

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA**

RANDY BOUDREAUX

CIVIL ACTION

VERSUS

No. 19-11962

LOUISIANA STATE B R
ASSOCIATION, ET AL.

SECTION "I" (1)

Judge Lance M. Africk
Mag. Judge van Meerveld

**DEFENDANTS' OPPOSITION
TO MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Defendants, the Louisiana State Bar Association (the “LSBA”) and the Justices of the Louisiana Supreme Court, in their official capacities, through their undersigned counsel, respectfully submit this Opposition to the Plaintiff’s Motion for Preliminary Injunction.¹

This case involves an action by Mr. Randy Boudreaux to end his mandatory membership in the LSBA. His Complaint was originally dismissed under Rules 12(b)(1) and 12(b)(6), but then was reinstated on appeal and remanded for further proceedings.² In its remand decision, the Fifth Circuit expressly stated that “[d]iscovery may bear out that LSBA does not actually engage in any non-germane activity.”³ Declining to amend his Complaint to allege specific non-germane activities, the Plaintiff instead filed this motion for preliminary injunction seeking an order from this Court to dis-integrate the LSBA and allow him to terminate his membership and practice law outside of it. This, of course, would be inconsistent with Louisiana law mandating an integrated bar and federal law recognizing that integrated bars are constitutional.

As will be demonstrated, the Plaintiff’s request faces insurmountable legal and factual burdens. But perhaps the most fundamental is his claim that he is entitled to relief on the basis that, if the LSBA engages in any speech that could be construed as “political or ideological”, then he is entitled to relief, whether that LSBA speech is germane or not.⁴ That extreme position, of

¹ Doc. 48.

² See *Boudreaux v. Louisiana State Bar Ass’n*, 433 F. Supp. 3d 942 (E.D. La. 2020), *reversed and remanded* 3 F.4th 748 (5th Cir. 2021).

³ *Boudreaux*, 3 F.4th at 756.

⁴ See Doc. 48-2 at 3, 6–7; Exh. 2, Plaintiffs’ Objections and Responses to Defendants’ First Set of Interrogatories and Requests for Production to the Plaintiff (“Pl. Rog. Resp.”) at 16 (alleging “this lawsuit and Plaintiff’s Motion for Preliminary Injunction are not moot because Plaintiff is still required to join the LSBA and subsidize its speech as a condition of practicing law, and because he is still forced to associate with the LSBA and its *germane and non-germane* speech”) (emphasis added).

course, is inconsistent with Supreme Court precedent and the law developed concurrently with this case. On appeal, this case was heard with *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021), another of the concerted litigation attacks on integrated bar associations. The Texas plaintiffs there argued that all “activities of a ‘political or ideological’ nature” necessarily should be classified as non-germane, but the Fifth Circuit held that such a viewpoint “misses the mark”. *Id.* at 247. The Fifth Circuit held only the non-germane activities of the Texas Bar actionable since controlling precedent “contemplates that some political or ideological activities might be germane.” *Id.* Indeed, both *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990), stand for that proposition.

Though that point alone is dispositive, the Plaintiff’s obstacles do not end there. First, nearly all of the complaints the Plaintiff has about policies and legislative positions taken by the LSBA are time-barred or not included in this Complaint and thus provide no basis for relief under 42 U.S.C. § 1983. In addition, the LSBA and the Louisiana Supreme Court immediately took independent substantive actions to assure that the LSBA’s activities conform to constitutional limitations as stated by the Fifth Circuit in *McDonald*. There is no ongoing activity to enjoin, rendering this entire case moot insofar as any injunctive relief may be concerned. Reduced to its essence, the Plaintiff’s injunction request seeks to assign this Court to the role of a judicial monitor of the LSBA to review any perceived slight or transgression.⁵

Given that germane political speech by an integrated bar association is constitutionally permissible under *McDonald*, *Lathrop*, and *Keller*, to succeed on the merits the Complaint must set forth live, timely claims based on the LSBA’s non-germane speech for which the LSBA’s *Hudson* procedures provide an insufficient remedy, and which constitute a major activity of the

⁵ See *infra*, n. 19 & Section IV.D.

bar.⁶ Accordingly, this case presents the following issues: (1) mootness;⁷ (2) timeliness under § 1983’s one-year statute of limitations;⁸ (3) germaneness;⁹ (4) whether the LSBA’s *Hudson* procedures are sufficient to protect against any potential constitutional infirmity;¹⁰ and (5) whether any alleged non-germane activity is a “major activity of the state bar.”¹¹ The Plaintiff’s motion, however, fails to address issues 2, 4, and 5—namely, the timeliness of his claims, any deficiency in the LSBA’s *Hudson* procedures, or whether any alleged non-germane actions were “major activities” of the LSBA.

Even if the Plaintiff could demonstrate a clear likelihood of success on all five of these issues (and he cannot), the Court also must assess whether he has shown the remaining requirements for a preliminary injunction’s issuance: substantial irreparable harm, and that the balance of equities and public interest favor an injunction. The Plaintiff will not, however, suffer any harm pending a trial. On this showing and based on his foreclosed, moot, and untimely allegations, the Plaintiff cannot demonstrate that he is entitled to a preliminary injunction.

II. STANDARD OF LAW FOR A PRELIMINARY INJUNCTION

“A preliminary injunction is an extraordinary remedy that should not be granted unless

⁶ See *infra* n. 7–11.

⁷ The Defendants recognize that *McDonald* currently stands as governing law in the Fifth Circuit and intend to comply with it. Exh. 1, Declaration of Loretta Larsen at ¶¶ 15, 20.

⁸ Any claim based on LSBA conduct before August 2018 (one year before the Plaintiff’s complaint was filed) is time-barred. See *Schell v. Chief Just. & Justs. of Oklahoma Supreme Ct.*, 11 F.4th 1178, 1192 (10th Cir. 2021); *Stringer v. Town of Jonesboro*, 986 F.3d 502, 509 (5th Cir. 2021) (“Courts considering claims under § 1983 must borrow the relevant state’s statute of limitations for personal injury actions. Louisiana’s relevant limitations period is one year.”) (citations omitted).

⁹ The Fifth Circuit stated that “determining whether each respective challenged activity is germane” is a “difficult question.” *McDonald*, 4 F.4th at 247.

¹⁰ See *id.* at 253 (holding *Keller* remains binding on the Fifth Circuit and holds that “an integrated bar could certainly meet its *Abood* obligation by adopting the sort of procedures described in *Hudson*.”).

¹¹ See *Schell*, 11 F.4th at 1187 (citing *Lathrop*, 367 U.S. at 839).

the movant has demonstrated, by a clear showing: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that may result from the injunction to the nonmovant; and (4) that the injunction will not undermine public interests.” *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990). Failure to satisfy any one of the four elements is fatal to a plaintiff’s motion, and “[t]he decision to grant or deny a preliminary injunction is discretionary with the district court.” *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). Granting a preliminary injunction “is to be treated as the exception rather than the rule.” *See id.*

III. THE PLAINTIFF CANNOT SHOW THAT A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT IRREPARABLE HARM BEFORE A TRIAL ON THE MERITS CAN OCCUR.

The Plaintiff has not shown that he is likely to suffer irreparable harm before a decision on the merits can be rendered and, therefore, has not met a critical element for a preliminary injunction. *See* 11A Wright & Miller, FED. PRAC. & PROC. CIV. § 2948.1 (3d ed.) (“**Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.**”) (emphasis added). Simply put, there is no need for “preliminary” relief when there exists no imminent threat that “would impair the court’s ability to grant an effective remedy.” *Id.* “[I]f a trial on the merits can be conducted before the injury would occur there is no need for interlocutory relief.” *Id.*

The Plaintiff has not demonstrated any imminent threat from the Defendants. To the contrary, the injunctive relief he seeks relates solely to hypothetical events that may arise no sooner than September 2022 if he fails at that time to renew his LSBA membership. In particular, the Plaintiff asks the Court to intervene on an interlocutory basis to “enjoin Defendants from: (1) taking any action to investigate, threaten, or punish him for failing to maintain membership in

the LSBA while this action is pending; and (2) taking any action to investigate, threaten, or punish him for failing to pay LSBA membership dues while this action is pending.”¹² The Plaintiff does not, however, point to or provide evidence of any imminent investigation, threat, or punishment that would take place before, at the earliest, September 2022.

The Plaintiff submitted his attorney registration statement and paid his LSBA dues in July 2021.¹³ He will not be required to take *any* further action regarding his LSBA membership until at least September 2022. *See* LSBA By-Laws art. I, § 4. An LSBA member only is regarded as delinquent when he fails to pay dues within thirty (30) days of the deadline, here July 1, 2022. The member is then issued a notice of delinquency with the earliest possible notice issuance being August 1, 2022. *Id.* Even then, the member only is declared ineligible if he *still* fails to pay dues within thirty (30) days of such notice of delinquency—at the earliest, September 1, 2022. *Id.* There is, therefore, no need for immediate interlocutory relief.

The Plaintiff devotes only one sentence of argument to this issue in his motion, stating, “without an injunction, Boudreaux will suffer irreparable harm because ‘[t]he loss of First Amendment freedoms, for even [a] minimal period[] of time, unquestionably constitutes irreparable injury.’”¹⁴ The Plaintiff’s attempt to avoid an irreparable harm analysis by alleging a hypothetical constitutional injury fails as a matter of law. The Fifth Circuit has explained that a request for prospective injunctive relief cannot be based on past conduct when no present threat or impairment exists at the time the relief is sought. *Google, Inc. v. Wood*, 822 F.3d 212, 227–28 (5th Cir. 2016) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. A preliminary injunction is not appropriate,

¹² Doc. 48 at 13–14.

¹³ *See* Exh. 1, Declaration of Loretta Larsen at ¶¶ 9–12.

¹⁴ Doc. 48-2 (quotations omitted).

however, unless the party seeking it can demonstrate that First Amendment interests are either threatened or in fact being impaired at the time relief is sought. Thus, invocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury.”) vacating preliminary injunction) citations and alterations omitted).

The Plaintiff is not suffering an “imminent, non-speculative irreparable injury” because the LSBA conduct he challenges—the LSBA’s former legislative positions and now-obsolete policies of the House of Delegates—occurred in the past and is not ongoing. *See id.* The Fifth Circuit confirmed in *McDonald* that a plaintiff “*can* be compelled to join the Bar if it ceases its non-germane activities.” 4 F.4th at 253 n.41 (emphasis in original). Accordingly, to be entitled to injunctive relief, the Plaintiff must demonstrate ongoing and continuing non-germane speech by the LSBA that presently harms his interests.¹⁵ He has not done so. The Plaintiff’s failure to identify any imminent non-speculative injury to his First Amendment rights is fatal to his motion.

IV. THE PLAINTIFF CANNOT SHOW A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Plaintiff seeks injunctive and declaratory relief that would require overruling a trilogy of controlling precedent.

The Plaintiff’s requested relief is a full-scale attack on existing Supreme Court precedent authorizing the existence of mandatory bar associations. In response to discovery, the Plaintiff identified his ultimate requests for relief as follows:

- A declaration that requiring attorneys to be members of the LSBA as a condition of practicing law in Louisiana (as provided by La. R.S. 37:211, La. R.S. 37:213, and La. S. Ct. XIX § 8(C)) violates attorneys’ rights to free speech and freedom of association;
- A declaration that requiring attorneys to pay dues to the LSBA as a condition of practicing law in Louisiana (as provided by La. S. Ct. R. XIX § 8(C) and La. R. Prof. Cond. 1.1(c)) violates attorneys’ rights to free speech and freedom of association;
- A declaration that the LSBA’s use of member dues for political or ideological speech

¹⁵ As will be discussed in more detail in Section IV.B *infra*, the House of Delegates’ policies about which the Plaintiff complains are obsolete and no longer effective.

without obtaining members' affirmative consent in advance violates attorneys' rights to free speech and freedom of association;

- A declaration that the LSBA does not provide members with sufficient information to allow them to protect their First Amendment right not to subsidize the LSBA's non-germane activities;
- An injunction prohibiting Defendants from enforcing the mandatory membership requirement against Plaintiff;
- An injunction prohibiting Defendants from enforcing the mandatory dues requirement against Plaintiff.¹⁶

None of this requested relief is appropriate, however, if (as the Fifth Circuit predicted may occur) discovery "bear[s] out that LSBA does not actually engage in any non-germane activity." *See Boudreaux*, 3 F.4th at 756.

The Fifth Circuit confirmed in *McDonald* that a plaintiff "*can* be compelled to join the Bar if it ceases its non-germane activities." 4 F.4th at 253 n.41. *Lathrop*, *Keller*, and *McDonald* also establish that integrated bar associations may engage in political speech. *Lathrop*, 367 U.S. at 843; *Keller*, 496 U.S. at 16; *McDonald*, 4 F.4th at 247 ("The plaintiffs advocate a bright line rule that *any* legislative lobbying is non-germane. But such a rule is foreclosed by *Lathrop* and *Keller*."). (emphasis in original). The Plaintiff's claim that the LSBA may not use "member dues for political or ideological speech without obtaining members' affirmative consent in advance" rests on an incorrect statement of the law found nowhere in this controlling precedent.¹⁷ Only "non-germane" speech is actionable because *Keller* "contemplates that some political or ideological activities might be germane." *McDonald*, 4 F.4th at 247. The Plaintiff's lawsuit is unlikely to succeed on the merits when, despite controlling precedent to the contrary, he continues

¹⁶ Exh. 2, Pl. Rog. Resp. at 17–18.

¹⁷ The argument that affirmative consent is required for speech funded by bar dues also was expressly rejected in *Fleck v. Wetch*, 937 F.3d 1112, 1118 (8th Cir. 2019), *cert. denied*, 140 S. Ct. 1294 (2020), *reh'g denied*, 140 S. Ct. 2756 (2020).

to request relief from membership based on germane speech by an integrated bar association.¹⁸

The Plaintiff is not seeking to enjoin any imminent unconstitutional actions of the LSBA pending a trial. Rather, his motion and lawsuit rest entirely on a hope that the United States Supreme Court eventually may overrule its own long-standing precedent to hold that integrated bar associations are unconstitutional and excuse him from mandatory membership. The Plaintiff's motion, accordingly, asks the court to provide preliminary injunctive relief from the LSBA's membership requirement—relief that would in effect prohibit the LSBA's permissible germane political speech under *McDonald*, *Keller*, and *Lathrop*, which itself ironically would be an unconstitutional prior restraint of the LSBA.¹⁹ The Plaintiff is not entitled to a preliminary injunction on these foreclosed claims.

B. The Plaintiff's claims are moot.

This lawsuit is unlikely to succeed on the merits for yet another elemental reason. It challenges past LSBA speech that occurred in the context of rules and procedures that are now obsolete. The motion identifies two categories of allegedly non-germane speech: actions of the Legislation Committee ("Committee") and the House of Delegates' legislative policy positions ("HOD Policies") previously used to assess potential legislation. This challenge to the Committee

¹⁸ The Fifth Circuit held that an inference that the Plaintiff considers the political and ideological conduct identified in his Complaint may be non-germane is "enough to confer standing." *Boudreaux*, 3 F.4th at 756. On remand, however, the Plaintiff clearly has stated that his objection is broader: to subsidizing LSBA speech as a condition of practicing law "because he is still forced to associate with the LSBA and its *germane and non-germane* speech". Exh. 2, Pl. Rog. Resp. at 16 (emphasis added). The Plaintiff's failure to identify non-germane speech in the Complaint was not fatal under the Rule 12 dismissal standard because of this inference to support standing, but he has since made clear that his Motion for Preliminary Injunction is intended to be a more sweeping constitutional attack that would include even germane political or ideological speech.

¹⁹ The Plaintiff's decision to fashion his request for injunctive relief as a restraint on punishment for failure to maintain his membership rather than a restraint on speech is semantics. The practical effect of such an injunction would restrain the LSBA's constitutionally permissible speech and, as discussed in more detail *infra* § IV.D, invite the Court to continually audit all LSBA activities.

and HOD Policies is moot, however, because the Committee and the HOD Policies on which it relied have been rendered obsolete.²⁰

1. Standard of law.

“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (some internal quotation marks omitted). Even if “the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit,” the case is moot if the dispute “is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Id.* (quotation omitted).

A defendant who voluntarily has ceased the allegedly unlawful conduct bears the burden of showing “that the challenged behavior cannot reasonably be expected to recur.” *Id.* at 96. A plaintiff cannot avoid dismissal based on mootness, however, merely by invoking “conjectural or hypothetical speculation” about future events. *See id.* at 97. Relatedly, the fact that a defendant engaged in allegedly unlawful conduct in the past is insufficient to show that such conduct will recur. *See id.* The Supreme Court has “never held that a plaintiff has standing to pursue” non-monetary relief “merely on the basis of being ‘once bitten.’ Quite the opposite.” *Id.* at 98 (citing *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) holding there was no justiciable controversy to support a declaratory judgment where plaintiff had been subjected to a chokehold in the past)).

²⁰ Previously, the LSBA engaged in germane political speech through its Legislation Committee, a standing committee created by the House of Delegates, which in turn was guided by policies established through the House of Delegates. *See* Exh. 3, Decl. of Richard Lemmler at ¶¶ 4–7; Exh. 4, Decl. of Robert A. Kutcher. That process, however, has been rendered obsolete by a new Louisiana Supreme Court Rule limiting the activities of the LSBA to those that are constitutionally germane to its purposes as stated in the Rule and placing all authority for legislative positions with the Board of Governors, not the House of Delegates. The Board of Governors exists independently of the House of Delegates under Article VII of the LSBA Articles of Incorporation.

“Although voluntary cessation of a challenged activity does not ordinarily deprive a federal court of its power to determine its legality, courts are justified in treating a voluntary governmental cessation of potentially wrongful conduct with solicitude.” *Turner v. Texas Dep’t of Crim. Just.*, 836 F. App’x 227, 229 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 2681 (2021) (citing *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009)). “Such self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.” *Id.* (quoting *Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (5th Cir. 1988)). Thus, “without evidence to the contrary, courts assume that formally announced changes to official policy are not mere litigation posturing.” *Id.* at 229

2. *Post-Complaint developments moot the request for a preliminary injunction.*

In *McDonald*, the Fifth Circuit reconfirmed that integrated bar associations are constitutional and provided an extensive analysis of the types of speech that a bar association constitutionally may fund through mandatory dues (i.e., speech that is “germane” to the association’s legitimate purposes). 4 F.4th at 229. Less than one week later, and prior to the filing of this motion by the Plaintiff, the LSBA’s Board of Governors, using the emergency authority granted to it by the By-Laws, voted to suspend the Legislation Committee and all legislative activities until the House of Delegates convenes for its January 2022 meeting.²¹ As LSBA President H. Minor Pipes, III, explained: “*McDonald* unless modified is governing law, and the LSBA intends to comply with it. Suspending all legislative activities allows the LSBA to review *McDonald* and ensure that any future activity complies with the guidance provided by the 5th Circuit.”²²

²¹ See Exh. 1, Decl. of Loretta Larsen at ¶ 14; see also “Legislative Advocacy,” available at <https://www.lsba.org/Legislation/>.

²² *Id.* at ¶ 15.

Then, in September 2021, the Louisiana Supreme Court independently took further action by enacting Rule XVIII, § 6. That rule codifies the constitutional germaneness standard and shifts responsibility for legislative positions and policy from the Legislation Committee and House of Delegates respectively to the Board of Governors.²³ The new rule further sets the limits for such activities to “constitutionally germane” issues related to the purposes stated in the Rule. Accordingly, the House of Delegates (and the Legislation Committee) are no longer responsible for the LSBA’s legislative policy and advocacy. Instead, pursuant to Supreme Court Rule XVIII, § 6, the Board of Governors is the sole LSBA entity that can perform such functions, and its legislative activities are limited to constitutionally germane topics such as those identified as permissible in *McDonald*.²⁴

Even more recently, the LSBA again has stated its intent to comply with *McDonald* and

²³ See R. Doc. 64 (Notice of Louisiana Supreme Court Rule Change). Rule XVIII, § 6 (“Section 6. Purpose and Scope of Mandatory Bar. The purpose of the Louisiana State Bar Association (LSBA) as a mandatory and integrated bar shall be to promote and assist the regulation of the practice of law, improve the quality of legal services, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law including Louisiana’s civil law system, and, generally, to promote the welfare of the profession in the State. The LSBA shall limit its activities to those that are constitutionally germane to its purposes, and shall limit its legislative activities to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and to responding to any requests for information received from the legislature. Any legislative positions on issues within the scope of this rule shall be voted upon and approved in advance by the LSBA’s Board of Governors and thereafter published to members of the LSBA. [Section 6 enacted September 14, 2021]”

²⁴ The Complaint also is moot because the Plaintiff affirmatively declined the opportunity to amend his Complaint to add allegations relative to more recent conduct and the current Justices of the Louisiana Supreme Court. See R. Doc. 59. Rule 15(d) of the Federal Rules of Civil Procedure “is particularly apt for cases where an intervening change in administration renders ambiguous a complaint seeking prospective relief against public officers.” *Am. C.L. Union of Mississippi, Inc. v. Finch*, 638 F.2d 1336, 1347 (5th Cir. 1981). Where plaintiffs (like Mr. Boudreaux) fail to allege in their complaint that a “new administration will continue the practices of the old,” they should “be permitted to file [a] supplemental pleading. If they do not do so within a reasonable time, their claims for prospective relief must be dismissed as moot.” See *id.*

Rule XVIII, § 6 and has taken action consistent with that intent. Indeed, the LSBA, its President, its Board of Governors, and its Bar Governance Committee all have made abundantly clear that the prior legislative practices and HOD Policies addressed in the Motion for Preliminary Injunction are no longer effective. The LSBA demonstrated this commitment by the passage of three resolutions:²⁵

- On October 19, 2021, the Board of Governors unanimously passed a resolution recognizing that the LSBA is bound by Rule XVIII, § 6, and suspending “any [LSBA] activity not within its scope, including but not limited to any action with respect to legislative policy provisions previously adopted by the House of Delegates (which provisions are now obsolete and no longer effective under the text of the Rule).”
- On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates confirming “that existing legislative policy positions be rescinded to more accurately reflect current procedures and remove obsolete policies that are no longer effective.”
- On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates revising the LSBA’s By-Laws “to more accurately reflect current operating practices and remove outdated and obsolete provisions that are no longer effective.”

While the House of Delegates will vote on the second and third proposed resolutions in January 2022, such resolutions only confirm what already has been mandated by the Louisiana Supreme Court in Rule XVIII, § 6 the conduct at issue in the motion (lobbying by the Committee

²⁵ See Exh. 1, decl. of Loretta Larsen at ¶¶ 21–23.

and the Committee’s reliance on HOD Policies) will not and cannot recur.²⁶ And, eliminating any doubt whatsoever, the Board of Governors—which is the governing body charged by Rule XVIII, § 6, with assessing legislative activity—has confirmed its commitment to these limitations. *See Sossamon*, 560 F.3d at 325 (“[The Fifth Circuit] will not require some physical or logical impossibility that the challenged policy will be reenacted absent evidence that the voluntary cessation is a sham for continuing possibly unlawful conduct.”). The Legislation Committee’s activities, including its reliance on the HOD Policies, cannot reasonably be expected to recur.

The LSBA’s legislative activities, therefore, have changed materially to conform to *McDonald*. *McDonald* and Rule XVIII, § render obsolete the Legislation Committee and the HOD Policies that guided it. In short, the Plaintiff “has received what he wanted.” *Turner*, 836 F. App’x at 229. The LSBA’s self-correction “simply accords all the relief demanded by the plaintiff” in his Motion for Preliminary Injunction such that “there is no point in proceeding to decide the merits.” *Coliseum Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 246 (5th Cir. 2006) (quoting 13C Wright & Miller, FED. PRAC. & PROC. CIV. § 3533.2 (3d ed.)). Put differently, “[T]here is no need to enjoin a defunct practice or policy.” *See Boyd v. Stalder*, No. CIV.A. 03-1249-P, 2006 WL 3813711, at *6 (W.D. La. Dec. 27, 2006) (citing *Heath v. Brown*, 807 F.2d 1229, 1231 (5th Cir. 1987) (claims for declaratory and injunctive relief mooted by change in challenged bank policy)); *Prison Legal News v. McDonough*, 200 F. App’x 873, 878 (11th Cir. 2006) (change in prison publication policy rendered injunctive claim moot); and *Jaami v.*

²⁶ Additionally, On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates that certain general policies of the Association consistent with the principles of *McDonald* and U.S. Supreme Court precedent be adopted in accordance with its Articles of Incorporation, article VIII Section 1, consistent with Louisiana Supreme Court Rule XVIII, § 6, *with these policies not to be considered related to any legislation that may or may not be proposed*, said function now delegated exclusively to the Board of Governors. *See id* at ¶ 24.

Compton, No. 00-5304, 2000 WL 1888696, at *2 (6th Cir. Dec. 19, 2000) (“This change in the prison policy renders Jaami’s requests for declaratory and injunctive relief moot because no need exists for this court to issue an injunction when prison authorities have voluntarily changed the allegedly unconstitutional practice.”).

With respect to the allegations underlying the Motion for Preliminary Injunction, “this case has lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract questions of law.” *See Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (quotations omitted). The motion is based on a hypothetical and facially implausible scenario where the LSBA House of Delegates disclaims its own resolution, disregards Rule XVIII, § 6, and reinstates the Legislation Committee, which could then, the Plaintiff conjectures, rely on now-defunct HOD Policies to engage in conduct potentially prohibited by *McDonald*—in further violation of Rule XVIII. To state the scenario shows that this conjecture is a bridge too far.²⁷ As set forth above, mootness cannot be avoided on a once-bitten-twice-shy theory. *Already, LLC*, 568 U.S. at 98 (citing *Lyons*, 461 U.S. at 109). Moreover, the changes to Rule XVIII, the public commitment of the LSBA’s president, the resolutions of the Board of Governors and Bar Governance Committees memorializing the obsolescence of the Committee and HOD Policies, and the declaration of the LSBA’s Executive Director are unrebutted evidence of material change, and they are more than sufficient to demonstrate that the changes are genuine.

²⁷ The Louisiana Supreme Court also has made clear through its enactment of Rule XVIII, § 6 that it will use its rulemaking authority to ensure that the LSBA remains an integrated bar and engages only in constitutionally germane activities. The LSBA’s leadership supports those efforts. Given the Louisiana Supreme Court’s plenary power under Article V of the 1974 Louisiana Constitution to regulate the practice of law in Louisiana and its demonstrated commitment to upholding applicable federal precedent, the mere possibility that a future January 2022 meeting might result in unremedied non-germane speech is both remote and insufficient for issuance of a preliminary injunction.

Thus, self-correction provides a secure foundation” that requires dismissal. *Turner*, 836 F. App’x at 229; *see also Save Our Aquifer v. City of San Antonio*, 108 F. App’x 863, 865 (5th Cir. 2004) (holding that, “[a]s the ordinance that the referendum petition sought to challenge was repealed, however, no live case or controversy concerning the City’s procedure is currently before the court” where there was no reasonable expectation to believe that the City’s procedure would be used to enact the same ordinance again).

The Louisiana Supreme Court’s rule change and subsequent actions by the LSBA to implement this rule change demonstrate that the LSBA will not be engaging in activities that exceed the boundaries of germaneness identified in controlling precedent. *See also McDonald* at 253 n.41 (confirming that a plaintiff “*can* be compelled to join the Bar if it ceases its non-germane activities.”) There is no ongoing unconstitutional activity threatening the Plaintiff’s First Amendment rights, and his request for injunctive relief is moot.

C. The Plaintiff’s claims are untimely.

The Plaintiff also will not succeed on the merits because his claims are untimely. The Plaintiff filed this lawsuit on August 1, 2019. Under Louisiana’s one-year prescriptive period for actions arising under 42 U.S.C. § 1983,²⁸ any of his claims accruing prior to August 1, 2018, have prescribed, including (1) all of the Plaintiff’s claims challenging HOD Policies passed prior to August 1, 2018, and (2) any LSBA positions on legislation taken either during or prior to the 2018 legislative regular session.

1. Standard of law.

A state’s statute of limitations for tort actions applies to a Section 1983 action “notwithstanding the kind of relief [plaintiffs] request.” *Walker v. Epps*, 550 F.3d 407, 412 (5th

²⁸ *See Stringer*, 986 F.3d at 509, *supra* n.8.

Cir. 2008). “Accordingly, Section 1983 claims pending in federal courts in Louisiana are subject to a one year statute of limitations period.” *Gordon v. James*, No. 16-cv-16540, 2017 WL 4311125, at *6 (E.D. La. Sep. 26, 2017). “[T]he statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.” *Helton v. Clements*, 832 F.2d 332, 335 (5th Cir. 1987). If “prescription is evident from the face of the pleadings, . . . the plaintiff bears the burden of showing the action has not prescribed.” *Spott v. Otis Elevator Co.*, 601 So. 2d 1355, 1361 (La. 1992).

The U.S. Court of Appeals for the Tenth Circuit recently applied these principles in *Schell v. Chief Justice and Justices of the Oklahoma Supreme Court*—where a Section 1983 claimant brought First Amendment claims for declaratory and injunctive relief against the Oklahoma Bar similar to those alleged by the Plaintiff against the LSBA. 11 F.4th at 1184. In *Schell*, the plaintiff’s First Amendment claims challenged the Oklahoma Bar Association’s (1) regular publication of allegedly ideological articles in its *Oklahoma Bar Journal*, and (2) public positions on legislation pending before the Oklahoma Legislature. *Id.* at 1183–84. Because Oklahoma has a two-year statute of limitations for tort actions, the Tenth Circuit held that the plaintiff could not challenge *Oklahoma Bar Journal* articles published, or legislative positions taken, more than two years before filing of the lawsuit, as these claims had become time-barred. *Id.* at 1192

2. *The motion rests on untimely claims.*

The Plaintiff’s claims challenging now-obsolete HOD Policies are similarly time-barred. For example, as to a 2016 House of Delegates LGBT antidiscrimination policy referenced in the

Plaintiff's motion, (1) the House of Delegates adopted the resolution on June 9, 2016,²⁹ (2) the LSBA directly notified its members through a Bar Brief that this resolution was adopted in July 2016,³⁰ and (3) meeting minutes were published summarizing the Delegates' consideration and passage of the resolution on January 24, 2017.³¹ The Plaintiff had ample information to commence the running of the prescriptive period when the resolution was passed on June 9, 2016, and certainly no later than January 24, 2017.³² A claim based on this HOD Policy prescribed well before the filing of this lawsuit in 2019. The Plaintiff's even more remote complaint about a 2010 Policy regarding high school civics curricula fails for the same reasons. The Plaintiff was put on notice of this Policy through direct Bar Brief communications, as well as by publicly available information posted to the LSBA's website nine years before the filing of this lawsuit.³³

The Plaintiff's challenges to other legislative positions offered prior to August 1, 2018, are similarly untimely. The legislature's 2018 regular session adjourned on May 18, 2018.³⁴ All of the LSBA's positions on legislation taken in 2018 and previous years relate to conduct that

²⁹ Minutes for this meeting remain available. *The House of Delegates Minutes*, Louisiana State Bar Association, <https://www.lsba.org/bargovernance/Minutes.aspx?Minutes=918b156d-5af-414d-8e8d-c794f416e156>.

³⁰ See Louisiana State Bar Association, *House Approves 8 Resolutions and Elects Members to Committee, Board*, Bar Briefs, July 2016, at 11 (available at <http://files.lsba.org/documents/publications/BarBriefs/Briefs-July-2016.pdf>).

³¹ See *The House of Delegates Minutes*, *supra* (showing that the June 9, 2016 meeting minutes were posted on January 1, 2017).

³² Even if the Plaintiff opted out of receiving the July 2016 Bar Brief directly by email, the document was still publicly posted to the LSBA's website in July 2016. Further, the Plaintiff admitted to having "a functioning email address at which [he has] received LSBA communications." Exh. 5, Plaintiff's Objections and Responses to Defendants' First Set of Requests for Admission to the Plaintiff ("Pl. Admission Resp.") at 5.

³³ See, e.g., Louisiana State Bar Association, *Board of Governors Approves Support of 29 Legislative Bills*, Bar Briefs, May 2010, at 12 (available at <https://www.lsba.org/documents/publications/BarBriefs/Briefs-May-2010.pdf>).

³⁴ See "Session Information for the 2018 Regular Session" (available at https://legis.la.gov/Legis/SessionInfo/SessionInfo_18RS.aspx).

occurred more than one year before the Plaintiff filed this action in August 2019. The Plaintiff possessed enough information to be aware of his claims based on any 2018 Legislative Positions well before August 1, 2018. The LSBA, pursuant to its By-Laws, reported its 2018 Legislative Positions to its members in its May 2018 Legislative Report. The LSBA directly notified members of the Bar, such as the Plaintiff, of this Report's availability online in its May 2018 Bar Brief.³⁵ The latest possible date by which the Plaintiff had notice of any purported injury from the 2018 Legislative Positions was May 2018, making any Section 1983 claim based on said conduct time-barred by the time his Complaint was filed in August 2019. By extension, the Plaintiff's claims challenging the even-more-remote Legislative Positions from earlier session years also have prescribed. The Plaintiff cannot establish a likelihood of success on the merits when the claims on which his Complaint is based are time-barred.³⁶

3. Claims based on post-Complaint conduct also were not included in the Complaint and cannot be a basis for a preliminary injunction.

To the extent that the Plaintiff's request for preliminary injunctive relief is based on allegations that are not time-barred, those claims were not included in the Complaint. The only allegations in the Plaintiff's preliminary injunction motion that are not time-barred relate to the LSBA's 2020 legislative positions.³⁷ But the Plaintiff's August 2019 Complaint does not mention or address the later-occurring 2020 legislative positions raised in the Preliminary Injunction Motion, and the Plaintiff never amended his Complaint to assert these claims as a basis for his

³⁵ See Louisiana State Bar Association, *2018 Legislative Session: Board of Governors Adopts Positions on 46 Bills*, Bar Briefs, May 2018, at 8 (available at <http://files.lsba.org/documents/publications/BarBriefs/Briefs-May-2018.pdf>).

³⁶ See *Schell*, 11 F.4th at 1192.

³⁷ Footnotes 15–20 of the Motion for Preliminary Injunction (Doc. 48-2) and their accompanying text address LSBA conduct that occurred in 2020, after the Complaint was filed. The Complaint vaguely alleges that the LSBA took positions on 10 unidentified bills in 2019, Doc. 1 at ¶ 45, but none of the 2019 bill positions taken by the LSBA are included in allegations set forth in the Motion for Preliminary Injunction as a basis for relief.

Complaint. The Plaintiff declined to file an amended Complaint after being given a reasonable opportunity to do so following the August 9, 2021 status conference in this matter.³⁸ This failure to amend is reason enough to deny the Plaintiff’s Motion for Preliminary Injunction. *See Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010) (holding that plaintiff “ha[d] no grounds to seek an injunction pertaining to allegedly impermissible conduct not mentioned in his original complaint”).³⁹ “Although these new assertions” included in a motion for a preliminary injunction “might support additional claims against the same [defendants], they cannot provide the basis for a preliminary injunction.” *Walcott v. Larpenster*, No. 2:17-cv-6710, 2017 WL 5891322, at *1 (E.D. La. Nov. 29, 2017) quoting *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994) (affirming denial of a motion for injunctive relief where the motion relied on alleged post-complaint conduct and thus failed to “establish a relationship between the injury claimed . . . and the conduct asserted in the complaint”). The Plaintiff cannot establish a likelihood of success on the merits because the only claims in his motion for injunctive relief that are not time-barred (the 2020 legislative position claims) were not included in his Complaint.⁴⁰

D. The LSBA’s activities are germane to its legitimate purposes under *McDonald*.

The Plaintiff also cannot succeed on the merits because he presents no evidence that the LSBA is engaging in activities that are non-germane. Louisiana Supreme Court Rule XVIII, § 6 clearly limits the LSBA to germane activities consistent with its legitimate purposes “to promote

³⁸ See Exh. 5, Pl. Admission Resp., at 11.

³⁹ See also *Peralta v. Martel*, No. CIV S-09-3228 GEB, 2011 WL 6759543, at *2 (E.D. Cal. Dec. 22, 2011) (“[T]he rule that governs interlocutory injunctions, Fed. R. Civ. P. 65, also indicates that the matters at issue have to be encompassed by the complaint, e.g., provision which allows the hearing on preliminary injunction to be accelerated into a trial on the merits None of the provisions would make sense if disputes outside the complaint, and on which no trial by definition will be had, could be considered as proceedings for injunctions.”).

⁴⁰ The HOD Policies also are not continuing conduct, as they have been rendered obsolete by Rule XVIII, § 6 and the emergency action taken by Board of Governors.

and assist the regulation of the practice of law, improve the quality of legal services, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law including Louisiana’s civil law system, and, generally, to promote the welfare of the profession in the State.” *Id.* Legislative activities further are limited by Louisiana Supreme Court rule to “issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and to responding to any requests for information received from the legislature.” *Id.* Under the current Louisiana Supreme Court rules, the LSBA is not permitted to engage in any non-germane activity.

As examples of non-germane activity, the Plaintiff’s motion presents a litany of past bill titles or topics, and short, truncated summaries of policy positions the LSBA took in the past. As a matter of law, this showing is insufficient to succeed on the merits. The Fifth Circuit acknowledged in *McDonald* that the issue of constitutional germaneness can be a “difficult question” and goes beyond whether such speech is merely political or ideological. 4 F.4th at 247. Germaneness of speech also cannot be determined from a title or brief summary. *See Schell*, 11 F.4th at 1194 (“While Mr. Schell provided short and plain descriptions of the April 2017 and November 2018 articles . . . without the articles in the record, it is not possible to conclude whether the OBA only furthered speech germane to the recognized purposes of a state bar.”).⁴¹

As to future speech, the Plaintiff’s motion fails to identify specific ongoing non-germane activity that must be remedied, inviting the Court to instead engage in an endless monitoring

⁴¹ At trial, the LSBA can explain in each instance the context of these positions and why its speech on each of these topics was germane, but the fact would remain that the speech already had occurred and the requested injunctive relief would not remedy any circumstance in which the LSBA, in hindsight, could have inadvertently crossed a line into non-germane speech, which the LSBA denies in any event. But that issue remains (if at all) for a later date, as it is impossible to enjoin speech that already has occurred.

exercise to continually assess the germaneness of LSBA speech. *McDonald* unequivocally holds that a bar can maintain mandatory membership if it ceases non-germane activity. 4 F.4th at 252. The Plaintiff's motion, however, defies and inverts this principle. Under the Plaintiff's argument, it does not matter that the LSBA has ceased its allegedly non-germane activity. Rather, the Plaintiff contends, the Court should eliminate mandatory membership now, and then monitor the LSBA for an indefinite period of time to see if and when the LSBA will resume non-germane activity.⁴² This approach has four fundamental problems: (1) It reverses the burden of proof by allowing the Plaintiff to obtain a preliminary injunction based on a baseless assumption that future events will support his request; (2) it is contrary to *McDonald*; (3) it imposes an indefinite monitoring obligation on the Court without any specification of when the LSBA's cessation of non-germane activity will be long enough to warrant a change in the injunction; and (4) it leaves open for further litigation what the LSBA must do to regain its status as a mandatory bar. The Plaintiff has not carried his burden to identify presently ongoing non-germane activity that would allow his claims to succeed on the merits.

E. The motion does not dispute the sufficiency of the LSBA's *Hudson* procedures, which are an adequate safeguard relative to any alleged non-germane activities.

The Plaintiff's motion fails to raise any challenge whatsoever to the sufficiency of the LSBA's *Hudson* procedures. In fact, the Plaintiff did not attempt to use these procedures prior to or since the filing of the action, and he does not contest in his motion (nor can he) that they provide an adequate remedy for any conceivable harm he alleges he has suffered or may suffer.

⁴² This is so even though the Plaintiff has acknowledged that such an exercise would be unreasonable, stating in his discovery responses that the "Defendants cannot reasonably expect Plaintiff to review every activity the LSBA has engaged in to make a determination as to whether it was germane." Exh. 2, Pl. Rog. Resp. at 9. The Court likewise cannot reasonably be expected to monitor and review all LSBA speech in the unlikely event that in the future the LSBA might exceed the boundaries of germaneness set by the Louisiana Supreme Court.

Under *Keller* and *McDonald*, a state bar association must provide certain procedural safeguards (known as *Hudson* procedures)⁴³ to avoid compelled subsidization of non-germane speech. 496 U.S. at 16. The LSBA’s current rules and By-Laws meet these requirements to remedy potentially non-germane speech. Any member of the LSBA “who objects to the use of any portion of the member’s bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member’s concerns.” LSBA By-Laws art. XII, § 1(A). Following the receipt of a written objection, the LSBA “shall promptly determine the pro rata amount of the objecting member’s membership dues at issue, and such amount shall be placed in escrow pending determination of the merits of the objection.” *Id.* If the Board of Governors disagrees that the activity challenged promotes or opposes political or ideological causes—an unlikely event considering that “[a]ny refund . . . shall be for the convenience of the LSBA,” *id.* at § 1(B)—the dispute can be settled in arbitration under a panel selected jointly by the member and the Association, with any amount subject to dispute placed in escrow pending a determination. *Id.* at § 1(C). This *Hudson* objection procedure satisfies *Keller*.

The Plaintiff admitted that he never sought a refund from the LSBA through its objection procedures,⁴⁴ nor has he made any other “request or demand . . . for the refund of all or part of

⁴³ Though *McDonald* was critical of *Keller*, *Keller* stands as precedent and indeed in *Boudreaux* was recognized as a basis for one of the Plaintiff’s claims in this case. 3 F.4th at 758 describing Plaintiff’s claim that the LSBA’s *Hudson* procedures are deficient “because it publicizes only its legislative advocacy.”). *Hudson* procedures are relevant to both speech and association challenges because, as *McDonald* observes, “*Keller* noted that an integrated bar could certainly meet its *Abood* obligation by adopting the sort of procedures described in *Hudson*.” 4 F.4th at 247. *Abood*, however, is an association case. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 225 (1977). The same important government interests recognized in the *Hanson* and *Street* cases presumptively support the impingement upon associational freedom created by the agency shop here at issue.”). The word “speech” does not appear in the majority opinion. Thus, an integrated bar also can “certainly meet its [free association] obligation” through *Hudson* procedures. *See* 4 F.4th at 247.

⁴⁴ Exh. 5, Pl. Admission Resp. at 5.

any dues payment” as a result of allegedly unconstitutional activities.⁴⁵ In fact, “apart from this litigation,” he “cannot recall any specific instance in which he has specifically expressed disagreement with an LSBA action.”⁴⁶ Further, the Plaintiff had no knowledge of any circumstances in which the LSBA declined either to provide requested information about its activities to a member or issue a partial refund of dues to an objecting member.⁴⁷ The Plaintiff’s motion for preliminary injunction is devoid of any challenge to the LSBA’s *Hudson* procedures. The Plaintiff’s failure to avail himself of remedies made readily available by the LSBA speaks to the absence of any genuine harm to the Plaintiff and the impropriety of the interlocutory injunctive relief requested in this motion.

F. Any past instances of arguably non-germane speech do not constitute a “major activity” of the Bar to support associational injury.

To the extent any of the LSBA’s past positions arguably (and unintentionally) exceeded the boundaries of germaneness as clarified in *McDonald*, such conduct was not a “major activity” of the LSBA. The U.S. Supreme Court identified in *Lathrop* that whether non-germane speech forms a “major activity” of the integrated bar speaks to whether compelled membership in the bar impinges upon protected rights of association. *Schell*, 11 F.4th at 1187 citing *Lathrop*, 367 U.S. at 839) When the bulk of a state bar’s activities serve legitimate functions and purposes, the character of the integrated bar makes compelled membership constitutionally permissible. *Id.*; see also *McDonald*, 4 F.4th at 244 (describing *Lathrop*’s holding that “compelling the plaintiff to pay dues to such a bar association did not violate the freedom of association” when “[t]hough that bar was engaged in legislative activity, that activity was ‘not the major activity of the State Bar,’ and, furthermore, it was limited to bills pertinent to the legal profession for which there was

⁴⁵ Exh. 2, Pl. Rog. Resp. at 31.

⁴⁶ *Id.* at 9.

⁴⁷ Exh. 5 Pl. Admission Resp. at 13.

‘substantial unanimity.’”). (citations omitted).

The Plaintiff has been a member of the LSBA for twenty-five years.⁴⁸ During those twenty-five years, the LSBA has engaged in speech and activities to further the legitimate interests of an integrated bar association. In all those twenty-five years, the Plaintiff has identified only a few now-obsolete HOD Policies and Legislative Positions that he contends (without evidentiary support) were improperly politically or ideologically motivated in violation of his First Amendment rights. The LSBA will be able to demonstrate that these claims are unfounded on the merits, but even if an isolated instance of past LSBA speech in twenty-five years were determined to have been non-germane by present-day standards, the Plaintiff should not presently and immediately be excused from LSBA membership on that basis. Non-germane activity does not constitute a “major activity” of the LSBA and the character and quality of the LSBA’s activities,⁴⁹ including its germane legislative advocacy, supports constitutionally permissible compelled membership under *Lathrop*.

V. GIVEN THE LIMITED ACTIVITY AT ISSUE AND AMOUNT OF TIME BEFORE BAR REGISTRATION AND PAYMENTS ARE DUE, THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVORS THE DEFENDANTS.

The Plaintiff has failed to demonstrate irreparable harm or a likelihood of success on the merits; additionally, the balance of equities and public interest factors weighs strongly in favor of the LSBA and against granting interlocutory relief. When an important public interest has been established, the balance of harm to the interest advanced by the Plaintiff must be critically examined before a preliminary injunction’s issuance. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008).

⁴⁸ *See* Pl.’s Decl. (Doc. 48-2) at ¶

⁴⁹ *See also* Exh. 4, Decl. of Robert A. Kutcher (providing additional information on the legislative positions challenged in the Plaintiff’s motion).

Maintaining an integrated bar promotes legitimate public interests in regulating the legal profession and improving the quality of legal services. *McDonald*, 4 F.4th at 244 citing *Keller*, 496 U.S. at 13–14). The Plaintiff’s compelled membership in the LSBA which, by Rule, must “limit its activities to those that are constitutionally germane to its purposes”⁵⁰ does not violate his First Amendment rights pending trial on the merits. The Plaintiff’s contention to the contrary invites the Court to ignore the recognized, legitimate public interests that mandatory bars serve in regulating the legal profession and improving legal services in favor of his speculative and unripe claim that the LSBA could potentially violate his rights pending trial on the merits.

Moreover, granting a preliminary injunction on this showing would engender further, needless, time-consuming litigation for the parties and the Court. Notably, the State Bar of Texas now faces a class action complaint following issuance of the Fifth Circuit’s injunction in *McDonald* on the full evidentiary record in that case. *See Bennett v. State Bar of Texas*, 4:1 cv-2829, 2021 WL 3884086 (S.D. Tex. August 20, 2021). Issuance of a preliminary injunction here would accomplish no change for the Plaintiff, but would invite more litigation by those who may wish not to pay bar dues. On this showing, the Plaintiff has not demonstrated that the balance of equities or public interest favors issuance of a preliminary injunction.

VI. CONCLUSION

The Plaintiff faces no imminent harm from the Defendants, and he has not shown a likelihood of success on the merits on his foreclosed, moot, and untimely claims or that the balance of equities and public interest favors a preliminary injunction. For these reasons, the Defendants respectfully request that the Plaintiff’s motion be denied.

⁵⁰ Rule XVIII, § 6.

Respectfully submitted,

/s/ Richard C. Stanley

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR ASSOCIATION,
ET AL.

Defendants.

Civil Action No. 19-cv-11962

SECTION "T" (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

DECLARATION OF LORETTA LARSEN

I, LORETTA LARSEN, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Executive Director of the Louisiana State Bar Association ("LSBA"), a position I have held since 1991. In that capacity, I am responsible for the overall administration of the LSBA's activities. I work closely with the officers, Board of Governors, and House of Delegates on the LSBA's programs and operations. I work with the leadership on strategic and financial planning. I manage the 40-person staff and generally oversee the day-to-day operations of the LSBA.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. Louisiana Attorney Disciplinary Board ("LADB" Assessment and LSBA Membership Dues are due and payable on July 1st of each calendar year, unless the deadline is otherwise extended.
4. Attorneys may elect to pay the LADB Assessment and LSBA Membership Dues online.

5. If an attorney elects to pay the assessment and dues online, the first step requires filing an attorney registration statement.
6. If the LSBA receives payment via Automated Clearing House or Credit Card, that confirms that the attorney registration statement was filed.
7. Randy J. Boudreaux is a member of the Louisiana State Bar Association.
8. For the 2021-2022 term, Mr. Boudreaux owed \$200 in LSBA Membership Dues and \$235 in LADB Assessment fees.
9. On July 2, 2021, Mr. Boudreaux paid \$435 for the combined LSBA membership dues and LADB assessment fees. *See* Exh. 1-A.
10. Mr. Boudreaux elected to pay the assessment and dues online by Automated Clearing House check.
11. The LSBA accepted Mr. Boudreaux's payment and provided him a receipt confirming acceptance of the payment.
12. This payment and receipt indicate that Mr. Boudreaux filed his attorney registration statement online.
13. On July 2, 2021, the United States Court of Appeals, Fifth Circuit, decided *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
14. On July 8, 2021, the LSBA Board of Governors, using the emergency authority granted to it in the LSBA By-Laws, voted to suspend the Legislation Committee and all legislative activities until the House of Delegates convenes for its January 2022 meeting.
15. Following this action, LSBA President H. Minor Pipes, III, explained, "*McDonald* unless modified is governing law, and the LSBA intends to comply with it. Suspending

all legislative activities allows the LSBA to review *McDonald* and ensure that any future activity complies with the guidance provided by the 5th Circuit.”

16. H. Minor Pipes, III, further explained, “The LSBA for years has focused on ensuring that its activities and expenditures are germane to regulating or improving the legal profession. Although we would have preferred an affirmation from the 5th Circuit, we are confident that the courts will confirm that our procedures safeguard against the Bar engaging in political and ideological activities. While we await further guidance from the Eastern District we will continue to work for the lawyers of Louisiana through our regulation of the practice of law and myriad member services and programs.”
17. On July 26, 2021, Mr. Boudreaux filed a Motion for Preliminary Injunction asking that he not have to pay LSBA dues during the pendency of his action.
18. Since the issuance of the *McDonald* decision, however, the LSBA already had been working to review its procedures and activities to ensure that any future activity complies with the guidance provided by the Fifth Circuit.
19. On September 14, 2021, the Louisiana Supreme Court promulgated Rule XVIII, § 6 which codified the constitutional germaneness standard and limited the activities of the LSBA to those that are constitutionally germane to its purposes as stated in the Rule, placing all authority for legislative positions with the Board of Governors, not the House of Delegates. The Board of Governors exists independently under Article VII of the LSBA Articles of Incorporation.
20. The LSBA intends to comply fully with Louisiana Supreme Court Rule XVIII, § 6 and the law of the Fifth Circuit.

21. On October 19, 2021, the Board of Governors unanimously passed a resolution recognizing that the LSBA is bound by Rule XVIII, § 6, as amended September 14, 2021, and stated that it “will take no action inconsistent with Rule XVIII, Section 6” and “suspend[ed] any [LSBA] activity not within its scope, including but not limited to any action with respect to legislative policy provisions previously adopted by the House of Delegates (which provisions are now obsolete and no longer effective under the text of the Rule).” *See* Exh. 1-B.
22. On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates “that existing legislative policy positions be rescinded to more accurately reflect current procedures and remove obsolete policies that are no longer effective.” *See* Exh. 1-C.
23. On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates revising the LSBA’s By-laws “to more accurately reflect current operating practices and remove outdated and obsolete provisions that are no longer effective.” *See* Exh. 1-D.
24. On October 20, 2021, the Bar Governance Committee unanimously voted to propose a resolution to the House of Delegates that certain general policies of the Association be adopted in accordance with its Articles of Incorporation, article VIII Section 1, consistent with Louisiana Supreme Court Rule XVIII, § 6, *with these policies not to be considered related to any legislation that may or may not be proposed*, said function now delegated exclusively to the Board of Governors:
 - a. The Association supports the protection of the attorney-client privilege and work product doctrine as critical to an effective attorney-client relationship and

as necessary to facilitate open communication with clients as set forth in the Rules of Professional Conduct.

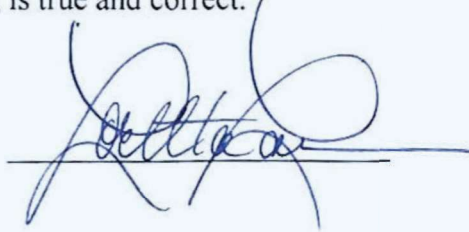
- b. The Association opposes any effort to tax legal services in Louisiana as placing a burden on client access to legal services and potentially invasive of the attorney-client privilege.
- c. The Association supports initiatives to assist low-income Louisianians with access to justice, including programs offering legal aid and pro bono services to Louisianians who cannot afford those services.
- d. The Association supports fair and adequate compensation for members of the state judiciary.
- e. The Association opposes the unauthorized practice of law by unlicensed persons.
- f. The Association supports diversity within the legal profession. *See* Exh. 1-E.

25. The LSBA has removed from its webpage obsolete House of Delegates' Policies and information on its former legislative advocacy procedures, including the Legislation Committee's formerly governing rules.

26. The LSBA's 2021-2022 budget, as amended in August 2021, does not allocate any funds for the now-obsolete Legislation Committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 28, 2021.



Payment Receipt

Transaction Payment Receipt

Randy Boudreaux

Payment Date: 7/2/2021 1:04:53 PM

Payment Type: ACH Check

Transaction ID: 65889772202110220

Original Payment Amount: \$435.00

I hereby authorize the Louisiana State Bar Association, to debit and/or credit my checking or savings account indicated above. I acknowledge the origination of ACH transactions to my account must comply with the provisions of U.S. law. I understand this authority is to remain in full force and effect until the Louisiana State Bar Association has received written notification from me of its termination in such time and manner as to afford the Louisiana State Bar Association a reasonable opportunity to act on it. If you have any questions please contact our office at (800) 421-5722 or (504) 566-1600 - Membership Dept.

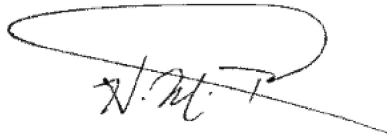
Item	Amount
(24029) Randy Joseph Boudreaux	
Dues - LSBA: DUES_Standard (Boudreaux, RandyJ: 7/1/2021-7/1/2022)	\$200.00
Dues - LADB: ASSESS_Standard (Boudreaux, RandyJ: 7/1/2021-7/1/2022)	\$235.00
Subtotal for (24029) Randy Joseph Boudreaux	\$435.00
Total Amount Paid: (Dues / Donations / Fees:)	\$435.00

**LOUISIANA STATE BAR ASSOCIATION
BOARD OF GOVERNORS
RESOLUTION**

WHEREAS, the Board of Governors recognizes that the Louisiana State Bar Association is bound by Louisiana Supreme Court Rule XVIII, Section 6, as amended September 14, 2021;

NOW THEREFORE BE IT RESOLVED that the Board of Governors will take no action inconsistent with Rule XVIII, Section 6, and hereby suspends any Louisiana State Bar Association activity not within its scope, including but not limited to any action with respect to legislative policy provisions previously adopted by the House of Delegates (which provisions are now obsolete and no longer effective under the text of the Rule).

Respectfully submitted:
2021-2022 Board of Governors



H. Minor Pipes III, President
Stephen I. Dwyer
Alainna R. Mire
John E. McAuliffe, Jr.
C.A. Martin III
Graham H. Ryan
Larry J. Centola
Scott L. Sternberg
Erin O. Braud
Dwazendra J. Smith
Todd. S. Clemons
Kelly M. Rabalais

Adrian G. Nadeau
Charles D. Elliott
W. Michael Street
Curtis R. Joseph, Jr.
Tina L. Suggs
Adreja Boutté Swafford
Blake R. David
John M. Church
Ronald J. Scalise, Jr.
Lila Tritico Hogan
Ann S. Siddall

**UNANIMOUSLY APPROVED BY BOARD OF GOVERNORS
OCTOBER 19, 2021**

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION
PROPOSING TO RESCIND LEGISLATIVE POLICY POSITIONS**

WHEREAS, the Bar Governance Committee recognizes that the Louisiana State Bar Association is bound by Louisiana Supreme Court Rule XVIII, Section 6, as amended September 14, 2021; and

WHEREAS, the Bar Governance Committee recognizes that Rule XVIII, Section 6, renders obsolete and no longer effective the legislative policy positions that were previously adopted by the House of Delegates; and

WHEREAS, the Bar Governance Committee proposes that the House of Delegates rescind any legislative policy positions given that Rule XVIII, Section 6, now renders those positions obsolete and no longer effective;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that existing legislative policy positions be rescinded to more accurately reflect current procedures and remove obsolete policies that are no longer effective.

Respectfully submitted:
2021-2022 Bar Governance Committee



Robert A. Kutcher, Chair

Robert L. Bussey
Preston J. Castille, Jr.
Joseph L. Caverly
David L. Colvin
Renee Chabert Crasto
James J. Davidson III
S. Guy deLaup
Stephen I. Dwyer
Val P. Exnicios
Larry Feldman, Jr.
Darryl J. Foster
Edmund J. Giering IV
Barry H. Grodsky
Carrie LeBlanc Jones
Richard K. Leefe
C.A. "Hap" Martin III

Kevin R. Molloy
John H. Musser IV
Darrel J. Papillion
Michael A. Patterson
H. Minor Pipes III
Dona Kay Renegar
Valerie T. Schexnayder
Christopher J. Sellers, Jr.
Joseph L. Shea, Jr.
Ronald J. Sholes
Ann S. Siddall
Lawrence P. Simon, Jr.
Patrick A. Talley, Jr.
Bradley J. Tate
Tavares A. Walker
Phillip A. Wittmann

**UNANIMOUSLY APPROVED BY BAR GOVERNANCE COMMITTEE
OCTOBER 20, 2021**

EXHIBIT 1-C

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION PROPOSING AMENDMENTS TO THE BY-LAWS TO THE
HOUSE OF DELEGATES**

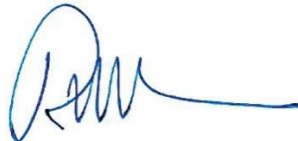
WHEREAS, the Bar Governance Committee conducted a comprehensive review of the Association's By-Laws in order to ensure they adequately reflected the Association's operating practices and procedures and did not contain outdated or obsolete provisions that are no longer effective; and

WHEREAS, the Bar Governance Committee has identified certain areas of these By-Laws which should be updated; and

WHEREAS, as a result of that review the Bar Governance Committee has approved the attached proposed revisions to the By-Laws;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that the By-Laws be amended as indicated in the attached Exhibit A to more accurately reflect current operating practices and remove outdated and obsolete provisions that are no longer effective.

Respectfully submitted:
2021-2022 Bar Governance Committee



Robert A. Kutcher, Chair

Robert L. Bussey
Preston J. Castille, Jr.
Joseph L. Caverly
David L. Colvin
Renee Chabert Crasto
James J. Davidson III
S. Guy deLaup
Stephen I. Dwyer
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Lawrence P. Simon, Jr.
Patrick A. Talley, Jr.
Bradley J. Tate
Tavares A. Walker
Phillip A. Wittmann

**UNANIMOUSLY APPROVED BY BAR GOVERNANCE COMMITTEE
OCTOBER 20, 2021**

EXHIBIT A

BY-LAWS OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE IV. RULES AND PROCEDURES; AUTHORITY OF BOARD

Section 3. Authority of Board

As specified in Article VIII, Section 1 of the Articles of Incorporation, the Board of Governors shall have control of the fiscal affairs of the Association. This authority shall include the power to administer the daily affairs of the Association and to obligate the Association in any way necessary to carry out its objects and purposes. The fiscal power of the Board shall also include, but is not limited to, the power and authority: to enter into contracts; to adopt written policies for the investment and reinvestment of Association funds; to invest and reinvest funds belonging to the Association in accordance with the written investment policies of the Association; to institute suit and to respond to suit on behalf of the Association; to acquire, hold, use and dispose of property; to incur liability; to establish pension or other benefits plans for its employees; to procure and provide indemnity and/or insurance for its members, officers, agents, and/or employees; to make donations to public charities; to make loans in the name of the Association; to buy and sell assets of the Association or to hypothecate or mortgage assets of the Association; and generally to conduct all administrative and fiscal matters of the Association as may be reasonable and appropriate in accordance with and in furtherance of the policies of the Association.

(Added June 13, 1996; Amended June 10, 2021)

Also as specified in Article VIII, Section 1 of the Articles of Incorporation, between meetings of the House of Delegates the Board of Governors shall serve as an executive council and may act upon all emergency and other matters not theretofore determined by the House. Under this authority, the Board of Governors may vote to file amicus briefs on behalf of the Association if the timing prohibits bringing such matters before the House of Delegates and in accordance with the guidelines outlined below.

(1) In determining whether to approve the drafting and filing of an amicus brief, the Board will be governed by the following limitations and conditions; Any proposed brief *shall not* be in conflict with any of the rules, regulations, policies and procedures of the LSBA. Moreover, the proposed brief must be related to and relevant to the administration of justice. Specifically, amicus briefs may be authorized *only* when such briefs involve legal questions relating address issues involving practice and procedure, the judicial system, access to the regulation of the profession, improving the courts, the administration compensation of justice judges or lawyers, or the quality of legal services, but may not legal profession. Filing of amicus briefs shall not be authorized for matters that are ideological or political in nature.

(2) If the Board votes to approve the filing of an amicus brief pursuant to these provisions, the President may appoint a committee to review the proposed amicus brief before it is filed, to confirm that it complies with these limitations and such other restrictions that may be imposed by the Board.

ARTICLE IX. SECTIONS

Section 8. Legislative Activity and Lobbying

In accordance with Louisiana Supreme Court Rule XVIII, Section 6, the LSBA shall limit its legislative activities to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and responding to any requests for information received from the Legislature. Sections' legislative activities shall likewise be limited.

Any section of the Association that desires the Association to take a position on pending legislation consistent with the above limitations shall inform the ~~Legislation Committee~~ Board of Governors through ~~its staff liaison or~~ the Executive Director of the exact nature of the proposed legislation and the section's recommended position as soon as is practicable after the introduction of the legislation, ~~but not later than the final meeting of the Legislation Committee as set forth in the Association's legislative calendar.~~

~~Any section desiring to sponsor legislation shall inform the Legislation Committee through its staff liaison or the Executive Director of the exact nature of the proposed legislation no later than December 1 for consideration by the Legislation Committee. The section shall provide to the Legislation Committee: (a) the specific legislation or policy which is proposed; (b) a summary of existing law; (c) principal known proponents and opponents of the legislation or policy and, if possible, a brief statement of the reasons for opposition or support by the other legislation or policy; and (e) the position which the section recommends be adopted by the Association.~~

No section, or any member of a section in his or her capacity as such, shall express a position to the public or engage in legislative activity without prior ~~review by the Legislation Committee and~~ authorization from the Board of Governors.

Section 9. Filing of Amicus Briefs by Sections

The following policies and procedures will apply to the filing of amicus briefs by any and all sections of the Louisiana State Bar Association.

1. Each President of the LSBA will appoint a Committee of three (3) attorneys who practice law in the State of Louisiana. The President will also appoint two (2) alternate members of the Committee in the event that a committee member is unable to satisfy his or her duties at the appropriate time, *and/or must recuse him or herself*. The President shall act under his or her authority and discretion in appointing Committee members who he or she believes has the requisite legal expertise to participate in the determination of whether a Section should be allowed to file an amicus brief under these Rules. The Committee will have the sole responsibility for determining the propriety of an LSBA Section filing an amicus brief.
2. In determining whether a Section should be allowed to file a proposed amicus brief, the Committee will be governed by the following limitations and conditions: Any proposed brief *shall not* be in conflict with any of the rules, regulations, policies and procedures of the LSBA, or any section of the LSBA. Moreover, the proposed brief must be related to

and relevant to the administration of justice. Specifically, amicus briefs may be authorized *only* when such briefs ~~involve legal questions relating to~~ address issues involving practice and procedure, the judicial system, access to the regulation of the profession, improving courts, the administration compensation of justice judges or lawyers, or the quality of legal services legal profession, but may ~~Filing of amicus briefs shall~~ not be authorized for matters that are ideological or political in nature.

ARTICLE X. STANDING COMMITTEES

Section 1. Creation

The following are the standing committees. The number of members of such committees, except as provided for hereinafter, shall be set by the President, subject to approval of the Board of Governors.

(5) *Legislation* - Vacated and repealed effective September 14, 2021. Replaced with Supreme Court Rule XVIII, Section 6

~~(5) *Legislation*—Consisting of twenty five (25) members in good standing of this Association: fifteen (15) elected by and from the House of Delegates and ten (10) members appointed by the President. All members shall serve three year terms and terms shall be staggered to ensure experience and continuity. The President shall appoint a chair from the membership of the committee, which chair shall serve a one year term.~~

~~Each President shall appoint one (1) member from Nominating Committee District 1; one (1) member from Nominating Committee District 2; and one (1) member from Nominating Committee District 3. Every third president shall also appoint one (1) member from the state at large.~~

~~The House of Delegates shall elect its committee members at its June meeting for terms that commence on July 1 immediately following the election. To ensure geographically diverse representation, there shall be no more than four (4) House of Delegates representatives from a judicial district at any given time.~~

~~(a) —The Legislation Committee shall have the following functions:~~

- ~~1. **Inform**—To inform the membership of legislation or proposed legislation of interest to the legal profession.~~
- ~~2. **Assist**—To assist the state legislature by providing information on substantive and procedural developments in the law, disseminating information to the membership, identifying resources available to the legislature, and providing other appropriate non-partisan assistance.~~
- ~~3. **Advocate**—To advocate for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services in accordance with the policies and procedures set forth in Article X of these Bylaws.~~

~~(b) — Legislation Committee members, by running for their positions or accepting appointments, are committing to advance preparation, and to participation in committee meetings. If a member is unable to participate, voting by proxy shall be permitted but only as hereinafter provided:~~

- ~~1. The proxy must represent the same constituency as the member for whom he/she is serving as proxy;
 - ~~• a proxy for a member elected by and from the House of Delegates must be a member of the House of Delegates;~~
 - ~~• a proxy for a member representing a Nominating Committee district must have his/her preferred mailing address in that district.~~~~
- ~~2. No person may serve as a proxy for more than one member of the committee.~~
- ~~3. No member of the committee may serve as a proxy for another member of the committee.~~

~~(c) — Should a committee member fail to appoint a proxy by the established deadline, the President shall immediately appoint a proxy to represent that committee member for that meeting. The President shall use his/her best efforts to appoint a proxy that meets the qualifications of clauses 1, 2 and 3 of the preceding paragraph (b).~~

~~(d) — Committee members may be removed by the President for cause, with cause including but not limited to failure to properly prepare for or participate in committee meetings. (Amended June 10, 1988; June 27, 2002; January 24, 2004; June 10, 2004; January 21, 2006; January 12, 2008; June 12, 2008; June 12, 2009; June 7, 2012; January 16, 2016)~~

ARTICLE XI. LEGISLATIVE POSITIONS

1. Scope and Limitations

~~The Legislation Committee's activities with respect to recommending consideration or adoption of a legislative position by the Association may include matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession, and such other matters consistent with the mission and purposes of the Association. The Committee shall not involve itself in legislation which is ideological in nature, unrelated to the practice of law, or which is unnecessarily divisive.~~

2. Criteria for Determining Positions

~~To assist in the determination of the Association's involvement, priorities and implementation of legislative positions, the following factors should be considered:~~

- ~~a. Importance to the Bar, the legal profession, the administration of justice and to society as a whole.~~

In accordance with Louisiana Supreme Court Rule XVIII, Section 6, the LSBA shall limit its legislative activities to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and

responding to any requests for information received from the Legislature. Under no circumstances shall the Association take positions on any other type of legislation.

- ~~2. b. *Expectations of the public, legislators, and members of the profession regarding the Bar's role in the particular issue involved.*~~
~~c. *Level of support within the profession. Is it a matter of organization-wide interest, or is it limited to a few interested parties?*~~
~~d. *Likelihood of success within the legislative process.*~~
~~e. *Expertise of lawyers as lawyers. Do lawyers have a unique province of understanding or unique role in the issue because of their training, knowledge and experience as lawyers?*~~
~~f. *Currency of issue. An appraisal of the currency or relevance of a matter. Would it likely capture attention of key decision-makers in the reasonable foreseeable future?*~~
~~g. *Image of the profession. A judgment of how positively the general or the specific public will view the profession in light of a particular issue or position.*~~
~~h. *Importance to the practice of law. This deals with the "trade" issues which affect lawyers as lawyers regulating or influencing the basic practice of law.*~~
~~i. *Opportunity for impact. Will a Bar position or effort have an impact on actions of decision-makers? Will it contribute to resolution of the issue?*~~

(Added June 7, 2012)

2. ~~3.~~ Adoption of Legislative Positions

~~Recommendations from the Legislation Committee concerning consideration or adoption of a position~~ The Board of Governors shall adopt positions on pending or proposed legislation ~~shall be presented to the Board of Governors~~ in accordance with the following procedures:

- a. A super majority of seventy-five percent (75%) of the ~~Legislation Committee~~ Board of Governors in attendance at the meeting(s) called for that purpose must approve any ~~recommendation(s) to the Board of Governors~~ positions.
- b. ~~Recommendations from the Legislation Committee~~ Positions shall be accompanied by an explanation of the ~~proposed~~ position(s) and the reasons for adoption.
- c. ~~In the event that the Legislation Committee has recommendations for consideration by the Board of Governors, the~~ The Board of Governors ~~shall~~ may meet electronically, via conference call or in person as ~~called~~ determined by the President.
- d. ~~Recommendations from the Legislation Committee shall be submitted to the Board of Governors prior to deliberation.~~
- e. ~~A recommendation of a position on pending or proposed legislation that is presented by the Legislation Committee to the Board of Governors shall be the position of the Association on that legislation, unless the recommendation is disapproved by a vote of at least seventy five percent (75%) of the Board's members present and voting at a meeting at which the recommendation is considered. If the Legislation Committee's recommendation on legislation is disapproved by the requisite vote of the Board, the Association shall not take a position on that legislation, absent a further recommendation on that legislation by the Legislation Committee that is not disapproved by the Board of Governors in the manner provided in this Section.~~
- f. ~~In the event a member of the Board of Governors desires Board consideration of a bill not presented to the Board by the Legislation Committee, the Board must first approve such consideration by a seventy five percent (75%) vote of the Board's members present and voting. Action on the bill is subject to the same seventy five~~

~~percent (75%) vote of the Board's members present and voting as bills presented by the Legislation Committee.~~

(Amended January 12, 2008; June 12, 2009; June 7, 2012)

43. Changes to Legislation Where Louisiana State Bar Association Has Adopted Position

It is anticipated that bills may be materially amended after the Louisiana State Bar Association has expressed its support or opposition. In such instances, the following procedures shall be followed.

- a. The Lobbyist or staff liaison shall consult with the Executive Committee on the bill(s) in question and they shall formulate recommendations based on the bill(s) in question.
- b. The LSBA will electronically transmit this information to members of the Board of Governors ~~and Legislation Committee~~, along with a recommended position the Executive Committee believes is most consistent with the Board of Governors' original vote, along with a timeline for submitting comments.
- c. Following the comment period, the Executive Committee shall meet to consider the comments of the Board of Governors ~~and Legislation Committee~~ and determine whether to change the Association's position on the bill.

(Added January 22, 2005; Amended January 12, 2008; June 7, 2012)

54. Publication of Legislative Positions

The Louisiana State Bar Association shall timely publish notice of adoption of legislative positions in at least one of its regular communications vehicles and shall send electronic notice of adoption of legislative positions to Association members.

(Amended January 12, 2008)

ARTICLE XII. LEGISLATIVE POSITIONS AND PUBLIC POLICY

1. Objection to Use of Bar Dues

A. Submission of Objections

A member of the Louisiana State Bar Association who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes, including activities that are not constitutionally germane to the LSBA's purpose, may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be filed as follows:

- a. Any objection must be filed within forty-five (45) days of the date of the Bar's publication of notice of the activity to which the member is objecting.
- b. Member objections must be in writing and must be filed with the Executive Director of the Association.
- c. Failure to object within the time period and in the manner set forth above shall constitute a waiver of any right to object.

After a written objection has been received, the Executive Director shall promptly determine the pro rata amount of the objecting member's membership dues at issue, and such amount shall be placed in escrow pending determination of the merits of the objection.

Upon the deadline for receipt of written objections, the Board of Governors shall have sixty (60) days in which to decide whether to give a pro rata refund to the objecting member(s) or to refer the action to arbitration.

(Added June 7, 2012)

ARTICLE XIV. SCOPE AND LIMITATIONS OF HOUSE POLICY

[Vacated and repealed effective September 14, 2021. Replaced with Supreme Court Rule XVIII, Section 6.] In accordance with these By Laws, any and all policy positions adopted by the LSBA House of Delegates must adhere to and agree with Article XI, §1, of the By Laws of the Louisiana State Bar Association: namely, be limited to matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession and such other matters consistent with the mission and purposes of the Association; but further limiting such positions to legislation which is not ideological in nature, not unrelated to the practice of law, or which is not unnecessarily divisive.

(Added January 18, 2020)

Revised June 10, 2021

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION PROPOSING ADOPTION OF GERMANE POLICIES TO
THE HOUSE OF DELEGATES**

WHEREAS, the Bar Governance Committee recognizes that the Louisiana State Bar Association is bound by Louisiana Supreme Court Rule XVIII, Section 6, as amended September 14, 2021; and

WHEREAS, the House of Delegates is the policy-making body of the Association pursuant to its Articles of Incorporation, article VIII Section 1; and

WHEREAS, the House of Delegates may enact general policies of the Association that are constitutionally germane to its legitimate purposes, consistent with Louisiana Supreme Court Rule XVIII, Section 6; and

WHEREAS, the Association further intends to comply with all binding U.S. Supreme Court and U.S. Fifth Circuit precedent including *Lathrop v. Donohue*, 367 U.S. 820 (1961), *Keller v. State Bar of California*, 496 U.S. 1 (1990), *McDonald v. Longley*, 4 F.4th 229 (5th Cir. July 2, 2021), and *Boudreaux v. Louisiana State Bar Ass'n*, 3 F.4th 748 (5th Cir. July 2, 2021) and limit its activities to those that are constitutionally germane to its legitimate purposes; and

WHEREAS, no policy of the House of Delegates shall be interpreted to exceed the limits set forth in Louisiana Supreme Court Rule XVIII, Section 6 and existing precedent or subsequent precedent, and that any policy found to exceed such limits shall be considered null and without effect;

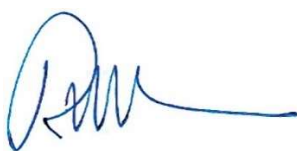
NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates the following policies to be general policies of the Association in accordance with its Articles of Incorporation, article VIII Section 1; consistent with Louisiana Supreme Court Rule XVIII, Section 6, these are not to be considered policies related to any legislation that may or may not be proposed, said function now delegated exclusively to the Board of Governors:

1. The Association supports the protection of the attorney-client privilege and work product doctrine as critical to an effective attorney-client relationship and as necessary to facilitate open communication with clients as set forth in the Rules of Professional Conduct.
2. The Association opposes any effort to tax legal services in Louisiana as placing a burden on client access to legal services and potentially invasive of the attorney-client privilege.
3. The Association supports initiatives to assist low-income Louisianians with access to justice, including programs offering legal aid and pro bono services to Louisianians who cannot afford those services.

4. The Association supports fair and adequate compensation for members of the state judiciary.
5. The Association opposes the unauthorized practice of law by unlicensed persons.
6. The Association supports diversity within the legal profession;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that the aforementioned general policies be adopted.

Respectfully submitted:
2021-2022 Bar Governance Committee



Robert A. Kutcher, Chair

Robert L. Bussey	Kevin R. Molloy
Preston J. Castille, Jr.	John H. Musser IV
Joseph L. Caverly	Darrel J. Papillion
David L. Colvin	Michael A. Patterson
Renee Chabert Crasto	H. Minor Pipes III
James J. Davidson III	Dona Kay Renegar
S. Guy deLaup	Valerie T. Schexnayder
Stephen I. Dwyer	Christopher J. Sellers, Jr.
Val P. Exnicios	Joseph L. Shea, Jr.
Larry Feldman, Jr.	Ronald J. Sholes
Darryl J. Foster	Ann S. Siddall
Edmund J. Giering IV	Lawrence P. Simon, Jr.
Barry H. Grodsky	Patrick A. Talley, Jr.
Carrie LeBlanc Jones	Bradley J. Tate
Richard K. Leefe	Tavares A. Walker
C.A. "Hap" Martin III	Phillip A. Wittmann

**UNANIMOUSLY APPROVED BY BAR GOVERNANCE COMMITTEE
OCTOBER 20, 2021**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR
ASSOCIATION, et al.

Defendants,

CIVIL ACTION

Case No. 2:19-cv-11962

SECTION "I" (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO
DEFENDANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO THE PLAINTIFF**

Pursuant to Federal Rules of Civil Procedure 33 and 34, Plaintiff objects and responds to Defendants' First Set of Interrogatories and Requests for Production to the Plaintiff as follows.

GENERAL OBJECTIONS

1. There are two primary matters on which Defendants might legitimately seek discovery from Plaintiff in this case: (1) Plaintiff's compelled membership in, and payment of dues to, the Louisiana State Bar Association ("LSBA"); and (2) Plaintiff's objection to subsidizing or otherwise associating with the LSBA and its speech. Plaintiff therefore objects to Defendants' Interrogatories and Requests for Production to the extent that they are not reasonably calculated to lead to evidence relevant to those issues. Further, even with respect to those matters, very little discovery is necessary or appropriate. With respect to the first matter, Defendants

Subject to and without waiving the foregoing objections, Plaintiff states that he cannot recall any specific instance in which he has specifically expressed disagreement with an LSBA action apart from this litigation.

INTERROGATORY NO. 3.

Please identify and describe with particularity each activity of the LSBA that you admit is constitutionally germane. *See also* Request for Admission No. 7.

RESPONSE.

Plaintiff objects to this Interrogatory because it calls for a legal conclusion. Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome, both because it is not limited to a specific time period and because, regardless of the time period, Defendants cannot reasonably expect Plaintiff to review every activity the LSBA has engaged in to make a determination as to whether it was germane.

INTERROGATORY NO. 4.

Please identify and describe with particularity all groups and associations of which you were or have been a member from January 1, 2018 until the present. Descriptions should include, without limitation, the name of the group or entity, whether any dues were paid and, if so, the amounts of such dues.

RESPONSE.

Plaintiff objects to this Interrogatory because Plaintiff's membership in organizations other than the LSBA is not relevant to any claim or defense in this case.

to those anticipated arguments, and (3) identify all facts Plaintiff would cite in support of those responses, which could include facts pertaining to events that have not yet transpired.

Subject to and without waiving the foregoing objections, Plaintiff states that this lawsuit and Plaintiff's Motion for Preliminary Injunction are not moot because Plaintiff is still required to join the LSBA and subsidize its speech as a condition of practicing law, and because he is still forced to associate with the LSBA and its germane and non-germane speech, including but not limited to the LSBA's policy positions adopted by its House of Delegates, which, on information and belief, remain in effect.

INTERROGATORY NO. 12.

Please identify and describe with particularity the declaratory and injunctive relief that you seek in this matter (including in the Motion for Preliminary Injunction) and the time frame within which you contend such relief should be imposed. Insofar as you seek an injunction, describe the precise conduct that you believe should be enjoined and the anticipated future dates on which you contend that the conduct would otherwise occur. Insofar as you seek a declaratory judgment, describe the precise terms of the judgment that you seek, including identifying the "Louisiana statutes, rules, and regulations" that you contend are unconstitutional.⁴

⁴ Complaint, p. 20, ¶ A.

RESPONSE.

Plaintiff objects to this Interrogatory because it calls for a legal conclusion.

Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome.

Interrogatories serve to allow a party to discover *facts* that may be within an opposing party's knowledge. A party is not entitled to use Interrogatories to ask the opposing party to develop and present legal arguments or to draft proposed orders.

Subject to and without waiving the foregoing objections, the relief Plaintiff seeks includes but is not limited to the relief requested in the Complaint (which speaks for itself), the relief requested in Plaintiff's Motion for Preliminary Injunction (which speaks for itself), and the following:

- A declaration that requiring attorneys to be members of the LSBA as a condition of practicing law in Louisiana (as provided by La. R.S. 37:211, La. R.S. 37:213, and La. S. Ct. XIX § 8(C)) violates attorneys' rights to free speech and freedom of association;
- A declaration that requiring attorneys to pay dues to the LSBA as a condition of practicing law in Louisiana (as provided by La. S. Ct. R. XIX § 8(C) and La. R. Prof. Cond. 1.1(c)) violates attorneys' rights to free speech and freedom of association;
- A declaration that the LSBA's use of member dues for political or ideological speech without obtaining members' affirmative consent in advance violates attorneys' rights to free speech and freedom of association;
- A declaration that the LSBA does not provide members with sufficient information to allow them to protect their First Amendment right not to subsidize the LSBA's non-germane activities;

- An injunction prohibiting Defendants from enforcing the mandatory membership requirement against Plaintiff;
- An injunction prohibiting Defendants from enforcing the mandatory dues requirement against Plaintiff.

This list is non-exhaustive, as the Court has discretion to grant other relief that it deems just and equitable (as the Complaint requests), and details of any injunction may depend on the specific facts presented to the Court.

INTERROGATORY NO. 13.

Please identify and describe with particularity the facts that support your contention that you have been made to “associate with the LSBA, its other members, or its political and ideological speech.”⁵

RESPONSE: Plaintiff objects to this Interrogatory because it calls for a legal conclusion.

Plaintiff objects to this Interrogatory because it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections, Plaintiff states that facts supporting this allegation include:

- The fact that Louisiana requires him and all other attorneys to join the LSBA as a condition of practicing law;
- The fact that the LSBA engages in political and ideological speech, including but not limited to the examples set forth in the Complaint and Motion for Preliminary Injunction;

⁵ Mtn. Preliminary Injunction, p.7.

producing.

REQUEST FOR PRODUCTION NO. 19.

Please produce all Documents reflecting any request or demand by you for the refund of all or part of any dues payment made by you.

RESPONSE: Plaintiff has no documents responsive to this Request other than documents served on Defendants in this litigation.

REQUEST FOR PRODUCTION NO. 20.

Please produce a copy of all Documents you intend to introduce into evidence at any hearing or trial in this matter.

RESPONSE: Plaintiff objects to this Request because it is premature; Plaintiff does not yet know what documents he intends to introduce into evidence at any hearing or trial in this matter. When Plaintiff determines that he intends to introduce particular documents into evidence at a hearing or trial, he will timely supplement this Response.

REQUEST FOR PRODUCTION NO. 21.

Please produce a copy of all Documents you intend to use for impeachment at any hearing or trial in this matter.

RESPONSE: Plaintiff objects to this Request because it is premature; Plaintiff does not yet know what documents he may use for impeachment at any trial or hearing. When Plaintiff determines which documents he intends to use for impeachment, he will timely supplement this Response.

or is otherwise entitled to an award of attorney's fees, Plaintiff will timely submit appropriate documentation to support his application for fees in accordance with the Federal Rules of Civil Procedure, the Local Rules, and any relevant order issued by the Court.

DATED October 1, 2021 by:

By: /s/ Jacob Huebert
Jacob Huebert (admitted *pro hac vice*)
Timothy Sandefur (admitted *pro hac vice*)
Scharf-Norton Center for Constitutional Litigation at the
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Phoenix, AZ 85004
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By: /s/ Sarah Harbison
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By: /s/ Dane S. Ciolino
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<https://daneciolino.com>

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2021, I electronically served the foregoing to:

Richard C. Stanley
Eva J. Dossier
Kathryn W. Munson
**STANLEY, REUTER, ROSS,
THORNTON & ALFORD, L.L.C.**
909 Poydras Street, Suite 2500
New Orleans, Louisiana 70112
rcs@stanleyreuter.com
ejd@stanleyreuter.com
kwm@stanleyreuter.com
Counsel for the Defendants

/s/ Jacob Huebert

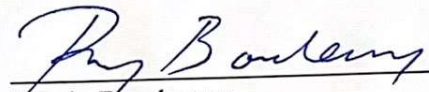
JACOB HUEBERT

VERIFICATION

I, Randy Boudreaux, have reviewed the foregoing document, PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO THE PLAINTIFF, and know its contents. On information and belief, I believe the matters set forth in the responses to Defendants' Interrogatories to be true.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1 day of October, 2021.


Randy Boudreaux

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR ASSOCIATION,
ET AL.

Defendants.

Civil Action No. 19-cv-11962

SECTION "T" (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

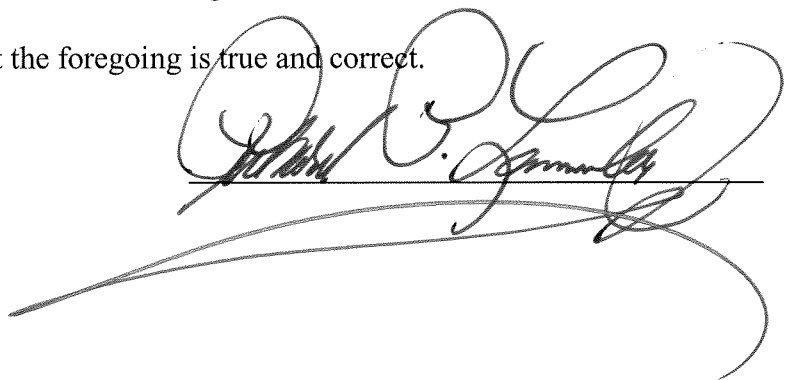
DECLARATION OF RICHARD LEMMLER

I, RICHARD LEMMLER, JR., declare as follows pursuant to 28 U.S.C. § 1746:

1. I currently serve as Ethics Counsel for the Louisiana State Bar Association ("LSBA"), a position I have held since May 2002.
2. I also served as LSBA staff liaison to the Legislation Committee in 2007, 2008, 2009, 2017, 2018, 2019, and 2020.
3. One of my duties as staff liaison was to facilitate the process used by the Legislation Committee for each regular session of the Louisiana State Legislature. Following is a description of this former process.
4. Prior to the first scheduled meeting of the Legislation Committee, the Committee Chair, staff liaison, and lobbyist "culled down" pre-filed bills based on relevance, appropriateness under the LSBA's By-Laws and Articles of Incorporation, and the House of Delegates' Policies used to guide the Committee. After several rounds of culling down, the pre-filed bills were reviewed by subcommittees of the Legislation Committee.
5. Each subcommittee, after reviewing its assigned bills, made a recommendation that the LSBA take a position—or not take a position—on each bill assigned to it.

6. The full Committee then discussed and debated the proposed position on each bill. A majority vote of members of the full Committee in attendance was required to recommend a position to the Board of Governors. At the conclusion of the meeting, any position being recommended by the Committee was conveyed to the LSBA Board of Governors for their consideration and vote.
7. After the Board of Governors met and voted on positions being recommended by the Committee, all positions adopted by the Board of Governors became the position of the LSBA, were considered formal and “public”, and were published on the LSBA website. Links thereto were published and circulated in other LSBA publications. Those formal public positions were also confirmed with the lobbyist for use and reference at the Capitol.
8. On July 8, 2021, the Board of Governors, using the emergency authority granted to it in the By-Laws, voted to suspend the Legislation Committee and all legislative activities until the House of Delegates convenes for its January 2022 meeting.
9. On September 14, 2021, the Louisiana Supreme Court amended Rule XVIII, § 6 to restrict the LSBA’s legislative activities, reassigning them to the Board of Governors and limiting them to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and to responding to any requests for information received from the legislature.
10. The LSBA’s legislative process will now change in accordance with Rule XVIII, § 6.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 27, 2021.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR ASSOCIATION,
ET AL.

Defendants.

Civil Action No. 19-cv-11962

SECTION "I" (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

DECLARATION OF ROBERT A. KUTCHER

I, ROBERT A. KUTCHER, declare as follows pursuant to 28 U.S.C. § 1746:

1. I have been actively involved with Louisiana State Bar Association ("LSBA") activities and administration since approximately 1998.
2. I served as the LSBA President from 2019 to 2020.
3. I have also served as a member of the Legislation Committee, the Rules of Professional Conduct Committee, the House of Delegates, and the Board of Governors.
4. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
5. I understand that the Motion for Preliminary Injunction, as clarified in the Plaintiff's discovery responses, challenges the LSBA's position on the following 23 bills. For each of the identified pieces of legislation, I provide below the allegation as quoted from the Plaintiff's Motion for Preliminary Injunction, followed by (a) information on which bill is referenced in the allegation, as clarified in the Plaintiff's discovery response; (b) a summary of the reasoning behind the LSBA's position on that bill; and (c) the legislative outcome.

6. The LSBA opposed a bill that would “limit liability of health care providers during a declared emergency.”

a. This allegation relates to SB 106 from 2009.

b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA House of Delegates’ (“HOD”) general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . § 735.5. Immunity for evacuation, sheltering, or repopulation[.] A. Any health care provider or health care personnel who renders or fails to render health care services, first aid, ambulatory assistance, transportation or care delivery anywhere in the state, **shall not be liable for any civil damages to a person for any injury or death or psychological trauma suffered or alleged to have been suffered by such person** in the course of an evacuation, sheltering, care delivery, transportation or repopulation of a health care provider facility or a failed evacuation, sheltering, care delivery, transportation or repopulation of a health care provider facility, during and following a declared state of emergency at the direction of military or governmental authorities, **unless the damages are caused by gross negligence or willful misconduct** . . .” (emphasis added).

c. The bill was amended to include “. . . [gross negligence or willful] and wanton [misconduct].” and passed easily through the Legislature as Act 231, and was signed into law by the Governor, effective July 1, 2009.

7. The LSBA opposed a bill that would “provide civil immunity for certain volunteers working in coordination with the state or its political subdivisions with respect to homeland security.”

a. This allegation relates to HB 554 from 2009.

b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . § 735.3.1. Immunity for volunteers[.] A. During a declared state of emergency, any natural or juridical person, who gratuitously and in good faith, voluntarily renders care, assistance, goods, or services in coordination with the state or its political subdivisions **shall not be liable to the recipient thereof for any injury or death to a person or any damage to property resulting therefrom, except in the event of gross negligence or willful misconduct.** B. This Section shall not apply to unlicensed persons providing care, assistance, goods, or services for which a license is required.” (emphasis added).

c. The bill passed easily through the Legislature as Act 295, and was signed into law by the Governor, effective August 15, 2009.

8. The LSBA opposed a bill that would “limit civil liability for persons using automated external defibrillators.”

a. This allegation relates to HB 332 from 2009.

- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“... § 1236.14. Limitation of liability[.] In addition to the civil immunity provided to persons rendering emergency assistance as provided by law, including R.S. 9:2793, R.S. 37:1731, 1732, and 1735, and R.S. 40:1231.2, any prescribing advanced practice registered nurse or physician who authorizes the purchase of the AED, any physician or advanced practice registered nurse involved in the possessor’s program, any individual or entity which provides training in cardiopulmonary resuscitation and in the use of an AED, any purchaser of an AED, any person or entity who owns or who is responsible for the site or the private security patrol vehicle where an AED is located, and any expected user regularly on the premises or in the vehicle **shall not be liable for any civil damages arising from any act or omission of acts related to the operation of or failure to operate an AED that do not amount to willful or wanton misconduct or gross negligence.**”

(emphasis added).

- c. The bill was amended but did not pass through the House, as the author agreed not to bring the bill to the House floor for a vote; returned to calendar May 4, 2009.

9. The LSBA opposed a bill regarding the “rehabilitation of injured employees.”

- a. This allegation relates to HB 669 from 2010.

- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . (2) No health care provider or his employee or agent **shall be held civilly or criminally liable** for disclosure of the medical information conveyed pursuant to this Section. This Paragraph shall not apply to examinations conducted by medical examiners appointed by the director pursuant to R.S. 23:1123.” (emphasis added).

- c. The bill was referred to the Committee on Labor and Industrial Relations, but it failed, as it did not make it out of committee.

10. The LSBA opposed a bill regarding “oyster leases.”

- a. This allegation relates to SB 240 from 2011.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . The lessee **shall hold** the permittee, the state, and any political subdivision of the state, and all or any agency or agent thereof **free and harmless from any claim for any damage, cost, expense, loss, or inconvenience whatsoever** arising from damage caused by coastal protection, conservation, or restoration, except as provided in R.S. 56:427.1.” (emphasis added).

- c. The bill was referred to the Committee on Natural Resources, but it failed, as it did not make it out of committee.

11. The LSBA opposed a bill regarding the “administration of auto-injectable epinephrine by a school nurse.”

- a. This allegation relates to SB 119 from 2012.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA. The bill provided, in part:

“ . . . (2) A school nurse who in good faith administers, or chooses not to administer, epinephrine to a student pursuant to this Subsection **shall be immune from any liability for any act or omission to act related to the administration of epinephrine, except in the case of willful or wanton misconduct.**” (emphasis added).

- c. The bill was amended, deleting immunity provisions entirely, passed through the Legislature as Act 624, and was signed into law by the Governor, effective June 7, 2012.

12. The LSBA opposed a bill regarding “midwifery licensing.”

- a. This allegation relates to HB 947 from 2012.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA. The bill provided, in part:

“ . . . C. **No physician or other health care provider** as defined in R.S. 40:1299.41, no hospital as defined in R.S. 40:2102, or no institution, facility, or clinic licensed by the department **shall be:** (1) Deemed to have established a legal relationship with a licensed midwife solely by

providing a risk assessment as defined in this Section or accepting a transfer of a patient from a licensed midwife. **(2) Liable for civil damages arising out of the negligent, grossly negligent, or wanton or willful acts or omissions of the licensed midwife** solely for providing a risk assessment as defined in this Section or accepting a transfer of a patient from a licensed midwife.” (emphasis added).

- c. The bill was referred to the Committee on Health and Welfare, but it failed, as it did not make it out of committee.

13. The LSBA opposed a bill for the return of certain “RSD” schools to the transferring school board.

- a. This allegation relates to SB 432 from 2016.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA. The bill provided, in part:

“... (d) The local school board and its individual members **shall be immune from civil liability for any damages arising from acts, omissions, or incidents occurring** during the time a school returned to the local school system was under the jurisdiction of the Recovery School District. (e) The local school board and its individual members **shall be immune from any liability or responsibility for** any obligation, claim, demand for reimbursement, or other indebtedness asserted by the Federal Emergency Management Agency, the United States Department of Housing and Urban Development, or any other

federal or state governmental agency or entity, with respect to construction projects managed by the Recovery School District.” (emphasis added).

- c. The bill was not amended to address the immunity issue. The bill was amended in other respects and passed through the Legislature as Act 91, and was signed into law by the Governor, effective May 12, 2016.

14. The LSBA opposed a bill “to limit the liability of landowners to grant a right of passage to cemeteries.”

- a. This allegation relates to HB 856 from 2016.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA. The bill provided, in part:

“ . . . § 2800.23. Limitation of liability for granting voluntary right of passage to enclosed cemetery[.] A. The owner of property adjoining an enclosed cemetery who grants a voluntarily right of passage to persons who desire to have access to the enclosed cemetery **shall not be liable for any injury, death, loss, or damages to persons** using the voluntary right of passage to access the enclosed cemetery. B. The owner of the property granting the voluntary right of passage **owes no duty of care to keep such property safe** for entry or use by persons using the right of passage to access the enclosed cemetery and is not extending a duty of care or any assurance that the property is safe, **or assuming responsibility for or incurring liability for any injury, death, loss,**

or damages to persons or property caused by any act of a person using the voluntary right of passage. C. The limitation of liability provided by this Section shall not apply to intentional or grossly negligent acts by the landowner granting the voluntary right of passage.” (emphasis added).

- c. The bill was amended to address the immunity issue and passed through the Legislature as Act 647, and was signed into law by the Governor, effective August 1, 2016.

15. The LSBA opposed a bill to “address bullying.”

- a. This allegation relates to SB 303 from 2018.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA. The bill provided, in part:

“ . . . I.(1) No cause of action shall exist against any school employee who in good faith makes a report, cooperates or participates in any investigation, or takes any required or authorized action pursuant to the provisions of this Section. Such school employee shall have immunity from civil or criminal liability that otherwise might be incurred or imposed. (2) The immunity provided in Paragraph (1) of this Subsection shall not be extended to a school employee who either: (a) Takes any action pursuant to this Section that the employee knows to be false information. (b) Fails to take a required action with regard to a bullying incident.” (emphasis added).

- c. The bill was referred to the Committee on Education on March 29, 2018. It was amended to address the immunity issue but then failed in committee.

16. The LSBA opposed a bill to “authorize electronic delivery of insurance coverage notices.”

- a. This allegation relates to HB 370 from 2018.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, bill was opposed by LSBA,. The bill provided, in part:

“... § 2463. Limitation of liability[.] An insurance producer **shall not be subject to civil liability for any harm or injury that occurs** because of a party’s election to receive any notice or document by electronic means or by an insurer’s failure to deliver a notice or document by electronic means.” (emphasis added).

- c. The bill was amended and passed through the Legislature as Act 132—and without any clarifying amendments—and was signed into law by the Governor, effective August 1, 2018.

17. The LSBA opposed a bill to “provide for the carrying of concealed handgun on school property by certain teachers or administrators.”

- a. This allegation relates to HB 271 from 2018.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA,. The bill provided, in part:

“ . . . (4) Any teacher or administrator who carries a concealed handgun pursuant to the provisions of this Subsection **shall be immune from civil liability for damages** that arise as a result of carrying a concealed handgun pursuant to the provisions of this Subsection, except for grossly negligent acts or omissions or acts of willful or wanton misconduct.” (emphasis added).

- c. The bill was referred to the Committee on Administration of Criminal Justice on March 12, 2018, but it failed, as it did not make it out of committee.

18. The LSBA supported a bill “to prohibit elementary and secondary schools that receive state funds from discriminating based on gender identity or sexual orientation.”

- a. This allegation relates to SB 228 from 2018.
- b. The LSBA supported the original bill because it fell within LSBA HOD policies of June 9, 2016: 1. Recognizing the LGBT people have a human right to be free from discrimination, threats, violence and denigration based on their LGBT status; 2. Urging the repeal of all constitutional amendments, laws, regulations, and rules or practices that denigrate or discriminate against LGBT individuals; and 3. Urging the adoption of laws prohibiting discrimination in employment, housing and accommodations for LGBT persons. The bill provided, in part:

no person shall be refused admission into, excluded from, or discriminated against in any form in any school that receives state funds on the basis of race, creed, color, disability, national origin, gender identity, or sexual orientation.

- c. The bill was referred to the Committee on Education on March 12, 2018, but it failed, as it did not make it out of committee.

19. The LSBA supported a bill that would “[p]rovide[] for out-of-state automobile insurance coverage” for the purpose of “protect[ing] Louisiana citizens and accident victims from out-of-state drivers utilizing Louisiana roads.”

- a. This allegation relates to SB 138 from 2018.
- b. The LSBA supported the original bill because it sought to protect Louisiana citizens and accident victims from out-of-state drivers utilizing Louisiana roads. The bill retained present law and increased the limits for out-of-state drivers to reflect the limits applicable in present law to Louisiana drivers as follows:

“ . . . (1) If the accident has resulted in bodily injury or death, to a limit, exclusive of interests and costs, of not less than \$15,000 because of bodily injury or death of one person in any one accident; (2) If the accident has resulted in bodily injury or death, to a limit, exclusive of interests and costs, of not less than \$30,000 because of bodily injury or death of two or more persons in any one accident; and (3) If the accident has resulted in injury to or destruction of property, to a limit of not less than \$25,000 because of injury to or destruction of property of others in any one accident.”

- c. The bill was amended and passed through the Legislature as Act 567, and was signed into law by the Governor, effective August 1, 2018.

20. The LSBA opposed the Omnibus Premium Reduction Act of 2020.

- a. This allegation relates to HB 9 from 2020.

- b. The LSBA opposed the original bill because the language on collateral source appeared unworkable for the following reasons: 1) it limited recovery to the amount actually paid by the insurer and not limited to past medicals; 2) it did not take into account co-pays and deductibles owed by the patient/plaintiff to “contracted” versus “non-contracted” providers and rates; 3) it would also have limited recovery to what would have been paid by the health insurer (which was not defined, so it could have included Medicaid or Medicare) if the plaintiff/patient does not submit the bills to them; 4) it was in direct conflict with the Medicare Secondary Payer provision, 42 U.S.C. § 1395y(b)(2); 5) Worker’s Compensation provisions started with amounts “paid” but then stated that “recovery of medical expenses is limited to the amount payable under the...fee schedule” (emphasis added); 6) there was no guidance on coordination of benefits issues; and 7) it was unclear how it would work with the Healthcare Consumer Billing and Disclosure Protection Act, La. R.S. 22:1871, et. seq.
- c. The bill was scheduled for floor debate on May 20, 2020, and was heard but abandoned by the legislature in favor of passing SB 418.

21. The LSBA opposed a bill to reduce the jury threshold amount.

- a. This allegation relates to HB 280 from 2020.
- b. The original bill, which sought to reduce the threshold for a civil jury trial to \$5,000, fell within LSBA HOD policies in favor of access to justice. The LSBA opposed the bill because of the threat that a lower threshold for a civil jury

would clog civil and criminal justice systems that are already backed up, and place financial burden on clerks of court and judicial district courts.

- c. The bill was referred to the Committee on Civil Law and Procedure on March 9, 2020, but it did not make it out of committee, as it was scheduled for a hearing but was never heard.

22. The LSBA opposed a bill to change the “‘collateral source rule’ to limit the amounts plaintiffs can recover.”

- a. This allegation relates to HB 287 from 2020.
- b. The LSBA opposed the original bill, which provided for limitations of recovery for medical expenses paid by certain collateral sources, because the language on “collateral source” appeared unworkable.
- c. The bill was referred to the Committee on Civil Law and Procedure on March 9, 2020, but it did not make it out of committee, as it was scheduled for a hearing but was never heard.

23. The LSBA opposed a bill regarding the reduction of insurance rates based on its \$500,000 damages limitation.

- a. This allegation relates to HB 492 from 2020.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . B. Insured and insurers of commercial motor vehicle liability and damage insurance who comply with Subsection A of this Section **shall be subject to a liability limitation** where the total amount recoverable

for all damages for personal injury by one person, including all claims and derivative claims, exclusive of property damages, medical and related benefits and loss of earnings, and loss of future earnings, shall not exceed five hundred thousand dollars plus interest and costs, regardless of the number of suits filed or claims made for the personal injury to that person.” (emphasis added).

- c. The bill was referred to the Committee on Insurance on March 9, 2020, but it did not make it out of committee, as it was never scheduled for a hearing but was never heard.

24. The LSBA opposed a bill to “[e]stablish the licensed profession of art therapist.”

- a. This allegation relates to HB 505 from 2020.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“... § 1360.132. Protected actions and communication[.] A. There **shall be no liability on the part of and no action for damages** against any member of the board, or any agent or employee of the board, in any civil action for any act performed in good faith in the execution of his duties in accordance with this Part. B. **No person, committee, association, organization, firm, or corporation shall be held liable for damages** pursuant to any law of this state or any political subdivision thereof for providing information to the board without malice and under the reasonable belief that such information is accurate,

whether providing such information as a witness or otherwise.”
(emphasis added).

- c. The bill was referred to the Committee on Health and Welfare on March 9, 2020, but it did not make it out of committee, as it was tentatively scheduled but was never actually heard.

25. The LSBA opposed a bill “to regulate peer-to-peer car sharing.”

- a. This allegation relates to HB 532 from 2020.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“... § 1300.5. Exclusions in motor vehicle liability policy[.] A. An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner’s motor vehicle liability policy, including but not limited to: (1) Liability coverage for bodily injury and property damage. (2) Uninsured and underinsured motorist coverage. (3) Medical payments coverage. (4) Comprehensive coverage. (5) Collision coverage ... § 1300.7. Exemption; vicarious liability[.] **A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability** in accordance with 49 U.S.C. § 30106 and pursuant to any state or local law that imposes liability solely based on vehicle ownership.” (emphasis added).

- c. The bill was amended without addressing the immunity issue and passed through the Legislature as Act 277, and was signed into law by the Governor, effective August 1, 2020.

26. The LSBA opposed a bill regarding the regulation of funeral directors and embalmers.

- a. This allegation relates to HB 827 from 2020.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“... C. There **shall be no liability** for a funeral director, funeral establishment, or any respective employee for permitting any interested person, as described in R.S. 9:1551, to view human remains in the care of the funeral director or funeral establishment.” (emphasis added).

- c. The bill was amended without addressing the immunity issue and passed through the Legislature as Act 329, and was signed into law by the Governor, effective June 12, 2020.

27. The LSBA opposed a bill “‘relative to the practice of medicine’ that would adopt the Interstate Medical Licensing Compact.”

- a. This allegation relates to SB 464 from 2020.
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“... (d) The officers and employees of the interstate commission **shall be immune from suit and liability, either personally or in their**

official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person. (e) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purpose of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person. (f) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act,

error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person. (g) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission **shall be held harmless in the amount of a settlement or judgement, including attorney's fees and costs, obtained against such persons** arising out of an actual or alleged act, error, or omission that occurred within the scope of the interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.” (emphasis added).

- c. The bill was referred to the Committee on Health and Welfare on May 4, 2020, but it did not make it out of committee, as it was never scheduled and never heard.

28. The LSBA opposed a bill to create a “retired volunteer dental hygienist license.”

- a. This allegation relates to HB 363 from 2020.

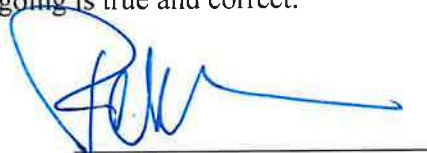
- b. The LSBA opposed this bill because immunity provisions in the original bill fell within LSBA HOD general policy against expansion of civil immunities; solely for that reason, the bill was opposed by LSBA. The bill provided, in part:

“ . . . D.(1) No dental hygienist holding a retired volunteer license to practice dental hygiene who in good faith gratuitously renders health care to a patient shall be liable for any civil damages as a result of any act or omission in rendering the care or services or as a result of any act or failure to act to provide or arrange for further medical or dental treatment or care to any person receiving the services, unless the damages were caused by the gross negligence or willful or wanton misconduct of the dental hygienist.” (emphasis added).

- c. The bill was amended without addressing the immunity issue and passed through the Legislature as Act 188, and was signed into law by the Governor, effective August 1, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 28, 2021.

A handwritten signature in blue ink, appearing to be "F. L. M.", is written over a horizontal line.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR
ASSOCIATION, et al.

Defendants,

CIVIL ACTION

Case No. 2:19-cv-11962

SECTION “T” (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

**PLAINTIFF’S OBJECTIONS AND RESPONSES TO DEFENDANTS’
FIRST SET OF REQUESTS FOR ADMISSION TO THE PLAINTIFF**

Pursuant to Federal Rule of Civil Procedure 36, Plaintiff objects and responds to Defendants’ First Set of Requests for Admission to the Plaintiff as follows.

GENERAL OBJECTIONS

1. There are two primary matters on which Defendants might legitimately seek discovery from Plaintiff in this case: (1) Plaintiff’s compelled membership in, and payment of dues to, the Louisiana State Bar Association (“LSBA”); and (2) Plaintiff’s objection to subsidizing or otherwise associating with the LSBA and its speech. Plaintiff therefore objects to Defendants’ Interrogatories and Requests for Production to the extent that they are not reasonably calculated to lead to evidence relevant to those issues. Further, even with respect to those matters, very little discovery is necessary or appropriate. With respect to the first matter, Defendants

Subject to and without waiving the foregoing objections, Plaintiff admits that the LSBA House of Delegates Policy Positions that the LSBA has categorized as pertaining to “Regulation of the Practice of Law” in its January 2021 list of policy positions (PLF 0136) are, on their face, germane to regulating the legal profession.

REQUEST NO. 8.

Please admit that you never sought a refund of your LSBA dues payment.

RESPONSE.

Admit.

REQUEST NO. 9.

Please admit that you have a functioning email address at which you have received LSBA communications.

RESPONSE:

Admit.

REQUEST NO. 10.

Please admit that each of the legislative bills identified in the Complaint was considered before or during the 2018 legislative session.

RESPONSE.

Plaintiff objects to this Request because it is vague and ambiguous, both in its passive-voice use of the phrase “was considered” (making unclear whether the Legislature or the LSBA is engaging in the consideration) and in its use of the term “identified.”

RESPONSE.

Admit.

REQUEST NO. 23.

Please admit that, as of the August 9, 2021 status conference in this matter, you were advised, through counsel, that the Defendants' position is that the Motion for Preliminary Injunction includes allegations not made in the Complaint.

RESPONSE.

Admit.

REQUEST NO. 24.

Please admit that, pursuant to the August 9, 2021 status conference in this matter, the Court provided you with a reasonable opportunity to file an amended complaint.

RESPONSE.

Admit.

REQUEST NO. 25.

Please admit that, after the August 9, 2021 status conference, you declined to file an amended complaint.¹

RESPONSE.

Admit.

¹ See Doc. 59.

the LSBA's notice of its activities after filing the Complaint.

RESPONSE.

Denied. The Complaint and this litigation constitute an objection to the sufficiency of the LSBA's notice of its activities.

REQUEST NO. 30.

Please admit that you have no knowledge of any circumstance in which the LSBA has declined to provide requested information about its activities to a member.

RESPONSE.

Admit.

REQUEST NO. 31.

Please admit that you have no knowledge of any circumstance in which the LSBA has declined to issue a partial refund of dues to an objecting member.

RESPONSE.

Admit.

REQUEST NO. 32.

Please admit that the resolution described in paragraph 41 of the Complaint ("resolution 'urging [a] moratorium on executions '") was passed before August 1, 2018.

RESPONSE.

Admit.

REQUEST NO. 40.

Please admit that the Complaint does not identify any activity occurring in 2021.

RESPONSE.

Plaintiff objects to this response because it is vague and ambiguous in its use of the term “identify.”

Subject to and without waiving the foregoing objection, Plaintiff admits that the specific examples of the LSBA’s political and ideological activity that the Complaint identifies necessarily occurred before the Complaint was filed in 2019.

Dated this 1st Day of October, 2021 by:

/s/ Jacob Huebert

Jacob Huebert (admitted *pro hac vice*)
Timothy Sandefur (admitted *pro hac vice*)
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2021, I electronically served the foregoing to:

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Eva J. Dossier

Kathryn W. Munson

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/s/ Jacob Huebert

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