

IN THE SUPREME COURT OF FLORIDA
Case No.: SC21-284

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

COMMENTS OF FLORIDA ASSOCIATION FOR
WOMEN LAWYERS TO AMENDMENT TO RULE 6-10.3(d),
RULES REGULATING THE FLORIDA BAR

Florida Association for Women Lawyers (“FAWL”), which is joined by its affiliated chapter, the Miami-Dade Chapter of the Florida Association for Women Lawyers (“MDFAWL”), submits the following comments pursuant to this Court’s Order No. SC21-284 entered on April 15, 2021 (the “Order”) regarding the Amendment to Rule 6-10.3(d), Rules Regulating The Florida Bar. FAWL respectfully requests that the Court withdraw or revise its amendment to Rule 6-10.3 to the extent that it prohibits The Florida Bar from giving continuing legal education (CLE) credit to private, voluntary bar associations if said organizations have a speaker diversity policy similar to that policy previously adopted by the Business Law Section (“the Policy”), which gave rise to the Order. FAWL will leave the argument as to whether the Policy constituted a quota to the Business Law Section and others who are addressing that point in

RECEIVED, 07/15/2021 11:03:28 AM, Clerk, Supreme Court

their comments. FAWL's comment is limited to its concern related to the overreach by the Court into the affairs and conduct of private entities, which does not appear to be in line with legal precedent.

It is well settled law that the Fifth and Fourteenth Amendments to the U.S. Constitution offer no shield against private conduct even if discriminatory or wrongful and that private conduct is not subject to the dictates of the Equal Protection Clause.¹ *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350-51 (1974); *Committee of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 946 (D.C.Cir. 1988) quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948). An entity's action must be attributable to the state for the protections of the Fifth and Fourteenth Amendments to be applicable. *Jackson* at 358-59. The inquiry must be whether there is a sufficiently close nexus between the State and the action of the entity so that the action of the latter may be fairly treated as that of the State itself. *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 176 (1972).

FAWL is a private organization that permits any person with a bar license in good standing in any state and who pays the

¹ The Court relied only on two Equal Protection Clause cases in its Order.

membership fee to be a member. Membership is voluntary. FAWL does not receive government funding and is not subject to any specialized government regulation. FAWL is clearly not a government entity. FAWL's Board of Directors has been unable to conceive of an argument by which its policies related to speaker diversity could be seen to have a nexus to the state to be considered state action. FAWL's Board of Directors likewise has not found any legal precedent to support a court determining that the content of a continuing education course should be approved or excluded from CLE credit by a state bar association based on internal policies of a self-funded, private organization.

Prior to the Order, the only criteria The Florida Bar considered when awarding CLE credit was whether the course or activity has "significant intellectual or practical content designed to increase or maintain the attorney's professional competence," that those conducting the course are "qualified by practical or academic experience" and conduct the course "in a setting physically suitable to the educational activity or program." Standing Policies of The Florida Bar Part 500, § 5.01 (a) (standards). The Order essentially writes into the Florida Bar CLE credit approval process a review of

private organizations' policy choices. If the Order stands, FAWL is concerned with what other policies courts in the future could use as a basis to effectively alienate voluntary, specialty bars from getting Florida Bar CLE approval, which would in turn affect their financial stability by taking away an important source of revenue and affect their viability as entities. Further, voluntary bar associations provide a variety of approved CLE programs on topics and legal issues that may not be offered by the Florida Bar. Those programs enhance the profession and increase the opportunity for lawyers to obtain the necessary credit for continuing education reporting and board certification.

If a speaker diversity policy today is the basis for excluding a private organization from CLE credit, is a gender-specific mission statement the basis for doing so tomorrow, for example? For all of the foregoing reasons, the ramifications of the Order are concerning to FAWL and FAWL urges the Court to reconsider its Order and to limit the scope so as to not encroach upon the freedoms of private entities protected by the laws of this country.

Respectfully submitted,

Florida Association for Women Lawyers

/s/ Kimberly E. Hosley

Kimberly E. Hosley
Florida Bar No. 015365
Immediate Past President,
Florida Association for Women Lawyers
P.O. Box 721264
Orlando, FL 32872
admin@fawl.org
khosley@theorlandolawgroup.com

/s/ Jenny Sieg

Jenny Sieg
Florida Bar No. 117285
President,
Florida Association for Women Lawyers
P.O. Box 721264
Orlando, FL 32872
admin@fawl.org
jenny@siegcolelaw.com

Miami-Dade Chapter, Florida Association
for Women Lawyers

/s/ Kristin Drecktrah Paz

Kristin Drecktrah Paz
Florida Bar No. 91026
President, Miami-Dade Chapter,
Florida Association for Women Lawyers
Florida Bar No. 91026
200 South Biscayne Boulevard, Suite
4100
Miami, FL 33131
Email: kpaz@shutts.com