

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUCILLE S. TAYLOR, an individual

Plaintiff,

v.

STATE BAR OF MICHIGAN, a public
corporation;
JENNIFER M. GRIECO, President of the
State Bar of Michigan Board of
Commissioners; DENNIS M. BARNES,
President-Elect of the State Bar of Michigan
Board of Commissioners; ROBERT J.
BUCHANAN, Vice President of the State
Bar of Michigan Board of Commissioners;
DANA M. WARNEZ, Secretary of the State
Bar of Michigan Board of Commissioners;
JAMES W. HEATH, Treasurer of the State
Bar of Michigan Board of Commissioners,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF UNDER 42
U.S.C. § 1983 AND DAMAGES 42 U.S.C.
§ 1988**

INTRODUCTION

1. This suit seeks to secure the free speech and free association rights protected by the First Amendment and the Fourteenth Amendment.
2. Plaintiff is a Michigan attorney who is compelled to join the State Bar of Michigan (“SBM”) as a condition of practicing law, which forces her to pay for and associate herself with speech and positions on public matters with which she does not necessarily agree.

3. The SBM is a public body corporate. MCL 600.901.
4. The State of Michigan requires attorneys to become and stay members of the SBM as a condition precedent to being licensed to practice law in Michigan. MCL 600.901.
5. State law requires SBM members to pay compulsory membership dues which the SBM applies to speech and positions with which the members may not agree. *Falk v. State Bar*, 418 Mich. 270; 342 N.W.2d 504 (1983).
6. The Rules Concerning the State Bar of Michigan (RCSBM), promulgated by the Supreme Court of Michigan, state that “The State Bar of Michigan is the association of the members of the bar of this state, organized and existing as a public body corporate pursuant to powers of the Supreme Court over the bar of the State.” RCSBM Rule 1. A copy of the Rules Concerning the State Bar of Michigan is provided as Attachment 1.
7. Plaintiff’s dues, as well as all members’ dues, are set by the Supreme Court of Michigan and are allocated into three separate amounts for: “(1) the Attorney Grievance Commission and the Attorney Discipline Board, (2) the client security fund administered by the State Bar, and (3) other State Bar expenses.” RCSBM Rule 4(A), Attachment 1, *id.*
8. Plaintiff’s dues are paid into the State Bar treasury, and spent as authorized by Defendant Board of Commissioners: “All dues are paid into the State Bar treasury and maintained in segregated accounts to pay State Bar expenses authorized by the Board of Commissioners and the expenses of the attorney discipline system within the budget approved by the Supreme Court, respectively.” RCSBM Rule 4(G), Attachment 1, *id.*
9. The United States Supreme Court has ruled that a mandatory association similar to the SBM shall only fund speech related to public affairs with funds obtained from members after they have affirmatively consented to such use of their membership dues. See *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. ___; 138 S.Ct. 2448, 2486 (2018).

10. In *Janus*, the Supreme Court stated that mandatory union dues or fees paid by public employees, which are similar to the bar dues at issue here, violated the employees' free speech rights:

This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.

Janus, 138 S.Ct. at 2486 (internal citations omitted).

11. Further, *Janus* required that any such payment requires a freely-given waiver of the fee-payers' First Amendment rights; and such a waiver cannot be presumed:

By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence.

Id. at 2486 (citations omitted).

12. Previously, the United States Supreme Court upheld mandatory bar dues in *Keller v. State Bar of California*, 496 U.S. 1 (1990) relying on the reasoning of *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977):

And indeed, the Court has relied on that rule [of *Abood*] when deciding cases involving compelled speech subsidies outside the labor sphere—cases today's decision does not question. See, e.g., *Keller v. State Bar of Cal.*, 496 U.S. 1, 9–17, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990) (state bar fees)...

Janus, 138 S.Ct. at 2498 (Kagan, J., dissenting).

13. However, *Janus* explicitly overruled *Abood*, calling into question *Keller* and other opinions that followed the reasoning of *Abood*:

Abood was poorly reasoned. It has led to practical problems and abuse. It is inconsistent with other First Amendment cases and has been undermined by more recent decisions. Developments since *Abood* was handed down have shed new light on the issue of agency fees, and no reliance interests on the part of public-sector unions are sufficient to justify the perpetuation of the free speech violations that *Abood* has countenanced for the past 41 years. *Abood* is therefore overruled.

Janus, 138 S.Ct. at 2460.

14. A recent Eighth Circuit case, *Fleck v. Wetch*, upheld mandatory bar dues based on *Abood* and *Keller*. However, the United States Supreme Court, on December 3, 2018, after granting the plaintiff's petition for writ of certiorari, ordered "Judgment vacated, and case remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Janus*..." *Fleck v. Wetch*, 139 S.Ct. 590 (2018).

15. The SBM uses mandatory dues to carry out functions that opine on a number of public policy issues related to the legal profession.

16. Michigan's laws requiring attorneys to pay compulsory membership dues to the SBM violates Plaintiff and other attorneys' First Amendment rights to free speech and association.

17. The SBM has not implemented any sort of waiver of rights for members that complies with the Supreme Court's ruling in *Janus*.

JURISDICTION AND VENUE

18. This action is brought under 42 U.S.C. §§ 1983 and 1988.

19. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

20. This Court has authority to grant declaratory and other relief under 28 U.S.C. §§ 2201 and 2202.

21. Venue is appropriate under 28 U.S.C. § 1391 in the Western District of Michigan, Southern Division.

22. Venue is appropriate in this Division as Defendants reside in Ingham County.

PARTIES

23. Plaintiff Lucille S. Taylor is a resident of Michigan and resides in Laingsburg, in Shiawassee County, Michigan.

24. Plaintiff Lucille S. Taylor is a duly licensed attorney under the laws of Michigan, and is in good standing with the SBM. Her registration number is P21301.
25. Plaintiff Lucille S. Taylor is a member of SBM because membership is a mandatory prerequisite to practicing law in Michigan.
26. Plaintiff Lucille S. Taylor has paid her compulsory membership dues since joining SBM in 1972.
27. Defendant SBM is a domestic nonprofit public corporation with principal offices in Lansing, Ingham County, Michigan.
28. Defendant SBM is currently authorized as a public body corporate by the Revised Judicature Act of 1961. MCL 600.901.
29. Defendant Jennifer M. Grieco currently serves as President of the SBM Board of Commissioners, and is charged with determining and implementing SBM policies, including the policies that Plaintiff is challenging as unconstitutional in this action.
30. Defendant Dennis M. Barnes currently serves as President-Elect of the State Bar of Michigan Board of Commissioners, and is charged with determining and implementing SBM policies, including the policies that Plaintiff is challenging as unconstitutional in this action.
31. Defendant Robert J. Buchanan currently serves as Vice President of the State Bar of Michigan Board of Commissioners, and is charged with determining and implementing SBM policies, including the policies that Plaintiff is challenging as unconstitutional in this action.
32. Defendant Dana M. Warnez currently serves as Secretary of the State Bar of Michigan Board of Commissioners, and is charged with determining and implementing SBM policies, including the policies that Plaintiff is challenging as unconstitutional in this action.

33. Defendant James W. Heath currently serves as Treasurer of the State Bar of Michigan Board of Commissioners, and is charged with determining and implementing SBM policies, including the policies that Plaintiff is challenging as unconstitutional in this action.

34. Defendant officers of the Board of Commissioners have the power to: “implement policy adopted by the assembly;” RCSBM Rule 5(a)(1), Attachment 1, *id.*

35. Defendant officers of the Board of Commissioners have the power to: “manage the State Bar, adopt a budget for it, and supervise receipt and disbursements of State Bar funds;” RCSBM Rule 5(a)(3), Attachment 1, *id.*

36. Defendant officers of the Board of Commissioners have the power to: “bring an action or proceeding at law or in equity in a state or federal court or tribunal and intervene and be heard on an issue involving the membership or affairs of the State Bar in an action or proceeding pending in a state or federal court or tribunal.” RCSBM Rule 5(b)(7), Attachment 1, *id.*

37. Defendant officers of the Board of Commissioners’ duties include: “The Board of Commissioners shall make the necessary appropriations for disbursements from the funds of the treasury to pay the necessary expenses of the State Bar of Michigan, its officers, and committees.” RCSBM Rule 9, Attachment 1, *id.*

COUNT I
CERTAIN COMPULSORY FEES VIOLATE 42 U.S.C. § 1983 AND
THE UNITED STATES CONSTITUTION

38. Plaintiff re-alleges the previous paragraphs and incorporates these by reference.

39. By requiring that Plaintiff pay compulsory dues or fees for purposes other than the Attorney Grievance Commission and the Attorney Discipline Board as a prerequisite to practicing law, Defendants are violating Plaintiff’s First Amendment right to free speech and to be free from compelled funding of speech. See *Janus*, *supra*.

40. The rights in the preceding paragraph are applied to state actors in the states by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

41. As a result of the aforementioned violation of Plaintiff's constitutional rights, Plaintiff has suffered irreparable harm and injury for which there is no adequate remedy at law. Unless enjoined by this Court, Plaintiff will continue to suffer irreparable harm and injury.

COUNT II

COMPULSORY MEMBERSHIP VIOLATES 42 U.S.C. § 1983 AND THE UNITED STATES CONSTITUTION

42. Plaintiff re-alleges the previous paragraphs and incorporates these by reference.

43. By requiring that Plaintiff join and become a continuing member in the SBM, Defendants are violating Plaintiff's First Amendment right to free association. See *Janus*, supra.

44. The rights in the preceding paragraph are applied to state actors in the states by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

45. As a result of the aforementioned violation of Plaintiff's constitutional rights, Plaintiff has suffered irreparable harm and injury for which there is no adequate remedy at law. Unless enjoined by this Court, Plaintiff will continue to suffer irreparable harm and injury.

RELIEF SOUGHT

Wherefore, Plaintiff asks that this Court:

1. Issue a declaratory judgment against Defendants that, in accordance with *Janus*, supra, requiring compulsory membership and requiring that dues be paid to the SBM for non-disciplinary-related actions violates the First Amendment rights of Plaintiff. Furthermore, that the Fourteenth Amendment and 42 U.S.C. § 1983 ensures that state actors cannot infringe upon

Plaintiff's rights in the way that the SBM does by requiring compulsory membership and dues payments.

2. Issue a permanent injunction against Defendants that prohibits them from collecting compulsory dues from Plaintiff for non-disciplinary-related actions unless she signs a clear and knowing waiver which acknowledges that, by paying those dues, Plaintiff is waiving her constitutional right to free speech.

3. Pursuant to 42 U.S.C. § 1988, award Plaintiff her costs, including reasonable attorneys' fees incurred in the cost of litigating this case.

4. Any other further relief as this Court finds to be just and proper.

Dated August 22, 2019.

Respectfully Submitted,

/s/ Derk A. Wilcox

Derk A. Wilcox (P66177)

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