No. 20-30086

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RANDY BOUDREAUX,
Plaintiff - Appellant
v.

LOUISIANA STATE BAR ASSOCIATION, A Louisiana Nonprofit Corporation; LOUISIANA SUPREME COURT; BERNETTE J. JOHNSON, Chief Justice of the Louisiana Supreme Court; SCOTT J. CRICHTON, Associate Justice of the Louisiana Supreme Court for the Second District; JAMES T. GENOVESE, Associate Justice of the Louisiana Supreme Court for the Third District; MARCUS R. CLARK, Associate Justice of the Louisiana Supreme Court for the Fourth District; JEFFERSON D. HUGHES, III, Associate Justice of the Louisiana Supreme Court for the Fifth District; JOHN L. WEIMER, Associate Justice of the Louisiana Supreme Court for the Sixth District; UNIDENTIFIED PARTY, successor to the Honorable Greg Guidry as Associate Justice of the Louisiana Supreme Court for the First District,

Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NO. 2:19-CV-11962, HONORABLE LANCE M. AFRICK, PRESIDING

BRIEF OF DEFENDANTS-APPELLEES THE LOUISIANA STATE BAR ASSOCIATION AND JUSTICES OF THE LOUISIANA SUPREME COURT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

The Plaintiff-Appellant has requested oral argument. The Defendants-Appellees do not believe oral argument is necessary. The district court's decision to dismiss the Plaintiff's claims was correct, and the Seventh Circuit decided a similar challenge to mandatory bar membership by summary affirmance. *See Jarchow v. State Bar of Wisconsin*, No.19-3444 (7th Cir. Dec. 23, 2019). In the event this Court grants the Appellant's request for oral argument, the Appellees request the opportunity also to present argument.

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STATEMENT OF THE ISSUES

I. Does the Plaintiff have standing to challenge his membership in the Louisiana State Bar Association ("LSBA"), its use of his dues, and its *Keller* procedures, or are his claims merely speculative, when he has not alleged any non-germane or objectionable speech by LSBA, not raised a *Keller* objection to any LSBA expenditure, and not identified any LSBA activities that he was prevented from objecting to because of an alleged lack of notice?

II. Are statutorily mandated bar dues that fund LSBA's professional and community support programs a form of state tax such that the Tax Injunction Act and abstention doctrines prohibit the exercise of federal jurisdiction over the Plaintiff's challenge to collection of LSBA dues?

III. Do *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *Lathrop v. Donohue*, 367 U.S. 820 (1961), which hold that mandatory bar association dues do not violate members' First Amendment rights to free speech or association, foreclose the Plaintiff's First Amendment challenge to a requirement that Louisiana attorneys pay dues to the LSBA?

STATEMENT OF THE CASE

This lawsuit rests on the ill-founded hope that the United States Supreme Court will dramatically extend its holding in a case involving a public-sector union deducting agency fees from non-members' wages, *Janus v. AFSCME*, 138 S. Ct. 2448 (2018); overrule its own longstanding precedent; and hold that integrated bar associations[1] are unconstitutional. The Plaintiff, however, lacks standing to bring a lawsuit challenging this issue, no matter how passionate he and his attorneys may be about their cause, and the Court lacks subject matter jurisdiction over his claims. Moreover, *Janus* did not overrule the Supreme Court cases confirming the constitutionality of integrated bar associations. A discussion of the LSBA's history, structure, funding, and services is foundational to demonstrating why the district court correctly dismissed the Plaintiff's federal lawsuit, which, in essence, sought an advisory opinion declaring the LSBA unconstitutional.

I. Background

A. History of the LSBA.

The LSBA was created after nearly 100 years of trial and error demonstrated that an integrated bar established by the Louisiana Legislature and the Louisiana

[1] An integrated bar is "an association of attorneys in which membership and dues are required as a condition of practicing law in a State." *Keller*, 496 U.S. at 5 (1990). Deborah L. Rhode & Geoffrey C. Hazard, Jr., Professional Responsibility and Regulation, p.9 (2d ed. 2007) ("About two-thirds of the states have 'integrated' bars, which require lawyers to belong to state bar associations as a condition of practice.").

Supreme Court could best serve the needs of the profession and the general public. Louisiana's first bar association, the New Orleans Law Association, began in 1847 with a small group of New Orleans attorneys who sought to obtain professional advantages through the creation and use of a members-only library and through special relationships with the Legislature and Louisiana Supreme Court.[2] At the turn of the century, the New Orleans Law Association gave way to the Louisiana Bar Association ("LBA").[3] The LBA, like its predecessor, had leadership concentrated in New Orleans and focused on providing its members with professional competitive advantages over non-members.[4]

In 1934, in response to certain political battles, Governor Huey P. Long's supporters created the State's first mandatory membership bar association, the State Bar of Louisiana ("SBL"), which was intended to "demolish the [LBA] and diminish the influence of Long's opponents on the supreme court."[5] SBL's mandatory membership requirement removed (perhaps inadvertently) one of the obstacles to achieving an inclusive bar. Despite the potential opportunities for progress afforded

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[2] Warren M. Billings, A Bar for Louisiana: Origins of the Louisiana State Bar Association, Louisiana History: The Journal of the Louisiana Historical Association, Vol. 41, No. 4 (Autumn, 2000), p. 340.
[3] *See id.* at 390.
[4] *See id.* at 393; *see also* Rhode & Hazard, *supra* note 1, at 19.
[5] *See* Billings at 398.

by mandatory membership, the SBL accomplished little.[6] After the assassination of Governor Long, the Louisiana Legislature voted to repeal the SBL,[7] and sought instead to achieve a bar association that would serve attorneys and the general public alike.

In 1940, the Legislature enacted legislation to authorize and support the Supreme Court's creation of the LSBA, impose a mandatory membership requirement, and authorize collection of member dues, the non-payment of which would be grounds for suspension.[8] The Louisiana Supreme Court then promulgated a charter by rule on March 12, 1941 creating the Louisiana State Bar Association.[9]

B. Structure & Funding.

The LSBA is structured such that its leadership must be drawn from attorneys across the state. The LSBA's five officers are selected by its members, and rotating nominating committee districts ensure that no particular geographic region dominates bar leadership from year-to-year.[10] Certain LSBA affairs are administered

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[6] *See id.* at 399.
[7] *Id.* at 400.
[8] *See* La. R.S. 37:211 Reporter's Notes – 1950 (discussing Sections 2–3 of Act No. 54 of 1940).
[9] *See id.*
[10] LSBA Articles of Incorporation ("Articles"), Art. VI § 1–2, available at https://www.lsba.org/documents/Executive/ArticlesIncorporation.pdf

by the Board of Governors, the composition of which includes representatives from the different geographic districts.[11] The House of Delegates, the LSBA's policy making body, includes 225 delegates with representatives from each judicial district.[12] Bar members in each district elect their delegates.[13] All of LSBA's elective officers, Board members, and delegates serve without compensation.[14]

LSBA members must pay dues ranging from $80–200 annually, which are a form of license tax, subject to certain exemptions or waivers depending on individual circumstances.[15] Members in default of payment are given a delinquency notice; if a member fails to pay dues within 30 days, he or she ceases to be in good standing and the LSBA Treasurer certifies to the Louisiana Supreme Court that the delinquent member is ineligible to practice law.[16]

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[11] Articles, art. VII § 1.
[12] Articles, art. VIII §§ 1–2; *see also* LSBA House of Delegates 2019-2020 Roster, available at https://www.lsba.org/documents/HOD/1920HODRoster.pdf; LSBA House of Delegates Rules of Procedure, available at https://www.lsba.org/documents/HOD/HODRulesOfProcedure.pdf (providing that the LSBA section chairpersons also are ex-officio members of the House of Delegates, with the same privileges and voting as House members).
[13] Articles, art. VIII § 3.
[14] Articles, art. VII § 8, VIII § 7.
[15] LSBA Bylaws ("Bylaws"), art. I, § 1, available at https://www.lsba.org/documents/Executive/BylawsRevisedJan2020.pdf
[16] Bylaws, art. I, § 4.

C. Purpose and Services.

Through its member-leaders and with funding supplied by LSBA dues, the LSBA implements its stated purpose to "regulate the practice of law, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law, encourage cordial intercourse among its members, and, generally, to promote the welfare of the profession in the state."[17] To those ends, the LSBA's services include:

> administering the state's mandatory continuing legal education program for attorneys; maintaining a standing committee on the Rules of Professional Conduct with functions delegated to it by the Louisiana Supreme Court; maintaining thirty-one "sections" related to different areas of law, which are devoted to "the improvement of professional knowledge and skill, and in the interest of the profession and the performance of its public obligations"; providing a mediation and arbitration service for the amicable resolution of disputes between clients and lawyers; sponsoring the Judges and Lawyers Assistance Program (JLAP) to assist law students, lawyers, and judges with a variety of issues, including substance abuse, aging, and mental health issues; sponsoring a client assistance program for clients wronged by a lawyer who have no remedy; operating a member insurance program providing peer-reviewed access to business insurance solutions; and providing all of the state's attorneys with a library of information, including online resources and access to the Louisiana Bar Journal, among other activities.

ROA.327.[18]

[17] Articles, art. III, § 1.

[18] These activities and other member resources and public resources the LSBA provides are discussed in greater detail at lsba.org.

Another function of the LSBA is its interaction with the Louisiana Legislature. The LSBA's Legislation Committee is a standing committee comprised of fifteen members elected by and from the House of Delegates and ten members appointed by the President (with requirements to ensure that each nominating committee district is represented).[19] The Committee's activities are limited to "matters consistent with the mission and purposes" of the LSBA, including "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, [and] the improvement of the courts and the legal profession."[20] Recommendations for positions on pending legislation must be presented and approved by the Board of Governors pursuant to certain specific procedures.[21] Members are advised of the LSBA's legislative positions both by publication and electronic notice.[22]

The relationship between bar integration and the Legislation Committee has special significance in Louisiana. "In Louisiana, as in other civil law jurisdictions, legislation is superior to any other source of law." La. Civ. Code art. 1, 1987 Rev., cmt. c. The primacy of legislation and the absence of the doctrine of *stare decisis* provide a unique additional reason that both the Louisiana Supreme Court and the

[19] Bylaws, art. X § 1(5).
[20] Bylaws, art. XI § 1; *see also* ROA.329-30.
[21] Bylaws, art. XI § 3.
[22] Bylaws, art. XI § 5.

Legislature rely upon a single bar association that includes every Louisiana lawyer—i.e., an integrated bar organized to act for the benefit of Louisiana's citizens in the administration of Louisiana's system of justice.

While membership in the bar and payment of dues are mandatory for Louisiana attorneys, participation in the Legislation Committee or any other LSBA activities is voluntary. LSBA members are free to engage in activities that work concurrently with, or in opposition to, the LSBA's efforts individually or through other organizations, including taking different positions on legislation or taking advantage of concurrent membership in other voluntary bar associations that offer services and benefits tailored to particular interests, viewpoints, or geographic areas.

D. Objection Procedures.

Any LSBA member who objects to the use of the LSBA's mandatory dues for a cause that he or she considers political or ideological may file an objection.[23] Once an objection is filed, the pro rata amount of the objecting member's dues devoted to the challenged activity is placed promptly in escrow while the Board of Governors reviews the member's objection.[24] Within 60 days, the Board of Governors will either authorize a pro rata refund to the objecting member, or refer the objection to

[23] Bylaws, art. XII, § 1(A).
[24] *Id.*

arbitration.[25] The Plaintiff did not allege (nor can he) that the LSBA has refused refunds to members who have objected to an action of the Legislation Committee.

II. The Plaintiff's lawsuit.

The Plaintiff, Randy Boudreaux, sued the LSBA, the Louisiana Supreme Court, and each of its Justices in their official capacities (collectively, the "Defendants") in federal court, asking the district court to declare Louisiana's nearly eighty-year-old integrated bar association unconstitutional. In his Complaint, the Plaintiff raised three challenges to the LSBA:

> Claim 1: Compelled membership in the LSBA violates attorneys' First and Fourteenth Amendment rights to free association and free speech.
>
> Claim 2: The collection and use of mandatory bar dues to subsidize the LSBA's speech, including its political and ideological speech, violates attorneys' First and Fourteenth Amendment rights to free association and free speech.
>
> Claim 3: The LSBA violates attorneys' First and Fourteenth Amendment rights by failing to provide safeguards to ensure mandatory dues are not used for impermissible purposes.

The district court judge, the Honorable Lance M. Africk, correctly determined that Claim 1 was foreclosed by controlling United States Supreme Court precedent and that he lacked jurisdiction over Claims 2 and 3.

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[25] *Id.*

Specifically, as to Claim 1, the district court held the Plaintiff's challenge to the constitutionality of mandatory bar membership was foreclosed by *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990).[26] As to Claim 2, challenging the constitutionality of the collection of mandatory bar association dues, the district court held that the Tax Injunction Act ("TIA") divested it of subject matter jurisdiction.[27] Finally, the district court held the Plaintiff lacked standing as to Claim 3, which challenged the sufficiency of the LSBA's *Keller* procedures.[28] The district court, accordingly, dismissed each of the Plaintiff's three claims and explained its reasons in a fifty-seven page opinion. The district court further determined that the Louisiana Supreme Court was an improper defendant because it was not a suable entity and dismissed the claims against it with prejudice.[29] This appeal followed. The Plaintiff did not appeal the dismissal of his claims against the Louisiana Supreme Court.[30]

III. Other post-*Janus* lawsuits.

The Plaintiff's lawsuit is not tailored to any particular facts relative to his personal beliefs or the LSBA's activities. Rather, it is one of a seemingly coordinated

[26] ROA.378.
[27] ROA.341.
[28] ROA.356.
[29] ROA.375.
[30] ROA.381 ("Plaintiff appeals the district court's dismissal of each of his claims with respect to each Defendant except the Louisiana Supreme Court.").

group of federal lawsuits designed to elicit rulings that integrated bar associations are unconstitutional, notwithstanding that any such ruling would contravene existing Supreme Court precedent.

In both *Keller*, 496 U.S. at 1, and *Lathrop*, 367 U.S. at 820, the Supreme Court held that requiring membership in mandatory bar associations as a condition of practicing law does not violate the First Amendment rights of the member attorneys. *Keller*'s holding relied in part on a union case, *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977). Over time, the Court came to question and eventually overrule *Abood* in the context of another union case, *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

Even though *Janus* left *Lathrop* and *Keller* intact and unquestioned, several challenges to mandatory bar associations were filed that seized on the overruling of *Abood* as a putative basis to undermine and attack *Lathrop* and *Keller*.[31] Despite these attempts, no federal court at any level, in any jurisdiction has extended *Janus*

[31] *See Gruber v. Oregon State Bar*, No. 3:18-cv-1591 (D. Or. Aug. 29, 2018); *Crowe v. Oregon State Bar*, No. 3:18-cv-2139 (D. Or. Dec. 13, 2018); *See McDonald, et al. v. Sorrels, et al.*, No. 1:19-cv-219 (W.D. Tex. March 6, 2019); *Schell v. Gurich*, No. 5:19-cv-281 (W.D. Okla. March 26, 2019); *Jarchow v. State Bar of Wis.*, No. 3:19-cv-266 (W.D. Wis. April 8, 2019); *File v. Kastner et al.*, No. 2:19-cv-1063 (E.D. Wis. July 25, 2019); *Taylor v. State Bar of Michigan et al.*, No. 1:19-cv-670 (W.D. Mich. Aug. 22, 2019).

to depart from *Keller* and *Lathrop*'s holding that states may require attorneys to join and pay dues to a state bar association.[32]

SUMMARY OF THE ARGUMENT

The Plaintiff and his attorneys are passionate in advocating that mandatory bar membership and dues violate the First Amendment. The proper vehicle for championing this cause, however, is not a federal court lawsuit seeking an impermissible advisory opinion on the constitutionality of the LSBA. The Plaintiff lacks standing to raise the challenges asserted in his lawsuit, there are jurisdictional bars to bringing these challenges in federal court, and his claims are foreclosed by controlling precedent. The district court's judgment dismissing this case should be affirmed.

[32] *See Gruber v. Oregon State Bar*, No. 3:18-cv-1591, 2019 WL 2251826, at *12–13 (D. Or. Apr. 1, 2019) (declining to apply *Janus* and dismissing Plaintiffs' claims based on *Keller*), report and recommendation adopted, No. 3:18-cv-1591, 2019 WL 2251282 (D. Or. May 24, 2019); *Schell v. Gurich*, 409 F. Supp. 3d 1290, 1298–99 (W.D. Okla. Sept. 18, 2019) (granting motion to dismiss claims based on *Janus*, applying *Keller*, and confining case to challenging objection procedures under *Keller*); *Jarchow v. State Bar of Wis.*, No. 3:19-cv-266, 2019 WL 6728258, at *1 (W.D. Wis. Dec. 11, 2019) (granting motion to dismiss and holding that *Keller*, not *Janus*, controls), No. 19-3444 (7th Cir. Dec. 23, 2019) (affirming by summary affirmance), cert. petition pending, No. 19-831; *Fleck v. Wetch*, 937 F.3d 1112, 1118 (8th Cir. 2019) (holding *Janus* did not overrule *Keller* and affirming dismissal of the Plaintiff's claims), cert. denied (post-remand), No. 19-670, 2020 WL 1124433 (U.S. Mar. 9, 2020).

STANDARD OF REVIEW

This Court reviews the district court's ruling granting Defendants-Appellee's Rule 12(b)(1) and Rule 12(b)(6) motions to dismiss *de novo*. *Wampler v. Sw. Bell Tel. Co.*, 597 F.3d 741, 744 (5th Cir. 2010).

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Id*. Accordingly, a plaintiff filing suit in federal court "constantly bears the burden of proof that jurisdiction does in fact exist." *See id.*

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a Complaint must allege sufficient facts to "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).[33] "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. When a complaint states facts that, even if construed liberally, demonstrate that the

[33] The Plaintiff erroneously relies on the pre-*Twombly* standard. *See* App. Br. at 16 ("Under that rule [Rule 12(b)(6)], a claim should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.") (quotation omitted); *see also Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) ("The Supreme Court, however, recently retired *Conley*'s 'no set of facts' language.'"); *see also Twombly*, 550 U.S. at 546.

plaintiff's claim is foreclosed by precedent, dismissal pursuant to Rule 12(b)(6) is proper. *See, e.g.*, *In re Bertucci Contracting Co., L.L.C.*, 712 F.3d 245, 246–48 (5th Cir. 2013).

ARGUMENT

I. Introduction.

For nearly eighty years, the privilege of practicing law in Louisiana has been conditioned on an attorney's membership in and payment of dues to the LSBA.[34] Thus, all licensed attorneys in Louisiana are deemed "members of the bar." While membership is mandatory, participation is voluntary; bar members are not required to participate in any LSBA activities or functions beyond the payment of dues.[35] The LSBA then uses these dues to fund a variety of programs and services that benefit the public and its attorney members. As required by the United States Supreme Court in *Keller*, the LSBA also has published procedures to permit attorney members who object to the LSBA's use of their mandatory dues to have their objection heard and seek a refund in appropriate circumstances.[36]

[34] ROA.13 ("Louisiana State Bar Association is a Louisiana nonprofit corporation established under Act 54 of the Louisiana Legislature of 1940. La. R.S. § 37:211.").
[35] ROA.15; ROA.327-28 (citing LSBA Bylaws Art. I.).
[36] Bylaws, art. XII, § 1(A).

The Plaintiff is a New Orleans attorney who paid his bar dues each year without objection since his admission in 1996.[37] Mr. Boudreaux's federal complaint alleges that Louisiana's system of mandatory bar membership and dues payment violates his First Amendment right to freedom of speech and freedom of association, or, alternatively, that the LSBA's *Keller* objection procedures to protect his First Amendment rights are insufficient.[38] This challenge is premised on an argument to extend the Supreme Court decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), that dealt with a public-sector union's involuntary deduction of agency fees from non-members' wages. The Court's decision in *Janus*, however, is distinguishable, and the Plaintiff's challenges to the LSBA are (1) not based on any cognizable injury specific to this plaintiff or redressable by the federal courts such that Mr. Boudreaux lacks Article III standing, (2) prohibited from being heard in federal court by the Tax Injunction Act and abstention doctrines, and (3) foreclosed by the Court's controlling decisions in *Keller* and *Lathrop*. The dismissal of the Plaintiff's claims should be affirmed.

[37] ROA.16. In fact, the Plaintiff paid his 2019 LSBA dues without objection, even though that payment came due on July 1, 2019, just one month before he filed this lawsuit on August 1, 2019. ROA.21.
[38] *See* Bylaws, art. XII, § 1(A).

II. The Plaintiff lacks standing.

The Plaintiff seeks an advisory opinion on the standard of law applicable to compulsory membership in and subsidization of speech by integrated bar associations. For reasons that overlap with the explanation of why the Plaintiff's claims fail on the merits, the Plaintiff lacks standing for each of his claims.[39] The Court can and should affirm the dismissal of the Complaint on this basis alone.

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 37 (1976). "[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing has three components: (a) a concrete and particularized injury that is actual or imminent, rather than conjectural or hypothetical, (b) a causal connection between the defendant's conduct and the injury, and (c) it must be likely, as opposed to

[39] The district court found that the Plaintiff lacked standing as to Claim 3, and that the Plaintiff has standing with respect to Claim 1 because that claim broadly alleged that the requirement of mandatory LSBA membership standing alone violates the First Amendment and that he does not wish to be an LSBA member. ROA.350. The district court did not have occasion to consider, and thus did not address, whether the Plaintiff has standing with respect to the new and narrower version of Claim 1 that has been raised on appeal. The district court also did not address standing as to Claim 2 because it found that the Tax Injunction Act precluded jurisdiction over that claim.

speculative, that a favorable decision will redress the plaintiff's injury. *Id.* at 560–61.

The requirement of "standing focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 484 (1982) (quotation omitted). The commitment of a plaintiff or his counsel to a cause is not a substitute for a cognizable injury under Article III:

> In such a wealthy society as ours there is a great deal of money available for financing the promoters of causes, some of whom want to use the courts as well as public opinion and the legislatures to advance their goals. If passionate commitment plus money for litigating were all that was necessary to open the doors of the federal courts, those courts, already overburdened with litigation of every description, might be overwhelmed.

See People Organized for Welfare & Employment Rights (P.O.W.E.R.) v. Thompson, 727 F.2d 167, 172 (7th Cir. 1984) (Posner, J.). Standing ensures that cases are decided not in a "rarified atmosphere of a debating society," but instead a "concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *See id.* (quoting *Valley Forge*, 454 U.S. at 472–73).

A. The Plaintiff's membership in and payment of dues to the LSBA has not resulted in any cognizable injury (Claims 1–2).

As described in detail below, the district court correctly dismissed Claim 1 on the merits pursuant to *Lathrop*, 367 U.S. at 820.[40] Also as described below, rather than engage in a futile argument that the district court erred in this conclusion, the Plaintiff has attempted to amend and narrow Claim 1 on appeal.[41] The newly presented version of Claim 1 alleges a violation of the Plaintiff's right to freedom of association based on mandatory membership in an organization not based on membership alone, but because the organization "uses his mandatory dues for political and ideological speech that is not germane to regulating the legal profession and improving the quality of legal services . . ."[42] To the extent the Court is inclined to entertain this new version of Claim 1, the Plaintiff lacks standing because he has not alleged that the LSBA engages in non-germane speech to which he objects. Similarly, the Plaintiff lacks standing with respect to his challenge to the use of bar dues for political or ideological purposes (Claim 2) because again he has not identified any use of bar dues for allegedly non-germane speech to which he objects.

As set forth below,[43] the First Amendment protections set forth in *Keller* and *Lathrop* apply only to subsidization of non-germane speech activities. The Plaintiff

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[40] *See infra*, Section IV(B).
[41] *See id.*
[42] *See* App. Br. at 19; *see also id.* at 19 n.1.
[43] *Infra* Section IV.

lacks standing because he has not alleged nor argued that any LSBA speech is non-germane; thus, there is no cognizable injury. Accordingly, the Plaintiff's challenges to LSBA membership and dues in Claims 1 and 2 lack the requisite concrete and particularized allegations of injury and the Plaintiff's claims should be dismissed for lack of standing.

The Plaintiff's failure to allege that he objected to any particular LSBA speech provides another reason that he lacks standing. The Plaintiff contends that his failure to allege that he disagrees with any LSBA position is immaterial to standing.[44] His argument, however, cites to and relies on cases in which the plaintiffs had alleged that they disagreed with the speech at issue. *See, e.g.*, 138 S. Ct. at 2461 ("Janus refused to join the Union because he opposes 'many of the public policy positions that [it] advocates,' including the positions it takes in collective bargaining.").[45] This is not mere procedural coincidence.

To the extent the First Amendment limits compelled subsidization of speech, the injury at issue is subsidization of speech with which one disagrees. *See United States v. United Foods, Inc.*, 533 U.S. 405, 410–11 (2001) ("First Amendment

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[44] ROA.207.

[45] *See also Keller*, 496 U.S. at 4 (discussing challenge to "ideological or political activities to which [the plaintiffs] were opposed); and, *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 305 (1986) (observing that "the quality of respondents' interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is clear").

concerns apply here because of the requirement that producers subsidize speech with which they disagree."). The Supreme Court has considered and rejected the argument that the First Amendment's protections extend to *any* compelled subsidization of expressive activity, regardless of individual belief.

> *Abood*, and the cases that follow it, did not announce a broad First Amendment right not to be compelled to provide financial support for any organization that conducts expressive activities. Rather, *Abood* merely recognized a First Amendment interest in not being compelled to contribute to an organization whose expressive activities conflict with one's "freedom of belief."

Glickman v. Wileman Bros. & Elliott, 521 U.S. 457, 471 (1997). Thus, a cognizable injury in this context requires some conflict between individual belief and the subsidized expression. As the Court summarized in *Janus*:

> When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding "involuntary affirmation" of objected-to beliefs would require "even more immediate and urgent grounds" than a law demanding silence. Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns. As Jefferson famously put it, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical."

Janus, 138 S. Ct. at 2464 (citations omitted). Where, as here, there is no alleged disagreement with the subsidized speech, there is no cognizable injury.

Finally, for reasons that overlap with the Tax Injunction Act analysis,[46] the Court also lacks jurisdiction over Claim 2 because the Plaintiff does not have taxpayer standing,[47] and also because he failed to exhaust his administrative remedies relative to this claim.[48] The dismissal of Claims 1 and 2 should be affirmed on the basis that the Plaintiff lacks standing to pursue these claims under Article III.

B. The Plaintiff lacks standing to challenge the sufficiency of the LSBA's *Keller* procedures (Claim 3), having never made an objection or been denied the opportunity to make an objection to any LSBA expenditure.

The Plaintiff's standing argument for Claim 3 rests on two alternative grounds, both of which fail as a matter of law. *First*, he asserts that the LSBA does not provide him adequate information about its activities. *Second*, he alleges that it is unreasonable to require LSBA members to monitor LSBA publications for notices

[46] *See infra*, Section III(A).

[47] LSBA dues are a tax. *See infra*, Section III(A). "[S]tate taxpayers have no standing under Article III to challenge state tax or spending decisions simply by virtue of their status as taxpayers." *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 346 (2006). In taxpayer challenges like that presented in Claim 2, there is no concrete or particularized alleged injury, and any alleged future injury is not actual or imminent. *Id.* at 344.

[48] Section 1983 claims generally do not include an exhaustion requirement, but a plaintiff must exhaust available state remedies before pursuing a 42 U.S.C. § 1983 claim challenging the constitutionality of a state tax. *See Clark v. Andrews Cty. Appraisal Dist.*, 251 F. App'x 267, 268–69 (5th Cir. 2007) (unpublished).

of legislative activity. The district court correctly rejected both arguments as insufficient to confer standing.[49]

On appeal, the Plaintiff argues that he should not be required to challenge expenditures about which he knew nothing, but this argument is not supported by his Complaint. The Plaintiff has affirmatively alleged that the LSBA publishes notices of its legislative activities, and it is undisputed that the LSBA's audited financial statements are available online extending back for a period of nearly twenty years.[50] Thus, the Plaintiff is well-situated to identify any allegedly deficient or overly vague explanations for LSBA expenditures. He has not done so. And he has not identified any instance in which the LSBA failed to disclose information when it was obligated to do so. There are no specific plausible factual allegations suggesting that the Plaintiff was at an informational disadvantage that precluded him from invoking the LSBA's *Keller* procedures.

Instead of alleging facts that would show the Plaintiff has some inability to obtain information regarding LSBA expenditures, the Complaint lists a series of LSBA legislative positions without identifying any for which the LSBA's

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[49] ROA.355-56.

[50] *See* LSBA Annual Reports, available at https://www.lsba.org/NewsandPublications/AnnualReports.aspx (last accessed April 30, 2020).

explanation or notice was allegedly deficient such that he would have objected, had he been properly informed. In *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 878 (1998), the Supreme Court cautioned that, when, as here, a *Hudson* notice has been published,[51] a plaintiff cannot "file a generally phrased complaint, then sit back and require the union to prove the 'germaneness' of its expenditures without a clue" as to which expenditure is being challenged.[52] The Plaintiff's Complaint falls squarely within the Supreme Court's warning, and it confirms that the Plaintiff has not alleged any cognizable injury that would give rise to standing. *See also Summers v. Earth Island Inst.*, 555 U.S. 488, 496–97 (2009) ("[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing.").

Moreover, the allegation that it is unreasonable for LSBA members to monitor publications does not give rise to standing. The Plaintiff has not identified any instance in which monitoring LSBA publications imposed an undue burden on

[51] The Court observed in *Hudson*, 475 U.S. at 307 n.18, "The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." The Plaintiff concedes that LSBA publishes an annual report identifying general categories of expenditures. ROA.20, Compl. ¶ 54; *see also supra*, n.50.

[52] *See also* ROA.354-55.

him such that he could not exercise his right to object. Instead, he speculates that LSBA members generally may find the LSBA's methods of publication an undue burden. As the District Court observed, "[a]lleging that *other* members of the LSBA may *possibly* be facing an undue burden does not establish that Boudreaux himself is suffering from a concrete injury." ROA.356 (citing *Ellison v. Connor*, 153 F.3d 247, 255 (5th Cir. 1997)).[53]

Finally, "[t]o achieve standing, a plaintiff must have suffered an injury in fact, [. . .] and generally, must submit to the challenged policy before pursuing an action to dispute it." *LeClerc v. Webb*, 419 F.3d 405, 413 (5th Cir. 2005) (quotation and internal citation omitted). This rule extends to constitutional challenges to state policies relative to the practice of law, unless submission would be futile. *See id.* The Plaintiff has offered no excuse[54] for failing to object or otherwise seek relief through existing state procedures. The Plaintiff's failure to participate in the LSBA's

[53] *See also United Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 89–90 (1947) ("The power of courts, and ultimately of this Court to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication.").

[54] In *LeClerc*, 419 F.3d at 413–14, the Court "excused" certain plaintiffs from pursuing state remedies relative to a bar admission policy because: (1) one of the plaintiffs had, in fact, done so (unsuccessfully); (2) the policy's "flat prohibition" on the requested relief made state remedies futile, and (3) the Louisiana Supreme Court had recently considered and rejected a challenge to the policy that was factually and legally similar. None of these three factors is present here.

Keller procedures is another reason that this case lacks the requisite concrete and particularized injury.

III. The district court properly dismissed the Plaintiff's challenge to mandatory LSBA dues (Claim 2) under the Tax Injunction Act; in the alternative, abstention doctrines require dismissal of this claim.

The Tax Injunction Act ("TIA") precludes federal court jurisdiction over the Plaintiff's claim challenging the collection of mandatory LSBA dues (Claim 2). The TIA is a jurisdictional bar providing that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341.[55] Federal courts interpret the TIA as "a broad jurisdictional impediment to federal court interference with the administration of state tax systems." *United Gas Pipe Line Co. v. Whitman*, 595 F.2d 323, 326 (5th Cir. 1979); *Henderson v. Stalder*, 407 F.3d 351, 356 (5th Cir. 2005) ("[A] broad construction of 'tax' is necessary to honor Congress's goals in promulgating the TIA, including that of preventing federally-based delays in the collection of public revenues by state and local governments."). However, even without this statutory jurisdictional impediment, the Plaintiff's challenge to mandatory payment of bar dues alternatively should be dismissed under the comity doctrine or under *Burford* abstention.

[55] The Plaintiff does not contest that Louisiana's state courts provide a plain, speedy and efficient remedy. *See* ROA.340.

A. The TIA applies to bar the Plaintiff's second claim because LSBA dues are a tax, not a regulatory fee.

In enacting the TIA, Congress sought to ensure that vital local services, like those provided by LSBA (i.e., JLAP, the client assistance fund, arbitration services, and more—as described above in the statement of the case) are not interfered with or enjoined by federal courts when the states can provide an adequate remedy. *See Tramel v. Schrader*, 505 F.2d 1310, 1316 (5th Cir. 1975) (discussing Congress's purpose in enacting the TIA "to end the use of the federal courts to disrupt the collection of local revenues" and prevent unwilling taxpayers from "turning their backs on available state remedies" and being "allowed to delay or otherwise frustrate the revenue collection process by resorting to the federal courts"). In arguing that the TIA does not bar his second claim, the Plaintiff's assignment of error is confined to the narrow argument that LSBA dues are a "regulatory fee" and not a state license tax pursuant to the three-factor test in *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Mississippi*, 143 F.3d 1006, 1010–12 (5th Cir. 1998).[56]

[56] *See* App. Br. at 23. The district court analyzed this fee/tax issue and concluded that LSBA dues are a tax quoting the *Home Builders* factors and following a similar three-factor test as articulated and numbered in *Neinast v. Texas*, 217 F.3d 275, 278 (5th Cir. 2000) ("The classic fee is imposed (1) by an agency, not the legislature; (2) upon those it regulates, not the community as a whole; and (3) for the purpose of defraying regulatory costs, not simply for general revenue-raising purposes."). This Court reviews the fee/tax issue considering both *Home Builders* and *Neinast*, *see*, *e.g.*, *Henderson*, 407 F.3d at 356–58. For the purposes of responsive briefing, this analysis follows the Appellant's articulation of the *Home Builders* factors.

In his analysis in *Home Builders*, Judge Wisdom outlined three characteristics of a "classic tax": (1) it sustains the essential flow of revenue to the government, (2) it is imposed by a state or municipal legislature, and (3) it is designed to provide a benefit for the entire community. *Id.* at 1011. By contrast, the characteristics of a "classic fee" are: (1) it is linked to some regulatory scheme, (2) it is imposed by an agency upon those it regulates, and (3) it is designed to raise money to help defray an agency's regulatory expenses. *Id.* LSBA dues bear all the characteristics of a classic tax, and none of the characteristics of a classic regulatory fee. As set forth below and summarized in Figure-1, the regulatory scheme governing attorneys in Louisiana is funded by a separate assessment paid to the Louisiana Attorney Disciplinary Board ("LADB"), not by LSBA dues. This LADB assessment, which is distinct from LSBA dues, is not at issue in this lawsuit.[57]

Figure-1

Classic Tax (*LSBA Dues*)	Classic Fee (*LADB Assessment*)
1. Sustains the essential flow of revenue to the government (*creates funds to finance activities servicing licensed lawyers* and *the public*)	1. Linked to a regulatory scheme (*creates funds only to finance attorney discipline system*)
2. Imposed by a state or municipal legislature (*imposed by Supreme Court and Act 54 of the 1940 Legislature*)	2. Imposed by an agency upon those it regulates (*imposed by Supreme Court rule*)

[57] *See* La. S. Ct. Rule XIX § 8.

3. Designed to provide a benefit for the entire community (*funds a broad array of services to serve the legal system and the public*)	3. Designed to raise money to help defray an agency's regulatory expenses (*dedicated to the disciplinary system*)

First, the funds generated by LSBA dues sustain the flow of essential revenue to essential functions of state government. As an entity created by authority of the Louisiana Legislature and the Louisiana Supreme Court, the LSBA collects revenue to support and sponsor a variety of activities that serve the state's judicial system, all licensed lawyers, and the public.

Although the Plaintiff attempts to escape the TIA by arguing that LSBA dues are merely a regulatory fee, his Complaint affirmatively alleges that the LSBA is not "a regulatory body."[58] As the Plaintiff concedes,[59] the "regulatory scheme" though which professional discipline of lawyers is accomplished in Louisiana is funded through a completely separate disciplinary assessment attorneys pay to the LADB, as described in La. S. Ct. Rule XIX §§ 5 and 8. Attorney admissions likewise are handled by the Louisiana Supreme Court Committee on Bar Admissions and funded through other separate fees paid only by those applicants, as described in La. S. Ct. Rule XVII Appendix A.[60] The first *Home Builders* factor thus indicates that, while

[58] ROA.16, Compl. ¶ 31 ("The LSBA generally functions as an interest group or trade association, however, not as a regulatory body.").
[59] App. Br. at 4.
[60] App. Br. at 4.

LADB assessments are dedicated to support the disciplinary system and its regulation of attorneys, LSBA dues are in the nature of a tax supporting broader state objectives promoting the judicial system at large and serving public interests.

Second, mandatory payment of dues by attorneys was imposed by the Louisiana Legislature in 1940 when an interplay of actions between the Legislature and the Court imposed a mandatory membership requirement, and authorized the collection of member dues.[61] Thus, in Louisiana, "bar association dues . . . are state license taxes, levied by express authority of the Louisiana state legislature in Act 54 of 1940." *See Lewis v. LSBA*, 792 F.2d 493, 498 (5th Cir. 1986) (citing *In re Mundy*, 11 So. 2d 398 (La. 1942)); *see also Lipscomb v. Columbus Mun. Separate School Dist.*, 269 F.3d 494, 500 n.13 (5th Cir. 2001) (Although federal law governs the determination of what is a "tax," federal courts can take note of determinations of a state's Supreme Court).[62] Since the LSBA's inception, the Louisiana Supreme Court has understood bar dues to constitute a "license tax" upon the right to practice law. *In re Mundy*, 11 So. 2d at 400 ("The levying of dues by the Bar Association in a

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[61] *See* La. R.S. 37:211 Reporter's Notes – 1950 (discussing Sections 2–3 of Act No. 54 of 1940).

[62] The Plaintiff incorrectly claims that a federal court may not consider a state's own characterization of a charge in determining whether a charge is a tax or a fee. *See* App. Br. at 30. In fact, whether a state refers to its own charge as a tax or a fee is a factor that federal courts can and do consider. *Cumberland Farms, Inc. v. Tax Assessor, State of Me.*, 116 F.3d 943, 946 (1st Cir. 1997) ("Although such labels are not conclusive, they are entitled to some weight in the calculus of characterization.") (citation omitted).

state which has adopted the so-called integrated bar is merely a form of levying a license tax upon the right to practice law."). A license tax imposed by a legislative body is subject to the TIA. *See, e.g.*, *A Bonding Co. v. Sunnuck*, 629 F.2d 1127, 1129 (5th Cir. 1980) (vacating a district court's judgment holding a license tax upon persons engaged in the bail bond business unconstitutional because the TIA deprived the federal courts of jurisdiction).

The Plaintiff's new argument that "legislation does not *impose* [LSBA dues],—i.e., it does not *require* their collection, or set their amount" because the Louisiana Supreme Court authorizes LSBA dues, *see* App. Br. at 24, is contrary to his briefing in the district court and incorrect as a matter of law. The Plaintiff conceded below that LSBA dues "are imposed exclusively on the LSBA's mandatory members" and *cited legislative authority* for this proposition: "La. R.S. § 37:211, (citing Act 54 of 1940, which states '[t]hat the membership of the [LSBA] shall consist of all persons now or hereafter regularly licensed to practice law in this State')."[63] Moreover, the Supreme Court held in *Lathrop* that integration of a state bar association is legislative in nature regardless of whether a state's supreme court also plays some role. *See* 367 U.S. at 825 (concluding that the integration of the bar was an act legislative in nature because it "was effected through an interplay of action by the legislature and the court directed to fashioning a policy for the

[63] ROA.202.

organization of the legal profession"). The second *Home Builders* factor thus also supports the conclusion that LSBA dues are a tax.

Third, LSBA dues raise general revenue that the LSBA uses in programing and services that benefit the people of Louisiana—including non-attorneys and attorneys alike. When a charge is imposed to provide a benefit to an entire community rather than just those who pay a charge, courts view the charge as a tax. *See Home Builders*, 143 F.3d at 1012. For example, this Court in *Home Builders* held that a targeted impact fee imposed by a city only on developers in certain residential areas (with proceeds earmarked for certain narrow purposes) was nevertheless a tax because the impact fee was "designed to protect and promote the public health, safety and welfare of an entire community." *Id.* ("Indeed, it is difficult to imagine that an ordinance designed to protect and promote the public health, safety and welfare of an entire community could be characterized as anything but a tax."); *see also Henderson*, 407 F.3d at 358 (vacating the district court's judgment and holding Louisiana's specialty license plate charge was a tax because the charge was designed to benefit the general public) ("Keeler's view of the public benefit served by these expenditures may differ from that of the Louisiana legislature, but it does not transform the additional charges for specialty plates into fees designated for a 'regulatory' purpose.").

Among the LSBA services highlighted earlier in this brief, the district court found LSBA services that benefit the public include "maintaining 'sections,' related to different areas of law, devoted to 'the improvement of professional knowledge and skill, and in the interest of the profession and the performance of its public obligations'; providing a mediation and arbitration service for the amicable resolution of disputes between clients and lawyers; and sponsoring a client assistance program for clients wronged by a lawyer who have no remedy."[64] The Plaintiff does not disagree with this finding and admits that "the public may benefit from" these services.[65]

Mandatory membership in the LSBA ensures that Louisiana citizens and attorneys across the State will have access to the same essential resources that support and enhance the practice of law in Louisiana for the benefit of the general public. The third *Home Builders* factor thus also indicates that LSBA dues are a tax. As the foregoing discussion demonstrates, LSBA dues are a tax because the LSBA collect dues from its membership, as authorized by legislation, and uses those dues for programming and services that benefit the entire community.

[64] ROA.339-40.
[65] App. Br. at 26.

The Plaintiff relies on inapposite cases that do not present the same concerns with disrupting state services,[66] and older cases from other jurisdictions in which the courts' analysis was focused primarily on tracing a charge to the initial fund in which it was deposited.[67] However, in *Neinast*, this Court characterized reasoning based on the initial account where a charge may be deposited as formalistic and "unhelpful" and clarified "that the question is not where the money is deposited, but the purpose of the assessment." 217 F.3d at 278. The purpose of LSBA dues is to support a broad array of community services, including services provided to and benefiting non-attorneys. Enjoining collection of LSBA dues would disrupt these essential services contrary to the express purpose of the TIA.

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[66] *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Comm'n*, 601 F.2d 223, 225 (5th Cir. 1979) (involving neither the TIA nor any concern with disrupting state revenue, but discussing the federal Nuclear Regulatory Commission's authority to charge a licensing fee); *San Juan Cellular Tel. Co. v. Pub. Serv. Comm'n of Puerto Rico*, 967 F.2d 683, 684 (1st Cir. 1992) (discussing a Puerto Rico regulatory agency's assessment of a "periodic fee" on one privately-owned cell phone service utility).

[67] In 1982, the First Circuit concluded that concerns with disrupting state revenue in Puerto Rico were not implicated when bar dues went to "a bar association rather than to the treasury." *In re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 27 (1st Cir. 1982). And, a Wisconsin district court (that later was reversed on other grounds, and whose TIA analysis was not addressed on appeal) similarly concluded that Wisconsin bar dues were not part of the state's "revenue raising operations" because they were paid to a bar association. *Levine v. Supreme Court of Wisconsin*, 679 F. Supp. 1478, 1489 (W.D. Wis. 1988); *Levine v. Heffernan*, 864 F.2d 457, 459 n.6 (7th Cir. 1988).

Further, the Plaintiff fails to meaningfully distinguish the more recent and persuasive analysis in two federal district court cases holding that charges paid by members of mandatory bar associations were taxes. In *Livingston v. N. Carolina State Bar*, 364 F. Supp. 3d 587 (E.D.N.C. 2019), the district court held that mandatory annual District Bar[68] dues constituted a "tax" under the TIA and, accordingly, dismissed the plaintiff's § 1983 claim attacking the constitutionality of mandatory bar dues. *Id.* at 594–95. Also in *Jackson v. Leake*, 476 F. Supp. 2d 515 (E.D.N.C. 2006), the district court held that a $50 surcharge collected from North Carolina attorneys to support a public campaign finance fund for state judicial positions was a tax and, therefore, "pursuant to the Tax Injunction Act, this court lacks jurisdiction to enjoin the collection of the surcharge or enter a declaratory judgment as to its constitutionality." *Id.* at 522. These North Carolina cases are more analogous than those cited by the Plaintiff, and support the conclusion that other federal courts also would view LSBA dues as a tax under federal law.

The district court correctly determined that "the public at large benefits from key aspects of the LSBA's stated purpose—promoting the administration of justice, advancing the science of jurisprudence, and upholding the honor of Louisiana state courts." ROA.339; s*ee also Am. Council of Life Insurers v. D.C. Health Ben. Exch. Auth.*, 815 F.3d 17, 20 (D.C. Cir. 2016) (reasoning that when a benefitted group is

[68] In North Carolina, the District Bar is a subdivision of the State Bar.

broader than the payer base, a charge is more likely to be a tax). This conclusion is consistent with the Louisiana Supreme Court's decision in *In re Mundy*, 11 So. 2d at 400. Under the Fifth Circuit's three-factor test, LSBA dues are taxes subject to the TIA. The district court's dismissal of the Plaintiff's second claim should be affirmed.

B. Principles of comity also preclude federal jurisdiction.

Even if the TIA did not apply to the Plaintiff's second claim (it does), principles of comity, which are broader than the TIA's statutory restriction on jurisdiction, weigh in favor of abstention.[69] The comity doctrine pre-existed the TIA and survives as a separate basis to decline jurisdiction. Comity "serves to ensure that 'the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.'" *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 431 (2010) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). Six years after the passage of the TIA, the Supreme Court dismissed a challenge to Louisiana's unemployment compensation tax on comity grounds, holding that "federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states." *See Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943).

[69] Having already dismissed the Plaintiff's second claim based on the TIA, the district court did not reach the Defendants' argument that this claim also would be precluded by principles of comity. ROA.344.

The comity doctrine thus is broader in scope than the TIA, and applies when the following factors are implicated: "(1) plaintiffs seek review regarding matters over which the state enjoys wide regulatory latitude; (2) the claimed constitutional violation does not require heightened judicial scrutiny; (3) the plaintiffs seek aid in the federal court to improve their competitive position; (4) the state court is more familiar with state legislative preferences; and (5) the federal court's remedial options are constrained." *Normand v. Cox Commc'ns, LLC*, 848 F. Supp. 2d 619, 625 (E.D. La. 2012) (Vance, J.) (reciting the *Levin* factors for application of the comity doctrine).

Each of the *Levin* factors counsels in favor of abstention under the comity doctrine. *First*, Louisiana unquestionably enjoys wide regulatory authority over lawyers practicing in its courts and how it chooses to fund the services provided through the LSBA. *Second*, there is no protected or suspect classification that requires heightened judicial scrutiny. *Third*, if the Complaint were successful, competitive advantages likely would reemerge among attorneys who would associate in selective bar association groups.[70] *Fourth*, Louisiana's courts are more

[70] As set forth *supra* Section I(A), early voluntary bar associations in Louisiana focused on providing members with professional advantages over non-members, often to the exclusion of minorities, women, and persons practicing in rural areas.

familiar with the legislative preferences underlying the current statutes and rules providing for an integrated bar. *Fifth* and finally, Louisiana's courts are better positioned to remedy any violation that may be found—while both the TIA and the Eleventh Amendment limit this Court's ability to grant relief.[71]

Even if the Plaintiff's second claim challenging mandatory LSBA dues did not fall squarely within the TIA's prohibition on federal court jurisdiction (and it does), the doctrine of comity is broad enough to encompass this claim and provide alternate grounds for its dismissal.

C. Alternatively, if the Plaintiff were correct that LSBA dues are a regulatory fee, that determination would indicate that his claim should be dismissed nevertheless based on *Burford* abstention.

In the alternative, even if the Plaintiff were correct in arguing that LSBA dues "are part of the state's regulatory scheme for the legal profession,"[72] dismissal would still be required under *Burford* abstention, as there can be no doubt that regulation of the legal profession is a matter of substantial state concern.[73] "*Burford* abstention

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ROA.105-07. An integrated bar ensures that these competitive advantages do not reemerge and promotes inclusion among those in the legal profession. *See* ROA.173.

[71] *Lewis*, 792 F.2d at 498 (5th Cir. 1986) (holding "the district court lacked jurisdiction under the eleventh amendment to entertain a suit against the Bar Association for damages").

[72] App. Br. at 24.

[73] The district court dismissed Claim 2 after concluding that LSBA dues are a tax, and did not reach the Defendants' argument that *Burford* abstention would apply if

is proper where timely and adequate state-court review is available," which is not contested here, and "where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Wilson v. Valley Elec. Membership Corp.*, 8 F.3d 311, 314 (5th Cir. 1993) (citations and alterations omitted); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

"The *Burford* line of cases reveals several factors that are relevant in making this determination: (1) whether the cause of action arises under federal or state law; (2) whether the case requires inquiry into unsettled issues of state law or into local facts; (3) the importance of the state interest involved; (4) the state's need for a coherent policy in that area; and (5) the presence of a special state forum for judicial review." *Wilson*, 8 F.3d at 314 (citation omitted). Each of these factors weighs in favor of abstention.[74]

First, the Plaintiff's federal challenge to payment of LSBA dues is anticipatory of an action against him under state law for non-payment of bar dues

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this claim were not so barred. ROA.357 (examining only Claim 1 for potential *Burford* abstention). The Defendants maintain that *Burford* abstention should apply to all three of the Plaintiff's claims, but its application as an alternative basis for dismissal of Claim 2 is the focus of this discussion.

[74] *See also* ROA.180-82 (providing additional discussion of these five factors).

that he does not wish to pay. *Second*, inquiry into what charges should and should not be funded by mandatory dues (if any) requires inquiry into local facts about LSBA expenditures and their value to the community and the legal profession. *Third*, weighing heavily in favor of abstention, regulation of lawyers is an important, indeed foundational, state interest.[75] *Fourth*, a federal court injunction prohibiting collection of LSBA dues would disrupt Louisiana's coherent policies regarding how essential programing is funded, and require state involvement to adjust and reallocate resources. And *fifth*, bar members challenging payment of dues have a special forum to address concerns with payment of dues in the LSBA's *Keller* procedures.[76]

Given that all *Burford* factors weigh in favor of abstention, the Plaintiff's argument that the district court erred in failing to recognize LSBA dues as a regulatory fee ultimately supports Claim 2's dismissal. When properly viewed as a tax, the TIA and comity preclude Claim 2. If viewed as a regulatory fee, *Burford* abstention still supports Claim 2's dismissal. Under either analysis, this claim was properly dismissed, and the Plaintiff's remedy (if any) lies in state court.[77]

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[75] *Leis v. Flynt*, 439 U.S. 438, 442 (1979) ("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions.").

[76] *See* Bylaws, art. XII, § 1(A).

[77] Both of the leading Supreme Court cases addressing issues of mandatory bar membership, *Lathrop* and *Keller*, arose through the state court system. The Plaintiff

IV. *Keller* and *Lathrop*, rather than *Janus*, apply to this case and require the dismissal of the Complaint.

A. *Janus* does not apply to this case.

In *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990), the Supreme Court held that the collection and use of mandatory bar dues does not violate attorneys' First Amendment rights. The Plaintiff argues that *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), compels a different result on these identical issues. It does not. *Janus* did not overrule *Lathrop* or *Keller*, and the First Amendment infringement associated with the subsidization of highly-politicized and partisan union activities is not present in the context of Louisiana's integrated bar. As will be shown below, Mr. Boudreaux's argument to extend *Janus* lacks merit, and pre-*Janus* precedent required the Complaint's dismissal.

First, *Lathrop* held that integrated bar associations, including those which impose mandatory dues, do not violate bar members' right to freedom of association. *See* 367 U.S. at 843 (plurality); *accord id.* at 849 (Harlan, J., and Frankfurter, J., concurring); *id.* at 865 (Whittaker, J., concurring). *Keller*, 496 U.S. at 17, later established that the collection of mandatory fees by state bar associations does not

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incorrectly states that *Keller* left certain freedom of association issues open for "lower courts to decide." App. Br. at 19. In fact, to the extent *Keller* left any such question open, the Supreme Court left that decision to the "state courts," not simply lower federal courts. *See Keller*, 496 U.S. at 17 ("The state courts remain free, of course, to consider this issue on remand.").

violate the First Amendment if an objection and refund mechanism exists for dissenting members with respect to any bar association speech that is not "germane" to the bar association's purpose. The Supreme Court concluded that one acceptable objection and refund mechanism (now referred to as *Keller* procedures) would be for the bar to provide "an explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Id.* at 16 (quotation omitted). The district court's decision, therefore, is a straightforward application of *Lathrop* and *Keller*.

Nonetheless, in deciding that objection and refund mechanisms could protect dissenting attorneys' First Amendment rights, *Keller* relied in part on *Abood*, 431 U.S. at 209, a case involving public-sector unions that was overruled by *Janus*. Plaintiff's argument that *Janus* should control this case is based on the faulty premise that, by overruling *Abood*, the Supreme Court implicitly overruled *Keller*. It did not.

The *Abood* plaintiffs argued that their right to freedom of association had been violated by an "'agency shop arrangement,' whereby every employee represented by a union even though not a union member must pay to the union, as a condition of employment, a service fee equal in amount to union dues.'" 431 U.S. at 212. The *Abood* Court held that the plaintiffs could allege a First Amendment claim *if* there was no appropriate internal procedure by which the non-union plaintiffs could seek a

refund or reduction in service fees for any portions of fees that were used for speech activities to which the plaintiffs objected and that were not germane to the union's purpose. *See id.* at 235–36, 240–241.

In *Harris v. Quinn*, 573 U.S. 616 (2014), the Supreme Court found that *Abood* had proven unworkable. Justice Alito, writing for the majority in *Harris*, summarized the numerous cases illustrating the "conceptual difficulty" and "practical administrative problems" that pervaded challenges to public-sector union expenses in the thirty years after *Abood*. *Harris*, 573 U.S. at 636–37. *Harris* concluded that *Abood* rested on "questionable foundations" and refused to extend it. *See id.* at 645–46. *Harris* confirmed, however, that *Abood*'s "questionable foundations" did not weaken the force of *Keller*. Discussing *Keller*, Justice Alito observed that *Keller* was "consistent with" the Court's holding in *Harris*:

> This decision [*Keller*] fits comfortably within the framework applied in the present case. Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme. The portion of the rule that we upheld served the "State's interest in regulating the legal profession and improving the quality of legal services." States also have a strong interest in allocation to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices. Thus, our decision in this case is wholly consistent with our holding in *Keller*.

Harris, 573 U.S. at 655–56 (citation omitted). Thus, after *Harris*, it was clear that *Abood* may be subject to reconsideration, while *Keller* remained justifiably distinct as governing precedent.

Four years after *Harris*, the Supreme Court decided *Janus*, 138 S. Ct. at 2460, and, in an opinion again authored by Justice Alito, overruled *Abood* and held that states and public-sector unions may no longer extract "agency fees" from non-member employees without their affirmative consent. Justice Alito's opinion did not address *Keller*, nor did he need to do so; *Harris* had confirmed that *Keller* remained good law regardless of the infirmities of *Abood. See Harris*, 537 U.S. at 655–56; *see also Janus*, 138 S. Ct. 2448, 2498 (Kagan, J., dissenting) (observing that "today's decision does not question" cases outside the labor sphere and citing *Keller*, 496 U.S. at 9–17).[78]

Post-*Janus*, the holdings in *Keller* and *Lathrop* stand firm. Moreover, the First Amendment perils present in the context of unions are not present in integrated bars. For example, in *Abood* and *Janus*, only the union could negotiate with the employer on conditions of employment.[79] Thus, compelled subsidization of speech was coupled with a restriction on union members' ability to engage in alternative speech

[78] Even the Petitioner in *Janus* (who was represented by one of the same attorneys who represents the Plaintiff in this matter) acknowledged this point. *See* Reply Brief for the Petitioner, *Janus v. AFSCME*, 2018 WL 835271, *16 (filed Feb. 12, 2018) ("Nor will overruling *Abood* undermine other lines of precedent. The Court recognized that *Keller v. State Bar*, 496 U.S. 1 (1990), can stand on its own two feet in *Harris*, 134 S. Ct. at 2643–44.").
[79] *Janus*, 138 S. Ct. at 2460.

through other channels. No similar restrictions on individual speech apply to LSBA members. Similarly, unlike some of the union activities discussed in *Harris* and *Janus*, the LSBA does not support or oppose political candidates in elections or engage in partisan activities.[80] Further, developments in the context of unions have resulted in municipal bankruptcies and grossly underfunded pensions, which "have given collective-bargaining issues a political valence" that also is not present in the context of Louisiana's integrated bar.[81] Finally, the integration of Louisiana's bar does not present the conceptual or practical challenges associated with union agency fees; there has been no perpetual litigation resulting from LSBA speech.[82]

Thus, *Janus* overruled *Abood* but did not affect *Keller.* This Court need not engage in further analysis to apply the law as articulated in *Keller* and *Lathrop* to dismiss the Plaintiff's claims. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) (lower courts should leave to the Supreme Court "the prerogative of overruling its own decisions"); *see also Jarchow v. State Bar of Wisconsin*, No. 19-3444 (7th Cir. Dec. 23, 2019) (summarily affirming district court's dismissal of plaintiffs' claims as barred by *Keller*); *Fleck v. Wetch*, No. 16-1564, 2019 WL 4126356, at *5 (8th

[80] In *Janus*, for example, the Petitioner described that the union at issue engaged in a public campaign that included tactics such as having union agents "disrupt Governor Quinn's public speaking engagements, political events, and even his private birthday party/fundraiser." Brief for the Petitioner, *Janus v. AFSCME*, No. 16-1466, 2017 WL 2546472 at *33 n.17 (filed June 6, 2017).
[81] *See Janus*, 138 S. Ct. at 2483.
[82] *See id.* at 2480–81.

Cir. Aug. 30, 2019) ("*Janus* did not overrule *Keller* and did not question use of the *Hudson* procedures when it is appropriate to do so, [therefore,] we conclude after further consideration that *Janus* does not alter our prior decision . . ."); *Gruber v. Oregon State Bar*, No. 3:18-cv-1591, 2019 WL 2251826, at *9 (D. Or. Apr. 1, 2019) ("[T]his court should decline to apply *Janus* and must apply *Keller* to the cases at bar. Applying *Keller* demonstrates that plaintiffs' claims fail as a matter of law and should be dismissed."). Putting *Janus* aside, this Court should proceed to review the district court's judgment based on the governing Supreme Court precedent, *Lathrop* and *Keller*.

B. *Lathrop* requires the dismissal of the Plaintiff's challenge to LSBA mandatory membership (Claim 1).

In Claim 1, the Plaintiff asserted that an integrated bar association violates his right to freedom of association under the First Amendment.[83] This argument is foreclosed by *Lathrop*, 367 U.S. at 820, which held that integrated bar associations, including those which impose mandatory dues, do not violate bar members' right to freedom of association.[84] *See id.* (plurality); *accord id.* at 849 (Harlan, J., and Frankfurter, J., concurring); *id.* at 865 (Whittaker, J., concurring). *Lathrop*'s holding was confirmed in *Keller*, which observed:

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[83] *See* ROA.23-25, Compl. ¶¶ 70–80.

[84] The Louisiana Supreme Court long ago reached the same conclusion in the immediate aftermath of the bar's integration. *See In re Mundy*, 11 So. 2d at 401 (holding that LSBA dues do not infringe an attorney's right to free association).

> In *Lathrop* . . . a Wisconsin lawyer claimed that he could not constitutionally be compelled to join and financially support a state bar association which expressed opinions on, and attempted to influence, legislation. Six Members of this Court . . . rejected the claim.

496 U.S. at 7. Thus, the district court correctly concluded:

> The United States Supreme Court, therefore, has already answered the question presented in Boudreaux's first claim—whether states can condition the right to practice law in the state on membership in the state bar association and the payment of dues—in the affirmative.[85]

In an attempt to escape *Lathrop* as controlling precedent for Claim 1, on appeal the Plaintiff presents a new articulation of this claim never presented to the district court. More specifically, the Plaintiff recharacterizes and narrows Claim 1 to now claim a violation of his right to freedom of association based on mandatory membership in an organization that "uses his mandatory dues for political and ideological speech that is not germane to regulating the legal profession and improving the quality of legal services . . ."[86] The Plaintiff contends that this newly-narrowed free-association claim survives *Keller* and *Lathrop*.

But Claim 1 of the Complaint alleges broadly that mandatory membership in the LSBA standing alone violates the Plaintiff's freedom of association regardless of any allegedly non-germane speech.[87] Lest there be any doubt as to the nature of Claim 1, the Plaintiff emphasized in his briefing in the lower court, "[w]hat matters

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[85] ROA.377.
[86] *See* App. Br. at 19; *see also id.* at 19 n.1.
[87] *See* ROA.23-25, Compl. ¶¶ 70–80; *see also* ROA.22, Compl. ¶ 60.

is that he does not wish to *associate* with the LSBA and does not wish to pay for *any* of the LSBA's political speech, regardless of its viewpoint, Compl. ¶¶ 58–59, but is nonetheless being compelled to do so."[88] Similarly, the arguments the Plaintiff presented to the district court with respect to Claim 1 broadly maintained that mandatory membership in any bar association is unconstitutional.[89] Thus, Claim 1 does not raise the issue the Plaintiff seeks to pursue on appeal.[90] The Plaintiff never sought to amend his Complaint or to argue that Claim 1 was, in fact, premised on a narrow allegation of non-germane speech.[91] By depriving the district court of the

[88] ROA.207 (emphasis in original).

[89] *See, e.g.*, ROA.225 ("As Plaintiff has alleged, Louisiana's mandatory bar fails exacting scrutiny for the same reason: the state can achieve its goals for the legal profession without mandating bar membership or dues.").

[90] The narrower issue of mandatory membership in an organization that engages in non-germane speech was mentioned only one time before the district court in the context of Claim 1—when *the Defendants* confirmed that Claim 1 did not present this issue. *See* ROA.289 ("*Keller* did not address the narrower question of whether mandatory membership in an organization that engages in non-germane speech could impinge on freedom of association . . . *Keller* does not undermine the holding in *Lathrop* or otherwise support Claim 1, which is based solely on bar membership and not on any allegedly non-germane speech.") (filed November 4, 2019).

[91] The closest the Plaintiff came to such an allegation was an argument in a footnote of his district court brief, in which he suggested that the germaneness of certain activities was "not obvious." ROA.231. In that same footnote, however, he expressly disavowed any reliance on this argument: "Plaintiff *has* identified non-germane LSBA activities . . . The Court need not pass on the issue at this stage . . . ." *Id.* n.2.

opportunity to consider and rule on such arguments, the Plaintiff has forfeited the opportunity to seek a ruling on them from this Court.[92]

Moreover, even if the Court were inclined to address this new claim, the Plaintiff's shifting position has resulted in a record ill-suited to the exercise that the Plaintiff invites the Court to undertake. In *Lathrop*, the record yielded uncertainty as to whether the plaintiff's free speech claim was based generally on the bar's engagement in political activity or its engagement in political activity to which the plaintiff was opposed. *See* 367 U.S. at 845–47 (plurality opinion). This case parallels *Lathrop* in that "[n]owhere are we clearly apprised as to the views of the appellant on any particular legislative issues," *id.* at 845–46, including whether and why appellant considers such issues non-germane. Thus, "on this record [there is] no sound basis" for adjudicating the constitutional claims. *See id.*[93]

Were the Court to entertain the Plaintiff's new version of Claim 1, however, the district court's dismissal still should be affirmed. The Plaintiff's claim on appeal

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[92] *See F.D.I.C. v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994) ("As we have held, if a litigant desires to preserve an argument for appeal, the litigant must press and not merely intimate the argument during the proceedings before the district court. If an argument is not raised to such a degree that the district court has an opportunity to rule on it, we will not address it on appeal.").

[93] The multiple separate opinions in *Lathrop* are largely attributable to the uncertainty as to the nature of the plaintiff's free speech claim. *See Lathrop*, 367 U.S. at 865 (Black, J., dissenting).

is that the bar association violates his right to freedom of association because it allegedly engages in non-germane political and ideological speech.[94] But nowhere in the Complaint does the Plaintiff identify the speech that is allegedly non-germane to the LSBA's legitimate purposes. Thus, the claim fails on its face. The district court's dismissal of Claim 1 should be affirmed.

C. *Lathrop* and *Keller* require the dismissal of the Plaintiff's challenge to the use of LSBA dues (Claim 2).

In Claim 2, the Plaintiff alleges that the LSBA's use of member dues to engage in speech, "including political and ideological speech" infringes his freedom of speech and association. This argument fails as a matter of law. Under *Lathrop*, payment of dues to an integrated bar association does not violate attorney's freedom of association when the only membership requirement is annual payment of dues.[95] Under *Keller*, an integrated bar association's use of compulsory dues to finance activities germane to the bar association's legitimate purposes does not violate an attorney's freedom of speech.[96] There is no exception for political or ideological speech; as long as such speech is germane to a bar associations' legitimate purpose and interests, it does not violate the First Amendment.[97]

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[94] *See* App. Br. at 19.
[95] 367 U.S. at 828, 843.
[96] 496 U.S. at 14.
[97] *See id.* at 13–14.

As set forth in the Complaint, the LSBA's legitimate purposes include: "to regulate the practice of law, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law, encourage cordial intercourse among its members, and, generally, to promote the welfare of the profession in the State."[98] The Plaintiff does not contest the legitimacy of any of these objectives. Although the Complaint lists certain LSBA positions, it fails to allege with any specificity that any of these positions is not germane.[99] Claim 2's dismissal also should be affirmed, as this claim is foreclosed by *Lathrop* and *Keller*.

D. *Keller* also requires the dismissal of the Plaintiff's challenge to the LSBA's procedures (Claim 3).

The Plaintiff's challenge to the sufficiency of the LSBA's objection procedures (Claim 3) also does not plausibly allege that those procedures are insufficient under *Keller*. Even if the Plaintiff *had* identified non-germane speech (he did not), this would only require the LSBA to provide adequate *Keller*

[98] ROA.16, Compl. ¶ 30.

[99] The LSBA positions listed by the Plaintiff are germane. For example, the first policy position the Plaintiff identifies is that the state should not execute anyone who has not had "their legal claims properly presented to the courts." *See* ROA.18, Compl. ¶ 41. This position is plainly germane to the legitimate purpose of promoting the administration of justice and improving the quality of legal services provided to the people of Louisiana.

procedures with respect to that non-germane speech. *Keller* provides that one appropriate objection mechanism is for the bar to set forth "an adequate explanation for the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending."[100] As the Plaintiff effectively concedes, this describes the procedure adopted by the LSBA.[101]

The Plaintiff's alleged procedural deficiencies do not provide him with a constitutional claim. For example, he complains that the LSBA Bylaws "do not specify where or when th[e] 'publication of notice' is to occur."[102] But nothing in *Keller* requires that this information be set forth in an association's bylaws, and the Plaintiff has not alleged that LSBA notices are untimely or otherwise inaccessible. Next, the Plaintiff complains that LSBA does not publish notices of "*all* of its activities."[103] Again, this allegation is not a constitutional claim because the Plaintiff does not allege that the LSBA has taken any non-germane, unpublished positions to which he objects.

The Plaintiff's conclusory allegation in Claim 3 that the LSBA's procedures are deficient is unsupported by any plausible factual allegations. The Plaintiff does

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[100] 496 U.S. at 16.
[101] *See generally* Bylaws art. XII. The Complaint outlines many of the LSBA's *Keller* procedures and incorporates the remainder by reference to the LSBA Bylaws.
[102] ROA.20, Compl. ¶ 52.
[103] ROA.20, Compl. ¶ 53 (emphasis supplied).

not identify any instance in which he would have objected to LSBA action but was unable to do so because of a deficiency in *Keller* procedures. Without any indication that the LSBA's procedures were insufficient or unworkable as to the Plaintiff (or any other LSBA member for that matter), the Plaintiff has not alleged sufficient facts to raise his right to relief on the sufficiency of the LSBA's *Keller* procedures above the speculative level, and the dismissal of his claims should be affirmed. *See Twombly*, 550 U.S. at 555.

Thus, although the district court correctly began its analysis with jurisdictional issues that led to the dismissal of Claims 2 and 3, had all three claims survived these jurisdictional issues to be addressed on the merits, each would be foreclosed by controlling Supreme Court precedent in *Keller* and *Lathrop*.

CONCLUSION

There is no subject matter jurisdiction over the Plaintiff's claims. Even if jurisdiction existed, these claims would fail on the merits because they are foreclosed by United States Supreme Court precedent. The district court's judgment dismissing the Plaintiff's claims against the Louisiana Supreme Court, its Justices, and the LSBA should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 1, 2020, the foregoing document was served, via the Court's CM/ECF Document Filing System, on all counsel of record.

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