



Thomas S. Leatherbury tleatherbury@velaw.com  
Tel +1.214.220.7792 Fax +1.214.999.7792

September 11, 2020

**VIA CM/ECF**

Lyle W. Cayce  
Clerk of the Court  
United States Court of Appeals for the  
Fifth Circuit  
600 S. Maestri Place  
Suite 115  
New Orleans, LA 70130-3408

**Re: *Tony McDonald, et al. v. Randall Sorrels, et al.*, No. 20-50448**

Dear Mr. Cayce:

Under Rule 28(j), Defendants-Appellees, members of the State Bar of Texas Board of Directors, provide notice of the U.S. District Court for the Western District of Michigan’s decision in *Taylor v. Barnes*, No. 1:19-cv-00670 (Sept. 8, 2020), ECF No. 26 (attached), granting summary judgment to the defendants, officers of the State Bar of Michigan.

In *Taylor*, the district court rejected claims nearly identical to the Plaintiffs-Appellants’ claims here—that mandatory membership in, and financial support for, the State Bar of Michigan violate attorneys’ First Amendment rights to freedom of association and speech. *See* Compl. ¶¶ 39, 43, *Taylor v. Barnes*, No. 1:19-cv-00670 (Aug. 22, 2019), ECF No. 1; Opening Br. 19-20. The court concluded that “the Supreme Court has squarely decided the issues framed here in favor of the defendants,” *Taylor*, Order 2, bolstering the Texas State Bar’s argument that “[b]inding Supreme Court precedent forecloses Plaintiffs’ claims,” Appellees’ Br. 16. The *Taylor* court further explained that the plaintiff’s free-association and free-speech claims were barred because “[i]n *Lathrop v. Donohue*, 367 U.S. 820 (1961), the Supreme Court rejected a free association claim by a member of the Wisconsin Bar on materially indistinguishable facts,” and “[i]n *Keller v. State Bar of California*, 496 U.S. 1 (1990), the Supreme Court rejected a free speech claim by a member



of the California Bar on materially indistinguishable facts.” *Taylor*, Order 1-2; *see* Appellees’ Br. 16, 33-36.

Sincerely,

*/s/ Thomas S. Leatherbury*  
Thomas S. Leatherbury  
*Counsel for Defendants-Appellees*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LUCILLE S. TAYLOR,

Plaintiff,

v.

DENNIS M. BARNES, et al.,

Defendants.

---

CASE NO. 1:19-CV-670

HON. ROBERT J. JONKER

**ORDER**

This is an action asserting First Amendment challenges to the structure of the Michigan State Bar. Plaintiff is a member of the Michigan Bar who asserts that the mandatory dues assessment violates her free speech rights, and that required membership as a condition to practice law violates her free association rights in light of the Supreme Court's decision in *Janus v. American Federation*, 138 S. Ct. 2448 (2018). Defendant officers of the Michigan Bar disagree and assert that nothing in *Janus* abrogates earlier Supreme Court decisions expressly validating a compulsory (or integrated) model for organization of a State Bar.

The parties have agreed on a Statement of Facts, ECF No. 16, and have each filed a Motion for Summary Judgment. ECF Nos. 17, 19. The parties have done an excellent job on their submissions, and it would be most interesting to wade into the issues with the parties. But the Court is satisfied that whatever wading needs to be done must happen in a higher Court because the Supreme Court has squarely decided the issues framed here in favor of the defendants. In *Lathrop v. Donohue*, 367 U.S. 820 (1961), the Supreme Court rejected a free association claim by a member of the Wisconsin Bar on materially indistinguishable facts. In *Keller v. State Bar of California*, 496

U.S. 1 (1990), the Supreme Court rejected a free speech claim by a member of the California Bar on materially indistinguishable facts.

Plaintiff accepts that *Lathrop* and *Keller* rejected the claims she is making here, but urges this Court to revisit them in light of a line of Supreme Court authority culminating in *Janus* that, according to Plaintiff, calls into question the continuing validity of the holdings. This Court has no power to do that. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1416 n.5 (2020) (Justice Kavanaugh, concurring in part); *Hohn v. United States*, 524 U.S. 236, 252-53 (1998). *See also Thompson v. Marietta Education Association*, \_\_\_ F.3d \_\_\_, 2020 WL 5015460 (6th Cir. Aug. 25, 2020) (refusing to extend *Janus* in a case “controlled by a fair reading of the Supreme Court’s precedents” because “lower courts must follow Supreme Court precedent”). Even Justices who may believe *Lathrop* and *Keller* were wrongly decided recognize that the Supreme Court will have to make that call. *See, e.g., Jarchow v. State Bar of Wisconsin*, 140 S. Ct. 1720 (June 1, 2020) (mem.) (Justices Thomas and Gorsuch dissenting from denial of certiorari in an integrated bar case).

Accordingly, following and applying *Lathrop* and *Keller*, as this Court is bound to do, the Court **GRANTS** the Defendants’ Motion for Summary Judgment, and **DENIES** the Plaintiff’s Motion for Summary Judgment. Judgment will enter in favor of Defendants and against Plaintiff.

**IT IS SO ORDERED.**

Date: September 8, 2020

/s/ Robert J. Jonker  
ROBERT J. JONKER  
CHIEF UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF COMPLIANCE**

This letter complies with the type-volume limitation of Federal Rule of Appellate Procedure 28(j) because the body of this letter contains 231 words.

Dated: September 11, 2020

Respectfully submitted,

/s/ Thomas S. Leatherbury

Thomas S. Leatherbury  
VINSON & ELKINS LLP  
2001 Ross Avenue  
Suite 3900  
Dallas, TX 75201  
Tel: (214) 220-7792  
Fax: (214) 999-7792  
tleatherbury@velaw.com

*Counsel for Defendants-Appellees*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 11, 2020, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

All counsel of record in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: September 11, 2020

Respectfully submitted,

/s/ Thomas S. Leatherbury

Thomas S. Leatherbury  
VINSON & ELKINS LLP

2001 Ross Avenue  
Suite 3900

Dallas, TX 75201

Tel: (214) 220-7792

Fax: (214) 999-7792

tleatherbury@velaw.com

*Counsel for Defendants-Appellees*