

IN THE SUPREME COURT OF FLORIDA

Harvey M. Alper and  
Joseph W. Little,

Petitioners

Case No. \_\_\_\_\_

vs.

The Florida Bar,  
Arm of the Supreme Court, and  
Robert A. Rush,

Respondents

ORIGINAL PETITION FOR INJUNCTIVE RELIEF

1. This is an petition for injunctive relief.
2. This Court has original jurisdiction of this action as prescribed by Article V § 15 Florida Constitution.
3. This Court's jurisdiction was acknowledged in The Florida Bar re David P. Frankel., 582 So.2d 1284, 1296, n.1 (Fla. 1991) and The Florida Bar re Schwarz, 552 So.2d 1094 (Fla.1989), cert. denied, 498 U.S. 951, 111 S.Ct. 371, 112 L.Ed.2d 333 (1990).
4. Frankel 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."
5. Schwarz held: "...we also wish to make clear that any member of The Florida Bar in good standing may question

the propriety of any legislative position taken by the Board of Governors by filing a timely petition with this Court."

#### PARTIES

6. Harvey M. Alper is an active member of The Florida Bar in good standing.
7. Alper resides in Seminole County, Florida and practices law in this state.
8. Joseph W. Little is an active member of The Florida Bar in good standing.
9. Little resides in Alachua County, Florida, teaches law at the University of Florida as a full time occupation, and practices law in this state.
10. The Florida Bar is an arm of the Supreme Court of Florida created and empowered by that Court pursuant to Article V §17 Florida Constitution.
11. The Florida Bar is hereinafter referred to as Bar.
12. An entity known as the Board of Governors is the governing Board of The Florida Bar under rules promulgated by the Supreme Court of Florida
13. The Board of Governors of The Florida Bar is hereinafter referred to as Board.
14. Robert A. Rush is an active member of The Florida Bar in good standing.
15. Rush is a member of the Board of Governors of The Florida Bar elected from the Eighth Judicial Circuit of

Florida.

#### FACTS

16. The Supreme Court of Florida is a court vested with judicial power by Article V Florida Constitution.
17. Under Article V §10 Florida Constitution the ballots presented to voters throughout the state will include a ballot question pertaining to whether the voters wish to approve a local option to select county judges by merit selection and retention rather than by election and a second ballot question pertaining to whether the voters wish to approve a local option to select circuit judge by merit selection and retention rather than by election.
18. Board has taken an official position to support a "Yes" vote on each of the two ballot questions referred to above.
19. Petitioners oppose having Board take an official position on this issue on grounds that doing so infringes rights of free expression and to petition government in violation of the First Amendment to the United States Constitution and Article I Florida Constitution.
20. Petitioners oppose the "Yes" position that Board has taken on the two ballot questions referred to above.
21. Because Bar is an arm of the Supreme Court of Florida,

Board's political positions are deemed to be invested with the approval and endorsement of the Supreme Court of Florida.

22. In Frankel and Schwarz the Supreme Court of Florida held that Board may take legislative lobbying positions on certain matters.
23. The Supreme Court of Florida has never held that Board may expend Bar's money and resources to engage in political campaigns that are directed to influence how individual voters in the state vote in secret elections.
24. Petitioners oppose Bar's extension of its political activities and its expenditure of money and resources in political campaigns that are directed to influence how individual voters in the state vote in secret elections.
25. Board has prepared campaign literature designed to be distributed to voters throughout the state to influence political campaigns that are directed to influence how individual voters in the state vote in on the two ballot questions referred to above.
26. Rush spoke as representative of Board at a meeting in Gainesville, Florida on Thursday, September 21, 2000 he announced that it was Board's position to support a "Yes" vote on the two ballot questions and urged the listeners to vote yes.
27. Rush had a copy of a video prepared by Bar to support its position.

28. Rush distributed copies of campaign flyers prepared and paid for by Bar to influence how individual voters in the state vote in on the two ballot questions referred to above.
29. Exhibit 1 attached hereto is a true specimen of a campaign flyer prepared and distributed by Bar and by Petitioner Little from Rush.
30. Exhibit 1 shows on its face that it is a message from The Florida Bar.
31. Exhibit 1 identifies Bar's web site as [www.FLABAR.org](http://www.FLABAR.org).
32. Exhibit 2 is a true copy of a page from Bar's foregoing website as it existed on September 27, 2000.
33. Exhibit 2 identifies to voters and other users of the website that Bar possesses official governmental status as an arm of the Supreme Court of Florida pursuant to Article V, Section 15 Florida Constitution.
34. Exhibit 1 is a political flyer.
35. Exhibit 1 contains false and misleading statements.
36. Exhibit 1 contains the false message that judges selected under the current constitutional plan are politicians and not qualified judges.
37. Exhibit 1 falsely implies that this statement will be voted upon by the voters on November 7, 2000: "Should all trial judges be selected on the basis of merit, appointed by the Governor, and retained in office with voter approval, like many Florida judges have been for

the past 20 years?"

38. The statement quoted above will not appear on the November 7, 2000 ballot in the Florida general election.
39. The statement, "Under the merit system, only the best qualified individuals will be appointed as judges" is not factually demonstrable.
40. The statement, "Under the merit system, only the best qualified individuals will be appointed as judges" is false.
41. There is no demonstrable evidence to establish that judges appointed under "the merit system" would be any better qualified than judges seated under the current system.
42. The statement, "Under the merit system, judges will be selected based on overall ability experience, and community service" is not factually demonstrable.
43. There is no demonstrable evidence to establish that judges appointed under "the merit system" would be more like to be "selected based on overall ability experience, and community service" than judges seated under the current system.
44. The statement, "Under the merit system, judges will be selected based on overall ability experience, and community service" is false.
45. The statement, "Voters will be held accountable based on their performance" is not factually demonstrable.

46. No judge who has been subject to a retention election in Florida has ever denied a subsequent term in office by a retention election.
47. The statement, "Voters will be held accountable based on their performance" is false.
48. The statement "Based on past experience, more women and minorities are likely to become judges" is not factually demonstrable.
49. The statement "Based on past experience, more women and minorities are likely to become judges" is false.
50. The statement "Judges should not be politicians and politics should not be a part of the court system" is misleading in its implication that the "merit system" will be freer of politics than the current system.
51. The statement "Judges should not be obligated to special campaign interests" is misleading in its implication that retention elections will be freer of special campaign interests than the current system.
52. The statement "The independence of the judiciary -free and totally unaffected by political pressure-is the cornerstone of our democracy" is misleading in its implication that our current judiciary is not independent and that the cornerstone of our democracy is at stake.
53. Exhibit 1 is misleading in that it does not reveal the "whole truth" to the voters.

54. Exhibit 1 is misleading in that it does not reveal to the voter that judges initially seated to fill an unexpired term created by a vacancy arising from death, resignation or removal under the current system is exactly the same as Exhibit 1 touts.
55. Exhibit 1 is misleading in that it does not reveal to the vote that a large proportion of judges initially seated in the current system are chosen by exactly the same system that Exhibit 1 touts.
56. Exhibit 1 is misleading in that it does not reveal that the major difference in the two systems to be voted upon is the matter of retention elections instead of the potential of contested elections as the end of a completed term of a judge who wishes to be reelected.
57. Exhibit 1 is a tawdry political document.
58. Exhibit 1 is full of false and half true statements and implications.
59. Exhibit 1 sullies the reputation and dignity of the Supreme Court of Florida and Bar.
60. Exhibit 1 sullies the reputation and dignity of petitioners because of their compelled membership in Bar.
61. Bar and Rush are making efforts to distribute copies of Exhibit and similar campaign materials to the voters throughout this state.
62. Bar's political activities carry the imprimatur of the

Supreme Court of Florida and the State of Florida in support of a political position that is in dispute among members of the Bar and within the general voting population.

63. A "Yes" vote on the ballot measure referred to in Exhibit 1 that Bar is engaged actively in politics to support would make a basic change in the traditional manner in which the people of Florida have selected the officials in the judicial branch of the government of the state.
64. If the Bar, acting under the aegis of the Supreme Court of Florida and the state of Florida is constitutionally permitted to expend its resources and the imprimatur of the Supreme Court to engage in political activities directed to influence the voters to change the judicial branch of government then the Legislative Executive branches of government may be expected to employ the resources and imprimatur of the State of Florida to engage in political activities to influence the voters to change the basic form of democratic government in other ways.
65. Intrusion of the government of the State of Florida though the political activities undertaken by Bar under the aegis of the Supreme Court of Florida impermissible interferes with the basic rights of the people to make independent decisions about the form of government in

the state in violation of petitioners' rights and those of the people of Florida guaranteed by Article I, §§1,4 and 9 Florida Constitution and the First and Fourteenth Amendments to the United States Constitution.

66. Intrusion of the government of the State of Florida though the political activities undertaken by Bar under the aegis of the Supreme Court of Florida while petitioners are compelled by the Supreme Court to be members of Bar and to pay dues to Bar as a condition upon the right to practice law in this state deprives them of property and liberty without due process of law in violation of Article I Florida Constitution and the First and Fourteenth Amendments to the United States Constitution.

**PRAYER FOR RELIEF**

67. Petitioners respectfully request this Court to order Rush and Board to cease and desist preparing and distributing all documents like Exhibit 1 and all other campaign documents and materials of whatever form and description containing the information therein.
68. Petitioners respectfully request this Court to order Rush and Board to make reasonable efforts to recover copies of Exhibit 1 and other campaign materials distributed.
69. Petitioners respectfully request this Court to order

Rush and Board to cease and desist from employing the money, resources and reputation of the Bar and the Florida Supreme Court to engage in direct political campaigns to influence the decisions of the voters of Florida in regard to specific ballot issues.

Respectfully submitted,

Joseph W. Little  
Fla. Bar # 196749  
3731 N.W. 13<sup>th</sup> Place  
Gainesville, Fl. 32605  
352-392-2211  
Attorney for Petitioners

Certificate of Service

I certify that a copy of this petition has been served by express mail on John F. Harkness, Jr., Esq., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Fl. 32399-2300, 850-561-5600 and by mail on Robert A. Rush, Esq., 626 N.E. 1<sup>st</sup> Street, Gainesville, Fl. 32601, 352-373-7566, this 27<sup>th</sup> day of September 2000.

Joseph W. Little

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