

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. Case No. 07-20866

JUDGE PAUL C. HUCK

JOHN B. THOMPSON,

Plaintiff,

versus

THE FLORIDA BAR, R. FRED LEWIS,
CHARLES T. WELLS, HARRY LEE ANSTEAD,
BARBARA J. PARIENTE, PEGGY A. QUINCE,
RAOUL G. CANTERO, KENNETH B. BELL,
DAVA J. TUNIS, and GAWKER MEDIA,

Defendants.

**THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as a citizen and as an attorney on his own behalf, and seeks declaratory relief, injunctive relief, and monetary damages, to-wit:

THE PARTIES

1. Thompson is an attorney in good standing with The Florida Bar and has been since 1977. He is a citizen of the United States, more than eighteen years of age, and a resident of Miami-Dade County, Florida.

2. Defendant The Florida Bar, hereinafter also referred to as The Bar, has been created by the Florida Supreme Court and is an arm of government of the State of Florida for the ostensible purpose of regulating the practice of law.

3. Defendants R. Fred Lewis, Charles T. Wells, Harry Lee Anstead, Barbara J. Pariente, Peggy A. Quince, Raoul G. Cantero, and Kenneth B. Bell, collectively and individually referred to hereinafter as Justices, are the Chief Justice and Justices, respectively, of the Florida Supreme Court.

4. Defendant Dava J. Tunis, hereinafter Tunis, is an Eleventh Circuit Court Judge chosen to be referee in the prosecution of all pending Bar “disciplinary” matters against Thompson.

5. Defendant Gawker Media is a corporation operating in the United States, incorporated in an unknown state. It is headquartered in New York, New York, and owns and operates a number of web sites on the Internet, including but not limited to a video game enthusiast site at www.kotaku.com.

VENUE AND JURISDICTION

6. This is the appropriate venue for this action, given the residence of Thompson within this federal court district and in light of the fact that The Bar has an office in Miami-Dade County.

7. Subject matter jurisdiction resides within this court on a number of grounds, including but not necessarily limited to the following:

a. 18 USC 2201 grants jurisdiction to this court for the purpose of granting declaratory relief.

b. 42 USC 1983, 42 USC 1985, 42 USC 1988, 18 USC 241, and 18 USC 242 grant jurisdiction to this court by virtue of the deprivation of the civil rights of Thompson by The Bar.

c. Additionally, a “federal question” is at issue between the parties as to the meaning and application of the First Amendment to the United States Constitution, not only as to the “petition clause” thereof but also as to freedom of speech and freedom of religion, as well as to the application of the immediately preceding noted federal civil rights statutes.

d. Thompson seeks monetary damages in excess of the minimum \$75,000 jurisdictional limits of this court.

PREFATORY STATEMENT

This week United States Circuit Court of Appeals (D.C) Judge Janice Rogers Brown identified the problem that gives rise to this lawsuit: This African American jurist spoke at Harding University, reported as follows:

Brown said those who attack the religious right “essentially argue (that) the true American religion demands acceptance of, indeed submission to, a common political vision — their vision.”

In the 20th century, secular humanism crept into American and Western governments, promising openness and tolerance for diverse groups, religions and philosophies, she said. “What we got was narrow positivism, moral relativism and the totalitarian reign of the radical multiculturalist,” Brown said. “It promised peace. What we got was a process of permanent revolution, tumult, strife and a ceaseless assault upon the foundations of faith, family and civil society. It promised if not the pursuit of truth, at least rationality and acknowledgment of objective reality. What we got was postmodernism.” The battle, in her view, is not political but theological: “Contrary to the prevailing secularist dogma

... a society cannot exist without a fighting faith. Where society has nothing to die for, it has nothing to live for and cannot long survive.”

Circuit Court Judge Brown would not be surprised by the allegations and the relief sought in this complaint, as The Florida Bar has allowed itself to become an engine for “multiculturalism” at the expense of people of faith.

FACTS COMMON TO ALL COUNTS

THE FIRST SLAPP BAR COMPLAINT, NOW CONCLUDED, BROUGHT IN 2004

8. For twenty years, Thompson has been involved in successful efforts against certain sectors of the American popular entertainment industry which has illegally marketed, distributed, sold, and broadcast adult material to children, adolescents, teens, and minors. Thompson secured the first decency fines ever levied by the Federal Communications Commission by applying 18 USC 1464 to this adult material provided to children, which criminalizes the airing of “indecent” broadcast material. That statute has been held constitutional by the U.S. Supreme Court in *FCC v. Pacifica*.

9. Between the time of those FCC fines in 1989, which the shock radio stations paid, and now, Thompson has a) secured more FCC decency fines than any other single citizen, b) persuaded Time Warner to stop selling rapper Ice-T’s “Cop Killer worldwide (Ice-T now portrays a cop on television), c) served as *amicus curiae* in the 2 Live Crew federal obscenity trial in which this very court entered a verdict that a sound recording was obscene under *Miller v. California* (the first such ruling in the planet’s history), d) stopped the State of Florida from funding, in violation of state law, the exhibition of what were then called “X-rated” movies with taxpayer dollars, e) forced the *Howard Stern Show* off all Clear Channel Communications radio stations across the country (which

prompted Stern to say “This lunatic lawyer in Miami got me off the air), f) has now successfully litigated in Alabama to the brink of trial the first video game copycat murder case, as featured on CBS’ *60 Minutes*, and g) just generally annoyed the extremist, scofflaw elements within the American entertainment industry who think they have a “constitutional right,” despite the clear meaning of our laws, to market even adult-rated and labeled entertainment products to children.

10. Thompson has also, along the way, managed to annoy the intolerant liberals, including the Board of Governors, who run The Florida Bar and who side with the porno-to-kids industry when it brings, through its lawyers, SLAPP (strategic litigation against public participation) Bar complaints as a “shoot the messenger” tactic by the industry to chill, infringe upon, and or harm the constitutional rights of Thompson. The Bar has a documented history of animus and intolerance against Thompson upon which it has repeatedly acted.

For example but not in an exhaustive listing of The Bar’s long-standing illegal acts against Thompson, The Bar, in the early 1990s was easily persuaded by the former chairman of the Florida ACLU and a lawyer for one of the shock radio hosts whose three stations Thompson got fined by the FCC, asked for and got from the Florida Supreme Court an order commanding Thompson to submit to a battery of psychiatric and psychological tests by health care providers of The Bar’s own choosing to “determine if Jack Thompson’s obsession against pornography is so severe that he is disabled by it and thus unfit to practice law.” Pause.

11. The happy result was that Thompson is now the only officially Bar-certified sane lawyer in Florida. The Bar’s experts found that “Thompson is a Christian acting out

his faith.” The Bar’s insurance carrier compensated Thompson for this illegal Bar attempt to publicly pathologize his faith, which harmed Thompson greatly.

12. Fast forward to 2004. On February 24, 2004, Thompson forced the *Howard Stern Show* off all Clear Channel stations in America, as already noted, when Stern aired the following comment, coast to coast, to children and adults alike:

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

13. *Stern* was, as a result, off the air in South Florida because of the actions of Thompson which need not be delineated here. African American women have expressed their hearty appreciation to Thompson. There one broadcast station, however, in South Florida, which thought it appropriate to return *Stern* to our community, and it is a major sports/talk station here in Miami. That return by the South Florida radio market to the sewer occurred on August 16, 2004. This broadcaster apparently did not object to Stern’s on-air request, two days after the catastrophic events of September 11, 2001, to Manhattan “hookers” to serve rescue workers at “Ground Zero” with oral sex on their breaks from sifting through the smoldering rubble.

14. On August 24, 2004, the attorney for this radio station threatened Thompson with a Bar complaint if he did not apologize for filing a new FCC complaint against the *Howard Stern Show*. Since that threat, by the way, Stern’s syndication broadcaster has admitted to its and his illegal airing of indecent material in a November 2004 \$3.5 million Consent Decree with the federal government’s FCC. Thompson was one of the citizens, according to the FCC, which helped forge that Consent Decree. Thompson was happy to help.

15. The aforementioned radio station attorney, however, went ahead and filed his SLAPP Bar complaint to punish Thompson for his public-spirited activism before the FCC regarding *Stern*. It is important to note that this was the same attorney who collaborated over a decade earlier with the former ACLU chairman and with the The Bar to secure the ill-fated Florida Supreme Court order which attempted, unsuccessfully and illegally, to pathologize Thompson's faith.

16. The Bar, apparently excited to have another regulatory shot at Thompson, collaborated with the aforementioned broadcast station and its outside attorney, starting on August 24, 2004, *for thirty-one (31) months* in harassing Thompson with this station's SLAPP Bar complaint intended to punish Thompson for the exercise of his "petition right" protected by the First Amendment to the United States Constitution.

17. The Bar appointed a respected local attorney by the name of David Pollack of the Stearns Weaver law firm to serve as "outside investigator" of this SLAPP Bar complaint. Pollack issued his written report. He found that there was absolutely no probable cause for The Bar to proceed with it.

18. The Bar did not care what Mr. Pollack found. The Bar on March 16, 2006, convened Grievance Committee 11-F, excluded Thompson from the hearing, and found "probable cause" as to the aforementioned complaint arising out of Thompson's activism against the *Howard Stern Show*. The Bar's "designated reviewer" of this Star Chamber Grievance Committee 11-F hearing was none other than Bar Governor Ben Kuehne, a prominent activist member of the ACLU, whose national organization has consistently targeted Thompson over the years. The Bar did not see the inherent unfairness of having such a person in a First Amendment matter sitting in judgment of the "fairness" of the

treatment of Thompson, even given the ACLU's connection to the earlier attempt to pathologize his faith. The Bar might as well have had Manuel Noriega assure the effectiveness of its anti-drug program.

19. Eleven more months of harassment by The Bar of Thompson with this baseless Bar complaint went on after Grievance Committee 11-F ignored its own outside investigator's report.

20. During that period of time, The Bar demanded, in writing, that Thompson once again climb onto The Bar's psychoanalysis couch so that he could be evaluated by the Florida Lawyer's Assistance Program! There they went again down that bunny trail of harassment, having learned nothing because it wanted to learn nothing.

21. Finally, The Florida Bar, after it got as much mileage as it could out of this SLAPP Bar complaint, which the complainant's lawyer ballyhooed to others, including the FCC, as proof of Thompson's unfitness to practice law, dismissed with prejudice the complaint. It did so not as any negotiated agreement or plea with Thompson, but rather because this SLAPP pursuit of Thompson by The Bar had proven too embarrassing to The Bar for even it to want to hang onto it and use it any longer. But the damage to Thompson as well as to his reputation and to his efforts in what he cares deeply about had already been done by virtue of The Bar's illegal and unconstitutional harassment of Thompson. Thompson's right to exercise his First Amendment "petition right" to the federal government and the exercise of his religious faith meant absolutely nothing to The Bar. It had been itching for a rematch for quite some time.

THE FLORIDA BAR'S ONGOING VIOLATIONS OF U.S. SUPREME COURT CASE
KELLER V. STATE BAR OF CALIFORNIA, WHICH PROHIBITS EXTRANEOUS
IDEOLOGICAL/POLITICAL ACTION BY COMPULSORY STATE BARS

22. The liberals and “multiculturalists,” to use Judge Brown’s accurate term, who infest The Bar’s Board of Governors are also doing on the macro level what they have done to Thompson at the micro level. They have an agenda on which they are acting that violates what the federal courts have held state bars can safely, constitutionally do.

23. The Florida Bar for years has been violating the unanimous United States Supreme Court case of *Keller v. State Bar of California*, 496 US 1 (1990) which prohibits unified, integrated, compulsory state bars from engaging in any activities whose purpose is to do anything other than promote the administration of justice, improve the quality of legal services, and promote the legal profession. Period. To the extent that any state bar goes beyond that, it is in violation of *Keller*. That is not Thompson’s opinion. That is the unanimous opinion of the U.S. Supreme Court.

24. It is also the opinion of The Florida Bar, at least on paper. The Bar’s own official, written, and published public policies as to what activism The Bar can engage in cite *Keller* and apply its restrictions to The Bar, but in name only. The Bar also states that even the voluntary “Sections” of The Bar must be careful in what they do. The below is from 9.50, “Legislative Activities of Sections.” A Bar Section may only put forth a position if

“(3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.”

25. Despite the clear authority of *Keller* and The Bar’s own rules and regulations, The Bar for years has been involved in brazen efforts to impose its unique agenda not only upon its members but also upon the residents of this state. For example,

a. With this state and this country deeply divided over the Terri Schiavo “right to life/right to die” case, then Florida Bar President Kelly Overstreet Johnson, on behalf of

the entire Bar, released to the media a "Statement" siding with Circuit Court Judge Greer and his rulings in the case. Ms. Johnson dressed up her defense of the Judge in a call for "judicial independence," but the message was clear as it was intended to be: "Judge Greer is an ideal representative of this type of judge citizens want to hear their case. His rulings are based on laws, not emotions and not politics." Thus, those who oppose Judge Greer's rulings on any basis are to be discounted. That would include the twice democratically elected Governor of the State of Florida, Jeb Bush, who was not impressed with Judge Greer's "judicial independence."

Neither were many Americans, who were deeply divided in the Schiavo case, which arguably was the most divisive controversy in Florida's recent history, eclipsing even the furor over "Elian." Proof of that is that Governor Bush said he received more mail on the Schiavo matter than on any other issue during his tenure a Governor.

Yet Ms. Johnson's public comments, made officially on behalf of The Bar, were not the musings of some Bar "Section" chair. Consider the following results from the respected Zogby polling organization:

The Zogby poll found that, if a person becomes incapacitated and has not expressed their preference for medical treatment, as in Terri's case, 43 percent say "the law presume that the person wants to live, even if the person is receiving food and water through a tube" while just 30 percent disagree.

Another Zogby question [bears] directly on Terri's circumstances.

"If a disabled person is not terminally ill, not in a coma, and not being kept alive on life support, and they have no written directive, should or should they not be denied food and water," the poll asked.

A whopping 79 percent said the patient should not have food and water taken away while just 9 percent said yes.

b. This year, U.S. Defense Department's Charles Stimson, who is in charge of military detainees suspected of terrorism, suggested that corporate clients of large law firms representing these suspected terrorists might want to take their law business elsewhere. Mr. Stimson was not alone. The New York Times reported on January 12: The same point appeared Friday on the editorial page of The Wall Street Journal, where Robert L. Pollock, a member of the newspaper's editorial board, cited the list of law firms and quoted an unnamed "senior U.S. official" as saying, "Corporate C.E.O.'s seeing this should ask firms to choose between lucrative retainers and representing terrorists."

The Florida Bar's current President, Hank Coxe, went off the deep end, issue a torrid news release on behalf of the entire membership of The Florida Bar, ridiculing Stimson, Attorney General Gonzales, and calling upon President Bush to repudiate Stimson for his "ignorance."

Actually, it was Mr. Coxe who was displaying his "ignorance." Mr. Stimson has made it very clear that he favors zealous representation of criminal defendants, as he himself had been a criminal defense lawyer. He was simply making the point that clients can vote with their feet as to what law firms they choose. The U.S. Supreme Court case of *NAACP v. Claiborne Hardware* makes the point about First Amendment-protected economic boycotts quite nicely.

c. Bar President Coxe is not content in using his official post to rail against the right of corporations to choose their own legal counsel. Mr. Coxe during last year's general election officially condemned the Christian Coalition and the Florida Family Policy Council who sent questionnaires to state judicial candidates seeking their views on

the issues of the day. Mr. Coxe thinks voters do not have a right to know what their elected officials believe and may do in office, based upon those beliefs.

Mr. Coxe is thus officially showing his “ignorance” of the law yet again. The U.S. Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) held that judicial candidates can freely give their opinions on the issues of the day. Mr. Coxe may be confused in that the Florida Supreme Court and The Florida Bar chose to ignore that U.S. Supreme Court ruling for quite sometime, just as both are now ignoring the Supreme Court’s ruling in *Keller*.

Plaintiff could relate more confusions by Florida Bar Presidents, past and present, about whether a Florida Bar President has been elected to represent the profession or the Democratic Party, the ACLU, or some other liberal group, but the court surely gets the idea.

d. If one goes to www.flabar.org, the official web site of The Bar, one can read that The Florida Bar favored and expended funds, officially, on behalf of all Bar members, passage of Amendment 3 to the Florida Constitution. Amendment 3 was known as the “Stupid Voter Amendment” in that its purpose was to thwart the majority of Floridians in making it far more difficult to amend the state constitution, requiring instead a “super majority” to do so.

This is politicking by The Bar for a measure that has no defensible link to the provision of legal services in this state. It is also Orwellian for a Bar that calls its leaders the “Guardians of Democracy” (See Exhibit A Bar brochure cover) to a) expend funds to promote an anti-democratic measure, b) over the wishes of its compulsory dues-paying members. These people are far more accurately called the “Guardians of Tyranny.”

e. Turning to the aggressive left-wing politicking of some of The Bar's Sections, the court should know that this April 12 and 13 the Equal Opportunity Law Section is hosting its annual Diversity Symposium at FIU. Even though The Bar defines "diversity" as including "religion," not a single person of faith will be on the official panel to discuss that issue. Instead, the assembled will be treated to the typical "multicultural" mélange, typified by this official topic ballyhooed at The Bar's official Internet site: "Coming Out and Surviving: The Invisible Minority." Thus, here we have The Bar, as it has done for quite sometime and in many ways, promoting the homosexual agenda. Does The Bar seriously think that this Section's promotion of this topic is not violative of its already-noted official warning to itself:

"(3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar."

f. Finally, but not exhaustively, the public can peruse The Bar's official web site, funded by all Bar member's compulsory dues, and find that the Entertainment, Arts, and Sports Law Section

1. Supports **full and complete state funding for the arts** and the arts education programs in Florida, as well as the continued existence of the Corporations Trust Fund, and urges the Florida legislature to continue and increase the funding of these arts programs and organizations. [emphasis added]

Are these people kidding? First of all, what does state funding for the arts have to do with the practice of *law*? Secondly, where have these people been for the past twenty years so that they missed the public outrage over government funding of the "Piss Christ"—the taxpayer support of the placement of a crucifix in a jar of urine. Plaintiff Thompson was on *Oprah* as one of five guests on the topic, for Heaven's sake (is

plaintiff allowed to say that?), and apparently The Bar elites missed not only that show but the entire national debate on the issue.

26. Plaintiff could go on, citing other examples of the incredible and sustained and unconstitutional headlong lurches by this Bar in pursuit of its Governors' collective left-wing agenda, but discovery herein will flesh them out more fully.

However, it is important and fair to note that the abiding current obsession of this Bar's leadership is with what it euphemistically and cleverly calls "judicial independence." As we all saw in President Johnson's expedition into the Schiavo swamp, The Bar seeks to insulate the judiciary from any and all democratic impulses by any means possible, even to the extent of President Coxe's formal opposition to citizens' asking judicial candidates what in the world they stand for.

27. One can read, with one's jaw dropped, article after article in The Bar's official, dues-funded *Florida Bar Journal* and *Florida Bar News* that the judicial branch of government is clearly the most important of the three branches. One such article even states that the Founders were wrong in thinking otherwise! This incredible stuff, paid for by all Bar members, and the divisiveness of which is shown by poll after respected poll of Americans that show deep concern about the judiciary's growing insulation from any accountability. That insulation and arrogance is precisely what The Bar wants. Yet, it has no business whatsoever, in light of *Keller*, trying to move our state and our nation further down that road to autocratic tyranny.

28. So arrogant is the recent and current leadership of The Florida Bar that it has actually exhibited the shameless audacity to portray themselves, pictorially, as the "Guardians of Democracy" on the attached Bar brochure, Exhibit A, as already noted.

29. Pictured among the self-styled “Guardians of Democracy” is the current President of The Florida Bar, Hank Coxe, who told Thompson and his lawyer, to their faces in a May 15, 2006, meeting in Tallahassee that Thompson “should be suspended from the practice of law for his *vitriol*.” This may be the first time the head of a state bar has maintained that a lawyer should be suspended from the practice of law for an alleged attitudinal problem. Given The Bar’s growing anti-Christian, anti-faith bias, Mr. Coxe undoubtedly would have found Jesus Christ’s repeated upbraiding of the Pharisees to be unacceptably “vitriolic.”

30. This same Mr. Coxe *was* tasked by The Bar to perform a specific legitimate Bar duty before he became Bar President. Miles McGrane, then Florida Bar President, ordered and conducted a poll of all Florida Bar members as to their opinion of our Bar’s disciplinary system. . A substantial number of poll respondents stated that discipline is pursued and meted out based not upon what one did but upon who one was or whom one knew. In other words, The Bar’s own members red-flagged the selective prosecution of The Bar. President McGrane appointed a Special Commission to deal with this and other Bar discipline issues, and he named as its chair Mr. Hank Coxe. What did Mr. Coxe do by way of recommendation about the problem of selective prosecution enunciated above? Absolutely nothing.

31. So here we have a Bar, now headed by a man who has the time and the misguided *ultra vires* desire to weigh in as Bar President on divisive political issues of the day, but who couldn’t find the resolve to fix The Bar’s unfair disciplinary system, despite the clear teaching of *Keller* that that is *precisely* what bars and their officials are *supposed* to do.

32. At all times during which the related events gave rise to this cause of action, the defendant Justices of the Florida Supreme Court had a duty to oversee the functioning, in all respects, of The Florida Bar, so much so that any and all omissions or commissions of The Bar were those of the Supreme Court collectively and the Justices individually, within the clear meaning of federal civil rights laws.

COUNT I.

DECLARATORY AND INJUNCTIVE RELIEF SOUGHT AND THE LEGAL BASIS THEREFOR AS TO THE FLORIDA BAR IN LIGHT OF *KELLER*

33. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

34. The Bar's ongoing violation of *Keller v. State Bar of California* is also violative of the First Amendment rights and other constitutional rights of members of The Florida Bar of which Thompson is one.

35. The Bar's political, ideological, illegal, and thus unconstitutional acts are violative of *Keller* and The Bar's own Rules. The Bar is unified, integrated, and compulsory in nature, and thus they must be declared illegal and unconstitutional by this court and also enjoined thereby, both as to those *ultra vires* acts as applied to all Bar members and also as to Thompson in whatever form.

WHEREFORE, plaintiff seeks a declaratory judgment that The Bar has violated *Keller* and that it cannot continue to violate *Keller*. Further, a permanent injunction is sought giving full force and effect to such a ruling with an order relating to *Keller* that directs The Florida Bar to cease and desist from future deviations from *Keller* in light of The Bar's brazen refusal to abide the U.S. Supreme Court's unanimous ruling in *Keller*. The contempt power of the federal judiciary, aimed with specificity at The Florida Bar,

apparently must be wielded to accomplish what the rule of precedent has not accomplished with the scofflaws who run our compulsory, integrated Bar.

Further, the declaratory and injunctive relief sought is also intended to declare invalid and enjoin any and all official activities by The Bar, in whatever form, that do not further the legitimate, constitutional purposes of The Bar.

COUNT II.

MONETARY DAMAGES SOUGHT BY PLAINTIFF FOR THE BAR'S VIOLATION OF HIS FEDERAL CIVIL RIGHTS

36. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

37. Plaintiff previously brought a federal civil rights lawsuit against The Bar in this court which was dismissed without prejudice on the basis of *Younger* abstention because The Bar's state regulatory proceedings were then pending. These were SLAPP assaults by disgruntled entertainment industry litigation opponents who enlisted the aid of the pliant Bar's "disciplinary" system to harass Thompson.

That dismissal was an erroneous ruling in light of the case law that makes it clear that a federal civil rights lawsuit for damages arising out a pending state proceeding must only be stayed, and worst, and not dismissed.

38. Be that as it may, the aforementioned SLAPP Bar complaint is no longer pending. *Younger* abstention, or more accurately The Bar's faulty use of *Younger* as a legal theory, cannot be seized upon by The Bar as a basis for dismissal of *this* action. The complained of Bar complaint is disposed of.

39. To be sure, The Bar, having learned absolutely nothing from its nearly twenty-year illegal, unconstitutional, criminal pursuit of Thompson, is presently maintaining other SLAPP Bar complaints brought by others inconvenienced by

Thompson’s successful, public-spirited activism against the porn-to-kids entertainment industry sectors, but Thompson seeks no remedy—not yet—for those pending assaults on the Constitution. The time for that will come. These other SLAPP assaults are corroborative, however, from an evidentiary standpoint, of the incredible denial of Thompson’s First Amendment rights, his right to due process, his right to equal protection denied by The Bar’s selective prosecution of him, and so forth.

40. In what was a spiteful, baseless, and bizarre “disciplinary” pursuit of Thompson which has now been concluded, The Bar violated 18 USC 241 and 18 USC 242, in the latter regard under color of state law, by conspiring to deprive him, within the meaning of those two statutes, of his various constitutional rights as set forth above.

41. 42 USC 1983 and 42 USC 1985 afford Thompson a civil suit remedy in the form of an award of monetary damages to compensate him for the damage done to him by The Bar’s violation of his civil rights.

WHEREFORE, Thompson seeks an award for monetary damages against The Bar, and any other relief in this regard that the court might deem appropriate, including an award of attorney’s fees and costs under 42 USC 1988.

COUNT III.

**MONETARY DAMAGES FOR THE FLORIDA BAR’S VIOLATION OF
FLORIDA’S RELIGIOUS FREEDOM RESTORATION ACT**

42. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

43. Florida Statutes, Chapter 761, is the Religious Freedom Restoration Act, and states as follows:

761.03 Free exercise of religion protected.--

(1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:

(a) Is in furtherance of a compelling governmental interest; and

(b) Is the least restrictive means of furthering that compelling governmental interest.

(2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

44. The Florida Bar violated this Florida Statute by its harassment of Thompson for thirty-one (31) months to punish him, with no governmental interest whatsoever, let alone a “compelling” one, for his religion-based activism, which The Bar itself *officially* found to be Thompson’s motivation for what he does.

WHEREFORE, Thompson prays this court for an award of monetary damages, including attorney’s fees and costs, as this statute provides, along with any other relief the court might deem appropriate.

COUNT IV.

**INJUNCTIVE RELIEF AND AWARD OF ATTORNEY’S FEES AGAINST
FLORIDA SUPREME COURT JUSTICES**

45. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

46. The United States Supreme Court in *Pulliam v. Allen*, 466 U.S. 522 (1984), made it clear that a citizen can secure both injunctive relief and an award of attorney’s fees for violations of 42 USC 1983 by state court judges.

47. Toward that end, the past and ongoing violations of plaintiff's federal, constitutionally-guaranteed civil rights by the Justices of the Florida Supreme Court are legion and egregious.

48. For example, this same state Supreme Court sought, unsuccessfully and disastrously, to pathologize Thompson's Christian faith and activism over a decade ago, with many of these same Justices serving on that Court at that time.

49. Upon The Bar's attempts to do this again, of which it is fully aware and approves, which efforts commenced anew in August 2004, Thompson repeatedly sought writs of mandamus from these Justices as a means of securing timely and appropriate judicial review of The Bar's misconduct, and yet these Justices ignored Thompson's state-side efforts to seek relief in that regard from them, even to the point of brazenly misciting case authority that actually stood for the proposition that Thompson was entitled to relief these Justices disingenuously denied him.

50. The calculated, illegal, and unconstitutional indifference to and denial of Thompson's state and federal rights by these Justices is so full-blown that now these Justices have instructed their Clerk, Tom Hall, to hold onto Thompson's \$300 cashier's check which is the filing fee for his writ of mandamus intended to secure state-side relief for The Bar's "disciplinary" pursuit of Thompson that has absolutely nothing to do with discipline and has everything to do with infringing upon Thompson's First Amendment and other federally-guaranteed constitutional rights. This absconding with the cash filing fee may amount to conversion by the court itself.

Be that as it may, the Justices are literally denying Thompson access to the state court system through which he is entitled at least to seek relief for the ongoing illegal,

unconstitutional misconduct of The Bar. This type of arrogance by state officials in a southern state is precisely why the United States Congress passed the civil rights laws, also known as the “Ku Klux Klan” laws. Thompson is targeted not because of his color but because of his faith and his conservative politics. The American South is known for this type of nonsense.

51. If anyone doubts the propensity of these Southern state Justices to go beyond the bounds of the law and the Constitution, they need only read the U.S. Supreme Court’s rebuke of this same court in *Bush v. Gore*, as well as the stinging dissent by then Florida Supreme Court Chief Justice Wells’ from his own court’s unconstitutional missteps in *Bush v. Gore*.

52. These defendant Justices of this Florida Supreme Court have instructed through The Bar their outside litigation counsel, Barry Richard of Greenberg Traurig, to previously tell this federal court that *Younger* abstention prohibits the federal courts from doing anything whatsoever to remedy ongoing civil rights deprivations by this Bar that harm Thompson. *Pulliam* says otherwise, see *supra*.

53. Be that as it may, at the same time that these Justices instruct their counsel through The Bar to say *Younger* prevents a federal court from interfering with an ongoing state regulatory/judicial process which is made manifest by the *ultra vires* “disciplinary” harassment of Thompson) these same Justices disingenuously and illegally deny Thompson the one lone state remedy to which he is now entitled—a writ of mandamus as a means of addressing a Bar that is presently and irremediably harming Thompson in the Justices’ and The Bar’s denial of due process as well as substantive constitutional rights. Put yet another way, the Justices say: We’ll see you, Mr. Thompson, when we have

finally destroyed your career and depleted you of all of your financial resources, and in the meantime we'll laugh at and ignore your petitions for writ of mandamus, even to the point of pocketing the filing fee.

54. The Florida Supreme Court and these Justices cannot have it both ways. They cannot tell the federal courts to go fly a kite, saying Thompson has a state remedy, and then simultaneously deny Thompson a timely state judicial remedy.

55. These Justices' duplicity notwithstanding, *Pulliam* and other U.S. Supreme Court cases control in this area of the law. Thus, since these Justices apparently have no intention whatsoever of conforming their illegal, unconstitutional behavior to what is required of them by the U.S. Constitution and the federal civil rights laws and even required of them by the body of statutory and case law pertaining to writs of mandamus in this state, Thompson seeks federal relief through this action. He has no other remedy, given the illegal conduct of these Justices and their Bar.

WHEREFORE, plaintiff Thompson seeks injunctive relief, under 42 USC 1983 and under *Pulliam* and other case authority for these Justices' ongoing illegal, unconstitutional actions at his expense, as well as an award of attorney's fees incurred as a result of the harm these Justices have already done, as provided for by 42 USC 1988.

COUNT V.

INJUNCTIVE RELIEF AND AWARD OF ATTORNEY'S FEES AGAINST CIRCUIT COURT JUDGE DAVA J. TUNIS

56. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

57. Judge Tunis was chosen by Miami-Dade Circuit Court Judge Joseph Farina to be referee over all "disciplinary" matters brought and pending against Thompson and is serving in that capacity.

58. Under *Pulliam*, as plaintiff reads it, Judge Tunis is personally liable for attorney's fees, under the scheme set forth by federal civil rights laws, incurred by Thompson and can be enjoined for violations of Thompson's federal civil rights, which are presently occurring.

59. This relief sought against Judge Tunis does not turn upon whether or not Judge Tunis bears any animus or any improper intent, as the aforementioned civil rights laws, 42 USC 1983, 1985, 1988 set forth the proper remedies therefore.

60. However, to date Judge Tunis has in fact, disturbingly, indicated by her comments from the bench at preliminary proceedings in pursuit of these SLAPP complaints that she is in fact in lockstep with the politically correct mindset of The Bar in its efforts to punish Thompson for his conservative. public activism.

61. Shockingly, Judge Tunis branded Thompson's efforts to defend himself in formal pleadings mere "propaganda." Such a statement about a respondent in a Bar disciplinary proceeding is outrageous but also revealing. This sort of bias that comes in part from being a part of the "legal establishment" is precisely why this federal court, and in fact this particular federal judge felt the need to recuse himself from a lawsuit brought against The Florida Bar, *because he, Paul C. Huck*, is licensed by The Florida Bar, as is Judge Tunis.

62. Thompson moved Judge Tunis, in the aftermath of her "propaganda" comment, to recuse herself. She refused. Her refusal makes the naming of her as a defendant herein, by a second amended complaint, both necessary and proper, but there are other reasons as well.

63. The Florida Bar has made it *very clear* that the entire “disciplinary” process it is using to harass Thompson and infringe upon his constitutional rights will enlist the aid even of referees to participate in this illegal, unconstitutional process. When it has gone so far that a referee who is supposed to be impartial is calling the respondent’s defense “propaganda” then any impartial observer can see what is going on here. The Bar, as to Thompson, has become a Star Chamber, presided over presently and conveniently by Miami-Dade Circuit Court Judge Dava J. Tunis. This charade must stop.

WHEREFORE, plaintiff Thompson seeks injunctive relief, under 42 USC 1983 and under *Pulliam* and other case authority for this Judge Tunis’ ongoing illegal, unconstitutional actions at his expense, as well as an award of attorney’s fees incurred as a result of the harm this Judge already done, as provided for by 42 USC 1988.

COUNT VI. CIVIL RIGHTS ACTION AGAINST GAWKER MEDIA

64. Plaintiff reasserts and realleges all of the preceding paragraphs, 1-32.

65. On April 16, 2007, plaintiff Thompson was asked by the Fox News Channel to be interviewed by Bill Hemmer to explain, given his experience and expertise in school shootings, what might be pieces of the causation puzzle regarding the massacre earlier that morning at Virginia Tech. At that point in time, 3:10 pm Eastern, Cho’s identity was not even known.

66. Thompson, as he has correctly done before in other situations (DC Beltway Sniper, Columbus Ohio Serial Highway Shooter, Southwood Middle School Killer, Columbine Rampage Killers, Red Lake Minnesota High School Killer, etc.) suggested that the “V Tech” rampage killer was probably someone who rehearsed the massacre on a violent video game as has so often been the case in similar situations. Such was the case

last year, also, at Dawson College in Montreal when Kimveer Gill, Thompson pointed out on Fox News Channel's April 16 interview, trained on *Super Columbine Massacre* and *Postal 2*, two mass murder simulators.

67. This was a plausible surmise, based upon eyewitnesses' accounts, already known by the time of Thompson's Fox interview, that the killer had a flat affect and calmly, methodically stalked and shot his prey. That cannot be done without rehearsal, and the common denominator rehearsal mechanism in a plethora of prior school shootings was a violent video game.

68. Thompson went so far as to tell Bill Hemmer and the international audience that the specific hyper-violent video game *Counter-Strike* trained Robert Steinhäuser to author what until last Monday was the worst, as to body count, school massacre in world history. Steinhäuser killed 16 and then himself after training on *Counter-Strike*. That fact changed the outcome of the Chancellor's election in Germany and the law in that country as to the sale of such murder simulators.

69. Bill Hemmer, despite characterizations of plaintiff Thompson to the contrary by the video game industry, by The Florida Bar, and by others who have a vested financial or other interest in seeking to discredit him, told the audience and Thompson "how eloquent" he was, as Thompson lost his composure on the air, explaining that he was in his car with his 14-year-old son, whom he had just picked up from school. "I say a prayer everyday when I leave him at school, knowing there is no place safe, having sat with parents who have lost children in shootings like this one today."

70. The next day, Thompson was doing a radio interview with a commercial station on the west coast of the United States when the host said, "Mr. Thompson, you're

not going to believe this, or maybe you will. The *Washington Post* is reporting right now that Cho was a massive player of *Counter-Strike*.” Indeed he was. Since then, the *New York Times* has reported this past Sunday that upon driving their son to Virginia Tech, the parents of Cho hoped that in going to college he would leave behind his immersion in video games. The chances of that, with no parental supervision, were slim and none, and Slim just left town.

71. Besides, science has now established the long-term effect of such violent entertainment consumption.

72. Whether Thompson and the mountain of science and the hundreds of scientists and physicians and law enforcement experts and the United States Department of Defense are all right or not, Thompson has a fundamental right to say what he said on Fox and later on MSNBC and other news outlets.

73. There is a whole subculture of people in this country, however, who think that “defense of the First Amendment” means driving people with whom they disagree out of the public square. These people are in the company of SLAPP Bar complainants, The Florida Bar, and others.

74. Specifically, an Internet web site at www.kotaku.com, within mere minutes of Thompson’s appearance on the Fox News Channel, posted a call to action by its “editor” Brian Crecente, who is a video game industry apologist as to its excesses, its illegalities, and its Stalinist tactics.

75. Mr. Crecente specifically referenced the need for The Florida Bar to succeed in its regulatory, “disciplinary” efforts against Thompson, and then proceeded to announce how utterly outrageous it was for Thompson to say such things on the Fox

News Channel. So far so good. Mr. Crecente has every right to be what he is and push his agenda. Interestingly, Mr. Crecente has publicly stated and stated to Thompson directly that he has gotten his information about Thompson’s Bar difficulties directly from The Bar. If so, he and The Bar are putting into the public domain demonstrably false information in these regards.

76. What followed this screed by Mr. Crecente at Kotaku.com, owned and operated by Gawker Media, was a rather stunning but predictable response from the bloggers who are video game industry lemmings who are attracted like moths to a flame at Kotaku.com. This histrionic response is precisely what Mr. Crecente, Kotaku.com, and Gawker Media wanted. The entire Gawker Media empire, such as it is, is built upon the wretched excesses of the “blogosphere” and the most famous aphorism of P.T. Barnum. Gawker Media has a long history of acting irresponsibly in various regards. It organized a campaign to stalk actor George Clooney, for example, learning nothing from the stalking of Princess Diana.

77. The first Kotaku blogger out of the box, responding to Mr. Crecente’s tying of the health of the video game industry and freedom as we know it to the success of The Florida Bar against Thompson, stated in his post that “Jack [Thompson] should be shot.”

78. This was followed with other posts that Thompson should be struck with a baseball bat, shot in the face by an irate gamer, castrated and his testicles stuffed down his throat, and the exercise of other basic “constitutional” rights to advocate violence against an individual.....Not!

79. Thompson has repeatedly asked, simply, in writing, that Kotaku and Gawker Media remove from the Kotaku site the calls for physical harm and murder to be visited

upon Thompson. Gawker Media's "lawyer," who does not appear to be licensed to practice law anywhere in the United States, a Ms. Gaby Darbyshire, has now twice written Thompson and said that such advocacy of physical harm toward Thompson is protected by the law, by the Constitution, and so forth, and that the posts will not, under any circumstances, be removed.

80. Ms. Darbyshire has miscited various cases which stand for the proposition that the operator of a web site that contains libelous posts, etc., unknown to the operator of a site, is not liable for them legally as to state court remedies. This makes sense, but the law is quite clear, at least to a lawyer licensed in this state, that a corporate entity which operates an Internet site, once it knows that its site is being used to advocate the murder of a citizen, has a legal duty to remedy that situation. Indeed, Thompson seeks a federal remedy, not a state remedy, and nobody, while we weren't looking, repealed the *federal* civil rights laws that prohibit and punish attempts to intimidate a citizen for the exercise of his constitutional rights. Extortion is still extortion. Solicitation of murder is still solicitation of murder. And knowing conspiracy to facilitate any crime is still a criminal conspiracy.

81. Further, Gawker Media quite clearly states in its written corporate policies, posted on the Internet, along with the threats on Thompson's life, that it will not allow "harassing" or "threatening" posts, and they will be removed. As such, Thompson is at least a third-party beneficiary of that contractual promise to enforce the posted rules at its Kotaku and other sites. That promise has been breached, to the detriment and harm of Thompson, for which Thompson seeks recompense.

82. The dangerousness of a corporate entity's allowing the posting of calls for the assassination and brutalization of a citizen via the Internet and the refusal of that company to remove or edit those posts after it becomes aware of it can be demonstrated in a number of ways, but here is just one:

83. Thompson awoke at 5 am on Saturday, April 21, to read an e-mail from someone in Marin County, just east of San Francisco. This e-mailer wanted Thompson to know that he would be shooting to kill 20-30 people on the campus of UC-Berkeley. Thompson immediately called the campus police at Berkeley, and they responded with greater acumen than the negligent folks at Virginia Tech. They did so in part because that day was "Cal Day" when 30,000 people would be massed in an open area which would be akin to a shooting gallery. The e-mailer seemed to know that. To make a long story short, Thompson, campus police, the FBI, and Thompson's own adroit cyber crimes and counter-terrorism expert friend in Erie, Pennsylvania, investigator Doug Hagmann, who has worked with the Defense Department, identified the sender, who was apprehended and cited later that day. It was a 14-year-old teen, who was incensed by Thompson's identification of murder simulators as just one piece of V Tech puzzle. He has been cited for a felony. It appears, but it is not absolutely certain, that this kid got Thompson's e-mail address from Kotaku.com. What a surprise. That will be known in due time, as the FBI is holding onto his computer.

84. Over a year ago, a Houston person was arrested and incarcerated for threatening to castrate and kill Thompson in a phone message he left at Thompson's home. He was incited by an Internet "video game enthusiast site" to do this. Brian Crecente of Kotaku.com knows full well about this as do the people who run Gawker

Media, and yet here at Kotaku.com this very day, still there because Gawker Media refuses to remove the illegal posts, is a call for Thompson to be castrated and his testicles stuffed down his throat.

85. One Internet idiot sent Thompson the following e-mail message just this day, out of the blue, which helps underscore the sociopathy of typical Kotaku knuckleheads:

“I didn't personally know the boy behind the Marin County incident, but I did know him from community forums, and what he did was stupid, yet, it is the only way to fight all of your suits against videogames. How else do you want us to fight back? I am a violent game enthusiast. I enjoy watching limbs fly, blood squirt, and so on.”

86. Gawker Media's refusal to edit or remove the offending posts constitute a violation of Thompson's federal civil and constitutional rights, including but not limited to violations of 18 USC 241 and 18 USC 242. He is entitled to injunctive relief as well as an award of monetary damages pursuant to 42 USC 1983, 42 USC 1985, and an award of attorney's fees under 42 USC 1988.

87. Inherent in the aforementioned federal civil rights remedies is the notion of conspiracy of separate individuals and entities, either loosely or closely knit, who can and do collaborate and combine to infringe upon the rights of targeted individuals. What we have here, encompassed within the corners of this lawsuit, is a convenient collaboration among the video game industry SLAPP Bar complainants, the pliant, politically corrected Florida Bar, a Florida Supreme Court that is apparently too busy to oversee The Bar, a local judge and Bar referee whose loose lips labeled Thompson's Bar defense “propaganda,” video game blogger sites who learned about the real meaning of the First

Amendment from Stalinists, and finally video gamers themselves who, in order to prove violent games have no effect on their attitudes and behaviors, threaten video game industry critic Thompson with death.

88. What has been demonstrably done to Thompson is not some “wild conspiracy theory about The Bar” and others conjured up by Thompson in some paranoid’s delusion. If anyone is paranoid, it is the defendants named herein who can’t seemingly “get” the concept that the public square is for everyone, not just gamers and liberal thought police.

WHEREFORE plaintiff Thompson seeks the aforementioned remedies, both monetary damages, attorneys fees, and injunctive relief, available to him under 42 USC 1983, 42 USC 1985, 42 USC 1988, and any other relief available to him that is appropriate.

COUNT VII. CIVIL CONSPIRACY (ALL DEFENDANTS)

89. Plaintiff reasserts and reallages all of the factual allegations set forth heretofore.

90. In addition to the remedies for conspiracy set forth above, there has existed and exists now a civil conspiracy among the defendants herein as well as others not named as defendants herein, to deprive Thompson of his various basic constitutional rights, in violation of the law and in violation of the United States Constitution.

91. In addition to those already named, commercial radio broadcaster Beasley (Beasley) Broadcast Group, Inc., and its lawyers have filed SLAPP Bar complaints against Thompson for retribution for his successes before the Federal Communications

Commission against illegal shock radio broadcasts. Beasley went so far as to have on-air “talent” threaten to beat up Thompson and remove “his kneecaps.”

92. Defendant, The Florida Bar, has actively protected Beasley’s lawyers from the consequences of their illegal, unethical acts, while at the same time processing baseless Bar complaints filed against Thompson by these very same lawyers.” Some of these complaints were so baseless that The Bar, after 31 months gagged on them and got rid of them, after months of intentionally harassing Thompson with them.

93. The SLAPP Bar complaints by Blank Rome, lawyers for violent video game maker Take-Two Interactive Software, Inc., are nothing but a collaboration between The Bar and Blank Rome to gang up on and hector Thompson, while at the same time The Bar actively protects Blank Rome from any disciplinary consequence for the unethical, acts of the Blank Rome lawyers, which includes fraudulent statements to courts and others.

94. Thompson has been a human piñata gleefully whacked by defendants herein, and he has had enough of it. America is not about using either a state regulatory system as if it were the thought police. America is not about using the open public square to target a citizen for death, and in doing so wedding the function of The Florida Bar to that effort to intimidate this undersigned citizen with threats on his life.

WHEREFORE, Thompson seeks monetary damages and any other appropriate relief against the civil conspirators named herein as vindication of his right to speak his mind, to worship God, and to otherwise enjoy the liberties of American citizenship free of reckless, illegal attempts to intimidate, silence, and punish him.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof of this second amended complaint has been sent by U.S. mail to John Harkness, Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, to each of the Supreme Court Justices, to Judge Tunis, and to Gawker Media at their respective addresses on this 26th day of April, 2007.

/Signed/
John B. Thompson, Attorney
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