

AFJ NOMINEE SNAPSHOT

JOHN NALBANDIAN

U.S. Court of Appeals for the Sixth Circuit

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INTRODUCTION

On January 23, 2018 President Trump nominated John Nalbandian to fill a seat on the U.S. Court of Appeals for the Sixth Circuit.¹ Nalbandian was nominated to replace Judge John Rogers.²

Like the vast majority of Trump's nominees, Nalbandian is a member of the Federalist Society, an outside group to which Trump has indicated he has delegated important aspects of the judicial nomination process.³

BIOGRAPHY

John Nalbandian was born in 1969 and graduated from the University of Pennsylvania in 1991 and the University of Virginia School of Law in 1994. After law school, Nalbandian clerked for Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit. From 1995 to 2000 Nalbandian worked at Jones Day in Washington DC. Since 2000, he has worked at the law firm Taft Stettinius & Hollister LLP in Cincinnati, Ohio, where he has been a partner since 2004. Nalbandian is the

lead appellate lawyer and practices complex litigation.

In addition to civil work, in *Frazier v. Huffman*, 343 F.3d 780 (6th Cir. 2003), Nalbandian briefed and argued a capital habeas case on behalf of convicted capital defendant Richard Frazier. The Sixth Circuit held that Frazier had received ineffective assistance of counsel during the sentencing phase of his trial, and therefore vacated Frazier's death sentence.

Nalbandian has been a longtime leader in Republican politics. From 2010 to 2016, he served as general counsel and State Executive Committee member for the Republican Party of Kentucky.⁴ Nalbandian was a delegate to the 2016 Republican National Convention, and was an alternate delegate to the 2008 and 2012 conventions. He also served as a board member, and formerly the chairman, of the Commonwealth Political Action Committee.⁵ The Commonwealth Political Action Committee works to get Republicans elected to state government positions nationwide.⁶

In 2016, Taft Stettinius & Hollister was awarded a \$500,000 contract by Kentucky's Republican governor to investigate his Democratic predecessor.⁷ Democrats raised

¹ Press Release, President Donald J. Trump Announces Tenth Wave of Judicial Candidates, The White House (Jan. 23, 2018), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-tenth-wave-judicial-nominees/>.

² Current Judicial Vacancies, Administrative Office of the U.S. Courts (last checked Feb. 9, 2018), <http://www.uscourts.gov/judges-judgeships/judicial-vacancies/current-judicial-vacancies>.

³ Sen. Comm. On the Judiciary, 115th Cong., John B. Nalbandian Questionnaire for Judicial Nominees, 4; see Lawrence Baum & Neal Devins, *Federalist Court: How the Federalist Society became the de facto selector of Republican Supreme court justices*, SLATE (Jan. 31, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/01/how_the_federalist_society_became_the_de_facto_selector_of_republican_supreme.html.

⁴ Sen. Comm. On the Judiciary, 115th Cong., John B. Nalbandian Questionnaire for Judicial Nominees, 11.

⁵ Sen. Comm. On the Judiciary, 115th Cong., John B. Nalbandian Questionnaire for Judicial Nominees, 11.

⁶ See, e.g., Patrick Crowley, *N. Ky. GOP ready to do battle for secretary of state seat*, THE CINCINNATI ENQUIRER, Dec. 15, 2002, at 1B; Patrick Crowley, *N. Ky. PAC has a plan*, THE CINCINNATI ENQUIRER, Feb. 7, 2002, at 1B.

⁷ Adam Beam, *Lawmakers allow pricey probe of gov's rival to move forward*, KENTUCKY TODAY (Aug. 15, 2016), <http://kentuckytoday.com/stories/lawmakers-allow-pricey-probe-of-govs-rival-to-move-forward.4977>.

questions over whether the contract was fairly awarded, pointing out that another firm offered a rate over \$100 per hour cheaper than Nalbandian's firm. Nalbandian, who was general counsel of the Kentucky Republican Party Central Committee, was included in the contract.

VOTING RIGHTS AND ELECTION LAW

Nalbandian [wrote](#) an amicus brief on behalf of the Center for Equal Opportunity and Project 21 in support of Indiana's voter ID law, which required citizens voting in person to provide government-issued photo identification. See [Crawford v. Marion County Election Board, 553 U.S. 181 \(2008\)](#).

The Center for Equal Opportunity is a nonprofit that "devotes significant time to promoting color-blind equal opportunity and racial harmony, and works to advance race-neutral principles in the areas of education, public contracting, public employment, and voting."⁸ The organization takes strong stances on

immigration as well. According to its website, the Center for Equal Opportunity [opposes](#) "government policies that discourage assimilation, including bilingual education and bilingual ballots."

The other organization for which Nalbandian authored the amicus brief was Project 21. Project 21 is an initiative of the National Center for Public Policy Research, a right-wing think tank that takes extreme positions including [denial](#) of climate change science. Project 21's [website](#) says its mission is to "promote the views of African-Americans whose entrepreneurial spirit, dedication to family and commitment to individual responsibility have not traditionally been echoed by the nation's civil rights establishment." According to the organization's website, it was created after the Rodney King beating and subsequent unrest, when "the media made little mention of those in the African-American community who spoke out in favor of law and order and individual responsibility—and against the rioting."

Nalbandian also defended Ohio's legislature when it sought to undo a civil rights consent decree designed to protect voters. After the Northeast Ohio Coalition for the Homeless challenged the constitutionality of a 2006 Ohio voter ID law, the parties entered a consent decree which required Ohio's secretary of state to issue directives instructing Ohio's county Boards of Elections to follow rules regarding the casting and counting of provisional ballots for persons lacking identification

⁸ Brief of Amici Curiae Center for Equal Opportunity and Project 21 In Support of State Respondents, *Crawford v. Marion County*, https://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_07_21_RespondentAmCuEqualOpportunity.authcheckdam.pdf.

other than a social security number. [Northeast Ohio Coalition for the Homeless v. Husted, 2012 U.S. Dist. LEXIS 66111](#) at *5, 7 (S.D. Ohio, May 11, 2012).

In April 2012, Nalbandian represented Ohio's senate president Thomas Niehaus and house speaker Louis Blessing, seeking, in state court, "to compel the Secretary of State to rescind directives issued pursuant to [the] consent decree[.]" *Id.* at *7. A federal district court, however, ordered the senate president and house speaker to dismiss their mandamus action, which would have been in violation of the consent decree. *Id.* at *8-9.

The district court held that the lawsuit would "frustrate [the District Court's] final judgment from being carried out[.]" *Id.* at *21. Moreover, the court criticized Niehaus and Blessing for their "extraordinary act of lodging a direct collateral attack on a Consent Decree of [the District Court] which is still in effect." *Id.* at *26. Thus, Nalbandian's attempts to "compel the Secretary [of State] to disobey [the District Court's] orders pursuant to the Consent Decree[.]" failed. *Id.* at *27.

Prior to this lawsuit, Nalbandian was involved in an earlier case challenging the legitimacy of the Ohio secretary of state's directives to boards of elections. In the case, [Painter v. Brunner, 941 N.E.2d 782 \(Ohio 2011\)](#), Nalbandian filed a writ of mandamus during the aftermath of a disputed election of the

Juvenile Court judge election in Hamilton County, Ohio.

CONCLUSION

Given John Nalbandian's prominent role in Republican politics and advocacy in election law, the Senate Judiciary Committee should carefully examine his record before putting him in a lifetime seat on the U.S. Court of Appeals for the Sixth Circuit.