Recall Redux

To the Editor:

In "Total Recall" (January 2014 *Michigan Bar Journal*), Jason Hanselman takes the position that 2012 PA 417, which now requires that recall petitions state a justification for recall "factually and clearly," is a valid exercise of the legislature's power to protect and preserve the "purity of elections." Hogwash!

Nothing in Const 1963, art 2, § 9, which mandates the legislature to enact laws "to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting," authorizes the legislature to restrict the right of recall carefully provided and enhanced in Article 2, Section 8. Not a word in Section 9 addresses the issue of recalls other than considerations of voter registration, absentee voting, and voting twice (an abuse of the franchise). Perhaps Mr. Hanselman believes that if I do not vote the way he considers wise, I am "abusing the elective franchise," but then there is no point to elections; the aristocracy, self-appointed rather than hereditary (we are Americans, after all), simply treats elections as "advisory" only and, if the nobles regard the advice thus imparted as unpersuasive, are free to disregard it, the way the czars of Russia treated the Duma. I can almost hear Mr. Hanselman and his fellow apologists for a legislature which regards our constitution as only precatory each declaring, "*L'etat, c'est moi,*" a French phrase meaning "I am the state."

Article 2, Section 8 prohibits the legislature from exactly that kind of self-protective, self-interested manipulation of the recall process when it states, "The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question." In other words, it is for the sovereign people, Const 1963, art 1, § 1, to decide at the ballot box whether whatever reason is given for recalling an elected official is persuasive or not. Neither the legislature, nor the governor, nor the judiciary, nor self-styled sages have the right to limit the people in the exercise of a right they have clearly protected against invasion in their fundamental charter of liberty as a sovereign prerogative.

> The legislature has no business or brief restricting the right of recall.

The Convention Comment to Article 2, Section 8 notes that it is a revision of Const 1908, art III, § 8, "strengthening it somewhat by stating that the reasons for a recall shall be a political question, so that courts cannot set aside a recall on the grounds that the reasons for it are in some way inadequate." Yet that is precisely what PA 417 purports to do. Nothing in the language of Section 8 suggests that the reason for a recall must be factual; it may surely be ideological or even idiotic ("the official wears ties to his government office that clash with his shirts"). It is then for the registered voters of the district to decide. The legislature has no business or brief restricting the right of recall. PA 417 is a naked power grab by which the legislature, as it has done in other situations (notably relating to the Headlee Amendment), attempts to circumvent a clear constitutional empowerment of individuals to control government to better ensure the survival of its members against constantly shifting political winds.

Mr. Hanselman attempts to sustain such a patently invalid enactment as addressing a growing problem of too many recalls for reasons he considers insufficiently weighty. But even granting his major premise as factual and objective rather than opinionated and subjective, the solution would be a constitutional amendment restricting the existing right of recall, not legislation to contradict the clear mandate of the constitution. Whether he could sell such an anathematic notion to the voters is doubtful, so he joins the movement to evade a constitutional provision he considers inconvenient. Why he chooses to be an apologist for such an anti-democratic movement—when a constitution is inconvenient, ignore it or pass a law to supersede it—I cannot imagine (but might divine by examining his client list), but that the *Bar Journal* would publish such material, giving it an imprimatur of legitimacy and reasonableness, boggles the mind. As an involuntary member of the mandatory bar, I am forced to financially support the *Bar Journal*; if it is going to be hijacked by interest groups rather than serve as a source of politically neutral information, the First Amendment may entitle me to opt out of my compulsory subscription.

Allan Falk
Okemos

Mandatory Reading

To the Editor:

As a member of the State Bar of Michigan for more than 58 years, I have always taken for granted the desirability of an integrated bar as a means to ensure quality in the profession and protection of clients and, as such, I opposed the pending legislation to make the State Bar of Michigan a voluntary organization.

This position evaporated in minutes after reading pages 14–16 of the March 2014 *Michigan Bar Journal*, perhaps because, as a loyal supporter of the State Bar, I first read SBM President Brian Einhorn's response and then read Allan Falk's letter to which Mr. Einhorn responded.

As I write this, I do not have access to the November 2013 President's Page to which Mr. Einhorn refers at the start of his response.

I had always thought (assumed?) that attorney grievance and discipline procedures were a function of the State Bar of Michigan which, according to the first paragraph and the first sentence of the second paragraph of Mr. Falk's letter on page 14, is simply not

true. I note that Mr. Einhorn's response does not controvert those statements, so I have to assume they are true.

Instead of responding substantively, Mr. Einhorn discussed the State Bar taking official positions on proposed legislation or rules, which to me is relatively trivial. I never have regarded State Bar position statements as representing me, as I have treated them as useful information from people with much more knowledge of the issues than I have. But it would not require an integrated bar for the State Bar to take position on issues.

Nor are any of Mr. Einhorn's bullet points in the first column on page 16, nice as they might be, singly or cumulatively, a reason to require Michigan lawyers to be members of the State Bar in order to practice law in Michigan.

When I mentioned my reaction to the pending voluntary bar legislation to my wife, she immediately reminded me that I have always supported right to work and that supporting an integrated bar was inconsistent with that position, to which I responded the integrated bar was different and necessary because it assured quality in delivering legal services.

> I cannot any longer support taxing all lawyers to support an organization with which they do not happen to personally agree.

Now with that horse shot out from under me, I have to switch to supporting making the State Bar voluntary—unless Mr. Einhorn can offer some reason not mentioned in his response to Mr. Falk to require lawyers to belong to the State Bar to work at their profession.

That is not to say that I have not and do not appreciate and admire the work the State Bar has done and is doing or that I have not enjoyed State Bar functions in the past. But the State Bar has not been determinative in the way I have practiced law, and I cannot any longer support taxing all lawyers to support an organization with which they do not happen to personally agree.

Unless Mr. Einhorn can produce more evidence or details of the legislation (which I have not read) that I do not know, there is no reason to oppose the proposed legislation, and I do not see how one can ethically oppose it solely to preserve the operation of the State Bar in its present form, which requires taxing attorneys to support it.

If Mr. Einhorn can demonstrate that I am wrong, I would appreciate hearing his reasons.

Meanwhile, I am shocked at learning facts that change my long-held position on the subject.

R. W. Barker, Midland