IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENT TO RULE REGULATING THE FLORIDA BAR 6-10.3

Case No. SC21-284

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WILKIE D. FERGUSON JR, BAR ASSOCIATION'S COMMENT IN OPPOSITION TO IN RE: AMENDMENT TO THE RULE REGULATING THE FLORIDA BAR 6-10.3

We, the members of the Wilkie D. Ferguson, Jr. Bar Association, pursuant to this Court's April 15, 2021 Order, No. SC21-284, *In re: Amendment to Rule Regulating the Florida Bar 6-10.3* ("The Order"), hereby submit this comment in opposition to the Order.

INTRODUCTION

The Wilkie D. Ferguson, Jr. Bar Association ("WDJFBA") was founded in 1977 by a group of Black lawyers who recognized, through their individual experiences, that barriers to full inclusion into the legal community in Miami-Dade County could only be overcome through a collective effort. The current membership recognizes that despite the valiant, courageous, and steadfast efforts of our predecessors and their allies, certain barriers to our full inclusion persist. Indeed, there remains, in 2021, a palpable dearth of representation among Black attorneys in a variety of contexts in the legal profession. Efforts to become a more inclusive profession, much like the Florida Bar's Business Law Section's (the "Business Law Section") efforts to

encourage and incentivize diversity at section-sponsored continuing legal education programs, aid in remediating the inequality Black attorneys and aspiring Black attorneys have suffered throughout the history of this state.

Accordingly, we support the Business Law Section in these efforts. And while this comment focuses specifically on The Order's harmful effects on Black attorneys practicing in Florida, we stand in solidarity with other minority groups impacted by The Order as well.

We respectfully request that you withdraw The Order.

ARGUMENT

In October 1955, Florida Supreme Court Justice William Glenn Terrell penned the following words in concurrence with the Court's decision denying Virgil D. Hawkins, a Black person, admission to the University of Florida College of Law—the only law school in Florida at that time.

> I might venture to point out in this connection that segregation is not a new philosophy generated by the states that practice it. It is and has always been the unvarying law of the animal kingdom. The dove and the quail, the turkey and the turkey buzzard, the chicken and the guinea, it matters not where they are found, are segregated; place the horse, the cow, the sheep, the goat and the pig in the same pasture and they instinctively segregate; the fish in the sea segregate into 'schools' of their kind; when the goose and duck arise from the Canadian marshes and take off for the Gulf a [sic] Mexico and other points in the south, they are always found segregated; and when God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God's

> plan was in error and must be reversed despite the fact that gregariousness has been the law of the various species of the animal kingdom.

State ex rel Hawkins v. Board of Control, 83 So.2d 20, 27-28 (Fla. 1955) (Terrell, J., concurring)

Shortly after Justice Terrell made this pronouncement, the U.S. Supreme Court disagreed and ruled that Mr. Hawkins was "entitled to prompt admission [to the University of Florida College of Law] under the rules and regulations applicable to other qualified candidates." *Florida ex rel Hawkins v. Board of Control*, 350 U.S. 413, 414 (1956). Nevertheless, on the same day, Florida Governor Leroy Collins (an attorney and member of the Florida Bar) vowed in a statewide radio broadcast that Florida was "just as determined as any Southern state to maintain segregation" and that he would resist the Supreme Court's order. Lawrence A. Dubin, Virgil Hawkins: A One-Man Civil Rights Movement, 51 Fla. L. Rev. 913, 934 (1999).

Not so long ago, this Court stated that segregation is "a fixed philosophy." *Board of Public Instruction of Manatee County v. State*, 75 So.2d 832, 837 (Fla. 1954). "The people are committed to it for what they were led to believe were sound reasons, it is one of their fundamental beliefs, fortified by generations of practice and legislative policy and repeatedly approved by state courts of last resort." *Id.* "It has also been approved for many years by the Supreme Court of the United States." *Id.*

From 1619, when Black Americans were forcibly deposited as chattel on the shores of this nation until the middle of the 20th century (over 300 years), segregation and second-class citizenship for Black Americans was the law of the land and the law of this state. For far longer, Black Americans have been excluded from the professions and educational centers occupied almost exclusively by White Americans, who have wielded incalculable power and influence over those professions and educational centers. Suffice it to say, the stain of America's tricentennial record of subjugation and exclusion of her Black American citizens cannot be, and will not be, erased overnight.

Indeed, there are people who currently live and practice law in this state who lived and practiced in this state around the time when this Court ruled that Virgil D. Hawkins could not attend the University of Florida College of Law simply because he was a Black man. Indeed, members of the Florida Bar and this Court fought heartily and effectively in their efforts to exclude Virgil D. Hawkins and other Black Americans from obtaining legal education and becoming members of the Florida Bar.

The question of this moment is clear. To what extent has this State, the Court, or the Florida Bar engaged in remedial efforts to at least try to address the harms suffered by Mr. Hawkins and his proverbial progeny? And

more specifically, to what extent did the Court consider any of these factors in formulating the reasoning underlying The Order? This Court is well aware that there is a noteworthy lack of Black American representation in all facets of the legal profession—starting with law schools and continuing all the way to the bench—not to the exclusion of this very Court and the lower courts throughout the state.

The Order suggests that the Court is either (1) willfully blind to the deficits that exist with respect to diversity and inclusion in the legal profession in Florida; (2) unwilling to *allow* members of the Florida Bar to take necessary and reasonable steps toward creating and maintaining a diverse and inclusive environment for lawyers in this state; or (3) actively seeking to maintain a "fixed philosophy" structured toward discrimination, supremacy and exclusion. *See Board of Public Instruction of Manatee County*, 75 So.2d at 837. History certainly has its eyes on us. Just as we read the words of Justice Terrell and this Court from not so long ago with a critical gaze, future lawyers, judges, and citizens will similarly reflect upon this moment as a time of progress and corrective action, a moment of stagnation, or, at worse, a retrogressive movement with unfortunate and far-reaching consequences.

CONCLUSION

The Wilkie D. Ferguson, Jr. Bar Association forcefully disagrees with The Order and the rationale offered in support thereof. We respectfully request that the Court reverse The Order and allow the Business Law Section and other similar groups to promote diversity and inclusion by encouraging and incentivizing actions that foster and maintain a diverse and inclusive legal profession.

Respectfully Submitted,

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