

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

RANDY J. BOUDREAUX,

Plaintiff,

v.

LOUISIANA STATE BAR
ASSOCIATION, et al.

Defendants,

CIVIL ACTION

Case No. 2:19-cv-11962

SECTION “I” (1)

Judge Lance M. Africk

Magistrate Judge Janis van Meerveld

**PLAINTIFF’S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Pursuant to the Court’s Order filed May 13, 2022, (Doc. 85), Plaintiff submits his proposed findings of fact and conclusions of law:

I. Findings of Fact

1. Randy Boudreaux has been a member of the Louisiana State Bar Association (“LSBA”) since 1996 and continues to be a member in good standing.
2. Mr. Boudreaux is required to be a member of the LSBA to practice law in Louisiana.
3. The LSBA is an “integrated” or “mandatory” bar association.
4. The LSBA collects dues and provides notice of the amounts of annual dues on its website.
5. The Louisiana Disciplinary Board administers Louisiana’s lawyer discipline and disability system pursuant to Louisiana Supreme Court Rule XIX.
6. The LSBA does not handle attorney disciplinary matters for the regulation of the profession.

7. All attorneys licensed in Louisiana must pay an annual “assessment” to the Louisiana Disciplinary Board.
8. Louisiana Supreme Court Rule XVII governs admission to the bar in Louisiana.
9. The LSBA does not handle the admission or licensing of new attorneys.
10. Louisiana Supreme Court Rule XXX governs mandatory continuing legal education.
11. If Mr. Boudreaux were to fail to pay his annual dues to the LSBA, he could be subject to attorney discipline, including disbarment.
12. Lawyers licensed to practice law in Louisiana who fail to pay bar dues to the LSBA are subject to discipline, including disbarment and revocation, imposed exclusively by the Louisiana Supreme Court, as enforced by its Justices.
13. On July 8, 2021, the LSBA Board of Governors, using the emergency authority granted to it in its By-laws, voted to suspend the Legislation Committee of the LSBA and all legislative activities until the House of Delegates convened for its January 2022 meeting.
14. As of August 2021, the LSBA had more than 22,000 members.
15. With respect to the LSBA’s activities, Mr. Boudreaux disagrees with positions the LSBA has taken and agrees other positions but nevertheless objects to the LSBA taking those positions.
16. The LSBA’s annual dues are authorized by Order of the Louisiana Supreme Court pursuant to the 1940 legislative memorial.
17. Mr. Boudreaux has paid his dues to the LSBA each year from 1996 to the present and has not submitted an objection to doing so other than this lawsuit.
18. Mr. Boudreaux paid his bar dues in July 2021 for the 2021/2022 bar membership year.

19. Mr. Boudreaux will not owe bar dues until July 2022, at the earliest.
20. Mr. Boudreaux maintains that for a period of years he has repeatedly observed the LSBA engaging in political and ideological speech and other conduct with which he disagrees.
21. Other than through his submissions in this litigation, Mr. Boudreaux has not sent the LSBA any objection about any LSBA policy position after filing the Complaint.
22. Mr. Boudreaux has not sought a refund of any portion of his LSBA dues payment or filed any refund claim using the LSBA's *Hudson* procedures.
23. Mr. Boudreaux has a functioning email address at which he receives LSBA communications.
24. Mr. Boudreaux receives email notices of the LSBA's publication of Bar Briefs.
25. Mr. Boudreaux receives the *Louisiana Bar Journal* via U.S. Mail.
26. Mr. Boudreaux did not advise the LSBA that he objects to the sufficiency of its notice procedures until he filed the Complaint.
27. The only activities of the LSBA Mr. Boudreaux criticizes are the ones of which he has become aware that are identified in the Complaint, Motion for Preliminary Injunction, Mr. Boudreaux's discovery responses, and in his deposition testimony.
28. Defendants contend that the activities criticized by Plaintiff are germane, while Mr. Boudreaux contends they are non-germane.
29. The Louisiana Supreme Court Rules and the LSBA By-laws currently allow the LSBA to engage in legislative advocacy.
30. The Louisiana Supreme Court Rules and the LSBA By-laws can be amended in the future.

31. The LSBA provided notice of the “69th Annual Red Mass” hosted by the St. Thomas More Catholic Lawyers Association through its official Twitter account, in posts made on September 27, 2021, and October 1, 2021.
32. The LSBA uses member dues to fund publication of its website.
33. Defendants contend that content on the LSBA’s website is germane.
34. Defendants contend that content of the LSBA’s Twitter feed is germane.
35. The LSBA has engaged in non-germane conduct.
36. The LSBA has engaged in non-germane conduct after the Fifth Circuit Court of Appeals decision in *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
37. The LSBA has engaged in non-germane conduct after the Louisiana Supreme Court amended Supreme Court Rule XVIII in September 2021.
38. The LSBA engages in the same kind of conduct post-*McDonald* as it did pre-*McDonald*.
39. The LSBA’s Bar Governance Committee issued positions on matters of public policy post-*McDonald*.
40. The LSBA publishes content, including through social media, post-*McDonald* similar to content it published pre-*McDonald*.
41. The LSBA maintains the same policies related to germane conduct pre- and post-*McDonald*.
42. The LSBA’s past conduct creates a sufficient likelihood that the germaneness of its conduct will be questioned in the future.
43. The LSBA uses Plaintiff’s bar dues to pay for its activities.
44. The LSBA does not provide notice to its members of its activities in sufficient detail to permit Plaintiff to discern whether each bar activity is germane.

45. The LSBA does not provide notice to its members of its expenditures in sufficient detail to permit Plaintiff to discern the amount of his dues the LSBA is using to fund specific activities.
46. The LSBA does not inform members of whether past expenditures of member dues on its activities, including government relations, were germane to the practice of law.
47. Mr. Boudreaux objects to the LSBA's conduct but has not done so through the LSBA's objection process.
48. The LSBA has not refunded Mr. Boudreaux any of his bar dues because the LSBA engaged in non-germane conduct or because Mr. Boudreaux objected.
49. The LSBA's objection-procedures do not afford Plaintiff a meaningful opportunity to object to LSBA expenditures.
50. The LSBA is a nonprofit corporation established under Act 54 of the Louisiana Legislature of 1940.
51. The LSBA has more than 20,000 members.
52. The Louisiana Supreme Court through its Justices are responsible for enforcing laws requiring membership and funding of the LSBA as a condition of practicing law in Louisiana.
53. The Justices of the Louisiana Supreme Court have been sued in this action in their official capacities.
54. The LSBA functions as an interest group or trade association.
55. The LSBA does not function as a regulatory body.
56. The LSBA uses member dues to engage in expressive conduct, including political and ideological speech.
57. The LSBA uses member dues to support its committees, including committees that issue and promulgate policy positions of the LSBA.

58. The LSBA has issued policy positions on subjects non-germane to the practice of law.
59. The LSBA uses member dues to engage in legislative advocacy.
60. The LSBA has lobbied for and against bills before the Louisiana legislature the subject matter of which was non-germane to the practice of law.
61. Since 2007, the LSBA has taken positions on more than 407 bills considered by the Louisiana legislature.
62. Since 2014, the LSBA has taken policy positions on 10 bills in the 2019 regular session, 46 bills in the 2018 regular session, 18 bills in the 2017 regular session, and 39 bills in the 2016 regular session, and at least 23 bills in the 2015 regular session of the Louisiana legislature, with the subject matter of those bills being non-germane.
63. The LSBA engages in conduct unrelated to administering a formal system for regulating and disciplining attorneys.
64. The LSBA publishes content through its publications and social media that is non-germane to the practice of law.
65. Given the LSBA's interpretation of "germaneness," the LSBA will likely engage in non-germane conduct in the future.
66. Given the LSBA's history of engaging in non-germane conduct, the LSBA will likely engage in non-germane conduct in the future.
67. Mr. Boudreaux's rights under the First and Fourteenth Amendments of the U.S. Constitution are violated by virtue of Louisiana's mandatory bar membership scheme.
68. Mr. Boudreaux will be compelled to remain a dues-paying member of the LSBA so long as he wishes to continue to practice law in Louisiana.
69. Mr. Boudreaux's forced association with the LSBA constitutes a continuing violation of his rights.

70. Even if the LSBA were to promise to engage in only germane conduct in the future, Mr. Boudreaux would suffer the continuing burden of having to monitor the LSBA's activity.
71. Absent the declaratory and injunctive relief Mr. Boudreaux requests in his Complaint, Defendants and their agents will continue to implement the challenged laws, rules, policies, and practices that deprive Mr. Boudreaux of his rights.
72. The deprivation of Mr. Boudreaux's constitutional rights is causing him irreparable harm for which there is not adequate remedy at law.
73. A formal system for regulating and disciplining lawyers exists in Louisiana through the Louisiana Disciplinary Board.
74. Louisiana could readily serve its interest in improving the quality of legal services and regulating the legal profession without forcing attorneys to associate with and subsidize the LSBA.
75. Other states have voluntary bar associations.
76. Other states regulate and discipline lawyers directly through agencies other than a mandatory bar association.
77. The Defendants could require that the LSBA use its member dues only for regulatory activities, as California and Nebraska have done.
78. Defendants could create an "opt in" system for attorneys vis-à-vis membership in the LSBA.

II. Conclusions of Law

1. Under Louisiana's mandatory-bar-membership scheme, Defendants violate Mr. Boudreaux's First and Fourteenth Amendment rights to free association and free speech.
2. Under Louisiana's mandatory-bar-membership scheme, Defendants violate Mr. Boudreaux's First and Fourteenth Amendment rights to free association and free speech because the LSBA engages in non-germane conduct, as that term is applied under *Keller v. State Bar of California*, 496 U.S. 1 (1990) and *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
3. Under Louisiana's mandatory-bar-membership scheme, the LSBA's collection and use of mandatory bar dues to subsidize its conduct violates Plaintiff's First and Fourteenth Amendment rights of association and speech.
4. Under Louisiana's mandatory-bar-membership scheme, the LSBA's collection and use of mandatory bar dues to subsidize its conduct violates Plaintiff's First and Fourteenth Amendment rights of association and speech because the LSBA engages in non-germane conduct, as that term is applied under *Keller v. State Bar of California*, 496 U.S. 1 (1990) and *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
5. The LSBA violates Plaintiff's First and Fourteenth Amendment rights by failing to provide adequate "*Hudson*" safeguards as those guaranties are understood pursuant to *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
6. Plaintiff has standing to pursue his claims.
7. The Justices of the Louisiana Supreme Court have been sued in their official capacities only.
8. The relief Plaintiff seeks is prospective such that the *Ex Parte Young* exception to Eleventh Amendment immunity applies.
9. Plaintiff's claims have not been rendered moot.

10. Plaintiff's claims are not time-barred.
11. The activities criticized by the Plaintiff in this action are not germane as that term is applied in *Keller v. State Bar of California*, 496 U.S. 1 (1990) and *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).
12. The LSBA's "*Hudson*" procedures are not an adequate safeguard relative to any alleged non-germane activities.
13. Plaintiff is entitled to his requested declaratory relief..
14. Plaintiff is entitled to his requested injunctive relief.

Respectfully submitted June 3, 2022 by:

/s/ Scott Day Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties.

/s/ Scott Day Freeman
SCOTT DAY FREEMAN