Brief and Manifesto
Against A Mandatory State Bar

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A. Introduction

Integrated bar organizations of attorneys like the State Bar of Michigan have been around for a long time, roughly a hundred years in the United States.[1] An integrated bar has nothing to do with racial integration. An integrated bar is an organization in which membership is mandatory as a matter of law in order for an attorney to practice law and earn a living. To practice law, an attorney must "join." If the attorney refuses to join, he or she is forbidden to practice law. Given the length of time lawyers across America have had to acclimate to the idea of mandatory bar membership, one might think it strange that every few years brings another round of fresh legal challenges to the idea. Yet, even though the U.S. Supreme Court has weighed in on this issue numerous times, why hasn't this issue gone away?

The answer is basic - forced associations with organizations are contrary to human nature. No one wants to be compelled to "join" or "associate" with an organization against their will.[2] No one should be compelled to join a church, marriage partner, attend a school, join a labor union, the military or any bar or legal organization. Forced associations are reserved exclusively for prisons. Spending holidays with unpleasant family members does not count. People seek to be free, and to exercise their own freedom of choice to join or not to join, to attend or not to attend. Yet, the idea of making people associate against their will "for their own good," "for the good of society," or for the good of the legal profession persists.

In Michigan the idea of forced association with the State Bar's organization is purportedly justified because it is necessary to promote "improvements in the administration of justice," "advance jurisprudence," "improve relations between the legal profession and the public," and promote "the interests of the legal profession." The State Bar has translated these broad organizational objectives into five core values and four institutional goals.[3] It is not immediately important to take a position on whether this mission, goals and values are like unto manna from heaven or the doctrines of demons. What is important is to determine why a lawyer's compulsory association with this particular bar organization is required to further this mission and goals and to promote these values?

What is considered organizationally good is not more important than the natural right animating personal choice - specifically, the choice whether or not to "join" a professional organization. First, whether or not to join a bar organization is not merely a matter of personal *preference* - it is a matter of *natural right.* Nor is it merely a fundamental right. Second, since this right comes from the

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[1] The first state to establish an integrated bar organization was North Dakota in 1921. The State Bar of Michigan was formed in 1935.

[2] The words "join" and "association" both presumes an element of voluntary action. Technically, there is no such thing as an "involuntary association," and no one "joins" an organization he or she is compelled to be a member of by coercion.

[3] State Bar of Michigan, 2017-2023 Strategic Plan. See https://www.michbar.org/generalinfo/home

Creator according to the law of nature and of nature's God, there is no governmental interest which can ever "outweigh" it. Governments cannot set aside what God has established. Third, every natural right is unalienable and cannot be infringed. The fact that states have been utterly disregarding this natural right for a century does not validate the injury.

B. All Persons Are Born Free, Even Lawyers

To aid in understanding our rights, consider John Locke and his First Treatise on Government (1680).[4] Locke wrote his treatise to refute the arguments made by unlimited government advocate Sir Robert Filmer (an apologist for King Charles I of England), to advance the ideas we know today as *the divine right of kings*. According to Locke, Filmer's thesis was, "That all government is absolute monarchy." And the legal justification for this position is "That no man is born free."[5] Locke's core principle, on the other hand, was that *all men are born free*. Today, we are sorry to observe, the core principles in America appear to be that whether or not people are born free, *they must be made subservient when choosing a legal career.*

Locke did not just make this up. Locke analyzed the Bible and found in Genesis that God created human beings, male and female and charged them with immediate self-governance. They were free to work and labor. They were free to earn a living. God mandated it. Mankind was obligated to obey. No one had the right to interfere, license or impose conditions on how a person could obey what God commanded.

Almost 5,800 year later, when the Declaration of Independence was written, its likewise observed the same facts. It stated that all men are created equal and endowed by their Creator with certain unalienable rights. This is not a sophomoric statement about gender or religion. It is affirming that a creation legal principle is part of American law - that people are born free according to the will of their Maker, they have certain unalienable rights arising from that free state including the natural right of choice in associating. This choice includes the freedom to associate or not associate with this or that organization. It is declaring that every civil government to be created after 1776 must respect this legal proposition and right including the State of Michigan, its judicial branch, Supreme Court and its state established organizations like the State Bar.[6]

As we shall see, this principle of freedom to associate leads to the following moral and legal arguments against a mandatory bar organization association: 1) true principles of associational law and freedom of association deny there is any such thing as an involuntary association; 2) were this right merely fundamental, the licensing authority actually asserts no compelling interest whatsoever for either: a) creating a relationship between each lawyer and the state, or b) forcing each lawyer into an association with every other lawyer; 3) *arguendo*, assuming state compulsion is justified, not

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[4] https://lonang.com/library/reference/locke-two-treatises-government/

[5] https://lonang.com/library/reference/locke-two-treatises-government/loc-101/

[6] For analysis of the legally binding nature of the principles of the Declaration of independence on state governments on equal footing with the original 13 states, see https://lonang.com/commentaries/conlaw/organizing/legal-framework-for-a-nation/

merely some, but all activities of the State Bar are ideologically driven, so infringement of the free speech rights of bar members is inevitable, 4) speech activities by an integrated bar impermissibly trade on the reputation and rights of its members; 5) the state bar is tantamount to an unconstitutional establishment of religion as well as an offenses against freedom of the mind; and 6) the bar is an odious monopoly unworthy to further the ends of justice.

II. FREEDOM OF ASSOCIATION INCLUDES THE RIGHT TO CHOOSE ASSOCIATION

A. There Is No Such Thing As An "Involuntary Association"

As was recently recounted in *Janus v. AFSCME*, 585 U.S. ___ (2018):

> We have held time and again that freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all." (Citations omitted). The right to eschew association for expressive purposes is likewise protected. (Citations omitted). ("Freedom of association . . . plainly presupposes a freedom not to associate"); (citations omitted). ("[F]orced associations that burden protected speech are impermissible"). As Justice Jackson memorably put it: "If there is any fixed star in our constitutional constellation, it is 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." (Citations omitted).

These are unambiguous grand pronouncements of constitutionally elevated legal principles. What prevents their application here? **"Freedom of association . . . plainly presupposes a freedom not to associate."** Clearly these words, when written, were not intended to be understood in some kind of Orwellian double-speak to mean just the opposite.

Especially to the founders, the compulsory oversight asserted by modern-day bar organizations would vividly remind them of: 1) a pernicious state establishment of religion; and 2) press-gangs who "recruited" unwilling "volunteers" to become seamen for the British Navy. Both of which examples, in the mindset of the founders justified revolution and legal rejection. In the words of Thomas Jefferson:

> Whereas, Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the [Creator], who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do.[7]

The whole basis of Jefferson's assertion is that because the human mind was created by God, each person's accountability for the use of their mind ran solely to God (from where it came), and not to

[7] *Bill for Establishing Religious Freedom*, adopted by the General Assembly of Virginia on January 16, 1786, now part of Code of Virginia, §57-1.

any other person. It is unfashionable now, but in Jefferson's day this right came from God, and therefore was inalienable. Not merely *fundamental*, not subject to any form of judicial balancing, and definitely not subject to any judicially manufactured so-called *compelling state interest* test. Things which come from God ought not to be tinkered with by professional organizations.

This right of the freedom of the mind carried with it all the liberties which naturally flow from it: freedom of religion, freedom of speech, freedom of the press, and freedom of association. The right to keep and bear arms for defense was the necessary means to secure these should government systematically fail. It is not limited to its most famous application—the disestablishment of Virginia's state established church. All are God-given, unalienable rights. Jefferson did not assert freedom of the mind originating with the Creator as a religious proposition. He asserted it as a legal position in a legislative bill. If Jefferson could assert the principle and right as a legal matter, perhaps this court could do likewise?

Some relationships a person is born into: as an individual, as the member of a family, and initially as the member of a nation. All other relationships are, by the design of the laws of nature and nature's God (this nation's most fundamental laws and overriding legal context), entered into volitionally. This is what it means to be a *free people*. That is what it means to be born free. Tyrants stand in the opposite corner of freedom. As the Declaration of Independence affirms, "A Prince [or government body], whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People."

Consequently, there is no such thing as an involuntary association under the foundational laws of our nation. To use the term "association," whose definition includes the necessary element of volitional joining, in respect of either an integrated or mandatory bar, is improper. To call the State Bar of Michigan a bar *association* is misleading, at best. In reality, it is a closed shop, where clients (employers) only hire members of the union, and all lawyers must remain members of the union in order to be employed in their chosen occupation. *Janus* clearly applies. We, therefore, refer to the State Bar as a "bar organization", not an association which is presumptuous.

B. The Only Way a Person Can Be Deprived of Their Liberty Is by Way of Forfeiture for a Wrong Committed

It was the universal standard at the common law, both in England and America, that a person could only be deprived of life, liberty, or property as a forfeiture for the commission of a wrong act.

> Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, *unless the owner shall himself commit some act that amounts to a forfeiture*.[8] (Emphasis added).

[8] Wm. Blackstone, *Commentaries on the Laws of England*, bk. 1, § 2 (1765).

> Resolved, N.C.D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England.
>
> Resolved, N.C.D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.[9]

We have already established that freedom of association is a natural right of liberty, endowed by the Creator as an unalienable right. In the present context, the right includes the liberty of choosing one's own organization for business or professional purposes, and the liberty of contributing money solely to those organizations one chooses to support voluntarily. This right can only be deprived upon the commission of some act amounting to forfeiture.

Nonetheless, at present it is the law of the land that lawyers may be compelled to be members of a bar organization without their consent. Logically, then, it must be concluded that lawyers, either upon choosing a career, or perhaps upon seeking licensure, have committed a wrong which now entitles the state to deprive them of their associational liberty.

If that is not the nature of the wrong which has been committed, then it is incumbent to *specify the act of forfeiture* committed by all licensed attorneys which entitles the state to deprive them of their associational liberty. On the other hand, if there is no such universal wrong committed by all lawyers *merely upon entering the profession*, then affirmation of that view of liberty which animated the common law and our forefathers is warranted.

Accordingly, forced association with the State Bar of Michigan violates the natural right to elect or decline to associate with that organization. Moreover, an attorney's associational right is not subject to abridgment through compulsory bar association because there is no conduct constituting a forfeiture of that natural right.

III. A COMPELLING INTEREST TO FORCE ASSOCIATION WITH A BAR ORGANIZATION IS ABSENT

A. All Compelling Interests of the State Can Be Met Without Forming an Integrated Bar

We do not suggest that the State of Michigan has no compelling interests in licensing and regulating attorneys. What we do suggest is that those interests, upon examination, can all be handled - and in fact are already handled - within the scope of the operations of the Michigan Supreme Court. Whatever justifications may exist for the licensing of attorneys, it is completely unnecessary that all attorneys should also be forced into a professional relationship *with each other* via a separate State Bar organization.

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[9] *Declaration and Resolves of the First Continental Congress*, October 14, 1774.

What is the purpose of an integrated bar? As the U.S. Supreme Court observed in *Keller v. State Bar of California*, back when California still had an integrated bar, "the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services."[10] According to the Court, the "guiding standard" of determining the legitimacy of the state bar's activities and expenditures "must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the State.'" (*Id.*, at 14.)

Ah, but what the Court said shortly thereafter is the most telling of all, namely, that "the officials and members of the Bar *are acting essentially as professional advisers* to those ultimately charged with the regulation of the legal profession." (*Id.*, at 15.) (Emphasis added.)

How does the purpose of the State Bar of Michigan compare? According to MCL §600.901, the State Bar is a public body corporate, consisting of all licensed lawyers in the state. But it does not actually license or regulate Michigan lawyers. MCL §600.904 provides,

> The supreme court has the power to provide for the organization, government, and membership of the state bar of Michigan, and to adopt rules and regulations concerning the conduct and activities of the state bar of Michigan and its members, the schedule of membership dues therein, the discipline, suspension, and disbarment of its members for misconduct, and the investigation and examination of applicants for admission to the bar.

So the Michigan Supreme Court *actually* regulates the legal profession in the state. The Michigan Rules of Professional Conduct are adopted by the Court. All attorney discipline is handled by the Attorney Grievance Commission and Attorney Discipline Board, which are separate from the State Bar of Michigan and report directly to the Court. The same holds true with the Judicial Tenure Commission. What does the State Bar actually do? It *advises* the Court. It also *advises* the legislature on legislative bills. It hunts for violations of the unauthorized practice of law statute. But in fact the State Bar regulates no one, disciplines no one, and prosecutes no one.

Michigan judicial opinions have long recognized there is a compelling state interest in having a State Bar. "The regulation of the practice of law, the maintenance of high standards in the legal profession, and the discharge of the profession's duty to protect and inform the public are purposes in which the State of Michigan has a compelling interest."[11] Yes, but in making this claim, the Michigan Supreme Court has gone well beyond both applicable statutory language and even what the State Bar claims about itself.

The State Bar describes its own mission on its website at https://www.michbar.org/ as follows:

> The State Bar of Michigan shall ***aid in promoting*** improvements in the administration of

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[10] *Keller v. State Bar of California*, 496 U.S. 1, at 13 (1990).

[11] *Falk v State Bar*, 411 Mich. 63, 305 N.W.2d 201 (1981) ["Falk I"], and *Falk v State Bar,* 418 Mich 270; 342 NW2d 504 (1983) ["Falk II"].

> justice and advancements in jurisprudence, ***in improving relations*** between the legal profession and the public, and in ***promoting the interests*** of the legal profession in this state. (Emphasis added).

There it is again - the role of the State Bar is not to regulate, but to *aid* and *advise*, just as the Court in *Keller* observed. And, heaven help us, to *improve relations* between the legal profession and the public. In other words, the State Bar is a marketing tool of the state judiciary. So the real issue is not whether the State Bar can compel its members to pay bar dues to express ideas the members do not agree with. It isn't even the question of whether the Michigan Supreme Court can or ought to have an advisory organization to assist it. ***The real issue is what possible interest can the State of Michigan have in compelling all licensed lawyers in the state to be members of a non-regulatory and merely advisory organization which primarily functions as a public relations firm?***

If the Court wants to have an advisory group, fine. But surely, the Court doesn't actually desire to be advised by each individual Michigan lawyer. All the Court will ever get is the advice furnished by the leaders and willing contributors to the State Bar. Consequently, the advisory function of the State Bar will be performed exactly the same *whether or not* all of the non-contributing and unwilling lawyers are members. Compelling lawyers who contribute nothing to the State Bar's committees, leadership, publications or functions, adds absolutely nothing to the nature or quality of the advice provided by the Bar. So what possible interest does the state have in compelling membership?

The answer can only be - money. Those unwilling and non-contributing lawyers are there to fund the State Bar, and for no other reason. If having a State Bar is such a compelling state interest, then let it be funded out of the public treasury. But this interest is unrelated to any interest in forcible association with the organization. No, the State Bar is integrated for only one reason: to bypass the state budget and provide the leadership of the bar a measure of autonomy. Even this is a *private interest*, not a public interest, and not a state interest - much less a compelling one as other state voluntary bar organizations attest.

B. The State Does Not Force Other Licensed Professionals Into an "Association" With Each Other

In the case of *Taylor v Barnes*, Appeal No. 20-2002 (6th Cir. Ct. of Appeals, 2020) the Plaintiffs/Appellants argued in their initial Motion and Brief in Support for Summary Judgment:

> [I]n Michigan, other professions are not subject to this mandatory requirement. Other professionals, including physicians, are licensed, but are not compelled to join or support a professional organization as a requirement for that license. If the state interest in making sure that physicians are competent does not require that they join and fund a membership organization, then it is not necessary for attorneys. (Footnote omitted.)

This fact suggests that within the State's licensing scheme of occupations and professions, lawyers are exceptional. The question is, exceptionally what? Exceptionally prone to commit professional

misdeeds, in spite of only admitting those persons to the practice of law who have shown "good moral character"? Exceptionally incapable of self-government, in spite of the fact their sole job is to represent the interests of others? Exceptionally qualified to be part of an advisory group because their job is to regularly give advice? Well, we know that isn't true, because the State Bar doesn't actually want the advice of those lawyers who don't want to be members.

What is the reason, exactly, which requires all lawyers to be professionally bound not just to the state itself, but organizationally *to every other lawyer in the state?*

Many predict the downfall of justice itself if the State Bar were disestablished. Nonsense. The use of force and coercion against Michigan attorneys is not consonant with justice. A diversity of private voluntary bar organizations is a surer guide to advancing justice and protecting the public, than a single mandatory bar organization can ever be. The Supreme Court has power enough to police the practice of law. It does not need or rely upon a system of coercion which suppresses the right to associate freely, or compels financial support, to exercise that regulatory power.

The State Bar pretends to know what is best for justice. Good for it. Now let it persuade others of the merits of its claim. Let it persuade others by volition. Let it persuade others to join in funding it voluntarily to advance its views. But by the same token, do not take from any one the ability to contribute to another organization which persuades them that a better path to justice or to protecting the community exists. Do not take from any one the comfortable liberty to refuse providing financial support, believing that the path to justice is otherwise obtained. The simple truth is this: coercion in funding is not necessary to advance just legislation, ensure the quality of legal services, the protection of the public, or for the provision of advisory services or technical expertise to the legislature or courts.

Accordingly, an attorney's forced association with the State Bar of Michigan violates the natural right to elect or decline to associate with that organization. Moreover, an attorney's fundamental associational right is not subject to abridgment through compulsory bar association because there is no legitimate state interest in compelling every lawyer in the state to associate with each other, above and beyond their current regulation by the Michigan Supreme Court.

IV. APPLICATION OF *KELLER'S* FREE SPEECH TEST MUST BE RE-EXAMINED

The concept of an integrated bar organization has commonly come under attack on the basis of free speech rights. The seminal case on the matter in recent years has been *Keller v. State Bar of California*, *supra*. Plaintiffs in the instant action have argued *Keller* has been conceptually overruled in *Janus v. AFSCME, supra*. Application of the *Keller* test, however, is fundamentally flawed and should be reexamined for two reasons.

First, the legacy of *Keller*, whether intended or not, is that only *some* of a typical integrated bar organization's activities are perceived as being advocacy or ideological. While the stated purpose, values and rules of the bar have the appearance of neutrality, their applications are all ideological. They are expressions of a particular opinion or viewpoint concerning the profession, the nature of

justice, and what it means to protect the public.

Second, the nature of the harm inflicted on unwilling members of an integrated bar by its speech and advocacy activities is not limited to payment of bar dues. Certainly, the harm inflicted may be economic *in part* or *indirectly*, but in any event it has no relation to the amount or percentage of bar dues paid by the unwilling attorney. Rather, the harm is defamatory in nature, forcibly making an association in the public mind between the unwilling attorney and the views espoused by the bar organization.

A. All of the Activities of the State Bar of Michigan are Ideologically Driven and Espouse a Particular Viewpoint

Recall how the State Bar of Michigan's charge: it "shall aid in promoting improvements in the administration of justice ... in improving relations between the legal profession and the public, and in promoting the interests of the legal profession." One might imagine these grand objectives are pursued with cold neutrality, a detached disinterest, and the lack of a political agenda. Not so.

A quick survey of several key initiatives of the State Bar will demonstrate that the bar's goals and programs reflect only one of a multitude of ideological options. For instance:

• The State Bar believes diversity and inclusion are "core values of the legal profession." The Bars strategic plan, Goal 2, Strategy 4 declares its commitment to "Encouraging improved diversity and inclusion of the profession as a fundamental component of the public's respect for the rule of law and confidence and trust in the justice system. The public's respect for the rule of law and confidence and trust in the justice system, however, presents a different take. The public has said that "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin." Mich. Const. Art. 1, sec. 2.

The public does not use words like "diversity" or "inclusion." The public uses words like "equal protection", the prohibition of affirmative action or singling people out for special preference because of immutable characteristics. "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." Mich. Const, Art 1, sec. 26. Equality, not preferences, affirmative action, diversity or inclusion are the public's interest.

The point is that the state bar's commitment to diversity and inclusion is well within the goal of a voluntary organization, but that is not to say they are free from ideology. It is certainly arrogant to claim that the bar also speaks *en mass* on behalf of the "the public's respect for the rule of law and confidence and trust in the justice system." The same is true when speaking on behalf of all Michigan lawyers. But arrogance is the liberty of every voluntary organization. It is not arrogance which is the problem. It is the demonstrably false claim that the bar is or can be ideologically bias free.

• The State Bar promotes the Martin Luther King Jr. Day of Service. In doing so, a quote from Reverend King serves as a rallying cry: "Life's most persistent and urgent question is, what are you doing for others?" This quote was taken from a 1957 sermon of Dr. King's. The assumption is that we all agree that there simply cannot be any divergence of opinion on what life's most persistent and urgent question might be on "MLK day."

But consider the viewpoint of another King: "In this meaningless life of mine I have seen both of these: the righteous perishing in their righteousness, and the wicked living long in their wickedness." Observation of King Solomon, Ecclesiastes 7:15. Now there is a quote worthy of reflection for lawyers who represent clients and judges who hear and decide cases even on MLK day. It is not relevant if the bar adopts or does not adopt this viewpoint. The point is that the Bar's commitment to weighing in on the meaning of life is neither universal nor neutral. There are many special days to celebrate great persons. The bar has chosen one to the exclusion of others. It represents a single point of view based on its own ideological assumptions in even choosing one day of service over another. While these assumptions may be suitable for a voluntary organization that generates voluntary support by like-minded contributors and members, this ideological perspective is not suitable for a compulsory one.

• The State Bar is a huge proponent of *pro bono* legal assistance. The Bar speaks with one voice - our compelled voice - in determining how best to serve the cause of justice and in setting the standard for how much time and money each lawyer should spend on charitable legal causes for the poor. Goal 2, Strategy 3 of its Strategic Plan declares the bar's goal of "expanding opportunities for SBM members to participate in access to justice initiatives through traditional means including pro bono and by partnering with public service organizations, local and affinity bars." This is all fine and well. Why is compulsory membership required, however, to achieve this ideological goal? Make no mistake. The bar is promoting specific ways it thinks Michigan attorneys should love their neighbors.

Isn't that what donating legal time is about—a form of loving one's neighbor? Is this a compelling interest—that lawyers be reminded to love their neighbor by freely giving their time and forgoing revenue elsewhere? The choice to voluntary give one's time to *pro bono* as opposed to other non-legal activities is a matter of individual judgment. It may be objected that the obligation is not legally mandated (yet). But this is to simply state in other words, that the state has no compelling interest in the matter.

The point is that the state bar's exaggerated sense of its own means of loving its neighbor by prodding its forced members to show love through pro bono activities is an ideological one, not options universally agreed upon as to how one should spend or donate their time. While these activities may be suitable for a voluntary organization provided it can garner support, it is not suitable for a compulsory one.

• The State Bar requires every lawyer to make an annual disclosure regarding the use, or non-use, of an IOLTA trust account in the practice of law, and of course requires their use under the Rules of Professional Conduct. Surely, at last, we have hit upon a completely neutral subject upon which

no one can disagree? No. What of those lawyers and clients who would prefer - if only they had the comfortable liberty to do so - of arranging their business affairs according to the freedom of conscience God gave them? What if their natural rights were respected by a bar committed to that justice – the justice of the Declaration of independence?

This survey is not intended to be exhaustive. We could examine everything the State Bar does, and find in every instance a particular viewpoint being espoused. And correspondingly, for every viewpoint advocated by the State Bar, there are many other viewpoints which are by definition excluded and precluded.

Despite the bar's ideologically rife Strategic Plan, the Michigan Supreme Court has uncritically gone along with *Keller's artificial ideological line* drawing. For instance, it provided in Administrative Order No. 2004-01, that "The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation." Such activities, in the view of the Court, are *non-ideological*. How could it have escaped the Court that the legislature is by definition, a *political* branch of state government? Further, the legislative process is, by definition, a *political process*. Yet, the political process is very much driven by passions, conflicting interests, and above all, *ideology*.

Let us stop the charade. Everything the State Bar does or promotes is ideological and viewpoint driven. This court should apply the *Keller* test identifying ideological speech and find everything the bar undertakes is ideological speech. It should abandon the decision's incomplete application of the test as an arbitrary line drawing exercise--indeed as an ideologically driven line drawing exercise. Application of the *Keller* test is itself an *ideological* effort to divide the activities of the integrated state bar organization into the ideological and non-ideological. Thus, all the activities of the State Bar, not merely some, violate the free speech rights of its members.

B. Speech Activities by an Integrated Bar Impermissibly Trade on the Reputation and Rights of Its Members

For the foregoing reasons, the case law focusing on whether lawyers must pay that portion of bar dues used to fund the advocacy, educational and other free speech activities of an integrated bar organization rather misses the whole point. More than bar dues are at stake. If that was all that was at stake, then a waiver of all bar dues would be in order since 100% of all bar activities promote ideologically driven objectives no matter how neutrally or persuasively worded.

The legal shortcoming, however, is more fundamental. Namely, funded or unfunded, ***the bar purports to speak in the name of all its members whenever it speaks.*** We are not merely quibbling about differences in opinions. When a bar organization speaks, it speaks with one voice. The Bar's Strategic Plan speaks with one voice. Speaking on behalf of all its members in this way, the integrated bar attains not only credibility, but is also a leading voice among the legal profession. In this way, the integrated bar organization trades upon the reputation and integrity of all its members, even those (and especially those) who differ from, disagree with and simply have no position regarding the positions voiced by the bar organization.

The bar organization by its very nature always speaks as the voice of unity (that is, the unity of the licensed lawyers), even when the number of opinions held by lawyer members invariably equals the number of lawyers. And for some lawyers, being compulsorily associated with the views espoused by the State Bar ranges from being a farce, to being repugnant.

Consider, for a moment, that instead of being an integrated bar, the State Bar of Michigan was entirely voluntary, and roughly 40% of licensed attorneys in the state were members. In that case, the bar organization could, at most, ever only speak for a minority of lawyers in the state. Its credibility would be subject to challenge. It might or might not be a leading voice on issues it addresses, but it could never be more than a plurality opinion among lawyers. Differing and dissenting opinions would abound. Unity within the profession would never be plausible. Real diversity could actually exist, not merely the state bar controlled version of diversity.

Consider also that the State Bar of Michigan, like all integrated bars, promotes the view that the bar organization provides value to its members. The reverse, however, is just as true. It should never have been a question of whether attorneys should pay that portion of bar dues used to fund the advocacy, educational and other free speech activities of an integrated bar organization. Rather, the question ought to be: *Why isn't the bar organization paying its members for the privilege of trading on their good names (without their consent) in order to advance the advocacy and free speech goals of the bar and a pretense of professional unity?*

It is not as though the individual lawyers - particularly those who do not consent - actually get anything of value from the advocacy and free speech activities of an integrated bar. Instead, it is the bar organization which derives value from trading on the names and reputations of its non-consenting members. *For that, the bar organization should pay a fair compensation.*

Of course, a bar organization, has a right to engage in free speech activities on behalf of itself and any consenting members. But does a bar organization have a "right" to speak on behalf of people who became members involuntarily, who never consented to join, and whose memberships were only obtain at the point of the sword? If a person has their land taken for a public use, they are entitled to fair compensation. If a person's personal services are required for some public purpose, they are entitled to fair compensation. Why are licensed lawyers treated as less than these?

Sure, trimming back bar dues attributable to free speech activities helps alleviate the economic burden of being forced to support the propagation of views a lawyer may oppose. But it does nothing to alleviate the embarrassment and/or *guilt by association* of having one's name and reputation used as a propaganda tool even if it costs nothing.

The solution adopted by California in 2017, whereby certain free speech activities were spun off from an integrated bar and relocated in an all voluntary bar association may, at first glance, seem to solve the problem. However, the California solution still labors under the false view that only *some* of the bar's activities are viewpoint or ideologically driven, when in fact *all* of them are. The other problem, of course, is that the State Bar of California, in spite of its reorganization, is still a mandatory bar. In that respect, the great spin-off of 2017 did nothing to alleviate the legal concerns

raised elsewhere in this brief.

Consequently, the leadership role the bar organization desires for itself is only made possible by compelling membership, and then trading on the value of its members without regard for obtaining their prior consent. A bar organization simply has no right at all to speak on behalf of non-consenting members, as to any matter whatsoever (including without limitation all so-called non-ideological matters).

Affirming the natural right of choice in organizational association and recognizing the lack of any compelling interest in compulsory joinder preserves the free speech rights of Michigan attorneys and recognizes their time and money are to be invested or spent at their own discretion as their conscience dictates.

V. THE STATE BAR IS TANTAMOUNT TO A RELIGIOUS ESTABLISHMENT

A mandatory State Bar is not merely a key component of the regulatory scheme for lawyers. It is, in fact, an integral part of a *belief system* foisted on lawyers veiled under the guise of a regulatory scheme, but which behaves exactly like a religion. When one recognizes that the term *religion* - for legal purposes - encompasses sincerely held beliefs and values that give meaning and purpose to a person's life, it then becomes plain that the State Bar of Michigan operates as an institution propagating a certain system of belief. As such, the State Bar is subject to a religious establishment analysis, starting with this: *religious establishments are prohibited*.

A. A Historical Four-Part Test For Identifying A Religious Establishment

It is ironic that for all the multitude of Establishment Clause cases litigated in the U.S., including those decided by the U.S. Supreme Court, that Court has never definitively described exactly what "an establishment of religion" is. Perhaps this fact alone explains why the Court's constitutional analysis has been so haphazard.

Permit us to suggest, in an attempt to go where neither devils nor angels have feared to tread, there is a rather simple four-point test, derived from history. In particular, we refer to the experience of religious establishment(s) in Virginia, from its founding up until the adoption of Thomas Jefferson's Bill for Establishing Religious Freedom.[12]

> Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in

[12] Adopted by the General Assembly of Virginia on January 16, 1786, now part of Code of Virginia, §57-1.

Virginia.[13]

Here, then, are the historic indications of the presence of a state establishment of religion:

- Compulsory membership/attendance. In Colonial Virginia, all residents were required to attend religious services sponsored by the official church (the Anglican Church). Failure to attend was punishable by law.

- Compulsory financial support via taxation. Following the model of the ancient Israelites, all residents in Virginia were required by law to pay over a "tithables" tax, initially consisting of tobacco leaves, but later converted into standard monetary terms.

- Government approved teachers. A person could not teach religion unless they were a member of the clergy of the state established religion (Anglican/Episcopalian).

- Government approved curriculum. The order and form of worship were prescribed by law. In Colonial Virginia, it was the Book of Common Prayer.

Many state mandatory bar organizations meet all these tests and constitute impermissible establishments of religion. Let us examine it more closely. For instance, in every mandatory bar, membership is required of every lawyer in the state. And of course, every mandatory bar exacts the payment of annual bar dues by all lawyers. Failure to pay this tax negates a lawyer's license to practice law in the state.

In states imposing mandatory continuing legal education requirements on lawyers, the state-approved curricula and state-approved teacher criteria are met as well. Because whenever mandatory CLE is imposed, the State Bar will also have a CLE accreditation body, whose function is to approve and accredit courses and teachers (or at a minimum, course providers). The State Bar of Michigan mandated lawyer CLE from 1987-2001, but does not do so at present.

However, two additional indications of a religious establishment shared by all mandatory bar organizations are *dogma* and a priesthood. By *dogma*, we refer to that body of rules functioning as a universal moral code for all lawyers - the Rules of Professional Conduct. A moral code - any moral code - consists of those rules of right and wrong behavior which all adherents are required to obey. And that is exactly the function of the Rules of Professional Conduct.

How wonderful, that virtually all state rules are modeled after the Rules of Professional Conduct propounded by the American Bar Association. The ABA rules, of course, only apply to those lawyers who choose freely, of their own will, in accordance with their true freedom of association, to become members of the ABA. How handy it is, that the various state bar organizations, have foisted this moral code upon all members of the state bars, regardless of choice, consent, or freedom. Thereby assuring nationwide conformity with moral rules which, by their very nature, were only intended to apply to willing devotees.

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[13] *Reynolds v. United States*, 98 U.S. 145, at 162-163 (1878).

Which now brings us to the point of identifying the priesthood in this whole schema.

B. Priests Ministering Before the Altar of Justice

It should not be surprising that judges have recognized over the years the religious nature of the legal system in which lawyers, the courts, and state bars are all an integral part.

> So, following this, we have the solemn assurance of the court, who has just informed the jury that he [the assistant district attorney] is *a priest at the altar of justice*, "which is the most sacred altar ever erected to God; it is the altar where liberty, and love, and light, and hope, prosperity, and peace are preached, inculcated, promulgated, and homologated."[14] (Emphasis added.)

Granted, the court in *People v. De Martine* was skeptical of the claim. Yet, this phrase, *a priest at the altar of justice*, is a fairly common phrase used by jurists. We found at least twenty instances of usage by searching Westlaw Edge for adv: "altar #of justice." Has the phrase ever been used in Michigan, specifically? As it turns out, it has - and fairly recently.

> We close by quoting the following remarks of the Ohio Supreme Court nearly a century ago when faced with the same duty to deal with a misbehaving lawyer as we are today: "When a man enters upon a campaign of vilification he takes his fate into his own hands and must expect to be held to answer for the abuse of the privilege extended to him by the constitution. An attorney of more than twenty years' standing at the bar must be presumed to know the difference between respectful, fair and candid criticism, and scandalous abuse of the courts which gave him the high privilege, not as a matter of right, to be *a priest at the altar of justice*. [Citation omitted.]"[15] (Emphasis added.)

Let's assume the judges in these multiple instances were not merely reciting a trite phrase, but intended to convey a serious message. Indeed, a very serious message, as many of the cases concerned attorney discipline and/or disbarment. So, let us flesh out what this religious system looks like, where lawyers minister as priests, and the bench is regarded as the altar of justice.

Where is the altar of justice - the altar of anything, really - to be located? In the temple, of course. Which makes every court a mini-temple. But the high holy altar is of course located at the high holy temple, the Supreme Court in any jurisdiction.

Lawyers, as priests, are the mediators between the people and what they seek communion with: law and justice. Approach the temple to seek justice on your own if you wish, but woe to them who fail to obtain the services of a priest to guide them. Which places all lawyers ultimately in the role of gatekeepers and guardians of the true faith, that is, whatever semblance of law and justice the courts deign to decree.

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[14] *People v. De Martine*, 205 A.D. 80, at 84, 199 N.Y.S. 426, at 429 (1923).

[15] *Grievance Adm'r v. Fieger*, 476 Mich. 231, 263-64, 719 N.W.2d 123, 144 (2006).

The State Bar is the archdiocese, or presbytery - the ecclesiastical hierarchy and body of bishops or overseers who watch over the priests. Its primary function is to see to it that all the priests observe only the approved form of worship, bow down to the supreme powers on a regular basis, and root out any impostors. "All rise, the court is now in session." In other words, to ensure that all lawyers follow the Professional Rules of Conduct and other miscellaneous social justice standards *du jour*, pay their bar dues and participate in the functioning of the bar, and applaud the vigorous prosecution of the Unauthorized to Practice Law statutes, which secure the professional cartel for mutual economic gain. Praise be to the State Bar, our overlords (er, overseers).

The judges of the courts, but especially the Supreme Court judges, are the living oracles of the law, from whose lips flow justice in the form of infallible edicts and bulls. Such edicts are not actually infallible, of course, yet with a constant recourse to *established precedents* and *stare decisis*, and even to *super-precedents* (the truly infallible decrees of the courts), the general infallibility of all judicial decrees is assured. And of course, it is the state Supreme Court which ordains all lawyer-priests, with the advice and assistance of the bishopric.

And that, we submit, is a more certain state establishment of religion than any other a person will ever find.

This phrase, *a priest at the altar of justice*, a reference to **bench and bar**, has been repeatedly used in American jurisprudence for well over 150 years, in courts scattered among multiple jurisdictions. Therefore, it is too late for courts to disclaim it either as an aberration or as an insignificant phrase. All American courts are, we submit, *estopped* from denying the religious nature of the legal system and the priestly relationship between bench and bar. We didn't coin the phrase; neither is it a legal obscurity. This is the legal system's own view of itself. So the legal system, including all mandatory State Bars which are a part of it, is stuck with the characterization - a *religious* characterization.

Even so, if judges are not mouthpieces for the gods of justice, then what are they? Are they just a person dressed up in a black robe that gets paid to hear and decide other people's disputes? Some look at law as a business. Some look at law as a chance to make law and shape the world. Some look at it as a docket to be processed. But virtually all judges demand respect and consider their courtroom their kingdom.

When you enter a courtroom you are commanded to rise and those who do not are escorted out or held in contempt, and subject to fines and imprisonment. It is customary in a church to rise at some point during worship but not even clergy command it upon pain of excommunication. By paying your bar dues you are then entitled to stand before the court on behalf of another and plead their cause seeking relief. But only rarely do churches make tithing mandatory as a condition of pleading one's case before the Almighty and seeking His relief. If the Court summons you to appear and you fail to do so, the sheriff will come and physically compel you to appear. But if your local religious assembly demands you attend worship and you fail to do so, no one compels you to do so. Courts typically ask what other judges have opined because they generally regard such opinions as the one true and only article of judicial faith to be religiously followed. If you have no case law, you risk

an adverse decision. If your religious hierarchy declares its doctrines to be the one and only true faith but you wish to advocate other views, then you risk shunning. The point is that even modern religious assemblies are not as biased or dogmatic as judicial ones when it comes to demanding obeisance, financial support, conformity, and commitment to doctrine. In keeping with this motif, the State Bar sees itself as a vital part of an essentially *holy* enterprise - an enterprise dedicated to the betterment of humankind. Just like a religion

C. Larger Considerations of the Freedom of the Mind

Granted, a reasonable person might be inclined to scoff at the preceding analysis, since there will be a very strong presumption that the State Bar of Michigan is, as all integrated bars are presumed to be, a completely secular organization. However, Thomas Jefferson was completely serious, when he stated in his *Bill for Establishing Religious Freedom* (1779):

> the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith [beliefs] of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions [belief systems] over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical...[16]

One can plainly see, with two minor word substitutions, that Jefferson's comments apply equally well to an integrated bar organization such as the State Bar of Michigan, as it does to any religious institution. The assumption Jefferson starts with is that *the human mind is free*, and this forms the basis of religious liberty. Yet, the human mind has more than just religious thoughts, and the freedom of the mind extends well beyond the realm of religion. So the foundational principle is that *all* thoughts, *all* beliefs, and *all* opinions, are equally free - and it matters not what the *content* of those thoughts may be, or whether they are religious or secular.

James Madison can be quoted to the same effect.

> The [beliefs] then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must

[16] *Supra*, note 7.

> every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of [beliefs], no man's right is abridged by the institution of Civil Society, and that [belief] **is wholly exempt from its cognizance**.[17]

We know very well that nearly everyone who litigates the issue of a compulsory bar quotes or references Jefferson and Madison, as do many judges in their opinions. Except we cannot help but conclude that judges generally do not appreciate what these words actually mean. Specifically, we refer to the phrase, "exempt from its cognizance" which is, in root, a jurisdictional statement. It is a statement that civil governments, including state supreme courts and state bar organizations, ***have no authority*** to prescribe the beliefs or opinions of lawyers, even as to matters of professional ethics, *pro bono* representation, diversity and inclusion, IOLTA trust accounts, or what it means to further the interests of *justice*.

Accordingly, every lawyer is, and ought to be, free to adopt their own code of ethics, to represent who they want under terms accepted by willing clients, and to define justice in a manner each lawyer sees fit. This freedom, being granted by God, and for which an account may be required by none other than God alone, is not, and cannot be, subject to any form of judicial balancing, nor can it be outweighed, superseded or overruled by any state interest. Because, in simplest terms, any authority derived from God always trumps any authority wielded by men, and never the reverse. The American founders knew this, and wrote this principle into our foundational laws. Foolish are they who, over the years, have suppressed this principle by their opinions.

Lawyers are typically taught that certain types of speech and thoughts are generally entitled to a greater protection than others, namely, religious and political speech and thoughts. Commercial/business/professional beliefs and opinions, not so much. Undoubtedly, any decent law clerk could generate numerous case citations to this effect in minutes. However, this is fundamentally ***a lie***. The Creator, who made the human mind, never made a differentiation between religious, political, commercial and other types of speech or thoughts.

Just because the framers had to deal with particularly pressing religious and political issues of their time does not create a limitation on future generations. The concepts expressed by the framers are not limited to their personal experiences. All thoughts are free, all beliefs are part of the duties owed to God and not to any person or group of people, and all opinions are beyond the scope of any state bar to intrude upon, teach, or enforce. It is not for a state bar organization to tell any lawyer what to think, or what we should think about *pro bono* work, diversity in the workplace, justice for the poor and underserved, or remedying this or that injustice. Bar organizations should stop trying to get into lawyers' heads and push the legal profession in the direction they want.

All thoughts, beliefs and opinions are equally sacred, including without limitation all commercial, business, professional and legal thoughts. The people never delegated to the state any authority to tell them what to think. But that is exactly what the State Bar of Michigan is doing - telling its

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[17] *Memorial and Remonstrance Against Religious Assessments* (1785), James Madison. We substituted "beliefs" for "religion" in the text.

member lawyers what to think. And it should stop.

Accordingly, the State Bar of Michigan should be disestablished by making it a purely voluntary association. Only in this way, can the freedom of the mind guaranteed to all lawyers in our foundational laws be preserved.

VI. THE STATE BAR OF MICHIGAN CONSTITUTES AN ODIOUS MONOPOLY UNWORTHY TO ADVANCE THE ENDS OF JUSTICE

A. The Legal Profession As A Cartel

W. Clark Durant, chairman of the Legal Services Corporation's board of governors, stated at the mid-winter meeting of the American Bar Association (A.B.A.) in February 1987:

> The greatest barrier to widely dispersed low-cost dispute resolution services for the poor, and for all people, could very well be the laws protecting our profession. They make it a cartel. Like any such laws, they limit or distort supply; they increase prices; and they create dislocations in the marketplace.
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> * * *
>
> The legal monopoly rests on two major pillars. The first are laws that set aside specific work exclusively for lawyers. Anyone else who performs "lawyer's work" may be prosecuted for the unauthorized practice of law [UPL statutes]. The second is a series of restrictions on how one may become a lawyer. These restrictions are really barriers to competition, not guardians of competence.[18]

When Durant was speaking of a *cartel*, he was of course referring to the legal profession as a whole, that is, licensed attorneys as a group. In a cartel, only the members of the specially entitled club are allowed to engage in the business of the cartel. That is, in fact, the chief purpose of every UPL statute - to keep all persons who are not members of the special club from engaging in the business of the cartel - in this case, the legal profession. UPL statutes are no different, in reality, from laws restricting the number of taxicab drivers in a locality, or which limit the number of liquor licenses issued in a given area. And despite the manifold claims that such laws are enacted to "protect the public," they are really there, as Durant said, to stifle competition.

Of course, UPL statutes do not benefit an integrated bar organization *directly*, as the focus of such statutes are lawyers as a group, not the bar organization as an organization. Nonetheless, bar organizations are the primary advocates for UPL statutes nationwide, and as luck would have it, they are also the chief enforcers of UPL statutes. Thus, the interests of an integrated bar and the professional legal cartel become intertwined, and as Durant pointed out, become the pillars of the "legal monopoly."

Strictly speaking, no licensed attorney enjoys a legal monopoly, because he or she has no way to

[18] Address by Clark Durant entitled *Maximizing Access to Justice: A Challenge to the Legal Profession*, American Bar organization Mid-Winter Meeting (Feb. 12, 1987), New Orleans.

prevent new attorneys from being licensed, all of whom have the potential to cut into their market share. They are simply members of the cartel. No, the legal monopoly is the province of the mandatory State Bar, which has the exclusive legal right (under the umbrella of the state supreme court) to license, regulate, discipline and educate all the lawyers in a given state. New attorneys can come, and old attorneys can go, but the integrated bar as an organization itself never has to share with anyone, never has to fear replacement, and never has to retire from service. Its privilege is *exclusive*, and is cemented into place by *law*. Its institutional goal is *immortality* - status quo is just fine, and don't ever let it change.

B. The Historic Understanding Of A Monopoly

Now, in using this term *monopoly*, we are specifically using it in the historic sense, and not as that term has been corrupted in modern usage. In other words, we refer to monopolies as they were understood under the English common law and among the early American states - *not* by the way Congress has more recently defined the law of antitrust. For example, the Sherman Anti-Trust Act states: "Every contract, combination . . . or conspiracy, in restraint of trade or commerce . . . is declared to be illegal."[19] Similarly, the Clayton Anti-Trust Act makes it illegal for businesses to charge different customers different prices for the same goods or services, or to acquire another business whenever the effect is to lessen competition or to create a monopoly.[20] Essentially, these laws prohibit certain business contracts entered into by private parties.

But, in Blackstone's day, and in the formative years of American commerce, a monopoly meant only one thing: an exclusive privilege to engage in business which was granted by the king. In other words, every monopoly was created by the civil ruler. A monopoly had nothing to do with private business practices, but was a civil privilege, and therefore, an equality issue. In the worldview of the founders, private parties could "corner the market," but they could never create a monopoly. Thus, according to Blackstone:

> MONOPOLIES are ... a license or privilege allowed by the king for the sole buying and selling, making, working, or using, of anything whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before.[21]

The Blackstonian understanding of monopolies was carried over to America in some of the early state constitutions.

> That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.[22]

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[19] 15 U.S.C. §1 (1982).

[20] 15 U.S.C. §§12-14 (1982).

[21] Wm. Blackstone, *Commentaries on the Laws of England*, bk. 4, ch. 12 (1769). https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-412/

[22] Art. XXIII, *North Carolina Declaration of Rights*, December 14, 1776.

> That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered.[23]

Modern scholars define a monopoly based upon economic facts, that is, the perceivable practice of market participants. However, our nation's founders understood a monopoly as a question of law, that is, whether a person was legally entitled to enter the marketplace. If, in fact, only one seller brought his wares to the market, that was acceptable, so long as other sellers were able to act similarly, but simply chose not to do so, or were unable to do so because of their own economic limitations. If, however, only one seller had the exclusive *legal right* to sell his wares at the market, even if no one else wanted to sell their wares in the same market at the same time, a monopoly existed, and was unlawful. Thus, the definition of a monopoly was based on what the *government* did, not on what the so-called monopolist did. Let us consider the State Bar of Michigan in this light.

C. The Michigan State Bar As A "Unit of Government"

Michigan statutory law proclaims, "The establishment, maintenance, or use of a monopoly, or any attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding or limiting competition or controlling, fixing, or maintaining prices, is unlawful." MCL §445.773. It is wonderfully convenient, therefore, the Michigan Antitrust Reform Act (MCL §§445.771, *et seq.*) also expressly provides that all public corporations in the state are deemed to be a "unit of government" which are excluded from the provisions of the Act. MCL §445.771(d) and §445.774(3). And the State Bar of Michigan is made a public corporation by MCL §600.901.

So after declaring as a matter of public policy that a monopoly established by any person in Michigan is unlawful, the left hand immediately takes away what the right hand has given, and declares that all government-created monopolies are perfectly legal, simply because (and for no other reason) they have been created by the government. This is too profound an irony to be missed, in that historically, a monopoly was odious and unlawful ***because*** it was granted by the government. And thus, once again, the law that has stood for centuries of Anglo-American jurisprudence is overturned in a moment for convenience by people who did not know their own history.

But the decline of monopoly law is not for the convenience of lawyers, who are compelled against their wills to become a member of *a unit of government*, *i.e.*, the State Bar of Michigan. Nor is it - really - for the convenience of the state, which is perfectly capable and has sufficient resources to license and regulate lawyers without any outside assistance, as it does with other professions and occupations. No, it is convenient only for the ruling aristocracy of the State Bar, because without their legal monopoly, their positions of power would be greatly diminished. They would have to fend on the merits of their own programs and goals to attract support, something they are unwilling to try absent the prop of coercion.

However, the exemption of the State Bar from the Michigan Antitrust Reform Act may not be as

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[23] Art. XXXIX, *Maryland Declaration of Rights*, November 3, 1776.

ironclad as it appears - at least in federal court. Although the issue of being a monopoly was not at issue in *Keller*, *supra*, the majority opinion noted, "the California Supreme Court in this case held that respondent's status as a regulated state agency [the State Bar of California] exempted it from any constitutional constraints on the use of its dues." In other words, California law regarded the State Bar as exempt from certain statutory requirements which would otherwise be applicable, because it was a "state agency." This is conceptually no different than the State Bar of Michigan being regarded as a "unit of government" under Michigan law.

Yet, how did the U.S. Supreme Court consider that argument, as applied to federal constitutional questions?

> Of course the Supreme Court of California is the final authority on the "governmental" status of the State Bar of California for purposes of state law. But its determination that respondent is a "government agency," and therefore entitled to the treatment accorded a governor, a mayor, or a state tax commission, for instance, is not binding on us when such a determination is essential to the decision of a federal question. The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as "governmental agencies." *Keller*, *supra*, at 11.

The *Keller* court went on to specify why they reached this conclusion:

> The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. *Keller*, *supra*, at 13.

All of these same arguments can be applied to the State Bar of Michigan and its status under Michigan law. How convenient is it, that the state should form a State Bar, which is nothing more than a glorified advisory group performing no actual regulatory functions, then the State Bar should be exempt from the antitrust laws simply because they are deemed to be (in form only, not in substance), a "unit of government." Fortunately, the U.S. Supreme Court has seen through this sleight of hand.

Besides, one may rightly ask - since when does a personal choice of profession compel a private citizen (who wishes to remain private) to be conscripted into government service as a member of a unit of government? Supposedly, people enlisted in public service are entitled to be compensated by the state. MCL §32.513. And after all, according to the State Bar, it serves a public function and is not merely a professional association formed for the benefit of its members. So, let's take the State Bar at its word, and start computing a pay scale for all licensed lawyers for their services to the public, in keeping with other enlistees. Failure to pay lawyers for such services merely reinforces their status as a subservient class, hardly worthy of a noble profession.

To be sure, one can *deny* that lawyers, who are "officers of the courts," have been conscripted into public service against their wills. One can *deny* that they are entitled to state compensation for their

public services. One can *deny* that licensed lawyers are being treated as a subservient class of citizens. One can even take those denials and have a law clerk place numerous string quotations in support of them. But attorney challenges to an integrated bar are not slowing down, they are just picking up steam. Just consider, for a moment, why that is.

Accordingly, the State Bar of Michigan should be disestablished by making it a purely voluntary association.

VII. *STARE DECISIS* AND THE JUDICIAL OATH

There are, of course, many legal precedents regarding the legality and constitutionality of an integrated bar organization. This is not a case of first impression. We are well aware of precedents built on erroneous foundations and actively urge people to disregard them and their foundations. We are not here seeking judicial consistency. This is not a time to circle the wagons and affirm solidarity with brothers and sisters on the bench in years gone by. We are seeking justice based on true and universal principles of human freedom. We oppose principles of compulsion in association. There is no virtue in perpetuating bad law, poorly reasoned opinions, and onerous precedents just because that is how it has always been done, *forever and ever, amen*. We are seeking liberty, and that quest can never be eliminated so long as the human spirit remains.

> For it is an established rule to abide by former precedents . . . Yet this rule admits of exception, where the former determination is most evidently contrary to reason; much more, if it be contrary to the divine law. But even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was not law . . .. So that the law and the opinion of the judge are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law.[24]

> But I wish not to be understood to press too strongly the doctrine of *stare decisis* . . .. It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error. Even a series of decisions are not always conclusive evidence of what is law . . ..[25]

It should always be kept freshly in mind, that the judicial oath of office (as it pertains to the State of Michigan) commits each judge to be faithful to the federal and state constitutions as the sole guide of proper judgment. There is absolutely no judicial oath taken or implied to abide by former precedents which are, after all, merely the opinions of other judges purportedly based on those Constitutions. If this is true in fact, then reexamination of those opinions to affirm that truth should

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[24] Wm. Blackstone, 1 *Commentaries on the Laws of England*, *69-71 (1765).

[25] Chancellor James Kent, 1 *Commentaries on American Law*, at 473-78 (1827).

pose no objection. What is there to hide? Prior judicial opinions are not divine edicts coming down from on high. They are not even the supreme law of the land despite what they may claim. They are only entitled to the respect which their reasoning deserves.

CONCLUSION

A voluntary bar organizations is warranted as a matter of natural and fundamental rights. An involuntary bar organization is contrary to these rights. Forced organizational associations are contrary to human nature and natural right because every person is born free and that freedom includes the right to choose what organizations if any, an attorney shall associate with or contribute his or her time or sums of money for the furtherance of its ideas.

Absent wrongful conduct, Michigan attorneys may not be compelled to forfeit these rights. The state may allege compelling interests and these may serve other regulatory purposes undertaken by the Michigan Supreme Court, but no such interest reaches or justifies compelling organizational membership contrary to a licensee's rights. All compelling interests of the state can be met without forming an integrated bar.

Application of *Keller's* free speech test must be reexamined. All of the activities of the State Bar of Michigan are based on choosing one viewpoint over another. They are all ideologically driven as is the manner of any organization. They all espouse a particular viewpoint. Compulsory membership and payment of dues are compelled speech activities by an integrated bar which impermissibly trades on the reputation and rights of its members. For these reasons compulsion in organizational association is contrary to the laws of nature and of nature's God, the natural rights of attorneys, and lacking any compelling rational to override even a fundamental right of association or of speech.

We like to think of ourselves as having a more free and open society compared to our ancestors centuries ago. We congratulate ourselves on being more "highly evolved." But in this we are deluded. We have merely perfected the use of language to conceal legal and economic bondage and wrap it in a cloak of benefitting the public interest. All of which makes the elite feel good about themselves as they hold on tightly to their power over the little people, that is, John and Jane Doe, Esq., licensed attorneys at law. The "little people," who are coerced members of the integrated bar - coerced by the law, and ultimately by the point of the sword.

We propose a simple and straightforward solution. Namely, disestablish the integrated bar organization. Leave the state to perform a straight-up licensing function, performing only those licensing-related activities which are performed by the state for physicians, other professions and the various occupations. Make all bar organizations strictly voluntary.

This simple solution is amazingly one-size-fits-all.

1. It avoids trampling the rights of free association by making the bar organization voluntary.

2. It fulfills the full extent of the state's compelling interest in licensing attorneys.

3. It avoids involving licensed attorneys in free speech and/or advocacy activities with which they disagree and choose not to support financially.

4. It removes the bar organization from the position of using the force of law to impose a system of belief regarding social, legal and professional issues to dissenting lawyers.

5. It prevents the bar organization from becoming an odious monopoly.

Courts are supposed to uphold the rights of the people, to be guardians of the law, and to hold back the oppressive tendencies of government officials and elitists who, pretending to "serve" the public interest, actually just want to maintain and increase their preferred way of living and advocacy at another's compelled expense. Is there a court that will see the true law and follow it?

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