

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

NEIL JOSEPH GILLESPIE,
Defendant.

CASE NO. 2019-CF-4193

CASE NO. 2020-CF-2417

CASE NO. 2021-CF-0286

CASE NO. 2022-CF-1143

APPENDIX T: SUPREME COURT OF THE UNITED STATES
COMPLAINT OF ELECTION FRAUD IN THE 2020 PRESIDENTIAL ELECTION

Neil J. Gillespie v Federal Election Commission, et al.

- Motion For Leave To File, USSC Rule 17, Procedure in An Original Action
- USSC Rule 23 Stay Inauguration of Joe Biden and Kamala Harris as President/VP
Filed: January 13, 2021 - Returned: February 8, 2021

1. Cover letter stamped "Received Jan 19 2021 Office of the Clerk Supreme Court, U.S."
2. Gillespie's \$300 filing fee check #1229 payable to U.S. Supreme Court
3. *USSC Rule 23 Stay* inauguration Biden/Harris pending decision (not stamped received)
4. *Motion For Leave To File, Rule 17, Procedure in An Original Action*, stamped "Received Jan 19 2021 Office of the Clerk Supreme Court, U.S." Appearing at Exhibit 1, right to sue letter of the Federal Election Commission, misdated January 6, 2020 (actually 2021) by Jeff S. Jordan (by TDK), Assistant General Counsel, Federal Election Commission
5. Motion For Leave To Proceed In Forma Pauperis, stamped "Received Jan 19 2021 Office of the Clerk Supreme Court, U.S."
6. Rule 29 Proof of Service (not stamped received)
7. Complaint of Election Fraud In The 2020 Presidential Election, submitted December 14, 2020 to the Federal Election Commission, with notarized signature of Neil J. Gillespie, and Exhibits 1 through 8
8. Appendix A, Petition For Writ of Mandamus And Constitutional Challenge, Florida Supreme Court, Petition No. SC16-2031, stamped "Received, 11/09/2016 10:53:47 AM, Clerk, Supreme Court"
9. Papers returned to Gillespie with letter February 8, 2021, USSC Clerk Scott S. Harris, by Clayton R. Higgins, Jr., Case Analyst, (202) 479-3019
10. USSC Return Priority Mail Envelope to Gillespie, Postmarked February 9, 2021, \$7.40 U.S. Postage, USPS Tracking #9205 5902 4503 8800 0000 2022 28

Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

January 13, 2021

RE: Neil J. Gillespie v. Federal Election Commission, et al.

Dear Clerk:

Please find enclosed and file the following on my behalf:

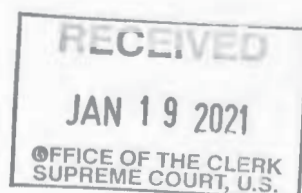
1. Motion for leave to file under Rule 17, Procedure in an Original Action
2. Rule 23 Stay directed to Justice Thomas
3. Motion For Leave To Proceed In Forma Pauperis
4. \$300 check for filing fee, in the event my motion for IFP is denied
5. Rule 29 proof of service

Sincerely,



Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481
Tel: 352-854-7807
Email: neilgillespie@mfi.net

Enclosures



NEIL J. GILLESPIE
8092 SW 115TH LOOP
OCALA, FL 34481-3567

63-8413/2670 1229

DATE 1-13-2021

PAY TO THE ORDER OF U.S. Supreme Court \$ 300⁰⁰
Three hundred and 00/100 DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com

MEMO File for

[Signature] MP

⑆ 267084 131⑆ 5350992920⑆ 1229

IN THE
SUPREME COURT OF THE UNITED STATES



USSC Rule 23. Stay

To Justice Thomas

To stay the inauguration of Joe Biden and Pamala Harris as president and vice president

pending a decision in Gillespie v. Federal Election Commission, et al.

RESPECTFULLY SUBMITTED January 13, 2021

A handwritten signature in blue ink, appearing to read "Neil J. Gillespie", written over a light blue rectangular background.

NEIL J. GILLESPIE
8092 SW 115th Loop
Ocala, Florida 34481
Tel. 352-854-7807
Email: neilgillespie@mfi.net

IN THE
SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE, American Citizen and
Candidate For President ID: P60022993,
NEIL J. GILLESPIE FOR PRESIDENT,
Principal Campaign Committee ID: C00627810,

Petitioner,

v.

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

JOSEPH R. BIDEN, JR.
Candidate For President ID: P80000722
BIDEN FOR PRESIDENT,
Principal Campaign Committee ID: C00703975

KAMALA D. HARRIS,
Candidate For Vice President ID: P00009423
KAMALA HARRIS FOR THE PEOPLE
Principal Campaign Committee ID: C00694455,

ALL OTHER SIMILARLY SITUATED CANDIDATES,
Officers of the Court Admitted to Practice Law Seeking
Elected Office Outside the Judicial Branch of Government,

THE ELECTORAL COLLEGE, Office of the Federal Register (OFR),
National Archives and Records Administration (NARA)

GENERAL SERVICES ADMINISTRATION (GSA),
Emily W. Murphy, GSA administrator

UNITED STATES DEPARTMENT OF JUSTICE (DOJ),

Respondents.

_____/

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

RECEIVED

JAN 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

1. Today I am submitting a motion for leave to file under Rule 17, Procedure in an Original Action, under Article III, Controversies to which the United States shall be a Party, in Neil J. Gillespie v. Federal Election Commission (FEC) and the Respondents in my *FEC Complaint Of Election Fraud In The 2020 Presidential Election Fraud*.

2. Enclosed is my Federal Election Commission (FEC) *Complaint Of Election Fraud In The 2020 Presidential Election* of December 14, 2020, and Appendix A, FSC16-2031.

3. On December 18, 2020 Shana M. Broussard, Sean J. Cooksey and Allen Dickerson were sworn in as members of the Federal Election Commission, returning a quorum to the agency charged with administering and enforcing federal campaign finance law.

4. The FEC responded January 6, 2021, Exhibit 1 and stated:

This acknowledges receipt of your letters to the Federal Election Commission on December 14th and December 17th, 2020.

The Federal Election Commission (the "Commission") is an independent regulatory agency charged with administering and enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has jurisdiction over the financing of campaigns for federal office -- the U.S. House, Senate, and President.

After careful review of your correspondence, we have determined that your letter does not state any acts that appear to constitute a violation under our jurisdiction.

5. Given the nature of my complaint, I take the FEC response as a right to sue letter.

6. My complaint argues that under the separation of powers doctrine, Joe Biden and Kamala Harris are not eligible to serve in an executive branch office such as president/VP because each of them are lawyers and part of the judicial branch of government. A lawyer admitted to practice is an officer of the court, part of the judiciary. A lawyer, officer of the court, in the executive branch would usurp the separation of powers doctrine set forth in the U.S. Constitution, and is part of a seditious conspiracy by the judicial branch that is a threat to our Republic.

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

7. Standing in this matter:

NEIL J. GILLESPIE, American Citizen and
Candidate For President ID: P60022993,
NEIL J. GILLESPIE FOR PRESIDENT,
Principal Campaign Committee ID: C00627810

8. Grounds: Letter of the FEC dated January 6, 2021, in re, *Complaint Of Election Fraud In The 2020 Presidential Election Fraud*;

9. Additional grounds: Crimes against humanity; incarceration rate of the United States; we lead the world in the percentage of people incarcerated:

The United States has the highest prison and jail population (2,121,600 in adult facilities in 2016), and the highest incarceration rate in the world (655 per 100,000 population in 2016).[1] According to the World Prison Population List (11th edition) there were around 10.35 million people in penal institutions worldwide in 2015.[2] The US had 2,173,800 prisoners in adult facilities in 2015.[3] That means the US held 21.0% of the world's prisoners in 2015, even though the US represented only around 4.4 percent of the world's population in 2015.[4][5]
https://en.wikipedia.org/wiki/Comparison_of_United_States_incarceration_rate_with_other_countries

10. Americans are not bad people, but when lawyers run every branch of government, this is the outcome. In particular, the so-called The War On Drugs in the United States is a war on Americans with addiction, a medical condition, currently being mishandled by the judiciary.

11. As set forth in my complaint, Joe Biden and Kamala Harris, each of whom are Officers of the Court admitted to practice law are part of the judiciary and must be disqualified as candidates for president and vice-president, or any other executive or legislative office.

12. Joe Biden and Kamala Harris are not entitled to solicit or receive campaign contributions for the office of U.S. president or vice president under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Chapters 95 and 96 of Title 26, United States Code.

13. Joe Biden and Kamala Harris are not entitled to receive any Electoral College votes because they are prohibited by the U.S. Constitution separation of powers doctrine from serving

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

in the executive branch as president and vice president. Therefore, Joe Biden and Kamala Harris cannot be elected U.S. president and vice president because they cannot lawfully obtain the 270 electoral votes required to take office.

14. Officers of the Court, admitted to practice law and part of the judicial branch of government, conspire to oppose the government of the United States by force, a seditious conspiracy (18 U.S.C. § 2384) in violation of, *inter alia*, the U.S. Constitution separation of powers doctrine when serving in the executive and legislative branches of government.

15. The 12th Amendment states that, in cases where no presidential candidate receives a majority of votes in the Electoral College, the House of Representatives will choose from among the top three candidates.

“and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.”

But the House of Representatives is compromised by House members who are Officers of the Court and part of the judicial branch of government wrongly serving in the legislature in violation of the Constitution of the United States separation of powers doctrine. The judiciary is responsible for this breach of the Constitution, a seditious conspiracy (18 U.S.C. § 2384).

16. One of the most compelling arguments against lawyers serving as president is found in an Article by The Honorable Dennis Jacobs, *The Secret Life of Judges*, 75 Fordham L. Rev. 2855 (2007). <http://ir.lawnet.fordham.edu/flr/vol75/iss6/4/> The Article is Exhibit 8 to my complaint

I sometimes think that the problem at bottom is really a lack of respect by lawyers for other people. Judges live chiefly in a circle of lawyers. But outside that circle there are people who are just as fully absorbed by other pursuits that deserve consideration and respect. Judges need a heightened respect for how nonlawyers solve problems, reach compromises, broker risks, and govern themselves and their institutions. There are lawyers on the one hand; and just about everybody else is the competition in the framing of values and standards of behavior. (par. 4-5, page 2861)

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

The legal mind is indispensable to lawyering, and for other purposes it is perfectly okay in its way. But it has its limitations. For example, every problem-solving profession except ours--quickly adopts as preferred the solution that is simplest, cheapest, and most efficacious, or (as they say) elegant... (par. 5, p. 2862)

As a matter of self-awareness and conscience, judges should accept that the legal mind is not the best policy instrument, and that lawyer-driven processes and lawyer-centered solutions can be unwise, insufficient, and unjust, even if our friends and colleagues in the legal profession lead us that way. For the judiciary, this would mean a reduced role, but not a diminished one if the judiciary is elevated by considerations of honor, self-restraint, and respect for other influences. (last par., p. 2863)

17. In *Bush v. Gore*, 531 U.S. 98 (2000), the U.S. Supreme Court essentially decided the election, a move which a number of legal scholars claim violated the Political Question Doctrine.

The doctrine is also referred to as the justiciability doctrine or the nonjusticiability doctrine.

18. A new election must be held because the 2020 presidential election was fatally flawed.

Democratic candidates Joe Biden and Kamala Harris are Officers of the Court admitted to practice law are part of the judiciary and must be disqualified as candidates for president and vice-president, or any other executive or legislative office. Republican candidate Mike Pence is an Officer of the Court admitted to practice law and part of the judiciary. Pence must be disqualified as candidate for vice-president, or any other executive or legislative office.

19. As it stands, the Democratic party will have control of a 50-50 Senate chamber through Vice President-elect Kamala Harris' tiebreaking vote; but Harris is an Officer of the Court admitted to practice law and part of the judiciary and must be disqualified as a candidate for vice-president, or any other executive or legislative office.

20. As set forth in my complaint, this danger by the judicial branch of government is a usurpation of power, aided by the U.S. Department of Justice (a executive department wrongly staffed by Officers of the Court). The seditious conspiracy by the judicial branch is responsible for rigged elections, election fraud, renders oversight of the judiciary moot, and violates the

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

political question doctrine. For example, judicial elections are rigged by limiting the number of candidates to one. Years ago when I was a student in Levittown, PA, I recall one of my teachers condemned communism by ridiculing its elections with only one candidate for whom to vote.

21. In Florida, an unincorporated association known as The Florida Bar, a legal trade guild, is essentially a shadow government of 100,000+ Florida lawyer members, including every state court judge, and virtually every federal judge presiding in the state. The Florida Bar is run by a Board of Governors, 52 lawyers elected by the 100,000+ Florida lawyer members.

<https://www.floridabar.org/about/bog/>

22. The Florida Supreme Court says The Florida Bar acts as is its “arm” for, *inter alia*, lawyer discipline. The Florida Bar does have its own prosecutors and investigators, but it is a private Gestapo with no public accountability. The Executive Director keeps the bills paid, and the president and president-elect are figureheads who serve for one year. The power lies with “The 52-member Board of Governors has exclusive authority to formulate and adopt matters of policy concerning the activities of the Bar, subject to limitations imposed by the Rules Regulating The Florida Bar.” Most Floridians have never heard of the 52-member Board of Governors, but it may wield more power than the Florida legislature, a legislative body which is also filled with lawyers who are part of the judicial branch of government. A lawyer admitted to practice is an officer of the court, part of the judiciary.

23. I reject the violent rampage at the U.S. Capital January 6, 2021. I believe those folks are angry because they know something is terribly wrong in American; they are right about that fact. But their frustration and lack understanding of the seditious conspiracy by the judicial branch that has usurped our Republic has caused them to lash out in wrong ways that brings discredit to themselves and discredit to their cause.

MOTION FOR LEAVE TO FILE, RULE 17, PROCEDURE IN AN ORIGINAL ACTION

24. In 2020 there were 1.33 million lawyers in the United States. I believe a majority of them are honest practitioners who represent clients, ordinary people and small businesses, and corporate and government lawyers. But they too suffer under the jackboot of various bar associations and a handful of powerful lawyer miscreants. The United States Supreme Court unanimously held in *Keller v. State Bar of California*, 496 US 1 (1990), adopting in effect the prescient minority Justices' dissents in *Lathrop v. Donohue*, 367 U.S. 820 (1961), that integrated state bars must not venture into political and ideological waters but stick with the narrow, legitimate functions of integrated state bars. To do otherwise these bars would become, as Justice Douglas pointed out in *Lathrop*, "goose-stepping brigades" that serve neither the public nor the profession.

25. In conclusion, this action may be futile, but someone has to open the discussion on why our Republic is failing under the jackboot of the judiciary.

WHEREFORE, I respectfully move the Court to GRANT this motion.

RESPECTFULLY SUBMITTED January 13, 2021



NEIL J. GILLESPIE
8092 SW 115th Loop
Ocala, Florida 34481
Tel. 352-854-7807
Email: neilgillespie@mfi.net



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL

neilgillespie@mfi.net
Neil Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

January 6, 2020

Dear Mr. Gillespie:

This acknowledges receipt of your letters to the Federal Election Commission on December 14th and December 17th, 2020.

The Federal Election Commission (the "Commission") is an independent regulatory agency charged with administering and enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has jurisdiction over the financing of campaigns for federal office -- the U.S. House, Senate, and President.

After careful review of your correspondence, we have determined that your letter does not state any acts that appear to constitute a violation under our jurisdiction.

Sincerely,

Jeff S. Jordan (*by TDK*)
Assistant General Counsel
Federal Election Commission
Office of General Counsel
Complaints Examination and Legal Administration

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Neil J. Gillespie — PETITIONER
(Your Name)

VS.

Federal Election Commission et al. RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S. Supreme Court, Florida Supreme Court, Florida 5th DCA & 2nd DCA
Marion Co. Florida Circuit Court, Hall County Co. Circuit Court

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

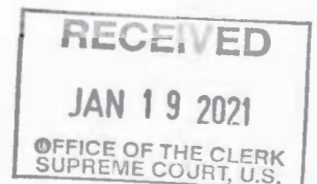
☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

Neil J. Gillespie
(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, _____, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Self-employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Income from real property (such as rental income)	\$ 0	\$ N/A	\$ 0	\$ N/A
Interest and dividends	\$ 0	\$ N/A	\$ 0	\$ N/A
Gifts	\$ 0	\$ N/A	\$ 0	\$ N/A
Alimony	\$ 0	\$ N/A	\$ 0	\$ N/A
Child Support	\$ 0	\$ N/A	\$ 0	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ N/A	\$ 0	\$ N/A
Disability (such as social security, insurance payments)	\$ 2102	\$ N/A	\$ 2163	\$ N/A
Unemployment payments	\$ 0	\$ N/A	\$ 0	\$ N/A
Public-assistance (such as welfare)	\$ 0	\$ N/A	\$ 0	\$ N/A
Other (specify): _____	\$ 0	\$ N/A	\$ 0	\$ N/A
Total monthly income:	\$ 2102	\$ N/A	\$ 2163	\$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Not employed	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ 19.00
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking 9292	\$ 5.63	\$ N/A
5678 deposit acct	\$ 1.9	\$ N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home
Value IN Enclosure

☒ Other real estate
Value NONE

☐ Motor Vehicle #1
Year, make & model 2013 Dodge
Value \$5,000 GRAB CRUISE

☐ Motor Vehicle #2
Year, make & model NONE
Value N/A

☐ Other assets
Description NONE
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>None</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
<u>MA</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
<u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>None</u>	<u>N/A</u>	<u>N/A</u>
<u>MA</u>	<u>N/A</u>	<u>N/A</u>
<u>MA</u>	<u>N/A</u>	<u>N/A</u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>Foreclosed</u>	\$ <u>N/A</u>
Are real estate taxes included? ☐ Yes ☒ No	\$ <u>Reverse mortgage</u>	
Is property insurance included? ☐ Yes ☒ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>288</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>80</u>	\$ <u>N/A</u>
Food	\$ <u>785</u>	\$ <u>N/A</u>
Clothing	\$ <u>37</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>15</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>500+</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 100	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ N/A
Life	\$ 135 0	\$ N/A
Health	\$ 135	\$ N/A
Motor Vehicle	\$ 60	\$ N/A
Other: N/A	\$ 0	\$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): None	\$ 0	\$ N/A
Installment payments		
Motor Vehicle	\$ 300	\$ N/A
Credit card(s)	\$ 0	\$ N/A
Department store(s)	\$ 0	\$ N/A
Other: day a lease	\$ 135	\$ N/A
Alimony, maintenance, and support paid to others	\$ 0	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ N/A
Other (specify): Litigation Expense	\$ 200 +	\$ N/A
Total monthly expenses:	\$ 2,645	\$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Losing home in Foreclosure

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 13, , 2021


(Signature)

IN THE
SUPREME COURT OF THE UNITED STATES

NEIL J. GILLESPIE, American Citizen and
Candidate For President ID: P60022993,
NEIL J. GILLESPIE FOR PRESIDENT,
Principal Campaign Committee ID: C00627810,

vs.

FEDERAL ELECTION COMMISSION, ET AL

PROOF OF SERVICE

I, Neil J. Gillespie, do swear or declare that on this date, January 13, 2020, as required by USSC Rule 29 I have served the enclosed MOTION FOR LEAVE TO FILE A RULE 17 PROCEEDURE IN AN ORIGINAL ACTION, and a RULE 23 STAY DIRECTED TO JUSTICE THOMAS, and a MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents to a third-party commercial carrier (UPS) for delivery within 3 calendar days to the Solicitor General of the United States, and by E-service in compliance with the Court's COVID-19 Order Wednesday, April 15, 2020. The names and addresses of those served are:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
Email: EnfComplaint@fec.gov
CELA: CELA@fec.gov

JOSEPH R. BIDEN, JR.
Candidate For President ID: P80000722
BIDEN FOR PRESIDENT
Principal Campaign Committee ID: C00703975
Email: fec@joebiden.com

KAMALA D. HARRIS
Candidate For Vice President ID: P00009423
KAMALA HARRIS FOR THE PEOPLE
Principal Campaign Committee ID: C00694455
Email: compliance@kamalaharris.org

THE ELECTORAL COLLEGE
Office of the Federal Register (OFR)
National Archives and Records Administration
Email: electoral.college@nara.gov

GENERAL SERVICES ADMINISTRATION
Emily W. Murphy, GSA administrator
Email: emily.murphy@gsa.gov
Mary Gibert, Email: mary.gibert@gsa.gov
Email: presidentialtransition2020@gsa.gov
1800 F Street, NW, Washington, DC 20405

Rule 29 Proof of Service, Gillespie v. FEC

U.S. DEPARTMENT OF JUSTICE
c/o Chief Frank Talbot, Assistant U.S. Attorney
Email: frank.m.talbot@usdoj.gov
U.S. Attorney's Office
300 N. Hogan Street, Suite 700
Jacksonville, FL 32202

Deputy Chief Kelly S. Karase
Jacksonville Division
kelly.karase@usdoj.gov

eFiling Support
Supreme Court of the United States
Email: efilingsupport@supremecourt.gov

Civil Rights Division, Voting Rights Section
Email: voting.section@usdoj.gov
950 Pennsylvania Avenue NW
4CON 8th Floor
Washington, DC 20530

U.S. Department of Justice
Civil Rights Division, MDPL
USAFLM.Civil.Rights@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 13, 2021.



Neil J. Gillespie, Signature

FEDERAL ELECTION COMMISSION
WASHINGTON, DC

NEIL J. GILLESPIE, American Citizen and
Candidate For President ID: P60022993,
NEIL J. GILLESPIE FOR PRESIDENT,
Principal Campaign Committee ID: C00627810,

Complainant,
v.

JOSEPH R. BIDEN, JR.
Candidate For President ID: P80000722
BIDEN FOR PRESIDENT,
Principal Campaign Committee ID: C00703975

KAMALA D. HARRIS,
Candidate For Vice President ID: P00009423
KAMALA HARRIS FOR THE PEOPLE
Principal Campaign Committee ID: C00694455,

ALL OTHER SIMILARLY SITUATED CANDIDATES,
Officers of the Court Admitted to Practice Law Seeking
Elected Office Outside the Judicial Branch of Government,

THE ELECTORAL COLLEGE, Office of the Federal Register (OFR),
National Archives and Records Administration (NARA)

GENERAL SERVICES ADMINISTRATION (GSA),
Emily W. Murphy, GSA administrator

UNITED STATES DEPARTMENT OF JUSTICE (DOJ),

Respondents.

COMPLAINT OF ELECTION FRAUD IN THE 2020 PRESIDENTIAL ELECTION

COMES NOW the Complainant, NEIL J. GILLESPIE, an American Citizen, a Candidate
For U.S. President ID: P60022993, a nonlawyer, and treasurer of NEIL J. GILLESPIE FOR
PRESIDENT, Principal Campaign Committee ID: C00627810, hereby files this *Complaint Of
Election Fraud In The 2020 Presidential Election* against the Respondents, and states:

Complaint No. _____
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
Email: EnfComplaint@fec.gov

SECTION I OPENING STATEMENT

1. Democratic Party candidates Joe Biden and Kamala Harris, each of whom are Officers of the Court admitted to practice law are part of the judiciary and must be disqualified as candidates for president and vice-president, or any other executive or legislative office. Lawyers admitted to practice, Officers of the Court and part of the judicial branch of government (*Ex parte Garland*, 71 U.S. 333 (1866)), are prohibited by the U.S. Constitution separation of powers doctrine from serving as president or VP part of the executive branch of government. *See* FSC16-2031.

- Joe Biden and Kamala Harris are not entitled to solicit or receive campaign contributions for the office of U.S. president or vice president under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Chapters 95 and 96 of Title 26, United States Code.
- *We The People* do not directly elect the U.S. President. The Electoral College decides the election as provided by Article II, Section 1, Clause 2 of the U.S. Constitution, and the 12th and 23rd Amendments. The last sentence of the 12th Amendment states, “But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.” Of the current 538 electors, an absolute majority of 270 or more electoral votes is required to elect the president. Joe Biden and Kamala Harris are not entitled to receive any Electoral College votes because they are prohibited by the U.S. Constitution separation of powers doctrine from serving in the executive branch as president and vice president. Therefore, Joe Biden and Kamala Harris cannot be elected U.S. president and vice president because they cannot lawfully obtain the 270 electoral votes required to take office.
- Officers of the Court, admitted to practice law and part of the judicial branch of government, conspire to oppose the government of the United States by force, a seditious conspiracy (18 U.S.C. § 2384) in violation of, *inter alia*, the U.S. Constitution separation of powers doctrine

when serving in the executive and legislative branches of government. This danger by the judicial branch of government is a usurpation of power, aided by the U.S. Department of Justice (a executive department wrongly staffed by Officers of the Court). The seditious conspiracy by the judicial branch is responsible for rigged elections, election fraud, renders oversight of the judiciary moot, and violates the political question doctrine. (Bush v Gore).

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SECTION II THE COMPLAINANT

2. The Complainant is NEIL J. GILLESPIE, an American Citizen, a candidate For U.S. President ID: P60022993, a nonlawyer, and treasurer of NEIL J. GILLESPIE FOR PRESIDENT, Principal Campaign Committee ID: C00627810, address 8092 SW 115th Loop, Ocala, Marion County, Florida, 34481. Candidate webpage: <https://neil2020.blogspot.com/>

SECTION III JURISDICTION

3. The Federal Election Commission (the “Commission”) is an independent regulatory agency charged with administering and enforcing the Federal Election Campaign Act of 1971, as

amended (the “Act”), and Chapters 95 and 96 of Title 26, United States Code. This complaint is brought under the Act and Commission regulations at 11 C.F.R. § 111, including:

- (1) A formal complaint should contain a clear and concise recitation of the facts describing the violation of a statute or law over which the Commission has jurisdiction. (11 C.F.R. § 111.4).
- (2) Its contents must be sworn to and signed in the presence of a notary public and shall be notarized. (52 U.S.C. § 30109(a)(1)). The notary must indicate as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, ____."
- (3) A formal complaint should be accompanied by supporting documentation if known and available to the person making the complaint. (11 C.F.R. § 111.4).
- (4) A complaint must be in writing. (52 U.S.C. § 30109(a)(1)). *As noted below, during this time, a complaint may be emailed if you are in a state in which electronic notarization is available.*
- (5) A formal complaint must contain the full name and address of the person making the complaint. (11 C.F.R. § 111.4).
- (6) A formal complaint should clearly identify as a respondent each person or entity who is alleged to have committed a violation. (11 C.F.R. § 111.4).
- (7) A formal complaint should identify the source of information upon which the complaint is based. (11 C.F.R. § 111.4).

The foregoing notwithstanding,

“The commission has not functioned since late August 2019, with an exception for the period of May 2020 to July 2020, due to lack of a quorum. In the absence of a quorum, the commission cannot vote on complaints or give guidance through advisory opinions. As of May 19, 2020, there were 350 outstanding matters on the agency's enforcement docket and 227 items waiting for action.” (Wikipedia)

SECTION IV THE RESPONDENTS

4. Respondent **JOSEPH R. BIDEN, JR.** (Joe Biden) is the 2020 Democratic Party presidential candidate and president-elect. Biden earned a Juris Doctor from Syracuse University College of Law in 1968, and was reportedly admitted to the Delaware bar in 1969. Biden practiced law first as a public defender and then in private practice. Exhibit 1.

Note: Joe Biden does not appear as a member of the Delaware State Bar at this link:
<https://rp470541.doelegal.com/vwPublicSearch/Show-VwPublicSearch-Table.aspx>

In 1972 Biden defeated Republican incumbent J. Caleb Boggs to become the junior U.S. senator from Delaware. https://en.wikipedia.org/wiki/Joe_Biden

5. Respondent **KAMALA D. HARRIS** (Kamala Harris) is the 2020 Democratic Party vice presidential candidate and vice president-elect. Kamala Harris graduated law school with a Juris Doctor in 1989 from the University of California, Hastings College of the Law and was admitted to the California Bar in June 1990. Kamala Harris is currently an active member of the California Bar, #146672. (Exhibit 2). <http://members.calbar.ca.gov/fal/Licensee/Detail/146672>. Harris was deputy district attorney in Alameda County, California (1990), worked for the San Francisco city attorney (2000), and was elected District Attorney of San Francisco. (2004 to 2011). Harris was elected Attorney General of California. (2011 to 2017). Harris was elected to the U.S. Senate in 2017 and is currently in office. https://en.wikipedia.org/wiki/Kamala_Harris

6. Respondent **ALL OTHER SIMILARLY SITUATED CANDIDATES**, Officers of the Court Admitted to the Practice Law Seeking Elected Office Outside the Judicial Branch.

7. Regarding the current Republican Party candidates for president and vice president, the current President, Donald J. Trump, is not an Officer of the Court, and he is not admitted to the practice law, and he is not seeking elected office outside the judicial branch of government.

8. However the current Vice President, Michael R. Pence, is an Officer of the Court admitted to the practice law seeking elected office outside the judicial branch of government. The online public **Indiana Roll of Attorneys** shows Michael Richard Pence, Attorney number: 10892-49, Inactive In Good Standing, Status date: 03-05-2012. (Exhibit 3)

9. While this complaint is focused on *Election Fraud In The 2020 Presidential Election*, there is election fraud in elections for federal legislators in the U.S. Senate, and U.S. House of

Representatives. The two U.S. Senators for the state of Florida are each Officers of the Court admitted to the practice law seeking elected office outside the judicial branch of government.

U.S. Senator Marco Rubio is a member of The Florida Bar (#102946)
U.S. Senator Rick Scott is a member of the State Bar of Texas (#17909700)

See List of United States senators from Florida - Wikipedia
https://en.wikipedia.org/wiki/List_of_United_States_senators_from_Florida.

10. In the U.S. House of Representatives for the state of Florida, the first column are Officers of the Court admitted to the practice law seeking elected office outside the judicial branch of government. The second column are nonlawyer U.S. Representatives for the state of Florida.

Alcee Hastings (D-20th district), Fla. Bar #34433	Neal Dunn (D-2nd district) nonlawyer
Charlie Crist (D-13th district), Fla. Bar #362190	Ted Yoho (R-3rd district) nonlawyer
Darren Soto (D-9th district), Fla. Bar #10853	John Rutherford (R-4th district) nonlawyer
Francis Rooney (R-19th district), Texas/DC Bar	Al Lawson (D-5th district) nonlawyer
Greg Steube (R-17th district), Fla. Bar #729981	Michael Waltz (R-6th district) nonlawyer
Gus Bilirakis (R-12th district), Fla. Bar #848018	Stephanie Murphy (D-7th district) nonlawyer
Kathy Castor (D-14th district), Fla. Bar #896160	Bill Posey (R-8th District) nonlawyer
Lois Frankel (D-21st district), Fla. Bar #180409	Val Demings (D-10th district) nonlawyer
Matt Gaetz (R-1st district), Fla. Bar #48962	Daniel Webster (R-11th district) nonlawyer
Ross Spano (R-15th), Fla. Bar #473189 (Disbarred)	Vern Buchanan (R-16th district) nonlawyer
Ted Deutch (D-22nd district), Fla. Bar #166537	Brian Mast (R-18th district) nonlawyer\
	Debbie Wasserman Schultz (D-23rd) nonlawyer
	Frederica Wilson (D-24th district) nonlawyer
	Mario Díaz-Balart (R-25th district) nonlawyer
	Debbie Mucarsel-Powell (D-26th) nonlawyer
	Donna Shalala (D-27th district) nonlawyer

See, List of United States Representatives from Florida - Wikipedia
https://en.wikipedia.org/wiki/List_of_United_States_Representatives_from_Florida

Executive and legislative oversight of the judiciary is compromised or rendered meaningless when Officers of the Court are part of the executive and legislative bodies doing the oversight.

11. Respondent **THE ELECTORAL COLLEGE** was established by Article II, Section 1, Clause 2 of the U.S. Constitution and modified by the 12th and 23rd Amendments. The last sentence of the 12th Amendment states, “But no person constitutionally ineligible to the office of

President shall be eligible to that of Vice-President of the United States. The Electoral College consists of a total of 538 members, one for each U.S. senator and representative, and three additional electors representing the District of Columbia. Each state has a number of electoral votes equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors. The Office of the Federal Register (OFR) is a part of the National Archives and Records Administration (NARA) and, on behalf of the Archivist of the United States, coordinates certain functions of the Electoral College between the States and Congress. Acting as an intermediary, it reviews the Certificates of Ascertainment and Vote before Congress accepts them as evidence of official State action in preparation for the counting of electoral votes in Congress. In addition to posting them on this website, OFR makes the physical Certificates available for public inspection for one year following the election. Then the Certificates become part of the National Archives collection.

12. Respondent **GENERAL SERVICES ADMINISTRATION (GSA)**, is an independent agency of the United States government established in 1949 to help manage and support the basic functioning of federal agencies. The GSA administrator, Emily W. Murphy, administers the Presidential Transition Act of 1963, as amended, to make certain post-election resources and services available to assist in the event of a presidential transition to facilitate an orderly and peaceful transition of power.

13. Respondent **UNITED STATES DEPARTMENT OF JUSTICE (DOJ)**, also known as the Justice Department, is a federal executive department of the United States government responsible for the enforcement of the law and administration of justice in the United States. The department is headed by the United States Attorney General, who is nominated by the President and confirmed by the Senate and is a member of the Cabinet. As of February 2019, the Attorney

General is William Barr. https://en.wikipedia.org/wiki/United_States_Department_of_Justice

The DOJ is an example of federal executive department wrongly staffed with Officers of the Court admitted to practice law and part of the judicial branch of government.

14. The Voting Section enforces the civil provisions of the federal laws that protect the right to vote, including the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, the Help America Vote Act and the Civil Rights Acts. <https://www.justice.gov/crt/voting-section>

SECTION V FLORIDA SUPREME COURT PETITION NO. SC16-2013

15. Florida Supreme Court Petition No. SC16-2031 accompanies this FEC complaint as Appendix A. In Florida the Petition was Filing # 48683711 E-Filed 11/09/2016 10:48:49 AM. The online case docket shows Petition SC16-2031 and four (4) appendices. (Exhibit 4).

Petition SC16-2031 sought, *inter alia*, to disqualify all candidates for president of the United States (executive branch) who are lawyer members of the bar, and officers of the court (judicial branch), under the Florida Constitution, Article II, Section 3, Branches of Government, and the separation of powers of the Constitution of the United States; and Amendment 22 of the U.S.

Constitution as to Hillary Rodham Clinton. The service list included the FEC:

Hon. Matthew S. Petersen, Chairman
Email: CommissionerPetersen@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463
Toll-free: 800-424-9530
Media inquiries: press@fec.gov

Hon. Ann M. Ravel, Commissioner
Email: CommissionerRavel@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Hon. Steven T. Walther, Commissioner
Email: swalther@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Hon. Caroline C. Hunter, Commissioner
Email: CommissionerHunter@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530
Tel. 202-694-1045

Hon. Ellen L. Weintraub, Commissioner
Email: CommissionerWeintraub@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Hon. Lee E. Goodman, Commissioner
Email: none available
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

16. The Florida Supreme Court wrongly sent Case SC16-2031 to Second Judicial Circuit Leon County Florida where it was dismissed. The courts failed to address a sec. 102.168 Contest of election or my constitutional challenges. At that time I had not studied election law beyond what appears in my Petition No. SC16-2031. The Florida Department of State belatedly provided the records for a sec. 102.168 Contest of election for Judge Ann Melinda Craggs, but that effort appears quashed by The Florida Bar, which essentially runs (notwithstanding the Fla Dept of State) the elections in Florida for trial judges, state attorneys, and public defenders.

17. The United States Supreme Court unanimously held in *Keller v. State Bar of California*, 496 US 1 (1990), adopting in effect the prescient minority Justices' dissents in *Lathrop v. Donohue*, 367 U.S. 820 (1961), that integrated state bars must not venture into political and ideological waters but stick with the narrow, legitimate functions of integrated state bars. To do otherwise these bars would become, as Justice Douglas pointed out in *Lathrop*, "goose-stepping brigades" that serve neither the public nor the profession.

18. The Florida Bar has not only ventured into political and ideological waters, it has a number of paid lobbyists. On information and belief, if a sec. 102.168 Contest of election took

place in the presidential election, the results may have altered the outcome. My four (4) constitutional challenges have there own separate merits that continue.

SECTION VI BIDEN FOR PRESIDENT, OVER \$1 BILLON IN TOTAL RECEIPTS

19. The FEC website on December 13, 2020 shows the following contributions and total receipts for the candidate Joe Biden for president and Kamala Harris for vice president.

BIDEN FOR PRESIDENT (C00703975)
TOTAL RECEIPTS: \$1,064,613,463.22
TOTAL CONTRIBUTIONS: \$823,669,195.78

KAMALA HARRIS FOR THE PEOPLE (C00694455)
TOTAL RECEIPTS: \$ 42,085,872.17
TOTAL CONTRIBUTIONS: \$39,516,628.70

20. Joe Biden and Kamala Harris are not entitled to solicit or receive campaign contributions for the office of U.S. president or vice president under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Chapters 95 and 96 of Title 26, United States Code.

21. Joe Biden earned a Juris Doctor from Syracuse University College of Law in 1968, and was reportedly admitted to the Delaware bar in 1969, and became part of the judiciary. Biden practiced law first as a public defender and then in private practice. Exhibit 1.

Note: Joe Biden does not appear as a member of the Delaware State Bar at this link:
<https://rp470541.doelegal.com/vwPublicSearch/Show-VwPublicSearch-Table.aspx>

In 1972 Biden defeated Republican incumbent J. Caleb Boggs to become the junior U.S. senator from Delaware. https://en.wikipedia.org/wiki/Joe_Biden

22. Joe Biden, an Officer of the Court admitted to practice law and part of the judiciary, must be disqualified as a candidate for president, or any other executive or legislative office. Lawyers admitted to practice, Officers of the Court and part of the judicial branch of government (Ex parte Garland, 71 U.S. 333 (1866), are prohibited by the U.S. Constitution separation of powers doctrine from serving as president, part of the executive branch of government.

23. Kamala Harris graduated law school with a Juris Doctor in 1989 from the University of California, Hastings College of the Law and was admitted to the California Bar in June 1990 and became part of the judiciary. Kamala Harris is currently an active member of the California Bar, #146672. (Exhibit 2). <http://members.calbar.ca.gov/fal/Licensee/Detail/146672>. Harris was deputy district attorney in Alameda County, California (1990), worked for the San Francisco city attorney (2000), and was elected District Attorney of San Francisco. (2004 to 2011). Harris was elected Attorney General of California. (2011 to 2017). Harris was elected to the U.S. Senate in 2017 and is currently in office. https://en.wikipedia.org/wiki/Kamala_Harris

24. Kamala Harris, an Officer of the Court admitted to practice law and part of the judiciary, must be disqualified as a candidate for vice president, or any other executive or legislative office. Lawyers admitted to practice, Officers of the Court and part of the judicial branch of government (Ex parte Garland, 71 U.S. 333 (1866), are prohibited by the U.S. Constitution separation of powers doctrine from serving as vice president part of the executive branch of government.

SECTION VII SEPARATION OF POWER: LEGISLATIVE, EXECUTIVE, JUDICIAL BRANCHES OF GOVERNMENT

25. Of the two major parties, Democratic and Republican, there are three lawyers in the presidential race: **Joe Biden, Kamala Harris, and Mike Pence**. Donald Trump is not a lawyer.

26. It is unconstitutional for a lawyer (judicial branch) to be president of the United States (executive branch) because it would violate *separation of powers*. Separation of powers is inferred in the U.S. Constitution,

Article I - Legislative Branch
Article II - Executive Branch
Article III - Judicial Branch

27. Separation of powers is clearly expressed in Florida law, ARTICLE II, GENERAL PROVISIONS, of the Florida Constitution,

SECTION 3. Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

28. Admission to the bar is for life, and beyond. The practice of law is unlike any other profession. Only the legal profession is self-regulated. Once a person is admitted to the practice of law, by passing the bar exam, passing character and fitness, and admission to the bar by the supreme court of the lawyer's state, the person becomes, *inter alia*, an *officer of the court*.

Classification of lawyers admitted to the state regulatory bar may include,

- Members in Good Standing
- Conditionally Admitted Members
- Inactive Members
- Delinquent members
- Suspended members
- Disbarred members, with right to reapply
- Disbarred members, disbarred for life
- Retired members
- Deceased members

29. The practice of law is unlike any other *legitimate* profession, according to David W. Marston, a former U.S. Attorney, Harvard Law School grad, and author. Marston, a now Philadelphia lawyer, compared the legal business to the Mafia in *Malice Aforethought, How Lawyers Use Our Secret Rules To Get Rich, Get Sex, Get Even...And Get Away With It*, an exposé of America's legal profession.

"They all have undergone the same tough initiation, and once admitted to membership, all have sworn the same oath. They live by their own rules and have fiercely resisted efforts by outsiders to penetrate their clan. They have a code of silence that makes the Mafia's dreaded omerta seem gossipy. And while the organization rigidly limits the operations of its members to their assigned turf, their criminal activities within these areas are surprisingly varied." (Page 22, paragraphs 4 & 5)

"The organization enforces its own discipline, and outsiders can piece together only the most fragmentary picture of the process. But while hard

statistics about crime and misconduct by its members remain elusive, there has unquestionably been a sharp escalation in recent years" (Page 23, paragraph 2)

"In every state, the organization has tentacles that reach into the legislature, as well as intimate knowledge of the local criminal justice system. Laws that might threaten operations are vigorously opposed, and when members are convicted of crimes, punishments are often lenient." (Page 23, paragraph 4)

"It's not the Mafia. Not the Medellin drug cartel... The members are all lawyers. And the organization is the American legal profession." (Pages 23-24) *Malice Aforethought*

- C-Span Interview on YouTube with Dave Marston, author of *Malice Aforethought, How Lawyers Use Our Secret Rules to Get Rich, Get Even and Get Away with It* (1991), video link: <https://youtu.be/AV7xfWw0zr0>

30. Broad Issue Paper - Separation of Powers - The Florida Bar (Exhibit 5)

"The Florida Bar has long maintained that this state's separation of powers doctrine precludes legislative entry into the regulation of lawyers."

If so, *separation of powers* should protect the PUBLIC from lawyers entering the presidency (executive branch) or congress (legislative branch).

Below is Section III, Background, Separation of Powers, Broad Issue Paper,

III. Background

A. United States -- Separation of Powers

The U.S. Constitution defines the power of the three main branches of the federal government as legislative, executive and judicial.

The U.S. Constitution provides the framework for the exercise of power by the federal government. Although the document contains no express separation of powers provision, the constitution defines and allocates the power of the federal government among the legislative, executive, and judicial branches. The framers of the constitution divided the exercise of governmental power into three branches to prevent that power from concentrating in one body. Checks to balance the power of the other branches are expressly provided in the constitution creating an overlap of power among the branches. In this way, the power of each branch is limited by giving to an equal branch one facet of another's unique power. Using these checks, the three branches compete among themselves to keep a relative balance of power. Therefore, each branch's exercise of its type of

power is not absolute. Under a literal interpretation of the structure created in the constitution, violation of the separation of powers doctrine occurs whenever the power of one branch is exercised by another branch without express authority in the Constitution.

The separation of the powers of government is a fundamental principle of every free and good government and is historically a part of both the state and federal constitutions. It is fundamental to the very existence and perpetuity of the American form of government and is one of the most important principles guaranteeing the liberty of the people and preventing the exercise of autocratic power.

1. Legislative

U.S. Constitution Article I, Section 1: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Section 8 of that article enumerates those powers which, among others, include: (1) to lay and collect taxes, excises, imports and duties, to pay the debts and provide for the common defense and general welfare; (2) to regulate commerce; (3) to establish uniform laws of bankruptcy; (4) to coin money and punish counterfeiting; (5) to establish post offices and post roads; (6) to constitute tribunals inferior to the supreme court; (7) to declare war; (8) to raise and support armies and to provide and maintain a Navy; (9) to make rules for the government; and (10) to make all laws which shall be necessary and proper for carrying into execution the legislative powers and all other powers vested by the constitution by the government of the United States or in any department or officer thereof.

2. Executive

U.S. Constitution Article II, Section 1: "The executive power shall be vested in a President of the United States of America." Article II, Sections 2 and 3 define those powers: (1) The president shall be commander-in-chief of the Army and Navy of the U.S., and of the militia of the states, when called into the actual service of the U.S.; (2) the president shall have power, by and with the advice and consent of the Senate, to make treaties; (3) the president shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; and (4) the president shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as the president shall judge necessary and expedient; the president may, on extraordinary occasions, convene both houses or either of them.

3. Judicial

The U.S. Constitution Article III, Section 1 reads: "The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." Judicial power shall extend to: all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; all cases affecting ambassadors, other public ministers and consuls; all cases of admiralty and maritime jurisdiction; controversies to which the United States shall be a party; controversies between two or more states; cases between a state and citizens of another state; cases between citizens of different states, cases between citizens of the same state claiming lands under the grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. Judicial power also extends to all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. The trial of all crimes, except in cases of impeachment, shall be by jury. Such trial shall be held in the state where the said crimes shall have been committed.

B. Florida -- Separation of Powers

According to the State of Florida Constitution Article II, Section 3, the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided.

1. Legislative

Article III Section 1 of the Florida Constitution states that the "legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district." The legislature has been described generally as the lawmaking branch of government. It also has the broad purpose of determining policies and programs and reviewing program performance.

Basically, the legislature is empowered to enact statutes that: levy and collect taxes; oversee professional licensing boards; ensure the public's health, safety and welfare; define crime and provide punishment for violations; build highways; regulate marriage and divorce; authorize establishment of cities. In addition, the legislature may also overturn the governor's veto, determine fiscal policies in the preparation of the General Appropriations Act and conduct formal investigations of alleged misconduct by government agencies and even private businesses.

2. Executive

Article IV, Section 1 states that the supreme executive power shall be vested in a governor who shall: be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices; initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act; request in writing the opinion of the justices of the Supreme Court of Florida as to the interpretation of any portion of the state constitution upon any question affecting the governor's executive powers and duties; have power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion; and by message, at least once in each regular session, inform the legislature concerning the condition of the state, propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest.

Additionally, the governor prepares a recommended balanced budget to be submitted prior to the legislative session. The governor retains line item veto of the General Appropriations Act and has other veto power in order to nullify any legislative act found unacceptable.

3. Judicial

The third branch of state government, the judiciary, exists because of Article V, Section 1 of the Florida Constitution. The judicial department of the government is that branch: intended to interpret, construe, and apply the law; and charged with the declaration of what the law is, and its construction so far as it is written law. Section 1 states that the "judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions."

SECTION VIII EX PARTE GARLAND, 71 U.S. 333 (1866)
https://en.wikipedia.org/wiki/Ex_parte_Garland

31. The US Supreme Court held in **Ex parte Garland** that counselors [lawyers] are officers of the court and not officers of the United States, and that their removal was an exercise of judicial power and not legislative power. Exhibit 6.

Ex parte Garland (Wikipedia) Background

In January 1865, the US Congress passed a law that effectively disbarred former members of the Confederate government by requiring a loyalty oath to be recited by any federal court officer that affirmed that the officer had never served in the Confederate government.

Augustus Hill Garland, an attorney and a former Confederate Senator from Arkansas, subsequently received a pardon from US President Andrew Johnson. Garland then came before the court and pleaded that the act of Congress was a bill of attainder and an ex post facto law, which unfairly punished him for the crime for which he had been pardoned, and so was unconstitutional.

Ex parte Garland (Wikipedia) Decision

In a 5-4 decision, the Supreme Court ruled that the law was both a bill of attainder and an ex post facto law. The court also ruled that the president can exercise the pardon power at any time after the commission of the crime, and that Garland was beyond the reach of punishment of any kind because of his prior presidential pardon.[1]

The court also stated that counselors are officers of the court, not officers of the United States, and that their removal was an exercise of judicial power, not legislative power. The law was struck down as unconstitutional, which opened the way for former Confederate government officials to return to positions in the federal judiciary.

Ex parte Garland, 71 U.S. 333 (1866) Legal Information Institute (Exhibit 7)
<https://www.law.cornell.edu/supremecourt/text/71/333>

By the Judiciary Act of 1789, the Supreme Court has power to make rules and decide upon the qualifications of attorneys.

5. Attorneys and counselors are not officers of the United States; they are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character.

6. The order of admission is the judgment of the court that the parties possess the requisite qualifications and are entitled to appear as attorneys

and counselors and conduct causes therein. From its entry, the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. Their admission and their exclusion are the exercise of judicial power. [p334]

7. The right of an attorney and counselor, acquired by his admission, to appear for suitors and to argue causes, is not a mere indulgence -- a matter of grace and favor -- revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.

8. The admitted power of Congress to prescribe qualifications for the office of attorney and counselor in the Federal courts cannot be exercised as a means for the infliction of punishment for the past conduct of such officers, against the inhibition of the Constitution.

SECTION IX JOE BIDEN AND KAMALA HARRIS: VOID OATH OF OFFICE, SEDITIOUS CONSPIRACY (18 U.S.C. § 2384)

32. Joe Biden cannot faithfully take the oath of office of the president of the United States, specifically that he "will to the best of my ability, preserve, protect and defend the Constitution of the United States." while he is actively violating the separation of powers doctrine of the Constitution of the United States as an Officer of the Court (judicial branch) usurping the power of the president of the United States (executive branch), as part of a seditious conspiracy.

The oath of office of the president of the United States

Article II, Section One, Clause 8, of the United States Constitution:

https://en.wikipedia.org/wiki/Oath_of_office_of_the_president_of_the_United_States

The oath of office of the president of the United States is the oath or affirmation that the president of the United States takes after assuming the presidency but before exercising or carrying out any presidential powers or duties. The wording of the oath is specified in Article II, Section One, Clause 8, of the United States Constitution.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

This clause is one of three oath or affirmation clauses in the Constitution, but it is the only one that actually specifies the words that must be spoken. Article I, Section 3

requires Senators, when sitting to try impeachments, to be "on Oath or Affirmation." Article VI, Clause 3, similarly requires the persons specified therein to "be bound by oath or affirmation, to support this Constitution." The presidential oath requires much more than that general oath of allegiance and fidelity. This clause enjoins the new president to swear or affirm that he "will to the best of my ability, preserve, protect and defend the Constitution of the United States." [1]

33. Karmala Harris cannot faithfully take the oath of office of the vice president of the United States, specifically that she "will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;" while she is actively violating the separation of powers doctrine of the Constitution of the United States as an Officer of the Court (judicial branch) usurping the power of the vice president of the United States (executive branch), as part of a seditious conspiracy. (18 U.S.C. § 2384).

The oath of office of the vice president of the United States

Article VI, clause 3, of the United States Constitution:

(and 5 U.S. Code § 3331. Oath of office)

https://en.wikipedia.org/wiki/Oath_of_office_of_the_vice_president_of_the_United_States

The oath of office of the vice president of the United States is the oath or affirmation that the vice president of the United States takes upon assuming the vice-presidency but before he or she begins the execution of the office. It is the same oath that members of the United States Congress take upon entering office.

Just before the president-elect takes the oath of office on Inauguration Day, the vice president-elect will step forward on the inaugural platform and repeat the oath of office to ensure that the vice president can potentially be elevated to president if an unforeseen event (death, illness, etc.) caused the president-elect to not be able to assume the office. Although the United States Constitution—Article II, Section One, Clause 8—specifically sets forth the oath required by incoming presidents, it does not do so for incoming vice presidents. The constitution—Article VI, Clause 3— simply requires that they, along with all other government officers (federal and state; elected and appointed), pledge to support the Constitution.

The oath is as follows:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully

discharge the duties of the office on which I am about to enter. So help me God.[2]

Article VI, clause 3, of the United States Constitution:

(and 5 U.S. Code § 3331. Oath of office)

<https://history.house.gov/Institution/Origins-Development/Oath-of-Office/>

“The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

— U.S. Constitution, Article VI, clause 3

5 U.S. Code § 3331. Oath of office

<https://www.law.cornell.edu/uscode/text/5/3331>

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” This section does not affect other oaths required by law. <https://www.govinfo.gov/content/pkg/USCODE-2011-title5/html/USCODE-2011-title5-partIII-subpartB-chap33-subchapII-sec3331.htm>

Oath of Speaker, Members, and Delegates

Article VI, clause 3, of the United States Constitution:

2 U.S.C. §25 Oath of Speaker, Members, and Delegates

<https://www.govinfo.gov/content/pkg/USCODE-2011-title2/html/USCODE-2011-title2-chap2-sec25.htm>

§25. Oath of Speaker, Members, and Delegates

At the first session of Congress after every general election of Representatives, the oath of office shall be administered by any Member of the House of Representatives to the Speaker; and by the Speaker to all the Members and Delegates present, and to the Clerk, previous to entering on any other business; and to the Members and Delegates who afterward appear, previous to their taking their seats.

The Clerk of the House of Representatives of the Eightieth and each succeeding Congress shall cause the oath of office to be printed, furnishing two copies to each Member and Delegate who has taken the oath of office in accordance with law, which shall be subscribed in person by the Member or Delegate, who shall thereupon deliver them to the Clerk, one to be filed in the records of the House of Representatives, and the other to be recorded in the Journal of the House and in the Congressional Record; and such signed copies, or certified copies thereof, or of either of such records thereof, shall be admissible

in evidence in any court of the United States, and shall be held conclusive proof of the fact that the signer duly took the oath of office in accordance with law.

Seditious conspiracy (18 U.S.C. § 2384)

<https://www.law.cornell.edu/uscode/text/18/2384>

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

SECTION X Dennis Jacobs, *The Secret Life of Judges*, 75 Fordham L. Rev. 2855

“The legal mind is indispensable to lawyering, but has its limitations”

34. One of the most compelling arguments against lawyers serving as president is found in an

Article by The Honorable Dennis Jacobs, *The Secret Life of Judges*, 75 Fordham L. Rev. 2855

(2007). (Exhibit 8) <http://ir.lawnet.fordham.edu/flr/vol75/iss6/4/>

I sometimes think that the problem at bottom is really a lack of respect by lawyers for other people. Judges live chiefly in a circle of lawyers. But outside that circle there are people who are just as fully absorbed by other pursuits that deserve consideration and respect. Judges need a heightened respect for how nonlawyers solve problems, reach compromises, broker risks, and govern themselves and their institutions. There are lawyers on the one hand; and just about everybody else is the competition in the framing of values and standards of behavior. (par. 4-5, page 2861)

The legal mind is indispensable to lawyering, and for other purposes it is perfectly okay in its way. But it has its limitations. For example, every problem-solving profession except ours--quickly adopts as preferred the solution that is simplest, cheapest, and most efficacious, or (as they say) elegant... (par. 5, p. 2862)

As a matter of self-awareness and conscience, judges should accept that the legal mind is not the best policy instrument, and that lawyer-driven processes and lawyer-centered solutions can be unwise, insufficient, and unjust, even if our friends and colleagues in the legal profession lead us that way. For the judiciary, this would mean a reduced role, but not a diminished one if the judiciary is elevated by considerations of honor, self-restraint, and respect for other influences. (last par., p. 2863)

The Secret Life of Judges appears at Exhibit 8.

**SECTION XI NO ELECTORAL COLLEGE VOTES FOR JOE BIDEN
OR KAMALA HARRIS**

35. THE ELECTORAL COLLEGE was established by Article II, Section 1, Clause 2 of the U.S. Constitution and modified by the 12th and 23rd Amendments. The last sentence of the 12th Amendment states, “But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. The Electoral College consists of a total of 538 members, one for each U.S. senator and representative, and three additional electors representing the District of Columbia. Each state has a number of electoral votes equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors. The Office of the Federal Register (OFR) is a part of the National Archives and Records Administration (NARA) and, on behalf of the Archivist of the United States, coordinates certain functions of the Electoral College between the States and Congress. Acting as an intermediary, it reviews the Certificates of Ascertainment and Vote before Congress accepts them as evidence of official State action in preparation for the counting of electoral votes in Congress. In addition to posting them on this website, OFR makes the physical Certificates available for public inspection for one year following the election. Then the Certificates become part of the National Archives collection.

36. Democratic Party candidates Joe Biden and Kamala Harris, each of whom are Officers of the Court admitted to practice law, must be disqualified as candidates for president and vice-president, or any other executive or legislative office. Lawyers admitted to practice, Officers of the Court and part of the judicial branch of government (*Ex parte Garland*, 71 U.S. 333 (1866)), are prohibited by the U.S. Constitution separation of powers doctrine from serving as president or VP part of the executive branch of government.

37. Of the current 538 electors, an absolute majority of 270 or more electoral votes is required to elect the president. Joe Biden and Kamala Harris are not entitled to receive any Electoral College votes because they are prohibited by the U.S. Constitution separation of powers doctrine from serving in the executive branch as president and vice president. Therefore, Joe Biden and Kamala Harris cannot be elected U.S. president and vice president because they cannot lawfully obtain the 270 electoral votes required to take office.

38. The National Conference of State Legislatures states as follows on its website:
<https://www.ncsl.org/research/elections-and-campaigns/the-electoral-college.aspx>

The Electoral College is a unique method for indirectly electing the president of the United States. It was established by Article II, Section 1, Clause 2 of the U.S. Constitution and modified by the 12th and 23rd Amendments.

The Electoral College consists of a total of 538 members, one for each U.S. senator and representative, and three additional electors representing the District of Columbia. Each state has a number of electoral votes equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors.

Currently, all states select electors through a popular vote (although how that vote works can differ), but that was not always the case throughout American history. In many states, the state legislature selected electors, a practice which was common until the mid-1800s.

Dec. 8, 2020: Deadline for Resolving Election Disputes. All state recounts and court contests over presidential election results must be completed by this date. (3 U.S.C. § 5). For the majority of states the date of certification is the same as for all contests, but in eight states there is a deadline that either directly references 3 USC §5 or uses similar language, requiring that disputes surrounding the selection of presidential electors be resolved in time to meet the “safe harbor” deadline: Indiana, Iowa, New Jersey, North Carolina, Ohio, Tennessee, Texas and Virginia. For detailed information on state post-election processes, please visit this page.

The Electoral College in 2020

Dec. 14, 2020: Meeting of the Electors. The electors meet in each state and cast their ballots for president and vice president. Each elector votes on his or her own ballot and signs it. The ballots are immediately transmitted to various people: one copy goes to the president of the U.S. Senate (who is also the vice president of the United States); this is the copy that will be officially counted later. Other copies go to the state's secretary of state, the National Archives and Records Administration, and the presiding judge in the

district where the electors meet (this serves as a backup copy that would replace the official copy sent to the president of the Senate if it is lost or destroyed).

Dec. 23, 2020: Deadline for Receipt of Ballots. The electors' ballots from all states must be received by the president of the Senate by this date. There is no penalty for missing this deadline.

Jan. 6, 2021: Counting of the Electoral Ballots. The U.S. Congress meets in joint session to count the electoral votes.

Jan. 20, 2021: Inauguration Day. The president-elect becomes the president of the United States.

SECTION XII Conclusion: The 2020 US Presidential Election was a Fraud on The People and the USA, 18 U.S.C. § 371, Conspiracy To Defraud The United States

39. This complaint shows the 2020 US Presidential Election was a Fraud on The People and the USA, in violation of 18 U.S.C. § 371 Conspiracy To Defraud The United States:

The general conspiracy statute, 18 U.S.C. § 371, creates an offense "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose. (emphasis added). See Project, Tenth Annual Survey of White Collar Crime, 32 Am. Crim. L. Rev. 137, 379-406 (1995)(generally discussing § 371).
<https://www.justice.gov/archives/jm/criminal-resource-manual-923-18-usc-371-conspiracy-defraud-us>

- Democratic Party candidates Joe Biden and Kamala Harris, each of whom are Officers of the Court admitted to practice law are part of the judiciary and must be disqualified as candidates for president and vice-president, or any other executive or legislative office.
- Joe Biden and Kamala Harris are not entitled to solicit or receive campaign contributions for the office of U.S. president or vice president under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Chapters 95 and 96 of Title 26, United States Code.
- Joe Biden and Kamala Harris are not entitled to receive any Electoral College votes because they are prohibited by the U.S. Constitution separation of powers doctrine from serving in the executive branch as president and vice president. Therefore, Joe Biden and Kamala Harris cannot be elected U.S. president and vice president because they cannot lawfully obtain the 270 electoral votes required to take office.
- Officers of the Court, admitted to practice law and part of the judicial branch of government, conspire to oppose the government of the United States by force, a seditious conspiracy (18 U.S.C. § 2384) in violation of, *inter alia*, the U.S. Constitution separation of powers doctrine when serving in the executive and legislative branches of government.

WHEREFORE, the 2020 US Presidential Election was a Fraud on The People and the United States. Currently the FEC is not functional:

“The commission has not functioned since late August 2019, with an exception for the period of May 2020 to July 2020, due to lack of a quorum. In the absence of a quorum, the commission cannot vote on complaints or give guidance through advisory opinions. As of May 19, 2020, there were 350 outstanding matters on the agency's enforcement docket and 227 items waiting for action.” (Wikipedia).

Therefore it is the duty of the Electoral College to deny Electoral Votes to Joe Biden and Kamala Harris; It is the duty of the General Services Administration to cease and desist efforts to install Joe Biden and Kamala Harris as president and vice president; and it is the duty of the Department of Justice to take all necessary action to stop the fraudulent 2020 US Presidential Election, and prevent Joe Biden and Kamala Harris from taking office. The 12th Amendment states that, in cases where no presidential candidate receives a majority of votes in the Electoral College, the House of Representatives will choose from among the top three candidates.

“and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.”

But the House of Representatives is compromised by House members who are Officers of the Court and part of the judicial branch of government wrongly serving in the legislature in violation of the Constitution of the United States separation of powers doctrine. The judiciary is responsible for this breach of the Constitution, a seditious conspiracy (18 U.S.C. § 2384).

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Federal Election Commission Complaint

RESPECTFULLY SUBMITTED December 14, 2020


NEIL J. GILLESPIE, Complainant

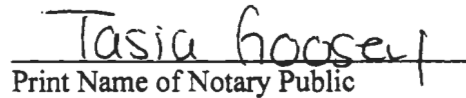
STATE OF FLORIDA
COUNTY OF MARION

The foregoing complaint was subscribed and sworn to before me on this 14th day of December, 2020, by Neil J. Gillespie, who is personally known to me, or who has produced FL DL as identification and states that he is the person who made this Complaint and swears under penalty of perjury that its contents are truthful to the best of his knowledge.

(SEAL)




NOTARY PUBLIC


Print Name of Notary Public

My Commission Expires: 8-30-22

NEIL J. GILLESPIE, Complainant
8092 SW 115th Loop
Ocala, Florida 34481
Tel. 352-854-7807
Email: neilgillespie@mfi.net

SERVICE LIST

Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
Email: EnfComplaint@fec.gov

JOSEPH R. BIDEN, JR.
Candidate For President ID: P80000722
BIDEN FOR PRESIDENT
Principal Campaign Committee ID: C00703975
Email: fec@joebiden.com

KAMALA D. HARRIS,
Candidate For Vice President ID: P00009423
KAMALA HARRIS FOR THE PEOPLE
Principal Campaign Committee ID: C00694455
Email: compliance@kamalaharris.org

THE ELECTORAL COLLEGE
Office of the Federal Register (OFR)
National Archives and Records Administration (NARA)
Email: electoral.college@nara.gov
National Conference of State Legislatures
Email: ncslnet-admin@ncsl.org

GENERAL SERVICES ADMINISTRATION (GSA)
Emily W. Murphy, GSA administrator
Email: emily.murphy@gsa.gov
Mary Gibert, Federal Transition Coordinator,
Email: mary.gibert@gsa.gov
Email: presidentialtransition2020@gsa.gov
U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405

UNITED STATES DEPARTMENT OF JUSTICE (DOJ)
c/o Chief Frank Talbot, Assistant U.S. Attorney
Email: frank.m.talbot@usdoj.gov
U.S. Attorney's Office
300 N. Hogan Street, Suite 700
Jacksonville, FL 32202

Hon. James E. "Trey" Trainor III, Chair
Federal Elections Commission (FEC)
Email: CommissionerTrainor@fec.gov

Hon. Steven T. Walther, Vice Chair
Federal Elections Commission
Email: swalther@fec.gov

Hon. Ellen L. Weintraub, Commissioner
Federal Elections Commission
Email: CommissionerWeintraub@fec.gov

Judith Ingram <JIngram@fec.gov>
Myles G. Martin <MMartin@fec.gov>
FEC Press <press@fec.gov>
ogccela <ogccela@fec.gov>
Information FEC <info@fec.gov>
eFiletechsupport@fec.gov
Inspector General <oig@fec.gov>

Civil Rights Division, Voting Rights Section
Email: voting.section@usdoj.gov
950 Pennsylvania Avenue NW
4CON 8th Floor
Washington, DC 20530



Biographical Directory
of the
United States Congress
1774 - Present

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*Courtesy U.S. Senate
Historical Office*

BIDEN, Joseph Robinette, Jr. (Joe) (1942-)

Member
XML

Senate Years of Service: 1973-2009

Biography

BIDEN, JOSEPH ROBINETTE, JR. (JOE), a Senator from Delaware and a Vice President of the United States; born in Scranton, Lackawanna County, Pa., November 20, 1942; educated at St. Helena's School, Wilmington, Del., and Archmere Academy, Claymont, Del.; graduated, University of Delaware, Newark, 1965, and Syracuse (N.Y.) University College of Law 1968; admitted to the Delaware bar in 1969 and commenced practice in Wilmington; served on the New Castle County Council 1970-1972; elected as a Democrat to the United States Senate in 1972 and reelected in 1978, 1984, 1990, 1996, 2002, and again in 2008 and served from January 3, 1973, until January 15, 2009, when he resigned to become Vice President; chair, Committee on the Judiciary (One Hundredth through One Hundred Third Congresses), Committee on Foreign Relations (One Hundred Seventh Congress [January 3-20, 2001; June 6, 2001-January 3, 2003], One Hundred Tenth Congress); was an unsuccessful candidate for the Democratic nomination for president in 2008, but was elected Vice President of the United States on the Democratic ticket headed by Barack Obama in 2008; reelected in 2012, and served from January 20, 2009, until January 20, 2017.

Research Collections

Extended Bibliography



**Kamala Devi Harris #146672****License Status: Active**

Address: 112 Senate Hart Office Bldg, Washington, DC 20510-0001

County: Non-California County

Phone Number: (202) 224-3553

Fax Number: Not Available

Email: Not Available

Law School: UC Hastings COL; San Francisco CA

Below you will find all changes of license status due to both non-disciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Active		
6/14/1990	Admitted to The State Bar of California		

Additional Information:

- Explanation of licensee status
- Explanation of disciplinary system
- Explanation of disciplinary actions
- Copies of official licensee discipline records are available upon request

CLA Sections:

None

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Michael Richard Pence

Attorney number: 10892-49

Status information

License status: Inactive In Good Standing

Status date: 03-05-2012

Admit date: 05-30-1986

E-filing & e-service information

This attorney is not available for electronic service through the [statewide e-filing system \(https://www.in.gov/judiciary/efile\)](https://www.in.gov/judiciary/efile). You must serve this attorney conventionally. See [Trial Rule 86 \(https://www.in.gov/judiciary/rules/trial_proc\)](https://www.in.gov/judiciary/rules/trial_proc) and [Appellate Rule 68 \(https://www.in.gov/judiciary/rules/appellate\)](https://www.in.gov/judiciary/rules/appellate).

Contact information

Firm name:

Address 1:

Address 2:

Address 3:

City:

State:

Zip:

Phone:

Email:



Disciplinary information

This attorney has no disciplinary history.

Any disciplinary history available here dates back to July 1, 2011; disciplinary information prior to that date is only available from the Appellate Clerk's Office. If an attorney has any disciplinary history, at least one case will be listed above, but this list does not necessarily represent a complete disciplinary history.

! Notice

The Roll of Attorneys search tool is provided by the Appellate Clerk to deliver specific attorney information to the public. Attorneys are required (<https://www.in.gov/judiciary/portal/ad-rule2.html>) to provide their correct name, county of residence, and contact information (including email address) to the Clerk. Attorneys are responsible for updating their information displayed on this web site, and may do so on the Courts Portal (<http://portal.courts.in.gov>).

Florida Supreme Court Docket
Case Docket



Case Number: SC16-2031 - Closed

NEIL J. GILLESPIE vs. KENNETH J. DETZNER, SECRETARY

12/14/2020

6:37:52 AM

Doc.	Date Docketed	Description	Filed by	Notes
	11/09/2016	PETITION-MANDAMUS	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	No Fee - Insolvent		
	11/09/2016	APPENDIX-PETITION	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	APPENDIX-PETITION	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	APPENDIX-PETITION	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	APPENDIX-PETITION	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	MOTION-IN FORMA PAUPERIS	PS Neil J. Gillespie BY: PS Neil J. Gillespie	
	11/09/2016	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Of Florida FSC BY: Supreme Court Of Florida FSC	
	11/09/2016	ORDER-IN FORMA PAUPERIS GR		Petitioner's motion for leave to proceed in forma pauperis is hereby granted.
				The petition for writ of mandamus is hereby transferred, pursuant to Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1999), to the Circuit Court of the Second Judicial Circuit, in and for Leon County,

	11/10/2016	DISP-TSFR CIRC CT/DCA (HARVARD - TIME SENSITIVE)	Florida. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of mandamus. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. The transferee court shall treat the petition as if it had been originally filed there on the date it was filed in this Court and is instructed to consider expediting the petition as it appears to be time sensitive based upon the allegations; however, a determination to expedite consideration is at the discretion of the transferee court. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court. Any future pleadings filed regarding this case should be filed in the above mentioned circuit court at Attn: Special Processes Division, 301 South Monroe Street, #100, Tallahassee, Florida 32301. NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.
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Bar Issue Papers

Separation of Powers

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I. Issue

Independence of the judiciary (the third branch of government, coequal to the executive and legislative branches) has been a cherished hallmark of our democratic republic. The judiciary balances and, where necessary, checks the power of the other branches. Judges, in order to render decisions based on law and not people, must be protected from the influences of partisan politics. However, less clear is the protection stemming from separation of powers extended to "officers of the court" -- lawyers. From time to time in Florida, the suggestion is made to place disciplinary regulation of lawyers under the executive branch or to subject the practice of law to legislative control, such as limiting fees or disclosing information that could fall under attorneyclient privilege.

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II. Bar Position

The Florida Bar has long maintained that this state's separation of powers doctrine precludes legislative entry into the regulation of lawyers. Regulation of the legal profession is a unique and proper power of the courts in the exclusive exercise of the court's judicial function -- certainly as long as Article V, Section 15 of the Florida Constitution remains intact. The Bar's formal legislative position on this issue has typically been expressed as opposition to "amendments to the Florida Constitution which would alter the authority of the Supreme Court of Florida to regulate the admission of persons to the practice of law or the discipline of persons admitted."

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III. Background

A. United States -- Separation of Powers

The U. S. Constitution defines the power of the three main branches of the federal government as legislative, executive and judicial.

The U.S. Constitution provides the framework for the exercise of power by the federal government. Although the document contains no express separation of powers provision, the constitution defines and allocates the power of the federal government among the legislative, executive, and judicial branches. The framers of the constitution divided the exercise of governmental power into three branches to prevent that power from concentrating in one body. Checks to balance the power of the other branches are expressly provided in the constitution creating an overlap of power among the branches. In this way, the power of each branch is limited by giving to an equal branch one facet of another's unique power. Using these checks, the three branches compete among themselves to keep a relative balance of power. Therefore, each branch's exercise of its type of power is not absolute. Under a literal interpretation of the structure created in the constitution, violation of the separation of powers doctrine occurs whenever the power of one branch is exercised by another branch without express authority in the Constitution.

The separation of the powers of government is a fundamental principle of every free and good government and is historically a part of both the state and federal constitutions. It is fundamental to the very existence and perpetuity of the American form of government and is one of the most important principles guaranteeing the liberty of the people and preventing the exercise of autocratic power.

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1. Legislative

U.S. Constitution Article I, Section 1: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall

consist of a Senate and House of Representatives." Section 8 of that article enumerates those powers which, among others, include: (1) to lay and collect taxes, excises, imports and duties, to pay the debts and provide for the common defense and general welfare; (2) to regulate commerce; (3) to establish uniform laws of bankruptcy; (4) to coin money and punish counterfeiting; (5) to establish post offices and post roads; (6) to constitute tribunals inferior to the supreme court; (7) to declare war; (8) to raise and support armies and to provide and maintain a Navy; (9) to make rules for the government; and (10) to make all laws which shall be necessary and proper for carrying into execution the legislative powers and all other powers vested by the constitution by the government of the United States or in any department or officer thereof.

2. Executive

U.S. Constitution Article II, Section 1: "The executive power shall be vested in a President of the United States of America." Article II, Sections 2 and 3 define those powers: (1) The president shall be commander in chief of the Army and Navy of the U.S., and of the militia of the states, when called into the actual service of the U.S.; (2) the president shall have power, by and with the advice and consent of the Senate, to make treaties; (3) the president shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; and (4) the president shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as the president shall judge necessary and expedient; the president may, on extraordinary occasions, convene both houses or either of them.

3. Judicial

The U.S. Constitution Article III, Section 1 reads: "The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." Judicial power shall extend to: all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; all cases affecting ambassadors, other public ministers and consuls; all cases of admiralty and maritime jurisdiction; controversies to which the United States shall be a party; controversies between two or more states; cases between a state and citizens of another state; cases between citizens of different states, cases between citizens of the same state claiming lands under the grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. Judicial power also extends to all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. The trial of all crimes, except in cases of impeachment, shall be by jury. Such trial shall be held in the state where the said crimes shall have been committed.

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B. Florida -- Separation of Powers

According to the State of Florida Constitution Article II, Section 3, the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided.

1. Legislative

Article III Section 1 of the Florida Constitution states that the "legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district." The legislature has been described generally as the lawmaking branch of government. It also has the broad purpose of determining policies and programs and reviewing program performance.

Basically, the legislature is empowered to enact statutes that: levy and collect taxes; oversee professional licensing boards; ensure the public's health, safety and welfare; define crime and provide punishment for violations; build highways; regulate marriage and divorce; authorize establishment of cities. In addition, the legislature may also overturn the governor's veto, determine fiscal policies in the preparation of the General Appropriations Act and conduct formal investigations of alleged misconduct by government agencies and even private businesses.

2. Executive

Article IV, Section 1 states that the supreme executive power shall be vested in a governor who shall: be commander in chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices; initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act; request in writing the opinion of the justices of the Supreme Court of Florida as to the interpretation of any portion of the state constitution upon any question affecting the governor's executive powers and duties; have power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion; and by message, at least once in each regular session, inform the legislature concerning the condition of the state, propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest.

Additionally, the governor prepares a recommended balanced budget to be submitted prior to the legislative session. The governor retains line item veto of the General Appropriations Act and has other veto power in order to nullify any legislative act found unacceptable.

3. Judicial

The third branch of state government, the judiciary, exists because of Article V, Section 1 of the Florida Constitution. The judicial department of the government is that branch: intended to interpret, construe, and apply the law; and charged with the declaration of what the law is, and its construction so far as it is written law. Section 1 states that the "judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasijudicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions."

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a) Supreme Court -- Jurisdiction

1. Shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted;
2. Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution;
3. When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service;
4. May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law;
5. May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal;
6. May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court;
7. May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the Supreme Court of Florida;
8. May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction;
9. May issue writs of mandamus and quo warranto to state officers and state agencies;
10. May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge;
11. Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

b) District Courts of Appeal -- Jurisdiction

1. District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court;
2. District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law;
3. A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

c) Circuit Courts -- Jurisdiction

- 1) The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

d) County Courts -- Jurisdiction

1. The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

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4. Judiciary and the Regulation of Attorneys

As previously mentioned, according to Florida Constitution Article V, Section 15, Attorneys; admission and discipline, "the Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

The distinguishing feature of the legal profession is that lawyers, in a real sense, are members of the judicial branch of government. They are truly "officers of the court." Their duties go far beyond representing a client's best interest and merely practicing law competently. They have duties to the system of justice itself. The Florida Constitution has specified for lawyers a special role in the state's judicial system. The system simply would not function without lawyers.

The practice of law differs from other professions because of its unique relationship to the judicial branch of government. Regulation of the bar and the practice of law is totally unlike regulation of professions for the reason that the functions of the courts are inextricably intertwined with the practice of law. The conduct of lawyers is, therefore, subject to special and stringent regulatory supervision because the functions performed by lawyers constitute an integral element of the judicial process. As expressed by the Florida Supreme Court when it unified the Florida State Bar: "It is hardly necessary to assert that the bar has responsibility to the public that is unique and different in degree from that exacted from the members of other professions." *Petition of Florida State Bar Association*, 40 So. 2d 902, 908 (Fla. 1949).

The Court further emphasizes these precepts in the preamble to Chapter 4 of the Rules Regulating The Florida Bar, which contains the rules of professional conduct for attorneys: "An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility."

Currently changes in Chapter 3 and 4 of the Rules Regulating The Florida Bar are pending at the Florida Supreme Court.

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a) Constitutional History

1868 -- On February 25, 1868, a constitutional convention adopted a revised constitution which included: "Sec. 21. Attorneys at law, who have been admitted to practice in any court of record in any State of the Union or to any United States Court, shall be admitted to practice in any court of this State, on producing evidence of having been so admitted." Art. VI, section 21, Fla. Const. (1868).

1885 -- Art. VI, sec. 21, Fla. Const. (1868), repealed.

1956 -- House Joint Resolution 810 approved by the general populace, Art. V, sec. 23, Fla. Const. (1956).

"Section 23. Admission and discipline of attorneys. -- The supreme court shall have exclusive jurisdiction over the admission to the practice of law and the discipline of persons admitted. It may provide for an agency to handle admissions subject to its supervision. It may also provide for the handling of disciplinary matters in the circuit courts and the district courts of appeal, or by commissions consisting of members of the bar to be designated by it, the supreme court, subject to its supervision and review."

1972 -- Senate Joint Resolution 520 approved November 1972 by the general populace (from the 1968 constitutional revision) renumbering and amending Art. V, sec. 23, Fla. Const. (1957) to Art. V, sec. 15, Fla. Const. (1972).

"Section 15. Attorneys; admission and discipline. -- The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted."

During the period from 1830 to 1870, there was a movement which wasn't called deregulation. It was called deprofessionalism of the bar. As a result of that, anybody could be a judge or a lawyer without any kind of certification or training. The results were chaotic; the public was misled, defrauded, administration of justice deteriorated and great public mischief resulted. For a period of 120 years, prior to 1949, the legal profession of Florida was subject to the jurisdiction of the legislature. During that period, there were less than 30 reported cases of discipline in the State of Florida . . . and there were even fewer reports of any kind of punishment.

Over the years, several challenges to this constitutional section (Article V, Section 15) have occurred. Some were court cases, some were initiatives by special interest groups to amend the constitution and others were legislatively sponsored.

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b) Legislative Activity

Probably the most substantial challenge to the Supreme Court's regulation of the legal profession was the 1979 Legislative Subcommittee on the Legal Profession (Sheldon Committee) which studied the possible sunset of The Florida Bar's regulatory function. The Bar was obligated to prove its indispensability in the regulation of the legal profession. The conclusions and recommendations of the Sheldon Committee were published on June 5, 1980. The Committee at that time decided not to propose legislation or a constitutional amendment to alter control of the legal profession but instead recommended administrative changes including adding public members to the Bar's Board of Governors, removing the confidentiality in attorney discipline cases after probable cause has been ascertained, not using Bar dues for lobbying efforts without contributors' approval, and periodic sunsettype review by the Legislature.

One of the seminal arguments by the Bar to leave regulation of lawyers with the Supreme Court was the separation of powers doctrine which precludes legislative entry into this area. The Bar observed that regulation of the legal profession is a unique and proper power of the court in the exclusive exercise of the court's judicial function. The Sheldon Committee's response to the separation of powers argument was that the court, by compelling and spending Bar dues, may be using an exclusively "legislative" power. (Article V, S. 14 which states that the judiciary shall have no power to fix appropriations.) The Committee further noted that dues collected and spent by agencies of the court, in

effect, "arms of the court," are public monies because the court, through its agencies, uses state power to raise that money. The Committee suggested that it is the exclusive inherent power of the Legislature, not the courts, to raise and regulate the spending of public money.

Throughout the existence of The Florida Bar there have been periodic efforts to introduce legislation that would pave the way for a popular vote on a constitutional amendment to alter the Supreme Court's authority to regulate and discipline attorneys. None of those measures has ever gained significant legislative momentum. And, the Bar has consistently opposed such proposals in its formal legislative advocacy.

During the 1990 Legislative Session, HB 2625 was introduced which would create an Attorney Discipline Study Committee composed of five members, including three nonlawyers. The panel would investigate, monitor and evaluate complaints about attorney unresponsiveness, incompetence, fee disputes and unethical conduct. A similar bill was introduced in 1989 but did not pass.

During the 1994 regular session, the Florida Legislature considered several measures that would have affected the authority of the Supreme Court of Florida to regulate the admission and discipline of lawyers. One House bill that died in committee would have urged the court to adopt rules amendments to require that bar admissions decisions be made public. Another Senate proposal would have sought a study of the due process aspects of the bar admissions application process -- that measure was withdrawn, and a Supreme Court study committee was named to consider the issue among others.

A special commission to review and make recommendations for change in the judicial article of the Florida Constitution was created during the 1994 regular legislative session: Ch. 94138, Laws of Florida. Although the focus of the Article V Task Force is judicial matters and court structure, the enabling legislation calls for "additional recommendations to improve the administrative of justice."

The Task Force's final report of December 1995 included a unanimous recommendation to maintain Florida's current constitutional process for regulating and disciplining attorneys. "The statistics and testimony overwhelming support the current scheme," the report states, "and no evidence was offered to indicate that any other form of regulation and discipline would produce the same favorable results."

Nevertheless, during the 1996 Legislative Session, matching bills were introduced in the House (HB 1453 Melvin) and Senate (SB 2456 Gutman) to offer voters a proposed constitutional amendment giving the legislature oversight over lawyer admission and regulation. The sponsor of the House legislation withdrew the measure when it became obvious that it would fail in the Judiciary Committee. The Senate companion was never heard.

Also in 1996, the House Appropriations Committee separately considered a claim that the legislature, by virtue of 1992 amendments to Article III, Section 19, has full authority over the finances of the Bar, the Florida Board of Bar Examiners, and the Florida Bar Foundation. The issue died after one morning of committee testimony from Court and Bar officials, and -- aided by a scholarly analysis of the constitutional amendment in question -- when it became clear that the current fiscal processes of these entities had more than enough supporters to thwart further legislative inquiry.

Similar legislation was proposed during the 1997 Legislative Session. The proposal (HB 1817) passed in the House Criminal Justice Appropriations Committee, but died on the House floor.

And, in the 1998 session similar legislation to amend Art V §15 of the state constitution, to allow for legislative control of attorney admission and discipline, was introduced -- but thereafter withdrawn during session.

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c) Relevant Court Cases

1. Financial Disclosure

In re: The Florida Bar, Advisory Opinion Concerning Applicability of Chapter 74177 [Chapter 112.312(2), (1989)], 316 So. 2d 45 (1975). This was an advisory opinion concerning the applicability of Chapter 74177, Laws of Florida -- Financial Disclosure Law -- to members of The Florida Bar acting in their historical professional capacity as "officers of the court." The Supreme Court of Florida found the Financial Disclosure Law inapplicable as a code of conduct to officers of the judicial branch as the Supreme Court has the inherent right to supervise the bar as an incident to the Supreme Court's power to control, admit to practice and discipline attorneys based on Article V, Section 15, Florida Constitution.

2. Public Records

In re: The Florida Bar. In re: Advisory Opinion Concerning the Applicability of Chapter 119, Florida Statutes. 398 So. 2d 446 (1981). This was an advisory opinion concerning the applicability of the Public Records Law to The Florida Bar's unlicensed practice of law investigation files. The Court ruled that the UPL investigation files of The Florida Bar, as an official arm of the Court, were subject to the control and direction of the Supreme Court and not to either of the other branches of the government.

This notion was reiterated in *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992), which dealt with the applicability of Florida's public records law to certain personal records of state legislators. The *Locke* case, with its reconfirmation of Florida's separation of powers doctrine with respect to public records, became the impetus for an amendment of Article I, Section 24 of the Florida Constitution, adopted by the electorate in November 1992.

That measure established a public right of access to the records of all three state governmental branches, and to certain meetings of

executive and legislative agencies. By virtue of the amendment, the legislature now possesses exclusive authority over all affected records and meetings, further restrained by various conditions on enacting any additional exceptions to such openness.

Meetings of the judicial branch were unaffected by the measure, and it specifically validated all rules of court regarding access to records in effect on the date that the amendment was adopted. Six days prior to voter approval of the amendment, the Supreme Court of Florida promulgated several records-related changes to the Rules Regulating The Florida Bar and the Rules of Judicial Administration: *In Re Amendments to Fla. Rules*, 608 So.2d 472 (Fla. 1992).

Additions to the Rules of Judicial Administration generally confirmed the right of public access to judicial branch records, but established 10 exceptions to such access. The other amendments clarified The Florida Bar's general records policy, and included specific provisions regarding professional ethics opinions, Clients' Security Fund claims, unlicensed practice of law matters, and the review of lawyer advertisements and solicitations.

In 1994 the Supreme Court's Study Committee on Confidentiality of Records of the Judicial Branch presented the court with additional amendments and commentary to Rule of Judicial Administration regarding public access to judicial records. The court's ultimate adoption of those revisions included, on its own motion, a preliminary policy statement concerning the use and maintenance of electronic mail transmissions which the court acknowledged as "judicial records" under the rule. *In Re Amendments to Rule of Judicial Administration 2.051 -- Public Access to Judicial Records*, 651 So.2d 1185 (Fla. 1995).

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3. Unlicensed Practice of Law

In 1956, Florida voters adopted a revised Article V of the state constitution. Section 23 of the new article, now Section 15, gave the Supreme Court of Florida "exclusive jurisdiction over the admission to the practice of law and the discipline of persons admitted." The Florida Supreme Court adopted as its own language from *West Virginia State Bar v. Earley*, 109 S.E. 2d 420 (W.Va. 1959) in the *Sperry* case (cited below) relevant to UPL and licensing: "... It would indeed be an anomaly if the power of the courts to protect the public from the improper or unlawful practice of law were limited to licensed attorneys and did not extend or apply to incompetent and unqualified laymen and law agencies. Such a limitation of the power of the courts would reduce the legal profession to an unskilled vocation, destroy the usefulness of licensed attorneys as officers of the courts, and substantially impair and disrupt the orderly and effective administration of justice by the judicial department of the government; and this the law will not recognize or permit."

- *The Florida Bar v. Escobar*, 322 So. 2d 25 (1975) stated that the constitutional provision giving the Supreme Court exclusive jurisdiction to regulate the admission of persons to the practice of law necessarily includes the power to prevent the unlicensed practice of law.
- *The Florida Bar v. Moses*, 380 So. 2d 412 Fla. (1980). Moses represented himself before a hearing officer of the state Division of Administrative Hearings, relying on a Florida statute which stated that a person is entitled to representation by counsel or by "other qualified representatives." Nonlawyers may practice in Florida administrative proceedings if they comply with *Moses* and the applicable Florida administrative rules. This ruling stated that, implicit in the Florida Supreme Court's power to define the practice of law and regulate those who may so practice and prohibit the unlicensed practice of law is the ability to authorize the practice of law by lay representatives.

4. Judicial Discipline:

The Florida Bar v. David Lucas McCain, 330 So. 2d 712 (1976). An attorney, who was formerly a Supreme Court Justice, moved to dismiss and/or quash a report by the Board of Governors of The Florida Bar of probable cause for further disciplinary proceedings against him. The Supreme Court held that the Board of Governors, serving as an adjunct or administrative agency of the Supreme Court, had jurisdiction to discipline an attorney for acts bearing on his fitness to practice law even when those acts occurred while the attorney held judicial office.

5. Legal Representation of the Poor

Amendments to Rules Regulating The Florida Bar -- 13.1(a) and Rules of Judicial Administration -- 2.065 (Legal Aid), 598 So. 2d 41 (Fla., 1992). Upon consideration of a report from a Joint Commission of Florida Bar and Florida Bar Foundation representatives, the Court approved an annual minimum of 20 hours of voluntary pro bono legal services to the poor, for each Florida Bar member, or an alternative contribution of \$350 to a legal services agency. The Court noted: "What makes our legal system so different is the ability of lawyers to challenge the constitutionality of government conduct before a separate, independent judicial branch of government. Although an independent judiciary is essential, an independent legal profession plays a critical role in maintaining our constitutional structure." In support of pro bono, the opinion added: "We find it is important for an independent legal profession to provide a portion of indigent representation to ensure proper challenges against government violations of individual rights." Yet the Court further stressed: "To the legislature, we emphasize that the legal profession is not able to singlehandedly resolve the problem of indigent legal representation, and, although there is a budget crisis, funding will eventually have to be provided to address a significant portion of the needs identified by the Commission and particularly legal representation that is now mandated by the Constitution."

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Prepared by The Florida Bar Department of Public Information and Bar Services with assistance from the General Counsel and the Unlicensed Practice of Law Department.

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[Revised: 5/26/05]



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Ex parte Garland

Ex parte Garland, 71 U.S. (4 Wall.) 333 (1866), was an important United States Supreme Court case involving the disbarment of former Confederate officials.

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Background

In January 1865, the US Congress passed a law that effectively disbarred former members of the Confederate government by requiring a loyalty oath to be recited by any federal court officer that affirmed that the officer had never served in the Confederate government.

Augustus Hill Garland, an attorney and a former Confederate Senator from Arkansas, subsequently received a pardon from US President Andrew Johnson. Garland then came before the court and pleaded that the act of Congress was a bill of attainder and an *ex post facto* law, which unfairly punished him for the crime for which he had been pardoned, and so was unconstitutional.

Decision

In a 5-4 decision, the Supreme Court ruled that the law was both a bill of attainder and an *ex post facto* law. The court also ruled that the president can exercise the pardon power at any time after the commission of the crime, and that Garland was beyond the reach of punishment of any kind because of his prior presidential pardon.^[1]

Ex parte Garland



Supreme Court of the United States

Argued December 15, 22, 1865
Reargued March 13–15, 1866
Decided January 14, 1867

Full case name *Ex parte Garland*

Citations 71 U.S. 333 (<https://supreme.justia.com/us/71/333/case.html>) (*more*)
 4 Wall. 333; 18 L. Ed. 366; 1866 U.S. LEXIS 886

Holding

Congress cannot punish a person for a crime for which the person has been pardoned.

Court membership

Chief Justice

Salmon P. Chase

Associate Justices

James M. Wayne • Samuel Nelson

Robert C. Grier • Nathan Clifford

Noah H. Swayne • Samuel F.

Miller

David Davis • Stephen J. Field

Case opinions

Majority Field, joined by Wayne, Nelson, Grier, Clifford

Dissent Miller, joined by Chase, Swayne, Davis

The court also stated that counselors are officers of the court, not officers of the United States, and that their removal was an exercise of judicial power, not legislative power. The law was struck down as unconstitutional, which opened the way for former Confederate government officials to return to positions in the federal judiciary.

Notes

1. On limitations to the president's pardon power, see: Zachary J. Broughton.: "I Beg Your Pardon: *Ex Parte Garland* Overruled; The Presidential Pardon Is No Longer Unlimited", (<https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1815&context=lawreview>) *Western New England Law Review*. 41 W. New Eng. L. Rev. 183 (2019), pp. 183-218. (Retrieved 2020-12-04.)

External links

-  Works related to *Ex parte Garland* at Wikisource
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Ex Parte Garland

71 U.S. 333

Ex parte Garland ()

Argued:

Decided:

-
- Syllabus
 - Opinion, Field
 - Dissent, Miller

Syllabus

1. The act of Congress of January 24th, 1865, providing that, after its passage, no person shall be admitted as an attorney and counselor to the bar of the Supreme Court, and, after March 4th, 1865, to the bar of any Circuit or District Court of the United States, or Court of Claims, or be allowed to appear and be heard by virtue of any previous admission, or any special power of attorney, unless he shall have first taken and subscribed to the oath prescribed in the act of July 2d, 1862 -- which latter act requires the affiant to swear or affirm that he has never voluntarily borne arms against the United States since he has been a citizen thereof, that he has voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto, that he has neither sought nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States, and that he has not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto -- operates as a legislative decree excluding from the practice of the law in the courts of the United States all parties who have offended in any of the particulars enumerated.

2. Exclusion from the practice of the law in the Federal courts, or from any of the ordinary avocations of life for *past conduct* is punishment for such conduct. The exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate.

3. The act being of this character partakes of the nature of a bills of pains and penalties, and is subject to the constitutional inhibition against the passage of



bills of attainder, under which general designation bills of pains and penalties are included.

4. In the exclusion which the act adjudges, it imposes a punishment for some of the acts specified which were not punishable at the time they were committed, and for other of the acts, it adds a new punishment to that before prescribed, and it is thus within the inhibition of the Constitution against the passage of an *ex post facto* law.

5. Attorneys and counselors are not officers of the United States; they are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character.

6. The order of admission is the judgment of the court that the parties possess the requisite qualifications and are entitled to appear as attorneys and counselors and conduct causes therein. From its entry, the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court *after opportunity to be heard has been afforded*. Their admission and their exclusion are the exercise of judicial power. [p334]

7. The right of an attorney and counselor, acquired by his admission, to appear for suitors and to argue causes, is not a mere indulgence -- a matter of grace and favor -- revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.

8. The admitted power of Congress to prescribe qualifications for the office of attorney and counselor in the Federal courts cannot be exercised as a means for the infliction of punishment for the past conduct of such officers, against the inhibition of the Constitution.

9. The power of pardon conferred by the Constitution upon the President is unlimited except in cases of impeachment. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency, or after conviction and judgment. The power is not subject to legislative control.

10. A pardon reaches the punishment prescribed for an offence and the guilt of the offender. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights. It gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited, or property of interests vested in others in consequence of the conviction and judgment.

11. The petitioner in this case, having received a full pardon for all offences committed by his participation, direct or implied, in the Rebellion, is relieved from all penalties and disabilities attached to the offence of treason, committed by such participation. For that offence, he is beyond the reach of punishment of any kind. He cannot, therefore, be excluded by reason of that offence from continuing in the enjoyment of a previously acquired right to appear as an attorney and counselor in the Federal courts.

On the 2d of July, 1862, Congress, by "An act to prescribe an oath of office, and for other purposes," ^[n1] enacted:

That hereafter every person elected or appointed to any office of honor or

profit under the government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, take and subscribe the following oath or affirmation:

I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; *that I have voluntarily given no aid, countenance, counsel, or encouragement to [p335] persons engaged in armed hostility thereto*; that I have neither sought nor accepted, not attempted to exercise the functions of *any office whatever, under any authority or pretended authority in hostility to the United States*; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution with the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God;

&c.

Any person who shall falsely take the said oath shall be guilty of perjury, and, on conviction, in addition to the penalties now prescribed for that offence, shall be deprived of his office, and rendered incapable forever after of holding any office or place under the United States.

On the 24th of January, 1865, ^[n2] Congress passed a supplementary act extending these provisions so as to embrace attorneys and counselors of the courts of the United States. It is as follows:

No person, after the date of this act, shall be admitted to the bar of the *Supreme Court of the United States*, or at any time after the fourth of March next, shall be admitted to the bar of *any Circuit or District Court of the United States, or of the Court of Claims*, as an attorney or counselor of such court, or shall be allowed to appear and be heard in any such court, by virtue of any previous admission, or any special power of attorney, unless he shall have first taken and subscribed the oath prescribed in "An act to prescribe an oath of office and for other purposes," approved July 2d, 1862. And any person who shall falsely take the said oath shall be guilty of perjury, and, on conviction,

&c.

By the Judiciary Act of 1789, the Supreme Court has power to make rules and decide upon the qualifications of attorneys.

At the December Term of 1860, A. H. Garland, Esquire, was admitted as an attorney and counselor of the court, and took and subscribed the oath then required. The second rule, as it then existed, was as follows: **[p336]**

It shall be requisite to the admission of attorneys and counselors to practise in this court that they shall have been such for three years past in the Supreme Courts of the States to which they respectively belong, *and that their private and professional character shall appear to be fair.*

They shall respectively take the following oath or affirmation, viz.:

I, A. B., do solemnly swear (or affirm, as the case may be) that I will demean myself as an attorney and counselor of this court, uprightly, and according to

law, and that I will support the Constitution of the United States.

There was then no other qualification for attorneys in this court than such as are named in this rule.

In March, 1865, this rule was changed by the addition of a clause requiring an oath, in conformity with the act of Congress.

At the same term at which he was admitted, Mr. Garland appeared, and presented printed argument in several cases in which he was counsel. His name continued on the roll of attorneys from then to the present time. but the late Rebellion intervened, and all business in which he was concerned at the time of his admission remained undisposed of. In some of the cases alluded to, fees were paid, and in others, they were partially paid. Having taken part in the Rebellion against the United States by being in the Congress of the so-called Confederate States from May, 1861, until the final surrender of the forces of such Confederate States -- first in the lower house and afterwards in the Senate of that body as the representative of the State of Arkansas, of which he was a citizen -- Mr. Garland could not take the oath prescribed by the acts of Congress before mentioned and the rule of the court of March, 1865.

The State, in May, 1861, passed an ordinance of secession, purporting to withdraw herself from the Union, and afterwards, in the same year, by another ordinance, attached herself to the so-called Confederate States.

In July, 1865, Mr. Garland received from the President [p337] a pardon, by which the chief magistrate, reciting that Mr. Garland, "by taking part in the late Rebellion against the government, had made himself liable to heavy pains and penalties," &c., did thereby

Grant to the said A. H. Garland a FULL PARDON AND AMNESTY for all offences by him committed, arising from participation, direct or implied, in the said Rebellion, conditioned as follows: this pardon to begin and take effect from the day on which the said A. H. Garland shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865, and to be void and of no effect if the said A. H. Garland shall hereafter at any time acquire any property whatever in slaves, or make use of slave labor, and that he first pay all costs which may have accrued in any proceedings hitherto instituted against his person or property. And upon the further condition that the said A. H. Garland shall notify the Secretary of State in writing that he has received and accepted the foregoing pardon.

The oath required was taken by Mr. Garland and annexed to the pardon. It was to the purport that he would thenceforth

faithfully support, protect, and defend the Constitution of the United States and the union of the States thereunder, and that he would in like manner abide by and faithfully support all laws and proclamations which had been made during the existing Rebellion with reference to the emancipation of slaves.

Mr. Garland now produced this pardon, and, by petition filed in court, asked permission to continue to practise as an attorney and counselor of the court, without taking the oath required by the act of January 24th, 1865, and the rule of the court. He rested his application principally upon two grounds:

1st. That the act of January 24th, 1865, so far as it affected his status in the court, was unconstitutional and void, and,

2d. That, if the act were constitutional, he was released from compliance with

its provisions by the pardon of the President. [p374]

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Opinion

FIELD, J., Opinion of the Court

Mr. Justice FIELD delivered the opinion of the court.

On the second of July, 1862, Congress passed an act prescribing an oath to be taken by every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military, or naval departments of the public service, except the President, before entering upon the duties of his office, and before being entitled to its salary, or other emoluments. On the 24th of January, 1865, Congress, by a supplementary act, extended its provisions so as to embrace attorneys and counselors of the courts of the United States. This latter act provides that, after its passage, no person shall be admitted as an attorney and counselor to the bar of the Supreme Court, and, after the fourth of March, 1865, to the bar of any Circuit or District Court of the United States, or of the Court of Claims, or be allowed to appear and be heard by virtue of any previous admission, or any special power of attorney, [p375] unless he shall have first taken and subscribed the oath prescribed by the act of July 2d, 1862. It also provides that the oath shall be preserved among the files of the court, and if any person take it falsely, he shall be guilty of perjury and, upon conviction, shall be subject to the pains and penalties of that offence.

At the December Term, 1860, the petitioner was admitted as an attorney and counselor of this court, and took and subscribed the oath then required. By the second rule, as it then existed, it was only requisite to the admission of attorneys and counselors of this court that they should have been such officers for the three previous years in the highest courts of the States to which they respectively belonged, and that their private and professional character should appear to be fair.

In March, 1865, this rule was changed by the addition of a clause requiring the administration of the oath in conformity with the act of Congress.

In May, 1861, the State of Arkansas, of which the petitioner was a citizen, passed an ordinance of secession which purported to withdraw the State from the Union, and afterwards, in the same year, by another ordinance, attached herself to the so-called Confederate States, and by act of the congress of that confederacy was received as one of its members.

The petitioner followed the State, and was one of her representatives -- first in the lower house and afterwards in the senate of the congress of that confederacy, and was a member of the senate at the time of the surrender of the Confederate forces to the armies of the United States.

In July, 1865, he received from the President of the United States a full pardon for all offences committed by his participation, direct or implied, in the Rebellion. He now produces his pardon, and asks permission to continue to practise as an attorney and counselor of the court without taking the oath required by the act of January 24th, 1865, and the rule of the court, which he is unable to take by reason of the offices he held under the Confederate government. [p376] He rests his application principally upon two grounds:

1st. That the act of January 24th, 1865, so far as it affects his status in the court, is unconstitutional and void, and,

2d. That, if the act be constitutional, he is released from compliance with its provisions by the pardon of the President.

The oath prescribed by the act is as follows:

1st. That the deponent has never voluntarily borne arms against the United States since he has been a citizen thereof;

2d. That he has not voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto;

3d. That he has never sought, accepted, or attempted to exercise the functions of any office whatsoever, under any authority, or pretended authority, in hostility to the United States;

4th. That he has not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto; and,

5th. That he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same.

This last clause is promissory only, and requires no consideration. The questions presented for our determination arise from the other clauses. These all relate to past acts. Some of these acts constituted, when they were committed, offences against the criminal laws of the country; others may or may not have been offences according to the circumstances under which they were committed and the motives of the parties. The first clause covers one form of the crime of treason, and the deponent must declare that he has not been guilty of this crime not only during the war of the Rebellion, but during any period of his life since he has been a citizen. The second clause goes beyond the limits of treason, and embraces not only the giving of aid and encouragement of a treasonable nature to a public enemy, but also the giving of assistance of any kind to persons engaged [p377] in armed hostility to the United States. The third clause applies to the seeking, acceptance, or exercise not only of offices created for the purpose of more effectually carrying on hostilities, but also of any of those offices which are required in every community, whether in peace or war, for the administration of justice and the preservation of order. The fourth clause not only includes those who gave a cordial and active support to the hostile government, but also those who yielded a reluctant obedience to the existing order, established without their co-operation.

The statute is directed against parties who have offended in any of the particulars embraced by these clauses. And its object is to exclude them from the profession of the law, or at least from its practice in the courts of the United States. As the oath prescribed cannot be taken by these parties, the act, as against them, operates as a legislative decree of perpetual exclusion. And exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct. The exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate, and, instead of lessening, increases its objectionable character. All enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional

inhibition against the passage of bills of attainder, under which general designation they are included.

In the exclusion which the statute adjudges, it imposes a punishment for some of the acts specified which were not punishable at the time they were committed, and, for other of the acts, it adds a new punishment to that before prescribed, and it is thus brought within the further inhibition of the Constitution against the passage of an *ex post facto* law. In the case of *Cummings against The State of Missouri*, just decided, we have had occasion to consider at length the meaning of a bill of attainder and of an *ex post facto* law in the clause of the Constitution forbidding their passage by the States, and it is unnecessary to repeat here [p378] what we there said. A like prohibition is contained in the Constitution against enactments of this kind by Congress, and the argument presented in that case against certain clauses of the constitution of Missouri is equally applicable to the act of Congress under consideration in this case.

The profession of an attorney and counselor is not like an office created by an act of Congress, which depends for its continuance, its powers, and its emoluments upon the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counselors are not officers of the United States; they are not elected or appointed in the manner prescribed by the Constitution for the election and appointment of such officers. They are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character. It has been the general practice in this country to obtain this evidence by an examination of the parties. In this court, the fact of the admission of such officers in the highest court of the States to which they respectively belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein. From its entry, the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. ^[n3] Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of [p379] judicial power, and has been so held in numerous cases. It was so held by the Court of Appeals of New York in the matter of the application of Cooper for admission. ^[n4] "Attorneys and counselors," said that court,

are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature. And hence their appointment may, with propriety, be intrusted to the courts, and the latter in performing this duty may very justly be considered as engaged in the exercise of their appropriate judicial functions.

In *Ex parte Secombe*, ^[n5] a mandamus to the Supreme Court of the Territory of Minnesota to vacate an order removing an attorney and counselor was denied by this court on the ground that the removal was a judicial act. "We are not aware of any case," said the court,

where a mandamus was issued to an inferior tribunal, commanding it to reverse

or annul its decision, where the decision was in its nature a judicial act and within the scope of its jurisdiction and discretion.

And, in the same case, the court observed that

it has been well settled by the rules and practice of common law courts that it rests exclusively with the court to determine who is qualified to become one of its officers as an attorney and counselor, and for what cause he ought to be removed.

The attorney and counselor, being by the solemn judicial act of the court clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence, revocable at the pleasure of the court or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency.

The legislature may undoubtedly prescribe qualifications for the office to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life. The [p380] question in the case is not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment, against the prohibition of the Constitution. That this result cannot be effected indirectly by a State under the form of creating qualifications we have held in the case of *Cummings v. The State of Missouri*, and the reasoning by which that conclusion was reached applies equally to similar action on the part of Congress.

This view is strengthened by a consideration of the effect of the pardon produced by the petitioner, and the nature of the pardoning power of the President.

The Constitution provides that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." [n6]

The power thus conferred is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken or during their pendency or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions.

Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender, and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights; it makes [p381] him, as it were, a new man, and gives him a new credit and capacity.

There is only this limitation to its operation: it does not restore offices forfeited or property or interests vested in others in consequence of the conviction and judgment. [n7]

The pardon produced by the petitioner is a full pardon "for all offences by him committed, arising from participation, direct or implied, in the Rebellion," and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offence of treason, committed by his participation in the Rebellion. So far as that offence is concerned, he is thus placed beyond the reach of punishment of any kind. But to exclude him, by reason of that offence, from continuing in the enjoyment of a previously acquired right is to enforce a punishment for that offence notwithstanding the pardon. If such exclusion can be effected by the exaction of an expurgatory oath covering the offence, the pardon may be avoided, and that accomplished indirectly which cannot be reached by direct legislation. It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency. From the petitioner, therefore, the oath required by the act of January 24th, 1865, could not be exacted even if that act were not subject to any other objection than the one thus stated.

It follows, from the views expressed, that the prayer of the petitioner must be granted.

The case of R. H. Marr is similar in its main features to that of the petitioner, and his petition must also be granted.

And the amendment of the second rule of the court, which requires the oath prescribed by the act of January 24th, 1865, to be taken by attorneys and counselors, having been unadvisedly adopted, must be rescinded.

AND IT IS SO ORDERED. [p382]

1. 12 Stat. at Large 502.
2. 13 Stat. at Large 424.
3. *Ex parte Heyfron*, 7 Howard, Mississippi 127; *Fletcher v. Daingerfield*, 20 California 430.
4. 22 New York 81.
5. 19 Howard 9.
6. Article II, § 2.
7. 4 Blackstone's Commentaries, 402; 6 Bacon's Abridgment, tit. Pardon; Hawkins, book 2, c. 37, §§ 34 and 54.

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Dissent

MILLER, J., Dissenting Opinion

Mr. Justice MILLER, on behalf of himself and the CHIEF JUSTICE, and Justices SWAYNE and DAVIS, delivered the following dissenting opinion, which applies also to the opinion delivered in *Cummings v. Missouri*. (*See supra*, p. 316.)

I dissent from the opinions of the court just announced.

It may be hoped that the exceptional circumstances which give present importance to these cases will soon pass away, and that those who make the laws, both state and national, will find in the conduct of the persons affected by the legislation just declared to be void sufficient reason to repeal, or essentially

modify it.

For the speedy return of that better spirit which shall leave us no cause for such laws all good men look with anxiety and with a hope, I trust, not altogether unfounded.

But the question involved, relating, as it does, to the right of the legislatures of the nation and of the state to exclude from offices and places of high public trust, the administration of whose functions are essential to the very existence of the government, those among its own citizens who have been engaged in a recent effort to destroy that government by force can never cease to be one of profound interest.

It is at all times the exercise of an extremely delicate power for this court of declare that the Congress of the nation, or the legislative body of a State, has assumed an authority not belonging to it, and, by violating the Constitution, has rendered void its attempt at legislation. In the case of an act of Congress, which expresses the sense of the members of a coordinate department of the government, as much bound by their oath of office as we are to respect that Constitution, and whose duty it is, as much as it is ours, to be careful that no statute is passed in violation of it, the incompatibility of the act with the Constitution should be so clear as to leave little reason for doubt before we pronounce it to be invalid.

Unable to see this incompatibility either in the act of Congress or in the provision of the constitution of Missouri upon which this court has just passed, but entertaining a [p383] strong conviction that both were within the competency of the bodies which enacted them, it seems to me an occasion which demands that my dissent from the judgment of the court, and the reasons for that dissent, should be placed on its records.

In the comments which I have to make upon these cases, I shall speak of principles equally applicable to both, although I shall refer more directly to that which involves the oath required of attorneys by the act of Congress, reserving for the close some remarks more especially applicable to the oath prescribed by the constitution of the State of Missouri.

The Constitution of the United States makes ample provision for the establishment of courts of justice to administer her law and to protect and enforce the rights of her citizens. Article III, section 1 of that instrument, says that

[t]he judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as the Congress may, from time to time, ordain and establish.

Section 8 of article I closes its enumeration of the powers conferred on Congress by the broad declaration that it shall have authority

to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department thereof.

Under these provisions, Congress has ordained and established circuit courts, district courts, and territorial courts, and has, by various statutes, fixed the number of the judges of the Supreme Court. It has limited and defined the jurisdiction of all these, and determined the salaries of the judges who hold them. It has provided for their necessary officers, as marshals, clerks,

prosecuting attorneys, bailiffs, commissioners, and jurors. And, by the act of 1789, commonly called the Judiciary Act, passed by the first Congress assembled under the Constitution, it is, among other things enacted that,

[i]n all the courts of the United States, the parties may plead and manage their causes personally, or by the [p384] assistance of such counsel or attorneys at law as, by the rules of the said courts respectively, shall be permitted to manage and conduct causes therein.

It is believed that no civilized nation of modern times has been without a class of men intimately connected with the courts, and with the administration of justice, called variously attorneys, counselors, solicitors, proctors, and other terms of similar import. The enactment which we have just cited recognizes this body of men, and their utility in the judicial system of the United States, and imposes upon the courts the duty of providing rules by which persons entitled to become members of this class may be permitted to exercise the privilege of managing and conducting causes in these courts. They are as essential to the successful working of the courts as the clerks, sheriffs, and marshals, and perhaps as the judges themselves, since no instance is known of a court of law without a bar.

The right to practise law in the courts as a profession is a privilege granted by the law under such limitations or conditions in each state or government as the lawmaking power may prescribe. It is a privilege, and not an absolute right. The distinction may be illustrated by the difference between the right of a party to a suit in court to defend his own cause and the right of another to appear and defend for him. The one, like the right to life, liberty, and the pursuit of happiness, is inalienable. The other is the privilege conferred by law on a person who complies with the prescribed conditions.

Every State in the Union, and every civilized government, has laws by which the right to practise in its courts may be granted, and makes that right to depend on the good moral character and professional skill of the party on whom the privilege is conferred. This is not only true in reference to the first grant of license of practise law, but the continuance of the right is made by these laws to depend upon the continued possession of those qualities.

Attorneys are often deprived of this right upon evidence of bad moral character or specific acts of immorality or dishonesty [p385] which show that they no longer possess the requisite qualifications.

All this is done by law, either statutory or common, and whether the one or the other, equally the expression of legislative will, for the common law exists in this country only as it is adopted or permitted by the legislatures or by constitutions.

No reason is perceived why this body of men, in their important relations to the courts of the nation, are not subject to the action of Congress to the same extent that they are under legislative control in the States or in any other government, and to the same extent that the judges, clerks, marshals, and other officers of the court are subject to congressional legislation. Having the power to establish the courts, to provide for and regulate the practice in those courts, to create their officers, and prescribe their functions, can it be doubted that Congress has the full right to prescribe terms for the admission, rejection, and expulsion of attorneys, and for requiring of them an oath, to show whether they have the proper qualifications for the discharge of their duties?

The act which has just been declared to be unconstitutional is nothing more than a statute which requires of all lawyers who propose to practise in the

national courts that they shall take the same oath which is exacted of every officer of the government, civil or military. This oath has two aspects, one which looks to the past conduct of the party and one to his future conduct, but both have reference to his disposition to support or to overturn the government in whose functions he proposes to take part. In substance, he is required to swear that he has not been guilty of treason to that government in the past, and that he will bear faithful allegiance to it in the future.

That fidelity to the government under which he lives, a true and loyal attachment to it, and a sincere desire for its preservation are among the most essential qualifications which should be required in a lawyer seems to me to be too clear for argument. The history of the Anglo-Saxon [p386] race shows that, for ages past, the members of the legal profession have been powerful for good or evil to the government. They are, by the nature of their duties, the moulders of public sentiment on questions of government, and are every day engaged in aiding in the construction and enforcement of the laws. From among their numbers are necessarily selected the judges who expound the laws and the Constitution. To suffer treasonable sentiments to spread here unchecked is to permit the stream on which the life of the nation depends to be poisoned at its source.

In illustration of this truth, I venture to affirm that if all the members of the legal profession in the States lately in insurrection had possessed the qualification of a loyal and faithful allegiance to the government, we should have been spared the horrors of the Rebellion. If, then, this qualification be so essential in a lawyer, it cannot be denied that the statute under consideration was eminently calculated to secure that result.

The majority of this court, however, do not base their decisions on the mere absence of authority in Congress and in the States to enact the laws which are the subject of consideration, but insist that the Constitution of the United States forbids, in prohibitory terms, the passage of such laws both to the Congress and to the States. The provisions of that instrument relied on to sustain this doctrine are those which forbid Congress and the States, respectively, from passing bills of attainder and *ex post facto* laws. It is said that the act of Congress and the provision of the constitution of the State of Missouri under review are in conflict with both these prohibitions, and are therefore void.

I will examine this proposition in reference to these two clauses of the Constitution in the order in which they occur in that instrument.

1. In regard to bills of attainder, I am not aware of any judicial decision by a court of Federal jurisdiction which undertakes to give a definition of that term. We are therefore compelled to recur to the bills of attainder passed by the English Parliament, that we may learn so much of their [p387] peculiar characteristics, as will enable us to arrive at a sound conclusion as to what was intended to be prohibited by the Constitution.

The word attainder is derived, by Sir Thomas Tomlins, in his law dictionary, from the words *attincta* and *attinctura*, and is defined to be

the stain or corruption of the blood of a criminal capitally condemned; the immediate inseparable consequence of the common law on the pronouncing the sentence of death.

The effect of this corruption of the blood was that the party attainted lost all inheritable quality, and could neither receive nor transmit any property or other rights by inheritance.

This attainder or corruption of blood as a consequence of judicial sentence of death continued to be the law of England in all cases of treason to the time that our Constitution was framed, and, for aught that is known to me, is the law of that country on condemnation for treason at this day.

Bills of attainder, therefore, or acts of attainder, as they were called after they were passed into statutes, were laws which declared certain persons attainted, and their blood corrupted so that it had lost all heritable quality. Whether it declared other punishment or not, it was an act of attainder if it declared this. This also seems to have been the main feature at which the authors of the Constitution were directing their prohibition, for, after having, in article I, prohibited the passage of bills of attainder -- in section nine to Congress and in section ten to the States -- there still remained to the judiciary the power of declaring attainders. Therefore, to still further guard against this odious form of punishment, it is provided, in section three of article III, concerning the judiciary, that, while Congress shall have power to declare the punishment of treason, no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

This, however, while it was the chief, was not the only, peculiarity of bills of attainder which was intended to be included within the constitutional restriction. Upon an attentive [p388] examination of the distinctive features of this kind of legislation, I think it will be found that the following comprise those essential elements of bills of attainder, in addition to the one already mentioned, which distinguish them from other legislation, and which made them so obnoxious to the statesmen who organized our government:

1. They were convictions and sentences pronounced by the legislative department of the government, instead of the judicial.
2. The sentence pronounced and the punishment inflicted were determined by no previous law or fixed rule.
3. The investigation into the guilt of the accused, if any such were made, was not necessarily or generally conducted in his presence or that of his counsel, and no recognized rule of evidence governed the inquiry. [n1]

It is no cause for wonder that men who had just passed successfully through a desperate struggle in behalf of civil liberty should feel a detestation for legislation of which these were the prominent features. The framers of our political system had a full appreciation of the necessity of keeping separate and distinct the primary departments of the government.

Mr. Hamilton, in the seventy-eighth number of the Federalist, says that he agrees with the maxim of Montesquieu that "there is no liberty if the power of judging be not separated from the legislative and executive powers." And others of the ablest numbers of that publication are devoted to the purpose of showing that, in our Constitution, these powers are so justly balanced and restrained that neither will probably be able to make much encroachment upon the others. Nor was it less repugnant to their views of the security of personal rights that any person should be condemned without a hearing and punished without a law previously prescribing the nature and extent of that punishment. They therefore struck boldly at all this machinery of legislative despotism by forbidding the passage of bills of attainder and *ex post facto* laws, both to Congress and to the States. [p389]

It remains to inquire whether, in the act of Congress under consideration (and the remarks apply with equal force to the Missouri constitution), there is found

any one of these features of bills of attainder, and, if so, whether there is sufficient in the act to bring it fairly within the description of that class of bills.

It is not claimed that the law works a corruption of blood. It will, therefore, be conceded at once that the act does not contain this leading feature of bills of attainder.

Nor am I capable of seeing that it contains a conviction or sentence of any designated person or persons. It is said that it is not necessary to a bill of attainder that the party to be affected should be named in the act, and the attainder of the Earl of Kildare and his associates is referred to as showing that the act was aimed at a class. It is very true that bills of attainder have been passed against persons by some description when their names were unknown. But, in such cases, the law leaves nothing to be done to render its operation effectual but to identify those persons. Their guilt, its nature, and its punishment are fixed by the statute, and only their personal identity remains to be made out. Such was the case alluded to. The act declared the guilt and punishment of the Earl of Kildare, and all who were associated with him in his enterprise, and all that was required to insure their punishment was to prove that association.

If this were not so, then the act was mere *brutum fulmen*, and the parties other than the earl could only be punished, notwithstanding the act, by proof of their guilt before some competent tribunal.

No person is pointed out in the act of Congress, either by name or by description, against whom it is to operate. The oath is only required of those who propose to accept an office or to practise law, and, as a prerequisite to the exercise of the functions of the lawyer or the officer, it is demanded of all persons alike. It is said to be directed, as a class, to those alone who were engaged in the Rebellion, but this is manifestly incorrect, as the oath is exacted alike from the [p390] loyal and disloyal under the same circumstances, and none are compelled to take it. Neither does the act declare any conviction either of persons or classes. If so, who are they, and of what crime are they declared to be guilty? Nor does it pronounce any sentence or inflict any punishment. If by any possibility it can be said to *provide* for conviction and sentence, though not found in the act itself, it leaves the party himself to determine his own guilt or innocence and pronounce his own sentence. It is not, then, the act of Congress, but the party interested, that tries and condemns. We shall see, when we come to the discussion of this act in its relation to *ex post facto* laws, that it inflicts no punishment.

A statute, then, which designates no criminal, either by name or description -- which declares no guilt, pronounces no sentence, and inflicts no punishment -- can in no sense be called a bill of attainder.

2. Passing now to consider whether the statute is an *ex post facto* law, we find that the meaning of that term, as used in the Constitution, is a matter which has been frequently before this court, and it has been so well defined as to leave no room for controversy. The only doubt which can arise is as to the character of the particular case claimed to come within the definition, and not as to the definition of the phrase itself.

All the cases agree that the term is to be applied to criminal causes alone, and not to civil proceedings. In the language of Justice Story, in the case of *Watson v. Mercer*,^[n2]

Ex post facto laws relate to penal and criminal proceedings, which impose punishment and forfeiture, and not to civil proceedings, which affect private

rights retrospectively. [n3]

The first case on the subject is that of *Calder v. Bull*, and it is the one in which the doctrine concerning *ex post facto* laws is most fully expounded. The court divides all laws [p391] which come within the meaning of that clause of the Constitution into four classes:

- 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.
- 2d. Every law that aggravates a crime, or makes it greater than it was when committed.
- 3d. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed.
- 4th. Every law that alters the rule of evidence, and receives less or different testimony than the law required at the time of the commission of the offence to convict the offender.

Again, the court says, in the same opinion, that "the true distinction is between *ex post facto* laws and retrospective laws," and proceeds to show that, however unjust the latter may be, they are not prohibited by the Constitution, while the former are.

This exposition of the nature of *ex post facto* laws has never been denied, nor has any court or any commentator on the Constitution added to the classes of laws here set forth as coming within that clause of the organic law. In looking carefully at these four classes of laws, two things strike the mind as common to them all:

- 1st. That they contemplate the trial of some person charged with an offence.
- 2d. That they contemplate a punishment of the person found guilty of such offence.

Now, it seems to me impossible to show that the law in question contemplates either the trial of a person for an offence committed before its passage or the punishment of any person for such an offence. It is true that the act requiring an oath provides a penalty for falsely taking it. But this provision is prospective, as no one is supposed to take the oath until after the passage of the law. This prospective penalty is the only thing in the law which partakes of a criminal character. It is in all other respects a civil proceeding. [p392] It is simply an oath of office, and it is required of all officeholders alike. As far as I am informed, this is the first time in the history of jurisprudence that taking an oath of office has been called a criminal proceeding. If it is not a criminal proceeding, then, by all the authorities, it is not an *ex post facto* law.

No trial of any person is contemplated by the act for any past offence. Nor is any party supposed to be charged with any offence in the only proceeding which the law provides.

A person proposing to appear in the court as an attorney is asked to take a certain oath. There is no charge made against him that he has been guilty of any of the crimes mentioned in that oath. There is no prosecution. There is not even an implication of guilt by reason of tendering him the oath, for it is required of the man who has lost everything in defence of the government, and whose loyalty is written in the honorable scars which cover his body, the same as of the guiltiest traitor in the land. His refusal to take the oath subjects him to no prosecution. His taking it clears him of no guilt, and acquits him of no charge.

Where, then, is this *ex post facto* law which tries and punishes a man for a crime committed before it was passed? It can only be found in those elastic rules of construction which cramp the powers of the Federal government when they are to be exercised in certain directions, and enlarges them when they are to be exercised in others. No more striking example of this could be given than the cases before us, in one of which the Constitution of the United States is held to confer no power on Congress to prevent traitors practising in her courts, while in the other it is held to confer power on this court to nullify a provision of the constitution of the State of Missouri relating to a qualification required of ministers of religion.

But the fatal vice in the reasoning of the majority is in the meaning which they attach to the word punishment in its application to this law and in its relation to the definitions which have been given of the phrase *ex post facto* laws.

Webster's second definition of the word "punish" is this: [p393] "In a loose sense, to afflict with punishment, &c., with a view to amendment, to chasten." And it is in this loose sense that the word is used by this court as synonymous with chastisement, correction, loss, or suffering to the party supposed to be punished, and not in the legal sense, which signifies a penalty inflicted for the commission of crime.

And so, in this sense, it is said that, whereas persons who had been guilty of the offences mentioned in the oath were, by the laws then in force, only liable to be punished with death and confiscation of all their property, they are, by a law passed since these offences were committed, made liable to the enormous additional punishment of being deprived of the right to practise law!

The law in question does not in reality deprive a person guilty of the acts therein described of any right which he possessed before, for it is equally sound law as it is the dictate of good sense that a person who, in the language of the act, has voluntarily borne arms against the government of the United States while a citizen thereof, or who has voluntarily given aid, comfort, counsel, or encouragement to persons engaged in armed hostility to the government, has, by doing those things, forfeited his right to appear in her courts and take part in the administration of her laws. Such a person has exhibited a trait of character which, without the aid of the law in question, authorizes the court to declare him unfit to practise before it, and to strike his name from the roll of its attorneys if it be found there.

I have already shown that this act provides for no indictment or other charge, that it contemplates and admits of no trial, and I now proceed to show that, even if the right of the court to prevent an attorney guilty of the acts mentioned from appearing in its forum depended upon the statute, that still it inflicts no punishment in the legal sense of that term.

"Punishment," says Mr. Wharton in his Law Lexicon, "is the penalty for transgressing the laws," and this is perhaps as comprehensive and at the same time as accurate a definition as can be given. Now what law is it whose transgression [p394] is punished in the case before us? None is referred to in the act, and there is nothing on its face to show that it was intended as an additional punishment for any offence described in any other act. A part of the matters of which the applicant is required to purge himself on oath may amount to treason, but surely there could be no intention or desire to inflict this small additional punishment for a crime whose penalty already was death and confiscation of property.

In fact, the word "punishment" is used by the court in a sense which would make a great number of laws, partaking in no sense of a criminal character, laws for punishment, and therefore *ex post facto*.

A law, for instance, which increased the facility for detecting frauds by compelling a party to a civil proceeding to disclose his transactions under oath would result in his punishment in this sense if it compelled him to pay an honest debt which could not be coerced from him before. But this law comes clearly within the class described by this court in *Watson v. Mercer* as civil proceedings which affect private rights retrospectively.

Again, let us suppose that several persons afflicted with a form of insanity heretofore deemed harmless shall be found all at once to be dangerous to the lives of persons with whom they associate. The State, therefore, passes a law that all persons so affected shall be kept in close confinement until their recovery is assured. Here is a case of punishment in the sense used by the court for a matter existing before the passage of the law. Is it an *ex post facto* law? And, if not, in what does it differ from one? Just in the same manner that the act of Congress does, namely, that the proceeding is civil, and not criminal, and that the imprisonment in the one case, and the prohibition to practise law in the other, are not punishments in the legal meaning of that term.

The civil law maxim, "*Nemo debet bis vexari, pro una et eadem causa*," has been long since adopted into the common law as applicable both to civil and criminal proceedings, and one of the amendments of the Constitution incorporates this [p395] principle into that instrument so far as punishment affects life or limb. It results from this rule that no man can be twice lawfully punished for the same offence. We have already seen that the acts of which the party is required to purge himself on oath constitute the crime of treason. Now if the judgment of the court in the cases before us, instead of permitting the parties to appear without taking the oath, had been the other way, here would have been the case of a person who, on the reasoning of the majority, is punished by the judgment of this court for the same acts which constitute the crime of treason.

Yet if the applicant here should afterwards be indicted for treason on account of these same acts, no one will pretend that the proceedings here could be successfully pleaded in bar of that indictment. But why not? Simply because there is here neither trial nor punishment within the legal meaning of these terms.

I maintain that the purpose of the act of Congress was to require loyalty as a qualification of all who practise law in the national courts. The majority say that the purpose was to impose a punishment for past acts of disloyalty.

In pressing this argument, it is contended by the majority that no requirement can be justly said to be a qualification which is not attainable by all, and that to demand a qualification not attainable by all is a punishment.

The Constitution of the United States provides as a qualification for the offices of President and Vice-President that the person elected must be a native-born citizen. Is this a punishment to all those naturalized citizens who can never attain that qualification? The constitutions of nearly all the States require as a qualification for voting that the voter shall be a white male citizen. Is this a punishment for all the blacks who can never become white?

Again, it was a qualification required by some of the State constitutions for the office of judge that the person should not be over sixty years of age. To a very

large number of the ablest lawyers in any State, this is a qualification to which they can never attain, for every year removes [p396] them farther away from the designated age. Is it a punishment?

The distinguished commentator on American law, and chancellor of the State of New York, was deprived of that office by this provision of the constitution of that State, and he was thus, in the midst of his usefulness, not only turned out of office, but he was forever disqualified from holding it again, by a law passed after he had accepted the office.

This is a much stronger case than that of a disloyal attorney forbid by law to practise in the courts, yet no one ever thought the law was *ex post facto* in the sense of the Constitution of the United States.

Illustrations of this kind could be multiplied indefinitely, but they are unnecessary.

The history of the time when this statute was passed -- the darkest hour of our great struggle -- the necessity for its existence, the humane character of the President who signed the bill, and the face of the law itself, all show that it was purely a qualification, exacted in self-defence, of all who took part in administering the government in any of its departments, and that it was not passed for the purpose of inflicting punishment, however merited, for past offences.

I think I have now shown that the statute in question is within the legislative power of Congress in its control over the courts and their officers, and that it was not void as being either a bill of attainder or an *ex post facto* law.

If I am right on the questions of qualification and punishment, that discussion disposes also of the proposition that the pardon of the President relieves the party accepting it of the necessity of taking the oath, even if the law be valid.

I am willing to concede that the presidential pardon relieves the party from all the penalties, or, in other words, from all the punishment, which the law inflicted for his offence. But it relieves him from nothing more. If the oath required as a condition to practising law is not a punishment, as I think I have shown it is not, then the pardon of the President has no effect in releasing him from the requirement to take it. If it is a qualification which Congress [p397] had a right to prescribe as necessary to an attorney, then the President cannot, by pardon or otherwise, dispense with the law requiring such qualification.

This is not only the plain rule as between the legislative and executive departments of the government, but it is the declaration of common sense. The man who, by counterfeiting, by theft, by murder, or by treason is rendered unfit to exercise the functions of an attorney or counselor at law, may be saved by the executive pardon from the penitentiary or the gallows, but is not thereby restored to the qualifications which are essential to admission to the bar. No doubt it will be found that very many persons among those who cannot take this oath deserve to be relieved from the prohibition of the law, but this in no wise depends upon the act of the President in giving or refusing a pardon. It remains to the legislative power alone to prescribe under what circumstances this relief shall be extended.

In regard to the case of *Cummings v. The State of Missouri*, allusions have been made in the course of argument to the sanctity of the ministerial office and to the inviolability of religious freedom in this country.

But no attempt has been made to show that the Constitution of the United

States interposes any such protection between the State governments and their own citizens. Nor can anything of this kind be shown. The Federal Constitution contains but two provisions on this subject. One of these forbids Congress to make any law respecting the establishment of religion, or prohibiting the free exercise thereof. The other is that no religious test shall ever be required as a qualification to any office or public trust under the United States.

No restraint is placed by that instrument on the action of the States, but on the contrary, in the language of Story, ^[n4]

the whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitutions. **[p398]**

If there ever was a case calling upon this court to exercise all the power on this subject which properly belongs to it, it was the case of the Rev. B. Permolli. ^[n5]

An ordinance of the first municipality of the city of New Orleans imposed a penalty on any priest who should officiate at any funeral in any other church than the obituary chapel. Mr. Permolli, a Catholic priest, performed the funeral services of his church over the body of one of his parishioners inclosed in a coffin in the Roman Catholic Church of St. Augustine. For this, he was fined, and, relying upon the vague idea advanced here that the Federal Constitution protected him in the exercise of his holy functions, he brought the case to this court.

But hard as that case was, the court replied to him in the following language:

The Constitution (of the United States) makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States.

Mr. Permolli's writ of error was therefore dismissed for want of jurisdiction.

In that case, an ordinance of a mere local corporation forbid a priest, loyal to his government, from performing what he believed to be the necessary rites of his church over the body of his departed friend. This court said it could give him no relief.

In this case, the constitution of the State of Missouri, the fundamental law of the people of that State, adopted by their popular vote, declares that no priest of any church shall exercise his ministerial functions unless he will show by his own oath that he has borne a true allegiance to his government. This court now holds this constitutional provision void on the ground that the Federal Constitution forbids it. I leave the two cases to speak for themselves.

In the discussion of these cases, I have said nothing, on the one hand, of the great evils inflicted on the country by **[p399]** the voluntary action of many of those persons affected by the laws under consideration, nor, on the other hand, of the hardships which they are now suffering much more as a consequence of that action than of any laws which Congress can possibly frame. But I have endeavored to bring to the examination of the grave questions of constitutional law involved in this inquiry those principles alone which are calculated to assist in determining what the law is, rather than what, in my private judgment, it ought to be.

1. See Story on the Constitution § 1344.

2. *Calder v. Bull*, 3 Dallas 386; *Fletcher v. Peck*, 6 Cranch 87; *Ogden v. Saunders*, 12 Wheaton 266; *Satterlee v. Matthewson*, 2 Peters 380.

3. 8 Peters 88.

4. Commentaries on the Constitution § 1878.

5. 3 Howard 589.

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The Secret Life of Judges

Dennis Jacobs



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THE JOHN F. SONNETT MEMORIAL LECTURE

THE SECRET LIFE OF JUDGES

*Dennis Jacobs**

Dean Treanor, distinguished faculty, students, alumni, colleagues, and fellow friends of Fordham Law School, I am honored more than I can say to be invited to deliver this distinguished lecture in the post-centennial year of this great law school—now, this venerable law school. I am going to express my gratitude by saying some things that matter to me, that are not often said, and that distill observations that have (increasingly) bemused me over the fourteen years that I have been a judge.

The title of my lecture gives little clue, I suspect, as to what I am going to say; but it is not a tease. I am going to talk about “The Secret Life of Judges,” by which I mean a habit of mind that, among so many admirable features of the judicial mentality, amounts to a serious and secret bias. There is a social reluctance to talk about this kind of thing. It sounds sanctimonious. Then again, a neat thing about giving a lecture is that it disarms inhibitions about lecturing people. I get to be sanctimonious without worrying about it.

This lecture is about bias, the judge’s inbred preference for outcomes controlled by proceduralism, the adversary system, hearings and experts, representation by lawyers, ramified complexity of doctrines and rules, multiple prongs, and all things that need and use lawyers, enrich them, and empower them vis-à-vis other sources of power and wisdom.

Let me make this bias concrete by example. If you arrived in an appellate court as counsel for a medical-malpractice plaintiff, and the three individuals on the bench were wearing white coats instead of black robes and had stethoscopes around their necks, I think your heart would sink. I could tell you that the three doctors deciding your case have taken an oath to be impartial as between patients and the medical profession and that they are conscientious, decent individuals who take seriously the obligation to be neutral. You would not be reassured: You would understand that there is (at least) an internalized bias that the doctors would not acknowledge because they would not notice it. A similar dread would come over the

* Chief Judge, United States Court of Appeals for the Second Circuit. These remarks were made on November 20, 2006, at the 2006 John F. Sonnett Memorial Lecture held at Fordham University School of Law. This transcript of Chief Judge Jacobs’s remarks has been lightly edited.

defendant's lawyer if the three judges each had a limb suspended in traction.

In our courts, judges are lawyers. They are all lawyers. Most of us have never been, nor want to be, anything else. We are proud of being lawyers. For many of us (like myself), lawyering is our only talent (assuming we have any talent at all), and it is the source of as much esteem as we enjoy. Our calling says a lot about how our minds work, what we respect, and whom we trust.

I am not—I repeat, I am not—speaking about a bias based upon politics or agenda, economic class, ethnicity, or para-ethnicity. When I refer to the secret life of judges, I am speaking of an inner turn of mind that favors, empowers, and enables our profession and our brothers and sisters at the bar. It is secret, because it is unobserved and therefore unrestrained—by the judges themselves or by the legal community that so closely surrounds and nurtures us. It is an ambient bias.

The result is the incremental preference for the lawyered solution, the fee-paid intervention or pro bono project, the lawyer-driven procedure, the appellate dispensation—and the confidence and faith that these things produce the best results. It is an insidious bias, because it is hard to make out, in the vast maze of judicial work and outcomes, the statutes, doctrines, and precedents that are woven together like an elaborate oriental rug in which the underlying image of the dragon emerges only after you stare for a while. I discern in this jumble a bias in favor of the bar and lawyers: what they do; how they do it; and how they prosper in goods and influence. This is the “figure in the carpet.”¹

This bias has several effects and ramifications. Judges all too frequently frame legal doctrines without considering the litigants' transaction costs. Considering how many of us conscientiously think hard about the economic consequences of the outcomes we adopt, it seems strange that our cases reflect an almost complete disregard and ignorance of the costs, uncertainties, and delays inflicted by the judicial process itself. I think that is because judges as lawyers cannot see as a problem the activity and busyness from which our brothers and sisters at the bar draw their livelihood, their career advancement, their distinction, and (often) their sense of purpose in life. All of this depends on the ceaseless turning of the legal machine.

Judges tend to assume that the adversary process assures a fair fight and a just outcome. And judges work hard to be fair as between the adversarial positions presented. But almost always, the adversaries on all sides are lawyers; so adversariness is no great engine for assuring fairness when it comes to the allocation of decision-making power between lawyers (adversaries all) and the institutions and populations outside our profession. The result is not that lawyers and the legal profession always win in court

1. See Henry James, *The Figure in the Carpet*, reprinted in *The Figure in the Carpet and Other Stories* (Frank Kermode ed., Penguin Books 1986).

contests (even though they are on both sides); but, there is no doubt that they get to punch above their weight.

As I hope I have made clear, I am talking about altruistic litigation as well as hourly fee-paid work and work on contingency. For all the good that public interest lawyers do (and it is a great deal), some of it results in the short circuit of democratic decision making and coerced policy choices. Thus, the threat of litigation often compels school boards to suppress all orthodoxies except those endorsed by the cadres of constitutional lawyers and constitutional law professors. A school-board member exercising fiduciary duties will bow to anticipated demands rather than bear the cost of exercising or testing the board's own rights, if only because the cost of litigating a flag, a reference to God, a locker search, a dirty word, or something like that, can easily cost the school board the annual services of a music teacher or a teacher of remedial reading.

To my observation, judges are blind to this. I think that is because public interest litigation greatly enhances lawyer influence and—not at all incidentally—increases the influence and power of judges. Judges love these kinds of cases. Public interest cases afford a judge sway over public policy, enhance the judicial role, make the judge more conspicuous, and keep the law clerks happy.

Whether fee-paid or pro bono publico, when lawyers present big issues to the courts, the judges receive the big issues with grateful hands; the bar patrols against inroads on jurisdiction and independence and praises the expansion of legal authority; and together we smugly congratulate ourselves on expanding what we are pleased to call the rule of law.

Among the results are the displacement of legislative and executive power, the subordination of other disciplines and professions, and the reduction of whole enterprises and industries to damages. Examples come ready to hand, though, speaking as I do as a judge, I am constrained from citing specifics of controversies that may come before me. In generalities, let me observe,

- Judicial power over the legislature and the executive is dilated by constitutional litigation, much of which is lawyer-driven. Often, the plaintiff's standing is made to rest on largely notional, abstract harms (like annoyance or anxiety), and sometimes the existence of the plaintiff is a recruitment detail that is easily arranged.
- Through such constitutional litigation, judges get to direct the work of educators, police, child protection officers, and many other professionals who have training to discharge critical responsibilities that require their expertise and experience.
- Class actions and consent decrees allow judges to operate prisons and schools, to force appropriations, and to channel funds.
- In mass tort, judges hold in their hands the fate of vast enterprises and can cause their extinction, with capitalization

forfeit to distribution between lawyers and plaintiffs and workers let go.

Judges who issue expansive rulings in these spheres enjoy wide esteem and reputation. There are judges whose fine reputations rest in part on the ability to handle and administer innumerable claims through litigation and settlement, pretty much without regard to whether the claims themselves are based on fraud, corrupt experts, perjury, and other things that would be deplored and persecuted by the legal profession if done within other commercial fields.²

The broadest judicial bias I see, and the one I will describe most vaguely, is the bias in favor of legal complexity. The volumes of the third edition of the Federal Reporter spread themselves like kudzu vine over the shelves of law libraries. I will offer no example, because I would be honor-bound to cite myself as a chief offender, but it is a problem when the complexity of the law causes laymen to view the legal process as either political or as essentially random. This phenomenon is made visible in the papers of prose litigants, who rarely bother to read the trial court decisions that reject their claims, and proceed to appeal on the theory (perhaps not altogether misguided) that the sheer, ramified, sprawling patterns of law will (in the hands of the right judge) yield a substantial payment or a sweet revenge.

It is an observed fact that the complexity of doctrines and opinions (not to mention the discovery of new doctrines) evokes praise and respect from within the profession. But our highly ramified litigation system imposes vast costs on other fields of endeavor, on our democratic freedoms, and on the unrepresented and the non-litigious.

The law reviews seem to have exhausted all topics dealing with bias in the law and the ethics and infractions of other professions. I asked one of my law clerks to check to see how many articles have dealt with the bias of judges toward the dominance and control of the legal profession, and my clerk came up dry.³ That does not surprise me, because if judges have this unconscious bias, so (I think) do law professors, for the same reasons—and students, for the same (and other) reasons. Scholarly papers undertake to expose and demonstrate the institutional and cultural biases of the law in every direction but this one. It is not for me to say whether I am making the point of this lecture effectively; but at least I can say that the competition is thin.

2. This point has been made in the asbestos context. See, e.g., Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 Hofstra L. Rev. 833, 911 (2005) (“[T]he pervasiveness of the absence of application of ethical rules to asbestos litigation and to a large extent, to asbestos bankruptcy proceedings as well, can only stand as an indictment of the courts, disciplinary authorities and indeed, the legal profession.”); Lester Brickman, *On the Theory Class's Theories of Asbestos Litigation: The Disconnect Between Scholarship and Reality*, 31 Pepp. L. Rev. 33, 37 (2003).

3. Subsequent to this Lecture, Professor Benjamin Barton has posted a paper that discusses this bias. See Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?* (Apr. 3, 2007) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976478

Why do we not notice this bias that I am talking about? If you are with me so far, and you now agree (or started out believing) that judges have a bias in favor of legalism and the legal profession, you may wonder as I have, why it is not noticed. Actually, it is a very familiar phenomenon that we do not recognize our bias as such. One tends to assume that bias has a nasty face, and that decent people shrink away instinctively. But some forms of bias are culturally embedded and are exercised with popular or elite approval.

Bias is not a moral evil. Everyone feels tugs of loyalty; everyone should. The bias I am talking about is more finely characterized as a tropism, an instinctive turning to follow a source of vital energy. That is what the sunflower does. But it is one thing to turn to follow the sun, and it is another to follow the American Bar Association (ABA), the law schools, law clerks, and the sound of applause.

Judges are susceptible to the opinions of others in our profession. But the bias in favor of more law, more procedure, and more process is in great measure bred in the bone of a lawyer. A judge is trained in the law; virtually all of us have high self-approval and a high regard for our profession, its processes, its culture and values, and its judgments—the profession which (after all) did loft judges to the bench, where we presumably wanted to go.

The tropism in favor of what lawyers do, and our tendency to expand the spheres of activity in which lawyers act and control, comes clothed in virtue. It is seen by us mainly as respect for due process, as the open door of the courthouse, as a flowering of the rule of law—and so excesses are viewed with indulgence as a Tocquevillian quirk of the American character. But it is unbecoming for judges to dismiss this phenomenon. It matters that our conduct as judges is reinforced by the support and praise that we get from colleagues, lawyers, bar associations, and law schools. I think fair-minded people should recognize the dangers that arise when judges, as the final arbiters for allocating vast power, money, and influence, are all members of the same (self-regulating) profession—and often of the same professional groups and social environments. It is a matter of like calling unto like.

Judges adhere to tight ethical constraints that keep us honest in that way and to that degree; but (ironically) some of those same constraints tend to reinforce our professional bias by insulating us from the influences of politics and (non-law) commerce. Unless we make an effort, we can become disconnected from the values and perceptions of the larger public. The more we obey the constraints that isolate us within a circle of legal culture, the more we are left to be judged, evaluated, and flattered (or not) by the nourishing, attentive, knowledgeable circle of lawyers, law students, and professors—which (to make matters worse) includes often the most charming and scintillating people in the community.

The mystique of the judicial process, and its power and pretension in this country, is pretty much all based on the idea of neutrality. If that idea is

deflated, by puncture or slow leak, it is bad for judges and for the larger community. Our work is subject to hostile critiques; and, if we do not acknowledge and restrain our bias, others will notice, and forces will marshal to rein us in.

These critiques are often classified as attacks on judicial independence, and resisted as interference, or dismissed as ignorant. Thus, a great theme of the legal profession is emphatic support for judicial independence. That is a good thing, and I enjoy my independence as much as the next judge; but judges should consider and appreciate that one effect (maybe a motive) of the bar's avid support of judicial independence is to make judges "independent" of many influences (good and bad) that compete with the dominant influence over judges that is exerted by fellow lawyers, bar associations, and law professors. This support of judicial power by the bar may be a pillar of law, but it can also operate as group loyalty, the protection of turf, or a reciprocal commitment to the ascendancy of judges and lawyers.

This bias I am talking about keeps us from seeing obvious things. For example, bar associations nowadays are chiefly trade groups. It is naive to think that the legal profession is the only disinterested player in our economic life. And bar groups are highly political. The ABA has formally adopted and announced hundreds of positions on virtually every issue in political dispute: You can look them up. It lobbies for those views in legislatures; it promotes them in amicus briefs filed in the courts. Yet hundreds of federal judges are members; thousands in the state and local courts. The canons of judicial conduct⁴ make space for that anomaly.

The canons broadly warn that "[a] judge should refrain from political activity."⁵ But the same canon (7) has a proviso: "this should not prevent a judge from engaging in the activities described in Canon 4,"⁶ which says that "[a] judge may serve as a member, officer, or director of an organization . . . devoted to the improvement of the law."⁷ And the commentary positively "encourage[s]" a judge to "contribute to the improvement of the law" by various means, expressly including "through a bar association."⁸ Hospitably, the commentary allows a judge to "receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a relative incident to the judge's attendance at a bar-related function."⁹

The legal profession, like all other fields, should be able to tap the experience and wisdom of its leading members, judges among them. And

4. Code of Conduct for United States Judges (2000), available at <http://www.uscourts.gov/guide/vol2/ch1.html>.

5. *Id.* Canon 7.

6. *Id.* Canon 7C.

7. *Id.* Canon 4C.

8. *Id.* Canon 4 cmt.

9. *Id.* Canon 5C(4) cmt.

there are times and places for that; at one time, the organized bar may have been such a forum. But now?

Judges who are members of the ABA are technically in an auxiliary for judges in which they presumably participate in the development of legal ideas. But allowing judges to join a trade association so that they can collaborate with the membership in developing the law seems to me to make matters much worse rather than better. In any event, the expedient of a judges' auxiliary would not be tolerated in any other ethical context. If there were a judges' auxiliary to the American Bankers Association or the Brotherhood of Pharmaceutical Manufacturers, I am sure they would love to have us, and would happily work with us on shaping legal improvements. What if there were a judges' auxiliary to the Tobacco Institute or the American Insurance Association that paid my way to their conventions (with my relative), where I could work with them shoulder to shoulder on beneficial improvements in the law? Why assume that the improvements favored by the ABA are less self-serving than the improvements favored by other professional and trade groups?

When the ABA considers improvements in the law, it usually comes down on the side of punitive damages, attorney's fees, the expansion of causes of action, and new areas of regulation that require maintenance by lawyers (such as speech at election time). I do not claim to be any better than the next one, but I would be uncomfortable being a guest of the ABA on well-oiled occasions when such improvements are discussed. All of this is made worse by the fact that the ABA often litigates as *amicus curiae* (and I will pass over without comment the ABA's evaluation of judicial nominees).

Of course, judges should be involved in the development of the law—case by case, chiefly. No doubt, judges also read some books, go to debates and forums, and attend seminars. But the idea that judges will develop the law under the sponsorship and aegis of a powerful interest group should provoke disquiet—and would, but for the fact that (with some notable exceptions) judges do not see this as an issue.

I sometimes think that the problem at bottom is really a lack of respect by lawyers for other people. Judges live chiefly in a circle of lawyers. Our colleagues are lawyers; happily, our friends are lawyers (and I am hoping to keep some after this lecture); the only outside income a federal judge can earn (aside from royalties) is from teaching in law schools (with the idea, I suppose, that they furnish a nonpartisan environment); and the only political and trade organizations we can join are bar associations.

But outside that circle there are people who are just as fully absorbed by other pursuits that deserve consideration and respect. Judges need a heightened respect for how nonlawyers solve problems, reach compromises, broker risks, and govern themselves and their institutions. There are lawyers on the one hand; and just about everybody else is the competition in the framing of values and standards of behavior.

In that competition, judicial bias has eroded the independence and influence of doctors, medical administrators, insurance underwriters, engineers, manufacturers, the military, the police, wardens and corrections officers, the clergy, employers, and teachers and principals.

I think that judges ought to appreciate that they operate under an internalized conflict of interest when they deal with all of these categories of people, and others, and that (as someone observed) divided loyalties are rarely divided down the middle. There is a great danger that, by the subordination of other professions, callings, and centers of power (and of their judgment and discretion), we are losing indispensable influences.

Another consequence of biased vision is the assumption that if something is of great importance, it can be safely left to lawyers. That is fine when it comes to statutory interpretation and such, but lawyers lack humility in approaching great matters. As judges, we tend to assume that adversarial hearings and expert testimony will render the judge omni-competent and fit to decide the great questions, and that a legal mind is the highest and most useful development of mental capacity.

The mind-set is that if something is of great importance—such as speech, thought, and expression; race, identity, and sexuality; life and death—it cannot be safely and properly left chiefly to anyone else. How else does one account for the fixation on issues such as capital punishment and the right to die, given that capital punishment cases are few (at least in these parts), and that death is coming for us as a certainty, regardless of whether we classify it as an entitlement? As we exercise power over all the basic, ultimate, and transcendent things, I think that judges should consider how we inevitably diminish the influence of doctors and juries, clergy and social workers, legislatures, and the ordinary citizen.

The legal mind is indispensable to lawyering, and for other purposes it is perfectly okay in its way. But it has its limitations. For example, every problem-solving profession—except ours—quickly adopts as preferred the solution that is simplest, cheapest, and most efficacious, or (as they say) elegant. Also, our legal mind is invasive: It has institutional advantages for subordinating other modalities of thought, and it presses those advantages. And it is triumphalist about its expansions of influence. The uninitiated, who lack the legal mind, are harnessed to our purposes as jurors or are put to the margins. What nonlegal professionals think can be dismissed as arbitrary and capricious, or (if needed to assist the legal process) can be classified as expert opinion, to be weighed by us and by our standards.

The legal mind can hold its own with the competition in terms of rigor; I have one, and I make no apology for it. But at least I have come to admit that, depending on the question, the legal mind may be insufficient or may be inferior to the moral imagination; the scientific method; the practical arts of healing, politics, and entrepreneurship; the promptings of loyalty, faith, and patriotism; and the experience and expertise found elsewhere and among others.

If you are not with me this far, you will have little interest in this last question: What can be done to correct this bias and to place the legal profession again on a footing of parity and fair competition with other professionals and activities that have a right to influence in our communities and our culture? In a nutshell, judges should lead the bar in exercising the self-restraint and self-discipline that is incumbent on a profession that has a virtual monopoly on legislative power and a monopoly by patent on the power of the judiciary, and that is largely self-regulating.

Other professions, by ethics or honor, exert the imagination and self-possession to avoid exercising all the power they have. Let me give an incendiary example.

When a military force occupies a conquered province, the military has vast power and may be tempted to run things in a way that best serves the dominance and comfort of the military profession. A military solution can be found for every challenge; such solutions fit the salient talents and skill-sets of military commanders. No doubt it is of the greatest convenience to the military and a great comfort to them to impose early curfews; to censor letters; to close the outspoken newspapers and the satirical magazines; to take over the radio, the police, and the prisons; to shoot looters; to draft strikers; to favor military justice; and to commandeer all the better hotels. I think there is a natural temptation for the military officers in charge to do all these things because these are measures that subordinate a lot of conduct that undermines military administration, and because no doubt lifelong professional military officers might believe that these measures are effective and fair and constitute the best design for the organization of the society under their thumbs. Others in the military might applaud the tidy administration that results.

We (in the profession of law) recoil from such measures in part because it is not our profession; it does not fit our salient talents and skill-sets; it puts to the margin what we do and the sphere in which we operate; and so we lack faith in it. It seems to us, viscerally illegitimate.

But an enlightened military recognizes that imposition of all these measures on an ongoing or permanent basis improperly subordinates other spheres of life. The military types (I am not one) seem to control themselves through a concept of honor. Maybe judges should consider their example. I concede that a country could do worse than suffer rule by lawyers: I would prefer a tyranny of law to life under a military regime. But outside our professional sphere, the dominance of the legal profession and the judiciary is resented more than we appreciate.

As a matter of self-awareness and conscience, judges should accept that the legal mind is not the best policy instrument, and that lawyer-driven processes and lawyer-centered solutions can be unwise, insufficient, and unjust, even if our friends and colleagues in the legal profession lead us that way. For the judiciary, this would mean a reduced role, *but not a diminished one* if the judiciary is elevated by considerations of honor, self-restraint, and respect for other influences.

Notes & Observations



**IN THE SUPREME COURT OF FLORIDA
STATE OF FLORIDA**

NEIL J. GILLESPIE,
NEIL J. GILLESPIE FOR PRESIDENT,

Petitioners,

PETITION NO. SC16-2031

v.

in forma pauperis

SECRETARY OF STATE KEN DETZNER,
Florida's Chief Election Officer,

Respondent.

_____ /

**PETITION FOR WRIT OF MANDAMUS
AND CONSTITUTIONAL CHALLENGE**

in forma pauperis

1. Petitioner Neil J. Gillespie, and Petitioner Neil J. Gillespie For President, Petition the Supreme Court of Florida, *in forma pauperis*, for a writ of mandamus directing Secretary of State Ken Detzner, Florida's Chief Election Officer, to disqualify all candidates for president of the United States (executive branch) who are lawyer members of the bar, and officers of the court (judicial branch), under the Florida Constitution, Article II, Section 3, Branches of Government, and the separation of powers of the Constitution of the United States; and Amendment 22 of the U.S. Constitution as to Hillary Rodham Clinton.

RECEIVED, 11/09/2016 10:53:47 AM, Clerk, Supreme Court

EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND CONSTITUTIONAL CHALLENGE

2. The Petitioners challenge the constitutionality of members of the judicial branch of government running as candidates for president of the United States, part of the executive branch of government.

3. The Petitioners challenge the constitutionality of political parties in Florida and the United States.

4. The Petitioners challenge the constitutionality of Fla. Stat. § 103.022, *Write-in candidates for President and Vice President*, with states and/or jurisdictions that do not have equivalent write-in rules. Kristi Reid Bronson, Chief, Division of Elections, denied my Florida write-in candidacy as untimely submitted.

5. **JURISDICTION**

ARTICLE V, JUDICIARY, of the Florida Constitution,

SECTION 2. Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

ARTICLE V, JUDICIARY, of the Florida Constitution,

SECTION 3. Supreme court.

(b) JURISDICTION.—The supreme court:

EMERGENCY PETITION FOR WRIT OF MANDAMUS
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(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

RULE 9.030(a) Jurisdiction of Supreme Court, Fla. R. App. Pro.

(3) Original Jurisdiction. The supreme court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

PARTIES

6. Petitioner NEIL J. GILLESPIE is a write-in candidate for president of the United States in the Commonwealth of Pennsylvania, and certain other states, Federal Election Commission (FEC) Candidate ID: P60022993, and resides at his Florida homestead, 8092 SW 115th Loop, Ocala, Marion County, Florida 34481. (Hereinafter “Petitioner(s)” or “Gillespie”). Exhibit 1.

7. Petitioner NEIL J. GILLESPIE FOR PRESIDENT, is the Principal Campaign Committee, FEC Committee ID: C00627810, NEIL J. Gillespie, Treasurer, for write-in candidate Gillespie. (“Petitioner(s)” or “Gillespie For President”). Exhibit 2.

8. Respondent Secretary of State Ken Detzner is Florida’s Chief Election Officer under Fla. Stat. § 97.012, Secretary of State as chief election officer.

STANDING TO PETITION OR SUE

EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND CONSTITUTIONAL CHALLENGE

9. The Petitioners *Gillespie* and *Gillespie For President* have standing to bring this petition as a candidate for president, and as the principal campaign committee.

PETITION FOR WRIT OF MANDAMUS

10. **PART I - writ of mandamus** directing Secretary of State Ken Detzner, Florida's Chief Election Officer, to disqualify all candidates for president of the United States (executive branch) who are lawyer members of the bar, and officers of the court (judicial branch), under the Florida Constitution, Article II, Section 3, Branches of Government, and the separation of powers of the Constitution of the United States;

The Democrats Official Certification of Nomination appears at Exhibit 3, and shows,

THIS IS TO CERTIFY that at the National Convention of the Democratic Party of the United States of America. held in Philadelphia, Pennsylvania on July 25 through 29, 2016, the following were duly nominated as candidates of said Party for President and Vice President of the United States respectively, and that the following are legally qualified to serve as President and Vice President of the United States respectively under the applicable provisions of the United States Constitution:

For President of the United States

Hillary Rodham Clinton
15 Old House Lane
Chappaqua, NY 10514

For Vice President of the United States

Timothy Michael Kaine
1515 Confederate
Ave Richmond, VA 23227

and is signed under oath/notarized July 29, 2016 by,

Representative Marcia Fudge
Chair, Democratic National Convention

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Mayor Stephanie Rawlings-Blake
Secretary, Democratic National Convention

and has a cover letter dated August 3, 2016 of David Huynh, Director of Delegate
Operations and Ballot Access, Email dhuynh@hillaryclinton.com addressed to,

Maria Matthews, Division Director
Florida Department of State, Division of Elections
Director's Office
Room 316, R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Hillary Rodham Clinton is an attorney in the State of Arkansas, bar number
73104 admitted on 10/18/1973. She is licensed and in good standing with the court
and there are no disciplinary actions against her in Arkansas, according to email of
Deputy Clerk Rose Allen, Tuesday, November 01, 2016 9:12 AM. Exhibit 4.

Rose Allen, Deputy Clerk
Clerk of the Courts Office
Justice Building
625 Marshall Street
Little Rock, AR 72201
Phone: 501-682-4369
Email: Rose.Allen@arcourts.gov

However, the attorney directory for Arkansas shows Hillary Rodham Clinton
“suspended for CLE” on 3/14/2002. (Exhibit 5). In response, Ms. Allen referred
me to Carol R. Hampton, Supreme Court Library. Ms. Hampton had previously

EMERGENCY PETITION FOR WRIT OF MANDAMUS
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responded by email on October 31, 2016 at 11:21 AM (Exhibit 6) and confirmed that Hillary Rodham Clinton was suspended for CLE on 3/14/2002.

Carol R. Hampton
Supreme Court Library
Library Technical Assistant III
625 Marshall Street
Little Rock, AR 72201
Phone: (501) 682-2148
Email: carol.hampton@arcourts.gov

The Virginia State Bar shows for Tim Kaine, the Vice Presidential candidate for Hillary Rodham Clinton, “currently inactive in good standing”,

Timothy Michael Kaine
Bar ID #24165
Currently inactive in good standing
Licensed 10/2/1984
No record of public discipline

according to email of Debra C. Isley, Administrative Assistant, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026 (Exhibit 7).

The Republican Party's Certificate of Nominations for the State of Florida appears at Exhibit 8, and shows in relevant part,

We do hereby certify that at a National Convention of Delegates representing the Republican Party of the United States, duly held and convened in the City of Cleveland, State of Ohio, on July 20, 2016, the following person, meeting the constitutional requirements for the Office of President of United States, and the following person, meeting the constitutional requirements for the Office of Vice President of the United States, were nominated for such offices to be filled at the ensuing general election, November 8, 2016, viz.:

EMERGENCY PETITION FOR WRIT OF MANDAMUS
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President of the United States

Donald J. Trump
721 Fifth Avenue PH
New York, NY 10022

Vice President of the United States

Michael R. Pence
4750 Meridian Street
Indianapolis, IN 46208

and is signed under oath/notarized July 20, 2016 by,

Paul Ryan
700 Saint Lawrence Avenue
Janesville, Wisconsin 53545
Chairman of the 2016 Republican National Convention

Susie Hudson
1658 Route 12
West Berlin, VT 05663
Secretary of the 2016 Republican National Convention

A cover letter with the Republican Party's Certificate of Nominations for the State
of Florida addressed to Ken Detzner, Secretary of State, dated July 22, 2016, from,

Blaise Ingoglia, Chairman, Republican Party of Florida
John Phillippe, Chief Counsel, Republican National Committee

states in relevant part,

Attached please find a copy of the Republican Party's Certificate of
Nomination, which shall serve as official certification to your office of the
2016 Republican National Convention's nomination for President and Vice
President of the United States, respectively.

EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND CONSTITUTIONAL CHALLENGE

The attached Certificate of Nomination is signed by Paul Ryan as Chairman of the 2016 Republican National Convention, and Susie Hudson, as Secretary of the 2016 Republican National Convention.

Please confirm as soon as possible that you have now received all of the necessary documentation to place the party's nominees for President and Vice President on your state's general election ballot for November 8, 2016. This confirmation can be sent by emailing a letter to Christina Schaengold, Associate Counsel, in the Republican National Committee Counsel's Office. Christina can be reached at (202) 863 5107, or by e-mail at cschaengold@gop.com...

The online public **Indiana Roll of Attorneys** (Exhibit 9) shows for Mike Pence on October 30, 2016 at 11:50 AM,

Michael Richard Pence
Attorney Number: 10892-49

Contact Information
200 W. Washington Street
Indianapolis, IN 46204
Tel. 317-695-5453

Status Information
License Status: Inactive In Good Standing
Status Date: 03-05-2012
Admit Date: 05-30-1986

Disciplinary Information
This attorney has no disciplinary history

11. **PART II - Constitutional challenge.** Member(s) of the judicial branch, running as candidate(s) for president of the United States, the executive branch, is unconstitutional under SEPARATION OF POWERS.

Of the two major parties, Democratic and Republican, there are three lawyers in the presidential race: **Hillary Rodham Clinton, Tim Kaine, and Mike Pence.** Donald Trump is not a lawyer.

It is unconstitutional for a lawyer (judicial branch) to be president of the United States (executive branch) because it would violate *separation of powers*.

Separation of powers is inferred in the U.S. Constitution,

Article I - Legislative Branch
Article II - Executive Branch
Article III - Judicial Branch

Separation of powers is clearly expressed in Florida law,
ARTICLE II, GENERAL PROVISIONS, of the Florida Constitution,

SECTION 3. Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Admission to the bar is for life, and beyond.

The practice of law is unlike any other profession. Only the legal profession is self-regulated. Once a person is admitted to the practice of law, by passing the bar exam, passing character and fitness, and admission to the bar by the supreme court of the lawyer's state, the person becomes, *inter alia*, an *officer of the court*.

Classification of lawyers admitted to the state regulatory bar may include,

- Members in Good Standing
- Conditionally Admitted Members

EMERGENCY PETITION FOR WRIT OF MANDAMUS
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- Inactive Members
- Delinquent members
- Suspended members
- Disbarred members, with right to reapply
- Disbarred members, disbarred for life
- Retired members
- Deceased members

The practice of law is unlike any other *legitimate* profession, according to David W. Marston, a former U.S. Attorney, Harvard Law School grad, and author. Marston, a now Philadelphia lawyer, compared the legal business to the Mafia in *Malice Aforethought, How Lawyers Use Our Secret Rules To Get Rich, Get Sex, Get Even...And Get Away With It*, an exposé of America's legal profession.

"They all have undergone the same tough initiation, and once admitted to membership, all have sworn the same oath. They live by their own rules and have fiercely resisted efforts by outsiders to penetrate their clan. They have a code of silence that makes the Mafia's dreaded omerta seem gossipy. And while the organization rigidly limits the operations of its members to their assigned turf, their criminal activities within these areas are surprisingly varied." (Page 22, paragraphs 4 & 5)

"The organization enforces its own discipline, and outsiders can piece together only the most fragmentary picture of the process. But while hard statistics about crime and misconduct by its members remain elusive, there has unquestionably been a sharp escalation in recent years" (Page 23, paragraph 2)

"In every state, the organization has tentacles that reach into the legislature, as well as intimate knowledge of the local criminal justice system. Laws that might threaten operations are vigorously opposed, and when members are convicted of crimes, punishments are often lenient." (Page 23, paragraph 4)

"It's not the Mafia. Not the Medellin drug cartel...The members are all lawyers. And the organization is the American legal profession." (Pages 23-24) *Malice Aforethought*

- C-Span Interview on YouTube with Dave Marston, author of *Malice Aforethought, How Lawyers Use Our Secret Rules to Get Rich, Get Even and Get Away with It* (1991), video link: <https://youtu.be/AV7xfWw0zr0>

Broad Issue Paper - Separation of Powers - The Florida Bar (Exhibit 10)

<https://www.floridabar.org/divcom/pi/bips2001.nsf/1119bd38ae090a748525676f0053b606/c2d4411cc05f7c458525669e004dea34!OpenDocument>

"The Florida Bar has long maintained that this state's separation of powers doctrine precludes legislative entry into the regulation of lawyers."

If so, *separation of powers* should protect the PUBLIC from lawyers

entering the presidency (executive branch) or congress (legislative branch).

Below is Section III, Background, Separation of Powers, Broad Issue Paper,

III. Background

A. United States -- Separation of Powers

The U. S. Constitution defines the power of the three main branches of the federal government as legislative, executive and judicial.

The U.S. Constitution provides the framework for the exercise of power by the federal government. Although the document contains no express separation of powers provision, the constitution defines and allocates the power of the federal government among the legislative, executive, and judicial branches. The framers of the constitution divided the exercise of governmental power into three branches to prevent that power from concentrating in one body. Checks to balance the power of the other branches are expressly provided in the constitution creating an overlap of power among the branches. In this way, the power of each branch is limited by giving to an equal branch one facet of another's unique power. Using these checks, the three branches compete among themselves to keep a relative balance of power. Therefore, each branch's exercise of its type of

power is not absolute. Under a literal interpretation of the structure created in the constitution, violation of the separation of powers doctrine occurs whenever the power of one branch is exercised by another branch without express authority in the Constitution.

The separation of the powers of government is a fundamental principle of every free and good government and is historically a part of both the state and federal constitutions. It is fundamental to the very existence and perpetuity of the American form of government and is one of the most important principles guaranteeing the liberty of the people and preventing the exercise of autocratic power.

1. Legislative

U.S. Constitution Article I, Section 1: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Section 8 of that article enumerates those powers which, among others, include: (1) to lay and collect taxes, excises, imports and duties, to pay the debts and provide for the common defense and general welfare; (2) to regulate commerce; (3) to establish uniform laws of bankruptcy; (4) to coin money and punish counterfeiting; (5) to establish post offices and post roads; (6) to constitute tribunals inferior to the supreme court; (7) to declare war; (8) to raise and support armies and to provide and maintain a Navy; (9) to make rules for the government; and (10) to make all laws which shall be necessary and proper for carrying into execution the legislative powers and all other powers vested by the constitution by the government of the United States or in any department or officer thereof.

2. Executive

U.S. Constitution Article II, Section 1: "The executive power shall be vested in a President of the United States of America." Article II, Sections 2 and 3 define those powers: (1) The president shall be commander-in-chief of the Army and Navy of the U.S., and of the militia of the states, when called into the actual service of the U.S.; (2) the president shall have power, by and with the advice and consent of the Senate, to make treaties; (3) the president shall have power to fill up all vacancies that may happen during the recess of the

Senate, by granting commissions which shall expire at the end of their next session; and (4) the president shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as the president shall judge necessary and expedient; the president may, on extraordinary occasions, convene both houses or either of them.

3. Judicial

The U.S. Constitution Article III, Section 1 reads: "The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." Judicial power shall extend to: all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; all cases affecting ambassadors, other public ministers and consuls; all cases of admiralty and maritime jurisdiction; controversies to which the United States shall be a party; controversies between two or more states; cases between a state and citizens of another state; cases between citizens of different states, cases between citizens of the same state claiming lands under the grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. Judicial power also extends to all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. The trial of all crimes, except in cases of impeachment, shall be by jury. Such trial shall be held in the state where the said crimes shall have been committed.

B. Florida -- Separation of Powers

According to the State of Florida Constitution Article II, Section 3, the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided.

1. Legislative

Article III Section 1 of the Florida Constitution states that the "legislative power of the state shall be vested in a legislature of the State of Florida,

consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district." The legislature has been described generally as the lawmaking branch of government. It also has the broad purpose of determining policies and programs and reviewing program performance.

Basically, the legislature is empowered to enact statutes that: levy and collect taxes; oversee professional licensing boards; ensure the public's health, safety and welfare; define crime and provide punishment for violations; build highways; regulate marriage and divorce; authorize establishment of cities. In addition, the legislature may also overturn the governor's veto, determine fiscal policies in the preparation of the General Appropriations Act and conduct formal investigations of alleged misconduct by government agencies and even private businesses.

2. Executive

Article IV, Section 1 states that the supreme executive power shall be vested in a governor who shall: be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices; initiate judicial proceedings in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act; request in writing the opinion of the justices of the Supreme Court of Florida as to the interpretation of any portion of the state constitution upon any question affecting the governor's executive powers and duties; have power to call out the militia to preserve the public peace, execute the laws of the state, suppress insurrection, or repel invasion; and by message, at least once in each regular session, inform the legislature concerning the condition of the state, propose such reorganization of the executive department as will promote efficiency and economy, and recommend measures in the public interest.

Additionally, the governor prepares a recommended balanced budget to be submitted prior to the legislative session. The governor retains line item veto of the General Appropriations Act and has other veto power in order to nullify any legislative act found unacceptable.

3. Judicial

The third branch of state government, the judiciary, exists because of Article V, Section 1 of the Florida Constitution. The judicial department of the government is that branch: intended to interpret, construe, and apply the law; and charged with the declaration of what the law is, and its construction so far as it is written law. Section 1 states that the "judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions."

Ex parte Garland, 71 U.S. 333 (1866)

https://en.wikipedia.org/wiki/Ex_parte_Garland

The US Supreme Court held in **Ex parte Garland** that counselors [lawyers] are officers of the court and not officers of the United States, and that their removal was an exercise of judicial power and not legislative power. Exhibit 11.

Case (Wikipedia)

In January 1865 the Congress of the United States passed a law that effectively disbarred former members of the Confederate government by requiring a loyalty oath be recited by any Federal court officer affirming that the officer had never served in the Confederate government.

Augustus Hill Garland, an attorney and former Confederate Senator from Arkansas, had previously received a pardon from President Andrew

Johnson. Garland came before the court and pleaded that the act of Congress was a bill of attainder and an ex post facto law which unfairly punished him for the crime for which he had been pardoned and was therefore unconstitutional.

Decision (Wikipedia)

In a 5-4 vote the Supreme Court ruled that the law was indeed a bill of attainder and an ex post facto law. The court ruled that Garland was beyond the reach of punishment of any kind due to his prior presidential pardon. The court also stated that counselors are officers of the court and not officers of the United States, and that their removal was an exercise of judicial power and not legislative power. The law was struck down, opening the way for former Confederate government officials to return to positions within the federal judiciary.

Ex parte Garland, 71 U.S. 333 (1866) Legal Information Institute (Exhibit 12)
<https://www.law.cornell.edu/supremecourt/text/71/333>

By the Judiciary Act of 1789, the Supreme Court has power to make rules and decide upon the qualifications of attorneys.

5. Attorneys and counselors are not officers of the United States; they are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character.

6. The order of admission is the judgment of the court that the parties possess the requisite qualifications and are entitled to appear as attorneys and counselors and conduct causes therein. From its entry, the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. Their admission and their exclusion are the exercise of judicial power. [p334]

7. The right of an attorney and counselor, acquired by his admission, to appear for suitors and to argue causes, is not a mere indulgence -- a matter of grace and favor -- revocable at the pleasure of the court, or at the command

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of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.

8. The admitted power of Congress to prescribe qualifications for the office of attorney and counselor in the Federal courts cannot be exercised as a means for the infliction of punishment for the past conduct of such officers, against the inhibition of the Constitution.

AMENDMENT TWENTY-TWO -- U.S. Constitution, states in relevant part,

"No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once."

<http://constitutioncenter.org/interactive-constitution/amendments/amendment-xxii>

State ex rel. Perez et al. v. Wall, Judge held in a judicial disqualification

case, marriage makes husband and wife one person. (quoting Judge Cooper for the Court in *Hume v. Bank*, 10 Lea, 1) 'Affinity, as distinguished from consanguinity, signifies the relation which each party to a marriage, the husband and the wife, bears to the kindred or blood relations of the other. The marriage having made them one person, the blood relations of each are held as related by affinity in the same degree to the one spouse as by consanguinity to the other...' Exhibit 13.

State ex rel. Perez et al. v. Wall, Judge,
49 L.R.A. 548, 41 Fla. 463, 26 So. 1020
<https://www.scribd.com/document/319201519/>

Hillary Rodham Clinton was married to Bill Clinton during both terms of his presidency. As lawyers, Hillary Rodham Clinton and Bill Clinton were officers of the court, and members of the judicial branch of government. **State ex rel. Perez et**

al. v. Wall, Judge would consider them as one person for judicial disqualification.

While not on point for presidential disqualification, I am not aware of any other case(s) that address presidential disqualification due to marriage.

"Buy One, Get One Free" - Bill Clinton and Hillary Clinton

Early in his first presidential campaign, Bill Clinton declared that he and his wife were basically a bargain deal -- "buy one, get one free." (Exhibit 14)

<http://www.pbs.org/wgbh/pages/frontline/shows/clinton/chapters/1.html#5>

America's First Female President?

Laura Secorun Palet of Ozy.com challenges the claim that Hillary Rodham Clinton would be America's first female president if elected. (Exhibit 15)

"Sorry, Hillary Clinton, but America has already had its first (acting) female president. Three decades before Clinton was born, Edith Wilson, Woodrow Wilson's second wife, ran the Oval Office for 17 months. Nobody voted for her, and she never actually referred to herself as president, but she did take charge of many executive duties after her husband was left incapacitated by a massive stroke."

<http://www.ozy.com/flashback/americas-first-female-president-been-there-done-that/61409>

The legal mind is indispensable to lawyering, but has its limitations

One of the most compelling arguments against lawyers serving as president is found in an Article by The Honorable Dennis Jacobs, *The Secret Life of Judges*, 75 Fordham L. Rev. 2855 (2007). <http://ir.lawnet.fordham.edu/flr/vol75/iss6/4/>

I sometimes think that the problem at bottom is really a lack of respect by lawyers for other people. Judges live chiefly in a circle of lawyers. But

outside that circle there are people who are just as fully absorbed by other pursuits that deserve consideration and respect. Judges need a heightened respect for how nonlawyers solve problems, reach compromises, broker risks, and govern themselves and their institutions. There are lawyers on the one hand; and just about everybody else is the competition in the framing of values and standards of behavior. (par. 4-5, page 2861)

The legal mind is indispensable to lawyering, and for other purposes it is perfectly okay in its way. But it has its limitations. For example, every problem-solving profession except ours--quickly adopts as preferred the solution that is simplest, cheapest, and most efficacious, or (as they say) elegant... (par. 5, p. 2862)

As a matter of self-awareness and conscience, judges should accept that the legal mind is not the best policy instrument, and that lawyer-driven processes and lawyer-centered solutions can be unwise, insufficient, and unjust, even if our friends and colleagues in the legal profession lead us that way. For the judiciary, this would mean a reduced role, but not a diminished one if the judiciary is elevated by considerations of honor, self-restraint, and respect for other influences. (last par., p. 2863)

The Secret Life of Judges appears at Exhibit 16.

Conclusion

Amendment XXII, and the holding of **State ex rel. Perez et al. v. Wall, Judge**, where Hillary Rodham Clinton and Bill Clinton are considered as one person, block Hillary Rodham Clinton from the presidency in 2016.

The US Supreme Court holding in Ex parte Garland that lawyers are officers of the court, and members of the judicial branch of government, blocks Hillary Rodham Clinton, Tim Kaine, and Mike Pence from being president (executive branch) because it would be an unconstitutional violation of separation of powers.

12. **PART III - Constitutional challenge.** Political parties in Florida and the United States are unconstitutional.

Political parties in the United States, Wikipedia

https://en.wikipedia.org/wiki/Political_parties_in_the_United_States

[T]he United States Constitution has always been silent on the issue of political parties; at the time it was signed in 1787, there were no parties in the nation. (§1)

The United States Constitution has never formally addressed the issue of political parties. The Founding Fathers did not originally intend for American politics to be partisan. In Federalist Papers No. 9 and No. 10, Alexander Hamilton and James Madison, respectively, wrote specifically about the dangers of domestic political factions. In addition, the first President of the United States, George Washington, was not a member of any political party at the time of his election or throughout his tenure as president. Furthermore, he hoped that political parties would not be formed, fearing conflict and stagnation, as outlined in his Farewell Address.[6] Nevertheless, the beginnings of the American two-party system emerged from his immediate circle of advisers. Hamilton and Madison, who wrote the aforementioned Federalist Papers against political factions, ended up being the core leaders in this emerging party system. (§1, section, History and early political parties)

A class-action lawsuit by JamPAC against the DNC suggests the nomination of Hillary Rodham Clinton was a rigged and unlawful process, see the First Amended Complaint, 16-cv-61511-WJZ, that appears as a separate appendix.

Plaintiff: CAROL WILDING et al.

Defendant: DNC SERVICES CORPORATION, d/b/a DEMOCRATIC
NATIONAL COMMITTEE and DEBORAH "DEBBIE"
WASSERMANSCHULTZ

Case Number: 16-cv-61511-WJZ

Filed: June 28, 2016

Court: Southern District of Florida

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AND CONSTITUTIONAL CHALLENGE

County: Broward County, Florida
Judge: William J. Zloch
Nature of Suit: Class Action
Cause of Action: Fraud and Consumer
Jury Demanded: Yes

13. **PART IV - Constitutional challenge.**

1. Petitioners challenge the constitutionality of Fla. Stat. § 103.022, *Write-in candidates for President and Vice President*
2. Petitioners challenge the constitutionality of combined presidential and vice presidential candidates.

On August 31, 2016, Gillespie submitted his Oath under Fla. Stat. § 103.022 to Secretary of State Detzner by email and UPS #1Z64589FP296243338.

On September 1, 2016, Kristi Reid Bronson, Chief, Division of Elections, denied Gillespie's Florida write-in candidacy as untimely submitted by email on September 1, 2016. Bronson's email and Gillespie's Oath appear at Exhibit 17.

Email Thursday, September 01, 2016 8:11 AM
Bronson, Kristi R. <Kristi.Bronson@DOS.MyFlorida.com>

Dear Mr. Gillespie –

The deadline for submitting the oath of candidate for a write-in candidate for the office of President was July 12, 2016. Accordingly, your submission is untimely and will not be processed.

I trust this is responsive to your inquiry.

Regards,

***Kristi Reid Bronson, Chief
Division of Elections,
Bureau of Election Records
(850) 245-6240***

Richard Winger of Ballot Access News wrote in a post on July 18, 2016, *Seven Presidential Candidates File to have Write-ins Counted in Florida*,

Florida is the only state in which the filing deadline to file as a write-in for president in the general election is earlier than the deadline for a new party to get on the ballot for President. The Florida write-in filing deadline was July 12. This year, six independent presidential candidates and one minor party candidate filed to have write-ins counted.

The minor party nominee is Zoltan Istvan of the Transhumanist Party. Istvan lives in Mill Valley, California.

The six independents are: Laurence J. Kotlikoff of Brookline, Massachusetts, a prominent economist; Richard Duncan of Aurora, Ohio, who usually gets on the ballot in Ohio but no other state; Cherunda Fox of Detroit, Michigan; Samuel Tabor of Mobeetie, Texas; Tony Valdivia of San Antonio, Texas; and Andrew Basiago of Charlotte, North Carolina. Basiago claims to have traveled back in time; see this story.

<http://ballot-access.org/2016/07/18/seven-presidential-candidates-file-to-have-write-ins-counted-in-florida/>

An article by Ballotpedia for the 2016 presidential election, *Ballot access for presidential candidates*, states,

In order to get on the ballot, a candidate for president of the United States must meet a variety of complex, state-specific filing requirements and deadlines. These regulations, known as ballot access laws, determine whether a candidate or party will appear on an election ballot. These laws are set at the state level. A presidential candidate must prepare to meet ballot access requirements well in advance of primaries, caucuses, and the general election.

There are three basic methods by which an individual may become a candidate for president of the United States.

EMERGENCY PETITION FOR WRIT OF MANDAMUS
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1. An individual can seek the nomination of a political party. Presidential nominees are selected by delegates at national nominating conventions. Individual states conduct caucuses or primary elections to determine which delegates will be sent to the national convention.[1]

2. An individual can run as an independent. Independent presidential candidates typically must petition each state to have their names printed on the general election ballot. For the 2016 presidential contest, it was estimated that an independent candidate would need to collect in excess of 880,000 signatures in order to appear on the general election ballot in every state.[1]

3. An individual can run as a write-in candidate. In 34 states, a write-in candidate must file some paperwork in advance of the election. In nine states, write-in voting for presidential candidates is not permitted. The remaining states do not require write-in candidates to file paperwork in advance of the election.[1]

https://ballotpedia.org/Ballot_access_for_presidential_candidates

On information and belief, states that do not require write-in candidates to file paperwork in advance of the election are,

Commonwealth of Pennsylvania
State of Oregon
State of Iowa
State of New Jersey
State of Rhode Island
State of New Hampshire
State of Vermont

On November 7, 2016, The American Bar Association published an article on its online Journal by Debra Cassens Weiss, *If you cast a write-in vote for president, will it count? State laws differ*, that states,

Thinking of casting a write-in vote for president? It may not be counted.

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You can write in anyone on the ballot in 10 states and Washington, D.C., the Washington Post reports. But you will face more hurdles if you want your write-in to count in other states.

Eight states don't even have a line for write-ins, according to the article. Thirty-two states won't count write-ins unless a candidate is registered with the state before the election.

The jurisdictions allowing write-ins for anyone are: Alabama, the District of Columbia, Iowa, Mississippi, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont and Wyoming.

The states that don't allow write-ins are: Arkansas, Hawaii, Louisiana, Nevada, New Mexico, Oklahoma, South Carolina and South Dakota.

There are additional restrictions in some states, including some of those that allow write-ins for anyone. In Mississippi, for example, write-ins won't be considered unless a candidate on the ballot dies, resigns, withdraws or is removed from the ballot. Some states won't allow a write-in to win unless additional paperwork is filed after the election.

And in some states, preciseness counts. Nicknames and initials may not be allowed.

http://www.abajournal.com/news/article/if_you_cast_a_write_in_vote_for_president_will_it_count_state_laws_differ/

The ABA Journal article, and linked Washington Post story, appear at Exhibit 18.

NATURE OF THIS PETITION

14. The general election is today November 8, 2016. This petition was intended to be a complaint and injunction filed in federal court a week ago, but that plan was obstructed by the district court's refusal to allow open ECF on the PACER system.

The Petitioner's communication with the United States District Court,
Middle District of Pennsylvania, appears as a separate appendix.

FEDERAL ELECTION COMMISSION (FEC)

15. The FEC website describes its duties:

The duties of the FEC, which is an independent regulatory agency, are to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections.

16. Notice to the Florida Attorney General a constitutional challenge
oag.civil.eserve@myfloridalegal.com

1. Petitioners challenge the constitutionality of members of the judicial branch of government running as candidates for president of the United States, part of the executive branch of government.
2. Petitioners challenge the constitutionality of political parties
3. Petitioners challenge the constitutionality of Fla. Stat. § 103.022, *Write-in candidates for President and Vice President*
4. Petitioners challenge the constitutionality of combined presidential and vice presidential candidates.

U.S.C. Title 52 - Voting and Elections

CFR Title 11 - Federal Elections

Title IX, Electors and Elections, Chapters 97-107

Rule 1.071 Constitutional Challenge, Fla. R. Civ. Pro.

86.091 Parties. declaratory relief, Fla. R. Civ. Pro.

Rule 5.1(a)(2) Constitutional Challenge, Federal Rules of Civil Procedure

28 U.S.C. § 2403 Intervention by United States or a State; constitutional question

17. Petitioner Neil J. Gillespie is a qualified person with a disability, henceforth in the first person. I request disability accommodation so that my petition is

EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND CONSTITUTIONAL CHALLENGE

considered on the merits, and not dismissed on account of disability, or disability discrimination. I request reasonable accommodation under the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. 12181 et. seq, including the ADA Amendments Act of 2008, as amended; I request reasonable accommodation under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et. seq, including Section 504 of the Rehabilitation Act, as amended, and Section 508 of the Rehabilitation Act, as amended. This disability accommodation request also seeks a prohibition against disability discrimination.

CONCLUSION

The petition for writ of mandamus should be granted, together with such other and further relief as the Court deems just and equitable.

I hereby certify that this petition complies with the font requirements of Rule 9.100(l).

RESPECTFULLY SUBMITTED November 8, 2016.



Neil J. Gillespie, nonlawyer, pro se
8092 SW 115th Loop
Ocala, Florida 34481
Phone: 352-854-7807
Email: neilgillespie@mfi.net

Service List November 8, 2016

Hon. Ken Detzner, Secretary of State
Florida Division of Elections
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
Tel. 850-245-6200
Email: Ken.Detzner@dos.myflorida.com

Hon. Ann M. Ravel, Commissioner
Email: CommissionerRavel@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Hon. Caroline C. Hunter, Commissioner
Email: CommissionerHunter@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530
Tel. 202-694-1045

Hon. Lee E. Goodman, Commissioner
Email: none available
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Florida Supreme Court
Email: supremecourt@flcourts.org

David Huynh, Director of Delegate
Operations and Ballot Access
Email dhuyh@hillaryclinton.com

Notice to the Florida Attorney General a constitutional challenge
oag.civil.eserve@myfloridalegal.com

Hon. Matthew S. Petersen, Chairman
Email: CommissionerPetersen@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530
<http://www.fec.gov/members/members.shtml>

Hon. Steven T. Walther, Commissioner
Email: swalther@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

Hon. Ellen L. Weintraub, Commissioner
Email: CommissionerWeintraub@fec.gov
Federal Election Commission (FEC)
999 E Street, NW
Washington, DC 20463
Tel. 800-424-9530

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463
Toll-free: 800-424-9530
Media inquiries: press@fec.gov
<http://www.fec.gov/pages/contact.shtml>

Florida Public Information Office
Email: publicinformation@flcourts.org

Christina Schaengold, Associate Counsel,
Republican National Committee Counsel's Office
Tel. (202) 863 5107
E-mail: cschaengold@gop.com

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

February 8, 2021

Neil Gillespie
8092 SW 115th Loop
Ocala, FL 34481

RE: In Re Neil Gillespie

Dear Mr. Gillespie:

The above-entitled petition for an extraordinary writ seeking unspecified relief was received on January 19, 2021. The papers are returned for the following reason(s):

The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.

The petition does not state the reasons for not making application to the district court of the district in which you are held. Rule 20.4(a) pertaining to petitions for writs of habeas corpus.

You have not appended a copy of the judgment or order in respect of which the writ is sought. Rule 20.3 pertaining to petitions for writs of prohibition and mandamus.

You must specify the type of relief being sought. Rule 20.

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

A copy of the corrected petition must be served on opposing counsel.

Also enclosed is your check in the amount of \$300.00.

Sincerely,

Scott S. Harris, Clerk

By:

Clayton R. Higgins, Jr.

(202) 479-3019

Enclosures



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OCALA FL 34481

EXHIBIT

10

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