No. 21-357

IN THE

Supreme Court of the United States

LUCILLE S. TAYLOR, *Petitioner*,

v.

DANA M. WARNEZ, PRESIDENT, STATE BAR OF MICHIGAN BOARD OF COMMISSIONERS, ET AL., *Respondents*.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner contends that Michigan's requirement that licensed lawyers belong and pay dues to the State Bar of Michigan violates her First Amendment associational and speech rights. Petitioner concedes that her claims are materially indistinguishable from those this Court rejected in *Lathrop* v. *Donohue*, 367 U.S. 820 (1961), and *Keller* v. *State Bar of California*, 496 U.S. 1 (1990). But, like plaintiffs in other cases brought around the country, she invites this Court to overturn those rulings based on the reasoning in a very different case involving labor-union agency fees, *Janus* v. *American Federation of State, County, & Municipal Employees*, 138 S. Ct. 2448 (2018). Every court—including this Court, four times over—has rejected that invitation. This case presents two questions for review:

1. Whether this Court should overrule *Lathrop* and hold that Michigan violates Petitioner's free-association right by requiring that licensed attorneys be members of the State Bar of Michigan.

2. Whether this Court should overrule *Keller* and hold that Michigan violates Petitioner's free-speech right by requiring that licensed attorneys pay dues to the State Bar of Michigan, even though the State Bar has a mechanism for requesting a dues refund—one that Petitioner has never invoked—when a bar member believes that the State Bar's public advocacy involves ideological matters.

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INTRODUCTION

Numerous plaintiffs like Petitioner have filed First Amendment challenges to integrated bars following this Court's decision in *Janus* v. *American Federation of State, County, & Municipal Employees*, 138 S. Ct. 2448 (2018). *Janus* limited the circumstances under which a public-sector union may charge mandatory fees to nonmembers for whom the union serves as exclusive representative in bargaining with the government. Though this Court has twice upheld the constitutionality of integrated bars in the face of indistinguishable claims, these plaintiffs invite courts to hold that *Janus* overruled those controlling precedents. Every court—including this Court, four times and counting—has rejected that invitation.

Though this record alone provides sufficient cause to deny the petition, the questions presented do not merit this Court's review for several additional reasons. Petitioner's free-association claim challenging the requirement that she belong to the State Bar of Michigan ("SBM") is a red herring. Michigan indisputably has the power to require lawyers to associate for regulatory and licensing purposes.

Likewise, the material differences between public-sector unions and SBM provide ample reason to conclude that *Janus* did not disturb this Court's precedent concluding that mandatory bar dues do not violate a lawyer's free-speech rights. Moreover, Michigan's mandatory dues pass constitutional muster because they fund government speech unconstrained by the First Amendment and, in the alternative, satisfy the "exacting scrutiny" test applied in *Janus*.

The petition should be denied.

STATEMENT

A. Legal background.

This case is part of a recent litigation wave about mandatory membership in bar associations that have been integrated into state government to regulate the legal profession and improve the administration of justice. This Court has already twice upheld the constitutionality of integrated bars.

First, in *Lathrop* v. *Donohue*, 367 U.S. 820 (1961), this Court rejected the plaintiff-lawyer's claim that Wisconsin's requirement that he become a member of and pay dues to an integrated bar violated his First Amendment right to free association. 367 U.S. at 822. A majority agreed that the mandatory membership and dues requirements did not unconstitutionally impinge on the lawyer's right to free association given Wisconsin's legitimate interest in regulating and improving the quality of legal services. *Id.* at 843 (plurality opinion); *id.* at 849–50 (Harlan, J., concurring); *id.* at 865 (Whittaker, J., concurring).

Then, in *Keller* v. *State Bar of California*, 496 U.S. 1 (1990), this Court unanimously rejected the plaintiffs' claim that the use of their mandatory dues to fund the California bar's political and ideological activities violated their free-speech rights. 496 U.S. at 9. It held that an integrated bar may "constitutionally fund activities germane" to the state's "interest in regulating the legal profession and improving the quality of legal services." *Id.* at 13–14. "[T]he guiding standard," this Court explained, is "whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the state.' " *Id.* at 14

(quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)). Under this standard, a bar could not, for example, use mandatory dues to advocate for gun control, but it could do so to propose new ethics rules. *Id.* at 16.

This Court has never overruled *Lathrop* or *Keller*. To the contrary, it recently reaffirmed *Keller*'s continuing vitality in a *Janus* precursor case that struck down mandatory membership and dues requirements for home-healthcare workers. *Harris* v. *Quinn*, 134 S. Ct. 2618, 2643 (2014) ("[O]ur decision in this case is wholly consistent with our holding in *Keller*.").

In *Janus*, this Court overruled *Abood* v. *Detroit Board of Education*, 431 U.S. 209 (1977), a case holding that a public-sector union may use mandatory agency fees to fund expressive activities germane to the union's purposes. 138 S. Ct. at 2463, 2486. Applying "exacting scrutiny"—under which a compelled subsidy of speech must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms," *id.* at 2465 (cleaned up)—*Janus* held that public-sector union agency fees violate the First Amendment, *id.* at 2486. Public-sector unions are the exclusive mouthpieces for public employees in the collective bargaining process, including nonmembers. After *Janus*, public-sector unions must obtain affirmative consent before exacting an agency fee from a nonmember. *Ibid.*

Post-*Janus*, plaintiffs around the country have filed challenges to integrated bars, contending that *Janus* signaled this Court's interest in reexamining the constitutionality of integrated bars. Those challenges have universally failed. Indeed, four separate cases have already reached this Court, where the

plaintiff-petitioners asked this Court to overrule *Keller*. Petition for a Writ of Certiorari, *Crowe* v. *Or. State Bar*, No. 20-1678 (U.S. Oct. 4, 2021), 2021 WL 2260516; Petition for a Writ of Certiorari, *Gruber* v. *Or. State Bar*, No. 20-1520 (U.S. Oct. 4, 2021), 2021 WL 1738414; Petition for a Writ of Certiorari, *Jarchow* v. *State Bar of Wis.*, 140 S. Ct. 1720 (2020) (No. 19-831), 2019 WL 7423388; Petition for a Writ of Certiorari, *Fleck* v. *Wetch*, 140 S. Ct. 1294 (2020) (No. 19-670), 2019 WL 6341142. This Court denied certiorari in all four cases. *Crowe* v. *Or. State Bar*, No. 20-1678, 2021 WL 4507678 (U.S. Oct. 4, 2021) (mem.); *Gruber* v. *Or. State Bar*, No. 20-1520, 2021 WL 4507676 (U.S. Oct. 4, 2021) (mem.); *Jarchow* v. *State Bar of Wis.*, 140 S. Ct. 1720 (2020) (mem.); *Fleck* v. *Wetch*, 140 S. Ct. 1294 (2020) (mem.).

B. Factual background.

1. SBM's background and purposes.

The Michigan Legislature established SBM as a public body corporate in 1935. Pet.App.22; Mich. Comp. Laws § 600.901. By statute, all persons licensed to practice law in Michigan must be a SBM member. Pet.App.22; Mich. Comp. Laws § 600.901. The Michigan Supreme Court has plenary authority over the organization, government, members, conduct, and activities of SBM. Pet.App.23; Mich. Comp. Laws § 600.904. The Michigan Supreme Court has exercised this authority by promulgating the Rules Concerning the State Bar of Michigan and various administrative orders. Since SBM's inception, the Michigan Supreme Court has declared that SBM's mission is to "aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the

legal profession and the public, and in promoting the interests of the legal profession" in Michigan. Pet.App.40; accord Rules Concerning the State Bar of Michigan § 1 (1935) (substantially identical).

The Rules Concerning the State Bar of Michigan provide that each member must pay dues to fund SBM's operations. Pet.App.45–46. The dues consist of three amounts set by the Michigan Supreme Court to fund (1) Michigan's Attorney Grievance Commission and Attorney Discipline Board; (2) SBM's Client Protection Fund, which reimburses clients who have been victimized by lawyers; and (3) SBM's other expenses. Pet.App.45–46.

2. SBM's activities.

The Michigan Supreme Court has defined SBM's public mission, and SBM engages in a wide array of activities in service of that mission. SBM's primary activities are regulatory and include attorney-licensing-database management, character and fitness recommendations, maintaining the official record of attorneys licensed to practice in Michigan, compliance administration functions, pro hac vice admissions administration, and unauthorized-practice-of-law investigation and prosecution. Pet.App.27–28, 32. SBM also performs ancillary services, including the Client Protection Fund, the Lawyers and Judges Assistance Program (focused on mental health and substance-abuse dependency), ethics guidance, pro bono activities coordination, lawyer referral, coordination of legal aid services, and access-to-justice programs. Pet.App.27–28. Activities in these categories consume well over 90 percent of SBM's budget. Pet.App.32.

SBM also engages in certain public-policy activities related to the legal profession and the administration of justice, as roughly defined in *Keller* and refined by several Michigan Supreme Court directives. Pet.App.31–32. The Michigan Supreme Court has adopted administrative orders that direct whether and how SBM may conduct those activities using mandatory dues. The current order, in effect since 2004, authorizes SBM to use mandatory dues to analyze pending legislation and provide content-neutral technical assistance to legislators on request. Pet.App.104. The order also allows SBM to fund activities of an ideological nature if they reasonably relate to:

> (A) the regulation and discipline of attorneys;
>
> (B) the improvement of the functioning of the courts;
>
> (C) the availability of legal services to society;
>
> (D) the regulation of attorney trust accounts; and
>
> (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession. [Pet.App.104.]

Before undertaking these activities, the Michigan Supreme Court's order requires SBM to provide all members at least two weeks' notice, via its website, that SBM may consider taking a position on proposed legislation at a public meeting. Pet.App.105–06. After the notice period, the issue of whether to support the proposed legislation may be taken up at a public hearing of SBM's 33-member Board of Commissioners or its 150-member Representative Assembly. Pet.App.105. SBM's members may make comments at

such hearings. Pet.App.105–06. The results of all Board and Assembly votes must be posted to SBM's website as soon as possible after the vote and published in the next issue of the *Michigan Bar Journal*. Pet.App.106.

Significantly, and quite different from the scheme in *Janus*, a member who believes that SBM has violated the administrative order may file a written challenge and seek revocation of the offending position and reimbursement of the activity's cost. Pet.App.108–09. The challenger may also seek Michigan Supreme Court review. Pet.App.109. Since the current administrative order's adoption in 2004, there has been *one* member challenge. Pet.App.33. Petitioner has never filed a challenge or sought reimbursement. Pet.App.34.

SBM has operated well within the lines set by the Michigan Supreme Court and this Court in *Keller*. Pet.App.31–32. For example, in the 2019–2020 legislative session, SBM:

- supported legislation extending the sunset of Michigan's e-filing fee, to ensure that the e-filing system remains adequately funded;
- supported legislation setting out permissible venues for prosecutions of delivery of controlled substances causing death; and
- opposed legislation that exempted a class of people from jury service. [Pet.App.112–13.]

When SBM engages in ideological activities, its positions are neither promulgated nor published with an indication that they have come from any SBM member or group of members. Pet.App.32. Instead, SBM's advocacy is always attributed to SBM itself. Pet.App.32. SBM's members are always free to—and

often do—speak privately or publicly about any issue on which SBM has deliberated or taken a position. Pet.App.33. Likewise, SBM's members are free to join other bar associations and special-interest groups that take positions contrary to those taken by SBM. Pet.App.33. For all these reasons, SBM is not in any way its members' exclusive representative in the collective bargaining sense, as in *Janus*. Pet.App.33.

C. Proceedings below.

1. Relying on *Janus*, Petitioner brings two claims. First, she alleges that the portion of SBM's mandatory dues in excess of the amount that funds the Attorney Grievance Commission and the Attorney Discipline Board is an unconstitutional compelled subsidy of speech, thereby violating her free-speech right. Pet.App.13. Second, she alleges that Michigan's requirement that she be a member of SBM as a condition of practicing law violates her right to free association. Pet.App.13.

The parties filed cross-motions for summary judgment in the district court. The district court granted SBM's motion and denied Petitioner's motion. Pet.App.15. The district court held that, since *Lathrop* and *Keller* decided free-association and free-speech claims on all fours with Petitioner's—as Petitioner herself admitted—it was bound to apply those directly controlling precedents. Pet.App.14–15.

2. The court of appeals affirmed the district court's decision, holding that the district court "correctly concluded that *Lathrop* and *Keller* continue to bind the lower courts despite th[is] Court's ruling in *Janus*." Pet.App.6. Judge Thapar, concurring, emphasized that, even under *Keller*, claims that a bar association engaged in ideological activities unrelated

to regulating the legal profession (i.e., nongermane activities) remain viable. Pet.App.9. But Petitioner concedes that SBM's activities are germane—dooming her claims. Pet.App.10.

REASONS FOR DENYING THE PETITION

I. This Court has repeatedly denied petitions for certiorari presenting indistinguishable claims.

The Court has denied four separate petitions for certiorari asking this Court to overrule *Keller* based on *Janus*, just like the petition here. *Crowe* v. *Or. State Bar*, No. 20-1678, 2021 WL 4507678 (U.S. Oct. 4, 2021) (mem.); *Gruber* v. *Or. State Bar*, No. 20-1520, 2021 WL 4507676 (U.S. Oct. 4, 2021) (mem.); *Jarchow* v. *State Bar of Wis.*, 140 S. Ct. 1720 (2020) (mem.); *Fleck* v. *Wetch*, 140 S. Ct. 1294 (2020) (mem.).

This Court's denials are no surprise given its explicit recognition of *Keller*'s continuing vitality in *Janus*'s precursor. *Janus* was the last in a trilogy of cases that led to the overruling of *Abood* v. *Detroit Board of Education*, 431 U.S. 209. In the second of those cases, *Harris* v. *Quinn*, this Court harshly criticized *Abood*'s rationale, 134 S. Ct. at 2632–34, and applied the "exacting scrutiny" test later employed in *Janus* to strike down a state law authorizing public-sector unions to charge agency fees to certain nonmembers, *id.* at 2639, 2644.

Despite its criticism of *Abood* and its application of exacting scrutiny, this Court made clear that its decision did not "call [*Keller*] into question." *Id.* at 2643. To the contrary, this Court observed that *Keller*

"fits comfortably within the [exacting scrutiny] framework applied in" *Harris*:

> Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme. The portion of the rule that we upheld served the "State's interest in regulating the legal profession and improving the quality of legal services." States also have a strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices. Thus, our decision in this case is *wholly consistent with* our holding in *Keller*. [*Id.* at 2643–44 (emphasis added) (citation omitted) (quoting *Keller*, 496 U.S. at 14).]

To be sure, Justices Thomas and Gorsuch dissented from the denial of certiorari in the second post-*Janus* bar case to reach this Court. *Jarchow*, 140 S. Ct. at 1721 (Thomas, J., dissenting from denial of certiorari). But the bar defendant in that case allegedly engaged in nongermane activity, in violation of *Keller*. See *ibid.* Here, as Judge Thapar explained in his concurring opinion below, Petitioner makes no such claim. Pet.App.10. Quite the opposite, Petitioner concedes that SBM has not crossed the germaneness line. Pet.11. Indeed, if SBM does cross that line, Petitioner has a remedy: the mechanism to request a refund of a portion of her dues.

Lower courts have followed a similar path. The Fifth, Ninth, and Tenth Circuits have allowed a portion of integrated-bar challengers' claims to proceed—and properly so. That is because each plaintiff alleged that the defendant bar association

engaged in nongermane activities under *Keller*. *Schell* v. *Chief Just. & Justs. of Okla. Supreme Ct.*, 11 F.4th 1178, 1194 (10th Cir. 2021); *McDonald* v. *Longley*, 4 F.4th 229, 246–47 (5th Cir. 2021); *Boudreaux* v. *La. State Bar Ass'n*, 3 F.4th 748, 756 (5th Cir. 2021); *Crowe* v. *Or. State Bar*, 989 F.3d 714, 729 (9th Cir. 2021), *cert. denied*, No. 20-1678, 2021 WL 4507678 (U.S. Oct. 4, 2021). In other words, setting aside *Janus*, the bar-association defendants in each of those cases allegedly exceeded the limitations on bar speech set in *Keller*. But again, as Judge Thapar explained in the court below, Petitioner renounces making any such claim in this case. Pet.App.10. And no circuit judge, whether in the majority or in dissent, has contended that *Lathrop* or *Keller* should or need be abandoned in the context of a bar like SBM that does *not* engage in nongermane activities.

In short, this Court has already resolved whether to consider the questions presented by the petition, and the answer is no. Given Petitioner's concession that SBM has not crossed *Keller*'s germaneness line, this case offers no basis to reach a different conclusion.

II. The first question presented does not merit this Court's review.

Insofar as she asks this Court to consider it, the question whether Michigan's requirement that licensed attorneys become SBM members violates an attorney's free-association right does not merit this Court's review.[1]

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[1] Petitioner frames the question presented as follows: "Can the State of Michigan compel practicing attorneys *to fund* an integrated bar association that takes policy positions, or does

A. *Janus*, a compelled-speech case, did not abrogate *Lathrop*, a free-association case.

Janus is a compelled-speech case. *E.g.*, 138 S. Ct. at 2460 ("We conclude that this arrangement violates the *free speech rights* of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." (emphasis added)). It did not prohibit mandatory associations. Indeed, it did not even purport to prohibit burdens on public employees' freedom to associate. To the contrary, this Court explicitly recognized that its holding did not undermine state requirements "that a union serve as exclusive bargaining agent for its employees," which themselves work a "significant impingement on associational freedoms." *Id.* at 2478. In sum, *Janus* did not undermine *Lathrop*'s holding with respect to free association.

In addition, the material differences between public-sector labor unions and integrated bar associations like SBM preclude the application of that holding here. Unlike a labor union, SBM is "not in any way [Petitioner's] exclusive representative in the collective-bargaining sense." Pet.App.33. In contrast to union members, Petitioner and SBM's other members are always free to speak and join other associations that disagree with SBM, and they frequently do so. Pet.App.33.

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such a law fail exacting scrutiny and violate the attorneys' First Amendment rights?" Pet.i (emphasis added). Elsewhere, Petitioner asks this Court to revisit Michigan's mandatory-membership requirement as well. See, *e.g.*, Pet.16–17 ("[T]he two cases allowing mandatory membership and dues, *Lathrop* and *Keller*, should also be overruled.").

B. The majority of SBM's activities are nonexpressive and do not implicate the First Amendment.

What's more, Petitioner's claim that Michigan's mandatory-membership requirement violates an attorney's free-association right fails on its face. The First Amendment does not protect the right to associate for any purpose; rather, it protects the "right to associate *for the purpose of engaging in those activities protected by the First Amendment*—speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 618 (1984) (emphasis added); accord *Janus*, 138 S. Ct. at 2463 ("The right to eschew association *for expressive purposes* is likewise protected." (emphasis added) (collecting cases)). Associations that engage in activities not otherwise protected by the First Amendment do not fall within the right's scope. *E.g.*, *City of Dall.* v. *Stanglin*, 490 U.S. 19, 25 (1989) ("We think the activity of these dance-hall patrons—coming together to engage in recreational dancing—is not protected by the First Amendment. Thus this activity qualifies neither as a form of 'intimate association' nor as a form of 'expressive association' . . . ."); *Watson* v. *Fraternal Order of Eagles*, 915 F.2d 235, 244 (6th Cir. 1990) ("[The Eagles] seems to be simply a drinking club. As such, the application of § 1981 to its conduct does not violate the freedom to associate.").

Labor unions implicate this right: speech on behalf of members is all but their exclusive activity and their *raison d'être*. *Janus*, 138 S. Ct. at 2474 ("[W]hen a union negotiates with the employer or represents employees in disciplinary proceedings, the union speaks . . . ."). By contrast, as *Lathrop* recognized, 367 U.S. at 839–43 (plurality opinion),

and as is the case here, integrated bars principally engage in nonexpressive activities. For instance, SBM engages in the following nonexpressive activities, among others:

a. Collects license fees and administers licensing requirements.

b. Investigates the character and fitness of candidates for admission to the Michigan bar.

c. Maintains the official record of attorneys licensed to practice in Michigan.

d. Operates and supports its governance mechanisms, including the Board of Commissioners and the Representative Assembly.

e. Investigates the unauthorized practice of law.

f. Administers IOLTA financial institution registrations.

g. Issues ethics opinions interpreting the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct.

h. Provides ethics counseling to lawyers and judges through its Ethics Helpline.

i. Administers the Client Protection Fund to reimburse clients whose attorneys misappropriate funds.

j. Administers the Lawyers and Judges Assistance Program, which assists attorneys and judges with substance abuse, mental health, and general wellness issues.

k. Coordinates pro bono, legal aid, and access to justice initiatives.

l. Provides the Practice Management Resource Center, a broad-based information clearinghouse and resource center for Michigan lawyers for services and goods necessary to successfully manage a legal practice.

m. Provides finance, administration, and human resources department support to the Attorney Grievance Commission and the Attorney Discipline Board. [Pet.App.27–28, 37.]

Aside from the Client Protection Fund, Petitioner ignores these nonexpressive SBM activities. Pet.11–16. Although Petitioner asserts that the existence of the Client Protection Fund somehow violates her First Amendment rights, Pet.32–33, she nowhere explains how the Client Protection Fund constitutes an expressive activity that implicates the First Amendment. It does not. The Client Protection Fund is straightforward: it reimburses clients for reimbursable losses caused by attorney misconduct within the scope of the fund's rules, and it uses money paid by attorneys to do so. Pet.App.29–30. Similar programs exist in all 50 states and the District of Columbia, and in all but two states—including states that do not have integrated bars—the programs are funded with mandatory fees exacted on licensed attorneys. Pet.App.29. It is impossible to discern how the Client Protection Fund and its counterparts in the remaining states and District of Columbia have anything to do with the First Amendment.

In sum, the Client Protection Fund and SBM's other nonexpressive activities—to which the vast majority of a member's dues are allocated, Pet.App.32—do not implicate the First Amendment. See *United States* v. *United Foods*, 533 U.S. 405, 414 (2001) ("[In *Keller*, t]hose who were required to pay a

subsidy for the speech of the association already were required to associate for other purposes, making the compelled contribution of moneys to pay for expressive activities a necessary incident of a larger expenditure for an otherwise proper goal requiring the cooperative activity."); *Falk* v. *State Bar of Mich.*, 342 N.W.2d 504, 512 (Mich. 1983) (opinion of Boyle, J.) ("In connection with plaintiff's challenges to non-political activities of the bar, we find that plaintiff has not met his burden of proof in showing an injury to a protected First Amendment interest."); see also *United States* v. *Frame*, 885 F.2d 1119, 1131 (3d Cir. 1989) ("[W]e find that the aspect of the Beef Promotion Act which imposes the assessments for research purposes qualifies as neither 'expressive' nor 'intimate' association, and therefore does not implicate Frame's first amendment rights."), *abrogated on other grounds by Johanns* v. *Livestock Mktg. Ass'n*, 544 U.S. 550 (2005).

Although Petitioner "may feel that [her] money is not being well-spent," that "does not mean that [she] ha[s] a First Amendment complaint." *Ellis* v. *Bhd. of Ry. Emps.*, 466 U.S. 435, 456 (1984). Michigan has the power to require attorneys to "associate" for purposes like these. *E.g.*, *Goldfarb* v. *Va. State Bar*, 421 U.S. 773, 792 (1975) ("States have . . . broad power to establish standards for licensing practitioners and regulating the practice of professions."); *Williamson* v. *Lee Optical of Okla. Inc.*, 348 U.S. 483, 488 (1955) ("The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." (collecting cases)). Indeed, Michigan's interest is "especially great" in the context

of lawyers "since lawyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts." *Ohralik* v. *Ohio State Bar Ass'n*, 436 U.S. 447, 460 (1978) (quoting *Goldfarb*, 421 U.S. at 792) (cleaned up). There is no merit to Petitioner's claim that Michigan's mandatory-membership requirement, in itself, violates an attorney's free-association right.

C. Reliance interests weigh against overruling *Lathrop*.

Michigan's and other states' long history of reliance on the integrated bar model provides another reason why this Court should not revisit *Lathrop*. See, *e.g.*, *Hilton* v. *S.C. Pub. Railways Comm'n*, 502 U.S. 197, 202 (1991) ("*Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response.").

SBM has been an essential component of Michigan's regulation of lawyers and the administration of justice for nearly a century. Undoing that integration would force the Michigan Legislature and Supreme Court to resolve thorny logistical and legal questions. Would a yet-to-be-created state agency assume SBM's functions? How would SBM's assets be divided? Would SBM continue to exist as a voluntary bar association, or would it be entirely subsumed into this new entity? How would the new agency be funded? How would it be governed? *Janus* offers no reason to force Michigan, its courts, its lawyers, and its citizens to bear the significant costs associated with resolving these and other questions.

III. The second question presented does not merit this Court's review.

The second question presented—whether Michigan's requirement that licensed attorneys pay dues to SBM violates an attorney's free-speech right—does not merit this Court's review either.

A. *Janus*'s empirical and workability criticisms of *Abood* do not carry over to *Keller*.

Janus's core reasons for rejecting *stare decisis* and overruling *Abood* do not apply to *Keller*. *Janus* considered whether the state interests identified in *Abood*—the interests in labor peace and eliminating free riders—could justify agency fees under exacting scrutiny. 138 S. Ct. at 2465–66. *Janus* held that *Abood*'s assumption that agency fees were necessary to promote labor peace was empirically wrong, *id.* at 2465, 2483, and that the interest in avoiding union free riders could not overcome a First Amendment objection given the significant benefits that unions derive from being designated as the exclusive representatives of employees, *id.* at 2466–69.

By contrast, *Keller* did not turn on the state's interests in promoting labor peace and eliminating free riders. To be sure, to support its conclusion that the California bar was not a government agency for First Amendment purposes, this Court recognized "a substantial analogy between the relationship of the State Bar and its members . . . and the relationship of employee unions and their members" in that bar members are called upon to pay their fair share of the bar's costs. 496 U.S. at 12. But what justified the integrated bar was the state's interest "in regulating the legal profession and improving the quality of legal

services." *Id.* at 12–13. These interests remain valid. *Harris*, 134 S. Ct. at 2643–44 (recognizing as well the state's "strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices").

Janus's rejection of states' interests in labor peace and eliminating labor unions' free riders does not undermine the states' legitimate and strong interests in regulating lawyers and improving the quality of legal services. *Schell*, 11 F.4th at 1190 ("[T]he analysis conducted in *Janus*, which drew into question the furtherance of the state's interest in 'labor peace' through 'agency shop' agreements, is not directly in play for 'regulating the legal profession' and 'improving the quality of the legal service available' were the interests identified in *Keller* . . . .").

Janus also criticized *Abood* for drawing an impossible line between union expenditures that may be charged constitutionally to nonmembers and those that may not. 138 S. Ct. at 2481. Despite twice revisiting the issue, this Court observed, "States and unions have continued to 'give it a try' " in litigation. *Ibid.* *Abood*'s unworkability thus weighed in favor of its overruling. *E.g.*, *Janus*, 138 S. Ct. at 2481 ("Another relevant consideration in the *stare decisis* calculus is the workability of the precedent in question . . . ."; *Montejo* v. *Louisiana*, 556 U.S. 778, 792 (2009) ("[T]he fact that a decision has proved 'unworkable' is a traditional ground for overruling it." (citing *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991))).

Keller, by contrast, has proven eminently workable, especially in SBM's experience. This Court has not once sought to clarify *Keller*'s line; to the contrary, it has now denied certiorari four times in cases seeking to revisit *Keller*. Moreover, since *Keller*

was decided, no party has filed a lawsuit challenging SBM's compliance with *Keller*, and SBM has received only a single member request for a partial refund since 2004. Pet.App.32–33. Petitioner herself renounces any challenge to SBM's compliance with *Keller*. Pet.1. Michigan's experience proves that *Keller* is eminently workable and benefits both the bar and the public.

B. SBM is materially different from a labor union.

SBM also stands in stark contrast to a public-sector union in terms of its purpose, functions, speech, composition, and enhancement of member speech.

1. SBM has a public purpose; unions advance private interests.

SBM is a public body corporate that exists primarily to serve the public interest. Mich. Comp. Laws § 600.901; Pet.App.40 ("[SBM] shall . . . aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state."). When SBM speaks, it speaks to advance that interest and not to represent the private interests of any individual lawyer. By contrast, public-sector unions exist to represent their employees at the bargaining table. Unlike a union, the benefits SBM provides to its members are incidental to its operations for the public's benefit.

2. SBM's primary activities are regulatory and nonexpressive; unions' primary activities are expressive.

As discussed in detail above, SBM's primary activities are non-expressive and relate to regulating the legal profession in Michigan and improving the quality of legal services. See Section II.B. By contrast, unions exist primarily, if not exclusively, to speak on behalf of their members. *Janus*, 138 S. Ct. at 2474. The fact that SBM's speech is "a necessary incident of a" larger, and otherwise proper, regulatory program materially distinguishes it from speech by a mandatory association, like a union, whose "principal object is speech itself." *United Foods*, 533 U.S. at 414–15; accord *Glickman* v. *Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 469 (1997) (in upholding compelled speech subsidy, emphasizing that "[t]he business entities that are compelled to fund the generic advertising at issue in this litigation do so as part of a" broader regulatory program).

3. SBM speaks on issues related to the legal profession and the administration of justice; unions speak on controversial political issues.

Public-sector labor unions' collective bargaining activities have a unique "political valence" given the mushrooming burden of public employee wages and benefits. *Janus*, 138 S. Ct. at 2483; see also *Harris*, 134 S. Ct. at 2632 ("In the public sector, core issues such as wages, pensions, and benefits are important political issues . . . ."). And as part of their core collective bargaining activities, public-sector unions speak out on contentious topics "such as climate

change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions." *Janus*, 138 S. Ct. at 2476 (footnotes omitted). Speech on such "sensitive political topics" understandably "occupies the highest rung of the hierarchy of First Amendment values and merits special protection," *ibid.* (quoting *Snyder* v. *Phelps*, 562 U.S. 443, 452 (2011)) (cleaned up), particularly when the union is the *only* voice allowed to speak on behalf of employees as part of the collective bargaining process.

In sharp contrast, SBM's speech, though about an essential government function, is far more apolitical and benign. By order of the Michigan Supreme Court, SBM may fund activities of an ideological nature only if they reasonably relate to:

> (A) the regulation and discipline of attorneys;
>
> (B) the improvement of the functioning of the courts;
>
> (C) the availability of legal services to society;
>
> (D) the regulation of attorney trust accounts; and
>
> (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession. [Pet.App.104.]

These topics do not have the same "political valence," *Janus*, 138 S. Ct. at 2483, as issues like climate change, the Confederacy, or sexual orientation and gender identity. The fact that Petitioner herself fails to identify even a single SBM position with which she disagrees—aside from the existence of the integrated bar—proves the point. As a result, SBM's activities do not raise the same level

of First Amendment concern as the speech at issue in the public labor union cases.

4. SBM's members are officers of the court with special obligations.

SBM comprises all lawyers licensed to practice law in Michigan, not state employees with a variety of duties. As lawyers, all SBM members have a foundational ethical obligation to "seek improvement of the law, the administration of justice[,] and the quality of service rendered by the legal profession." Pet.App.35–36; Mich. Rules Prof'l Conduct 1.0 cmt. They should "aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest." Pet.App.35–36; Mich. Rules Prof'l Conduct 1.0 cmt. In other words, "[w]hile lawyers act in part as 'self-employed businessmen,' they also act 'as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes.'" *Ohralik*, 436 U.S. at 460 (quoting *Cohen* v. *Hurley*, 366 U.S. 117, 124 (1961)). Indeed, "lawyers are essential to the primary governmental function of administering justice." *Goldfarb*, 421 U.S. at 792 (collecting cases).

SBM provides a crucial platform for all Michigan lawyers to meet these obligations. It assembles lawyer viewpoints from across the spectrum of practices, geography, and ideology to produce valuable, broad-based input on issues related to the regulation and discipline of attorneys, the functional improvement of the Michigan court system, the availability of legal services to the public, the regulation of attorney trust accounts, and the regulation of the legal profession. See Pet.App.104–05. A voluntary bar does not create

the same opportunities for all lawyers in a state or the same benefits to the public. See Pet.App.36.

Moreover, unlike unions that deduct agency fees from employees' pay, SBM collects dues from licensed attorneys—a group that is "trained to understand and appreciate legal communications." *Fleck*, 937 F.3d at 1117. SBM members must affirmatively renew their membership each year. "Though membership is mandatory, it still involves a relatively comfortable relationship in which the member is encouraged to raise issues or seek information from" SBM. *Id.* at 1118.

5. SBM's members retain their ability to speak out on SBM issues.

Unions and SBM also contrast sharply in their restrictions on member speech. Unions exist to speak at the bargaining table for the employees they represent. Those employees may not bargain directly with their employers, nor may they choose another agent to represent them. *E.g.*, *Janus*, 138 S. Ct. at 2460 (describing Illinois's system). In other words, unions are the mouthpiece through which public employees speak.

But SBM members are free to advocate within the bar and publicly on any issue SBM addresses and even those it does not. Pet.App.33. Members can even join voluntary bars and special-interest groups that take positions contrary to SBM's. Pet.App.33. These features alleviate any First Amendment concerns raised by SBM's expressive activities. Cf. *Glickman*, 521 U.S. at 469 (agricultural cooperative's speech differed from other cases because "the marketing orders impose no restraint on the freedom of any producer to communicate any message to any audience").

To be sure, Petitioner contends that "since SBM can be said to speak for all lawyers in Michigan, this amplifies its voice" vis-à-vis individual objecting lawyers. Pet.30. But SBM's expressive activities are structured to enhance, not restrict, member speech. The Michigan Supreme Court's administrative order governing SBM's ideological activities contains extensive procedures to provide members notice and an opportunity to comment before and after SBM takes a position on proposed legislation. Pet.App.105–06. These procedures all support SBM members' speech on topics of interest to the legal profession. It stands to reason that some SBM members learn of legislation only because of the bar's pre- and post-position notification procedures. And if a member desires to make a public comment about pending legislation that differs from SBM's position, SBM not only allows that member attorney to express the differing viewpoint, it provides that member a platform to do so.

* * *

In short, SBM is not analogous to public labor unions. SBM exists to serve the public, not private interests, and it does so through activities that are primarily nonexpressive in nature. SBM's limited speech concerns the regulation of lawyers and the administration of justice, not the hot-button political issues of our time. SBM's structure enables Michigan attorneys to meet their ethical obligations to improve the law and aid in the administration of justice. And in all cases, SBM encourages its members to speak out on the issues on which it takes positions.

C. Even under *Janus*, Michigan's mandatory dues are constitutional.

Even under *Janus*, Michigan's requirement that attorneys pay dues to fund SBM's regulatory operations passes muster. First, under post-*Keller* caselaw, SBM's speech qualifies as government, rather than private, speech, placing Michigan's mandatory dues requirement outside the First Amendment's scope. Second, Michigan's mandatory dues also pass *Janus* exacting scrutiny.

1. SBM's speech is government speech and therefore not subject to the First Amendment.

Concluding that *Janus* abrogated *Keller* would require this Court to revisit *Keller*'s suggestion that speech by an integrated bar like SBM is private, rather than government, speech. *Keller*, 496 U.S. at 13. And this Court's post-*Keller* cases confirm the opposite: SBM's speech is government speech and therefore not subject to the First Amendment's strictures.

"The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." *Pleasant Grove City* v. *Summum*, 555 U.S. 460, 467 (2009) (collecting cases). For that reason, this Court's compelled subsidy cases have "consistently respected the principle that '[c]ompelled support of a private association is fundamentally different from compelled support of government.' " *Johanns*, 544 U.S. at 559 (quoting *Abood*, 431 U.S. at 259 n.13 (Powell, J., concurring in the judgment)). As both Petitioner and her counsel

admit, SBM is a state agency,[2] and SBM's activities are subject to the Michigan Supreme Court's complete control. Accordingly, Michigan's rule compelling attorneys to support SBM's expressive activities is not subject to the First Amendment.

Post-*Keller* decisions show that, while *Keller*'s ultimate conclusion was correct, the opinion inappropriately assumed that integrated-bar speech is private speech. For example, *Keller* observed that the bar was funded by assessments on lawyers rather than legislative appropriations. 496 U.S. at 11. But subsequent cases hold that "[t]he compelled-subsidy analysis is altogether unaffected by whether the funds . . . are raised by general taxes or through a targeted assessment." *Johanns*, 544 U.S. at 562.

Next, *Keller* noted that the bar comprised only lawyers. 496 U.S. at 11. But this Court has held that a group composed solely of private beef industry members nonetheless engaged in *government* speech. *Johanns*, 544 U.S. at 553–54, 567.

Finally, *Keller* thought it important that the California bar did not have final authority to regulate the legal profession and, as a result, provided essentially advisory services to the California Supreme Court. 496 U.S. at 11. But this Court has since held that an essentially advisory industry group *was* the

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[2] In a press release regarding the filing of this case, Petitioner's counsel described SBM as "a *state agency*," and Petitioner stated, "Thanks to the Janus decision, *public agencies* can no longer require a captive membership." Press Release, Mackinac Center for Public Policy, *Mackinac Center Sues the State Bar of Michigan for First Amendment Violation* (Aug. 22, 2019) (emphasis added), *available at* https://www.mackinac.org/mackinac-center-sues-the-state-bar-of-michigan-for-first-amendment-violation.

government for First Amendment purposes. *Johanns*, 544 U.S. at 554 (explaining that the challenged law's assessment "is to be used to fund beef-related projects, including promotional campaigns, designed by the Operating Committee and approved by the Secretary").

Another post-*Keller* decision, *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374 (1995), further cements the conclusion that SBM's speech is government speech. There, the Court considered whether Amtrak, which nominally is a private corporation, is the government for First Amendment speech purposes. 513 U.S. at 376–78. This Court held that, when "the Government creates a corporation by special law, for furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment." *Id.* at 400.

If Amtrak is the government for purposes of the First Amendment, then certainly SBM is. And indeed, each of *Lebron*'s criteria is met here: SBM was created by a special statute, Mich. Comp. Laws § 600.901, in furtherance of the important governmental objectives of regulating the legal profession, "promoting improvements in the administration of justice and advancements in jurisprudence," and "improving relations between the legal profession and the public," among others, *id.* § 600.904; Pet.App.40. Further, although the Michigan Supreme Court appoints a minority of the members of SBM's Board of Commissioners, Pet.App.50–51, the court has plenary authority over SBM's organization, government, conduct, and activities, Mich. Comp. Laws § 600.904.

In short, the Court should conclude that SBM engages in government speech for purposes of the First Amendment. That reality is fatal to Petitioner's compelled-speech claim even under *Janus*.

2. SBM's mandatory dues pass exacting scrutiny.

What's more, Michigan's requirement that attorneys pay the portion of their dues that supports SBM's expressive activities passes the "exacting scrutiny" test this Court applied in *Janus*. Under exacting scrutiny, "a compelled subsidy must 'serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.' " *Janus*, 138 S. Ct. at 2465 (quoting *Knox* v. *Serv. Emps. Int'l Union*, 567 U.S. 298, 310 (2012)). Michigan's mandatory dues requirement meets this standard.

To start, as discussed above, SBM allocates the vast majority of its members' dues to *nonexpressive* activities that have nothing to do with the First Amendment. See Section II.B. Because those dues do not "*subsidize the speech of other private speakers*," their exaction does not impinge on First Amendment rights. *Janus*, 138 S. Ct. at 2464 (emphasis added). Again, Petitioner "may feel that [her] money is not being well-spent," but that "does not mean that [she] ha[s] a First Amendment complaint." *Ellis*, 466 U.S. at 456.

With respect to the nominal dues used to fund expression, courts have long recognized the legitimate interests that states like Michigan have in regulating the legal profession, elevating the ethical and educational standards of the bar, improving the quality of legal services, receiving broad-based input

from the bar on legislation, and allocating to lawyers rather than taxpayers the cost of such activities. *E.g.*, *Harris*, 134 S. Ct. at 2643–44 (recognizing the "State's interest in regulating the legal profession and improving the quality of legal services," as well as its "strong interest in allocating to members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices"); *Keller*, 496 U.S. at 13–14 (interest in regulating lawyers and improving the quality of legal services); *Ohralik*, 436 U.S. at 460 (state has an "especially great" interest in regulating lawyers because they are "essential to the primary governmental function of administering justice"); *Lathrop*, 367 U.S. at 843 (plurality opinion) (interest in raising the quality of legal services); *Falk*, 342 N.W.2d at 514 (opinion of Boyle, J.) ("There can be little doubt that the government has an interest in receiving the input of the State Bar into the legislative process.").

Janus did not delegitimize these interests. See Section III.A. And even Petitioner admits Michigan's wide-ranging interests in relation to the legal profession.[3] Given that "lawyers are essential to the primary government function of administering

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[3] Pet.App.35–36 (acknowledging Michigan's interests in "the practice of law within the state," "elevating the ethical and educational standards of the bar," "enhancing the quality of legal services," "improving relations between the legal profession and the public," "protecting the public from unethical attorneys," and "receiving systematized input from licensed attorneys on legislation concerning the administration of justice, the functioning of the court system, and the legal profession," as well as Michigan's "broad power to protect public health, safety, and other valid interests by establishing standards for licensing attorneys and regulating the practice of law").

justice," *Goldfarb*, 421 U.S. at 792, these interests are compelling.

There is no alternative to SBM's integrated model that serves these interests as well while simultaneously imposing a significantly lesser restriction on associational freedoms. Exacting scrutiny is not strict scrutiny, and SBM's integrated model need not be the least restrictive means of serving the state's interests. Cf. *Sable Commc'ns of Cal., Inc.* v. *FCC*, 492 U.S. 115, 126 (1989). Here, the seemingly obvious alternative to mandatory membership—a voluntary bar—is no alternative at all. To serve Michigan's interests, SBM necessarily must include all lawyers licensed to practice in Michigan. An association comprising only a subset of licensed attorneys cannot act on the whole profession. Pet.App.36.

SBM also must necessarily engage in speech. Just like the "government has to say something" to govern, *Summum*, 555 U.S. at 468 (quoting *Johanns*, 544 U.S. at 574 (Souter, J., dissenting)), SBM cannot serve Michigan's interests and fulfill its mission and purposes without speaking. SBM could not, for instance, "aid in promoting improvements in the administration of justice and advancements in jurisprudence," Pet.App.40, without sharing its views. It also would be impossible for SBM to fulfill even its core regulatory functions, such as prosecuting the unauthorized practice of law, if it could not speak. Cf. *Legal Servs. Corp.* v. *Velazquez*, 531 U.S. 533, 548 (2001) ("There can be little doubt that the LSC Act [providing for legal assistance in noncriminal proceedings] funds constitutionally protected expression . . . .").

A voluntary bar association would be a poor substitute on this score, too. Although Michigan has

an array of local and special-interest voluntary associations for lawyers and judges, none has the uniquely public, nonparochial character that SBM has as an arm of the Michigan Supreme Court. Nor do those voluntary associations have the duty, much less the capacity, to consider the entirety of the Michigan legal profession when formulating their positions on matters that concern the regulation of lawyers and the administration of justice. See Pet.App.36.

Petitioner says that the fact that a minority of states (comprising, she asserts without record support, a majority of the nation's lawyers) have voluntary bars conclusively proves that Michigan has a less restrictive means to achieve its interests. Pet.30. Not so. Those states may well have weighed their interests differently than Michigan or decided not to serve them at all. That hardly proves that voluntary-bar states have identified a means significantly less restrictive of associational freedoms to achieve the interests that Michigan has elected to serve. It shows only that some states choose to respond reactively to bad lawyering while others—including Michigan—choose to act proactively to improve the bar and the delivery of legal services.

Petitioner also notes that other professionals, like doctors, are not subject to the same requirements as lawyers. Pet.30–31. But lawyers are different from other professionals: they "are essential to the primary governmental function of administering justice and have historically been 'officers of the courts.' " *Goldfarb*, 421 U.S. at 792. "While lawyers act in part as 'self-employed businessmen,' they also act 'as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes.' " *Ohralik*, 436 U.S. at 460. Lawyers also have a

foundational ethical obligation to improve the law, the administration of justice, and the quality of legal services. See Section III.B.4.

Other licensed professionals do not occupy a similar role. Doctors are not sworn in as public-health officers, nor are they obligated to offer the state advice on how to carry out its public-health functions. Engineers and plumbers are not obligated to advise on the state's infrastructure. Lawyers alone have ethical obligations for an essential government function: the finding of truth in both civil and criminal matters. That difference underlies why Michigan—and most other states—have integrated their bars.

Petitioner also argues that Michigan's interest in "monitoring and policing lawyers" can be served by the Attorney Discipline Board and the Attorney Grievance Commission alone. Pet.31. But Petitioner ignores SBM's primary role in collecting license fees and administering licensing requirements, investigating the character and fitness of candidates for admission to the bar, maintaining the official record of attorneys licensed to practice in Michigan, and prosecuting the unauthorized practice of law, among other monitoring and policing activities. Pet.App.27.

Moreover, Michigan's interests are not so narrow. And given that the Attorney Discipline Board's and the Attorney Grievance Commission's exclusive functions are the prosecution and adjudication of attorney ethical violations, Pet.App.37–38, those entities necessarily cannot serve Michigan's interests that extend beyond monitoring and policing, such as promoting improvements in the administration of justice and advancements in jurisprudence and prospectively enhancing the quality of legal services.

Next, Petitioner contends that Michigan's mandatory dues requirement does not survive exacting scrutiny because SBM's expressive activities could be funded by legislative appropriation or even voluntary dues. Pet.32. But "[t]he compelled-subsidy analysis is altogether unaffected by whether the funds . . . are raised by general taxes or through a targeted assessment." *Johanns*, 544 U.S. at 562. Reverting to a legislative appropriation would not resolve Petitioner's First Amendment objection. Voluntary dues are also no substitute given Michigan's "strong interest in allocating to the members of the bar" the expenses associated with the privilege of being a lawyer. See *Harris*, 134 S. Ct. at 2644.

Petitioner last argues that the Client Protection Fund does not survive exacting scrutiny. Pet.32–33. But as explained in Section II.B, the Client Protection Fund is not an expressive activity and has nothing to do with the First Amendment. Petitioner may feel that the Client Protection Fund is unwise or poorly administered, but she has no *First Amendment* complaint regarding the program.

In short, each state weighs its interests differently and opts for different methods for administering its justice system, including the regulation of lawyers. Given the choices that the Michigan Legislature and Supreme Court have made—and the absence of equally effective alternatives that impinge significantly less on lawyers' associational rights—Petitioner's own policy preferences cannot trump the judgment of two branches of Michigan's state government.

IV. This case is a poor vehicle because Petitioner principally relies on facts not in the record and, in one case, outside the statute of limitations.

Although Petitioner emphasizes that the parties submitted a joint statement of material facts in the district court, her purported factual trump cards are outside the record and, in one case, outside the statute of limitations. Petitioner first highlights a 2013 letter from SBM to Michigan's Secretary of State. Pet.28. But that letter is not in the record, and it long predates the three-year statute of limitations applicable to this case. See, *e.g.*, *Chippewa Trading Co.* v. *Cox*, 365 F.3d 538, 543 (6th Cir. 2004).

Petitioner's purported "conclusive evidence" that Michigan could achieve its interests through significantly less restrictive means is also outside the record. Pet.30. Petitioner asserts that approximately 60 percent of lawyers are not required to join an integrated bar. Pet.30. That purported fact is not in the record, and SBM does not concede that it is true.[4] Petitioner also emphasizes that "California recently adopt[ed] a voluntary bar association" and "Nebraska similarly adopt[ed] what more closely resembles a voluntary bar." Pet.30. These purported facts, too, are nowhere to be found in the record.

All these flaws make this case a poor vehicle for consideration of the questions presented.

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[4] Even if Taylor's assertion were accurate, it does not prove that a majority of lawyers are not members of integrated bars. The number of lawyers that are licensed in more than one jurisdiction is not tabulated, and it stands to reason that many lawyers who are licensed in voluntary-bar states also are licensed in integrated-bar states.

* * *

In sum, this Court's decisions in *Lathrop* and *Keller* squarely foreclose Petitioner's claims in this case, and there is no good reason for the Court to revisit those longstanding precedents. Though some lower-court decisions leave room for a plaintiff to bring a claim if an integrated bar engages in ideological or political activity unrelated to regulating the legal profession, Petitioner concedes that SBM's activities "do not cross the line." Pet.App.4; accord Pet.App.10 (Thapar, J., concurring). Finally, this case is a poor vehicle for even considering the tidal wave change in the law for which Petitioner advocates. There is no need for this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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