UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

RANDY J. BOUDREAUX
Plaintiff,

v.

LOUISIANA STATE BAR ASSOCIATION, a Louisiana Nonprofit Corporation;
LOUISIANA SUPREME COURT;
BERNETTE J. JOHNSON, Chief Justice of the Louisiana Supreme Court;
JOHN DOE, successor to the Honorable Greg Guidry as Associate Justice of the Louisiana Supreme Court for the First District;
SCOTT J. CRICHTON, Associate Justice of the Louisiana Supreme Court for the Second District;
JAMES T. GENOVESE, Associate Justice of the Louisiana Supreme Court for the Third District;
MARCUS R. CLARK, Associate Justice of the Louisiana Supreme Court for the Fourth District;
JEFFERSON D. HUGHES, III, Associate Justice of the Louisiana Supreme Court for the Fifth District;
JOHN L. WEIMER, Associate Justice of the Louisiana Supreme Court for the Sixth District,
Defendants.

CIVIL ACTION

Case No. 19-cv-11962

SECTION "I" (1)

Judge Lance M. Africk

Mag. Judge van Meerveld

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Rules

Cases

I. Introduction

"Membership in the bar is a privilege burdened with conditions." *In re Snyder*, 472 U.S. 634, 644 (1985) (citation omitted). In Louisiana, one of these conditions requires that attorneys become members of the Louisiana State Bar Association ("LSBA") and pay a license tax in the form of LSBA dues. The Plaintiff, Randy Boudreaux, and his counsel object to the existence of integrated bar associations[1] such as the LSBA and the collection of mandatory dues. These objections are foreclosed, however, by governing precedent from the United States Supreme Court.

In *Lathrop v. Donohue*, 367 U.S. 820 (1961), the Supreme Court held that integrated bar associations, including those which impose mandatory dues, do not violate bar members' right to freedom of association. *See Lathrop v. Donohue*, 367 U.S. 820 (1961) (plurality); *accord id*. at 849 (Harlan, J., and Frankfurter, J., concurring); *id*. at 865 (Whittaker, J., concurring). Then, in *Keller v. State Bar of California*, 496 U.S. 1, 17 (1990), the Supreme Court unanimously held that an integrated bar association can use mandatory dues to fund its speech activities so long as a mechanism exists by which members can object to the use of their dues for purposes that are not germane to the bar association's legitimate interests. Notwithstanding this case law, and relying on a recent inapposite case involving a public sector union, the Plaintiff has sued the Louisiana State Bar Association, the Louisiana Supreme Court, and each of its Justices in their official capacities (the "Defendants"),[2] and asked this Court for a sweeping declaration that the LSBA is

[1] An integrated bar is "an association of attorneys in which membership and dues are required as a condition of practicing law in a State." *Keller v. State Bar of California*, 496 U.S. 1, 5 (1990).
[2] References herein to the "Defendants" or the "Justices" do not include "Justice Doe," the person whom the Complaint characterizes as "an individual whose identity is currently unknown, who will succeed the recently retired Hon. Greg Guidry as the Associate Justice of the Louisiana Supreme Court from Louisiana's First Judicial District." Doc. 1, ¶ 15.

unconstitutional and an injunction barring the Defendants from enforcing the Louisiana statutes and court rules mandating bar membership and the payment of dues.

The Plaintiff raises three broad challenges to the LSBA, each of which ignores *Keller* and *Lathrop*:

> Claim 1: Compelled membership in the LSBA violates attorneys' First and Fourteenth Amendment rights to free association and free speech.
>
> Claim 2: The collection and use of mandatory bar dues to subsidize the LSBA's speech, including its political and ideological speech, violates attorneys' First and Fourteenth Amendment rights to free association and free speech.
>
> Claim 3: The LSBA violates attorneys' First and Fourteenth Amendment rights by failing to provide safeguards to ensure mandatory dues are not used for impermissible purposes.

The Plaintiff's claims fail as a matter of law.

Lathrop and *Keller* have never been overruled and control the disposition of this case. Moreover, the Plaintiff's purported extension of the public-sector union case, *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), is unavailing. The U.S. Supreme Court has cautioned lower courts that "if a precedent of this Court [the U.S. Supreme Court] has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quotation omitted). And, putting to one side the Complaint's failings on the merits, the Louisiana Supreme Court is not a juridical entity capable of being sued, and the claims against it must be dismissed on this basis. The Plaintiff's Complaint, therefore, fails to state a claim upon which this Court can grant relief and should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. Law and Analysis

A. Standard of Law

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a Complaint must allege sufficient facts to "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. 544, 555 (2007). Courts will "assess a Rule 12(b)(6) motion only on 'the facts stated in the complaint and the documents either attached to or incorporated in the complaint.'" *Ferguson v. Bank of New York Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015).

"In analyzing a suit instituted under 42 U.S.C. § 1983 in the context of a Rule 12(b)(6) motion, the initial inquiry is whether the complaint properly sets forth a claim of a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States caused by persons acting under color of state law." *S. Christian Leadership Conference, Louisiana Chapter v. Supreme Court of State of Louisiana*, 61 F. Supp. 2d 499, 504 (E.D. La. 1999) (Fallon, J.) (internal quotation omitted). "A court must focus on the plaintiff's complaint, the nature of the purported protected interest, and the nature of the alleged deprivation." *Id.* "Failure of the complaint to set forth a deprivation of a protected interest warrants dismissal of the case." *Id.*

When a complaint states facts that, even if construed liberally, demonstrate that the plaintiff's claim is foreclosed by precedent, dismissal pursuant to Rule 12(b)(6) is proper. *See*, *e.g.*, *In re Bertucci Contracting Co., L.L.C.*, 712 F.3d 245, 246-48 (5th Cir. 2013) (affirming the dismissal of claims in a limitation proceeding pursuant to Rule 12(b)(6) because those claims were foreclosed by Fifth Circuit precedent, and finding that "Appellants have alleged no facts, even if construed liberally, that plausibly state a claim . . . ."). Federal district courts are bound by precedent, and dismissal of claims foreclosed by precedent is appropriate "absent an intervening

change in the law such as by a statutory amendment, or the Supreme Court, or the [Fifth Circuit's] en banc court." *Vaughan v. Anderson Reg'l Med. Ctr.*, 849 F.3d 588, 591 (5th Cir. 2017) (quotation omitted).

B. *Janus* does not apply to this case.

In *Lathrop* and *Keller*, the Supreme Court considered and rejected arguments that the collection and use of mandatory bar dues violates the First Amendment rights of affected attorneys. The Plaintiff argues that *Janus*, 138 S. Ct. 2448 (2018), compels a different result on these identical issues.[3] It does not. The Defendant first will dispose of the Plaintiff's *Janus* argument before demonstrating why pre-*Janus* precedent requires the Complaint's dismissal.

Keller, 496 U.S. at 17, established that the collection of mandatory bar association fees by state bar associations does not violate the First Amendment if an objection and refund mechanism exists for dissenting members with respect to any speech by the bar association that is not germane to the bar association's purpose. The Court concluded that one acceptable mechanism (now referred to as *Keller* procedures) is for the bar to provide "an explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Id.* at 16 (quotation omitted). The Court need not reach beyond *Keller* to dismiss this lawsuit. Nonetheless, *Keller* relied in part on a union case, *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), *overruled by Janus*, 138 S. Ct. 2448, a discussion of which is necessary to understand the Plaintiff's *Janus* argument.

The *Abood* plaintiffs argued that their right to freedom of association had been violated by an "'agency shop arrangement,' whereby every employee represented by a union even though

[3] *See* Doc. 1 at 20.

not a union member must pay to the union, as a condition of employment, a service fee equal in amount to union dues.'" 431 U.S. at 212. The union's role as the exclusive representative precluded union members from communicating directly with their employer regarding a variety of conditions of employment. *See id.* at 222. The Court held that the plaintiffs could allege a First Amendment claim *if* there was no appropriate internal procedure by which the plaintiffs could seek a refund or reduction in fees for any portion of fees used for speech activities to which the plaintiffs objected and that were not germane to the union's purpose. *See id.* at 235–36, 240–241. Although the union had installed an internal remedy, it had done so only after commencement of the litigation. Accordingly, the Court remanded the case for further proceedings. *See id.* at 242 (suggesting that "it may be appropriate . . . to defer further judicial proceedings pending the voluntary utilization by the parties of that internal remedy as a possible means of settling the dispute").

In *Harris v. Quinn*, 573 U.S. 616 (2014), the Supreme Court found that *Abood* had proven unworkable. Justice Alito, writing for the majority in *Harris*, summarized the numerous cases illustrating the "conceptual difficulty" and "practical administrative problems" that pervaded challenges to public-sector union expenses under *Abood*. *Harris*, 573 U.S. at 636–37.[4] *Harris* concluded that *Abood* rested on "questionable foundations" and refused to extend it. *See id.* at 645–46. *Harris* confirmed, however, that *Abood*'s "questionable foundations" did not weaken the force of *Keller*. As Justice Alito observed:

> This decision [*Keller*] fits comfortably within the framework applied in the present case. 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." *Ibid.* States also have a strong interest

[4] Unlike some of the unions discussed in *Harris*, the LSBA does not support or endorse political candidates or their activities.

> 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*.

Harris, 573 U.S. at 655–56. Thus, after *Harris*, it was clear that *Abood* may be subject to reconsideration, while *Keller* remained justifiably distinct as governing precedent.

Four years after *Harris* was decided, *Abood* was overruled. In *Janus*, 138 S. Ct. at 2460, the Supreme Court, again in an opinion by Justice Alito, overruled *Abood* and held that States and public-sector unions may no longer extract "agency fees" from employees without their affirmative consent.[5] Justice Alito did not address *Keller*, nor did he need to do so; *Harris* itself confirmed that *Keller* remains good law regardless of the infirmities of *Abood. Harris*, 537 U.S. at 655–56; *see also Janus*, 138 S. Ct. 2448, 2498 (Kagan, J., dissenting) (observing that "today's decision does not question" cases outside the labor sphere and citing *Keller*, 496 U.S. at 9–17).

Thus, *Janus* overruled *Abood* but did not affect *Keller.* This Court need not engage in further analysis to apply the law as articulated in *Keller* and *Lathrop* to dismiss the Plaintiff's claims. *See Agostini*, 521 U.S. at 237 (lower courts should leave to the Supreme Court "the prerogative of overruling its own decisions"); *see also Fleck v. Wetch*, No. 16-1564, 2019 WL 4126356, at *5 (8th Cir. Aug. 30, 2019) ("*Janus* did not overrule *Keller* and did not question use of the *Hudson* procedures when it is appropriate to do so, [therefore,] we conclude after further consideration that *Janus* does not alter our prior decision . . . ."); *Gruber v. Oregon State Bar*, No. 3:18-CV-1591-JR, 2019 WL 2251826, at *9 (D. Or. Apr. 1, 2019) ("[T]his court should decline to apply *Janus* and must apply *Keller* to the cases at bar. Applying *Keller* demonstrates that the

[5] As in *Abood*, under the statutory scheme at issue in *Janus*, only the union could negotiate with the employer on conditions of employment. *Janus*, 138 S. Ct. at 2460 ("If a majority of the employees in a bargaining unit vote to be represented by a union, that union is designated as the exclusive representative of all the employees."). No similar restrictions on individual sppech apply to members of an integrated bar association.

plaintiffs' claims fail as a matter of law and should be dismissed.").[6] Putting *Janus* aside, this Court can proceed to review the Complaint based on the governing Supreme Court precedent, *Lathrop* and *Keller*.

C. *Lathrop* requires the dismissal of the Plaintiff's free association claim.

The Plaintiff asserts that an integrated bar association violates his right to freedom of association under the First Amendment.[7] As a matter of law, he is wrong. The United States Supreme Court established in *Lathrop* that integrated bar associations, in which the only membership requirement is the payment of dues, do not violate the First Amendment freedom of association right of attorneys, even if the bar association also engages in some legislation-related activities. *Lathrop v. Donohue*, 367 U.S. 820 (1961) (plurality); *accord id*. at 849 (Harlan, J., and Frankfurter, J., concurring); *id*. at 865 (Whittaker, J., concurring). In *Lathrop*, a Wisconsin lawyer alleged that the Wisconsin Bar Association promoted politics and encouraged adoption of legislation to which he was opposed. *Lathrop*, 367 U.S. at 822. The lawyer's compulsory enrollment in the bar association imposed only the duty to pay dues; he did not need to attend meetings or otherwise participate in organization elections. *Id.* The Court held that a State may "constitutionally require that the costs of improving the profession . . . should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity." *Id.* at 843. In 1942, the

[6] Although this Court need not and should not inquire whether the rejection of *Abood* undermines *Keller*, *Agostini*, 521 U.S. at 237, there are obvious and significant differences between a bar association and a public sector union, differences that justify maintaining mandatory dues and a *Keller*-procedure for dissenters in the context of a mandatory bar association. As Justice Rehnquist recognized in *Keller*, and as is still true today, bar associations serve both professional and public interests by "regulating the legal profession and improving the quality of legal services." *See Keller*, 496 U.S. at 13.

[7] Doc. 1, ¶¶ 2, 65.

Louisiana Supreme Court reached the same conclusion, holding that LSBA dues do not infringe an attorney's right to free association. *In re Mundy*, 11 So. 2d 398, 401 (1942).

As in *Lathrop* (and *Mundy*), the Plaintiff contends that mandatory membership in the LSBA violates his first amendment right to freedom of association.[8] The Plaintiff's Complaint, however, fails to present any factual distinction between his present circumstances and these binding precedents. The Plaintiff has not alleged that his LSBA membership requires anything other than the payment of dues. Nor can he. As in *Lathrop*, the LSBA requires all practicing attorneys to maintain a membership by paying reasonable annual dues, but it does not require attorneys to attend meetings or vote in any of the association's elections.[9] The Plaintiff has failed to alleged facts distinguishing his freedom of association claims from those in *Lathrop*, requiring the dismissal of these claims.

D. *Keller* requires the dismissal of the Plaintiff's free speech claims.

Next, the Plaintiff asserts that the "LSBA uses members' mandatory dues to engage in speech, including political and ideological speech" causing him to suffer deprivation of his freedom of speech.[10] This argument also fails as a matter of law.

An integrated bar association's use of compulsory dues to finance activities germane to the bar association's legitimate purposes does not violate an attorney's freedom of speech. *Keller*,

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[8] *See* Doc, 1, at ¶ 2.

[9] LSBA Bylaws Art. I. The LSBA's Bylaws and Articles of Incorporation are available at https://www.lsba.org/BarGovernance/ByLawsAndArticles.aspx. They were incorporated by reference into the Complaint, are matters of public record, and are integral to Complainant's claims. Doc. 1, ¶¶ 51, 55; *Iberiabank Corp. v. Illinois Union Ins. Co.*, No. CV 18-1090, 2019 WL 585288, at *2–3 (E.D. La. Feb. 13, 2019) (internal citations omitted) ("in weighing a Rule 12(b)(6) motion, district courts primarily look to the allegations found in the complaint, but courts may also consider documents incorporated into the complaint by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned").

[10] Doc. 1, ¶¶ 36, 65.

496 U.S. at 14 (citing *Lathrop*, 367 U.S. at 843). There is no exception for political or ideological speech. Political or ideological speech that is germane to a bar association's legitimate interests does not violate the First Amendment. *See id.* at 13–14. Thus, regardless of whether political or ideological speech is involved, "the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred" for a state bar association's legitimate purpose. *See id.* at 14. Those legitimate purposes unquestionably include "regulating the legal profession" and "improving the quality of the legal service available to the people of the state." *Id.* (quotation omitted).

Should a bar association use member dues to subsidize speech that is *not* germane to the bar's legitimate interests, then the bar association must provide *Keller* procedures relative to that speech. *See id.* at 16. *Keller* procedures avoid exposing the bar association to a risk of litigation every time it decides to take a particular position. *See id.* (rejecting the premise that the bar would be burdened by the risk of litigation every time it took a particular position because the only potential burden would be administrative) (quotation omitted).

As set forth in the Complaint, the LSBA's legitimate purposes include: "to regulate the practice of law, advance the science of jurisprudence, promote the administration of justice, uphold the honor of the Courts and of the profession of law, encourage cordial intercourse among its members, and, generally, to promote the welfare the profession in the State."[11] The Plaintiff does not contest the legitimacy of any of these objectives. Further, as discussed in the Rule 12(b)(1) motion filed concurrently herewith, Louisiana's utilization of a civilian system of government requires legal advocacy and change to occur through legislation. La. Civ. Code arts. 1-3. Louisiana's lawmakers (who are not all lawyers themselves) have a legitimate interest in an

[11] Doc. 1, ¶ 30.

integrated bar association as a resource that represents the diverse demographics of all licensed Louisiana lawyers.

The Complaint makes no distinction, and challenges all LSBA speech that is political or ideological, without regard to whether the speech is germane to the LSBA's purposes.[12] Although the Complaint sets forth a list of LSBA positions, it fails to allege with any specificity that any of these positions may not be germane to the LSBA's purpose. In doing so, the Complaint ignores the distinction in *Keller* between (1) bar association speech that is permissible because it is germane to the bar association's legitimate interests, and (2) bar association speech that is not germane to the bar association's legitimate interests, and, thus, is permissible only if *Keller* procedures are available. This is reason enough to dismiss the Plaintiff's claims.

Further, the LSBA speech identified in the Complaint is germane to the LSBA's legitimate purposes. As an example, the first LSBA policy position highlighted by the Plaintiff is that the State should not execute anyone who has not had "their legal claims properly presented to the courts."[13] While the Plaintiff may consider this position ideological or political (though he does not allege any objection to it), this speech is plainly germane to the bar association's legitimate purposes of promoting the administration of justice and improving the quality of legal services provided to the people of Louisiana. *See Lathrop*, 367 U.S. at 843. A similar analysis applies with respect to the other examples of LSBA speech identified in the Complaint. Finally, insofar as the Plaintiff is attempting to allege that the LSBA has engaged in speech that is not germane to the

[12] *See* Doc. 1, ¶ 1 (attacking the use of dues for "political or ideological speech," without mentioning whether such speech is germane to the bar association's legitimate interests); *id.* ¶ 2 ("challenging "the collection of mandatory bar dues to subsidize political and ideological speech"); *id.* ¶ 59 ("[Plaintiff] further opposes the LSBA's use of any amount of his mandatory dues to fund any amount of political or ideological speech, regardless of its viewpoint . . .").

[13] *See* Doc. 1, ¶ 41. The Plaintiff does not allege that he disagrees with this statement, nor any of the other LSBA positions described in the Complaint.

LSBA's purpose, this allegation, even if true, would not violate the First Amendment. Instead, the allegation would mean only that the LSBA must provide *Keller* procedures with respect to that particular speech, which it does in fact do, as the Plaintiff effectively concedes. The Plaintiff's free speech claims should be dismissed.

E. *Keller* requires the dismissal of the Plaintiff's claims challenging the LSBA's objection procedures.

The Plaintiff has not alleged sufficient facts for a plausible claim that the LSBA's *Keller* procedures are insufficient. Assuming, for purposes of argument, that the Complaint identifies a policy position that is not germane to the LSBA's purpose (the Complaint as presently written fails to do so), there can be no violation of the Plaintiff's freedom of speech because the LSBA complies with the objection procedures prescribed in *Keller*, 496 U.S. at 16.

With appropriate *Keller* procedures in place, an integrated bar association does not violate a member's freedom of speech by engaging in some speech activities that are not germane to the bar association's legitimate purposes. *See id.* One acceptable mechanism is for the bar to provide "an explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending." *Id.* (quotation omitted). This is the procedure adopted by the LSBA.[14]

Pursuant to the LSBA Bylaws, the adoption of legislative positions is timely published in a regular communications vehicle and electronic notice to association members.[15] Once published, any member may send written objection to the Executive Director of the association within forty-five days, at which point the Board of Governors will have sixty days to either issue a pro-rata

[14] *See generally* Bylaws Art. XII. The Complaint outlines many of the LSBA's *Keller* procedures and incorporates the remaining procedures by reference to the LSBA Bylaws.
[15] Bylaws Art. XI, § 5.

refund of membership dues or refer the action to arbitration.[16] If the Board of Governors decides to submit the matter to arbitration, a panel of three arbitrators will be constituted as soon as practicable.[17] The objecting member selects the first arbitrator; the LSBA Executive Committee shall select the second arbitrator, and the third arbitrator is selected by agreement of the first two arbitrators.[18] These procedures guarantee that the member's objection will be heard as soon as practicable by an impartial decisionmaker or be automatically qualified for a pro-rata refund of dues. During the time that a decision is pending, the pro rata amount of the objecting member's membership dues is placed in escrow pending a determination of the merits of the objection.[19] The Plaintiff has asserted no facts to suggest the LSBA's procedures do not comply with *Keller*. *See also Gibson v. The Florida Bar*, 906 F.2d 624 (11th Cir. 1990) (rejecting a similar challenge to the Florida Bar's objection procedures).

The Plaintiff's allegations relative to putative deficiencies in LSBA procedures do not provide him with a constitutional claim. For example, the Plaintiff complains that "LSBA Bylaws do not specify where or when this 'publication of notice' is to occur."[20] But nothing in *Keller* requires an organization's bylaws to contain this type of specificity, and the Plaintiff has not alleged that the LSBA's notices are either untimely or inaccessible. Next, the Plaintiff complains, "LSBA does not publish notices of *all* of its activities, which means that members do not actually have an opportunity to object to the LSBA's various uses of their dues."[21] Again, neither *Keller*

[16] Bylaws Art. XII, § 1(A).
[17] Bylaws Art. XII, § 1(B).
[18] Bylaws Art. XII, § 1(C).
[19] Bylaws Art. XII, § 1(A).
[20] Doc. 1, ¶ 52.
[21] Doc. 1, ¶ 53 (emphasis supplied).

nor *Lathrop* can transform this allegation into a constitutional claim when Plaintiff does not allege that the LSBA has taken non-germane, unpublished positions to which he objects.

The LSBA's procedures meet *Keller*'s requirements. The Plaintiff's conclusory allegation that the LSBA does not provide a "meaningful, reasonable opportunity for members" to object to non-germane activities is unsupported by any plausible factual allegations. The Plaintiff does not identify any instance in which he would have objected to LSBA action but was unable to do so because of a constitutional deficiency in the available *Keller* procedures. Without any indication that the LSBA's procedures were insufficient as to the Plaintiff (or as to any other attorney for that matter), the Plaintiff has not alleged sufficient facts to raise his right to relief on the sufficiency of the LSBA's *Keller* procedures above the speculative level, and his claims should be dismissed. *See Twombly*, 550 U.S. at 555.

III. The Louisiana Supreme Court cannot be sued because it is not a juridical entity.

State law determines whether an entity has capacity to be sued in federal court. *See* Fed. R. Civ. Pro. 17(b). Under Louisiana law, an entity cannot be sued unless it is a juridical person. *See Chisom v. Edwards* No. 86-4075, 2012 WL 13005340, at *3 (E.D. La. Aug. 6, 2012) (Morgan, J.). "A juridical person is an entity to which the law attributes personality, such as a corporation or a partnership." La. Civil Code art. 24. "The Supreme Court, as an arm of the State of Louisiana [], does not possess juridical capacity to sue or be sued." *Chisom*, 2012 WL 13005340, at *1 (E.D. La. Aug. 6, 2012) (denying motion to intervene); *see also, e.g.*, *Griffith v. Louisiana*, 808 F. Supp. 2d 929, 934 (E.D. La. 2011) (Berrigan, J.) ("District courts within the Eastern District of Louisiana have consistently held that Louisiana state courts are not juridical persons capable of being sued."); *Rutherford v. Louisiana*, No. 10–1987, 2011 WL 692031, at *5 (E.D. La. Feb. 17, 2011) (Africk, J.) (finding that the 21st Judicial District of the State of Louisiana is not a juridical person); *Ormond v. Louisiana*,, No. 09-7202, 2010 WL 1837913, at *1 (E.D. La. May 5, 2010) (Vance, J.)

(". . . Louisiana state courts are not 'persons' for § 1983 purposes."). For this additional reason, the claims against the Louisiana Supreme Court should be dismissed with prejudice.

IV. Conclusion

The Plaintiff has failed to allege facts upon which relief can be granted. *Lathrop* and *Keller* have never been overruled, and they control the disposition of this case and require dismissal of each of the Plaintiff's claims. Moreover, the Louisiana Supreme Court is not a juridical entity that can be sued. The Complaint, therefore, should be dismissed with prejudice pursuant to Rule 12(b)(6).

Respectfully submitted,

/s/ Eva J. Dossier
Richard C. Stanley, 8487
Eva J. Dossier, 35753
Kathryn W. Munson, 35933
STANLEY, REUTER, ROSS, THORNTON & ALFORD, L.L.C.
909 Poydras Street, Suite 2500
New Orleans, Louisiana 70112
Telephone: (504) 523-1580
Facsimile: (504) 524-0069
Counsel for the Louisiana State Bar Association, Louisiana Supreme Court, Chief Justice Johnson, Justice Crichton, Justice Genovese, Justice Clark, Justice Hughes, and Justice Weimer