla. R. App. P. 9.370(a), the undersigned has conferred with counsel for the parties as to whether they consent to the filing of the amicus brief. Counsel for the parties have responded as follows:

- a. Respondent Governor DeSantis takes no position on the motion;
- b. Respondent Chairman Nordby does not oppose the motion;
- c. Petitioner “objects,” contending that undersigned is “on the JNC in question, [and] therefore [is] one of the parties in the case,” and “each Respondent is entitled to only one Response” such that it

“would be inappropriate for [Movant] to file an additional ‘brief’”
given that Chairman Nordby has already filed a brief.

4. The Petition does not name the JNC—or any individual JNC commissioner other than Mr. Nordby—as a respondent, even though the JNC could have been named as a respondent. *See* Art. V, § 3(b)(8) (“The supreme court ... [m]ay issue writs of mandamus and quo warranto to state *officers* and state *agencies*.”) (emphasis added). *Compare* Pet. (naming “Daniel E. Nordby, in his Official Capacity as Chair of the Florida Supreme Court [*sic*] Nominating Commission”), *with* Emergency Supp. Pet. for Writ of Quo Warranto, *League of Women Voters of Fla., Inc. v. Scott*, No. SC18-1573 (Fla. Oct. 26, 2018) (naming “Florida Supreme Court Judicial Nominating Commission” as a party *separate and apart* from respondent “Jason L. Unger, in his Official Capacity as Chair of the Florida Supreme Court Judicial Nominating Commission”), *and* App. to Emergency Supp. Pet. for Writ of Quo Warranto at 3, *id.* (Oct. 26, 2018) (minutes of JNC noting that respondent JNC Chair had retained his own counsel and recording the JNC’s affirmative vote to retain *separate* counsel for the Commission). Respondent Nordby’s brief was submitted on his own behalf as a named party, not on behalf of, or authorized by, the JNC or any of its other members. *See* Nordby Resp. (“Supreme Court Judicial Nominating Commission *Chair’s* Response in Opposition”) (emphasis added); *id.* at 23-24 (stating that the JNC is a “non-party”); Art. V, §

20(c)(6), Fla. Const. (“All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.”).² In any event, even if the JNC had been named as a party and had filed a brief, each commissioner is an independent constitutional officer with independent views. Given the invective Petitioner has leveled against JNC commissioners, the undersigned has an independent interest in addressing those unwarranted allegations.

WHEREFORE, the undersigned respectfully requests leave to file an amicus curiae brief in support of Respondents.

Respectfully submitted,

/s/ Jesse Panuccio

JESSE PANUCCIO (FBN 31401)
JPanuccio@bsfllp.com
BOIES SCHILLER FLEXNER LLP
401 East Las Olas Blvd., Ste. 1200
Fort Lauderdale, FL 33301
(954) 356-0011

² A Florida statute requires “[p]rocess against any ... commission ... of the state” to be served on the “chair.” § 48.111, Fla. Stat. But that assumes the commission is *actually named* as a party.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion has been furnished by electronic service through the Florida Court E-filing Portal this 13th day of August, 2020, to all counsel of record:

William E. Ponall
Ponall Law
253 North Orlando Avenue
Suite 201
Maitland, FL 32751
bponall@PonallLaw.com

Lisabeth J. Fryer
Lisabeth J. Fryer, P.A.
247 San Marcos Avenue
Sanford, FL 32771
lisabeth@lisabethfryer.law

Counsel for Petitioner

Joseph W. Jacquot
Nicholas A. Primrose
Kasey B. O'Connor
Joshua E. Pratt
Executive Office of the Governor
The Capitol, PL-05
Tallahassee, FL 32399

Joe.Jacquot@eog.myflorida.com
Nicholas.Primrose@eog.myflorida.com
Kasey.O'Connor@eog.myflorida.com
Joshua.Pratt@eog.myflorida.com

Counsel for Respondent, Governor DeSantis

Daniel E. Nordby
Shutts & Bowen LLP
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
DNordby@shutts.com

Counsel for Respondent, Chairman Nordby