

Supreme Court, U.S.

FILED

DEC 17 2021

OFFICE OF THE CLERK

No. 21-929

IN THE
SUPREME COURT OF THE UNITED STATES

MARIE HENRY

Petitioner,

v.

THE FLORIDA BAR, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA FIFTH DISTRICT
COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Marie Henry
Petitioner Pro Se
P. O. Box 953521
Lake Mary, FL 32795
Libertyjustice2012@gmail.com
704-737-1935

ORIGINAL

QUESTIONS PRESENTED

The Florida Bar (“the Bar”), an integrated Bar association, is the statewide regulatory organization for all lawyers licensed to practice law in Florida. Thirty-three states, U.S. territories, the Commonwealth of Puerto Rico and the District of Columbia, vest in an integrated bar, the State’s police power to regulate its members’ occupational license. An integrated Bar, has two things in common (i) compulsory membership; and (ii) dues as a condition of practicing law in the State. The Bar’s activities fall within the First Amendment right of its members to refrain from subsidizing the organization’s political or ideological activities. Such is the basis of this Court’s opinion in *Keller v. State Bar of California*, 496 U.S. 1 (1990).

The Questions Presented are:

1. Whether this Court’s First Amendment speech and petitioning precedents on the fundamental constitutional right to access the court as expressed in *Bounds v. Smith*, 430 U.S. 817 (1977) and progeny guarantee Petitioner a remedy and rejection of the Fifth District Court of Appeal Per Curiam Affirmed (“PCA”) Order, adopting the trial court’s Opinion that a plaintiff lack standing to sue the Florida Bar.
2. Whether a trial or appellate judge, with an economic interest, in a membership in good standing in the Respondent bar association,

and over whom the Respondent exercise continuing discipline for acts on the bench, after leaving the bench, violate a plaintiff's Due Process right, guaranteed by the Fifth and Fourteenth Amendments, when presiding in an adversarial lawsuit against the Bar.

3. Whether the Fifth District Court of Appeal is correct that the Bar is absolutely immune from suit.

PARTIES TO THE PROCEEDING

Petitioner, Marie Henry was the plaintiff-appellant below.

May 6, 2020, the court issued an Order, *sua sponte*, that it lacks jurisdiction over other defendants and the Bar employees or agents individual capacities claims, as a non-final action. The appeal proceeded only against the following Respondents, who were defendants-appellees below: The Florida Bar, Joshua Doyle, in his official capacity, as Executive Director, Florida Bar, John Harkness, Jr., in his official capacity, as the former Executive Director of the Florida Bar; Kevin Johnson, in his official capacity,¹ Clayton Simmons, in his official capacity.

¹Kevin Johnson, a lawyer in private practice is neither a Bar employee nor its agent and was only named in the Complaint as an individual.

TABLE OF CONTENTS

	Page
Statement of Related Proceedings.....	1
Jurisdiction.....	1
Opinions below.....	1
Constitutional and statutory law.....	2
Statement of the case.....	3
A. Factual Background.....	3
B. Procedural History.....	15
Summary of argument.....	21
Reasons for granting petition	24
A. The Vindication of an integrated bar unconstitutional deprivation of civil liberties is of exceptional importance.....	24
1. The questions presented have exceptional importance for uniform enforcement of civil liberties	24
2. The First Amendment right-remedy guarantee requires rejection of the Fifth District Court of Appeal	

TABLE OF CONTENTS – CONTINUED

	Page
PCA disposition.....	29
B. Conflicts of interests resulting in fundamental unfairness was presented and ignored below.....	38
C. Structural error rendered the court incapable of carrying out its constitutional duty.....	40
D. The questions presented concern the supremacy of this Court's precedents and refusal to follow them.....	42
E. The Court should not remain mute to fraud on the court.....	43
Conclusion.....	45

APPENDIX

Circuit Court Opinion (March 6, 2020).....	1a
Fifth DCA Order (June 22, 2021).....	6a
Fifth DCA Denial Rehearing (July 20, 2021).....	8a

TABLE OF AUTHORITIES

Cases	Page
<i>5-H Corporation v. Padovano</i> , 708 So.2d 244 (Fla. 1997)	38
<i>Abood v. Detroit Bd. of Ed.</i> , 431 U.S. 209 (1977)	30
<i>Allen v. Wright</i> , 468 U.S., 737 (1984)	34
<i>Am. Canoe Ass'n, Inc. v. City of St. Albans</i> , 18 F. Supp. 2d 620, 621 (S.D.W.Va. 1998)	34
<i>Armstrong v. Manzo</i> , 380 U.S. 545, 552, (1965)	32
<i>Ayala v. Scott</i> , 224 So.3d 755 (Fla. 2017)	39
<i>Bain v. State</i> , 730 So.2d 296, 302 (Fla. 2d DCA 1999)	25
<i>Bank of Jackson County v. Cherry</i> , 980 F.2d 1362, 1370 (11th Cir. 1993)	27
<i>BE & K Construction Co., v. NLRB</i> , 536 U.S. (2002)	34, 35, 36
<i>Borough of Duryea v. Guarnieri</i> , 564 U.S. 379 (2011)	35, 36
<i>Bounds v. Smith</i> , 430 U.S. 817 (1977)	25, 27, 29, 30
<i>Chappel v. Rich</i> , 340 F.3d 1279 (11th Cir. 2003)	27
<i>Chisholm v. Georgia</i> , 2 U.S. 419 (1793)	29
<i>Cole v. Owens</i> , 776 So.2d 287 (Fla. 4th DCA 2000) .	25

TABLE OF AUTHORITIES – CONTINUED

Cases	Page
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833 (1998).....	32
<i>Cowart v. City of West Palm Beach</i> , 255 So 2d 673 (Fla. 1971)	33
<i>Cruz v. Beto</i> , 405 U.S. 319 (1972).....	37
<i>Dale v. Moore</i> , 121 F.3d 624 (11th Cir. 1997)	18
<i>DeBock v. State</i> , 512 So.2d 164 (Fla. 1987).....	42, 43
<i>Delk v. Department of Professional Regulation</i> , 595 So.2d 966, 967 (Fla. 5th DCA 1992).....	38
<i>Elmdorf v. Tay</i> , 23 U.S. 152, 160 (1825).....	22
<i>Ex parte Virginia</i> , 100 U. S. 339, 346 (1880)	24
<i>First English Evangelical Lutheran Church v. County of Los Angeles</i> , 452 U.S. 304, 310 (1987)	39
<i>Florida Bar v. Clement</i> , 682 So.2d 690 (Fla.1995).....	23, 44
<i>Florida Bar v. Massfeller</i> , 170 So.2d 834 (Fla. 1964)	23, 42
<i>Florida Bar v. McCain</i> , 330 So.2d 712, 715 (Fla. 1976)	38

TABLE OF AUTHORITIES – CONTINUED

Cases	Page
<i>Florida Bar v. Winn</i> , 208 So. 2d 809, 811-12 (Fla. 1968)	27
<i>Hazel Atlas Glass Co. v. Hartford Empire Co.</i> , 322 U.S. 238, 246 (1944)	28, 43, 44
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994)	44
<i>Hudson v. Palmer</i> , 468 U.S. 517, 523 (1984)	29
<i>Huffman v. Delacruz</i> , 719 So. 2d 385 (Fla. 4th DCA 1998).....	45
<i>In re Kelley</i> , 238 So.2d 565 (Fla. 1970).....	44
<i>In re Ruffalo</i> , 390 U.S. 544 (1968).....	39
<i>J.R. v. State</i> , 627 So.2d, 126 (5th DCA 1993)	5
<i>James v. City of Boise</i> , 136 S. Ct. 685 (2016).....	22
<i>Janus v. AFSCME</i> , 138 S.Ct 2448 (2018).....	30
<i>Jarchow v. State Board of Wisconsin</i> , 140 S. Ct. 1720 (2020).....	30
<i>Jenkins v. Oregon State Bar</i> , 241 Or. 283 (1965) ...	38
<i>Jenkins v. State</i> , 385 So. 2d 1356 (Fla. 1980).....	2

TABLE OF AUTHORITIES – CONTINUED

Cases	Page
<i>Joint Anti-Fascist Comm. v. McGrath</i> , 341 U.S. 123 (1951)	32
<i>Keller v. State Bar of Cal.</i> , 496 U. S. 1 (1990)	30, 31, 41, 43
<i>Kent v. Sutker</i> , 40 So.2d 145, 147 (Fla.1949)	44
<i>Kentucky v. Graham</i> , (473 U.S. 159 (1985).....	25
<i>Krivanek v. Take Back Tampa Political Committee</i> , 625 So. 2d 840 (Fla. 1993)	33
<i>Lake v. Lake</i> , 103 So. 2d 639, 642 (Fla. 1958).....	25
<i>Lewis v. Casey</i> , 518 U.S. 343, 1996	29
<i>Lexmark Int'l Static Control Components, Inc.</i> , 572 U.S. 118 (2014).....	34
<i>Liljberg v. Health Servs. Acquisition Corp.</i> , 486 U.S. 847, 859-60 (1988).....	28, 44
<i>Logan v. Zimmerman Brush Co.</i> , 455 U. S. 422 (1982).....	32
<i>Love v. Hannah</i> , 72 So. 2d (Fla. 1954)	33
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803). 29	
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	32

TABLE OF AUTHORITIES – CONTINUED

Cases	Page
<i>Middlesex County Ethics Comm. v. Garden State Bar Assn.</i> , 457 US 423 (1982).....	39
<i>Mine Workers v. Illinois Bar Assn.</i> , 389 U. S. 217 (1967).....	34
<i>Mueller v. The Florida Bar</i> , 390 So. 2d 449, 452 (Fla. 4th DCA 1980)	25, 39
<i>N.C. State Bd. of Dental Exam'rs v. FTC</i> , 135 S. Ct. 1101 (2015).....	27
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	37
<i>NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982).....	36
<i>Patsy v. Board of Regents of the State of Florida</i> , 457 U.S. 496, 503 (1982).....	24
<i>Robinson v. State</i> , 550 So.2d 1186 (Fla. 5th DCA 1989).....	5
<i>Rochin v. California</i> , 342 U.S. 165 (1952)	28
<i>Spevack v. Klein</i> , 385 U.S. 511 (1967).....	42,43
<i>State v. Bloom</i> , 497 So. 2d 2, 3 (Fla. 1986)	39
<i>Supreme Court of New Hampshire v. Piper</i> , 470 U.S. 274 (1985).....	43

<i>Supreme Court of Virginia v. Consumers Union</i> , 446 US 719 (1980).....	39
<i>Tulsa Professional Collection Services, Inc. v. Pope</i> , 485 U.S. 478 (1988).....	32
<i>Tumey v. Ohio</i> , 273 U.S. 510 (1927).....	28, 41
<i>U.S. v. Mississippi Valley Co.</i> , 364 U.S. 520 (1961).....	39
<i>United States v. Cruikshank</i> , 92 U. S. 542 (1876).....	35
<i>United States v. Throckmorton</i> , 98 U.S. 61 (1878) ..	45
<i>Wayte v. United States</i> , 470 U.S. 598 (1985).....	22
<i>Weaver v. Massachusetts</i> , 137, Ct. 1899 (2017). ..	40
<i>Wolff v. McDonnell</i> , 418 U.S. 539 (1974)	32
<i>Younger v. Harris</i> , 401, 54(1971)	17

TABLE OF AUTHORITIES – CONTINUED

	Page
Constitutional Provisions	
First Amendment.....	passim
Fifth Amendment.....	26, 38
Fourteenth Amendment	25, 29, 31, 38, 42
Art. IV Privileges and Immunities Clause	25, 26
Art. VI,cl. 2, Supremacy Clause.....	3, 25
Art. I § 5 Fla. Const.....	25
Art. I § 6 Fla. Const	41
Art. I § 9 Fla. Const.	38
Art. I § 21	25
Federal Statutes	
28 U.S.C. § 1141 (a)	16
42 U.S.C. § 1983.....	3
Americans with Disabilities Act.....	4
Title VII.....	3

TABLE OF AUTHORITIES – CONTINUED

	Page
Florida Statutes	
Fla. Stat. § 38.10.....	4, 25
Fla. Stat. § 38.01.....	25
Fla. Stat. § 447.01.....	41
Fla. Stat. § 454.11.....	25
Fla. Stat. §760.10(5).....	25
Fla. Stat § 768.295.....	25
Fla. Stat. § 985.511.....	5
Fla. Stat. § 985.514.....	5
Florida Civil Rights Act, 1992.....	4
Rules	
F. R. Civ. P. 12(b)(6)	18
F. R. Evid. 201(b)(2),.....	20
<i>Local Rule 1.04(b)</i>	17
Fla. R. App. P 9.210(b)(3).	27

TABLE OF AUTHORITIES – CONTINUED

	Page
Other Authorities	
Nineteenth Statewide Grand Jury Interim Report “AStudy of Public Corruption in Florida and Recommended Solutions.”SC09-1910	5

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings: *Marie Henry v. Florida Bar, et al* (opinion affirming judgment of the circuit court, issued June 22, 2021), 2020); and *Marie Henry v. Florida Bar et al*, 6:18-cv-01325-Orl-23-CEM-GJK (M.D.FL) (order from Removal Action partially granting the Bar's motion to dismiss, and dismissing all federal causes of action including claims arising under the First Amendment, the Americans with Disabilities Act, and Title VII and filed March 28, 2019), *Marie Henry v. City of Mount Dora, et al*, 2019-CA-1679-O, 5D21-1387 (order granting all defendants motion to dismiss and ruling the court lack of subject matter jurisdiction). There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

OPINIONS BELOW

The decision of the Circuit court is not reported. The opinion of Fifth District Court of Appeal ("Fifth DCA") has not been officially reported. Both opinions are reproduced in the Appendix.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1). The Fifth DCA issued a Per Curiam Affirmed Opinion ("PCA") June 22, 2021, and denied rehearing and request for a written Opinion July 20, 2021. The Florida Supreme Court ("FSC") lacks

jurisdiction to review a PCA.² October 15, 2021, Justice Thomas extended the time to and including November 17, 2021, to file any petition for a writ of certiorari. November 15, 2021, Petitioner filed an application for additional extension up to and including Friday, December 17, 2021. Justice Thomas granted the extension. The petition is timely.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

A. The Supremacy Clause, U.S. Const., art. VI, cl. 2, states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

B. The First Amendment, U.S. Const. states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

² *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980)

C. The Fourteenth Amendment, U.S. Const. § 1 states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 law.

D. Fla. Const, Art. I § 21. Access to court, states: The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

E. Fla. Const., Art. II § 3. Branches of government, states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

STATEMENT OF THE CASE

A. Factual Background

The Jury Demand Complaint, that began this action, sought damages, injunctive and declaratory relief pursuant to 42 U.S.C. § 1983, Title VII, Florida

Civil Rights Act, 1992, the Americans with Disabilities Act, Intentional Infliction of Emotional Distress, Invasion of Privacies.

The Complaint's factual allegations, plead personal injuries from retaliatory prosecution, in clear absence of all jurisdiction, for redressing grievances with various government agencies.³ And for the content of those grievances.

Petitioner's injuries include: (i) public degradation; (ii) loss of employment; (iii) deprivation of liberty; (iv) stigmatic injury in being regarded mentally unfit by a public entity; (v) reciprocal disbarment in the district court; (vi) a judgment of thousands of dollars, lasting a minimum of 20 years; (vii) deprivation of constitutionally protected privacies; (viii) impairment of good health from intentional infliction of emotional distress; (ix) denial of the "opportunity" to practice law, due to inability to obtain a letter in good standing from the FSC.

Specifically, official statements, *infra*, confirm: (i) speech about potential racial bias in the State's unlawful arrest and malicious criminal prosecution of Petitioner's thirteen-year-old daughter, ("M.E."); and (ii) averments of perceived prejudice, pursuant to § 38.10 Fla. Stat., to disqualify the juvenile judge, from presiding in a breach of contract lawsuit with

³ Equal Employment Opportunity Commission, Florida Bar, Office of State Attorney Brad King, Florida Attorney General, Florida Commission on Human Relations, Judicial Qualifications Commission, Mount Dora Police Department.

Petitioner's mortgagor, is the but-for-cause of the Bar's prosecution and Petitioner's injuries.

The Complaint pleaded facts, that the Bar agents or employees fabricated the essential element of charges "the practice of law" to add a veneer of legitimacy, to proscribed government's conduct.

The State's Nineteenth Statewide Grand Jury Interim Report--"A Study of Public Corruption in Florida and Recommended Solutions."SC09-1910, filed in the FSC, December 29, 2010, concluded public corruption continues to be an issue of great public importance in all aspects of government, politics, and business throughout Florida. As here: 1) M.E. committed no crime⁴; 2) Petitioner was served legal process and placed under the jurisdiction of Florida's criminal justice system for her child's lawful conduct⁵; and 3) as the custodial parent incurred more than \$50,000.00 in legal fees, court costs, and medical

⁴ 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).

⁵ F.S. §§ 985.511 - 985.514 (2009), authority of the court over parents or guardians. *J.R. v. State*, 923 So.2d, 1269 (Fla. 1st DCA 2006), (rights accorded to parents and child are coextensive... the child's and parent's interests are the same...Florida thus requires that the parents of the child be summoned along with the child...jurisdiction does not attach until parents and children are both served).

treatment for her injuries suffered in the criminal justice system.

Official statements, *infra*, establish the Bar's motives or purpose falls outside its official duties. And are contrary to honesty and justice:

1) Juvenile Judge, June 25, 2012, six-days after disqualification, sent a 7-page Order, cover letter on judicially issued letter-head, a 34-page attachment, including juvenile records, judicial canons, and a Joint Stipulation of Dismissal, for Preferred Home Mortgage, to the Bar Chief Branch Discipline Counsel, Jan Wichrowski, captioned: RE: Order in Case No:2009CA4537, Bar Complaint Against Marie Louise Henry, Bar #65716" and said:

Sadly, I write to inform you that I find it to be my duty as a Circuit Judge for the Fifth Circuit to forward to you the enclosed Order which for the reasons stated therein constitute my charges against Ms. Henry for unethical and unprofessional conduct that violate the Rules of professional conduct of the Rules Regulating the Fla. Bar. Should the Order be insufficient or there are any questions you may contact me at the office number below.

2) July 3, 2012, as litigant in *Henry v. Bank of America, et al*, 2009-CA-004537A, Petitioner filed a Writ of Prohibition in the Fifth DCA to stop the judge's threatened prosecution. The Writ docketed, July 5, 2012, was denied July 11, 2012, without elaboration.

3) October 26, 2012, 129-days, after disqualification, the judge's Assistant, sent an email to SOtten at the Bar styled: "Florida Bar Complaint Against Marie Louise Henry" and said:

Good morning:

(Per Judge Takac) In response to a letter received from Ms. Stalcup on October 15th, 2012, please be notified that you may continue to call the office and speak to my assistant, if I am not available, concerning the Bar complaint against Marie Henry.

If the Judge is not available, he is always willing to return the call or make himself available to you. If you feel the need to set up a time to speak with him in person, please feel free to contact the office to set up an appointment.

Thanks
Viv Sheets
Judicial Assistant

4) October 27, 2013, the Bar's Plea Offer said:

The Bar is seeking, as a settlement, a public reprimand and their costs to date. They are viewing the case similarly to other cases where an attorney went (what they consider) too far in a motion to disqualify.

5) November 5, 2013, the judge 30-minute deposition made relevant statements:

And to me it demonstrated just a patent inability to practice. She is not qualified to practice law.

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.

6) November 12, 2013, the ASA testified, as a witness on behalf of the Bar and said:

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 then that foreclosure case went to a different docket.

7) M.E.'s juvenile records are confidential and exempt from public disclosure. Department of Juvenile Justice, Office of Inspector General ("OIG") determined how the Bar obtained a transcribed two-volume binder of sealed juvenile court proceedings, captured on the Electronic Court Reporter and the March 1, 2011, (Affidavit For Order To Take Into Custody) to prosecute M.E.'s mother. The July 9, 2014, Report documents the Complaint's relevant allegations:

- 1) April 16, 2014, Bar Counsel testified (she did not obtain juvenile records from the court but obtained them from the ASA because there was a final bar hearing held on November 12-13, 2013, in which the bar was required to prove allegations made in the formal complaint. At that hearing, Bar Counsel produced several documents to include the March 1, 2011, DJJ Case Notes [Report] written by SJPO Edmondson, which indicated Henry's daughter had "run away."
- 2) April 29, 2014, the ASA testified (i) he had to respond to Henry's bar complaint, and when he responded, he filed a bar complaint against

Henry alleging misconduct for not being honest with Judge Takac during the March 7, 2011, hearing for M.E. in which Henry testified as a witness and reportedly made a false statement under oath; (ii) he gave Bar Counsel DJJ log notes that were not admitted into evidence in the juvenile case, because she was investigating a bar complaint Henry made against him.

8) April 30, 2014, the Bar Referee found guilt, sanctions and mental unfitness and said:

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....”

9) December 16, 2016, and March 29, 2017, the former judge, tasked as the Bar’s Grievance Committee investigator testified and said:

- 1) I testified to the Grievance Committee as to the evidence and I did make a recommendation that in my opinion, as the investigating official that probable cause existed because . . . 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.
- 2) It had nothing -- 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.

- 3) We were looking at your behavior not whether you were practicing law or not."
- 4) The investigation is whether or not there's a factual basis to support the alleged grievance. The 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) I reviewed a copy of your emergency petition for writ of habeas corpus. I reviewed e-mails and case notes from Officer Kasey Edmondson reflecting a telephone conversation with you, Officer Robinson's (sic) incident report, including a narrative of the complaint filed on that date by you. I reviewed a March 4th, 2010 hearing transcript, March 7th, 2011 hearing transcript, an April 19th, 2010 hearing transcript, an April 22nd, 2010 hearing transcript, an April 23rd, 2010 hearing transcript, the May 21st, 2010 hearing transcript, the Mount Dora arrest affidavit, a petition for writ of habeas corpus filed by you on June 16th, 2011, the Fifth DCA's opinion filed May 20th, 2011 affirming Judge Takac's determination of guilt, and various other court pleadings and documents.

6) [t]he Florida Bar view the term “racial animus” as short-hand that you called the judge a “racist” “I was not there, and I did not see that in the transcript, your allegation that a sitting judge made his decision based on racial animus is tantamount to calling him a racist.”

10) March 28, 2017, the Administrative Law Judge, as finder of facts pursuant to § 760.10(5), Florida Civil Rights Act, said on the record:

“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.”

11) Responding to interrogatories, requests for admissions Bar employees said:

1. [The Bar] admits [it] 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. [the Bar's] submission of the referenced material into evidence during the disciplinary proceedings was permitted by The Rules Regulating the Florida Bar. The persons with knowledge of these facts include Rich Courtemanche and Jan Wichrowski;
2. As part of Judge Jaworski's determination of the appropriate recommended sanction, he identified an "aggravating factor" based on refusal to acknowledge the wrongful nature of her conduct; Judge Jaworski specifically referenced a letter that [Petitioner] addressed to both the President and the Executive

Director of The Florida Bar on December 30, 2013, following the disciplinary hearing;

3. [The Bar] Admits that the accusations made by Petitioner within said Motions for Disqualification were in part the subject of the charges made in Count II of The Florida Bar's Complaint;
4. The citizens' complaint [Petitioner] filed against the police officers documenting her concerns of "racial profiling" "were considered during the disciplinary proceedings instituted against [Petitioner] by [the Bar];"

B. Procedural History

1. Complaint and Jury Demand

Petitioner filed a multi-defendant civil Complaint and demand for Jury trial in State Court, with the following Exhibits:

1. Notice of Right to Sue from the Equal Employment Opportunity Commission;
2. April 6, 2017, Notice of Dismissal granting right to sue the Bar, employees/agents for injuries arising under § 760.10(5) Fla. Stat., FCHR Case No. 201601596 and EEOC No. 15D201600795;

3. Florida Supreme Court unelaborated ORDER *Florida Bar v. Marie Louise Henry*, (SC13-1127);
4. The Bar's CONFIDENTIAL Blind Post Script memos referring Petitioner for prosecution;
5. Plea Offer of Public Reprimand and Payment of Costs;
6. Attorney Repair Correspondence on Damage to Reputation;
7. Affidavit, Sherry Myers, Esq., documenting personal history of being labeled mentally unfit by the Bar to practice law for protesting racial discrimination;

2. Removal Action, Motion to Dismiss and Judicial Notice

August 14, 2018, before all defendants were served legal process, the Bar, removed the lawsuit to federal court citing 28 U.S.C. § 1141 (a), and said:

- (1) Henry's Complaint was filed in Orange County, Florida less than one week after she received notice that her petition for writ of certiorari to the U.S. Supreme Court was denied (referencing *Marie Henry v. The Florida Bar et al* Case No. 6:15-cv-01009); and

- (2) The Complaint seek to relitigate her false arrest claims against the city of Mount Dora and Police Officer Brett Livingston that were dismissed with prejudice by this court on February 27, 2015, in the action styled *Marie Henry v. City of Mount Dora et al* (Case No: 5:13-00528-JSM-PRL).
- (3) Henry's Orange County Complaint was also filed after the Florida Commission on Human Relations entered a Final Order against her November 2, 2017 expressly finding that [The Florida Bar] did not commit discrimination or retaliation against [Marie Henry].⁶
- (4) Disregarding the same barred claims, seeking to relitigate them all over again in Orange County.

The Action, was assigned to Judge Presnell. The Bar requested reassignment to Judge Mendoza. An August 17, 2018, Order said, "pursuant to Local Rule 1.04(b), the case is transferred to the Hon. Carlos Mendoza, with his permission."⁷

⁶ Notably, the lawsuit does not contain a claim on this administrative action.

⁷ Judge Mendoza, presided in Petitioner's verified Civil Rights Complaint. (*Marie Henry v. The Florida Bar et al.* Case No. 6:15-cv-01009), and denied federal jurisdiction citing *Younger v. Harris*, 401,

August 27, 2018, the Bar's 25-page motion to dismiss ("MTD"), with prejudice said:

Motion is brought on behalf of The Florida Bar and each of its officials, and attorneys named in the lawsuit, moves for dismissal of this action with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted. In addition, this case is barred by the *Rooker-Feldman* doctrine. "It is well-settled that a federal district court lacks jurisdiction to review, reverse, or invalidate a final state court decision." *Dale v. Moore*, 121 F.3d 624, 627 (11th Cir. 1997).

3. The Bar's Request for Judicial Notice and Exhibits

"THE FLORIDA BAR'S REQUEST FOR JUDICIAL NOTICE" said:

The Exhibits for judicial notice, said: Defendant, The Florida Bar, pursuant to Federal Rules of Evidence 201, respectfully requests judicial notice of: Florida Supreme Court Decisions: 1. Order of Suspension d/t/d

54(1971) noting that the Bar's case SC13-1127 was ongoing when suit was filed in federal court.

March 31, 2015. Exhibit A. 2. Order Denying Motion for Rehearing d/t/d Sept. 25, 2015. Exhibit B. Henry v. Mt. Dora I Decisions: 3. District Court's Dismissal in Part. Henry v. City of Mt. Dora, et. al, No.: 5:13- cv-00528-JSM-PRL (M.D. Fla. Nov. 10, 2014). Exhibit C. 4. District Court's Dismissal of Remaining Claims Prejudice: Henry v. City of Mt. Dora, et. al, No.: 5:13-cv-00528-JSM-PRL (M.D. Fla. Feb. 27, 2015). Exhibit D. 5. Eleventh Circuit Opinion: Henry v. City of Mt Dora, et al, No. 15-11351 (11th Cir. May 31, 2017) (per curiam) affirming dismissal of § 1983 false arrest claims against officers. Exhibit E. 6. Notification of Denial of Petition for Writ of Certiorari to United States Supreme Court d/t/d Jan. 8, 2018. Exhibit F. Henry v. TFB I Decisions: 7. District Court's Dismissal: Henry v. The Florida Bar, et. al, No. 6:15-cv-1009-CEM-TBS (M.D. Fla. May 27, 2016). Exhibit G. 8. Eleventh Circuit Opinion: Henry v. The Florida Bar, et. al, No. 16-15869 (11th Cir. July 14, 2017) (per curiam) affirming dismissal of Henry's Complaint with prejudice and without leave to amend based upon Eleventh Amendment immunity, absolute immunity, and Younger abstention doctrine. Exhibit H. 9. Notification of Denial of Petition for Writ of Certiorari to United States Supreme Court d/t/d April 23, 2018. Exhibit I. FCHR Litigation Decision: 1. Division of Administrative Hearings Recommended Order. Exhibit J. 2. Henry's Exceptions for DOAH Recommended Order.

Exhibit K. 3. Final Order on FCHR Petition d/t/d Nov. 2, 2017, finding no discrimination occurred by The Florida Bar. Exhibit L. This Request is made pursuant to Federal Rule of Evidence 201(b)(2),

December 3, 2018, the Magistrate Judge Report and Recommendation dismissed Petitioner's federal causes of action and said: "*Plaintiff's federal causes of action against Defendants are barred by Rooker-Feldman. Plaintiff ultimately seeks to relitigate her bar disciplinary proceedings and the sanction imposed by the Florida Supreme Court.*"

December 17, 2018, the Bar filed a document styled "LIMITED OBJECTION TO REPORT AND RECOMMENDATION" and said:

This action was removed to this Court for economic and judicial economy because it re-pled claims recently considered and rejected by this Court, days after this Court's determinations were affirmed by the Eleventh Circuit. The Report and Recommendation properly finds Plaintiff's new claims are barred by Rooker-Feldman.

March 28, 2019, Judge Mendoza issued a dismissal Order (adopting the Magistrate's Report and Recommendation).

4. Remand of State Claims

May 24, 2019, the Bar filed a MTD in State court requesting Judicial Notice of Exhibits, *supra*.

September 9, 2019, Petitioner filed a Motion to Strike for Fraud on the Court and Summary Judgment (the motions were not heard).

September 11, 2019, Petitioner filed a motion to disqualify Judge Alvaro for Cause. September 25, 2019, the Motion was granted.

January 22, 2020, the trial court held a 30-minute hearing on the Bar's MTD, a Court Reporter was present and a Transcript was prepared.

February 3, 2020, Petitioner filed a motion to disqualify successor judge for comments from the bench that he started a timeline of the cases the Bar asked the court to judicially notice, as dispositive of the Bar's MTD. February 17, 2020, the Motion was denied.

March 6, 2020, the successor judge, dismissed the Claims against the Bar and its official capacities defendants with prejudice.

SUMMARY OF ARGUMENT

The Fifth DCA is bound to follow federal law, and this Court's precedents. On authority of official statements capsulated, in the Statement of the Case, *supra*, the Bar investigated, prosecuted, found guilt, imposed the dishonor of disbarment, and found Petitioner mentally unfit for petitioning the

government to redress grievances. More than three-decades ago, this Court held the government cannot 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).

For more than 100 years, *stare decisis* has been recognized, as requiring courts to follow legal precedent, to promote stability in society. See *Elmdorf v. Tay*, 23 U.S. 152, 160 (1825) (finding construction given by the U.S. Supreme Court to the Constitution and laws of the United States must be accepted by all courts). In 2016, the Court reiterated this construction. See *James v. City of Boise*, 136 S. Ct. 685 (2016), (“once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.”).

It’s beyond debate, the First Amendment guarantee the right to petition, and the negative right to be free from government reprisal for petitioning activities and speech.⁸

Neither the referee’s report mitigators nor the aggravators considered and recommended sanctions,

⁸ “Official reprisal for protected speech ‘offends the Constitution [because] it threatens to inhibit exercise of the protected right.’” *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (citation omitted).

fall within the Bar's official purpose⁹ nor its three-pronged purpose of disciplinary sanctions.¹⁰

The Complaint establish standing to sue and colorable claims for judicial relief. The Bar's prosecution, inflicted damages and deprivation of civil liberties, and is void for a number of reasons, including: (1) an invalid exercise of the police power; (2) retributive and unreasonable interference with Petitioner's First Amendment right secured by the Speech and Petition Clauses.

Petitioner's Complaint met the three-pronged pleading standard for retaliation for the exercise of First Amendment rights: (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.

⁹ ... for the protection of the public and the integrity of the courts. *Florida Bar v. Massfeller*, 170 So.2d 834 (Fla. 1964).

¹⁰(1) the judgment must be fair to society; (2) fair to the attorney; and (3) sufficiently deter others from similar conduct. See *Florida Bar v. Clement*, 682 So.2d 690 (Fla. 1995)

REASONS FOR GRANTING THE PETITION

- A. The Vindication of an Integrated Bar Unconstitutional Deprivation of Civil Liberties is of Exceptional Importance**
 - 1. The Questions Presented Have Exceptional Importance for Uniform Enforcement of Civil Liberties**

The judgments below, affirm no matter how egregious the Bar's conduct, or grievous the injuries inflicted or rights violated, neither federal law nor federal courts is a deterrent.

Congress assigned the federal courts the paramount role of protecting constitutional rights. See *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)).¹¹ The procedural history, *supra*, show a federal court exercised subject matter jurisdiction, it expressly disclaimed, to grant the Bar's MTD. And finding a winning strategy in federal court, the Bar continued the same tack in State court.

¹¹ "[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.

Florida courts are vouchsafed to grant fair hearings.¹² And the law is settled, Florida DCAs have an unrenunciable judicial duty to correct fundamental errors, See *Bain v. State*, 730 So.2d 296, 302 (Fla. 2d DCA 1999).

The trial court's Order (App. 1a-5a) dismissed the Complaint on lack of standing and absolute immunity grounds, relying on *Cole v. Owens*, 776 So.2d 287 (Fla. 4th DCA 2000) and *Mueller v. The Florida Bar*, 390 So. 2d, 449 (Fla. 4th DCA 1980).¹³

The trial judge said ("Complaint and Jury Demand" filed May 22, 2018 does not allege facts sufficient to maintain a claim of actionable conduct that falls outside of each person's official duties") (App. 3a). A three-judge panel affirms, repudiates *Bounds* and progeny. And nullifies Petitioner's fundamental civil liberties, triggering this Court's supervisory and equitable duty.

¹² See *Lake v. Lake*, 103 So. 2d 639, 642 (Fla. 1958). ("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").

¹³ The facts and legal conclusion in *Cole* are inapposite. Cole appealed an Order dismissing his Complaint against the Bar Staff Attorneys for failure to refer his Complaint against his former attorney to the Grievance Committee. The court reasoned *Cole* lacked standing to sue. *Muller* was decided five years before *Kentucky v. Graham*, (473 U.S. 159 (1985), *infra*.

The guarantees in the Supremacy Clause, First Amendment speech and petition, Due Process, Equal Protection and Privilege & Immunities Clauses; and Art. I §§ 5 & 21 Fla. Const., as well as federal and State anti-discrimination laws, grant victims standing to sue. And §§ 38.01, 38.10, 454.11, 760.10(5), 768.295 Fla. Stat. and the Ethics Rules prescribe that government's conduct, *supra*, falls outside each person's official duties.

The First Amendment do not require courts to choose between competing policies. In relevant terms, its provisions are stated in absolute and unqualified language that no law shall be passed abridging the freedom of speech, petition, or association. The First Amendment never requires people to bear the burden of proving they should be free to speak or not speak. Instead, it's the *government* who bears the burden of justifying its intrusions.

At its core, the First Amendment prohibits government from making laws abridging freedom of speech, or interfering with citizens' ability to petition the government for redress of their grievances. This Court and the Eleventh Circuit Court of Appeals said the right, to adequate, effective, and meaningful access to the court, is grounded in the First Amendment, Art. IV Privileges and Immunities Clause and the Fifth and/or the Fourteenth Amendment.¹⁴

¹⁴ Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the

The Department of Justice and this Court recognize integrated state bars are uniquely positioned to abuse its authority to regulate health, safety and general welfare legislation, when active market participants, who are gatekeepers of the profession they regulate, wield that power. In, N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101 (2015) the Court said: “*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.*”

The power to discipline a Florida law license is the analogue of bringing a criminal to justice. See e.g., *Florida Bar v. Winn*, 208 So. 2d 809, 811-12 (Fla. 1968) (Disciplinary proceedings are essentially a function of the court instituted in the public interest and designed to preserve the purity of The Bar).

Like criminal statutes, licensing regulation is predominantly committed to the care of the States. When, as here, police power is abused, the price for exercising constitutional or statutory rights should never be economic annihilation, without a remedy.

Fourteenth Amendment. See e.g., *Chappel v. Rich*, 340 F.3d 1279 (11th Cir. 2003). (citations and quotations omitted); See also *Bank of Jackson County v. Cherry*, 980 F.2d 1362, 1370 (11th Cir. 1993) (To pass constitutional muster, access to the courts must be more than merely formal; it must also be “adequate, effective, and meaningful”). Bounds, 430 U.S. at 822-23, “inmate access to the courts [must be] adequate, effective, and meaningful.

9.210(b)(3) Fla. R. App. P., requires the Initial Brief, statement of case and facts "shall" contain "references to the appropriate pages of the record or transcript." As such, the facts, *supra*, were fully brought to light in the appeal.

The Bar defenses that the U.S. Supreme Court is the only Court with "subject-matter" jurisdiction to adjudicate Petitioner's claims and the *Rooker-Feldman* doctrine, and absolute judicial immunity bar the lawsuit are patently false, and should not be tolerated, in light of: (1) conscience shocking conduct admonished in *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952); (2) due process structural defects admonished in *Tumey v. Ohio*, 273 U.S. 510 (1927); (3) First Amendment jurisprudence admonishing inviolability of the guarantee that the government's regulation of content-based speech is impermissible, presumptively invalid, and it is the government's burden to justify its intrusions ; and (4) 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).

**2. The First Amendment Right-Remedy
Guarantee Requires Rejection of the
Fifth District Court of Appeal PCA
Disposition**

Ubi jus ibi remedium — “where there is a right, there should be a remedy” is the ancient legal maxim articulating the aspirational ideal of Anglo-American jurisprudence. In the decade following ratification of the First Amendment, this Court recognized the right-remedy relationship. See *Chisholm v. Georgia*, 2 U.S. 419 (1793) and *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Chief Justice Marshall explicitly recognized the link between petitioning the courts for redress of grievances and mandatory remedies when he stated: “[i]n Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.” *Id.* 163

In *Bounds v. Smith*, 430 U.S. 817 (1977), the Court held “that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”

In the years after *Bounds*, Justices continued to recognize, without objection, a First Amendment right to petition the courts. See *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (“Like others, prisoners have the constitutional right to petition the Government for redress of their grievances, which includes a reasonable right of access to the courts.”) In *Lewis v.*

Casey, 518 U.S. 343, 1996, the Court limited but reaffirmed *Bounds*. Both the respondents and Justice Stevens framed the *Bounds* court access right in terms of the right to petition. See 518 U.S. 343, 346 (1996) (describing respondents' claim); *Id.* at 405-06 & n.1 (Stevens, J., dissenting).

The questions presented suggest that now is an auspicious time to revisit the First Amendment concerns from compelled association to earn a living

Two U.S. Supreme Court Justices agree *Keller*, *supra*, is an important First Amendment precedent and should be revisited. From inception of the first integrated bar, in 1921, the call to end compulsory association, to earn a living, has been pressed on the courts, as a violation of the First Amendment.

The issue became more salient in 2018, the Court overruled *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) in *Janus v. AFSCME*, 138 S.Ct 2448 (2018). Justice Alito writing for the Court's majority, described *Abood* as poorly reasoned and an outlier among the Court's First Amendment cases. Justice Thomas and Gorsuch, dissented to the Court's denial of certiorari in *Jarchow v. State Board of Wisconsin*, 140 S. Ct. 1720 (2020) and pertinently said:

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.

The Questions Presented are emblematic of (i) a total lack of checks and balances; (ii) conflicts of interest in compulsory association, to earn a living¹⁵; and (iii) lack of constitutionally adequate safeguards. Here, compelled association with judges and powerful public employees just to earn a living, became a tool of retribution and personal vindication. And why, for almost a decade, federal law has no force or effect in granting relief.

¹⁵ The White house defines an occupational license as a government-issued credential that enables a person to engage in a profession.

The Bar's MTD did not even raise a lack of standing defense. Judicial proceedings affect individual properties or parties, and are subject to due process protections under the Fifth and Fourteenth Amendments. The Fifth DCA error is fundamental and denies due process. Under Constitutional standard of notice, an opposing party must have fair notice of any asserted defense to the claims presented.

Time and time again, this Court emphasized, [t]he touchstone of due process is protection of the individual against arbitrary government action. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court clarified the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Id.* at 332-33, (citations omitted) (first quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123 (1951) (Frankfurter, J., concurring); and then quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)).

The *Mathews* Court said: The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society."

No doubt exists of the property interest at stake in a cause of action or 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), citing (*Logan v. Zimmerman*

Brush Co., 455 U. S. 422, 428 (1982), said: "a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."

Since a defense of standing was not raised in the trial court, the Due Process Clause forecloses the deprivation of life, liberty or property without notice or opportunity to be heard. And the Equal Protection Clause requires the law be applied equally.

Florida law and Rules of Civil Procedure are binding on the Fifth DCA that Standing is an affirmative defense, must be raised in the trial court and if not raised is waived. Florida's standing doctrine derives from its Constitution's provision of separation of power among the branches of government, which denies the judiciary authority to decide matters in the abstract or deny Floridians the guarantee of a remedy in art. I § 21 Fla. Const.

Particularly pertinent, the following FSC cases constitute 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); *Cowart 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*).

Moreover, Florida's 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)). Given parallels between the federal test, and Florida's, and lack of standing not raised in the trial court, the decision of the Fifth DCA cannot stand.

Respondents do not dispute Petitioner exercised First Amendment rights—under the Speech Clause and the Petition Clause. When the government's constituents are litigation adversaries, the government still has an affirmative duty to safeguard citizens' constitutional rights. See *Am. Canoe Ass'n, Inc. v. City of St. Albans*, 18 F. Supp. 2d 620, 621 (S.D.W.Va. 1998) (observing that the “[g]overnment remains the servant of the people, even when citizens are litigating against it”).

This Court's modern line of precedents support a remedial reading of the Petition Clause. There is broad consensus that the right to petition includes a negative right to be free from retaliation for, or prosecution for petitioning activity.¹⁶

¹⁶ See e.g., the majority and concurring opinions in *BE & K Construction Co., v. NLRB*, 536 U.S. 516, 524-25 (2002). We have recognized this right to petition as one of "the most precious of the liberties safeguarded by the Bill of Rights," *Mine*

Petitioning serves numerous, fundamental interests of petitioners and the government alike. It is “essential to freedom,” liberty and self-government. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 382, 394 (2011). Petitions contribute to the “public airing” of disputes, the “evolution of the law,” and the use of government as an “alternative to force.” BE & K Constr., 536 U.S. at 532.

In *Guarnieri*, the Court renewed its Petition Clause jurisprudence, focusing on the historical underpinnings of the right. 564 U.S. at 387-97. Describing the “special concerns” of the Petition Clause, as compared to the Speech Clause, the Court said:

The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives, whereas the right to speak fosters the public exchange of ideas that is integral to deliberative democracy as well as to the whole realm of ideas and human affairs.” Id. at 388 (emphasis added).

Workers v. Illinois Bar Assn., 389 U. S. 217, 222 (1967), and have explained that the right is implied by “[t]he very idea of a government, republican in form,” *United States v. Cruikshank*, 92 U. S. 542, 552 (1876).(... We thus made explicit that “the right to petition extends to all departments of the Government,” and that “[t]he right of access to the courts is . . . but one aspect of the right of petition.” (*Citation omitted*).

Thus, as here, a petition may “undoubtedly” consist of a “personal grievance addressed to the government.” *Id.* at 394. A petition enjoys constitutional protection whether addressed, to a local government, or to a state or national government. See, e.g., *NACP v. Claiborne Hardware Co.*, 458 U.S. 886, 889 (1982) (petition and boycott directed at county officials); *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (protest of segregated public library). A petition may be directed towards any department of government, including the courts. *Guarnieri*, 564 U.S. at 387; *BE & K Constr.*, 536 U.S. at 525.

The record establishes Petitioner’s claims for damages, injunctive and declaratory relief rested on deprivation of fundamental civil liberties in petitioning to redress grievances and seeking an impartial tribunal, because the Bar’s attorney told the judge:

After her [Petitioner] daughter was prosecuted, Bar disciplinary proceedings arose with regard to Ms. Henry’s conduct during those criminal prosecution proceedings, and a second Bar disciplinary proceeding arose with regard to a civil claim concerning the motion to recuse, the content of a motion to recuse filed by Ms. Henry.

Judges have an independent constitutional duty to apply the law neutrally. In *NAACP v. Button*, 371 U.S. 415 (1963) this Court said: "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."

The instant appeal is analogous to *Cruz v. Beto*, 405 U.S. 319 (1972). There the Court required, pursuant to the First Amendment, a full adjudication of a Buddhist inmate's allegation of religiously discriminatory prison practices. *Id.* 405 U.S. at 321-22. The First Amendment violation in *Cruz* was the trial court's refusal to adjudicate, and, if warranted, remedy claims of legal injury.

In *Christopher v. Harbury*, 536 U.S. 403 (2002), this Court recognized that some of its prior cases had "grounded the right of access to courts in . . . the First Amendment Petition Clause," *Id.* at 415 n.12, among other textual sources. Emphasizing the link between right and remedy *Id.* at 414-15, the Court said:

[T]he very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong [T]he right [of court access] is ancillary to the underlying claim [of legal wrong], without which a

plaintiff cannot have suffered injury by being shut out of court.

B. Conflicts of Interests Resulting in Fundamental Unfairness was Presented and Ignored Below

A licensee has a property and liberty interest in an occupational license.¹⁷ The FSC makes clear: (All Florida judges are, first and foremost, attorneys and members of The Florida Bar). See *5-H Corporation v. Padovano*, 708 So.2d 244 (Fla. 1997); *see also (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). (a judge is a lawyer whose labors are performed behind the bench instead of before it).

The Order below demonstrates, when judges assume the role of prosecutors, it obstructs the fair and impartial administration of justice and public confidence in the judiciary.

Under Florida law, the decision to charge and prosecute is an executive responsibility. Art. II § 3 Fla.

¹⁷ *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.

Const. See also *Ayala v. Scott*, 224 So.3d 755 (Fla. 2017) citing *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986), (the power to prosecute.... is *purely an executive function of state government*).

Judges enforcing a Bar Code are prosecutors. See *Supreme Court of Virginia v. Consumers Union*, 446 US 719 (1980). *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 US 423 (1982), (disciplinary proceedings are the analogue to a State's criminal prosecution). *In re Ruffalo*, 390 U.S. 544 (1968), (*these are adversary proceedings of a quasi-criminal nature. The charge must be known before the proceeding commence*).

The Bar Rules and Florida courts recognize the Bar's prosecutorial role: "*Bar counsel shall make such investigation as is necessary and shall prepare and prosecute with utmost diligence any case assigned*" (Rule 3-2.1(a) and 3-7.6(g); *Mueller v. The Florida Bar*, 390 So. 2d 449, 452 (Fla. 4th DCA 1980) ("*[T]he initiation of grievance matters is a prosecutorial function of the Florida Bar*").

The Bill of Rights defines the outer limits of permissible governmental action. If governmental action violates protections of speech, due process, right to counsel, or equal protection, it is invalid. See *First English Evangelical Lutheran Church v. County of Los Angeles*, 452 U.S. 304, 310 (1987).

Lawyers, with an economic interest in a Bar license, judging a lawsuit against the Bar, offend the broad proscriptions addressed in *U.S. v. Mississippi*

Valley Co., 364 U.S. 520, 549-551 (1961), (internal citation, note omitted). Commenting on a federal penal statute, the Court declared a contract unenforceable, and said:

The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.

C. Structural Error Rendered the Court Incapable of Carrying Out Its Constitutional Duty

This case requires an examination of the proper application of the structural error doctrine, when a judge with an occupational license, regulated by the Bar is the arbiter of litigation involving the Bar. In *Weaver v. Massachusetts*, 137 S. Ct 1899 (2017), the Court acknowledged some errors always result in

fundamental unfairness, citing cases and deeming certain errors structural, requiring reversal, (e.g., *Tumey v. Ohio, (supra)*).

The appellate record, reflects the Bar's said "it cannot afford to lose a case like this." It's antithetical to the Due Process Clause, when a litigant's case is adjudged by lawyers with an economic interest in compulsory membership in good standing.

An integrated Bar, to whom Petitioner's right to earn a living was entrusted, through compulsory association, imposed the dishonor of disbarment and deprivation of a livelihood, as a price for redressing grievances against the government, including the Bar. Both trial judge and appellate panel knew from the Plea Offer, *supra* that the decision to prosecute was to obstruct a litigant's right to an impartial tribunal and to censor averments of prejudice, with adverse licensing action.

"*The right to work is the right to live*" enshrined in Florida's Constitution and statutory law (art. I § 6 Fla. Const., § 447.01 Fla. Stat.) guarantee an individual's right to work on account of membership or non-membership in any labor union or labor organization. As relevant here, this Court, interpreted the integrated bar structure, as analogous to labor unions and their members' dues.¹⁸

¹⁸ There is, by contrast, a substantial analogy between the relationship of the State Bar and its members, on the one hand, and the relationship of employee unions and their members, on the other. *Keller* 496 at 12.

**D. The Questions Presented Concern the
Supremacy of this Court Precedents and
Refusal to Follow Them**

The facts, *supra*, show compelled association, to earn a living, seriously erodes the administration of justice, whether defending against disciplinary proceedings or redressing grievances as an adversary to the Bar.

This point is illustrated in the FSC refusal to accept this Court's precedents that disciplinary proceedings are quasi-criminal and penal in nature. See e.g., *Spevack v. Klein*, 385 U.S. 511, 87 S.Ct. 625 (1967). The Court overruled *Cohen v. Hurley*, 366 U.S. 117 (1961) and reversed a lawyer's disbarment, concluding the Fifth's Amendment self-incrimination Clause is absorbed in the Fourteenth Amendment. And made clear that a right cannot be denied by classifying people to deny it to some and extend it to others. *Id.* 516.

Declining to follow *Spevack*, in *DeBock v. State*, 512 So.2d 164 (Fla. 1987), the FSC relied on *Florida Bar v. Massfeller*, 170 So.2d 834 (Fla. 1964), to deny federal constitutional protections saying "bar disciplinary proceedings are remedial, designed for the protection of the public and the integrity of the courts." There, the *DeBock*¹⁹ court relied on

¹⁹ Citing, *Ciravolo v. Florida Bar*, 361 So.2d 121 (Fla. 1978) the court concluded that an immunized attorney's testimony in a criminal proceeding could be used in a bar inquiry,

classifying people to deny fundamental rights, just as the Fifth DCA has done here.

The Opinion below violates this Court's binding precedents in *Spevack, Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985)²⁰, and *Keller, supra*.

E. The Court Should Not Remain Mute to Fraud on the Court

Justice Black famously said: "*The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.*" (*Hazel Atlas* at 246).

The three-judge panel extends an unconstitutional offense into futility for a victim to redress egregious violations of civil liberties and intentional discrimination. This is especially true when, as here, statistically most petitions to this Court, are denied without explanation.²¹

because: "*attorneys can be held to different standards than other regulated professions.*" *DeBock* 512 So.2d at 167.

²⁰ [A] lawyer is not an "officer" within the ordinary meaning of that word..... He "makes his own decisions, follows his own best judgment, collects his own fees and runs his own business.' " *Piper* 413 U. S., at 729 – 728 (quoting *Cammer v. United States*, 350 U. S. 399, 405 (1956)).

²¹ 5,411 filings in the 2019 Term, only 73 cases were argued. www.supremecourt.gov "2020 Year-End Report on the Federal Justice Caseload."

Relying on this Court's relevant decisions, *Hazel Atlas* and *Liljberg* *supra*, the Bar achieved victory by fraud directed to federal and state judges. For e.g., raising, as affirmative defenses: 1) Only the U.S. Supreme Court has subject-matter jurisdiction over Petitioner's claims; 2) A petition for a writ of certiorari and its denial signified the Court's view of the merits of the case, constituting a finding of relevancy and admissibility under Fed. R. Evid. 201(b), to grant the Bar's MTD; 3) absolute immunity bar the lawsuit against the Bar, despite this Court's precedent to the contrary²²; 4) *Res Judicata* bars the lawsuit.²³

²²“The only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, may possess, such as the Eleventh Amendment.” *Kentucky*, *supra*, at 167.

²³Res Judicata effect of state-court decisions in § 1983 action is a matter of state law. *Heck v. Humphrey*, 512 U.S. 477 (1994). The Bar is not a court. *Florida Bar v. Clement*, 682 So.2d 690 (Fla. 1995) (collateral estoppel can only be asserted when identical issue has been litigated between the same parties); *In re Kelley*, 238 So.2d 565, 570 (Fla. 1970); *Kent v. Sutker*, 40 So.2d 145, 147 (Fla.1949)(a judgment rendered on any grounds which do not involve the merits of the action may not be used as a basis for the operation of the doctrine of *res judicata*). Here, Fifth DCA judges, the Bar found Petitioner guilty and sanctioned for criticizing, would issue a mandate that Petitioner lacks standing to redress personal injuries traceable to the Bar's unlawful conduct.

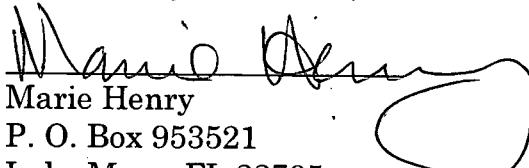
In *Huffman v. Delacruz*, 719 So. 2d 385, 386 (Fla. 4th DCA 1998), the court explained extrinsic fraud citing United States v. Throckmorton, 98 U.S. 61, 65-66 (1878) as follows:

Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as.... and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. (Citations omitted.)

CONCLUSION

The petition for a writ of certiorari should be granted. Petitioner also suggests that summary disposition may be appropriate.

Respectfully Submitted,


Marie Henry
P. O. Box 953521
Lake Mary, FL 32795
Libertyjustice2012@gmail.com
704-737-1935