CIVIL CASE

21A72

In The
SUPREME COURT OF THE UNITED STATES
October Term 2021

Marie Henry
Applicant/Petitioner

v.

The Florida Bar, et al,

Respondent.

Application for Emergency Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Fifth District Court of Appeal of the State of Florida

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APPLICATION TO THE HONORABLE JUSTICE CLARENCE THOMAS AS CIRCUIT JUSTICE

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November 15, 2021

Applicant/Petitioner, *pro se*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicant/Petitioner, Marie Henry is an individual with no parent corporation. This Rule does not apply to Applicant/Petitioner.

APPLICATION FOR AN EXTENSION OF TIME

To the Honorable Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

October 9, 2021, I filed a *pro se*, initial application asking that the court grant a 60-day extension within which to file a petition for a writ of certiorari.

By letter dated October 15, 2021, Justice Thomas extended the time to and including November 17, 2021, in which to file the petition for writ of certiorari.

Unfortunately, since that time there has been an insurmountable intervening life event that makes it impractical to finish the petition within the timeframe Justice Thomas allowed. Therefore, I respectfully ask Justice Thomas to grant the original request for an enlargement of time up to and including Friday December 17, 2021, within which to complete and file a petition for writ of certiorari.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Marie Henry v. The Florida Bar, et. al.* No: 5D20-994 (June 22, 2021). The Fifth District Court of Appeal denied my motion for rehearing and written opinion July 20, 2021. Both Orders were provided with the initial application, as Exhibits 1-2, and are not resubmitted here.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under the Rules of this Court, 13.1, 13.3, and 30.1, a petition for writ of certiorari was due to be filed on or before October 18, 2021.

REASONS JUSTIFYING ADDITIONAL TIME

Although, I started writing the petition for writ of certiorari, and researching the relevant cases supporting the questions to be presented for the Court's review, my mother passed away November 1, 2021.

The ensuing grief, funeral arrangements, and travel plans for services, which will be held out of the country, left no time to finish the petition within the timeframe Justice Thomas approved.

Because the judgment below repudiates clearly established law on the principles necessary to decide "standing" to sue, the Florida Fifth District Court of Appeal mandate, is itself an ongoing violation of federal law. The decision is arbitrary, capricious, riddled with conflict of interests, impermissible burden-shifting, and was secured by intentional fraud on the court. I*nfra.*

The threshold issue of standing is facially and as applied unconstitutional. The judgment is presumptively invalid. As discussed, *infra*, it is the government who bears the burden here. As such, I addressed, the paramount constitutional and public policy issues invoked by the Florida Fifth District Court of Appeal judgment.

For the reasons, set forth below, I respectfully request Justice Thomas extend the time to file a petition for writ certiorari up to and including Friday, December 17, 2021:

1. The death of my mother is significant and distressing. My mother died with the knowledge that instilling the value of an education, a law degree, and getting a license to practice law via membership in the Florida Bar, to

follow my childhood dream, cost three generations of her family everything. These facts alone prevent me from finishing the research, drafting a petition to the Court to address very serious repudiation of clearly established jurisprudence on First Amendment, Due Process, Equal Protection, Separation of Power, Privileges and Immunity grounds, and the courts constitutional duty to apply the law neutrally to the facts before it.

2. The essence of the Jury Demand Complaint for damages, injunctive and declaratory relief brought pursuant to 42 U.S.C. § 1983, discrimination under Title VII, the Americans with Disabilities Act, Florida Civil Rights Act, 1992, claims arising under Florida Constitution, common law and statutory law, is that because of compelled association to hold an occupational license, the Florida Bar agents and employees used police power to first threaten, fabricate the essential element of the charge—the practice of law, then penalize a statutory criminal defendant and *pro se* litigant for attempting to redress grievances before various governmental entities, including the Florida Bar.

3. A person deprived of economic liberty, property interest in an occupational license, the liberty interest in her good name and for the reasons: (i) plead in the Complaint; (ii) the Defendant's public concessions, filed as defenses in U.S. district courts, state courts; and (iii) the findings of federal, state and administrative judges, *infra*, but denied "standing" to redress

grievances should be granted an opportunity to present a formal petition for a writ of certiorari to the U.S. Supreme Court.

4. All lawyers licensed, to practice law in Florida, has a property and liberty interest in his or her law license.[1] The U.S. Supreme Court explained in *Cleveland Board of Education v. Loudermil*, 470 U.S. 532, 541 (1985), "*[t]he Due Process Clause provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures.*"

5. The Florida Bar, the Defendant in this action, is the "gatekeeper" of the legal profession. The record below substantiates, under the guise of attorney discipline, the Defendant caused grievous injuries, economic sabotage and deprivation of fundamental rights that gave rise to the claims in the lawsuit. These reasons are not based on (i) valid exercise of the police power but on an arbitrary and unreasonable interference with a citizen's right to petition various governmental entities to redress grievances; and (ii) violate the due process and equal protection clauses of the Federal and State Constitutions.

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[1] (*Delk v. Department of Professional Regulation*, 595 So.2d 966, 967 (Fla. 5th DCA 1992). [A] professional has a property interest in his/her license to practice his/her profession protected by the due process clauses of the state and federal constitutions (art. I § 9 Fla. Const. and U.S. Const. Amend. V, XIV. See also *Presmy v. Dr. Eric Smith Commissioner or Education*, 69 So.3d 383, 387 n.1 (Fla. 1st DCA, 2011) "*A professional has a property interest in his license to practice his profession protected by the due process clauses of the state and federal constitutions.*" Citing *Robinson v. Fla. Board of Dentistry*, 447 So.2d 930 (Fla. 3d DCA 1984).

6. All Florida judges are lawyers who practice law behind the bench[2]. The individuals tasked as neutral arbiters of the facts and law, all have an economic interest in compulsory membership, in good standing, with the Florida Bar. Indeed, to ascend to the Bench, run for the Office of State Attorney, or Attorney General require a requisite number of years, in good standing, in the Florida Bar. Further, the Florida Bar was created by the Florida Supreme Court and all judges are under the indirect disciplinary supervision of the Florida Bar. *Florida Bar v. McCain*, 330 So.2d 712, 723 (Fla. 1976), Adkins concur/dissent.

7. This Court clarified in *James v. City of Boise*, 136 S. Ct. 685 (2016), vertical *stare decisis* is non-discretionary and admonished: "*once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.*" In light of the Court's extensive First Amendment jurisprudence, how then does the government's burden to justify its intrusion on First Amendment rights by a compelling state interest, become the victim's burden to seek a writ of certiorari to enforce this Court's mandated duty when statistically it is improbable, a writ of certiorari will be granted?[3]

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[2] As far as his duty to his profession is concerned, a judge is a lawyer whose labors are performed behind the bench instead of before it. (*Florida Bar v. McCain*, 330 So.2d 712, 715 (Fla. 1976) citing *Jenkins v. Oregon State Bar,* 241 Or. 283, 405 P.2d 525 (1965), 405 P.2d at 528.

[3] See, "2020 Year-End Report on the Federal Judiciary." Of 5,411 filings in the 2019 Term, only 73 cases were argued. www.supremecourt.gov "2020 Year-End Report on the Federal Justice Caseload," as accessed October 18, 2021.

8. The majority of states have a mandatory state bar. These institutions, were created to act in the public interest, by regulating competency standards to practice law. Instead, they are self-regulated governmental entities with immense unsupervised police power to, as here, engage in all types of social, and political activities that do not fall within the realm of police power, including acting as a vanguard against complaints made against police officers, prosecutors, judges and the entire criminal justice system.

9. In the instant case, the intentional fraud perpetrated on the courts include, impressing on judicial members, with an economic interest in a membership in good standing in the Defendant's bar, and over whom the Defendants have continuing disciplinary jurisdiction that: (i) no court, other than the U.S. Supreme Court, has "subject-matter" jurisdiction to adjudicate the grievances in this case[4]; (ii) as an agency of the Florida Supreme Court, the Florida Bar is absolutely immune from suit; and (iii). the *Rooker-Feldman* doctrine bars the lawsuit.

10. The Florida Bar perpetuated intentional fraud, in defiance of this Court's: (i) "discretionary jurisdiction"; (ii) binding legal precedents that absolute immunity is a defense available to a defendant sued in his or her individual capacity. *Kentucky v. Graham*, 473 U.S. 159, 166-167 (1985) (The

[4] It is crystal clear that the U.S. Constitution, not the Florida Supreme Court or its prosecutorial arm, the Florida Bar, fixes the Court's jurisdiction.

two types of capacities are not interchangeable and the court and all advocates must distinguish them); and (iii) removing the case to federal court then arguing the federal court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.

11. At the Motion to Dismiss posture of the case, the Defendant asserted defenses, moving the State trial court to opine a lack "standing" to redress grievances and a three-judge panel of the Fifth District Court of Appeal to affirm the opinion with three single words Per Curiam Affirmed ("PCA").

12. The related case, the Florida Bar removed the case to federal court pursuant to 28 U.S.C.§ 1446(d), federal question jurisdiction. Then promptly filed a Motion to Dismiss asserting a defense "failure to state a claim on which relief could be granted" under Rule (12)(b)(6), and argued the federal court lacks "subject-matter" jurisdiction.

13. The gravity of the Florida Bar circular logic, in obstructing a *pro se* party's right to justice, cannot be overlooked. The district court did what the Florida Bar argued it must do.

14. It is beyond debate, a cause of action is a species of property protected by the Due Process Clauses of the U.S. and Florida Constitutions. And no doubt exists of the magnitude of its deprivation. Justice O'Connor writing for the Court, in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), pertinently said:

> As we wrote in *Logan v. Zimmerman Brush Co.*, 455 U. S. 422, 428 (1982), this question "was affirmatively settled by the *Mullane* case

itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." In *Logan,* the Court held that a cause of action under Illinois' Fair Employment Practices Act was a protected property interest, and referred to the numerous other types of claims that the Court had previously recognized as deserving due process protections.

15. The record substantiates compulsory membership, to hold an occupational license, became a tool of retribution and personal vindication by employees and agents of the Florida Bar. Under color of state law, these individuals used the power of public employment, compulsory membership dues, as gatekeepers of the legal profession, to engage in conduct that: (i) runs contrary to accepted societal duties; (ii) an invalid exercise of police power; and (iii) involve dishonest or fraudulent activity. The record is devoid, of a single case, that a person aggrieved by admitted conduct lacks "standing" to redress grievances in a court of competent jurisdiction.

16. Context matters. Government employees' statements against interests, and the public findings of judicial members of the Florida Bar, *infra,* document the mandatory state bar activated police power on direction of the judge, prosecutor, and police officer, against whom my grievances are directed. I was publicly ostracized, dehumanized, gaslighted as mentally unfit to engage in my chosen profession, and deprived of my property and liberty interest in my occupational license for:

a) seeking a neutral tribunal for a breach of contract dispute with my mortgagee, in reliance on Florida statutory disqualification law §§ 38.10 and 38.01 Fla. Stat.;

b) seeking to redress grievances against state actors, for the deprivation of rights secured by the Fourth and Fifth Amendments U.S. Const., involving my 13-year-old daughter's objectively false arrest, false imprisonment, abuse in police custody, and prosecution after the time set by law. The juvenile judge ruling that the child violated Florida's Penal Code § 843.02 (Resisting an Officer Without Violence) is impermissible, because the essential element of the crime, not providing her name to the police officer when a group of minority kids were detained was clearly established, by the relevant legal landscape to be non-criminal[5]; and

c) the grievances content tied racial disparities in the criminal justice systems to my daughter's arrest.

17. The irony here, racial disparities long recognized by the U.S. Supreme Court, Federal Courts of Appeal, Congress, and the U.S. Department of Justice were used by a panel of appellate judges to convey a message that redressing grievances about racial disparities, in the criminal justice system, violate the public health, safety or welfare, such that "standing" to seek damages, injunctive or declaratory relief is not permitted. For e.g., in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 503 (1982)((quoting *Ex parte Virginia,* 100 U. S. 339, 346 (1880))[6] the Court said of § 1983's precursor:

> [a] major factor motivating the expansion of federal jurisdiction through §§ 1 and 2 of the [Civil Rights Act of 1871] was the belief of the 1871 Congress that the state authorities had been unable or unwilling to

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[5] See *Robinson v. State*, 550 So.2d 1186, 1187 (Fla. 5th DCA 1989), J.R. v. State, 627 So.2d, 126 (5th DCA 1993). (The defendant's failure to cooperate — his refusal to answer questions — cannot itself be criminal consistent with fourth and fifth amendment protections).

[6] "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights — to protect the people from unconstitutional action under color of state law, `whether that action be executive, legislative, or judicial.

protect the constitutional rights of individuals or to punish those who violated these rights." *Patsy v. Bd. of Regents of Florida*, 457 U.S. 496, 505 (1982). The unable or unwilling state authorities included "local courts." *Id.* (quoting legislative history).

18. In Fiscal Year 2021, a 1.2 million dollar Solicitation, offered by the U.S. Department of Justice, Office of Justice Programs (OJP), under the statutory Authority Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Sections 201 and 202), noted racial disparities and victimization in the criminal justice system have been well documented in the research literature.[7]

19. In *Woods v. City of Greensboro*, 855 F.3d 639, 241 (4th Cir. 2017), the Fourth Circuit Court of Appeals considered whether it is plausible to believe that, in twenty-first century America, a municipal government may seek to contract with a minority-owned enterprise under some conditions, yet, on account of race, avoid contracting with a minority company under other conditions. The court observed:

> Racial stigmas and stereotypes are not impairing unless we internalize them. And there is no reason for us to do that when we know that the history of black culture in America is rich and reaffirming. We may live in a society that will only grudgingly and inconsistently acknowledge our equality, but that does not mean that we must live as if we are victims. I understand that avoiding the effects of racial stigmas and stereotyping is not always easy because many studies have shown that most people harbor implicit biases and even well-intentioned people unknowingly act on racist attitudes. However, this merely confirms that

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[7] Kovera, M. B. (2019). Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions. Journal of Social Issues, 75(4), 1139–1164. Ellen A. Donnelly (2017). Racial disparity reform: racial inequality and policy responses in US national politics, Journal of Crime and Justice, 40:4, 462-477, DOI: 10.1080/0735648X.2016.1176950. Alexander, M. (2010). The New Jim Crow: Mass Incarceration in the Age of Colorblindness. New York: The New Press. Horowitz, J. and Utada, C. (2018). Community Supervision Marked by Racial and Gender Disparities. The Pew Charitable Trusts.

> we alone cannot carry the burden of ameliorating racism in our country. This responsibility must be assumed by all good people without regard to race, sex, and ethnicity. (Footnote omitted).

20. Here, the third largest mandatory state bar, saw in its role, as a law enforcement agency, with the power to regulate my occupational license that speaking out about racial disparities, in the criminal justice system, is the sort of conduct that warrants disbarment from its rank. The call to eliminate the mandatory state Bar, has been pressed on the courts, as violative of the First Amendment. However, it became more salient in 2020, after the U.S. Supreme Court overruled its decision in *Abood v. Detroit Bd. of Ed.*,431 U.S. 209, 97 S. Ct. 1782, 52 L.Ed 2d 261 (1977). Justice Alito writing for the Court's majority, in *Janus v. AFSCME*, described *Abood* as poorly reasoned and an outlier among the Court's First Amendment cases.

21. After supporting that *Abood* should be overruled, Justice Thomas, joined by Justice Gorsuch, dissented from the denial of certiorari in *Jarchow v. State Board of Wisconsin*, 140 S. Ct. 1720 (2020) and said:

> A majority of States, including Wisconsin, have "integrated bars." Unlike voluntary bar associations, integrated or mandatory bars require attorneys to join a state bar and pay compulsory dues as a condition of practicing law in the State. Petitioners are practicing lawyers in Wisconsin who allege that their Wisconsin State Bar dues are used to fund "advocacy and other speech on matters of intense public interest and concern." App. to Pet. for Cert. 10. Among other things, petitioners allege that the Wisconsin State Bar has taken a position on legislation prohibiting health plans from funding abortions, legislation on felon voting rights, and items in the state budget. Petitioners' First Amendment challenge to Wisconsin's integrated bar arrangement is foreclosed by *Keller v. State Bar of Cal.*, 496 U. S. 1 (1990), which this

petition asks us to revisit. I would grant certiorari to address this important question.

21. Two justices, agree the Court's precedent in *Keller, supra,* is an important First Amendment precedent on compulsory membership in a state bar. And it stands to reason, that such entities are foreclosed from using membership dues to engage in the conduct enumerated, at ¶¶33(1-10) *infra.* A timely petition will undoubtedly establish that three jurists, with an economic interest, in the Defendant's bar, repudiated this Court's mandated duty to accept the governing rule of law, in favor of discrimination and reprisals emanating from official sources in the State, in violation of the First and Fourteenth Amendments.

The Panel PCA Violates Public Policy and Clearly Established Rights

22. In light of clear controlling precedents, in the decision of the Florida Supreme Court: "*It can be stated without hesitancy, qualification, or reservation, that every man is entitled to his day in court. He is vouchsafed a fair trial and he is secured a fair hearing on an appeal which he may take as a matter of right*"). *Lake v. Lake,* 103 So. 2d 639, 642 (Fla. 1958), the Fifth District Court of Appeal mandate is an ongoing violation of federal law and fundamental constitutional rights.

23. The PCA disposition that a person lacks standing to redress damages, declaratory and injunctive relief, when personally aggrieved by the Florida Bar conduct plead in the Complaint and asserted in state actors' own words, and judicial findings ¶¶33(1-10), *infra,* frustrate the Constitutional safeguards of the First, Fifth, and Fourteenth Amendments, Separation of Power and Privileges and Immunities Clauses.

24. The PCA disposition, violates the mandatory duty this Court imposed on all lower federal and state courts, *James, supra.* And fundamentally violates the Petitioning Clause of the First Amendment, as interpreted by this Court. And unequivocally violates the Separation of Power Clause, clarified in *U.S. v. Alvarez,* 132 S. Ct. 2537 (2012) that the U.S. Constitution establishes three separate but equal branches of government: the legislative branch makes the law, the executive branch enforces the law, and the judicial branch interprets the law.

Congress is a national Legislature. The 102d U.S. Congress said:

> A victim of discrimination suffers a dehumanizing injury as real as, and often of far more severe and lasting harm than, a blow to the jaw." *See* H.R.REP. No. 40(I), 102d Cong., 1st Sess. 15 (1991) ("The Committee intends to confirm that the principle of anti-discrimination is as important as the principle that prohibits assaults, batteries and other intentional injuries to people.").

25. The Florida Legislature made it the Public Policy of Florida that: (i) unlawful discrimination **prohibited** by Title VII and the Americans with Disabilities Act, is indistinguishable, when applied to any organization that requires mandatory membership to get or keep an occupational license. §760.10(5) Fla. Stat.; (ii) § 454.11 Fla. Stat. prescribes attorneys are amenable **to the rules and discipline** of the court in all matters of order or procedure not in conflict with the constitution or laws of this state; and (iii) § 768.295(4) Fla. Stat. prescribes that no government or private entity, shall file or cause to be filed "any cause of action" against any person because such person petition for redress of grievances, as protected by the First Amendment U.S. Const. and s. 5, Art. I of the State Constitution.

26. The U.S. Supreme Court made it impermissible, for any governmental entity to prosecute an individual for constitutionally protected speech or deliberately base the decision to prosecute upon an unjustifiable standard such as race or other arbitrary classification, including the exercise of protected statutory and constitutional rights. *Wayte v. United States,* 470 U.S. 598, 608 (1985). See also, *NAACP v. Button*, 371 U.S. 415 (1963) ("The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.... For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.)"

27. A timely filed petition will be meritorious and would warrant the Court's limited resources because all courts have a constitutional duty to neutrally interpret and apply the law. The U.S. Supreme Court should not remain mute to the systemic effects of unconstrained and unsupervised police power the mandatory state bar wields because of compulsory association. And the notion that judges, with a financial interest in remaining a member of mandatory state bar, have the *sua sponte* authority to grant or deny "standing" at will is impermissible and foreclosed by decades of sound jurisprudence of the U.S. Supreme Court.

28. For almost a decade, (since 2012), the Florida Bar, placed a plethora of admissions against interests in public documents, including the charging document, which substantiates an illegal race-based prosecution and the clear absence of all jurisdiction. Then realizing its conduct transgressed Federal and State statutory law

as well as the Federal and State Constitutions, became laser focused on repudiating the First Amendment and State counterparts art. I §§ 5, 21 Fla. Const., guarantee of a fundamental right to access the courts to redress grievances.

29. In 2015, I filed a "verified" Civil Rights Complaint in the U.S. District Court to vindicate the grievous and ongoing injuries sustained, as a result of an unlawful and unconstitutional deprivation of my occupational license. The Defendant convinced the Court that the cause of action should be dismissed on *Younger* abstention grounds. Thereafter, every attempt I made to enforce my Constitutional rights under the Federal and State Constitutions, and statutory law, the Florida Bar responded with fraudulent defenses that [pursuant] to the Florida Bar final adjudication rule[8] 3-2.1(q)(2012), the U.S. Supreme Court is the only Court with "subject-matter" jurisdiction to decide the claims and the *Rooker-Feldman* doctrine, and absolute judicial immunity bar the Complaint. These defenses are examples of:

a) conscience shocking conduct admonished in e.g., Rochin *v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952);

b) due process structural defects admonished in *Tumey v. Ohio*, 273 U.S. 510 (1927)[9];

c) inviting conflict with a court's constitutional duty to apply the law according to neutral principles, while at the same time, inviting fear and reprisals, on members of a protected class for redressing grievances with the government agencies charged with investigating such grievances;

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[8] ***Final Adjudication:*** *"A decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States."*

[9] Regulations unconstitutional that provided financial interests for local mayors to prosecute individuals accused of violating the Prohibition Act.

d) rejecting this Court's First Amendment jurisprudence admonishing the inviolability of the guarantee that the government's regulation of content-based speech is impermissible and presumptively invalid, and it is the government burden to justify its intrusions on the freedoms of speech or association; and

e) rejecting this Court's admonishments that the integrity of the judicial process hinges on vigilantly policing fraud on the court and eliminating even the appearance of judicial impartiality. *Hazel Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246 (1944); *Liljberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 (1988).

30. If the deprivation of fundamental rights via a Florida State court PCA sounds familiar, it is because in 1963, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court unanimously held that states are required to provide legal counsel to indigents defendants charged with a felony. The Court's denial of Mr. Gideon's Sixth Amendment right, also traveled on a PCA disposition.

31. Placed in proper context, the PCA disposition identifies the violation of federal law and constitutional guarantees are ongoing. It is inarguable, the Rules Regulating the Florida Bar, as they were in 2012, (i) identifies the Florida Bar as a law enforcement agency, of the State's highest Court. Rule Regulating Fla. Bar 3-2.1(a) and 3-7.6(g); and (ii) Florida Bar Counsels perform prosecutorial functions against members of the Florida Bar and individuals charged with the Unlicensed Practice of Law, under the direction of the executive director. (Rule Regulating Fla. Bar 3-3.3(a)).

32. As such, the three-judge panel PCA can be read to convey an abdication of a court's constitutional duty to neutrally apply the law to facts presented and emphatically say a person lacks standing to sue the Florida Bar

for damages, injunctive and declaratory relief for: (i) grievous economic injuries in deprivation of a contract of employment and millions of dollars in lost business opportunities; (ii) debilitating physical injuries from intentional infliction of emotional distress; (iii) being gaslighted as mentally unfit in professional competence; (iv) deprivation of the opportunity to obtain a law license in the United States, commonwealth, or territories; (v) a financial penalty in the form of judgment, lasting a minimum of 20-years, for which sum-let-execution issue, totaling thousands of dollars, and (vi) disbarment from the practice of law in the State and federal courts, except this Court.

33. The panel was well informed, of the facts giving rise to the lawsuit as well as the ensuing damages. The meaning of a three-judge panel, PCA disposition grounded on lack of standing and absolute immunity is illuminated from the following public reasons given for the Florida Bar's investigation, formal charges, recommendation of guilt, financial penalty, and disbarment:

1) Bar Counsel: "[S]he is accusing the judge and the prosecutor of inappropriate conduct because of the race of her daughter - she needs to prove it and the best way to do so is to let me read the transcripts - I believe it is incumbent upon her to get them [juvenile records] to me..... It is the Bar's position that the matters over which this case is about and Ms. Henry's specific statements in pleadings to not only the Supreme Court, but the Fifth DCA, and statements made in the motions to recuse, which are all part and parcel of what the Bar is underlying—what the Bar's complaint is about—in order for it to be put in proper context, and in order actually for anyone to have a clear view of what did transpire, it would be important for the transcripts to be placed into evidence and reviewed."

2) Assistant State Attorney: It was my understanding that she filed a motion to recuse Judge Takac. And from what I've seen, it had a lot of the language in it that was used against me, the same kind of—all racial animus, everything he did was based on race and prejudice and so forth. She wanted him

removed. And my understanding was, is that he did not feel that the recusal was adequate. I mean, it was just not anything true whatsoever. But he found it so extreme, that he said, "Based on this, I'm going to file a Bar complaint against you, Marie Henry, and that means I do now have a legal reason to recuse myself," which he did and that foreclosure case went to a different docket."

3) Juvenile Judge: "Ms. Henry made the argument that her daughter had been racially profiled. And, you know, that's something that we can't tolerate. But she had latched on to a call—somehow or other the word "black" came up because her daughter is black. And I think it was the caller said, "Black children are throwing rocks," or something like that. And she had a concern about the racial profiling. **And to me it demonstrated just a patent inability to practice**. She **is not qualified to practice law**. The complainant is delusional, has tunnel vision, and has a fixation on this case . . .. The complainant also brought up "race" because the juveniles were referred to as "black youths." . . . toward the end, the complainant made comments concerning racial bias that made everyone uncomfortable."

4) Former Judge/Head of Grievance Committee: you alleged . . . the officer who arrested your daughter was motivated by racial prejudice. You alleged that the ASA was motivated—in his prosecution of your daughter's case was motivated by racial prejudice, and you alleged and inferred that Judge Takac was racially prejudiced. And those are all violations of the code of conduct—your prosecution had nothing to do with whether or not your daughter committed a crime or not. Your daughter was a juvenile. Most juvenile cases get adjudicated with a slap on the hand and nothing ever happens. That's not what happened in your daughter's case. . . . Race is all over this case, Ms. Henry. You started this case in juvenile court alleging your daughter was being discriminated against because she was a minority. That's what started this case.... factual basis was Carnahan's response to ethics complaint, the Order of Circuit Judge Michael Takac entered in the Circuit Court of the Fifth Judicial Circuit, *Marie Henry versus Bank of America*, case number 2009-CA-4537, characterized as a complaint."

5) Florida Bar Assistant General Counsel: [the Florida Bar] considered documents and/or information provided by the Mount Dora Police Department regarding Petitioner's conduct related to the juvenile proceedings concerning her daughter and subsequent encounters by Mount Dora officers with Petitioner, when investigating the complaints made by and against Petitioner. The Bar also admits that, during the disciplinary proceedings against Petitioner tried before Judge Jaworski, the Bar submitted into evidence an exhibit containing correspondence from the Chief of the Mount Dora Police Department to one of his law enforcement officers,

which correspondence included a letter from a Mount Dora citizen to the Chief.

6) Florida Bar Assistant General Counsel: After the final hearing, respondent filed with the President of The Florida Bar and the Executive Director of The Florida Bar, a twenty-one page letter, excluding the attachments, wherein respondent continues to challenge the verdict rendered in her child's juvenile case, continues to assert that the individuals involved in the an arrest and prosecution of her daughter acted solely based upon improper conduct (racial animus and prosecutorial misconduct) and motivations, and now asserts that the bar's investigation and prosecution of the bar's case was also based upon improper conduct and motivations. [Bar's Sanction Exhibit 1.]... Prior to reinstatement, respondent shall be required to be evaluated by a mental health professional, approved by Florida Lawyers Assistance, Inc., and that such mental health professional conclude that respondent is fit to practice law with reasonable skill and safety...."

7) Florida Bar Assistant General Counsel: "[the Florida Bar] considered documents and/or information provided by the Mount Dora Police Department regarding Petitioner's conduct related to the juvenile proceedings concerning her daughter and subsequent encounters by Mount Dora officers with Petitioner, when investigating the complaints made by and against Petitioner. The Bar also admits that, during the disciplinary proceedings against Petitioner tried before Judge Jaworski, the Bar submitted into evidence an exhibit containing correspondence from the Chief of the Mount Dora Police Department to one of his law enforcement officers, which correspondence included a letter from a Mount Dora citizen to the Chief.

8) Administrative Law Judge: Judge Takac made a decision involving your daughter. You disagreed with the decision. Strongly, passionately. You took advantage of the avenue available to you to complain about the judge's decision regarding your daughter and that was to file a motion for disqualification. Now the complaint to the Bar and the motion to disqualify ended up going to the Bar and, unfortunately for you, the reaction of the Bar was not positive. It was very strongly opposed to what you did. So, the Bar or somebody made a decision, took some action, based on your complaints and prosecuted you for your complaints.

9) Federal Judge: *In the Matter of Attorney Marie L. Henry* CASE NO.: 6:18-mc-26-Orl-23 based on *Fla. Bar v. Marie Louise Henry*, 160 So.3d 230 (Fla. 2015) (No. SC13-1127), a federal judge said those reasons were: *"disparaged the*

prosecutor and the judge in M.E.'s delinquency action and raised similar unsupported allegations against the Florida Bar and the referee."

10) Eleventh Circuit Court of Appeals: Documents obtained from the Florida Bar website show that in June 2013 the Florida Bar filed a complaint against Complainant, who is an attorney, alleging that she engaged in misconduct during two state court cases, her daughter's juvenile delinquency action and her civil action against a mortgage lender. Among other things, the complaint noted that Complainant accused the prosecutor in the delinquency action of racial bias and made various allegations of improper conduct and motives by the judge assigned to both cases.

34. The problem, however, is that this Court has already rejected the Fifth District Court of Appeal theory of lack of standing. Although, not a public employee, this Court's decision in *Elrod v. Burns*, 427 U.S. 347 (1976) is dispositive. The *Elrod*, Court considered whether public employees who allege that they were discharged solely because of their partisan political affiliation or non-affiliation state a claim for deprivation of constitutional claims secured by the First and Fourteenth Amendments. In holding that the Complaint stated a legally cognizable claim, the Court citing *New York Times Co. v. United States*, 403 U.S. 713 (1971) said: "*The loss of First Amendment freedoms for even minimal periods of time, unquestionably constitute irreparable injury.*" *Id.* 373-74.

35. Particularly pertinent here, under Florida law, standing is an affirmative defense that must be raised in the trial Court and if not raised it is waived. Nowhere in the record, before the Fifth District Court of Appeal, was "standing" raised as a defense in Defendant's pre-answer Motion to Dismiss. This

point of law, necessarily implicates the Due Process of Clause that forecloses the deprivation of life, liberty or property without notice or opportunity to be heard.

36. A dismissal on lack of standing and absolute immunity grounds is a pyrrhic victory for the Florida Bar and a new completed deprivation of rights secured by the First Amendment guarantee of adequate, effective, and meaningful access to the court, as interpreted by the U.S. Supreme Court jurisprudence that access to the court is a fundamental constitutional right grounded in the First Amendment, Art. IV Privileges and Immunities Clause and the Fifth and/or the Fourteenth Amendment.

36. And the following Florida Supreme Court cases establish binding precedent that a "lack of standing" is an affirmative defense that must be raised by the defendant: *Love v. Hannah*, 72 So. 2d (Fla. 1954) (standing cannot be raised for the first time on appeal); C*owart v. City of West Palm Beach*, 255 So 2d 673 (Fla. 1971) (standing cannot be raised for the first time on appeal and is waived if not raised at the trial court level); and *Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840 (Fla. 1993) *(standing should have been raised as an affirmative defense and failure to do so constitutes a waiver of that defense*).

37. Florida standing test parallels the federal test for Art. III standing: a Plaintiff must allege personal injury fairly traceable to defendants allegedly unlawful conduct and likely to be redressed by requested relief. *Allen v. Wright*, 468 U.S., 737, 731, 104 S.Ct. 3315 (1984) (abrogated on other grounds by *Lexmark Int'l Static Control Components, Inc.*, 572 U.S. 118 (2014).

38. Given the parallels between the federal test, and Florida's, coupled with the fact standing was not raised in the lower court as an affirmative defense, the court violated the Federal and State Constitutional provision for separation of power among the branches of government which denies the judiciary the authority to decide issues in the abstract, arbitrarily, or to deny the open courts provision of the First Amendment and state counterparts, art. I §§ 5, 21 Fla. Const.

39. The PCA disposition, itself, extends a manifest and irreparable injury into impermissible burden shifting. The victim is forced to seek review in the U.S. Supreme Court, for government action affecting fundamental right or a suspect class. As discussed *supra*, a petition for writ of certiorari, is completely discretionary and statistically improbable, it would be granted.

CONCLUSION

For the foregoing reasons, I respectfully request Justice Thomas grant me the additional time, as requested in the original application, up to and including December 17, 2021, within which to file a petition for a writ of certiorari in this matter.

Respectfully submitted,

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