No. 19-831

IN THE

Supreme Court of the United States

ADAM JARCHOW AND MICHAEL D. DEAN,
Petitioners,

v.

STATE BAR OF WISCONSIN, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990), upholding the constitutionality of integrated bars like Wisconsin's, remain good law.

RULE 29.6 STATEMENT

Because Respondents are not corporations, a Rule 29.6 disclosure is not required.

STATEMENT OF RELATED PROCEEDINGS

Jarchow v. State Bar of Wisconsin, No. 19-cv-266, United States District Court for the Western District of Wisconsin. Judgment entered December 13, 2019.

Jarchow v. State Bar of Wisconsin, No. 19-3444, United States Court of Appeals for the Seventh Circuit. Judgment entered December 23, 2019.

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RESPONSE TO PETITION FOR CERTIORARI

The State Bar of Wisconsin ("State Bar") is a state-created, mandatory association of all lawyers licensed to practice law in Wisconsin, funded largely by membership dues. Such arrangements are generally referred to as "integrated bars." For almost 75 years, the State Bar has been central to Wisconsin's framework for regulating the practice of law. Over the years, the State Bar and Wisconsin Supreme Court, which established the State Bar and its governing structure, have developed and refined mechanisms for assessing mandatory and voluntary dues while also protecting members' First Amendment rights. The Wisconsin Supreme Court and State Bar have relied on this Court's decisions in *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990), for guidance in crafting these mechanisms. The resulting regime has been refined over the years and withstood a multitude of challenges in both state and federal courts.

Petitioners challenge the constitutionality of integrated bar arrangements generally, and specifically that of the State Bar of Wisconsin, arguing that the Wisconsin Supreme Court rules which require them to join and pay dues to the State Bar violate their First Amendment rights. They assert that, by overturning *Abood v. Detroit Board of Education*, 431 U.S. 208 (1977), this Court's recent decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), fatally undermined the reasoning in *Lathrop* and *Keller* that justifies requiring lawyers to join and fund integrated bars. In light of *Janus*, Petitioners claim

that the State Bar and other integrated bars cannot distinguish between "chargeable" and "non-chargeable" activities sufficiently to prevent members' mandatory dues from being used to fund bar activities to which they object. Petitioners further assert that mandatory membership in an integrated bar is itself a violation of their First Amendment rights.

Petitioners did not develop a record establishing the impact on their associational interests or the inadequacy of the State Bar's dues-reduction procedures or efforts to separate out non-chargeable activities. Nor did they pursue any argument that their claims could be reconciled with *Lathrop* and *Keller*. Instead, Petitioners rushed their case through the lower courts, affirmatively arguing each step of the way that *Lathrop* and *Keller* foreordain the constitutional questions in the lower courts. The only recourse, Petitioners assert, is for this Court to overturn *Lathrop* and *Keller*, and for the State Bar either to cease all expressive activities or to make membership voluntary and revert all regulatory functions to the State.

This Court should deny the petition for a writ of certiorari. Contrary to Petitioners' assertions, *Lathrop* and *Keller* remain in line with this Court's First Amendment precedents, and *Janus* did not alter their vitality. *Lathrop* and *Keller* are well-established decisions, and as recently as 2014 this Court in *Harris v. Quinn*, 573 U.S. 616 (2014), reaffirmed the core holdings of those decisions, plainly stating that *Lathrop* and *Keller* retain validity independent of *Abood*. The precedents Petitioners cite to support their alleged First Amendment claims are readily

distinguishable when applied to integrated bars generally and the State Bar in particular.

Further, the principles of *stare decisis* counsel against overturning *Lathrop* and *Keller*, particularly because both cases have established a workable framework for the operation of integrated bars in a majority of states.

Finally, given the unique nature of the State Bar and the eagerness with which Petitioners have rushed to this Court, this case presents a poor vehicle for review of *Lathrop* and *Keller*, even if review were otherwise warranted. In their haste, Petitioners have developed no meaningful record and have made no argument that the State Bar and its procedures are unconstitutional if *Lathrop* and *Keller* remain good law. Thus, even if the Court is inclined to reconsider the issues raised in *Lathrop* and *Keller*, the Court should allow post-*Janus* challenges to integrated bars to be more fully litigated in the lower courts and decide the ultimate issues of the constitutionality of integrated bars and the validity of *Lathrop* and *Keller* on a more developed record.

STATEMENT OF THE CASE

I. The State Bar of Wisconsin

The State Bar of Wisconsin is an "association" "of persons licensed to practice law in [Wisconsin]." Supreme Court Rule ("SCR") 10.01(1).[1] The State Bar

[1] Full text versions of the Wisconsin Supreme Court Rules and State Bar By-Laws are available at: https://docs.legis.wisconsin.gov/misc/scr.

was created by the Wisconsin Supreme Court as an "exercise of the court's inherent authority over members of the legal profession as officers of the court." SCR 10.02(1). This exercise is, as this Court has recognized, an "exertion[ ] of the State's law-making power." *Lathrop v. Donohue*, 367 U.S. 820, 824–25 (1961). The Wisconsin Supreme Court created the State Bar to "promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice." SCR 10.01(2). To further those purposes, the State Bar is charged by the Wisconsin Supreme Court to:

> Aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to conduct a program of continuing legal education; to assist or support legal education programs at the preadmission level; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform and the relations of the bar to the public and to publish information relating thereto; to carry on a continuing program of legal research in the technical fields of

> substantive law, practice and procedure and make reports and recommendations thereon within legally permissible limits; to promote innovation, development and improvement of means to deliver legal services to the people of Wisconsin; to the end that the public responsibility of the legal profession may be more effectively discharged.

Id. To advance these purposes, the Supreme Court Rules "permit the State Bar to engage in and fund 'any activity that is reasonably intended' to further the State Bar's purposes." SCR 10.03(5)(b).

"[M]embership" in the State Bar is "a condition precedent to the right to practice law in Wisconsin." SCR 10.01(1). Therefore, under SCR 10.03, the Wisconsin Supreme Court requires "[e]very person who becomes licensed to practice law in [Wisconsin]" to "enroll in the state bar by registering." SCR 10.03(2). All active State Bar members—that is, those members authorized to practice law in Wisconsin, SCR 10.03(4)—must pay "annual membership dues," which in turn fund, *inter alia*, essential functions of the State Bar, including its numerous functions in support of the state's attorney regulatory system. *See, e.g.,* SCR 21.03, 21.06, 21.08, 22.10, 22.23, 22.30; *see also In re State Bar of Wisconsin: Membership*, 485 N.W.2d 225, 228 (Wis. 1992) (Bablitch, J., concurring)[2]; Memorandum of Court Commissioner,

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[2] "[T]he mandatory bar has been a guiding force in assisting lawyers to deliver an increasing quality of justice to society and to those they represent. Many if not most of the services the bar delivers in pursuit of these goals are not self-supporting and are

Rule Petition 11-04, Petition for Voluntary Bar at 22 (Oct. 25, 2011) https://www.wicourts.gov/supreme/docs/1104commissionermemo.pdf. Failure to pay required dues can result in a member being "suspended" from the practice of law. SCR 10.03(6). A state bar association like Wisconsin's, in which "membership and dues are required as a condition of practicing law," is referred to as an "integrated bar." *Keller*, 496 U.S. at 5; *see also Kingstad v. State Bar of Wisconsin*, 622 F.3d 708, 713 n.3 (7th Cir. 2010) ("integrated," "mandatory," or "unified" bar).

While, as noted above, the Wisconsin Supreme Court has generally provided that the State Bar may "engage in and fund any activity that is reasonably intended for the purposes of the association" as defined in SCR 10.02(2), it has also clearly stated that "[t]he State Bar may *not* use the compulsory dues of any member who objects . . . for activities that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the

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not capable of being subject to user fees. To cite but a few, they include: publications to members keeping them up to date on legal developments including orders and decisions of this Court which regulate the profession and discipline attorneys; publications for public consumption informing the public on matters of justice and the rights and responsibilities of citizens under law; lawyer referral service, assisting members of public find qualified lawyers regarding specific legal issues; assistance and promotion of pro bono activities; fee arbitration service; assistance in the disciplinary system by appointing approximately 200 lawyers and lay persons to district grievance committees; ethical advice and guidance to members; assistance to alcoholic, ill and disabled lawyers through the "lawyers helping lawyers" program." 485 N.W.2d at 228–229 (Bablitch, J., concurring).

quality of legal services." SCR 10.03(5)(b)(1) (emphasis added). This is consistent with the standard set by this Court in *Keller.* 496 U.S. at 14 ("The State Bar may therefore constitutionally fund activities germane to [regulating the legal profession and improving the quality of legal services] out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity."); *see also id.* at 15 (quoting *Lathrop*, 367 U.S. at 843) ("[T]he guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the State.'"). Those activities, according to the Wisconsin Supreme Court, "may be funded only with voluntary dues, user fees or other sources of revenue." *Id.*

The State Bar has gone one step further than required by SCR 10.03 and *Keller*, however, and includes in the category of activities that may not be funded by mandatory dues "*all* direct lobbying activity on policy matters before the Wisconsin State Legislature or the United States Congress ... , even lobbying activity deemed germane to regulating the legal profession and improving the quality of legal services." State Bar of Wisconsin, *Maintaining Your Membership* (2019), https://www.wisbar.org/formembers/membershipandbenefits/Pages/Maintaining-Your-Membership.aspx (under "State Bar of Wisconsin Dues Reduction and Arbitration Process (Keller Dues Reduction)" tab).

To effectuate the standard set by this Court in *Keller* and incorporated in SCR 10.03, each year, along with an annual dues statement, the State Bar sends to each member a "written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues." SCR 10.03(5)(b)2; *see generally* SCR Ch. 10, App'x, State Bar Bylaws, art. I, § 5. This notice is often referred to as the "*Keller* Dues Reduction Notice." This notice is sent "[p]rior to the beginning of each fiscal year" (SCR 10.03(5)(b)2) and is based on data from the most recent fiscal year for which there is an audit report available (*see, e.g.*, Brief in Support of Motion to Dismiss, Exhibit A, *Jarchow v. State Bar of Wisconsin*, No. 3:19-cv-00266-bbc (W.D. Wis. May, 21, 2019) ("Fiscal Year 2020 *Keller* Dues Reduction Notice"); *Keller*, 496 U.S. at 16–17). The notice "indicate[s] the cost of each activity, including all appropriate indirect expense[s], and the amount of dues to be devoted to each activity" (SCR 10.03(5)(b)2). The State Bar then voluntarily rounds up from a "strict calculation" (*e.g.* Fiscal Year 2020 *Keller* Dues Reduction Notice). The Notice provides each member the opportunity to "withhold" from their "annual dues statement" "the pro rata portion of dues budgeted for [the] activities that cannot be supported by compulsory dues." SCR 10.03(5)(b)2. This pro rata dues reduction is often referred to as the "*Keller* Dues Reduction."

The Wisconsin Supreme Court's Rules also provide a procedure for a member who "contends that the state bar incorrectly set the amount of dues that can be withheld" to challenge the amount of the *Keller* Dues Reduction through a timely demand for

arbitration. SCR 10.03(5)(b)3. The State Bar must then "promptly submit the matter to arbitration before an impartial arbitrator." SCR 10.03(5)(b)4. If the arbitrator concludes that an increased pro rata dues reduction is required, "the state bar shall offer such increased pro rata reduction to members first admitted to the state bar during that fiscal year and after the date of the arbitrator's decision." SCR 10.03(5)(b)5. "The costs of arbitration shall be paid by the state bar." SCR 10.03(5)(b)4. During the pendency of the challenge, the objecting member(s) pay no dues to the State Bar. SCR 10, App'x, Bylaws art. I, § 5(B) ("A member demanding arbitration is required to pay his or her dues by October 31 or 15 days following the arbitrator's decision, whichever is later.").

The constitutionality of the State Bar's integrated structure has been affirmed by this Court,[3] the Seventh Circuit,[4] and the Wisconsin Supreme Court[5] against numerous challenges over the past 75 years.

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[3] *Lathrop v. Donohue*, 367 U.S. 820 (1961).

[4] *Kingstad v. State Bar of Wis.*, 622 F.3d 708 (2010); *Thiel v. State Bar of Wis.*, 94 F.3d 399 (7th Cir. 1996); *Crosetto v. State Bar of Wis.*, 12 F.3d 1396 (1993); *Levine v. Heffernan*, 864 F.2d 457 (7th Cir. 1988).

[5] *Integration of Bar Case*, 11 N.W.2d 604 (Wis. 1943); *In re Integration of the Bar*, 25 N.W.2d 500 (Wis. 1946); *In re Integration of the Bar*, 77 N.W.2d 602 (Wis. 1956); *In re Integration of the Bar*, 93 N.W.2d 601 (Wis. 1958); *Lathrop v. Donohue*, 102 N.W.2d 404 (Wis. 1960); *In re Reg. of the Bar of Wis.*, 81 Wis.2d xxxv (1978); *State ex rel. Armstrong v. Board of Governors*, 273 N.W.2d 356 (Wis. 1979); *In re Discontinuation of the State Bar of Wis. as an Integrated Bar*, 286 N.W.2d 601 (Wis. 1980); *Report of Comm. to Review the State Bar*, 334 N.W.2d 544

II. Proceedings Below

Petitioners, licensed Wisconsin attorneys and members of the State Bar, initiated this action against the State Bar, its Board of Governors and Officers on April 8, 2019. Pet. App. 39, 46. Petitioners' Complaint identified 45 separate activities of the State Bar, or one of its subdivisions or Sections,[6] relating to "a broad range of matters of public interest," including "legislat[ive] proposals," "advocacy on public policy issues," "speech and advocacy directed to the public," and State Bar "publications," and asserted that Petitioners disagree with some of those activities. Pet. App. 21–41. Based on these 45 activities and the fact that Petitioners are mandatory-dues-paying members of the State Bar pursuant to Wisconsin Supreme Court Rule 10.03, the Complaint asserts violations of Petitioners' First Amendment rights. Pet. App. 42–45. Although the Complaint alleges that some State Bar speech on matters of public interest in funded "at least in part" by mandatory dues, *see* Pet.App.22, and that

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(Wis. 1983); *In re Amend. of State Bar Rules*: SCR 10.03(5), slip op. (Wis. Jan. 21, 1986); *In re Petition to Review State Bar Bylaw Amends.,* 407 N.W.2d 923 (Wis. 1987); *In re State Bar of Wisc.: Membership*, 485 N.W.2d 225 (Wis. 1992); *In re Amend. of Sup. Ct. Rules*: *10.03(5)(b) – State Bar Membership Dues Reduction*, 174 Wis. 2d xiii (1993); *In re Petition to Amend SCR 10.03(5)(b)1*, No. 09-08 (Wis. Nov. 17, 2010); *In re Petition for a Voluntary Bar*, No. 11-01 (Wis. July 6, 2011); *In re Petition to Review Change in State Bar Bylaws*, No. 11-05, slip op. (Wis. Oct. 7, 2011); *In re Petition to Repeal and Replace SCR 10.03(5)(b) with SCR 10.03(5)(b)-(e) and to Amend SCR 10.03(6)*, No. 17-04, slip op. (Wis. Apr. 12, 2018).

[6] Membership in a State Bar Section, and the resulting obligation to pay Section dues, is entirely voluntary. SCR 10 App'x, State Bar Bylaws art.VI.

petitioners disagree with some speech by the State Bar, it does not allege facts showing exactly what particular State Bar speech is funded by mandatory dues (and to what extent), how the State Bar decides what instances of its speech are to be funded by mandatory dues, that the State Bar has funded any particular speech with which Petitioners disagree through mandatory dues, or how the State Bar's opt-out procedures operate in practice.

Respondents moved to dismiss Petitioners' claims on various grounds, including that those claims are foreclosed by *Keller*. Pet.App.6. Rather than contesting that argument and seeking to distinguish *Keller* or seeking to develop a record demonstrating that the State Bar's opt-out procedures were insufficient in practice, Petitioners immediately conceded the point and "agree[d]" that *Lathrop* and *Keller* foreclosed their claims, openly declaring that their objective was to ask this Court to reconsider those decisions. Pet.App.7. The District Court accepted Petitioners' concession and dismissed their claims as foreclosed by *Keller*, thereby preventing the parties from conducting any discovery or developing any more detailed record on the factual basis for Petitioners' claims or Respondents' other grounds for their motion to dismiss. Pet.App.5.

Petitioners continued their race to this Court on appeal. As soon as the district court entered judgment, Petitioners immediately filed their Notice of Appeal to the Seventh Circuit. And as soon as the Seventh Circuit docketed their appeal, Petitioners immediately moved that Court to summarily *affirm* the District Court's dismissal without further briefing

or argument, again conceding that their claims were foreclosed by *Lathrop* and *Keller* and openly declaring that their goal was to urge this Court to reconsider those decisions. *See* Motion for Summary Affirmance, *Jarchow v. State Bar of Wisconsin*, No. 19-3444 (7th Cir. Dec. 16, 2019). The Seventh Circuit granted Petitioners' motion for summary affirmance one week later, before the State Bar had an opportunity to respond. Pet.App.1. This Petition followed eight days later.

THE PETITION SHOULD BE DENIED

Petitioners' headlong rush to convince this Court to reverse decades of its own precedent suffers from all the flaws one might expect, and more. Petitioners' primary contention is that in deciding whether public unions can require dues from non-members, *Janus* also casually eviscerated two decades-old opinions on a wholly different issue: whether states may choose to regulate the legal profession by creating an integrated bar association, a model that has existed in this country for over a century. Indeed, Petitioners believe not only that *Janus* fundamentally undermined *Lathrop* and *Keller*, but also that it *sub silentio* discarded the views expressed just four years earlier in *Harris* that *Keller* is fully consistent with the First Amendment—a part of *Harris* that Petitioners notably fail to mention, despite otherwise relying on that decision throughout their petition.

Petitioners' position has little to recommend it. As *Harris* correctly recognized, the state interest in regulating the legal profession, and in holding

attorneys themselves rather than the general public responsible for the costs of that regulation, easily distinguishes the integrated bar from the public unions addressed in *Janus*. And the cases on which Petitioners rely for their mandatory association claim are even further afield, as they address the limited First Amendment right of a private association to *exclude* certain unwanted members, not an individual's purported right to avoid being labeled a "member" of a state-created professional organization.

In short, *Lathrop* and *Keller* are fully consistent with this Court's First Amendment jurisprudence. They are also fully supported by the weight of *stare decisis*, including more than a century of experience with integrated bar associations and the reliance interests of more than half of the states.

However, even if this Court had reason to reexamine *Lathrop* and *Keller*, this would not be the case to do it. Petitioners' single-minded focus on getting to this Court as quickly as possible, including their repeated concession that *Lathrop* and *Keller* govern their claims and their motion for summary affirmance in the court of appeals, has ensured that this case comes before the Court with no meaningful record and practically no judicial examination or discussion of the relevant issues below. That is hardly the best environment for this Court's review. It is also unnecessary, as other courts have suggested, that *Keller* might not foreclose similar claims. To be sure, Respondents disagree with that proposition. But certainly a future plaintiff less focused on a fast track to the Supreme Court could try to persuade a lower court that its claims are not foreclosed by this Court's

precedent—and in the process adequately preserve an argument that would not force this Court to consider the binary question of whether or not to overturn two of its decisions. Worse, this case comes before the Court on nothing but the allegations in Petitioners' complaint, with no detailed factual record on how the State Bar's opt-out procedures operate in practice, how the State Bar actually allocates and uses its funds, or any other relevant issue. As this Court recognized decades ago in *Lathrop*, that kind of sparse record simply does not provide adequate context for judicial review of the fact-intensive First Amendment issues Petitioners are attempting to raise. The petition should be denied.

I. *Lathrop* and *Keller* Remain Consistent With This Court's Precedents.

a. *Janus* did not undermine *Keller* and *Lathrop*.

Petitioners' core argument is that *Lathrop* and *Keller*—which together approved the longstanding practice of state regulation of the legal profession through state-created integrated bar associations—were tacitly overruled by this Court's decision in *Janus*. That argument is meritless. On the contrary, *Lathrop* and *Keller* remain fully in line with this Court's First Amendment precedents.

Lathrop (like this case) involved a First Amendment challenge to the integrated State Bar of Wisconsin, brought shortly after the State Bar was established. The Court rejected that challenge. Although no one opinion commanded a majority, a

plurality of the Court concluded that Wisconsin law imposed no cognizable burden on attorneys beyond the obligation to pay mandatory annual dues, implicitly rejecting the view that merely calling attorneys "members" of the State Bar imposed some First Amendment injury. 367 U.S. at 827–28, 842–43 (plurality opinion). The plurality declined to decide whether an attorney might have a First Amendment claim if required dues were used to pay for political speech with which the attorney disagreed, holding that the factual record was insufficient to address that claim—because, among other things, it lacked facts showing "the way in which and the degree to which funds compulsorily exacted from [bar] members are used to support . . . political activities," "how political expenditures are financed and how much has been expended for political causes to which appellant objects," and "what portions of the expenditure of funds to propagate the State Bar's views may be properly apportioned to [the plaintiff's] dues payments." *Id.* at 846.[7]

In *Keller*, the Court considered whether an integrated bar association could use a member's dues to finance political activities over the member's objection. The Court unanimously held that while "lawyers admitted to practice in the State may be required to join and pay dues to the State Bar," the bar could not use a member's dues for ideological or political speech with which the member disagreed.

[7] Three Justices thought the factual record was adequate to decide these issues, and would have found no First Amendment violation. *See id.* at 848–65 (Harlan, J., joined by Frankfurter, J., concurring in the judgment); *id.* at 865 (Whitaker, J., concurring in the judgment).

496 U.S. at 4. In reaching that holding, the Court made clear that the First Amendment did not prohibit states from using integrated bars for appropriate regulatory purposes, emphasizing that (for instance) attorneys "have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the Bar or proposing ethical codes for the procession." *Id.* at 16.

Petitioners' bid to overturn *Lathrop* and *Keller* hinges on the notion that the holdings in both cases are fatally undermined by this Court's decision in *Janus*. That notion is incorrect. *Janus* said nothing whatsoever about *Lathrop*, *Keller*, or whether attorneys could be required to join and pay dues to an integrated bar. Instead, *Janus* addressed a wholly different issue: whether the First Amendment permits a public union (i.e., one representing public-sector workers) to charge mandatory dues to non-members. 138 S. Ct. at 2459–60. The Court held that such arrangements violate the First Amendment, overturning *Abood v. Detroit Board of Education*, 431 U.S. 208 (1977). Naturally, the *Janus* Court explained at length why *Abood* was incorrect, and why *stare decisis* did not warrant keeping it. *See Janus*, 138 S. Ct. at 2463–86. Nothing in *Janus*, however, addressed whether those same arguments would have any application in the integrated bar context, especially given the unique state interest in regulating the legal profession (and imposing the costs of that regulation on practicing attorneys themselves) and the longstanding history of the integrated bar as a means of carrying out that regulation. Put simply, *Janus* overruled *Abood*, not *Lathrop* and *Keller*.

The lack of any reference to *Lathrop* or *Keller* is unsurprising, as this Court reaffirmed *Keller* and its underlying reasoning just four years earlier in *Harris v. Quinn* at the same time it questioned the soundness of *Abood*. 572 U.S. 616, 655–56 (2014). In *Harris*, this Court refused to extend *Abood* to apply to home care personal assistants, holding that the personal assistants who did not join a public-sector union could not be compelled to pay agency fees. *Id.* at 645–47. This Court held that *Abood* did not apply, in part, because the compelling state interests that *Abood* held supported compulsory agency fees did not apply to the personal assistants, who were not fully-fledged state employees. *Id.* at 645–46. Respondents in that case argued that refusal to extend *Abood* to require agency fees from the personal assistants would call into question the holding in *Keller*. *Id.* at 655. This Court held that Respondents were "mistaken" because "[*Keller*] fits comfortably within the framework applied in the present case." *Id.* Further, this Court reaffirmed the validity of the "State's interest in regulating the legal profession and improving the quality of legal services." *Id.* "States also have a strong interest in allocating 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 [*Harris*] is wholly consistent with our holding in *Keller*." *Id.* at 655–56. The dissent, too, agreed that the holding in *Harris* "reaffirmed [*Keller*] as good law." 579 U.S. at 670 (Kagan, J., dissenting). Thus, in *Harris*, the Court unanimously confirmed the continuing validity of *Keller*.

This Court's statements in *Harris*, which Petitioners do not even mention, were not questioned by the holding in *Janus*. On the contrary, *Janus* itself relied extensively on *Harris* in reaching its decision to overrule *Abood*. *See* 138 S. Ct. at 2463, 2465–66, 2468, 2471–72, 2474, 2477, 2479–80. If, as Petitioners assert, *Keller* has increasingly become an anomalous outlier in this Court's First Amendment jurisprudence, then this Court would not have so clearly reaffirmed *Keller's* essential holding as recently as 2014 in the same opinion that criticized *Abood*. Rather, the very different treatment of *Keller* and *Abood* in *Harris* illustrates that *Keller* and the compelling state interests it recognized not only differ significantly from the public unions question, but remain in line with the modern understanding of the First Amendment. Indeed, *Harris*' reaffirmation of *Keller* contradicts Petitioners' argument that *Keller's* holding is dependent on *Abood,* because *Harris* reaffirmed the core holdings of *Keller* after criticizing *Abood* and deciding that it did not apply there. Thus, *Harris* confirms that *Keller* stands independent from *Abood*, and *Janus* did not mention, much less question, that conclusion.

b. This Court's "freedom-to-exclude" cases do not apply here.

Petitioners' argument that Wisconsin's integrated bar violates their First Amendment associational rights is also unavailing. First, *Janus* does not alter the law regarding associational rights because the issue did not even arise there, as the plaintiffs were non-members, challenging the

requirement that they pay dues to the union. Thus, the question of membership was not at issue.

Regardless, Petitioners have not shown that there is a cognizable First Amendment injury merely because the State describes all lawyers admitted to practice in Wisconsin as "members" of the State Bar. "Member of the bar" is an historical term of art which in this context simply means that a lawyer is licensed to practice in Wisconsin, as opposed to identification as a member of a political party or interest group, which implies that a person agrees with the group's views. If the Wisconsin Supreme Court chose to refer to such individuals only as "licensed attorneys," and called State Bar membership dues "license fees," there would clearly be no argument as to the constitutionality of such designations. Petitioners cannot conjure a constitutional injury from a mere choice of long-accepted terminology.

Wisconsin lawyers are familiar with the idea that affiliation does not imply endorsement, as the Wisconsin Supreme Court Rules of Professional Conduct for Attorneys plainly state that "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities." SCR 20:1.2(b). Just as association with a client does not imply a lawyer's identification with the client's views, association with the State Bar does not imply identification with the State Bar's positions. *See Lathrop*, 367 U.S. at 859 (1961) (Harlan, J., concurring in the judgment) ("[E]veryone understands or should understand that the views expressed [by the State Bar] are those of the State Bar as an entity

separate and distinct from each individual." (quotation marks omitted).). Because all practicing lawyers in the State must become members of the State Bar, the only common thread between them, and the only reasonable implication from their association with the State Bar, is their authorization to practice their shared profession.

The alternative, finding a First Amendment injury in being identified as a member of *any* expressive organization with which a person might disagree on some issues, would mean that every integrated bar since the first integrated bar in the United States, created over a century ago, has been unconstitutional. Undoubtedly, any professional association will have at least one member who disagrees with a position the association takes. Nonetheless, this Court unanimously held in *Keller* that attorneys can be compelled to join an integrated bar. *Keller*, 496 U.S. at 4 ("We agree that the State lawyers admitted to practice in the State may be required to *join* and pay dues to the State Bar.") (emphasis added). While Petitioners claim that their argument would not foreclose the prospect of integrated bars entirely (*see* Pet. at 25 ("all a State need do is curtail the expressive role of a licensing body")), their asserted associational injury would do just that.

Further, there is no precedent to support the kind of forced-association claim Petitioners assert. Petitioners rely on the "freedom not to associate" identified in *Roberts v. U.S. Jaycees* and *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.* to support their forced-association claim. However, the

"freedom not to associate" described in *Jaycees* and *Hurley* has little in common with mandatory bar membership. In *Jaycees*, this Court identified a "freedom not to associate" when considering the question of whether a private association could exclude unwanted members. 486 U.S. 608 (1984).[8] Similarly, *Hurley* addressed the question of whether a private group organizing a parade could exclude a group espousing positions with which it disagreed. 515 U.S. 557 (1995). In both cases, the exclusionary practices were challenged as violations of state anti-discrimination laws, highlighting tensions between those laws and First Amendment associational rights. *Jaycees*, 486 U.S. at 615, 618; *Hurley*, 515 U.S. at 564.

The question of whether a fully-private association can exclude groups otherwise protected by anti-discrimination laws as an exercise of their First Amendment associational rights has little bearing on whether a state can require members of a regulated profession to join a state-created, quasi-governmental professional association. Nothing in *Jaycees* or *Hurley* undermines the assumption in *Lathrop* and *Keller* that the State can describe all practicing lawyers as "members" of the State Bar or suggests that mere "membership" in the State Bar communicates a personal endorsement by members of statements made or positions taken by the State Bar. The other cases Petitioners cite to support their forced-association argument dealt more directly with compelled speech and compelled subsidization of

[8] Notably, this Court cited *Abood*, much maligned by Petitioners, for the proposition that "[f]reedom of association presupposes a freedom not to associate." *Id.* at 623 (citing *Abood*, 431 U.S. at 234–235).

speech than forced association, and therefore also fail to undermine the logic of *Lathrop* or *Keller* on this point. *See United States v. United Foods*, 533 U.S. 405, 411–12 (2001) ("First Amendment concerns apply here because of the requirement that producers subsidize speech with which they disagree."); *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 12 (1986) ("the State is not free either to restrict appellant's speech to certain topics or views or to force appellant to respond to views that others may hold").

c. The quasi-governmental nature of integrated bars distinguishes them from the unions discussed in *Janus.*

Petitioners' assertion that *Keller's* holding is no longer valid rests heavily on *Janus*. However, integrated bars in general, and the State Bar of Wisconsin in particular, are readily distinguishable from the public-sector unions discussed in *Janus*. This is, in part, because public-sector unions are wholly-private organizations, while integrated bars are state-created entities that fill quasi-governmental roles. This alone places integrated bars outside the direct scope of this Court's *Janus* holding. As Justice Harlan noted in his concurrence in *Lathrop*, "[a] federal taxpayer obtains no refund if he is offended by what is put out by the United States Information Agency." *Lathrop*, 367 U.S. at 857 (Harlan, J., concurring in the judgment).

While speech by a state-created integrated bar has not been thought of as full-blown government speech, *see Keller*, 496 U.S. at 10–13, it is "part of a

broader collective enterprise in which [one's] freedom to act independently is already constrained by the regulatory scheme," the statewide regulation of the legal profession. *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 469 (1997); *see also United Foods*, 533 U.S. at 414–15. This Court has found that compelled contributions to entities that are part of a broader regulatory scheme do not violate the First Amendment. *Id.* As discussed more fully below, *see infra* pp. 27–28, the activities of the State Bar and other integrated bars across the country are inextricably intertwined with their respective states' regulatory schemes for attorneys. Thus, not only is the holding in *Janus* not directly applicable to the payment of mandatory bar dues, but integrated bars fall squarely within a category of entities for which compelled funding is generally permissible.

Further, unlike the union in *Janus*, the State Bar is not the exclusive representative of Wisconsin lawyers under any circumstances. In *Janus*, by contrast, the union was the exclusive bargaining representative of government employees within the bargaining unit, whether or not they were union members. *Janus*, 138 S. Ct. at 2467–68. As a result, compelled funding of union speech limited government employees' ability to speak on similar issues to the union in a concrete way. This is hardly the case with the State Bar and other integrated bars. The State Bar does not purport to speak directly for Wisconsin lawyers on any particular issue. State Bar members are free to espouse their own views on any issue on which the State Bar speaks, even where the two views are directly contradictory. Moreover, State Bar members are uniquely positioned to appreciate

First Amendment values and exercise their rights to avoid dues that are directed to chargeable activities to which they object.

In short, *Keller* and *Lathrop* remain in line with this Court's First Amendment precedents, even in light of *Janus*.

II. *Lathrop* And *Keller* Should Not Be Overruled.

Keller and *Lathrop* remain good law, wholly consistent with this Court's First Amendment precedents, so this Court need not resort to *stare decisis* to avoid overturning them. *See Kimble v. Marvel Entertainment, LLC*, 576 U.S. __, 135 S. Ct. 2401, 2409 (2015) ("*[S]tare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up."). However, the principles of *stare decisis* also counsel against overturning *Keller* and *Lathrop*. "'Overruling precedent is never a small matter.'" *Kisor v. Wilkie*, __ U.S. __, 139 S. Ct. 2400, 2422 (2019) (quoting *Kimble*, 135 S. Ct. at 2409). "Adherence to precedent is 'a foundation stone of the rule of law." *Id.* (quoting *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798 (2014)). "To be sure, *stare decisis* is not an 'inexorable command' ... [b]ut any departure from the doctrine demands 'special justification'—something more than 'an argument that the precedent was wrongly decided.'" *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991), *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014)). Petitioners fail to meet this standard.

This Court's reasoning in *Keller* and *Lathrop* was not flawed, nor has it been undermined by *Janus*. As noted above, this Court has recently reaffirmed the core reasoning of *Keller* and *Lathrop*. Part I, *supra*. This Court's decision in *Harris* plainly stated that the interests which support integrated bar arrangements and the mechanism for assessing mandatory dues established in *Keller* "fit[ ] comfortably" within the modern First Amendment framework, independent of *Abood*. *Harris*, 572 U.S. at 655. Further, *Harris* confirmed that *Keller* and *Lathrop* are not wholly dependent on agency fee cases such as *Abood. Id.* Even though courts have drawn comparisons between integrated bars and public unions in the past, the underlying reasoning supporting integrated bar arrangements is not inexorably tied to the fate of public union agency fees. Thus, *Janus* did not disturb the reasoning of *Harris*, just as it did not mention, much less overturn or criticize, *Keller* or *Lathrop*.

Close to 75 years of litigation have shown that the holdings in *Lathrop* and *Keller* continue to be workable. Every challenge to State Bar activities funded with mandatory dues has found that the State Bar correctly applies *Keller*'s mechanism for protecting members' First Amendment rights. Petitioners claim that *Keller* calls for an "impossible" line-drawing exercise like the one this Court invalidated in *Janus*, but they have never availed themselves of the procedure adopted to permit challenges to an expenditure the State Bar considers chargeable.[9] Petitioners cannot point to an instance of

[9] To the extent Petitioners claim the State Bar's procedures are inadequate to protect their First Amendment rights, their claims

the State Bar using mandatory dues to fund activities that are not properly chargeable under *Keller*; indeed, they have not even pointed to any actual use of mandatory fees with which they disagree. Nor have they shown an instance of the State Bar's dues arbitration process failing to properly resolve a disputed use of mandatory dues.

This is perhaps because the State Bar has, of its own volition, been over-inclusive in deciding which of its activities to designate as non-chargeable. As noted above, State Bar policy prohibits charging members even for activities allowed under *Keller* such as "*all* direct lobbying activity on policy matters before the Wisconsin State Legislature or the United States Congress ... , even lobbying activity deemed germane to regulating the legal profession and improving the quality of legal services." *Supra* at 7. Similarly, the State Bar does not charge members for the overhead and administrative costs associated with non-chargeable activities, and it rounds up the final reduction amount to give members the benefit of any calculation errors. *See* Fiscal Year 2020 *Keller* Dues Reduction Notice. Thus, unlike the unions in *Janus*,

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are not ripe, much less properly addressed on a petition for *certiorari*, as Petitioners have not developed a factual record on this issue and have not availed themselves of the State Bar's *Keller* procedures. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). In fact, Petitioner Jarchow did not even take the Keller Dues Reduction (Decl. of Paul Marshall, *Jarchow v. State Bar of Wisconsin*, No. 3:19-cv-00266-bbc (W.D. Wis. May 21, 2019)), and, therefore, has consented to the use of his dues. *See Keller*, 496 U.S. at 13–14; *Kingstad*, 622 F.3d at 712–13; *cf. Katz v. United States*, 389 U.S. 347, 357–58 & n.22 (1967) ("A search to which an individual consents meets Fourth Amendment requirements . . . .").

the State Bar has a policy of being over-inclusive in designating activities as non-chargeable. By following the guidance in *Keller*, the State Bar has developed an effective, workable mechanism for ensuring that members do not fund speech of which they disapprove. Moreover, bar members are uniquely positioned to opt out and ensure that their First Amendment rights are being vindicated.

Finally, there is a strong reliance interest in upholding *Keller* and *Lathrop*. A majority of states have chosen integrated bar arrangements as their vehicle of choice for regulating the practice of law. Pet. at 25. Overturning *Keller* and *Lathrop* would require those states to quickly develop new institutions to perform the disciplinary and educational functions for which they have molded their integrated bars over decades. Petitioners make light of this prospect, asserting that "all a State need do is curtail the expressive role of an integrated bar, such that all that remains is a licensing body, or take over that function itself." *Id.* Petitioners' apparent admission that everything they seek to challenge would be perfectly permissible if the State just made the State Bar a full-blown state agency seriously undermines their First Amendment claims, and underscores how fundamentally different this context is from public unions.

But setting that aside, the reality is far more complex than they make it out to be, as the regulatory functions and the day-to-day operations of integrated bars are inextricably intertwined. Perhaps most importantly, the State Bar handles all of the administrative activities and costs to collect the

assessments that support the Board of Bar Examiners and Office of Lawyer Regulation, which Petitioners concede perform core regulatory functions (Pet. at 19), as well as Wisconsin Lawyers' Fund for Client Protection and WisTAF (Wisconsin Trust Account Foundation.) Memorandum of Court Commissioner, *supra* pp. 5–6 at 22. State Bar dues also fund the State Bar Ethics Hotline, Lawyer Dispute Resolution, Fee Arbitration, ethics training and counseling, the Wisconsin Lawyers Assistance Program, and registration of law firms and attorney trust accounts on behalf of the courts. Memorandum of Court Commissioner, *supra* pp. 5–6 at 25–28. Other integrated bars around the country are similarly intertwined with their state's framework for regulating the legal profession, playing integral roles in attorney discipline, enforcement of rules against unauthorized practice of law, ethics training, and attorney licensing.

The Supreme Court of Wisconsin cannot independently levy taxes to replace State Bar funding, and thus would be unable to readily absorb the regulatory functions of the State Bar if Petitioners get their way. Instead, the Supreme Court would have to rely on the Wisconsin State Legislature to levy additional taxes (on attorneys or on the public at large) to fund regulatory activities once funded primarily by State Bar dues. Especially in light of the continued vitality of the holdings in *Keller* and *Lathrop* and their demonstrated workability, particularly in Wisconsin, the widespread reliance on these precedents weighs heavily in favor of upholding *Keller* and *Lathrop*.

III. This Case Is Not A Good Vehicle To Review *Keller* and *Lathrop*.

This case is not a good vehicle to review *Keller* and *Lathrop* in any event. In their race to reach this Court, Petitioners failed to develop an adequate record for this Court to review. The proceedings below feature little more than a motion to dismiss in the District Court and an invited summary affirmance in the Court of Appeals. Nor have the issues raised in this case been thoroughly litigated by the lower courts since *Janus* was decided. Further testing in the lower courts is essential because each integrated bar engages in its own unique activities and assesses mandatory dues differently. Reviewing in this case now, without a more developed record, would risk an overly broad ruling that does not account for the variety of integrated bar arrangements.

To begin with, Petitioners' claims—which revolve heavily around the proper interpretation of *Janus*, a case decided by this Court less than two years ago—cry out for further percolation in the lower courts, or at least for a vehicle in which the courts below have been able to develop a record and examine the relevant issues in the context of concrete adversarial presentations. Petitioners brush those problems aside, asserting that this Court will never have the advantage of any other court's views on these issues because the lower courts are bound by *Lathrop* and *Keller*. But the public record proves otherwise: while the State Bar does not believe that mandatory membership in the State Bar represents a First Amendment injury (*see* Part I, *supra*), the Eighth

Circuit recently suggested in *Fleck v. Wetch*[10] that the mandatory association claim that Petitioners raise is not necessarily foreclosed by *Keller* or *Lathrop* and could be litigated in the lower courts. *Fleck v. Wetch*, 937 F.3d 1112, 1115–16 (2019), *cert. denied*, No. 19-670 (U.S. Mar. 9, 2020) ("assum[ing] without deciding that *Keller* 'left the door open' to pursue this freedom of association claim").

The District Court and Court of Appeals in this case had little opportunity to assess the extent to which mandatory membership in the State Bar might impact Petitioners' associational freedoms, however, because Petitioners conceded from the outset that *Keller* foreclosed their freedom of association claim. Petitioners thus have not even presented any argument that this Court could decide in their favor without overruling two of its precedents. In short, not only have the issues here had no opportunity to percolate in the lower courts, but they have not even had an opportunity to be fully aired in this case itself. That should counsel strongly against granting certiorari here. *See, e.g.*, *Byrd v. United States,* 138 S. Ct. 1518, 1527 (2018) (as "a court of review, not of first view," this Court finds it "generally unwise to consider arguments in the first instance" that the lower courts "did not have occasion to address."); *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1652 n.4 (2017) ("[I]n light of . . . the lack of a reasoned conclusion on this question from the Court of Appeals, we are not inclined to resolve it in the first instance.").

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[10] Petitioner in *Fleck* attempted to raise this issue, but was found to have waived it in earlier proceedings.

The problem is even more pronounced with respect to Petitioners' claim that their obligation to pay mandatory dues to the State Bar violates the First Amendment, since Petitioners' haste has left no detailed record on the question of how mandatory dues are actually determined and used. Because Petitioners' complaint was dismissed with their acquiescence at the threshold, there has been no discovery and no summary judgment proceeding (let alone a full-blown trial) to develop the meaningful factual record that this Court has seen as critical for proper review of the fact-intensive issues Petitioners raise. While Petitioners have generally alleged that some State Bar speech on matters of public interest is funded "at least in part" through mandatory dues, Pet.App.22, their allegations provide no facts (let alone evidence) showing exactly what particular State Bar speech is funded by mandatory dues and to what extent, how the State Bar decides what instances of its speech are to be funded by mandatory dues, or that the State Bar has funded any particular speech with which Petitioners disagree through mandatory dues. Put simply, here as in *Lathrop*, "there is no indication in the record as to how [State Bar] political expenditures are financed and how much has been expended for political causes to which [Petitioners] object[]." *Lathrop*, 367 U.S. at 847 (plurality opinion). That leaves this Court with no factual basis on which to assess Petitioners' claim that the State Bar has used their dues in ways that violate the First Amendment, or that the State Bar is incapable of limiting the expenditure of mandatory dues to germane activities.

Further, Wisconsin's State Bar has well-developed mechanisms for differentiating chargeable and non-chargeable activities which have been tested by decades of pre-*Janus* litigation. Petitioners have not availed themselves of those mechanisms and have avoided directly attacking them in a way that would allow this Court to determine their sufficiency for protecting members' First Amendment rights.

In fact, the State Bar's *Keller* Dues Reduction process is comprehensive and differs notably from the agency fee procedures in *Janus* to which Petitioners seek to compare them. In *Janus*, the agency fees were automatically deducted from the wages of public employees without their consent. *Janus*, 138 S. Ct. at 2461. Only after the amount of the agency fee was set for the year did employees receive a notice detailing the union activities to which their agency fees were applied. *Id.* This meant that employees could only challenge the amount of the agency fee after the State had already begun to deduct it from their paychecks. *Id.* Thus, the state employees in *Janus* had no choice as to which union activities they funded.

By contrast, State Bar members voluntarily opt-in to funding the State Bar's non-chargeable activities. When State Bar members pay their dues each year, they are given the option of paying only those dues which support the State Bar's chargeable activities, or paying additional dues to fund the State Bar's non-chargeable activities. *See supra* p. 8. To make this decision, members can refer to the *Keller* Dues Reduction Notice, which spells out which activities are chargeable and which are not, based on the most recent financial data available. *Id.* Only if

members affirmatively choose to pay the additional amounts do they fund the State Bar's non-chargeable activities. Alternatively, if they choose to challenge the dues reduction, they pay no bar dues at all until the challenge has been heard by an impartial arbitrator.

The Eighth Circuit in *Fleck*, reviewing the State Bar Association of North Dakota's ("SBAND") similar *Keller* procedures, held that by allowing members to deduct amounts for non-chargeable activities from their dues in advance, SBAND had created an opt-in procedure easily distinguishable from the opt-out procedure overturned in *Janus*. *Fleck*, 937 F.3d at 1117–18 ("SBAND's revised fee statement and procedures clearly do not force members to pay non-chargeable dues over their objection.").

> The member's right to pay or refuse to pay dues to subsidize non-chargeable expenses is clearly explained on the fee statement and accompanying instructions, *in advance of the member consenting to pay by delivering a check to SBAND*. Doing nothing may violate a member's obligations to pay dues, but it does not result in the member paying dues that he or she has not affirmatively consented to pay.

Id. at 18. As with SBAND, the State Bar's *Keller* procedures ensure that members fully consent when they choose to pay dues to fund non-chargeable activities. Additionally, because the State Bar has a

policy of being over-inclusive in calculating the annual *Keller* Dues Reduction (*see* Part II, *supra*), there is little risk that members unknowingly pay for non-chargeable activities even when they take the *Keller* Dues Reduction.[11]

In fact, Wisconsin's *Keller* procedures are not only effective, but uncommon in the realm of integrated bars. Excepting SBAND, many other integrated bars around the country use less proactive policies for ensuring adherence to *Keller*. The state bars of Alaska, Arizona, Kentucky, Michigan, West Virginia, and Wyoming all offer the opportunity to challenge expenditures under *Keller* and seek a dues refund as opposed to the up-front dues reduction procedure used by Wisconsin and North Dakota. *See* Amicus Curiae Brief of the Integrated State Bars of Alaska, Arizona, Kentucky, Michigan, West Virginia, and Wyoming in Support of Appellees and Affirmance, *Fleck v. Wetch*, 937 F.3d 1112 (8th Cir. 2019) (No. 16-1564). This wide variety of approaches to dues assessment amongst the various integrated bars means that constitutional review in this case, especially with its limited record, is unlikely to result in an appropriately tailored decision.

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[11] In fact, at least one challenge to an integrated bar in another state has expressly recommended Wisconsin's procedures as a model to be followed to ensure protection of members' constitutional rights. *See* Response to NSBA Report, Petition for a Rule Change to Create a Voluntary State Bar of Nebraska, No. S-36-120001 (Neb. 2013) https://cdn.ymaws.com/www.nebar.com/resource/resmgr/NSBA_Litigation/Lautenbaugh_Response_NSBAReport.pdf.

Thus, even if *Keller* and *Lathrop* were undermined by *Janus* (and they are not, for the reasons discussed above), the sparse record in this case and the unique nature of the State Bar's mandatory dues procedures makes this case a poor vehicle for review of those cases. The issues Petitioners present should be left to further litigation in the lower courts for a more thoroughly-developed case to emerge.

CONCLUSION

For the reasons stated above, the Court should deny the petition.

Respectfully submitted,

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