

**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**

PRE-TRIAL ORDER

Pursuant to the Court’s Scheduling Order filed February 11, 2022, (R. Doc. 73) and Rule 16 of the Federal Rules of Civil Procedure, the Court orders as follows:

1. Pre-trial conference conducted on May 13, 2022.
2. Counsel:

a. Plaintiff

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b. Defendants

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3. Parties:

- a. Randy Boudreaux (Plaintiff). Mr. Boudreaux is an attorney licensed and in good standing in the State of Louisiana and a member of the Louisiana State Bar Association (“LSBA”). He objects to being required to join, associate with, be counted as a member of, and pay dues to the LSBA to practice his chosen profession in the state.
- b. Louisiana State Bar Association (Defendant).
- c. The Justices of the Louisiana Supreme Court, in their official capacities (Defendants).

4. Jurisdiction:

Plaintiff’s claims for relief are brought under 42 U.S.C. §§ 1983 and 1988. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and authority to grant declaratory and other relief under 28 U.S.C. § 2201 and 2202. Some defenses raised by the Defendants as to whether

such relief is appropriate in this case (e.g., standing, the Eleventh Amendment, and mootness) are jurisdictional in nature, and are more fully set forth in Section 9 of this Order.¹

5. Pending or Contemplated Motions:

Plaintiff's Motion for Preliminary Injunction (R. Doc. 48) is pending. The parties do not contemplate other motions.

6. Brief Summary of Material Facts:

a. By Plaintiff:

Plaintiff Randy Boudreaux is a duly licensed attorney under the laws of Louisiana and is a dues-paying member of the LSBA in good standing. Louisiana law requires Mr. Boudreaux to join, associate with, and pay dues to, the LSBA as a condition of practicing law in the state. The LSBA generally functions as an interest group or trade association for lawyers and not as a regulatory body. The LSBA does not handle attorney admissions or disciplinary matters and only recently began handling continuing legal education and legal specialization. The LSBA uses its authority, built upon its mandatory membership, to engage in legislative advocacy, public policy proclamations, and other activities non-germane to the practice of law. Mr. Boudreaux objects to his compelled association with the LSBA. He objects to his compelled association with the LSBA given that it has engaged, and continues to engage, in non-germane conduct. He objects to having his compelled dues used for non-germane purposes. And he objects to the LSBA's procedure for ostensibly "refunding" members an amount of money the LSBA contends cure any violations of member's First and Fourteen Amendment rights.

¹ The Defendants recognize that the U.S. Court of Appeals for the Fifth Circuit ruled that the Tax Injunction Act does not apply to this lawsuit. The Defendants respectfully reserve the right to re-urge the argument that the Tax Injunction Act applies if this case is ever considered by the Fifth Circuit en banc or the U.S. Supreme Court.

Mr. Boudreaux asks the Court to declare that Defendants have violated his rights to freedom of speech and association by enforcing Louisiana statutes, rules, and regulations requiring mandatory membership in the LSBA, including mandatory dues payments. He also asks the Court to declare that Defendants may not require an attorney to pay mandatory dues to subsidize the LSBA's speech or any of its non-germane activities unless the member has affirmatively consented to having dues used for those purposes as required by *Janus*, 138 S. Ct. 2448. Mr. Boudreaux also asks the Court to permanently enjoin Defendants and others from enforcing Louisiana Revised Statutes sections 37:211 and 37:213, which mandate membership in the LSBA, and Rule 1.1(c) of the Louisiana Rules of Professional Conduct, which requires payment of membership fees to the LSBA. Alternatively, he asks the Court to declare that Plaintiff's rights to freedom of speech and association are violated by the LSBA's failure to implement the minimum safeguards required by *Keller*, and permanently enjoin Defendants from collecting mandatory bar dues until the LSBA adopts the minimum safeguards *Keller* requires.

b. By Defendants:

This lawsuit rests on the ill-founded hope that the United States Supreme Court will overrule its own longstanding precedent and the Fifth Circuit's decision in *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021),² and hold that integrated bar associations are unconstitutional.³ Unless and until that happens, *McDonald* is the law of the land. The evidence at trial will show that the LSBA complies with *McDonald*.

² *McDonald* reconfirms that integrated bar associations are constitutional and provides an extensive analysis of the types of speech that a bar association constitutionally may fund through mandatory dues (i.e., speech that is "germane" to the association's legitimate purposes).

³ The U.S. Supreme Court has repeatedly denied petitions for certiorari that seek this result. See *Firth v. McDonald*, 142 S. Ct. 1442 (Apr. 4, 2022); *Schell v. Darby*, 142 S. Ct. 1440 (Apr. 4, 2022); *Crowe v. Or. State Bar*, 142 S. Ct. 79 (2021); *Jarchow v. State Bar of Wis.*, 140 S. Ct. 1720, 1721 (2020).

Most of Mr. Boudreaux's Complaint focuses on lobbying activity that is obsolete.⁴ After *McDonald*, the Louisiana Supreme Court adopted Rule XVIII, § 6. *See* R. Doc. 64 (Notice of Louisiana Supreme Court Rule Change). That rule codifies the constitutional germaneness standard and shifts responsibility for legislative policy and positions from the Legislation Committee and House of Delegates respectively to the Board of Governors. Accordingly, the House of Delegates (and the Legislation Committee) are no longer responsible for the LSBA's policy positions and advocacy. Instead, the Board of Governors is the sole LSBA entity that can perform such functions, and its activities are limited to constitutionally germane topics such as those identified in *McDonald*. Further, the LSBA has amended its By-Laws, rescinded the criticized House of Delegates legislative policies, and eliminated the Legislation Committee. *See* R. Doc. 71 (Notice of Adoption of LSBA Resolutions Implementing Louisiana Supreme Court Rule XVIII, § 6).⁵ Finally, the draft budget for 2022-2023 confirms that the LSBA is no longer paying for a lobbyist.⁶ While the LSBA maintains that its prior legislative positions were germane and stands ready to prove this contention at trial, this issue is moot.

Confronted with (although not conceding) mootness on the issues raised in his Complaint, Mr. Boudreaux has pivoted to criticizing a handful of LSBA Twitter messages promoting its

⁴ The LSBA maintains that its prior legislative positions were germane, although the issue has become merely an academic once since the underlying legislative policies have all been repealed and decision-making on any hypothetical future legislative positions is subject to strict procedural safeguards to avoid the need for any further litigation.

⁵ Although the House of Delegates no longer maintains legislative policy provisions, it concurrently passed several general policy provisions to reflect the policies of the LSBA. Mr. Boudreaux has not challenged the current policy positions as non-germane, nor can he. The policy provisions relate to attorney-client privilege and work product, the taxation of legal services, access to justice through pro bono services, compensation for members of the state judiciary, the unauthorized practice of law, and diversity within the legal profession. *See* R. Doc. 71-3 (new general policy positions).

⁶ The draft budget reflects that the LSBA anticipates spending approximately \$10,000 to monitor for legislation that is germane under *McDonald* and within the scope of Rule XVIII, § 6.

Wellness Wednesday Program,⁷ advising members of volunteer opportunities relative to providing free Halloween costumes or Secret Santa presents to needy children, and notifying members of the Red Mass hosted by the St. Thomas More Catholic Lawyers.⁸ The Twitter posts are not within the scope of the Complaint and are not a “major activity” of the bar.⁹ Nonetheless, the LSBA is prepared to demonstrate the germaneness of these messages tweet-by-tweet.¹⁰

Mr. Boudreaux’s final claim is that the LSBA does not provide sufficient notice of its activities. But Mr. Boudreaux was unable to identify any deficiency in the LSBA’s notice procedures during his deposition. While he contended that the “lobbying” expense line item in prior budgets should have been broken down into germane and non-germane activity, that contention is moot given that: (1) the LSBA no longer has a lobbying budget, and (2) Mr. Boudreaux cannot identify any ongoing non-germane legislative activity.¹¹

⁷ Wellness Wednesday is an initiative to promote attorney mental and physical health, including through accredited CLE programming.

⁸ Historically, the LSBA has frequently scheduled its annual Memorial Exercises on the same day as the Red Mass. The Memorial Exercises take place at the Louisiana Supreme Court and honor deceased members of the Bench and Bar. Attorneys can choose whether to attend the Red Mass, the Memorial Exercises, or neither one.

⁹ See *Lathrop v. Donohue*, 367 U.S. 820, 839 (1961) (“[I]t seems plain that legislative activity is not the major activity of the State Bar. The activities without apparent political coloration are many.”); *Schell v. Chief Just. & Justs. of Oklahoma Supreme Ct.*, 11 F.4th 1178 n.11 (10th Cir. 2021) (“A potential open issue is to what degree, in quantity, substance, or prominence, a bar association must engage in non-germane activities in order to support a freedom-of-association claim based on compelled bar membership.”).

¹⁰ See Louisiana Rules of Professional Conduct, Rule 1.1 (competence); Rule 1.16 (physical or mental impairment); Rule 1.6 (confidentiality); Louisiana District Court Rules, Rule 6.2(k) (“Attorneys . . . should abide by the Louisiana Code of Professionalism”); Louisiana Code of Professionalism (“I will work to protect and improve the image of the legal profession in the eyes of the public”).

¹¹ That contention also fails because the LSBA’s prior activities were all germane such that there was no need for the type of budget distinction suggested by Mr. Boudreaux.

7. Listing of All Uncontested Material Facts:

- a. Randy Boudreaux has been a member of the LSBA since 1996 and continues to be a member in good standing.
- b. Mr. Boudreaux is required to be a member of the LSBA to practice law in Louisiana.
- c. The LSBA is an “integrated” or “mandatory” bar association.
- d. The LSBA collects dues and provides notice of the amount of annual dues on its website.
- e. The Louisiana Disciplinary Board administers Louisiana’s lawyer discipline and disability system.
- f. Louisiana Supreme Court Rule XVII governs admission to the bar in Louisiana.
- g. Louisiana Supreme Court Rule XXX governs mandatory continuing legal education.
- h. 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.
- i. As of August 2021, the LSBA had more than 22,000 members.
- j. The LSBA has not required Mr. Boudreaux to participate in any of its activities.
- k. To his best recollection, Mr. Boudreaux has not participated in any LSBA activities apart from the payment of his mandatory dues.
- l. With respect to the LSBA’s activities, Mr. Boudreaux agrees with some of the positions the LSBA has taken but nevertheless objects to the LSBA taking those positions.
- m. The LSBA’s annual dues are authorized by Order of the Louisiana Supreme Court pursuant to the 1940 legislative memorial.

- n. Mr. Boudreaux has paid his dues to the LSBA each year from 1996 to the present and has not submitted any objection to doing so other than this lawsuit.
- o. Mr. Boudreaux paid his bar dues in July 2021 for the 2021/2022 bar membership year.
- p. Mr. Boudreaux will not owe bar dues until July 2022, at the earliest.
- q. Mr. Boudreaux maintains that for a period of years he has repeatedly observed the LSBA engaging in political and ideological speech with which he disagrees.
- r. Mr. Boudreaux has not sent an objection to the LSBA about any LSBA policy or position before filing the Complaint.
- s. Other than through his submissions in this litigation, Mr. Boudreaux has not sent the LSBA any objection about any LSBA policy or position after filing the Complaint.
- t. 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.
- u. Mr. Boudreaux has a functioning email address at which he receives LSBA communications.
- v. Mr. Boudreaux receives email notices of the LSBA's publication of Bar Briefs.
- w. Mr. Boudreaux does not dispute that he received email notices of the publication of Bar Briefs potentially at issue in this litigation.
- x. Mr. Boudreaux receives the *Louisiana Bar Journal* via U.S. Mail.
- y. Mr. Boudreaux does not dispute that he received via U.S. Mail the issues of the *Louisiana Bar Journal* potentially at issue in this litigation.
- z. The LSBA's "Bar Briefs" provided notice of the positions of the Legislation Committee and directed members to a website where they can obtain more information on those positions.
- aa. Mr. Boudreaux did not advise the LSBA that he objects to the sufficiency of its notice procedures until he filed the Complaint.

- bb.** Mr. Boudreaux is unaware of any instance in which the LSBA has declined to provide requested information about its activities to a member.
- cc.** Mr. Boudreaux is unaware of any instance in which he has been criticized individually for an activity of the LSBA.
- dd.** 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.
- ee.** Defendants contend that the criticized activities are germane.
- ff.** The Louisiana Supreme Court Rules and the LSBA By-laws currently allow the LSBA to engage in legislative advocacy.
- gg.** The LSBA has not engaged in any legislative advocacy since *McDonald*.
- hh.** 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.
- ii.** The LSBA uses member dues to fund publication of its website.
- jj.** Defendants contend that content on the LSBA's website is germane.

8. Listing of Contested Issues of Fact:

- a.** Whether the LSBA engages in conduct post-*McDonald* similar to the conduct it engaged in pre-*McDonald*.
- b.** Whether the LSBA has taken policy positions post-*McDonald* similar to policy positions it took pre-*McDonald*.
- c.** Whether the LSBA publishes content, including through social media, post-*McDonald* similar to content it published pre-*McDonald*.
- d.** Whether the LSBA maintains the same policies related to germane conduct pre- and post-*McDonald*.

- e. Whether the LSBA's past conduct creates a sufficient likelihood that the germaneness of its conduct will be questioned in the future.
 - f. Whether any alleged non-germane activity is a major activity of the LSBA.
 - g. Whether the Defendants have demonstrated that the LSBA intends to comply with *McDonald*.
9. Listing of Issues of Law:
- a. Whether mandatory membership in the LSBA violates Plaintiff's First and Fourteenth Amendment rights to free association and free speech;
 - b. Whether 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;
 - c. Whether the LSBA violates Plaintiff's First and Fourteenth Amendment rights by failing to provide adequate safeguards pursuant to *Keller v. State Bar of California*, 496 U.S. 1 (1990);
 - d. Whether Plaintiff has standing;
 - e. Whether the relief Plaintiff seeks is properly characterized as prospective such that the *Ex Parte Young* exception to Eleventh Amendment immunity applies;
 - f. Whether the Plaintiff's claims are moot;
 - g. Whether the Plaintiff's claims are time-barred;
 - h. Whether the activities criticized by the Plaintiff are germane;
 - i. Whether any alleged non-germane activity is a "major" activity of the LSBA pursuant to *Lathrop v. Donohue*, 367 U.S. 820, 839 (1961);¹²
 - j. Whether the LSBA's *Hudson* procedures are an adequate safeguard relative to any alleged non-germane activities; and

¹² Plaintiff does not agree that the holding of *Lathrop* creates a "majority activity" legal standard.

- k. Whether criticized activities identified for the first time in the Reply relative to the Motion for Preliminary Injunction are within the scope of the trial.

10. List and Description of Exhibits for Each Party:

The parties have agreed to stipulate as to the authenticity and admissibility of their exhibits, subject to the understanding that evidentiary issues such as hearsay and relevance can be assessed by the Court in determining the weight (if any) to give the evidence.

Plaintiff's Exhibits		
No.	Description of Exhibit	Bates Label
1.	2009 LSBA Positions Adopted by Board of Governors May 13, 2009	PLF 0001–0003
2.	LSBA Bill Status Report 06/02/2010, 2010R BOG Oppose	PLF 0004–0008
3.	LSBA Bill Status Report 06/02/2010, 2010R BOG Oppose	PLF 0009–0013
4.	LSBA Bill Status Report 05/12/2010, BOG Support Bills	PLF 0014–0018
5.	LSBA Bill Status Report 08/18/2011, 11R Support Positions	PLF 0019–0022
6.	LSBA Bill Status Report 08/18/2011, 11R Oppose Positions	PLF 0023–0026
7.	LSBA Bill Status Report 8/18/2011, 11R Restricted Positions	PLF 0027–0028
8.	LSBA Bill Status Report 08/18/2011, 11R Support Positions	PLF 0029–0032
9.	LSBA Bill Status Report 05/12/201, BOG Support Bills	PLF 0033–0037
10.	The Capitol Group LSBA Final Report 06/05/2012	PLF 0038–0052
11.	The Capitol Group LSBA 2013 Final Report with Bar Position 06/19/2013	PLF 0053–0059
12.	Final Disposition of LSBA Bill Positions 2014 Regular Session	PLF 0060–0062
13.	Final Disposition of LSBA Bill Positions 2015 Regular Session	PLF 0063–0066
14.	LSBA Final Report for 2016 Regular Session, 16 Reg Session Final Slate	PLF 0067–0081

15.	LSBA 2017 Lobbyist Report, Bill Status Report 08/15/2017	PLF 0082–0089
16.	2018 R LSBA BOG Positions 05/01/2018	PLF 0090–0103
17.	2019 R LSBA BOG Positions Bill Status Report 04/29/2019	PLF 0104–0106
18.	LSBA Board of Governors Positions 2020R Bill Status Report 04/27/2022	PLF 0107–0118
19.	2021R LSBA Positions 4/19/2021	PLF 0119–0121
20.	LSBA Bill Status Report 05/15/2007	PLF 0122
21.	LSBA Legislative Positions 2008R, Board of Governors – Oppose 04/25/2008	PLF 0123– 0127
22.	LSBA Legislative Positions 2008R, Board of Governors – Oppose Unless Amended 04/25/2008	PLF 0128
23.	LSBA Legislative Positions 2008R, Board of Governors – Support 04/25/2008	PLF 0129–0131
24.	LSBA Legislative Positions 2008R, Board of Governors – Support if Amended 04/25/2008	PLF 0132
25.	LSBA HOD Policy Positions (through January 2021)	PLF 0133– 0138
26.	LSBA Twitter Posts	PLF 0139– 0153
27.	Randy Boudreaux, Janus Showed Me How to Fight for My Free Speech, Supreme Court News (Aug. 21, 2019)	PLF 0154
28.	Randy Boudreaux, Letters: Bar Associations Don’t Represent Me, Lawyer Says, The Advocate (Aug. 20, 2019)	PLF 0155–0158
29.	The U.S. Commission on Civil Rights Announces the Appointment of Advisory Committee Members for Four States, U.S. Comm’n on Civil Rights (Mar. 27, 2017)	PLF 0159–0161
30.	Email from Federalist Society Membership to Randy Boudreaux re membership renewal, Oct. 14, 2020	PLF 0162–0163

31.	By-Laws of the Louisiana State Bar Association, available at https://www.lsba.org/documents/Executive/Bylaws.pdf .	
32.	Articles of Incorporation of the Louisiana State Bar Association, available at https://www.lsba.org/documents/Executive/ArticlesIncorporation.pdf .	
33.	Information re Louisiana Attorney Disciplinary Board, available at https://www.ladb.org/ .	
34.	Resolution Proposed by the LSBA 2019-2020 Special Committee to Review House of Delegates' Policies of the Louisiana State Bar Association, available at https://www.lsba.org/documents/HOD/Res9Jan20FAI.pdf .	
35.	Declaration of Plaintiff Randy Boudreaux, Exhibit 1 to Memorandum in Support of Plaintiff Randy Boudreaux's Motion for Preliminary Injunction [Doc. 48-2].	
36.	Boudreaux Deposition Exhibit 2 - Civil Rights Complaint for Injunctive and Declaratory Relief [Doc. 1];	
37.	Boudreaux Deposition Exhibit 3 - Plaintiff Randy Boudreaux's Motion for Preliminary Injunction [Doc. 48];	
38.	Boudreaux Deposition Exhibit 4 - List of Proposed Legislation;	
39.	Boudreaux Deposition Exhibit 7 - Declaration of Dane S. Ciolino [Doc. 70-1];	
40.	Boudreaux Deposition Exhibit 8 - Declaration of Plaintiff Randy Boudreaux [Doc. 48-2];	
41.	Boudreaux Deposition Exhibit 9 – LSBA Agenda – Virtual Justice Fridays – Impactful Lawyering;	

42.	Boudreaux Deposition Exhibit 10 – LSBA website – Disclaimer of Liability and Advertisement;	
43.	Boudreaux Deposition Exhibit 11 – Louisiana Bar Journal, April/May 2022;	
44.	Boudreaux Deposition Exhibit 12 – Louisiana Bar Journal, October/November 2019;	
45.	Boudreaux Deposition Exhibit 13 - Bar Briefs, May 2020;	
46.	Boudreaux Deposition Exhibit 14 – Notice of Louisiana Supreme Court Rule Change [Doc. 64];	
47.	Boudreaux Deposition Exhibit 15 – Notice of Adoption of LSBA Resolutions Implementing Louisiana Supreme Court Rule XVIII, § 6 [Doc. 71];	
48.	Boudreaux Deposition Exhibit 16 – Plaintiff’s Objections & Responses to Defendant’s First Set of Interrogatories and Requests for Production to the Plaintiff.	
	LSBA 30(b)(6) Deposition Exhibits as follows:	
49.	LSBA Rule 30(b)(6) Deposition Exhibit 1 – Amended Notice of Rule 30(b)(6) Deposition;	
50.	LSBA Rule 30(b)(6) Deposition Exhibit 2 – Objections and Responses to Randy Boudreaux’s Notice of Rule 30(b)(6) Deposition of the LSBA;	
51.	LSBA Rule 30(b)(6) Deposition Exhibit 3 – LSBA Bar Governance Committee Resolution Proposing Adoption of Germane Policies to the House of Delegates	LSBA 003553–56
52.	LSBA Rule 30(b)(6) Deposition Exhibit 4 – By-Laws of the LSBA, revised Jan. 22, 2022	LSBA 008383–8408

53.	LSBA Rule 30(b)(6) Deposition Exhibit 8 – LSBA Objections to Legislative Positions, 2019/2020	LSBA 003458–59
54.	Kelly Ponder Deposition Exhibit 9 - Amended Notice of Deposition;	
55.	Kelly Ponder Deposition Exhibit 10 – Social Media Post – LSBA Community Action Committee	LSBA 004616
56.	Kelly Ponder Deposition Exhibit 11 - LSBA Social Media Posts – Secret Santa Project	LSBA 004714–20
57.	Kelly Ponder Deposition Exhibit 12 – LSBA Social Media Posts – Second Harvest Food Bank Project	LSBA 004875
58.	Kelly Ponder Deposition Exhibit 13 – LSBA Social Media Posts – Be Kind to Lawyers Day	LSBA 004921
59.	Kelly Ponder Deposition Exhibit 14 – LSBA Social Media Posts – JLAP Wellness Tip	LSBA 004939
60.	Kelly Ponder Deposition Exhibit 15 – LSBA Social Media Posts – Love Your Lawyer Day	LSBA 005015
61.	Kelly Ponder Deposition Exhibit 16 – LSBA Social Media Posts – LSBA Member Benefit Spotlight Office Depot	LSBA 005028
62.	Kelly Ponder Deposition Exhibit 17 – LSBA Social Media Posts – Virtual Event – The History & Traditions of Black Sororities and Fraternities	LSBA 005042
63.	Kelly Ponder Deposition Exhibit 18 – LSBA Social Media Posts – “Flood Proof” A LIFT Incubator Project	LSBA 005043
64.	Kelly Ponder Deposition Exhibit 19 – LSBA Social Media Posts – Virtual ABA Techshow 2021	LSBA 005044

65.	Kelly Ponder Deposition Exhibit 20 – LSBA Social Media Posts – Well-Being Week in Law	LSBA 005056
66.	Kelly Ponder Deposition Exhibit 21 – LSBA Social Media Posts – Gender issues and gender equality	LSBA 006111–12
67.	Kelly Ponder Deposition Exhibit 22 – LSBA Social Media Posts – Louisiana Bar Journal Oct./Nov. 2021	LSBA 006346–56
68.	Kelly Ponder Deposition Exhibit 23 – LSBA Social Media Posts – The Power of Posture	LSBA 006591
69.	Kelly Ponder Deposition Exhibit 24 – LSBA Social Media Posts – The Best Mouse Pads of 2022	LSBA 006609
70.	Kelly Ponder Deposition Exhibit 25 – LSBA Social Media Posts – Cyber Threats; LSBA Resolutions	LSBA 006616
71.	Kelly Ponder Deposition Exhibit 26 – LSBA Social Media Posts – Most Lawyers are Introverted	LSBA 006650
72.	Plaintiff’s Responses to Defendants’ Second Set of Interrogatories and Requests for Production of Documents.	
73.	Documents produced by Defendants in response to Plaintiff’s pending First Set of Requests for Production of Documents, served on February 18, 2022.	

Defendants’ Exhibits	
No. and Description	Bates Labels
1. 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)	008115–008128
2. La. R.S. 37:211 Reporter’s Notes – 1950 (discussing Sections 2-3 of Act No. 54 of 1940)	008162–008163
3. La. S. Ct. Rule XVIII	008442–008443

4. LSBA Articles of Incorporation	008366–008382
5. LSBA By-Laws	008383–008408
6. January 2022 draft minutes considering HOD Resolutions	003577–003579
7. By-Laws, art. I, §§ 3-4, Delinquent Dues	008383
8. Resolution Proposing Adoption of Germane Policies	003625–003626
9. Disclaimers Exhibits 9-11 to Deposition of Randy Boudreaux	008527-008537
10. Lawyer Advertising Website	008240–008243
11. MCLE Website	008278–008281
12. Plan of Legal Specialization Website	008323–008331
13. Public Resources, Board of Legal Specialization Website	008244–008245
14. Rules of Professional Conduct Committee Website	008321–008322
15. Ethics Advisory Service Website	008219–008222
16. Member Directory Search Page	008409
17. Access to Justice Commission Website	008182–008187
18. Order creating the Louisiana Access to Justice Commission	008410-008413
19. Practice Assistance and Improvement Program Website	008290–008294
20. La. S. Ct. Rule XIX	008417–008441
21. TIP Website, referencing Supreme Court Order	008337–008341
22. Committee Preferences/List of Committees	008357
23. Committee Descriptions	008357–008359
24. List of Sections/Section Application	008345
25. Fee Dispute Website	008223–008225
26. Sample Bar Brief	007745–007761
27. Sample CLE Calendar	000275-000277
28. JLAP Website	008233–008235; 008486-008524
29. Insurance Website	008274–008277
30. Lawyer Fee Dispute Resolution Website	008223–008225
31. Lawyer Dispute Resolution Program Rules	008259–008273
32. Client Assistance Fund Website	008200–008202

33. Pro Bono/Lawyer Referral Website	008226–008232
34. Diversity Committee Website	008212–008218
35. Pipeline to Diversity and Outreach Subcommittee Website	008286–008289
36. Guide to Discipline Website	008179–008181
37. Legal Terms Website	008247–008251
38. Court Structure Website	008207–008209
39. Brochure Overview Website	008203–008206
40. Disability Assistance Network Website	008210–008211
41. Pro Bono Website	008295–008298
42. LCLCE Website	008364
43. Declaration of Robert A. Kutcher	Doc. 69-4
44. Summary Exhibit (legislative)	008538-008544
45. Summary Exhibit (social media and email)	008545-008546
46. Legislation Committee Video	003125
47. Secret Santa Project, <i>Louisiana Bar Journal</i> articles	008169-008178
48. Louisiana Supreme Court Red Mass 2021 Press Release	008444
49. Wellness Wednesday Documents	007542–007549
50. Complaint	Doc. 1
51. Website Notice of Suspension of Legislation Committee, July 8, 2021; Minutes reflecting suspension	003627-003628; 008525-008526
52. Website Notice on Status of Integrated Bar Challenges	003704–003705
53. Board of Governors Minutes and Resolution regarding Rule XVIII, Section 6	003608-003611
54. Bar Governance Committee Resolution regarding By-laws revisions	Doc. 71-1; 003233– 003241
55. Bar Governance Committee Resolution Proposing to Rescind Legislative Policy Positions	Doc. 71-2; 003624
56. Bar Governance Committee Resolution Adopting Germane Policies adopted in January 2022	Doc. 71-3; 003625- 003626
57. Sample Objection, Response, and Refund	003381–003384
58. Audited Annual Financial Statements	001472–001573

59. 2022 <i>Hudson</i> Notice (not yet released)	To be provided
60. LSBA By-laws, Art. XII, § 1	008405-06
61. 2020 Objection Refund Charts	003458–003459
62. LSBA By-laws, Arts. XI–XII	008404–008406
63. Prior Legislative Advocacy Website	003219-003226
64. Sample E-mail	007762–007765
65. Sample Facebook Post	005681
66. Sample Twitter Posts	007217-7219
67. Sample Instagram Post	005987
68. Sample Secret Santa Website Notice	008299–008303
69. Sample CLE Notice	001992
70. Sample E-mail, referencing Secret Santa	002379–002380
71. Sample E-mail, referencing Red Mass	002264
72. Exhibit 13 to Deposition of Randy Boudreaux	008445-008471
73. May 2022 Financial Disclosure	008547-008552

11. List of Deposition Testimony to be Offered into Evidence:

At least five days before trial, each party will submit a summary of what that party intends to prove and convey to the Court by deposition testimony, including, where appropriate, particular page and line references to said depositions.

a. Plaintiff:

Plaintiff may offer the deposition testimony of the LSBA’s Rule 30(b)(6) witnesses Robert Kutcher, H. Minor Pipes, III, and Loretta Larsen, as well as the testimony of Kelly Ponder and any fact witness testimony of Loretta Larsen.

b. Defendants:

Defendants may offer the deposition testimony of the LSBA’s Rule 30(b)(6) representatives (Robert Kutcher, H. Minor Pipes, III, and Loretta Larsen); Kelly Ponder; Loretta

Larsen; and Randy Boudreaux. Defendants reserve the right to designate additional witness testimony in response to any designations made by Plaintiff.

12. List and Brief Description of Charts, Etc.:

- a. None.

13. List of Witnesses:

- a. By Plaintiff:

- i. Randy J. Boudreaux
c/o Goldwater Institute
500 East Coronado Road
Phoenix, Arizona 85004
602.462.5000

Expected Testimony: Mr. Boudreaux anticipates that he will testify regarding his membership in the Louisiana State Bar Association (“LSBA”); his payment of mandatory dues to the LSBA; his understanding of the consequences for not paying dues to the LSBA; reasons he objects to his compulsory membership in, and association with, the LSBA, including political and ideological speech engaged in by the LSBA; the lack of information regarding the process by which members may object to activities of the LSBA; and the lack of information the LSBA provides justifying its speech activities, including meaningful data regarding its expenditures related thereto.

- ii. Kelly Ponder, 601 St. Charles Avenue, New Orleans, Louisiana 70130. Ms. Ponder is the Communications Director for the LSBA and is anticipated to testify consistent with her deposition testimony, including testimony related to publishing materials for the LSBA, including through social media.
- iii. Loretta Larsen, 601 St. Charles Avenue, New Orleans, Louisiana 70130.
Ms. Larson is the Executive Director of the LSBA and is anticipated to testify consistent with her deposition testimony, including testimony related to publishing materials for the LSBA, including through social media.

The following witnesses may be offered through deposition testimony:

- iv. Robert Kutcher, who testified on as a Rule 30(b)(6) witness of the LSBA on topics identified in Defendants' response to Plaintiff's Rule 30(b)(6) Deposition Notice.
- v. H. Minor Pipes, III, who testified on as a Rule 30(b)(6) witness of the LSBA on topics identified in Defendants' response to Plaintiff's Rule 30(b)(6) Deposition Notice.
- vi. Loretta Larsen, who testified on as a Rule 30(b)(6) witness of the LSBA on topics identified in Defendants' response to Plaintiff's Rule 30(b)(6) Deposition Notice.
- vii. Kelly Ponder, who is the Communications Director for the LSBA and testified as a fact witness.

b. By Defendants:

- i. Loretta Larsen, 601 St. Charles Ave., New Orleans, LA 70130

Ms. Loretta Larsen has served as the LSBA's Executive Director since 1991. Ms. Larsen will provide testimony on the structure and governance of the LSBA and its programming and services. Ms. Larsen also will testify as to the LSBA's dues collection, including its *Hudson/Keller* procedures, and publication of information to its members.

- ii. Robert A. Kutcher, Two Lakeway Center, Suite 900, 3850 North Causeway Boulevard, Metairie, LA 70002

Mr. Robert A. Kutcher is the 2021-2022 Chair of the Bar Governance Committee.. Mr. Kutcher will testify as to modifications of the LSBA's By-laws and policies and the elimination of the Legislation Committee following *McDonald* and the enactment of Louisiana Supreme Court Rule XVIII § 6. Mr. Kutcher also may

provide testimony about the now-disbanded Legislation Committee's activities and the policies under which it operated.

iii. H. Minor Pipes, III, 1100 Poydras St., Suite 1800, New Orleans, LA 70163

Mr. H. Minor Pipes, III serves as the 2021-2022 LSBA President. Mr. Pipes will testify concerning the LSBA's programming and communications, including its social media presence.

iv. Sandra A. Vujnovich, 400 Royal St., Suite 1190, New Orleans, Louisiana 70130

Ms. Sandra A. Vujnovich is the Judicial Administrator of the Louisiana Supreme Court. Ms. Vujnovich will testify as to the LSBA's support of the Court, including through the regulation of the legal profession and the improvement of legal services.

v. Darrel J. Papillion, 12345 Perkins Rd., Building 1, Baton Rouge, LA, 70810

Mr. Darrel J. Papillion is a Past-President of the LSBA and will testify as to the LSBA's programs and services, as well as its relationship with its members.

vi. Kelly Ponder, 601 St. Charles Ave., New Orleans, LA 70130

Ms. Kelly Ponder has served as the LSBA's Communications Director since 2007.

Ms. Ponder may testify concerning the LSBA's communications efforts and her work as staff liaison to certain LSBA committees.

The following witnesses may be offered through deposition testimony:

vii. Plaintiff Randy J. Boudreaux who testified as a fact witness.

The witness list was filed in accordance with prior Court orders.

14. This case is a non-jury case:

The parties will file their suggested finding of fact and conclusions of law and a separate trial memorandum not less than five full working days before trial.

15. Damages are not sought.

16. Statement describing other matters that might expedite disposition:

None.

17. Trial shall commence on June 21, 2022, at 9:30 a.m.

The parties estimate that trial, including any opening statements and closing arguments, will be completed within three days.

18. This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared.

Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

19. Possibility of settlement of this case has been considered.

20. Signatures:

Lance M. Africk
United States District Judge

By: /s/ Scott Day Freeman

Timothy Sandefur (admitted *pro hac vice*)
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