IN THE SUPREME COURT OF FLORIDA

Harvey M. Alper and
Joseph W. Little,

Petitioners **Case No. 00-2004**

vs.

The Florida Bar,
Arm of the Supreme Court, and
Robert A. Rush,

Respondents

RESPONSE OF PETITIONERS ALPER AND LITTLE

Petitioners Alper and Little respectfully submit that the RESPONSE OF THE FLORIDA BAR TO PETITION FOR INJUNCTIVE RELIEF fails to show good cause for denial of injunctive relief. The Bar's response has not confronted the urgent constitutional issues squarely presented by the Petition and has sought to avoid them by alluding to dicta and generalities that cannot dissolve the constitutional crisis the Bar's partisan political activities have provoked. The Bar has placed this Court squarely in the eye of the storm by declaring, as the Court's surrogate, a political position for this Court on a matter which may yet come before it.

A. THE FUNDAMENTAL AUTHORITIES

Petitioners commence by reciting the fundamental authorities that apply:

United States Constitution

First Amendment, United States Constitution:

Congress shall make no law ... abridging the freedom of speech... or the right of the people ... to peaceably assemble, and to petition the Government for a redress of grievances.

Ninth Amendment, United States Constitution:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained *by the people*. (Italic added).

Tenth Amendment, United States Constitution:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people*. (Italics added.)

Fourteenth Amendment, United States Constitution:

.....nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article IV, Section 4. United States Constitution

The United States shall guarantee to every State in this Union a Republican form of government.....

Declaration of Rights, Florida Constitution

Article I Section 1. All political power is inherent in the people.

Article I Section 2. All natural persons, male and female alike, are equal before the law.....

Article I Section 4. .....No law shall be passed to restrain or abridge the liberty of speech or the press.....

Article I Section 5. The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

B. THE BAR'S RESPONSE

The Bar's response (pp. 1-4) initially attempts to avoid the irrefutable facts that The Florida Bar is an arm of this Court and that this Court is a branch of state government created by Article V, Florida Constitution. The Bar's response also wholly ignores the Petition's allegation that the Bar is holding itself out to the public in its ongoing political activities as an arm of the Florida Supreme Court. The exhibits prove this. The fact that some of the Bar's activities may not entail the direct involvement of the Court does not remove the color of law and the imprimatur of the state. The law is well settled that subordinate State officials are colored with the power and authority of the state even thought their actions are not mandated or controlled by the State's highest officials.

The Bar's reliance on People Against Tax Rev. v. County of Leon, 583 So. 2d 1373 (Fla. 1991) is equally off base. In PATRM the governmental entity in question (Leon County) made a public decision to undertake a public works program by issuing voted bonds. The county's election activities were undertaken because "*it was important that we got that information out to the community and that we made the choices clear to the community.*" 583 So.2d at 1375. (e.s.) In short, the emphasis was explanatory, not political. On that point, PATRM explicitly found:

> While we agree with PATRM that such acts must not be abusive or fraudulent, we find nothing in the record to show that the limit was crossed here.

Id. (e.s.) By contrast, these Petitioners have alleged and provided exhibits to prove that the Bar has gone far beyond "the limit" that was not exceeded in PATRM. The Bar has not denied or disowned these exhibits.

Indeed, in Armstrong v. Harris, ____ So.2d____(Fla. 2000),2000 WL 1260014, (rehearing applied for), this Court examined the nature of those "limits" much more carefully than was required in PATRM. Because this Court is fully aware of Armstrong's facts and issues, Petitioners need not amplify them here. In sum, even the Legislature may not disguise a ballot issue with half-truths to hide the chief purpose of the measure and deceive the people. Armstrong relied heavily upon Wadhams v. Board of County Commissioners of Sarasota County, 567 So.2d 414, 417 (Fla.1990), a case involving a ballot title propounded by a county commission. In Wadhams, this Court held:

> No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told "the chief purpose of the measure." As this Court has previously stated: "[T]he voter should not be misled and ... [should] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote.... What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." Hill v. Milander, 72 So.2d 796, 798 (Fla.1954) (emphasis added).

Armstrong extended the "truth" requirement to the Legislature itself. It condemned deceptive acts of government that produced an election in which "the popular vote was based not on the whole truth but on part-truth." Armstrong. Armstrong also noted that the "main effect" of

the voted amendment was “to nullify a fundamental state right that has existed in the Declaration of Rights since this state's birth over a century and a half ago.” Id. The same principle applies here: the right to vote for trial court judges has long been lodged in the constitution.

Petitioners need not repeat the litany of falsehoods and half truths the Bar has used in its political campaign. Yet, one of them deserves particular condemnation. The Bar’s slogan, “Vote YES for Qualified Judges, Not Politicians,” is a sly and misleading slander to the countless honorable judges seated under the existing system. It is a false effort to impugn our constitutional structure as it exists. This Court ought to repudiate the Bar’s efforts.

But the real danger in the Bar’s activities and in the character of its response is summed up in Armstrong’s concluding paragraphs:

> Under our constitutional form of government in Florida, the Legislature is authorized to enact statutory laws and the courts can define the common law, but only the people-by direct vote-can delineate the organic law. The constitution is the one abiding voice of the body politic and encompasses the collective wisdom and counsel of our forebears, recorded verbatim throughout the ages. While any successive legislature is free to question the wisdom of the Founding Fathers and propose the striking of the Cruel or Unusual Punishment Clause, the Due Process Clause, the Right to Bear Arms Clause, the Freedom of Speech Clause, the Freedom of Religion Clause, or any other basic right enumerated in the Declaration of Rights, that legislature must do so plainly, in clear and certain terms. When Florida citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled-indeed, each is duty-bound-to cast a ballot with eyes wide open.

> Based on the foregoing, we hold that proposed Amendment No. 2 clearly and conclusively violates the accuracy requirement in article XI, section 5, Florida Constitution. The ballot title and summary "fly under false colors" and "hide the ball" as to the amendment's true effect. Most important, voters were not told on the ballot that the amendment will nullify the Cruel or Unusual Punishment Clause, an integral part of the Declaration of Rights since our state's birth. Voters thus were not permitted to cast a ballot with eyes wide open on this issue. *Because the validity of the electoral process was fundamentally compromised, we conclude that proposed Amendment No. 2 must be stricken.*

Id. (e.s.)

In short, Armstrong's base principle is not merely that the government must not formulate a deceptive ballot title; instead, it is that government may not mislead the voters or otherwise interfere with the rights of the citizens when voting on issues of constitutional status. To do so abridges the essence of the constitutional tenet, "All political power is inherent in the people." Or, as held in Armstrong, "To function effectively-and to remain viable-a constitutional democracy must require no less" than that "each voter will cast a ballot based on the full truth."

The Bar's campaigning falls far short of this standard. It makes no effort to inform the voters of the basic structure of the current system and how the proposal would change it. It does not and cannot present true facts to *prove* which system would produce "better" justice in Florida, or to *prove* which is more suitable in a constitutional democracy. On these matters, the best the Bar can produce is the "opinion" of its governors. Under the First Amendment, "There is no such thing as a false

opinion." That of the Bar is no more deserving of the imprimatur of the State than that of Petitioners'. In short, the government must not interfere with the right of the people to make their constitutional choices at the ballot box without interference by deception and half-truths promulgated by government.

Petitioners make one further point about PATRM. They raise no objections to right of the President of the United States, members of Congress, the Governor, or even members of a county commission to express their opinions on matters of public concern. PATRM held only that a *responsible governmental entity* (i.e., directly answerable to the general electorate) may use public funds in *truthful* effort to inform the voters of the nature of the choice facing them. Most emphatically, PATRM did not approve, even as to responsible governments, the use of rank political campaigning of the most disreputable fashion. Moreover, the officers named in PATRM *are responsible political officers*, elected by the voters and held accountable at the ballot box by the general electorate both for their political positions and their performances. This is certainly not true of the leaders of The Florida Bar. As another example, while it would not infringe any voter's constitutional right for the justices in their private capacities to express their private views on public matters, it would certainly infringe rights for the *Court qua court* to use the power and prestige of the state judiciary to support a position on a matter to be voted upon by the electorate.

The chief justice is the chief administrative official for the judicial branch of government in Florida. For the chief justice to use that power to direct courts around the state to pass out the Bar's flyers to all members of the jury venires would violate the First Amendment and Florida Declaration of Rights. Just so, when the Bar, the creature of the Court, employs the resources, name and prestige it obtains by virtue of powers granted by this Court to politic directly to the people, it infringes those rights. When it politics deceptively or with less than the whole truth, then it further intrudes upon the essential democratic right of the people in a manner condemned by Armstrong.

Finally, the Bar's attempt to defend its deceptive, half true, and misleading campaign based upon the proposition that members cannot petition this Court to correct every error in The Florida Bar News, is pure sophistry. The Florida Bar News is a publication of an agency of state government. As such, the First Amendment applies, rendering the Bar powerless to make publication decisions based on the political content of the messages or the political views of the writers. When and if such an issue arises, the Bar will surely be held to the standards of the First Amendment. Petitioners submit herein that the same standard of political neutrality must be applied to the Bar's financial support of but one side of the political issue involved in this petition.

C. THE GROUNDS OF PETITIONERS' COMPLAINT

Petitioners are well aware of the cases the Bar has

cited and, indeed, participated in some of them. All those cases skirt around the central constitutional issues at stake here; i.e., those rights expressed in the constitutional statements presented in part A above. As members of the Bar and as citizens of the United States of America and the State of Florida, Petitioners assert that the Bar's political activities violate their rights as follows:

1. Their right not to be compelled to be dues paying members of a compulsory membership organization that regularly undertakes political activities that they do not agree with or support, in violation of the First Amendment and the Florida Declaration of Rights.

2. Their right not to have their freedom of political expression abridged in addressing the people about the political choices they must make without having their voices drowned out by the overwhelming voice and money of government raised in opposition.

3. Their right to participate in the exercise of the supreme political power inherent in the people to make basic decisions through the democratic process about the organization of government without interference by the government.

4. Their right to petition government at the ballot box for a redress of grievances without having their access to the sovereign people infringed and denied by the overwhelming resources of the government aligned in opposition as a barrier to it.

5. Their right to have a neutral judicial system available for review of grievances. The Bar's political activities, undertaken as a surrogate of this Court, have placed this Court itself in seeming opposition to the political views of these Petitioners. This constitutes a violation of their rights of free expression and to petition this Court for redress in violation of the constitutional principles set forth above.

Point 1.

The first of these issues was litigated in The Florida Bar re: Schwarz, 552 So.2d 1094 (Fla. 1989), The Florida Bar Re. Frankel, 581 So.2d 1294 (Fla. 1991), and Keller v. State Bar of California, 110 S. Ct. 2228 (1990). As this Court knows, Keller is the leading first amendment case involving mandated Bar membership. In its concluding paragraph, Keller stated:

> In addition to their claim for relief based on respondent's use of their mandatory dues, petitioners' complaint also requested an injunction prohibiting the State Bar from using its name to advance political and ideological causes or beliefs. See supra, at 2232. This request for relief appears to implicate a much broader freedom of association claim than was at issue in Lathrop. Petitioners challenge not only their "compelled financial support of group activities," see supra, at 2233, but urge that they cannot be compelled to associate with an organization that engages in political or ideological activities beyond those for which mandatory financial support is justified under the principles of Lathrop and Abood. The California courts did not address this claim, and we decline to do so in the first instance. The state courts remain free, of course, to consider this issue on remand.

110 S. Ct. at 2238. Morrow v. State Bar, 188 F.3d 1174, 1177 (9th Cir.1999), cert. denied, 120 S.Ct. 1162 (2000), is

the only reported decision to address this extended issue. Morrow denied relief saying:

> The claim reserved in Keller was a broader claim of violation of associational rights than was at issue in either Lathrop or in this case. Here, plaintiffs do not allege that they are compelled to associate in any way with the California State Bar's political activities. They do not allege that the Bar's political involvement is greater and the regulatory function less than it was when the Court decided Keller and Lathrop. The claim they make is therefore no broader than that in Lathrop, where the court held the regulatory function of the bar justified compelled membership. Lathrop controls our decision here.

188 F.3d at 1177.

By contrast to Keller and Morrow, these Petitioners do make a broader claim here. Petitioners are mandated to be members of an organization that overtly uses the financing mandates, the imprimatur and the authority of the Florida Supreme Court to endorse and support political views they oppose. Petitioners cannot divorce themselves from the sanction and the inveiglement of the State. Indeed, members of the voting public presume that Petitioners and other members of the Bar approve of and support the Bar's political position. Hence, Petitioners' own political views are diminished in the eyes of the public because the public is likely to perceive them as confused and inherently inconsistent. Government has no lawful power to diminish the weight of Petitioners' political opinion in this manner.

Unlike The Florida Bar, which was created by this Court as an arm of the Court, the State Bar of California exists under this provision of the California Constitution:

§ 9. State bar; public corporation; membership

> Sec. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

Hence, the State Bar of California is a "public corporation," not an arm of the California Supreme Court. Moreover, the powers of the State Bar of California are prescribed by statute, as follows:

> § 6001. State bar; perpetual succession; seal; powers; revenue; laws applicable
>
> The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.
> The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:
> (a) Make contracts.
> (b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.
> (c) Own, hold, use, manage and deal in and with real and personal property.
> (d) Construct, alter, maintain and repair buildings and other improvements to real property.
> (e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.
> (f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.
> (g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.
> Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or

not-for-profit corporations.

> No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares.

Hence, the State Bar of California is *not an arm of government* and is plainly *not an arm of the California Supreme Court.* Instead, it is *only a public corporation* much like many Florida nonprofit corporations. Unlike the voice of The Florida Bar, the voice of the State Bar of California is not backed by the force of the California State government, much less the California Supreme Court.

Petitioners submit that The Florida Bar has gone far beyond Keller. These Petitioners are required to be members of an organization whose political purposes directly implicate the authority and prestige of this Court. Petitioners oppose these purposes. The Bar has entered the domain of half-truths and political posturing that is far beyond anything presented in Keller or is likely to have been envisioned by the United States Supreme Court. For these reasons alone, the injunction must issue.

Petitioners also submit that the Bar has exceeded the ideological liberty permitted to it by Schwarz and Frankel by entering the arena of directly campaigning to the people on a proposed ballot question affecting the state's basic

governmental structure. This excess is independent of the tie to the authority and prestige of this Court. The core of the ballot question is one of pure political choice- do the voters want the current system of seating judges or a change? Lawyers have opinions about the matter, but the lay public knows a lot and can form its own opinions without pollution by governmental endorsement of one side or the other. Moreover, the opinions of lawyers, individually and collectively, differ, and are as likely, or more so, to be motivated by perceived professional advantage as by an impartial assessment of the good of the public. This is a pure political issue. Constitutional principles require the government and the Bar to keep out. For this reason too, Petitioners submit they are entitled to relief.

Point 2.

On the issue at stake, i.e., whether the voters of the state should change the structure of government by altering the present system for selecting and retaining judges, the Petitioners' political views have exactly the same right to the protection of the state as that of every other member of the Bar and of the general public. The right of free political expression guaranteed by the First Amendment and the Florida Declaration of Rights prevents the government from physically barring access to the ballot box. The right also prevents the government from shouting down the Petitioners' political views by governmental action, financed by exacted funds. When the State brings its powers and resources behind one side of the debate to supplant the

will of the people with that of the government, the effect is the full equivalent of physically barring the ballot box to some and allowing others to vote. Governmental manipulation of free political expression is a hallmark of *faux democracies.* Up to now, it has been abhorred and prohibited in Florida and the United States of America.

Armstrong quoted Gray v. Golden, 89 So.2d 785, 790 (Fla.1956) to acknowledge the centrality of unfettered constitutional democracy in our system of government:

> Another thing we should keep in mind is that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.

Keller, Schwarz and Frankel did not treat this issue. Perhaps, this was because the government had not then attempted to influence the voters directly through common electioneering practices as the Bar has now undertaken. Nevertheless, the United States Supreme Court addressed this issue in slightly different contexts in Rosenberger v. Rector and Visitors of the University of Virginia, 115 S. Ct. 1346 (1995) and Board of Regents of the University of Wisconsin System v. Southworth, 120 S. Ct. 1346 (2000). These cases dealt with First Amendment limits upon state

power to allocate resources to student organizations that promote sectarian or partisan political ideas. In short, the answer required by the First amendment is "neutrality" toward religion (Rosenberger)and "neutrality" toward political "viewpoint" (Southworth).

In the context of the political issue involved in this petition, the First Amendment and the Florida Declaration of Rights require no less: viewpoint neutrality. To satisfy the constitutional requirement, if the Bar is to support any political viewpoint, it must support them all with equal weight. The current activities of the Bar violate this constitutional principle and must be enjoined.

Point 3.

The right of the people to vote is explicitly acknowledged in four separate provisions of the United States Constitution: Amendment XV, Amendment XIX, Amendment XXIV, and Amendment XXVI. When a state creates a right to vote in a public election of general interest, the right so created is protected against state infringement by the First and Fourteenth Amendments. Hill v. Stone, 421 U.S. 289, 297, 95 S.Ct. 1637, 1643, 44 L.Ed.2d 172 (1975) and South v. Peters, 339 U.S. 276, 70 S. Ct. 641, 94 L.Ed. 834. Both this Court and the United States Supreme Court have explicitly acknowledged that this right extends to elections and campaigns to amend state constitutions. Meyer v. Grant, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988) (pertaining to the Colorado process for amending the constitution by initiative and referendum) and Advisory

Opinion to the Attorney General re Tax Limitation, 644 So.2d 486, 489 (Fla.1994), also involving an initiative and referendum. In the latter case, this Court stated:

> Infringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution.

Reynolds v. Sims, 377 U.S. 533,555, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506 (the essential “one voter, one vote” case) remains as the seminal case. There, the United States Supreme Court stated:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Here, Petitioners, as members of the Bar, seek redress of their constitutional right to vote as citizens of the State of Florida and the United States of America. Indeed, the Bar’s practices violate the rights of all citizens of Florida, not just members of the Bar. In this instance, Petitioners’ right to vote is being overtly opposed in the hustings by the Bar, employing the powers of state government as an arm of this Court. The weight of the Petitioners’ votes is abridged by the Bar’s campaign expenditures and activities just as surely as if the State were placing a monetary charge or tax on the right to vote. Through its publications, which this Court as the Bar’s

creator can judicially notice, the Bar has announced that it has formed a special committee to promote its political activities. It has produced *½ million or more of* the misleading campaign flyers attached to the petition in this cause. It has also produced many copies of a video tape to disperse its political message widely among the voters. And, as an arm of this Court, the Bar is visiting editorial boards around the state to persuade them to endorse the government's view on the political issue rather than that of its opponents.

While the amounts of the Bar's expenditures in money, fixed resources, and staff are unknown to Petitioners, they surely range into the hundreds of thousands of dollars. This perhaps places the Bar in violation of Chapter 106 Fla. Stat., a matter that itself could come before this Court. These resources are not available to Petitioners to counter the Bar's activities against their political interests. Hence, in addition to everything else, the Bar's activity deprive them of the equal protection of the laws. But worse than this, the Bar is directly tying the validity and correctness of its campaign to the authority and the prestige of this Court, i.e., the State itself.

If the Bar's challenged activities are not found to violate the right to vote, then an essential bulwark against governmental tyranny will have fallen. In Article XI, Florida Constitution, the Legislature is vested with power to propose amendments to the Florida Constitution. Proposed amendments could include severe restrictions on the powers

and jurisdictions now vested in this Court. May the Legislature also create a body with the power to raise revenue by taxes, fees or other mandatory exactions and use those funds to campaign directly to the people in support of such a Legislative proposal? These Petitioners respectfully submit that the First and Fourteenth Amendments and the Florida Declaration of Rights would forbid this activity. This Court would surely agree. Neither do these fundamental authorities permit the Bar to engage in the political activities challenged in this petition. Otherwise, the day may come when the Legislature and this Court may find themselves competing in political campaigns with exacted funds to persuade the voters that the opinion of one branch of the government on a proposed amendment is preferable to the opinion of the other.

In sum, the Bar's activities plainly diminish and abridge the right to vote of all members of the Bar and citizens of the State, including especially those who do not agree with the Bar's position. This diminishes the weight of Petitioners' votes while enhancing the weight of the votes cast by those members of the Bar who support the Bar's position. It violates the free expression and equal protection rights of dissenters. This alone requires the injunction to issue.

Point 4.

The political sovereignty of the people of Florida is embedded in Article I § 1 Florida Constitution: "All political power is inherent in the people." Political

sovereignty of the people is also the core value of the United States Constitution. That hallowed document begins with the words, "*We the people* of the United States.... do ordain and establish this Constitution for the United States of America." (Italics added.) This is not mere precatory language but is an expression of ultimate sovereignty supported and enhanced by the Bill of Rights. Amendment IX states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained *by the people*." (Italics added). And in like manner, Amendment X states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people*." (Italics added.)

In short, the United States Constitution plainly acknowledges that ultimate political sovereignty in the United States is reserved in "the people." Moreover, Amendment X explicitly acknowledges that "the people" may reserve powers independent and distinct from the powers of "the states" qua states. In Florida, the people have reserved to themselves the final “yea” or “nay” on proposals to amend the Florida Constitution. Article XI § 5 Florida Constitution. This is the most critical expression of the inherent political sovereignty of the people.

The people of this Country have exercised their ultimate sovereignty to petition virtually from the time of the Country's beginning. Indeed, it has been said that the right to petition is “a distinct right, superior to the

other expressive rights," including free speech and free press. Spanbauer, "The First Amendment Right to Petition Government for A Redress of Grievances: Cut from a Different Cloth," 21 Hastings Const. L. Q. 15 (1993). For example, the people making law in town meetings is an ancient and important element of American governance, especially in New England. See, e.g., Sly, Town Government in Massachusetts, (Harvard Press 1930). This must be acknowledged as government by the people acting as "the Government" within the meaning of the First Amendment. It is also nothing new that departments of government sometime wish to stifle the people in their exercise of the ultimate right to make laws and policy. History records, for example, that many town meetings in Massachusetts fanned the flames of liberty in the 1770s by adopting resolutions calling for a declaration of independence and doing so against the desires of the Royal governors. Sly, supra., pp. 98,99. History also records that in 1744 the British Parliament adopted a statute to limit the powers and jurisdiction of town meetings in the Massachusetts colony for the purpose of stifling resolutions supporting independence. Go. III. c. 45. See also, Sly, supra. History finally reports that this attempted suppression did not quell the spirit of liberty, but indeed may have helped incite the very event it was intended to quash, the Declaration of Independence of 1776.

The United States Supreme Court has acknowledged that the people's exercise of amendment rights reserved in a

state constitution invoke both the free speech, Meyer v. Grant, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988), and the right to petition, Cammarano v. United States, 358 U.S. 498, 79 S.Ct. 524, 3 L.Ed 462 (1959)[1], limbs of the First Amendment. Cammarano ruled that money spent to influence a state initiative constituted expenditures on legislation:

> We think that initiatives are plainly 'legislation' within the meaning of these Regulations. Had the measures involved in these cases been passed by the people of Washington and Arkansas they would have had the effect and status of ordinary laws in every respect. The Constitutions of the States of Washington and Arkansas both explicitly recognize that in providing for initiatives they are *vesting legislative power in the people*. Every court which has considered the question has found these provisions to be fully as applicable to initiatives and referendums as to any other kind of legislation.

When the state undertakes to interfere with the people's right to make a free decision on the basic organization of state government, as the Bar has done in this instance, it abridges the right of the people to petition for redress guaranteed by the First Amendment and by Article I § 5 Florida Constitution. The nature of the abridgement is the same as described in Point 3 above. The nature of the right abridged is distinctively different and independently entitled to protection. For this reason alone, this Court

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[1] In Biddulph v. Mortham, 89 F.3d 1491, 1497 (11th Cir.1996), th 99 F.3d 1157, cert. denied, 117 S.Ct. 1086 (1997), the court held that the Florida system for reviewing initiated referenda under Article XI § 3 Florida Constitution, implicated the free speech clause of the First Amendment but not the petition clause.

should grant the relief requested in the petition.

Point 5.

The neutrality of this Court and its authority to function as an arbiter of justice are impugned by the Bar's political activities. Those activities give the appearance that this Court has taken a political position on a matter that may come before it for decision. Likewise, the Bar's activities give the appearance that this Court opposes the political views of these Petitioners and the many other members of the Bar and the public who oppose the Bar's political views. In short, the Bar's political activities violate Petitioners' constitutional rights, and those of the clients they and other lawyers of like mind represent, to a system of justice that is neutral and not tainted with prejudice by political matters such as those that have elicited this Petition.

Conclusion

For all the reasons stated herein and in the Petition, Petitioners respectfully submit that the Bar failed to show good cause why its political activities do not deprive Petitioners of fundamental rights guaranteed by the United States and Florida Constitutions. Accordingly, this Court should grant the relief requested in the petition.

Respectfully submitted,

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Certificate of Service

I certify that a copy of this document has been served by email and United States mail on Paul Hill, Esq., Attorney for The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl. 32399-2300, 850-561-5600 and Barry Richard, Esq., Attorney for The Florida Bar, Greenberg, Traurig, 101 E. College Avenue, Tallahassee, Fl. 32301, and by mail on Robert A. Rush, Esq., 626 N.E. 1st Street, Gainesville, Fl. 32601, 352-373-7566, this 9th day of October 2000.

Joseph W. Little

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