IN THE SUPREME COURT OF FLORIDA

WHITNEY S. BOAN, Petitioner, v. FLORIDA FIFTH DISTRICT COURT OF APPEAL JUDICIAL NOMINATING COMMISSION, and JOSEPH JACQUOT, in His Official Capacity as Chair of the Florida Fifth District Court of Appeal Judicial Nominating Commission, Respondents.	No. SC22-1557

MOTION OF THE ATTORNEY GENERAL FOR LEAVE TO FILE AN AMICUS BRIEF IN SUPPORT OF RESPONDENTS

Pursuant to Florida Rule of Appellate Procedure 9.370, the Attorney General moves for leave to file a brief as amicus curiae in support of Respondents: the Fifth District Court of Appeal (DCA) Judicial Nominating Commission (JNC); and Joseph Jacquot, Chair of the Fifth DCA JNC.

1. In her Amended Emergency Petition for Writ of Quo Warranto, filed November 22, 2022, Petitioner Whitney S. Boan seeks to invalidate two out of fifteen judicial nominations made by the Fifth DCA JNC to fill four vacancies on the Fifth DCA. She also seeks to

prevent the Governor from appointing either of these two nominees to the Fifth DCA. Boan contends that the JNC violated the Florida Constitution and the JNC's own rules in nominating these two, because they did not reside in the Fifth District at the time of their nominations.

2. The Attorney General has a significant interest in the constitutional questions posed by Boan's petition and believes that the Court would benefit from the Attorney General's participation. In the Attorney General's view, requiring a judicial appointee to have established eligibility for judicial office at the time of nomination, rather than the time of appointment, would impermissibly add to the eligibility requirements set forth in article V, section 8 of the Florida Constitution. This Court has "consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements." *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988) (quoting *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974)). Article V, section 8 phrases most of its eligibility requirements—including the residency requirement—as conditions to be "eligible for [the] office." This Court has ruled that eligibility for judicial

office is to be determined at the time the Governor makes the appointment and fills the vacancy. *See Thompson v. DeSantis*, 301 So. 3d 180, 185 (Fla. 2020); *see also id.* at 193 (Polston, J., concurring in result only) ("[T]he text of [article V,] section 8 plainly addresses eligibility for 'office,' not eligibility for 'nomination' or 'selection.'").

3. In the Attorney General's view, Boan's submission would upend the carefully calibrated eligibility and process requirements set up in article V. Those provisions strike a deliberate balance that weighs the value of screening candidates according to their objective qualifications—through the deliberative input of a politically insulated, multi-member commission—against the value of lodging ultimate appointment authority in an electorally accountable, state-wide executive who exercises meaningful discretion in appointing the person he considers most suitable for judicial office. The Attorney General, as "chief state legal officer," Art. IV, § 4, Fla. Const., has a strong interest in preserving this constitutional design, *see* Art. II, § 5(b), Fla. Const.

4. The Attorney General has contacted Boan's counsel about this motion. They take no position on whether the Court should grant the motion.

CONCLUSION

For the foregoing reasons, the Attorney General requests that this Court grant her leave to file an amicus brief in support of Respondents. A copy of that brief is appended to this motion.

Respectfully submitted.

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December 13, 2022

CERTIFICATE OF SERVICE

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APPENDIX

SC22-1558

In the Supreme Court of Florida

WHITNEY S. BOAN,

Petitioner,

v.

FLORIDA FIFTH DISTRICT COURT OF APPEAL JUDICIAL NOMINATING COMMISSION, AND JOSEPH JACQUOT, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE FLORIDA FIFTH DISTRICT COURT OF APPEAL JUDICIAL NOMINATING COMMISSION,

Respondents.

AMICUS BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF RESPONDENTS

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IDENTIFY OF AMICUS CURIAE AND INTEREST IN THIS CASE

The Attorney General submits this brief as amicus curiae in her capacity as "chief state legal officer" for the State of Florida, Art. IV, § 4(b), Fla. Const., to support the position of Respondents: the Fifth District Court of Appeal (DCA) Judicial Nominating Commission (JNC); and Joseph Jacquot, Chair of the Fifth DCA JNC. The Attorney General may appear in any suit "in which the state may be . . . in anywise interested," § 16.01(4), Fla. Stat., and the State has an interest in any case involving the interpretation of the Florida Constitution. This is particularly so in the case at hand, which presents an important question regarding eligibility for judicial office and the proper allocation of authority to select justices and judges for the Florida bench.

SUMMARY OF ARGUMENT

Petitioner Whitney S. Boan seeks a writ of quo warranto from this Court that would invalidate two judicial nominations made by the Fifth District Court of Appeal (DCA) Judicial Nominating Commission (JNC) and prevent the Governor from appointing any of those individuals to the Fifth DCA. Boan contends that the JNC violated

the Florida Constitution and the JNC's own rules of procedure by nominating two individuals who did not reside in the Fifth District at the time of their nominations.

But the Florida Constitution does not require a candidate to establish residency at the time of nomination. Article V, section 8 phrases its residency requirement in terms of being "eligible for office," not in terms of being "eligible at the time of nomination," or "eligible for consideration." This Court has thus ruled on multiple occasions that a candidate for judicial office must establish eligibility under article V no earlier than appointment (or, as applicable, election)—not at a prior stage such as nomination (or qualification in the case of elections). *See, e.g.*, *Thompson v. DeSantis*, 301 So. 3d 180, 185 (Fla. 2020); *see also id.* at 193 (Polston, J., concurring in result only) ("[T]he text of [article V,] section 8 plainly addresses eligibility for 'office,' not eligibility for 'nomination' or 'selection.'").

Requiring a judicial appointee to establish eligibility for office prior to the appointment would impermissibly add to the requirements of article V. This Court has "consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already

undertaken to set forth those requirements." *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988) (quoting *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974)). The judicial appointment process in article V is deliberate in its design. The eligibility requirements set out in article V, section 8 work in conjunction with the multi-step appointment process set out in article V, sections 10 and 11 to achieve a calculated balance. The Governor may appoint the person he considers most suitable for judicial office, but he must select from nominees selected by the JNCs. Excluding the possibility of the Governor's even considering a worthy candidate who might otherwise meet the eligibility requirements in article V, section 8 by the time of appointment would limit the Governor's appointment options in a manner the constitutional text does not support.

In short, a court cannot compel the JNC to nominate only candidates who have already met the eligibility requirements of article V, without upsetting the balance of interests struck by article V. The Attorney General takes no position on the correct interpretation of the JNC's rules, except to note that they should be construed "[t]o the extent possible . . . to avoid conflict with the Constitution." *Fla. Bar v. Sibley*, 995 So. 2d 346, 350 (Fla. 2008). However interpreted,

the JNC's rules cannot override the Constitution and therefore do not entitle Boan to the extraordinary relief she seeks.

For these reasons, this Court should deny Boan's petition for a writ of quo warranto.

ARGUMENT

Boan asks this Court to preclude the Governor from appointing individuals who did not satisfy article V's residency requirements at the time of their nomination by the JNC. But article V's eligibility requirements attach only at the time of appointment, not at the time of nomination. This Court cannot accept Boan's submission without adding to article V a qualification for judicial office found nowhere in the Florida Constitution.

I. THE EARLIEST STAGE AT WHICH A JUSTICE OR JUDGE MUST ESTABLISH ELIGIBILITY UNDER ARTICLE V IS APPOINTMENT OR ELECTION.

"The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Advisory Op. to Governor Re: Implementation of Amend. 4*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). The relevant constitutional text does not support Boan's position in this case. Article V,

section 8 imposes none of its eligibility requirements, including residency, as conditions of being preliminarily qualified or suitable for consideration or nomination to office. Rather, with one exception, it states those requirements as conditions of being "eligible for office" (the residency requirement) or "eligible for the office" (three other requirements):

> No person shall be *eligible for office of justice or judge* of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. . . .
>
> No person is *eligible for the office of justice of the supreme court or judge* of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida.
>
> No person is *eligible for the office of circuit judge* unless the person is, and has been for the preceding five years, a member of the bar of Florida.
>
> Unless otherwise provided by general law, no person is *eligible for the office of county court judge* unless the person is, and has been for the preceding five years, a member of the bar of Florida.
>
> Unless otherwise provided by general law, a person shall be *eligible for election or appointment to the office* of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

Art. V, § 8, Fla. Const. (paragraph demarcation and emphasis supplied). The lone exception (for county court judges in counties with a

population of 40,000 or less) requires bar membership in good standing as a condition of being "eligible for election or appointment to the office" and thus even more strongly forecloses the possibility of having to establish the qualification at an earlier date. *See also* Art. V, § 3(a), Fla. Const. (requiring Florida Supreme Court to "have at least one justice elected or appointed from the district to the supreme court who is a resident of the district *at the time of the original appointment or election*" (emphasis added)).

In *Thompson v. DeSantis*, this Court ruled that "any constitutional eligibility requirement 'for the office' . . . attaches at the time of appointment." 301 So. 3d 180, 185 (Fla. 2020). That ruling paralleled a long line of precedent in which this Court had repeatedly held that a candidate for elected judicial office need not establish the requisite qualifications prior to the actual election—the analog to appointment for an elected official. *See, e.g.*, *Miller v. Mendez*, 804 So. 2d 1243, 1245–47 (Fla. 2001); *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988); *In re Advisory Opinion to the Governor*, 192 So. 2d 757, 759 (Fla. 1966) (per curiam). It also paralleled the rule governing qualifications for elected office in the U.S. Constitution. *See, e.g.*, *Schaefer v. Townsend*, 215 F.3d 1031, 1036 (9th Cir. 2000) ("[T]he Founders

simply specified that a Representative be an 'Inhabitant of that State' when elected. U.S. Const. art. I, § 2, cl. 2. This specific time at which the Constitution mandates residency bars the states from requiring residency before the election." (footnote omitted)). These cases all make clear that justices or judges need not be eligible prior to the date of election, such as when they submit their candidacies and seek to qualify for judicial elections.[1] The same is true for an appointed justice or judge, who likewise need not be eligible at an earlier point.

Some authorities suggest that eligibility requirements do not attach until the appointee or electee assumes the office. *See, e.g.*, *Miller*, 804 So. 2d at 1247 ("[B]ar membership eligibility requirements 'refer to eligibility at the time of assuming office and not at the time of qualification or election to office.'" (quoting *1966 Adv. Op.*, 192 So. 2d at

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[1] This appears to be consistent with the practice in most other states. *See, e.g.*, P.H. Vartanian, Annotation, *Time as of Which Eligibility or Ineligibility to Office Is To Be Determined*, 88 A.L.R. 812, pts. II–IV (1934), *supplemented by* J.B.G., Annotation, *Time as of Which Eligibility or Ineligibility to Office Is To Be Determined*,143 A.L.R. 1026 (1946); Thomas T. Trenkner, Annotation, *Validity and Construction of Constitutional or Statutory Provision Making Legal Knowledge or Experience a Condition of Eligibility for Judicial Office*, 71 A.L.R.3d 498, pt. III.B (1976); 63C Am. Jur. 2d *Public Officers and Employers* §§ 54–55 (2022); 70 Am. Jur. 2d *Sheriffs, Police, and Constables* § 11 (2022); 56 Am. Jur. 2d *Municipal Corporations* § 210 (2022).

759)); *see also Thompson*, 301 So. 3d at 192 ("The plain meaning of [article V,] section 11 does not foreclose the possibility of an individual becoming eligible between the time a governor selects that individual from the JNC list and the time the individual assumes office.") (Polston, J., concurring in result only). In *Thompson*, however, this Court rejected the argument that a justice or judge could wait to establish the requisite ten years of bar membership until "the appointee actually takes the oath and assumes the duties of her office." 301 So. 3d at 185. That ruling was predicated at least in part on the Governor's insistence that the appointment of Judge Francis was already complete, notwithstanding that the Governor had not yet issued the commission and Judge Francis had not yet taken her oath of office. The Governor thus had already purported to "fill the vacancy," Art. V, § 11(a), Fla. Const., which in turn would have started the clock running on the appointee's term of office. *See Thompson*, 301 So. 3d at 185–86.[2] But even if, contrary to this Court's *Thompson* decision,

[2] This Court's ruling in *Thompson* also finds support in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 157 (1803), in which the U.S. Supreme Court ruled that President Adams had completed the appointment of Marbury as a justice of the peace in the District of Columbia when President Adams signed the commission, even though Marbury

eligibility requirements attached at some point later than the time of appointment, they could not attach at the time of nomination. No vacancy has even arguably been filled by a nomination.

In sum, the earliest point in time at which a candidate must show that he is "eligible for [the] office" under article V, section 8 is appointment (or election, as the case may be). This Court has never held that constitutional eligibility requirements attach prior to the date of appointment or election,[3] as Boan now contends. For this reason alone, Boan's petition should be denied.

II. THE JNC'S "[U]NIFORM RULES OF PROCEDURE" FOR THE NOMINATION OF JUDICIAL CANDIDATES CANNOT ADD TO THE ELIGIBILITY REQUIREMENTS OF ARTICLE V.

Boan next invokes the Fifth DCA JNC's own rules of procedure, contending that they preclude the Governor from appointing two individuals who did not meet the residency requirement in article V, section 8 at the time they were nominated. Because such a requirement would exceed what article V itself requires, that argument

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never received it. *See also United States v. Le Baron*, 60 U.S. 73, 79 (1856).

[3] Justice Labarga took the contrary position in *Thompson*. 301 So. 3d at 189 (specially concurring).

assumes the JNCs may add to the substantive requirements of article V, section 8 through their delegated authority to establish "[u]niform rules of procedure" under article V, section 11(d). They may not. This Court has "consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements." *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988) (quoting *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974)).[4]

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[4] The U.S. Supreme Court has taken the same approach to qualifications for office under the U.S. Constitution. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 (1995) ("[W]e reaffirm that the qualifications for service in Congress set forth in the text of the Constitution are 'fixed,' at least in the sense that they may not be supplemented by Congress."); *Powell v. McCormack*, 395 U.S. 486, 522 (1969) (explaining that "the Constitution leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution"). *See also The Federalist* No. 60, at 409 (Hamilton) (Jacob E. Cooke ed., 1961) ("The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature."); *Schaefer*, 215 F.3d at 1037; *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999); *Advisory Op. Re: Term Limits Pledge*, 718 So. 2d 798, 801 n.1 (Fla. 1998).

The rule that statutes or rules may not add to the qualifications for office follows from the text and structure of article V. Article V prescribes an elaborate and finely tuned process for filling vacancies on the Florida bench. That process has evolved significantly throughout the history of the State, at each stage of development reflecting different allocations of the authority to determine who will serve on the bench. *See generally* Joseph W. Little, *An Overview of the Historical Development of the Judicial Article of the Florida Constitution*, 19 Stetson L. Rev. 1 (1989). The current version of article V features elements of merit selection, executive prerogative, and direct democratic accountability. These elements are sometimes in tension with each other. By settling on a judicial appointment system that blends all three, article V effectuates what the people who approved it have determined to be the optimal blend of each of these elements.

Initially, each circuit (encompassing all trial courts within that circuit), each district court of appeal, and the Supreme Court has its own judicial nominating commission, as provided by law. Art. V, § 11(d), Fla. Const.; *see also* § 43.291, Fla. Stat. In the event of a vacancy on a court, the JNC for that court has thirty days (which the Governor may extend for up to an additional thirty days) to nominate

a slate of between three and six individuals for the Governor to appoint. Art. V, § 11(a), (c), Fla. Const. The Governor must appoint one of those individuals, within sixty days. *Id.* To govern the nomination process, the JNCs at each level of the court system are responsible to promulgate "[u]niform rules of *procedure*," which may be repealed by general law or a vote of five justices of the Supreme Court. Art. V, § 11(d), Fla. Const. (emphasis added).

The JNCs act as a filter, elevating for the Governor's consideration the most qualified candidates for judicial office. In so doing they "remove some of the discretion of the Governor's office in the appointment of judicial officers." *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009) (quoting *In re Advisory Opinion to the Governor*, 276 So. 2d 25, 30 (Fla. 1973) (per curiam)); *see generally id.* at 943–44; *1973 Adv. Op.* at 28–30. "The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge." *Pleus*, 14 So. 3d. at 943 (quoting *1973 Adv. Op.*, 276 So. 2d at 30 (emphasis removed)). The JNCs are thus set up as deliberative,

multi-member bodies,[5] representing diverse cross-sections of the relevant political community[6] and operating with a significant degree of independence from the three main branches of government,[7] albeit still as components of the executive branch.

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[5] The Constitution of 1968 originally provided that each JNC would consist of three individuals appointed by the Board of Governors of the Florida Bar, three individuals appointed by the Governor, and three individuals appointed by the other six members. Art. V, § 20(c)(5), Fla. Const. It allowed for these requirements to be "changed by general law consistent with sections 1 through 19 of this article." Art. V, § 20(c), Fla. Const. Exercising this delegated authority, the legislature has since provided that each JNC shall consist of nine gubernatorial appointees, of whom four must be based on nominations by the Board of Governors of the Florida Bar. § 43.291(1), Fla. Stat.

[6] *See* § 43.291(4), Fla. Stat. ("In making an appointment, the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit.").

[7] *See generally 1973 Adv. Op.*, 276 So. 2d at 28–30; *see also* § 43.291(2), Fla. Stat. ("A justice or judge may not be a member of a judicial nominating commission."); *id.* § 43.291(5) ("A member of a judicial nominating commission may be suspended for cause by the Governor pursuant to uniform rules of procedure established by the Executive Office of the Governor consistent with s. 7 of Art. IV of the State Constitution."); Art. IV, § 7, Fla. Const. (itemizing causes for suspension).

But the JNCs are not meant to deprive the Governor of all discretion to select among constitutionally eligible nominees. Reflecting in some ways the structure of the U.S. Constitution and its preference for lodging the ultimate appointment power in an energetic chief executive who is electorally accountable to the entire polity, *see The Federalist* No. 77, at 517–20 (Hamilton) (Jacob E. Cooke ed., 1961), article V assigns the Governor the ultimate responsibility to determine whom to appoint to fill a judicial vacancy. This change was made by a constitutional amendment in 1976, which "altered the system of selecting and retaining justices of the supreme court and judges of the district courts of appeal from one involving a general election by the voters (electorate) to one of appointment by the governor and subsequent retention elections by the electorate within the territorial jurisdiction of the respective courts." Art. V, § 10, editor's note, Fla. Const. Ann. (West). "[I]n fulfilling this constitutional duty, the Governor has discretion in his selection of a nominee from the [JNC's] list." *Pleus*, 14 So. 3d at 945.

Retention elections for Supreme Court justices and DCA judges, and general elections for circuit and county courts, supply the element of direct accountability to the people of the State. Art. V, § 10,

Fla. Const.[8] They allow the people to unseat a justice or judge notwithstanding the Governor's preference or a JNC's belief that the justice or judge is qualified to serve on the bench. In so doing, they "retain[] that primacy which has historically been accorded to [the elective process] consistent with the retention of all powers in the people, either directly or through their elected representatives in their Legislature, which are not delegated, and also consistent with the priority of the elective process over appointive powers except where explicitly otherwise provided." *Spector v. Glisson*, 305 So. 2d 777, 782 (Fla. 1974).

Overlaying the entire process are the eligibility requirements in article V, section 8. Taken as a whole, Florida's judicial nomination system effectuates a calculated trade-off among the interests served by the JNC-selection system: winnowing the field of justices and judges to those most qualified for the position; presenting the Governor with a sufficiently large and diverse candidate pool from which

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[8] The people of a given circuit or county may also vote to opt into the merit selection system, so that the judges for that circuit or county court would also be subject to retention elections. Art. V, § 10(b), Fla. Const.

he may exercise meaningful discretion in completing the ultimate appointment; and maintaining democratic accountability. The system sets off gubernatorial prerogative against mandatory qualifications for office and the salutary check of a deliberative, politically insulated, multi-member body. Adding to article V's requirements would upend the balance of interests that is central to its design.

The moment at which article V's mandatory qualifications attach to a justice or judge is a critical element of this trade-off. Constraining a JNC to nominate only individuals who already meet the qualifications in article V, section 8 would impose an extra-constitutional limitation on the Governor's appointment options and potentially deprive the public of the benefit of an otherwise fully qualified justice or judge. The residency requirement, for example, could be met by an individual nominee, fully qualified and indeed exemplary in every other respect relevant to service on the Florida bench, who changes residence to the territorial jurisdiction of the court to which he or she is appointed between the time of nomination and the time of appointment.

This Court's ruling in *Grassi* is particularly instructive on this front. *Grassi* held that a statute "impos[ing] the additional

qualification for the office of county commissioner of residency at the time of qualifying for election" was unconstitutional. 532 So. 2d at 1056. The case thus involved not merely a rule promulgated by a JNC but an act of the Florida Legislature. It also involved a provision of the Florida Constitution—article VIII, section 1(e), governing the selection of county commissioners—with language that could have been construed as delegating to the Florida Legislature the authority to add qualifications to those set forth in the provision, similar to article V, section 11(d).

Article VIII, section 1(e) governs the process for selecting county commissioners. It provides that the county shall divide itself "into districts of contiguous territory as nearly equal in population as practicable. *One commissioner residing in each district shall be elected as provided by law.*" (Emphasis added.) A 1983 Florida statute in turn provided that "[a] candidate for the office of county commissioner shall, at the time he qualifies, be a resident of the district from which he qualifies." § 99.032, Fla. Stat. (1983). Violations of the statute were punishable as first-degree misdemeanors. § 104.41, Fla. Stat. (1983). The appellee in the case was a candidate for the Broward County Commission whom the State had charged with running in a

different district from the one in which he lived. The trial court had granted his motion of dismiss on the ground that the statute contravened article VIII, section 1(e).

This Court affirmed. Initially, it rejected the State's argument that the statute was "not substantive" or that the phrase "as provided by law" in article VIII, section 1(e) "'delegate[d] the establishment of specific county commissioner qualification to the legislature.'" *Grassi*, 532 So. 2d at 1056 (quoting State's brief). It ruled instead that the constitutional provision "delegat[ed] to the legislature the task of establishing procedures for election of county commissioners, not the power to set qualifications for that office." *Id.* It then interpreted the constitutional provision as "requir[ing] residency at the time of election" and declared the statute to be "unconstitutional, as it impose[d] the additional qualification for the office of county commissioner of residency at the time of *qualifying for election.*'" *Id.* (emphasis added).

This Court thus treated a shift in the timing of when a candidate must establish eligibility for office as a substantive change that impermissibly added to the qualifications for office set forth in the Constitution. It further made clear that that the delegation of authority

in article VIII, section 1(e) (through the phrase "as provided by law") did not permit the Legislature to change or add to those substantive qualifications. By the same logic, the parallel delegation to the JNCs in article V, section 11(d)—to establish "[u]niform rules of *procedure*" (emphasis added)—cannot be used as a sword to change or add to the substantive requirements of article V, including the conditions of eligibility for office.

To be clear, the Attorney General takes no position on how the JNCs' rules should be interpreted or whether they bind the JNCs in their own nomination discretion. The Fifth DCA JNC maintains that the relevant language in the Uniform Rules of Procedure for DCA Judicial Nominating Commissions, properly interpreted, "neither intends to nor does shift the constitutional eligibility requirement from the time of appointment to the time of nomination." Brief of Respondents at 10. Even if that interpretation were not correct, those rules could not change the eligibility requirements set forth in article V. As a result, they do not afford a basis for quo warranto relief that would prevent the JNC from nominating, much less the Governor from appointing, individuals who did not satisfy the residency requirement in article V, section 8 at the time of their nomination.

The Attorney General also acknowledges that a JNC could, in its discretion, decide that the best policy is to nominate only candidates who already meet the qualifications for judicial office set forth in article V. But a JNC certainly could not be forced, by writ of mandamus or otherwise, to nominate only candidates who preemptively satisfy the residency requirements of article V. Any such policy could not bind the JNCs in all cases, again because doing so would impermissibly augment the requirements of article V. It follows that a court could not enforce such a policy by issuing a writ of quo warranto, as a JNC in departing from such a policy would not have "improperly exercised a power or right derived from the State." *Thompson*, 301 So. 3d at 191 (quoting *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011)).

CONCLUSION

For the foregoing reasons, this Court should deny Boan's petition for a writ of quo warranto.

Respectfully submitted.

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December 13, 2022

CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I certify that this amicus brief was prepared in Bookman Old Style, 14-point font, in compliance with Rules 9.370(b) and 9.210(b) of the Florida Rules of Appellate Procedure; and that it contains 4,382 words, in compliance with Rule 9.370(b).

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