No. _____

IN THE

Supreme Court of the United States

ADAM JARCHOW AND MICHAEL D. DEAN,

Petitioners,

v.

STATE BAR OF WISCONSIN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Janus v. AFSCME,* 138 S. Ct. 2448 (2018), the Court held that State laws compelling public employees to subsidize the speech of labor unions violate the First Amendment, overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The same improperly "deferential standard" that *Abood* espoused underpins the two decisions of the Court—*Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990)—permitting States like Wisconsin to compel attorneys to be members of an "integrated bar" and fund its speech and advocacy on matters of substantial public concern. Accordingly, the question presented is:

Whether *Lathrop* and *Keller* should be overruled and "integrated bar" arrangements like Wisconsin's invalidated under the First Amendment.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Adam Jarchow and Michael D. Dean were Plaintiffs-Appellants in the court below.

Respondents, who were Defendants-Appellees in the court below, are the State Bar of Wisconsin, the State Bar of Wisconsin Board of Governors, Christopher Rogers, Jill Kastner, Starlyn Tourtillott, Kathleen Brost, Eric L. Andrews, and Kori Ashley.

Because Petitioners are not corporations, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

There are no other court proceedings "directly related" to this case within the meaning of Rule 14(b)(iii).

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The Petitioners, as attorneys practicing law in Wisconsin, are required by State law to join the State Bar of Wisconsin and subsidize its speech on matters of substantial public concern ranging from the administration of justice and the substance of the law to divisive legislation. Those requirements are an even plainer affront to the First Amendment than the compelled payments to public-employee labor unions condemned by *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). Whereas the collective-bargaining speech at issue in *Janus* was primarily addressed to things like wages and benefits that implicate the public fisc, the speech Wisconsin attorneys are compelled to subsidize is directly and inherently political, addressing as it does the substance and administration of the law. And whereas the public employee in *Janus* was not required to join the union, Wisconsin law requires all lawyers to formally associate with the State Bar as full-fledged members. In these ways, Wisconsin's so-called "integrated bar" contravenes the fundamental First Amendment principle "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

Yet this compulsion has never been subject to First Amendment scrutiny and never will be absent the Court's intervention. The lower courts are bound by two aberrant decisions approving integrated-bar schemes without any consideration of whether they

are appropriately tailored to achieve compelling State interests. *Lathrop v. Donohue*, 367 U.S. 820 (1961), upheld compulsory bar membership based on off-hand *dicta* from labor-law precedent concerning the private sector that the Court has since clarified has no application to *State*-compelled association. And *Keller v. State Bar of California*, 496 U.S. 1 (1990), upheld compelled subsidization of State bar speech based on another labor-law precedent, *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), that the Court subsequently overruled because it approved such compulsion "under a deferential standard that finds no support in our free speech cases." *Janus*, 138 S. Ct. at 2480. Although the Court's modern free-speech jurisprudence—*Janus*, in particular—has knocked the legs out from under *Lathrop* and *Keller*, the lower courts remain bound to follow them unless and until this Court overrules them.

The time has therefore come for this Court to reconsider those decisions and give "a First Amendment issue of this importance" the consideration it deserves. *Harris v. Quinn*, 573 U.S. 616, 636 (2014). The deferential standard applied by *Lathrop* and *Keller* is unsupportable, but its persistence deprives the hundreds of thousands of attorneys who are compelled by State law to join and subsidize the speech of integrated bars of their First Amendment rights. Permitting this state of affairs to continue long past the date that the untenability of those precedents became clear would be unconscionable. The same logic that

led the Court in *Janus* to revisit and overrule *Abood* applies with equal force here.

OPINIONS BELOW

The Seventh Circuit's opinion is unreported and is reproduced at Pet.App.1. The district court's opinion is unreported and reproduced at Pet.App.5.

JURISDICTION

The Seventh Circuit entered judgment on December 23, 2019. Pet.App.2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The relevant regulatory provisions involved are reproduced at Pet.App.48.

STATEMENT OF THE CASE

A. Wisconsin's Integrated Bar

The State Bar of Wisconsin is a mandatory professional "association" organized under the Wisconsin Supreme Court's rules. Pet.App.48. Among its purposes are acting "to aid the courts in carrying on and improving the administration of justice," "to safeguard the proper professional interests of the members of the bar," and to "make reports and recommendations" on "substantive law." Pet.App.49 (Wis. S. Ct. R. 10.02(2)). It has approximately 25,000 members. Pet.App.16.

The State Bar is an "integrated" or "unified" bar, meaning State law requires membership in the Bar and payment of membership dues as a condition of practicing law in the State. Specifically, the Wisconsin Supreme Court rules direct that "membership in the association shall be a condition precedent to the right to practice law in Wisconsin." Pet.App.48. Wisconsin requires "[e]very person who becomes licensed to practice law in [the] state" to "enroll in the state bar by registering…with the [State Bar] within 10 days after admission to practice." Pet.App.50. These same rules forbid an "individual other than an enrolled active member of the state bar" to "practice law in [the] state or in any manner purported to be authorized or qualified to practice law." Pet.App.53.

Wisconsin law empowers the State Bar to compel payment of dues from all members except certain "emeritus" members over 70 years of age. Pet.App.16, 51, 57. The State Bar has exercised that prerogative and compels the payment of what it calls "compulsory dues." Pet.App.16. The annual amounts vary based on membership classification and run from $258 for full dues-paying members to $173 for nonvoting judicial members. Pet.App.16–17. These dues, in turn, fund nearly half of the State Bar's annual expenditures. Pet.App.17–18.

If a member fails to pay annual dues or assessments for over 120 days after the payment deadline, the State Bar will automatically suspend the attorney's membership. Pet.App.17. This prohibits the member

from "practic[ing] law during the period of the suspension." Pet.App.17. A suspended member's name is sent to the Wisconsin Supreme Court and to "each judge of a court of record in [the] state." Pet.App.17. Ultimately, an attorney who practices law in Wisconsin without joining the Bar and paying dues risks criminal penalties. Wis. Stat. § 757.30.

B. The State Bar's Speech and Advocacy

The State Bar is among the most active and powerful political-advocacy organizations in Wisconsin, forcefully engaging in legislative and policy debates within the State and entering political debates on seemingly every hot-button issue under the sun. The State Bar opposes the death penalty. Pet.App.32. It supports criminal-justice "reform" and has advocated for releasing "older inmates" from prison, Pet.App.35, permitting convicted felons to vote, Pet.App.41, and taking aggressive measures to curtail what it calls "disparate and mass incarceration," Pet.App.35.

The State Bar is particularly engaged on social issues. For example, it supports insurance coverage for abortions in policies sold on a State-operated exchange, Pet.App.23, incorporating "sexual orientation" and "gender identity" into anti-discrimination law, Pet.App.38, and taking affirmative action "to promote diversity and inclusion among State Bar leadership," Pet.App.34, and "law firms," Pet.App.31.

The State Bar has also taken public stances on tax reform, Pet.App.30, sexual-harassment policies, Pet.App.34, and public financing of campaigns,

Pet.App.32. And the State Bar has had much to say about the current President and Administration, all of it critical. Pet.App.36–37 (commentary that immigration executive order is "[i]mmoral, "obnoxious," and "unjust"); Pet.App.36 (criticizing nominee as "pro-management"); Pet.App.38 (criticizing President's statement as "ill-considered").

The State Bar maintains a dedicated lobbying shop, which it also supports with membership dues. Pet.App.19–20. The Bar's lobbyists have prepared a 30-page statement of the Bar's "Policy Positions" that is published on the Bar's website. Pet.App.29.[1] Its positions include support for continuation of the State's integrated bar, opposition to permitting non-attorney professionals to provide what it considers to be legal advice, support for public financing of judicial campaigns, and opposition to State immigration laws and enforcement. Pet.App.29–31.

The Bar's speech and political advocacy is funded by membership dues. By default, members of the State Bar are required to pay dues that subsidize the full range of the Bar's activities, including all of its advocacy. Members may, however, opt out of paying a portion of dues corresponding to the State Bar's expenditures on activities that it has determined to be "non-

[1] State Bar of Wisconsin Policy Positions 2016, State Bar of Wisconsin (2016), https://www.wisbar.org/aboutus/governmentrelations/Documents/BOGPolicyPositions2017.pdf.

chargeable," which it defines as activities not germane to regulation of the legal profession or improving legal services. Pet.App.18.

But the State Bar's chargeable speech (i.e., that which all members must subsidize) also involves issues of substantial public concern. The speech that the Bar has deemed chargeable includes, among much else, its advocacy for legislation affecting the regulation of the practice of law; advocacy for increased funding for prosecutors; and advocacy for "improved access to justice, consumer safeguards and judicial campaign reform." Pet.App.39; *see also* Defendants' Motion to Dismiss, Ex. B, *Jarchow, et al., v. State Bar of Wisconsin, et al.*, No. 19-cv-266, (W.D. Wis. May 21, 2019), ECF No. 16-2 (table prepared by Bar identifying chargeable items). The Bar also regards as chargeable the many articles and reports that it publishes on substantive law and the administration of law. Pet.App.21.

C. Proceedings Below

Petitioners are licensed Wisconsin attorneys who have been and are currently required to pay annual membership dues. Pet.App.39. Petitioners disagree with the State Bar's speech—including its speech on criminal-justice issues, legal–services corporation funding, felon voting rights, maintaining an integrated bar, the unauthorized practice of law, professional taxes, tax reform, immigration law, public campaign financing, the death penalty, unemployment insurance fraud, free exercise of religion, and immigration law—and oppose being compelled to financially

support it with their membership dues. Pet.App.40–41. For the same reason, they also object to being compelled to join the State Bar as members. *Id.*

Accordingly, Petitioners brought suit against the State Bar and its officers, in their official capacities, seeking declaratory and injunctive relief from the compelled-membership and compelled-dues requirements. Pet.App.9–47. The Defendants (Respondents here), moved to dismiss, arguing that this Court's *Keller* decision foreclosed Petitioners' claims. In response, Petitioners acknowledged that *Lathrop* and *Keller* were controlling, argued that those decisions were wrongly decided, and asked the district court to dismiss the action to facilitate a prompt appeal. The district court granted the motion, holding that *Keller* controlled and dismissing the case on that basis. Pet.App.3–8.

Petitioners appealed to the Seventh Circuit and moved for summary affirmance. They acknowledged again that *Lathrop* and *Keller* were controlling and presented their arguments for overruling those decisions. The appeals court granted the motion, agreeing that it was bound by *Keller* and recognizing that Petitioners "have preserved their position for review by the Supreme Court." Pet.App.2.

REASONS FOR GRANTING THE PETITION

This petition presents an ideal and timely opportunity for the Court to revisit two aberrant precedents, *Lathrop* and *Keller*, that permit wholesale deprivation of attorneys' First Amendment right to be free from compelled association. An integrated bar like Wisconsin's is subject to heightened scrutiny because it entails "compelled funding of the speech of other private speakers and groups," *Harris v. Quinn*, 573 U.S. 616, 647 (2014) (citation omitted), but is not tailored to achieve any compelling State interest. And its membership requirement is no different from a requirement that citizens *join* one of the major political parties, something that "[n]o one…would seriously argue that the First Amendment permits." *Janus*, 138 S. Ct. at 2464. *Lathrop* and *Keller* approved these intrusions on First Amendment rights, but (like the compelled-association precedents *Janus* overruled) they came "about more as a historical accident than through the careful application of First Amendment principles." *Knox v. SEIU*, 567 U.S. 298, 312 (2012). The intellectual underpinning of both decisions having been dismantled by *Janus*, the Court should take this opportunity to overrule them and clarify that ordinary First Amendment principles apply in this area.

I. *Lathrop* and *Keller* Cannot Be Reconciled with *Janus* and the Rest of This Court's First Amendment Jurisprudence

Contrary to *Lathrop* and *Keller*, the Court's modern First Amendment jurisprudence recognizes that impingements of First Amendment rights like compelled membership in an integrated bar and subsidization of its speech are subject to heightened scrutiny, which neither of those impingements on First Amendment rights can withstand.

A. Wisconsin Law Compels Attorneys To Subsidize Core Political Speech Materially Indistinguishable from a Labor Union's or a Lobbyist's

The compelled-dues aspect of Wisconsin's integrated-bar scheme is identical to that of the agency-fee scheme invalidated in *Janus*. *Janus*, like the Court's predecessor *Harris* and *Knox* decisions, applied the "bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris*, 573 U.S. at 656; *see also Knox*, 567 U.S. at 310–11 ("[C]ompulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." (quotation marks omitted)). And it held that, because labor-union speech in collective bargaining addresses matters of the utmost public concern, State laws compelling public workers to subsidize that speech trigger heightened scrutiny.

138 S. Ct. 2463–66. Wisconsin's compelled-dues requirement for attorneys is indistinguishable.

The State Bar engages in core protected speech on matters of intense public concern. That is, in fact, its central mission, as spelled out in law: "to aid the courts in carrying on and improving the administration of justice" and to "make reports and recommendations" on "substantive law." Pet.App.49 (Wis. S. Ct. R. 10.02(2)). Those ends are accomplished through speech, and the administration of justice and contents of substantive law are indisputably matters of substantial public concern. It should go without saying that Wisconsin attorneys do not all share the same vision for the law and the administration of justice and so may disagree with the State Bar's positions on any number of important public policies, as the Petitioners do. Nonetheless, they are all compelled by State law to subsidize its advocacy in support of those positions and other speech by the Bar with which they disagree.

There is no material distinction between the State Bar's speech and the speech that the Court held triggered heightened scrutiny in *Janus*. *Janus* recognized that even the supposedly non-political subjects of collective bargaining—things like wages and employee benefits—were still matters of public concern because collective bargaining impacts the public fisc. 138 S. Ct. at 2475. And there was no serious question about the core status of union speech that "touches on fundamental questions of education policy," as well as union speech on such "controversial subjects such as

climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions." *Id.* at 2476. All of this speech, the Court concluded, "occupies the highest rung of the hierarchy of First Amendment values and merits special protection." *Id.* (quotation marks omitted).

The same is true of the State Bar's speech, which addresses many of same controversial subjects as the union's in *Janus*. It speaks out on matters of public funding and tax policy that affect the public fisc. But even its arguably more mundane speech, regarding the legal profession and the law, directly implicates matters of substantial public concern. Just as a "public-sector union takes many positions during collective bargaining that have powerful political and civic consequences," *Knox*, 567 U.S. at 310, the regulation of lawyers, the provision of legal services, and the administration of justice are matter of paramount public concern.

And, just like in *Janus*, State law compels attorneys to subsidize that speech, even if they disagree with it. Indeed, the Court has long understood that there is a close parallel "between the relationship of the State Bar and its members, on the one hand, and the relationship of employee unions and their members, on the other." *Keller*, 496 U.S. at 12; *Lathrop*, 367 U.S. at 828 (recognizing that both situations raise the "question of compelled financial support of group activities"). And *Keller* borrowed the legal reasoning of a since overruled labor-law precedent, *Abood*, to uphold

compelled subsidization of an integrated bar's speech. 496 U.S. at 13.

Janus's overruling of *Abood* left a striking anomaly in the application of the First Amendment to State-compelled subsidization of speech, subjecting it to heightened scrutiny with respect to labor unions, without disturbing *Keller*'s deferential approval of it with respect to integrated bars. At the level of principle, however, the result must be the same in both context because both involve State-compelled subsidization of speech on matters of substantial public concern.

B. Compelled Membership in the State Bar Impinges Core Associational Rights

Wisconsin's integrated-bar arrangement imposes a greater burden on First Amendment rights than the agency-fee arrangement *Janus* condemned because it requires lawyers to be formal members of the State Bar, whereas the public-sector workers in *Janus* were not compelled to join the union. Yet *Lathrop*, with scant reasoning and no scrutiny, upheld compelled membership in integrated bars. 367 U.S. at 843 (plurality opinion); *see also id.* at 849–50 (Harlan, J., concurring). And *Keller*, with *no* reasoning, reaffirmed *Lathrop*. 496 U.S. at 17. Both decisions erred in failing to recognize the intrusion on First Amendment rights posed by compelled membership in an expressive association and failing to subject it to heightened scrutiny.

An integrated bar is an expressive association like a church, fraternal organization, civic association, or advocacy group because it exists for its members to "mak[e] some sort of collective point, not just to each other but to bystanders along the way." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 568 (1995). To that end, the State Bar speaks out on a wide range of matters of substantial public interest. Its mission is to represent the interest of its members on matters of legal reform, access to justice, and regulation of the legal profession. Pet.App.18–19, 49. That Wisconsin law compels attorneys to associate with the State Bar as members is therefore a plain-as-day impingement of their First Amendment rights under this Court's precedents, triggering heightened scrutiny. *See, e.g., United States v. United Foods*, 533 U.S. 405, 411–12 (2001); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984); *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 12 (1986).

Lathrop, however, regarded that injury as a nullity. In the plurality's view, because a bar member "is free to attend or not attend [the bar's] meetings or vote in its elections," the Court was "confronted…only with a question of compelled financial support of group activities, not with involuntary membership in any other aspect." 367 U.S. at 828. It is difficult to imagine a ruling more at odds with subsequent precedent, which treats the "freedom not to associate" as a constitutional right independent of any financial obligation. *Jaycees*, 468 U.S. at 623.

Rather than re-assess *Lathrop*'s reasoning in light of the Court's more recent expressive-association precedents, *Keller* repeated its error. *Keller* did not distinguish between "membership" and "dues," but rather lumped them together without explanation. *See* 496 U.S. at 5 (describing the arrangement ultimately upheld as one requiring "membership and dues").[2]

Yet, at the level of First Amendment principle, there is no difference between compelled membership in an advocacy organization and compelled membership an integrated bar, which is simply a species of advocacy organization. Both impinge First Amendment rights, triggering heightened scrutiny.

C. No State Interests Justify Compelled Membership in the State Bar or Compelled Subsidization of Its Speech

Because Wisconsin's integrated-bar scheme imposes a substantial burden on First Amendment rights, it must be subject to heightened scrutiny. Whether that level is "strict" or "exacting" scrutiny remains undecided because *Janus* expressly left the question open. *See Janus*, 138 S. Ct. at 2465. It did so because the agency-fee arrangement it addressed would fail either test. So too does Wisconsin's integrated-bar scheme.

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[2] In *Keller*, the question whether an integrated bar may use "its name to advance political and ideological causes or beliefs" was raised (and not decided), 496 U.S. at 17, but that is different from the question of forced membership.

1. The Court's precedent indicates that strict scrutiny should apply. Like Illinois's unconstitutional agency-fee scheme, Wisconsin's integrated bar involves "the compelled subsidization of private speech," which "seriously impinges on First Amendment rights." *Id.* at 2464.

A statute compelling the subsidization of private speech is not analogous to a commercial-speech regulation. *See Harris*, 573 U.S. at 648 ("[I]t is apparent that the speech compelled in this case is not commercial speech."). The State Bar's speech does not serve an "economic interest" or "assist[] consumers" in making choices as to "a commercial transaction," and it does not serve "the informational function of advertising." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561–63 (1980). Instead, the speech at issue here is that "concerning public affairs," which is even "more than self-expression; it is the essence of self government" that "occupies the highest rung of the hierarchy of First Amendment values." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation marks omitted). The Court will rarely encounter a stronger claim to strict scrutiny. Accordingly, it should require proof of a "compelling necessity" and a statutory arrangement that is "precisely tailored." *Riley v. Nat'l Fed'n of the Blind of North Carolina., Inc.*, 487 U.S. 781, 800 (1988).

2. In any event, the integrated-bar arrangement fails any applicable level of scrutiny. Under exacting scrutiny, government compulsion "must 'serve a compelling State interest that cannot be achieved through

means significantly less restrictive of associational freedoms.'" *Janus*, 138 S. Ct. at 2465 (quoting *Knox*, 567 U.S. at 310). As noted, Wisconsin's scheme compelling licensed attorneys to join and fund the State Bar is materially indistinguishable from the statutory scheme in *Janus* compelling public employees to fund labor unions. The principal justification offered to support agency-fee arrangements—the interest of "labor peace"—is obviously inapplicable here. And the two justifications drawn from *Keller* that Respondents advanced—improving the quality of legal services and regulating the legal profession—fare no better.

a. *Improving the Quality of Legal Services*. The First Amendment does not permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley*, 487 U.S. at 791, 795. Yet that is the upshot of this proffered interest. Merely identifying some interest that the government may lawfully advance—promoting kindness and compassion among its citizens, the provision of services to the poor, economic growth, etc.—does not suffice to render it sufficiently compelling to justify impingement of First Amendment rights. Instead, the general rule is that "[t]he First Amendment's guarantee of free speech does *not* extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits." *United States v. Stevens*, 559 U.S. 460, 470 (2010) (emphasis added). No exception

rooted in history having been recognized for speech on the quality of legal services, the general rule applies.

At best, an asserted interest in improving the quality of legal services is merely another way of articulating the "free rider" argument *Janus* rejected—i.e., that labor unions' bargaining efforts benefit an entire unit and forced funding of that effort prevents unit employees from benefiting from those efforts without paying their fair share. That is, in fact, how *Keller* justified California's integrated bar. 496 U.S. at 12 (recognizing that the "reason behind" agency-shop and integrated-bar laws is the same: to prevent "free riders"). And, as *Keller* also recognized, the argument is even weaker here than in the agency-shop context, because "[t]he members of the State Bar concededly do not benefit as directly from its activities as to employees from union negotiations with management." *Id.*

In any instance, *Janus* held that avoiding would-be "free riders" "is not a compelling interest" that can "overcome First Amendment objections." 138 S. Ct. at 2466 (quotation marks omitted). And even if that interest were considered compelling in some respect, forcing attorneys to join the bar and subsidize its speech is not tailored to achieve it, because that same end could be achieved through means significantly less restrictive of associational freedoms—such as through funding the speech at issue from general tax revenues.

b. *Regulating the Legal Profession*. The second proffered interest, regulating the legal profession, is not compelling for the same reason: the government's

convenience in carrying out its functions is no basis to impinge core First Amendment rights. *See Riley*, 487 U.S. at 791, 795.

In any instance, the government's regulatory interest (as well as its interest in improving the quality of legal services) does not justify the integrated-bar regime because Wisconsin does not need an integrated bar to regulate lawyers. At least 18 States do not have integrated bars and therefore do not wed the regulation of the legal profession and expressive activities of a bar association. *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 841 N.W.2d 167, 171 (Neb. 2013) (identifying States without integrated bars).

Possessing the police power, as well as the powers to tax and spend, Wisconsin has ample authority and ability to achieve any legitimate regulatory purpose through a licensing scheme or similar means, without intruding at all on First Amendment rights. Indeed, ultimate responsibility for regulating lawyers is vested not in the State Bar, but in the Wisconsin Supreme Court and its Office of Lawyer Regulation. Pet.App.72–73. That, in addition to this regulatory scheme, Wisconsin also compels lawyers to join the State Bar and subsidize its speech is a gratuitous and unjustifiable intrusion on their First Amendment rights.

II. *Lathrop* and *Keller* Should Be Overruled

Because *Lathrop* and *Keller* are incompatible with this Court's First Amendment jurisprudence, the Court's obligation is to determine "whether *stare decisis* nonetheless counsels against overruling" them. *Janus*, 138 S. Ct. at 2478. "*Stare decisis* is not an inexorable command," and it is "at its weakest when [this Court] interpret[s] the Constitution." *Id.* For the same reasons the Court found *stare decisis* insufficient to adhere to *Abood*, the Court's prudential deference to its precedent cannot save these erroneous decisions.

A. By overruling *Abood*, the Court impliedly signaled that *Lathrop* and *Keller* should also be revisited and overruled. The First Amendment right to be free from compelled subsidization of speech is the same right in all these cases, and it merits equal protection here. Because "*stare decisis* applies with perhaps least force of all to decisions that wrongly denied First Amendment rights," *id.*, there is no better claim to preserve *Lathrop* and *Keller* than there was to preserve *Abood*.

What's more, the Court's reasons for overruling *Abood* apply with equal force to *Lathrop* and *Keller*. *Keller* extended *Abood*'s reasoning and doctrinal framework from the agency-fee context to the integrated-bar context on the basis that they bear "a substantial analogy" to each other. 496 U.S. at 12. In so doing so, it extended the many errors *Janus* identified in *Abood*'s reasoning—including that *Abood* improperly relied on rational-basis case law interpreting the

Railway Labor Act, *see Keller*, 496 U.S. at 14, that it found a "free rider" interest to be a compelling justification for impinging First Amendment rights, *id.* at 11–12, and that it saw a tenable distinction between "ideological activities not 'germane' to the purpose for which compelled association was justified" and those "germane to those goals," *id.* at 13–14. *See Janus*, 138 S. Ct. at 2481–86 (describing these flaws in *Abood*'s reasoning as a basis to overrule it). Having identified those flaws as sufficient to overcome *stare decisis* in the case of *Abood*, the Court can hardly allow *Lathrop* and *Keller* to linger as open and obvious constitutional "anomal[ies]." *Id.* at 2463 (citation omitted).

B. As in *Janus*, all of the *stare decisis* factors weigh in favor of overruling these precedents.

1. The reasoning of *Keller* and *Lathrop* is even weaker than that of *Abood*. *Keller* took *Abood* as a given, recited its core (flawed) logic, and extended its holding into the integrated-bar setting. *Keller* therefore carried *Abood*'s errors forward, and this factor favors overruling it. *See Janus*, 138 S. Ct. at 2479.

Importantly, the Court in *Keller* was in no position to revisit *Abood* because *Abood*'s vitality as constitutional law was unchallenged. *See* 496 U.S. at 16–17. Quite the opposite, *Keller* addressed the far more aggressive proposition, which the California Supreme Court had adopted, that the First Amendment imposes no restriction on a State's ability to compel lawyers to fund bar-association speech, even ideological advocacy and lobbying. The *Keller* Court therefore ap-

proached the problem from the other direction, considering whether to apply *Abood*'s minimally restrictive First Amendment regime or no First Amendment principles at all. It did not consider the third possibility that *Janus* identified as the right answer: that no distinction between "ideological" and "non-ideological" speech is tenable and that compelled dues payments are subject to heightened scrutiny.

The erroneous development of legal doctrine in this area is therefore strikingly similar to that identified and rectified in *Knox*, *Harris*, and *Janus*. In *Knox*, the Court criticized *Abood* for articulating principles that were more the product of "historical accident" than sound legal reasoning. 567 U.S. at 312. *Keller* is simply another artifact of that historical accident.

Keller also extended the superficial and antiquated reasoning of *Lathrop*, which upheld compelled dues payments to and membership in Wisconsin's integrated bar. But, like *Abood*, that case predated much of the Court's modern First Amendment jurisprudence, and it contained very little analysis. Instead, the plurality opinion cited an offhand statement in a labor case involving private-sector unions, *Railway Employees Department v. Hanson*, 351 U.S. 225, 238 (1956), that compelled financial support for unions is no more unconstitutional than a State law forcing a lawyer "to be a member of an integrated bar." *Lathrop*, 367 U.S. at 843 (quoting *Hanson*, 351 U.S. at 238). The concurring opinion likewise relied on *Hanson* and *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961), another case involving private-

sector unions. *Lathrop*, 367 U.S. at 849–53 (Harlan, J., concurring). Just like *Abood*, *Lathrop* "went wrong at the start when it concluded that [those] two prior decisions" on private-sector arrangements licensed *State-compelled* association. *Janus*, 138 S. Ct. at 2479. And, just like *Abood*, *Lathrop* thereby proceeded to "judge[] the constitutionality of public-sector [compelled subsidization of speech] under a deferential standard that finds no support in [this Court's] free speech cases." *Id.* at 2479–80.

Thus, *Lathrop* and *Keller* suffer from the very same errors that led the Court to declare *Abood* "poorly reasoned" and unworthy of continued respect. *Id.* at 2479.

2. *Keller*'s regulation of bar dues has proven no more workable than the identical regulation of agency fees under *Abood*. *See Janus*, 138 S. Ct. at 2481. As in that context, here the "line between chargeable and nonchargeable…expenditures has proved to be impossible to draw with precision." *Id.* As the State Bar conceded below, it treats some (but not all) lobbying as chargeable and some (but not all) advocacy as chargeable. Pet.App.18 *see also* Defendants' Motion to Dismiss, Ex. B, *Jarchow, et al., v. State Bar of Wisconsin, et al.*, No. 19-cv-266, (W.D. Wis. May 21, 2019), ECF No. 16-2. The difference is in the eye of the beholder, and that weighs heavily against *stare decisis*. *See Janus*, 138 S. Ct. at 2481–82.

Although some bar members may respond to this inherent uncertainty through the "give it a try" ap-

proach, and litigate each and every questionable expenditure, *id.* at 2481, the more typical response of simply paying up is even more concerning. *See id.* at 2482. Objecting attorneys "face a daunting and expensive task if they wish to challenge…chargeability determinations," *id.*, and they face obstacles even to asserting *any* basis of objection, since objectors bear the burden of taking the annual steps to *avoid* payment of chargeable expenses. That the system is so easily rigged to discourage members from protecting their constitutional rights is yet another way in which *Keller* has proven unworkable. *See id.* at 2486.

3. As in *Janus*, developments in the Court's First Amendment jurisprudence have "eroded" the "underpinnings" of both *Lathrop* and *Keller* and left them "outlier[s] among [the Court's] First Amendment cases." 138 S. Ct. at 2482. Indeed, a case could hardly be a greater outlier than *Keller*, whose principal authority has since been overruled, or *Lathrop*, whose principal authorities have been declared completely inapplicable to State-compelled association.

That *Keller* and *Lathrop* are anomalies in the law is even more clear because neither can be defended as commercial-speech or government-as-employer cases, as *Abood* was. See *Janus*, 138 S. Ct. at 2464–65, 2471–72. At this point, there is no First Amendment case in any context that resembles *Lathrop* or *Keller* or supports them.

4. No "reliance" interest here justifies sticking with *Lathrop* and *Keller*, and any contention to the

contrary runs squarely into *Janus*. The reliance interest asserted in *Janus* was far weightier than any interest to be asserted here because the *Abood* framework governed an incalculable number of bargaining relationships and agreements at every level of government nationwide. Here, because there are no more than 32 integrated State bars, any disruption would be of a far lesser magnitude. Moreover, States are in a stronger position to respond to a change in law because they, unlike unions, possess taxing and spending authority, and many States, like Wisconsin, have already delegated ultimate regulatory power in a supreme court or regulatory agency with no expressive purpose. And, besides, a response would not be particularly onerous: all a State need do is curtail the expressive role of an integrated bar, such that all that remains is a licensing body, or take over that function itself. These are all reasons in *addition* to those in *Janus* why this factor does not favor upholding *Keller* and *Lathrop*.

C. The importance of the question presented here and the Court's intervention and cannot be understated. Hundreds of thousands of attorneys are compelled by State law to join integrated bars and fund their advocacy, irrespective of their disagreement with it. At present, thanks to *Lathrop* and *Keller*, they lack any way to vindicate their First Amendment rights and disassociate themselves from advocacy and other speech with which they disagree even when it offends their most deeply held beliefs. "The loss of First Amendment freedoms, for even minimal periods

of time, unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion), and the injury here is massive in size and scope. Because "it would be unconscionable to permit free speech rights to be abridged in perpetuity," *Janus*, 138 S. Ct. at 2484, the Court's reconsideration and overruling of these aberrant precedents is necessary.

III. This Case Is an Excellent Vehicle for Reconsidering *Lathrop* and *Keller*

This case presents an ideal vehicle for the Court to revisit an issue of overriding importance.

The Court will not find a better opportunity to reconsider *Lathrop* and *Keller*. This case directly challenges State-compelled membership in an integrated bar and subsidization of its speech, Pet.App.10–45 (stating those claims) and the court below expressly recognized that Petitioners "have preserved their position for review by the Supreme Court." Pet.App.2. The district court also recognized that Petitioners have properly set themselves up to "seek relief in a higher court." Pet.App.8.[3] Moreover, this case presents a clean vehicle to revisit the constitutional issues, and only those issues, as Petitioners have not coupled their constitutional cause of action with other

[3] Unfortunately, a similar petition arising from the Eighth Circuit, No. 19-670, suffers from a waiver defect. *See Fleck v. Wetch*, 937 F.3d 1112, 1116–18 (8th Cir. 2019) (holding that plaintiff waived challenge to "the constitutionality of mandatory bar association membership" and compelled payment of dues).

challenges (e.g., a challenge to some charges as improperly designated "chargeable").

This case is optimally postured in the only way it could be postured, as an appeal from a granted motion to dismiss. No other case raising the same challenges could advance beyond that stage, because *Keller* and *Lathrop* foreclose those challenges in the lower courts. Accordingly, if the Court denies this petition, there would be little incentive for future litigants to bring suit in hope of achieving a different result.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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DECEMBER 2019

APPENDIX

TABLE OF APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 19-3444

ADAM JARCHOW AND MICHAEL D. DEAN,

Plaintiffs - Appellants,

v.

STATE BAR OF WISCONSIN, et al.,

Defendants, Appellees.

Appeal from the U.S. District Court for the Western District of Wisconsin (Hon. Barbara B. Crabb, U.S. District Judge)

ORDER

December 23, 2019

Before FLAUM, EASTERBROOK, and SCUDDER, Circuit Judges.

The following is before the court: MOTION FOR SUMMARY AFFIRMANCE, filed on December 16, 2019, by counsel for the appellants.

This court has carefully reviewed the final order of the district court, the record on appeal, and appellants' motion for summary affirmance. Based on this review, the court has determined that further briefing would not be helpful to the court's consideration of the issues. See *Taylor v. City of New Albany,* 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would not assist the court and no member of the panel desires briefing or argument). "Summary disposition is appropriate 'when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.'" *Williams v. Chrans*, 42 F.3d 1137, 1139 (7th Cir. 1995), *citing Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). The district court, in its thorough and well-reasoned order, correctly held that the appellants' claims are foreclosed by *Keller v. State Bar of California*, 496 U.S. 1 (1990). Appellants have preserved their position for review by the Supreme Court.

Accordingly, IT IS ORDERED that the appellants' motion is GRANTED, and the judgment of the district court is summarily AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ADAM JARCHOW AND MICHAEL D. DEAN, Plaintiff v. STATE BAR OF WISCONSIN, STATE BAR OF WISCONSIN BOARD OF GOVERNORS, CHRISTOPHER E. ROGERS, JILL M. KASTNER, STARLYN R. TOURTILLOTT, KATHLEEN A. BROST, ERIC L. ANDREWS AND KORI L. ASHLEY Defendants.	19-cv-266-bbc

JUDGEMENT IN A CIVL CASE

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants State Bar of Wisconsin, State Bar of Wisconsin Board of Governors, Christopher E. Rogers, Jill M. Kastner, Starlyn R. Tourtillott, Kathleen A. Brost, Eric L. Andrews and

Kori L. Ashley against plaintiffs Adam Jarchow and Michael D. Dean dismissing this case.

s/ A. Wiseman, Deputy Clerk
Peter Oppeneer, Clerk of Court

12/13/2019

Date

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ADAM JARCHOW AND MICHAEL D. DEAN, Plaintiff v. STATE BAR OF WISCONSIN, STATE BAR OF WISCONSIN BOARD OF GOVERNORS, CHRISTOPHER E. ROGERS, JILL M. KASTNER, STARLYN R. TOURTILLOTT, KATHLEEN A. BROST, ERIC L. ANDREWS AND KORI L. ASHLEY Defendants.	OPINION AND ORDER 19-cv-266-bbc

Lawyers who are licensed to practice law in Wisconsin must join the State Bar of Wisconsin and pay mandatory annual dues. Wis. S. Ct. R. (SCR) 10.01(1); 10.03. The State Bar uses compulsory member dues to fund various activities. Plaintiffs Adam Jarchow and Michael D. Dean are lawyers licensed in Wisconsin who disagree with the State Bar's activities and

oppose being compelled to support it financially with their membership dues. They contend that being compelled to join the State Bar and pay dues violates their rights under the First Amendment to the United States Constitution. In support of their claims, plaintiffs rely primarily on *Janus v. American Federation of State, County and Municipal Employees, Council 31*, 138 S. Ct. 2448, 2486 (2018), in which the Supreme Court held that public sector unions may not deduct agency fees from nonconsenting employees.

Defendants have moved to dismiss plaintiffs' complaint on various grounds, including that all of plaintiffs' claims are barred by *Keller v. State Bar of California*, 496 U.S. 1 (1990). Dkt. #15. In *Keller*, the Court held that an integrated bar, such as the State Bar of Wisconsin, may, consistent with the First Amendment, use a member's compulsory fees to fund activities germane to "regulating the legal profession and improving the quality of legal services," but not to fund "activities of an ideological nature" that are not reasonably related to the advancement of such goals. Id. at 13-15. The Supreme Court reached its conclusion in *Keller* after applying its decision in *Abood v. Detroit Board of Education*, 431 U.S. 209, 235-36 (1977), in which it held that public-sector unions could collect compulsory "agency fees" from nonmembers within the bargaining unit to fund activities germane to collective bargaining, but could not use those fees to fund non-germane political or ideological activities that a nonmember employee opposed.

The parties in this case agree that under *Keller*, the State Bar of Wisconsin can compel lawyers to join the State Bar and pay mandatory dues without running afoul of the First Amendment. Plts.' Br., dkt. #25, at 3, 10; Dfts.' Br., dkt. #16, at 8. However, plaintiffs contend that the Supreme Court's 2018 decision in *Janus* undermined the reasoning and holding of *Keller*. In *Janus*, the Supreme Court overruled Abood, and held that public-sector unions may not deduct agency fees or "any other payment to the union" from the wages of nonmember employees unless the employees waive their First Amendment rights by "clearly and affirmatively consent[ing] before any money is taken from them." Id. at 138 S. Ct. at 2486. The majority in *Janus* did not discuss *Keller* nor respond to the dissent's citation to *Keller*. Id. at 138 S. Ct. at 2498 (Kagan, J., dissenting).

It may be, as plaintiffs contend, that the Court's decision in *Janus* has eroded the foundation of *Keller*. However, both sides agree that *Keller* still binds this court, and that only the Supreme Court can say otherwise. Plts.' Br., dkt. #25, at 3, 10; Dfts.' Br., dkt. #16, at 8. The Supreme Court has made it clear that "if a precedent of this Court has direct application in a case [here, *Keller*], yet appears to rest on reasons rejected in some other line of decisions, [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237(1997). *See also Price v. City of Chicago*, 915 F.3d 1107, 1119 (7th Cir. 2019) (applying *Agostini*). Because this court is bound

by *Keller*, and because the parties agree that plaintiffs' challenges fail under *Keller*, plaintiffs' claims fail in this court. Therefore, I will grant defendants' motion to dismiss plaintiffs' claims. Plaintiffs must seek relief in a higher court.

Because I am dismissing plaintiffs' claims as barred by *Keller*, I do not need to resolve the other arguments for dismissal raised by defendants.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants State Bar of Wisconsin, State Bar of Wisconsin Board of Governors, Christopher E. Rogers, Jill M. Kastner, Starlyn R. Tourtillott, Kathleen A. Brost, Eric L. Andrews and Kori L. Ashley, dkt #15, is GRANTED. The clerk of court is directed to enter judgment and close this case.

Entered this 11th day of December, 2019.

BY THE COURT:

/s/

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BARBARA B. CRABB

District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ADAM JARCHOW AND MICHAEL D. DEAN, Plaintiff v. STATE BAR OF WISCONSIN, STATE BAR OF WISCONSIN BOARD OF GOVERNORS, CHRISTOPHER E. ROGERS, JILL M. KASTNER, STARLYN R. TOURTILLOTT, KATHLEEN A. BROST, ERIC L. ANDREWS AND KORI L. ASHLEY Defendants.	Civil Case No.: 19-cv-266 CIVIL RIGHTS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

COMPLAINT

Plaintiffs Adam Jarchow and Michael D. Dean ("Plaintiffs"), for their Complaint against the Defendants, the State Bar of Wisconsin; the State Bar of Wisconsin Board of Governors; Christopher E. Rogers, President of the State Bar of Wisconsin; Jill M. Kastner, President-elect of the State Bar of Wisconsin;

Starlyn R. Tourtillott, Secretary of the State Bar of Wisconsin; John E. Danner, Treasurer of the State Bar of Wisconsin; Odalo J. Ohiku, Chairperson of the State Bar of Wisconsin Board of Governors, and Paul G. Swanson, Immediate Past-president of the State Bar of Wisconsin, in their official capacities (collectively, "Defendants" or "State Bar"), allege and state as follows.

Nature of the Action

1. This civil-rights action challenges Wisconsin's unconstitutional requirements that attorneys licensed to practice law in Wisconsin must join and pay membership dues to the State Bar of Wisconsin. The State Bar of Wisconsin regularly engages in advocacy and other speech on matters of intense public interest and concern, and it funds that advocacy through mandatory dues payments. Accordingly, those requirements compel Plaintiffs' speech and compel them into an unwanted expressive association with the State Bar, in violation of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs therefore ask that this Court declare unconstitutional Wisconsin's requirements that attorneys join and fund the State Bar of Wisconsin, order Defendants to desist in enforcement of those requirements, and refund to Plaintiffs the dues that they have been unconstitutionally compelled to pay to the State Bar of Wisconsin.

Parties

2. Plaintiff Adam Jarchow is a resident of Polk County, Wisconsin, a licensed attorney under the laws of Wisconsin, and a member of the State Bar of Wisconsin pursuant to Wisconsin's Supreme Court rules requiring that he be a member of the bar in order to practice law. Wis. Sup. Ct. R. ("SCR") 10.01(1) ("There shall be an association to be known as the 'state bar of Wisconsin' composed of persons licensed to practice law in this state, and membership in the association shall be a condition precedent to the right to practice law in Wisconsin."). He has paid dues to the State Bar of Wisconsin since 2009.

3. Plaintiff Michael D. Dean is a resident of Waukesha County, Wisconsin, a licensed attorney under the laws of Wisconsin, and a member of the State Bar of Wisconsin pursuant to Wisconsin's Supreme Court rules requiring that he be a member of the bar in order to practice law. Wis. Sup. Ct. R. ("SCR") 10.01(1) ("There shall be an association to be known as the 'state bar of Wisconsin' composed of persons licensed to practice law in this state, and membership in the association shall be a condition precedent to the right to practice law in Wisconsin."). He has paid dues to the State Bar of Wisconsin for over a decade.

4. Defendant State Bar of Wisconsin ("State Bar") is a mandatory professional "association" as specified by Wisconsin Supreme Court's rules. SCR 10.01(1); *see also* Overview, State Bar of Wisconsin ("The State Bar of Wisconsin is a mandatory professional association, created by the Wisconsin Supreme

Court . . . .").[1] The State Bar enforces the "rights, obligations and conditions of membership therein," SCR 10.01(2), and may be sued for "carrying out the purposes for which it is organized." SCR 10.02(1). The State Bar is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action. Its main office is located at 5302 Eastpark Blvd. Madison, WI 53718-2101.

5. Defendant State Bar of Wisconsin Board of Governors ("Board") "manage[s] and direct[s]" the "affairs of the [State Bar] association." SCR 10.05(1). In that capacity, the Board is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action.

6. Defendant Christopher E. Rogers is the President of the State Bar of Wisconsin; as such, he is an officer of the State Bar of Wisconsin, SCR 10.04(1), specifically its "chief executive officer," *Id*. 10.04(2)(a), and a member-at-large of the State Bar of Wisconsin Board of Governors, *Id*. In those capacities, the Defendant is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action. Mr. Rogers is sued in his official capacity.

7. Defendant Jill M. Kastner is the President-Elect of the State Bar of Wisconsin; as such, she is an officer of the State Bar of Wisconsin, SCR 10.04(1), and a member-at-large of the State Bar of Wisconsin

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[1] https://www.wisbar.org/aboutUs/Overview/Pages/overview.aspx (last visited Mar. 7, 2019).

Board of Governors and serves on the executive committee. *Id*. 10.04(2)(b). In those capacities, the Defendant is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action. Ms. Kastner is sued in her official capacity.

8. Defendant Starlyn R. Tourtillott is the Secretary of the State Bar of Wisconsin; as such, she is an officer of the State Bar of Wisconsin, SCR 10.04(1), and a member-at-large of the State Bar of Wisconsin Board of Governors. *Id*. 10.04(2)(d). In those capacities, the Defendant is enforcing the unconstitutional laws, rules customs, practices and policies complained of in this action. Ms. Tourtillott is sued in her official capacity.

9. Defendant John E. Danner is the Treasurer of the State Bar of Wisconsin; as such, he is an officer of the State Bar of Wisconsin, SCR 10.04(1), and a member-at-large of the State Bar of Wisconsin Board of Governors. *Id*. 10.04(2)(e). In those capacities, the Defendant is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action. Mr. Danner is sued in his official capacity.

10. Defendant Odalo J. Ohiku is the Chairperson of the State Bar of Wisconsin Board of Governors; as such, he is an officer of the State Bar of Wisconsin, SCR 10.04(1), and a member-at-large of the State Bar of Wisconsin Board of Governors. *Id*. 10.04(2)(c). In those capacities, the Defendant is enforcing the un-

constitutional laws, rules, customs, practices and policies complained of in this action. Mr. Ohiku is sued in his official capacity.

11. Defendant Paul G. Swanson is the Immediate Past-President of the State Bar of Wisconsin; as such, he is an officer of the State Bar of Wisconsin, SCR 10.04(1), and a member-at-large of the State Bar of Wisconsin Board of Governors. *Id*. 10.04(2)(b). In those capacities, the Defendant is enforcing the unconstitutional laws, rules, customs, practices and policies complained of in this action. Mr. Swanson is sued in his official capacity.

Jurisdiction and Venue

12. This case raises claims under the First and Fourteenth Amendments of the federal Constitution, 42 U.S.C. §§ 1983 and 1988, and the Declaratory Judgment Act, 22 U.S.C. § 2201, *et seq*. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343.

13. Venue is proper in this District and Division because all Defendants are residents of Wisconsin and at least one Defendant resides in this judicial district and a substantial part of the events or omissions giving rise to the claim occurred and are occurring in the District and Division. *See* 28 U.S.C. § 1391(b).

Factual Allegations

A. Wisconsin Supreme Court Rules Require Licensed Attorneys To Be Members of the State Bar and To Pay Dues to the State Bar

14. As a condition to practice law in Wisconsin, attorneys licensed in Wisconsin are required to join the mandatory state bar association—the Defendant State Bar of Wisconsin. Specifically, the Wisconsin Supreme Court rules direct: "There shall be an association to be known as the 'state bar of Wisconsin' composed of persons licensed to practice law in this state, and membership in the association shall be a condition precedent to the right to practice law in Wisconsin." SCR 10.01(1).[2]

15. The Wisconsin Supreme Court rules demand "[e]very person who becomes licensed to practice law in [the] state" to "enroll in the state bar by registering . . . with the [State Bar of Wisconsin] within 10 days after admission to practice." SCR 10.03(2).

16. The Wisconsin Supreme Court rules forbid an "individual other than an enrolled active member of the state bar" to "practice law in [the] state or in any manner purported to be authorized or qualified to practice law," *Id*. 10.03(4), with limited exceptions for "nonresident counsel to appear and participate in a particular action or proceeding in association with an

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[2] Wisconsin Supreme Court "rules" governing the regulation of the state bar constitute statutes for analysis purposes. *See Lathrop v. Donohue*, 367 U.S. 820, 824-26 (1961) (treating now SCR 10.01 as a statute for purposes of 28 U.S.C. § 1257 analysis).

active member of the state bar of Wisconsin who appears and participates in the action or proceeding." SCR 10.03(4)(b).

17. The membership of the State Bar of Wisconsin is divided into four classes: "active members, judicial members, inactive members and emeritus members." SCR 10.03(a).

18. The State Bar's website asserts it is a "professional association that provides educational, career development and other services to its 25,000 members."[3]

19. Defendants are authorized to compel payment of dues from all classes of Wisconsin State Bar members, SCR 10.03(5)(a) ("The annual membership dues for state bar operations for an active member shall be established as provided herein."); *id*. (establishing "fractions of the dues of an active member" for "[o]ther classes of members."), except for emeritus members (members who are active or inactive members in good standing but at least 70 years of age and have requested emeritus status), SCR 10.03(3)(a).

20. Defendants do compel the payment of such membership dues—termed "compulsory dues" by the Defendants themselves. Notice Concerning State Bar Dues Reduction and Arbitration Process, State Bar of Wisconsin § 1 (2016).[4]The annual membership dues vary based on membership classification: $258 for full

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[3] https://www.wisbar.org/aboutUs/Pages/aboutus.aspx.

[4] https://www.wisbar.org/aboutus/membership/documents/keller-dues.pdf.

dues-paying members; $129 for active new members and inactive members; $173 for nonvoting judicial members; and no cost to emeritus members. No Change in Annual Court Assessments and State Bar Dues for Coming Year: Pay by July 1, State Bar of Wisconsin, State Bar of Wisconsin (May 2, 2018).[5]

21. If a member fails to pay annual dues or assessments for over 120 days after the payment is due, the Defendants may suspend the member's membership—with the Defendants' by-laws decreeing failure to pay after 120 days "shall automatically suspend the delinquent member," SCR ch. 10 app., art. I, § 3(a); *id.* § 3(b)—which bars the member from the "practice [of] law during the period of the suspension." SCR 10.03(6).

22. A suspended member's name is sent to the State's Supreme Court and to "each judge of a court of record in [the] state," SCR ch. 10 app., art. I, § 3(a); *id.* § 3(b), ensuring the member will not be able to practice law in the state.

23. The State Bar's "2019 budget of $11.5 million will be funded with $5.2 million in membership dues." (Updated) State Bar Board Adopts Budget, Hears E-filing and Private Bar SPD Rate Updates. State Bar of Wisconsin (Apr. 23, 2018).[6] "About 45 percent of the proposed 2020 budget relies on membership dues."

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[5] https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=8&ArticleID=26331.

[6] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26314.

Board Discusses Potential OLR Rule Changes, Proposed State Bar Budget, State Bar of Wisconsin (Feb. 18, 2019).[7]

24. The State Bar provides members an optional dues reduction that accounts for certain "nonchargeable" activities, but the reduction does not reduce dues altogether. SCR 10.03(5)(b)(2). It is incumbent on the State Bar to "publish written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues." *Id*. The nonchargeable activities include a combination of political and ideological activities and activities not germane to regulation of the legal profession or improving legal services. The State Bar informs members it "may use compulsory dues of all members for all other activities, provided the activities are within the purposes of the State Bar as set forth in SCR 10.02(2)." Notice Concerning State Bar Dues Reduction and Arbitration Process, State Bar of Wisconsin § 1 (2016).[8] These activities are considered "chargeable." *Id*.

25. The purposes of the State Bar set forth in SCR 10.02(2):

> The purposes of the association are to aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of

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[7] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26856.

[8] https://www.wisbar.org/aboutus/membership/documents/keller-dues.pdf.

> law high ideals of integrity, learning, competence and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to conduct a program of continuing legal education; to assist or support legal education programs at the preadmission level; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform and the relations of the bar to the public and to publish information relating thereto; to carry on a continuing program of legal research in the technical fields of substantive law, practice and procedure and make reports and recommendations thereon within legally permissible limits; to promote the innovation, development and improvement of means to deliver legal services to the people of Wisconsin; to the end that the public responsibility of the legal profession may be more effectively discharged.

SCR 10.02(2)

26. The State Bar's Government Relations program is the "lobbying arm of the State Bar and some of its practice sections." Government Relations, State

Bar of Wisconsin.[9] **"**The State Bar's Government Relations (GR) program works with State Bar members and state government officials (including legislators, executive branch and judicial branch agencies and their staff) to improve the administration of justice and the delivery of legal services in Wisconsin." *Id.*

27. The State Bar has identified the following practice sections within the State Bar as permitted to lobby: Bankruptcy, Insolvency & Creditors' Rights; Business Law; Children & the Law; Civil Rights & Liberties; Construction & Public Contract Law; Criminal Law; Dispute Resolution; Elder Law and Special Needs; Family Law; Health Law; Indian Law; Litigation; Public Interest Law; Real Property, Probate & Trust Law; and Taxation Law. Sections, State Bar of Wisconsin.[10] A lobbying section must "charge[] annual dues at least equal to the cost of its legislative program so that the cost need not be borne by section nonmembers." SCR 10.05(4)(e).

28. All Plaintiffs are attorneys licensed to practice law in Wisconsin.

29. To maintain their licensure as attorneys in Wisconsin and as a condition of engaging in their cho-

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[9] https://www.wisbar.org/aboutus/governmentrelations/Pages/government-relations.aspx#/ (last visited Mar. 7, 2019).

[10] https://www.wisbar.org/aboutus/overview/pages/sections.aspx (last visited Mar. 7, 2019).

sen profession, Plaintiffs are compelled to be members of the State Bar and pay membership dues every year.

30. By enforcing those requirements, Defendants act under color of state law.

B. The State Bar Speaks on Matters of Public Interest, Using Funds Plaintiffs Are Forced to Provide as a Condition to Practicing Law in Wisconsin

31. The State Bar uses compelled membership dues to fund its speech on a broad range of matters of public interest.

32. The State Bar regularly proposes legislation to the Wisconsin Legislature.

33. The State Bar regularly advocates on public policy issues, including legislation.

34. The State Bar engages in a variety of speech and advocacy directed to the public.

35. The State Bar publishes a variety of material addressing matters of public interest and concern. These publications include the Wisconsin Lawyer, the WisBar Inside Track, the Rotunda Report, the State Bar of Wisconsin website, the State Bar's Twitter feed, the State Bar's Facebook page, and books and pamphlets.

36. The State Bar regularly publishes publications on matters of intense public controversy.

37. The State Bar's speech includes the following policy-related advocacy that was funded, at least in part, through compelled membership dues:

a. Advocacy for Criminal Justice Issues in Governor's Budget. In March 2019, the State Bar released a statement applauding the Governor's budget supporting increases in private bar rate, additional resources to District Attorneys and State Public Defenders, and addressing the "state's justice gap, by continuing to fund civil legal services."[11]

b. Advocacy for Juvenile Justice Reform. In February 2019, the State Bar announced its support for the Governor's "proposal to return 17 yr olds to juvenile justice system" through Twitter.[12] The posting provides an accompanying article local newspaper article entitled, "Gov. Evers Seeks To Raise The Age For Charging Teens As Adults And Delay Closure Of Lincoln Hills" describing the Governor's plan and the associated debate over it.

c. Advocacy Concerning State's Criminal Justice Budget. In February 2019, the State Bar issued a statement in response to the Wisconsin Assembly Republican's unveiling of comprehensive criminal

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[11] https://www.wisbar.org/NewsPublications/RotundaReport/Pages/Article.aspx?ArticleID=26871

[12] https://twitter.com/SBWRotundaRpt/status/1100804160793034752. The SBW Rotunda Report (@SBWRotundaRpt) is the Twitter account that is self-described as: "The Government Relations program at the State Bar of Wisconsin works on issues of importance to the courts, the legal profession and the public."

justice budget initiatives. The response focused on the Bar's support to pay progression for assistant district attorneys, public defenders, and private attorneys taking on public defender cases.[13]

d. Advocacy to Increase Private Bar Rate in Criminal Justice Budget. In February 2019, the State Bar posted a request on Twitter to: "Make your voice heard. Ask Governor Evers to include an increase to the private bar rate in his budget proposal this year," with a link to online State Bar article advocating same.[14]

e. Advocacy on Abortion Coverage. The State Bar actively opposed legislation relating to "prohibiting coverage of abortions through health plans sold through exchanges."[15]

f. Advocacy for Criminalizing Threats or Harm to Attorneys. In April 2018, the State Bar "worked on" and "supported" legislation the State enacted that made it a "Class H felony to threaten or cause bodily harm to an attorney or other representative of the court or their family involved in proceedings affecting children and families."[16]

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[13] https://www.wisbar.org/NewsPublications/RotundaReport/Pages/Article.aspx?ArticleID=26855

[14] https://twitter.com/SBWRotundaRpt/status/1093955107941699585.

[15] https://www.wisbar.org/aboutus/governmentrelations/pages/policy-positions.aspx (providing Bar's position on Assembly Bill 154 in the 2015-2016 legislative term).

[16] https://www.wisbar.org/NewsPublications/RotundaReport/Pages/Article.aspx?ArticleID=26282.

g. Advocacy for Elder Law Reform. The State Bar's Elder Law Section supported legislation related to the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act signed into law in April 2018.[17]

h. Advocacy for Family Law Legislation Addressing Child Relocation. The State Bar's Family Law Section supported bill enacted in April 2018 that affected children subject to legal custody by "provid[ing] a clear process" to a parent desiring to move more than 100 miles away.[18]

i. Advocacy for Restoring Legal Services Corporation (LSC) Funding. In 2017, the State Bar urged the restoration of LSC funding eliminated in President Trump's proposed 2018 federal budget. The LSC funded two state-wide organizations that provided free legal services to low income individuals related to civil matters. The State Bar President expressed grave concerns over the funding elimination and the "burden [elimination] will place on low income families in Wisconsin, and the resulting challenges to our state's justice system."[19] On Apr. 7, 2017, the State Bar tweeted, "Wisconsin attorneys, advocates say Trump budget cuts threaten legal aid

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[17] https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=6&ArticleID=26254 (discussing Assembly Bill 629 under "Adult Guardianship Law" in legislative wrap-up).

[18] *Id*. (discussing Assembly Bill 551 under "Child Custody" in legislative wrap-up).

[19] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=25489.

organizations"[20] with linked article.[21] On Apr. 17, 2017, the State Bar tweeted, "Lawyers, advocates for the poor rally to save Legal Services Corp. from Trump budget cut"[22] with linked article. The article provided: "There have been prior runs at trimming back the LSC, but nothing like the complete elimination Trump has proposed." The article concluded with: "At a speech commemorating the LSC's 40th anniversary, the late Justice Antoni Scalia said the organization, 'pursues the most fundamental of American ideals, and it pursues equal justice in those areas of life most important to the lives of our citizens.'"[23]

j. Advocacy To Include Parent of Sibling to Notice of Removal. In 2015, the State Bar actively supported the 2015 Wisconsin Act 101.[24]The Act added to the adult relatives that must be notified upon a child's removal from the custody of the child's

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[20] https://twitter.com/StateBarofWI/status/850372496905863169.

[21] https://madison.com/ct/news/local/govt-and-politics/madison-attorneys-advocates-say-trump-budget-cuts-threaten-legal-aid/article_632664d7-4a5f-5f4c-8342-dde6e057b60a.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share.

[22] https://twitter.com/StateBarofWI/status/852877074566189057.

[23] https://www.jsonline.com/story/news/blogs/proof-and-hearsay/2017/04/13/lawyers-advocates-poor-rally-save-legal-services-corp-trump-budget-cut/99592964/.

[24] https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx#Position (providing Bar's position on Assembly Bill 193 in the 2015-2016 legislative term).

parent the "parent of a sibling of the child who has legal custody of that sibling."[25]

k. Advocacy Related to Unemployment Insurance Fraud. In 2015, the State Bar opposed a bill that would ban people who defraud the State's insurance program.[26]

l. Advocacy Against Amending Child Custody Presumptions. The State Bar actively opposed a bill introduced in 2013 that provided "when the court allocates periods of physical placement, instead of maximizing the amount of time a child may spend with each parent, taking into consideration geographic separation and accommodations for different households, the court must presume that a placement schedule that equalizes to the highest degree the amount of time the child may spend with each parent is in the child's best interest."[27] The bill failed to pass.

m. Advocacy Against Confidentiality Exception for School Officials. In 2011, the State Bar actively opposed a bill that would make an exception to the existing confidentiality privilege related to communication with a school guidance counselor, school teacher, or teacher's aide when the school guidance

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[25] http://docs.legis.wisconsin.gov/2015/related/proposals/ab193.
[26] https://wislawjournal.com/2015/09/29/state-bar-weighs-in-on-proposed-unemployment-benefits-ban/.
[27] https://docs.legis.wisconsin.gov/2013/related/proposals/ab540 (Assembly Bill 540 with Legislative Reference Bureau analysis); *see also* https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx#Position (providing Bar's position on Assembly Bill 540 in the 2015-2016 legislative term).

counselor, school teacher, or teacher's aide received information "he or she [was] required to report under the state's mandatory child abuse and neglect reporting laws."[28]

n. Advocacy To Restore Felon Voting Rights. The State Bar actively supported a bill introduced in 2009 to restore the voting rights to felons.[29] The bill failed to pass.

o. Advocacy to Eliminate Spiritual Exception to Child Abuse Law. The State Bar actively supported a bill to remove an exception for spiritual treatment versus medical or surgical treatment of a child as related to child abuse laws. The bill,[30] Assembly 590, failed to pass.[31]

p. Advocacy Against DNA Samples From Juvenile Sex Offenders. The State Bar actively opposed a bill requiring "law enforcement agencies to collect a biological specimen for DNA analysis from

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[28] https://docs.legis.wisconsin.gov/2011/related/proposals/ab249 (Assembly Bill 249 with Legislative Reference Bureau analysis); *see also* https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx#Position (providing Bar's position on Assembly Bill 249 in the 2015-2016 legislative term).

[29] https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx (providing Bar's position on Assembly Bill 353 in the 2015-2016 legislative term); *see also* http://docs.legis.wisconsin.gov/2009/related/proposals/ab353 (bill supported).

[30] http://docs.legis.wisconsin.gov/2009/related/proposals/ab590.pdf.

[31] https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx (providing Bar's position on Assembly Bill 590 in the 2015-2016 legislative term).

every adult who is arrested for a felony and every juvenile who is taken into custody for certain sexual assault offenses that would be felonies if committed by an adult."[32] The bill failed to pass.

q. Advocacy for Legal Services Consumer Protection Act. In 2007, the State Bar petitioned the State Supreme Court, which has jurisdiction over the practice of law in the state, to adopt a rule clearly defining the "'practice of law' for consumer protection purposes" and, to "[c]reate an administrative system to enforce the new rule."[33]

r. Advocacy on Policies Respecting the Legal Profession. The State Bar takes legislative positions on items deemed of importance to the legal profession guided by six principles: Regulation of the Practice of Law; Delivery of Legal Services; Administration of Justice; Funding of the Justice System; Criminal Practice and Procedure; and Civil Practice and Procedure. The Bar posts its Policy Position Statements online (see "Policy Positions—2016" entry below). State Bar positions on current legislation include strong support for both expungement of certain crimes and allowing district attorneys, deputy district

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[32] http://docs.legis.wisconsin.gov/2009/related/proposals/ab511.pdf; *see also* https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx (providing Bar's position on Assembly Bill 511 in the 2015-2016 legislative term).

[33] https://tinyurl.com/WSB-advocacy-LSCPA.

attorneys, and assistant district attorneys engage in the private practice of law for certain civil purposes.[34]

38. The State Bar's speech includes the following additional advocacy:

a. Policy Positions—2016. The State Bar published a book of its policy positions.[35] Policy areas covered include: regulation and the practice of law; delivery of legal services; administration of justice; funding of the justice system; criminal practice and procedure; and civil practice and procedure. Select positions include:

i. Supports State Supreme Court Regulation of the Bar and Maintenance of the Integrated Bar. The State Bar supports its regulation by the State Supreme Court, opposes transfer of regulation to another government branch, and opposes "any legislative attempt to restrict the Court's authority over fees and assessments related to the State Bar or the regulation of the practice."[36]

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[34] https://www.wisbar.org/aboutus/governmentrelations/Pages/Policy-Positions.aspx#Position (providing six principles for legislative positions); https://www.billtrack50.com/Public/Stakeholder/plv0dxACCUCOAvljvFiOeg (State Bar positions on bills in the 2019-2020 legislative term); http://docs.legis.wisconsin.gov/2019/related/proposals/ab33.pdf (Assembly Bill 33 concerning expungement).

[35] State Bar of Wisconsin Policy Positions 2016, State Bar of Wisconsin (2016), https://www.wisbar.org/aboutus/governmentrelations/Documents/BOGPolicyPositions2017.pdf.

[36] *Id.* at 7.

ii. Opposes Expanding Powers of Realtors. The State Bar opposes efforts to expand the powers of real estate licensees to provide legal advice, including enhancing abilities to negotiate and draft contracts and explain "consequences of action taken during transactions."[37]

iii. Opposes Regulation of the Bar Except by the State Supreme Court. The State Bar opposes transfer of regulation of the Bar from the State Supreme Court to any other branch of government.[38]

iv. Opposes Professional Tax on Legal Services. The State Bar believes access to legal services is "essential to the operation of an ordered society" and a legal service tax would increase legal fees and reduce low-income and moderate-income access to justice.[39]

v. Opposes Tax Reform Act. The State Bar opposes converting tax evaluation on law firms from computation on cash receipts and disbursements method to an accrual method.[40]

vi. Supports Enforcement Against the Unauthorized Practice of Law. The State Bar believes persons engaging in the unauthorized practice of law are "harmful to consumers" of the State

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[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

and supports "meaningful enforcement" of violations.[41]

vii. Supports Diversity. The State Bar is an "inclusive organization" that encourages "diversity among its leadership, its membership and the entire legal community"; encourages "local and specialty bars to promote diversity and inclusion in their membership and leadership"; and encourages "legal employers and law firms to promote diversity and inclusion within their workplaces."[42]

viii. Supports Expungement of Criminal Records Under State Supreme Court. The State Bar supports the "broad remedial purpose of expungement" and supports the authority of the State's Supreme Court to provide lower state courts with guidance on expungement.[43]

ix. Opposes Certain State Immigration Laws. The State Bar "opposes any state efforts to regulate actions that conflict" with the Supremacy Clause "whenever the federal government is acting in pursuit of its constitutionally authorized powers. Consequently, the State Bar opposes any state efforts related to immigration that encourage a conflict to arise between federal law and either the state constitution or state law."[44]

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[41] *Id.* at 8.
[42] *Id.* at 12.
[43] *Id.* at 13.
[44] *Id.*

x. Supports Public Financing of State Supreme Court Campaigning. The State Bar supports public funding of State Supreme Court campaigns to maintain the court's integrity and independence.[45]

xi. Supports Returning Jurisdiction Over 17-year-olds to Juvenile System. The State Bar support returning original jurisdiction of 17-year-old juveniles to the juvenile justice system because it believes the adult criminal justice system is "neither adequately equipped nor designed to handle juveniles in the adult system."[46] However, the Bar does not advocate the elimination of the ability to try "truly dangerous and mature 17-year-olds in adult court when appropriate."[47]

xii. Opposes Death Penalty. The State Bar opposes reinstatement of the death penalty in the State.[48]

xiii. Opposes Racial and Ethnic Profiling.[49]

xiv. Supports Noneconomic Damage Awards for Unlawful Discrimination. The State Bar advocates that noneconomic damage awards for unlawful discrimination receive the same federal tax

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[45] *Id.* at 14.
[46] *Id.* at 20.
[47] *Id.*
[48] *Id.* at 21.
[49] *Id.* at 22.

treatment as noneconomic damage awards for personal injury.[50]

b. Commentary on Online Gun Sales. On Feb. 15, 2019, the State Bar tweeted, "Should federal internet law protect gun site Armslist from liability in the Azana Spa mass shooting?"[51] with linked article. The article discusses a gun maker liability case in the Wisconsin State Supreme Court addressing whether a "web-based gun marketer can be held liable for facilitating an unlawful weapon sale." The article quotes Patti Seger, executive director of End Domestic Abuse Wisconsin: "If the Supreme Court overturns the lower court decision to find that Armslist is immune from suit, domestic abusers will continue to have easy — and deadly — access to firearms."[52]

c. Advocacy on Second Amendment Rights. On May 10, 2018, the State Bar tweeted, "Is the Supreme Court Taking Action on Guns By Not Acting?"[53] and linked to an article. The article discusses SCOTUS not taking up lower court decisions that have upheld restrictions on the Second Amendment individual right to keep and bear arms. The article observes the Court's inaction "has led some to assume that the Roberts court has become a silent but

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[50] *Id.* at 27.
[51] https://twitter.com/StateBarofWI/status/1096474255204732932.
[52] https://www.jsonline.com/story/news/crime/2019/02/14/gun-sales-website-armslist-argues-immunity-azana-spa-shooting/2863293002/.
[53] https://twitter.com/StateBarofWI/status/972484759589924864.

influential partner on the side of gun-control advocates, taking action by deciding not to act. But [a law professor] says the court has walked more of a middle path, weighing in sparingly on the issue and allowing the states and the lower federal courts to define the Second Amendment."[54]

d. Advocacy on Sexual Harassment in the Legal Profession. In December 2018, the State Bar Board of Governor's "adopted an official policy against sexual harassment in the legal profession and encouraged State Bar members to make a similar commitment within law firms and legal departments."[55]

e. Adoption of "Diversity & Inclusion Action Plan." In December 2018, the State Bar Board of Governor's adopted a detailed action plan to advance diversity and inclusion within the legal profession—one of the State Bar's five strategic priorities. Strategic Priorities, State Bar of Wisconsin (June 15, 2016). "The action plan includes steps to promote diversity and inclusion among State Bar leadership, including officers, board members, and committee members. It also emphasizes strengthening the State Bar's relationship with affinity bar associations and other diverse legal groups." "[T]he plan calls for recruiting

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[54] https://www.usnews.com/news/the-report/articles/2018-03-07/is-the-supreme-court-taking-action-on-guns-by-not-acting?src=usn_tw.

[55] https://www.wisbar.org/newspublications/pages/general-article.aspx?articleid=26732 (discussing adoption of anti-sexual harassment policy).

and training diverse attorneys for leadership positions within the State Bar and to serve as advisors on diversity and inclusion issues" and "increasing diversity among the leadership of section and division boards and their memberships" as well "State Bar programming and publications."[56]

f. Advocacy on "Disparate and Mass Incarceration." In June 2018, the State Bar's Board of Governor's adopted policy positions related to "disparate and mass incarceration to include: (1) supporting reform to bail and pretrial detention laws and to move forward with a risk-assessment instrument as the basis for pretrial detention decisions; (2) amending statutes to facilitate prompt release of inmates with "extraordinary health conditions" deemed not a threat to public safety; (3) expanding geriatric release statute to allow earlier release for older inmates; and (4) supporting regular collection and dissemination of data on racial disparities in the criminal justice system.[57]

g. Commentary on Churches Challenging City's LGBT Ordinance. On Feb. 26, 2018, the State Bar tweeted, "Churches Challenge Wisconsin City's LGBT Ordinance"[58] with linked article. The article opens with: "Five churches and a Christian radio station sued a Wisconsin city, claiming its recently

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[56] *Id*. (discussing "Board Adopts Diversity & Inclusion Plan").
[57] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26433.
[58] https://twitter.com/StateBarofWI/status/968186448867446784.

passed nondiscrimination ordinance protecting transgender residents should not apply to them."[59]

h. Advocacy on President Trump's National Labor Relations Board Nominee. On Feb. 1, 2018, the State Bar tweeted, "If confirmed by the Senate, John Ring, President Trump's nominee for chair of the National Labor Relations Board, will restore the pro-management majority to the NLRB. Just what might be expected after his confirmation?"[60] and a link to an article.[61] The article discussed the NLRB's "roll[] back [of] several key decisions announced since 2009" because of the new Republican majority on the NLRB. The author observed "President Trump nominated Miscimarra's replacement: John Ring, an accomplished management-side labor lawyer" and predicted, "Once confirmed by the Senate, his appointment will restore the pro-management majority to the NLRB, so that it can get back to the business of rolling back the radical agenda announced over recent years."[62]

i. Commentary on President Trump's "Refugee Ban." On Feb. 2, 2017, the Wisconsin State Bar published an article to its website's Labor and Employment Law Section Blog entitled, "How Should Employers Respond to Trump's Muslim Ban?"

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[59] https://www.courthousenews.com/churches-challenge-wisconsin-citys-lgbt-ordinance/.
[60] https://twitter.com/StateBarofWI/status/959177162829041664.
[61] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26132.
[62] *Id.*

The article opened with a factual account of the executive order, then provided considerations for employers related to the executive order's impact on their businesses. The article then shifted tone with a subheading, "Why the Executive Order Is Immoral and Unconstitutional." The author wrote:

> Much has been said about this ban by many commentators. I usually would not criticize political actions in such an article and would focus instead on the impacted legal and business issues. I realize this additional commentary may be off-putting to readers and even potentially harmful for future prospects. I understand if that is your reaction and accept any subsequent consequences. However, this executive action offends core constitutional principles and values that I respect as an immigrant and as an attorney. Therefore, I cannot simply gloss over its obnoxious aspects.

Nilesh Patel, How Should Employers Respond to Trump's Muslim Ban?, State Bar of Wisconsin's Labor & Employment Law Blog (Feb. 2, 2017). [63] The postscript to the article provided: "From the editor: We are aware that there may be multiple viewpoints on blog topics. We welcome submissions that may provide a counterpoint to this or any Labor and Employment Law Section Blog topic." *Id.*

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[63] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=25372.

j. Response to Statements by President Trump. On February 10, 2017, in response to President Trump's tweets referencing a district court judge that suspended an executive order, including characterizing the judge as a "so-called judge," the State Bar's Board of Governors adopted a statement characterizing the President's tweets as "ill-considered," discussing the rule of law and an independent judiciary, and stating "there are no 'so-called judges' in America."[64] On the same day, the Bar tweeted, "Board of Governors urge respect for independent judiciary, addresses comments by President Trump" with link to the statement.

k. Advocacy for Nondiscrimination Policies Based on Sexual Orientation and Gender Identity. On July 24, 2015, the State Bar tweeted, "Tip: Implementing nondiscrimination policy? Include sexual orientation, gender identity. Attend LGBT session"[65] with link to registration website.

l. Advocacy for Prosecutor Funding. In 2010, the State Bar President warned that potential funding cuts by the Governor could "adverse[ly] impact [the State's] justice system."[66]

m. Advocacy for Access to Justice, "Consumer Safeguards," and "Judicial Campaign

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[64] https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=25403.

[65] https://twitter.com/StateBarofWI/status/624675936298889217.

[66] https://www.wisbar.org/NewsPublications/Newsroom/Old%20Press%20Releases%20pre2011/ADAPressRelease.pdf.

Reform." In 2007, the incoming State Bar President announced to over 1000 attorneys at the Bar's annual convention that he would push for "improved access to justice, consumer safeguards and judicial campaign reform during his one-year term."[67]

39. The advocacy by the State Bar described above, as well as other speech by and published by the State Bar, concerns matters of public interest and concern.

C. The Plaintiffs Disagree with the State Bar's Speech and Object to Being Associated with the State Bar

40. The State Bar is an expressive association—that is, its members join together for the purpose of engaging in advocacy and other speech.

41. Plaintiffs are compelled to pay annual membership dues.

42. The Plaintiffs are compelled to subsidize the State Bar's speech on matters of public interest and concern.

43. The State Bar provides a limited mechanism by which members may avoid subsidizing some of the State Bar's speech. The State Bar provides an optional dues reduction for certain "nonchargeable" activities that currently includes "all direct lobbying activity." Board Adopts Policy on Dues Rebate Amount,

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[67] https://www.wisbar.org/NewsPublications/Newsroom/Old%20Press%20Releases%20pre2011/BastingPressRelease.pdf.

Supports Pro Hac Vice Exemption, State Bar of Wisconsin (Feb. 9, 2018).[68] The State Bar requires members to opt-out of financing activities it deems "non-chargeable."

44. Nonetheless, the State Bar still treats as "chargeable" much of its speech on matters of public interest and concern, including non-lobbying advocacy concerning the regulation of the legal profession and legal reform and speech on many subjects pertaining to the practice of law, the operation of government, and the provision of public services.

45. Accordingly, there is no mechanism by which a member may avoid subsidizing entirely the State Bar's speech on matters of public interest and concern.

46. Plaintiffs individually disagree with portions of the State Bar's speech on matters of public interest and oppose being compelled to support that speech with their membership dues.

47. In particular, Plaintiffs disagree with the following speech by the State Bar:

a. Plaintiff Adam Jarchow disagrees with the State Bars speech and advocacy on, among other things, criminal justice issues, Legal Services Corporation Funding, felon voting rights, maintaining an

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[68] https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=10&Issue=3&ArticleID=26170.

integrated bar, the unauthorized practice of law, professional taxes, tax reform, immigration law, public campaign financing, and the death penalty.

b. Plaintiff Michael D. Dean disagrees with the State Bar's speech and advocacy on, among other things, unemployment insurance fraud, free exercise of religion, the unauthorized practice of law, and immigration law.

48. Plaintiffs individually disagree with other speech by the State Bar.

49. Plaintiffs do not wish to fund the State Bar's advocacy and other speech and, if given the choice, would not fund those activities.

50. Plaintiffs object to being required to be members of the State Bar of Wisconsin.

51. Plaintiffs object to associating with the State Bar and its speech.

52. Plaintiffs have suffered, are suffering, and will suffer irreparable harm from being required to join and pay dues to the State Bar.

D. Mandatory Membership in, and Compelled Contribution to, the State Bar Is Not Tailored To Support Any Compelling State Interest

53. The only possible state interests served by requiring attorneys to join and pay dues to the State Bar are regulating the legal profession and improving the quality of legal services.

54. Eighteen states regulate the practice of law without requiring attorneys to join and pay dues to a bar association.

55. Like those eighteen states, Wisconsin could use means significantly less restrictive of First Amendment freedoms than compelling membership and funding of the State Bar to regulate the legal profession and improve the quality of legal services.

Count One: Compelling Dues Payments to the State Bar Violates Plaintiffs' First Amendment Rights

56. Plaintiffs incorporate and re-allege each and every allegation in the foregoing paragraphs as though fully set forth herein.

57. The First Amendment to the United States Constitution provides: "Congress shall make no law…abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

58. The Fourteenth Amendment to the United States Constitution incorporates the protection of the First Amendment against the States.

59. The freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

60. The First Amendment likewise protects "right to eschew association for expressive purposes."

Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 2463 (2018).

61. Compelled association is permissible only when it "serve[s] a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Janus*, 138 S. Ct. at 2465.

62. By requiring Plaintiffs to make financial contributions in support of the State Bar, Defendants impinge the Plaintiffs' rights under the First and Fourteenth Amendments to be free from compelled association.

63. Because Wisconsin could regulate the legal profession through means significantly less restrictive of First Amendment freedoms, compelling dues payments to subsidize the State Bar's speech violates Plaintiffs' rights under the First and Fourteenth Amendments.

64. Plaintiffs have no adequate remedy at law.

65. The controversy between Defendants and Plaintiffs is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

66. The dispute is real and substantial, as the Defendants are continuing to collect fees from Plaintiffs' as a condition of practicing law in Wisconsin.

67. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a

mere advisory opinion, as the parties dispute the legality of the ongoing requirement to pay dues.

68. As a result of the foregoing, an actual and justiciable controversy exists between the Plaintiffs and the State Bar regarding their respective legal rights, and the matter is ripe for review.

69. Plaintiffs are entitled to injunctive and declaratory relief providing that the requirement to pay membership dues to the State Bar as a condition of being licensed to practice law in Wisconsin is unconstitutional.

Count Two: Requiring Plaintiffs To Join the State Bar Violates Their First Amendment Rights

70. Plaintiffs incorporate and re-allege each and every allegation in the foregoing paragraphs as though fully set forth herein.

71. By requiring Plaintiffs to be members of the State Bar, Defendants are impinging the Plaintiffs' rights under the First and Fourteenth Amendments to be free from compelled speech and compelled association.

72. Because Wisconsin could regulate the legal profession through means significantly less restrictive of First Amendment freedoms, compelling membership in the State Bar violates Plaintiffs' rights under the First and Fourteenth Amendments.

73. Plaintiffs have no adequate remedy at law.

74. The controversy between Defendants and Plaintiffs is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

75. The dispute is real and substantial, as the Defendants are continuing to require Plaintiffs to maintain membership in the State Bar as a condition of practicing law in Wisconsin.

76. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of the ongoing requirement to maintain membership in the State Bar.

77. As a result of the foregoing, an actual and justiciable controversy exists between the Plaintiffs and the State Bar regarding their respective legal rights, and the matter is ripe for review.

78. Plaintiffs are entitled to injunctive and declaratory relief providing that the requirement to become a member of the State Bar as a condition of being licensed to practice law in Wisconsin is unconstitutional.

Costs and Attorneys' Fees

79. Pursuant to 42 U.S.C § 1988, the Plaintiffs seeks an award of costs and attorneys' fees incurred in the litigation of this case.

Prayer for Relief

For these reasons, Plaintiffs requests that the Court:

(A) Enter a judgment declaring that Wisconsin's statute requiring payment of mandatory dues to the State Bar, codified by the operation and effect of SCR 10.01; *id*. 10.03(2)-(6); and *id*. ch. 10 app., art. I, § 3, impermissibly abridges Plaintiffs' First Amendment rights;

(B) Enter a judgment declaring that Wisconsin's statute requiring membership in the State Bar, codified at SCR 10.01(1), impermissibly abridges Plaintiffs' First Amendment rights;

(C) Enjoin Defendants from continuing to collect membership dues;

(D) Enjoin Defendants from continuing to require membership in the State Bar;

(E) Order Defendants to refund Plaintiffs' membership-dues payments collected in violation of Plaintiffs' rights;

(F) Grant Plaintiffs additional or different relief as the court deems just and proper, including an award of reasonable attorneys' fees and costs of this action.

Respectfully submitted,

Dated April 8, 2019

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Wisconsin Supreme Court Rule 10.01

State bar of Wisconsin.

(1) There shall be an association to be known as the "state bar of Wisconsin" composed of persons licensed to practice law in this state, and membership in the association shall be a condition precedent to the right to practice law in Wisconsin.

(2) The supreme court by appropriate orders shall provide for the organization and government of the association and shall define the rights, obligations and conditions of membership therein, to the end that the association shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice.

Wisconsin Supreme Court Rule 10.02

Organization of the state bar of Wisconsin.

(1) CREATION OF ASSOCIATION. All persons licensed to practice law in this state are organized as an association to be known as the "state bar of Wisconsin," subject to the provisions of this chapter. The rules of this chapter, which are adopted in the exercise of the court's inherent authority over members of the legal profession as officers of the court, may be referred to as "state bar rules." The state bar may, for the purpose of carrying out the purposes for which it is organized, sue and be sued, enter into contracts, acquire, hold, encumber and dispose of real and personal property.

(2) PURPOSE. The purposes of the association are to aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to conduct a program of continuing legal education; to assist or support legal education programs at the preadmission level; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform and the relations of the bar to the public and to publish information relating thereto; to carry on a continuing program of legal research in the technical fields of substantive law, practice and procedure and make reports and recommendations thereon within legally permissible limits; to promote the innovation, development and improvement of means to deliver legal services to the people of Wisconsin; to the end that the public responsibility of the legal profession may be more effectively discharged.

(3) DEFINITION. In this chapter, "state bar" means the state bar of Wisconsin.

Wisconsin Supreme Court Rule 10.03

Membership.

(1) PERSONS INCLUDED IN MEMBERSHIP. As of the effective date of this rule, membership of the state bar

consists of all those persons who on that date are licensed to practice law in this state. After the effective date of this rule, the membership includes all persons who become licensed to practice law in this state; subject in each case to compliance with the conditions and requirements of membership. Residence in this state is not a condition of eligibility to membership in the state bar.

(2) ENROLLMENT. Every person who becomes licensed to practice law in this state shall enroll in the state bar by registering his or her name and social security number with the association within 10 days after admission to practice. Every change after enrollment in any member's office address or social security number shall be reported promptly to the state bar. The social security number of a person enrolling in the state bar may not be disclosed to any person or entity except the supreme court and its agencies, or as otherwise provided by supreme court rules.

(3) CLASSES OF MEMBERSHIP.

(a) The members of the state bar are divided into 4 classes: active members, judicial members, inactive members and emeritus members. The class of active members includes all members of the state bar except the judicial members and inactive members. The class of inactive members includes those persons who are eligible for active membership but are not engaged in the practice of law in this state and have filed with the secretary of the association written notice requesting enrollment in the class of inactive members. The class of judicial members includes the following

persons: supreme court justices, court of appeals judges, circuit court judges, full-time circuit court commissioners, full-time municipal court judges, supreme court commissioners, court of appeals staff attorneys, federal district court judges, federal appellate court judges, federal bankruptcy judges, federal magistrate judges, federal administrative law judges, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Any judicial member may elect to become an active member with all rights of active membership except to hold office as an officer or governor or to practice law. The class of emeritus members includes those persons who are either active or inactive members in good standing but who are at least 70 years of age and have filed with the executive director of the association a written notice requesting enrollment in the class of emeritus members. An emeritus member has all the privileges of membership in the state bar and need not pay membership dues for the years following the year in which he or she attains the age of 70.

(b)

1. Any inactive member in good standing who has actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the secretary a written request for transfer to the class of active members and by paying the dues required of active members.

2.

a. Any inactive member in good standing who has not actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the secretary a written request for transfer to the class of active members, paying the dues required of active members, and obtaining supreme court approval as provided in subd. 2.

b. Any inactive member described in subd. 2. a. seeking to change his or her classification to that of an active member shall file a copy of his or her request for transfer to active membership with both the board of bar examiners and the office of lawyer regulation. The member shall pay $200 each to the board of bar examiners and the office of lawyer regulation, which payment shall accompany the copy of the request. Within 90 days after receipt of the copy of the request, the board of bar examiners shall make a determination regarding compliance with continuing legal education requirements and file its finding with the clerk of the supreme court. Within 90 days after receipt of the copy of the request, the director of the office of lawyer regulation shall investigate the eligibility of the requestor and file a response with the clerk of the supreme court in support of or in opposition to the request. Following receipt of the determination of the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and approve or disapprove the inactive member's request for transfer to active membership.

(bf) Any judicial member who is no longer serving in a judicial office may change his or her classification to that of an active member by filing with the secretary a written request for transfer to the class of active members and paying the dues required of active members.

(bm) Any inactive member in good standing may change his or her classification to that of an emeritus member if otherwise qualified to become an emeritus member provided that no inactive member who has not actively practiced law in this state or in another state during the last two years may be transferred to emeritus status until the board of bar examiners certifies that the member has completed the continuing legal education requirements required for transfer to active status and the transfer is approved by the supreme court.

(c) No judicial or inactive member may practice law in this state or hold office or vote in any election conducted by the state bar. No person engaged in the practice of law in this state in his or her own behalf or as an assistant or employee of an active member of the state bar, or occupying a position, the duties of which require the giving of legal advice or service in this state, may be enrolled as an inactive member.

(4) ONLY ACTIVE MEMBERS MAY PRACTICE LAW.

(a) No individual other than an enrolled active member of the state bar may practice law in this state or in any manner purported to be authorized or qualified to practice law.

(b) A court or judge in this state may allow a nonresident counsel to appear and participate in a particular action or proceeding in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding. An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter, provided that nonresident counsel files a notice of the order granting permission with the court handling the subsequent appellate or circuit court action or proceeding.

1. Counsel who seek to provide legal services under SCR 10.04 (4) (b) shall provide the information listed in Appendix A to this rule. The applicant may also include additional information supporting the request for admission pro hac vice.

2. Counsel who seek to provide legal services under SCR 10.04 (4) (b) shall pay a nonrefundable fee of two hundred and fifty dollars ($250) for each application for admission pro hac vice. The fee shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be appearing on behalf of an indigent client in the proceeding and will be charging no fee for the appearance.

(c) A court in this state may allow a nonresident military counsel to appear and participate in a

particular action or proceeding representing military personnel without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.

(cm) A court in this state may allow a nonresident attorney who seeks to appear for the limited purpose of participating in a child custody proceeding pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. s. 1901, et seq., while representing a tribe, without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.

(d) If representing a party before an agency of this state is limited to lawyers, an administrative law judge or hearing examiner for a state agency may, using the same standards and procedures as a court, allow a nonresident counsel who has been retained to appear in a particular agency proceeding to appear and participate in that proceeding without being in association with an active member of the state bar of Wisconsin.

(e) A court or judge may, after hearing, rescind permission for a nonresident counsel to appear before it if the lawyer by his or her conduct manifests incompetency to represent a client in a Wisconsin court or unwillingness to abide by the rules of professional conduct for attorneys or the rules of decorum of the court.

(f) Counsel not admitted to the practice of law in this jurisdiction but admitted in any other U.S. jurisdiction or foreign jurisdiction, who is employed as a lawyer in Wisconsin on a continuing basis and employed exclusively by a corporation, association, or other nongovernmental entity, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 60 days after the commencement of employment as a lawyer or if currently so employed then within 90 days of the effective date of this rule, by submitting to the Board of Bar Examiners the following:

1. A completed application in the form set forth in Appendix B to this rule;

2. A nonrefundable fee of two hundred and fifty dollars ($250) to the Board of Bar Examiners;

3. Documents proving admission to practice law in the primary jurisdiction in which counsel is admitted to practice law; and

4. An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed.

A lawyer registered under this subsection may provide pro bono legal services without fee or expectation of fee as provided in SCR 20:6.1.

NOTE: See SCR 10.03 (4) Appendices A-1, A-2, and B following this section.

(5) MEMBERSHIP DUES AND REDUCTION OF DUES FOR CERTAIN ACTIVITIES.

(a) The annual membership dues for state bar operations for an active member shall be established as provided herein. Other classes of members shall pay the fraction of the dues of an active member as follows: Supreme Court Justices, the full amount; inactive member, one-half; judicial members, two-thirds; and members admitted to practice for 3 years or less, one-half. For purposes of determining an active member's dues status based on the number of years admitted, there shall be no proration based on the exact month and year of admission. A fiscal year for which any dues are required to be paid under Bylaw 1, Section 2 shall count as a full year and a fiscal year for which no dues payment is required shall not count as a year. A change in the dues of an active member for state bar operations may be made by the board of governors or as set forth herein. The state bar shall include in the dues statement each year the amount necessary to pay the costs of the Lawyer Regulation System and of the continuing legal education functions of the Board of Bar Examiners as approved by the Supreme Court. Judicial members other than Supreme Court Justices are not liable to pay the portion for the costs of these boards, as reflected in the dues statement. The state bar shall also include in the dues statement each year an assessment to support the public interest legal services fund, as approved by the supreme court. The state bar shall show separately on its annual dues statement the portion of the

total dues for state bar operations, the assessments for each of the boards, and other assessments imposed by the supreme court.

(b)

1. The State Bar may engage in and fund any activity that is reasonably intended for the purposes of the association set forth in SCR 10.02 (2). The State Bar may not use the compulsory dues of any member who objects pursuant to SCR 10.03 (5) (b) 3. for activities that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services. Expenditures that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services may be funded only with voluntary dues, user fees or other sources of revenue.

Comment: The term voluntary dues in SCR 10.03 (5) (b) 1. refers to the dues of members who do not withhold dues pursuant to SCR 10.03 (5) (b) 2. or successfully object pursuant to SCR 10.03 (5) (b) 3.

2. Prior to the beginning of each fiscal year, the state bar shall publish written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues. The notice shall indicate the cost of each activity, including all appropriate indirect expense, and the amount of dues to be devoted to each activity. The notice shall set forth each member's pro rata portion, ac-

cording to class of membership, of the dues to be devoted to activities that cannot be supported by compulsory dues. The notice shall be sent to every member of the state bar together with the annual dues statement. A member of the state bar may withhold the pro rata portion of dues budgeted for activities that cannot be supported by compulsory dues.

3. A member of the state bar who contends that the state bar incorrectly set the amount of dues that can be withheld may deliver to the state bar a written demand for arbitration. Any such demand shall be delivered within 30 days of receipt of the member's dues statement.

4. If one or more timely demands for arbitration are delivered, the state bar shall promptly submit the matter to arbitration before an impartial arbitrator. All such demands for arbitration shall be consolidated for hearing. No later than 7 calendar days before the hearing, any member requesting arbitration shall file with the arbitrator a statement specifying with reasonable particularity each activity he or she believes should not be supported by compulsory dues under this paragraph and the reasons for the objection. The costs of the arbitration shall be paid by the state bar.

5. In the event the decision of the arbitrator results in an increased pro rata reduction of dues for members who have delivered timely demands for arbitration for a fiscal year, the state bar shall offer such increased pro rata reduction to members first admitted to the state bar during that fiscal year and after the date of the arbitrator's decision.

(6) PENALTY FOR NONPAYMENT OF DUES. If the annual dues or assessments of any member remain unpaid 120 days after the payment is due, the membership of the member may be suspended in the manner provided in the bylaws; and no person whose membership is so suspended for nonpayment of dues or assessments may practice law during the period of the suspension.

(6m) PETITION FOR REINSTATEMENT FROM SUSPENSION FOR NONPAYMENT OF DUES OR FAILURE TO FILE A TRUST ACCOUNT CERTIFICATE.

(a) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of less than 3 consecutive years shall be reinstated as a member by the state bar board of governors if he or she makes full payment of the amount owing and an additional payment of $20 as a penalty. The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.

(b) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of 3 or more consecutive years may file a petition for reinstatement with the supreme court. A copy of the petition shall be served on the board of bar examiners and the office of lawyer regulation. Separate payments in the amount of $200 each shall be made to the board of bar examiners and the office of lawyer regulation and shall accompany

the petition. Within 90 days after service of the petition for reinstatement, the board shall make a determination regarding compliance and file its finding with the supreme court. Within 90 days after service of the petition for reinstatement, the director of the office of lawyer regulation shall investigate the eligibility of the petitioner for reinstatement and file a response with the supreme court in support of or in opposition to the petition.

(c) An attorney suspended from the practice of law for failure to comply with the trust account certification requirement under SCR 20:1.15 (g) shall be reinstated as a member by the state bar board of governors if he or she files the prescribed certificate. The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.

Wisconsin Supreme Court Rule 10.04

Officers.

(1) TITLES, NOMINATION, AND ELECTION. The officers of the state bar include a president, a president-elect, an immediate past-president, a chairperson of the board of governors, a secretary and a treasurer, who shall be nominated and elected in the manner provided by the bylaws. Only active members of the state bar residing and practicing law in Wisconsin are eligible to serve as president or president-elect of the association. The term of office of the president, president-elect, immediate past-president and chairperson of the board of governors is one year. The term of the

secretary and the treasurer is 2 years, with the secretary elected in even-numbered years and the treasurer elected in odd-numbered years. The term of each officer runs until the qualification of a successor.

Wisconsin Supreme Court Rule 10.05

Board of Governors.

(1) COMPOSITION OF BOARD. The affairs of the association shall be managed and directed by a board of governors consisting of the 6 officers of the association, all of whom shall be ex officio members-at-large of the board, not fewer than 34 members elected from the state bar districts established under sub. (2), one member selected by the young lawyers division pursuant to its bylaws, one member selected by the government lawyers division pursuant to its bylaws, five governors selected by the nonresident lawyers division pursuant to its bylaws, one governor selected by the senior lawyers division pursuant to its bylaws, and three nonlawyers appointed by the supreme court for staggered two-year terms. No person appointed by the supreme court shall serve more than two consecutive full terms. The rights and powers of the ex officio members of the board are the same as those of elected members. All past presidents of the Wisconsin bar association or of the state bar of Wisconsin, the Wisconsin state delegate to the American Bar Association house of delegates and the deans of the Marquette university and university of Wisconsin law schools are entitled to floor privileges, but without voting privileges.

* * *

(4) FUNCTIONS.

(a) The board of governors has general charge of the affairs and activities of the association. It may:

1. Fix the time and place of the annual meeting of members of the association.

2. Make appropriations and authorize disbursements from the funds of the state bar in payment of the necessary expenses of the association.

3. Engage and define the duties of employees and fix their compensation.

4. Receive, consider and take action on reports and recommendations submitted by committees, sections and the assembly of members of the association at any annual or special meeting.

5. Arrange for publication of official state bar publications.

6. Conduct investigations of matters affecting the association or the practice of law or the discipline of members of the association.

7. Fill vacancies arising in the membership of the board of governors or in any office except the office of president. In each case the person appointed to fill the vacancy shall hold office for the unexpired term.

8. Adopt bylaws and regulations, not inconsistent with this chapter, for the orderly administration of the association's affairs and activities.

(b) The board of governors shall meet at least 4 times each year. Twenty-four members present at any meeting constitutes a quorum. Special meetings of the board of governors may be called in accordance with the bylaws.

(c) The board of governors shall establish and maintain standing committees having respectively the functions defined in the bylaws. The board of governors may create additional standing committees and special committees and may define the authority and functions of those standing and special committees.

(d) The board of governors shall establish and maintain sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. New sections may be established and existing sections may be consolidated or discontinued by the board of governors. Each section shall be governed by bylaws not inconsistent with this chapter or state bar bylaws. Section bylaws and amendments thereto become effective upon approval of the board of governors.

(e) A section may express a position on a matter involving a substantial issue of public policy under the following conditions:

1. The matter is one on which the section's views would have particular relevance.

2. The position is adopted in accordance with section bylaws.

3. The position is clearly taken only on behalf of the section.

4. The section charges annual dues at least equal to the cost of its legislative program so that the cost need not be borne by section nonmembers. The executive committee or board shall receive a summary of section positions on matters involving substantial issues of public policy prior to their publication but inaction by the executive committee or board shall not be construed as support of such positions. No committee of the association may publicly express any conclusion or opinion respecting any substantial issue of public policy without having procured previous authorization from either the board of governors or the executive committee of the association.

This prohibition is not applicable to the public release of reports made by committees to the board of governors prior to action thereon by the board, unless the board has otherwise ordered. If any committee or section of the association expresses publicly any conclusion or opinion on matters other than substantial issues of public policy, the expression shall indicate that the conclusion or opinion is that of the section of committee from which it emanates, rather than the conclusion or opinion of the state bar.

(f) The members of the board of governors shall receive no compensation for services to the association, but they and also the members of committees and the

officers and directors of sections and of the young lawyers division, the government lawyers division, the nonresident lawyers division, and the senior lawyers division may be reimbursed for necessary expenses in the performance of their duties.

(g) A summary of the minutes of each meeting of the board of governors shall be provided to the membership in an official state bar publication, with a notation that any interested member may obtain a copy of the minutes.

(h) The board of governors shall establish and maintain a young lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the young lawyers division shall be any member of the state bar under the age of 36 years or any member, irrespective of age, during the first 5 years following admission to the bar. This division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The young lawyers division shall stimulate the interest of young lawyers in the objectives and programs of the state bar and carry on projects which will be of assistance to young lawyers.

(i) The board of governors shall establish and maintain a government lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the government lawyers division shall be any member of the state bar who is a salaried employee of any government. This division shall be governed by bylaws not inconsistent with state bar

rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The government lawyers division shall promote effective collaboration between the private and public sectors of the bar and provide for the participation of publicly employed members in the governance of the state bar.

(j) The board of governors shall establish and maintain a non-resident lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the non-resident lawyers division shall be any member of the state bar who has an address of record outside the state of Wisconsin. This division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The non-resident lawyers division shall carry on projects which will be of assistance to members outside the state of Wisconsin and provide for the participation of members outside Wisconsin in the governance of the state bar.

(k) The board of governors shall establish and maintain a senior lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the senior lawyers division shall be any members of the state bar who are age 60 years or older. The division shall be governed by bylaws not inconsistent with state bar rules and bylaws.

The division bylaws and amendments thereto become effective upon approval of the board of gover-

nors. The senior lawyers division shall carry on projects that will stimulate the interest of the senior lawyers in the objectives and programs of the state bar and carry on activities which will be of assistance to senior lawyers in the practice of law.

(m)

1. 'Establishment.' The board of governors may provide assistance programs, including assistance in law office management, and assistance to judges, lawyers, law students, and their families in coping with alcoholism and other addictions, mental illness, physical disability, and other problems related to or affecting the practice of law.

The board may establish committees, hire staff, and obtain volunteers as reasonably necessary to provide assistance. The board shall establish policies consistent with the purposes of the state bar and in furtherance of the public interest in the competence and integrity of the legal profession.

2. 'Privileges, immunity.' Communications with an assistance committee member, staff, or volunteers by any person providing information in good faith are privileged; no lawsuit based upon these communications may be instituted by any person. In providing assistance services, the board, members of assistance committees, staff, and volunteers designated by the board shall be immune from suit for any conduct in the course of their official duties.

3. 'Confidentiality.' All communications with an assistance committee member, staff, or volunteer,

and all records of program assistance to a person are confidential and shall not be disclosed, except in any of the following circumstances:

a. With the express consent of the person provided assistance.

b. When required as a condition for monitoring.

c. When reasonably necessary to prevent death or substantial bodily harm to the person assisted or to another.

d. When reasonably necessary to prevent child abuse or elder abuse.

e. When reporting is mandated by other law.

Wisconsin Supreme Court Rule 10.06

Executive committee.

(1) MEMBERS' SELECTION. The executive committee consists of the president, the president-elect, the immediate past president, the chairperson of the board of governors, one representative each from the nonresident lawyers division, government lawyers division, young lawyers division, and senior lawyers division selected from their board of governors representatives and 6 additional members elected annually by the board of governors at its final meeting of the fiscal year. The 6 additional members shall be elected from among the governors-elect and the current governors who will serve on the board of governors during the following fiscal year. A vacancy occurring in

the selected membership may be filled by action of the board of governors.

(2) POWERS. The executive committee may exercise all the powers and perform all the duties of the board of governors between the meetings of the board except the executive committee shall not, unless otherwise authorized by the board of governors: amend the bylaws; make rules or regulations governing nominations or elections; prescribe regulations for proceedings before grievance committees; or initiate the taking of any referendum or poll of members of the association. The executive committee shall directly receive and act upon all reports of committees on disciplinary matters without reporting to the board of governors. The minutes relating to disciplinary matters shall be kept separate from the general minutes and shall be confidential. The executive committee shall prepare an annual budget for

submission to the board of governors and shall perform such other duties as the board of governors may prescribe.

Unless otherwise ordered by the board of governors, the executive committee shall not express publicly any opinion on any matter including legislation of major public interest or concern or of major importance to the members of the association. A summary of the general minutes of each meeting of the executive committee shall be provided to the membership in an official state bar publication.

(3) Meeting; Quorum. The executive committee shall meet at the call of the president, or at the call of the executive director upon the written demand of at least 6 of its members. All members shall be given at least 48 hours' notice by mail or telephone of the time and place of any meeting. A majority of all members constitutes a quorum. No action may be taken by the committee except upon the concurrence of at least a majority of all members. The concurrence may be registered by mail, telephone, facsimile, or e-mail.

SCR Chap. 10 Appendix, Art. 1, § 3

PENALTY FOR NONPAYMENT OF DUES.

(a) Any member admitted to the State Bar prior to July 1 whose dues are not paid by September 1 shall be notified of his or her delinquency and the consequent penalties by certified mail sent to the member's last known address prior to October. Failure to pay the dues by October 31 shall automatically suspend the delinquent member. The names of all members suspended from membership by the nonpayment of dues shall be certified by the Executive Director to the Clerk of the Supreme Court and to each judge of a court of record in this state, after first mailing a copy of such list to each suspended member 10 days before it is filed with the Supreme Court.

(b) Any member admitted to the State Bar on or after July 1 and whose dues are not paid within 60 days after the due date stated on his or her initial dues statement shall be notified of his or her delinquency and the consequent penalties by certified mail

sent to the member's last known address within 90 days after the initial due date. Failure to pay initial dues within 120 days from the initial due date shall automatically suspend the delinquent member, and the Executive Director shall certify such suspension in the manner provided by these bylaws.

Wisconsin Supreme Court Rule 21.01

Components.

(1) The lawyer regulation system consists of the following:

(a) Office of lawyer regulation, provided in SCR 21.02.

(b) District committees, provided in SCR 21.06.

(c) Preliminary review committee, provided in SCR 21.07.

(d) Referees, provided in SCR 21.08.

(e) Board of administrative oversight, provided in SCR 21.10.

(f) Supreme court.

Wisconsin Supreme Court Rule 21.02

Office of Lawyer Regulation.

(1) The office of lawyer regulation consists of the director, investigative and support staff, and staff counsel and retained counsel. The office receives and responds to inquiries and grievances relating to attor-

neys licensed to practice law or practicing law in Wisconsin and, when appropriate, investigates allegations of attorney misconduct or medical incapacity, and may divert a matter to an alternatives to discipline program. The office is responsible for the prosecution of disciplinary proceedings alleging attorney misconduct and proceedings alleging attorney medical incapacity and the investigation of license reinstatement petitions. The office has discretion whether to investigate and to prosecute de minimus violations. Discretion permits the office to prioritize resources on matters where there is harm and to complete them more promptly.

(2) The office of lawyer regulation functions pursuant to the procedures set forth in SCR chapter 22.

Wisconsin Supreme Court Rule 21.09

Supreme Court.

(1) The supreme court determines attorney misconduct and medical incapacity and imposes discipline or directs other action in attorney misconduct and medical incapacity proceedings filed with the court.

(2) The supreme court shall meet with the director, with the preliminary review committee, and with the board of administrative oversight annually to discuss the operation of the lawyer regulation system and consider improvements in its operation.