Appeal No. 20-2002

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

LUCILLE S. TAYLOR,

Plaintiff – Appellant,

v.

DENNIS M. BARNES, in his official capacity as President of the State Bar of Michigan Board of Commissioners; ROBERT J. BUCHANAN, in his official capacity as President-Elect of the State Bar of Michigan Board of Commissioners; DANA M. WARNEZ, in her official capacity as Vice President of the State Bar of Michigan Board of Commissioners; JAMES W. HEATH, in his official capacity as Secretary of the State Bar of Michigan Board of Commissioners; DANIEL DIETRICH QUICK, in his official capacity as Treasurer of the State bar of Michigan Board of Commissioners

Defendants – Appellees.

On Appeal from the United States District Court For the Western District of Michigan
Case No. 1:19-cv-00670 (Jonker, J.)

BRIEF OF AMICUS LONANG INSTITUTE

Kerry Lee Morgan (P32645)
PENTIUK, COUVREUR & KOBILJAK, P.C
Attorneys for Amicus Curiae
LONANG Institute
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
Main: (734) 281-7100
Fax: (734) 281-2524
KMorgan@pck-law.com

Gerald R. Thompson (P-29003)
37637 Five Mile Rd., #397
Livonia, MI 48154
Main: (734) 469-7150
thompson@t-tlaw.com

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 20-2002 Case Name: Lucille Taylor v Dennis Banres, et al

Name of counsel: Kerry Lee Morgan

Pursuant to 6th Cir. R. 26.1, Amicus LONANG Institute
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on November 30, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Kerry Lee Morgan
Pentiuk, Couvreur & Kobiljak, P.C.
Attorneys for Amicus LONANG Institute

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

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STATEMENT OF IDENTIFICATION

LONANG Institute is a Michigan-based, nonprofit and nonpartisan research and educational institute. Application of the "Laws Of Nature And Nature's God" to contemporary legal disputes is its specialty. The "Laws Of Nature And Nature's God" serves as the legal foundation of the States and United States as referenced in the Declaration of Independence of 1776. It enshrined into our civil laws principles of human freedom and their corresponding unalienable rights. This same law also presupposed that any civil government or branch thereof thereafter to be created (such as the State of Michigan), is obliged to secure those freedoms and defend those rights, not infringe or alienate them.

As friend of the Court, LONANG Institute offers the Court insight into the legal implications of that Law and its unalienable rights in the context of compulsory association with an integrated bar organization. The undersigned counsel authored the brief in whole. No party's counsel authored the brief in whole or in part. No party or a party's counsel contributed money intended to fund the preparation or submission of the brief. No person other than the amicus curiae, its members, or its counsel contributed money intended to fund the preparation or submission of the brief.

Amicus LONANG Institute obtained the consent of the parties to file its Amicus brief pursuant to Fed. R. App. P. 29 (a)(2).

ARGUMENT

I. FORCED ORGANIZATIONAL ASSOCIATIONS ARE CONTRARY TO HUMAN NATURE AND NATURAL RIGHT.

A. Introduction.

Integrated bar organizations like the State Bar of Michigan have been around for a long time, roughly a hundred years in the United States.[1] Given the length of time lawyers across America have had to acclimate to the idea, 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] That includes a church, marriage, labor union and bar organizations. Forced associations are reserved exclusively for prisons and for some, holidays with family. People seek to be free, and to exercise their own freedom of choice to join or not to join. 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.

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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.

In Michigan the idea of forced association with the State Bar 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] Amicus take no position on whether this mission, goals and values are like unto manna from heaven or the doctrines of demons. The issue is: Why is a lawyer's compulsory association with this particular bar organization required to further these ends?

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,* not merely a fundamental one. Second, since this right comes from the Creator according to the law of nature and of nature's God, there is no governmental interest which can ever "outweigh" any natural right. 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.

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

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.*

When the Declaration of Independence states that all men are created equal and endowed by their Creator with certain unalienable rights, it is not making a sophomoric statement about gender or religion. It is establishing a legal principle in 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 with this or that organization. It is declaring that every civil government to be created after 1776 must respect this legal

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

proposition and right including the State of Michigan, its judicial branch and established organizations.[6]

Amicus therefore deduce the following 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; and 3) *arguendo*, assuming state compulsion is justified, not merely some, but all activities of the State Bar are ideologically driven, so infringement of the free speech rights of bar members is inevitable.

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

[6] For analysis of the legally binding nature of the principles of the Declaration of Independence on state governments admitted to the Union on equal footing with the original 13 states, see *The Laws of Nature and of Nature's God: The Legal Framework For A Nation*, by Kerry L. Morgan. https://lonang.com/commentaries/conlaw/organizing/legal-framework-for-a-nation/

> 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 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]

[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.

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 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, the right to keep and bear arms and freedom of association. It is not limited to its most famous application—the disestablishment of Virginia's state established church. All are God-given, inalienable rights. Jefferson did not assert freedom of the mind originating with the Creator as a religious proposition. He asserted as a legal position in a legislative bill. If Jefferson could asset 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."

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).
>
> 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. But attorneys have committed no wrong which now entitles the state to deprive them of their associational liberty. As such, it is incumbent to *specify the act of forfeiture*

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[8] Wm. Blackstone, *Commentaries on the Laws of England*, bk. 1, § 2 (1765). See https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-002/

[9] *Declaration and Resolves of the First Continental Congress*, October 14, 1774. https://lonang.com/library/organic/1774-fcc/

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 animates the common law is warranted.

Accordingly, we urge this Court to hold that 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 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 in this brief 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.

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

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

> 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.

[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"].

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 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.

As Plaintiffs/Appellants have pointed out 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 ability 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 technical expertise to the legislature or courts.

Accordingly, we urge this Court to hold that 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-EXAIMNED.

The concept of an integrated bar organization has commonly come under attack on the basis of free speech rights. The key case 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*. Even if it were not so,

application of the *Keller* test, 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 Bar's 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 view. 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.

- 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. 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 to a legal purpose and forgo revenue? The choice to voluntary give one's time to *pro bono* as opposed to other non-legal activities encompassing the whole of voluntary life 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 real compelling interest in the matter.

The point is that the state bar's 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 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*. The legislature, however, is by definition a *political* branch of state government. Further, the legislative process is, by definition, a *political process*.

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. 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. Ultimately, Amicus argues that 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 viewpoint objectives no matter how neutrally 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.

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 official

version of diversity. But the opposite is now the case where compelling membership permits the Bar's official organs to trade 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.

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, one 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 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 every 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 Amicus regard compulsion in organizational association to be 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.

Respectfully Submitted,

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By /s/ Kerry Lee Morgan
Kerry Lee Morgan (P32645)

PENTIUK, COUVREUR & KOBILJAK, P.C.
Attorneys for Amicus Curiae
LONANG Institute
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
Main: (734) 281-7100
F: (734) 281-2524
KMorgan@pck-law.com

Gerald R. Thompson (P-29003)
37637 Five Mile Rd., #397
Livonia, MI 48154
Main: (734) 469-7150
thompson@t-tlaw.com

CERTIFICATE OF COMPLIANCE

As the Amicus brief is longer than 15 pages, the undersigned counsel for Amicus LONANG Institute certifies under Fed. R. App. P. 32(f) and (g), 6 Cir. R. 32 and Fed. R. App. P. 29(a)(5) regarding length, that this brief complies with the formatting and type volume requirements. This brief is printed in 14 point, proportionately spaced, typeface utilizing Microsoft Word Office 2010 and contains 6185 words based on the software, including headings, footnotes, quotations, and excluding all items identified under Fed. R. App. P. 32(f).

Dated: November 30, 2020 By: /s/ Kerry Lee Morgan
Kerry Lee Morgan
Counsel for Amicus LONANG Institute

CERTIFICATE OF SERVICE

As per 6th Cir. R. 25(f)(2); The undersigned counsel for Amicus certifies that on November 30, 2020, he electronically filed the forgoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. The undersigned counsel further certifies that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system utilizing the email addresses of Attorney Derk A. Wilcox and John J. Bursch on file.

Dated: November 30, 2020 By: /s/ Kerry Lee Morgan
Kerry Lee Morgan
Counsel for Amicus LONANG Institute