No. 18-1026

In The

SUPREME COURT OF THE UNITED STATES

William Kinney & Margaret Kinney,

Petitioners

v.

Anderson Lumber Company, Inc.,

Kizer & Black, Attorneys, PLLC

McDonald, Levy, & Taylor, Attorneys

Respondents

On Petition For Certiorari To The United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

William & Margaret Kinney

2442 Allegheny Loop Road

Maryville, TN 37803

865-773-5299

QUESTIONS PRESENTED:

1. Whether Tennessee's law for the unlicensed practice of law violates the Sherman Anti-Trust Act by restraining free market trade and competition without mandatory State oversight.

2. Whether Tennessee's law for the unlicensed practice of law is vague or over broad, depriving citizens of their rights without fair process, thus violating the due process clause and the equal protection clause of the Fourteenth Amendment.

3. Whether the application of Tennessee's UPL law by Federal Courts in concurrent jurisdictions violates the Religious Freedom Restoration Act, 42 U.S. Code § 2000bb.

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OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit denying rehearing en banc was filed on November 14 2018.[1] The order of the United States Court of Appeals for the Sixth Circuit denying this appeal was filed on September 13, 2018.[2] The Notice of Appeal to the Sixth Circuit was filed on February 7, 2018. The memorandum order of the United States District Court for the dismissal of this complaint, was filed on January 9, 2018.[3] All of which is reprinted in the Appendix hereto, pages 20-51.

JURISDICTION

On February 16, 2016, Petitioners filed the instant case in the United States District Court for the Eastern District of Tennessee at Knoxville.[4] We alleged, inter alia, deprivations of our civil and equal rights within the meaning 42 U.S. Code § 1983 and violations of the Fair Debt Collection Practices Act, 15 U.S. Code § 1692 et seq. On March 28, 2017, the District Court dismissed our Section 1983 claim.[5] On January 9, 2018, the district court dismissed the remaining original FDCPA claim, while sending a second FDCPA claim which arose during litigation in federal court, to the state court.[6] On February 7, 2018, the petitioners timely filed an appeal with the United States Circuit Court of Appeals for the Sixth Circuit, which was dismissed on September 13, 2018.[7] Petitioners timely filed a petition for rehearing en banc with the Sixth Circuit on October 11, 2018, [8] which was dismissed on November 14, 2018.[9] Petitioners have timely filed this Petition and the jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. § 1254(1).

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[1] Appeal No. 18-5146, DOC 27

[2] Appeal No. 18-5146, DOC 24

[3] Case No. 3:16-cv-00078, DOC 66

[4] Case No. 3:16—cv-00078

[5] Case No. 3:16-cv-00078, DOC 28

[6] Case No. 3:16-cv-00078, DOC 66

[7] Appeal No. 18-5146, DOC 24

[8] Appeal No. 18-5146, DOC 26

[9] Appeal No. 18-5146, DOC 27

CONSTITUTIONAL PROVISIONS, AND STATUTES AT ISSUE

First Amendment To The United States Constitution, Fifth Amendment To The United States Constitution, Seventh Amendment To The United States Constitution, Ninth Amendment To The United States Constitution, Tenth Amendment To The United States Constitution, and Fourteenth Amendment To The United States Constitution.

42 U.S. Code § 1983

15 U.S. Code § 1692

28 U.S.C. § 1254

The Judiciary Act of 1789, SEC. 35

42 U.S. Code § 2000bb.

15 U.S.C. § 1, 2

Constitutional Provisions and Statutes are re-printed in the appendix, pages 46-51.

SCHOLARLY ARTICLES

Unauthorized Practice of Law In Tennessee, by Jessica Myers, Assistant Attorney General for the State of Tennessee, March 20, 2015

The Supreme Court: How It Was, How It Is William H Rehnquist New York: William Morrow & Co. (1987)

The Massachusetts Book of Liberties, 1641 .

The Pennsylvania Frame of Government of 1682.

The Bill of Rights: A Documentary History 130 (1971) by Schwartz.

Documenting the Justice Gap in America, the Legal Services Corporation.

The future of legal services in the United States, by Judy Perry Martinez (2018)

Letter to the Task Force To Define The Practice Of Law In Massachusetts, Department of Justice, Federal Trade Commission (2004)

Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement, Deborah L. Rhode & Lucy Buford Ricca (2014).

I.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

In November of 2012, Respondent sued Petitioner Margaret Kinney ("Margaret") in state court, and then added Petitioner William Kinney ("William") as a defendant, for a debt allegedly incurred on an Anderson Lumber credit account.[10] No evidence of an indebtedness was ever introduced into the record by the respondent for the account sued upon in its state complaint. Mr. Landon Coleman, V.P., Anderson Lumber Company, Inc., perjured himself by attesting to an alleged debt owed by the Petitioners in his Sworn Account. Petitioners have properly introduced into the record sworn affidavits disputing every allegation of fact relevant to the alleged debt specified in respondent's state complaint. The respondent has failed to establish its prima facie showing needed to procure personal jurisdiction over the Petitioners in state court that comports with the Fourteenth Amendment. Subsequently, the state court's exercise of personal jurisdiction over the petitioners violates the requirements of due process.

At a hearing held at the District Court in Knoxville, Tennessee on October 18, 2017, the respondents asserted to the Honorable H. Bruce Guyton, Chief Magistrate Judge of the District Court for the Eastern Division of Tennessee, that they had the documentation needed to support the state claim, but then failed to produce the documentation when ordered to do so by the district court.[11] The Respondent deliberately and wrongfully concealed the factual predicate to Petitioners' federal claims in order to unlawfully maintain jurisdiction over the Petitioners in state court [12] During state court hearings, the respondents have used the threat of criminal prosecution under Tennessee's law for the unlicensed practice of law ("the UPL law")

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[10] Our son Christopher Kinney ("Chirs"), who was originally named as a defendant in respondent's state case, passed away on December 28, 2015.

[11] DOC 54, Page ID # 1058

[12] Serras v. First Tennessee Bank Nat. Ass'n 875 F.2d 1212, 1214 (6th Cir) See also Chenault v Walker, et al. No. W1998-00769-SC-R11-CV, TN Supreme Court, 2001) "the exercise of jurisdiction must comport with the United States Constitution."

against William to "chill" his right to free speech[13] and deliberately hinder Petitioner's defense in preparation of trial, while denying us our liberty and property rights without due process of law.[14] As husband and wife, William and Margaret are one person in the eyes of God and in law. This relationship, founded in the free exercise of our religion, is not an attorney-client relationship that comes under the purview of the UPL law. Neither does said law prohibit a husband and wife from preparing legal documents for themselves, or appearing as counsel for each other in court. The respondents and the state court, by applying a subjective opinion to the vague or overbroad UPL statute, have imposed a rule of conduct upon the petitioners that violates our right to due process.[15] There is no authority in Tennessee case law, precedence, or even A/G opinions,[16] to support the threats leveled against the petitioners by the state court and the respondents under the guise of UPL. All such threats were made under color of law, to deprive the petitioners of their civil rights within the meaning of 42 U.S. Code § 1983.

B. The State Court Proceedings

At state court proceedings held on July 18, 2013, December 1, 2014, January 16, 2015, and February 13, 2015, the respondents questioned the petitioners about the preparation of legal documents. At the hearing held on February 13, 2015, William had to plead his rights under the Fifth Amendment to avoid criminal prosecution under the UPL law, while he and Margaret attempted to present their mutual defense at said hearing.[17] At the hearing held on January 16, 2015, which the petitioners had scheduled to compel discovery, Mr. John McArthur of Kizer & Black, Attorneys ("McArthur"), objected that William was representing his wife. Immediately following McArthur's objection, the Honorable David R. Duggan, Judge of the Blount Court Circuit Court in Maryville, Tennessee, warned William that it was a crime for him to represent his wife. In response to Judge Duggan's threat, William chose to remain silent rather than be accused of a crime. Subsequently, the

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[13] Sec'y of State of Md. v. Munson Co., 467 U.S. 947, at 968

[14] See companion Case No. 3:18-cv-00227, Lugar v. Edmondson Oil Co 457 U.S. 922, at 923

[15] United States v. Price, 383 U.S. 787 at 794 n. 7

[16] Unauthorized Practice of Law In Tennessee, by Jessica Myers, TN Asst. A/G

[17] **Transcript of Special Master's hearing, Case No. 3:16-cv-00078, DOC 45, Page ID #'s 996-998. The Special Master's Report was never adopted by the state court It is replete with fraudulent representations and forged documents proffered by the respondents, the state court refused to examine and subsequently ORDERED the Special Master not to introduce said documents as evidence.**

court did not hear petitioner's motion to compel discovery and instead granted the respondents a continuance. The state court failed to write an order for said hearing.[18]

In his response to Petitioner's First Motion for Recusal, Judge Duggan explains that he warned William at the hearing held on January 16, 2015, that *"to purport to represent another person without a law license is, in fact, a misdemeanor, which means it is a crime."* Judge Duggan continues by stating, *"..the court has explained to a pro se party, many times,* why that party cannot represent another party in a proceeding, and to purport to do so is potentially a crime."* Judge Duggan further stated, *"The Court does remember, on many occasions, that the Court, after explaining that one person cannot represent another person without a law license, and that to purport to do so is a crime, has gone on to explain to the pro se party, and in an effort to try to calm the waters, that the court is not saying that anyone is going to be prosecuted."*[19] For the state court to say, "it is a crime," and at the same time, it is "potentially a crime," while at the same time saying it is a crime that you may or may not be prosecuted for, *"fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement."* (quoting United States v. Williams[20]) The UPL law violates due process on vagueness grounds because the statute can be applied to circumstances that are not clearly articulated in the construction of the statute. Which leads to the predicament described by this court in *Screws v. US*; *"The constitutional vice in such a statute is the essential injustice to the accused of placing him on trial for an offense the nature of which the statute does not define, and hence of which it gives no warning."* [21]

In a demand letter written by respondent Anderson to the petitioners on May 28, 2015, Atty. Charles Taylor ("Taylor") from the law firm of McDonald, Levy, & Taylor, stated; *"Judge Duggan has already ruled that Mr. William Kinney cannot represent the interests of his wife and son, and they will either have to start actively participating in the lawsuit, or hire an attorney to represent them."*[22] Taylor is refer-

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[18] DOC 44-3, Page ID #: 918, entry under December 30, 2014.

[19] Case 3:17-cv-00288, DOC 1, Page ID #'s 60-62

[20] United States v. Williams 553 U.S. 285, at 304

[21] Screws v. US; 325 U. S. 91, at 101

[22] Case 3:17-cv-00288, DOC 1, Page ID #: 63

ring to Judge Duggan's warning to William at the hearing held on January 16, 2015. This threat made by Taylor, and the threat made by McArthur (stated above) were made under color of law. In the State of Tennessee, only the courts are authorized to issue orders and injunctions to restrain and prevent UPL [23] The law authorizes Bar Associations to file claims for Attorney Plaintiffs against anyone who violates the UPL law.[24] It does not authorize an attorney to threaten criminal prosecution in a demand letter., or to spontaneously enjoin a person's right to free speech in open court, by making a bare assertion of a UPL violation. Punishment under the UPL law is applicable only upon a verdict made by a jury.

In addition to this, our son Chris was terminally ill and certified under the Americans with Disabilities Act. He attempted to obtain assistance from the Legal Aid Society, but the attorney assigned to him under the ADA did not return his calls. Chris did not possess the personal stamina to defend himself in court, or the financial means to hire an attorney. The only option left for Chris, outside of accepting a default judgment, was to ask his Dad for help. The only option William had, in good conscience, was to help his son. This led to William being threatened with UPL in Taylor's demand letter (stated above). There is a certain cruel irony to be found here. It is a criminal offense in the State of Tennessee to abandon an animal in your custody.[25] It is also a criminal offense for a Father to help his son with a legal matter. Employing this statutory logic, a Father must abandon his son under penalty of law, but cannot abandon the family dog under penalty of law. No parent living in a civil society should be put in that predicament. The UPL law is a good example of a "*penal statute susceptible of sweeping and improper application.*" [Dombrowski v. Pfister, 380 U.S. 479, at 487]

Because the threat of criminal prosecution under the UPL law has been used to spontaneously enjoin the Petitioner's First Amendment rights in open court, it operates as a Bill of Attainder in violation of Article I, Section 10, clause 1, of the Constitution of the United States. According to former Chief Justice William Rehnquist: "*A bill of attainder was a legislative act that singled out one or more per-*

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[23] T.C.A. 23-3-103(c)(3)

[24] T.C.A. 23-3-103(d)(1)

[25] TCA 39-14-202(a)(3)

sons and imposed punishment on them, without benefit of a judicial trial." [26] According to Mr. Rehnquist's technical legal analysis, a Bill of Attainder would possess four specific elements: (1) a legislative act, (2) a particular individual or group of individuals (3) a punishment, which includes the loss of life, liberty, or property, (4) the lack of a judicial trial. In the instant case, the threat of prosecution under the UPL law satisfies all four elements of a Bill of Attainder. (1) The legislation is T.C.A. 23-3-103, (2) the threat was directed toward the petitioners, (3) the punishment includes a loss of liberty and property (4) William was compelled to remain silent in court, under the threat of criminal prosecution, without benefit of a trial. Quoting from *Cummings, "These bills, though generally directed against individuals by name, may be directed against a whole class, and they may inflict punishment absolutely or may inflict it conditionally."*[27] While the Petitioners were directly affected by the UPL law, in a greater sense, pro se litigants have been affected as a class. Restated below is a part of Judge Duggan's statement made above:

> *The Court does remember, on many occasions, that the Court, after explaining that one person cannot represent another person without a law license, and that to purport to do so is a crime, has gone on to explain to the pro se party, and in an effort to try to calm the waters, that the court is not saying that anyone is going to be prosecuted."* [Emphasis added]

In other words, there have been many pro se litigants who cannot afford an attorney and expect to have the assistance of their partner in court, who get emotionally upset when this fundamental right is denied under the threat of criminal prosecution (which is why the waters need "calming.") We witnessed just such an incident in state court, in October of 2016. A husband and wife appeared before a Blount County, Tennessee Judge regarding a debt collection lawsuit filed in the wife's name only. The husband began to help his wife when the Judge abruptly interrupted by asking the husband, "Are you the debtor?" The husband replied, "No." The Judge responded, "Then you have nothing to say." We have challenged Tennessee's UPL statute not only because our First Amendment rights were violated, but also for the reason given by this court in *Broadrick; "...that -*

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[26] William H Rehnquist, The Supreme Court: How It Was, How It Is. New York: William Morrow & Co. (1987)

[27] Cummings v. Missouri 71 U.S. 277, at 278

the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."[28] and, "*particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.*" [29] According to the Supreme Court of Tennessee, the legitimate sweep of the UPL law is to protect the public, ostensibly from charlatans posing as attorneys. Therefore, threatening the petitioners (or any other married couple) under the UPL law, does not satisfy the legislative intent of the statute, or pass the compelling interest test required to justify limiting First Amendment rights.

C. The District Court Proceedings

1. The UPL Law Violates Substantive Due Process.

In our claim for deprivation of civil rights under Section 1983, from which this appeal arises, we asserted that fundamental to our Christian faith is a religious belief adopted from the Abrahamic faith of the children of Israel, which comes from the understanding that almost 6000 years ago God supernaturally caused a man and his wife to become (into) one flesh. In the oldest known written form of this doctrine, found in the original Hebrew it literally says;

"wahayuw (**to exist**) labasar echad (**as one person**)." (Bereshiyth 2:24)

Petitioners firmly believe that as a married couple we are one person in the eyes of God and in law, and we must stand together "**to protect and defend each other**" in all aspects of life, especially when called into court. In fact, the above quotation was part of the marital contract we entered into when expressing our wedding vows on September 26, 1975. The framers of our constitution were well acquainted with this belief enjoyed by many faiths, and which is now *"so rooted in the traditions and conscience of our people as to be ranked as fundamental."*[30]

Continuing in his answer to Petitioners First Motion for Recusal, Judge Duggan further states on page 19, paragraph 10, sub-paragraph b;

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[28] Broadrick v. Oklahoma, 413 U.S. 601, at 612

[29] *Broadrick* v. *Oklahoma,* 413 U. S. 601, at 615

[30] Griswold v. Connecticut, 381 U. S. 479, at 487

"To the extent that the Defendants continue to argue, in the present motion that in fact one of them can legally represent the other without a law license because "They are one person in the eyes of God and in law," they are simply wrong about that."[31]

This statement is a violation of our right to freedom of religion and freedom to worship.[32] The State is imposing its opinion of our religion as a matter of law, to constrain our beliefs while applying a criminal consequence to regulate First Amendment freedoms rooted in lawful activity. Judge Duggan did not articulate in said answer, how the petitioner's activities were harmful or of a public safety concern, nor did he give any other reason for interfering in our First Amendment rights. The UPL law does not prohibit a married couple from defending each other in court and the Judge's statement is viewpoint discrimination carried out through the exercise of governmental discretion.

Petitioners filed a Rule 5.1 Constitutional challenge of the UPL law with the District Court on July 30, 2016. [33] Pursuant to Rule 5.1(a)(2), on July 30, 2016 we served notice upon the Attorney General for the State of Tennessee, who failed to respond. [34]We presented our constitutional challenge of UPL to the State Appeals Court who failed to address our claim.[35] We appealed the decision to the State Supreme Court.[36] We presented the State Supreme Court with our constitutional challenge of the UPL law, and also raised the UPL issue with respect to Tennessee's Religious Freedom Restoration Act.[37] Our Appeal was summarily denied leaving us with no opportunity to raise our constitutional challenge in state court.[38] On January

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[31] Case 3:17-cv-00288-DOC 1, Page ID #: 62

[32] "No State shall . . . deprive any person....to worship God according to the dictates of his own conscience,.." Meyer v. Nebraska 262 U.S. 390, at 399 [Emphasis added]

[33] Case 3:16-cv-00078, Document 13, Page ID #: 266

[34] Case 3:16-cv-00078, Document 13, Page ID #: 264-265 [On June 7, 2016, we filed a Rule 24.04 Motion with the Attorney General for the State of Tennessee challenging the state's UPL statute, asking for a Declaratory Judgment and injunctive relief pursuant to Tenn. Code Ann. § 29-14-107. We received no response from the A/G. Case 3:17-cv-00288, DOC 2-1, Page ID #: 93]

[35] Case No. 3:17-cv-00288, DOC 2-1, Page ID # 109 [Found in its entirety at: No.E2016-01640-COA-T10B-CV--https://law.justia.com/cases/tennessee/court-of-appeals/2016/e2016-01640-coa-r3-cv.html]

[36] Case No. 3:17-cv-00288. DOC 2-1, Page ID #: 111

[37] TENN. CODE ANN. § 4-1-407

[38] Gibson v. Berryhill, 411 U.S. 564, at 581 n. 16

9, 2018, the District Court dismissed our case without certifying the Rule 5.1 constitutional challenge, or otherwise addressing the UPL issue in our original claim, or as a collateral issue.[39]

2. The District Court's application of Tennessee's UPL law in federal court violates 42 U.S. Code § 2000bb.

During the district Court proceedings held on October 18, 2017; Magistrate Judge Guyton raised the issue of petitioner's constitutional challenge of UPL, and gave a brief recitation of how UPL is defined in federal Court, as shown in the following excerpts from the transcript;

> MR. KINNEY: -- my wife and I are, of course, co-defending in that we assist each other in this matter. The opposing party interprets that as me representing my wife or vice versa, which, of course, is an interpretation of the state statutes 23-3-101 and –
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> **THE COURT**: I'll just say this for the record so there is no confusion: You are not an attorney. You can only represent yourself. Your wife can only represent herself. You can't represent her in court and she can't represent you in court. That's a very well-established rule and federal law. So that's why you both have an opportunity to speak today if you want to, but you are speaking for yourself and she will speak for herself. Do you have any questions about that?
>
> MR. KINNEY: Well, I still do want to formally challenge that interpretation of the Tennessee statutes.[40]

It is our contention that Judge Guyton is mischaracterizing the marital relationship of the petitioners by applying an attorney - client relationship. We are not a law business, and we do not appear for each other in a representative capacity. In actuality, we are one in the eyes of God, and one in law. Therefore, it is our natural right to interact, interject, help, or otherwise assist each other under all circumstances that may present themselves in life. Furthermore, as a practical matter, it is already a burden for self-represented parties to assert their rights in

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[39] Petitioners specifically requested that the state courts view our constitutional challenge of the UPL law under the state constitution, in light of our federal constitutional rights. We did not ask the state courts to adjudicate our federal constitutional rights.

[40] DOC 71, Page 18, lines 19-25, page 19, lines 1-25, page 20, lines 1-10

court. The State of Tennessee requires the petitioners to possess the same knowledge and skills of a seasoned attorney, all the while under the risk and even threat of dismissal.[41] This expectation is unrealistic. If the petitioners must be "private attorneys," how can the state then prohibit married couples from assisting each other in court, on the basis that one spouse would then be representing the other (which is something only an attorney can do). The state is actually demanding that the petitioners become attorneys in order to defend their constitutional rights, while at the same time, petitioners cannot counsel or assist each other while defending those same rights. This practice, directly or indirectly empowered by the state under the guise of UPL, is a violation of the equal protection clause of the 14th Amendment.

The district court addresses the subject of UPL a second time during the hearing held on October 18, 2017, regarding petitioner's Interrogatory No. 24 propounded to the respondents, which states;

> "By what precedent or legal reasoning do YOU object, to William Kinney assisting his wife Margaret Kinney, in defense of their mutual liberty and property rights, by invoking Tennessee's UPL statutes?" [42]

The respondents were not required to answer this question, as shown in the transcript below:

> THE COURT: All right. No. 24. I think I've answered No. 24.
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> MR. KINNEY: You want to -- with all due respect, I don't accept that answer. I think that the statute is overly broad and vague, and it actually operates as a bill of attainder. All an attorney has to do in court is say, Your Honor, he's representing somebody else. My wife and I, we're married; all right? We're considered to be one in the eyes of God. So this was an affront to our religious convictions. The word --
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> THE COURT: Well, nobody is attacking your religious beliefs. I'm just saying: As a matter of law, you can -- you represent yourself and she represents herself. Now, I understand married couples come into court all the time and they speak for each other. I understand that. I'm just saying technically; okay? Let's say this case goes to trial. Would you want it to be that she can't say anything if you say something? No. You'd want her

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[41] *The Court..."must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." Young v. Barrow, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003).*

[42] Case 3:16-cv-00078, DOC 68, Page ID #: 1197

to have the right to say something and you'd want to have the right to say something. Well, that's the way the law works. You represent yourself and she represents herself. Otherwise, after you said something, the other side would object and say, "Well, they have already spoken." So –

MR. KINNEY: Well --

THE COURT: -- that's how it is. So I think I've answered No. 24. You can assist each other. You just can't speak for each other and represent each other. See what I'm saying? There is a difference.

MR. KINNEY: ... it's not a matter of me speaking for my wife. She is well able to speak for herself. But if she isn't thorough enough and I can add something, a piece of knowledge or something that -- to help her, I should be allowed to help.

THE COURT: I just said that. I just said that.

MR. KINNEY: I know, but –

THE COURT: You can talk and share information. But when it comes to a court proceeding, which a deposition is, or a court hearing, you each represent yourself. That's all there is to it. And you both could -- you both can say whatever you want to say.[43]

Judge Guyton's statement, "You can assist each other...you both can say whatever you want to say...You just can't speak for each other and represent each other," is perplexing within the context of the UPL law. If William speaks for himself on an issue, he is not excluding Margaret from speaking on the same issue, as if her point of view would be precluded (or estopped) because William had already spoke on the matter. This is simply a matter of a husband and wife standing together in defense of each other, according to our religious belief. In addition to this, since Margaret plans to depend on William to assist her with her defense in state court, and in presenting her claim in federal court, William's assistance is essential to Margaret's right to a fair trial. If either spouse is denied the assistance of the other, we will be denied meaningful access to the courts. The vagueness of the UPL law, if applied in District Court, will serve to limit the presentation of our claim, not only in violation of our First, Fifth, and Seventh Amendment rights, but also in violation of 42 U.S. Code § 2000bb. We see "no compelling governmental interest to justify the substantial infringement of our right to religious freedom under the First Amendment." [44]

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[43] DOC 71, Page 50, lines 15-25, page 51, 1-25, page 52, 1-23

D. The Appellate Court Proceedings

The U.S Court of Appeals for the Six Circuit did not address petitioner's RULE 5.1 Constitutional challenge of UPL,[45] or the petitioners unopposed Motion to Enjoin the State Court Proceedings to further prevent the denial of petitioner's right to due process and violations of the Sherman Anti-Trust Act.[46]

II.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. Tennessee's UPL law violates the Due Process Clause.

Under the Due Process Clause of the Fourteenth Amendment, "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." [U.S. Const. amend. XIV, § 1.] The Due Process Clause has "procedural and substantive components."[47] Tennessee's UPL statute, T.C.A., 23-3-103, violates the First Amendment guarantee of Freedom of Speech and Freedom of Religion, and the right to Petition the Government for a Redress of Grievances; which are rights entitled to substantive due process protection and the application of strict scrutiny to the challenged action.

The Plain Language of the UPL Statute

The Supreme Court of Tennessee has stated that the UPL law is generally designed to protect the public,[48] and has issued guidelines to follow when deciding legislative intent.[49] These guidelines are meant to (1) prevent expanding a statute's coverage beyond its intended scope[50] or, (2) forcing a subtle interpretation that would limit or

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[44] 42 U.S. Code § 2000bb(2). See also Sherbert v. Werner, 374 U.S. 398, at 408–09, and Wisconsin v. Yoder , 406 U.S. at 215.

[45] DOC 13, Page ID #: 266

[46] Appeal No. 18-5146, DOC 23

[47] Plyler v. Moore, 100 F.3d 365, 374 (4th Cir. 1996).

[48] Haverty Furniture Co. v. Foust, 124 S.W.2d 694, 698

[49] Citations from AG opinions for the State of Tennessee, No. 02-078

[50] State v. Pettus, 986 S.W.2d 540, 544 (Tenn. 1999)].

extend the statute's application.[51] Due to vagueness, the UPL law has been used to accomplish both harms by extending its intended scope to include private interpretations that have deprived the petitioners of their civil and equal rights. In short, T.C.A. 23-3-101(1) defines the law business as (1) advising or counseling for valuable consideration, (2) the drawing of legal documents for valuable consideration, (3) the doing of any act in a representative capacity, for valuable consideration. The words "for valuable consideration" make up an essential clause being used to clarify the main clause ("advising and counseling"). In other words, the "advising or counseling" must be done "for valuable consideration," (ostensibly as it relates to monetary gain). The petitioners experience no monetary gain or exchange any other form of valuable consideration as a condition for assisting each other in court. Therefore, by definition we are not a law business. Secondly, the practice of law is defined by the representative capacity achieved through advising or counseling a client. An advocate relationship relies on there being a client. In our situation there is no client. Petitioners co-counsel each other as a married couple. We appear in court as ourselves, husband and wife, and we have no choice but to act - in this way.

The Historic Meaning of Counseling

The Judiciary Act of 1789, states in SEC. 35:

And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.

The Judiciary Act allows for a party to manage their own cause personally, meaning "by one's self," or by assistance of such counsel. The word "such" is being used as a transitional word pointing backward (in the sentence) to the subject matter of "managing one's own cause." This means, one may utilize the assistance of others, "**or attorneys at law...**" In the plain language meaning of Section 35, the word "or" is a conjunctive used to list alternatives. For our purposes in the instant case, we manage our cause utilizing each other as counsel, rather than employing the assistance of an attorney. This was indeed the practice in use at the time the Judiciary Act was signed into law, which is apparent from other declarations made throughout the American colonies. In the case of *Faretta v. California (1975)*,[52] in writing the opinion for the court, Mr. Justice Stewart refers to a number of American-

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[51] Carver v. Citizen Utils. Co., 954 S.W.2d 34, 35 (Tenn. 1997).

[52] Faretta v. California, 422 U.S. 806 (1975)

Colonial documents where the word "counsel" did not refer to lawyers. For example, he refers to, The Massachusetts Book of Liberties, written in 1641;

"Every man that findeth himselfe unfit to plead his owne cause in any court, shall have Libertie to imploy any man against whom the Court doth not except, to helpe him,[53]

The Pennsylvania Frame of Government of 1682 provided:

"That, in all courts, all persons of all persuasions may freely appear in their own way, and according to their own manner, and there personally plead their own cause themselves; or, if unable, by their friends. . ."[54]

The words "such counsel," as it appears in the Judiciary Act of 1789, invariably includes a husband and wife's right to each other's advice and judgment. In light of the historic meaning of counsel, it is accurate to say that the right to have your spouse as counsel was usurped under the guise of vague or overbroad UPL laws that came into effect across our country beginning in the 1930's.

2. The UPL law violates the Sherman Anti-Trust Act

The UPL law not only violates Tennessee's Antitrust Code Section, 47-25-101, et seq., it violates the Sherman Anti-Trust Act, 15 U.S.C. § 1, which makes unlawful "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States," and 15 U.S.C. § 2, which makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States." The UPL law is used to restrain the free market by restricting competition between lawyers and non-lawyer service providers. We found services that we could have used in our situation, in other jurisdictions of the United States, except they are prohibited in Tennessee. This situation is not unique to Tennessee. Numerous letters have been written by the Department of Justice, and the Federal Trade Commission to various States regarding activities that should not be considered the unlawful practice of law; but rather, are generally harmful to consumers by restricting competition, raising costs, and limiting choices. In its report "Documenting the Justice Gap in America,"

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[53] 422 U.S. 806, footnote 32

[54] Schwartz, The Bill of Rights: A Documentary History 130 (1971) [422 U.S. 806 n. 37, opinion of DOUGLAS, J.]

the Legal Services Corporation estimated that in the United States, 80 to 90 percent of low-income people with civil legal problems never receive help from a lawyer.[55] The Justice Department and the FTC blame this situation on the adoption of excessively broad unauthorized practice of law rules, along with opinions by state courts and legislatures, for preventing non-lawyers from competing with attorneys in providing certain services.[56] Other jurisdictions have begun to make changes in confronting the apparent disparity in costs and availability of legal services to the average person. For example, the State of Washington has begun to offer a Limited License Legal Technician. Among other "civil justice situations," they can help clients prepare court documents and perform legal research.[57] This same service constitutes the unlicensed practice of law in Tennessee.[58] The State of California enacted California Code of Civil Procedure - CCP § 116.540(k), which allows for a spouse to "...appear and participate on behalf of his or her spouse." Furthermore, CCP § 116.540(l) allows for a non-lawyer to assist a party who cannot "...properly present his or her claim..." The State of Illinois has a "Rights of Married Persons Act" which states in Sec. 2., Defending in own right or for other; "If husband and wife are sued together, either may defend for his or her own right and, if either neglects to defend, the other may defend for both."[59] The State of California and the State of Illinois recognize the rights historically possessed by married couples to defend each other in legal matters. Whereas in Tennessee, a husband and wife who might one day be called upon to make end-of-life decisions on behalf of their spouse,[60] cannot stand in defense of each other in a Tennessee courtroom. Tennessee's Health Care Power of Attorney statute was enacted in 1990 to preserve a married couple's dignity, whereas, the UPL law serves to strip the marital union of its honor and dignity.

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[55] Documenting the Justice Gap – https://www.lsc.gov [See also, The future of legal services in the United States, by Judy Perry Martinez.

[56]. Letter to the Task Force To Define The Practice Of Law In Massachusetts (2004) https://www.ftc.gov

[57] Washington State Bar Association - http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians

[58] Fifteenth Judicial Dist. Unified Bar Ass'n v. Glasgow, No. M1996-00020-COA-R3- CV, 1999 WL 1128847 (Tenn. Ct. App. 1999).

[59] 750 ILCS 65, from Ch. 40, par. 1002 (Source: P.A. 87-286.).

[60] T.C.A. 34-6-201, Health Care POA

The Tennessee Bar Association as a regulatory Board, functions in a manner similar to the North Carolina State Board of Dental Examiners, as seen in the case recently before this court.[61] Tennessee's local and State Bar Associations are private organizations who have been given authority by the State to enforce the UPL law. The State system of enforcement does not satisfy the requirements for immunity, that the challenged restraint be **"one clearly articulated and affirmatively expressed as state policy,"** and be **"actively supervised"** by the State.[62] Enforcement of the UPL law is carried out in four different ways.[63] In short, under the statute, any organized Bar Association in Tennessee can initiate a claim without the oversight of an impartial state actor, who might otherwise oversee the claim or invalidate the claim before it is filed. This Court has stated; *"When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest."*[64] The State of Tennessee does not satisfy MidCal's active supervision requirement. The independent actions of a BAR member (Attorney Plaintiff) or the organized Bar Association, unsupervised by the State, are not an exercise of the State's Sovereign power, and do not invoke Parker immunity.[65] Because State Policy does not clearly articulate the boundaries of the statute, it serves (in effect) to authorize the conduct that violates the antitrust laws.[66] The respondents were left to decide for themselves the boundaries of UPL. This led to threats of criminal prosecution against the petitioners for activities that are not prohibited by the UPL law. Respondents threats were conspiratorial conduct of the kind forbidden by Section 1 of the Sherman Act, intentionally employed to dominate the market by limiting legal rights and services, rather than to preserve a competitive marketplace to protect consumers from abuses, which is a violation of Section 2.

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[61] NORTH CAROLINA STATE BD. OF DENTAL EXAMINERS v. FTC. 574 U.S. ___ (2015)

[62] Parker v. Brown. 317 U. S. 341.

[63] TCA 23-3-103; (a), (b), (c), and (d).

[64] California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U. S. 97, 105, also Parker v. Brown, 317 U.S. 341, at 350

[65] Columbia v. Omni Outdoor Advertising, Inc., 499 U. S. 365, at 374

[66] A recent survey of state bar unauthorized practice committees and enforcement agencies found that most complaints about alleged unauthorized practice of law are made by lawyers or the bar association itself, not by consumers. The vast majority of complaints never result in court proceedings where enforcement actions can be supervised by state court judges – rather, they are resolved unofficially through bar and committee investigations. *Deborah L. Rhode & Lucy Buford Ricca, Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement, 82 FORDHAM L. REV. 2587 (2013-14).*

Bar Association members as Plaintiff Attorneys, and organized Bar Associations within the State of Tennessee, need only threaten a person with UPL, or a non-lawyer business providing services that the Bar deems illegal in nature, in order to restrain trade, exclude their rivals, and maintain their monopoly without any effective means of State oversight. Under Section 2 of the Act, employing this Court's test for monopolization articulated in *United States v. Grinnell Corp.*, Tennessee Bar Associations, their members, and non-member attorneys, meet both elements of the test; (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. The lack of market alternatives, such as those available in other jurisdictions in the United States; leaves a large segment of our society with little to no options but to accept defeat of an otherwise valid and winnable claim or defense.

III.

Review Is Warranted in Consideration of 42 U.S. Code § 2000bb

When the District Court in Knoxville applied Tennessee's UPL law to the petitioners as federal law, it violated 42 U.S. Code § 2000bb by restricting petitioners free exercise of religion, and freedom of speech under the First Amendment. Under the compelling interest test, governments are not permitted to substantially burden religious exercise without a compelling justification. In light of this requirement, petitioners can see no risk or public safety issue that would compel the state or federal government to burden the rights of married couples to defend each other in court.

CONCLUSION

The lack of a clearly articulated UPL statute in Tennessee has been used to deprive the petitioners of their rights under the First, Fifth, Seventh, Ninth, Tenth and Fourteenth Amendments to The United States Constitution, as well as statutory rights under the Sherman Anti-Trust Act, Section 1 & 2, and the Religious Freedom Restoration Act, 42 U.S. Code § 2000bb. This court should consider declaring Tennessee's law for the unlicensed practice of law **UNCONSTITUTIONAL** on vagueness grounds, or on the ground that it is substantially overbroad. Furthermore, and for the reasons stated herein, we ask the court to consider reversing the Sixth Circuit's dismissal of our Appeal, and to reinstate this case in the District Court.