

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: _____

FLORIDA J.A.I.L. 4 JUDGES, FLORIDA
DIVISION OF ELECTIONS COMMITTEE
#35025,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

_____ /

**PETITION TO ENJOIN THE FLORIDA BAR
FROM POLITICAL ACTIVITIES RELATED TO THE
ARTICLE XI, § 3 INITIATIVE OF FLORIDA J.A.I.L. 4 JUDGES**

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BASIS FOR INVOKING THE JURISDICTION OF THE COURT

“As a creation of this Court, The Florida Bar is under our supervision and subject to our regulation.” *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989).

“Any member of The Florida Bar in good standing may question the propriety of any legislative lobbying position taken by the board of governors by filing a timely petition with this Court.” *Id.* at 1097. *Accord: In re Florida Bar Board of Governors' Action*, 217 So.2d 323 (Fla. 1969); *In re Amendment to Integration Rule of the Florida Bar*, 439 So.2d 213, 214 (Fla. 1983); *Florida Bar re: Frankel*, 581 So.2d 1294, 1295 (Fla. 1991); *Alper v. FL Bar*, 771 So.2d 523 (Fla. 2000).

Additionally, pursuant to Article VI, Clause 2 of the Federal Constitution, the jurisdiction of this Court is invoked.

THE FACTS ON WHICH PETITIONER RELIES

I. FLORIDA J.A.I.L. 4 JUDGES

Florida J.A.I.L. 4 Judges, Florida Division of Elections Committee #35025 (“Florida J.A.I.L. 4 Judges”) is a Political Action Committee recognized by the Florida Department of State, Division of Elections and at all times relevant was “active” as Committee #35025.

Florida J.A.I.L. 4 Judges seeks to amend Article V of the Florida Constitution with certain provisions known as “The Judicial Accountability Law”(J.A.I.L.). A copy

of the proposed amendment is attached as Exhibit “A”. At present, Florida J.A.I.L. 4 Judges has not determined which method it seeks to invoke to amend Florida’s constitution.

The J.A.I.L. proposal would create special grand juries to investigate complaints against judges. These grand juries would have the power to discipline judges by levying fines, removing them from the bench and, where appropriate, subjecting them to criminal proceedings before special trial juries. Under present practice, the judiciary is entirely *de-facto* self-regulated and this has led in many instances to intolerable abuses of judicial discretion without recourse for those harmed. These instances have involved conflict of interest, denial of due process, withholding of evidence, and other violations of the constitutional rights of individuals, including arbitrary and unjustified fines, sanctions, seizure of property, loss of parental rights and incarceration.

United under the banner of JAIL4Judges is a broad coalition of citizens from all backgrounds, professions, and political persuasions who are dedicated to the mission of reforming the Florida judiciary.

II. THE FLORIDA BAR

The Florida Bar is an integrated bar. Rules Regulating the Florida Bar, §§ 1-3.1, 1-3.2. The Supreme Court of Florida established the Florida Bar as "an official arm of

the Court." Rules Regulating the Florida Bar, 494 So.2d 977, 979 (Fla.1986). Additionally, The Florida Bar also holds itself out as an "association". A copy of that letter is attached as Exhibit "B".

The Florida Bar, through its members, officers and employees is presently engaged in *direct* and *indirect* political activities and controls editorial content in its two publications, "The Florida Bar News" and "The Florida Bar Journal", which are regularly distributed to all 80,000± members of the Florida Bar.

Noteworthy is that The Florida Bar Journal has reported the activity of the Florida Bar's opposition to Petitioner, Florida J.A.I.L. 4 Judges.

On July 15, 2006, the Florida Bar News reported: "A constitutional amendment petition drive by Florida J.A.I.L. 4 Judges 'claims to be able to sanction corrupt judges with civil lawsuits and even jail. It claims that J.A.I.L. (Judicial Accountability Initiative Law) is totally in the hands of the people and is accountable to no government body," [Former Florida Supreme Court Justice Major] Harding said. "And, my friends, this is an effort to undermine the very foundation of our country and places at risk freedoms and liberties we have been so blessed to have." A copy of that article is attached as Exhibit "C".

In the same July 15, 2006, edition of the Florida Bar News, it was reported that

The Bar's Judicial Independence Committee is looking

locally and internationally at possible threats to the ability of judges and lawyers to do their jobs. . . . The viability of the group's Florida campaign remains uncertain. Dana Watson, a legislative aide with the Bar who serves as staff for the committee, said the group began its state petition drive four years ago, but has collected only 16 signatures. About 611,000 verified signatures are necessary to get the amendment on the ballot. . . . Diner noted the Web site lists county directors, although most counties, including some of the largest in the state, apparently do not yet have directors. The committee did not vote to take any action on the group, but Diner said, "Let's keep our eyes open on this and be as informed as we can be".

A copy of that article is attached as Exhibit "D".

Most recently, in the January 15, 2007, edition of the Florida Bar News, the Florida Bar had reported under a headline that read: "*Despite SD loss, J.A.I.L.4Judges targets Florida – Attorneys urged to be prepared for the fight*":

If backers of an amendment known as J.A.I.L.4Judges succeed in getting their constitutional amendment on the Florida ballot, the state's lawyers should be ready to lead a campaign to defeat it. . . . Tom Barnett, executive director of the State Bar of South Dakota, gave that advice to the Bar Board of Governors at its December meeting. Barnett led the campaign last year that resulted in the defeat of a J.A.I.L.4Judges initiative in South Dakota that wound up failing by an 89-to-11 percent margin. . . . He advised the Bar to begin preparing early for the potential campaign, and outlined how the anti-amendment campaign was waged in South Dakota. . . . "Start building coalitions today," he said. "Who uses the court system? Business. Who has the money to do appeals? Business. Tell them this will hurt the court system."

A copy of that article is attached as Exhibit “E”.¹

¹ At least on February 1, 2007, the Florida Bar permitted one dissenting voice to be heard to the Florida Bar’s juggernaut against the J.A.I.L. in a letter from a bar member: “J.A.I.L.4Judges – The January 15 “article” which appeared under headline “Despite SD loss, J.A.I.L.4Judges targets Florida”— beginning on page one no less — is not an article at all. It is a thinly veiled editorial against the amendment known as J.A.I.L.4Judges. There is no mention of any argument in favor of the measure. It is essentially a call to action (“Build your coalitions now”), seeking to spread opposition to the proposal, and offering suggestions for how to help defeat it. It would, in my view, be improper for any newspaper to run this on page one as an article. Coming from a paper that is published by a government entity, it is disgraceful. Will Murphy, Hollywood.

THE NATURE OF THE RELIEF SOUGHT

By this Petition, Florida J.A.I.L. 4 Judges seeks an order from this Court (i) enjoining the Florida Bar from involving itself in the political activities related to the Florida J.A.I.L. 4 Judges, Florida Constitution Article XI, § 3 initiative to amend Article V of the Florida Constitution as detailed *supra*, (ii) directing the Florida Bar to give equal space in its publications to “re-level” the playing field skewed by the Florida Bar’s present reporting on Florida J.A.I.L. 4 Judges and (iii) require the Florida Bar to register as a political action committee with the Division of Elections.

ARGUMENT IN SUPPORT AND CITATIONS TO AUTHORITY

SUMMARY OF ARGUMENT

First, Petitioner claims that the Florida Bar through this Court has usurped political power from the People never delegated to the Judiciary by the Florida Constitution, Article V, §15. Second, by its actions, The Florida Bar abridges and disparages the People’s right to petition for redress of grievances. Third, as an “arm” of the Florida Supreme Court, The Code of Judicial Conduct, Cannon 7 prohibits the very activity The Florida Bar is engaging in *vis-a-vis* Florida J.A.I.L. 4 Judges. Last, The Florida Bar, violates the spirit if not the letter of Florida Statutes, Chapter 106.

I. THE FLORIDA BAR USURPS POLITICAL POWER

The necessary and first inquiry in any suit challenging the authority of a government agent to take certain actions is whether such actions were among those delegated to the government by the People in the first instance by a specific enumeration. Plainly, the Florida Constitution, Article I, §1 states “All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.” Likewise, the Ninth Amendment to the United States Constitution similarly states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

From these bedrock principles arises the uncontested maxim that to the government certain powers were ceded and that any action by the government outside those ceded powers was *void ab initio*.² “An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Norton v. Shelby County*, 118 U.S. 425, 442 (1886).

² “Those who fought in the American Revolution and adopted the Constitution and the Bill of Rights included persons of widely varying religious, political, and moral views. They were moved by the desire to establish limited government and to enshrine certain fundamental personal rights as immune from governmental infringement.” *Department of Educ. v. Lewis*, 416 So.2d 455, 463 (Fla. 1982).

Here, the only authority granted by the People regarding attorneys is found at Article V, §15, which states: “The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.” Hence, the limited power ceded to this Court from the People permits this Court to only regulate (i) admission and (ii) discipline of persons admitted to practice law.

However, from this limited grant of power, this Court has usurped the additional power to create – **as its “arm”**³ – the Florida Bar whose purpose has been greatly expanded beyond the limited grant of regulating attorney admission and discipline to: “inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.” Moreover, once extra-constitutionally expanded, this Court then mandates that every attorney admitted to practice must be a member. Rules Regulating the Florida Bar, Rule 1-3.1.

Thus, The Florida Bar has become an engine of this Court’s vested interests and, given its unlimited power, a vehicle to punish directly and indirectly any who oppose it.

³ “The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, an official arm of the court.” Introduction, Rules Regulating the Florida Bar

As Mr. Justice Bradley said in *Boyd v. United States*, 116 U.S. 616 (1886):

[I]llegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.⁴

Similarly, in *Olmstead v. United States*, 277 U.S. 438, 479 (1928) Justice Brandeis stated: “Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

Granted power to regulate attorneys, this Court through its “arm” has by “by silent approach and slight deviations” from the limited Article V, §15 grant of power for allegedly “beneficent” purposes, created a “danger to liberty” in the monolithic Florida Bar.

Against this backdrop the actions of the Florida Bar in regards to the pending Article IX, §3 initiative of Florida J.A.I.L. 4 Judges is plainly extra-constitutional and thus must be enjoined by this Court as requested herein.

First, notice must be taken that apparently a paid staff person of the Florida Bar,

⁴ “resist the first encroachments”.

Dana Watson, is spending her time – and thus the money of this Court’s “arm” – investigating and working to oppose the Florida J.A.I.L. 4 Judges’ initiative. Moreover, Ms. Watson’s future activities are clearly expected to inflate as Florida J.A.I.L. 4 Judges expands its activities.⁵

Second, the Florida Bar News has already begun trumpeting the Florida Bar’s *ex cathedra* determination as the January 15, 2007, headline clearly details.⁶ What “fight” are the Florida attorney to be prepared for?

Last, the scope of the activities of the Bar as evidenced by the three public articles attached here, plainly do not disclose the full range of activities and resources being undertaken by the Florida Bar in opposition to Florida J.A.I.L. 4 Judges. Accordingly filed herewith is a motion for expedited disclosure by the Florida Bar of what exactly it is doing and planning to do in opposition to Florida J.A.I.L. 4 Judges

. In sum, the People never ceded to this Court the power to create an “arm” whose purpose has been expanded from simple regulation of the admission and discipline of attorneys to an organization which undertakes to oppose the exercise of the fundamental right to petition for redress of grievances as particularly authorized in

⁵ “but Diner said, “Let’s keep our eyes open on this and be as informed as we can be.”

⁶ “*Despite SD loss, J.A.I.L.4Judges targets Florida – Attorneys urged to be prepared for the fight*”

Florida J.A.I.L. 4 Judges 's constitutional initiative.

II. THE FLORIDA BAR DISPARAGES THE RIGHT TO PETITION FOR REDRESS

This Court must recognize that under Article I, § 5: “The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.” Likewise, under the Federal Constitution, First Amendment, “Congress shall make no law . . . prohibiting . . . the people . . . to petition the government for a redress of grievances.” Thanks to the Acts of Reconstruction, 39 Cong. Ch. 153, §5, the First Amendment is now binding on Florida. *Accord: Nebraska Press Assn. v. Stuart*, 427 U.S. 539 (1976)(It is well settled that the Fourteenth Amendment makes this provision applicable to the abridgment of the First Amendment by Florida, including Florida’s state judges.)

Against this right to petition, certain pole-stars are well known. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

As such, the government’s attempts to prescribe orthodoxy have been restricted in three areas. First, the government may not abridge “equality of status in the field of ideas” by granting the use of public forums to those whose views it finds acceptable

while denying their use to those with controversial views. *Police Department of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Here, through the mediums of its publications and its iron-grip on committee appointments⁷, the *junta* of the Florida Bar has *de facto* reserved the “field of ideas” to itself, invoked *ad hominem* arguments against its adversaries⁸, and banned any discussion contrary to its “orthodox” views.⁹

Second, the government may not monopolize the “marketplace of ideas” thus drowning out private sources of speech. *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390 (1969)(“It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.”) Here, just as there was a “scarcity of radio frequencies” in *Red Lion*, there is a analogous “scarcity” of frequency of communications to lawyers and

⁷ “Before June 1 of each year, the president-elect shall appoint all committee members” Rules Regulating the Florida Bar, Rule 2-8.1

⁸ “this is an effort to undermine the very foundation of our country and places at risk freedoms and liberties we have been so blessed to have.”

⁹ Moreover, the Florida Bar has more than just banned views, it has actively retaliating against any who would challenge its hegemony: *Cf.: The Florida Bar Re: Authority of a Voluntary Section to Engage in Legislative Action*, No. 79,321, Final Order (Fla. May 1, 1992): This case ensued after the Board of Governors of The Florida Bar prohibited the Public Interest Law Section of The Florida Bar from advocating the repeal of Florida's prohibition against adoptions by homosexuals. The board's action was premised on a belief that the issue would be divisive within the bar's membership at large.

the public which is being monopolized by the Florida Bar. This fact is confirmed by the common sense notice this Court must take of the exorbitant cost to access the “marketplace of ideas” and the prestige, power and purse¹⁰ that the Florida Bar brings to that “captured” and “controlled” marketplace – Florida’s admitted lawyers and by far the largest representative group in the legislature.

Third, the government may not “compel persons to support candidates, parties, ideologies or causes that they are against.” *Lathrop v. Donohue*, 367 U.S. 820, 873 (1961) (Black, J., dissenting).

Patently, this Court has articulated a theory which it surmises allows the Florida Bar to establish, maintain and supervise “a program for providing information and advice to the courts and all other branches of government concerning current law and proposed or contemplated changes in the law.” Rules Regulating Fla. Bar 2–3.2(d)(4). That articulation starts with *In re Florida Bar Board of Governors' Action*, 217 So.2d 323 (Fla. 1969)(“it is not only the right but the duty of the Bar as a professional organization to make such evaluation and advise the public of its conclusions”)¹¹

¹⁰ “The Florida Bar's 2003-2004 operating budget is \$28.8 million. Membership fees account for 66 percent, or \$19 million, of that amount.” Florida Bar Journal, September 1, 2003.

¹¹ Although notably in making its studied “evaluation”, the Florida Bar has not yet contacted Florida J.A.I.L. 4 Judges to solicit their opinion before commencing its *jihad* against Florida J.A.I.L. 4 Judges .

through *Alper v. FL Bar*, 771 So.2d 523 (Fla. 2000) (“because we hold that the Bar’s activities, as alleged in the petition before us, are clearly within the parameters previously approved by this Court, we hereby deny the petition on the basis that it is facially insufficient for the granting of relief”) and includes other cases.¹²

Notably in each of these cases – and the federal cases related thereto – the sole analysis undertaken was whether the challenged Florida Bar activity violated the right to free speech or to association; not to “petition”. Cf: *The Florida Bar re Frankel* at 1297; *Alper* at 524.

Here, Petitioner raises a different claim heretofore not addressed or adjudicated: to wit, whether the political activities of the Florida Bar violate the right to petition upon the grounds discussed *supra*. As such, as much as the Court might like to dismiss this petition by a string citations to the footnoted cases, to do so would be intellectually dishonest and avoid the obligation to declare its *Ratio Decidendi*.

Indeed, the “right to petition” is one of the most underdeveloped bodies of both Florida and federal constitutional law. This Court has made only generalized

¹² *The Florida Bar*, 439 So.2d 213 (Fla. 1983), *The Florida Bar re Schwarz*, 526 So.2d 56 (Fla. 1988), *The Florida Bar Re. Amend. to Rule 2–9.3*, 526 So.2d 688 (Fla. 1988), *The Florida Bar re Schwarz*, 552 So.2d 1094 (Fla. 1989), *cert. denied* 498 U.S. 951 (1990), *The Florida Bar re Frankel*, 581 So.2d 1294 (Fla. 1991) and *The Florida Bar Re: Authority of a Voluntary Section to Engage in Legislative Action, No. 79,321, Final Order* (Fla. May 1, 1992).

statements concerning this right¹³, but, unlike other fundamental rights, has not ventured into an analysis of when such right is being abridged as Petitioner alleges here.

As such, Petitioner has now pried open Pandora's box and this Court must re-examine the scope of permissible activities of the Florida Bar in light of their affect upon the fundamental, federal and Florida right to petition.

III. IT IS UNETHICAL FOR THE FLORIDA BAR TO ENGAGE IN POLITICAL ACTIVITY

Canon 7A(3)(d)(ii) provides that a judge shall not make statements that commit or appear to commit him or her with respect to cases, controversies, or issues that are likely to come before the court. Likewise, the commentary to Canon 7A(3)(d) states that a candidate should emphasize in any public statement his or her duty to uphold the law regardless of his or her personal views. *See: In re Kinsey*, 842 So. 2d 77 (Fla. 2003).

Moreover, Cannon A.3.b states that all judges "shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections

¹³ "Given its constitutional underpinnings, the right to petition is inherent and absolute." *Krivanek v. Take Back Tampa Political Committee*, 625 So.2d 840, 843, (Fla. 1993) .

of this Canon.”

While perhaps technically directed to a judge campaigning for office, the sentiment embodied in the preamble to the Code of Judicial Conduct necessarily persuades that the restriction on political activity is properly expanded to include activity to influence public policy issues such as that raised by Florida J.A.I.L. 4 Judges.

Our legal system is based on the principle that an **independent, fair and competent** judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. Preamble, Code of Judicial Conduct, Adopted September 29, 1994, effective January 1, 1995 (643 So. 2d 1037)(As amended through January 5, 2006 (918 So. 2d 949)(Emphasis added.)

Turning then to the Florida Bar, it is obviously an “arm” of this Court over which this Court enjoys complete authority. “Subject to the authority of the Supreme Court of Florida, the board of governors, as the governing body of The Florida Bar, shall be vested with exclusive power and authority to formulate, fix, determine, and adopt matters of policy concerning the activities, affairs, or organization of The Florida Bar.” Rules Regulating the Florida Bar, 2-3.1. “Only the Supreme Court of

Florida shall have the authority to amend all other chapters of these Rules Regulating The Florida Bar.” Rules Regulating the Florida Bar, 1-12.1.

Additionally, the Florida J.A.I.L. 4 Judges initiative will come before this Court either directly through action of the Florida Constitution, Art. IV, §10 and Article V, § 3(b)(10) or indirectly as a challenge under the Florida J.A.I.L. 4 Judges initiative if enacted. In either case, it would disqualify every member of this Court if political activity for or against the Florida J.A.I.L. 4 Judges’ initiative had been already publicly made by the Court’s “arm” – the Florida Bar.

Accordingly, for the “arm” to engage in political activity against the Florida J.A.I.L. 4 Judges’ initiative that the Judges of this Court are *de facto* if not *de jure* prohibited from engaging in is prohibited and a very violation of that fundamental right to an “independent, fair and competent judiciary” who we *trust* judge us fairly and impartially.

IV. THE FLORIDA BAR IS VIOLATING FLORIDA STATUTES, CHAPTER 106

Florida Statute 106.011(1)(a)1.c defines “Political committee” to include:

A combination of two or more individuals, or a person¹⁴ other than an individual, that, in an aggregate amount in excess of \$500 during a single calendar year: . . .Makes

¹⁴ "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, political committee, or committee of continuous existence.

expenditures¹⁵ that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue¹⁶;

Moreover, each “political committee” is required to – as Florida J.A.I.L. 4 Judges properly has – register with the Division of Elections pursuant to §106.03. A review of the Division’s records by the undersign reveal no such registration by the Florida Bar.

“Unquestionably, the legislature intended that there be a public disclosure of persons who have organized to seek substantial contributions or make substantial expenditures for a political purpose. Thus, we hold that section 106.03 applies to those who anticipate obtaining contributions or making expenditures in excess of \$500 in a calendar year and who are otherwise defined in section 106.011(1), even though such contributions have not yet been obtained or such expenditures have not yet been made.” *State v. Greco*, 479 So.2d 786, 789 (Fla.App. 2 Dist. 1985).

Patently, The Florida Bar is in the process of organizing and expending Florida Bar resources to “defeat” the “issue” proposed by Florida J.A.I.L. 4 Judges. Indeed,

¹⁵ "Expenditure" means . . .anything of value made for the purpose of influencing the results of an election.

¹⁶ "Issue" means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election

at present it is known that the Florida Bar's Board of Governors has sought expert counsel – at presently unknown expense to the Florida Bar – on how to oppose Florida J.A.I.L. 4 Judges and the importance of raising money to do so.¹⁷ Significantly, that expert counsel's advice included raising money from the only group that can afford to do appeals – businesses. A candid observation which ought to make this Court pause in its deliberations to consider the implications: This Court's arm is hearing advice to on how to fight a citizen initiative and is hearing: "Who has the money to do appeals? Business. Tell them this will hurt the court system." Such an un-holy alliance between big business and this Court's "arm" should cause every patriot/lawyer in this state to shudder for the same reason King John was put to the Sword at Runnymede. Governmental arrogance.

Accordingly, this Court must act to enjoin the Florida Bar from engaging in opposition to J.A.I.L. until it has complied with the registration requirements of Chapter 106.

¹⁷ "Tom Barnett, executive director of the State Bar of South Dakota, gave that advice to the Bar Board of Governors at its December meeting. Barnett led the campaign last year that resulted in the defeat of a J.A.I.L.4Judges initiative in South Dakota that wound up failing by an 89-to-11 percent margin. . . .He advised the Bar to begin preparing early for the potential campaign, and outlined how the anti-amendment campaign was waged in South Dakota. . . .'Start building coalitions today,' he said. 'Who uses the court system? Business. Who has the money to do appeals? Business. Tell them this will hurt the court system.'"

V. CONCLUSION

Wherefore, upon the rights first secured at Runnymede¹⁸, Florida J.A.I.L. 4

Judges seeks an order from this Court:

(i) enjoining the Florida Bar from involving itself in the political activities related to the Florida J.A.I.L. 4 Judges , Florida Constitution Article XI, § 3 initiative to amend Article V of the Florida Constitution as detailed *supra*;

(ii) directing the Florida Bar to give equal space in its publications to “re-level” the playing field skewed by the Florida Bar’s present reporting on Florida J.A.I.L. 4 Judges, and

(iii) require the Florida Bar to register as a political action committee with the Division of Elections.

¹⁸ And still when mob or Monarch lays
Too rude a hand on English ways,
The whisper wakes, the shudder plays,
Across the reeds at Runnymede.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this motion complies with the font requirements of Florida Rules of Appellate Procedure, Rule 9.210(a)(2).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on February 21, 2007, by Email upon Laura Rush: RushL@flcourts.org and Laura Beth Fargasso: lbfaragasso@henryblaw.com.

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APPENDIX

“The Judicial Accountability Law” “A”
December 19, 2006, letter “B”
Article in the July 15, 2006, edition of the Florida Bar News “C”
Article in the July 15, 2006, edition of the Florida Bar News “D”
Article in the January 15, 2007, edition of the Florida Bar News “E”

**WHAT SAY THE REEDS AT RUNNYMEDE?
A POEM COMMEMORATING THE SIGNING OF MAGNA CARTA
RUNNYMEDE, SURREY, JUNE 15, 1215
Rudyard Kipling (1865-1936)**

At Runnymede, at Runnymede,
What say the reeds at Runnymede?
The lissom reeds that give and take,
That bend so far, but never break,
They keep the sleepy Thames awake
With tales of John at Runnymede.

At Runnymede, at Runnymede,
Oh, hear the reeds at Runnymede:
'You musn't sell, delay, deny,
A freeman's right or liberty.
It wakes the stubborn Englishry,
We saw 'em roused at Runnymede!

When through our ranks the Barons came,
With little thought of praise or blame,
But resolute to play the game,
They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine,
The curt uncompromising “*Sign!*”
They settled John at Runnymede.

At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter signed at Runnymede.

And still when mob or Monarch lays
Too rude a hand on English ways,
The whisper wakes, the shudder plays,
Across the reeds at Runnymede.
And Thames, that knows the moods of kings,
And crowds and priests and suchlike things,
Rolls deep and dreadful as he brings
Their warning down from Runnymede!

Judicial Accountability Initiative Law (J.A.I.L.)

(Florida Initiative - Version 2-7-07)

Preamble. We, the People of Florida, find that the doctrine of judicial immunity has been greatly abused; that when judges abuse their power, the People are obliged - it is their duty - to correct that injury, for the benefit of themselves and their posterity. In order to ensure judicial accountability and domestic tranquility, we hereby amend our Constitution by adding the following provisions as §21 to Article V, which shall be known as "**The J.A.I.L. Amendment.**"

1. Definitions. To avoid absurd results, words shall be given their plain, ordinary and literal meanings; and where appropriate, the singular shall include the plural and vice-versa. For purposes of this Amendment, the following terms shall mean:

- a. Judge:** A judicial officer hearing and adjudicating legal actions and proceedings within the judicial branch of government (to include arbitrator, mediator, or a private judge, any of whom is assigned by a court to hear involuntary proceedings). This definition shall not be construed to mean trial juror, prosecutor, or any administrative official.
- b. Material allegations:** Statements essential to the claim or defense presented in a pleading filed in court.
- c. Blocking:** Any unlawful act that impedes the lawful conclusion of a case, to include unreasonable delay and willful rendering of an unlawful or void judgment or order.
- d. Corporate litigant:** A party holding a corporate charter, as distinguished from a business license.
- e. Juror:** A Special Grand Juror.
- f. Strike:** An adverse immunity decision or a criminal conviction against a judge.

2. Exclusions of immunity. Notwithstanding common law or any other provision to the contrary, no immunities shielding a judge from frivolous and harassing actions shall be construed to extend to any deliberate violation of law, fraud or conspiracy, intentional violation of due process of law, deliberate disregard of material allegations, judicial acts without jurisdiction, blocking of a lawful conclusion of a case, or any deliberate violation of the Constitutions of Florida or the United States. The foregoing judicial misconduct shall not be construed to mean court decisions made within the authorized capacity of a judge.

Exhibit "A"

3. Special Grand Juries. For the purpose of returning power to the People and ensuring the integrity of the judiciary, there are hereby created within this State two twenty-five member Special Grand Juries with statewide jurisdiction having inherent power to judge both law and fact. This body shall exist independent of statutes governing county Grand Juries. Their responsibility shall be limited to determining, based on the evidence shown on the record, whether any civil lawsuit against a judge would be frivolous or harassing, or fall within the exclusions of immunity as set forth in paragraph 2, or whether there is probable cause of criminal conduct by the judge against whom a petition/complaint is brought before the Special Grand Jury.

4. Professional Counsel. Each Special Grand Jury shall have exclusive power to retain non-governmental advisors, special prosecutors, and investigators, as needed, who shall serve no longer than one year, and thereafter shall be ineligible to serve; except a special prosecutor may be retained to prosecute to conclusion ongoing cases through all appeals and any complaints to the Special Grand Jury. Each Special Grand Jury may hire clerical staff, as needed, without time limitation.

5. Establishment of Special Grand Jury Facilities. Within ninety days following the passage of this Amendment, the Legislature shall provide a suitable facility for each Special Grand Jury. Each facility shall be reasonably placed proportionately according to population throughout the State, but no facility shall be located within a mile of any judicial body.

6. Annual Funding. The Legislature shall cause to be deducted two and nine-tenths percent from the gross judicial salaries of all judges, which amount shall be deposited regularly into an exclusive trust account created by this Amendment in paragraph 10 for its operational expenses, together with filing fees under paragraph 7, surcharges under paragraph 8, forfeited benefits of disciplined judges under paragraph 18, and fines, if any, imposed by sentencing under paragraph 16.

7. Filing Fees. Attorneys representing a party filing a civil petition or response before the Special Grand Jury shall, at the time of filing, pay a fee equal to the filing fee due in a civil appeal to the State Supreme Court. Individuals filing a civil petition or response on their own behalf before the Special Grand Jury as a matter of right shall, at the time of filing, post a fee of fifty dollars, or file a declaration, which shall remain confidential, stating that they are impoverished and unable to pay and/or object to such fee, pursuant to First Amendment right of redress.

8. Surcharges. Should this Amendment lack sufficient funding through its fines, fees, and forfeitures (including deductions in paragraph 6), the Legislature shall

impose appropriate surcharges upon the civil court filing fees of corporate litigants as necessary to supplement the funding of this Amendment so as not to be chargeable to the public.

9. Compensation of Jurors. Each Juror shall receive a salary commensurate to that of a Circuit Court judge, prorated according to the number of days actually served by the Juror.

10. Annual Budget. The Special Grand Juries shall have an annual operational budget commensurate to double the combined salaries of the fifty Jurors serving full time, which sum shall be initially deposited by the Legislature into an exclusive trust account to be annually administered by the State Treasurer. Should the trust balance, within any budget year, drop to less than an amount equivalent to the annual gross salaries of thirty Circuit Court judges, the State Treasurer shall so notify the Legislature which shall replenish the account, prorated based on the actual average expenditures during the budget year. Should the trust balance in any subsequent year exceed the annual operational budget at the beginning of a new budget year, the State Treasurer shall transfer such excess to the state treasury. Except for the initial year, no expenses in paragraphs 6, 7, 9 and 10 of this Amendment shall be chargeable to the public.

11. Jurisdiction. Each Special Grand Jury shall have exclusive power to appoint a foreperson, establish rules assuring their attendance, to provide internal discipline, and to remove any of its members on grounds of misconduct. The Special Grand Jury shall immediately assign a docket number to each petition/complaint brought before it, unless such case is transferred to another Special Grand Jury to achieve caseload balance. A transfer shall not prejudice a docketing deadline. The Special Grand Jury first docketing a complaint shall have sole jurisdiction of the case. Except as provided in paragraphs 17 and 22, no petition of misconduct shall be considered by any Special Grand Jury unless the petitioner shall have first attempted to exhaust all judicial remedies available in this State within the immediately preceding six-month period. (Such six-month period, however, shall not commence in petitions of prior fraud or blocking of a lawful conclusion until after the date the Special Grand Juries become functional. This provision applies remedially and retroactively.) Should the petitioner opt to proceed to the United States Supreme Court, such six-month period shall commence upon the disposition by that Court.

12. Qualifications of Jurors. A Juror shall have attained to the age of thirty years, and have been nine years a citizen of the United States, and have been an inhabitant of Florida for two years immediately prior to having his/her name drawn. Those not eligible for Special Grand Jury service shall include elected and appointed officials,

members of the State Bar, judges (active or retired), judicial, prosecutorial and law enforcement personnel, without other exclusion except previous adjudication of mental incapacity, imprisonment, or parole from a conviction of a felonious act.

13. Selection of Jurors. The Jurors shall serve without compulsion and their

names shall be publicly drawn at random by the Secretary of State from the list of registered voters and any citizen submitting his/her name to the Secretary of State for such drawing. The initial Special Grand Juries shall be established within thirty days after the fulfillment of the requirements of paragraph 5.

14. Service of Jurors. Excluding the establishment of the initial Special Grand

Juries, each Juror shall serve one year. No Juror shall serve more than once. On the first day of each month, two Jurors shall be rotated off each Special Grand Jury and two new Jurors seated, except in January it shall be three. Vacancies shall be filled on the first of the following month in addition to the Jurors regularly rotated, and the Juror drawn to fill a vacancy shall complete only the remainder of the term of the Juror replaced.

15. Procedures. The Special Grand Jury shall serve a copy of the filed petition

upon the subject judge and notice to the petitioner of such service. The judge shall have twenty days to serve and file a response. The petitioner shall have fifteen days to reply to the judge's response. (Upon timely request, the Special Grand Jury may provide for extensions of time upon the showing of good cause.) In criminal matters, the Special Grand Jury shall have power to subpoena witnesses, documents, and other tangible evidence, and to examine witnesses under oath. Each Special Grand Jury shall determine the causes properly before it with their reasoned findings in writing within one hundred twenty calendar days, serving on all parties their determination as to whether or not immunity shall apply as a defense to any civil action that may thereafter be pursued against the judge. A rehearing may be requested of the Special Grand Jury within fifteen days with service upon the opposition. Fifteen days shall be allowed to reply thereto. Thereafter, the Special Grand Jury shall render final determination in writing within thirty days. All allegations in the petition shall be liberally construed. The Jurors shall keep in mind, in making their determinations, that they are entrusted by the People of this State with the duty of restoring judicial accountability and the perception of justice. The standard of authority by which the Jurors shall be guided in making their determinations shall not be opinions of courts, but shall be the Constitutions of Florida and of the United States and laws made in pursuance thereof. The Jurors shall avoid all influence by judicial and government entities. The statute of limitations on any civil suit brought pursuant to this Amendment against a judge shall not commence until a final determination by the Special Grand Jury. Special Grand Jury files shall always remain public record

following their final determination. A majority of thirteen Jurors shall determine any matter.

16. Indictment. Should the Special Grand Jury also find probable cause of criminal conduct on the part of any judge against whom a petition is docketed, it shall have the power to indict such judge. The Special Grand Jury shall, without *voir dire* beyond personal impartiality, relationship, or lack of fluency in English, cause to be impaneled twelve special trial jurors, plus alternates, which trial jurors shall be instructed that they have power to judge both law and fact. The Special Grand Jury shall also select a non-governmental special prosecutor and a judge with no more than four years on the bench from a county other than that of the defendant judge, having jurisdiction solely to maintain a fair and orderly proceeding. The trial jury shall be selected from the same pool of jury candidates as any regular jury. The special prosecutor shall thereafter prosecute the cause to a conclusion, having all the powers of any other prosecutor within this State. Upon conviction, sentencing shall be the province of the special trial jury, and not that of the selected judge. Such term of sentence shall conform to statutory provisions.

17. Criminal Procedures. In addition to any other provisions of this Amendment, a complaint for criminal conduct against a judge may be brought directly to the Special Grand Jury, when all of the following conditions have been met: (1) an affidavit or declaration of criminal conduct has been lodged with the appropriate prosecutorial entity within ninety days of the commission of the alleged crime; (2) the prosecutor declines to prosecute, or one hundred twenty days have passed following the lodging of such affidavit or declaration, and prosecution has not commenced; (3) an indictment, if sought, has not been specifically declined on the merits by a county Grand Jury; and (4) the criminal statute of limitations has not run. Any criminal conviction (including a plea bargain) under any judicial process shall constitute a strike.

18. Removal. Whenever any judge has received three strikes, the judge shall be permanently removed from office, and thereafter shall not serve in any State judicial office. Judicial retirement for such removed judge shall not exceed one-half of the benefits to which such judge would have otherwise been entitled. Retirement shall not avert third-strike penalties.

19. Public Indemnification. No judge against whom a petition/complaint is brought, or sued civilly by a complainant pursuant to this Amendment, shall be defended at public expense or by any elected or appointed public counsel, nor shall any judge be reimbursed from public funds for any losses sustained under this Amendment.

20. Enforcement. No person exercising strict enforcement of the findings of a Special Grand Jury shall be held liable civilly, criminally, or in contempt.

21. Redress. The provisions of this Amendment are in addition to other redress that may exist and are not mutually exclusive.

22. Challenges. No judge under the jurisdiction of the Special Grand Jury, or potentially affected by the outcome of a challenge hereto, shall have any jurisdiction to sit in judgment of such challenge. Such pretended adjudication shall be null and void for all purposes and a complaint for such misconduct may be brought at any time, without charge, before the Special Grand Jury by class action, or by any adversely affected person.

23. Preeminence. Preeminence shall be given to this Amendment in any case of conflicts with statute, case law, common law, or constitutional provision. The foreperson of each Special Grand Jury shall read, or cause to be read, this Amendment to the respective Jurors semi-annually during the first week of business in January and July. Should any part of this Amendment be determined unconstitutional, the remainder shall remain in full force and effect as though no challenge thereto existed.

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*** END ***



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December 19, 2005

Ms. Nancy Grant
P. O. Box 573
Arcadia, FL 34265

Dear Ms. Grant:

I received your certified mail on December 19.

The Florida Bar is an agency of the Florida Supreme Court and as such is not a corporation and does not have a registered agent.

The Executive Director of The Florida Bar is the person who can accept service of process.

Very truly yours,

Alan B. Bookman, President
The Florida Bar

ABB/dn

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Exhibit "B"

July 15, 2006

The profession faces challenges that must be met

By Jan Pudlow
Senior Editor

Even though former Florida Supreme Court Justice Major Harding considers himself an optimist, challenges faced by the judiciary can be downright depressing.

"I feel like the guy walking around with the sign: 'Repent! The end is near!'" Harding said in his keynote address at the General Assembly at the Bar's Annual Convention in Boca Raton June 23.

"But there is something we can do. We can repent. We can change. And we can meet this challenge."

Among the challenges Harding listed:

- There is a need to educate those who come to America from other countries about the value of an independent judiciary.

"One out of two people living in Miami-Dade County was born in another country. Did you know that?" Harding asked.

"Yeah, I did," said Bar President-elect Frank Angones, born in Cuba.

"He's one of the two," Harding continued, to laughter.

"These people come into our country, many of them have no tradition of an independent and nonpoliticized judiciary. I've been told by lawyers and judges, throughout the state and throughout the country, that many of these people have a tradition of bribery and corruption to get favorable decisions. I think it presents to us, as members of the Bar, a significant challenge to tell these friends what a wonderful system we have and how things get done better the way we do it."

- There is a growing divide between the rich and the poor.

"We hear that many families making a living wage cannot find adequate housing for their families. A startling headline in the Jacksonville paper just a few days ago said that one out of 50 on the First Coast are homeless. One out of 50! My friends, that is startling!"

- County courts have become a collection court, primarily for credit card debt.

"Whether these assertions are true, they are statewide; they are a concern; and we as members of the Bar should consider them a

Exhibit "C"

challenge," Harding said.

- Eighty percent of the civil legal needs of low-income Americans are not being met, and half of those who come to legal aid seeking civil legal help are turned away, according to a recent report from the Legal Services Corp.

- In family law cases, one or both parties are unrepresented in 70 percent of cases.

"Even more alarming is that the pollsters tell us that there is a greater satisfaction rate for those who go through the system without an attorney than those who go with an attorney," Harding said.

• A constitutional amendment petition drive by Florida J.A.I.L. 4 Judges "claims to be able to sanction corrupt judges with civil lawsuits and even jail. It claims that J.A.I.L. (Judicial Accountability Initiative Law) is totally in the hands of the people and is accountable to no government body," Harding said. "And, my friends, this is an effort to undermine the very foundation of our country and places at risk freedoms and liberties we have been so blessed to have."

In a call to action to Florida lawyers, Harding said he is signing up to take legal aid cases, now that he is a lawyer once again after 34 years as a judge.

"I have a particular interest in contributing to the legal aid in Jacksonville. It's housed in a building entitled the Major B. Harding Center. As my wife, Jane said, 'It's wonderful to have a building named after you because you have to behave yourself the rest of your life!'"

Harding said he is also going to support Chief Justice Fred Lewis's efforts to educate children "about our precious heritage of our governmental role in securing our liberties and freedoms. More than that, Justice Lewis, I am going to volunteer the Bar, the whole Bar, to join in an education blitz with you for civics education."

For those who may laugh about whether Florida's lawyers can meet the challenges, Harding quoted Florida lawyer Martha Barnett, former president of the ABA:

"One vote, one act, one person can change the course of history. I thought of the lawyers who daily and tirelessly labor in the vineyards of justice, men and women who represent their clients with integrity, ethics, and professionalism, and who think nothing of it. Because that's what lawyers do. Yet often these individuals are the very people who change the world."

To Florida's lawyers, Harding challenged: "You can be that one person. You can join with me to reduce the number of people who are turned away from legal aid. You can be the one who will contribute with me to

send money to legal aid associations in your area. You can be the one who will help change the course of history and help preserve this wonderful heritage created for us by our founders. You can be the one who will help the efforts of our new Florida Bar President Hank Coxe, who this year will walk in the shoes of those who have so faithfully gone before him."

[Updated: 07-11-2006]

July 15, 2006

Independence panel concerned by threats

J.A.I.L.4Judges seeks to subject sitting judges to civil and criminal penalties imposed by special tribunals

By Gary Blankenship

Senior Editor

The Bar's Judicial Independence Committee is looking locally and internationally at possible threats to the ability of judges and lawyers to do their jobs.

The committee met June 22 at the Bar's Annual Convention in Boca Raton. Its discussion items included efforts in England and Wales to place regulation of lawyers under the executive branch and a voter initiative in Florida — called J.A.I.L.4Judges — that seeks to subject sitting judges to civil and criminal penalties imposed by special tribunals.

The committee also discussed problems with judicial elections.

Committee Chair Jesse Diner said the J.A.I.L.4Judges campaign in Florida, although established a couple years ago, recently set up a Web site for its campaign for a constitutional amendment. He said the effort is based on an existing campaign in South Dakota where the initiative goes to voters this fall.

"Basically, they want to take away the immunities that are provided to a judge in this state, except as specifically provided in the amendment, which is basically nothing," Diner said. "It is statewide grand juries for the purpose of prosecuting judges for deviating from what they consider the standards of what a judge should do.

"The proposed amendment seeks to not only hold accountable judges, justices, and magistrates, but also judicial mediators and arbitrators and referees and anyone who is shielded by judicial immunity," he added.

Tax on Judges

Other features provide that the program would be paid for by a 2.9 percent tax on judges' salaries, and grand jurors — who would serve for a year — would be paid a salary equal to that of circuit judges.

Committee member Debra Curtis said there would be no appeal from the special grand jury's rulings and that the grand jury could initiate criminal charges without the involvement of a state attorney.

Exhibit "D"

Committee member Richard Levenstein noted the amendment provides that a grand juror must be at least 30, have been a citizen for nine years, and may not be a judge or a lawyer.

The amendment also provides that it takes precedence over any conflicting state constitutional provisions. Judges found by the grand jury to have made three mistakes would be automatically removed from office and would have whatever pension benefits they were due reduced by one-half. Judges are also prohibited from billing the public when they defend themselves from any charges filed with a grand jury.

Diner said the goal of the national campaign is to pass the amendment in South Dakota, and then undertake campaigns in California and Florida.

According to the Florida J.A.I.L.4Judges Web site, "Our goal is to take Florida and California by storm, then the other states by fall-out. What begins in Florida and California sweeps the nation. With pressure from the other states, we will create a call for federal judicial accountability."

The viability of the group's Florida campaign remains uncertain. Dana Watson, a legislative aide with the Bar who serves as staff for the committee, said the group began its state petition drive four years ago, but has collected only 16 signatures. About 611,000 verified signatures are necessary to get the amendment on the ballot.

That could change, however, as the group just posted its Web site on the Internet, which could raise its visibility. Diner noted the Web site lists county directors, although most counties, including some of the largest in the state, apparently do not yet have directors.

The committee did not vote to take any action on the group, but Diner said, "Let's keep our eyes open on this and be as informed as we can be."

England and Wales

The international discussion came on a bill expected to pass the British Parliament that changes the regulation of the bar. The committee discussed that with Brock McClane, a member of the International Law Section and the International Bar Association, who attended a recent IBA conference in London.

"It's a troublesome development," McClane said.

The issue arose from an investigation of a single issue on whether the bar was being responsive to consumers, and the report concluded that the self-regulated bar was doing a poor job on that issue. Consequently, the report recommended that the government take over that regulation and a bill has been drafted and, being sponsored by the Labor Party, is expected to pass.

"It will establish a new bureaucracy in England and Wales that will take over the regulation of lawyers," McClane said. "To address the lawyers' concern that they should not be regulated by the government for independence reasons, certain duties will be delegated back to the bar. But consumer complaints will be regulated by the government.

"It's probably not going to ruin the legal profession in England, but it's a concern to us that the regulation of lawyers is being delegated to the government. It's not a positive trend. It's a slippery slope that we should be concerned about."

Panel members said they were worried that action could be used as justification to take away regulation of the Florida legal profession by the Supreme Court and put it under the executive branch. There have been periodic attempts, they said, to place lawyer regulation under the Department of Business and Professional Regulation.

"Once the nose is under the tent, it's only a matter of time until the other pieces will follow," said incoming Committee Chair Eugene Pettis. "We need to be in the position of not blinking."

"In terms of a change from the Bar to DBPR, it comes up periodically," said former Bar President Kelly Overstreet Johnson. "It's a problem and you have to keep fighting it off. It's always on the radar screen."

Judicial Elections

On judicial elections, committee member Benjamin Chavies said contested judicial races raise troubling issues.

"The thought a judge might pause before she makes a decision in a case because the person who is appearing before her might turn against her in the next race or because it might offend a group of persons . . . is very disturbing," he said.

Chavies also said it continues to be a problem, especially in Miami-Dade County, where "publicists" charge candidates \$25,000 for their services in elections. Those who don't pay may find themselves opposed in an election by another candidate backed by the publicist.

Even respected judges who are doing outstanding jobs can find themselves opposed in an election, he said,

"This year, we had 15 active races [for circuit and county judgeships in Miami-Dade], 11 races involving sitting judges," Chavies said. Two of those races involve circuit judges and nine involve county judges. He suggested the committee should invite the judges back to talk about their experiences, after the election.

Committee member Kim Bald said in the 12th Circuit, which covers the

Sarasota-Bradenton area, two judges had been removed by the Supreme Court after winning election because their election tactics violated judicial canons.

Committee members discussed the value of using local bar campaign monitoring committees to help police judicial races and prevent abuses, and Bar General Counsel Paul Hill said that issue would be part of the Bar's upcoming voluntary bar leaders conference.

Pettis, who takes over at the committee's September meeting, closed the gathering noting the committee has had profitable discussions on a wide range of issues in the past year. In the coming year, he hopes the committee begins making concrete recommendations on dealing with the difficult problems related to preserving judicial independence.

[Updated: 07-11-2006]

January 15, 2007

Despite SD loss, J.A.I.L.4Judges targets Florida

Attorneys urged to be prepared for the fight

By Gary Blankenship

Senior Editor

If backers of an amendment known as J.A.I.L.4Judges succeed in getting their constitutional amendment on the Florida ballot, the state's lawyers should be ready to lead a campaign to defeat it.

The public face of that campaign should not be judges and lawyers, but rather regular citizens who would be adversely affected by the amendment that nominally seeks to strip civil and criminal immunity from the judiciary in cases where a special grand jury decides they have acted improperly.

Tom Barnett, executive director of the State Bar of South Dakota, gave that advice to the Bar Board of Governors at its December meeting. Barnett led the campaign last year that resulted in the defeat of a J.A.I.L.4Judges initiative in South Dakota that wound up failing by an 89-to-11 percent margin.

"When we planned our campaign, we immediately decided that the worst people to talk about attacks on judges were judges and the second worst people were lawyers," Barnett said. "What we needed were people on the street."

He identified those people as the "four B's" – bankers, beauticians, barbers, and bartenders, or "people who talk with people every day."

"The whole central theme to this campaign was to build coalitions and for the good of us all, let's try to maintain those coalitions," Barnett said. "Build your coalitions now, because J.A.I.L.4Judges has announced that the next two target states are Nevada and Florida. Michigan is third."

The Florida chapter of the organization (its Web site is <http://floridajail4judges.org>) is already trying to get signatures for an initiative petition. It provides that judges and those who act in a judicial capacity can lose immunity from civil and criminal prosecution in some cases. Under the amendment, the losing party in a case, civil or criminal, can file a petition with a special statewide grand jury once all appeals have been exhausted. The grand jury can overturn the outcome of the case and, if it decides a judge acted improperly, make the judge subject to civil or criminal liability.

While judges might be unpopular, Barnett noted the amendment would

Exhibit "E"

have far-reaching impacts. One is that many locally elected officials, including city and county commissioners and school board members, can have judicial duties, and hence be covered under the amendment. So can ordinary residents when they serve on juries — a fact the South Dakota anti-amendment campaign highlighted as ad after ad hammered that criminal defendants would be able to harass or sue jurors.

Barnett said one poll showed that allowing jurors to be sued was opposed by 86 percent of the voters. "It's a very, very powerful message," he said. "That's why we used that."

In seeking support for its campaign against the amendment, he said opponents looked to the users of the court system, particularly the business community.

Barnett said he explained the consequences of the amendment, including that relatively simple matters like repossessions of cars and mortgage foreclosures could become much more complicated and expensive if the debtors decided to fight their cases through the special statewide grand jury. That jury, he added, would be able to nullify contracts which could leave lenders with an empty bag.

The consequences? Car dealers might find lenders unwilling to finance automobile purchases and banks might be unwilling to issue mortgages, he said.

Hence, the anti-amendment campaign was able to get financial and political support from bankers, insurance companies, car dealers, and even the U.S. Chamber of Commerce and tort reform groups that recognized the potential mayhem from the amendment, Barnett said.

In Florida, Barnett said a key factor will be whether the J.A.I.L.4Judges campaign hires professionals to gather signatures to get its initiative on the ballot. In South Dakota, he said the effort was headed nowhere until backers hired professional signature gatherers. The same is likely to happen in Florida.

He advised the Bar to begin preparing early for the potential campaign, and outlined how the anti-amendment campaign was waged in South Dakota.

The first phase of the campaign, when resources were scarce, was a public outreach that paired lawyers and judges with laypeople for appearances at civic and community groups. The emphasis, Barnett said, was on having the nonlawyers speak, with the legal professionals available to provide detailed answers if needed.

"Lawyers are very poor explainers of legal issues," he said. "People expect the lawyer to be very glib and polished . . . But the hardware

store owner they listened to, he's not very polished, but people leave persuaded."

Early last year when Barnett geared up the campaign against the amendment, initial polls showed that voters had a favorable impression of the measure by a 3-1 to 4-1 margin.

Initially short on funds, Barnett launched the local outreach program and began building coalitions with various groups. By the early fall, when more money began coming in, the local outreach program had shifted sentiment to 3-1 against the amendment, but still with over half the voters undecided.

With more money, Barnett was able to begin television and radio ads. Those emphasized that convicted criminals could use the amendment to harass jurors and try to get out of jail, and that the amendment did not spring from South Dakotans but rather was imported from a California group.

In building coalitions, Barnett said he got every major town and city in the state to pass a resolution opposing the amendment. He reached out to doctors, hospitals, bankers, insurance companies, accountants, and others and explained how the amendment could upset the legal system and even allow the reopening of previously settled and decided cases since the amendment applied retroactively.

"When it comes to a full-scale attack on our court system, they have to be on our side because they use the court system," Barnett said.

He estimated that the personal outreach campaign got 60 percent of the voters to oppose the amendment, and the media campaign raised that to nearly 90 percent. Indeed, the campaign was so successful that while it required 47,000 signatures to get the amendment on the ballot, it got only about 36,500 votes even though 72 percent of the state's voters went to the polls.

Even if it appears the J.A.I.L.4Judges organization is weak in Florida, Barnett advised gearing up for a campaign because of the seriousness of the issue.

"Start building coalitions today," he said. "Who uses the court system? Business. Who has the money to do appeals? Business. Tell them this will hurt the court system."

[Updated: 01-08-2007]