No. 19-291

In The

# Supreme Court of the United States

ANNE BLOCK,

*Petitioner,*

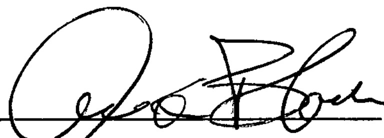
v.

WSBA, et al.,

*Respondents.*

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

## REPLY TO RESPONDENT KENYON DISEND AND CITY OF GOLD BAR'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI



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## INTRODUCTION

Respondents' assert to this Court that there is nothing unique or unusual about a news reporter being disbarred for reporting and publishing on public officials' corruption. They see nothing wrong with the bar association issuing a subpoena demanding Ms. Block to divulge confidential sources, turner over reporter files not related to a client, when RCW 5.68.010 ( Media Shield), the First Amendment, and the Washington Constitution prohibits such infringement of citizen's rights. They offer no explanation as to how their thinly disguised attempt at censor and punish a member of the press and free speech of lawyers has anything to do with the practice of law.

This case is unique because it involves for the first time in United States history when a news reporter, who happened to be a licensed attorney, is disbarred because of she writes about public officials corrupt acts in a publication. If allow to stand, years of case law are virtually overturned simply because Ms. Block was a lawyer who chose to investigate and report on corruption inside Washington State agencies. Every American's precious constitutional right to freedom of speech and freedom of the press suffers when government officials punish lawful First Amendment activity.

The court should take notice that some of the

more active participants in the denial of first amendment rights of Anne Block, i.e. the Snohomish County, King County, WSBA, and Sky Valley defendants, have not even attempted to justify their actions against Ms. Block by submitting responses. Others who have, namely the Kenyon Disend, Gold Bar, and Port of Seattle defendants (collectively addressed here as "the respondents"), only provide inapplicable technical defenses, and provide no countervailing authority on substantive issues, essentially conceding that they have undermined important first amendment right established by previous Supreme Court precedents, as well as violated Block's constitutional right to associate and disassociate with organizations of her own choosing.

The Court should take notice that Ms. Block has never been sued by anyone for defamation.

## THE RESPONDENTS INTRODUCTION

In their introduction, the respondents repeatedly refer to the plaintiff as "vexatious" while also mentioning the fact that a "vexatious litigant" order was entered. They conveniently leave out the fact that the vexatious litigant order was reversed and remanded to the trial court for further action.

## I. FACTS RELEVANT TO THE PETITION

### (A) PROCEDURAL FACTS:

There are no significant disputes as to the procedural posture of this case.

## (B) SUBSTANTIVE FACTS:

There are no significant disputes as to the substantive facts of this case. The respondents have not challenged any of the substantive allegations given in the petition, and their version simply lists the allegations made in the complaint.

## II. REPLY ARGUMENTS

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

The gravamen of the respondents' argument is that the plaintiff has not pointed out to any significant disputes among the circuits as to warrant Supreme Court review. They ignore completely the apparent dispute of the ninth circuit with the third circuit in the case of *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1262 n. 7 (3d Cir.1977), which 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 Pennsyvania Practice* § 2158.1 (1977).

That is not the case in Washington, where the common law prevails, which make all Washington federal judges liable if Block prevails. The respondents did not make any argument as to why Block's analysis of Washington State case law was erroneous.

In Washington, courts may assume that where no authority is cited, counsel has found none after search. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

Similarly, the respondents ignored the apparent dispute with the third circuit in *Plechner, id.*

The ninth circuit has made similar rulings to Washington's *State v. Young id*: See *Acosta Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992); see also *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *Meehan v. County of L.A.*, 856 F.2d 102, 105 n.1 (9th Cir. 1988).

**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 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.

The joint briefing does not address this analysis that resulted in the dismissal of her claim. Instead, they claim that there is no basis for appeal to the United States Supreme Court, contending this appeal is primarily "fact bound". In support of this they cite to Supreme Court rule 10, which talks about erroneous factual findings. The petitioner is not claiming any factual errors, because this was a motion on the pleadings in which there is no factual findings as all allegations are construed in favor of the non-moving party. The petitioner is claiming there was an error of law, in the way the law was applied to a series of allegations that were unchallenged for the purpose of a motion of the pleadings.

At no point did the plaintiff contend that this set of facts were so unique as to not be capable of

repetition as in *Allapattah Services Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004). In fact, just the opposite could be argued. If the kind of analysis used by the district court and the court of appeals were used on all first amendment cases, then it is difficult to imagine any kind of first amendment case surviving, because the respondents have basically admitted that all three prongs of *Arrington v. Dickerson*, 915 F. Supp. 1516, and *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 867 (9th Cir. 2016) were met because they refused to apply any analysis as to why they were not met.

In fact, none of the cases cited by the respondents apply because those cases involved disputed issues of fact. Here, since the case was won on a motion on the pleadings, and the respondents did not dispute the plausibility of any of the allegation in their response, the facts are essentially conceded and the appeal cannot be considered as "fact bound."

The Kenyon respondents claim there is no basis for concluding that any of the district court findings contradicted established U.S. Supreme court precedents. However, by failing to even address arguments based upon first amendment, such as the three part test in *Arrington v. Dickerson*, *supra*, and *Arizona Students' Ass'n v. Arizona Bd. of Regents*

*supra*, or media shield in RCW 5.68.010[1], the respondents have undermined the protections given in all the Supreme Court cases cited in the petition including *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)(broadest first amendment protections given for political speech), *Roth v. United States*, 354 U.S. 476, 484 (1957), *Bd. of Cty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996);( threatening or causing pecuniary harm), *Baird v. State Bar of Ariz.*, 401 U.S. 1, 7 (1971); (withholding a license, right, or benefit), *In Re Rufallo*, 390 US 544 (denying due process for convicting of bar violations without charging them), as well as undermining principles in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (which put restrictions on the power of public officials to sue for defamation.)

**C. 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.**

In her petition, the appellant brought forth detailed arguments on how compulsory subsidies such as mandatory bar association dues cannot be sustained under existing case law. She also supplied detailed briefing demonstrating how her appeal was an issue of first impression as to how mandatory bars

[1] First Amend. extended to online publications such as the Gold Bar Reporter in *Republic of Kazakhstan v. Does 1-100*, 192 Wn. App. 773. It protects against subpoenas which disclosure would identity of a source of **any** news source.

can be legal following this court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31,* No. 16-1466, 585 U.S. ___ (2018).

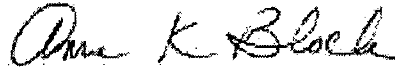
Contrary to the respondents assertion, Block has pointed out this case has raised an unsettled area of the law, namely, whether the finding in *Janus* should now be applied to bar associations, who, like public unions coerce members of a profession to join an organization. The respondents confusingly assert that Block has not argued how this case violates principles established in other supreme court cases, but provide no authority which contradicts her arguments as to how the ninth circuit violated principles established in *Knox v. Service Emps. Int'l Union, Local 1000 ("SEIU"),* 132 S. Ct. 2277 (2012), *Lathrop v. Donohue,* 367 U.S. 820, 843 (1961), *Keller v. State Bar of California* 496 U.S. 1, 4 (1990), *Harris v. Quinn,* 134 S.Ct. 2618 and other cases cited to by her in her petition.

For the most part, the respondents have ignored substantive arguments raised by the petition, instead asking this court to summarily reject the petition on their unproven assertion that this appeal is "fact bound." As argued earlier, respondents cannot ignore these substantive arguments by not providing countervailing authority. It is not up to the United States Supreme Court to provide arguments for them.

## CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the US Supreme Court to reject the reply arguments raised by the limited number of respondents and grant review in this case.

Dated this 12 day of November, 2019.



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