

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

RANDY J. BOUDREAUX
Plaintiff,

v.

LOUISIANA STATE BAR ASSOCIATION, a
Louisiana Nonprofit Corporation;
LOUISIANA SUPREME COURT;
BERNETTE J. JOHNSON, Chief Justice of the
Louisiana Supreme Court;
JOHN DOE, successor to the Honorable Greg
Guidry as Associate Justice of the Louisiana
Supreme Court for the First District;
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,
Defendants.

CIVIL ACTION

Case No. 19-cv-11962

SECTION "I" (1)

Judge Lance M. Africk

Mag. Judge van Meerveld

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

The Defendants respectfully submit the attached supplemental authority to update a statement in their prior briefing in support of their Motion to Dismiss Pursuant to Rule 12(b)(6).¹ The Defendants' reply memorandum observed that the "only other district court to rule" on whether the *Janus* standard replaced *Keller* determined that it "should decline to apply *Janus* and must apply *Keller* to the cases at bar."² After the reply brief was filed, an additional district court ruled on this issue and reached the same conclusion. See *Jarchow v. State Bar of Wisconsin*, No. 2019 WL 6728258, at *2 (W.D. Wisc. Dec. 11, 2019) (dismissing plaintiffs' claims as barred by *Keller*).³

Respectfully submitted,

/s/ Eva J. Dossier

Richard C. Stanley, 8487

Eva J. Dossier, 35753

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¹ Doc. 12.

² Doc. 28, p. 7 n.11 (quoting *Gruber v. Oregon State Bar*, No. 3:18-1591, 2019 WL 2251826, at *9 (D. Or. Apr. 1, 2019), report and recommendation adopted, No. 18-1591, 2019 WL 2251282 (D. Or. May 24, 2019)).

³ For the Court's convenient reference, a copy of this authority is attached hereto as Exhibit A.

 KeyCite Blue Flag – Appeal Notification
Appeal Filed by [ADAM JARCHOW, ET AL v. STATE BAR OF WISCONSIN, ET AL](#), 7th Cir., December 16, 2019

2019 WL 6728258

Only the Westlaw citation is currently available.
United States District Court, W.D. Wisconsin.

[Adam JARCHOW](#) and [Michael D. Dean](#), Plaintiff,
v.

STATE BAR OF WISCONSIN, State Bar of
Wisconsin Board of Governors, Christopher
E. Rogers, Jill M. Kastner, Starlyn R.
Tourtillott, Kathleen A. Brost, Eric L.
Andrews and Kori L. Ashley, Defendants.

19-cv-266-bbc

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Signed 12/11/2019

Attorneys and Law Firms

[Andrew Michael Grossman](#), [David Boris Rivkin, Jr.](#), [Richard Bryan Raile](#), Baker & Hostetler LLP, Washington, DC, [Richard M. Esenberg](#), Wisconsin Institute for Law & Liberty, Inc., Milwaukee, WI, for Plaintiff.

[Kevin Michael LeRoy](#), [Roberta F. Howell](#), Foley & Lardner, LLP, Madison, WI, for Defendants State Bar of Wisconsin, State Bar of Wisconsin Board of Governors, Christopher E. Rogers, Jill M. Kastner, Starlyn R. Tourtillott.

[Roberta F. Howell](#), Foley & Lardner LLP, Madison, WI, for Defendants Kathleen A. Brost, Eric L. Andrews, Kori L. Ashley.

OPINION AND ORDER

[BARBARA B. CRABB](#), District Judge

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

violates their rights under the First Amendment to the United States Constitution. In support of their claims, plaintiffs rely primarily on  [Janus v. American Federation of State, County and Municipal Employees, Council 31](#), 138 S. Ct. 2448, 2486 (2018), in which the Supreme Court held that public sector unions may not deduct agency fees from nonconsenting employees.

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

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

It may be, as plaintiffs contend, that the Court's decision in [Janus](#) has eroded the foundation of [Keller](#). However, both sides agree that [Keller](#) still binds this court, and that only the Supreme Court can say otherwise. Plts.' Br., dkt. #25, at 3,

2019 WL 6728258

10; Dfts.' Br., dkt. #16, at 8. The Supreme Court has made it clear that "if a precedent of this Court has direct application in a case [here, Keller], yet appears to rest on reasons rejected in some other line of decisions, [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."  [Agostini v. Felton](#), 521 U.S. 203, 237 (1997). See also  [Price v. City of Chicago](#), 915 F.3d 1107, 1119 (7th Cir. 2019) (applying Agostini). Because this court is bound by Keller, and because the parties agree that plaintiffs' challenges fail under Keller, plaintiffs' claims fail in this court. Therefore, I will grant defendants' motion to dismiss plaintiffs' claims. Plaintiffs must seek relief in a higher court.

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

ORDER

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

All Citations

Slip Copy, 2019 WL 6728258

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