19-291

No.

In The

Supreme Court of the United States

ANNE BLOCK,

Petitioner,

v.

WSBA, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States District Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ANNE BLOCK
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QUESTIONS PRESENTED

A. Did the trial court err when the district court judge and the reviewing judge refused to disqualify themselves because of their membership in the defendant, the Washington State Bar Association?

B. Could the appellant's first amendment claim survive a motion on the pleadings if an unbiased judge had been assigned?

C. Did the defendants actions of retaliating against Block for resigning from the WSBA violate her constitutional right to disassociate as recently announced in *Janus v. American Federation of State, County, and Municipal Employees, Council 31,* No. 16-1466, 585 U.S. ___ (2018)?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Ninth Circuit were:

Anne Block v. WASHINGTON STATE BAR ASSOCIATION; SARAH ANDEEN, individually, and in her capacity as defendant Washington State Bar Association; KEVIN BANK, individually and in his capacity as defendant Washington State Bar Association; KATHRYN BERGER, individually and in her capacity as defendant Washington State Bar Association; KEITH MASON BLACK, individually and in his capacity as defendant Washington State Bar Association; STEPHANIE BLOOMFIELD, individually and in her capacity as defendant Washington State Bar Association; MICHELE NINA CARNEY, individually and in her capacity as defendant Washington State Bar Association; S. NIA RENEI COTTRELL, individually and in her capacity as defendant Washington State Bar Association; WILLIAM EARL DAVIS, individually and in his capacity as defendant Washington State Bar Association; STEPHANIA CAMP DENTON, individually and in her capacity as defendant Washington State Bar Association; LINDA EIDE, individually and in her capacity as an employee of defendant Washington State Bar Association; DOUG ENDE, individually and in his capacity as defendant Washington State Bar Association; MARCIA LYNN DAMEROW FISCHER, individually and in her capacity as defendant Washington State Bar Association; G. GEOFFREY GIBBS, individually, and in his official capacity as an employee of defendant Snohomish County and an employee of Washington State Bar Association; WILLIAM MCGILLIN, individually and in his capacity as defendant Washington State Bar Association; MICHAEL JON MYERS, individually and in his capacity as defendant Washington State Bar Association; JOSEPH NAPPI JR, individually and in his capacity as defendant Washington State Bar Association; LIN O'DELL, individually and in her capacity as defendant Washington State Bar Association and in her marital community with her husband and/or domestic partner of defendant Mark Plivilech; MARK PLIVILECH, in his individual capacity and in his marital community with wife and/or domestic partner defendant LIN O'Dell; ALLISON SATO, individually and in her capacity as defendant Washington State Bar Association; RONALD SCHAPS, individually and in his capacity as defendant Washington State Bar Association; JULIE SHANKLAND, individually and in her capacity as defendant Washington State Bar Association; MARC SILVERMAN, individually and in his capacity as defendant Washington State Bar Association; TODD R. STARTZEL, individually and in his capacity as defendant Washington State Bar

Association; JOHN DOE, individually and in his capacity as defendant Washington State Bar Association; CITY OF DUVALL, a Washington State City and Municipal Corporation; LORI BATIOT, individually, and in her official capacity as an employee of defendant City of Duvall; JOE BEAVERS, individually; LINDA LOEN, individually, and in her capacity as defendant City of Gold Bar Mayor and Public Records Officer; CRYSTAL HILL PENNINGTON (nee BERG), individually, and in her marital community with defendant John Pennington, her husband; KENYON DISEND, A WASHINGTON PLLC business in Washington; MICHAEL KENYON, individually, and in his official capacity as an employee and as a shareholder of defendant Kenyon Disend; MARGARET KING, individually, and in her official capacity as an employee of defendant Snohomish County and for defendant Kenyon Disend; ANN MARIE SOTO, individually, and in her official capacity as an employee for defendant Kenyon Disend; SANDRA SULLIVAN (nee, MEADOWCRAFT), individually, and in her official capacity as an employee for defendant Kenyon Disend; KING COUNTY, a Washington State County and Municipal Corporation; CARY COBLANTZ, individually, and in his official capacity as an employee of defendant King County; PORT OF SEATTLE, a Washington State Port and Municipal Corporation; SEAN GIBLEO, individually, and in her official capacity as an employee of defendant Port of Seattle; KALI MATUSKA, individually, and in her official capacity as an employee of defendant Port of Seattle; JULIE TANGA, individually, and in her official capacity as an employee of defendant Port of Seattle; JAMES TUTTLE, individually, and in her official capacity as an employee of defendant Port of Seattle; SNOHOMISH COUNTY, a Washington County and Municipal Corporation; SARA DIVITTORIO, individually, and in her official capacity as an employee of defendant Snohomish County; SETH FINE, individually, and in his official capacity as an employee of defendant Snohomish County and an employee of Washington State Bar Association; BRIAN LEWIS, individually, and in his official capacity as an employee and public records officer of defendant Snohomish County; JOHN LOVICK, individually, and in his official capacity as an employee of defendant Snohomish County; JOHN PENNINGTON, individually, and in his marital community with defendant Crystal Hill Pennington, his wife, and in his official capacity as Director of Snohomish County Department of Emergency Management for defendant Snohomish County; SEAN REAY, individually, and in his official capacity as an employee of defendant Snohomish County; MARK ROE, individually, and in his official capacity as an employee of defendant Snohomish County; SKY VALLEY MEDIA GROUP, LLC dba SKY VALLEY CHRONICLE, a Limited Liability Company in Washington; RONALD FEJFAR, aka RON FAVOR aka RON FABOUR aka CHET

ROGERS individually, and in his official capacity as an agent for defendant Sky Valley Media Group, LLC., Defendants.

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The unreported memorandum decision of the United States District Court of the Western District of Washington

II. JURISDICTION

The Ninth Circuit Court of Appeals filed its memorandum on February 11, 2019 and entered an order denying Petitioner's motion for rehearing/rehearing en banc on April 2, 2019. The jurisdiction of this Court is invoked under 28 USC § 2101(c)

III. FEDERAL STATUTE AT ISSUE: 42 USC 1983

For the reasons stated hereinbelow, the district court's order dismissing Anne Block's claims on defendants' motion for motions on the pleadings should be reversed.

IV. INTRODUCTION

If Petitioner Anne Block (Block) was Jim Acosta from CNN, and the defendants were operating under the umbrella of the White House instead of the Washington Bar Association, we would not be here today. The issues are similar. In this case, Defendant, Washington State Bar Association, sent news reporter Block, a subpoena for her news reporter files. Block responded by objecting, claiming that RCW 5.68.010 (media shield), RCW 49.60, and the First Amendment required the bar association to first go to court before the subpoena could be issued. Defendant WSBA ignored Block's objections herein and opened an investigation over whether her actions constituted "obstruction". When Block resigned from the bar association in protest, the Washington State Bar charged her with obstruction and recommended disbarment in direct violation of principles recently announced in the recent case of *Janus v. American Federation of State, County, and Municipal Employees, Council 31,* No. 16-1466, 585 U.S. ___ (2018)),

Unlike Jim Acosta from CNN, Block does not have the financial resources of a powerful international news corporation like CNN at her disposal. Block came to our courts with one simple request: Protect her rights as a news reporter and uphold the First Amendment to the United States

Constitution and RCW 5.68.010 Media Shield laws of Washington State.

In this regard, both the district court and a three judge panel in the Ninth Circuit have failed miserably in their duty to uphold basic First and Fourth Amendment principles simply because Block was also a licensed WSBA member. The appeals panel issued a two page order which cited to only one case as the basis for their dismissal. Under well-established principles, using previous cases as a guide, Block should have easily avoided a motion on the pleadings. After all, in Block's complaint she clearly stated dates, and how she received public disclosure responses supportive of each of her allegations. For reasons we cannot fathom, because the panel never explained their reasoning, why the panel ignored decades of well-established precedent, and instead opted out for a decision that if allowed to stand, will essentially do away with our First and Fourth Amendment rights to be free from abusive unconstitutional subpoenas simply because she is a licensed bar member, who happens to be reporting news. If Block v WSBA et al is allowed to stand, perhaps CNN's Anderson Cooper or Washington Post's blogger and UCLA Professor Eugene Volokh will be disbarred next.

Adding insult to injury, the district court and the panel ignored the retaliation Block experienced for disassociating from the Washington State Bar. As we will demonstrate in this petition, membership in

the bar had nothing to do with the bar's investigation of possible discipline. It only served to punish Block for asserting her right to associate (or dissociate) under the fourth amendment

For these reasons, and because of their importance, this court should grant the injunctive relief and declaratory relief Block sought from US Federal District Court. regarding the defendant WSBA's disbarment proceedings.:

V. FACTS RELEVANT TO THE PETITION

(A) PROCEDURAL FACTS:

1. On December 28, 2015, Anne Block filed suit in the United States District Court, Western District against the Washington State Bar Association, Snohomish County, the City of Gold Bar, King County, Port of Seattle, and several individual defendants. (ER V: 94-158).

2. On February 14, 2016, Anne Block filed a motion to disqualify Judge Martinez and all other western district judges. (ER V:88-93, 170) 4. Between February 24, 2016, and March 23rd, 2016 both Judge Martinez and Judge Leighton refused to disqualify themselves. (ER I: 145-149, ER V:172). (ER I:140-144, ER V:173) (ER V:173, ER III:211-223) (ER V: 175; ER I: 137-139).

3. Between February 23, 2016, and April 19, the defendants filed motions to dismiss. (ER V: 172,

ER IV: 56-68) (ER V:172, ER IV:22-48) (ER V:172, ER IV:1-121) (ER V:173, ER III:224-211) (ER V:173; 4:196-199) (ER V:174; ER III: 168-183) (ER V:174; ER III:66-92) (ER V:176; ER III:56-65) (ER V:181, ER II: 71-82) (ER V:181; ER II:61-70) (ER V:182; ER II: 49-57).

4. Between March 31, 2016 and August 17, 2016, Judge Martinez granted motions to dismiss to the defendants and awarded attorney fees to several defendants. (ER I:105-136, ER V:177) (ER I: 74-100; ER V:179) (ER I: 57-69; ER V:181-182) (ER I: 51-56; ER V: 182) (ER I:46-48;ER V:183) (ER I:33-45; ER V:184) (ER I:27-32; ER V:184-185) (ER V:185; ER II:11-17) (ER V:185) (ER I:15-16; ER V:185) (ER I:10-14; ER V:186) (ER I:7-9; ER V:186) (ER I-6, ER V: 186-187) (ER V:187).

5. On March 31, 2016, Block filed for a TRO and Preliminary Injunction (ER V:177)(ER III:27-55).

6. Between April 1, 2016 and May 24th 2016, Judge Martinez denied the Motion for TRO, motion for injunction. (ER I, 101-104)(ER V:177) (ER I:17-26, ER V:185).

7. Between June 2, 2016, and September 15, Block files Notice(s) of Appeal to Ninth Circuit. (ER V:185, ER II:18-36) (ER V:186; ER II:4) (ER V:186; ER II:2-3) (ER V:187; ER II: 1).

(B) SUBSTANTIVE FACTS:

1. Re judicial disqualification; the appellant requests this court to take judicial notice that the chief justice of the Ninth Circuit COA has already ruled in *Marshall v. WSBA,* WWDC Case # 11-5319, *Pope v. WSBA*, WWDC Case # 11-05970, and *Scannell v. Washington State Bar Association, et al*, WWDC Case #2:12-cv-00683, that their membership in the WSBA requires disqualification in a suit against the WSBA.

2. This and other suits originated from appellant's public disclosure requests to respondents in December, 2008 as co-owner and investigative reporter for the Gold Bar Reporter (GBR) an online news service. (ER V:25-27, §3.5)

3. Anne Block's articles accused the respondents of various crimes and other wrongdoing, including theft, misuse of taxpayer funds such as financing affairs and trips to brothels, bribery, racketeering, rape, extortion and assaults. She claims to carefully research each of the articles through public disclosure, hiring a private investigator firm and utilizing confidential sources. She provides her targets an opportunity to respond, and most refuse to deny the allegations. She has never been sued for defamation. (ER V:24-30, §3.2, §3.9)(ER II:157-192, passim)(ER V:25-27, §3.5; ER III:166-167).

4. The various defendants found willing accomplices, the WSBA defendants, who had already

formed their own criminal enterprise that had similar goals. This included other attorneys who opposed corruption by filing lawsuits.

5. For example, in a case involving the lawyer discipline of Bradley Marshall before the Washington State Supreme Court, in August of 2009, Scott Busby wrote on behalf of the WSBA before the Washington State Supreme Court.

> The Association further requests that the Court address the issues presented here when [the court] issues it published opinion in this case to give guidance to other respondent lawyers who believe they can thwart a disciplinary proceeding merely by filing a lawsuit against the Association, the Supreme Court, or its members.

Mr. Marshall was not charged with filing a frivolous lawsuit as part of the disbarment proceedings and his lawsuit was not the subject of discipline. (ER IV:215, §238).

6. In a series of exposes, Block published articles documenting how respondent Aaron Reardon (Reardon) used taxpayer funds to carry on an affair with two employees in Europe. (ER V:37-38, §3.30)

7. Another target of Block's exposes was respondent John Pennington (Pennington) who was head of emergency services. She published over fifty articles about respondent Pennington's incompetence, lack of credentials to head the Department of

Emergency Management (DEM) for Snohomish County, and criminal history of assaulting women. (ER V:31, §313) (ER III:158-189)

8. Appellant Block named Pennington as the one primarily responsible for the Oso mudslide disaster which killed 43 people in 2014 primarily because he was the one who authorized the permits that allowed the houses to be built on the mudslide site, knowing the site was unsafe. (ER V:43, §3.41, 59, ER III:71-72)

9. In January 2012, Appellant learned from public records that were withheld over three years, that Margaret King, Michael Kenyon, Ann Marie Soto, Hill-Pennington, Pennington, and Joe Beavers met and conspired to retaliate against Block by filing a second WSBA complaint In February 2012, Gold Bar's law firm, Kenyon Disend, billed the taxpayers of Gold Bar for the WSBA complaint against appellant. (ER V:36, §3.26)

10. In late March 2012, under the guise of a CR 26 conference, respondent Reay threatened appellant and her paralegal that if appellant continued to insist on deposing Pennington he would have appellant and her paralegal arrested. (ER V:36, §3.27)

11. On June 1, 2013 John Lovick was appointed Snohomish County Executive. Subsequently, Pennington was never disciplined for his misconduct as alleged in the complaint, even Lovick was aware of evidence to support discipline. Instead he was placed on paid "administrative leave" from April 2014 until

terminated by the new Snohomish County Executive in 2016. Since Block I was decided, appellant has learned through public records that defendant, Pennington, was not trained, supervised, disciplined, or adequately screened for employment with Snohomish County. (ER V:39, §3.32)

12. On November 15, 2013, pertaining to a bar complaint filed by Pennington, respondent Linda Eide (Eide) issued a subpoena to Block for three years of documents relating to articles published in the Gold Bar. The subpoena had nothing to do with Block's clients or practice of law, but to reveal confidential sources behind the articles she wrote on Pennington. (ER V:31, §3.12).

13. On December 3, 2013, Block sent Eide a letter objecting to the deposition on First Amendment grounds, Media Shield laws (RCW 5.68.010), and privacy rights under Washington's state constitution. She also raised the defense that the Washington State Bar Association had no jurisdiction to regulate the press. (ER V:41, §3.36, ER III:43).

14. On December 6, 2013, without attempting to have any of the objections adjudicated by the Chief Hearing Officer, Eide attempted to hold the deposition without Block (ER V:41, §3.36; ER III:69-70),

15. On February 19, 2014 a Court appointed investigator and special master in Stevens County concluded that Lynn O'Dell (O'Dell) had committed ethical violations and refused to account for funds

that she had controlled in her role as a limited guardian of a vulnerable adult, Paula Fowler. Details of the alleged wrongdoing by O'Dell are outlined in ER V: 42, §3.39.

16. Block alleged that the hearing examiner was not chosen at random, but was chosen by the Chief Hearing Examiner Nappi, who was paid $30,000 a year to pre-select the hearing officers to gain conviction. In her complaint Block alleges several conflicts of interest that O'Dell had with Nappi at the time she was chosen to be hearing examiner. Block claims that the exchange of the conviction of Anne Block in exchange for her immunity from her illicit actions as a guardian constitutes bribery. (ER V: 42-43, §3.38, §3.40).

17. On March 22, 2014, the OSO mudslide occurred killing 43 people. At the time, Pennington (DEM) was on the east coast paid under contract for FEMA Emergency Institute yet still collecting wages from Snohomish County. He did not return to Snohomish County until March 24, 2014, according to public records obtained by Block. (ER V:43, §341).

18. In late March 2014, O'Dell and Plivilech set up USPS Box # 70 in Duvall Washington located within three blocks from the Penningtons' home in Duvall. O'Dell and Plivilech live in Spokane, four hours away, and had no previously known ties to City of Duvall. The Duvall postmaster (retired) having seen Hill-Pennington accessing a post office box in Duvall. Appellant's investigation, revealed neither

Hill-Pennington, nor Pennington had a USPS box in Duvall. (ER V:43,44, §3.42).

19. At the end of April 2014, Plaintiff notified the WSBA and the Washington State Supreme Court that she would not be renewing her license and would be disassociating with the WSBA.(ER V, 44, §3.43)

20. In May 2014, appellant notified O'Dell and Eide that she would be out of state on business for two months. O'Dell purposely set discovery for a three week period appellant would be out of state. O'Dell and Eide refused to answer a single discovery request issued by appellant. (ER V, 44, §3.44).

21 In early May, Edie tried to extort Plaintiff's democratic rights, alleging that Plaintiff does not have the legal right to disassociate with the WSBA under the First Amendment. (ER V, 44, §3.45)

.22. Early June 2014 appellant issued a subpoena for WSBA witness, John Pennington. Respondent Reay, apparently on behalf of Pennington, then contacted Eide for the purpose of quashing a subpoena. Appellant requested public records from Snohomish County, who responded that no responsive records exist. (ER V:45, 46, §3.47).

23. In June 2014, Eide, shortly after being contacted by Reay made ex-parte contact with O'Dell who then issued a quash order. (ER V:46, §3.48).

24. When appellant learned a quash order was issued for the subpoena, appellant requested Eide's telephone records. Eide unlawfully redacted the

phone records for the ex-parte contacts with O'Dell claiming attorney-client privilege. (ER V: 46, §3.49).

25. June 30, 2014, WSBA records confirm O'Dell and Eide held another ex-parte telephone communication. O'Dell then sets a hearing date for three weeks later on July 21, 2014. (ER V:46, §3.50). ELC 10.12(b) requires that the hearing date only can be set at a hearing where the parties are present.

26. In July 2014, Reay authored knowingly false, statements, which included among other allegations: (1) That appellant is "delusional". (2) That appellant "accosted" Reay. (ER V, 46 §3.51).

27. First week of July 2014. The Sky Valley Chronicle posted a story about a hearing for Ms. Block's "misconduct as an attorney" which is how appellant learned of the scheduled hearing. The story was false as plaintiff was not accused of misconduct as an attorney, only for what she wrote as a journalist for the Gold Bar Reporter. Since February 13, 2012, the Sky Valley Chronicle has published more than 100 defamatory articles about appellant which remain published to this day. (ER V: 46-47, §3.52).

28. On July 21, 2014 WSBA denied the appellant's a reasonable accommodation request, and prevented appellant from participating in a disciplinary hearing by deliberately disconnecting the phone through which she was appearing. (ER V: 47-48, §3.53).

29. In August 2014, Gibbs, a Snohomish County court commissioner member contacted WSBA

ODC member, Jean McElroy, via email, complaining about appellant's First Amendment protected activity in order to influence the proceedings. To wit, news reports on the Gold Bar Reporter about Gibbs' corruption as it relates to Snohomish County. Gibbs had significant motive to influence the proceedings because the appellant has published numerous articles of Gibb's corrupt activities including illegal lobbying of the legislature, lying to the court about being sanctioned for it, stealing land in another civil case while he was a judge, mishandling over $200,000 in client funds for his own use and illegally hiding money in offshore accounts. (ER V: 48, §3.54).

30. When appellant filed a bar complaint against Gibbs, the WSBA ignored it. (ER V: 50, 51; §3.54).

31. On September 6, 2014, Hearing Officer O'Dell, issued her decision recommending disbarment. O'Dell made several findings of misconduct, for which she was never charged, including harming the Penningtons, and misconduct in the way she conducted her case, which included misconduct for diassociating from the bar(ER V: 50}

32. Even though O'Dell could not account for several million dollars in a trust account set up for a client (Paula Fowler), for whom she was guardian, the bar refused to investigate these bar complaints. Later on, long before the Disciplinary Board had come to a conclusion on the case, O'Dell predicted that Anne Block would be disbarred. The WSBA, through

respondent McGillen, refused to investigate the bar complaints filed in connection with this multimillion dollar disparity. (ER V:42, §339; ER V:55-56, §3.56)

33. In late 2014, appellant filed WSBA complaints against Lin O'Dell, Linda Eide, and Sean Reay for ex-parte communication in violation of Washington Rules of Professional Conduct. WSBA assigned Ronald Schaps to investigate the bar complaints, who admits he never investigated. (ER V:58-59, §3.64).

34. From the time between the time hearing by O'Dell, and the time the issue was eventually heard by the Disciplinary Board in October 2015, the appellant alleges a number of harassing actions taken by some of the respondents.

These include:

35. In March 2015, the Penningtons filed criminal complaints with the City of Duvall because appellant attempted to depose Hill-Pennington in a public records case. Batiot helps them file a no contact order for protected speech. (ER V:60, §367). Pennington files identical evidence to try to obtain no contact order before Judge Meyers on March 19, 2015. (ER V: 60, 3.69) The Pennington's knowingly used altered documents and false accusations in both. Pennington's admit in court they shut down appellant's twitter account for what appellant claims was protected first amendment activity. These attempts by Hill Pennington were rejected by prosecutors and by Judge Meyers. (ER V: 62§371)

36. On March 19, 2015, March 25, 2015, and April 1, 2015 Hill-Pennington knowingly filed false statements with the King County District Court, City of Duvall, and Snohomish County, respectively. The falsities that Hill-Pennington stated and published, are outlined in ER V:63-64, §373, §374

37. Threat on appellant's Life. April 2015, after the Penningtons failed three times to obtain a restraining order on appellant's First Amendment protected speech or have criminal charges filed against appellant for the same, Block learned that John Pennington had "taken out a hit" on appellant. The confidential source was to be revealed in depositions or trial. (ER V:64-65, §375)

38. On April 12, 2015, Respondent Duvall Police Officer Lori Batiot, made thinly veiled threats that if appellant did not call her back and explain her news articles she would have her arrested. (ER V:65, §376)

39. On May 4, 2015 Lori Batiot did knowingly publish false documents and false accusations for the purpose of wrongfully instituting legal proceedings and abuse of process against the appellant by seeking to have her committed to a mental institution. (ER V: 65-66, §3.77, §3.78, §3.80)

40. Defendants Duvall, Batiot, Penningtons and Michael Kenyon continued to withhold public records involving appellant, even after Appellant filed a suit for the records (ER V:67, §3.79).

41. In May, 2015, John Pennington's and Officer Batiot contacted Cary Coblantz with at least two phone calls. As a result, Coblantz falsely asserted the appellant was wanted for "possible felony warrant with extradition back to the U.S." Port of Seattle Officers Matuska, Tanga, and Gibleo used this to elicit the assistance of US Customs Officer Curtis Chen to place a tracker on appellant's passport which had the effect of putting her on a terrorist watch list. On May 24, 2015, after arriving at London Heathrow Airport, appellant, while fully clothed, was searched in a very personal and penetrating manor. She was also illegally detained at Seattle Tacoma International Airport, by two Port Officers and one US Customs Officer, Curtis Chen. The judge eventually threw out this wrongfully instituted legal proceeding. (ER V:67-69, §3.81, §3.82, §383).

42. Public records from the City of Shoreline confirmed that Coblantz not only conspired with Pennington and Batiot to have appellant charged with felony criminal stalking and harassment charges, but he also conspired with Sandra, Sullivan (Meadowcroft) who was not acting as a prosecutor at the time. The conspiracy ultimately failed, the details of this effort are outlined in (ER V:68, §3.83).

43. On June 19, 2015, Batiot, Pennington and Hill Pennington, also sought to have appellant committed for a PSY evaluation. This effort failed as well. (ER V:69, 70, §3.84, §3.85).

44. From public records retrieved in August 2015, Reay assisted Hill- Pennington by giving her personal giving legal advice on how to get a restraining order. Furthermore, Hill-Pennington notified the court she considered Reay her personal lawyer (ER V:70§3.86).

45. In September 2015, a former Snohomish County Department of Information Services employee Pam Miller gave appellant public records previously requested from Snohomish County but withheld, documenting that defendants DiVittorio and Lewis tampered with public records appellant requested. Miller had earlier been fired after she complained about Snohomish County staff treating Block differently than other requesters, by not disclosing many documents and altering others. DiVittorio and Lewis' actions violated the public records act and the public trust causing injury to appellant and the public. (ER V:71, §3.88).

46. On October 5, 2015, John Pennington was actively stalking appellant at her place of business in Monroe, Washington, while being paid by Snohomish County. (ER V:72, §3.90).

47. After Block filed objections and asked for oral argument under ELC 11.2, and asked for accommodations because she was scheduled for ear surgery at the time the hearing was scheduled. Both Shankland and the Board denied her request without cause. (ER V:72-73: §391).

48. On October 30, 2014, the Disciplinary Board held an ex parte hearing which was videotaped. The video tape shows numerous ex parte conversations between John Pennington, Julie Shankland, and Disciplinary Board member Kevin Bank. Respondents Bank and Sato physically intimidated and threatened a news reporter who had filmed the illegal ex parte contacts during the hearing. (ER V:73- 74, §392-394).

49. On November 13, 2015, the Disciplinary Board recommended disbarment again refusing to address the same issues that O'Dell had failed to address. (ER V:74, §395).

50. On November 17, 2015, Pennington reported to Snohomish County Emergency Command Center (EOC) signed onto the Gold Bar Reporter, shut down appellant's Twitter account. (ER V:74, §396).

VI. ARGUMENT

A. All three judges associated in this case have pre-existing conflicts of interest which require their disqualification.

In Block's motion for disqualification against Judge Martinez and Leighton, (ER V:91) she cited to *Marshall v. WSBA supra*, *Pope v. WSBA*, *supra*, and *Scannell v. Washington State Bar Association, et al supra*, where the chief justice had disqualified the

Western District Judges by appointing out of Washington State federal judges, based upon their membership in the Washington State Bar Association. She argues that Jones should have been disqualified in the previous case for the same reasons.

These rulings are consistent with the case of *Riss v. Angel,* 934 P.2d 669, 131 Wash.2d 612 (Wash. 04/10/1997) , which indicates that individual members of an association like the WSBA are individually liable for suits against the organization as a whole.[1]

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[1] That case in turn, cited *Nolan v. McNamee*, 82 Wash. 585, 144 P. 904 (1914), which pointed out that in Washington, at common law, members of unincorporated associations have been held jointly and severally liable for all debts of the association. While *Riss* allowed for a narrow exception for "nonbusiness, non-profit" associations, where only members who participated in the decision could be held liable, this exception has never been applied to a business related non-profit such as the bar association. There also has been no exception for judges who participate in making the decision by making judicial decisions.
Judge Martinez in (ER I:150) cites to *Denardo v. Municipality of Anchorage*, 974 F.2d 1200, 1201 (9th Cir. 1992) (citing *Pilla v. American Bar Assoc.*, 542 F.2d 56, 57-58 (8th Cir. 1976), *Hu v. American Bar Assoc.*, 334 F.Appx 17, 19 (7th Cir. 2009)(citing *Hirsh v. Justices of the Sup. Ct. of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995));*In re City of Houston*, 745 F.2d 925, 930 n.8 (5th Cir. 1984); *Plechner v. Widener College,*

B. The plaintiff has properly pled first amendment retaliation claims.

For a private citizen, the tests for establishing a prima facie case for first amendment retaliation are covered under the following three-part test. (1) that his or her speech is protected by the First

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Inc., 569 F.2d 1250, 1262 n.7 (3rd Cir. 1977); *also Parrish v. Bd. Of Comm'rs of Alabama State Bar*, 527 F.2d 98, 104 (5th Cir. 1975). In none of these cases was the issue of a conflict of interest based upon common law liability of members of a bar association raised.

In fact, one case cited by Martinez, *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1262 n. 7 (3d Cir.1977), supports Block. That case ruled that the amenability of an unincorporated association to suit is governed by the law of the state in which the court sits. *Underwood v. Maloney*, 256 F.2d 334 (3d Cir. 1957), cert. denied, 358 U.S. 864, 3 L. Ed. 2d 97, 79 S. Ct. 93 (1958); See Fed. R. Civ. P. 17(b). In *Plechner*, the forum state was Pennsylvania, which, allows suit to be brought against an unincorporated association either in its own name or that of an officer as trustee ad litem. Pa. R. Civ. P. 2153. A judgment entered against an association alone in Pennsylvania, will support execution upon its property but not that of an individual member. Pa. R. Civ. P. 2158. 6 GOODRICHAMRAM 2d, STANDARD PENNSYLVANIA PRACTICE § 2158.1 (1977). That is not the case in Washington, where the common law prevails, which make all Washington federal judges

Amendment; (2) that the defendants took an adverse action against the plaintiff; and (3) that the adverse action was prompted or caused by the plaintiff's exercise of his or her First Amendment rights. *Arrington v. Dickerson*, 915 F. Supp. 1516.

This is essentially the same three-part test that was articulated in *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) (discussing requirements for retaliation claim), which the panel cited as the basis for its dismissal. Significantly, this was the only test mentioned in *Arizona Students* id, as that case was primarily a case involving damage immunity for those who possessed 11th amendment immunity. Since this was the only basis the panel gave for its dismissal of Block's First Amendment claims.

The panel does not state which of the three prongs Block failed to meet. However, *Arizona Students* gives the requirements that must be met for each of the three prongs.

According to *Arizona Students,* to bring a First Amendment retaliation claim,

> [T]he plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would "chill a person of ordinary firmness" from continuing to engage in the protected activity; and (3) the

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liable should Block wins.

protected activity was a substantial motivating factor in the defendant's conduct-i.e., that there was a nexus between the defendant's actions and an intent to chill speech. *O'Brien*, 2016 WL 1382240, at *11 (citing *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006); *Mendocino Envt'l Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999)); see also *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010). Further, to prevail on such a claim, a plaintiff need only show that the defendant "intended to interfere" with the plaintiff's First Amendment rights and that it suffered some injury as a result; the plaintiff is not required to demonstrate that its speech was actually suppressed or inhibited. *Mendocino Envt'l Ctr.*, 192 F.3d at 1300.

1. According to *Arizona Students supra*:

> "The First Amendment affords the broadest protection to . . . political expression in order 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam)

(quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)). A person's First Amendment free speech right is at its highest when that person engages in "core political speech, " which includes issue-based advocacy related to ballot initiatives. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347, 351 (1995).

Block obtained public records (email communication) from King and Snohomish Counties prior to filing suit. In her suit, she stated under oath that while traveling from London Heathrow Airport to Seattle Tacoma International Airport in May 2015, Defendant, Cary Coblantz, a King County Officer, contacted the Child Sex Trafficking Division for the Department of Justice International Police (Interpol) placed a tracker on her US passport claiming she was wanted back in the US for a "possible felony warrant with extradition back to the US" causing her detention and rape from London to Seattle. She was seized and not free to leave. Before filing suit, she learned from public disclosures releases that Defendants Port of Seattle, Matusa, Gibleo, Tanga and City of Duvall and its police officer Lori Batiot (who was fired a result Block's investigation of her extensive criminal history and placed on the Brady List) issued the false claims of a felony warrant to DOJ Interpol after Defendant Coblantz stated in an email to Defendant Port of Seattle, Sean Gibleo, Block's news reports were was " anti-government"

therefore justifying the false statements to be placed on her passport. Block stated that these false statements resulted in her being unlawfully detained and rape from lawfully traveling from London to Seattle in May of 2015.

Block's articles accused the respondents of various crimes and other wrongdoing, including theft, misuse of taxpayer funds such as financing affairs and trips to brothels, bribery, racketeering, rape, extortion and assaults. She carefully researches each of articles after obtaining responses through public disclosures, has a private investigator firm for verification and follow purposes, and utilizes confidential employee sources from various agencies including Defendants in this case. She also provides her targets an opportunity to respond, prior to publication, and most refuse to deny the allegations. Block has never been sued for defamation, but Defendants Pennington and Hill Pennington have made several attempts to obtain restraining orders which were denied by a Washington State Court Judge citing Block is a member of the press and such orders are unconstitutional. (ER V:24-30, §3.2, §3.9) (ER II:157-192, passim).

Since Block's targets are exclusively public officials, public contractors, and public employees, it is undisputed that Block engaged in First Amendment protected activity, and was punished and retaliated against as evidenced by public disclosures

responses from Defendants and was articulated in detail in her complaint.

2. Block additionally alleged that the defendant's retaliatory actions chilled her exercise of its free speech rights by actions that deter a person of ordinary firmness from engaging in protected First Amendment. Specifically, the Block alleged that the defendants engaged in conduct that would chill a person of ordinary firmness from engaging in protected First Amendment activity when they attempted, and subsequently did, disbar, as evidenced in Block v WSBA 2 et al, defamed her on a government operated website titled "The Sky Valley Chronicle", placed her on a terrorist watch list, and illegally tracked and seized her without a warrant while traveling internationally, which essentially resulted in Block being raped at a London Heathrow Airport and unlawfully detained at Seattle Tacoma International Airport. The reason Defendant Coblatnz citied in his email obtained through King County public disclosures was that he believed Block's news reports were "anti-government." If this isn't "retaliation" based on protected First Amendment activity, we're not sure what is. (ER V:67-69, §3.81, §3.82, §383).

Public records from the City of Shoreline confirmed that Coblantz not only conspired with Pennington and Batiot to have appellant charged with felony criminal stalking and harassment charges, only after viewing Block's online her news

reports, but he also conspired with Sandra, Sullivan (Meadowcroft). Meadowcraft is a City of Duvall special prosecutor and has no jurisdiction in City of Shoreline. The conspiracy ultimately failed, the details of this effort are outlined in (ER V:68, §3.83).

On June 19, 2015, Batiot, Pennington and Hill Pennington, also sought to have appellant committed for a PSY evaluation. This effort failed as well. (ER V:69, 70, §3.84, §3.85).

In September 2015, a former Snohomish County Department of Information Services employee Pam Miller gave appellant public records previously requested from Snohomish County but withheld and never produced, documenting that defendants DiVittorio and Lewis tampered with public records Petitioner Block requested but never received. Miller had earlier been fired after she complained about Snohomish County staff treating Block differently than other requesters, by not disclosing many documents and altering others. DiVittorio and Lewis' actions violated the public records act and the public trust causing injury to appellant and the public. (ER V:71, §3.88).

On October 5, 2015, John Pennington was actively stalking appellant at her place of business in Monroe, Washington, while being paid by Snohomish County. (ER V:72, §3.90).

On October 30, 2014, the Disciplinary Board held an ex parte hearing which was videotaped and posted to U Tube. In Block's response to the WSBA

Disbarment proceeding, Block correctly cited First Amendment protected activity was not subject to the WSBA's censorship when such activity does not involve a client. The WSBA ignored Block's pleadings and objections which was the central point of her subsequent action seeking declaratory and injunctive relief.

Block correctly alleged that WSBA and Snohomish County interfered with her right to conduct discovery in the WSBA proceedings, by claiming that the WSBA dropped Snohomish County public official John Pennington's complaint. However, the video tape shows numerous ex parte conversations between John Pennington, Julie Shankland, and Disciplinary Board member Kevin Bank violating the Open Public Meetings Act. When Respondents Bank and Sato noticed that they were being videotaped, both physically intimidated and threatened a news reporter who had filmed the illegal ex parte contacts during the hearing. (ER V:73-74, §392-394).

On November 13, 2015, the Disciplinary Board recommended disbarment again refusing to address the same issues that O'Dell had failed to address. (ER V:74, §395).

On November 17, 2015, Pennington reported to Snohomish County Emergency Command Center (EOC) signed onto the Gold Bar Reporter, shut down appellant's Twitter account.. (ER V:74, §396). According to *Arizona Students supra*

> Both the Supreme Court and we have recognized a wide variety of conduct that impermissibly interferes with speech. For example, the government may chill speech by threatening or causing pecuniary harm, *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996); withholding a license, right, or benefit, *Baird v. State Bar of Ariz.*, 401 U.S. 1, 7 (1971); prohibiting the solicitation of charitable donations, *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 633 (1980); detaining or intercepting mail, *Blount v. Rizzi*, 400 U.S. 410, 417–18 (1971); or conducting covert surveillance of church services, *The Presbyterian Church v. United States*, 870 F.2d 518, 522–23 (9th Cir. 1989). Importantly, the test for determining whether the alleged retaliatory conduct chills free speech is objective; it asks whether the retaliatory acts "'would lead ordinary student[s] . . . in the plaintiffs' position' to refrain from protected speech." *O'Brien*, 2016 WL 1382240, at *11 (quoting *Pinard*, 467 F.3d at 770).

Clearly, the above alleged retaliatory misconduct by the defendants would lead an ordinary

person in the plaintiff's position to refrain from protected speech.

3. Finally, according to *Arizona Students supra;*

> A plaintiff may establish motive using direct or circumstantial evidence. *Ulrich v. City & County of San Francisco*, 308 F.3d 968, 979 (9th Cir. 2002) (citing *Allen v. Iranon*, 283 F.3d 1070, 1074 (9th Cir. 2002)). In cases involving First Amendment retaliation in the employment context, we have held that a plaintiff may rely on evidence of temporal proximity between the protected activity and alleged retaliatory conduct to demonstrate that the defendant's purported reasons for its conduct are pretextual or false. Id. at 980. At the pleading stage, a plaintiff adequately asserts First Amendment retaliation if the complaint alleges plausible circumstances connecting the defendant's retaliatory intent to the suppressive conduct. *O'Brien*, 2016 WL 1382240, at *11, *13.

Block offers several plausible factual allegations to support her contention that the defendants tried to disbar her, defame her, and put her on a terrorist watch list along with the other alleged misconduct to retaliate against Block for her

core protected First Amendment activities. As direct evidence of the defendants' retaliatory intent, Block alleges that the defendants publicly acknowledged that the basis for them taking action was the articles she was publishing in the Gold Bar Reporter. Also, one defendant labeled her as "anti-government" before taking action against her (ER V:69). As circumstantial evidence of the WSBA's retaliatory intent, Block notes that the disciplinary board criticized Block for her articles on Pennington, even though she was never charged with that, in violation of *In Re Rufallo*, 390 US 544. She also argues that the defendants allegedly retaliatory conduct was temporally proximate to Block's exercise of her free-speech rights. Taken together, those allegations sufficiently identify the defendant's retaliatory intent and the nexus between the Board's intent and their subsequent alleged retaliatory actions.

3. The Bar's actions of retaliating for asserting her right to disassociate from the Bar violated her constitutional right to disassociate from organizations she disagrees with.

Compulsory subsidies such as mandatory bar association dues "cannot be sustained unless two criteria are met." *Knox v. Service Emps. Int'l Union, Local 1000 ("SEIU"),* 132 S. Ct. 2277 (2012). First, all coerced association must be justified by a "compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* Second, even in the "rare case" where

coerced association is found to be justified, compulsory fees "can be levied only insofar as they are a 'necessary incident' of the 'larger regulatory purpose which justified the required association.' " *Id.*

Starting with *Lathrop v. Donohue*, 367 U.S. 820, 843 (1961) and continuing with *Keller v. State Bar of California* 496 U.S. 1, 4 (1990), mandatory bar associations have never been measured under the focused analysis required by *Knox*. Instead, it has approved mandatory bar associations on the basis of what a state "might reasonably believe." *Lathrop*.

The logic of these decisions is that mandatory bars are needed so that attorneys can be compelled to fund their own disciplinary systems. *Harris*, 134 S. Ct. at 2643–44; *Keller*, 496 U.S. at 14; *Lathrop*, 367 U.S. at 843 However, Compelling attorneys to pay for the cost of regulating the practice of law can be achieved by means that do not impinge on the constitutional right to disassociate, which is present when there is mandatory bar association membership: 19 states already do it without compelling membership at all.[2]

In his Lathrop dissent, Justice Douglas, came to the conclusion that the First Amendment did not permit compulsory membership in an integrated bar.

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[2] See In re Petition, 841 N.W.2d at 170–71; 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)

See 367 U.S., at 878-880, 81 S. Ct. 1826. The analogy drawn in Janson, he wrote, fails.

"Once we approve this measure," he warned, "we sanction a device where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose." 367 U.S., at 884, 81 S. Ct. 1826. He continued:

"I look on the Hanson case as a narrow exception to be closely confined. Unless we so treat it, we practically give carte blanche to any legislature to put at least professional people into goose-stepping brigades. Those brigades are not compatible with the First Amendment." Id., at 884-885, 81 S. Ct. 1826 (footnote omitted).

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the US Supreme Court reverse the 9th Circuit prior decision.

Dated this 30th day of August 2019.

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