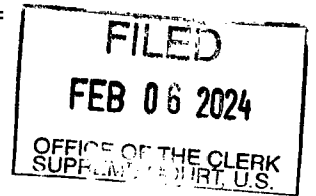


23-865  
No. \_\_\_\_\_

ORIGINAL



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In The  
**Supreme Court of the United States**

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DALE WENDALL LAUE,

*Petitioner,*

v.

COMMITTEE OF BAR EXAMINERS  
of the State Bar of California,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The Supreme Court Of California**

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**PETITION FOR WRIT OF CERTIORARI**

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*Petitioner, pro se*

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## QUESTIONS PRESENTED FOR REVIEW

### The questions presented are:

1. Whether admission to a State Bar, or other state licensing agency, constitutes a liberty interest under the United States Constitution.
2. Whether a strict scrutiny standard of review is required when a liberty interest is at stake and whether the applicant or the state bears the burden of proof.
3. Whether admission or licensing standards, and any disqualifying factors, must be narrow, objective, and definite.
4. Whether the Fourteenth Amendment allows a State Bar, or other state licensing agency, to promote diversity, equity, and inclusion (DEI) resulting in racial and gender preferences in the admission process

Petitioner Dale Laue (hereinafter “Mr. Laue”) respectfully requests this Court to review important questions of law related to applicants seeking admission to practice law in California. Without a bright line precedent on these questions, state licensing agencies can grant or deny a professional license for whatever racial, gender, or ideological reasons they choose with impunity. This leaves applicants with little or no legal recourse and courts with little or no guidance on these issues. These questions affect similarly situated

**QUESTIONS PRESENTED FOR REVIEW—**  
Continued

applicants and are subject to repetition. The actual number of applicants is unknown because the admission process is confidential.

Mr. Laue argues that his adverse moral character determination by the State Bar of California Committee of Bar Examiners (hereinafter “the Committee”) consists of vague, arbitrary and subjective reasons instead of narrow, objective, and definite standards supported by admissible evidence of any disqualifying factors. Mr. Laue has no criminal history and has not violated the rights of any person. Mr. Laue further argues that his adverse moral character determination is based on racial and gender preferences, a policy prohibited by Article I, section 31 of the California Constitution.

Despite constitutional prohibitions, the State Bar of California openly promotes diversity, equity, and inclusion (DEI) goals pursuant to the newly enacted California Business and Professions Code section 6001.3. Their stated mission is *to achieve a statewide attorney population that reflects the rich demographics of the state’s population*. This quota policy, and the statute, likely also violate the equal protection clause of the Fourteenth Amendment to the United States Constitution.

In a published opinion, the State Bar Court of California ruled that Mr. Laue failed to establish his

**QUESTIONS PRESENTED FOR REVIEW—**

Continued

burden of requisite good moral character for admission to practice law in California. Mr. Laue asserts that the State Bar Court failed to apply the strict scrutiny standard of review when the matter involves a liberty interest under the United States Constitution. Consequently, the State Bar Court's Opinion is not supported by the law, the facts, or the weight of the evidence in the record. Lastly, he argues that the Committee should bear the burden of identifying any disqualifying factors and not Mr. Laue to prove his own good moral character, a de facto "guilty until proven innocent" requirement.

## **PARTIES TO THE PROCEEDING**

### **Petitioner**

Petitioner Dale Laue was also the Petitioner in the State Bar Court of California, Hearing Department, the Petitioner-Appellant in the State Bar Court, Review Department, and the Petitioner-Appellant in the Supreme Court of California. His Petition for Review was denied.

### **Respondent**

The Respondent is the Committee of Bar Examiners of the State Bar of California ("Committee"). The Committee was represented by the Office of Chief Trial Counsel of the State Bar of California. The Committee was also the Respondent in the State Bar Court of California Hearing Department, the Appellees in the State Bar Court Review Department, and the Respondent in the Supreme Court of California.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to this Court's Rule 29.6, Petitioner states as follows:

Petitioner, Dale Laue, is a private individual.

The State Bar of California is a regulatory body structured as a public corporation under the California Constitution and the State Bar Act.

**STATEMENT OF RELATED PROCEEDINGS**

This case arises from the following proceedings:

- *Dale Wendall Laue v. State Bar of California*, Application No. 23A505, (Supreme Court of the United States) (Application granted by Justice Kagan on Dec. 5, 2023 extending time to file to Feb. 10, 2024).
- *Laue on Admission*, No. S280895 (Supreme Court of California) (Petition for Review denied Sep. 13, 2023).
- *In the Matter of Dale Wendall Laue, Applicant for Admission*, No. SBC-21-M-30591 (State Bar Court, Review Dept.) (Opinion affirming the decision of the hearing judge that Mr. Laue did not make the required prime facie showing of good moral character, filed May 12, 2023).
- *In the Matter of Dale Wendall Laue, Applicant for Admission*, No. SBC-21-M-30591-MC (State Bar Court, Hearing Dept.) (Decision concluding that Mr. Laue has failed to establish the requisite good moral character for admission to practice law in California, filed May 27, 2022).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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<sup>1</sup> Avail. at [https://www.calbar.ca.gov/Portals/0/documents/  
admissions/moralCharacter/moral-character-determination-  
guidelines.pdf](https://www.calbar.ca.gov/Portals/0/documents/admissions/moralCharacter/moral-character-determination-guidelines.pdf), last accessed July 11, 2023.

**PETITION FOR WRIT OF CERTIORARI**  
**OPINIONS BELOW**

The Supreme Court of California's denial of Mr. Laue's Petition for Review, filed September 13, 2023, is reproduced at App. 85.

A public version of the State Bar Court of California Review Department's published opinion, filed May 12, 2023, *In the Matter of Applicant D, Applicant for Admission*, is available at [https://www.statebarcourt.ca.gov/Portals/2/documents/opinions/Applicant\\_D\\_Opinion.pdf](https://www.statebarcourt.ca.gov/Portals/2/documents/opinions/Applicant_D_Opinion.pdf). The confidential version is reproduced at App. 70. (Confidentiality waived.)

The State Bar Court of California Hearing Department's decision, filed May 27, 2022, is confidential and reproduced at App. 32. (Confidentiality waived.)

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**JURISDICTION**

The Supreme Court of California denied Petitioner's Petition for Review on September 13, 2023. All state remedies now exhausted. This Court has jurisdiction under 28 U.S.C. § 1257(a).

An extension of time to file a Petition for Writ of Certiorari was granted December 5, 2023, extending the time to file to February 10, 2024. (No. 23A505).

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**CONSTITUTIONAL, STATUTORY, AND  
REGULATORY PROVISIONS INVOLVED**

United States Constitution Fourteenth Amendment, section 1:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, sec. 1.

Article I, section 31 of the California Constitution, added November 5, 1996, is reproduced at App. 86.

**California Business and Professions Code  
section 6001.3:**

“(a) It is the intent of the Legislature that the State Bar maintain its commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law.

(b) The Legislature finds and declares the following:

(1) The rich diversity of the people of California requires a justice system that



is equally accessible and free of bias and is a core value of the legal profession.

(2) Diversity and inclusion are an integral part of the State Bar's public protection mission to build, retain, and maintain a diverse legal profession to provide quality and culturally sensitive services to an ever-increasing diverse population.

(3) Diversity increases public trust and confidence and the appearance of fairness in the justice system and therefore increases access to justice.

(4) The State Bar should continue to increase diversity and inclusion in the legal profession.

(c) The State Bar shall develop and implement a plan to meet the goals set forth in this section, which may include, but is not limited to, an assessment of needed revenue. The State Bar shall prepare and submit a report to the Legislature, by March 30, 2019, and every two years thereafter, on the plan and its implementation, including a description of activities undertaken to support the plan, their outcomes, and their effectiveness.

*(Amended by Stats. 2023, Ch. 697, Sec. 3. (SB 40) Effective **January 1, 2024.**)*" Cal. Bus. & Prof. Code § 6001.3.

California Business and Professions Code section 6060, January 1, 2021, is reproduced at App. 88.

California Business and Professions Code section 6068, January 1, 2019, is reproduced at App. 93.

California Code of Civil Procedure, section 2025.540, January 1, 2005, is reproduced at App. 98.

California Rules of Court, Rule 9.13, January 1, 2019, is reproduced at App. 100.

The State Bar of California, Admission to Practice Law in California (“Admission Rules”) adopted July 2007, are reproduced at App. 106.

Pertinent sections of the State Bar of California Rules of Procedure, May 19, 2022, are reproduced at App. 150.

The State Bar Court of California, Rules of Practice, November 1, 2020, are reproduced at App. 197.

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## STATEMENT OF THE CASE

### A. Factual Background

#### 1. Petitioner Dale Laue

Petitioner Dale Wendall Laue (“Mr. Laue”) is an individual and applicant for admission to the State Bar of California. Mr. Laue is a 67-year-old white male Christian conservative that cherishes our Constitution and the rule of law. He has no criminal history and has not violated the rights of any person. He earned his Bachelor of Science degree in Professional Aeronautics from Embry-Riddle Aeronautical University and his

Juris Doctor degree from Purdue Global Law School (formerly Concord Law School).

Mr. Laue held a Department of Defense “Secret” security clearance from 1982 to 1999 as a requirement of his employment in defense aerospace. He holds a commercial pilot license with single engine, multi-engine and instrument ratings, an aircraft mechanic license with airframe and powerplant ratings, and a California Real Estate Salesperson license.

Without citing any specific disqualifying conduct, the Committee declined to grant Mr. Laue a positive Moral Character Determination on February 4, 2009 and again on March 19, 2021. Mr. Laue challenged both adverse moral character determinations and has now exhausted all state remedies.

## **2. Respondent State Bar of California**

Created by the Legislature in 1927, the State Bar is an arm of the California Supreme Court that licenses and regulates the state’s 270,000-plus attorneys. The nation’s largest state bar, it is a regulatory body structured as a public corporation under the California Constitution and the State Bar Act.<sup>1</sup>

The State Bar’s stated mission is to protect the public and includes the primary functions of licensing,

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<sup>1</sup> See State Bar of California Fact Sheet, p.1 (Rev. 6.26.2023) avail. at <https://www.calbar.ca.gov/Portals/0/documents/factSheets/State-Bar-of-California-Fact-Sheet.pdf>, last accessed Jul. 11, 2023.

regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system. The State Bar's mission includes advancing diversity and inclusion in the legal profession. The Board has defined the ultimate goal as a statewide attorney population that reflects the richly diverse demographics of California.

The Board of Trustees is the State Bar's governing body. It establishes the agency's strategic direction and ensures that the organization is fulfilling its statutory mission. The 13-member Board—7 attorneys and 6 nonattorneys—is appointed by the California Supreme Court, the Governor, the Assembly, and the Senate. The Board appoints attorneys and public members to serve on a variety of committees that support the agency's work. The State Bar's top leadership positions—the Executive Director, Chief Trial Counsel, and General Counsel—report directly to the Board.

## **B. Procedural Background**

On December 4, 2006, Mr. Laue submitted an Application for Moral Character Determination with the Committee. (R. 782.) Mr. Laue subsequently received requests from the Committee for additional information and documents dated April 4, 2007, December 7, 2007, and August 5, 2008. Mr. Laue responded with the requested information and documents on May 18, 2007, March 5, 2008 and August 20, 2008 respectively. (R. 893-914.)

In December 2008, Mr. Laue received an invitation to participate in an informal conference in San Francisco on January 14, 2009 at 11:00 a.m. Mr. Laue accepted the invitation and fully cooperated with the Committee during the conference. (R. Trans. Informal Conf. (Jan. 14, 2009).) During the conference, the Committee never identified any specific disqualifying conduct by Mr. Laue.

On February 4, 2009, the Committee declined to grant a positive Moral Character Determination, citing “lack of candor on your Application for Determination of Moral Character, due to the finding that a there was an appearance of impropriety in your actions as the Personal Representative of your mother’s estate and that you engaged in conduct that indicated a lack of fiduciary responsibility, and, generally, your failure to establish that you were of good moral character.” App. 1. (R. 819.) The letter did not identify any specific disqualifying event or conduct by Mr. Laue, but rather conduct that subjectively had an **appearance** of impropriety or **indicated** a lack of fiduciary responsibility. (emphasis added)

On April 1, 2009, Mr. Laue filed an “Application for Initiation of a Moral Character Proceeding and Hearing” (simply titled “Request for Hearing”) with the State Bar Court via U.S. Mail. Copies were served on the Committee and on the Office of Chief Trial Counsel (“OCTC”) along with the applicable \$100 filing fee payable to the Committee of Bar Examiners. Both the Committee and the OCTC received the copies served but for some unknown reason the State Bar Court did

not receive the original for filing. After inquiry, Mr. Laue learned that the filing with the State Bar Court was not received and consequently not perfected within the 60-day time limit. The Committee refunded Mr. Laue's \$100 filing fee on August 10, 2009. (R. 135.) Mr. Laue became eligible to file another application for Determination of Moral Character on February 4, 2011.

On January 5, 2018, Mr. Laue filed a paper application for Determination of Moral Character in accordance with "Reapplication Subsequent to Receipt of an Adverse Moral Character Determination or Withdrawal Under Rule 4.49 of the Admissions Rules."<sup>2</sup> App. 129. (R. 821.) Mr. Laue sent an update (Form 1) on March 20, 2018. Mr. Laue received a letter dated August 8, 2018 requesting "additional information and/or documentation." (R. 376, Tr. Ex. 1004.) On September 26, 2018, Mr. Laue provided the requested additional information and documentation. (R. 382-416, Tr. Ex. 1005.) Mr. Laue provided periodic updates of ongoing civil lawsuits dated November 19, 2018, December 4, 2018, March 6, 2020, and March 3, 2021. (R. 956, 959, 960, Tr. Ex. 16, 18, 19 respectively.)

On March 1, 2021, Mr. Laue received an email inviting him "to meet with representatives of the State Bar via video conference on 3/17/21, at 11:30 a.m." Mr.

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<sup>2</sup> Rule 4.49 "The State Bar may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character . . ." implies the subsequent Application is a continuation of the previous application.

Laue accepted the invitation and fully cooperated with the Committee during the conference. (R. Trans. Informal Conf. (Mar. 17, 2021.)) Again, during the conference the Committee never identified any specific disqualifying conduct by Mr. Laue.

On March 19, 2021, the Committee again declined to grant Mr. Laue a positive Moral Character Determination, stating that the “decision was reached after a consideration of factors including your insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are of good moral character as required by Section 6060 of the California Business and Professions Code and Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California (Admissions Rules).” App. 11. (R. 860, Tr. Ex 4.) The letter did not identify any specific disqualifying event or conduct by Mr. Laue.

On April 18, 2021, Mr. Laue sent a Request for Administrative Review to the Committee via email and U.S. Mail pursuant to Rule 4.47.1 of the Admission Rules. App. 16. (R. 870-72, Tr. Ex. 5.) The request for review stated that both the February 4, 2009 and March 19, 2021 adverse moral character determinations are based on vague, arbitrary and subjective statements and not on any specific admissible evidence of disqualifying conduct. Mr. Laue has fully cooperated with the Moral Character Determination staff during the application process.

On June 24, 2021, Mr. Laue received a third denial letter via Certified Mail. The June 21, 2021, final determination letter stated “the Committee of Bar Examiners (“Committee”) considered your Application for Determination of Moral Character pursuant to your request for administrative review. The Committee determined that you have not met your burden of establishing good moral character. This decision was reached after a consideration of factors including your **lack of insight**, insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are of good moral character as required by Section 6060 of the California Business and Professions Code and Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California (Admissions Rules).” App. 21. (R. 873, Tr. Ex. 6, emphasis added.) The letter further stated that Mr. Laue could appeal the Committee’s decision to the State Bar Court within 60 days.

On August 20, 2021, Mr. Laue timely mailed an Application for Hearing on An Adverse Determination of Moral Character by the Committee of Bar Examiners, Rule 4.47 (Admission Rules), for filing in the State Bar Court with copies served on the Committee and on the Office of Chief Trial Counsel (OCTC) of the State Bar of California. App. 24. (R. 24-61.) Then the State Bar’s OCTC embarked on an extensive fishing expedition to subpoena over 50,000 pages of documents, including Mr. Laue’s bank records, in an effort to justify the Committee’s adverse moral character determination. On January 3, 2022, the Committee,



through their attorneys the OCTC, filed a Response. (R. 73-91.)

On January 13, 2022, Mr. Laue and the Committee exchanged discovery requests. Mr. Laue fully complied with the information requested by the Committee on February 10, 2022. The Committee did not fully comply with Mr. Laue's discovery request. On February 22, 2022, Mr. Laue filed a motion to compel. (R. 168.) On February 25, 2022, Mr. Laue filed a Motion in Limine to exclude any evidence not part of the appeal record on or before the June 21, 2021 final adverse moral character determination, and to exclude the Committee's proposed witnesses. (R. 308.) The Committee filed oppositions to both the Motion to Compel and Motion in Limine on March 3, 2022. (R. 750, 755.) The Court denied both motions on March 8, 2022. (R. 774.)

A trial was held on March 9 and 10. No witnesses were called by either party. The court invited closing briefs from the parties. Mr. Laue filed a closing brief. The Committee did not file a closing brief. App. 34. The State Bar Court Hearing Department filed the Decision on May 27, 2022. App. 32. (R. 1156.) The decision concluded, "The court finds that Dale Wendall Laue has failed to establish that he currently possesses the requisite good moral character for admission to practice law in the State of California. (Bus. & Prof. Code, § 6060, subd. (b); Rules of State Bar, title 4, Admission and Educational Stds., rule 4.40(A).)" App. 64. (R. 1179.)

On June 13, 2022, Mr. Laue filed a Motion for Reconsideration under Rule 5.115(B)(2) of the Rules of Procedure of the State Bar of California (App. 173-74.) citing that “the order or decision contains one or more errors of fact or law, or both, based on the evidence already before the Court.” (R. 1181.) On June 24, the Committee filed a response opposing the Motion. (R. 1200.) The Court denied the motion on July 19, 2022. App. 65. (R. 1211.)

On August 18, 2022, Mr. Laue then filed a Request for Review in the State Bar Court Review Department. (R. 1215.) On August 25, 2022, the Hearing department filed an order referring the matter to the Review department. App. 69. The matter was fully briefed on January 5, 2023 with the filing of Mr. Laue’s Reply Brief. (R. 1310.)

Up until this point, Mr. Laue had been locked in circular arguments with the Committee over whether a particular issue amounted to a disqualifying factor for purposes of a moral character determination. While preparing for oral argument, Mr. Laue took a step back to look at the big picture. The real issue in this case was not apparent.

Mr. Laue went to the State Bar website to research the Moral Character Determination Guidelines. This is when Mr. Laue discovered the State Bar’s policy of promoting diversity, equity, and inclusion (DEI) goals as part of their mission to “to achieve a statewide attorney population that reflects the rich demographics of

the state's population.”<sup>3</sup> At oral argument on February 16, 2023, Mr. Laue raised the DEI issue, along with related constitutional issues and the required standard of review when the matter involves a liberty interest. (R. Trans. Oral Argument 6:7-10:12; 24:2-27:20 (Feb. 16, 2023).)

On May 12, 2023, the State Bar Court filed a published opinion concluding, “Based upon our independent review of the record, we affirm the hearing judge’s finding that Laue did not make a prima facie showing of good moral character. A failure to make a prima facie showing of good moral character is outcome determinative; therefore, we need not address Laue’s remaining arguments on appeal. We decline to recommend Laue for admission to practice law in California.” App. 70. (R. 1334-44.)

On May 29, 2023, Mr. Laue filed a Motion for Reconsideration, citing the absence of a strict scrutiny standard of review when the issue involves a fundamental right under the United States Constitution. (R. 1345.) The motion also asked the court to reconsider the actual definition of “a prima facie showing of good moral character.” On June 16, 2023, the court denied the motion stating, “Applicant has failed to (1) present new or different facts, circumstances, or law, or (2) show our opinion contained errors of fact or law. (See Rules Proc. of State Bar, rules 5.115(B), 5.158.) Therefore, applicant’s motion is denied.” App. 84. (R. 1356.)

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<sup>3</sup> See Promoting Diversity, Equity, and Inclusion avail. at <https://www.calbar.ca.gov/About-Us/Our-Mission/Promoting-Diversity-Equity-and-Inclusion>, last accessed July 11, 2023.

On July 11, 2023, Petitioner filed a Petition for Review in the California Supreme Court pursuant to Rule 9.13, subsection (d) of the California Rules of Court. Rule 9.13 allows the respondent to file an answer. App. 101. On July 19, 2023, the State Bar filed a letter stating that “the State Bar does not intend to submit an answer to the petition filed in the above-referenced matter on July 11, 2023, unless requested by the Court.” On September 13, 2023, the California Supreme Court denied Mr. Laue’s Petition for Review. App. 85.

On November 28, 2023, Mr. Laue submitted an Application for Extension of Time to File a Petition for Writ of Certiorari. Justice Elena Kagan granted the motion on December 5, 2023, extending the time to file from December 10, 2023 to February 10, 2024. (No. 23A505).

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### REASONS FOR GRANTING THE PETITION

**I. Whether admission to a State Bar, or other state licensing agency, constitutes a Liberty interest under the United States Constitution.<sup>4</sup>**

**A. Pursuit of an occupation or profession of a person’s choice is a liberty interest and a fundamental right.**

A *liberty interest* is defined as an interest protected by the due-process clauses of state and federal

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<sup>4</sup> Constitutional issue first raised in the Request for Review by the Committee of Bar Examiners dated April 18, 2021. App. 19-20.

constitutions. See Fundamental Right (2). *Black's Law Dictionary* 931 (Bryan A. Garner ed., 7th ed., West 1999). A *fundamental right* is defined as a significant component of liberty, encroachments of which are rigorously tested by courts to ascertain the soundness of purported governmental justifications. A fundamental right triggers strict scrutiny to determine whether the law [or state action] violates the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. *Black's Law Dictionary* at 683. The right of a citizen to engage in a profession of his choice qualifies as a liberty interest.

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition." *Allgeyer v. Louisiana*, 165 U.S. 578, 589-90 (1897). Pursuit of an occupation or profession is a liberty interest protected by the due process clause. *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999) (the "Fourteenth Amendment's Due Process Clause includes some generalized due process right to choose one's field of private employment"); see also *Dittman v. California*, 191 F.3d 1020, 1029 (9th Cir. 1999) (the pursuit of a profession or occupation is a protected liberty interest that extends across a broad range of lawful occupations), cert. denied, 530 U.S. 1261 (2000); *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F.Supp. 1260, 1271 (1997) ("[t]he right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference

comes within the "liberty" and "property" concepts of the federal constitution, quoting *Greene v. McElroy*, 360 U.S. 474, 492 (1959).)

The pursuit of a profession or occupation of a person's choice is a protected liberty interest and fundamental right that cannot be arbitrarily deprived without violating due process of law and an equal application of the laws.

#### **B. A Liberty interest is protected by the United States Constitution**

Considered textually, the Privileges and Immunities Clause, the Equal Protection Clause, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution clearly describe a legal obligation of all states. Section 1 of the Fourteenth Amendment requires:

**"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the**

laws.” U.S. Const. amend. XIV, sec. 1 (emphasis added).<sup>5</sup>

These words require an assurance that all levels of American government must operate within the law and provide fair procedures. The Due Process Clause also requires that before depriving a citizen of life, liberty, or property, government must follow fair procedures. It is not always enough for the government just to act in accordance with whatever law or rules under which they operate.

Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law or rules upon which it is acting. A state’s legislature cannot deny to any citizen within its jurisdiction any privilege or immunity (however defined). Once a law has validly passed, the state or its agents cannot arbitrarily enforce it against any person within the state’s jurisdiction without violating the Equal Protection Clause. Thus, every person is entitled to the full panoply of procedural rights that our Constitution provides.

Admission to a State Bar to practice law, or issuance of a state license to follow any lawful calling, business, or profession that a person may choose,

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<sup>5</sup> Similarly, Article I of the California Constitution requires: “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; . . .” (Cal. Const. art. I, sec. 7.) “The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.” (Cal. Const. art. I, sec. 26.)

constitutes a Liberty interest and a fundamental right under the United States Constitution

**II. Whether a strict scrutiny standard of review is required when a liberty interest is at stake and whether the applicant or the state bears the burden of proof.<sup>6</sup>**

**A. Analysis under a strict scrutiny standard of review**

The exercise of a fundamental right triggers strict scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). At oral argument in the State Bar Court Review Department, Mr. Laue argued that review of an adverse moral character determination must be under a strict scrutiny analysis. (R. Trans. Oral Argument 6:7-10:12; 24:2-27:20 (Feb. 16, 2023).) Strict scrutiny places the burden on the State Bar to show a compelling government interest for any disqualifying factor and represents the least restrictive means of achieving that interest.

**B. The State Bar bears the burden of proof to identify any specific disqualifying acts by the applicant**

Mr. Laue argues that the State Bar bears the burden to identify and prove any specific disqualifying

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<sup>6</sup> Burden of proof issue first raised in the Request for Review by the Committee of Bar Examiners dated April 18, 2021. App. 20.



conduct by clear and convincing evidence. The State Bar's Rules of Procedure state, "The State Bar must prove culpability by clear and convincing evidence." App. 168, Proc. Rule 5.103.<sup>7</sup> This directly conflicts with the State Bar Court's ruling, "After independent review of the record (Cal. Rules of Court, rule 9.12),<sup>8</sup> we affirm the decision of the hearing judge that Laue did not make the required prime facie showing of good moral character." App. 71.

The State Bar argues that the "applicant bears the burden of establishing good moral character." *In re Gossage*, 23 Cal.4th 1080, 1095 (2000) (burden rests upon applicant for admission to prove own moral fitness). App. 34-35, 74. "First, the applicant must present **enough evidence** to make a prima facie showing

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<sup>7</sup> Proc. Rule 5.103 is not identified as inapplicable to moral character proceedings. See Proc. Rule 5.466, App. 195-6.

<sup>8</sup> California Rules of Court

Rule 9.12. Standard of review for State Bar Court Review Department

In reviewing the decisions, orders, or rulings of a hearing judge under rule 301 of the Rules of Procedure of the State Bar of California or such other rule as may be adopted governing the review of any decisions, orders, or rulings by a hearing judge that fully disposes of an entire proceeding, the Review Department of the State Bar Court must independently review the record and may adopt findings, conclusions, and a decision or recommendation different from those of the hearing judge.

*Rule 9.12 amended and renumbered effective January 1, 2007; adopted as rule 951.5 by the Supreme Court effective February 23, 2000.*

of good moral character.” *In re Menna*, 11 Cal.4th 975, 984 (1995); *Lubetzky v. State Bar*, 54 Cal.3d 308, 312 (1991) (emphasis added). App. 34-35, 74. The State Bar Court’s Conclusion states, “Laue’s failure to make a prima facie showing of good moral character is outcome determinative; therefore, we need not address Laue’s remaining arguments on appeal.” App. 82. (R. 1343.) In other words, *if he can’t show he’s innocent, then he must be guilty.*

The court’s definition of a prima facie showing of good moral character is vague and overbroad and does not seem to recognize that the application itself provides “enough evidence” to make a prima facie showing of the applicant’s background information. A lack of evidence necessary to make a moral character determination was never one of the Committee’s factors. If the application contained little or no verifiable information following the applicant’s 18th birthday, then a moral character determination might be difficult or impossible to ascertain.

For example, a 25-year-old student applicant living at home while progressing through high school, college and law school might have little or no verifiable history other than being a student from which a moral character determination can be made. When a person applies for their first job, recommendation letters, academic awards, and personal references are typical substitutes for the lack of employment history. Once a person has an employment history, this type of background “evidence” is no longer required except as a

competitive advantage with other applicants competing for the same job.

In stark contrast, Mr. Laue “contends that other than a 2006 speeding ticket in South Dakota,<sup>9</sup> he does not have a criminal record, and he has ‘not violated the rights of any other person.’” App. 75. (R. 1338.) The State Bar does not dispute these facts. Mr. Laue has an extensive 32 year education and employment history which includes a “secret” security clearance, as well as numerous licenses. Yet, the State Bar Court essentially dismisses Mr. Laue’s achievements as irrelevant and obsolete. The court stated, “In sum, we are left with Laue’s stable employment that lasted until 2002, a security clearance that ended almost 20 years prior to his 2018 moral character application in addition to other inactive licenses, and not a single witness who vouched, either by testimony or in writing, for his good character.” App. 81-82. (R. 1342.)

The State Bar bears the burden to identify and prove any specific disqualifying conduct by clear and convincing evidence. They have not done so. If they had, they would so state.

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<sup>9</sup> 50 m.p.h. in a 35 m.p.h. zone is a vehicle code misdemeanor in South Dakota (See South Dakota Codified Law § 32-25-7), but would be a vehicle code infraction in California (See California Vehicle Code § 22348.) The incident no longer appeared on Mr. Laue’s driving record prior to submitting his 2018 moral character application. Mr. Laue supplied a certified copy of his driving record to the Committee.

**III. Whether admission or licensing standards, and any disqualifying factors, must be narrow, objective, and definite.<sup>10</sup>**

**A. The State Bar's admission standards are vague, overbroad, arbitrary, and subjective resulting in the possibility of abusive ends.**

Rule 4.40, Title 4, Division 1, Chapter 4 of the Rules of the State Bar of California (Admissions Rules) states:

“(A) An applicant must be of good moral character **as determined by the State Bar.** The **applicant has the burden** of establishing that he or she is of good moral character.

(B) “Good moral character” **includes but is not limited to** qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.” App. 122. Admis. Rule 4.40 (emphasis added).

The Committee's vague, arbitrary, and subjective licensing standards are analogous to the firearm licensing standards employed by the State of New York in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. \_\_\_\_ (2022) (“*Bruen*”).

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<sup>10</sup> Licensing standards issue first raised in the Request for Review by the Committee of Bar Examiners dated April 18, 2021. App. 18-20.

The controversy in *Bruen* involved a New York gun control law which required parties interested in possessing a firearm to first obtain a license, whether inside or outside the home. These licenses were for enumerated uses only; and, if a party wanted a license to carry a handgun in public, they were required to show “proper cause” as to why they have a heightened need for self-protection over the general population. Permits were issued on a “may-issue” basis, meaning government officials had the final say as to whether “proper cause” was shown. *Bruen*, 597 U.S. slip op. 2-3. In contrast, the Court found that “shall-issue” jurisdictions contain only “narrow, objective, and definite standards” guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969), rather than requiring the “appraisal of facts, the exercise of judgment, and the formation of an opinion,” *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940)—features that typify proper-cause standards like New York’s. *Ibid.*, slip op. at 30.

Similarly, the Committee’s vague, arbitrary, and subjective standards require the appraisal of facts, the exercise of judgment, and the formation of an opinion, in lieu of narrow, objective, and definite standards to guide Moral Character Determination staff. “The State Bar determines when an application is complete.” App. 114, Rule 4.16(A). “An applicant must be of good moral character as determined by the State Bar. The applicant has the burden of establishing that he or she is of good moral character.” App. 122, Rule 4.40(A). Such subjective and overbroad standards can be applied

toward abusive ends allowing the Committee to deny a positive moral character determination for any reason desired. The “factors” given can be impermissibly based on an unwritten ideological or political agenda set by the State Bar for licensing its members without having to specifically so state.

For example, the Committee cites “lack of candor” as a factor for the decision. A lack of candor specifically implies falsification by omission but the Committee has not shown that any alleged omission was material, intentional, or resulted from a reckless disregard for the truth. App. 11, 21. Lack of candor is what agencies typically use when they can’t prove actual falsification. The lack of candor charge does not require proof of intent.

“Falsification involves an affirmative misrepresentation, and requires intent to deceive. (citation omitted). Lack of candor, however, is a broader and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete.” *Ludlum v. Department of Justice*, 278 F.3d 1280, 1284 (Fed. Cir. 2002).

The generally accepted elements of lack of candor are:

- The conduct not disclosed is misconduct;
- The conduct not disclosed actually occurred;

- The person failed to disclose the misconduct; and
- The person did so knowingly. See *Ludlum*, 278 F.3d at p. 1282.

(“The Bureau determined that Ludlum had engaged in several improprieties and dismissed him. It ruled that he had made an unauthorized traffic stop, that he had ‘transported an unauthorized passenger in [his] Bureau vehicle,’ and that he ‘lacked candor during this inquiry.’”); *Parkinson v. Dep’t of Justice*, 815 F.3d 757, 766 (Fed. Cir. 2016) (“Lack of candor, as relevant here, requires proof of two elements: that [the person] failed to be fully forthright, and that the [person] did so knowingly.”).

In the instant case, any omissions alleged by the Committee do not satisfy the elements of a lack of candor because there was no underlying misconduct by Mr. Laue. “The State Bar must prove culpability by clear and convincing evidence.” App. 168, Proc. Rule 5.103. They have not done so.

The fact that arbitrary or capricious action by the moral character determination staff is subject to judicial review in the State Bar’s own in-house Court<sup>11</sup> cannot validate the process. Judicial decision after trial is as obnoxious under the Constitution as denial by administrative action. See *Cantwell v. Connecticut*, 310 U.S. 296, 297 (1940). Moreover, review by the

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<sup>11</sup> The State Bar Court of California, General Information, avail. at <https://www.statebarcourt.ca.gov/>, last accessed Jan. 29, 2024.

California Supreme Court is not a matter of right. App. 112, Admis. Rule 4.9, "If review is ordered by the Supreme Court, . . . ." App. 102, CRC Rule 9.13(d). This leaves the applicant with no independent review outside of the State Bar's internal system.

In summary, admission standards cannot be vague, overbroad, subjective, or arbitrary but must be based on narrow, objective, and definite standards supported by actual proof of disqualifying conduct. An adverse moral character determination identifying factors such as "lack of insight, insufficient rehabilitation, lack of candor, lack of respect for the judicial process, and generally, your failure to establish that you are of good moral character" do not qualify as narrow, objective, and definite standards of disqualifying conduct based on clear and convincing evidence. App. 21.

### **B. Mr. Laue's Prima Facie Case of Good Moral Character**

To qualify for admission to the State Bar of California, "an applicant must, among other things, demonstrate he or she is possessed of 'good moral character.' (citation omitted). 'Good moral character' has traditionally been defined as the absence of conduct imbued with elements of 'moral turpitude.'<sup>12</sup>

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<sup>12</sup> A phrase that describes wicked, deviant behavior constituting an immoral, unethical, or unjust departure from ordinary social standards such that it would shock a community. Courts however have commonly quoted the following in order to describe *conduct* that involves moral turpitude: "An act of baseness, villainess, or depravity in the private and social duties which a man



(citation omitted). It includes ‘qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.’ (citation omitted).” *In re Menna*, 11 Cal.4th 978, 983 (1995). “In a moral character proceeding, the applicant must first establish a prima facie case that he or she possesses good moral character; the State Bar may then rebut that showing with evidence of bad moral character. If it does so, the burden then shifts back to the applicant to demonstrate his or her rehabilitation.” *Ibid.* at p. 984.

The final stage of the proceeding assumes the State Bar has identified clear and convincing evidence of disqualifying conduct that would require a showing of rehabilitation. The Committee has not identified any disqualifying conduct, especially conduct “imbued with elements of ‘moral turpitude.’” *Ibid.* The State Bar Court is required to follow the guidelines set by the California Supreme Court in *Menna* under the doctrine of stare decisis. “Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction.” *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 455 (1962).

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owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” *Cano v. U.S. Att’y Gen.*, 709 F.3d 1052, 1053 (11th Cir. 2013) (Source: [https://www.law.cornell.edu/wex/moral\\_turpitude](https://www.law.cornell.edu/wex/moral_turpitude) (last accessed Mar. 23, 2022.))

The applicant is ordinarily afforded “the benefit of the doubt as to ‘conflicting equally reasonable inferences’ concerning moral fitness.” *In re Glass*, 58 Cal.4th 500, 521 (2014), quoting *In re Gossage*, 23 Cal.4th 1080, 1098 (2000). But where there is notable or criminal transgression, “positive inferences about the applicant’s moral character are more difficult to draw, and negative character inferences are stronger and more reasonable.” *In re Gossage*, supra, at p. 1098.

Here, the court completely ignores the fact that Mr. Laue has no criminal history, especially acts involving moral turpitude. In fact, the Committee has not identified clear and convincing evidence of any specific disqualifying act(s).<sup>13</sup> Nevertheless, the Committee argues that the ultimate burden rests upon the applicant to prove that he is a “fit and proper person” to be permitted to practice law. *In re Glass*, supra, at p. 521. The State Bar Court has simply endorsed the Committee’s adverse moral character determination by concluding that Mr. Laue did not meet his burden of making a prima facie showing of good moral character.

Mr. Laue argues that since he lacks a criminal record and has not violated the rights of any other person, he has, by default, shown a respect for and obedience to the laws of the state and the nation, respect for the

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<sup>13</sup> See Moral Character Determination Guidelines (avail. at <https://www.calbar.ca.gov/Portals/0/documents/admissions/moral-Character/moral-character-determination-guidelines.pdf>, last accessed Jan. 12, 2024.) The guidelines state, “**Accordingly, these guidelines neither bind nor limit the discretion of the decision-makers.**” (p.1, last sentence)

rights of others, and respect for the judicial process. The Application itself provides the affirmative documentary evidence and testimony of Mr. Laue's good moral character according to the Supreme Court's traditional definition. (R. 782-818, 821-859, Tr. Ex. 1, 3.) The Applications include education history, employment history, personal references, credentials and licenses.

Mr. Laue's licenses include a FAA<sup>14</sup> Commercial Pilot license with instrument, single-engine and multi-engine ratings, and a FAA Aircraft Mechanic license with airframe and powerplant ratings. Aviation is a regulation intensive field for safety reasons. For example, simply by operating an aircraft in the dense Southern California airspace system, Mr. Laue has subjected himself to the possibility of regulatory violations for which a non-pilot would never be at risk. Mr. Laue has no violations.

Additionally, Mr. Laue's credentials include a Department of Defense "Secret" security clearance for 17 years related to his engineering employment on U.S. Air Force aircraft development programs. (R. 792-93, 830-31, Tr. Ex. 1, 3.) Again, Mr. Laue has been subjected to strict rules and regulations not experienced by someone without a security clearance. The fact that the U.S. Government has entrusted Mr. Laue with national security secrets for life under Title 18 of the U.S.

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<sup>14</sup> FAA is the acronym for the Federal Aviation Administration

Code is inconsistent with the Committee's opinion that he lacks good moral character.

The Applications also show that Mr. Laue has not committed, and the Committee has not identified, clear and convincing evidence of any specific disqualifying acts, especially any acts of moral turpitude. The absence of any disqualifying acts, demonstrates by default that Mr. Laue has established a prima facie case that he possesses good moral character under the California Supreme Court's definition in *Menna*. Therefore, the absence of any disqualifying acts demonstrates that Mr. Laue has established a prima facie case that he possesses good moral character.

**C. The State Bar has recommended admission of a convicted felon, a dishonest journalist and an illegal immigrant.**

In a motion for reconsideration, Mr. Laue objected that the State Bar Court Hearing Department cited heavily to *In re Glass*, 58 Cal.4th 500 (2014) ("*Glass*") and *In re Gossage*, 23 Cal.4th 1080 (2000) ("*Gossage*") throughout its Decision. App. 34, 35, 38, 41, 46-49, 62. Neither case shares any facts in common with Mr. Laue's case. Both *Gossage* and *Glass* involved extreme acts of moral turpitude and are inapposite when compared with the facts in this case.

In *Gossage*, the State Bar Court inexplicably recommended admission of Mr. Gossage even though he was found guilty of an intentional criminal homicide and other felonies involving moral turpitude. In his

Moral Character Application, Mr. Gossage disclosed only 4 of 17 criminal convictions he had sustained. No official supporting documents were attached. The Supreme Court rejected the State Bar Court's recommendation and declined to admit Mr. Gossage to the practice of law.

Similarly in *Glass*, Stephen Randall Glass made himself infamous as a dishonest journalist by fabricating material for more than 40 articles for *The New Republic* magazine and other publications. He also carefully fabricated supporting materials to delude *The New Republic's* fact checkers. His articles included falsehoods that reflected negatively on individuals, political groups, and ethnic minorities. As in *Gossage*, the Supreme Court rejected the State Bar Court's recommendation and declined to admit Mr. Glass to the practice of law. The material omissions of Mr. Gossage and Mr. Glass satisfy the elements of a lack of candor because both had engaged in extreme acts of moral turpitude they desired to hide.

The Committee also recommended admission of Sergio C. Garcia, an immigrant from Mexico who is not lawfully present in the United States. See *In re Garcia on Admission*, 58 Cal.4th 440 (2014). On January 2, 2014, the California Supreme Court granted the Committee's motion to admit Garcia to the State Bar. The California Business and Professions code states in pertinent part, "It is the duty of an attorney to do all of the following: (a) To support the Constitution and laws of the United States and of this state." Cal. Bus. & Prof. Code § 6068(a). App. 93. How does an immigrant from Mexico comply with this basic requirement when he is

not lawfully present in the United States? At the time of his admission, Mr. Garcia was not in the class of “persons born or naturalized in the United States and subject to the jurisdiction thereof. . . .” U.S. Const. amend. XIV, sec. 1.

In stark contrast, Mr. Laue has not committed any crimes, has not violated the rights of any person and he is lawfully present in the United States. His alleged omissions do not satisfy the elements of a lack of candor because he has no actual misconduct to hide. Despite these facts, the Committee and the State Bar Court has not recommended that Mr. Laue be admitted to the practice of law. This has the appearance of a pretext and indicates a mission to satisfy the goals of a social agenda—namely the promoting of diversity, equity and inclusion.

**IV. Whether the Fourteenth Amendment allows a State Bar, or other state licensing agency to promote diversity, equity, and inclusion (DEI) resulting in racial and gender preferences in the admission process.<sup>15</sup>**

**A. California Business and Professions Code section 6001.3 is unconstitutional because it promotes discrimination based on race and gender**

California Business and Professions Code section 6001.3 states,

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<sup>15</sup> DEI issue first raised during oral argument in the State Bar Court Review Dept. on Feb. 16, 2023.

“(a) **It is the intent of the Legislature that the State Bar maintain its commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession** and the elimination of bias in the practice of law.

(b) The Legislature finds and declares the following:

(1) The rich diversity of the people of California requires a justice system that is equally accessible and free of bias and is a core value of the legal profession.

(2) **Diversity and inclusion are an integral part of the State Bar’s public protection mission to build, retain, and maintain a diverse legal profession** to provide quality and culturally sensitive services to an ever-increasing diverse population.

(3) **Diversity increases public trust and confidence and the appearance of fairness in the justice system** and therefore increases access to justice.

(4) **The State Bar should continue to increase diversity and inclusion in the legal profession.**

(c) **The State Bar shall develop and implement a plan to meet the goals set forth in this section**, which may include, but is not limited to, an assessment of needed revenue. **The State Bar shall prepare and submit**

**a report to the Legislature**, by March 30, 2019, and every two years thereafter, **on the plan and its implementation**, including a description of activities undertaken to support the plan, their outcomes, and their effectiveness.

*(Amended by Stats. 2023, Ch. 697, Sec. 3. (SB 40) Effective **January 1, 2024.**)* Cal. Bus. & Prof. Code § 6001.3 (emphasis added).

On November 5, 1996, the California voters passed Proposition 209 “Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities.” Proposition 209 was intended to end affirmative action in state programs. It became Article I, Section 31 of the California Constitution, and states in pertinent part, “(a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Cal. Const. art. I, § 31(a). App. 86.

Affirmative action is defined as the use of policies, legislation, programs, and procedures to improve the educational or employment opportunities of members of certain demographic groups (such as minority groups, women, and older people) as a remedy to the effects of long-standing discrimination against such groups. *Merriam-Webster Dictionary*, avail. at [https://www.merriam-webster.com/dictionary/affirmative action](https://www.merriam-webster.com/dictionary/affirmative%20action), last accessed July 11, 2023. Diversity, equity,



and inclusion (DEI) is simply a cleverly disguised name for affirmative action.

The State Bar does not hide its goals for “Promoting Diversity, Equity, and Inclusion.”<sup>16</sup>

Their webpage states,

**“The State Bar advances diversity, equity, and inclusion (DEI) in the legal profession** by focusing on key areas of influence, **specifically the pipeline into the legal profession**, retention and career advancement, and judicial diversity. The State Bar adopted as its diversity definition the reporting categories in Government Code section 12011.5(n): race, ethnicity, gender, gender identity, disability, sexual orientation, and veteran status.” (emphasis added)

**“The State Bar’s DEI work seeks to achieve a statewide attorney population that reflects the rich demographics of the state’s population.** Goal two of the

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<sup>16</sup> See *Promoting Diversity, Equity, and Inclusion* avail. at <https://www.calbar.ca.gov/About-Us/Our-Mission/Promoting-Diversity-Equity-and-Inclusion>, last accessed Jan. 12, 2024. See also *Report Card on the Diversity of California’s Legal Profession*, avail. at: <https://publications.calbar.ca.gov/2022-diversity-report-card/introduction>, last accessed Dec. 18, 2023; *Calls to Action*, avail. at <https://publications.calbar.ca.gov/2022-diversity-report-card/calls-to-action>, last accessed Dec. 18, 2023; The DEI Leadership Seal Program, avail. at: <https://www.calbar.ca.gov/About-Us/Our-Mission/Promoting-Diversity-Equity-and-Inclusion/DEI-Leadership-Seal-Program>, last accessed Dec. 18, 2023.

State Bar's new Five-Year Strategic Plan<sup>17</sup> for 2022-2027 includes several implementation steps for diversifying the legal profession. In addition, the State Bar's biennial report to the Legislature<sup>18</sup> highlights progress and plans in this area." (emphasis added).

With regard to the admission process, the State Bar has two options to "achieve a statewide attorney population that reflects the rich demographics of the state's population." Ibid. By either 1) excluding white males or 2) increasing the number of non-white males. Since the State Bar has little or no control over the demographics of applicants to the State Bar, the default method would logically be to exclude white males to achieve the desired demographics.

The State Bar might argue that admission to practice law does not discriminate against, or grant preferential treatment to, any individual or group . . . in the operation of public employment, public education, or public contracting. Yet one should not ignore the Committee's ability to achieve their DEI goals through

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<sup>17</sup> *Five Year Strategic Plan 2022-2027*, avail. at <https://publications.calbar.ca.gov/strategic-plan-2022-2027/state-bar-of-ca-2022-2027-goals>, last accessed Jan. 27, 2024.

*Goal 2* avail. at <https://publications.calbar.ca.gov/strategic-plan-2022-2027/state-bar-of-ca-2022-2027-goals?overlay=Goal%202>, last accessed Jan. 27, 2024.

<sup>18</sup> *Diversity, Equity, Inclusion Plan Report 2021-2022* (PDF) avail. at <https://www.calbar.ca.gov/Portals/0/documents/reports/Diversity-Equity-Inclusion-Plan-Report-2021-2022.pdf>, last accessed Jan. 30, 2024.

manipulation of the moral character process and the bar exam results, all under the cloak of confidentiality.

This Court recently struck down the use of affirmative action in college admissions. See *Students for Fair Admissions v. President and Fellows of Harvard College* (2023) 600 U.S. \_\_\_\_\_. In a podcast discussing her new book, *The Adversity of Diversity*, retired Vanderbilt professor Dr. Carol Swain stated, “I argue that the same grounds that make race-based college admissions unconstitutional impact every DEI and CRT<sup>19</sup> program in the country. That includes workplaces, organizations, in government. These programs violate the U.S. Civil Rights Act and the Equal Protection Clause of the Constitution,” *The Weaponization of Government and Exposing Racist Ideologies* at 3:05 mark, Dr. Carol Swain on American Family Radio (Aug. 22, 2023) avail. at <https://afr.net/podcasts/jenna-ellis-in-the-morning/?id=78310>, last accessed Jan. 30, 2024.

If pursuing a law degree, applying for admission to a State Bar is the next logical step after expending the effort and the money for college and law school to satisfy the requisite educational requirements. The State Bar should not be participating in, much less promoting, a diversity, equity and inclusion agenda. Doing so likely violates Article I, section 31 of the California Constitution and likely violates the Equal Protection clause of Fourteenth Amendment as well.

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<sup>19</sup> CRT is the acronym for Critical Race Theory.

Mr. Laue argues that the State Bar's diversity, equity, and inclusion (DEI) goals discriminate against white males by default. The State Bar Court's conclusion that "Laue's failure to make a prima facie showing of good moral character is outcome determinative" appears to serve as a pretext to avoid addressing the State Bar's promotion of diversity, equity, and inclusion (DEI) goals by exclusion of white males. Pretexts are often used to avoid openly admitting to the real reason for illegal discriminatory practices. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

**B. The State Bar of California is a state actor**

"Created by the Legislature in 1927, the State Bar is an arm of the California Supreme Court, protecting the public by licensing and regulating attorneys." *Our Mission: What We Do*, State Bar of California, avail. at <https://www.calbar.ca.gov/About-Us/Our-Mission>, last accessed Nov. 15, 2022.

It has long been established that the actions of state officers and agents are attributable to the State. In *Ex parte Virginia*, the United States Supreme Court illustrates this point by stating,

"We have said the prohibitions of the Fourteenth Amendment are addressed to the States. . . . They have reference to actions of the political body denominated by a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its

legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State." *Ex parte Virginia*, 100 U.S. 339, 346-347 (1879).

In this case, State Bar is subject to the constraints placed on it by Article I, § 31 of the California Constitution and the due process and equal protection clauses of the Fourteenth Amendment. Here, the process due to Mr. Laue simply consists of granting a positive moral character determination or identifying narrow, objective, and definite disqualifying conduct supported by clear and convincing admissible evidence in support. Otherwise the Committee's application process becomes arbitrary and thus unconstitutional. If unconstitutional, then Mr. Laue's rights have been violated.

The Committee has failed to provide any specific admissible evidence of disqualifying conduct by Mr. Laue amounting to anything more than mere oversight or omission of information deemed to be an included

continuation of the same action (such as an appeal). Nevertheless, the Committee, acting under state authority, has determined that Mr. Laue has not met his burden of establishing good moral character without stating why.

Since the entire application process is cloaked in confidentiality, there is no way to obtain statistics of how many other applicants are denied admission due to an adverse moral character determination and for what reasons. This allows the Committee of Bar Examiners to deny admission to any person and for whatever reason they choose. This allows the State Bar to limit participation in the California legal system to individuals that check the proper boxes under the DEI model. *Christian conservative white males need not apply.*

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### CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Dated: February 6, 2024      Respectfully submitted,

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**Waiver of Confidential Material in the Appendix**

Petitioner, Dale Laue, hereby waives the confidentiality of all material reproduced in the Appendix pursuant to California Business and Professions Code section 6060.2(a).<sup>20</sup> See App. 70, Published *Opinion* of the State Bar Court Review Department (May 12, 2023) fn. 1.

Dated: February 6, 2024

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<sup>20</sup> California Business and Professions Code section 6060.2(a) which states,

“(a) All investigations or proceedings conducted by the State Bar concerning the moral character of an applicant shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) **unless the applicant, in writing, waives the confidentiality.**”(emphasis added) See also State Bar admission Rules 4.4, App. 76.

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