UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TONY K. MCDONALD, JOSHUA B. HAMMER, and MARK S. PULLIAM,

Plaintiffs,

v.

JOE K. LONGLEY, et al.,

Defendants.

Civil Action No. 1:19-cv-00219-LY

DEFENDANTS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs' opposition to Defendants' cross-motion for summary judgment makes clear that Plaintiffs' challenges to mandatory bar membership and particular State Bar of Texas activities rest on a fundamental misunderstanding of the Supreme Court's binding decisions in *Lathrop v. Donohue*, 367 U.S. 820 (1961), and *Keller v. State Bar of California*, 496 U.S. 1 (1990).[1] Plaintiffs contend that "[n]othing in either *Keller* or *Lathrop* holds that a state can compel bar membership *when a bar engages in political and ideological activities*." Pls.' Opp'n to Defs.' Cross-Mot. for Summ. J. 8 (May 31, 2019), ECF No. 65 ("Opp'n"). *Lathrop*, however, squarely held that the mandatory Wisconsin State Bar did not violate attorneys' right to freedom of association, even though it "participated in political activities." *Lathrop*, 367 U.S. at 835-39, 843 (plurality op.); *accord id.* at 848-51 (Harlan, J., and Frankfurter, J., concurring in judgment); *id.* at 865 (Whittaker, J., concurring in judgment). *Keller* reaffirmed *Lathrop*, expressly recognizing that *Lathrop* "rejected" the plaintiff's claim that "he could not constitutionally be compelled to join and financially support a state bar association which expressed opinions on, and attempted to influence, legislation." *Keller*, 496 U.S. at 7.

Plaintiffs similarly contend that *Keller* does not authorize bars to use mandatory fees for "political and ideological activities." Opp'n 12. Again, that is wrong. *Keller* authorizes using mandatory fees to "fund activities germane" to the state interests justifying the formation of integrated bars—i.e., "regulating the legal profession and improving the quality of legal services." 496 U.S. at 13-14. *Keller* only prohibits integrated bars from using mandatory fees to "fund activities of an ideological nature *which fall outside of those areas of activity*." *Id.* at 14 (emphasis added). Plaintiffs' Count I and Count II challenges to the mandatory Bar and particular Bar

[1] In this brief, "Defendants" refers to the defendants named in Plaintiffs' original complaint—i.e., the members of the State Bar of Texas Board of Directors sued in their official capacities.

activities thus fail because they rest on the erroneous premise that "activities of a 'political or ideological' nature are non-chargeable to objectors . . . . as a matter of law." Opp'n 13.

Plaintiffs' Count III challenge to the Bar's protest procedure relies on the novel contention that an organization that as a matter of policy and practice only engages in "chargeable" expenditures must nonetheless provide the full range of procedural protections required of an organization that engages in both "chargeable" and "non-chargeable" expenditures. Plaintiffs cite no authority adopting such a rule, which would be unworkable and is unnecessary to protect First Amendment values. Organizations that engage in both chargeable and non-chargeable activities present a particular challenge to First Amendment interests because there is a significant risk they will improperly use objectors' funds to subsidize the non-chargeable activities. Because the Bar adheres to detailed policies and procedures that strictly limit its activities to those authorized under *Keller*, it does not present comparable First Amendment concerns. The Bar's robust procedures for providing members notice of, and a meaningful opportunity to object to, the Bar's proposed expenditures more than satisfy the objective of ensuring that "the government treads with sensitivity in areas freighted with First Amendment concerns." Opp'n 20 (quoting *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 303 n.12 (1986)).

Both parties agree that this suit can be "resolved as a matter of law" without resolving any factual disputes. Opp'n 7. Adopting Magistrate Judge Russo's findings and recommendation, Judge Simon of the District of Oregon recently dismissed similar challenges to the mandatory Oregon State Bar, concluding that the plaintiffs "failed to raise any plausible constitutional violations." *Gruber v. Or. State Bar*, No. 3:18-cv-1591-JR, 2019 WL 2251282, at *1 (D. Or. May 24, 2019), *appeal filed*, Nos. 19-35463, 19-35470 (9th Cir.). Plaintiffs provide no basis for a different approach here. The Court should grant Defendants' cross-motion for summary judgment.

ARGUMENT

I. Plaintiffs' Challenges to Mandatory Bar Membership and Particular Bar Activities Fail Because They Rely on the Erroneous Contention That Integrated Bars May Not Engage in Any Activities That Some Members View as "Political" or "Ideological"

A. *Keller*'s "Guiding Standard" Is Not Solely Whether Challenged Activities Are "Political" or "Ideological," But Instead Whether They Are Germane to Professional Regulation or Improving Legal-Service Quality

Plaintiffs' Count I and Count II challenges to compulsory Bar membership and particular Bar activities rest on the erroneous premise that the First Amendment precludes the Bar from engaging in any activities that some members might view as "political" or "ideological" in nature. *E.g.*, Opp'n 8-9, 12-14. As Defendants have explained, that is wrong. *See* Defs.' Cross-Mot. for Summ. J. 14-17, 21-22 (May 13, 2019), ECF No. 35 ("Mot."). *Lathrop* squarely held that the integrated bar there did not violate the plaintiff's right to freedom of association, even though it "participated in political activities." *Lathrop*, 367 U.S. at 835-39, 843 (plurality op.); *accord id.* at 848-51 (Harlan, J., and Frankfurter, J., concurring in judgment); *id.* at 865 (Whittaker, J., concurring in judgment); *see also Keller*, 496 U.S. at 7 (explaining *Lathrop* "rejected th[e] claim" that plaintiff "could not constitutionally be compelled to join and financially support a state bar association which expressed opinions on, and attempted to influence, legislation"); Mot. 16-17. *Contra* Opp'n 8-9. Building on *Lathrop*, *Keller* held that lawyers can "be required to pay moneys in support of activities . . . germane to the reason justifying the compelled association." *United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001) (discussing *Keller*). *Keller* concluded that integrated bars "are justified by the State's interest in regulating the legal profession and improving the quality of legal services." *Keller*, 496 U.S. at 13. It thus held that integrated bars may "constitutionally fund activities *germane to those goals* out of the mandatory dues of all members." *Id.* at 14 (emphasis added). Accordingly, "the guiding standard" under *Keller* 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.* (citation omitted). Plaintiffs' contrary argument that "activities of a 'political or ideological' nature" are "non-germane as a matter of law" conflicts with *Keller*'s plain language. Opp'n 13.

Demonstrating the extent of the conflict, the language in *Keller* on which Plaintiffs primarily rely to support their argument actually defeats it. Plaintiffs quote *Keller*'s statement that integrated bars may not use mandatory fees to "fund activities of an ideological nature which fall outside of those areas of activity" authorized by *Keller*'s guiding standard. *Id.* at 12 (quoting *Keller*, 496 U.S. at 14). Plaintiffs implausibly assert that "[t]he best reading of this language is that 'activities of an ideological nature' necessarily 'fall outside those areas' of permissible activity." *Id.* Nonsense. The only reasonable reading of the sentence on which Plaintiffs rely is that it identifies a subset of "activities of an ideological nature" that cannot be funded with mandatory fees—i.e., those "which fall outside" the permissible objectives of professional regulation and improving legal-service quality. *Keller*, 496 U.S. at 14. The cited sentence sets forth the corollary rule to the immediately preceding sentence's statement that integrated bars may "constitutionally fund activities germane to th[e] goals" of professional regulation and improving legal-service quality. *Id.* If *Keller* had intended to adopt Plaintiffs' rule, it would have said that integrated bars may not "fund activities of an ideological nature"—full stop. *Id.* It would not have added the restrictive qualifier "which fall outside of th[e] areas of [permissible] activity." *Id.*

Similarly, if *Keller* adopted Plaintiffs' rule, it would have omitted the italicized language from the following sentence:

> Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisers to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration *which are not reasonably related to the advancement of such goals*, on the other, will not always be easy to discern.

Id. at 15 (emphasis added). Also, if Plaintiffs' reading were correct, *Keller* would have simply held that the plaintiffs there could not "be compelled to associate with an organization that engages in political or ideological activities"; it would *not* have remanded for the lower courts to consider whether the plaintiffs could "be compelled to associate with an organization that engages in political or ideological activities *beyond those for which mandatory financial support is justified under the principles of Lathrop and Abood*." *Id.* at 17 (emphasis added).[2] And if Plaintiffs were correct, *Keller* would have said the "guiding standard" is whether the challenged expenditures were for "ideological" or "political" activities; it would not have said the "guiding standard" is "whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving [legal-service] quality." *Id.* at 14 (citation omitted).

Lacking support for their reading in *Keller* itself, Plaintiffs turn to two later decisions discussing *Keller*—*Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005), and *Harris v. Quinn*, 573 U.S. 616 (2014). *See* Opp'n 10, 12-13. But neither decision purports to revise the *Keller* standard. To the contrary, *Harris*—the more recent decision—expressly reaffirmed that standard. 573 U.S. at 655-56. *Harris* recognized that the "portion of the [bar] rule that [*Keller*] upheld served the 'State's interest in regulating the legal profession and improving the quality of legal services,'" and the Court stated that *Keller* "is wholly consistent with" and "fits comfortably within the [exacting-scrutiny] framework applied" in *Harris*.[3] *Id.* (quoting *Keller*, 496 U.S. at 13);

[2] This italicized language from *Keller* makes clear that the freedom-of-association claim that the Supreme Court reserved for the lower courts' consideration was focused on state-bar participation in political or ideological activities beyond those justified by the state's interests in professional regulation or legal-service quality. *See* Mot. 22 n.11. *Contra* Opp'n 8-9.

[3] Plaintiffs also contend (Opp'n 13) that their interpretation of *Keller* is "buttressed" by *Janus v. American Federation of State, County, & Municipal Employees*, 138 S. Ct. 2448 (2018). But as Defendants have explained, *see* Mot. 17-18, the Court's opinion in *Janus* does not mention—much

see also Johanns, 544 U.S. at 558 (*Keller* calls for inquiry into whether integrated bar's speech is "germane to the regulatory interests that justif[y] compelled membership").

Courts of appeals have rejected the notion that the constitutionality of integrated-bar expenditures turns solely on whether they might be characterized as "political" or "ideological" in nature. The Seventh Circuit has explained that it "is not sufficient to examine only the political or ideological nature of [challenged] expenditures." *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 716 (7th Cir. 2010). Instead, "the First Amendment requires [the] court to consider whether challenged expenditures . . . are reasonably related to the constitutionally relevant purposes of [the mandatory] association." *Id.* "[T]he key is the overall 'germaneness' of the speech to the governmental interest at issue." *Id.* Therefore, an integrated bar "may use the mandatory dues of objecting members to fund only those activities that are reasonably related to the [s]tate [b]ar's dual purposes of regulating the profession and improving the quality of legal services, *whether or not those same expenditures are also non-ideological and non-political*." *Id.* at 718 (emphasis added).

The Ninth Circuit has similarly explained that "what *Keller* found objectionable was not political activity but partisan political activity as well as ideological campaigns *unrelated to the bar's purpose*." *Gardner v. State Bar of Nev.*, 284 F.3d 1040, 1043 (9th Cir. 2002) (emphasis added). And the First Circuit in *Romero v. Colegio de Abogados de Puerto Rico*, 204 F.3d 291 (1st Cir. 2000), held that the district court erred by focusing on whether challenged integrated-bar expenditures were "political" or "ideological," without "determin[ing] whether [the expenditures were] germane to regulating the legal profession and improving the quality of legal services." *Id.* at 295-96, 302 (citation omitted); *see also id.* at 297 ("An integrated state bar may not . . . compel

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less purport to overrule or limit—*Keller*. Indeed, *Janus*'s principal dissent emphasizes that the majority's opinion "does not question" *Keller*. 138 S. Ct. at 2498 (Kagan, J., dissenting).

members to fund 'activities of an ideological nature' *that are not germane to the state's interest justifying compelled membership*." (emphasis added) (quoting *Keller*, 496 U.S. at 14)). Plaintiffs provide no compelling reason for this Court to split from the First, Seventh, and Ninth Circuits by holding that the constitutionality of integrated-bar expenditures hinges solely on whether they might be characterized as "political" or "ideological" in nature.

In addition to lacking precedential support, Plaintiffs' nebulous proposed prohibition against "political" or "ideological" integrated-bar expenditures is unworkable. Plaintiffs never provide a clear definition of what makes a bar activity "political" or "ideological." Under some definitions of those amorphous terms, attorneys might contend that nearly all bar activities are "political" or "ideological." For example, one definition of "political" is "pertaining to the conduct of government." *Political*, *Black's Law Dictionary* (11th ed. 2019). One might argue that *everything* the Texas State Bar does is "political" in that sense, as the Bar is "an administrative agency of the judicial department of [the Texas] government." Tex. Gov't Code Ann. § 81.011(a). Because attorneys who object to particular bar activities could almost always allege that the activities are "political" or "ideological" in nature, making the constitutional test hinge solely on those vague terms would threaten integrated bars with endless, costly litigation that could eventually paralyze bar operations. This Court should reject Plaintiffs' effort to effectively gut *Keller*'s and *Lathrop*'s recognition of the constitutionality of integrated bars through a proposed standard that would provide no meaningful guidance on the activities in which integrated bars may constitutionally engage.

B. Because They Are Founded on the Erroneous Premise That the State Bar Cannot Engage in Any "Political" or "Ideological" Activities, Plaintiffs' Challenges to Particular Bar Activities Fail

Defendants have explained at length why the particular Bar activities Plaintiffs challenge comply with *Keller* because they further the state's interests in professional regulation or legal-

service quality improvement. *See* Mot. 22-30. Defendants have not only detailed the challenged programs' value to Texas lawyers, their clients, and the general public, but have also cited provisions of the Texas Disciplinary Rules of Professional Conduct that those programs advance. *See, e.g.*, *id.* at 25-28. In response, Plaintiffs rehash the arguments in their complaint and summary-judgment motion. Those arguments fail because they are founded on the erroneous premise that the Bar cannot engage in any activities that might be characterized as "political" or "ideological." *See, e.g.*, Opp'n 15 ("Legislation and lobbying are inherently political . . . ."); *id.* at 16-18 (arguing that diversity initiatives, access-to-justice programs, journal, and continuing-legal-education programs are "ideological"). Given their reliance on the wrong legal standard, Plaintiffs do not meaningfully contest Defendants' showing of how the Bar's challenged programs comply with the test actually set forth in *Keller*. Only the Bar's legislative activities and advertising warrant further discussion.

On the Bar's legislative activities, Plaintiffs err in arguing that integrated bars cannot conduct any lobbying. Opp'n 14. If the Supreme Court had intended to adopt that bright-line rule, it could (and would) have said so expressly in *Keller*. Instead, after describing a wide variety of legislative activities undertaken by the California State Bar and its "conference of delegates," *Keller* identified only two that "clear[ly]" could not be funded with mandatory fees—"endors[ing] or advanc[ing] a gun control or nuclear weapons freeze initiative." 496 U.S. at 15-16. If Plaintiffs' proposed rule were the law, *Keller* would simply have stated that "[c]ompulsory dues may not be expended [on any lobbying activities]." *Id.* at 16. The absence of such language indicates that integrated bars may engage in lobbying activities as long as they satisfy the general *Keller* standard by furthering the state's interests in professional regulation or legal-service quality improvement. *See id.* at 13-14; *see also* Mot., Ex. 1, Findings & Recommendation at 22 n.8, *Gruber v. Or. State*

Bar, No. 3:18-cv-1591-JR (D. Or. Apr. 1, 2019) ("*Gruber* slip op.") (challenge to Oregon State Bar's legislative policy "fail[ed] as a matter of law" because Bar's bylaws "provide that the Bar's legislative or policy activities must be reasonably related to topics related to the legal profession").

In arguing that "many of the bills [the Bar] supports are highly controversial," Opp'n 14, Plaintiffs mischaracterize the record and Defendants' arguments and ignore the Bar's policy against engaging in legislative activities that "carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar," Opp'n, Ex. EE, Policy Manual § 8.01.03(C). Defendants do *not* claim "a roving mandate to spend coerced dues on efforts to 'amend or repeal' what *they* believe to be unconstitutional laws." Opp'n 15 (emphasis added). For example, the Bar's support for amending "Texas's definition of marriage" does not merely reflect the *Bar Board's* "belie[f]" that the definition is unconstitutional. *Id.* at 14-15. Instead, *this Court* has entered a final judgment declaring that definition unconstitutional under *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). *See* Mot., Ex. 10.[4]

Plaintiffs' undeveloped challenge to the Bar's advertising expenditures (Opp'n 18) is similarly meritless. Plaintiffs have provided no meaningful legal or factual basis for a ruling in their favor on this issue because they have not identified any particular advertisements that they contend fail to comply with *Keller*. To the extent Plaintiffs claim that *all* Bar advertising violates the First Amendment, that claim conflicts with court of appeals decisions upholding bar-sponsored public image campaigns. *See* Mot. 30 n.13; *see also Kingstad*, 622 F.3d at 719-21 (public image campaign "germane to the Bar's constitutionally legitimate purpose of improving the quality of

[4] Plaintiffs are also wrong in suggesting that the Bar has supported the "creat[ion] [of] civil unions 'as an alternative to marriage' for both sexes." Opp'n 15 (quoting Opp'n, Ex. Y). On its face, the bill Plaintiffs cite, H.B. No. 978, would not have authorized the formation of civil unions in Texas. It would have *defined* the term "civil union" as used in Tex. Family Code Ann. § 3.401(5), which refers to "a civil union . . . *entered into in another state*." Opp'n, Ex. Y at 5-6 (emphasis added).

legal services"); *Gardner*, 284 F.3d at 1043 (similar). The Supreme Court's decision in *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991), is not to the contrary. *Contra* Opp'n 18. In *Lehnert*, the Court held that a teachers' union could not charge non-union employees for "[p]ublic relations expenditures designed to enhance the reputation of the teaching profession" because they were "not sufficiently related to the union's [chargeable] collective-bargaining functions." 500 U.S. at 528-29 (citation omitted). *Lehnert* is readily distinguishable because "the purposes supporting mandatory union dues (collective bargaining and grievance resolution) and a mandatory bar (regulating the profession and improving legal services) are very different." *Kingstad*, 622 F.3d at 719. Unlike the *Lehnert* expenditures, the Bar's advertising activities are "highly germane to the purposes for which the State Bar exists," *Gardner*, 284 F.3d at 1043, because they inform lawyers and the public about the Bar's programs and the Bar's role in furthering those interests. *See* Mot. 30 n.13.

II. Because the Bar Adheres to Detailed Policies That Prevent "Non-Chargeable" Activities, It Is Not Required to Provide the Procedural Protections Required of Organizations Engaging in Both "Chargeable" and "Non-Chargeable" Activities

As a matter of policy and practice, the State Bar only engages in activities that are "chargeable" to its members—i.e., activities furthering the state's interests in professional regulation and legal-service quality improvement. *See* Mot. 7-10, 22-30. Because the Bar has no "non-chargeable" expenditures, it has no obligation to provide members with the full complement of procedural protections required of organizations with such expenditures. *Contra* Opp'n 18-21.

Plaintiffs contend (Opp'n 20-21) that the Bar has violated the First Amendment by declining to adopt the precise procedures described in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). But *Keller* does not mandate that integrated bars adopt the exact procedures outlined in *Hudson*. To the contrary, Plaintiffs concede that *Keller* "left open" (Opp'n 20) the question of whether integrated bars could adopt "alternative procedures" to prevent bar members

from being compelled to fund non-chargeable expenses. *Keller*, 496 U.S. at 17. Moreover, *Keller* and *Hudson* are distinguishable because the organizations in those cases—unlike the Texas State Bar—engaged in non-chargeable activities. In *Keller*, the California State Bar undertook non-chargeable "election campaigning," and the Bar-funded conference of delegates engaged in non-chargeable endorsement of gun control and nuclear weapons freeze initiatives. *Id.* at 7, 15-16. The union in *Hudson* admitted that it had non-chargeable expenditures. *Hudson*, 475 U.S. at 295.

Plaintiffs cite *no* authority in support of their novel argument that a state bar that has elected to limit its activities to those permitted under *Keller*—and has robust safeguards in place to ensure compliance with the *Keller* standard—must nonetheless comply with the procedures set forth in *Hudson*. To protect First Amendment interests, enhanced procedural safeguards may be required for organizations that indisputably engage in both chargeable and non-chargeable activities given the risk that they will improperly use objectors' funds to subsidize their non-chargeable activities. *See Hudson*, 475 U.S. at 302-03. Organizations like the Bar that strictly limit themselves to chargeable activities do not present comparable First Amendment concerns. Indeed, the purpose of a "*Hudson* notice"—to inform individuals of the "allocation of funds for chargeable and *nonchargeable purposes*," *Knox v. Serv. Emps. Int'l Union*, 567 U.S. 298, 318 (2012) (emphasis added)—is inapplicable where an integrated bar does not have any non-chargeable expenditures to report. Therefore, *Keller*'s and *Hudson*'s discussions of required procedural protections do not apply here because the State Bar is prohibited by state law and its own policy from engaging in any activity that does not comply with *Keller*. *See, e.g.*, Tex. Gov't Code Ann. §§ 81.034, 81.054(d); Policy Manual § 3.14.

While Plaintiffs claim a need for "*ex ante* procedural requirements," they ignore that the Bar provides such "prophylactic guardrails" (Opp'n 20) through its detailed procedures for

ensuring compliance with *Keller*, including a nine-page policy setting forth a multi-step deliberative process for the Bar's consideration of proposed legislative activities. *See* Mot. 7-10. Those procedures work in practice. As Defendants have shown, *every* Bar activity that Plaintiffs challenge furthers the state's interests in regulating the legal profession or improving the quality of legal services. *See* Mot. 22-30. Because the Bar adheres to detailed policies and procedures that prevent non-chargeable expenditures, it is not required to adopt the procedures that apply to organizations with both chargeable and non-chargeable expenditures, such as providing a breakdown of such chargeable and non-chargeable expenditures. *Cf. Hudson*, 475 U.S. at 306-07.

The Bar's existing policies and procedures amply achieve the objective of procedural safeguards in the First Amendment context—i.e., ensuring that "the government treads with sensitivity in areas freighted with First Amendment concerns." Opp'n 20 (quoting *Hudson*, 475 U.S. at 303 n.12). The Bar provides members with advance, detailed notice of its proposed expenditures, and several opportunities to object to those expenditures before they occur. *See* Apffel Decl. ¶¶ 39-46; Laney Decl. ¶¶ 31-45.

The Bar publishes its proposed annual budget and notice of a public hearing on the budget in the *Texas Bar Journal*, well in advance of both the Bar Board's adoption of the budget and the June 1 deadline for annual membership fees. *See* Apffel Decl. ¶¶ 21, 41 (2019-2020 proposed budget published in March issue of *Texas Bar Journal*). The Bar's annual proposed budgets itemize particular categories of forecasted revenues and proposed expenditures, including specific budgets for programs such as "Government Relations," "Minority Affairs," and the "Bar Journal." Opp'n, Exs. K, L. The Bar's website publishes the Bar's recent annual financial statements and independent auditor's reports, which provide a detailed accounting of the Bar's finances and expenditures. *See* Our Finances, https://bit.ly/2JTy8Np (last visited June 17, 2019). The Bar also

provides notice of proposed legislation on which it is considering taking a position. *See* Laney Decl. ¶ 34. Together, these disclosures more than satisfy any constitutional notice requirements that might apply to the Bar's expenditures. *See Gruber* slip op. at 25 (upholding Oregon Bar's protest procedure against First Amendment challenge where "the Bar provides all members with an annual accounting of both projected and actual expenses, allowing a member an opportunity to object if they believe an upcoming expense fails to comply"); *see also Hudson*, 475 U.S. at 307 n.18 (noting "adequate disclosure . . . would include the major categories of expenses").

Additionally, Bar members have multiple opportunities to object to proposed expenditures before they occur. *See* Mot. 10. For example, members may object (1) at the annual public budget hearing required under Tex. Gov't Code Ann. § 81.022(b), (2) at the annual Bar Board meeting at which the budget is approved under Policy Manual § 3.02.03, and (3) under the Policy Manual's protest procedure, which allows members to "object to a *proposed* or actual expenditure," Policy Manual § 3.14.02 (emphasis added). Members may also object to proposed legislative activities and participate in the Legislative Policy Subcommittee meeting on the Bar's proposed legislative program. *See* Laney Decl. ¶¶ 31-45. Plaintiffs do not dispute that they have *never* taken any of these objection opportunities. *See* Apffel Decl. ¶¶ 45-46, 87-89; Laney Decl. ¶¶ 35, 38, 42, 45. Plaintiffs cannot plausibly claim that the Bar unconstitutionally coerces them into funding allegedly non-chargeable activities without a meaningful opportunity to object.

CONCLUSION

The Court should enter summary judgment for Defendants on all of Plaintiffs' claims.

Dated: June 18, 2019

Respectfully submitted,

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I certify that on June 18, 2019, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the Western District of Texas by using the Court's CM/ECF system, which will send notification of such filing to the following:

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