

IN THE SUPREME COURT OF FLORIDA

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LIBERTY COUNSEL, a Florida
corporation, on behalf of its employee and
affiliate members of The Florida Bar;
ANITA L. STAVER, SCOTT C. DIXON

Case No.

CLERK, SUPREME COURT

BY _____

Petitioners

v.

THE FLORIDA BAR BOARD OF
GOVERNORS; JOHN G. WHITE III,
Florida Bar President; JOHN F.
HARKNESS, JR., Executive Director of
the Florida Bar,

Respondents

**ORIGINAL PETITION FOR INJUNCTIVE RELIEF *PENDENTE LITE*,
PROSPECTIVE INJUNCTIVE RELIEF AND/ OR OTHER
EXTRAORDINARY RELIEF**

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Petitioners, LIBERTY COUNSEL, ANITA L.STAVER, and SCOTT C. DIXON (“Petitioners” herein), invoke the original jurisdiction of this Court and ask that it grant extraordinary relief in the form of an injunction *pendente lite*, prospective injunction, and/or other appropriate relief against Respondents, the FLORIDA BAR BOARD OF GOVERNORS, JOHN G. WHITE III and JOHN F. HARKNESS, JR. (“Respondents” herein), based upon the following:

JURISDICTION

This Court has original jurisdiction over this matter under Article V §15 of the Florida Constitution. This Court also has jurisdiction based upon *The Florida Bar re David P. Frankel*, 582 So. 2d 1294, 1296 n.1 (Fla. 1991) (per curiam), in which this Court held: “Any member of The Florida Bar in good standing may question the propriety of any legislative lobbying position taken by the board of governors by filing a timely petition with this Court.” (citing *The Florida Bar re Thomas R. Schwarz*, 552 So.2d 1094, 1097 (Fla. 1989) *cert. denied*, 498 U.S. 951 (1990)).

THE PARTIES

Petitioner Liberty Counsel is a Florida non-profit public interest law firm based in Maitland. Liberty Counsel was founded in 1989 by Mathew D. Staver, who has been an active member in good standing of The Florida Bar since 1987. Liberty Counsel has six members of The Florida Bar on staff and dozens of affiliate attorneys

who are members of The Florida Bar. Liberty Counsel is petitioning this Court on behalf of its staff and affiliate attorneys who are members of the Florida Bar.

Petitioner Anita L. Staver is a member in good standing of The Florida Bar and is President of Liberty Counsel. Petitioner Staver practices law in this state.

Petitioner Scott C. Dixon is a member in good standing of The Florida Bar and practices law in this state. Petitioner Dixon is an affiliate attorney with Liberty Counsel.

Respondent The Florida Bar Board of Governors is the governing body of The Florida Bar under rules promulgated by this Court.

Respondent John G. White III is a member in good standing of The Florida Bar and the president of the Board of Governors.

Respondent John F. Harkness, Jr. is a member in good standing of The Florida Bar and is Executive Director of The Florida Bar.

STATEMENT OF FACTS

In 1949 this Court granted The Florida Bar's petition to be integrated, and thereby imposed mandatory bar membership and dues as a condition for practicing law in Florida. *Petition of Florida State Bar Ass'n*, 40 So.2d 902 (Fla. 1949)(en banc). The Florida Bar is a body created by and existing under the authority of this Court and an official arm of this Court. *Dacey v. Florida Bar, Inc.* 414 F.2d 195, 196

-197 (5th Cir. 1969). The Board of Governors has the authority and responsibility to govern and administer The Florida Bar, but is always subject to the direction and supervision of this Court. Rules Regulating the Florida Bar (“Bar Rules”), Rule 1-4.2. The Board of Governors has the discretion to create and abolish sections as it deems necessary to accomplish the purposes and serve the interests of The Florida Bar. Bar Rule 1-4.5. Sections created under Bar Rule 1-4.5 are “an integral part of The Florida Bar” and have the duty to “work in cooperation with the board of governors and under its supervision toward accomplishment of the aims and purposes of The Florida Bar and of that section or division.” Bar Rules, Bylaw 2-7.2.

The Family Law Section of the Florida Bar was established by the Board of Governors in 1973-74 pursuant to Bar Rule 1-4.5. Article X §5 of the Bylaws of the Family Law Section states that “No action of this Section shall be contrary to the policies of The Florida Bar established by the board of governors.”¹ The Legislative Standing Board Policy and Procedure established by the Board of Governors provides, in pertinent part:

9.50 Legislative Activities of Sections

(a) Authority. A section may be recognized by the board of governors as taking action on or advocating a position on a legislative or political issue only when all of the following criteria are met:

¹ Available at http://www.familylawfla.org/pdfs/Current_Bylaw-2008.pdf (Last visited February 19, 2009).

- (1) the issue involved is within the section's subject matter jurisdiction as described in the section's bylaws;
- (2) the issue is beyond the scope of permissible legislative or political activity of The Florida Bar, or the issue is within the permissible scope of legislative or political activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue;
- (3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.**² (Emphasis added).

On November 25, 2008, Judge Cindy Lederman of the Circuit Court for the Eleventh Judicial District issued a ruling in Case No. 06-033881 FC 04, *In re Adoption of John Doe and James Doe*, in which she ruled that Fla. Stat. §63.042(3), which prohibits homosexuals from adopting, is unconstitutional. *In re Adoption of John Doe and James Doe*, 2008 WL 5006172 (Fla.11th Cir.Ct. 2008). The State of Florida appealed the decision to the Third District Court of Appeals. *Florida Department of Children and Families v. In re Matter of Adoption of X.X.G. & N..R.G.* Third District Court of Appeals Case No. 3D08-3044.

According to records on the Family Law Section's Web site, the Executive Committee of the Family Law Section of The Florida Bar held a meeting on

² <http://www.floridabar.org/tfb/TFBLegNW.nsf/dc7ee304c562ed5b85256709006a26ee/d8fc829315edea6985256b2f006ccfc1?OpenDocument#9.10%20General>. (Last visited February 19, 2009).

December 1, 2008.³ According to the minutes of the meeting, the committee met to discuss filing an amicus curiae brief in support of Judge Lederman's finding that Section 63.042(3) is unconstitutional.⁴ According to the minutes, the committee discussed the procedures for gaining approval for the amicus brief from the Board of Governors.⁵ The Executive Council of the Family Law Section of the Florida Bar met on December 12, 2008.⁶ According to the minutes of that meeting, the council voted in favor of filing an amicus brief in support of Judge Lederman's ruling granting the adoption of the minor children by the homosexual petitioner and declaring Section 63.042(3) unconstitutional.⁷ According to the minutes, council members discussed the need to actively and personally lobby members of the Board of Governors to urge

³ The minutes of the December 1, 2008 Executive Committee Meeting are included in the agenda packet for the January 24, 2009 Executive Council Meeting, http://www.familylawfla.org/executive/pdfs/executive_Council_Meeting_Agenda-January_24_2009.pdf, (Last visited February 19, 2009).

⁴ *Id.*

⁵ *Id.*

⁶ The minutes of the December 12, 2008 Executive Council Meeting are included in the agenda packet for the January 24, 2009 Executive Council Meeting, available at: http://www.familylawfla.org/executive/pdfs/executive_Council_Meeting_Agenda-January_24_2009.pdf, (Last visited February 19, 2009).

⁷ *Id.*

them to support the council's position.⁸

On January 30, 2009, the Board of Governors met at The Florida Bar's offices in Tallahassee. At that meeting, the Board voted to permit the Family Law Section to file an amicus brief in support of Judge Lederman's ruling that Section 63.042(3) is unconstitutional.⁹

On February 9, 2009, Petitioners sent a letter to the Board of Governors and Executive Director Harkness objecting to the Board of Governors' action. A true and correct copy of the letter is attached hereto, marked as Exhibit A and incorporated herein by reference. Petitioners informed the Board of Governors that the vote was improper and violated the First Amendment rights of Petitioners and other like-minded members of the Florida Bar. Petitioners requested that the Board of Governors rescind the action.

Mr. White has been quoted as saying that the board "made a big mistake."¹⁰

⁸ *Id.*

⁹ Jan Pudlow, *Family Law Section to file gay adoption case amicus*, THE FLORIDA BAR NEWS, February 15, 2009, p. 1. <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/7b157c5de558987785257558004b993d?OpenDocument> (Last visited February 19, 2009).

¹⁰ David Lyons, *Commentary, The fog that is Bar bureaucracy*, THE DAILY BUSINESS REVIEW, February 9, 2009, available at: http://www.dailybusinessreview.com/Web_Blog_Stories/2009/Feb/Bar (last visited

However, in a February 19, 2009 letter to Liberty Counsel, Mr. White justifies the Board of Governors' action and claims that it is entirely consistent with *Keller*, *Schwarz* and *Frankel*.¹¹ According to Mr. White, "The Florida Bar's amicus activities stem from this organizations' authority to provide information and advice to the courts and other branches of government on legal matters. Similar amicus involvement by any section of this bar is generally sanctioned by the Board of Governors when requested by these groups or sought by the courts if otherwise considered appropriate."¹²

The Board of Governors has also used the vehicle of the Florida Bar News, funded by mandatory membership dues, to promote its action.¹³ A front page story in the February 15, 2009 edition quotes Board of Governor member Ervin Gonzalez as saying, "If you frame this issue of what this is really about, we are all in favor of this request."¹⁴ Board member Juliet Roulhac is quoted as saying "To consider children are being prohibited from having the right to be adopted by appropriate and very

February 10, 2009).

¹¹ Letter from John G. White, III to Mathew D. Staver, a true and correct copy of which is attached as Exhibit B.

¹² *Id.*

¹³ Pudlow, at p. 1.

¹⁴ *Id.*

caring individuals is completely wrong, and we should not let that go forth.”¹⁵ Despite these statements, Bar leaders contend that the Board’s vote does not violate lobbying guidelines because it is not the Board advocating for repeal of Section 63.042(3), but the Family Law Section and because it involves the filing of an amicus brief, not support of legislation.

Petitioners are now asking this Court to enjoin the filing of the amicus brief, enjoin the Board of Governors from further actions in contravention of the First Amendment rights of its members, and to rescind the January 30, 2009 vote.

LEGAL ARGUMENT

Sir Walter Scott’s oft-quoted saying “What a tangled web we weave when first we practise to deceive,”¹⁶ describes the Board of Governors’ action as aptly as if it had been written immediately after the January 30, 2009 vote. The Board of Governors has woven a web that has entangled itself, the 86,000-plus members of The Florida Bar, and even the judiciary in a controversy that only five years ago the board agreed was too divisive to warrant legislative action. Other than the passage of time, nothing has changed since the Board of Governors rejected a 2004 proposal by

¹⁵ *Id.*

¹⁶ Sir Walter Scott, *Marmion: A Tale of Flodden Field*, Canto iv, Stanza 17 (J. Ballantyne and Co. 1808).

the Family Law Section to advocate the repeal of Section 63.042(3). Nevertheless, the Board of Governors has now reversed its position to the detriment of Petitioners, other bar members and the judiciary and in violation of clearly established precedent.

I. THE BOARD OF GOVERNORS' VOTE TO APPROVE THE FAMILY LAW SECTION'S FILING OF A BRIEF ADVOCATING THE INVALIDATION OF FLORIDA STATUTES SECTION 63.042(3) VIOLATES PETITIONERS' FIRST AMENDMENT RIGHTS.

The United States Supreme Court has established that integrated bars, such as The Florida Bar, cannot use dues received from its members to fund ideological and political activities that are not germane to the goals of regulating the legal profession and improving the quality of legal services. *Keller v. State Bar of California*, 496 U.S. 1, 15-16 (1990). “The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members.” *Id.* at 14. “It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.” *Id.* “[T]he guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of the legal service available to the people of the State.’” *Id.* Among the activities challenged in *Keller* were lobbying in favor of legislation to prohibit armor-piercing bullets, **filing an amicus brief arguing that a victims’ bill of rights was unconstitutional**, and adoption of

resolutions by a bar-sponsored association, the conference of delegates, which supported gun control and a nuclear weapons freeze. *Id.* at 6 n.2. The latter activities clearly crossed the line of permissible expenditures. *Id.* at 16. However, other activities addressing the disqualification of a law firm, attorney discipline issues and proposed ethical codes for the profession were permissible. *Id.*

Consistent with *Keller*, this Court has established standards for legislative activity expenditures for The Florida Bar. *The Florida Bar re Schwarz*, 552 So. 2d 1094 (Fla. 1989); *The Florida Bar re Frankel*, 581 So.2d 1294 (Fla. 1991). Expending bar resources for legislative activity is clearly justified for the following subject areas: (1) Questions concerning the regulation and discipline of attorneys;(2) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;(3) increasing the availability of legal services to society; (4) regulation of attorneys' client trust accounts; and (5) the education, ethics, competence, integrity and regulation as a body, of the legal profession. *Schwarz*, 552 So.2d at 1095. The Florida Bar can also use the following guidelines to determine whether an issue outside of those five criteria can properly be the subject of legislative activity: (1) That the issue be recognized as being of great public interest; (2) That lawyers are especially suited by their training and experience to evaluate and explain the issue; and (3) The subject matters affects the rights of those likely to come

into contact with the judicial system. *Id.* “However, we also suggest that **the Board exercise caution in the selection of subjects upon which to take a legislative position so as to avoid, to the extent possible, those issues which carry the potential of deep philosophical or emotional division among the membership of the Bar.**” *Id.* at 1097 (emphasis added).

In *Frankel*, this Court found that the Board of Governors’ adoption of the Commission for Children’s lobbying positions on expansion of the women, infants, and children program; extension of Medicaid coverage for pregnant women; full immunization for children; establishing children's services councils; family life and sex education/teen pregnancy; increasing aid to families with dependent children; enhanced child-care funding and standards; and creation of a children's needs consensus estimating conference was impermissible under *Schwarz* and *Keller*. *Frankel*, 581 So.2d at 1298. This Court noted that The Florida Bar carries the burden of proof in establishing the propriety of its lobbying activities. *Id.* at 1296. In that case, the Bar claimed that its involvement in children's matters clearly justified advocacy of the contested positions due to their relationship to the ethics and integrity of the legal profession. *Id.* The Bar also said that its moral obligation to Florida's children verified the suitability by training and experience within the legal profession to evaluate and explain the contested lobbying positions. *Id.* at 1298. This Court

found the Bar's reasoning insufficient. *Id.* In response to the Bar's argument that only nine of its members objected to the issues, this Court said the "merit of the position or the unanimity in its support is not the standard by which to determine the propriety of bar lobbying activities on that position." *Id.* Because the Bar's lobbying positions did not fall within the *Schwarz* guidelines, they were outside the scope of permissible lobbying activities. *Id.*

By contrast, the Bar's lobbying activities in support of ballot measures related to judicial selection and retention did fall within the *Schwarz* guidelines. *Alper v. The Florida Bar*, 771 So.2d523, 526 (Fla. 2000). Unlike the positions taken on child welfare and family health in *Frankel*, the bar's positions on judicial selection and retention in *Alper* met the criterion of being related to the improvement of the functioning of the courts, judicial efficacy and efficiency and the alternative criteria of dealing with an issue of great public interest, which lawyers are specially trained to evaluate and that can affect the rights of those likely to come into contact with the judicial system. *Id.* at 524.

The Board of Governors' January 30, 2009 action does not fall within the parameters set by *Keller*, *Schwarz*, and *Frankel* and must be enjoined as violative of Petitioners' free speech rights. Unlike the positions adopted in *Alper*, which focused on the clearly germane issues of judicial selection and retention, the Board's position

here focuses on issues of child welfare and family health, as did the positions this Court enjoined in *Frankel*. Furthermore, the Board's January 30th action violates this Court's direction that the bar must exercise caution to not become involved in "issues which carry the potential of deep philosophical or emotional division among the membership of the Bar." *Schwarz*. 552 So. 2d at 1097. It can hardly be disputed that the issue of whether homosexuals should be permitted to adopt is a deeply divisive philosophical and emotional issue, as evidenced by Petitioners' letter (Exhibit A), Judge Lederman's discussion of the competing views of medical and social science experts and efforts to try to have the statute overturned by the Legislature. *In re John Doe and James Doe*, 2008 WL 5006172 (Fla.11th Cir.Ct. 2008).¹⁷

In 2004 the Board of Governors rejected a similar request by the Family Law Section to advocate for the repeal of Section 63.042(3) because the Board concluded that the issue caused a deep philosophical and emotional divide among Bar members.¹⁸ Board members have offered no evidence to suggest that the divide has disappeared in the last five years. Instead, the Board is attempting to go around the divide entirely by claiming that its January 30, 2009 action is somehow different form

¹⁷ See, e.g., HB 413 and SB 0500, 2009 Legislative Session, currently pending in the Florida Legislature, both seeking to repeal Section 63.042(3).

¹⁸ Alan B. Bookman, *Our Legislative Role*, 80-FEB FLA. B.J. February 2006, at 8.

the prior action and consistent with precedent. Mr. White's response to Petitioners' objections regarding the change in policy is that "last month's vote was the product of a different board, on a new day, and beyond matters of influencing public policy in the legislative arena."¹⁹

Mr. White and other Bar officials have claimed that their January 30, 2009 action does not violate *Keller*, *Schwarz* and *Frankel* because the board did not vote to support invalidation of Section 63.042(3), but merely to permit the Family Law Section to advocate for that position in an amicus brief. Mr. White is quoted as saying that the Family Law Section, which is composed entirely of voluntary members "and is considered separate from the bar," will be preparing the brief.²⁰ However, in his letter to Liberty Counsel, Mr. White said that "As with all amicus submissions by any section, the Family Law Section's final brief will be shared with the Florida Bar for further review. Consideration of such matters by the Bar to ensure their propriety, we believe, is within constitutional limitations."²¹ Similarly, Scott Rubin, chair of the

¹⁹ February 19, 2009 letter from John White to Mathew Staver, Exhibit B.

²⁰ John G. White III, *Amicus brief for gay adoption supported, funded by volunteers*, DAILY BUSINESS REVIEW, February 4, 2009, available at: http://www.dailybusinessreview.com/Web_Blog_Stories/2009/Feb/Letter.html (Last visited February 18, 2009).

²¹ February 19, 2009 letter from John White to Mathew Staver, Exhibit B.

Family Law Section, has written that “a position taken by a section of the Bar is different from The Bar itself taking a position,” and that no Bar dues will be used to advocate the position since the brief is being written by a volunteer member of the section.²²

Reportedly, other members of the Board of Governors offered other rationalizations for their reversal of position since 2004. Dennis Kainen was reported to have been “moved by the speech of Judge Rosemary Barkett which spoke of the holocaust and the judgment at Nuremburg, where the leaders did nothing.”

We are the leaders of the Bar. It’s recognition that times have changed, though I think the law has always been immoral, unethical, and illegal. Now we are simply being asked to permit the section to file an amicus to affirm a circuit judge. It’s so many steps away from lobbying the legislature. I think we should send a message to Floridians that we are here to uphold the law, and we are here to do the right thing.²³

Board member Gonzalez is quoted as saying:

[C]hildren who are abandoned, neglected, aggrieved need this, who have no one to love them. Orphans discarded like gum on a sidewalk, where people walk over it and if it sticks to you, you get it off your shoe. Children who have no hope, whom now have individuals who want to care for them and love them and provide for them the type of family that

²² Scott L. Rubin, *Position taken by a section of the Bar not the same as a Bar endorsement*, DAILY BUSINESS REVIEW, February 4, 2009, available at: http://www.dailybusinessreview.com/Web_Blog_Stories/2009/Feb/Letter.html (Last visited February 18, 2009).

²³ Pudlow, at p. 1.

they need so that they can be successful in the future. . .
I would submit it is illegal. It violates equal protection. It violates due
process. It's against the law.²⁴

Board President-elect Jesse Diner is quoted as saying: "I adopt everything Ervin
says, and that's 180 degrees from where I was the last time we had this debate. . . ." ²⁵

"There is a time when you stand up and you do the right thing. And that is what we
need to do now . . . So I am proud to say that the time is now." ²⁶Board member David
Rothman is quoted as saying, "But here, it is a core issue: Is it constitutional? I don't
see how amongst lawyers that could be divisive. I am going to vote in favor of it, and
I'm not going to lose any more sleep over it." ²⁷ Bar President-elect Designate
Maryanne Downs is reported as saying: "It made her cry to read Judge Lederman's
'beautifully reasoned and carefully written' 53 page final judgment." She said, "I too,
along with President-elect Diner, voted against the lobbying effort, because I was
fearful of the potential for divisiveness, This, however, the advocacy sought here, is
to affirm *this* final judgment for these for these children and these two foster parents.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Very different.”²⁸ These comments belie Mr. White’s statement that the Board’s action was “beyond matters of influencing public policy in the legislative arena.”²⁹ If Mr. Gonzalez’ comments that the statute is “illegal, violates equal protection, violates due process and is against the law” and Mr. Kainen’s comments that “we should send a message to Floridians that we are here to uphold the law, and we are here to do the right thing,” are not attempts to influence public policy in the legislative arena, then it is difficult to perceive what would be.

Bar leaders’ belated attempt to conform the January 30, 2009 vote to *Keller*, *Schwarz* and *Frankel* by claiming that the Bar is not directly advocating for the invalidation of Section 63.042(3), but only agreeing that the Family Law Section can do so, is too little too late. Even if their contentions were true, they would create a distinction without a difference in terms of Petitioners’ constitutional rights. However, as the above-quoted comments, the section’s by-laws, the Bar’s by-laws, Mr. White’s response to Liberty Counsel and the Bar’s promotion of the action in Bar publications illustrate, any purported distinction between the Family Law Section’s advocacy and the Board of Governors is illusory.

While Mr. White originally stated that the section is considered separate from

²⁸ *Id.* (emphasis in original).

²⁹ February 19, 2009 letter from John White to Mathew Staver, Exhibit B.

the Bar, Bar Rule 2-7.2 provides and Mr. White's February 19th statement illustrates that the section is "an integral part of The Florida Bar" that works in cooperation with and under the supervision of the Board of Governors. Article X §5 of the Bylaws of the Family Law Section states that "No action of this Section shall be contrary to the policies of The Florida Bar established by the board of governors."³⁰ The Legislative Standing Board Policy and Procedure established by the Board of Governors provides, in pertinent part:

9.50 Legislative Activities of Sections

(a) Authority. A section may be recognized by the board of governors as taking action on or advocating a position on a legislative or political issue only when all of the following criteria are met:

- (1) the issue involved is within the section's subject matter jurisdiction as described in the section's bylaws;
- (2) the issue is beyond the scope of permissible legislative or political activity of The Florida Bar, or the issue is within the permissible scope of legislative or political activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue;
- (3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.**³¹ (Emphasis added).

³⁰ Available at http://www.familylawfla.org/pdfs/Current_Bylaw-2008.pdf (Last visited February 19, 2009).

²⁶ Available at <http://www.floridabar.org/tfb/TFBLegNW.nsf/dc7ee304c562ed5b85256709006a26ee/d8fc829315edea6985256b2f006ccfc1?OpenDocument#9.10%20General>. (Last visited February 19, 2009).

Since the Family Law Section cannot take an action that is contrary to the Bar's policies, its action in filing the amicus brief must either be in accord with the Bar's policies and procedures, or the Board of Governors has acted in contravention of its own procedures (to be discussed *infra*). Furthermore, the Section is wholly a creation of the Board of Governors and must work under its supervision. Mr. White has confirmed this in his statement that the section's final brief will be shared with the Bar for further review to ensure its propriety. Similarly, since the position advanced by the Family Law Section is a position advanced by an organization integral to and operating under the supervision of the Board, Mr. Rubin's comment that there is a difference between the two is illogical at best.

In addition, Mr. Rubin's claim that no bar dues will be used to advocate the position is patently false. The Bar spent mandatory dues to conduct the January 30, 2009 meeting at which the vote was taken, and uses dues to pay for support staff for the sections. Most tellingly, the Bar uses mandatory dues to produce the Florida Bar News, which printed and published Senior Editor Jan Pudlow's article about the vote in its February 15, 2009 issue. The article contains no disclaimer stating that no bar dues were used in the article nor that the views expressed are not those of The Florida Bar and its members. Anyone reading the February 15, 2009 edition of the The

Florida Bar News will see a front page news story promoting the Board of Governors' vote with language such as: "The debate that followed was brief and passionate. Following the vote a smiling Family Law Section chair Scott Rubin called it 'a fabulous reaction' and the section's 'first and most important accomplishment of the year.'"³² Even though Petitioners' letter (and Petitioners believe other similar correspondence) objecting to the vote had already been submitted to Respondents, there was no mention of any opposition to the Board's action, even in the electronic version of the Bar News that was updated on February 19, 2009.³³ Notably, the editorial staff updated the February 15, 2009 edition to include letters of clarification to the Daily Business Review from Mr. White and Mr. Rubin, but did not include any references to any other correspondence related to the vote.³⁴ Rather than presenting an objective description of the Board's action and its effect on Bar members, the Bar's publication presented a report that leaves little doubt in any reader's mind that The Florida Bar unanimously approves of the action to be taken by the Family Law Section. Since that report appears in a publication funded by mandatory dues from Bar members, there is no question that members' dues have been used to advocate for

³² Pudlow, at p. 1.

³³ *Id.*

³⁴ *Id.*

an ideological position wholly outside of the parameters of *Keller*, *Schwarz* and *Frankel*. Any remaining doubt on that score has been fully erased by Mr. White's letter to Liberty Counsel.

The Board's implication that working indirectly through a section and Mr. White's statement that filing an amicus brief instead of trying to repeal a law somehow insulates it from liability under *Keller* and *Frankel* is without merit. In *Keller*, the challenged activities were not merely direct actions by the board of governors to affect legislation, but actions, including the filing of an amicus brief, taken by the Conference of Delegates, which was funded and sponsored by the State Bar of California. *Keller*, 46 U.S. at 15. The Supreme Court did not differentiate between the activities of the board of governors and the activities of the conference. *Id.* Similarly, in *Frankel*, the challenged activities were not direct actions by the Board of Governors, but the board adopting the recommendations of The Florida Bar Commission for Children. *Frankel*, 581 So. 2d at 1296. This Court did not draw a distinction between direct and indirect action when it determined that the actions violated *Keller* and *Schwarz*. The section's integration with The Florida Bar compels the conclusion that the January 30, 2009 action approving the filing of an amicus brief advocating the invalidation of Section 63.042(3) was an action of the Board of Governors.

That is all the more apparent in the fact that, as Mr. White has confirmed, the Board of Governors' vote to permit the filing of the amicus brief by a section of its creation and under its supervision represents a ratification of the section's action. Since the Family Law Section cannot take any action that is contrary to the Board of Governors' policies, the Board's approval of the section's action, *ipso facto*, is an action authorized by the Board of Governors and consistent with its policies. Mr. White confirms that with his statement that the brief will be shared with and reviewed by the Bar to ensure propriety.

The divisive nature of the matter is also apparent in the fact that the Bar is placing itself in an adversarial position with Petitioners and other members who have and are expressing support for Section 63.042(3). Liberty Counsel filed an amicus brief supporting the constitutionality of Section 63.042(3) in *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004) *rehearing en banc denied*, 377 F.3d 1275 (2004), *cert denied*, 543 U.S. 1081 (2005) Liberty Counsel is also filing an amicus brief in support of Section 63.042(3) in *Florida Department of Children and Families v. In re Matter of Adoption of X.X.G. & N..R.G.* The Board of Governor's vote to permit the Family Law Section to file an amicus brief advocating the overturning of Section 63.042(3) places the Bar in direct conflict with its constituents, which is the very definition of "divisive."

Since the constitutionality of Section 63.042(3) is divisive and outside of the guidelines given to the Board of Governors by this Court, the January 30, 2009 action is improper under *Keller*, *Schwarz* and *Frankel*. Respondents have violated the free speech rights of Petitioners and other Bar members. Violation of First Amendment rights, even for a minimal amount of time “unquestionably constitutes irreparable injury” for which there is no adequate remedy at law. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The January 30, 2009 vote was itself a violation of Petitioners’ First Amendment rights, and the irreparable injury caused by that violation is continuing so long as the decision remains in place. Further injury will occur if the Family Law Section is permitted to file the amicus brief in contravention of established precedent and the Bar’s established policies. Enjoining the Bar from acting upon its decision and ordering the decision be rescinded will serve the public interest in that it will prevent an undermining of the principles established by this Court and the United States Supreme Court and the concomitant undermining of the integrity of the Bar. Petitioners have established the prerequisites for an injunction pendente lite, *i.e.*, 1) that they will suffer irreparable harm unless the status quo is maintained³⁵, 2) that they

³⁵ Respondents might argue that technically the “status quo” includes the January 30, 2009 vote because that occurred prior to the filing of the petition. However, it is “the usual function of a preliminary injunction [] to preserve the *status quo ante litem* pending a determination of the action on the merits.” *Brotherhood of Railroad Carmen of America, Local No. 429 v. Chicago and North Western Railway*

have no adequate remedy at law, 3) that they have a clear legal right to the relief requested, and 4) that the injunction will serve the public interest. *Greenwood v. City of Delray Beach*, 543 So.2d 451, 452 (Fla. 4th DCA 1989). Petitioners respectfully request that this Court issue an injunction pendente lite to prevent the filing of the amicus brief by the Family Law Section.

Petitioners also seek a prospective, permanent injunction against Respondents taking any similar legislative action in contravention of the standards established in *Keller*, *Schwarz*, and *Frankel* and established Bar policies.

II. THE BOARD OF GOVERNORS' VOTE TO APPROVE THE FILING OF AN AMICUS BRIEF BY THE FAMILY LAW SECTION IS AN UNLAWFUL *ULTRA VIRES* ACT.

The Board of Governors' tangled web includes not only the violation of *Keller*, *Schwarz* and *Frankel*, but also disregard for its own standing rules and authorization of the Family Law Section's violation of its by-laws. As described more fully above, section 9.50 of the Bar's standing policy on legislative action provides that a section is permitted to advocate for a position on a legislative or political issue only if **all** of the following are true: (1) the issue involved is within the section's

Company, 354 F.2d 786, 799 (8th Cir. 1965). The status quo ante here is the pre-January 30, 2009 status when Respondents had not yet voted to engage in lobbying on a divisive issue. Therefore, this Court should issue the preliminary injunction and return the parties to the status quo ante which was set by the Supreme Court in *Keller* and this Court in *Schwarz* and *Frankel*.

subject matter jurisdiction as described in the section's bylaws; (2) the issue is beyond the scope of permissible legislative or political activity of The Florida Bar, or the issue is within the permissible scope of legislative or political activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue; **(3) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.**³⁶ (Emphasis added). If, as Bar officials claim, the position being advocated in the section's proposed amicus brief is not the position of the Bar, then the section proposal does not satisfy the second criterion. Furthermore, regardless of whether the proposal complies with the second criterion, it does not comply with the third criterion. Even the Family Law Section Executive Council acknowledged that their position is highly divisive.³⁷ Council members are quoted as saying that issue of homosexual adoption is highly sensitive and that asking the Board

¹⁵ Available at:

<http://www.floridabar.org/tfb/TFBLegNW.nsf/dc7ee304c562ed5b85256709006a26ee/d8fc829315edea6985256b2f006ccfc1?OpenDocument#9.10%20General>. (Last visited February 19, 2009).

¹⁶

http://www.familylawfla.org/executive/pdfs/executive_Council_Meeting_Agenda-January_24_2009.pdf, (Last visited February 19, 2009).

of Governors to approve the amicus brief could be “walking into a flame thrower.”³⁸ Bar President John White is quoted as admitting that the board “made a big mistake.”³⁹ In 2004 the board concluded that the issue was divisive and rejected a similar attempt by the Family Law Section.⁴⁰ Therefore, neither the section nor board members can dispute that drafting an amicus brief advocating invalidation of the statutory ban on homosexual adoption is divisive among members of the Bar. In fact, Mr. White does not try to dispute that, but disingenuously claims that the Board’s action is not an attempt to influence public policy.

The section’s proposal certainly does not comply with the third criterion of Section 9.50 and arguably does not comply with the second. Since all of the criteria must be met in order for the board to approve legislative activity by a section, the board’s approval of this activity violated its own procedures and was, therefore, ultra vires.

Furthermore, the board has authorized the Family Law Section’s violation of

³⁸ *Id.*

³⁹ David Lyons, *Commentary, The fog that is Bar bureaucracy*, THE DAILY BUSINESS REVIEW, February 9, 2009, available at: http://www.dailybusinessreview.com/Web_Blog_Stories/2009/Feb/Bar (last visited February 10, 2009).

⁴⁰ Bookman, at 8.

its own by-laws. The section is not permitted to take actions that are contrary to the policies of the Florida Bar as established by the Board of Governors. Article X §5 of the Bylaws of the Family Law Section.⁴¹ Since the amicus brief does not conform to the board's policy on legislative activity, it is contrary to established policy and therefore prohibited. By voting to permit the section to file the brief, the Board of Governors has authorized the section to violate its own by-laws. Permitting the filing of this amicus brief will further erode the integrity and independence of the Bar and its members, including Petitioners. Therefore, Petitioners respectfully request that this Court issue an injunction pendente lite as well as prospectively.

III. THE BOARD OF GOVERNORS HAS CREATED AN UNRESOLVABLE CONFLICT FOR MEMBERS OF THE JUDICIARY, PETITIONERS AND ALL OTHER WHO APPEAR BEFORE THE COURTS AS THE FAMILY LAW SECTION'S ADVOCACY PLACES JUDGES IN THE POSITION OF VIOLATING THE CANONS OF JUDICIAL ETHICS.

The Board of Governors has also ensnared the judiciary in a web of conflict from which the only hopes of escape are rescission and injunction. Article V §8 of the Florida Constitution provides that no one can serve as a judge unless that person is a member of The Florida Bar. Judges, as members of The Florida Bar, also participate in various sections. Records of the Family Law Section show that at least 39 judges

⁴¹ Available at http://www.familylawfla.org/pdfs/Current_Bylaw-2008.pdf (Last visited February 19, 2009).

are members of the section.⁴²

Judges are governed by the Code of Judicial Conduct, which aims to preserve the integrity of the judiciary by proscribing activities that could raise the appearance of impropriety or bias. Canon 2 of the Code of Judicial Conduct provides that a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and shall not permit family, social, political or other relationships to influence the judge's judicial conduct or judgment. Canon 3 establishes several rules of conduct, including that a "judge shall not, with respect to parties or classes of parties, cases, controversies or issues likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office." A judge is required to disqualify himself from hearing a case if he has made a public statement that "commits, or appears to commit, the judge with respect to: (i) parties or classes of parties in the proceeding; (ii) an issue in the proceeding; or (iii) the controversy in the proceeding." Canon 3E(1)(f). Canon 5 requires that a judge conduct all of his extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) undermine the judge's independence, integrity, or

²⁴

<http://www.floridabar.org/names.nsf/SECT?openview&RestrictToCategory=FL&count=20> (Last visited February 23, 2009).

impartiality; (3) demean the judicial office; (4) interfere with the proper performance of judicial duties; (5) lead to frequent disqualification of the judge; or (6) appear to a reasonable person to be coercive. In addition, a judge is prohibited from serving as an officer, director or advisor to any nonprofit organization which will likely come before the judge or will be frequently engaged in adversarial proceedings before the court on which the judge sits or over which the judge has appellate jurisdiction. Canon 5. As this Court has said, it is imperative that judges comply with these canons, and that this Court enforce them to “make clear to all who have business before our courts that they can expect equal justice and fair treatment regardless of station in life.” *In re Inquiry Concerning a Judge, J.Q.C.*, 357 So.2d 172, 180 (Fla. 1978).

The action taken by the Board of Governors means that Petitioners and others who appear in Florida courts will no longer have that certainty. In particular, the judges who are members of the Family Law Section will be viewed as having taken a stand on a highly divisive and controversial issue that is pending in at least two district Courts of Appeal and will likely continue to be the subject of adversarial proceedings.⁴³ The Family Law Section is advocating for the repeal of a statute

⁴³ As well as the subject case pending in the Third District Court of Appeals, the Second District Court of Appeals has scheduled oral argument in *Embry v. Ryan*, Case No. 2D08-1323, which also relates to Section 63.042(3).

previously determined to be constitutional by this Court and the Eleventh Circuit Court of Appeals. *State v. Cox*, 627 So.2d 1210, 1217 (Fla. 1993); *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004) *rehearing en banc denied*, 377 F.3d 1275 (2004), *cert denied*, 543 U.S. 1081 (2005), thereby placing its members, including at least 39 judges, at odds with prevailing precedent. The judicial members of the Family Law section are placed in a situation that potentially violates the Code of Judicial Conduct in that they are members of a group that is advocating in favor of one party to a pending lawsuit, publicly taking a position against the very law the judges are sworn to uphold, publicly taking a position against this Court and other binding precedent, and publicly taking a position on a controversial political issue. If Respondents' actions are not enjoined, then judges who are members will have to resign from the section in order to avoid violation of Canons 3 and 5. They will also have to disqualify themselves from hearing cases in which Section 63.042(3) could be an issue.

In addition, since, as Mr. White acknowledged, the Board of Governors ratified and will review the section's position, even the judges who are not members of the section are caught in the web. Even if member judges resign from the Family Law Section and disqualify themselves from cases involving Section 63.042(3), they cannot resign from the Bar, so there will still be a cloud of doubt hanging over the

judiciary. Petitioners and others appearing before the courts and the general public, will understand that The Florida Bar, of which all judges are members, has taken a stand contrary to this Court's rulings and established statutory law. Bar leaders have tried to distinguish between a petition taken by the Bar and a position taken by a section of the Bar. However, as discussed above, that distinction is illusory. Even if it were not, it would not be understood by those who count on the judiciary to dispense justice impartially and independently. This is particularly true in light of the fact that the Family Law Section sought and received permission from the Board of Governors. Members of the public will understand that if the Family Law Section had to obtain permission from the Board of Governors in order to file the amicus brief, then the Family Law Section is not an independent association and The Florida Bar cannot disclaim any interest in the section's advocacy. Mr. White's letter to Liberty Counsel confirms that the section's action is not independent from the Bar. Petitioners and other members of The Florida Bar, including judges, will be seen as taking a stand against the rule of law and against this Court's authority, to the detriment of the entire legal system.

Finally, The Florida Bar is an arm of this Court. *Dacey v. Florida Bar*, 414 F.2d at 196-197; *In re Florida Bar in re Petition for Advisory Opinion Concerning Applicability of 74-177*, 316 So.2d 45, 49 (Fla. 1975). Members of the Board of

Governors are acting as officers of this Court. *Id.* Therefore , the Board's actions, if not disputed by this Court, will, in the minds of the public, bear its imprimatur. Left in place, the Board's January 30, 2009 action will put this Court in the position of taking an adverse position to its previous ruling finding Section 63.042(3) constitutional. The Court will also be placed in the position of being perceived as having taken sides on an issue that it will likely be asked to determine after the Third District Court of Appeals renders its decision. Respondents' tangled web will become a Gordian knot unless this Court acts to reverse Respondents' actions.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that the Supreme Court of Florida:

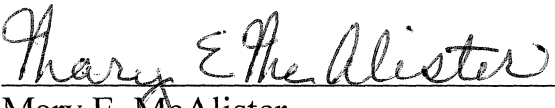
1. Declare that the Board of Governors' action on January 30, 2009 approving the filing of an amicus brief advocating that Section 63.042(3) be overturned as improper under *Keller*, *Schwarz* and *Frankel* and declared null and void;
2. Issue an order enjoining The Florida Bar *pendente lite* from permitting the Family Law Section of the Florida Bar to file an amicus curiae brief in *Florida Department of Children and Families v. In re Matter of Adoption of X.X.G. & N..R.G.* in support of the finding that Section 63.042(3) is unconstitutional;
3. Issue an order enjoining The Florida Bar *pendente lite* and hereafter from engaging, either directly or indirectly through its sections, in any lobbying activities

to support any legislative positions that do not meet the criteria set forth in *Keller*,
Schwarz and *Frankel*;

4. Award such additional relief as the Court should deem just and proper;
5. Award Petitioners fees and costs.

Dated: February 25, 2009.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font and type size requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point type.


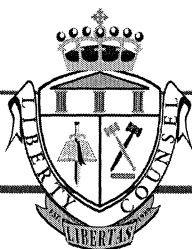

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EXHIBIT A

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Reply to: Florida

February 9, 2009

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John G. White, III
President, The Florida Bar
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West Palm Beach, FL 33401

RE: Board of Governors Vote Approving Amicus Curiae Brief To Support Invalidation of Florida Stat. §63.042(3).

Gentlemen:

As the Founder and Chairman of Liberty Counsel, I am writing to you on behalf of myself, the Florida Bar members of our public interest law firm listed below, and the many Florida Bar affiliate attorneys of Liberty Counsel. Speaking on behalf of these many attorneys, we were shocked by the actions of the Board of Governors' vote approving the Family Law Section's request to file an amicus brief supporting the invalidation of Florida Stat. §63.042(3), which excludes practicing homosexuals from adopting Florida's children. This action by the Board of Governors violates our First Amendment rights and the First Amendment rights of hundreds of other bar members, and we ask that the Board immediately rescind the action.

As you are no doubt aware, the United States Supreme Court has determined that mandatory integrated bars, such as the Florida Bar, cannot use members' dues to support ideological causes which are not germane to the goals of regulating the legal profession and improving the quality of legal services. *Keller v. State Bar of California* 496 U.S. 1, 15-16 (1990). We understand that Board members have attempted to justify their action under *Keller* by maintaining that the vote was not to directly support invalidation of the statute but to permit a voluntary section of the Bar to support invalidation. We understand that Board

members have stated after the fact that no members' dues will be used to prepare the brief and that the sponsor of the brief will be the Family Law Section, a voluntary organization, instead of the integrated bar. This is a distinction without a constitutional difference.

First, members' dues are expended in conducting Board of Governors' meetings, paying expenses, and for administrative functions, all of which were incurred as part of the recent vote. Therefore, the assertion that no members' dues are being expended on this endeavor is untrue.

Second, the general public will not discern the difference between the Family Law Section sponsoring a brief with the state bar's blessing and the state bar sponsoring the brief. Instead, they will understand that the Florida Bar, of which all of us are members, is supporting invalidation of a law that has wide public support. Liberty Counsel's clients, constituents and supporters, who depend upon us to defend their values in the public square, will not understand the alleged subtle difference between a section of the state bar and the state bar, but will believe that we are part of an organization that has taken a stand diametrically opposed to the values that they and we hold and that they expect us to uphold. This is clearly a violation of the spirit, if not the letter, of *Keller*.

Furthermore, if, as Board members assert, the Family Law Section is a wholly distinct, voluntary association, then it is not necessary for it to seek the Board's blessing on its proposal. If it is necessary for the section to seek the Board's approval, then they are not a wholly distinct, voluntary association. In addition, to the extent that the Board views the section's proposal as being within the section's mission, that is also incorrect. Article I, §2 of the by-laws for the section set forth its purposes, which include providing a forum for the exchange of ideas, establishing methods for more efficient administration of family law cases, encouraging consideration of the needs of children in court proceedings, fostering a high standard of ethical conduct, and preparing educational programs. The by-laws mention advising the *Legislature* about proposed changes in the substantive law but do not provide for advocacy for judicial invalidation of legislation, which a subset of the Bar's membership does not like. Wholly absent from the by-laws are any provisions that permit advocacy and advancement of ideological causes. Consequently, the preparation of this amicus brief is wholly outside of the permitted activities for the Family Law Section, and it was inappropriate for the Board of Governors to approve the request.

This action by the Florida Bar is completely out of step with the member attorneys it represents and with the vast majority of Floridians. On November 4, 2008, the people of Florida amended the state Constitution by passing the Florida Marriage Protection Amendment (also known as Amendment 2) by a majority of 62.5 percent. Implicit in the passage of this amendment is the affirmation of the traditional family unit comprised of a mother and a father. This same core value is encompassed in the Florida law that prohibits adoption by those activity engaged in homosexual activity. Permitting homosexual adoption is contrary to the values affirmed in the Florida Marriage Protection Amendment. Homosexual adoption would establish a public policy that children do not need mothers and fathers. Homosexual adoption permanently precludes a child from having a mother or a father. Homosexual adoption is nothing less than a policy which says that moms and dads are expendable. The majority of Floridians rejected this proposition by passing the Florida Marriage Protection Amendment. It is irresponsible for the Florida Bar to inject itself

in the midst of this political debate.

The undersigned personally drafted the Florida Marriage Protection Amendment and successfully argued on behalf of that amendment before the Florida Supreme Court. See *Advisory Opinion to Attorney General re: Florida Marriage Protection Amendment*, 926 So.2d 1229 (Fla. 2006). The undersigned also filed a brief in support of the same law which is now being challenged and which was upheld by the Eleventh Circuit Court of Appeals. See *Lofton v. Kearney*, 358 F.3d 804 (11th Cir. 2004) *cert denied* 543 U.S. 1081 (2005) (upholding Fla. Stat. §63.042(3) which prohibits adoption by those actively engaged in homosexual activity). Moreover, the undersigned, through Liberty Counsel, will be filing an amicus brief in support of the same Florida law which the Florida Bar recently voted to oppose. As a mandatory bar association, the action by the Florida Bar has made it an adversary of the members it represents. This action has placed the members of the Florida Bar in a very uncomfortable position. When this same issue arose while the *Lofton* case was appealed to the Eleventh Circuit Court of Appeals, the former members of the Board of Governors took the right course of action by agreeing not to enter this political arena because of the conflicts it would create with its members. That was the right decision then, and this recent vote is the wrong decision now. The First Amendment demands that the Florida Bar respect all of its members and thus refrain from entering into this controversial arena.

The Board of Governors' vote was an impermissible attempt to circumvent *Keller* in order to pursue a divisive political agenda. The Florida Bar should attend itself to only matters that are of general concern and need for Florida attorneys. The Florida Bar has no business injecting itself into these controversial and politically divisive topics. The action violates our First Amendment rights, and we request that the Board rescind its action. We want peace with the Florida Bar and do not want to be placed in an adversarial position. However, we are serious about our First Amendment rights and the proper role of the Bar in respecting those rights. We therefore ask that the Board of Governors immediately rescind its vote and remove the Florida Bar from this political issue. Since the upcoming dates for the filing of amicus briefs is fast approaching, we expect the Florida Bar to rescind its vote and refrain from taking sides in this issue. We look forward to hearing from the Florida Bar prior to the time the amicus brief is due.



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Anita L. Staver #0611131
Mary E. McAlister #0010168
David M. Corry #861308
Rena M. Lindevaldsen # 0659045
Horatio G. Mihet #26581

cc: Board members of the Florida Bar

EXHIBIT B



The Florida Bar



John G. White, III
President

John F. Harkness, Jr.
Executive Director
February 19, 2009

Jesse H. Diner
President-elect

Mr. Mathew D. Staver
Liberty Counsel
Post Office Box 540774
Orlando, Florida 32854-0774

Re: Board of Governors Vote / Family Law Section Amicus Curiae / F.S. §63.042(3)

Dear Mr. Staver:

This letter responds to your correspondence of February 9, 2009 regarding the recent vote of The Florida Bar's governing board approving an amicus curiae appearance by the Family Law Section in connection with *In the Matter of the Adoption of John Doe and James Doe* and in support of the invalidation of F.S. §63.042(3) which excludes homosexuals from adopting.

Your concerns are appreciated but I assure you that The Florida Bar Board of Governors was sensitive to the First Amendment implications of its actions. Florida Bar policies relating to political and ideological advocacy by its various sections – when clearly distinguishing themselves from this unified bar and if separately supported by voluntary funds in such activities – are considered consistent with the dictates of *Keller v. State Bar of California* and Florida Supreme Court guidance.

The Florida Bar's amicus activities stem from this organization's authority to provide information and advice to the courts and other branches of government on legal matters. Similar amicus involvement by any section of this bar is generally sanctioned by the Board of Governors when requested by these groups or sought by the courts if otherwise considered appropriate.

I understand your sentiments regarding past actions of prior governing boards concerning the advocacy of homosexual adoption. However, last month's vote was the product of a different board, on a new day, and beyond matters of influencing public policy in the legislative arena. The Board of Governors gave particular deference to the fact that this is now a legal question, in a court of law, where substantive commentary by lawyers should be registered by those who are among the most authoritative on this issue.

As with all amicus submissions by any section, the Family Law Section's final brief will be shared with The Florida Bar for further review. Consideration of such matters by the Bar to ensure their propriety, we believe, is within constitutional limitations. As of now, the Board of Governors of The Florida Bar has no intentions of rescinding its January 30 vote regarding this amicus filing.

Again, thank you for your comments regarding this issue.

Sincerely,

John G. White, III
President

cc: Board of Governors

