UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE (GABRIEL) HILLEL KAIMOWITZ

Plaintiff,

Jury Trial is demanded for those issues amenable to that process.

v. **Case No. 1:16-cv-00257-MW-GRJ**

SUPERVISOR OF ELECTIONS, etc.; JOHN HARKNESS, individually as well as in his capacity as Florida Bar executive director, and his agents, employees, assignees, including those who are judges; EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC. **(EJCBA)** and FLORIDA BLUE KEY, INC. **(FBK)**,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTIONS

Preliminary Statement

Plaintiff in these papers challenges legal fictions, by Defendants other than the Supervisor of Elections. Defendants other than the Supervisor of Elections also have insisted that Article V, Florida Constitution, as amended in 1972 and thereafter, and enabling statutes, have created a neutral and fair judicial system-- even if their applications invidiously discriminate against African-Americans and their civil rights advocates in violation of the self-enforcing 15th Amendment to the United States Constitution. That self-enforcing provision guarantees blacks the right to participate in elections on equal footing with whites. For that reason, declaratory relief is sought to set aside any and all of that Article V and applicable statutes. But this *Memorandum* primarily is being filed to get temporary, preliminary, and permanent injunctive relief to allow Plaintiff and other registered voters in Alachua County to participate meaningfully as voters and perhaps write-in candidates in current judicial elections in 2016. Currently none of nine local judicial candidates is named on an Aug. 30, 2016, ballot.

Plaintiff's Applicable Experience

As for the challenge to the entire judicial system as applied in Florida since 1972, Plaintiff had similar success in persuading an unbiased federal court that most of Michigan's mental health code was unconstitutional, and massive overhaul. *Bell et al v. Wayne Co. Gen. Hsptl., at Eloise*, 384 F. Supp. 1085 (E.D. /W.D. MI 1974, three-judge federal court.)

> Although much had changed in the mental health world since Annie's commitment in 1940, not much had changed in probate court procedure. As in Annie's case, two Eloise doctors had certified that (Annette) Bell as mentally ill and in need of treatment. As in Annie's case, they declared that it would be "improper and unsafe" for Bell to attend her own hearing. As in Annie's case, the probate judge had complied with Eloise's request to keep Bell at the hospital without a full hearing or the taking of any other testimony. Unlike Annie, however, Bell had a forceful advocate who saw himself as part of a movement. (Gabe) Kaimowitz interceded on Bell's behalf....Kaimowitz filed the law suit which like many in its day, used a specific case as a launching point for a broad-based attack on the entire system. It not only alleged Bell was being held against her will and presented no danger to anyone but that the entire commitment process was unconstitutional—that Michigan law deprived patients of their fundamental rights....If the court accepted the premise of the sweeping lawsuit it would essentially have to shut down the involuntary commitment process and order the Michigan mental health system to start over....(A) panel of three federal judges...in May 1974 invalidat(ed) major sections of the involuntary commitment process....The panel agreed with every major change in the lawsuit but chose not to throw out the entire law because, it said, "both the Michigan legislature and the Michigan Supreme Court are pursuing efforts to enact new laws and rules." Instead, the panel would be watching to make sure the reforms took the court's ruling into account, and would retain jurisdiction in case the reforms fell short."

S. Luxenberg, *Annie's Ghosts*, (Hyperion, New York 2009), pp.313-315.

As for a similar broad scaled attack on an election process, Plaintiff personally persuaded the late Justice Thurgood Marshall, to notify his colleagues to affirm a lower court decision, to postpone a New York City mayoral primary, scheduled to be held less than a week later. See *Gerena Valentine, et al v. Koch*, 523 F. Supp. 167 (E.D. /W.D.N.Y. 1981, three judge court), *aff'd Koch v. Herron*, 453 U.S. 893 (Mem.)(1981). Plaintiff successfully argued that tabloid headlines headlining the postponement would prompt readers to stay away if the postponement were suddenly reversed.

> In the nighttime shadows of the United States Supreme Court building on Wednesday, three lawyers of disparate backgrounds who had come together in a common cause declared in virtual unison: "This is a civil-right s victory."
>
> Minutes before, they had been handed the eight-line decision that stopped yesterday's scheduled primary elections. An hour before, they had been face to face with Justice Thurgood Marshall, informally seated around the Justice's table in his chambers. They argued that New York City had violated the Voting Rights Act and should not be allowed to proceed with its balloting....Gabriel Kaimowitz, 46, the lawyer for the Puerto Rican Legal Defense and Education Fund, represented Gilberto Gerena-Valentin, a Bronx Democratic Councilman. Mr. Gerena-Valentin had voted for the redistricting plan but then, according to Mr. Kaimowitz, initiated the suit by alleging in an affidavit that he had been "pressured into voting for the lines...."
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> Mr. Kaimowitz had filed his brief by the time Mr. (Kim) Sperduto and Mr. (Paul) Wooten arrived (NOTE: the other two lawyers for the other plaintiffs). Mr. Sperduto continued to type his briefs in the press room of the courthouse while the lawyers waited to learn if Justice Marshall would hear arguments....When the decision came, the three lawyers and their associates embraced each other, and Mr. Sperduto remarked that the combination had resulted in "good synergy." J. Perles, "Disparate Interests Joined in Fighting New Districts," *New York Times*, Sept. 11, 1981, retrieved on Aug. 15, 2016, from http://www.nytimes.com/1981/09/11/nyregion/disparate-interests-joined-in-fighting-new-districts.html

Plaintiff's other voting rights experiences as lead counsel includes: *Human Right Party of Ann Arbor, MI v. Ann Arbor School District*, 370 F. Supp. 921 (E.D. MI three judge court 1972), *aff'd* 414 U.S. 1058 (1973). *Hispanic Coalition, Etc. v. Leg. Reappor. Com'n*, 536 F. Supp. 578 (E.D. Pa. 1982 three-judge court); *Williams v. Orange Co.* Fl, 783 F. Supp. 1348 (M.D. FL 1989, Judge James Watson, visiting African-American judge), *aff'd* 979 F.2d 1504 (11th Cir. 1992)(Judge Peter Fay, **FBK**), *Macon v. Secretary of State*, 98 cv 00143 (M.D. FL 1998—transferred by Judge Steven Merryday (**FBK**) to Orlando, where a decision was reached for all Defendants after "hearing" by Judge G. Kendall Sharp. He previously had disqualified himself on motion of Plaintiff, and even stepped aside in the *Williams* action, *supra*.

In 1981, after that forced postponement of a New York City primary, Plaintiff informed a gathering of voting rights attorneys, about the strategy that he seeks to employ here, to avoid Southern judicial devices to undercut application of the 15th Amendment. See https://books.google.com/books/about/The_Right_to_Vote.html?id=BSV-QgAACAAJ.

ARGUMENT

I. VOTERS AND POTENTIAL JUDICIAL CANDIDATES MEET THE CRITERIA FOR PRELIMINARY RELIEF TO STOP ISSUANCE OF ELECTION BALLOTS WHICH DO NOT LIST A SINGLE LOCAL JUDICIAL CANDIDATE THOUGH NINE JUDICIAL SEATS ARE TO BE FILLED BY LOCAL ELECTIONS IN 2016.

"Judges greatly impact on every citizen's life, "K. Williams, "A Most important position—Voters should cast ballots for judges as they greatly impact every citizen's life," ***Reader's page,*** *The Gainesville Sun*, Aug. 23 2004. Four judgeships were on the ballot in that year. In one of the four, Judge Walter M. Green became the only African-American ever to be elected to a local court in the 8th Judicial Circuit in 1971 years. This year, like eight other incumbents, he is unopposed. None of them is on the ballot.

Write-in opposition to one or more of them still should be possible, if the Defendant Supervisor re-opens a "qualifying period" for potential write-in candidates for a reasonable time before the August 30, 2016 primary or if necessary the Nov. 8, 2016 general election. The first such period was held without adequate due process notice to the public.

The criteria for temporary or preliminary injunctive relief in a voting rights election case similar to this action was spelled out *City of Greensboro v. Guilford County Board of Elections*, 1:15-cv-559, (M.D. N.C. July 23, 2015, retrieved on Aug. 3, 2016 from http://law.justia.com/cases/federal/district-courts/north-carolina/ncmdce/1:2015cv00559/69447/35/

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest,"

> See *Winter v. Natural Res. Def. Council Inc.* 555 U.S. 7, 20 (2008), see also *Martinez v. Register Fly, Inc.* No. 1:07CV0018, 2007 WL 1028516 at *1 (M.D. N.C. Mar. 21, 2007(opinion and recommendation of Sharp, M.J.)(applying the preliminary injunction standard to a motion for a temporary restraining order)(continued on the next page.)
>
> "A preliminary injunction is an extraordinary remedy afforded prior to trial" that temporary provides "the relief that can be granted permanently after trial." *Real Truth About Obama, Inc. v. Fed. Election Comm'n,* 575 F.3d 342, 345 (4th Cir. 2009), vacated on other grounds 559 U.S. 1089 (2010). The plaintiff bears a "heavy burden in showing [a] likelihood of success" where the area of the law at issue is "difficult and complicated and "still developing." *Id.* at 349.

City of Greensboro., supra, at *slip op.* pp... 8-9.

Plaintiff has been familiar with those criteria ever since he participated in his first case as an attorney in federal court to get a TRO, on behalf of chronically ill patients who were coerced into signing over federally exempt checks to pay off the debts they owed to the city hospital system which was providing them with care. See *Catalano v. Dept. of Hsptls. of the City of New York*, 299 F. Supp. 166 (S.D. N.Y. three-judge court.) The *City of Greensboro* decision confirmed that the criteria have remained unchanged and apply in cases concerning election opportunities for voters and candidates.

Likelihood of Success

To establish likelihood of success, Plaintiff relies on both the majority and dissenting opinions in *Nipper v. Smith*, 39 F.3d 1494, 1541-47 (11th Cir. 1994, *en banc*). Both Judge G. B. Tjoflat for six jurists, and dissenting Judges Joseph Hatchett and Phyllis Kravitch agreed that plaintiff voters had shown that Florida for years had discriminated invidiously and unlawfully against blacks in Duval County (Jacksonville) and the 4th Judicial Circuit.

There is greater proof of such discrimination in the local elections in the 8th Judicial Circuit and Alachua County since they first were held before the Civil War. Nothing further is needed on this issue, however, now, with regard to the demands for temporary, preliminary and permanent injunctive relief to assure that all judges' names appear on an Alachua County election ballot in 2016 and an opportunity be given by press releases published in the *Gainesville Sun* and the *Gainesville Guardian* for judicial candidates to seek election on write-in ballots.

But the issue is being raised to put the odd circumstances of phantom judicial elections in perspective. The provision to avoid judicial elections when there was no opposition opened the door to backroom deals to assure that insider traders— white judges and lawyers—would control candidate selections through "gossip"—not elections. Who are these dealers?

For declaratory relief, Plaintiff will show that it has been more than 20 years since Florida was informed of its discriminatory practices. The State and Bar were allowed by Florida Bar member Judge G. B. Tjoflat to continue to keep the judicial system in place, because the complainants did not alleged that the decision-making processes themselves were unfair.

Plaintiff intends to show that Judge Tjoflat long has replaced facts with legal fictions in his view of the practice of law before blacks were allowed to participate in the legal system and after. Compare M. D. Killian "Senior lawyers have plenty to teach the younger generation," *Florida Bar News*, Aug. 15, 2007 (the views of U.S. Judge G. B. Tjoflat during his 50th year as a Florida Bar member), with. M. D. Killian, "50-year members remembered as 'The Rights Generation'" *The Florida Bar News,* July 15, 2008 (the descriptions of the practice of law in Florida in the 1950's and early 1960s, by the late former Florida Bar President Russell Troutman, during his 50th year as a Florida Bar member.)

It should also be noted that Judge Tjoflat as a Florida Bar member practicing under the Florida Constitution of 1885 for more than 10 years and Mr. Troutman were among the hundreds of veterans of the Florida Bar who swore to uphold racial segregation at the University of Florida and other schools, until 1968, when the bulk of the Florida Constitution was amended, including the elimination of the provision which required school segregation in this State through that year.

Further, "Jack "John Harkness makes it virtually impossible through his publications or in response to public record requests to know whether blacks are getting justice in the courts.

The Bar with 100,000 plus members keeps no data about race for "legal reasons." As for finding out whether there has been civil rights progress in the state and local courts, which information too is virtually impossible to ascertain.

The Florida Bar has not offered a single Civil Rights Continuing Legal Education Course other than sessions limited to the narrow confines of Title VII employment discrimination or the Americans with Disabilities Act, or Title IX, in the 29 years that Plaintiff has been a member. All that exists are the chronic complaints from various sources that the number of blacks on the bench is far lower than any expectancy based on the state population.

There is an Animal Law Section of Bar members interested in that subject but there is no Civil Rights Section. A comparatively recent Public Interest Section does include a fledging group under Chris Jones of attorneys looking for civil rights practitioners to be members. In Alachua County, there are no civil rights attorneys, though a dozen of the hundreds in the 2016 EJCBA member directory profess to have such a specialty. However the websites or Link-In listing of their actual specialties does not include civil rights for any of them as of Aug. 1, 2016.

In the 24 years Plaintiff has resided and worked in Alachua County, the virtually all white bench, aided by the virtually all-white female judicial assistants, (except those for the two black county court judges) have never demonstrated in any way that African Americans and civil rights advocates have meaningful access to the local courts. Plaintiff incorporates herein the view he held of the local legal system which was published without rebuttal in the *Florida Bar Journal*:

> **Another View of the Judicial System**
> Once again Florida Bar members are subjected to glittering generalities about "Protecting Our Fair and Independent Judicial System" (March 2005). They are sent down to us from on high, that is, from The Florida Bar president. Here on earth, those lofty assurances as often as not may be greeted by knowing smiles and heads shaking from side to side, so let me tell you what the view is like from the bottom up. I have been in the Florida legal system for 20 years, since I arrived in Orlando as executive director of Greater Orlando Area Legal Services (GOALS).

> I practiced for nearly as long in Michigan and New York, before I came here. By the time I was admitted to The Florida Bar and the U.S. Court for the Middle District of Florida, in 1987, I had blown the whistle on wrongdoing by GOALS staff and board attorneys.
>
> They had facilitated entry into Florida of North Carolina and Georgia banks with questionable histories of commercial and home lending to the poor and minority groups. *See Kaimowitz v. The Bd. of Gov. of the Fed. Res.*, 940 F.2d 610 (11th Cir. 1991) (My administrative agency appeal was dismissed for lack of standing, because the panel found I suffered no injury to my reputation as I asserted, in light of the fact that the federal agency adopted many of the criticisms I made during the administrative process about events in Orange County, Florida.). But I didn't begin to learn about the "fair and independent judiciary" in Florida state courts until I began to practice in Gainesville, at the site of the flagship university's law school.
>
> About that time, the Bar published the views of former Florida Supreme Court Chief Justice Gerald Kogan, who was quoted as informing law students that both trial and appeals judges talk to one another about lawyers, just as attorneys gossip about them.
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> *See* G. Blankenship, "Reputations Aren't Hypothetical," *The Fla. Bar News*, Aug. 1, 1996, p. 12. Justice Kogan explained that meant no case, no client was worth the loss of reputation by an attorney whose credibility would be forever damaged if judges came to believe that they had to look out the window to see for themselves when such a scoundrel said it was raining outside. By then, I already had spent five years in federal court trying to separate myself from this Bar's "color blindness." I didn't have to ask about my reputation in this state. It was long gone. That litigation against The Florida Bar still is remembered by the Eighth Judicial Circuit Court bench, as I learned last year. That bench is as white as it was when I started in 1996.
>
> Those elected judges are helped out by more than a half-dozen senior judges, some of whom were never elected locally. Several entered the Bar when they had to swear to uphold a state constitution that required the racial segregation of the state's educational system. The judges and lawyers who frequently know one another through the University of Florida and its law school hobnob together at events held by their historically white private bar association. One small law firm predominates as a host. Several of its former members are judges today. At times, they even sing and dance together, or raise money for worthy causes. I and others like me, of course, can join in their gatherings (sic). One such group of 35 or so felt it necessary to start their own bar association, an African-American bar group. Ask black litigants and other minorities in my jurisdiction what they think of the need to protect "our fair and independent judicial system." Get out of the way before the laughter begins.

Kaimowitz "Another View of the Judicial System"79 *FL Bar J* 4 (May 2004).

More specifically at the local level, Plaintiff is prepared to show that at least one circuit court judge has discriminated unlawfully against him in a half dozen cases, as well as a client he represented in 2012 because they are secular Jews.

That biased judge likewise acted with invidious discriminatory intent, against prominent black attorneys Willie Gary and Chris Chestnut, and particularly against George Jacobs, M.D., a person of color, when he sued the University of Florida for alleged misappropriation of a cancer treatment he discovered. Plaintiff also is prepared to prove that the Judge swore that he allowed the display of Christian symbols in his chambers where he held mandatory hearings in deference to his judicial assistant. When that judge ran for election in 2000, he did let the voters know about the good Christian practices he and his family followed, through the local Trinity United Methodist Church, to demonstrate in part his ability to sit as a judge. See Monaco "Sound legal career will benefit community," *The Gainesville Sun*, Aug. 27 2000. `

Judge Monaco has been re-elected twice without opposition. How has his judgments been affected by his religious practices? Can judges let voters know about their religious views and practices in a legal system which is held out as being without bias or prejudice? On Feb. 26, 2014, *The Gainesville Sun* reported that Judge Andrew Decker in pertinent part was facing disciplinary action because of his expression of his Christian beliefs:

> In a campaign video commissioned by Decker, he states that he is "a Christian, and I will not leave my Christian beliefs aside when I work as a Judge. If I'm elected ... as your Judge, I will be a Christian judge and bring those values to my work every day." The statement allegedly violates several judicial canons, the report states, including Canon 2 that a judge "shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment."

C. Swirko, "Judicial Charges Filed Against Circuit Judge," *The Gainesville Sun*, Feb. 26, 2014 http://www.gainesville.com/news/20140226/judicial-charges-filed-against-circuit-judge/

Judge Monaco is not alone in professing his religious faith and practices in Alachua County. Indeed, he identified his judicial assistant as being responsible for annual religious displays in his chambers where he heard motions during the Christmas holiday season. She is the spouse of County Judge Tom Jaworski .

Judge Jaworski is one of the jurists whose name will not appear on the ballot because he is unopposed. Plaintiff will seek to qualify as a write-in candidate to inform the public about how and why he believes that Judge Jaworski has acted inappropriately in at least one instance involving an African-American attorney who is a single mother. Plaintiff will also show that he and former judges have kept a small claim against the Florida Bar from being heard in Alachua County for a decade. Plaintiff is considering a write-in judicial candidacy to make those points, if he is given a meaningful opportunity to try to qualify in 2016 by the Supervisor of Elections. Plaintiff previously ran for office as a candidate for an at-large seat on the Gainesville City Commission primarily to inform the public about his views in 2005

Irreparable Harm

In voting cases, according to the *City of Greensboro* judge, restrictions on the right to vote are routinely found to cause irreparable injury. See, e.g. *Obama for Am. V. Husted*, 697 F.3d 423, 436 (6th Cir. 2012), *Williams v. Salerno,* 792 F.2d 323, 326 (2d Cir. 1986); *cf. Council of Alternative Political Parties v. Hooks,* 121 F.3d 876, 883 (3rd Cir. 1997), *U.S. v. West Virginia*, No. 2:14-27456,2014 WL 73338867,at *5 (S.D. W. Va. Dec. 22, 2014*). City of Greensboro, supra*, at slip op. 16.

Plaintiff and other voters will be irreparably harmed if they have no opportunity to have a say or for others even to know the name of judges who are being placed in office for six years without their knowledge, in this phantom election process. There will be no discernible reasonable harm to anyone including the incumbents by having their names on the election ballots. Cf. Republican *Party of North Carolina v. Hunt,* 841 F. Supp. 722, 728 (E.D. N.C. 1994), cited in *City of Greensboro, supra*, at 17.

Balance of Equities and Public Interest

Those were determined to favor an award of temporary relief to plaintiffs in the *City of Greensboro* voting rights action and they should be here. Elections always are matters of public interest.

As for the balance of equities, they clearly tip in favor of Plaintiff and other registered voters. No discernible harm is evident to anyone by listing the nine incumbents on a ballot, or by giving a reasonable opportunity with notice for Plaintiff or someone else to qualify as a write-in candidate, to challenge one or more of the three county judges at the ballot box.

II. DECLARATORY RELIEF IS WARRANTED.

The Florida Supreme Court this year already has declared a Florida election provision Fla. Stat. §99.0615 to be unconstitutional. See *Brinkman v. Francois*, 184 So.3d 504 (Fl 2016). A write-in candidate for county commission will be on the ballot this year after he survived a challenge to his residency, and his worth as a valid "opposition" force. The *Brinkman* court quoted a federal court decision favorably, which accepted as fact that write-in candidates are opposing candidates. See *Lacasa v. Townsley*, 883 F.Supp.2d 1231, 1242–43 (S.D.Fla.2012). But here, of the documented history of intentional discrimination by the Florida Bar both before and since its insistence of on a integrated Bar, a more drastic remedy to correct decades of invidious discrimination against blacks in the legal profession here, is required. See Goldstein, "The bar in black and white, UF Law alumni played key roles in organization's segregation, redemption," *UF Law Newsletter*, April 28, 2012, retrieved on Aug. 3, 2016, from https://www.law.ufl.edu/uflaw/feature/the-bar-in-black-and-white-uf-law-alumni-played-key-roles-in-organizations-segregation-redemption

This legal action overall is based on the 15th Amendment to the Constitution, NOT Section 2 of the Voting Rights Act, which was limited in its application in judicial elections by decisions of the 11th Circuit, because of lack of a remedy at the time. The U. S. Supreme Court has recognized that the 15th Amendment is self-executing.. See *Smith v. Allwright*, 321 U.S. 649 (1944)(Texas white primary was found to be unconstitutional).

But in the last generation the U.S. Supreme Court and then the 11th Circuit respectively used Congress' enactment and amendment of Section 2 of the Voting Rights Act, to undo the purpose of the 15th Amendment The former did so before it was amended, the latter after, to avoid consideration of the underlying Constitutional authority, but the 15th Amendment itself is "self-executing," *Guinn v. United States*, 238 U.S. 347, 362-63 (1915). But the idea that the self-executing assurance of the Fifteenth Amendment could be limited was created by a post-Reconstruction, Lost Cause Revival U.S. Supreme Court, *Ex parte Yarborough*, 110 U.S. 651, 655(1884). It is time to restore the 15th Amendment to its rightful place in an academic community and an arrogant honorary legal fraternity insist on supporting the reputation of the University of Florida, and its Levin School of Law, even if that means defiance of the United States Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954).

The white supremacist view endorsing limitation on African-American "affirmative action" at the University came in 2000 from Plaintiff's former attorney, Constitutional Law Prof. Joseph W. Little. He has been on the faculty since 1967.

> At the law school here, the Frederic G. Levin College of Law, people on both sides of the issue say tensions have simmered for years. Joseph W. Little, a white law professor and a former mayor of Gainesville, has been critical of what he says are baseless charges, calling them "racial McCarthyism." He said that he supported hiring minority professors, but that competition for them was intense and they were sometimes lured away by other schools. Professor Little argued that proponents have continued to press for diversity at the expense of the school's 1,200 students, some 300 of whom are members of minorities. 'If it comes to hiring teachers for our core courses and hiring a person that's black just because he's black," Professor Little said, "I will hire for the core course, and I am unabashed about that." (Here as at many universities, the faculty has considerable authority in hiring decisions.) But black law professors who have worked here said opponents of diversity efforts often claimed that no qualified black candidate could be found as a way of defeating such efforts. "In America the race question can't be talked about openly and honestly, so there's always an effort to say it must be something else," said Michelle S. Jacobs, a black associate professor who is on leave from the law school here and teaching at the historically black Howard University School of Law

W. Glaberson, "Accusations of Bias Roil Florida Law School," *New York Times*, Oct. 30, 2000. The unchanged racial tension has been maintained for years, in litigation in this Court.

Former UF Law Prof Sherrie Russell Brown in 2009, sued the University for race discrimination, in a federal court in New Jersey. Venue was determined to be more appropriate in Gainesville, in this Northern District of Florida. By 2014, Professor Russell-Brown here was not only said to have filed a frivolous law suit, but she was determined to owe $600,000 or more in attorney fees for bringing that action against the pristine Florida school of law.

Where did the idea of keeping the University of Florida legal environment lily-white? For nearly 50 years, the University has received special protection from the State's judiciary to bar any uncontrolled incursion of African-Americans who might frighten whites to such an extent that the latter might respond with violence and mischief, if blacks are allowed to participate in legal affairs on a level equivalent to whites. See *State Ex rel Virgil Hawkins v. Board of Control*, 93 So. 2d 354 (FL 1957). In that matter, Justice B. K. Roberts speaking for a five member majority including two members of Florida Blue Key, defied the United States Supreme Court directive to admit a black into the University of Florida School of Law Justice Roberts claimed that Florida was entitled to disregard such an order if it is contrary to Florida's right to protect itself from mischief and violence. That decision has never been reversed or modified Justice Roberts in an interview in 1999 stated his belief that the decision was sound law.. The *Independent UF Alligator* let its readers know that in 2015 that the University's policy of ignoring race and ethnicity would stand, even though the U.S. Supreme Court had ruled that the University of Texas could do so.

Justice Roberts' position can no longer be maintained judicially, because the United States Supreme Court finally closed the door on states making exceptions to compliance with the highest tribunal's interpretation of the federal law and constitution.

> (42 U.S.C.) Section 1988 is a federal statute. It is this Court's responsibility to say what a federal] statute. "It is this Court's responsibility to say what a [federal] statue means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law" *Nitro-Life Technologies, L. L. C. v. Howard*, 568 U.S. ___ (2012) (*per curiam*) (slip op. (quoting *Rivers v. Roadway Express Inc.* 511 U.S. 298, 312 (1994)(internal quotation remarks omitted.) And for good reason. As Justice Story explained 200 years ago if state courts were permitted to disregard this Court's rulings on federal law, "the laws, the treaties, and the constitution of the United States would be different in different states and might, perhaps never have precisely the same construction, obligation or efficacy, in any two states. The public mischief's that would attend such a state of things would be truly deplorable." *Martin v. Hunter's Lessee*, 1 Wheat. 304, 348 (1816). The Idaho Supreme Court, like any other state or federal court, is bound by this Court's interpretation of federal law. The state court erred in concluding otherwise. The judgment of the Idaho Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Melene James v. City of Boise, Idaho,et al., No. 15-493 (Jan. 26 2016), 577 U.S. ___ (2016).

But the damage already has been done at the UF Levin School of Law by adherence to the 1957 *Hawkins* decision, which ostensibly gave Florida the right to decide when and where admission of African-Americans might endanger a violent white response. Apparently the attempt not to show favoritism to blacks, especially by local judges and lawyers who serve as adjunct faculty, trial practice instructors, and trial team coaches, has resulted in only one black graduate ever being elected to serve in local circuit and county courts .

To shore up the impression that Florida maintains a fair and justice legal system, notwithstanding the uncontroverted findings at the 11th Circuit in two cases that invidious discrimination against African-Americans existed in the judicial election systems, see *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994, en banc, 6-2 decision), Davis v. Chiles, 139 F.3d 1414 (11th Cir. 1998) as well as *Nipper v. Smith*, *supra*, former FBK president "Jack" John Harkness used his Florida Bar to help a disciplinary action get to the U.S. Supreme Court. His publications reflected his concern about solicitation of funds from lawyers by a judicial candidate in several articles both before and after the matter was heard by the United States Supreme Court.

The Harkness publications never seemed to indicate much about the alleged offender herself. The alleged offender Lanell Williams-Yulee, is a single black mother with a solo law practice. She was defeated in 2010 in a race in which she ran against an incumbent with little chance of winning, and again in 2012, when she got 9% of the vote. But at one point, while she was out of town visiting her parents, her office sent out a letter of solicitation.

Harkness and disciplinary team pounced. The African-American, perhaps through a white team of lawyers, pursued a reprimand she got from the Florida Supreme Court. The Florida Bar supported her position! Let's get this issue heard. The Bar got her reprimand upheld 5-4 by the U.S. Supreme Court, in Lanell *Williams-Yulee v. the Florida Bar,* 575 U.S. __, 135 S.Ct. 1656 (2015). But to do so, they had to retell a legal fiction about how the State's judicial system got to be so fair and just, after what long has been reported as an unpleasant scandal in which four ***elected*** Florida Supreme Court justices had to resign. According to the Bar's submission, a specific Canon of Ethics was introduced as a result of that scandal to halt judicial solicitation of funds. At least that is the way Justice Roberts seems to have heard the tale, according to the factual background he laid out to justify putting aside the black female attorney's right to exercise First Amendment rights.

Justice Roberts writing the Court's opinion first relied on an excellent and accurate overview of the Florida legal system up until 1989. Justice Roberts quoted from that account to note that "the people reclaimed the power to elect the state bench—Supreme Court justices in 1885 and trial court judges in 1942, " See J.W. Little, An Overview of the Historical Development of the Judicial Article of the Florida Constitution, 19 *Stetson L. Rev.* 1, 40 (1989).

But he apparently attached no importance to Professor Little's conclusion about the shift in control of the judicial system from the State Legislature to the Supreme Court and the Bar.

Instead Justice Roberts relied on the Barfax version of events during and after the scandal. Justice Roberts wrote: "In the early 1970s, four Florida Supreme Court justices resigned from office following corruption scandals. Florida voters responded by amending their Constitution again. Under the system now in place, appellate judges are appointed by the Governor from a list of candidates proposed by a nominating committee—a process known as "merit selection." Then, every six years, voters decide whether to retain incumbent appellate judges for another term. Trial judges are still elected by popular vote, unless the local jurisdiction opts instead for merit selection. Fla. Const., Art. V, §10; (Scott G.) Hawkins, Perspective on Judicial Merit Retention in Florida, 64 Fla. L. Rev. 1421, 1423–1428 (2012). (NOTE: Hawkins is a former Florida Bar president.) Amid the corruption scandals of the 1970s, the Florida Supreme Court adopted a new Code of Judicial Conduct. 281 So. 2d 21 (1973)."

The reality was that only two of the four justices resigned—David L. McCain, and Hal P. Dekle—resigned and then did so in 1975, AFTER the new Canons were adopted. The other two Joseph A. Boyd, and James C. Adkins, an admitted alcoholic with six wives who still is venerated in the 8th Judicial Circuit, stayed on until their mandatory retirements in 1987. Further, after the merit retention system was put in place, more recent scandals apparently prompted the premature resignation of three judges of the First District Court of Appeals, including former Chief Judges. First District Court judges on the ballot at the same time as Williams-Yulee barely passed the retention vote after two Chief Judges left that bench.

But the true core of the judicial spoils system remains in the 8th Judicial Circuit and Alachua County, where "gossip" determines who will be seated judges, increasingly even without the bother of a contested election.

That gossip rests on the aforementioned structures to limit insofar as possible African-

American voters and candidates from participating in local judicial elections and for respected white judges to let their colleagues know about the ones they consider disreputable. See, N. Doughtie, retired judge, "*All Rise*, a 2007 novel about the Eighth Judicial Circuit.

In 2014, one prominent local attorney, John Jopling, openly boasted that his post-Reconstruction 1876 Dell-Graham firm has special access to the local courts because several judges on the bench have been partners or associates there. One of those judges, the Hon. Toby S. Monaco, has had at least three partners as judicial colleagues. Judge Monaco also is well-connected enough to participate in as many as a dozen appeals an associate judge, far far away from his election base, on the Fourth District Court of Appeal in Palm Beach, FL, 2011-2014.

Meanwhile, John Jopling's father, the late Hon. Wallace M. Jopling (FBK) preferred to hear cases as a senior judge in Alachua County where he was never elected. When Plaintiff objected that Judge Jopling was hearing a case against the University of Florida while his son was defending that institution's School of Medicine ophthalmologists who were charged with fraud, Judge Jopling retaliated. He charged Plaintiff with 20 counts of direct and indirect criminal contempt, and sent those charges to the Florida Bar for follow-up. It took four years, before Plaintiff could rid himself of those claims by pleading guilty to one charge in each forum, accepting a $250 fine in the contempt action, and $250 costs plus a reprimand in the Bar proceeding, four years before Judge Jopling stepped aside on the merits. In 2002, Plaintiff did settle his claims against the University and its provost for nearly $10,000 once Judge Jopling had stepped aside. But Judge Jopling continued as a Senior Judge, away from Columbia County where he had been elected several times. Senior judges all of whom are white are another manifestation of the attraction to the bench in the 8th Judicial Circuit. Many sitting and senior judges have gotten on the bench after working for the 8th Judicial Circuit State Attorney's Office

since 1992. In that year, Rod Smith, the former State Attorney and Bill Cervone, the current state attorney, rebelled against the incumbent State Attorney Len Register in that year.

They were joined in their objections to Register by criminal defense attorneys Gloria and Larry Gibbs Turner—the "Fletcher Group" which is said to be influential in choosing local judges from the pool of assistant State Attorneys. . Between Dell Graham and the 8th Judicial Circuit State Attorney's Office, a significant plurality if not majority can claim to have worked for one or the other. County Judge Walter Green, the only black ever elected in Alachua County, spent 15 years in the State Attorney's Office until he was elected in 2004.

So Alachua County presents a unique venue in Florida judicial elections, and that should be taken into account in determining relief. Cf. *Palisade Fruitlands v. Tod*, 279 F.3d 1204, 1209-13 (10th Cir. 2002)(Colorado's differentiating system was found to be constitutional). However the *City of Greensboro* judge cited that *Palisades* as authority for the proposition that federal courts should and do scrutinize state plans which appear to favor or disfavor particular jurisdiction. In Colorado, the legislative enactment had differentiated between registered voters in some counties from others in the participation in an election referendum. The City of Greensboro judge distinguished that result from his injunction halting the apparent discrimination against the City of Greensboro, by the North Carolina legislature.

Again what makes Alachua County a singular community comparable to Greensboro is the open and notorious favoritism shown by Defendant members toward the University of Florida. Greensboro was the "good guy." Alachua County is not. Here the University of Florida is favored, to the detriment of the African-American community which lives in its shadows. UF always can count on the allegiance of its lawyers and judges, it FBK contingent.

Florida Blue Key members including judges and justices (at least three are on the current Florida Supreme Court; several are on the U.S. Court for the Middle District of Florida and the 11th Circuit Court of Appeals.) Judge Mark Walker here was nominated by U.S. Sen. Bill Nelson (D-FL)(FBK). Gov. Rick Scott (R-FL) who has specific powers to participate in the process of picking jurists (he has chosen several of the incumbents who are not appearing on the ballot) also is an FBK member. The entire Article V of the Florida Constitution of 1972 was recommended by a Constitution Revision Commission led by Chesterfield Smith (FBK) without participation by any blacks in the drafting of the constitutional provision. Under these circumstances, declaratory relief for Plaintiff is warranted under the Fifteenth Amendment to the U.S. Constitution, notwithstanding the attempts in this federal Circuit to prevent revision of the Florida judicial system despite extensive findings in *Nipper* and *Davis* that this State continued for decades unlawfully an unconstitutionally to dilute black voting strength in judicial elections in two circuits, and several counties.

III. SELECTION OF A JUDGE WITHOUT A BLIND DRAW IS A DENIAL OF DUE PROCESS WHICH HAS TO BE CORRECTED.

The manipulation of this court's blind draw system to avoid public disclosure that its only black judge no longer participates in the deciding of cases violates due process of law. See e.g. *Grutter v. Bollinger*, No. CIV.A.97-CV-75928-DT. (E.D. MI Aug. 17, 1998), retrieved on Aug. 16 2016, from https://www.cir-usa.org/legal_docs/grutter_v_bollinger_companion_deny.pdf.

See also, *A JUDICIARY DIMINISHED IS JUSTICE DENIED: THE CONSTITUTION, THE SENATE, AND THE VACANCY CRISIS IN THE FEDERAL JUDICIARY* HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS SECOND SESSION OCTOBER 10, 2002 retrieved on Aug. 16, 2016, from chttp://commdocs.house.gov/committees/judiciary/hju82264.000/hju82264_0f.htm.

IV. REASONABLE ACCOMMODATION FOR PLAINTIFF IS NECESSARY TO ASSURE DUE PROCESS IN PROCEEDINGS CONCERNING INJUNCTIVE AND DECLARATORY RELIEF IN THIS CIVIL RIGHTS ACTION.

Plaintiff relies on the sound discretion of the Court to provide reasonable accommodation to allow for his full participation in this matter, despite his military service connected hearing disability and pulmonary difficulties.

CONCLUSION

An unbiased judge must allow injunctive relief to prevent the Defendant County Supervisor of Election from issuing ballots for elections on Aug. 30, 2016, and/or Nov. 8, 2016, without including the names of judicial incumbents, and by acting without proper notice to qualified judicial candidates to limit the opportunity for people unaware of the gossip to become write-in candidates. Further, such a jurist has ample reason to declare that the Florida judicial system as it is operated in the 8th Judicial Circuit and Alachua County to protect the flagship University of Florida by effective exclusion of African-Americans from opportunities for judicial elections violates the self-effecting Fifteenth Amendment to the United States Constitution.

Respectfully submitted,

s/Gabe H. Kaimowitz
Gabe H. Kaimowitz

CERTIFICATE OF SERVICE

A copy of the foregoing will be sent by e-mail and by hard copy sent first class to each Defendant and others on the attached mailing list, on Aug. 17, 2016:

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