Case No. 20-30086

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RANDY BOUDREAUX,

Plaintiff-Appellant

v.

LOUISIANA STATE BAR ASSOCIATION, A Louisiana Nonprofit Corporation; LOUISIANA SUPREME COURT; BERNETTE J. JOHNSON, Chief Justice of the Louisiana Supreme Court; SCOTT J. CRICHTON, Associate Justice of the Louisiana Supreme Court for the Second District; JAMES T. GENOVESE, Associate Justice of the Louisiana Supreme Court for the Third District; MARCUS R. CLARK, Associate Justice of the Louisiana Supreme Court for the Fourth District; JEFFERSON D. HUGHES, III, Associate Justice of the Louisiana Supreme Court for the Fifth District; JOHN L. WEIMER, Associate Justice of the Louisiana Supreme Court for the Sixth District; UNIDENTIFIED PARTY, successor to the Honorable Greg Guidry as Associate Justice of the Louisiana Supreme Court for the First District,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana
Case No. 2:19-cv-11962, Hon. Lance M. Africk, presiding

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CERTIFICATE OF INTERESTED PERSONS

Boudreaux v. Louisiana State Bar Association, et al., No. 20-30086.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant Randy Boudreaux respectfully requests oral argument because this case presents important and complex questions of constitutional law, including: (1) the relationship between the Supreme Court's decisions in *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *Janus v. AFSCME*, 138 S. Ct. 2448 (2018); (2) the Tax Injunction Act's application to a First Amendment challenge to mandatory bar association dues; and (3) attorneys' standing to challenge a mandatory bar association's failure to provide safeguards for First Amendment rights required under *Keller*.

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JURISDICTIONAL STATEMENT

Plaintiff-Appellant Randy Boudreaux brought this civil action against the Louisiana State Bar Association ("LSBA"), several LSBA officials, the Louisiana Supreme Court, and each of the Justices of the Louisiana Supreme Court (with all individual Defendants sued in their official capacities). Plaintiff-Appellant brought his claims under 42 U.S.C. § 1983, seeking relief for violations of his rights under the First and Fourteenth Amendments of the United States Constitution, and the district court therefore had subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because Plaintiff-Appellant seeks review of a final decision of the district court that disposed of all the parties' claims.

This appeal is timely. The district court entered judgment and an order dismissing Plaintiff-Appellant's claims in full on January 13, 2019. ROA.323–380. Plaintiff then filed this appeal on February 10, 2020, within the 30-day limit of Federal Rule of Appellate Procedure 4(a)(1). ROA.381-82.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. In *Keller v. State Bar of California*, 496 U.S. 1, 17 (1990), the Supreme Court expressly declined to consider whether the First Amendment allows states to compel attorneys to join a bar association that engages in political or ideological activities that are not germane to improving the quality of legal services or regulating the practice of law. Did the district court therefore err in concluding that *Keller* foreclosed Plaintiff's First Amendment challenge to Louisiana's requirement that attorneys join the Louisiana State Bar Association ("LSBA")?

II. The Tax Injunction Act forbids federal courts from enjoining collection of a state "tax" but not collection of a state "fee" that is linked to a regulatory scheme, imposed by an agency on those it regulates, and designed to defray an agency's regulatory expenses. Did the district court therefore err in concluding that the Act bars Plaintiff's First Amendment challenge to mandatory LSBA dues?

III. *Keller* requires mandatory bar associations to provide certain safeguards for attorneys' First Amendment rights before collecting mandatory dues. If a bar association fails to provide these safeguards, does an attorney have standing to challenge its collection of mandatory dues?

STATEMENT OF THE CASE

This lawsuit challenges (a) the State of Louisiana's requirement that attorneys join and pay dues to the Louisiana State Bar Association ("LSBA"), (b) the LSBA's use of mandatory dues for political and ideological activity without members' affirmative consent, and (c) the LSBA's lack of safeguards to protect members' First Amendment rights.

A. Louisiana's mandatory bar membership and dues

Louisiana compels every attorney licensed in the state to join the LSBA in order to practice law. ROA.15 ¶ 22; La. R.S. §§ 37:211, 37:213; La. S. Ct. R. XIX, § 8(C). It also authorizes the LSBA to charge annual membership fees to its mandatory members. ROA.15 ¶ 23; La. R. Prof. Cond. 1.1(c); *In re Mundy*, 11 So. 2d 41 (La. 1942). Those dues are currently $80 for lawyers admitted three years or less and $200 for members admitted for more than three years. ROA.15 ¶ 24. Lawyers who fail to pay LSBA dues are subject to discipline imposed exclusively by the Louisiana Supreme Court, through the Defendant Chief Justice and Associate Justices, including disbarment and revocation of the privilege to practice law in the State. ROA.15–16 ¶¶ 25, 28; *In re Fisher*, 24 So. 3d 191 (La. 2009); *In re Smith*, 17 So. 3d 927 (La. 2009).

B. The LSBA's role

According to Article III, § 1, of its Articles of Incorporation, the LSBA's purpose is "to regulate the practice of law, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law, encourage cordial intercourse among its members, and, generally, to promote the welfare of the profession in the State." ROA.16 ¶ 30. But the LSBA does not handle disciplinary matters for the regulation of the profession. ROA.17 ¶ 32. Instead, a separate body established by the Louisiana Supreme Court, called the Louisiana Attorney Disciplinary Board ("LADB"), serves as the "statewide agency to administer the lawyer discipline and disability system," according to its website. *Id.* All attorneys licensed in Louisiana must pay an annual "Assessment" to the LADB—separate from and in addition to their LSBA member dues—and this Assessment is currently set at $170 for attorneys admitted three years or less, and $235 for attorneys admitted more than three years. *Id.* ¶ 33.

The LSBA also does not handle the admission or licensing of new attorneys. Those duties are instead performed by the Louisiana Supreme Court Committee on Bar Admission. *Id.* ¶ 34. The LSBA only recently began administering the state's mandatory continuing legal education activities. *Id.* ¶ 35.

C. LSBA's use of mandatory dues for political and ideological speech

The LSBA uses members' mandatory dues to engage in speech, including political and ideological speech. *Id.* ¶ 36. For example, the LSBA conducts legislative advocacy through a "Legislation Committee." *Id.* ¶ 37. The LSBA's Bylaws express LSBA's desire to influence public policy through legislative advocacy. ROA.17–18 ¶ 38. The Bylaws' criteria for "legislative positions" include "[l]ikelihood of success within the legislative process" and whether LSBA's issue lobbying will have "an impact on actions of decision-makers." *Id.*

The LSBA's Legislation Committee evaluates bills in part through "Policy Positions" adopted by the LSBA's House of Delegates. ROA.18 ¶ 39. The LSBA has grouped these "Policy Positions" into categories that include not only "regulation of the practice of law" but also, among others, "criminal law," "civil law," and "miscellaneous" areas of law. *Id.* ¶ 40.

The LSBA's "criminal law" Policy Positions include, among others, a resolution "urging [a] moratorium on executions in Louisiana until [the] state implements procedures for providing for representation by counsel of all persons facing execution sufficient to ensure that no person is put to death without having their legal claims properly presented to the courts." *Id.* ¶ 41. The LSBA's "civil law" Policy Positions include

> a resolution opposing: 1. The granting of civil immunities, except in cases where the public policy

> sought to be favored is sufficiently important, the behavior sought to be encouraged is directly related to the policy, and the immunity is drawn as narrowly as possible to effect its purpose; and 2. The creation of special rules favoring subclasses of parties in certain types of cases in contravention of our Civil Code and Code of Civil Procedure, unless a clear case is made of the need for these rules.

Id. ¶ 42.

The LSBA's "miscellaneous" Policy Positions include, among others, a resolution "strongly supporting a requirement for a full credit of civics in the high school curriculum in the State of Louisiana, while eliminating the free enterprise requirement and incorporating those concepts into the civics curriculum." ROA.18–19 ¶ 43. The "miscellaneous" positions also include, among other things, a resolution "[u]rging the adoption of laws prohibiting discrimination in employment, housing and accommodations for LGBT persons." ROA.19 ¶ 44.

The LSBA's Legislation Committee has taken positions on over 407 bills considered by the Louisiana legislature since 2007. *Id.* ¶ 45. In the five years before Plaintiff filed his complaint, the Committee offered positions on 10 bills in the 2019 regular session, 46 bills in the 2018 regular session, 18 bills in the 2017 regular session, 39 bills in the 2016 regular session, and at least 23 bills in the 2015 regular session. *Id.*

Further, the LSBA has used its legislative advocacy arm to lobby in Baton Rouge against legal reform efforts. These include its opposition to efforts to

reduce the threshold amount required to request a jury in a civil matter (in 2014 and 2016), to require judges to file financial statements with the Board of Ethics (in 2008 and 2015), and to allow school professionals with training and concealed carry permits to concealed carry in schools (in 2013). *Id.* ¶ 46.

According to its dues notices, LSBA estimates that "3% of … LSBA Membership Dues" are devoted to "government relations," and these are "not deductible as a business expense for federal income tax purposes." *Id.* ¶ 47. But the LSBA does not inform members of whether any past expenditures of member dues on "government relations" were germane to improving the quality of legal services or regulating the legal profession. *Id.* ¶ 48.

The "Policy Positions" and legislative advocacy described here are inherently political and ideological and constitute political and ideological speech by the LSBA. ROA.20 ¶ 49.

D. LSBA's dues refund procedures

The LSBA does not provide members—as it is required to do under *Keller*, 496 U.S. 1—with sufficient information about its activities and expenditures to enable members to ensure their mandatory dues are used only for activities that are germane to improving the quality of legal services or regulating the practice of law. ROA.20 ¶ 50.

The LSBA's Bylaws do allow a member to object to "the use of any portion of the member's bar dues for activities he or she considers promotes or opposes [*sic*] political or ideological causes" by filing a written objection with the LSBA's Executive Director "within forty-five (45) days of the date of the Bar's publication of notice of the activity to which the member is objecting." *Id.* ¶ 51 (quoting LSBA Bylaws Art. XII, § 1(A)). But the LSBA Bylaws do not specify where or when this "publication of notice" is to occur. *Id.* ¶ 52.

In fact, the LSBA does not publish notices of all of its activities, which means that members do not actually have an opportunity to object to all of the LSBA's various uses of their dues. *Id.* ¶ 53. Although the LSBA publishes an annual report that includes its spending for the previous year, that report does not identify specific expenditures the LSBA has made or proposed to make; it only identifies general categories of expenditures. *Id.* ¶ 54.

The LSBA's Bylaws do require it to "timely publish notice of adoption of legislative positions in at least one of its regular communications vehicles and [to] send electronic notice of adoption of legislative positions to Association Members." ROA.21 ¶ 55 (quoting LSBA Bylaws Art. XI, § 5). But the LSBA's Bylaws and Articles of Incorporation do not otherwise require the LSBA to provide members with notice of the LSBA's political and ideological speech and other activities. *Id.* The LSBA therefore does not provide a meaningful, reasonable

opportunity for members to determine the basis of the dues they are charged. Nor does it give members information needed to enable them to object to expenditures that they believe violate their First Amendment rights—including their right, under *Keller*, not to fund LSBA activities that are not germane to improving the quality of legal services and regulating the practice of law. *Id.* ¶ 56.

E. Plaintiff's injury and claims

As a Louisiana attorney, Plaintiff Randy Boudreaux has been forced to join and pay dues to the LSBA since approximately 1996 and will be required to pay annual dues in the future if he wishes to continue practicing law in the state. ROA.16 ¶¶ 26-27, ROA.21 ¶ 57. He opposes Louisiana's laws, rules, and regulations that compel him to associate with other lawyers and to associate with an organization against his will. ROA.21 ¶ 58. He also opposes the LSBA's use of any amount of his mandatory dues to fund any amount of political or ideological speech, regardless of its viewpoint, including, but not limited to, the examples set forth above. But he has been without effective means to prevent it and has no effective recourse. *Id.* ¶ 59.

Louisiana's requirements that all attorneys join and pay dues to the LSBA injure Boudreaux because he does not wish to associate with the LSBA, its other members, or its political and ideological speech, nor does he wish to fund the LSBA or its political and ideological speech and other activities. ROA.22 ¶¶ 60-61.

But for the requirements that he join and pay dues to the LSBA, he would not do so. *Id.* Further, the LSBA's lack of safeguards to ensure that members are not required to pay for political and ideological speech and other activities not germane to regulating the legal profession or improving the quality of legal services injures him because he does not want to fund such activities in any amount. *Id.* ¶ 62.

In his First Claim for Relief, Plaintiff alleges that mandatory membership in the LSBA violates his First Amendment rights to free association and free speech, particularly his right to choose which groups, and what political speech, he will and will not associate with. ROA.23–25 ¶¶ 70-80. In his Second Claim for Relief, he alleges that the LSBA's collection and use of mandatory bar dues to subsidize its speech, including its political and ideological speech, without his affirmative consent violates his First Amendment rights to free speech and association. ROA.25–27 ¶¶ 81-95. In his Third Claim for Relief, he alleges—in the alternative to his first two claims—that, to the extent that mandatory bar dues are constitutional at all, the LSBA violates attorneys' First Amendment rights by failing to provide safeguards, required under *Keller, supra*, to ensure that member dues are not used for activities that are not germane to regulating the legal profession and improving the quality of legal services. ROA.27–29 ¶¶ 96-106.

Defendants include the Louisiana State Bar Association, the Louisiana Supreme Court, and the Chief Justice and Associate Justices of the Louisiana Supreme Court, with all individual Defendants sued in their official capacities. ROA.13–14 ¶¶ 12-21.

F. Procedural history

Defendants filed two motions to dismiss in the district court, one under Federal Rule of Civil Procedure 12(b)(1) and one under Rule 12(b)(6). ROA.93–94, 130–31. The district court dismissed Plaintiff's first claim (challenging mandatory bar membership) under Rule 12(b)(6), concluding that Supreme Court precedent foreclosed it. ROA.378. The court dismissed Plaintiff's second claim (challenging the collection and use of mandatory bar dues for speech) under Rule 12(b)(1), concluding that the Tax Injunction Act barred it. ROA.341. And the court dismissed Plaintiff's third claim (challenging LSBA's lack of safeguards to protect First Amendment rights) under Rule 12(b)(6), on the grounds that Plaintiff had not alleged a sufficiently concrete injury to himself. ROA.356. The district court also dismissed the Louisiana Supreme Court from the case upon concluding that it was not a person or juridical entity capable of being sued. ROA.375. The district court rejected Defendants' other arguments for dismissal, however, which were based, respectively, on principles of comity, ROA.349, standing, ROA.356, ripeness

ROA.351, the *Burford* abstention doctrine, ROA.363, the Eleventh Amendment, ROA.371, and legislative immunity, ROA.372.

SUMMARY OF THE ARGUMENT

The district court erred in dismissing Plaintiff's claims because Plaintiff has stated viable First Amendment challenges to mandatory LSBA membership, to the use of mandatory LSBA dues for political and ideological speech without members' affirmative consent, and to the LSBA's failure to provide safeguards for attorneys' First Amendment rights required under *Keller*, 496 U.S. 1.

The district court erred in concluding that Plaintiff's first claim for relief, which raises a First Amendment challenge to mandatory LSBA membership, is foreclosed by *Lathrop v. Donohue*, 367 U.S. 820, 842-44 (1961), and *Keller*. To the contrary, *Keller* expressly declined to address whether a state may require attorneys to join a bar association that engages in political and ideological speech not germane to regulating the legal profession and the improvement of legal services. The Court noted that *Lathrop* had not resolved that question, either, and concluded that lower courts therefore "remain free … to consider this issue." *Keller*, 496 U.S. at 17. Plaintiff's claim therefore presents the very question *Keller* reserved for a future case.

Further, the claim should proceed because Defendants have not shown that mandatory bar membership can survive the exacting First Amendment scrutiny

that the Supreme Court has prescribed for laws mandating association for expressive purposes. Under *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), Defendants bear the burden of showing that mandatory LSBA membership "serve[s] a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 2465. Defendants have not shown and cannot show this: it is obvious that the state could regulate attorneys directly, just as it regulates other trades and professions without the aid of a mandatory association, and just as the 18 states that already have no mandatory bar association already do.

The district court also erred in concluding that the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, bars Plaintiff's second claim for relief, which challenges the LSBA's use of mandatory dues for political and ideological speech without members' affirmative consent. The TIA only prohibits federal courts from enjoining a state *tax*; it does not prevent courts from enjoining a state *regulatory fee*. And mandatory LSBA dues are fees, not taxes: they are imposed as part of a regulatory scheme, are imposed by an agency on those it regulates, and serve to defray the agency's regulatory expenses, rather than raise general revenue for the state. *See Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The fact that regulation of the legal profession provides benefits to the general public does not change these fees into taxes. Neither does *In*

re Mundy, 11 So. 2d at 400–01, the 1942 state court decision that the district court cited, which referred to LSBA dues as a "tax." The labels applied by state courts in other contexts is irrelevant to whether a charge is a tax under the TIA. *Home Builders*, 143 F.3d at 1010 n.10.

Finally, the district court erred in concluding that Plaintiff lacks standing to bring his third claim for relief, which alleges—in the alternative to his first two claims—that the LSBA lacks safeguards that *Keller* requires. Those safeguards are mandated to ensure that members' mandatory dues are not used for political and ideological speech and other activities not germane to regulating the legal profession and improving the quality of legal services, which are the only purposes for which a mandatory bar association may use mandatory dues. *See Keller,* 496 U.S. at 13-14, 16.

But Plaintiff alleges that the LSBA does not provide sufficient information about activities in which it engages that would allow him to raise an objection to improper expenditures. His standing to bring this claim does not depend, as the district court held, on his ability to identify LSBA expenditures to which he would have objected had he been notified of them. *Keller*'s safeguards are an essential *prerequisite* to the collection of mandatory bar dues; they are essential to ensure that the state *avoids* infringing on attorneys' First Amendment rights. Therefore, the absence of the required safeguards, by itself, renders the LSBA's collection of

mandatory dues unconstitutional and violates attorneys' First Amendment rights. It would be unreasonable to require Plaintiff to identify LSBA activities to which he would have objected, had he known of them, because the very basis of his claim is that the LSBA failed to inform him of its activities.

This Court therefore should reverse the district court's dismissal with respect to all three claims.

ARGUMENT

The district court erred in dismissing Plaintiff's claims. *First,* it erred in dismissing Plaintiff's challenge to mandatory LSBA membership because Plaintiff has sufficiently alleged a violation of his First Amendment rights, and the claim raises an issue that the Supreme Court has expressly reserved for lower courts to consider. *Second*, the district court erred in ruling that the Tax Injunction Act ("TIA") bars Plaintiff's challenge to mandatory LSBA dues because those dues are not a tax, but are fees—precisely the sort to which the TIA does not apply. *Third*, the court's conclusion that Plaintiff lacked standing to challenge the LSBA's lack of safeguards for First Amendment rights was improper because collection of mandatory dues in the absence of *Keller* safeguards violates Plaintiff's First Amendment rights.

I. This Court reviews motions to dismiss under Rules 12(b)(1) and 12(b)(6) de novo.

This Court reviews motions to dismiss under Rule 12(b)(1) and 12(b)(6) de novo, applying the same standard as the district court. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

A motion to dismiss under Rule 12(b)(1) should not be granted unless "it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief." *Home Builders*, 143 F.3d at 1010. "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Id.* "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming*, 281 F.3d at 161.

Rule 12(b)(6) is different. Under that rule, a claim should not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* A court considering a 12(b)(6) motion must accept all allegations of the complaint as true and construe all facts in the light most favorable to the plaintiff. *Id.*

II. Plaintiff has stated a viable First Amendment challenge to mandatory LSBA membership.

This Court should reverse the district court's dismissal of Plaintiff's first claim under Rule 12(b)(6) because Plaintiff has stated a valid First Amendment

challenge to Louisiana's requirement that attorneys become members of the LSBA as a condition of practicing law. ROA.23–25 ¶¶ 70-80. The Supreme Court has made clear that "[t]he right to eschew association for expressive purposes" is "protected" by the First Amendment. *Janus*, 138 S. Ct. at 2463. Therefore, forcing Plaintiff to join LSBA as a condition of practicing law infringes on his First Amendment right to freedom of association. Under *Janus*, therefore, Defendants bear the burden of justifying that infringement by showing that it "serve[s] a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 2465 (citation omitted). Defendants have not even attempted to meet that burden. Therefore, the district court lacked any basis for dismissing Plaintiff's claim. Its conclusion that Supreme Court precedent bars the claim is incorrect.

A. The Supreme Court has expressly reserved this issue for consideration by lower courts.

The district court erred in concluding that Supreme Court precedent forecloses Plaintiff's challenge to mandatory LSBA membership. ROA.375–78. To the contrary, the Supreme Court has expressly reserved this issue for consideration by lower courts.

In *Lathrop v. Donohue*, 367 U.S. 820, 842-44 (1961) (plurality), the Supreme Court held that a state does not violate attorneys' First Amendment right to freedom of association when it requires them to pay dues to a bar association

that exists to "elevat[e] the educational and ethical standards of the Bar [and] … improv[e] the quality of legal service[s]." *Id.* at 843. But the Court declined to address the separate question of whether a bar association's use of mandatory dues for political or ideological advocacy violates attorneys' First Amendment right to free speech. *Id.* at 845-46.

In *Keller*, the Court addressed the issue that *Lathrop* had declined to resolve. It held that a mandatory bar association violates the First Amendment when it uses mandatory dues for political and ideological speech that is not germane to improving the quality of legal services and regulating the practice of law. 496 U.S. at 13-14. In reaching that conclusion, the Court followed the example of *Abood v. Detroit Board of Education,* 431 U.S. 209 (1977), which held that public-sector unions violated government employees' First Amendment rights when they used compulsory union fees for activities that were not germane to representing workers in collective bargaining. *Keller*, 496 U.S. at 9-14. *Keller*'s analysis assumed, without deciding, that mandatory bar membership is constitutional—at least if the bar association uses dues only for permissible "germane" purposes. *See id.* at 4, 13-14, 17.

Keller expressly declined to resolve a separate freedom-of-association issue related to mandatory bar membership: whether attorneys may "be compelled to associate with an organization that engages in political or ideological activities

beyond those [germane activities] for which mandatory financial support is justified under the principles of *Lathrop* and *Abood*." *Keller*, 496 U.S. at 17. In other words, *Keller* did not decide whether the First Amendment allows states to force attorneys to join bar associations that engage in non-germane political and ideological speech, *even if* the attorney is not forced to pay for that speech. And *Keller* noted that *Lathrop* had not addressed that issue, either. *Id.* The Court therefore said that lower courts "remain[ed] free … to consider this issue." *Id.* Since then, neither the Supreme Court nor this Court has resolved it.

Here, Plaintiff alleges that the LSBA uses his mandatory dues for political and ideological speech that is not germane to regulating the legal profession and improving the quality of legal services, ROA.18–19 ¶¶ 40-44, ROA.26 ¶ 89, and that forcing him to join the LSBA therefore violates his First Amendment right to freedom of association, ROA.22–25 ¶¶ 60, 70-80. Plaintiff's claim therefore presents precisely the question that *Keller* did not decide, and the district court therefore erred in concluding that *Keller* forecloses his claim.[1]

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[1] To be clear, Plaintiff's First Claim for Relief also presents the even broader question of whether mandatory membership in a bar association that engages in *any* political or ideological speech—"germane" or not—violates attorneys' First Amendment rights. ROA.23–25 ¶¶ 70-80. Plaintiff argues here, however, that his claim should survive *at least* to the extent that it presents the narrower freedom-of-association issue that *Keller* expressly reserved.

B. Plaintiff's claim should proceed because Defendants have not shown that mandatory bar membership satisfies exacting First Amendment scrutiny.

Because precedent does not foreclose Plaintiff's First Claim for Relief, the Court should subject Louisiana's membership requirement to the exacting First Amendment scrutiny that *Janus* prescribed for laws mandating association for expressive purposes. Under exacting scrutiny, Defendants must show that mandatory LSBA membership "serve[s] a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." 138 S. Ct. at 2465 (citation omitted).

Defendants have not satisfied their burden; indeed, they have not even tried to show that the state cannot achieve the only purpose that mandatory LSBA membership might legitimately serve—"regulating the legal profession and improving the quality of legal services," *Keller*, 496 U.S. at 13—by significantly less restrictive means. Further, it is obvious that Louisiana *can* serve its interest in regulating the legal profession and improving the quality of legal services without forcing attorneys to join the LSBA.

On this point, *Janus*'s details are instructive. In *Janus*, the state argued that forcing government employees to subsidize a union with mandatory "agency fees" was necessary to serve the state's interest in "labor peace." The "labor peace" theory—which the Court had accepted in *Abood*, 431 U.S. at 223-37—held that

requiring public-sector employees to subsidize a union was necessary because of the union's designation as employees' exclusive bargaining representative. Without compulsory fees, the theory went, the union would not be able to act as the sole bargaining representative; and without a single exclusive representative, competing unions could cause "pandemonium" in the workplace. *Janus*, 138 S. Ct. at 2465.

Janus rejected that assumption as "simply not true," *id.*, because, in fact, several federal entities and states designated public-sector unions as exclusive representatives *without* compelling workers to pay union fees, and no such "pandemonium" had resulted. Unions were able to serve as exclusive representatives even without compelling workers' support. Therefore, the Court found it "undeniable that 'labor peace' can readily be achieved 'through means significantly less restrictive of associational freedoms' than the assessment of agency fees." *Id.* at 2466. The Court then concluded that the fees could not survive exacting First Amendment scrutiny and overruled *Abood*. *See Janus*, 138 S. Ct. at 2466, 2478-86.

As Plaintiff has alleged, mandatory LSBA membership fails exacting scrutiny for the same reason mandatory union fees failed it in *Janus*: the state can achieve its goals without compelling anyone to join or pay an organization. ROA.24 ¶¶ 76–77. It is obvious as a theoretical matter how the state could achieve

its goals for the legal profession without mandating bar membership or dues: by acting as a regulator, penalizing those who break the rules and providing educational services to ensure that practitioners know the rules—just as it already does for other professions and trades. And, as a practical matter, some 20 states and Puerto Rico do, in fact, already regulate the practice of law without requiring membership in a state bar association that may use member fees for political and ideological speech. *Id.* ¶ 77; Ralph H. Brock, *"An Aliquot Portion of Their Dues:" A Survey of Unified Bar Compliance with Hudson and Keller*, 1 Tex. Tech J. Tex. Admin. L. 23, 24 n.1 (2000).[2] This includes states with large populations of lawyers, such as Massachusetts, New York, California, and New Jersey, and states with some of the smallest bars, such as Vermont and Delaware. *Id.* If those states can regulate lawyers and improve the quality of legal services without violating attorneys' First Amendment rights with a mandatory bar, then so can Louisiana.

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[2] This article identifies 32 states with a mandatory bar association. Since its publication, however, California and Nebraska have adopted bifurcated systems under which lawyers only pay for purely regulatory activities are not forced to fund a bar association's political or ideological speech, eliminating most if not all of the First Amendment problems Plaintiff objects to here. *See In re Petition for a Rule Change to Create a Voluntary State Bar of Neb.*, 841 N.W.2d 167, 173 (Neb. 2013); Marilyn Cavicchia, *Newly Formed California Lawyers Association Excited to Step Forward*, ABA Journal (Apr. 30, 2018), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2017-18/may-june/born-by-legislative-decision-california-lawyers-association-excited-to-step-forward/.

The Court should therefore reverse the district court's dismissal of Plaintiff's First Claim for Relief.

III. The Tax Injunction Act does not bar Plaintiff's First Amendment challenge to mandatory LSBA dues because the dues are a fee, not a tax.

The district court erred in concluding that the TIA bars Plaintiff's Second Claim for Relief, challenging mandatory LSBA dues, ROA.25–27 ¶¶ 81–95, because, for purposes of the TIA, the dues are "fees," not "taxes."

The TIA only prohibits district courts from enjoining collection of state *taxes*; it does not prevent courts from enjoining state "regulatory fees." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 2014). Whether a charge constitutes a "tax" for TIA purposes is a question of federal law; the label given to the charge by state law does *not* control. *Id.* at 1010 n.10 (citing *Robinson Protective Alarm Co. v. City of Phila.,* 581 F.2d 371, 374 (3d Cir. 1978)).

A "classic tax"—to which the TIA applies—is a charge that (a) "sustains the essential flow of revenue to the government," (b) is "imposed by a state or municipal legislature," and (c) is "designed to provide a benefit for the entire community." *Id.* at 1011. On the other hand, a "classic fee"—to which the TIA does *not* apply—is (1) "linked to some regulatory scheme," (2) "imposed by an agency upon those it regulates," and (3) "designed to raise money to help defray an agency's regulatory expenses." *Id.*

Under these tests, mandatory LSBA dues are the quintessential "classic fee."

First, LSBA dues are not designed to increase the state's general revenue, but are part of the state's regulatory scheme for the legal profession. *See* LSBA Bylaws Art. I, § 3 (providing that LSBA dues are to be paid to the LSBA's Treasurer).[3]

Second, the dues are not imposed by the legislature but by the LSBA. *See id.* § 1. In finding LSBA dues to be a tax, the district court stated that "[a]lthough the LSBA sets the rate at which members must pay dues, its authority to do so derives from the state legislature." ROA.336. But in fact, the LSBA was created and authorized to charge dues under the authority of the Louisiana *Supreme Court*, and this was "memorialized" in state legislation, which simply noted that the court would "exercise its inherent powers … by providing a schedule of membership dues." *See* La. R.S. 37:211; *In re Mundy*, 11 So. 2d at 400. Further, even if one could construe that legislation as "authorizing" the LSBA to collect mandatory dues, those dues still would not be a tax because legislation does not *impose* them—i.e., it does not *require* their collection, or set their amount. A charge cannot be a tax just because a body imposed it under authority bestowed by

[3] https://www.lsba.org/documents/Executive/BylawsRevisedJan2020.pdf

legislation. After all, virtually *all* charges government bodies impose are authorized by *some* statutory authority—but not all are taxes under the TIA.

A First Circuit decision that this Court has called "[t]he leading case in this area,"[4] *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico*, 967 F.2d 683 (1st Cir. 1992), confirms this. In that case, the court found a charge to be a fee in part because an agency assessed it under the authority of a statute that authorized the agency to "'demand a periodic rate … and prescribe the manner and time that the payments shall be made.'" *Id.* at 686 (citing 27 L.P.R. § 1111(b)). There, as here, a body's (supposed) statutory authority to impose a charge did not make that charge one "imposed by" the state legislature; rather, the agency's statutory authority confirmed that it was the agency, *not* the legislature, that imposed the charge, and the charge therefore was *not* a tax. And, here, the LSBA—like the agency in *San Juan Cellular*—sets the amount that it charges and prescribes the manner and time that payments are made. LSBA Bylaws, Art. I §§ 1, 3.

Third, LSBA dues are only imposed on the individuals the LSBA regulates. *See* La. R.S. § 37:211 (citing Act 54 of 1940, which states "[t]hat the membership of the [LSBA] shall consist of all persons now or hereafter regularly licensed to practice law in this State"). The district court acknowledged this and agreed with

[4] *Neinast v. Texas*, 217 F.3d 275, 278 (5th Cir. 2000).

Plaintiff that it "favors a finding that LSBA dues are a fee." ROA.336 citing *Neinast*, 217 F.3d at 278.

Fourth, LSBA dues are designed to defray the LSBA's regulatory expenses. Indeed, under *Keller*, a bar association may *only* use mandatory dues for activities that are germane to "regulating the legal profession and improving the quality of legal services." 496 U.S. at 13-14. The district court acknowledged that the LSBA's use of dues to fund its own operation "seems to suggest that LSBA dues are fees," ROA.338, citing *Neinast*, 217 F.3d at 278, but it also implied that the dues are like a tax inasmuch as "a number of" the LSBA's activities benefit "the entire community." ROA.338–39. Those activities, according to the district court, include:

> "maintaining 'sections,' related to different areas of law, devoted to 'the improvement of professional knowledge and skill, and in the interested of the profession and the performance of its public obligations'; providing a mediation and arbitration service for the amicable resolution of disputes between clients and lawyers; and sponsoring a client assistance program for clients wronged by a lawyer who have no remedy.

ROA.339–40 (footnotes omitted). But all those activities *do* pertain to regulating the legal profession and improving the quality of legal services. True, the general public may benefit from them. But that is not enough by itself to turn a fee charged to a regulated group into a tax.

This Court's decision in *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), illustrates the point. In that case, the Court determined that a charge imposed on nuclear facilities "to recover the costs for processing applications, permits and licenses as well as the costs arising from health and safety inspections and statutorily mandated environmental and antitrust reviews" was a fee, not a tax. *Id.* at 225-29. *Mississippi Power* did not involve the TIA, but *Home Builders* declared that *Mississippi Power*'s "holding is consonant with the cases … that define the paradigmatic fee [under the TIA] as one imposed by an agency upon those it regulates for the purpose of defraying regulatory costs." *Home Builders*, 143 F.3d at 1011.

Of course, the safety and environmental inspections of nuclear plants at issue in *Mississippi Power*—like the regulation of the legal profession at issue here—served to benefit the general public, not just the plants' operators. But that did not make the charge those operators paid a tax; it was still a fee, because it was imposed on a regulated group to cover the cost of its regulation. *Id*. The Court recognized that regulation's benefit to the general public, by itself, could not render a charge imposed on regulated entities to fund their regulation into a "tax." Otherwise *all* such charges would be taxes, never fees, because "all public agencies are constituted in the public interest." *Miss. Power*, 601 F.3d at 229.

As *San Juan Cellular* put it, a charge is a fee if it "provides more narrow benefits to regulated [entities] *or* defrays the agency's costs of regulation." 967 F.2d at 685 (emphasis added). Conversely, a charge is a tax if it is imposed on a particular group to cover something *other than* the cost of its own regulation that benefits the general public. *See, e.g., Henderson v. Stalder*, 407 F.3d 351, 357-58 (5th Cir. 2005) (charges for specialty license plates, which were used for various purposes "ranging from … park development to university education to adoption," not vehicle regulation, held to be a tax); *Home Builders*, 143 F.3d at 1012 (charge for building permit that funded municipal services for the benefit of the general public, not regulation of builders, held to be a tax).

Applying this rule, other courts have recognized that mandatory bar association fees are not "taxes" for purposes of the TIA or its equivalent. *See In re Justices of Sup. Ct. of P.R.*, 695 F.2d 17, 26-27 (1st Cir. 1982) (Butler Act—the TIA equivalent for Puerto Rico, read *in pari materia* with it—did not bar challenge to "revenue scheme … [that] devote[d] all of the funds that it generate[d] to a bar association rather than to the treasury"); *Levine v. Sup. Ct. of Wis.*, 679 F. Supp. 1478, 1488-89 (W.D. Wis. 1988) (TIA did not bar challenge to state bar dues), *rev'd on other grounds sub nom. Levine v. Heffernan*, 864 F.2d 457 (7th Cir. 1988).

A North Carolina district court decision that held otherwise lacks persuasive value because it simply concluded, without analysis, that bar dues were a tax based on "the entity that imposes [them], the population that is subject to [them], and the purposes served by the use of the monies obtained by [them]." *Livingston v. N.C. State Bar*, 364 F. Supp. 3d 587, 594 (E.D.N.C. 2019). In stating that conclusion, the court cited an earlier district court case that found a different North Carolina surcharge on lawyers (not bar association dues) to be a tax, not a fee, *Jackson v. Leake*, 476 F. Supp. 2d 515 (E.D.N.C. 2006), *aff'd* 524 F.3d 427 (4th Cir. 2008). *Livingston*'s reliance on *Jackson* was improper, however, because *Jackson* was inapposite. *Jackson* held that the surcharge challenged there was a tax because the legislature imposed it directly, and the state used the revenue to fund election campaigns, not to regulate the legal profession. *Id.* at 517, 522.

Finally, the district court erred to the extent that it relied on "the [Louisiana] supreme court's characterization of [LSBA] dues as taxes" in *Mundy*, *supra*. ROA.336. The *Mundy* case did not address the distinction between a tax and a fee at all, and in determining whether something is a tax under the TIA, what the state chooses to call that thing "has no bearing." *Henderson*, 407 F.3d at 356. *Mundy* involved a state court's characterization of the charge, under state law, in an unrelated context—whereas determining whether something is a tax for TIA purposes is a question exclusively of federal law. *Id*. at 356; *see also Tramel v.*

Schrader, 505 F.2d 1310, 1315 n.7 (5th Cir. 1975) (state court decisions "deal[ing] only with the meaning of the term 'taxes' in the context of Texas statues and the Texas Constitution … [were] not controlling in determining what Congress meant by the term 'taxes' [in the TIA]"). As *Robinson* put it, Congress did not "mean[] for the federal courts to define the scope of the [TIA] and their own jurisdiction by adopting state labels from contexts inapposite to application of [the TIA]." 581 F.2d at 374.

The district court's statement that "federal courts may consider the state supreme court's characterization of the payment at issue" is incorrect. ROA.335. The case the district court cited for this proposition addressed the TIA only in a single footnote, which only noted in passing that the Mississippi Supreme Court had characterized certain payments as "leases rather than taxes." *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F.3d 494, 500 n.13 (5th Cir. 2001). That decision, however, reiterated that "the determination of what is a 'tax' [under the TIA] is ultimately a question of federal law." *Id.* (citing *Neinast*, 217 F.3d at 278). Moreover, *Lipscomb* apparently noted the state court's characterization of payments as "leases" simply to underscore how obviously far from taxes they were. *See id.*

In sum, mandatory bar association dues have all of the characteristics associated with a "classic fee," and none of the characteristics of a "classic tax."

The district court therefore erred in holding that the TIA bars Plaintiff's challenge to LSBA dues, and this Court therefore should reverse its dismissal.

IV. Plaintiff has stated a viable challenge to the LSBA's lack of safeguards for attorneys' First Amendment rights.

The district court erred in dismissing Plaintiff's third claim, which challenges LSBA's lack of safeguards to ensure that members' mandatory dues are not used for non-germane political and ideological speech and other non-germane activities.[5] ROA.26–29 ¶¶ 96-106. By alleging that the LSBA fails to provide members with sufficient information to satisfy the requirements established in *Keller*, the Plaintiff has stated a sufficient injury to himself to support a viable First and Fourteenth Amendment claim.

A. Plaintiff has alleged that the LSBA fails to provide sufficient information to allow attorneys to protect their First Amendment rights as *Keller* requires.

In *Keller*, the Supreme Court held that mandatory bar dues may only be used for activities "germane" to "regulating the legal profession and improving the quality of legal services." 496 U.S. at 13-14. The Court held that using mandatory dues to "fund activities of an ideological nature which fall outside of those areas of activity" violates members' First Amendment right to freedom of speech. *Id.* at 14.

[5] Again, this claim is asserted, in the alternative to Plaintiff's other claims, that mandatory bar membership and dues are unconstitutional.

Keller therefore required that bar associations establish three safeguards to ensure that members are not forced to pay for such non-germane activities. First, they must provide "an adequate explanation of the basis for the [mandatory bar association] fee." Second, they must provide "a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker." Third, they must maintain "an escrow for the amounts reasonably in dispute while such challenges are pending." *Id.* at 16. This is the same "minimum set of procedures" the Court mandated for public-sector unions in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), to ensure that non-members' mandatory union fees are not used for political and ideological activity not germane to the union's representation activities.

Plaintiff alleges that the LSBA fails to satisfy the first *Keller*/*Hudson* requirement because the LSBA "does not provide [him] adequate information about its activities to allow him to determine whether his dues are being used appropriately and therefore does not provide an adequate explanation for the basis of his mandatory dues." ROA.28 ¶ 99. The LSBA's Bylaws do provide that a member may object to "the use of any portion of the member's bar dues for activities he or she considers promotes or opposes [*sic*] political or ideological causes" by filing a written objection with the LSBA's executive director "within forty-five (45) days of the date of the Bar's publication of notice of the activity to

which the member is objecting." ROA.20 ¶ 51; LSBA Bylaws Art. XII, § 1(A). But the Bylaws do not specify where or when this "publication of notice" is to occur and therefore do not ensure that members receive constitutionally sufficient notice. ROA.20 ¶ 52.

Moreover, the LSBA does not publish notices of all of its activities, which means that members do not actually have an opportunity to object to all of the LSBA's various uses of their dues. *Id.* ¶ 53. The LSBA publishes an annual report that purports to show its expenditures for the previous year, but it does not identify any *specific* expenditures that the LSBA has made or proposed to make. It only identifies general categories of expenditures. *Id.* ¶ 54.

Article XI, § 5, of its Bylaws requires the LSBA to "timely publish notice … of adoption of legislative positions to Association members," but the LSBA's Articles of Incorporation and Bylaws do not otherwise require the LSBA do provide members with notice of the LSBA's political and ideological speech or its other activities. ROA.21 ¶ 55. The LSBA therefore does not provide a meaningful, reasonable opportunity for members to determine the basis of the dues they are charged and to object to expenditures that they believe violate their First Amendment right not to fund non-germane activities. *Id.* ¶ 56.

With these allegations, Plaintiff has stated a First Amendment claim based on the LSBA's failure to provide the safeguards *Keller* requires bar associations to adopt before they may collect mandatory dues.

B. Plaintiff has alleged a sufficient injury to himself to establish his standing to challenge the LSBA's failure to provide sufficient information.

Contrary to the district court's conclusion (ROA.352–57), the Plaintiff has standing to challenge the LSBA's failure to provide members with sufficient information about its activities, because that failure renders the LSBA's collection of his mandatory dues unconstitutional.

Keller and *Hudson* make clear that providing safeguards is a constitutional prerequisite for the collection of mandatory dues. *Keller* characterized these safeguards as "constitutional *requirements* for the [bar association's] collection of … fees." 496 U.S. at 16 (emphasis added). So did *Hudson*, 475 U.S. at 310 (safeguards were "constitutional requirements for [a u]nion's collection of agency fees"). *Hudson* held that the safeguards were essential because mandatory union fees were an "infringement on nonunion employees' constitutional rights" that was justifiable only if a union provided safeguards "carefully tailored to minimize the infringement." 475 U.S. at 303. And *Keller* adopted *Hudson*'s safeguard requirement for bar associations for the same reason. 496 U.S. at 16-17.

Therefore, when a bar association collects mandatory dues in the absence of adequate *Keller* safeguards, it commits an unjustified infringement of members' First Amendment rights. The proper remedy is an injunction against the collection of mandatory bar dues unless and until the bar association adopts the required safeguards.

Thus, when Puerto Rico's mandatory bar association failed to provide the safeguards *Keller* requires, the First Circuit affirmed an injunction that prohibited the bar association from compelling membership "until it either ceased *all* ideological activities not germane to its core purposes or devised an adequate system to protect dissenters' rights." *Schneider v. Colegio de Abogados de P.R.*, 917 F.2d 620, 636 (1st Cir. 1990). Likewise, when the State Bar of New Mexico failed to provide adequate safeguards, a federal court enjoined its collection of mandatory fees from members. *Popejoy v. N.M. Bd. of Bar Comm'rs*, 831 F. Supp. 814 (D.N.M. 1993).

These cases show why Plaintiff is injured by the LSBA's lack of sufficient safeguards and has standing to challenge them. Under *Keller*, requiring him to join and pay dues to the LSBA in the absence of such safeguards violates his First Amendment rights. And he appropriately seeks the same remedy that the *Schneider* and *Popejoy* plaintiffs sought and obtained: an injunction against the "collecti[on]

[of] mandatory bar dues until the [bar association] adopts the minimum safeguards *Keller* requires." ROA.30.

The district court erred in deeming Plaintiff's injury to be "merely hypothetical" on the ground that his complaint did not "identify any [LSBA] activity for which he had no notice … that he would have objected to had he had notice that the LSBA was going to engage in such an activity." ROA.355. That misses the point: again, under *Keller* and *Hudson*, the collection of dues in the absence of sufficient safeguards *inherently* violates an attorney's First Amendment rights.

That conclusion is illogical because one cannot reasonably expect the Plaintiff to identify "activit[ies] for which he had no notice." *Id.* Plaintiff's inability to identify specific, unconstitutional LSBA activities is the very *basis* of his claim: he alleges that he and other members do not receive sufficient information about the LSBA's activities to raise an objection. If the district were correct—and an attorney could not challenge a bar association's *Keller* procedures unless he or she could identify specific undisclosed improper expenditures—then a bar association could completely shield its procedures from constitutional challenge by simply providing members *no* information about its activities.

That, of course, turns *Keller* on its head. The purpose of *Keller*'s first safeguard is to allow attorneys to *obtain* information so that they may *then*

determine whether any of the bar's activities are objectionable. *See Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 878 (1998) (discussing *Hudson*'s equivalent requirements). Without that information, they cannot protect their First Amendment rights, and requiring them to pay dues violates their First Amendment rights.

No other court has taken the district court's illogical view regarding an attorney's standing to challenge inadequate *Keller* procedures. None of the cases in which a court has considered such a challenge has suggested, let alone held, that attorneys must identify bar association activities to which they would have objected before they can challenge the bar's failure to inform them about those activities. *See, e.g., Crosetto v. State Bar of Wis.*, 12 F.3d 1396, 1404-05 (7th Cir. 1993) (considering facial challenge to re-integration of State Bar of Wisconsin based on its alleged "fail[ure] to comply with *Keller*"); *Schneider*, 917 F.2d at 635-37 (considering Puerto Rico's lack of safeguards without reference to particular allegedly objectionable expenditures); *Gibson v. Fla. Bar*, 906 F.2d 624 (11th Cir. 1990) (after challenge to particular political activity deemed moot, court still considered challenge to alleged lack of safeguards); *Popejoy*, 831 F. Supp. at 820 (declaring *Keller* procedures unconstitutional even though "only one Bar member … ever questioned a proposed budget" because whether attorneys "[a]vail[ed] themselves of the objection procedure is unimportant if the procedure violates their

constitutional rights") (internal marks and citation omitted); *Schell v. Gurich*, 409 F. Supp. 3d 1290, 1299 (W.D. Okla. 2019) (denying motion to dismiss claim alleging, among other things, that bar association "d[id] not identify planned expenditures with sufficient specificity for members to make a meaningful decision as to whether or how to challenge a proposed expenditure or category of expenditures" because "[t]hose allegations potentially support a successful claim under the standards set out in *Keller*").

Finally, the district court erred in concluding that, by alleging that LSBA imposes "an unreasonable burden on members who wish to protect their First Amendment rights," ROA.29 ¶ 101, Plaintiff did "not allege that the LSBA's *Keller* procedures have placed an undue burden on *him*" because "[a]lleging that *other* members of the LSBA may *possibly* be facing an undue burden does not establish that Boudreaux himself is suffering from a concrete injury." ROA.356. But Plaintiff's complaint does not refer to "other members"; it refers to *all* members, which includes himself. *See* ROA.13 ¶ 11, ROA.29 ¶ 101. Moreover, Plaintiff's complaint repeatedly and specifically alleges that the LSBA's lack of adequate procedures injures him personally. ROA.27–29 ¶¶ 96–106. The district court's construction of "members" to exclude Plaintiff was contrary to both the term's plain meaning and to the district court's obligation to construe all of the

complaint's allegations in the light most favorable to the Plaintiff. *See Ramming*, 281 F.3d at 161.

Because the district court erred in concluding that the Plaintiff lacked standing to bring his third claim for relief, this Court should reverse that claim's dismissal.

CONCLUSION

This Court should reverse the district court's dismissal of Plaintiff's claims.

RESPECTFULLY SUBMITTED this 1st day of April 2020 by:

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April 2020, the foregoing brief was filed and served on all counsel of record via the ECF system.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1) and Fed. R. App. P. 29(a)(5), I certify that this Brief:

(a) was prepared using 14-point Times New Roman font;

(b) is proportionately spaced; and

(c) contains 8,769 words.

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