

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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LUCILLE S. TAYLOR,

Case No.: 1:19-cv-00670

Plaintiff,

v

HON. ROBERT J. JONKER

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.

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**DEFENDANTS' ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

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Defendants, State Bar of Michigan, Jennifer M. Grieco, Dennis M. Barnes, Robert J. Buchanan, Dana M. Warnez, and James W. Heath (collectively, “**Defendants**”) answer Plaintiff’s Complaint for Declaratory and Injunctive Relief Under 42 U.S.C. § 1983 and Damages 42 U.S.C. § 1988 as follows:

**INTRODUCTION**

1. This suit seeks to secure the free speech and free association rights protected by the First Amendment and the Fourteenth Amendment.

**ANSWER: Defendants admit that Plaintiff has captioned her claims in this fashion, but deny that Plaintiff’s claims have merit.**

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.

**ANSWER: Defendants admit that Plaintiff is licensed to practice law in the State of Michigan and that, as a condition of such licensure, Plaintiff is required to be a member of the State Bar of Michigan (“SBM”) and pay annual bar dues. Defendants deny the remaining allegations in this paragraph because they are untrue.**

3. The SBM is a public body corporate. MCL 600.901.

**ANSWER: Admitted.**

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.

**ANSWER: Admitted.**

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).

**ANSWER: Defendants admit that SBM members are required to pay annual membership dues, but deny the remaining allegations in this paragraph because they are untrue.**

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.

**ANSWER: Admitted.**

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.*

**ANSWER: Admitted.**

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.*

**ANSWER: Admitted.**

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).

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer. To the extent that this paragraph is intended to state factual allegations, those allegations are denied as untrue.**

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).

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer. To the extent that this paragraph is intended to state factual allegations, those allegations are denied as untrue.**

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).

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer. To the extent that this paragraph is intended to state factual allegations, those allegations are denied as untrue.**

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).

**ANSWER: Defendants admit that the Supreme Court has upheld the constitutionality of mandatory bar dues. Answering further, the allegations in this paragraph state only legal conclusions and therefore require no answer.**

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.

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer. To the extent that this paragraph is intended to state factual allegations, those allegations are denied as untrue.**

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).

**ANSWER: Admitted. Answering further, the Eighth Circuit, on remand, affirmed its prior ruling and reaffirmed the trial court, in a decision reported August 30, 2019. *Fleck v. Wetch*, No. 16-1564, 2019 WL 4126356 (8th Cir. Aug. 30, 2019).**

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

**ANSWER: Defendants deny the allegations in this paragraph because they are untrue. Answering further, the SBM uses member dues to opine on matters of public policy only if reasonably related 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; or (E) the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession. (Mich. Sup. Ct. Admin. Order No. 2004-1.)**

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.

**ANSWER: Defendants deny the allegations in this paragraph because they are untrue.**

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

**ANSWER: Defendants admit that SBM has not implemented a waiver process, but deny any express or implied assertion that the Supreme Court's ruling in *Janus* requires the SBM to implement a waiver process.**

### **JURISDICTION AND VENUE**

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

**ANSWER: Admitted.**

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

**ANSWER: Defendants deny that Plaintiff has standing to assert Count I of her complaint, but admit that this Court has subject matter jurisdiction over Count II of Plaintiff's complaint.**

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

**ANSWER: Admitted.**

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

**ANSWER: Admitted.**

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

**ANSWER: Defendants admit that venue is proper in this Court, but deny that all Defendants reside in Ingham County.**

### **PARTIES**

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

**ANSWER: Admitted, upon information and belief.**

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.

**ANSWER: Admitted.**

25. Plaintiff Lucille S. Taylor is a member of SBM because membership is a mandatory prerequisite to practicing law in Michigan.

**ANSWER: Defendants lack knowledge or information sufficient to answer Plaintiff's allegations regarding her motivations to join the SBM, but admit that Plaintiff is a SBM member and that membership is a prerequisite to obtaining a license to practice law in Michigan.**

26. Plaintiff Lucille S. Taylor has paid her compulsory membership dues since joining SBM in 1972.

**ANSWER: Admitted.**

27. Defendant SBM is a domestic nonprofit public corporation with principal offices in Lansing, Ingham County, Michigan.

**ANSWER: Denied. Pursuant to Michigan law (MCL 600.901), SBM is a public body corporate. Admitted, however, that SBM has its 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.

**ANSWER: Admitted.**

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.

**ANSWER: Defendants admit that Jennifer M. Grieco serves as President of the SBM Board of Commissioners, but deny the remaining allegations in this paragraph as untrue.**

**Answering further, the SBM policies that Plaintiff is challenging in this action were promulgated by the Michigan Supreme Court and are followed by the SBM and its leadership.**

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.

**ANSWER: Defendants admit that Dennis M. Barnes serves as President-Elect of the SBM Board of Commissioners, but deny the remaining allegations in this paragraph as untrue.**

**Answering further, the SBM policies that Plaintiff is challenging in this action were promulgated by the Michigan Supreme Court and are followed by the SBM and its leadership.**

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.

**ANSWER: Defendants admit that Robert J. Buchanan currently serves as Vice President of the SBM Board of Commissioners, but deny the remaining allegations in this**

**paragraph as untrue. Answering further, the SBM policies that Plaintiff is challenging in**

**this action were promulgated by the Michigan Supreme Court and are followed by the SBM and its leadership.**

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.

**ANSWER: Defendants admit that Dana M. Warnez currently serves as Secretary of the SBM Board of Commissioners, but deny the remaining allegations in this paragraph as untrue. Answering further, the SBM policies that Plaintiff is challenging in this action were promulgated by the Michigan Supreme Court and are followed by the SBM and its leadership.**

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.

**ANSWER: Defendants admit that James W. Heath currently serves as Treasurer of the SBM Board of Commissioners, but deny the remaining allegations in this paragraph as untrue. Answering further, the SBM policies that Plaintiff is challenging in this action were promulgated by the Michigan Supreme Court and are followed by the SBM and its leadership.**

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.*

**ANSWER: Admitted.**

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.*

**ANSWER: Admitted.**

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.*

**ANSWER: Admitted.**

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.*

**ANSWER: Admitted.**

### COUNT I

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

**ANSWER: Defendants incorporate by reference their answers to the foregoing paragraphs.**

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*.

**ANSWER: Defendants admit that Plaintiff is licensed to practice law in the State of Michigan and that, as a condition of such licensure, Plaintiff is required to be a SBM member and pay annual bar dues that are used to fund the Attorney Grievance Commission, the Attorney Discipline Board, and other SBM activities. Defendants deny the remaining allegations in this paragraph because they are untrue.**

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.

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer.**

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.

**ANSWER: Denied as untrue.**

## COUNT II

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

**ANSWER: Defendants incorporate by reference their answers to the foregoing paragraphs.**

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.

**ANSWER: Denied as untrue.**

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.

**ANSWER: The allegations in this paragraph state only legal conclusions and therefore require no answer.**

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.

**ANSWER: Denied as untrue.**

### **AFFIRMATIVE DEFENSES**

Defendants may rely on any or all of the following affirmative defenses in this matter:

1. Plaintiff lacks standing to assert all or some of her claims in this matter.
2. Plaintiff's claims are barred, in whole or in part, by the 11<sup>th</sup> Amendment to the United States Constitution and the doctrine of sovereign immunity, and/or other immunity defenses.
3. Plaintiff's claims may be barred in whole or in part by applicable statutes of limitations and/or related equitable doctrines of waiver, laches and estoppel.

4. Plaintiff has failed to exhaust her administrative remedies as to all or some of her claims.

5. Defendants reserve the right to add further affirmative defenses as and when they become known in this matter.

**WHEREFORE**, Defendants respectfully request that this Court dismiss Plaintiff's Complaint with prejudice and grant Defendants their reasonable attorney fees incurred in defending this action, their costs, and such other relief as this Court deems just and equitable.

Dated: September 19, 2019

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