IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v. Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR,
DAVA J. TUNIS, FRANK ANGONES,
and JOHN HARKNESS,

Defendants.

VERIFIED THIRD AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and files this third amended complaint for declaratory relief, for injunctive relief, and for attorney's fees, stating:

PARTIES

1. Thompson is a citizen of the United States, aged more than eighteen years, a resident of Florida, domiciled in Miami-Dade County, and an attorney licensed by the State of Florida and in continuous good standing with The Florida Bar since May 1977, when he was first licensed to practice law.

2. The Florida Bar, hereinafter The Bar, is an arm of the government of the State of Florida and part, in a sense, of the judicial branch created and supposedly overseen in its functioning by the Supreme Court of the State of Florida, although it describes its disciplinary proceedings as "quasi-judicial." It has offices throughout the State of Florida, including in Miami-Dade County, with its main office in Tallahassee, Florida.

3. Dava J. Tunis, hereinafter Judge Tunis, is a citizen of the United States, a Circuit Court Judge in the Eleventh Judicial Circuit of Florida (Miami-Dade County), appointed to the bench by Governor Jeb Bush, normally serving on the criminal bench but in this particular instance that gives rise to this action, she is serving as the "referee" in certain Florida Bar "disciplinary" proceedings against Thompson, chosen for this task by Chief Judge Joseph P. Farina, Jr.

4. Frank Angones, hereinafter Angones, is the current president of The Bar, serving a one-year term in that public, state-sponsored office, living and working in Miami-Dade County as a U.S. citizen. As Bar president, Angones is leader, in name and function, of the Board of Governors of The Bar and as such oversees and guides The Bar in its formulation and general enforcement of Bar policies. Angones and his Board of Governors are specifically charged with overseeing and superintending all discipline of lawyers by The Bar. Angones has recently, on the pages of The Bar's official monthly organ, *The Florida Bar Journal*, proclaimed his and The Bar's duties to assure "fairness" and "equal protection," etc. See http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/28cf79de3a2ccc8185256aef00070760/7fea43359c54041b85257305004def8e?OpenDocument. Presumably Angones should be held to the same standards to which he publicly, as Bar president, insists that others be held.

5. John Harkness, hereinafter Harkness, is presently the executive director of The Florida Bar and was at the time that The Bar first targeted plaintiff Thompson with its illegal "disciplinary" assault upon Thompson's constitutional rights nearly twenty years ago.

6. Harkness and Angones' immediate two predecessors as Bar presidents met on May 15, 2006, with plaintiff about the matters that give rise to this lawsuit, so their appropriateness as defendants herein is corroborated by that meeting and by other facts to be set forth more fully below. Harkness is the day-to-day employee at The Bar who has overseen two assaults, twenty years apart, upon Thompson's constitutional rights, and Angones is the functional head of the policy leaders at The Bar who are directing this assault. Plaintiff could have sued more individual defendants, but these two should be enough.

JURISDICTION

7. This court has jurisdiction over the declaratory judgment action relief sought herein by virtue of Rule 57, Federal Rules of Civil Procedure, and the federal Declaratory Judgment Act, 28 USC 2201. At issue in the declaratory judgment count herein is the meaning and reach of the First Amendment to the United States Constitution and whether certain "pure political speech," "petition speech" as those terms are used in constitutional parlance and as engaged in by Thompson, are prohibited by lawyers licensed by The Florida Bar. Thus, a genuine federal issue and a federal constitutional issue in this regard are raised in and by this action. It is not an "abstract" issue as The Bar has previously asserted, but constitutes a real and current case or controversy, as The Bar seeks to discipline Thompson right now, not at some undetermined future time, for this pure and fully-protected First Amendment speech.

8. As to the federal civil rights action against The Florida Bar, this federal court has jurisdiction by virtue of 42 USC 1983 and 42 USC 1988 and is empowered, under the law, to grant relief, including injunctive relief, under federal civil rights law.

9. Additionally, as to the federal civil rights cause of action against Judge Tunis, Frank Angones, and John Harkness this federal court has jurisdiction over it and over them by virtue of their acting under color of state law, as defined by 42 USC 1983.

VENUE

10. This court affords the parties the appropriate venue, given their location, and where many of the acts giving rise to this cause occurred.

FACTS COMMON TO ALL COUNTS, INCLUDING A CHRONOLOGY OF THE BAR'S HISTORY OF USING ITS "DISCIPLINARY" FUNCTION TO INFRINGE UPON HIS FEDERAL FIRST AMENDMENT AND OTHER CONSTITUTIONAL RIGHTS

11. The Eleventh Circuit Court of Appeals has required plaintiffs in their complaints to recite facts rather than mere conclusory allegations with sufficient specificity that they provide a basis for those allegations. Plaintiff, as the risk of not providing a simple and concise statement, seeks to comply with the Eleventh Circuit's admonition that sufficient facts be pled.

12. Twenty years ago, Thompson heard Miami shock jock "Neil Rogers soliciting teenaged boys for sex on the public airwaves." A portion of the last sentence is in quotation marks because that was also the written conclusion of the head of the Adam Walsh Foundation who complained, along with Thompson, to the Federal Communications Commission about Rogers' illegal airing of indecent material in violation of 18 USC 1464, which including soliciting boys for sex.

13. In 1989, Thompson's FCC complaints about Rogers resulted in the first decency fines ever levied by the FCC. The three stations at which Rogers did this paid the fines. Thompson was the formal FCC complainant who helped secure those fines.

Thompson therefore has a history of *pro bono* public activism against the dissemination of adult entertainment material to minors and success in those regards.

14. The primary strategy of the radio stations and of shock jock Neil Rogers to thwart Thompson's efforts was to "shoot the messenger" by filing multiple lawsuits and Florida Bar complaints against Thompson in order to infringe upon his First Amendment-protected activities. Such collateral attacks are given the acronym SLAPP (**S**trategic **L**itigation **A**gainst **P**ublic **P**articipation). This illegal activity has grown so much in recent years that its has spawned numerous legal analyses thereof and laws in a number of states prohibiting such an assault upon the First Amendment "petition" and "speech" rights of citizens. Florida has an anti-SLAPP law.

15. Neil Rogers attorney, then and now, is a Ft. Lauderdale "gay rights" lawyer by the name of Norm Kent who collaborated with the former chairman of The Florida ACLU to persuade the Florida Bar to proceed against Thompson on the basis that "Jack Thompson's obsession against pornography is so severe that he is mentally incapacitated by that obsession, disabled by it, and thus unfit to practice law." The Florida Bar, with no factual basis for doing so, secured an *ex parte* order from the Florida Supreme Court mandating that Thompson submit to a battery of psychiatric and psychological tests to determine if he was insane. Thompson was also required to be tested for "brain damage." The order and the testing was very public and destroyed Thompson's legal career at the time.

16. Thompson is now the only officially Bar-certified sane lawyer in the State of Florida, as The Bar's experts formally found, after hours of testing, that Thompson was

perfectly sane and "simply acting out his Christian faith." The Bar's insurance carrier paid Thompson money damages for the privilege.

17. In the intervening sixteen or so years since that happened, Thompson has authored a book published by Tyndale House on his activism and his faith, appeared on roughly 250 national and international television programs regarding the commercial assault by the entertainment industry on our children, secured more FCC decency fines, secured as *amicus curiae* the first verdict (federal court) in history that a sound recording was obscene under *Miller v. California*, granted over 1,000 radio interviews around the world, appeared on more than 200 college campuses, addressed the ABA three times on these issues, written newspaper guest editorials for major metropolitan dailies, drafted and testified on behalf of a video game law in Louisiana, unanimously passed and signed into law, and generally made a nuisance of himself in the eyes of the American entertainment industry. Al Gore, Thompson's law school classmate at Vanderbilt, has what he calls "an inconvenient truth." Thompson's inconvenient truth is two-fold: a) that American as well as multi-national entertainment companies like Sony and Microsoft and Time Warner routinely make, market, and sell adult products for and to children, and b) that despite their claims that the First Amendment protects us all have routinely sought to destroy the entertainment industry's most nettlesome and successful critic with SLAPP assaults, including Florida Bar complaints, in order to protect their illegal and harmful activities. The hypocrisy of the American entertainment industry when it comes to the "First Amendment" is only rivaled by The Florida Bar's "leadership" which has collaborated repeatedly in its assault upon Thompson, as will be seen more fully, *infra*.

18. On August 16, 2004, Thompson filed FCC complaints against Beasley Broadcast Group, Inc's (Beasley) airing, on South Florida radio station WQAM-AM, indecent material on the *Howard Stern Show* in violation of 18 USC 1464, which "decency" statute, which empowers the FCC to regulate the pornographic content of "through the air" broadcasts, was held constitutional by the US Supreme Court in *FCC v. Pacifica*. Thompson had earlier forced *Stern* off all Clear Channel radio stations around the country on February 24, 2004,for airing the following:

"Ever bang any famous nigger chicks? What do they smell like? Watermelons?"

After Stern was removed from Clear Channel, solely because of Thompson's contacting the FCC and Clear Channel, Stern complained: "This lunatic lawyer in Miami got me off the air."

19. Mere days after Thompson filed the *Stern* FCC complaints against Beasley for its illegal broadcasts, the aforementioned SLAPP-happy lawyer, Norm Kent, threatened and brought a new wave of SLAPP Bar complaints against Thompson in retaliation for his fully-protected petition speech to the FCC. In his August 24, 2004, letter to Thompson, Kent also threatened new Bar lunacy proceedings, apparently having learned nothing from the last time he and The Bar, along with the Florida Supreme Court, did this.

20. Thompson also wrote state government officials about the criminal activity going on at Beasley's WQAM, by then involving Beasley's outside general counsel in Florida, the politically powerful law firm of Tew Cardenas. Al Cardenas, close personal friend of Jeb and George Bush, filed a massive SLAPP Bar complaint against Thompson,

joined in by his law partner Larry Kellogg and Beasley CFO Caroline Beasley, in retaliation, Kellogg admitted, for Thompson's letter to Florida Governor Jeb Bush.

21. More than two years later, the Tew Cardenas/Beasley SLAPP Bar complaints are still being prosecuted against Thompson, despite Bar staff counsel Sheila Tuma's offer to dismiss them with prejudice.

22. Norm Kent's SLAPP Bar complaints, after their usefulness to Kent and WQAM and The Bar, were finally dismissed with prejudice after two and one-half years of harassment of Thompson with them. Thus, this example, and the other previous examples of SLAPP complaints, reveal a pattern of extreme, shocking harassment of Thompson with and by The Bar, resulting in the ultimate vindication of Thompson. The Kent complaint should have been summarily dismissed by The Bar within days. Instead, The Bar used it to harass Thompson for more than two years, just at it had used the SLAPP lunacy stunt in the early 1990s as well, with some of the same cast of characters, including Kent.

23. The "Kent" SLAPP complaints were kept alive longer because of the decision by The Bar and by a particular Bar Governor by the name of Ben Kuehne to further hijack and corrupt the Bar disciplinary process in violation of Thompson's civil rights, including his First Amendment rights, to-wit:

24. Ben Kuehne is a leftwing ACLU ideologue who has received recognition awards from the very organizations that have targeted Thompson for harm over the years, including the People for the American Way. Mr. Kuehne has every right to pursue his agenda. But he did not have a right to serve for nearly three years as the "designated reviewer" as to all of Thompson's SLAPP Bar complaints brought before Grievance

Committee 11-F. When Thompson asked that this ideologue be removed as his "designated reviewer," The Bar and Kuehne refused, despite the clear provision in The Bar's own rules that such recusal should occur. The designated reviewer is the most important, most consequential person in the entire disciplinary process, as he guarantees and certifies the "fairness" of all of the disciplinary proceedings as they go forward. This contemporaneous certification process is an admission by The Bar that due process, fairness, equal protection, and other constitutional guarantees must be assured during the Bar disciplinary proceedings, not just reviewed at the end of them, by virtue of the damage that can be done to a lawyer and his career with the mere awareness by the public of the pendency of such proceedings.

25. Ben Kuehne then, in betrayal of his duty as Thompson's designated reviewer, overrode the recommendation of The Bar's own outside investigator, David Pollack of the Miami law firm of Stearns Weaver that the "Kent" complaints be dismissed with prejudice, resuscitated them and got Grievance Committee 11-F to find "probable cause" as to the baseless charges against Thompson by the Kent. This misconduct by Kuehne, on behalf of his fellow ACLU operative, Kent, breathed new life into the Kent complaints and kept them going for another year, during which time Kent and The Bar made the most of this harassment of Thompson in order to try to chill his First Amendment rights.

26. Finally, as indicated above, the Kent complaints on behalf of Howard Stern's illegal activities were dismissed with prejudice, but not before damage to Thompson and his rights was done, in no small part because of Bar Governor Kuehne's apparent pursuit of his ideological agenda. Thompson has sought an explanation as to why the charges

were first resuscitated and then dropped, and The Bar refuses to answer those questions, refusing all formal discovery in the disciplinary proceedings in that and other regards, instead shrouding that and other decisions in secrecy, in violation of The Bar's own Rules, the Rules of Civil Procedure, and the U.S. Constitution.

27. On March 5, 2005, eleven days before Thompson's Bar Grievance Committee 11-F improperly proceeded to find probable cause at the behest of the Tew Cardenas/Beasley/Kent Bar complaints, over the objection of The Bar's own outside investigator as to some of the complaints, Thompson appeared on CBS' *60 Minutes* at the request of the now late and great Ed Bradley. Thompson had appeared on *60 Minutes* six years earlier with Ed Bradley to discuss the clear and proven role of violent entertainment in the school massacres in Paducah, Kentucky, and at Columbine High School. Thompson appeared on *60 Minutes* the immediate Sunday after "Columbine" in a hurried filming of the segment in what in the tv industry is called a "crash" to report an aspect of story that is still breaking. *60 Minutes* had asked Thompson to appear because he had predicted "Columbine" one week before it happened on NBC's *Today* show, when he appeared with the parents (his clients) of three girls shot and killed by 14-year-old student Michael Carneal who literally trained on the video game *Doom* to kill. He had also watched the Time Warner movie *The Baskeball Diaries* to prepare himself to do the shootings, as testified to at Carneal's murder trial by world-renowned forensic pediatric psychiatrist Diane Schetky of Yale.

28. Thompson had predicted on *Today*, one week before Columbine, that "other boys in American high schools would see the same movie with its glamorized school massacre and play the same video game, and do the same thing Carneal had done or

worse." Columbine's Klebold and Harris were obsessed, it turned out, with *The Basketball Diaries* and they literally trained on *Doom* to kill. Thompson had been right, and he wishes today that he had not been.

29. On Thompson's second appearance on *60 Minutes*, on March 5, 2005, he spoke to Bradley and to millions of viewers about the central role that Take-Two's *Grand Theft Auto: Vice City* played in a triple homicide of three Alabama policemen at the hands of a teen who killed them in precise replication of a segment of that cop-killing murder simulator video game.

See http://www.cbsnews.com/stories/2005/03/04/60minutes/main678261.shtml .

30. Almost immediately thereafter, in retaliation for Thompson's appearance on *60 Minutes* Blank Rome, the lawyers for Take-Two, commenced a SLAPP assault upon Thompson that resulted in the improper, fraudulently-obtained revocation of his *pro hac vice* admission to practice in Alabama to pursue the wrongful death action, which is now set for trial in January 2008.

31. Blank Rome also filed SLAPP Bar complaints against Thompson, which The Bar is presently pursuing. The Florida Bar brought its own complaint arising out of Thompson's alleged unethical conduct in the Alabama case, as did the judge, Judge James Moore of Alabama, who presided over the cop-killer's murder trial. Thompson had told by Clatus Junkin, a prominent lawyer in that sector of Alabama, that he could fix the case before Judge Moore. This allegation to Thompson got back to Moore, and Judge Moore, rather than filing a Bar complaint against Junkin, filed one against Thompson for expressing his concerns to the Judge!

32. At the center of Blank Rome's and Judge Moore's SLAPP assault upon Thompson was the assertion that Thompson had hidden his disciplinary history from the court in order to secure his *pro hac vice* admission in Alabama. If that central assertion by Blank Rome and the alleged "fixer" Judge Moore falls, then all aspects of the "Alabama" Florida Bar complaints against Thompson fall.

33. Just this past week, on August 20, 2007, Thompson was finally, after months of demanding it, was allowed to take the deposition of Judge Moore. Judge Moore, finally under oath, having failed to file a sworn Bar complaint with The Florida Bar, as required by its own Rules mandating that only sworn Bar complaints are to be pursued, admitted that Thompson had actually provided more information about his past disciplinary history than he was required to provide!

Thompson had received a public reprimand in 1992 for minor misconduct. All Thompson had to do was disclose to Alabama any suspensions or disbarments or proceedings seeking suspension or disbarment, and there had never been any. Thompson, in order to be utterly transparent, disclosed even this disciplinary history to Alabama. Judge Moore, then, fraudulently, illegally, improperly, and outrageously entered an order revoking Thompson's *pro hac vice* application, the central and precipitating basis for that order being Thompson's alleged hiding of his discipline history. It was all a lie, and now a proven lie, by Judge Moore, Blank Rome, Take-Two's record counsel in that case.

34. The Florida Bar knew from the outset that it was a lie. It failed to investigate this matter, as it was required to do by its own Rules and procedures dealing with how

sworn, and only sworn, Bar complaints are to be processed, investigated, and then fairly pursued.

35. From the very outset, Thompson repeatedly asked Judge Moore, The Florida Bar, and Blank Rome, to tell him what he failed to disclose to Alabama. All, including The Florida Bar refused to answer interrogatories, respond to formal requests for production, respond to requests for admissions, allow depositions in order that Thompson might be apprised of what he had allegedly hidden. The reason that The Bar would not tell Thompson is that it knew—it knew—that he had hidden nothing. The Bar had Thompson's aforementioned disciplinary history, and it knew that Blank Rome's and Judge Moore's assertions in that regard were utterly false. This prosecutorial misconduct by The Bar is akin to the misconduct of North Carolina's Duke lacrosse rape prosecutor in pursuing Thompson with a phony charge.

36. Indeed, even after Judge Moore's sworn deposition, attended by The Bar's own staff counsel, Sheila Tuma, The Bar refuses to drop these charges.

37. There is one other SLAPP Bar complaint set for trial. It is the *unsworn* Bar complaint of Miami-Dade Circuit Court Judge Ron Friedman, who presided over another case brought by Thompson against Take-Two's marketing of a violent game to children, entitled *Bully* which celebrates and rewards school violence in a school setting. Thompson sought to have Florida's nuisance law applied to this case, as he has successfully used that law in Florida before.

38. Judge Friedman violated his own orders in failing to review *Bully* and lied to the media in telling the world that he had reviewed the game to conclusion. Thompson sat in his chambers and witnessed his failure to review the game. The judge violated

other orders he had entered, even refusing to preside over a hearing attended by Thompson and his expert who had testified to Congress about such matters.

39. When Thompson took an appeal to the Third DCA and also rebutted Judge Friedman's misrepresentations to the media that the Judge summoned to his courtroom, Judge Friedman, in retaliation against Thompson's truthful statements to the media and to the Third District, filed his own SLAPP Bar complaint against Thompson that reads like a *verbatim* fantasy rendering by Blank Rome, record counsel in that Take-Two case as well, as to what had occurred in the case.

40. This matter is now going to disciplinary trial as well, with The Bar breaking its solemn promise that Thompson would be able to speak directly with The Bar's outside investigator, David Pollack, before going to a grievance committee—the same Grievance Committee 11-F whose designated reviewer was still Ben Kuehne.

41. Thompson was excluded from all grievance committee hearings, despite his repeated requests that he attend, in just one facet of the denial of federally-guaranteed due process by The Bar.

42. All of these disciplinary complaints—the ones pertaining to Alabama by The Bar, the judge, and Blank Rome—and the Judge Friedman retaliatory complaint—are proceeding to trial. Thompson asked for a mediation in order to try to resolve this mess and get on with his life, particularly in light of his wife's recent bout with ovarian cancer.

43. A "mediation" occurred in June 2007, at which The Bar demanded that Thompson plead guilty to things he did not do and that after he pled guilty he would have to be assessed for mental incapacity, *yet again*, by the Florida Lawyers Assistance program. It is probably not necessary for Thompson to point out the bizarreness of a

defendant's pleading guilty and then being assessed as to whether he has the mental capacity to do so.

44. The Bar threatened Thompson with disbarment if he did not accept this "deal." Such a level of punishment of what even The Bar says Thompson did is violative of the ABA's and The Bar's own Standards of Discipline listed at The Bar's own www.flabar.org web site.

45. The Bar had, within the last year of so threatened Thompson, extorted him, with new lunacy proceedings, even after Thompson's trial level argument had persuaded the Alabama Supreme Court that his cop-killer video game case should proceed to trial. An allegedly deranged lawyer had out-litigated Blank Rome before his *pro hac vice* admission had been revoked.

46. That lunacy demand was withdrawn, only to see it demanded again at "mediation." Such a demand is clearly violative of The Bar's own Rule 3-7.13 which requires that such demands can only be made if the complaint of lunacy is sworn, is supported by specific facts disclosed to the respondent, is assigned an actual case file number, is assigned to an investigator, and allows respondent to appear before the grievance committee. The Bar has done none of this because The Bar knows Thompson is not impaired and is simply using the lunacy stunt to smear Thompson, destroy what is left of his reputation, and try to force him to resign from The Bar.

47. Thompson retained one of the state's leading forensic psychologists, Dr. Oren Wunderman, to conduct a fair and impartial psychological assessment of Thompson to get The Bar and its baseless threats off Thompson's back. His formal assessment is attached hereto. Thompson has requested that The Bar at least drop its demand for a

post-lead psychological assessment. The Bar refuses, which helps prove the unfair vendetta The Bar is pursuing against Thompson.

48. During the aforementioned "mediation" The Bar informed Thompson that Ben Kuehne, now that his three years of damage to Thompson was done in pursuit of Kuehne's ideological agenda, had recused himself from Thompson's Bar matters. The Bar refuses to say why, refuses all discover on this issue, despite the fact that Thompson is entitled to know why the person that has certified the "fairness" of all Bar dealings with Thompson is no longer involved. This is yet another denial of due process, and more will be related, *infra*.

49. Finally, as to Kuehne, Thompson has learned that Kuehne quite sometime ago was served with a "target letter" by the US Department of Justice alleging he had laundered money for the Medellin cocaine cartel. The Bar knows of this, and yet Kuehne is still being allowed to serve as "designated reviewer" on other disciplinary matters. Kuene never gave Thompson, or anyone else in these disciplinary settings the equivalent of a "McLain hearing." Thompson had right to know of this target letter and the reason for it, especially since the SLAPP Bar complainants have more money than the Medellin cartel. Thompson does not like making that point, but it is a point that must be made. Take-Two has been repeatedly found to have engaged in fraud by the Securities and Exchange Commission. They fraudulently brought their Bar complaint against Thompson. They are capable of anything, having been caught placing oral and anal sex scenes in one game sold to children and lying to the ESRB game-rating agency as to how it got there. Thompson prepared Senator Hillary Clinton for her "Hot Coffee" news

conference that blew the lid of that Take-Two scandal the same month that Blank Rome uncovered its SLAPP assault upon Thompson.

FACTS DELINEATING DENIALS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS BY THE BAR

50. The law is unclear, at least to Thompson, that there is a bright line differentiating substantive from procedural due process. Therefore, Thompson hereat recounts, but not exhaustively, what he believes to be examples of substantive and/or procedural due process denials by defendant The Bar, by defendant Tunis, by defendant Harkness, who did this once before, as noted above, and by defendant Angones, to-wit:

51. The formal complaints under which The Bar is proceeding against Thompson, filed with the Supreme Court of Florida after findings of probable cause, fail to specify, remarkably, what, with any specificity, Thompson has done to violate the Rules cited by The Bar. The Bar invariably states that here are the Rules violated. When asked what Thompson did to violate those Rules, The Bar says, in effect, to paraphrase: We have five file drawers of documents. Here are the Rules you violated. You figure it out. When this has been pointed out to the referee, she has just shrugged.

Yet, this is the same Bar and the same referee whose lawyers have said to this court, in open court and in filings, that all Thompson has alleged in his second amended complaint are "conclusory allegations" with no specific acts showing wrongdoing alleged. The preceding paragraphs and the ones to follow are replete with specific facts of alleged wrongdoing. It is The Bar, in a stunning denial of due process, that has failed to file any complaints that inform Thompson what he has done wrong. He is to find out at trial. The disturbing testimony of Judge Moore, related above, is a stark reminder as

to how far this type of thing can go when the prosecution is not required to tell the defendant what he has done wrong.

52. In furtherance of this peek-a-boo prosecution, The Bar and the referee, under the direction of Harkness and Angones, are denying and have denied nearly all discovery to Thompson by which he could have found out that with which he is charged. Subpoenas have been denied by the referee. Requests for admissions, requests for production, interrogatories have all gone unanswered because The Bar's response is always: You figure it out, or What you want is privileged. It is not privileged material, for example, to find out why Thompson's designated reviewer is not his designated reviewer anymore. The denial of discovery, guaranteed by Florida Bar Rules, which state that the Rules of Civil Procedure apply, is a denial of due process that is consequential.

53. One of Thompson's defenses is selective prosecution. He can prove, if he is allowed to prove it, that The Bar has refused to proceed against the ethics violations of Thompson's SLAPP complainants, lawyer Rebecca Ward of Blank Rome, Norm Kent, a and Tom Tew, Larry Kellogg, and Al Cardenas of Blank Rome, all of whom have committed perjury against Thompson. Norm Kent, for example, has admitted illegal drug use in responses to request for admission in a state court case, and The Bar couldn't care less, because the enemy of The Bar's "enemy" is The Bar's friend. The US Supreme Court case of *U.S. v. Armstrong* entitles Thompson to discovery from The Bar to prove this selective prosecution, and yet the defendants have all collaborated with one another to deny Thompson all discovery on this selective prosecution issue, which constitutes a denial of equal protection, as case authority characterizes selective prosecution, if proven. Thompson cannot prove what he is not allowed by this referee to prove.

54. The referee has branded Thompson's defensive pleadings "propaganda," has denied him two continuances asked for because of his wife's battle with ovarian cancer, and has otherwise conducted herself as if she herself were a SLAPP Bar complainant. Thompson, after the "propaganda" gaffe by Tunis, moved for her to recuse herself. She refuses, and she refuses to state what the alleged facial defect is in the motion to recuse. Thus, Thompson cannot remedy it.

55. As already noted, Thompson has been denied access to The Bar's outside investigator to tell him directly his side of the story in a number of these complaints. This constitutes a breach of promise by The Bar, as The Bar promised him this access prior to probable cause proceedings. Thompson has also been denied the opportunity to address his grievance committees. The Bar, for its part, says grievance committees are akin to grand jury proceedings and that Thompson has no right to appear thereat. This analogy and this excuse breaks down, in that defendants are allowed to address grand juries all the time, and grand juries keep transcripts of what transpired. The Bar either has no transcripts or refuses to share them with Thompson, so they are secret proceedings which, if they get off the tracks, Thompson or any other Bar respondent will not know. Such a derailment, more than once, obviously occurred in the presence of the aforementioned Ben Kuehne, but Thompson was denied an opportunity to address the committee to correct any misunderstanding it might have.

56. In fact, in this very regard, David Pollack did meet with Thompson and his attorney and assured them that the Kent complaint was gone. His written report assured Thompson of that. Then the committee met, and Kuehne resurrected the Kent complaint, persuading the committee to find probable cause after Thompson was assured there was

none. This is a variant of the denial of Thompson's constitutional right to confront his accusers, one of whom was apparently serving on the committee itself.

57. Thompson has sought depositions of various Bar personnel, including whomever The Bar might choose to designate, as is required by Florida Rules of Civil Procedure, as the person to answer Thompson's questions, under oath, as to what these complaints really allege, as indicated above.

58. The Bar refuses to designate anyone and refuses to produce anyone, claiming that Thompson seeks "privileged and confidential" information. This is a nonsensical denial of due process, as The Bar has no idea that what Thompson will inquire into is privileged and confidential. It hasn't heard the questions yet. If they are improper, *then* they are objected to and the referee rules.

The referee defendant, however, has ruled preemptively that she is sure Thompson's questions—all of them—will seek privileged and confidential information, and so Thompson has been prevented for months from taking any of this discovery. He goes to a "trial by ambush," utterly in the dark as to what he has done wrong.

59. The aforementioned alleged misconduct by Thompson must first be processed as an Alabama State Bar complaint because that is what Florida Bar Rule 3-4.6 mandates. If Thompson is found guilty of misconduct in Alabama, then and only then, according to The Bar's own Rule, can Thompson be proceeded against. Florida has turned this important procedural rule upside down because it does not trust the Alabama State Bar "to get it right."

60. The Bar's wholesale violation of its Rule 3-7.13, pertaining to how to proceed against a lawyer that it believes it has reason to believe is impaired is a gross

denial of due process. The Bar has proceeded right to the demand for an evaluation, skipping at least five procedural safeguards in between the thought and the demand.

61. Beyond that, the demand that Thompson submit to a psych evaluation, the opprobrium flowing from which would destroy what is left of his career, is nothing more than an extortionate stunt intended to coerce Thompson into foregoing all due process altogether by resigning from The Bar.

62. Thompson's new "designated reviewer" is Steven Chaykin, who is so "out there" ideologically that even the Bar's Board of Governor's rebuffed him for his position that unless one supports the position that The Bar should actively lobby for "gay adoption" then one is "an enemy of the core values of this Bar." The Bar has chosen two of the most extreme ideologues, at the opposite end of what The Board thinks is Thompson's extremism, to preside over this ideological witch hunt against Thompson. The choice of Kuehne, and now Chaykin, constitutes a denial of due process by virtue of the fact that individuals who certify "fairness" should be fair and above charges of bias.

63. Upon Kuehne's unexplained recusal, Thompson is entitled, by any definition of due process, to a *de novo* review of the proceedings, from day one, against him. If a judge were to be recused from a case, a party could seek a review of any orders he/she had entered. Thompson has asked for that review and it has been denied him.

64. Thompson has repeatedly asked, in writing, that his explanations of what is transpiring in these matters be transmitted to the Board of Governors, which is charged with overseeing discipline by The Bar. These transmissions have been denied Thompson, with the intent to give the Board "plausible deniability" as to what has been

transpiring. This contrived isolation of the very decision makers in all this is a denial of due process. Thompson has a right to petition his Governor for a redress of grievances.

65. The Florida Supreme Court has a duty to oversee disciplinary proceedings. Thompson has a *right* to seek a writ of mandamus by the Supreme Court during the pendency of these proceedings if things get so out of whack that timely, contemporaneous review should be had or at least asked for.

66. The Supreme Court has completely abdicated and ignored its due process obligation in this regard, as its own docket sheets pertaining to these matters prove that the High Court has ignored Thompson's petitions for the ancient writ which is embodied in our state constitution as an appropriate remedy.

67. The Supreme Court has been so brazen as to tell Thompson that his denied motion for the recusal of Referee Tunis should solely be addressed *by her* and not by a writ of mandamus. Any district court of appeal in Florida that would say such a thing would be up on charges before the JQC.

68. The referee has denied Thompson hearings on various pending matters, failing to hear Thompson out on motions to dismiss, motions for the granting of subpoenas and so forth.

69. Finally, but not exhaustively, the refusal of The Bar even to respond, by various formal discovery means to the question, "What harm did Jack Thompson do?," with the answer, "That calls for a legal conclusion and cannot be answered" is possibly the most ridiculous thing Thompson has heard in practicing law for thirty years. The entire disciplinary regime, as set forth in The Bars Rules, turns upon the notion that ***harm*** must be done for discipline to follow. The Bar will not answer that question because it

knows that no harm has been done by Thompson, not to the public, not to any client. No client has ever complained of what Thompson has done. The only ones who have complained are two dishonest judges who think they can, respectively, falsify orders or ignore their own orders. The only others who have complained are two companies and their lawyers who have illegally and aggressively marketed and distributed sexual and violent material to children. Thompson has inconvenienced these people. He has "harmed" no one other that people breaking the law. The pursuit of Thompson for this is a denial of substantive due process if ever there were such a thing.

THE LEGAL AUTHORITY AS IT APPLIES TO THIS CAUSE

70. An excellent overview of the elements and applicability of a 42 USC 1983 claim, which can be a daunting area of the law, is to be found at http://www.constitution.org/brief/forsythe_42-1983.htm.

Plaintiff has benefited from the hearing before this court on August 23 and the helpful analysis by the court and by opposing counsel, and the providing thereat of certain case authority by which plaintiff hopes he has been able, more accurately, to fashion a remedy provided for by the laws of this country. Thompson's pastor has told him "that thirst presupposes there is water somewhere." Thompson has been thirsty for relief for three years to the day, as it was on this day three years ago that Norm Kent promised to use The Bar to do precisely what it has done to him. The water:

71. The text of 42 USC 1983 reads:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an

act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

72. Only "persons" under 42 USC 1983 are subject to liability and the state is not a person. Therefore, Thompson has dropped his demand for money damages and seeks only a declaratory judgment and injunctive relief, as set forth more fully below. A state and a state officer can be sued for injunctive relief. See Ex Parte Young, 209 U.S. 123 (1908). Plaintiff herein is doing just that.

73. All defendants herein are acting "under color of state law." See West v. Atkins, 487 U.S. 42, 49 (1988). The Bar, which can be sued for injunctive relief, is an arm of the Supreme Court but does not consist of the judiciary. Defendant Tunis is a judge against whom injunctive and/or declaratory relief is available, as will be seen, *infra.* Angones is Bar president, and his office assumed upon taking an oath, is a creation of the state. Harkness is literally an employee of the state acting under color of Bar Rules and regulations promulgated by the Supreme Court.

74. Plaintiff has suffered a deprivation of constitutional rights, and these rights have fallen into two categories of rights. See Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617 (1979). Thompson has had his constitutional rights, under the First Amendment, of speech, petition rights, and religion, deprived or infringed upon. The purpose of the use of The Bar's disciplinary power has been to intimidate, harass, and curtail these First Amendment rights because Thompson has dared exercise them.

75. The *means* by which the defendants have individually and/or collectively infringed upon Thompson's First Amendment rights have been by a) seeking regulatory punishment of him for his exercise thereof (denial of substantive due process) and b)

depriving him of procedural due process, repeatedly, as set forth more fully above, in order to thwart his successful defense of himself, in this disciplinary process. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985); Baker v. McCollan, 443 U.S. 137, 145 (1979).

76. Thompson is not alleging some "negligent" acts by any of the defendants. Thompson is alleging that all of the defendants have intentionally purposed to punish him for his First Amendment-protected speech, religion, and petition, and to knowingly deprive him of due process in order to punish him in his defense of himself from these knowing, intentional attacks. What these defendants has done, whether it be the lunacy stunt, or the knowing processing and prosecution of Judge Moore/Blank Rome's false assertion of hiding his discipline history, has been "arbitrary, or conscience shocking, in a constitutional sense.' See Collins v. City of Harker Heights, Texas, 503 U.S. 115, 128 (1992); Rymer v. Douglas County, 764 F.2d 796, 801 (11th Cir. 1985).

77. Contrary to the representations of The Bar's and Tunis' counsel, the existence of allegedly adequate post-deprivation remedies does ***not*** bar a substantive due process claim. The actions of The Bar and the other defendants, as has been seen constitute a deprivation of substantive due process, because the attack has been upon certain rights found within the Bill of Rights. See particularly McKinney v. Pate, 20 F.3d 1550, 1557 (11th Cir. 1994), which this court will note is an Eleventh Circuit Court case.

78. Regarding whether Thompson is entitled to a remedy *now* for his ongoing deprivation of civil rights, or whether he is only entitled to a post-deprivation remedy, the Bar has repeatedly claimed that *Younger* and other abstention authorities require that Thompson wait. The court itself brought to defendants' attention at the August 23

hearing the "bad faith" exception under *Middlesex* at 457 US 423 (1982). *Middlesex* was, importantly, a lawyer discipline case in New Jersey. The respondent therein failed even to respond to the ethics complaint filed against him, and, importantly, *he failed to raise any constitutional issues in the state proceedings.*

Not only has Thompson vigorously answered these "ethics" complaints, unlike the respondent in Middlesex, he has raised constitutional issues every step of the way, from day one, over and over again. The Bar has ignored these constitutional issues. The referee has ignored them, even denying him hearings on them. The Florida Supreme Court, for eight months now, has totally ignored the constitutional issues raised by Thompson. Thus, the response of the respondent in *Middlesex* could not be more inapposite to the conduct of Thompson herein.

The Supreme Court in *Middlesex* then proceeds to hold that if there is "bad faith" by the Bar disciplinary authority, then there can be injunctive relief now rather than merely post-deprivation. There was no bad faith in *Middlesex.* Is there any here? The defendants have exhibited bad faith that is about as bad as bad faith in a disciplinary proceeding can get. Consider: Thompson has been saddled with an ideological extremist on the opposite side of the "culture war" as his "designated reviewer," and upon his recusal three years too late, The Bar will not tell him why, denying him also a review of this "fair" person's "fairness" rulings. The referee has called Thompson's defensive pleadings "propaganda" and not only won't recuse herself but won't clarify what the recusal defect is. The Bar has demanded a psych evaluation, just as it did fifteen years ago, with no factual basis to do so and in violation of its own Rule 3-7.13 on how to get such a psych evaluation properly, because The Bar knows it cannot get an order for such

an evaluation. It is using the threat to force resignation in the face of either the evaluation or disbarment. The Bar is insisting upon sanctions that violate its and the ABA Sanctions standards. The Bar is knowingly relying upon perjury by Blank Rome and a fraudulent order by an Alabama Judge to prosecute Thompson for allegedly hiding his disciplinary history when this judge has now, under oath, finally admitted Thompson gave him more disciplinary history than he was required to disclose! The Bar has written an opinion that Tom Tew should not be prosecuted for an ethics violation for stalking Thompson's client, giving her a stroke, because Tew "had no client for whom he was staling her.' Thompson had no client in many of these matters, but that has not stopped The Bar. Thompson could go on. The bad faith is here. It is related above. It has been all over this "disciplinary" matter from day one.

79. *Steven G. Mason v. Florida Bar*, cited to the court at the August 23 hearing as a published Eleventh Circuit Court of Appeals Case No. 99-2138, D.C. Docket No. 97-01493 –CV-ORL-18A, is an important case for the parties herein, decided on April 6, 2000, well after the abstention and other cases cited by defendants. It is a disciplinary case in which the respondent alleged that The Bar's discipline of him for the exercise of his commercial speech in the form of lawyer advertising was an unconstitutional infringement of his First Amendment rights.

80. The Eleventh Circuit in *Mason* granted the declaratory judgment, in part, holding that such commercial speech is protected by the First Amendment. Thompson has engaged not in commercial speech but speech that enjoys an even higher rung of protection on the First Amendment ladder. He has engaged in speech "petitioning his government for a redress of grievances" and also pure "political speech" about the

actions of lawyers and predatory corporations who have facilitated the distribution of adult and adult-rated sexual and violent material to children. He has also truthfully identified a fraudulent order entered by an Alabama judge, which the judge's own testimony now confirms to be fraudulent, and he has told the media that Miami-Dade Judge Ronald Friedman himself summoned to mislead about how he had followed his own orders that the judge in fact had done no such thing. If this is not First Amendment speech, then there really is no such thing. *Mason* gives strong authority to this trial court to hold what The Bar is doing up to judicial scrutiny, in light of the First Amendment, and find it wanting.

81. One Bar Rule that is being used by defendants to punish Thompson for his First Amendment speech is Bar Rule 4-8.4 (d),which states that a lawyer shall not:

(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

82. This rule is both unconstitutionally vague and also being enforced unfairly, arbitrarily, and unconstitutionally against Thompson. For example, how does informing the Alabama court that opposing counsel has deceived it with a fraudulent assertion that Thompson has lied about his disciplinary history "disparage" opposing counsel in a way that is "prejudicial to the administration of justice." Thompson disparaged the illegal antics of Blank Rome truthfully in order to promoted the administration of justice! The

Bar has used this vague, slippery language to stand the purpose of Rule on its head—in order to protect perjury and to subvert justice.

83. Similarly, Rule 4-8.2(a), which The Bar is using to harass Thompson, states:

(a) Impugning Qualifications and Integrity of Judges or Other Officers. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, mediator, arbitrator, adjudicatory officer, public legal officer, juror or member of the venire, or candidate for election or appointment to judicial or legal office.

84. In fact, The Bar knows that Thompson has told the *truth* about Judge Moore and Judge Friedman, so it is applying this Rule in order to protect misconduct by these two judges. The Rule, however, is constitutionally vague in that it seeks to punish speech that may be true but could be construed as "reckless." There is no question that Thompson was "reckless" in one sense in his comments about these two judges. But he was reckless only in speaking the truth to power. That may be the ultimate reckless act, as Voltaire noted that "It is dangerous to be right when the government is wrong."

85. This Rule, then, is also unconstitutional on its face, as it eliminates "truth as a defense" when a lawyer says something reckless and true about a judge. This puts one branch of government official in a class of "untouchables." This is so foreign to the concept of "petition speech" as to do violence to the very core purpose of the First Amendment.

86. The Founders would have laughed at the notion that judges were to be above criticism but members of the other two branches of government were not. Bar President Hank Coxe in fact has gone after President Bush on the printed pages of the *Florida Bar*

Journal in a fashion that he would deny Thompson the right to speak of a dishonest judge. Thus, Rule 4-8.2 (a) as both drafted and as enforced against Thompson constitutes an unconstitutional act by The Bar which should be declared such.

87. The Florida Bar, purporting to represent the state's lawyers, now has what amounts to a "speech code" with which it intimidates its members. The University of Miami's President, Donna Shalala, while Chancellor of the University of Wisconsin-Madison, helped force upon that university a politically correct "speech code" that would be hilarious if it had not proven to be so dangerous.

88. No other "profession" in Florida or anywhere else, other than the "legal profession" has or would even think of a speech code by which to intimidate and regulate its members. Medical doctors, for example, are not punished by Florida's Department of Professional and Business Regulation for uttering criticism of those within their profession. They are disciplined for being "bad doctors" who have harmed patients. Thompson has no complaining "patients," whom we lawyers call "clients." All we have that has given rise to the ideological pursuit of Thompson, with its arrogantly applied "speech code" is a bunch of pornographers, their lawyers, and two thin-skinned judges , corrupted by their offices, who all believe that the best way to "get" Thompson is to unleash The Florida Bar and its speech code upon him.

89. So out of control is this Bar in enforcement of its illiberal speech code that it kept alive for months two separate Bar complaints filed by video game enthusiasts who filed formal, sworn complaints because they found Thompson's efforts against the video game industry ***annoying.***

One complainant was what appears to be a male teen "gamer" in the Midwest who took time out from playing *Grand Theft Auto: Vice City* long enough to file his Bar complaint.

Another complainant was the owner and operator of a video game industry web site, masquerading as a "news" site, GamePolitics.com, who filed his sworn complaint to prove to the industry that he was a reliable attack dog for the industry that helps fund his enterprise. Not surprisingly, www.gamepolitics.com has, not too clevery, featured the "legal analyses" of the aforementioned Norm Kent as to how and why "whacky Jacky" must be disbarred.

Other sites, most notably the www.penny-arcade.com site, have actually posted on their Internet sites Florida Bar complaint forms, soliciting formal Bar complaints against Thompson. As has been noted, The Bar takes these complaints seriously, massages them for months in order to harass Thompson, and then dismisses them after the harassment has had its intended effect.

Judge Tunis' counsel at the August 23 hearing before this court stated that Thompson does not have a "history of acquittals" in Bar discipline. That history of acquittal goes back years, as this complaint has recounted them, now with more acquittals of baseless charges that have come out of cyberspace. Why have such SLAPP Bar complaints come from people Thompson doesn't even know? Because The Bar, by its very regulatory pursuit of Thompson in an attempt to validate its illiberal speech code, has made it clear to all who oppose Thompson's faith-based activism that Bar complaints are the "way to go."

COUNT I. PRAYER FOR DECLARATORY JUDGMENT RELIEF

90. Plaintiff adopts, realleges, and incorporates paragraphs 1 through 89 into this count.

91. The two aforementioned Bar Rules, 4-8.2 (a) and 4-8.4(d) are unconstitutional on their face, on vagueness and possibly other grounds, and surely unconstitutional as they are being enforced against Thompson by all defendants.

92. Further, all of the other Rules being used by The Bar to prosecute Thompson are being used for one reason and one reason only: to infringe upon Thompson's exercise of his First Amendment rights of speech, petition, and religion.

93. As such, all of The Bar's efforts against Thompson in these regards cannot possibly survive the "strict scrutiny" test which any state must pass in order to justify a restriction or punishment of speech in so draconian a fashion. There is not even any harm that can be demonstrated by The Bar, and thus there is no compelling state interest here in restricting Thompson's speech. Remember The Bar has been asked point-blank "What harm has Jack Thompson done?" The Bar refuses to answer, proof of which is to be found in the transcript of one of Judge Tunis' more remarkable "status conferences" and thus The Bar, unable and unwilling to answer what "harm" has been done by Thompson, cannot now claim to this court that Thompson's speech is so harmful that the state has "compelling interest" in restricting and punishing it. "No harm no foul" works in basketball, and it works in constitutional analysis when it comes to state bars acting like the "thought police" and in doing so unwittingly act like the Kafka-esque Keystone Kops.

WHEREFORE, plaintiff Thompson seeks a declaratory judgment that all of the Bar Rules being applied against Thompson, including but not limited to the two aforementioned ones—4-8.4(d) and 4-8.2(a) are unconstitutional on their face, as to vagueness or other patent grounds and/or as being applied to Thompson in restricting his First Amendment rights of speech, religion, and petitioning activity.

COUNT II. PRAYER FOR INJUNCTIVE RELIEF

94. Plaintiff adopts and realleges paragraphs 1 through 93 and incorporates them into this count.

95. As has been seen, 42 USC 1983 affords plaintiff an arguable equitable remedy for injunctive relief against the defendants ***now***, not later, for any ongoing proceedings being undertaken in "bad faith." Such injunctive relief can extend now even to Bar disciplinary proceedings (See *Middlesex)* and not just as post-deprivation relief. Thus, bad faith deprivation of procedural due process can warrant injunctive relief before the state proceedings are concluded.

96. As has been shown, The Bar's use of a "designated reviewer" who is to guarantee "fairness as we go" and to remedy any unfairness as it occurs is an office that corroborates plaintiff's assertion that his proceeding to trial with due process having been so routinely denied will do irreparable harm to him and is in fact doing harm right now.

97. Further, if the rights being infringed upon by actions of the defendants under color of state law are substantive constitutional rights, such as the ones enumerated in the Bill of Rights, then injunctive relief can be had immediately. See Rymer v. Douglas County, 764 F.2d 796, 801 (11th Cir. 1985).

98. Thompson does not seek a gutting of The Bar's disciplinary function. He is not a latterday Luddite who would purpose to tear down The Bar and its legitimate duties. However, The Bar is using illegitimate means to achieve illegitimate ends. The means are the various denials of due process that are recounted herein. The Bar's pursuit of Thompson with its selective prosecution of him while looking the other way as to the stalking, the perjury, the drug use, and the extortion of those who pursue Thompson is almost breathtaking in its scope. In acting this way, The Bar does more damage to itself and its legitimacy than Thompson could ever inflict on his own.

99. The ends The Bar pursues against Thompson is a vendetta born of a defeat it suffered at his hands over fifteen years ago and that it never got over. This vendetta is wedded to an extreme ideological agenda that is embodied by the life and professional pursuits of the one man who never should have been anywhere near this "disciplinary" charade-Ben Kuehne.

100. The Bar has been so eager to destroy Thompson for illicit reasons that it has tripped over its own Rules, over the Bill of Rights, and over even self-preservation to capture the prey that continues to elude it.

WHEREFORE, plaintiff respectfully prays this Honorable Court to grant Thompson a preliminary, not a permanent injunction at this date, in order that he can have, for example, the discovery that has been so assiduously denied him in the state disciplinary proceeding.

This court is asked to order the defendants, preliminarily, to extend to him the due process that The Bar's own Rules require, starting with Rule 3-7.13 that prohibits The

Bar, specifically, from playing this hurtful lunacy card without a factual basis for doing so. The Rules are there for a reason—to protect the regulators as well as the regulated.

However, if the court is convinced now, by the filing of this verified complaint, or upon testimony that can be provided in open court, that this entire exercise is but a ham-handed attempt by The Bar to punish and harass Thompson for exercising his First Amendment rights, whether his agenda is right or wrong, then Thompson respectfully moves this court to enter a permanent injunction to shut this waste of time and money down.

There are truly unethical acts by lawyers who are harming the public that are going unpunished.

All Thompson asks, preliminarily, is a breathing space in which to prove his case—his case that The Florida Bar, and the other defendants, have subverted the Constitution in pursuit of someone who is trying to protect children from predatory corporate practices.

Thompson's ends surely do not justify any means he might come up with to realize them. But The Bar's ends do not justify the violence it is presently doing both to Thompson and to the Constitution.

WHEREFORE, plaintiff moves for a) a preliminary injunction which will stay the state disciplinary proceedings so that Thompson can prove their unconstitutional purpose and their unconstitutional methods, or b) a permanent injunction based upon a disciplinary system that has lost its way. Thompson is likely to prevail on the merits, and he shall do so, given the chance to prove his case, which chance he is being assiduously denied in the state proceedings.

COUNT III. PRAYER FOR ALTERNATIVE DECLARATORY JUDGMENT RELIEF

101. Plaintiff adopts and realleges paragraphs 1 through 100 and incorporates them into this count.

102. What follows is a legal and constitutional analysis that provides the basis for appropriate declaratory relief in another form. Just because The Bar may not have ever heard such an argument and has not had to confront it does not make it invalid. The Bar's Board of Governors appears not to have a full working understanding of the consequences of the First, Fifth, and Fourteenth Amendments either. What follows is an unusual request and the valid basis for it. The Bar has "opened the door" to this relief by not only how it is misbehaving but by virtue of The Bar's cluelessness that it is misbehaving.

103. The Florida Bar is nothing more than a "guild." It is not, as will be seen, anything close to a governmental entity, its protestations to the contrary notwithstanding. It is an indictment of what has become of legal education and education generally in this country that most lawyers, in Florida and elsewhere, don't even know what a guild is, although they practice in one. To most lawyers, the word "guild" only pops up in the saying "guild the lily."

104. Historically a guild has been an organization of individuals who earn a living by practicing a particular trade and who affiliate with one another to protect their craft or profession by restricting access thereto, which increases the cost of the product or services rendered by those in the guild, and which purportedly protects the public from the consequences of poor craftsmanship.

105. There are excellent analyses of the history of guilds readily available, one of the most readily available of which can be found at http://en.wikipedia.org/wiki/Guild. The reader will see there, and elsewhere, that guilds have been around for nearly six thousand years. They have been a part of Western civilization since the Middle Ages. Plaintiff will not burden the court with a regurgitation of the history of guilds, but get right to the point, as offered at the aforementioned Wikipedia article:

"The practice of law in the United States is also an example of modern guilds at work. Every state maintains its own Bar Association, supervised by that state's highest court. The court decides the criteria for being admitted to, and remaining a member of, the legal profession. In most states, every attorney must be a member of that state's Bar in order to practice law. State laws forbid any person from engaging in the unauthorized practice of law and practicing attorneys are subject to rules of professional conduct that are enforced by the state's high court.

Other associations which can be classified as guilds, though it isn't evident in their names, include the American Medical Association and the American Bar Association."

106. People within a craft or profession have a right, certainly within this country, to associate with one another and create guilds or any other lawful organization. This is, after all, an exercise of the right of "assembly" and association under our First Amendment. The exercise of that right of association has logically, if not beneficially, led lawyers to take their guild and clothe it with the government's stamp of approval thereby proclaiming its guild even to be a branch of government. This is what the concept of the "integrated bar" is all about. An excellent historical overview of the integration of Florida's bar is attached hereto.

107. Plaintiff has enough on his plate presently to undertake an effort to disintegrate Florida's integrated bar, although The Bar, by going way beyond what any guild should do with its pursuit of a speech code, it lays the groundwork for a possible disintegrate at the hands of others at a later date.

108. What plaintiff finds both remarkable and remediable by a declaratory judgment herein is The Bar's claim that it is an arm of the Florida Supreme Court and thus an arm of the state government, while at the same time it claims for itself all sorts of exceptions from the duties and features of government, in this state, that are required of and the hallmarks of true Florida governmental entities. A bunch of people gathering together in the public square and declaring themselves to be Vikings does not make them Vikings. Similarly, and more to the point, the Florida Supreme Court's creation of an entity called "The Florida Bar" does not make its creation any more a part of the state than does a man who makes a toaster impart to the toaster the essence of being a man. Governments, state or otherwise, create entities all the time. Florida's Secretary of State, in a very real sense, makes "corporations." That does not make the corporation "an arm of the Secretary of State." Now for the examples of just how The Florida Bar, claiming to be the government, makes sure, when it serves its purposes, that it is not the government:

109. The Bar is not funded by the state. It is funded by the compulsory dues of its members. What other "state entity" is funded in that fashion rather than out of the state treasury?

110. The individuals who actually run The Bar, in every sense, are not answerable in any fashion to the democratic process. They are elected by members of

their profession, not by the public and not appointed or employed by publicly-elected officials, unlike any other, state officials.

111. The Bar's insulation from all "governmental" accountability is seen in a number of revealing ways, but none more startling than the fact that the Florida Ethics Commission has ***no*** jurisdiction over The Bar's executive staff, such as The Bar's executive director, who is presently John Harkness, a defendant herein, and more importantly the Florida Ethics Commission has ***no*** jurisdiction over The Bar's Board of Governors. Plaintiff confirmed this by a phone call to the Commission last week when he asked an official there if an Ethics Commission complaint could be filed against a Bar Governor, such as The Bar's designated reviewer/target Ben Kuehne. The answer was no. Why not? The answer: "Because the Florida Supreme Court entered a ruling in the 1970s that the Governors were exempt." What a surprise.

112. In the Bar disciplinary proceedings against Thompson, The Bar's own line staff prosecutor, Sheila Tuma, has claimed to defendant referee Tunis, that Florida's Public Records Law does not apply to The Bar and that what would otherwise be public records if they were housed within another Florida branch of government would be public records obtainable with the state equivalent of a federal FOIA request. So The Bar, on the one hand, claims the majesty and power of "the government" while avoiding the consequences of being part of the government. How clever.

113. Bar Governors actually hold meetings, one with the other. Thompson has repeatedly asked to appear before all of them, since they are supposedly part of the state government, in furtherance of his right to "petition the government for a redress of grievances." If The Bar really is a guild which enjoys the status of being part of "the

government," then its Governors' actions in refusing communications, both in person and in *writing* from plaintiff are shocking and put the lie to its governmental status. Plaintiff cannot even get from The Bar's president and its outside counsel, Barry Richard of Greenberg Traurig, an agreement to transmit to *our* Bar Governors settlement proposals. They are intercepted and filed away by staff.

114. The Bar has also exempted itself from Florida's "Government in the Sunshine Law." Despite the clear language, for example of Florida Statute 286.011, even the plaintiff is not allowed to know what transpired in his own grievance committee hearing! Minutes are kept, but they are not treated as governmental records discoverable even by the individual most impacted by what they contain.

A true governmental entity, like the Florida Supreme Court, that calls something a "duck" that neither walks, looks, nor quacks like a duck, can, by the waving of its wand, make it a duck. The Florida Bar says it is part of the government and yet to all the world is acting like a private sector guild. The Bar is "part of the government" when it suits itself to be part of the government.

115. Another example: The Florida Bar Foundation, headed up by Bar Governor John Thornton of Miami, is funded largely with IOTA trust account revenues. The Bar Foundation is supposed to fund endeavors that help the public public and assiduously avoid funding narrow agenda pursuits. The Bar Foundation got caught in the mid-1990s funding the ACLU of Florida. It promised never to do it again.

What is The Bar Foundation doing now? It is funding the Florida ACLU's in-house pet project of providing "counseling" to teenaged minor girls on how to get abortions without telling their parents in contravention of Florida's Parental Notice of

Abortions statute democratically enacted in our state and signed into law by Florida's Governor. The Florda Bar's Board of Governors literally depict and label themselves on official Bar brochures, with something beyond *chutzpa*, as the "Guardians of Democracy," with Bar Presidents' faces on these brochure covers, while these same Guardians of Democracy use Bar Foundation funds to underwrite the ACLU's anti-democratic assault upon the aforementioned Parental Notification law. No real "governmental arm" would even think of doing such a thing. In doing such a thing, The Bar's inadvertently but surely strips away any pretense of being "an official arm of the Florida Supreme Court." It is more like the "official cancer of the Florida Supreme Court."

116. There may be other proofs as to how The Florida Bar, by its actions and its exemptions, puts the lie to the notion that it is part of our state government. If it is part of the state government, then it must act like it, with all the constraints on government that anyone who understands our constitutional form of government knows to restrict government. Since The Bar refuses to be bound by such restrictions, they must be judicially imposed by a tribunal that did not create it and assiduously protects it from all accountability.

117. The Founders understood, as the U.S. Constitution itself proves, that for freedom, liberty, and public virtue to flourish government must be restricted as to its size and reach, and the three functions of government—the executive, the legislative, and the judicial—must be used to provide "checks and balances" against one another. John Locke is the father of this approach, and success of this approach, proves his genius.

118. The out-of-control antics of The Florida Bar prove Locke's genius as well. In The Florida Bar we Bar Governors, not answerable to the public, either directly or indirectly, running a guild that weds all three functions of government. It makes the Rules (legislative function). It enforces and prosecutes the Rules (executive function). And it interprets, applies, and adjudicates the Rules (judicial function), and in Thompson's situation, it interprets and applies them at odds with what The Rules actually say (See specific Bar Rules being violated by The Bar, *supra*.) This is a centripetalization of governmental power that leads to disaster, and The Bar, it seems, will be the last to know. Lord Acton has explained why.

So what we have here, in The Florida Bar, is an entity that claims to be part of the government and yet also claims to be free to act as if it were not part of the government when it seeks to "regulate" lawyers, like Thompson, who do not fit its mold, and in doing so denies him any modicum of due process, equal protection, and "fairness." Put another way, if a guild claims to be "the government," then it damn well had better act like the government.

119. Finally, as to this prayer for alternative declaratory judgment relief, the specifics of which will be set forth, *infra*, we turn to Florida's own Constitution for guidance which The Bar must heed.

Consider Article I, Section 3:

"Religious freedom.--There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or ***agency*** thereof shall ever be taken from the public treasury

directly or ***indirectly*** in aid of any church, sect, or religious denomination or in aid of any sectarian institution. (emphasis added)"

In contravention of this mandate of the Florida Constitution, The Bar is literally taking public funds, in the form of compulsory Bar dues mandated and collected by force of law, to harass Thompson for his religious faith and activism.

Consider the next Section in our state Constitution and how The Bar is contravening it:

"SECTION 4. Freedom of speech and press.--Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated."

The Bar is seeking disbarment of Thompson for speaking the truth about two judges, the truth about the *Howard Stern Show* and the *Grand Theft Auto* video games, and the truth about the lawyers who have tried to protect the marketing and dissemination of these two adult and adult-rated products to children.

Remarkably, almost all of Thompson's speech, for which The Bar seeks to disbar him, are Thompson's communications with governmental entities. Consider that harassment by a guild, which claims to be the government, in the face of what is to be a restraint on state governmental power found in the next section of our Article I:

"SECTION 5. Right to assemble.--The people shall have the right peaceably to assemble, to instruct their representatives, and ***to petition for redress of grievances***." (emphasis added).

The Bar's SLAPP complainants have gone to The Bar and to other governmental entities and have smeared him. Thompson has fought back, as best he could, by defending himself as well as by going to governmental entities, including The Bar with his defense. The Bar now seeks to punish Thompson for his petition speech in clear violation not only of his federal constitutional rights but in violation of our own state Constitution, as indicated above.

120. Therefore, since The Florida Bar is a guild that claims on the one hand to be part of the government, yet exempts itself from the restrictions and checks placed upon government in this state, it thereby surrenders, by its self-proclaimed exemptions, to be in truth and in fact an "arm" of the state government. Thus, plaintiff seeks a declaratory judgment either a) that The Bar is not, for all intents and purposes, not a state governmental entity, or that it is, and if it is, it must abide the restraints constitutionally imposed upon our state government by our own state Constitution and by the United States Constitution.

WHEREFORE, plaintiff John B. "Jack" Thompson moves this court for a declaratory judgment order in this regard. The Bar cannot have it "both ways." If it is to be a guild and act like a guild, then let it be a guild. If it is to be part of the government, then let it be part of the government and act like the government. As it now stands, in its dealings not just with Thompson but with others, The Florida Bar's "Guardians of Democracy" think and act as if they were above the law, above our constitutions, and

above common decency and fairness. Their politically-correct reign of guilded terror must cease; let it cease by order of this Honorable Court. Guild or government? A choice must be made. Since The Bar will not choose, may a declaratory judgment make the choice for it.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all issues so triable.

I SOLEMNLY AFFIRM, as if under oath and under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God.

I HEREBY CERTIFY that the foregoing has been served upon record counsel by the court's electronic system this 26th day of August, 2007.

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